

137 FERC ¶ 61,214
UNITED STATES OF AMERICA FEDERAL ENERGY REGULATORY
COMMISSION

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

Midwest Independent Transmission	ER09-1049-000
System Operator, Inc.	ER09-1049-002
	ER09-1049-003

ORDER ON COMPLIANCE FILING

(Issued December 15, 2011)

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1. On April 28, 2009, in Docket No. ER09-1049-000, Midwest Independent Transmission System Operator, Inc. (MISO) submitted a compliance filing (April Filing), pursuant to Order No. 719,¹ that proposes revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff). MISO requests that its proposed Tariff revisions in the April Filing be made effective on June 27, 2009. On October 2, 2009, in Docket No. ER09-1049-002, MISO submitted an additional filing (October ARC Filing) that set forth proposed Tariff revisions to allow the participation of Aggregators of Retail Customers (ARC)² in MISO's markets and additional Tariff provisions to comply with Order No. 719-A. MISO requests an effective date of March 1, 2010 and June 1, 2010, for the Tariff revisions in the October ARC Filing. In this order, we accept MISO's April Filing to be effective as discussed below, subject to a further compliance filing, as discussed below, and the October ARC Filing in part, to be effective as discussed below, subject to a further compliance filing.³

2. On October 26, 2009, in Docket No. ER09-1049-003, MISO submitted an informational filing regarding the requirements in Order No. 719-A requiring regional transmission organizations (RTO) and independent system operators (ISO) to distinguish between the retail customers of small utilities and large utilities for ARC eligibility

¹ *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 73 FR 64100 (Oct. 28, 2008), FERC Stats. & Regs. ¶ 31,281 (2008) (Order No. 719 or Final Rule), *order on reh'g*, Order No. 719-A, 74 FR 37776 (Jul. 29, 2009), FERC Stats. & Regs. ¶ 31,292 (2009), *order on reh'g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

² See proposed Tariff section 1.8a, which defines ARC as follows:

A Market Participant that represents demand response on behalf of one or more eligible retail customers, for which the participant is not such customers' L[oad] S[erving] E[ntity], and intends to offer demand response directly into the Transmission Provider's Energy and Operating Reserves Markets, as a Module E Planning Resource or as an E[mergency] D[emand] R[esource].

MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, First Revised Sheet No. 78.

³ The Commission addressed the governance portion of MISO's Order No. 719 filings on October 21, 2010. *Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,068 (2010).

purposes. The informational filing stated that the October ARC Filing satisfied this requirement. MISO filed a second informational filing on January 25, 2010, indicating the October ARC Filing and its existing Tariff fully comply with Order No. 719-A's information-sharing requirements associated with provision of demand response resources by ARCs.

I. Background

3. In Order No. 719, the Commission established reforms to improve the operation of organized wholesale electric power markets⁴ and amended its regulations under the Federal Power Act (FPA) in the areas of: (1) demand response, including pricing during periods of operating reserve shortage; (2) long-term power contracting; (3) market-monitoring policies; and (4) the responsiveness of RTOs and ISOs to their customers and other stakeholders. The Commission stated that these reforms are intended to improve wholesale competition to protect consumers in several ways: by providing more supply options, encouraging new entry and innovation, spurring deployment of new technologies, removing barriers to demand response, improving operating performance, exerting downward pressure on costs, and shifting risk away from consumers.⁵

4. In the area of demand response, Order No. 719 required each RTO and ISO to: (1) accept bids from demand response resources in the RTO's or ISO's markets for certain ancillary services, on a basis comparable to other resources; (2) eliminate, during a system emergency, a charge to a buyer that takes less electric energy in the real-time market than it purchased in the day-ahead market; (3) in certain circumstances, permit an ARC to bid demand response on behalf of retail customers directly into the organized energy market; and (4) 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.⁶

⁴ Organized market regions are areas of the country in which an RTO or ISO operates day-ahead and/or real-time energy markets. The following Commission-approved RTOs and ISOs have organized markets: PJM Interconnection, L.L.C. (PJM); New York Independent System Operator, Inc. (NYISO); MISO; ISO New England, Inc. (ISO New England); California Independent System Operator Corp. (CAISO); and Southwest Power Pool, Inc. (SPP).

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

⁶ *Id.* P 4, 15.

5. Additionally, the Commission recognized that further reforms may be necessary to eliminate barriers to demand response in the future. To that end, the Commission required each RTO or ISO to assess and report on any remaining barriers to comparable treatment of demand response resources that are within the Commission's jurisdiction. The Commission further required each RTO's or ISO's Market Monitoring Unit (MMU) to submit a report describing its views on its RTO's or ISO's assessment to the Commission.⁷

6. With regard to long-term power contracting, Order No. 719 required each RTO and ISO to dedicate a portion of its website for market participants to post offers to buy or sell power on a long-term basis.⁸

7. To improve market monitoring, the Commission required each RTO and ISO to provide its MMU with access to market data, resources and personnel sufficient to carry out its duties. The Commission further required that the MMU (or the external MMU in a hybrid structure and, in some cases, the internal MMU) report directly to the RTO or ISO board of directors.⁹ In addition, the Commission required that the MMU perform the following core functions: (1) identifying ineffective market rules and recommending proposed rules and tariff changes; (2) reviewing and reporting on the performance of the wholesale markets to the RTO or ISO, the Commission, and other interested entities; and (3) notifying appropriate Commission staff of instances in which a market participant's behavior may require investigation.

8. The Commission also took the following actions with regard to MMUs: (1) expanded the dissemination of MMU recommendations regarding rule and tariff changes, and broadened the scope of behavior to be reported to the Commission; (2) modified MMU participation in tariff administration and market mitigation, required each RTO and ISO to include ethics standards for MMU employees in its tariff, and required each RTO and ISO to consolidate all its MMU provisions in one section of its tariff; and (3) expanded the dissemination of MMU market information, required more frequent reporting, and reduced the time periods before energy market bid and offer data are released to the public.

⁷ *Id.* P 274.

⁸ *Id.* P 301.

⁹ The use of the phrase "board of directors" herein also includes the board of managers, board of governors, and similar entities.

9. Finally, Order No. 719 established an obligation for each RTO and ISO to establish a means for customers and other stakeholders to have a form of direct access to the RTO or ISO board of directors and thereby to increase its responsiveness to customers and other stakeholders. The Commission stated that it will assess each RTO's or ISO's compliance filing using four responsiveness criteria: (1) inclusiveness; (2) fairness in balancing diverse interests; (3) representation of minority positions; and (4) ongoing responsiveness.

10. The Commission required the RTOs and ISOs to make compliance proposals to implement the reforms adopted in Order No. 719. In each of the four areas described above, the Commission required each RTO or ISO to consult with its stakeholders and make a compliance filing within six months of the date that the Final Rule was published in the *Federal Register*. The compliance filing must explain how the RTO's or ISO's existing practices comply with the Final Rule's reforms, or describe the entity's plans to attain compliance.¹⁰ Order No. 719 also required RTOs and ISOs to assess the technical feasibility and value to the market of smaller demand response resources providing ancillary services and report to the Commission within one year of the date that the Final Rule was published in the *Federal Register*.¹¹

11. On July 16, 2009, the Commission issued an order on rehearing, Order No. 719-A. The Commission generally denied the requests for rehearing except for three issues. First, while the Commission affirmed that the Order No. 719 ARC requirement applies only to RTOs and ISOs,¹² it also recognized that this holding could significantly burden the relevant electric retail regulatory authorities of small systems.¹³ Thus, the Commission revised the ARC requirement by ordering RTOs and ISOs to amend their market rules as necessary to accept bids from ARCs that aggregate the demand response of: (1) the customers of utilities that distributed more than 4 million megawatt hour (MWh) in the previous fiscal year, and (2) the customers of utilities that distributed 4 million MWh or less in the previous fiscal year, where the relevant electric retail

¹⁰ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 8, 578-583.

¹¹ *Id.* P 97, 581. *See also* Errata Notice, Docket No. RM07-19-000 (Mar. 23, 2009) (clarifying deadline).

¹² Order No. 719, FERC Stats. & Regs. ¶ 31,281 P 56 (noting that the “[notice of proposed rulemaking] specifically stated that those entities directly affected by this proceeding are the six RTOs and ISOs, namely CAISO, NYISO, PJM, SPP, [MISO], and ISO New England”).

¹³ *Id.* P 27-31.

regulatory authority permits such customers' demand response to be bid into organized markets by an ARC. RTOs and ISOs may not accept bids from ARCs that aggregate the demand response of: (1) the customers of utilities that distributed more than 4 million MWh in the previous fiscal year, where the relevant electric retail regulatory authority prohibits such customers' demand response to be bid into organized markets by an ARC, or (2) the customers of utilities that distributed 4 million MWh or less in the previous fiscal year, unless the relevant electric retail regulatory authority permits such customers' demand response to be bid into organized markets by an ARC.¹⁴

12. Second, in Order No. 719-A, the Commission eased the restrictions in Order No. 719 to allow an MMU to enter into contracts to monitor a market participant operating in the same RTO or ISO for activity in that RTO or ISO under certain conditions.¹⁵ In particular, the MMU could enter into such a contract if: "the relationship between the entity and the MMU and the MMU's scope of work for the entity are both mandated by the Commission in an order on the merits, the contract is filed with the Commission for review and approval, and the contract contains a provision that the entity must notify the Commission of any intention to terminate MMU employment, permission for which may be refused by the Commission."¹⁶

13. Finally, Order No. 719-A required each RTO or ISO, through the stakeholder process, to develop appropriate mechanisms for sharing information about demand response resources to address double counting, verification procedures, and deviation charges. It directed each RTO and ISO, through the stakeholder process, to develop a mechanism through which an affected load-serving entity would be notified when load served by that entity is enrolled to participate, either individually or through an ARC, as a demand response resource in an RTO or ISO market and the expected level of that participation for each enrolled demand response resource. It directed each RTO and ISO to submit a compliance filing no later than 180 days after the issuance of Order No. 719-A indicating how it has complied with these requirements.

II. Notice of Filing and Responsive Pleadings

14. Notice of MISO's April Filing was published in the *Federal Register*, 74 Fed. Reg. 21,795 (2009), with interventions and protests due on or before May 26, 2009.

¹⁴ Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 at P 27-31; 18 C.F.R. § 35.28(g)(1)(iii) (2011).

¹⁵ Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 at P 164.

¹⁶ *Id.*

Notice of MISO's October ARC Filing was published in the *Federal Register*, 74 Fed. Reg. 52,958 (2009), with interventions and protests due on or before October 23, 2009.

15. Numerous parties filed timely motions to intervene or notices of intervention with regard to the April Filing: American Municipal Power-Ohio, Inc. (AMP);¹⁷ Calpine Corporation; Coalition of Midwest Transmission Customers (CMTC); Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (Constellation); CPower, Inc.; EnergyConnect, Inc.; EnerNOC, Inc.; Exelon Corporation (Exelon); FirstEnergy Service Co. (FirstEnergy); Illinois Commerce Commission (Illinois Commission); Illinois Municipal Electric Agency (Illinois Municipal); Indiana Office of Utility Consumer Counselor; Office of the Ohio Consumers' Counsel (Ohio Counsel); Wal-Mart Stores, Inc. (Wal-Mart); Wisconsin Electric Power Co.; and Wisconsin Industrial Energy Group (Wisconsin Industrial). In addition, several parties filed motions to intervene and comments and/or protests to the April Filing: Alcoa Inc. and Alcoa Power Generating Inc. (Alcoa); Demand Response Supporters;¹⁸ DC Energy Midwest, LLC (DC Energy); The Detroit Edison Company (Detroit Edison); Duke Energy Corporation (Duke); Dynegy Power Marketing, Inc. (Dynegy); Electric Power Supply Association (EPSA); Electricity Consumers Resource Council (ELCON); Illinois Commission; Midwest Transmission-Dependent Utilities (Midwest TDUs); Ohio Counsel; Organization of Midwest ISO States (OMS); RRI Energy, Inc. (RRI Energy); Steel Producers;¹⁹ and Wal-Mart. The Public Service Commission of Wisconsin filed a letter voicing support for the comments filed by the Illinois Commission. In addition, MISO's MMU, Potomac Economics, filed comments on the Report on Barriers to Comparable Treatment for Demand Response Resources (Barriers Report) that was filed with MISO's April Filing.

16. Comverge, Inc. and the Public Utilities Commission of Ohio filed untimely motions to intervene with regard to the April Filing. In addition, Industrial Consumers²⁰ and Xcel Energy Services, Inc. (Xcel) filed untimely motions to intervene and comments

¹⁷ American Municipal Power-Ohio, Inc. changed its name on July 1, 2009, to American Municipal Power, Inc.

¹⁸ Demand Response Supporters include CMTC, EnerNOC, EnergyConnect, CPower, Viridity Energy, Inc., and Comverge, Inc.

¹⁹ Steel Producers include Nucor Steel Marion, Inc., Nucor Steel-Indiana, and SDI-Pittsboro.

²⁰ Industrial Consumers include the Portland Cement Association and ArcelorMittal USA, Inc.

and/or protest to the April Filing. EPSA, the Illinois Commission, and MISO filed answers to the protests and comments and/or answers to answers. In addition, the Ohio Counsel filed a motion to lodge the report of the National Association of State Utility Consumer Advocates (NASUCA) entitled, “Model Corporate Governance for Regional Transmission Organizations and Independent System Operators.”

17. With regard to the October ARC Filing, Alliant Energy Corporate Services, Inc., FirstEnergy, Illinois Municipal, Indianapolis Power & Light Co., and MISO Transmission Owners filed timely motions to intervene. Ameren Services Co. (Ameren), AMP, CMTC, Constellation, Consumers Energy Company (Consumers Energy), CPower, Detroit Edison, Duke, FirstEnergy, Midwest TDUs, OMS, Wisconsin Industrial, and Xcel filed comments and protests to the October ARC Filing. OMS filed a notice of intervention. MISO, Alcoa, AMP, and DR Parties filed answers to the comments and protests and/or answers to answers.²¹

III. Discussion

A. Procedural Matters

18. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the notices of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2011), the Commission will grant the late-filed motions to intervene given the entities’ interests in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

19. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest, unless otherwise ordered by the decisional authority. We will accept the answers to protests and comments as well as the answers to answers filed with respect to the April Filing and with respect to the October ARC Filing because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

20. We find that MISO’s April Filing and certain proposals set forth in the October ARC Filing, with certain modifications, comply with Order No. 719 in the areas of: (1) demand response and pricing during periods of operating reserve shortage, including

²¹ DR Parties include CMTC, EnerNOC, and Wal-Mart.

aggregation of retail customers; (2) long-term power contracting; and (3) market-monitoring policies. Accordingly, we accept MISO's April Filing, to be effective June 27, 2009, as requested, subject to a further compliance filing as discussed below. We also accept in part and reject in part the October ARC Filing, effective March 1, 2010 and June 1, 2010 as requested, subject to a further compliance, as a part of this proceeding, as discussed below. We further find that the October ARC Filing complies with Order No. 719-A, with certain modifications, and subject to a further compliance filing as discussed below. MISO is directed to make the compliance filing within 90 days from the date of issuance of this order.

21. This order makes no findings as to MISO's compliance with the fourth area of reforms identified in Order No. 719: the responsiveness of RTOs and ISOs to their customers and other stakeholders. The Commission issued a separate order addressing MISO's compliance with this aspect of Order No. 719 on October 21, 2010.²²

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

a. **Ancillary Services Provided by Demand Response Resources**

22. Order No. 719 required each RTO and ISO to accept bids from demand response resources, on a basis comparable to any other resources, for ancillary services (energy imbalance, spinning reserves, supplemental reserves, reactive and voltage control, and regulation and frequency response) that are acquired in a competitive bidding process, if such demand response resources: (1) are technically capable of providing the ancillary service within the response time requirements and meet reasonable requirements adopted by the RTO or ISO as to size, telemetry, metering and bidding; and (2) submit a bid under the generally-applicable bidding rules at or below the market-clearing price, unless the laws or regulations of the relevant electric retail regulatory authority do not permit a retail customer to participate.²³ All accepted bids would receive the market clearing price. Further, Order No. 719 required each RTO and ISO to establish policies and procedures to ensure that demand response resources are treated comparably to supply-side resources.²⁴

²² *Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,068.

²³ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 47, 49.

²⁴ *Id.* P 50.

23. Additionally, Order No. 719 directed each RTO and ISO to file, as part of its compliance filing, a proposal to adopt reasonable standards necessary for system operators to call on demand response resources, together with mechanisms to measure, verify, and ensure compliance with any such standards.²⁵ Further, Order No. 719 required RTOs and ISOs to describe their efforts to develop adequate customer baselines.²⁶ Finally, it required RTOs and ISOs to coordinate with each other in the development of technical requirements for demand response resources participating in ancillary services markets, and provide the Commission with a technical and factual basis for any necessary regional variations.²⁷

i. General Comparability in Accepting Bids

(a) MISO Filing

24. In its April Filing, MISO states that it already complies with the directive in Order No. 719 to allow demand response resources to participate in the ancillary service market on comparable terms with other resources. MISO notes that this issue was addressed as part of its ancillary service markets proposal in Docket No. ER07-1372, *et al.*, and the Commission generally accepted, subject to compliance, MISO's proposed Tariff revisions.²⁸

25. MISO contends that under its current Tariff, demand response resources can participate in the ancillary service markets as either a Demand Response Resource-Type I (DRR-Type I) or a Demand Response Resource-Type II (DRR-Type II). DRR-Type I resources are demand response resources that are capable of supplying a specific quantity of energy or contingency reserve through physical load interruption. Because of that, MISO states that DRR-Type I resources are treated comparably to generation resources that are block loaded for a specific quantity of energy or operating reserves and cannot

²⁵ *Id.* P 61.

²⁶ *Id.* P 57. Customer baselines are designed to depict, as accurately as possible, a customer's normal load on a given day. Establishing this baseline helps system operators to measure and verify load reductions, thus giving RTOs and ISOs the ability to not only determine if demand response resources showed up, but also what the proper value of the demand reduction should be.

²⁷ *Id.* P 59.

²⁸ MISO April Filing at 6-7 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,172 (2008) (*Ancillary Services Market Order*)).

currently set prices in MISO markets.²⁹ MISO, however, is working on an initiative to develop an appropriate pricing methodology to allow DRR-Type I resources and other “fixed block” offers to establish market prices.³⁰

26. In contrast to DRR-Type I resources, DRR-Type II resources can supply energy and/or operating reserves over a dispatchable range through controllable load or behind the meter generation. MISO states that because of their flexibility, DRR-Type II resources are treated comparably to generation resources and, therefore, can set prices in MISO markets under the Tariff.³¹

27. MISO allows both DRR-Type I and DRR-Type II resources to submit offers in the day-ahead and the real-time markets as either “emergency-only” resources or “economic” resources. Under the “emergency-only” designation, demand response resources are called upon as Emergency Demand Response (EDR) by MISO in advance of a forecasted system emergency. These resources do not participate in the energy market and are not generally price responsive—they are only considered during an emergency operation procedure like other emergency resources. Demand response resources designated as “economic” resources may offer energy, regulating reserves, spinning reserves and/or supplemental reserves in both the day-ahead and real-time markets as long as they meet the same general qualifications and product requirements applicable to other resource types.

(b) Protests and Comments

28. Wal-Mart asserts that greater integration of demand response resources will lead to a variety of benefits including lowering wholesale power prices, mitigating market power, adding flexibility, improving price signals, and providing environmental benefits.³² Wal-Mart states that while additional progress must be made, it believes MISO has complied with the requirements in Order No. 719 to incorporate demand response resources into its ancillary markets.³³

²⁹ *Id.* at 8-9. Operating reserves consist of spinning reserves, supplemental reserves, and regulation.

³⁰ *Id.*

³¹ *Id.* at 9.

³² Wal-Mart May 26, 2009 Comments at 2.

³³ *Id.* at 3.

29. ELCON and Alcoa generally claim that the RTOs and ISOs failed to ensure comparable treatment and reasonable terms for demand response resources. ELCON and Alcoa state that the RTOs and ISOs have incorrectly equated comparable treatment to identical treatment.³⁴ They claim that “identical treatment” does not necessarily lead to “comparable treatment,” as required by Order No. 719. They argue that greater burdens are placed on demand response resources by subjecting them to the same conditions and requirements as generators. ELCON asserts that “demand response providers should not be penalized because the computer and control systems of the ISOs and RTOs originally were designed to operate generation resources.”³⁵ As an example, ELCON refers to MISO’s proposal in Docket No. ER09-991-000, which required all market participants, including demand response resources, to install a real-time communication protocol.³⁶ Industrial Consumers assert that MISO creates burdensome scheduling requirements and deviation penalties.³⁷

30. Alcoa notes that it remains the only active DRR-Type II resource in MISO, and asserts that this illustrates the need for reduction of barriers to entry into the market and for comparable treatment.³⁸ Demand Response Supporters agree with Alcoa and note that there is little demand response participation in MISO markets as compared to the NYISO, ISO New England, and PJM markets.³⁹

31. ELCON and the Demand Response Supporters argue that the Commission should pursue nationwide uniformity with respect to the treatment of demand response resources. ELCON maintains that the lack of standardization among the RTOs and ISOs with respect to demand response protocols imposes significant costs on the large industrial consumers who likely will provide the bulk of demand response resources. ELCON states that large industrial customers typically have many facilities throughout the country and often have major loads within the footprints of more than one RTO or ISO. ELCON maintains that it is a tremendous burden for demand response-capable loads to respond to the different, often conflicting, rules and procedures. According to

³⁴ ELCON May 26, 2009 Comments at 5; Alcoa May 26, 2009 Protest at 10.

³⁵ ELCON May 26, 2009 Comments at 5.

³⁶ *Id.*

³⁷ Industrial consumers June 26, 2009 Protest at 2-3.

³⁸ Alcoa May 26, 2009 Protest at 8-9.

³⁹ Demand Response Supporters May 26, 2009 Protest at 4-6.

ELCON, the complexity and burden of addressing regionally-disparate demand response programs on a case-by-case basis inhibits the participation of demand response resources. It believes that, through standardization, RTOs and ISOs can reduce delays, inefficiencies, and transaction costs for demand response providers. ELCON suggests that it is not too late for the Commission to revisit the issue to adopt *pro forma* tariff language that would promote demand response consistently on a nationwide basis. ELCON also supports a national conference among the six RTOs and ISOs to discuss consistency with respect to demand response resources.⁴⁰ Similarly, Demand Response Supporters requests that the Commission evaluate comments and protests with an eye toward identifying common comparability issues across several or all RTO regions and that the Commission establish a generic proceeding to address these issues efficiently.⁴¹

32. CPower states MISO needs to broaden the definition of a DRR-Type I resource.⁴² CPower states that the definition includes energy provided “through physical Load interruption,”⁴³ but that it appears to exclude from the definition behind the meter generation, energy storage systems, and load curtailments through means other than simple “interruption.” CPower states that the Commission should direct MISO to replace the phrase “through physical Load interruption” with the phrase “through behind the meter generation, and/or controllable Load.”⁴⁴

33. CPower states that, unlike the definition for DRR-Type I resources that specifies that DRR-Type I resources are “capable of supplying . . . capacity,” the definition of DRR-Type II resources does not specify whether DRR-Type II resources may participate as a capacity resource.⁴⁵ CPower states that MISO should amend this definition to specify that such resources may provide capacity or justify excluding DRR-Type II resources from the providing capacity.⁴⁶

⁴⁰ ELCON May 26, 2009 Comments at 9-11.

⁴¹ Demand Response Supporters May 26, 2009 Comments at 14-15.

⁴² CPower November 6, 2009 Comments at 3-4.

⁴³ *Id.* (citing MISO, FERC Electric Tariff, Fourth Revise Vol. No. 1, Second Revised Sheet No. 119).

⁴⁴ *Id.* at 4.

⁴⁵ *Id.* at 6.

⁴⁶ *Id.* at 6-7.

34. CPower argues that there is an inconsistency in the proposal in the October ARC Filing regarding the specification of Hourly Excessive Energy and Hourly Deficient Energy, when comparing DRR-Type I resources and DRR-Type II resources. In particular, CPower notes that, while the October ARC Filing correctly states for DRR-Type I resources that “[i]f the Demand Response Resource-Type I has not been committed for Energy for that Hour, the Calculated DRR-Type I output shall be equal to zero (0) MW,” similar language is omitted from the corresponding Hourly Excessive Energy and Hourly Deficient Energy specifications for DRR-Type II resources. CPower argues that a strict reading of this provision would leave DRR-Type II resources exposed to excessive/deficient energy penalties if their metered consumption varied from calculated baselines during hours when they have not been committed for energy. CPower requests that the Commission order MISO to remedy this by specifying that the calculated output of DRR-Type II resources that are not committed for energy is zero in the appropriate sections.

(c) Answers

35. With respect to the allegations of inflexibility associated with a specified real-time communication protocol, as raised by ELCON, MISO notes that this issue was raised and addressed in Docket No. ER09-991-000. It emphasizes that the Commission found these communication protocols to be appropriate.⁴⁷

36. MISO agrees with CPower’s suggested modification to the definition of DRR-Type I resources in section 1.141 that would replace the phrase “through physical Load interruption” with the phrase “through behind the meter generation, and/or controllable Load.”⁴⁸ MISO also agrees to modify the definition of DRR-Type II resource, allowing participation as a capacity resource consistent with the definition of DRR-Type I resource, by inserting the phrase “capable of supplying a specific quantity of Energy, Contingency Reserve, or Capacity. . . .”⁴⁹

⁴⁷ MISO June 15, 2009 Answer at 13 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 127 FERC ¶ 61,239 (2009) (accepting MISO’s proposal to require EDR participants to receive instructions from MISO via an Extensible Markup Language (XML) interface and recognizing that the use of the XML interface is the industry standard communication protocol for utilities and the XML requirement for EDRs will help to ensure comparable communications for all market participants)).

⁴⁸ MISO December 15, 2009 Answer at 25.

⁴⁹ *Id.* at 24 n.65.

37. MISO also agrees to insert, as requested by CPower, the phrase, “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,” in sections 40.3.4.a.vii and 40.3.4.a.x of the Tariff.⁵⁰

(d) **Commission Determination**

38. We agree with ELCON that comparability is not necessarily achieved by setting conditions for demand response resources that are the same as those set for generating resources.⁵¹ However, in Order No. 719, the Commission specifically chose not to develop “a standardized set of minimum requirements for minimum size bids, measurement, telemetry and other factors, and instead allowed RTOs and ISOs to develop their own minimum requirements, including bidding parameters.”⁵² It would be inappropriate to revisit the Final Rule in this compliance filing.⁵³ Furthermore, the Commission will continue to examine the need for further generic policy reforms to identify and eliminate barriers to comparable treatment of demand response resources, and ELCON’s concerns with standardization can be addressed in relevant future Commission proceedings.

39. With regard to ELCON’s concerns about the installation of a real-time market communication protocol, the Commission addressed that issue as well in a recent order

⁵⁰ *Id.* at 24.

⁵¹ For example, in Order No. 890-A, the Commission determined that “We disagree with TDU Systems that comparability requires that generation resources and demand resources be subject to the same operational parameters in every circumstance. Treating similarly-situated resources on a comparable basis does not necessarily mean that the resources are treated the same.” *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261, at P 216 (2007).

⁵² Order No. 719, FERC Stats. & Regs. ¶ 31,218 at P 21.

⁵³ However, we note that the North American Energy Standards Board (NAESB) has adopted Phase I business practice standards for the measurement and verification of demand response, a first step in a process that may lead to greater standardization through the NAESB consensus process. *See Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676-F, FERC Stats. & Regs. ¶ 31,309 (2010).

on MISO's proposal to implement communications protocols for participation in MISO's EDR program.⁵⁴ We will not revisit these matters in this order.

40. In regard to comments by Alcoa and Demand Response Supporters in response to the April Filing about the need for clearly defined business practices for demand response resources, we find that the MISO addressed this issue sufficiently in its October ARC Filing. In that filing, MISO stated that it will develop detailed procedures for demand response resources and ARCs in its Business Practices Manuals. We direct MISO to specify the timeline for development of any such manuals addressing demand response resources (including ARCs) in a compliance filing due 90 days after the issuance of this order.⁵⁵

41. We agree that the definition of DRR-Type I resources needs to be further modified. We will require MISO to replace the phrase "through physical Load interruption" with "through Behind the Meter Generation and/or controllable Load," in order to incorporate the defined term "Behind the Meter Generation." This modification to the definition of DRR-Type I resources, which MISO has agreed to make, will give greater flexibility to DRR-Type I resources to use behind the meter generation and load curtailment by means other than simple interruption to facilitate their provision of demand response, and will not impose unnecessary limitations upon demand response resources. With regard to the definition of DRR-Type II resources, we will require MISO to modify the definition (as it has indicated it is willing to do) to state that DRR-Type II resources are eligible to qualify as capacity resources in MISO. DRR-Type II resources are more flexible than DRR-Type I resources and, thus, there is no reason that they should not be able to serve as a capacity resource when technically capable. Further, both definitions should be symmetrical, stating each product the resource can provide given the appropriate qualification. Finally, we will require MISO to make the changes to sections 40.3.4.a.vii and 40.3.4.a.x of the Tariff, as requested by CPower and agreed to by MISO. We direct MISO to submit a compliance filing, due 90 days after the issuance of this order, incorporating these changes.

ii. Bidding Parameters

42. Order No. 719 required each RTO and ISO to allow demand response resources to specify limits on the duration, frequency and amount of their service in their bids to

⁵⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, 127 FERC ¶ 61,239 at P 21-24.

⁵⁵ As discussed elsewhere in this order, we note that some items MISO has stated that it will put in its Business Practices Manuals instead belong in its Tariff.

provide ancillary services or their bids into the joint energy-ancillary services markets in the co-optimized RTO or ISO markets.⁵⁶ All RTOs and ISOs must incorporate new parameters into their ancillary services bidding rules that allow demand response resources to specify a maximum duration in hours that the demand response resource may be dispatched, a maximum number of times that the demand response may be dispatched during a day, and a maximum amount of electric energy reduction that the demand response resource may be required to provide either daily or weekly.⁵⁷ Order No. 719 also required RTOs and ISOs to confer with each other on such parameters and methods and to provide a technical and factual basis for any necessary regional variations.⁵⁸

(a) **MISO Filing**

43. MISO contends that its current market design, accepted as part of the *Ancillary Services Market Order*,⁵⁹ satisfies the bidding parameters requirement for DRR-Type II resources as set forth in Order No. 719. MISO asserts that the bidding parameters requirement for DRR-Type II resources is satisfied by allowing DRR-Type II resources to bid: (1) a maximum run time, which restricts the number of hours a unit can be run during the day;⁶⁰ (2) a maximum start-up limit, which is the maximum number of times a unit may receive a start-up per day during the day;⁶¹ and (3) a maximum daily energy, which is the maximum MWh a resource is able to supply over a 24-hour period.⁶²

44. With regard to DRR-Type I resources, MISO asserts that the proposed Tariff complies with the bidding parameters requirement for such resources by the Maximum Interruption Duration parameter, which allows the DRR-Type I resource to limit the number of consecutive hours in which a DRR-Type I resource can be committed during the day-ahead energy and operating reserve markets and the real-time energy and

⁵⁶ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 81.

⁵⁷ *Id.*

⁵⁸ *Id.* P 86.

⁵⁹ 122 FERC ¶ 61,172.

⁶⁰ MISO April Filing at 11 (citations omitted).

⁶¹ *Id.* (citations omitted).

⁶² *Id.* at 11-12 (citations omitted).

operating reserve markets.⁶³ MISO acknowledges that its current Tariff does not address two specific bidding parameters needed for DRR-Type I resources. Specifically, the Tariff does not include parameters that allow DRR-Type I resources to specify a maximum number of times that it may be dispatched during a day, and a maximum amount of electric energy reduction that the demand response resource may be required to provide either daily or weekly.⁶⁴ MISO has submitted amendments to sections 39.2.5A(b) and 40.2.6(b) of its Tariff and new definitions in Module A of its Tariff to address these bidding parameters. Due to system requirements, MISO states that it cannot incorporate and implement these two new parameters needed for DRR-Type I resources in the MISO markets until the fourth quarter of 2009.⁶⁵

45. To comply with the directive in Order No. 719 to confer with other RTOs and ISOs on bidding parameters, MISO states that it has coordinated with the other RTOs and ISOs in the development of technical requirements for demand response resources. MISO asserts that this effort helped to address market differences and identify missing bidding parameters for demand response resources in MISO's markets. MISO, however, does not discuss any regional variations in its April Filing.

46. As part of its Barriers Report,⁶⁶ MISO notes that some market participants raise concerns that its Tariff also forces a resource offering regulation to submit a corresponding energy offer.⁶⁷ Market participants have expressed a desire to have the ability to offer separate regulation and energy bids, as well as the ability to offer contingency flags, to indicate what product or service they want to provide. Similarly, market participants are concerned about the Tariff requiring demand response resources to submit offers for all products and services that the resource is qualified to offer (thereby potentially turning a regulation maximum offer into a *de facto* economic maximum), rather than allowing them to specify or limit the products and services to which their demand resource offers will apply. With regard to both concerns, MISO does not believe that these requirements present a barrier to entry and argues that the elimination of these requirements would result in major modifications to the underpinnings of its markets. MISO commits to continue reviewing and analyzing any

⁶³ *Id.* at 11 (citations omitted).

⁶⁴ *Id.* at 12.

⁶⁵ *Id.*

⁶⁶ *Id.*, Ex. D.

⁶⁷ MISO October ARC Filing at 7.

appropriate modifications to these design requirements. Finally, MISO notes that market participants had concerns that the Tariff only allows a demand response resource to “bid a single value for the service.”⁶⁸ MISO responds that the market participant should register as a DRR-Type II resource, which does not have this limitation, if it wishes to submit bids reflecting different costs for different quantities offered.

(b) Protests and Comments

47. Alcoa argues that demand response resources should be able to specify limits on the frequency and duration of providing ancillary services in their bids, and that such parameters should be separate and apart from bid parameters submitted to provide energy. Alcoa asserts that resolving this issue is critical to maximizing demand response and to eliminating a major barrier to market participation and ensures that a demand response resource is able to focus on the service it is capable of supplying and reduce impacts to its business processes. Alcoa believes the requirement to provide energy is a holdover from the MISO model for generator resources that does not fit the realities of offering demand response resources.⁶⁹ Further, Alcoa states that under MISO’s current definition of “max daily energy” offer, which is the bid parameter available for demand response resources, any resource that is offering regulation must offer the full range of regulation as available energy for the full day to clear the product.⁷⁰ Alcoa requests that the Commission direct MISO to allow a demand response resource to specify limits on the specific services that it can provide with the ability to opt in and out of providing energy, or at least limit energy supply separately from other services.⁷¹

48. Alcoa also suggests that MISO’s market model could be improved if regulation services and associated ramp rates were divided into regulation “up” and “down” services. Currently, regulation limits are established as the same in both directions and

⁶⁸ *Id.* at 8.

⁶⁹ Alcoa May 26, 2009 Protest at 4.

⁷⁰ *Id.* at 12-13. For example, a resource offering 10 MW of regulation is required to set the max daily energy offer to 480 MWh (24 hours multiplied by 20 MW of range required for 10 MW of regulation), just to clear the regulation. Alcoa states that with the bid parameter set, there is no mechanism to limit energy. *Id.* at 13.

⁷¹ *Id.* In addition, ELCON notes that one of the leading factors of the success of the Electric Reliability Council of Texas, Inc.’s ancillary services market is it gives demand response providers the flexibility to choose among several qualified ancillary services to provide. ELCON May 26, 2009 Comments at 8.

there is no mechanism to specify opportunities on either side.⁷² Alcoa explains that, in general, demand response resources are ideal providers of regulation up services, which looks like a load drop to the provider. However, regulation down services are ideally provided by low cost generators who could operate at maximum generation to provide these services. By dividing these services into regulation “up” and “down,” Alcoa asserts that overall market costs would decrease and allow resources to bid according to their capabilities. It argues that creating such market model flexibility is part of the overall reform needed to open doors to resources that would not previously have been available.⁷³

49. Alcoa also requests that the Commission direct MISO to reconsider allowing demand response resources to offer certain services, such as regulation, to be priced on a curve, rather than restricting their bids to a single value. Alcoa emphasizes that the supply of ancillary services is not linear as it is with a traditional generator and that allowing energy to be priced on a curve would be in keeping with physical realities of many demand response providers and provide the flexibility needed by many non-linear demand response providers.⁷⁴

50. Potomac Economics, in its report on demand response, echoes MISO’s position that its bidding parameters for DRR-Type II resources are currently compliant with the requirements of Order No. 719, and that bidding parameters for maximum calls per week and a daily or weekly maximum demand reduction are not currently available for DRR-Type I resources.⁷⁵

(c) **Commission Determination**

51. Except as noted below, we find that MISO’s current market design satisfies the bidding parameter requirements in Order No. 719 for DRR-Type II resources. As noted by MISO, sections 39.2.5 and 39.2.5A of its Tariff set forth the generation offer and demand response resource offer rules in the day-ahead energy market. Sections 40.2.5 and 40.2.6 of the Tariff set forth the generation offer and demand response resource offer rules in the real-time energy market. These Tariff provisions, in relevant part, allow market participants to specify hourly ramp rates, hourly economic minimum and

⁷² Alcoa May 26, 2009 Protest at 37.

⁷³ *Id.* at 37-38.

⁷⁴ *Id.* at 36-37.

⁷⁵ Potomac Economics April 28, 2009 Report on Demand Response at 17.

maximum limits,⁷⁶ hourly regulation minimum and maximum limits, minimum and maximum run time, as well as other operating parameters including a maximum start-up limit that establishes the maximum number of times a DRR-Type II resource can be called on within a 24-hour period.

52. MISO has submitted tariff amendments that revise its Tariff to allow a DRR Type-I resource to specify operational limits in their bids for: (1) the maximum number of times that the DRR-Type I resource may be dispatched during a day; and (2) the maximum amount of electric energy reduction that the DRR-Type I resource will provide either daily or weekly. While MISO stated that such changes could not be implemented until the fourth quarter of 2009, that time has passed. Accordingly, we order MISO to explain whether system requirements now allow implementation of these parameters, and if not, provide a timeline for implementation, in its compliance filing due 90 days after the issuance of this order.

53. With regard to Alcoa's request that it be allowed to bid into ancillary services markets without also bidding into the energy markets, we note that the Commission in Order No. 719 found that such a feature could upset certain market efficiencies in co-optimized markets.⁷⁷ The Commission adopted a compromise proposal whereby demand response resources could specify operational limits in their bids to minimize the risk that they are called upon too frequently, thereby making participation in ancillary services markets more feasible. However, Alcoa's comments raise concern that the combination of bidding parameters, and especially the maximum daily energy parameter, while reducing the risk that that demand response resources are called upon too frequently, will not sufficiently address the risk that demand response resources are called upon too frequently. Furthermore, MISO's response does not provide enough information to determine whether its bidding parameters are sufficiently flexible. Accordingly, we will require MISO to address this in its compliance filing due 90 days after the issuance of this order.

54. With respect to Alcoa's request that demand response resources be able to bid regulation up and regulation down separately (instead of a mandatory requirement for a bi-directional bid), we find that it goes beyond the requirements of Order No. 719. As

⁷⁶ The hourly economic minimum(maximum) limit is the minimum(maximum) MW level at which a generation resource or Demand Response Resource-Type II may operate under normal system conditions that may be submitted by the resource to override the default value submitted during the asset registration process.

⁷⁷ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 89.

the Commission stated in Order No. 719, it will not require specific bidding parameters, and instead will require that RTOs and ISOs incorporate bidding parameters that allow demand response resources to specify limitations on the duration, frequency and amount of their service.⁷⁸ We find that Alcoa's request goes beyond these requirements.

55. Finally, Alcoa asserts that for many resources, the supply of ancillary services may not be linear as it is with a traditional generator and requests the ability for demand response resources to submit ancillary service offer curves, instead of just a single value. MISO has responded to this issue by stating that the market participant should register to submit ancillary service offers as a DRR-Type II resource, which does not have this limitation, if it wishes to submit different costs for different quantities offered. However, while resources can submit up to ten price/quantity pairs in its energy offer, resources can not provide a multi-part offer to sell ancillary services (as opposed to energy services) into the MISO market. Rather, a resource offers ancillary services of a single price and quantity.⁷⁹ Accordingly, we do not believe that MISO has provided sufficient information to address the concern raised with respect to DRR-Type II resources, and we will require it to do so in its compliance filing due 90 days after the issuance of this order.

iii. Market-Clearing Price

56. Order No. 719 required that all accepted demand response resource bids for ancillary services receive the market-clearing price.⁸⁰ This requirement applies to competitively-bid markets, if any, for energy imbalance, spinning reserves, supplemental reserves, reactive supply and voltage control, and regulation and frequency response as defined in the *pro forma* Open Access Transmission Tariff, or to the markets of their functional equivalents in an RTO or ISO tariff.⁸¹

⁷⁸ *Id.* P 86.

⁷⁹ MISO, Energy and Operating Reserves Market Business Practices Manual, BPM-002-r10 at 4-26 through 4-27.

⁸⁰ *Id.* P 47.

⁸¹ *Id.* P 49.

(a) **MISO Filing**

57. The MISO Tariff establishes that generation resources (including demand response resources) are paid the relevant market-clearing price.⁸²

(b) **Commission Determination**

58. We find that MISO has complied with the Order No. 719 requirement to ensure that “[a]ll accepted bids would receive the market-clearing price.”⁸³ MISO compensates both DRR-Type I and DRR-Type II resources providing ancillary services at the appropriate market clearing price, as required in Order No. 719.

iv. **Customer Baselines and Measurements**

59. In Order No. 719, the Commission found that customer baselines help to depict a customer’s normal load on a given day, and to measure and verify load reductions.⁸⁴ Accordingly, the Commission ordered the RTOs and ISOs on compliance to describe their efforts to develop customer baselines and to file a proposed mechanism for measuring and verifying any reduction by demand response resources.⁸⁵

(a) **MISO Filing**

60. In its October ARC Filing, MISO proposed revisions to the way it measures demand reduction by load modifying resources, as well as EDR, DRR-Type I, and DRR-Type II resources. Specifically, MISO proposes to replace the forecasting requirements under the Load Zone Dispatch Interval Demand Forecast with measurement and verification protocols based on the NAESB guidelines.⁸⁶ MISO’s revised definition of

⁸² MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, First Revised Sheet Nos. 881, 1114 (§§ 39.3.2.C, 40.3).

⁸³ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 47.

⁸⁴ *Id.* P 57.

⁸⁵ *Id.* P 57, 61.

⁸⁶ MISO October ARC Filing at 19; *see also* MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Second Revised Sheet No. 127 (eliminating the forecasting requirement); MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Second Revised Sheet No. 210 (establishing the use of Business Practices Manuals). This change does not apply to DRR-Type II resources that are eligible to provide regulating reserves.

Measurement and Verification Procedures establishes that the details of these methodologies will be provided in new Business Practices Manuals and that “[s]uch methodologies may include and will be consistent, but not be limited to, the applicable NAESB Measurement and Verification standards and other applicable standards.”⁸⁷ MISO notes that it continues to work on these new measurement and verification protocols and will include them in its Business Practices Manuals.⁸⁸

61. MISO also states that it will modify its Business Practices Manuals to change the metering requirements for certain demand response resources. MISO will allow hourly metering for demand response resources participating in the energy market and five-minute meter data for demand response resources that are providing contingency reserves.⁸⁹ MISO notes, however, that the metering standards for the regulation markets remain unchanged.

62. MISO proposes to define Host Load Zone in section 1.281a of the Tariff as a separate Commercial Pricing Node (CPNode)⁹⁰ that has the same definition as a DRR-Type II CPNode.⁹¹ This definition applies to only DRR-Type II resources because MISO’s proposes to eliminate the requirement for a one-to-one relationship between the Host Load Zone and demand response resources for offers and for measurement purposes for DRR-Type I resources providing energy, contingency reserves, or serving as capacity resources, by removing the requirement for a DRR-Type I resource to: (1) specify its

⁸⁷ See MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Second Revised Sheet No. 210.

⁸⁸ MISO October ARC Filing, Ex. C at 22.

⁸⁹ MISO October ARC Filing at 20.

⁹⁰ A CPNode is an Elemental Pricing Node (single bus where LMP is calculated) or an Aggregate Price Node (aggregation of Elemental Pricing Nodes with a weighted LMP) in the Commercial Model used to schedule and settle market activities. CPNodes include Resources, Hubs, Load Zones and/or Interfaces.

⁹¹ The term “Host Load Zone” was previously undefined in the definitions section of the Tariff. However, the Tariff described the term in sections 39.2.5 (offer requirement rules for generation resources and DRR-Type I resources) and 39.2.5.A (offer requirement rules for DRR-Type II resources). These sections provide that the Host Load Zone is a separate Commercial Pricing Node that has the same definition (same Elemental Pricing Nodes and associated weighting factors, in the case of DRR-Type I resources) as in the DRR resource Commercial Pricing Node.

associated Host Load Zone when offering, or (2) provide its Host Load Zone Dispatch Interval Demand Forecast when it submits bids to the day-ahead and real-time energy and operating reserves markets. In particular, MISO proposes to amend section 39.2.5.A of its Tariff to remove this offer requirement from DRR-Type I resources. In the proposal, references to the Host Load Zone as a required offer parameter and required for DRR-Type I resources are removed from sections 39.2.5.xxii, 39.2.5A.vii, 40.2.6.b.vii, and 40.2.6.c of the Tariff. Additional changes are made to remove the Host Load Zone reference from sections 40.2.4.b and 40.2.4.c, which deal with resource requirements for operating reserves for spin and supplemental qualified resources.

63. Only DRR-Type II resources that provide regulating reserves will be required to have their offers specified to the zone of the host load (load from which the demand response occurs) and to provide an associated Host Load Zone Dispatch Interval Demand Forecast.⁹² MISO states that, because of the rigorous requirements necessary for assets to provide regulation service (Automatic Generation Control) and the need for MISO to meet NERC's Control Performance Standard and Balancing Authority Area Control Error Limits standards as the reliability coordinator, it believes it is important for reliability reasons to closely monitor the assets providing regulation.⁹³ Accordingly, MISO proposes a modification to section 40.2.5.j of the Tariff to clarify that the Host Load Zone interval forecast must be submitted only for those DRR-Type II resources that are eligible to provide regulating reserves in the real-time energy and operating reserves market.

64. MISO also proposes revised definitions of Actual Energy Injections, Actual Energy Withdrawals, Calculated DRR-Type I Output, and Calculated DRR-Type II

⁹² Section 1.158 of the Tariff provides that the Dispatch Interval Demand Forecast is a Host Load Zone demand forecast expressed in MW for each Dispatch Interval that is provided to MISO by the owner of a DRR-Type II that is eligible to provide regulating reserve that represents the Host Load Zone's expected MW of average gross demand during the Dispatch Interval, assuming no load reduction relating to DRR-Type II Dispatch Targets for energy, regulating reserve deployment, or contingency reserve deployment. MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Second Revised Sheet No. 127.

⁹³ MISO October ARC Filing, Ex. C at 22-23. MISO would continue to associate ARC assets to the load zone for purposes of settling the appropriate charges and credits with market participants and allocating the costs of ARC payments to the host LSE. This association is discussed in the ARC Compensation and Settlement Procedures section of this order.

Output. The intent of these revisions is (in part, in the case of Actual Energy Withdrawals) to remove references to the Host Load Zone interval forecast for DRR-Type I resources and DRR-Type II resources that are not regulation qualified and replace the use of the forecast with the use of metered levels.⁹⁴ In addition to these changes, MISO also modified the definition of Actual Energy Withdrawals to provide that the actual energy withdrawal includes not only the measured outflow from the transmission system during the operating day, but also the Actual Energy Injections within the Load Zone for demand response resources and EDR resources.⁹⁵

(b) Protests and Comments

65. Several parties, including DR Parties and Wisconsin Industrial, challenge MISO's decision to place the measurement and verification protocols in its Business Practices Manuals. DR Parties argue that these protocols directly impact how demand response resources are compensated and, thus, fall within the "rule of reason"—that is, a party must file under section 205 of the FPA any provision that significantly affects rates, terms and/or conditions of service.⁹⁶ They add that the Tariff, once approved by the Commission, legally binds parties to its terms and allows parties recourse when it is violated. DR Parties argue that having the measurement and verification protocols in the Tariff, as opposed to its Business Practice Manuals, would ensure that the rights of all parties would be protected.⁹⁷ In addition, Wisconsin Industrial states that the NAESB standards are broad guidelines only. Without MISO providing any details on the measurement and verification protocols, Wisconsin Industrial asserts that the measurement and verification requirements remain unclear.⁹⁸ Accordingly, DR Parties

⁹⁴ See MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Fifth Revised Sheet No. 74; MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Third Revised Sheet No. 74A, 94; MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Second Revised Sheet No. 75, 94A.

⁹⁵ The ARC Compensation Formula and Settlement Procedures portion of this order discusses these aspects of the definition of Actual Energy Withdrawals, especially as it relates to Actual Energy Injections for demand response resources.

⁹⁶ DR Parties November 6, 2009 Protest at 11-12 (citing *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985) (*City of Cleveland*)); see also Wisconsin Industrial November 6, 2009 Comments at 6.

⁹⁷ DR Parties November 6, 2009 Protest at 11.

⁹⁸ Wisconsin Industrial November 6, 2009 Comments at 6.

and Wisconsin Industrial request that the Commission require MISO to file the measurement and verification protocols in its Tariff.

66. Detroit Edison objects to MISO's proposal to provide aggregated or "masked" measurement and verification data, as well as settlement information, to the Load Serving Entity (LSE). Detroit Edison maintains that the Tariff should provide a responsible LSE with input to the measurement and verification methodology, meter data, and settlements information. It contends that the failure to allow such input could cause operational or reliability issues in cases where MISO determines that an ARC has cleared load, but the LSE believes that the load would not have been in service. While Detroit Edison acknowledges that certain bidding strategies and other bid-related information should be kept confidential, it further believes that LSEs must be given full access to pertinent metering, settlements, and measurement and verification information for a variety of reasons (including the prevention of "phantom energy" purchases).⁹⁹

67. CPower states that MISO should remove the requirements that prevent non-LSEs from using demand response to provide regulating reserves. CPower states that to provide regulating reserves, entities that are not LSEs must somehow predict the load of their LSE's Load Zone in near real-time. CPower argues that such a load prediction is effectively impossible, and contradicts the "equal access provisions" of Order No. 719. CPower requests that the Commission direct MISO to devise measurement and verification protocols for regulating reserves that do not require the owner of the demand resource to provide a Host Load Zone Dispatch Interval Demand Forecast.¹⁰⁰

68. Alcoa believes there is no basis to the requirement that demand response resources must provide a financially binding five-minute forecast of demand and recognizes MISO's stated commitment to implement a more conventional baseline methodology.¹⁰¹

69. Alcoa further argues that the current standards for metering and forecasting are overly stringent for supplying energy and certain ancillary services and should facilitate bi-directional resources. Alcoa believes that the metering and forecasting standards are a barrier to entry into the market and require continuous financially binding operational activities in order to manage. Alcoa states the modeling requirement for mono-directional resources blocks resources from providing services, and is one of Alcoa's

⁹⁹ Detroit Edison November 5, 2009 Comments at 10-11.

¹⁰⁰ CPower November 6, 2009 Comments at 4-5.

¹⁰¹ Alcoa May 26, 2009 Protest at 25. MISO subsequently proposed that this requirement apply only to DRR-Type II resources providing regulation.

chief concerns regarding comparable treatment. Alcoa argues that this is another example of MISO fitting demand response resources into the generator model, where generators are not bi-directional but demand is. It maintains that MISO needs to open the door to bi-directional resources and move to flexible metering requirements for resources providing only energy (one hour integrated since the energy market settles on the one-hour basis and five-minute integrated because the ancillary services market settles on five minutes for spinning and supplemental reserves), and that it should continue to look at alternatives for regulation as well.¹⁰²

70. Duke supports MISO's proposal to use a five-minute data interval for contingency reserves. However, Duke seeks clarification as to whether the five-minute interval data requirement will be extended to generation resources providing contingency reserves.¹⁰³

71. Demand Response Supporters contend that, for demand response resources to qualify to provide spinning reserves, MISO needs to adopt a measurement and verification standard that ensures comparability with generation resources. According to Demand Response Supporters, such a standard should include requirements for end-to-end data verification, ongoing verification of megawatt availability, and near real-time estimation of load reduction before and after a demand response event is activated. Demand Response Supporters explain the need for timeliness in showing grid operators how much demand response is available if called. Demand Response Supporters assert the measurement and verification development process should be fast-tracked at MISO to ensure comparability, consistent with Order No. 719.¹⁰⁴ Demand Response Supporters state that such a measurement and verification protocol is necessary for ARCs to participate in the market.¹⁰⁵

72. Xcel states that MISO's proposal lacks sufficient detail regarding the measurement and verification of demand response offered by ARCs. Xcel argues that specific measurement and verification procedures should be in place prior to implementation of ARCs, and the Commission should not accept the filing until the measurement and verification standards are robust enough to enable the relevant state regulatory authority to verify that an ARC's load reduction, for which the LSE's retail rate payers will be charged, actually exists. Without specific measurement and verification procedures, Xcel

¹⁰² *Id.* at 33.

¹⁰³ Duke May 26, 2009 Comments at 3.

¹⁰⁴ Demand Response Supporters May 26, 2009 Protest at 10-11.

¹⁰⁵ *Id.* at 13.

is concerned that there is potential for gaming by ARCs. In addition, Xcel states that the Commission should not grant the change in measurement interval for contingency reserves or energy until such measurement and verification procedures have been finalized. Xcel recommends that the Commission require MISO to continue to work with stakeholders and submit measurement and verification procedures at least 60 days before the proposed ARC implementation occurs.¹⁰⁶

73. As the only DRR-Type II resource participating in the MISO markets and providing regulation, Alcoa contends that MISO should treat a bid from a demand response resource as independent and not related to a Host Load Zone. Alcoa argues that the Host Load Zone model requires Alcoa to purchase and clear energy in the day-ahead market before it can participate in the ancillary services market.¹⁰⁷

74. Constellation states that the Tariff is inconsistent on whether the ARC or MISO must perform calculations regarding Actual Energy Injections. According to the proposed revisions in section 1.1a of the Tariff, MISO will calculate the Actual Energy Injection.¹⁰⁸ However, Constellation states that the Tariff is not clear on which entity provides the meter data if a customer is represented by more than one entity, such as by an LSE and an ARC. Instead of having MISO calculate the Actual Energy Injection, the proposed changes to section 38.6 of the Tariff indicate that the ARC will be responsible for calculating Actual Energy Injections.¹⁰⁹ In addition, Constellation points to the testimony of Michael Robinson as indicating that the ARC will be responsible for calculating the Actual Energy Injection.¹¹⁰ To the extent that ARCs are being required to determine Actual Energy Injections, but other market participants are not, Constellation asserts that such treatment is inequitable and unjustified. Constellation requests that the Commission require MISO to revise the Tariff to ensure equitable treatment among all market participants and clarify which entity is responsible for providing meter data to MISO.¹¹¹

¹⁰⁶ Xcel November 6, 2009 Protest at 9-11.

¹⁰⁷ Alcoa May 26, 2009 Comments at 3.

¹⁰⁸ MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Third Revised Sheet No. 74A.

¹⁰⁹ *Id.*, Original Sheet No. 655A.

¹¹⁰ Constellation November 6, 2009 Comments at 3.

¹¹¹ *Id.* at 2-3.

(c) **Answer**

75. In response to Duke's request for clarification, MISO explains that generation resources will have the same five-minute interval data requirement.¹¹²

76. In response to Xcel, who requests the development of the measurement and verification standards before ARC implementation, MISO clarifies that the measurement and verification protocols will be in place prior to ARC implementation. MISO explains that the protocols will be described in the appropriate Business Practice Manuals. MISO asserts that the protocols do not need to be in the Tariff because they are merely implementing rules.¹¹³

77. With respect to CPower's request that MISO devise measurement and verification protocols as a means to remove certain requirements that prevent non-LSEs from using demand response to provide Regulating Reserve, MISO clarifies that it will work with its stakeholders to further address such issues in 2010 as part of its ongoing efforts to address potential barriers to ancillary services market participation.¹¹⁴

78. In response to Constellation's request for clarification on who calculates the Actual Energy Injection and who provides the meter data, MISO clarifies that the Transmission Provider (MISO) calculates the Actual Energy Injection and the Meter Data Management Agent provides the meter data.¹¹⁵

(d) **Commission Determination**

79. We find that MISO is not in compliance with the Order No. 719's requirements for development of baseline measurement and verification methodologies. As a preliminary matter, we agree with several parties that the measurement and verification protocols, including the metering standards, must be filed as part of the Tariff. Order No. 719 made this requirement clear by instructing the RTOs and ISOs to file their proposed measurement and verification protocols and to subject them to Commission review.¹¹⁶ As several parties note, these protocols will significantly impact rates and

¹¹² MISO June 15, 2009 Answer at 12.

¹¹³ MISO December 15, 2009 Answer at 21-23.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 6.

¹¹⁶ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 61.

services and, thus, must be filed as part of the Tariff.¹¹⁷ Accordingly, we direct MISO to submit in its compliance filing, due 90 days after the issuance of this order, Tariff revisions that remove references to the measurement and verification protocols being in the Business Practices Manuals and set forth its measurement and verification protocols and metering guidelines for demand response resources, including for ARC resources.¹¹⁸

80. At this time, we will defer judgment as to whether the proposed measurement and verification procedures are just and reasonable. We encourage MISO to continue working with stakeholders to resolve their concerns regarding the measurement and verification protocols and metering standards prior to filing those protocols. Accordingly, we will conditionally accept MISO's proposed Tariff provisions and definitions related to measurement and verification, except as noted, subject to further Tariff revisions as needed that are associated with the to-be-filed measurement and verification protocols.

¹¹⁷ See *City of Cleveland*, 773 F.2d at 1376.

¹¹⁸ In *Demand Response Compensation in Organized Wholesale Energy Markets*, Order No. 745, 134 FERC ¶ 61,187, at P 9-94 (2011), the Commission directed each RTO and ISO to review their current requirements in light of the changes required therein and develop appropriate revisions and modifications, if necessary, to ensure that their baselines remain accurate and that they can verify that demand response resources have performed. Each RTO and ISO was required to include as part of its compliance filing an explanation of how its measurement and verification protocols will continue to ensure that appropriate baselines are set, and that demand response will continue to be adequately measured and verified. Additionally, the Commission stated that, if necessary, each RTO and ISO should propose any changes necessary to ensure that their measurement and verification will adequately capture the performance or non-performance of each participating demand response resource, consistent with the Final Rule.

We note that, in its compliance to Order No. 745, in Docket No. ER11-4337-000, MISO reiterates the protocols and procedures that it filed in its Order No. 719 compliance filing to update the method for measuring demand reduction. When MISO makes its compliance filing as directed in this paragraph, MISO should confirm that it is fulfilling all measurement and verification requirements in Order No. 745 as well.

81. With regard to MISO's proposal to relax the one-to-one relationship for DRR-Type I resources and some DRR-Type II resources to the Host Load Zone, we find the proposal to be just and reasonable, subject to further modifications. We are concerned that MISO has failed to provide sufficient justification for its decision to retain the one-to-one relationship to the Host Load Zone for DRR-Type II resources providing regulation. While MISO's testimony states that the one-to-one relationship must be maintained for reliability reasons, it gives no explanation of how the requirement operates nor does it show how reliability would be compromised if the one-to-one relationship with the Host Load Zone were no longer required, and if MISO instead relied on the required communications capabilities and telemetry data that all resources providing regulation must provide.¹¹⁹ Further, as CPower observed and MISO acknowledges in its Answer, this requirement can prevent entities that are not LSEs from using demand resources to provide regulating reserves. As part of its compliance filing due 90 days after the issuance of this order, we direct MISO to provide sufficient justification of its decision to maintain the one-to-one relationship between a DRR-Type II resource providing regulation and the Host Load Zone. We also will require MISO to address measurement and verification protocols for non-LSEs that would allow them to provide regulating reserve without providing a Host Load Zone Dispatch Interval Forecast. And finally, we will require MISO to provide a definition of Host Load Zone that is not simply stating the equivalence to another term, but rather defines the term, including in its broader context.

v. **Market Mitigation Measures for Demand Response Resources**

(a) **Protests and Comments**

82. Potomac Economics argues that uncertainty in the application of market power mitigation to demand response resources could serve as a barrier. It states that if a demand response resource is concerned that it will be accused of raising prices anti-competitively when it chooses to consume power during times of high prices (as all non-responsive loads do), then market power mitigation potentially serves as a disincentive or barrier to participation in demand response programs. Potomac Economics advocates

¹¹⁹ Section 40.2.4.a of the Tariff provides that all Regulation Qualified Resources supplying Regulation in the Real-Time Energy and Operating Reserve Market must be capable of receiving and responding to automatic control signals and must provide telemetered output data in accordance with the Business Practices Manuals. MISO, FERC Electric Tariff, Forth Revised Vol. No. 1, First Revised Sheet No. 930; MISO, FERC Electric Tariff, Forth Revised Vol. No. 1, Third Revised Sheet Nos. 931-32.

exempting demand response resources from mitigation measures because: (1) the magnitude of the resources involved is generally insignificant and does not pose a threat to market competition; and (2) it is nearly impossible to determine the marginal value of consumption, which is the benchmark against which a demand response resource's bid price would need to be evaluated. In addition, Potomac Economics asserts that a demand response resource that offers to curtail at a very high price is still providing more flexibility and improving the competitiveness of the market versus being non-responsive.¹²⁰

83. To the extent that mitigation is applied, Alcoa is concerned that the current MISO market model mistakenly requires demand response resources to establish reference pricing and cost models to fit the parameters of a generator, such as the submission of incremental fuel costs and non-fuel operating and maintenance costs. Moreover, while Alcoa agrees that there needs to be a clearly defined process for how demand response resources will interact with the market monitor, it disagrees with the notion that demand response resources may have market power.¹²¹

(b) Commission Determination

84. Order No. 719 did not require that RTOs and ISOs address mitigation of demand response resources that exercise market power. Because MISO has not proposed mitigation measures for demand response resources in this proceeding, there is no need to address this issue in the abstract. We will examine the reasonableness of mitigation measures for demand response resources when and if MISO makes a concrete proposal and parties have an opportunity to comment on MISO's proposal.¹²²

¹²⁰ Potomac Economics April 28, 2009 Report on Demand Response at 8.

¹²¹ Alcoa May 26, 2009 Protest at 32.

¹²² We note that MISO filed, in a separate proceeding, Tariff revisions to clarify that demand response resources are subject to market monitoring and mitigation for economic withholding. *See* MISO, Filing, Docket No. ER10-386-000, at 2 (filed Dec. 4, 2009). However, the Commission rejected its proposal without prejudice because MISO did not explain its proposal or provide sufficient facts to support its proposed Tariff revision. *Midwest Indep. Transmission Sys. Operator, Inc.*, 130 FERC ¶ 61,087, at P 21 (2010).

We further note that MISO has proposed in Docket No. ER08-394-022 to apply physical and economic withholding screens for all Planning Resources participating in the voluntary capacity auction, which will include Load Modifying Resources. That

(continued...)

b. Eliminating Deviation Charges During System Emergencies

85. In Order No. 719, the Commission required RTOs and ISOs to modify their tariffs to eliminate a deviation charge¹²³ to a buyer in the energy market during a real-time market period for which the RTO or ISO declares an operating reserve shortage or makes a generic request to reduce load to avoid an operating reserve shortage when the buyer takes less electric energy in the real-time market than was scheduled in the day-ahead market.¹²⁴ Order No. 719 also directed RTOs and ISOs to modify their tariffs to eliminate deviation charges for virtual purchasers, during the same period as they are eliminated for physical purchasers, unless the RTO or ISO makes a showing upon compliance that it would be appropriate to assess such deviation charges for virtual purchasers during this period.¹²⁵

i. MISO Filing

86. MISO states that it is in full compliance with the Commission's directive to eliminate deviation charges to a buyer in a real-time market that was scheduled in the day-ahead market during a real-time market period for which MISO declares an emergency situation or requests a voluntary load reduction after the close of the day-ahead market. To that end, MISO notes that it submitted, and the Commission accepted, Tariff revisions that exempt market participants from Real-Time Revenue Sufficiency Guarantee (RSG) charges for any deviation caused by a MISO directive during a declared

proposal is addressed with an order issued contemporaneously with the order in this proceeding. *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,213 (2011).

¹²³ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 100 n.133. Order No. 719 states that deviation charges recover certain costs, including generators' costs (such as start-up costs) that exceed their energy market revenues when real-time demand is less than forecast. *Id.* It states that these "uplift costs" may include the cost of extra generators committed after the close of the day-ahead market to serve anticipated load, if those costs are not recovered from sales of energy at real-time LMPs. *Id.*

¹²⁴ *Id.* P 111.

¹²⁵ *Id.* P 127.

emergency (such as from decreasing load, increasing behind the meter generation, increasing their level of imports, or decreasing their level of exports).¹²⁶ Section 40.3.3 of MISO's Tariff provides that Market Participants are exempt from Revenue Sufficiency Guarantee payments during declared Emergency Conditions (which would include during periods when there are operating reserve shortages and public appeals for demand reductions) when they follow MISO's dispatch instructions.

87. MISO also points to Schedule 30, EDR Initiative, which provides EDR resources (demand response resources that bid in to supply demand response only during emergency periods) with compensation during declared NERC Energy Emergency Alert 2 (Emergency Alert 2) or Energy Emergency Alert 3 (Emergency Alert 3) events.¹²⁷ MISO states that the compensation provisions in the EDR procedures were designed to encourage market participants with demand response capabilities to submit standing offers to provide demand response, by reducing load or increasing behind the meter generation during an Emergency Alert 2 or Emergency Alert 3 event. Under Schedule 30, EDR participants that reduce demand in response to an Emergency Demand Response Dispatch Instruction (EDR Dispatch Instruction) are compensated for the amount of verified load reduction with either the real-time locational marginal price (LMP) or the EDR offer price, whichever is higher.¹²⁸ MISO notes that EDR participants will receive compensation for reducing demand only to the extent that the EDR participants comply with the MISO's EDR Dispatch Instructions. EDR participants are not entitled to compensation for demand reductions in excess of the EDR Dispatch Instruction. Further, to the extent that an EDR participant's demand reduction would have occurred notwithstanding the emergency, EDR participants will not be entitled to compensation for such a demand reduction¹²⁹

¹²⁶ MISO April Filing at 13-14 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 120 FERC ¶ 61,029, at P 14 (2007)).

¹²⁷ An Emergency Alert 2 occurs when the Balancing Authority, Reserve Sharing Group, or Load Serving Entity is no longer able to provide its customers' expected energy requirements, and may result in public appeals to reduce demand, voltage reduction, interruption of non-firm end use loads in accordance with applicable contracts, demand side management, and utility load conservation measures. An Emergency Alert 3 means that firm load interruption is imminent or in progress.

¹²⁸ MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet No. 2256 (Schedule 30).

¹²⁹ *Id.* at Original Sheet No. 2255.

88. MISO submits that EDR Schedule 30 and corresponding provisions set forth in its Tariff satisfy the requirement in Order No. 719 directing the elimination of deviation charges to buyers supplying EDR in the energy market for taking less energy in the real-time market than was scheduled in the day-ahead market during a real-time market period for which the RTO declares an operating reserve shortage or makes a generic request for load reduction to avoid an operating reserve shortage.¹³⁰ Part IV of Schedule 30 provides that, if an EDR Participant reduces demand by more than the EDR dispatch instruction during an Emergency Alert 2 or Emergency Alert 3 event, the EDR participant will not be allocated RSG charges for deviations in load.¹³¹

89. With respect to assessing deviation charges on virtual purchases, MISO states that its Tariff does not allocate any deviation charges (i.e., no real-time RSG charges) to virtual purchases.¹³²

ii. Protests and Comments

90. DC Energy argues that MISO failed to comply with the Commission's directive to eliminate deviation charges on virtual purchases during operating reserve shortages. DC Energy states that MISO's current Tariff does not assess RSG charges to virtual demand purchases at all. However, DC Energy states that the Tariff language submitted by MISO in its April Filing does not explicitly exempt virtual purchases from deviation charges during system emergencies. Rather, DC Energy asserts, the proposed Tariff language focuses on physical demand, and virtual purchasers are only exempt during a declared emergency condition issued by MISO. DC Energy further states that MISO has not justified the distinction between virtual and physical bids. Thus, DC Energy requests that the Commission direct MISO to submit an additional compliance filing to amend its Tariff to clearly eliminate deviation charges applicable to virtual purchasers during system emergencies.¹³³

91. Alcoa argues that, while it has registered to participate as an EDR resource, there have not been any system emergencies to test if the deviation charge has been eliminated. It states that this is a concern because Alcoa has incurred continuous deviation penalties

¹³⁰ MISO April Filing at 15.

¹³¹ MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet No. 2255 (Schedule 30).

¹³² MISO April Filing at 15.

¹³³ DC Energy May 26, 2009 Protest at 11-13.

on the hourly demand response activities that it has conducted while participating and following dispatch instructions in the energy and ancillary service markets. Alcoa states that these deviation penalties were not identified during modeling and system testing, but appeared as an unexpected result of the settlement process after the start of the market, and that the penalties are under dispute between Alcoa and MISO. Alcoa states that a similar issue exists when demand responsive resources are penalized with unnecessary deviation charges for not following day-ahead schedules in real-time even when those responses are beneficial to the market when demand response resources respond to critical or volatile system conditions reflected in the markets. It states that this practice sends a negative incentive to responders that are working to benefit the market. Alcoa states that it and other price responsive demand resource providers are financially penalized for reducing load during periods of high power prices and recognized critical system events (during generation shortages and routine minimum generation alerts and warnings), even though their behavior helps stabilize the power grid. Alcoa states that, at a minimum, MISO should waive RSG charges for those resources that respond in a manner that helps the market, including, but not limited to, minimum generation alerts.¹³⁴

iii. Answers

92. MISO disagrees with DC Energy's assessment regarding virtual purchases. MISO claims that the current RSG proposal does not charge virtual purchases at all to recover real-time make-whole payments. Under this proposal, MISO asserts that "virtual purchasers that clear the day-ahead market are charged only when a constraint is negatively impacted in the constraint management bucket."¹³⁵ Furthermore, MISO states that "virtual purchasers are not charged deviation charges in the capacity bucket, when MISO commits resources necessary to serve load."¹³⁶ MISO further states that, during emergencies, the proposed RSG Tariff language makes no changes to proposed RSG allocations to virtual purchasers.

iv. Commission Determination

93. We find MISO to be in compliance with the Commission's directive to eliminate deviation charges to a buyer in a real-time market that was scheduled in the day-ahead market during a real-time market period for which MISO declares an emergency situation or requests a voluntary load reduction after the close of the day-ahead market. During the

¹³⁴ Alcoa May 26, 2009 Protest at 14-15.

¹³⁵ MISO June 15, 2009 Answer at 6.

¹³⁶ *Id.*

pendency of this proceeding, the Commission conditionally accepted MISO's proposed RSG charge exemptions for resources that are responding to MISO directives during emergencies or contingency reserve deployments.¹³⁷ Accordingly, we find MISO to be in compliance with respect to RSG charges under these circumstances.

94. With respect to DC Energy's concern related to virtual purchases, we find that MISO can impose no RSG charges on virtual purchases, as DC Energy concedes. MISO cannot recover RSG charges from such purchases without a Tariff provision that allows such recovery and, thus, there is no need to explicitly state that virtual purchasers are exempt from deviation charges.

95. Nor will we grant Alcoa's request to have MISO waive RSG charges for those resources that respond in a manner that helps the market, including but not limited to, during minimum generation alerts. Alcoa has not shown that the MISO intends to assess deviation charges under certain prohibited circumstances, as set forth in Order No. 719.¹³⁸ If, at some point in the future, Alcoa finds that it is inappropriately being charged a deviation charge linked to its participation as an EDR resource, there are appropriate steps it can take to challenge such charges, including filing a complaint with the Commission.

c. Aggregation of Retail Customers

96. 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. The Commission determined that allowing an ARC to act as an intermediary for many small retail loads that cannot individually participate in the organized market would reduce a barrier to demand response participation.¹³⁹

97. The Commission directed RTOs and ISOs to submit compliance filings to propose amendments to their tariffs or otherwise demonstrate how their existing tariffs and market

¹³⁷ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 132 FERC ¶ 61,184 (2010).

¹³⁸ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 111.

¹³⁹ *Id.* P 154.

rules comply with the Final Rule.¹⁴⁰ The Commission stated that tariff revisions are to be made in accordance with certain specified criteria and flexibilities:

(1) The ARC's demand response bid must meet the same requirements as a demand response bid from any other entity, such as a load-serving entity. For example:

- Its aggregate demand response must be as verifiable as that of an eligible load-serving entity or large industrial customer's demand response that is bid directly into the market;
- The requirements for measurement and verification of aggregated demand response should be comparable to the requirements for other providers of demand response resources, regarding such matters as transparency, ability to be documented, and ensuring compliance;
- Demand response bids from an ARC must not be treated differently than the demand response bids of a load-serving entity or large industrial customer.

(2) The bidder has only an opportunity to bid demand response in the organized market; it does not have a guarantee that its bid will be selected.

(3) The term "relevant electric retail regulatory authority" means the entity that establishes the retail electric prices and any retail competition policies for customers, such as the city council for a municipal utility, the governing board of a cooperative utility, or the state public utility commission.

(4) An ARC can bid demand response either on behalf of only one retail customer or multiple retail customers.

(5) Except for circumstances where the laws and regulations of the relevant retail regulatory authority do not permit a retail customer to participate, there is no prohibition on who may be an ARC.

(6) An individual customer may serve as an ARC on behalf of itself and others.

(7) The RTO or ISO may specify certain requirements, such as registration with the RTO or ISO, creditworthiness requirements, and certification that participation is not precluded by the relevant electric retail regulatory authority.

¹⁴⁰ *Id.* P 163.

(8) The RTO or ISO may require the ARC to be an RTO or ISO member if its membership is a requirement for other bidders.

(9) Single aggregated bids consisting of individual demand response from a single area, reasonably defined, may be required by RTOs and ISOs.

(10) An RTO or ISO may place appropriate restrictions on any customer's participation in an ARC-aggregated demand response bid to avoid counting the same demand response resource more than once.

(11) The market rules shall allow bids from an ARC unless this is not permitted under the laws or regulations of the relevant electric retail regulatory authority.

98. In Order No. 719-A, the Commission allowed participation limits to be placed on ARCs. In particular, it established that RTOs and ISOs may not accept bids from ARCs that aggregate the demand response of: (1) the customers of utilities that distributed more than 4 million MWh in the previous fiscal year, where the relevant electric retail regulatory authority prohibits such customers' demand response to be bid into organized markets by an ARC, or (2) the customers of utilities that distributed 4 million MWh or less in the previous fiscal year, unless the relevant electric retail regulatory authority specifically permits such customers' demand response to be bid into organized markets by an ARC.

99. Order No. 719-A required each RTO or ISO, to develop through the stakeholder process, at a minimum, a communication protocol through which an affected LSE would be notified when load served by the LSE is enrolled to participate (either individually or through an ARC) as a demand response resource in an RTO or ISO market and the expected level of participation for each enrolled demand response resource.¹⁴¹ Each RTO or ISO was directed to submit a compliance filing no later than 180 days after the issuance of Order No. 719-A indicating how it complied with this requirement.¹⁴² The Commission stated that each RTO's or ISO's compliance filing detailing these protocols should address certain issues, including: double-counting, concerns regarding deviation, underscheduling, and uplift or other charges that may be incurred if real-time load is below that scheduled in the day-ahead market, as well as metering, billing, settlement,

¹⁴¹ Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 at P 69.

¹⁴² MISO states that it has "initially" complied with this requirement in its October ARC Filing. MISO also submitted on January 25, 2010, a filing to address this issue.

information sharing and verification measures.¹⁴³ However, the Commission did not require each RTO or ISO to provide detailed information in real-time to affected LSEs.¹⁴⁴

100. The Commission required RTOs and ISOs, in cooperation with their customers and other stakeholders, to perform an assessment, through pilot projects or other mechanisms, of the technical feasibility and value to the market of small demand response resources providing ancillary services, within one year from the effective date of the Final Rule, including whether (and how) smaller demand response resources can reliably and economically provide operating reserves and report their finding to the Commission.¹⁴⁵ The choice between a pilot program and other mechanisms in this assessment was left to the discretion of the RTO or ISO and its customers and other stakeholders. The Commission stated that additional issues related to small demand response resources should be addressed in the assessments.¹⁴⁶

i. General ARC Issues

(a) MISO Filing

101. On October 2, 2009, MISO submitted its proposed Tariff revisions to allow ARC participation in the MISO markets in compliance with Order Nos. 719 and 719-A. MISO emphasized that it developed these Tariff revisions after extensive discussion with its stakeholders.¹⁴⁷ Under its proposal, MISO states that ARCs will be allowed to offer demand response into energy (including for emergencies) and operating reserves markets, including providing capacity.

102. MISO proposes and revises several definitions in Module A of the Tariff to implement its ARC proposal.¹⁴⁸ In section 1.8a, MISO proposes to define an ARC as a

¹⁴³ Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 at P 70.

¹⁴⁴ *Id.* P 69 n.97.

¹⁴⁵ *Id.* P 97.

¹⁴⁶ *Id.* MISO filed this report on October 28, 2009 in Docket No. RM07-19-001.

¹⁴⁷ MISO October ARC Filing at 3.

¹⁴⁸ New definitions are given for: Demand Response Resource, section 1.140a; Marginal Foregone Retail Rate (MFRR), section 1.373a; and Relevant Electric Retail Regulatory Authority, section 1.569a. Revised definitions are included for: Actual Energy Injections; Actual Energy Withdrawal, ARR Delivery Point; Calculated DRR-

(continued...)

market participant “that represents demand response on behalf of one or more eligible retail customers for which the participant is not such customers’ LSE, and that intends to offer demand response directly into the Transmission Provider’s Energy and Operating Reserve markets, as a Module E Planning Resource or as an EDR [Emergency Demand Response] resource.” Section 1.569a of the proposed Tariff defines a relevant electric retail regulatory authority as “an entity that has jurisdiction over and established prices and policies for providers of retail electric service to end-customers, such as the city council for a municipal utility, the governing board of a cooperative utility, the stat[e] public utility commission, or any other such entity.”¹⁴⁹ Finally, MISO proposes a new definition for Demand Response Resource to mean either a DRR-Type I or DRR-Type II resource.¹⁵⁰

103. MISO also modifies several existing definitions to accommodate its ARC proposal. In particular, MISO proposes to modify its definitions of DRR-Type I and DRR-Type II resources to make clear that they may be hosted by an ARC within MISO’s balancing area. MISO modified both terms to clarify that DRR-Type I and DRR-Type II resources have to be capable of complying with MISO’s instructions and must have the appropriate metering equipment.¹⁵¹ MISO also modified the definition of DRR-Type I to state that each DRR-Type I will be modeled as a CPNode consisting of defined Elemental Pricing Nodes maintained and approved by the Transmission Provider that comprise injections of customer demand response within a single Local Balancing Authority for purposes of scheduling, reporting Actual Energy Injections, and settling Energy and Contingency Reserve transactions.

104. In addition to the definitional changes, the October ARC Filing provides a new section 38.6 in Module C of the Tariff to define: (1) the roles and responsibilities of an ARC, (2) the registration requirements, (3) the modeling requirements, (4) the relationship between the ARC and LSE, (5) the assets it can represent, and (6) the

Type I Output; Calculated DRR-Type II Output; Demand Response Resource-Type I; and Demand Response Resource-Type II.

¹⁴⁹ MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, First Revised Sheet No. 263.

¹⁵⁰ *See Id.*, Second Revised Sheet No. 119.

¹⁵¹ *See* MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Second Revised Sheet No. 119; MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet No. 119A.

certification requirements to ensure participation is not precluded by the relevant electric retail regulatory authority.

105. MISO states that it will treat demand response offers from an ARC no differently than the demand response offers from other market participants. MISO notes that the unit dispatch software will be unable to distinguish between market participant types. When an ARC offers demand response from DRR-Type I and DRR-Type II resources or load modifying resources or EDRs, the ARC must meet the same offer requirements applicable when any other market participant makes offers for the respective services.¹⁵² There is no guarantee that the bid will be accepted.¹⁵³ MISO also will communicate the quantities of demand response cleared in the day-ahead and real-time markets to the ARC and the applicable local balancing authority.¹⁵⁴

(b) Protests and Comments

106. Consumers Energy supports MISO's proposal to exclude LSEs from the definition of an ARC, which it states will allow state retail demand response programs to continue without modification.¹⁵⁵ Midwest TDUs state that the October ARC Filing is a step in the right direction that accommodates third-party ARCs, while appropriately acknowledging the authority of relevant electric retail regulatory authorities and seeking to avoid imposing excessive costs and new, heavy administrative burdens on LSEs.¹⁵⁶

107. OMS states that it does not oppose ARC participation in MISO's markets as long as non-participating customers are not forced to bear an increase in costs, reduction in reliability, or increase in risk as a result of that participation. OMS states that MISO's proposal meets this standard and suggests that the Commission approve the ARC proposal. OMS states it has not analyzed and takes no position on the Tariff revisions related to ARC participation in MISO's ancillary services markets.¹⁵⁷

¹⁵² MISO October ARC Filing, Robinson Test. at 9-10.

¹⁵³ MISO October ARC Filing at 7.

¹⁵⁴ *See* MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet No. 655G.

¹⁵⁵ Consumers Energy November 6, 2009 Protest at 3.

¹⁵⁶ Midwest TDUs November 6, 2009 Protest at 1.

¹⁵⁷ OMS November 5, 2009 Comments at 2.

108. Demand Response Supporters question MISO's efforts to allow the participation of small demand response resources in its markets. To that end, it notes the lack of this issue being scheduled on the agenda of the Demand Response Working Group since the issuance of Order No. 719.

109. Similarly, Constellation raises a concern about whether ARCs will be able to offer load modifying resources into the voluntary capacity auction for MISO's resource adequacy market. In particular, it notes that the language in section 69.2.1.5 could be interpreted by an ARC to allow it to offer load modifying resources into the auction.¹⁵⁸ On the other hand, it could be interpreted to mean that the ARC must contract directly with an LSE. Constellation also raises concerns about section 69.2.1.5(3) that, according to Constellation, suggests an ARC may not be able to utilize its load modifying resource if an LSE has not met its resource adequacy obligations.¹⁵⁹ Ultimately, Constellation asserts that ARCs should be free to contract with any party, and an ARC should not be limited to offering its services based upon the hedging strategies employed by an LSE.¹⁶⁰

110. Constellation alleges that there is an inconsistency in the definition of ARC, as set forth in section 1.8a, and the description of an ARC's function in the first paragraph of section 38.6. In particular, Constellation notes that, while the definition of ARC in section 1.8a requires the market participant to represent demand response *and* to have the intent to offer demand response into MISO's markets, the language in section 38.6 merely mentions that the ARC must have an intent to offer demand response.¹⁶¹ In other words, section 38.6 fails to mention the ARC's obligation to represent demand response as defined in section 1.8a.

¹⁵⁸ Constellation November 6, 2009 Comments at 7 (quoting MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Second Revised Sheet No. 1473).

¹⁵⁹ *Id.* Module E, section 69.2.1.5(3), states: "The Transmission Provider also will confirm using the title tracking tool that the LSE serving the load associated with the [Load Modifying Resource] is meeting its RAR obligations with a larger quantity of universally deliverable Planning Resources than the quantity of [Load Modifying Resources] that the LMR MP is seeking to offer in the voluntary capacity auction or contract directly with an LSE to sell the capacity of the Load Modifying Resource to an LSE for purposes of the LSE's compliance with [s]ection 69.2.1.2" MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, First Revised Sheet No. 1473B.

¹⁶⁰ Constellation November 6, 2009 Comments at 7-8.

¹⁶¹ *Id.* at 6.

111. Consumers Energy argues that the ARC proposal fails to address transmission charges for behind the meter generation when ARCs use such generation as a demand response resource. Consumers Energy argues that behind the meter generation will not be included as part of a host LSE's monthly transmission load when it is being controlled by an ARC. Thus, it asserts that the ARC should be responsible for obtaining transmission service and paying its portion of the cost of the transmission system under Module B of the Tariff.¹⁶²

112. Xcel states that the ARC proposal raises complex issues not easily addressed or resolved through written comments. As such, it encourages the Commission to order a technical conference in this proceeding where interested parties may appear and discuss their concerns regarding the ARC proposal. Xcel states that a technical conference would allow the Commission and its staff to better understand the technical issues and how the ARC proposal interrelates with other provisions of the Tariff and NERC reliability standards. Furthermore, it states that such conference would provide guidance to the additional stakeholder processes that will be necessary to launch ARCs in MISO.¹⁶³

(c) Answers

113. MISO does not believe that a technical conference or hearing on its ARC proposal is necessary. MISO states that the October ARC Filing was developed in conjunction with its stakeholders and in strict compliance with Order Nos. 719 and 719-A. MISO argues that its proposal represents the product of extensive stakeholder discussions and is the most appropriate means of implementing ARC participation in MISO.¹⁶⁴

114. MISO also objects to Consumers Energy's proposal to require behind the meter generation to secure and pay for transmission service. MISO notes that such a change is unnecessary because transmission service is adequately addressed in Module B of the Tariff, which requires the Transmission Customer (i.e., the entity that secures transmission service for the delivery of energy) to secure transmission service. MISO asserts that an ARC using behind the meter generation will be treated like generators and, therefore, will not be required to procure transmission service.¹⁶⁵

¹⁶² Consumers Energy November 6, 2009 Protest at 8-9.

¹⁶³ Xcel November 6, 2009 Protest at 16.

¹⁶⁴ MISO December 15, 2009 Answer at 26.

¹⁶⁵ *Id.*

115. MISO maintains that the October ARC Filing clearly states that an ARC must be a market participant and is treated as such under the proposed Tariff provisions.¹⁶⁶ In response to Constellation, who seeks clarification, MISO confirms that ARCs (like all other market participants) are free to contract with whomever they wish, except to the extent that relevant electric retail regulatory authorities may provide eligibility criteria determining what types of retail customers may participate in the aggregation programs of RTO and ISO markets.¹⁶⁷

116. MISO also states that it does not believe that it should be required to develop a plan in conjunction with stakeholders and regional entities, or that the Commission should convene a technical conference or set the proposed Tariff changes for hearing, to address potential compliance issues with NERC mandatory reliability standards prior to implementation of the ARC proposal. MISO states that, in developing the instant ARC proposal, it has already been through the process of addressing NERC compliance issues and, therefore, no additional compliance is needed.¹⁶⁸

117. Alcoa and DR Parties challenge Consumers Energy's proposal to require ARCs with behind the meter generation to obtain transmission service. Alcoa asserts that Consumers Energy's request is beyond the scope of this compliance proceeding and will result in an undue restriction on the ability of ARCs and other demand response providers to participate in the markets.¹⁶⁹ Even if MISO were to impose transmission charges, such charges should be only for behind the meter generation that has been modeled as a designated network resource. DR Parties further state that ARCs are retail, not wholesale, customers and, thus, the Commission's policies regarding wholesale charges should not apply. DR Parties question the need for transmission charges when behind the meter generation is likely to result in a net reduction in load on the transmission system.¹⁷⁰

¹⁶⁶ *Id.* at 6.

¹⁶⁷ *Id.* at 26.

¹⁶⁸ *Id.*

¹⁶⁹ Alcoa November 23, 2009 Answer at 2-3.

¹⁷⁰ DR Parties November 23, 2009 Answer at 10-11.

(d) **Commission Determination**

118. Except as noted below and subject to compliance, we will generally accept MISO's proposed ARC revisions.

119. With regard to the definition of ARC, as proposed in section 1.8a of the Tariff, the Commission agrees with several parties that the definition may be a source of confusion. We direct MISO to address the apparent inconsistency in the Tariff between the definition of ARC in section 1.8a and the introductory paragraph in section 38.6. MISO must make clear in section 38.6 that an ARC is the entity that both represents demand response and has an intention to offer demand response directly into the MISO's markets. We will require both revisions as part of its compliance filing due 90 days after the issuance of this order.

120. We also agree with Demand Response Supporters that MISO must address the issue of allowing small demand response resources to participate in MISO markets. Although MISO stated in its October 28, 2009 informational filing that it needed a year's experience with its ancillary services market before investigating further changes, MISO has now had more than a year since that market started and has yet to propose any revisions. Accordingly, we direct MISO to address the issue of small demand response resources in its Demand Response Working Group and submit any proposed Tariff revisions as part of its compliance filing due 90 days after the date of this order.

121. With regard to Constellation's concern that Module E of the Tariff may limit an ARC's ability to participate in the voluntary capacity auction, the Commission has accepted MISO's interim mechanism to allow Load Modifying Resources to participate in MISO's voluntary capacity auction.¹⁷¹ As part of that decision, the Commission emphasized the importance of certain reliability safeguards in the interim mechanism, including safeguards that prevent a market participant from offering a Load Modifying Resource into the voluntary capacity auction unless the LSE serving the load has a larger quantity of universally deliverable Planning Resource than the amount of Load Modifying Resources that is being offered into the auction.¹⁷² We will not revisit that decision in this proceeding. However, we encourage Constellation to work with MISO as

¹⁷¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 131 FERC ¶ 61,057 (2010). As part of that order, the Commission required the MISO to propose a permanent solution to allow Load Modifying Resources to participate in the capacity auction by August 27, 2010. *Id.* P 19.

¹⁷² *Id.* P 20.

MISO develops a permanent solution to allowing Load Modifying Resources to participate in the voluntary capacity auction.

122. We deny Consumers Energy's requests to require an ARC to pay for transmission service when it uses behind the meter generation as a demand response resource. As noted by MISO, the Tariff requires the Transmission Customer (i.e., the entity that secures transmission service for the delivery of energy)—not the generator or ARC—to secure transmission service when needed. In particular, on the MISO system, behind the meter generation is included in the network load of the LSE taking network service. Accordingly, the LSE will not incur additional transmission charges due to the dispatch of behind the meter generation.¹⁷³

123. Finally, with respect to Xcel's request that the Commission hold a technical conference, we have made several findings in this order, and we decline to set any of these issues for technical conference.

ii. ARC Registration and Certification

(a) MISO Filing

124. As set forth in section 38.6, MISO has proposed numerous provisions related to the registration requirements for ARCs and certification of retail customers for aggregation within ARCs. MISO proposes to distinguish between the retail customers of large and small utilities for purposes of determining whether retail customers are eligible to be aggregated. Specifically, MISO proposes that where the relevant utility distributed more than four million MWh in the prior fiscal year, their retail customers will be deemed to be eligible for aggregation unless they are specifically prohibited from doing so by the relevant electric retail regulatory authority. However, where the relevant utility distributed four million MWh or less in the prior fiscal year, their retail customers are not deemed to be eligible unless the relevant electric retail regulatory authority permits their demand to be offered by an ARC into an organized market.¹⁷⁴

125. Assuming that the relevant retail regulatory authority allows a retail customer to participate in an ARC, MISO will not exclude entities from becoming an ARC so long as the entity is a market participant and meets the applicable credit requirements. The only exception to this rule is that MISO will not allow an LSE to register as an ARC for the

¹⁷³ MISO, Transmission Settlements Business Practices Manual, BPM-012-r6 at 3-56.

¹⁷⁴ MISO October ARC Filing at 10.

purpose of aggregating the demand response of its own retail customers. An LSE, however, can aggregate the demand response of its retail customers under section 38.5 of the Tariff.¹⁷⁵

126. As noted in its October ARC Filing, an ARC in MISO can offer demand response on behalf of either a single retail customer or multiple retail customers. Moreover, any individual customer may serve as an ARC on behalf of itself and others. MISO states that it will require ARCs to submit single aggregated offers consisting of sets of individual retail customer demand response assets from a single local balancing authority area, which will be defined based on actual injection points on MISO's grid. MISO states that it will place appropriate restrictions on any retail customer's participation in an ARC-aggregated demand response offer to avoid double counting (counting the same demand response resource more than once).¹⁷⁶

127. MISO states that the registration process will identify the particular retail customers comprising each demand resource asset to be offered by the ARC. This will allow MISO to avoid double counting of demand assets by ensuring that the demand asset is not already represented by another LSE or ARC.¹⁷⁷ ARC registration will include the following information for each resource: (1) certification of eligibility of retail customers to participate through an ARC in MISO's markets; (2) identity of the utilities/LSE(s) serving the retail loads that the ARC proposes to curtail; (3) identity of the applicable relevant electric retail regulatory authority(ies) having jurisdiction over the utilities/LSE(s) serving the ARC customers; (4) identity of the local balancing authority where the ARC customers' loads are located; (5) the applicable measurement and verification methodology, as specified in the Business Practices Manuals; (6) list of retail customer accounts comprising the demand response resources, load modifying resources or EDRs being registered, including the names and addresses of such retail customers; (7) expected level of participation for each registered DRR-Type I and/or DRR-Type II resource, load modifying resource or EDR; (8) names and contact information for the

¹⁷⁵ MISO states that the retail customer demand aggregated by the ARC will be the ARC's "asset," and will be represented in MISO's Commercial Model as such. DRR-Type II resources also will be modeled in the Network Model, consistent with existing market practices. MISO states that to the extent a retail customer at a single physical location has multiple electric accounts representing different electric end uses, the ARC's asset can represent specific accounts. *Id.*, Robinson Test. at 12.

¹⁷⁶ MISO October ARC Filing at 13.

¹⁷⁷ *Id.* at 18.

relevant contact persons or entities for each identified LSE, relevant electric retail regulatory authority, and local balancing authority; and (9) the applicable MFRR.¹⁷⁸

128. MISO asserts that it will accept offers from the 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. The process for contesting certification is set forth in section 38.6(3). MISO states that in 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 proposes to allow the ARC to make an offer only if the relevant electric retail regulatory authority notifies MISO that the ARC and relevant retail customers are again eligible to participate.

(b) Protests and Comments

129. Midwest TDUs generally applaud MISO's efforts to promptly comply with the requirement in Order No. 719-A to distinguish between the retail customers of small and large utilities. However, Midwest TDUs assert that the proposed Tariff language is arguably ambiguous as to whether the relevant electric retail regulatory authority has the ultimate authority to determine whether ARCs can aggregate demand response and to establish the rules for aggregating retail customers.¹⁷⁹ Accordingly, Midwest TDUs request that the Commission direct MISO to clarify section 38.6 such that: (1) a relevant electric retail regulatory authority can permit some ARCs to operate in its jurisdiction and not others; and (2) MISO will respect and accommodate the authority of a relevant electric retail regulatory authority to establish and enforce qualifications for ARCs.¹⁸⁰

130. While Ameren supports the distinction between large utilities and small utilities for registration purposes, it argues that MISO has created confusion by using the terms "utility" and "LSE" interchangeably throughout the October ARC Filing.¹⁸¹ Ameren points out that MISO in its transmittal letter of the October ARC Filing references "utilities/LSEs" several times and switches from utility to LSE and back with no apparent

¹⁷⁸ *Id.* at 11-12.

¹⁷⁹ Midwest TDUs November 6, 2009 Protest at 6-7.

¹⁸⁰ *Id.*

¹⁸¹ Ameren November 6, 2009 Comments at 5.

distinction between the terms.¹⁸² Ameren notes that MISO's conflation of these two terms raises questions about whether retail customers of a large utility may be aggregated even if they belong to a small LSE, and states that the Commission should require MISO to make its usage consistent with the Commission's focus on utilities rather than on LSEs, as set forth in Order No. 719-A.¹⁸³

131. Consumers Energy, on the other hand, argues that section 38.6(1)(a) should be modified to replace the undefined language "Relevant utility" to make clear that the size restrictions apply to the "LSE serving the load"—not the utility serving load. Consumers Energy wants to modify section 38.6(1)(a) so that it reads: "Where the LSE serving the load ~~relevant utility~~ distributed more than four million MWh in the prior fiscal year."¹⁸⁴

132. Parties also raise concerns about the ARC registration process. CPower identifies a potential problem with the requirement that ARCs must provide the names of relevant contact persons or entities for each identified LSE, relevant electric retail regulatory authority, and local balancing authority. CPower states that an ARC has no control over whether those entities will designate relevant contact persons. Under a strict reading of this section, CPower argues that an LSE could prevent ARCs from registering demand resources simply by not designating a relevant contact person. CPower asserts that the Commission should order MISO to either place the burden of naming a relevant contact person on the LSE, relevant electric retail regulatory authority, and/or local balancing authority, or clarify that failure to name a relevant contact person will not be grounds for delaying registration.¹⁸⁵

133. Constellation argues that the registration process is unclear and, as currently drafted, may require an ARC to re-register every time there is a change to its customer portfolio.¹⁸⁶ Constellation notes that other market participants, such as LSEs, are not expected to re-register each time their customer portfolios change.¹⁸⁷

¹⁸² *Id.* (citing MISO October ARC Filing at 11, 16).

¹⁸³ *Id.* at 6.

¹⁸⁴ Consumers Energy November 6, 2009 Protest at 9.

¹⁸⁵ CPower November 6, 2009 Comments at 5.

¹⁸⁶ Constellation November 6, 2009 Comments at 6.

¹⁸⁷ *Id.* at 6-7.

134. Midwest TDUs state that MISO should modify the fourth sentence of section 38.6 to reflect the fact that both LSEs and ARCs may aggregate demand response resources. They argue that the section should state: “An end user customer account may be represented by only one ARC *or LSE*, but a single ARC may register multiple Demand Response Resources, [Load Modifying Resources] or EDRs.”¹⁸⁸ Midwest TDUs argue that the proposed language in section 38.6(1) is ambiguous, because it fails to clearly distinguish between the registration of an ARC and the registration of a demand response resource, load modifying resource, or EDR resource. Midwest TDUs request the first sentence in this section be modified to read as follows: “For the purpose of establishing eligibility to be registered by an ARC as a Demand Response Resource, [Load Modifying Resource], or EDR resource, the ARC must certify the following, for each retail customer included in the Demand Response Resource, Load Modifying Resource, or EDR resource.”¹⁸⁹

135. Numerous parties raise concerns about the process for contesting an ARC certification under section 38.6(3).¹⁹⁰ Consumers Energy, for example, questions why section 38.6(3) does not allow a host LSE to participate in the ARC validation process. It notes that the section, as drafted, only allows the relevant electric retail regulatory authority to contest an ARC’s eligibility. Consumers Energy asserts that MISO should be directed to include the host LSE in the validation process for determining whether an ARC’s retail customers are subject to a preexisting tariff or agreement.¹⁹¹ Midwest

¹⁸⁸ Midwest TDUs November 6, 2009 Protest at 19 (emphasis added).

¹⁸⁹ *Id.* This would replace the phrase “For purposes of establishing eligibility to be registered as an ARC, the ARC must certify the following, for each retail customer.”

¹⁹⁰ Under proposed section 38.6(3), MISO will continue to accept bids from the ARC, unless and until MISO receives a notification from the relevant electric retail regulatory authority either: (1) contesting the certification under proposed section 38.6(1); or (2) claiming loss of eligibility. Upon receipt of such a notification, MISO informs the ARC, which immediately limits its bids for the resource to the retail customers for which the associated certification has not been contested by the applicable relevant electric retail regulatory authority. The ARC is only allowed to bid such previously disqualified resources if the relevant electric retail regulatory authority subsequently notifies MISO that the ARC and relevant retail customers are eligible to participate. *See* MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet No. 655G.

¹⁹¹ Consumers Energy November 6, 2009 Protest at 5.

TDUs argue that section 38.6(3) violates Order No. 719-A because it places an affirmative burden on the relevant electric retail regulatory authority to prevent an ARC's bids from being accepted when its certification has been contested.¹⁹² Midwest TDUs argue that Order No. 719-A specifically held that an RTO or ISO should not "impose an affirmative obligation to act on the relevant electric retail regulatory authorities" with regard to customers of small utilities—that is, customers of utilities that distribute 4 million MWh or less in the previous fiscal year. Midwest TDUs argue that MISO must revise section 38.6(3) to recognize the distinction between small and large utilities and must eliminate any affirmative burden on the relevant electric retail regulatory authority with regard to customers of small utilities.¹⁹³

136. AMP asserts that MISO should revise section 38.6(3) to provide greater detail and clarity. For example, AMP notes that section 38.6(3) merely states that the MISO will accept "offers from an ARC," unless the relevant electric retail regulatory authority contests the ARC's certification. AMP argues, however, that the term "offer" is vague in that it is not clear whether the term applies to cleared offers or pending offers or both. It argues that the section should only apply to pending offers that have not been cleared. In addition, AMP questions the language in section 38.6(3), which appears to make the ARC responsible for limiting its own offers but does not specify consequences for the ARC if it fails to comply with the limit. Rather than rely on self-policing, AMP asserts that MISO must modify section 38.6(3) to make clear that MISO will no longer accept offers subject to contested certification.¹⁹⁴

137. Several parties question whether the proposed notice and challenge provision for ARC certification, as set forth on Original Sheet No. 655F, is mislabeled or misplaced in the Tariff. According to AMP, because the notice provision does not have a separate or distinct heading, it appears to be a continuation of the previous subsection—that is, a continuation of subsection 38.6(2)(c) which discusses the billing procedures for small utilities. AMP argues that the notification and challenge provision should apply to all

¹⁹² Midwest TDUs November 6, 2009 Protest at 14-15.

¹⁹³ *Id.*

¹⁹⁴ Consumers Energy November 6, 2009 Protest at 5-6 (requesting that the Commission direct MISO to modify section 38.6(3) to provide that, upon receipt of the notification, MISO shall: (1) inform the ARC of its contested certification; and (2) reject offers for the resource for which the certification has been contested by the relevant electric retail regulatory authority).

ARC certifications.¹⁹⁵ Similarly, Midwest TDUs assert that the provision, based on its current placement, would wrongly impose an affirmative obligation on the relevant electric retail regulatory authority to contest the certification of small utilities in violation of Order No. 719-A.¹⁹⁶

(c) **Answers**

138. MISO agrees to make several revisions to section 38.6 to resolve concerns raised by parties. For example, MISO states that it will revise the fourth sentence of section 38.6, as requested by Midwest TDUs, to reflect that both LSEs and ARCs may aggregate demand response but that any one demand response resource may only be represented by a single ARC or LSE.¹⁹⁷ This change will provide a safeguard against double-counting demand response resources, by ensuring that any one demand response resource is represented by only one LSE or ARC. MISO also agrees to modify the first sentence of 38.6(1) to draw a clear distinction between the registration of an ARC and the registration of a demand response resource, load modifying resource, or EDR resource.¹⁹⁸

139. In addition, MISO agrees with CPower that the registration process of an ARC should not be delayed by the failure of an LSE, relevant electric retail regulatory authority and/or local balancing authority to identify their respective points of contact. MISO also agrees that the ARC should not have to re-register when an ARC adds new assets. However, MISO asserts that an ARC will need to register those new assets.¹⁹⁹ MISO states that it will make the necessary modifications to section 38.6, if so ordered by the Commission.²⁰⁰

140. MISO also clarifies that it did not intend to use the terms “utility” and “LSE” interchangeably. Instead, MISO believes that it properly used the term “utility” in the proposed Tariff revisions and is consistent with the Commission’s delineation of

¹⁹⁵ AMP November 6, 2009 Comments at 7.

¹⁹⁶ Midwest TDUs November 6, 2009 Protest at 15-16 (citing Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 at P 59-60).

¹⁹⁷ MISO December 15, 2009 Answer at 24-25.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* at 5-6.

²⁰⁰ *Id.* at 8.

eligibility based on the size of the distribution utility.²⁰¹ To the extent that the Commission believes that additional clarification is necessary, MISO states that it is open to making such changes.²⁰²

141. Regarding AMP's request that MISO distinguish between offers tendered and offers cleared, MISO states that it does not oppose incorporating the suggested Tariff language into proposed section 38.6(3), if so ordered by the Commission.²⁰³ However, MISO objects to AMP's request to modify section 38.6(3) to provide that, upon receipt of the notification, MISO shall: (1) inform the ARC of the contested certification; and (2) no longer accept offers from the resource for which the associated certification has been contested by the relevant electric retail regulatory authority. MISO states that section 38.6(3) already meets AMP's suggestion.

142. MISO disagrees with Consumers Energy's requested modification to section 38.6(3) to include the host LSE in the validation process for ARC participation. MISO asserts that proposed section 38.6(2)(c) already satisfies Consumers Energy's request.²⁰⁴ It also disagrees with Consumers Energy's request to change section 38.6(1)(a) so that the size restrictions would apply to the "LSE serving the load." MISO argues that such a modification is unnecessary because the intent of the proposed Tariff language is to distinguish between retail distribution utilities and LSEs.²⁰⁵

143. With respect to AMP's and Midwest TDUs' concerns regarding notice and challenge provision for ARC certification, MISO clarifies that the provision applies to all ARC certification. MISO agrees to clarify the language in the Tariff language, if so ordered by the Commission.²⁰⁶ MISO states that these clarifications should address AMP's and Midwest TDUs' concerns.

²⁰¹ *Id.* at 5-6. In compliance with the requirements of Order No. 719, as modified by Order No. 719-A, MISO states that the proposed ARC provisions distinguish between the retail customers of large and small utilities for purposes of determining the eligibility of retail customers to be aggregated. *Id.* at 6 n.21.

²⁰² *Id.* at 6.

²⁰³ *Id.* at 11.

²⁰⁴ *Id.*

²⁰⁵ *Id.* at 25.

²⁰⁶ *Id.*

144. In response to Midwest TDUs' argument that the Commission should allow each relevant electric retail regulatory authority to choose which ARCs it wants operating in its jurisdiction,²⁰⁷ which uses the Commission's affirmation of "respecting the authority of the [relevant electric retail regulatory authority]," DR Parties state that this assessment of the Commission's affirmation is partially true because Order No. 719-A also reasserted that "unnecessary barriers to demand response participation in energy, capacity and ancillary service markets should be eliminated."²⁰⁸ However, DR Parties state that Midwest TDUs' proposal allows for unreasonable discrimination against ARCs by relevant electric retail regulatory authorities, which is an unnecessary barrier to the participation of ARCs and, thus, to demand response as well. DR Parties maintain that standardized eligibility requirements for ARCs written by relevant electric retail regulatory authorities are acceptable, but a subjective "pick-and-choose" system for allowing ARC participation is not. DR Parties further state that Midwest TDUs do not propose standards or guidelines for how a relevant electric retail regulatory authority would make its determination and that this underscores the arbitrary nature of this protest. DR Parties urge the Commission to reject this proposal on these grounds.²⁰⁹

145. In response to DR Parties' answer about the authority of the relevant electric retail regulatory authorities to determine an ARC's eligibility requirements,²¹⁰ AMP states that DR Parties' argument is based on a very selective use of language from Order No. 719-A and ignores portions of Order No. 719-A that stress state and local authority is preserved and relevant electric retail regulatory authorities remain entitled to govern demand response participation in organized markets.²¹¹ While AMP agrees with DR Parties that Congress directed the Commission to eliminate unnecessary barriers to demand response, AMP asserts that Congress also recognized the right of relevant electric retail regulatory authorities to structure demand response participation in their jurisdictional areas and Order Nos. 719 and 719-A are consistent with the statutory mandates set forth in the Energy Policy Act of 2005.²¹² Accordingly, AMP asserts that the Commission should

²⁰⁷ Midwest TDUs November 6, 2009 Protest at 6.

²⁰⁸ Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 at P 53 (citation omitted).

²⁰⁹ DR Parties November 23, 2009 Answer at 9.

²¹⁰ *Id.*

²¹¹ AMP December 9, 2009 Answer at 6 (citing Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 53, 155; Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 at P 49).

²¹² *Id.* at 5-6 (citing Energy Policy Act of 2005, Pub. L. No. 109-58, § 1252, 119 Stat. 963-67 (2005)).

maintain the role of states and other relevant authorities to decide the eligibility of retail customers to provide demand response.²¹³

(d) **Commission Determination**

146. We generally accept the registration of ARCs and certification requirements for aggregation of retail customers for ARCs proposed in Tariff section 38.6, subject to a number of modifications and clarifications, as discussed below.

147. However, with regard to the registration requirements, we reject the requirement that ARCs include their measurement and verification methodology selection as a part of the registration and certification process until such time that MISO files its measurement and verification protocols as part of the Tariff, as directed above, and until the Commission accepts those measurement and verification protocols. We also reject the requirement that ARCs specify the applicable MFRR at the time of registration or certification, given our determination below regarding the use of the MFRR. These revisions must be made as part of a compliance filing due 90 days after the date of this order.

148. Additionally, as part of the aforementioned compliance filing, we direct MISO make the several modifications to which no party has objected and MISO has agreed to make:

- Add “or LSE” to the fourth sentence of section 38.6 such that it reads: “An end user customer account may be represented by only one ARC *or LSE* but a single ARC may register multiple Demand Response Resources, [Load Modifying Resources] or EDRs;”
- Modify the first sentence in section 38.6(1) to distinguish between the registration of an ARC and the registration of a demand response resource, Load Modifying Resource or EDR resource such that it reads: “For purposes of establishing eligibility to be registered as an ARC as a Demand Response Resource, LMR, or EDR resource, the ARC must certify the following, for each retail customer included in the Demand Response Resource, LMR, or EDR resource;” and
- Incorporate the distinction between offers tendered and offers cleared in section 38.6(3) and clarify that offers tendered and cleared before the relevant electric retail regulatory authority gives MISO notice of contested

²¹³ *Id.* at 5.

certification will be honored, but offers that are still pending when such notification is received will be rejected.

149. We will not, however, require MISO to make additional clarifications regarding its unintended use of “LSE” instead of “utility.” While MISO acknowledged that it may have inadvertently used the term “LSE” in its transmittal letter, MISO made clear in its answer that the Tariff properly uses the term “utility.”²¹⁴ Because MISO’s error was limited to the transmittal letter for the October ARC Filing and did not otherwise impact the proposed Tariff, we do not believe that further clarification or revisions are necessary.

150. Similarly, we will not order MISO to modify section 38.6(1)(a) by replacing the term “Relevant utility” with “LSE serving the load.” As noted above, we find that the use of the term “utility” in determining ARC eligibility is consistent with Order No. 719-A. In Order No. 719-A, the Commission adopted the term “utilities” to identify the appropriate entity in establishing the requirements related to accepting bids from ARCs—not an “LSE.”²¹⁵ Because section 38.6(1)(a) uses the same term as Order No. 719-A, it would be inconsistent with Order No. 719-A for the Commission to require MISO to substitute “LSE serving the load” for “utility.”

151. We agree that MISO must make additional clarifications to remedy ambiguity in section 38.6. In particular, MISO must clarify in section 38.6 that the ARC does not need to re-register each time there is a change in the demand assets that it manages. Without this clarification, ARC participation in the market would be hurt by the potential for frequent re-registration to accommodate shifting demand response assets. However, to the extent that additional assets are added, those specific new assets must be registered with MISO before they can be incorporated into the ARC. In addition, MISO must address in the Tariff how it will deal with situations where the LSE, relevant electric retail regulatory authority and/or local balancing authority fail to designate a contact person. MISO must submit both clarifications as part of the compliance filing due 90 days after the date of this order.

152. The Commission will not require, as requested by Consumers Energy, a modification of section 38.6 to allow a host LSE to participate in the validation process. As noted by MISO in its answer, section 38.6 plainly states that a host LSE will receive notice when a retail customer has been registered by an ARC and will have the opportunity to contest the certification. These provisions ensure that the host LSE has an opportunity to review and contest registrations of a retail customer that may be subject to

²¹⁴ Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 at P 60.

²¹⁵ *Id.*

some other retail tariff or agreement. We do not believe that further protection is necessary.

153. Under the notice and certification provision, as contained on Original Sheet No. 655F,²¹⁶ MISO will notify the relevant electric retail regulatory authority and relevant LSE(s) of an ARC's registration request, and the certifications made in its registration request. Furthermore, this provision states that the relevant electric retail regulatory authority and/or relevant LSE(s) seeking to assert that the laws or regulations expressly prohibit an end-user's participation in the Transmission Provider's markets must provide that certification within ten business days of receipt of notification from MISO of a registration request. While we believe that the notification to the relevant electric retail regulatory authorities and/or relevant LSEs should be executed very quickly after the ARC registers a resource, the Tariff does not establish the timeline for MISO to provide those notifications and to complete the registration. Looking at both the notice and certification provision and section 38.6(3), it also is unclear how MISO will treat offers from ARCs that may be submitted during the ten-business-day period permitted to the relevant electric retail regulatory authority and relevant LSE(s) to challenge a registration request. Nor does MISO address what will happen should such a challenge to the certification occur. We will require MISO to address these issues with additional tariff language as part of the compliance filing due 90 days after the date of this order.

154. Further, the phrase in section 38.6(3) "unless and until the Transmission Provider receives a notification from the RERRA contesting the certification under sub-paragraph (1) of this section, or claiming loss of eligibility" is ambiguous. Accordingly, we direct MISO to revise this language to read: "unless and until the Transmission Provider receives a notification from the RERRA 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." We direct MISO to make the above-referenced modifications as part of its compliance filing due 90 days after the date of this order.

155. With regard to section 38.6(3), we agree with parties that modification is needed to ensure compliance with Order Nos. 719 and 719-A. As AMP notes, section 38.6(3) fails to specify consequences for an ARC that offers a contested resource. We order MISO to modify section 38.6(3) and address consequences when contested resources are a part of an ARC's offer.

²¹⁶ As ordered below, this provision shall be relabeled as subsection (3) and each subsequent subsection in this section shall be renumbered as required.

156. However, we disagree with Midwest TDUs that section 38.6(3) imposes an affirmative duty on the relevant electric retail regulatory authority to act with regard to the customers of small utilities. Section 38.6(3) only imposes an affirmative duty on MISO to act when the relevant electric retail regulatory authority contests the eligibility of an end-user that has been registered by an ARC to participate in MISO's markets. MISO's reliance on such certification of eligibility by an ARC is consistent with the Commission's statements in Order Nos. 719 and 719-A.²¹⁷ The relevant electric retail regulatory authorities have an opportunity to challenge the eligibility of the ARC's resources under this section, but they are not required to do so. In the event that the relevant electric retail regulatory authority elects to challenge the eligibility of the ARC's resources, section 38.6(3) provides that MISO shall immediately reject offers for the resource of the retail customers whose eligibility have been contested by the applicable relevant electric retail regulatory authority.

157. We disagree with parties that section 38.6 is unclear regarding the ultimate authority of the relevant electric retail regulatory authority to decide the eligibility of retail customers to provide demand response in wholesale markets. Nor do we agree that section 38.6 of the Tariff should be revised to provide that a relevant electric retail regulatory authority can permit some ARCs to operate in its jurisdiction and not others. The Commission stated clearly, and we will not revisit this policy here, that:

The Final Rule also does not make findings about retail customers' eligibility, under state or local laws, to bid demand response into the organized markets, either independently or through an ARC. The Commission also does not intend to make findings as to whether ARCs may do business under state or local laws, or whether ARCs' contracts with their retail customers are subject to state and local law. Nothing in the Final Rule authorizes a retail customer to violate existing state laws or regulations or contract rights. In that regard, we leave it to the appropriate state or local authorities to set and enforce their own requirements.²¹⁸

²¹⁷ See Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 158 (“[W]e direct RTOs and ISOs to amend their tariffs and market rules as necessary to allow an ARC to bid demand response directly into the RTO's or ISO's organized market in accordance with the following criteria and flexibilities . . . (g). The RTO or ISO may specify certain requirements, such as . . . certification that participation is not precluded by the relevant electric retail regulatory authority.”); Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 at P 51, n.85 (citing Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 158g).

²¹⁸ Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 at P 54.

158. Finally, we agree with AMP and Midwest TDUs that the notice and challenge provision for ARC certification appears to be mislabeled. It appears that provision should have been labeled as subsection (3). By making that revision, it will ensure that the notice and challenge provision applies to all ARC certifications regardless of the utility's size, which is consistent with MISO's answer and resolves the concerns raised by AMP and Midwest TDUs. Accordingly, we direct MISO to label the notice and challenge provision (currently located on Original Sheet No. 655F) as subsection (3) and to renumber any subsequent subsections as needed. This change shall be made as part of the compliance filing due 90 days after the date of this order.

iii. ARC Compensation and Settlement Procedures

(a) MISO Filing

159. MISO proposes to compensate each ARC that reduces load in a given hour in connection with an accepted energy-related offer by paying them the average hourly LMP or Market Clearing Price, as applicable. However, as part of the settlement process for energy, MISO will deduct from the LMP the MFRR.²¹⁹ Accordingly, under MISO's proposal, each ARC will be compensated the LMP paid for energy minus the relevant "marginal foregone retail rate" or MFRR (as discussed in more detail below) for each MWh it "injects" into the MISO energy market. The MFRR deduction does not apply to the provision of Operating Reserves or capacity.²²⁰

160. MISO explains that the settlement process will involve two separate transactions for the ARC and two transactions for the LSE. With regard to the ARC, in the settlement process, the ARC first will be paid the LMP for each MWh of energy that it "injected" (or did not use) as part of the demand response. The ARC then will be billed the MFRR for that same energy in the settlement process. Separately in that process, the LSE will be charged the LMP for the energy that was not consumed by the ARC (thereby being allocated the cost of the demand response),²²¹ but then will receive a payment of the MFRR. MISO explains that the bifurcated settlement process is needed to ensure revenue neutrality with respect to MISO. It further believes that the process is

²¹⁹ MISO October ARC Filing at 13. As defined earlier, the MFRR is the marginal foregone retail rate.

²²⁰ *Id.*, Robinson Test. at 12-13.

²²¹ The allocation of the costs of the ARC demand response to the underlying (host) LSE by adding the load reduction back in to the LSE's settlement is also known as load reconstitution.

appropriate because the demand reduction sold by the ARC is energy that the LSE would have delivered to the retail customer, but for the demand response by the ARC.²²²

161. MISO refers to 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].”²²³ Under section 38.6(2) of the Tariff, MISO proposes three distinct methods for establishing MFRR. Depending on circumstances, the MFRR will be set at a level specified by the ARC, the relevant electric retail regulatory authority, or set to zero.

162. MISO’s proposed definition of the MFRR provides that when the ARC provides the relevant MFRR, it shall be based on reasonable estimates of the marginal retail energy rates. However, the definition does not specify how the MFRR is set when the relevant electric retail regulatory authority determines the MFRR. In Michael Robinson’s testimony for MISO, he notes that retail ratemaking is a complicated process, with many factors to consider in designing the appropriate rates. He further states that, as a result, the MFRR could presumably be positive or negative, based on the policy objectives of the RERRA.²²⁴

163. MISO also proposes a new Tariff provision in section 38.6.2 that creates a review process when more than ten percent of an ARC’s MFRR identifications are successfully disputed by an LSE.²²⁵

(b) Protests and Comments

164. Several parties, including OMS, Consumers Energy, Xcel, and Detroit Edison, support the proposed ARC compensation formula. On the other hand, Steel Producers, DR Parties, and Wisconsin Industrial challenge MISO’s decision to reduce the ARC’s compensation by the MFRR.

165. While Xcel supports MISO’s proposal, Xcel states that MISO’s proposal allows an ARC to claim its demand response resources are load modifying resources and to sell this

²²² MISO October ARC Filing at 17-18.

²²³ *Id.* at 13.

²²⁴ *Id.*, Robinson Test. at 17.

²²⁵ MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet No. 655H.

capacity resource bilaterally or through the voluntary capacity auction under Module E of the Tariff. Xcel states this is problematic because the ARC will not own the capacity it is offering. Xcel argues that an LSE must pay for the capacity that the ARC is selling, yet there currently is no process to require an ARC to buy the capacity from the LSE before submitting an offer of that capacity. Xcel states that the Commission should not allow an ARC to register as a load modifying resource or capacity resource under Module E unless MISO modifies its proposal to allow for or confirm the ARC's procurement of the capacity.²²⁶

166. Several parties argue that MISO's proposal is an improper delegation of FERC's ratemaking authority. Duke and Ameren argue that the proposal would allow ARCs to unilaterally set rates and, thus, the rate would be determined by the ARC and not the Commission. They likewise question whether it would be appropriate for the relevant electric retail regulatory authority to establish the MFRR. Duke and Ameren also raise concerns regarding MISO's proposal to default the MFRR to zero when the relevant electric retail regulatory authority does not establish an MFRR.²²⁷

167. Duke and Ameren also question whether the procedures for challenging an MFRR, as set forth in section 38.6.2, will provide sufficient protection for LSEs. They note that, while an LSE may challenge an MFRR under the dispute resolution procedures, the procedure will take time and the LSE will suffer financial harm while the dispute resolution is pending.²²⁸

168. Other parties focus on the effects on payments during the settlements process of other charges associated with MISO's reconstitution of the load. Consumers Energy and Detroit Edison state that MISO did not provide specific Tariff language to eliminate deviation and other charges caused by ARCs, despite stating in its transmittal letter that RSG charges due to ARC participation would be eliminated due to load reconstitution.²²⁹

²²⁶ Xcel November 6, 2009 Protest at 8-9.

²²⁷ Duke November 6, 2009 Protest at 6. Ameren November 6, 2009 Comments at 9.

²²⁸ Duke November 6, 2009 Protest at 7. Ameren November 6, 2009 Comments at 8.

²²⁹ The charges in question include RSG, Schedule 10 and 17 charges, load ratio share uplifts, Regulating Reserve charges, spinning reserve and supplemental reserve charges and other market and transmission charges when such reconstituted load adjustments are made. Consumers Energy November 6, 2009 Comments at 7-8; Detroit Edison November 5, 2009 Comments at 4-5.

Consumers Energy contends that the Commission should reject MISO's proposal to modify the definitions of "Actual Energy Injection" and "Actual Energy Withdrawal" to add reconstituted load to the host LSE's zone. Rather, it argues that MISO should be directed to implement an automatic transaction that offsets the host LSE's position in the market for the ARC's position and to develop a process to collect the payment for the ARC from the market as a whole. Consumers Energy states that collecting the payment for the ARC from the market as a whole is reasonable because all LSEs within the market will benefit from lower LMPs.²³⁰ Xcel argues that MISO should clarify the proposal to ensure that the LSE is not required to pay load-related charges such as Revenue Neutrality Uplift Charges or MISO administrative charges, for load obligated to the ARC, and that an LSE's true metered load should be used to assess these charges. Xcel states that it is appropriate to use the gross-up load for purposes of calculating RSG charges for load deviations from day-ahead schedules.²³¹

169. Finally, Constellation argues that the compensation mechanism for EDR, as set forth in Schedule 30, section V, is ambiguous and MISO should revise the proposal. Constellation notes that the proposed language²³² indicates that the compensation provision will apply to the ARC that is an EDR participant, but not the underlying assets controlled by the ARC. Constellation argues that such a provision is inconsistent with the credit requirements and settlement process, both of which are based on the expected output of the ARC's underlying assets. Accordingly, it requests the following sentence be changed: "For EDR Participants that are part of an ARCs asset, the provisions of [s]ection 38.6, part 2(a), (b), or (c) will apply, for purpose of billing and settlement with adjustment for the applicable MFRR."²³³

(c) Answers

170. In its answer, MISO reiterates its view that ARCs should be compensated at LMP minus MFRR.

171. With respect to Xcel's inquiries concerning MFRR adjustments for Load Modifying Resources, MISO clarifies that it never intended to alter the nature of

²³⁰ Consumers Energy November 6, 2009 Protest at 8.

²³¹ Xcel November 6, 2009 Protest at 7-8.

²³² See MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, First Revised Sheet No. 2256.

²³³ Constellation November 6, 2009 Comments at 6-7.

compensation for Load Modifying Resources. MISO states that the proposed Tariff language allows ARCs to offer Load Modifying Resources to meet Module E requirements, with compensation for these transactions arranged between parties. MISO states that, if Load Modifying Resources are called on, charges and credits for their deployment will continue to accrue to the LSEs. MISO states that, if ARCs want compensation for providing energy through capacity resources, they can do so by converting their Load Modifying Resources to EDRs, for which MISO included compensation provisions in the proposed Tariff language.²³⁴

172. In response to Constellation's proposed change to the compensation proposal for EDR, as set forth in Schedule 30, MISO states the requested change to the language is inappropriate. MISO emphasizes that the section properly refers to ARCs that are EDR participants because the ARCs—not the ARC assets—have the obligation as market participants.²³⁵

173. In response to Consumers Energy, MISO clarifies that the unit dispatch software (Security Constrained Dispatch) cannot offset the host LSE's position in the market for the position awarded to the ARC; nor is such an offset desirable. MISO explains that an LSE has the obligation to serve its end-use customers regardless of ARC affiliation.²³⁶

174. MISO disagrees with Detroit Edison's request for modifications to the proposed Tariff definitions of "Actual Energy Injections" and "Actual Energy Withdrawals," stating that one of the reasons the ARC proposal provided for the reconstitution of LSE load is to ensure that LSEs with day-ahead positions will not be assessed improper deviation charges due to load reductions by ARCs. MISO believes that the proposed Tariff language properly addresses circumstances where LSEs are subject to such deviation charges.²³⁷

175. DR Parties filed an answer to several protests. Among other things, they reiterate their stance that demand response should be paid the full LMP.²³⁸

²³⁴ MISO December 15, 2009 Answer at 18.

²³⁵ *Id.* at 25.

²³⁶ *Id.* at 19-20.

²³⁷ *Id.* at 19.

²³⁸ DR Parties November 23, 2009 Answer at 8.

(d) Commission Determination

176. We will reject MISO's proposed compensation for ARCs. As the Commission has emphasized, it may accept formula rates that are fixed and predictable in nature.²³⁹ Here, MISO's proposal for ARC compensation fails to meet this requirement as the MFRR component of the formula for that compensation lacks the specificity required for ratemaking purposes and is not tied to any objectively identifiable criteria.²⁴⁰ Rather, as noted by MISO,²⁴¹ the proposal permits 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. Allowing such unfettered discretion in setting a critical rate component of the wholesale formula for ARC compensation is contrary to the Commission's obligation to set FERC-jurisdictional rates.²⁴² Accordingly, we direct MISO to submit a just and reasonable ARC compensation proposal that addresses these issues within 90 days from the date of this order.

177. In terms of the allocation of costs associated with ARC demand response to the LSE from which the demand response originates, the proposed allocation of the LMP as a charge to the LSE is consistent with the current allocation of other demand response costs on the MISO system and, accordingly, we will accept the provision.²⁴³ However, we will require MISO to explain how changes in the definition of Actual Energy Withdrawal related to load reconstitution would affect deviation and other charges, such as administrative charges, to the host LSE in the day-ahead and real-time markets. We

²³⁹ *Ocean State Power II*, 69 FERC ¶ 61,146, at 61,552 (1994).

²⁴⁰ See *Fed. Power Comm'n v. Texaco*, 417 U.S. 380, 395-96 (1974); *Pacific Gas & Elec. Co. v. FERC*, 306 F.3d 1112, 1119 (D.C. Cir. 2002) (*PG&E*); *Pub. Utilities Comm'n of the State of California v. FERC*, 254 F.3d 250, 254-56 (D.C. Cir. 2001) (*California PUC*).

²⁴¹ MISO October ARC Filing at 14.

²⁴² *California PUC*, 254 F.3d at 255; *PG&E*, 306 F.3d at 1119.

²⁴³ 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 will be further addressed in MISO's Order No. 745 Compliance proceeding. The compensation and cost allocation requirements of Order No. 745 will apply to these time periods.

direct MISO to provide this information as a part of the compliance filing due 90 days after the date of this order.

178. We disagree with Constellation regarding the need to revise the EDR compensation provision in Schedule 30. As noted by MISO, it is the ARC – not the underlying ARC assets – that are subject to the billing and settlement procedures under section 38.6(2). Accordingly, Schedule 30, section V, properly refers to “EDR Participants that are ARCs”²⁴⁴ and we will not require further modification.

iv. Determination of the Relevant LMPs

(a) MISO Filing

179. In determining an LMP to use for compensating an ARC for providing energy, MISO states that it will assign each ARC a unique CPNode based on the respective Elemental Pricing Nodes (EPNodes)—that is, the physical locations within a single local balancing authority area where individual retail customers withdraw energy.²⁴⁵ An end user customer account may be represented by only one ARC, but a single ARC may register multiple demand response resources, LMRs or EDRs. MISO asserts that its dispatch software calculates the LMP at each EPNode every 5 minutes based on actual power flows. ARC-specific LMPs will be calculated for each ARC’s CPNode, for each hour, as the average of LMPs at the EPNodes of the retail customers in the ARC at that CPNode weighted by their respective demand reductions. Each ARC that delivers a verified load reduction will be paid the calculated average hourly LMP at the CPNode associated with the relevant demand reduction.²⁴⁶

(b) Protests and Comments

180. A number of parties express concern about MISO’s proposal for determining the LMPs used for compensating ARCs. Midwest TDUs state that settlement is complicated by compensating an ARC with multiple-LSE or multiple-EPNode demand response resources based on a new CPNode, where that CPNode appears to use a fixed weighting for the EPNodes from all of the relevant Load Zones.²⁴⁷ They contend that, because the

²⁴⁴ MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, First Revised Sheet No. 2256.

²⁴⁵ *Id.*, Original Sheet Nos. 803, 995.

²⁴⁶ MISO October ARC Filing, Robinson Test. at 10-11.

²⁴⁷ Midwest TDUs November 6, 2009 Comments at 8-9.

fixed weighting of the ARC's CPNode may not reflect the location of the actual demand response provided by the resource in a given hour and the fixed weighting of the EPNodes will be determined before the actual distribution of retail customer demand response has been demonstrated, there could be mismatches between: (1) the payments to such ARCs for a given hour; and (2) the value of energy at the locations where the ARC gets the demand response. Midwest TDUs state that, for the Tariff to be just and reasonable, the LSE must pay the same LMP for a MWh of ARC load reduction as the LMP it would have paid to purchase a MWh of energy from the wholesale market.

181. Midwest TDUs object to ARCs being allowed to aggregate across LSEs and EPNodes, absent adequate assurance that the settlements process will fully disaggregate the resources and payments to ensure fair charges to the LSEs where the retail demand response occurs. They argue that, under the proposal, there is not sufficient detail to assure that charges to an individual LSE to compensate demand response resources spanning multiple LSEs will have each affected LSE being charged only to recover the portion of MISO's ARC payments associated with the LSE's own retail customers, consistent with MISO's justification for directly assigning the ARC payment to the LSEs.²⁴⁸ Midwest TDUs contend that, without safeguards, the recovery mechanism for ARC energy payments will improperly allocate the energy payments and double-charge some LSEs for energy.²⁴⁹

182. With respect to ARC demand response resources that span multiple EPNodes within a single LSE, Midwest TDUs argue that the Commission should require MISO to demonstrate that it has the tools in place to assure that: (1) the demand response energy for which an LSE will be charged equals the energy contributed by the ARC from that LSE's retail customers' demand response; (2) the price that the LSE will be charged for the energy contributed by the ARC's retail-customer demand response will be the same as that LSE's avoided price of wholesale energy in MISO's markets; and (3) each affected LSE will be properly credited with its corresponding MFRR.²⁵⁰ Midwest TDUs

²⁴⁸ *Id.* at 7-9 (citing MISO October ARC Filing, Robinson Test. at 12). Midwest TDUs state that it is crucial that each LSE only pay for the demand response provided by its own retail customers because MISO's justification for directly assigning the ARC energy payment to a specific LSE is that the ARC-provided energy "is energy that [the] LSE would have purchased from the energy markets and delivered to its retail customers if the retail customers had not reduced load." *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.* at 8.

state that the proposed Tariff language appears to envision that each LSE would instead pay the LMP at the ARC's demand response resource CPNode, which could reflect the LMPs in multiple Load Zones and LSEs, not just the LMP at the EPNodes where the LSE would have purchased energy that is sold to the wholesale market by the LSE's retail customers through the ARC as demand response.²⁵¹

183. Consumers Energy asserts that, in states with retail choice, most transmission system EPNodes are shared by multiple LSEs and market participants while some EPNodes are directly assigned to a single entity. It maintains that, if there is not a one-to-one relationship between the ARC and the host LSE serving the retail customer, MISO will be unable to identify the specific host LSE that should have its load reconstructed if an ARC's bid is selected. Consumers Energy suggests that the Commission direct MISO to re-file its proposal, requiring an ARC to have a separate CPNode for each host LSE zone where it is serving load and to define the CPNode in the same way as the host LSE's CPNode.²⁵²

184. Duke states that it is unclear whether the settlement LMP at which the ARC is paid is the same as the LMP at which the LSE will turn back unused power to the market. Duke contends that the proposal may "mismatch" the LMP for LSEs' purchases (which is based on a zonal weighted average), and the demand-resource LMP for ARCs (which is based on an average weighted by the location of its associated load reductions) in calculating ARC-related payments. Duke further states that this mismatch can result in unduly discriminatory cost shifts because load that does not sign up with an ARC could unfairly and inefficiently subsidize payments to load that signs up with an ARC. Duke requests that the Commission require MISO to clarify Tariff language such that the LMP for ARC payment equals the LMP at which the LSE will turn back unused power to the market.²⁵³

185. Duke asserts that it is unclear how the proposed revisions will account for load switching involving competitive retail suppliers, and that the Commission should require MISO to explain how its current proposal will ensure that the appropriate LSE is charged for the payment to the ARC for a load reduction, or require it to adopt new tariff measures if the current measures are insufficient for that task. Duke argues that, if a competitive retail supplier is providing service to a load that has signed up with an ARC that implements a demand reduction, it is the competitive retail supplier, not the provider

²⁵¹ *Id.* at 10.

²⁵² Consumers Energy November 6, 2009 Protest at 6-7.

²⁵³ Duke November 6, 2009 Protest at 2-6.

of last resort, which should pay the ARC. It states that otherwise the provider of last resort's customers will be subsidizing the competitive retail supplier, resulting in undue discrimination.²⁵⁴

186. Consumers Energy holds that allowing an ARC to pick the EPNodes that define its zone for a DRR-Type I resource can lead to potential gaming, with an ARC picking an EPNode with a higher LMP rather than an EPNode within a short distance of the utility's distribution system.²⁵⁵

(c) Answers

187. In addressing Midwest TDUs' concerns regarding ARC aggregation across multiple LSEs and EPNodes, MISO states that it intends to detail in its Business Practices Manuals the appropriate charges and credits assessed to each LSE and ARC such that an LSE will be charged for only those demand response assets within its Load Zone. MISO disagrees with Duke's proposed Tariff language that provides that the LMP at which the ARC is paid equals the LSE's resale LMP, such that there are no cost shifts. MISO states that LMPs are calculated based on injection and withdrawal points per the definition of LMP in the Tariff. Thus, MISO argues that charging the LSE responsible for serving the load behind the ARC assets will ensure that nonparticipating load is not subsidizing ARC payments.²⁵⁶

188. MISO states that Consumer Energy's interpretation of the EPNode and CPNode designation provisions is erroneous. Each ARC, MISO maintains, will be assigned a unique CPNode based on their respective physical locations on the Transmission System (i.e., the EPNodes where the ARC's registered retail load withdraw their energy). MISO states that its dispatch software calculates the LMP at each EPNode every five minutes based on actual system power flows, and that the average hourly LMPs are calculated at the ARC Resource's CPNode as the weighted average of the average hourly LMPs at the EPNodes where the retail demand reduction occurs. MISO states that it plans to have the Local Balancing Authorities verify the physical address to EPNode relationship.²⁵⁷

²⁵⁴ *Id.* at 10-11.

²⁵⁵ Consumers Energy November 6, 2009 Protest at 6-7.

²⁵⁶ MISO December 15, 2009 Answer at 20.

²⁵⁷ *Id.* at 8-9.

189. In response to protesters' opposition to assigning a unique CPNode to each ARC Resource based on its respective physical location and to the calculation of average hourly LMP at the CPNode as the weighted average of the hourly LMPs at the responding EPNodes, DR Parties state that the Commission should reject arguments to require ARC payments equal to the LSE's avoided wholesale cost. DR Parties argue that in order for demand response resources to be treated comparably to generation as a supply-side resource, the value of the demand reduction should be determined at its point of injection. They maintain that there is no reason to believe that the demand response resource's LMP at the point of injection will be or ought to be the same as the LSE's LMP at its CPNode.²⁵⁸

(d) Commission Determination

190. First, we find that compensation of an ARC at a CPNode LMP, calculated with volume-weighted LMPs, is appropriate. Such an LMP would compensate the ARC in a manner comparable to how a generator would be compensated for energy.²⁵⁹ Calculation with volume-weighted LMPs is comparable to how CPNode LMPs are calculated for load and Resources. Thus, we reject Duke's argument. Contrary to what Duke contends, this manner of calculating the energy LMP used to compensate ARCs will not result in load that does not participate in aggregated demand response through an ARC subsidizing those that do. Duke's concern is misplaced; it is only at the point where MISO allocates the costs of compensating ARCs that the concern over one customer subsidizing another comes in to play. That issue is addressed below.

191. Second, we find that MISO has sufficiently addressed Consumer Energy's concern over gaming behavior in the choice of EPNode by an ARC. As noted by MISO, the ARC does not choose the EPNodes. An ARC's CPNode is determined by the weighted average of prices at the EPNodes where the individual demand response resources withdrew their energy. In this context, CPNodes are assigned, not chosen.

192. Third, protesters raise concerns regarding the calculation of the ARC LMP and appropriateness of MISO's proposal to use this LMP when allocating costs to particular

²⁵⁸ DR Parties November 23, 2009 Answer at 6.

²⁵⁹ The payment of the weighted average of the EPNode LMPs within the ARC multiplied by the demand response of the ARC results in the same payment as if the individual EPNode LMPs were multiplied by the respective demand response at that EPNode for the ARC. This is comparable to the case when a generating resource spans multiple EPNodes, in which case the CPNode LMP is calculated as a weighted average of the EPNode LMPs.

LSEs. We find that compensation of an ARC at a CPNode LMP, calculated with volume-weighted LMPs, is appropriate. Such an LMP would compensate the ARC as if it had generated those volumes at the specific EPNodes.²⁶⁰ This is comparable to how CPNode LMPs are calculated for load and Resources.

193. However, we agree with protesters that MISO's proposed method for the LMP determination associated with ARC cost recovery from LSEs has not been shown to be just and reasonable and not unduly discriminatory or preferential. MISO proposes to charge each LSE based on LMPs at the ARC's CPNode. When the ARC's CPNode comprises EPNodes from LSEs with different LMPs, such a methodology could result in an LSE with lower LMPs subsidizing an LSE with higher LMPs. This is not acceptable. In its answer, MISO recognizes that such subsidization is possible and agrees to rectify the methodology in its Business Practices Manuals. We believe MISO should resolve the issue in the Tariff. Accordingly, we direct MISO to modify its tariff to rectify this problem, as part of the compliance filing due 90 days after the date of this order.

194. In response to Duke's concerns about the appropriate LSE or competitive retail supplier being billed for the demand response, we find that MISO has proposed in section 38.6 of the Tariff to require the ARC's registration for each resource to include information on the LSE(s) serving the load. We believe that this is sufficient, and that if a conflict over settlement arises, the parties have a Tariff process for seeking redress.

v. Information Sharing Protocols

(a) MISO Filing

195. MISO states that it will, at a minimum, notify an affected LSE via email when load it serves is enrolled to participate, either individually or through an ARC, as a demand response resource. The email notification will provide the LSE with the expected level of participation for each demand response resource. In addition, MISO proposes to include provisions in its Tariff for sharing information about demand response resources to address concerns about double-counting, deviation charges, and phantom energy charges. Through the registration process, retail customers comprising each demand response asset to be offered by the ARC will be identified. MISO states this will enable it to avoid double-counting and to ensure reliable grid operation. It states that the potential RSG charges due to ARC participation will be removed in the

²⁶⁰ The payment of the weighted average of the EPNode LMPs within the ARC multiplied by the demand response of the ARC results in the same payment as if the individual EPNode LMPs were multiplied by the respective demand response at that EPNode for the ARC.

settlement process by the reconstitution of the load reduction affected by the ARC back into the LSE's withdrawal volumes. MISO states that well-defined measurement and verification protocols will be established in the Business Practices Manuals that will mitigate phantom load reductions.²⁶¹

196. MISO states that ARCs will be provided the same information as any other market participant representing a resource in the MISO markets—that is, cleared schedules, dispatch instructions (if appropriate), and Market Clearing Prices. It states that it will provide the relevant electric retail regulatory authority with notice of an ARC's intent to register retail customers under the jurisdiction of the relevant electric retail regulatory authority, as well as the certification provided by the ARC regarding the ARC's ability to participate under applicable laws, regulations, or orders of the relevant electric retail regulatory authority. This information, along with the expected level of participation, will be sent by certified mail and email transmission. MISO states that it will provide each LSE aggregated summaries of the extent of its retail customers' participation on a periodic basis. Furthermore, MISO states that it will only provide aggregated or "masked" information to the LSE and the relevant electric retail regulatory authority.²⁶²

(b) Comments and Protests

197. Several parties argue that LSEs, transmission operators, and local balancing authorities should be notified of offers that are cleared in the day-ahead market and of ARCs' real-time demand reductions. They argue that such information is needed to perform reliability assessments and to fulfill their planning roles in the day-ahead and real-time horizons.²⁶³ Consumers Energy maintains that the Host LSE must be informed of ARC bids that are selected such that the Host LSE will not unknowingly over-purchase resources and incur associated imbalance charges.²⁶⁴ Xcel emphasizes that coordination

²⁶¹ MISO October ARC Filing at 18-19.

²⁶² *Id.*

²⁶³ Ameren November 6, 2009 Comments at 22; Xcel November 6, 2009 Protest at 11-13. Ameren gives the example of Illinois, a retail choice state in which a retail customer can switch LSEs on 7-days' notice. Ameren states that MISO does not explain how it will track an ARC customer switching from the Ameren Illinois Utilities to another LSE, or how it will track an ARC customer switching from service under the Ameren Illinois Utilities' fixed price tariff to the Ameren Illinois Utilities' real-time pricing tariff, so that MISO can direct the reconstitution of load to the correct CPNode. Ameren November 6, 2009 Comments at 11-12.

²⁶⁴ Consumers Energy November 6, 2009 Protest at 4.

between ARCs and LSEs is necessary to prevent over-scheduling of generation, over-loading or under-loading of distribution systems, adverse power flows, or transmission congestion. Xcel also believes that day-ahead coordination of an ARC's plans is necessary to eliminate the risk of double-counting of demand response resources. Xcel suggests that the Commission require MISO to work with stakeholders and to submit specific coordination procedures between ARCs and their host LSEs at least 60 days before the proposed implementation of ARCs' participation in the market.²⁶⁵

198. Xcel is further concerned about the logistics and reliability of MISO's plan to send emails to the local balancing authority to coordinate the volume of actual load reductions with the local balancing authorities to evaluate and verify settlements after the operating day.²⁶⁶

199. Xcel believes that MISO has not sufficiently addressed the NERC reliability standards that require an LSE to provide demand response data and modeling assumptions upon request. It states that MISO must address the obligation of the LSE to provide this data in MISO's Tariff because the LSE may no longer directly control all demand response on the LSE's system. The failure to provide such information, according to Xcel, may prevent an LSE from complying with several of NERC's Modeling, Data and Analysis standards and with emergency planning and response obligations under the NERC EOP-001-2 standard. Further, operating standards require information about future plans that LSEs cannot provide without access to detail regarding an ARC's activities in their individual footprints. Xcel suggests the Commission direct MISO to develop a plan to address reliability standards prior to implementation of its proposed ARC rules.²⁶⁷

200. Midwest TDUs and Detroit Edison likewise challenge whether MISO's proposal provides LSEs and relevant electric retail regulatory authorities with sufficient information with respect to ongoing ARC operations and retail customer demand response.²⁶⁸ Midwest TDUs maintain that the Commission should direct MISO to provide LSEs with data for demand response resources and emergency demand response resources on Actual Energy Injections, by EPNode, within seven days of the operating

²⁶⁵ Xcel November 6, 2009 Protest at 13; *see also* Ameren November 6, 2009 Comments at 12.

²⁶⁶ Xcel November 6, 2009 Protest at 11-12.

²⁶⁷ *Id.* at 13-14 (citations omitted).

²⁶⁸ Midwest TDUs November 6, 2009 Protest at 17.

day, so that LSEs can verify ARC-related charges within MISO's settlement process.²⁶⁹ Detroit Edison believes the lack of detailed information will make it difficult for an LSE to verify that the load reduction reported by an ARC is correct. The only way to ensure that this does not become another mechanism for gaming, according to Detroit Edison, is for the Commission to require a one-to-one match between the Host Load Zone and the demand response assets within the Load Zone being managed by the ARC.²⁷⁰

(c) Answers

201. In response to parties' requests for assurance that local balancing authorities and LSEs will have access to certain relevant information associated with the operation of ARCs, MISO states that it is currently working with its stakeholders to develop a coordination and information sharing process for the Business Practices Manuals.²⁷¹ In addition, MISO states that, as will be detailed in the Business Practices Manuals, it will verify that there is no double-counting.²⁷²

202. With respect to information access for local balancing authorities, MISO states that the Tariff provides that the local balancing areas will participate with it in reviewing the composition of CPNodes proposed by ARCs. MISO states that local balancing authorities also will have access to the electrical location and magnitude of resources in an ARC's portfolio of resources to perform operational planning studies. Further, MISO states that local balancing areas will be notified of ARC demand reduction offers that

²⁶⁹ *Id.*

²⁷⁰ Detroit Edison November 5, 2009 Comments at 11-12.

²⁷¹ While MISO indicated that it would provide more details in an Order No. 719-A compliance filing due on January 25, 2010, no such details were contained in that filing, and MISO stated at that time that all details with regard to information access and sharing amongst the MISO, LSEs and local balancing authorities will be articulated in the Business Practice Manuals only, unless the Commission orders that they also be included in the Tariff.

²⁷² In the January 2010 filing, MISO states that after due consideration and further stakeholder consultations, it has concluded that no additional Tariff revisions relating to compliance protocols are necessary to supplement those proposed in its October ARC Filing. It states that it discussed the filing requirements and implementation issues with the its Demand Response Working Group on January 4, 2010 and that such discussions are slated to continue through the first half of 2010, with discussions of ARC implementation issues and Business Practices Manuals. MISO January Filing at 2.

have been cleared in the day-ahead and real-time markets to perform reliability assessments and planning roles in the day-ahead and real-time horizon.²⁷³

203. MISO maintains that LSEs will have access to all pertinent metering, settlements, and measurement and verification information associated with the operation of an ARC in its zone. MISO states that LSEs will also be notified of cleared ARC load reduction offers in real-time through settlement data. MISO states that, as part of the settlement process, LSEs will have access to data on Actual Energy Injections associated with demand response resources and emergency demand resources, by EPNode, within seven days of the operating day, so that LSEs can verify ARC-related charges.²⁷⁴

(d) Commission Determination

204. As a preliminary matter, we will require MISO to file its information access and information sharing procedures as part of its Tariff. We believe that these procedures are sufficiently important that they should be included as a part of the Tariff under the rule of reason. Without appropriate information sharing, there could be double-counting, inappropriate deviation charges, and inadequate verification procedures. The Tariff provisions must state the type of information that will be available, how that information will be provided, who will have access to or be provided the information, and clear timelines for the distribution or release of the information. In addition, MISO must set forth in the Tariff the procedure that it will employ to verify that there is no double-counting. We direct MISO to make these revisions as part of the compliance filing due 90 days after the date of this order. We will address any questions regarding the sufficiency of the provisions in the order on compliance.

205. We note MISO's clarification that the Tariff provides that the local balancing authorities will participate with MISO in reviewing the composition of CPNodes proposed by ARCs and that local balancing authorities will also have access to the electrical location and magnitude of resources in an ARC's portfolio of resources to perform operational planning studies. Further, MISO states that it, via its Reliability Subcommittee, is continuing to discuss reliability concerns at the local balancing authority level, as well as the need for EPNode information from the local balancing areas.²⁷⁵ MISO states that LSEs will have access to all pertinent metering, settlements, and measurement and verification information associated with the operation of an ARC

²⁷³ MISO December 15, 2009 Answer at 21-22.

²⁷⁴ *Id.* at 22.

²⁷⁵ MISO January Filing at 2.

in an LSE's zone, and that they will be notified of cleared ARC load reduction offers in real-time through settlement data. We will require MISO to make this clarification as part of its Tariff in its compliance filing, as discussed above. We will address any questions regarding the sufficiency of that clarification in the order on compliance.

206. We disagree with Xcel's concern about the logistics and reliability of MISO's use of email to coordinate the volume of actual load reductions cleared in the day-ahead market with the local balancing authorities, as well as to evaluate and verify settlements after the operating day. Xcel has not sufficiently explained why this process is unreliable or unjust and unreasonable. On the contrary, we find that such a procedure is a reliable and efficient way to notify load balancing authorities regarding any load reduction. We direct MISO to propose language to implement this procedure in its Tariff. As noted above, MISO's proposal must include a timeline for when such a notification will be sent to the local balancing authority.

vi. Credit Requirements

(a) MISO Filing

207. In its October ARC Filing, MISO amends its credits requirements under Attachment L of its Tariff for purposes of calculating the total potential exposure of each ARC applicant regarding its supply of energy or operating reserves.²⁷⁶ MISO states that the applicable formula proposed in the October ARC Filing reduces the hourly value to 345 hours, from the 720 hours used for other resources. MISO asserts this value is appropriate for ARCs because demand response resources rarely participate in energy markets with the same frequency as generation resources. Accordingly, MISO proposes that an ARC's Total Potential Exposure be calculated with the following formula: the maximum MWh capacity of generating unit(s) x 345 hours x the average historical day-ahead price for the preceding five months x five percent. MISO also notes that Attachment L has been updated to reflect the most current historical day-ahead price used in the calculation.²⁷⁷

(b) Comments and Protests

208. DR Parties state that MISO's proposed credit requirements are unduly burdensome and discriminatory. Based on DR Parties' estimation, the formula will result in a

²⁷⁶ See MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Second Revised Sheet No. 2476.

²⁷⁷ MISO October ARC Filing at 11 n.28.

minimum credit requirement of \$38,000 for ARCs, which according to DR Parties would require an ARC to aggregate nearly 87 MWs to break-even (assuming a 3-month average price of \$26/MWh).²⁷⁸ DR Parties assert that MISO's proposal could prevent small ARCs or customers from directly participating in MISO's market.²⁷⁹ DR Parties state that MISO should develop an ARC-specific credit requirement and should not simply rely on its default credit requirements, which are based on credit needed to protect the market for defaulting load or purchasers of energy.

(c) Answers

209. Contrary to DR Parties' arguments, MISO asserts that the sum of the expected output of the ARC's assets is considered when establishing the credit requirement for ARCs. It further emphasizes that the calculation also focuses on the potential liability that may arise from the ARC's output—that is, the liability that may result from an ARC not meeting the obligations of its offers.²⁸⁰ In order to calculate the expected liability, MISO states that the credit requirement considers the number of peak hours in a billing cycle, which is the period when an ARC is more likely to be cleared. MISO states that this translates into an expected maximum output (hours offered per billing cycle) of 345 hours per billing cycles (a billing cycle is approximately one month). MISO states that the hours are further discounted by the estimated percentage of time that the ARC would not meet its day-ahead supply offer.²⁸¹

210. MISO further clarifies that the initial value of Total Potential Exposure (as detailed in Section I.A.7(c)(ii) of the Attachment L Credit Policy) associated with an ARC is specific to the individual ARC asset. The calculation considers the actual MWh capacity of the demand resource and other factors that influence the potential liability including (a) the average historical day-ahead price for the preceding three months, and (b) the estimated number of hours that an ARC will not meet its output commitment per

²⁷⁸ DR Parties November 6, 2009 Protest at 10.

²⁷⁹ *Id.* at 10-11.

²⁸⁰ MISO December 15, 2009 Answer at 6-7.

²⁸¹ *Id.* at 7. MISO states that the estimated period of time that is used for calculation is five percent, which results in an estimated liability using a maximum of 17.25 hours per billing cycle (345 hours times five percent). These hours are then multiplied by the average day-ahead price for the preceding three months to establish an expected liability per MWh for an ARC. *Id.*

billing cycle.²⁸² However, MISO requests the application of one MWh to the minimum initial value of Total Potential Exposure associated with Energy and Operating Reserve purchases.²⁸³ MISO states that the actual amount to be posted as an initial value of Total Potential Exposure would be the greater of (a) \$413.66 per MWh of an ARC asset, or (b) the minimum initial value of Total Potential Exposure based on applying one MWh to the Energy and Operating Reserve purchases calculation or \$17,266.60.²⁸⁴

(d) Commission Determination

211. We conditionally accept MISO's credit requirements for ARCs. MISO's proposed formula for calculating an ARC's Total Potential Exposure relies on monthly billing. On September 15, 2011, the Commission issued an order conditionally accepting MISO's compliance with Order No. 741.²⁸⁵ As part of its compliance obligation, the Commission directed MISO to revise its Tariff to establish billing periods that are, at most, weekly.²⁸⁶ Accordingly, we direct MISO to revise the proposed formula for calculating an ARC's Total Potential Exposure consistent with the changes to its billing periods required in compliance with Order No. 741. MISO must make these revisions as part of the

²⁸² *Id.* As of today, MISO states, the average historical day-ahead price for the preceding three months is \$23.98 per MWh, and the estimated number of hours that an ARC will not meet its output commitment is 17.25 hours per billing cycle (345 on-peak hours time five percent), which results in an Initial Value of Total Potential Exposure of \$413.66 per MWh of an ARC asset. *Id.*

²⁸³ *Id.* at 8. MISO states that using today's average historical day-ahead price for the preceding three months of \$23.98 per MWh, the minimum amount based on one MWh of Energy and Operating Reserve purchases for a billing cycle would result in a minimum initial value of Total Potential Exposure of \$17,265.60. *Id.*

²⁸⁴ *Id.*

²⁸⁵ *Midwest Indep. Transmission Sys. Operator, Inc.*, 136 FERC ¶ 61,188 (2011). Order No. 741 revised the credit policies used in organized wholesale electric power markets. *Credit Reforms in Organized Wholesale Electric Markets*, Order No. 741, FERC Stats. & Regs. ¶ 31,317 (2010), at P 32, *order on reh'g*, Order No. 741-A, FERC Stats. & Regs. ¶ 31,320 (2011), *order denying reh'g*, Order No. 741-B, 135 FERC ¶ 61,242 (2011).

²⁸⁶ *Midwest Indep. Transmission Sys. Operator, Inc.*, 136 FERC ¶ 61,188 at P 10.

compliance filing 90 days from the date of this order. Furthermore, MISO requested in its December 15, 2009 Answer for the first time that a minimum capacity of 1 MWh be applied when calculating the initial value of the Total Potential Exposure for the ARC's demand resources. However, there are no proposed revisions to the Tariff that establish the minimum capacity of one MWh for the ARC's minimum credit requirement. Accordingly, we direct MISO to clarify its request to apply the minimum capacity requirement in calculating the ARC's minimum credit requirements as part of its compliance filing and to revise Attachment L of the Tariff as needed.

212. We disagree with DR Parties regarding the proposed credit requirements. Contrary to DR Parties' claims, MISO has developed credit requirements that are specifically tailored to the estimated level of participation by ARCs demand resources and are based on potential exposure in the event of default. For purposes of calculating the initial value of the Total Potential Exposure, MISO lowered an ARC's maximum level of participation from all hours during a billing period to the peak hours during the billing period. We find this approach to be reasonable. Moreover, because the Commission is requiring MISO to revise the proposed formula for calculating an ARC's Total Potential Exposure to reflect, at most, weekly billing periods in compliance with Order No. 741, this would further reduce the amount of the ARC's minimum credit requirements.

d. Market Rules Governing Price Formation During Periods of Operating Reserve Shortage

213. In Order No. 719, the Commission established reforms to remove barriers to demand response by requiring RTOs and ISOs to reform their market rules in such a way that prices during operating reserve shortages more accurately reflect the value of energy during such shortages. Order No. 719 required each RTO or ISO to reform or demonstrate the adequacy of its existing market rules to ensure that the market price for energy reflects the value of energy during an operating reserve shortage.²⁸⁷ As such, it stated that each RTO or ISO may propose in its compliance filing one of four suggested approaches to pricing reform during an operating reserve shortage, or develop its own alternative approach to achieve the same objectives.²⁸⁸ Each RTO or ISO must address how its selected method of shortage pricing interacts with its existing market design.²⁸⁹

²⁸⁷ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 194.

²⁸⁸ The four approaches are: (1) RTOs and ISOs would increase the energy supply and demand bid caps above the current levels only during an emergency; (2) RTOs and ISOs would increase bid caps above the current level during an emergency only for

(continued...)

214. Order No. 719 also required each RTO or ISO to provide adequate factual support for its compliance filing. To that end, the Commission outlined six criteria it will consider in reviewing whether the factual record compiled by the RTO or ISO meets the requirements of the rule.²⁹⁰ The Commission allowed an RTO or ISO to phase in any new pricing rules over a few years, provided that this period is not protracted.²⁹¹ The phase-in period must be justified as part of the RTO's or ISO's overall proposal to change its pricing rules.

i. MISO Filing

215. MISO currently provides for shortage pricing via a demand curve for operating reserves as part of its co-optimized energy and ancillary service market design. If sufficient capacity, including that provided by demand response, is not available to meet the operating reserve requirements (i.e., a shortage condition exists), scarcity pricing is to be applied based on applicable clearing prices established by the demand curve.²⁹²

demand bids while keeping generation bid caps in place; (3) RTOs and ISOs would establish a demand curve for operating reserves, which has the effect of raising prices in a previously agreed-upon way as operating reserves grow short; and (4) RTOs and ISOs would set the market-clearing price during an emergency for all supply and demand response resources dispatched equal to the payment made to participants in an emergency demand response program. *Id.* P 208.

²⁸⁹ *Id.* P 204.

²⁹⁰ The six criteria are: (1) improve reliability by reducing demand and increasing supply during periods of operating reserve shortages; (2) make it more worthwhile for customers to invest in demand response technologies; (3) encourage existing generation and demand resources to continue to be relied upon during an operating reserve shortage; (4) encourage entry of new generation and demand resources; (5) ensure that the principle of comparability in treatment of and compensation to all resources is not discarded during periods of operating reserve shortage; and (6) ensure market power is mitigated and gaming behavior is deterred during periods of operating reserve shortages including, but not limited to, showing how demand resources discipline bidding behavior to competitive levels. *Id.* P 246-247.

²⁹¹ *Id.* P 258.

²⁹² MISO April Filing at 20-21.

216. As originally proposed, the minimum operating reserve demand curve scarcity price was based on the sum of the energy offer cap and the contingency reserve offer cap. MISO states that the minimum operating reserve scarcity price is set at \$1,100/MWh and the maximum at \$2,500/MWh. MISO states that the Commission approved MISO's proposed use of demand curves and shortage pricing, subject to certain Tariff modifications and reporting requirements, which MISO states that it has addressed or is in the process of addressing in subsequent compliance filings.²⁹³

217. MISO states that since the initial filing of its ancillary services market proposal, it has deferred the start of that market in various instances. In particular, MISO filed a notice on August 26, 2008 deferring the start of the ancillary services market to address concerns raised by market participants with respect to the occurrence of scarcity pricing during market testing. Subsequently, on October 2, 2008, it filed a proposal to address perceived ancillary services market shortage pricing issues by: (1) permitting ramp sharing, (2) revising its tolerance band, deployment penalties, and dispatch band provisions, (3) reducing the regulating reserve demand curve price, and (4) amending the eligibility criteria for certain make-whole payments.²⁹⁴ On December 18, 2008, the Commission issued an order generally approving these revisions without modification, but required a number of informational reports to be submitted by MISO and its MMU post-launch of the ancillary services market.²⁹⁵ MISO subsequently launched its new ancillary services market on January 6, 2009. It submitted a compliance filing pursuant to the Ancillary Market Start-Up Order regarding eligibility criteria for make-whole payments on January 22, 2009.

218. In response to the six criteria the Commission adopted in Order No. 719 to be used to judge an RTO's or ISO's shortage pricing proposal, MISO states that its compliance filing to the Ancillary Services Market Start-Up Order, as well as the ancillary services market rules previously approved by the Commission, show that it meets these criteria. It provides no other direct response to the six criteria. MISO states that because the ancillary services market is less than four months old, there is an incomplete factual record to support its shortage pricing mechanism in the co-optimized energy and ancillary services markets. Market operations data are still being compiled, consistent with the

²⁹³ *Id.* at 21 (citing *Ancillary Services Market Order*, 122 FERC ¶ 61,172 at P 191-220).

²⁹⁴ MISO, Tariff Filing, Docket No. ER09-24-000 (filed on Oct. 2, 2008).

²⁹⁵ MISO April Filing at 23 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,318 (2008) (*Ancillary Services Market Start-Up Order*)).

Commission's requirements that the MMU provide 180-day informational reports on certain reliability aspects of shortage pricing in the ancillary services market.

219. MISO also states that it concurs with the conclusion of its market monitor, Potomac Economics, described further below, that existing shortage pricing market rules adequately protect consumers against market power during shortage conditions. MISO maintains that, given the Commission's conditional approval of MISO's modified scarcity pricing proposal, its proposal meets the Commission's scarcity pricing requirements as set forth in Order No. 719, subject to Commission approval of MISO's January 22, 2009 compliance filing.²⁹⁶

ii. Protests and Comments

220. Midwest TDUs support MISO's conclusion that its existing Tariff, which includes shortage pricing provisions recently approved by the Commission as part of the new ancillary services market, meets the requirements in Order No. 719 on price formation during periods of operating reserve shortage.²⁹⁷

221. DC Energy, Dynegy, EPSA, and RRI Energy state that MISO takes many out-of-market steps prior to instituting shortage pricing and that this practice actually masks the true value of energy thereby leading to a shortage and that MISO's compliance filing is inadequate. They state that MISO's approach fails to activate the demand curve sufficiently early to permit market response and, therefore, the correct price signals are not sent. They state that the demand curve is not used in a manner such that prices are raised as operating reserves grow short. The primary problem, according to these protesters, is that MISO takes other actions, per the Reliability Assessment Commitment process in its Tariff, before deploying the demand curve. These actions include calling on voluntary load reduction, curtailing exports, and instituting a voltage reduction.²⁹⁸ Dynegy states that these operating procedures are "antiquated," and do not produce prices that accurately reflect the value of energy. Dynegy adds that this will likely harm reliability, hamper demand response, deter entry of new demand response and generation

²⁹⁶ *Id.* at 24-25.

²⁹⁷ Midwest TDUs May 26, 2009 Comments at 3.

²⁹⁸ DC Energy May 26, 2009 Protest at 8; EPSA May 26, 2009 Comments at 10-11; RRI Energy May 26, 2009 Comments at 3-5.

resources, and prevent innovation with the outcome being inconsistent with the Commission's six criteria for adequate market rules.²⁹⁹

222. According to DC Energy, when operating reserves begin to be short, MISO should immediately employ the demand curve before other tools to send efficient price signals and to give market participants more time to prepare to deliver emergency supplies of energy or to voluntarily reduce consumption.³⁰⁰ Dynegy states that the Commission should require MISO to implement scarcity pricing before emergency operational actions are taken and direct MISO to file Tariff provisions that appropriately recognize the value of generation resources and demand-side response by providing correct price signals for energy.³⁰¹ RRI Energy similarly states that the Commission should direct MISO to revise its Tariff to: (1) require shortage pricing to occur, on the outset and during shortage conditions, prior to the dispatch of emergency capacity; (2) require shortage pricing to occur before the uneconomic (i.e., out of merit order) curtailment of energy export schedules; and (3) apply scarcity pricing before the declaration of an Energy Emergency Alert Level 1 or 2.³⁰²

223. EPSA notes that MISO, in relying on the infancy of the ancillary services market to shape its April Filing, fails to directly address the Commission's six criteria. EPSA further states that, because MISO developed the ancillary services market prior to the issuance of Order No. 719, it may fall short of meeting the goals of that order.³⁰³ DC Energy asserts that neither MISO's Real-Time Operations Emergency Operating Procedures nor the Tariff provide a complete and definitive set of guidelines for how MISO will handle shortage conditions and associated pricing rules.³⁰⁴ Industrial Consumers filed comments in this docket that only address shortage pricing generally and do not address MISO's compliance filing directly.³⁰⁵

²⁹⁹ Dynegy May 26, 2009 Comments at 7-8.

³⁰⁰ DC Energy May 26, 2009 Protest at 9.

³⁰¹ Dynegy May 26, 2009 Comments at 8-9.

³⁰² RRI Energy May 26, 2009 Comments at 5-6.

³⁰³ EPSA May 26, 2009 Comments at 10-11.

³⁰⁴ DC Energy May 26, 2009 Protest at 10.

³⁰⁵ Industrial Consumers May 26, 2009 Protest at 2-5.

224. Potomac Economics states that MISO's operating reserve demand curve satisfies the Commission's requirements in Order No. 719.³⁰⁶ Potomac Economics also states that since the beginning of operation of the demand curve (i.e., January 2009), it has operated as designed; however, because the load has not been high since the implementation of the operating reserve demand curve, there have been no material shortages of 10-minute total reserves.³⁰⁷ Potomac Economics notes that it is common for RTOs to call on emergency demand response or interruptible retail load to maintain reliability and states that because these forms of demand response are not integrated into the market and generally do not set market prices, their use to meet the demands of the market under emergency conditions will generally lead to prices that do not reflect shortage conditions. Potomac Economics cites an incident in 2006 when MISO called on approximately 3,000 MW of voluntary load reduction resulting in prices, at peak, far below what the price would have been if a shortage had occurred and shortage pricing had been invoked. Because of this, Potomac Economics recommends provisions that would set efficient prices when MISO takes other emergency actions under shortage conditions, including export curtailment, voltage reduction, and other emergency actions.³⁰⁸

225. Finally, DC Energy states that the Commission should direct MISO to eliminate the use of dispatch bands that leads to unintended consequences during emergency periods. A dispatch band is a set of generation resources or DRR-Type II operating limits and ramp rates that represent the physical operating characteristics of the resource within that operating band. Under MISO's current market rules, a generator is permitted to submit offers with narrow dispatch band parameters which prevent MISO from having the ability to flexibly dispatch the system. If the dispatch band parameters are too narrow, MISO ultimately has to ignore the parameters, which means that generators are exempt from excessive/deficient energy deployment and RSG charges. According to DC Energy, this creates an incentive for generators to provide as limited a dispatch as possible so that they can increase their chance of being exempt from deployment charges.³⁰⁹

³⁰⁶ Potomac Economics April 28, 2009 Report on Shortage Pricing at 8.

³⁰⁷ *Id.* at 9.

³⁰⁸ *Id.* at 10-11.

³⁰⁹ DC Energy May 26, 2009 Protest at 13-16.

iii. Answers

226. MISO disagrees with concerns regarding its deployment of a demand curve for operating reserves after all other Reliability Assessment Commitment (RAC) process steps have been taken. It states that invoking scarcity before scarcity actually exists (i.e., when RAC steps are being taken but there is no actual shortage of operating reserves) would be irrational and ineffective. MISO states that it agrees that the demand curve should be used when operating reserves begin to grow short, and states that is how the demand curve is employed today. However, when there are sufficient reserves, the demand curve is not invoked. Contrary to DC Energy's claims that neither MISO's Real-Time Operations Emergency Operating Procedures nor the Tariff provide market participants with a complete and definitive set of guidelines for how MISO will handle shortage conditions and associated pricing rules, MISO states that it held a summer readiness workshop on April 30, 2009 where the emergency operating procedures were fully explained in detail. The purpose of this workshop was to ensure that MISO market participants have reliable grid operation during emergencies and to explain how prices would be established under each step of the procedures.³¹⁰

227. In reply to EPSA's comment that MISO did not adequately address the six criteria set forth in Order No. 719, MISO states that sufficient detail was provided in the filing letter and affidavits in this docket,³¹¹ as well as its filings under the Module E compliance filing explaining the relationship between the ancillary services market, Module E, demand response, and scarcity pricing.³¹² MISO states that the issue has been adequately addressed.³¹³

228. In EPSA's answer, it added to the record an informational report from the MMU, Potomac Economics, regarding shortage price signals and the ancillary services market, which was filed in Docket No. ER07-1372, *et al.* EPSA notes that in the report, Potomac Economics stated:

³¹⁰ MISO June 15, 2009 Answer at 9.

³¹¹ *Id.* at 10.

³¹² *Id.* (citing to MISO, Compliance Filing, Docket No. ER08-394-003, at 11-16 (filed June 25, 2008)). On October 20, 2008, the Commission conditionally accepted the financial settlement provisions of the resource adequacy section of the MISO's Tariff. *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,060 (2008).

³¹³ MISO June 15, 2009 Answer at 10.

The concerns raised by market participants regarding the effects of these types of emergency actions on shortage pricing are legitimate. Since none of these actions is explicitly reflected in the real-time prices, they can cause the market prices to fail to reflect shortage conditions when they are invoked. The [MMU] has recommended in other reports that . . . [MISO] develop pricing provisions that would allow these types of emergency actions to set prices in its real-time market. Research by . . . [MISO] to develop such provisions is underway.³¹⁴

229. EPSA urges the Commission to take Potomac Economics' assertions under advisement in this proceeding. In addition, EPSA argues that the Commission should direct MISO to work with stakeholders and ultimately file at the Commission modifications to MISO's Tariff procedures to ensure that price signals within MISO's market properly value and incent demand participation.³¹⁵

iv. Commission Determination

230. Two important issues are raised here. The first is compliance with the requirements of Order No. 719. The second is the issue of RTOs and ISOs taking out-of-market actions prior to a shortage actually occurring, thus averting a shortage, and these actions not being priced in the market. We address both of these issues herein.

231. We share EPSA's concern that MISO's current pricing rules during periods of operating reserve shortages may not meet the requirements of Order No. 719. While MISO stated that its January 22, 2008 compliance filing and the ASM market rules previously approved meet the six criteria, it also stated that there was insufficient data available on which to build a factual record. We agree that there had been insufficient time for MISO to evaluate its pricing rules' effectiveness when it filed its compliance filing. Therefore, there was an insufficient basis for claiming that the six criteria have been met. Now that sufficient time has elapsed since the commencement of the market, we will require MISO to provide adequate factual support for its pricing rules during periods of operating reserve shortages, as required by Order No. 719, including direct responses to the six criteria outlined by the Commission in Order No. 719, in its compliance filing due 90 days after the issuance of this order.

³¹⁴ EPSA July 17, 2009 Answer at 3-4 (quoting Potomac Economics, Informational Filing Regarding Shortage Price Signals, Docket No. ER07-1372, *et al.* (filed July 6, 2009)).

³¹⁵ *Id.* at 4.

232. We also encourage MISO to work with stakeholders to determine the best method for pricing the out-of-market RAC actions so that they do not distort market prices and provide the wrong signal to the market. We view this as a significant issue that MISO and market participants must address. Because these actions take place while the RTO or ISO is not experiencing a shortage, under Order No. 719, they fall out of the purview of this proceeding.

233. As to DC Energy's concern regarding dispatch bands, we find that this issue is outside the scope of this Order No. 719 compliance filing and note that, in any case, the Commission addressed this concern when it accepted MISO's proposal to remove its dispatch bands.³¹⁶

e. **Reporting on Remaining Barriers to Comparable Treatment of Demand Response Resources**

234. Order No. 719 required each RTO and ISO to assess and report on any remaining barriers to comparable treatment of demand response resources that are within the Commission's jurisdiction, and to submit its findings and any proposed solutions to the Commission, along with a timeline for implementation.³¹⁷ The Commission required RTOs and ISOs to identify all known barriers, to provide an in-depth analysis of those that are practical to analyze in the compliance time frame given, and to supply a time frame for analyzing the remainder, including, but not limited to, technical requirements and performance verification limitations.³¹⁸ Finally, Order No. 719 required RTOs and ISOs to identify any significant minority views in its report.

i. **MISO Filing**

235. MISO submitted a detailed report (i.e., Barriers Report) on remaining barriers to comparable treatment of demand response resources, including stakeholder minority positions, as a part of its compliance filing.³¹⁹ The Barriers Report provided the findings of the Demand Response Working Group that held numerous meetings to review and discuss potential barriers to direct participation by demand response resources. The

³¹⁶ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 130 FERC ¶ 61,150 (2010).

³¹⁷ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 274.

³¹⁸ *Id.* P 275.

³¹⁹ MISO April Filing, Ex. D.

Barriers Report identified a number of significant barriers to demand response in MISO, including limitations or restrictions on the participation of demand response resources in certain markets, the cost associated metering and telemetry equipment, and various compensation issues.³²⁰

ii. Protests and Comments

236. As required by Order No. 719, Potomac Economics submitted its views on barriers to comparable treatment of demand response resources in MISO's market in a report filed on April 28, 2009.³²¹ In its report, Potomac Economics made a number of recommendations to address the barriers it identified.³²²

237. A number of parties filed comments on barriers that demand response resources face in seeking access to MISO's wholesale markets. Alcoa, Demand Response Supporters, and RRI Energy filed comments, and in many cases included specific suggestions about which barriers should be addressed, processes that should be pursued, or collaborations required to address both state and federal regulatory issues.

238. Industrial Consumers argues that none of the RTO demand response programs offer a level playing field in organized markets for the participation of demand response products.³²³ They argue that the barriers to entry in all these markets need to be removed.

iii. Commission Determination

239. The Commission finds that MISO has complied with the directive of Order No. 719 to provide a listing of and assessment of remaining barriers to comparable treatment of demand response resources that are within the Commission's jurisdiction. We also find that Potomac Economics has appropriately filed its views on barriers to comparable treatment of demand response resources, providing the Commission and stakeholders with valuable insights.³²⁴

³²⁰ MISO April Filing at 25-27.

³²¹ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 274.

³²² Potomac Economics April 28, 2009 Report on Demand Response 13-17.

³²³ Industrial Consumers June 26, 2009 Protest at 2-3.

³²⁴ The Barriers Report and the comments and answers filed in this proceeding will

2. Long-Term Power Contracting in Organized Markets

240. In Order No. 719, the Commission required each RTO and ISO to dedicate a portion of its website for market participants to post offers to buy and sell electric energy on a long-term basis.³²⁵ The Commission did not mandate any specific form for the website, but instead allowed each RTO or ISO to work with its stakeholders to implement the website. This discretion includes decisions over the type and amount of data to be posted by participants, whether participants must include a proposed price in their posting, and password and security requirements.³²⁶ Order No. 719 directed each RTO or ISO to explain in its compliance filing the actions it has taken to comply with these requirements and to provide information on the bulletin board that it has chosen to implement.³²⁷

a. MISO Filing

241. MISO has a dedicated portion of its website for market participants to post offers to buy or sell electric energy. The postings take place on MISO's Non-MISO Bilateral Transactions Bulletin Board (Bilateral Bulletin Board), which, MISO states, allows for both short and longer-term capacity and energy transactions, and is available through MISO's market portal. MISO recovers the cost of the Bilateral Bulletin Board through Schedule 17 of its Tariff.³²⁸

242. MISO states that, as part of its resource adequacy project, it modified its Bilateral Bulletin Board to enable market participants to post their bids and offers for long-term capacity and energy. In addition, it added planning capacity-generation, planning capacity-demand response resource, and planning capacity-load modifying resource to the product choices. MISO also updated the quantity and price fields to only allow selection of MW-month when the selected product is one of the new planning capacity

provide information that will be considered by the Commission staff in its evaluation of remaining barriers to demand response participating in MISO's wholesale markets.

³²⁵ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 277. The Commission defined "long-term" as one year or more, but stated that RTOs and ISOs may include offers for contracts of less than a year on their websites as well. *Id.*

³²⁶ *Id.* P 303.

³²⁷ *Id.* P 309.

³²⁸ MISO April Filing at 28.

choices. MISO states that there are currently no minimum or maximum terms required for these products. Bids and offers, however, will remain valid for only 30 days beginning on the date when the inquiry is entered. Thereafter, the market participant must re-enter the bid or offer. The market participant can choose any values for bids and offers. However, final prices are determined bilaterally between market participants, and are not posted.³²⁹

243. MISO based the password and security requirements for the Bilateral Bulletin Board upon access to MISO's market portal. Market participants initially must have access to MISO market portal, and, thereafter, are assigned a role (e.g., viewing bulletin board or submitting a bulletin board entry) by their local security administrator.³³⁰

244. MISO believes that the Bilateral Bulletin Board complies with the requirements for long-term power contracting established in Order No. 719.³³¹ Further, MISO states that PJM has offered the use of its bulletin board to all of the other RTOs that are members of the ISO/RTO Council, and their market participants, at no cost to the RTOs or their market participants, in part to encourage greater beneficial cooperation between RTOs and to provide access to a larger pool of buyers and sellers of long-term contracts for power. MISO states that its stakeholders have not currently had the opportunity to fully assess this approach, which would support a broader scope and greater efficiency provided by a multi-ISO/RTO bulletin board, but will discuss this alternative approach with its stakeholders before PJM's approach becomes functional.³³²

b. Protests and Comments

245. Alcoa states that it appreciates MISO's commitment to dedicate a portion of its website for market participants to post offers to buy or sell electric energy, as well as long-term capacity or energy. It believes such a commitment is the first step toward facilitating a long-term power exchange that is a critical element of healthy markets and long-term sustainability for industrial loads.³³³

³²⁹ *Id.*

³³⁰ *Id.* at 29.

³³¹ *Id.*

³³² *Id.* at 29-30.

³³³ Alcoa May 26, 2009 Protest at 19.

c. Commission Determination

246. We find that MISO's posting on its Bilateral Bulletin Board satisfies the Commission's directives in Order No. 719. We note that MISO's stakeholders are currently reviewing PJM's endeavor for a multi-ISO/RTO bulletin board. We believe this endeavor will encourage greater beneficial cooperation between RTOs and provide access to a larger pool of buyers and sellers of long-term contracts for power. We encourage MISO and its stakeholders to work cooperatively in the development of this effort.

3. Market Monitoring Policies

a. Structure and Tools

247. In Order No. 719, the Commission declined to mandate a specific structure for the MMU. Instead, it required each RTO or ISO, through its stakeholder process, to decide on its own MMU structure – external, internal, or hybrid.³³⁴ Additionally, Order No. 719 required RTOs and ISOs to include provisions in their tariffs: (1) obliging them to provide their MMUs with access to market data, resources and personnel sufficient to enable them to carry out their duties; (2) granting MMUs full access to the RTO or ISO database; and (3) granting MMUs exclusive control over any MMU-created data.³³⁵

i. MISO Filing

248. MISO's market monitoring provisions are generally set forth in Module D of its Tariff. Although MISO submits that many of its current market monitoring provisions are already in compliance with Order No. 719, MISO proposes additional revisions to section 54.1 of its Tariff to fully comply with the order. MISO asserts that these revisions will further enhance the MMU's independence and the quality of market monitoring in MISO.³³⁶

249. MISO states that it uses an external MMU (Potomac Economics) and its Tariff grants the MMU (referred to as the Independent Market Monitor or IMM in the Tariff) broad independence in the performance of its duties.³³⁷ According to MISO, the

³³⁴ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 326.

³³⁵ *Id.* P 328.

³³⁶ MISO April Filing at 3.

³³⁷ *Id.*

proposed revisions do not change the structure of its MMU. Rather, the revisions provide clarification that MISO is obligated to provide the MMU with access to market data, resources and personnel sufficient to enable the MMU to carry out its functions. In addition, the proposed revisions clarify that the MMU is granted full access to MISO's databases and has exclusive control over any MMU-created data.³³⁸

ii. Protests and Comments

250. Duke asks that proposed section 54.1 be clarified to designate which “pertinent confidentiality requirements” the MMU will rely on when sharing data so that there is no confusion as to what the requirements are before any data disclosures occur.³³⁹

iii. MISO Answer

251. MISO, in response to Duke, clarifies that the confidentiality provisions referenced in section 54.1 are subject to the confidentiality standard generally applicable to the release of any data by the MMU. The requirements are found in sections 38.9.4, 53.3, 54, and Attachment EE of the Tariff. MISO asserts that there is no need to repeat these provisions in section 54.1 of its Tariff.³⁴⁰

iv. Commission Determination

252. We have reviewed MISO's proposed revisions regarding market monitoring structure and tools and find that MISO is in compliance with these requirements of Order No. 719. With regard to Duke's concerns regarding the applicable confidentiality provisions, we agree with MISO that such provisions do not need to be repeated in section 54.1. We note that the applicable confidentiality provisions are set forth in section 54.4 of the Tariff, as well in the other locations identified by MISO, and apply to “all Confidential Information obtained in connection with the implementation of this Plan.” The provisions in section 54.4 apply to information and data obtained under section 54.1. We find no need for further clarification.

³³⁸ *Id.* at 4.

³³⁹ Duke May 26, 2009 Comments at 4.

³⁴⁰ MISO June 15, 2009 Answer at 15.

b. Oversight

253. Order No. 719 required an MMU, for purposes of supervision over their market monitoring functions, to report to its RTO's or ISO's board of directors, rather than management, with management representatives on the board excluded from this oversight function. An RTO or ISO may permit its MMU to report to management for administrative purposes (e.g., pension management and payroll).³⁴¹ For hybrid MMUs (i.e., MMUs with both an external and internal market monitor), the Commission stated that an internal MMU may report to management, provided that if the internal MMU is responsible for carrying out any core MMU functions,³⁴² both it and the external market monitor must report to the board.³⁴³

i. MISO Filing

254. MISO asserts that section 50.1 of its Tariff already meets the requirement of having the MMU report to the MISO Board of Directors (Board).³⁴⁴ However, MISO proposes to revise that section to further clarify that the MMU reports to the Board and to exclude MISO's management representatives on the Board from any oversight function of the MMU.³⁴⁵

ii. Protests and Comments

255. Illinois Commission and Ohio Counsel challenge MISO's proposed revisions to section 51.2 and section 52.2 of its Tariff. In particular, they question MISO's decision to provide administrative oversight of the MMU's contractual agreement to the Market Monitoring Liaison Officer (Liaison Officer). They claim that the Liaison Officer is "effectively a member of RTO management"³⁴⁶ and, thus, violates Order No. 719's requirement that the MMU report directly to the Board, rather than any member of the

³⁴¹ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 339.

³⁴² Core MMU functions include identifying ineffective market rules, reviewing the performance of the markets, and making referrals to the Commission.

³⁴³ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 341.

³⁴⁴ MISO April Filing at 31.

³⁴⁵ *Id.* at 4.

³⁴⁶ Illinois Commission May 21, 2009 Comments at 12.

RTO management.³⁴⁷ Protestors propose that the proposed Tariff language be stated more narrowly to make clear that the role of the Liaison Officer only facilitates or assists the Board's administrative oversight of the agreement with the MMU.

256. Protestors also challenge the revisions to section 52.2. They claim that the revisions improperly require the MMU to certify its compliance with the ethics standards to and upon request of the Liaison Officer.³⁴⁸ Protestors propose that MISO modify the Tariff language to have the MMU and its employees certify ethics compliance to the Board when requested to do so by the Board.

iii. MISO Answer

257. MISO argues that the role of the Liaison Officer is purely administrative, which in no way impinges on the MMU's independence.³⁴⁹ The Liaison Officer, according to MISO, merely acts as a communication channel for the MMU within MISO, and the MMU has always reported to the Board since its inception. MISO emphasizes that the Liaison Officer does not report to any member of MISO's management. Furthermore, under section 51.2(b) of its Tariff, MISO states that the Liaison Officer has no authority to "screen, alter, delete or delay [MMU] investigations or the preparation of findings, conclusions and recommendations developed by the [MMU]."³⁵⁰ Accordingly, MISO states that it is in compliance with the Commission's oversight directives and no further Tariff modifications are needed in this area.

iv. Commission Determination

258. We have reviewed MISO's proposed provisions regarding oversight, and find that the provisions satisfy the Commission's directives in Order No. 719. As noted by MISO, the Market Monitor has reported to the Board since the monitoring plan was adopted and, thus, no additional changes were necessary. The additional proposed revisions help to clarify this oversight role.

³⁴⁷ Illinois Commission May 21, 2009 Comments at 12; Ohio Counsel May 26, 2009 Comments at 10.

³⁴⁸ Illinois Commission May 21, 2009 Comments at 12; Ohio Counsel May 26, 2009 Comments at 10-11.

³⁴⁹ MISO June 15, 2009 Answer at 16.

³⁵⁰ *Id.*

259. As to the concern of the Illinois Commission and Ohio Counsel, we agree with MISO that section 51 and the new language on independence and oversight in section 50.4 make clear that the Liaison Officer's role is administrative. We find that MISO is in compliance with the independence required by Order No. 719 for the MMU.

c. Functions

260. Order No. 719 required each RTO and ISO to assign the following functions to its MMU in its tariff:

(1) evaluation of existing and proposed market rules, tariff provisions and market design elements, and recommend proposed rule and tariff changes to the RTO or ISO, and also to the Commission's Office of Energy Market Regulation and to other interested entities (i.e., state commissions and market participants);

(2) review and reporting on the performance of the wholesale markets to the RTO or ISO, the Commission, and other interested entities (i.e., state commission and market participants);³⁵¹ and

(3) identification and notification of the Commission's Office of Enforcement of instances in which a market participant's behavior, or that of the RTO or ISO, may require investigation, including suspected tariff violations, violations of Commission-approved rules and regulations, market manipulation, and inappropriate dispatch that creates substantial concerns regarding unnecessary market inefficiencies.³⁵²

i. MISO Filing

261. MISO has incorporated Tariff language, generally consistent with the Commission's regulations, into the existing section 52.3 to list the core functions that the MMU performs and renamed the section "Core Functions and Responsibilities of the IMM."³⁵³ The three core functions are generally paraphrased in subsection (i) through (iii) of section 52.3.a. Section 52.3.a.i requires the MMU to evaluate proposed and

³⁵¹ Order No. 719 provided that an RTO or ISO may require its MMU to submit its reports in draft form to the RTO or ISO for review, but may not alter the reports generated by the MMU or dictate its conclusions. Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 360.

³⁵² *Id.* P 354.

³⁵³ MISO April Filing at 32.

existing market rules and recommend proposed changes to MISO and the Commission's Office of Energy Market Regulation, as well as state regulatory commissions and market participants, but only so long as notification to these parties of identified behaviors and recommendations could not lead to exploitation. Section 52.3.a.ii provides that the MMU shall review and report on the performance of MISO market in quarterly and annual reports. Section 52.3.a.iii requires the MMU to notify the designated Commission offices and the affected state commissions when it discovers a market problem or potential Tariff or other market violation. This subsection also requires the MMU to report market problems that may require a change in market rules or action by the Commission or by one or more state commissions.

262. MISO asserts that section 50.4 of its Tariff already provides the necessary language to comply with the Commission's directive prohibiting MISO from altering the reports generated by its MMU or dictating the MMU's conclusions.³⁵⁴ Accordingly, MISO has not included any additional language in its Tariff with respect to Commission's "no alteration" directive contained in Order No. 719.

ii. Protests and Comments

263. Duke argues that proposed section 52.3.a.iii that discusses the MMU functions that require referral to the Commission is vague and overbroad and goes beyond the requirements of Order No. 719.³⁵⁵ Duke proposes that the Tariff use specific language approved by the Commission in Order No. 719 instead.

264. Illinois Commission argues that the proposed limitation in section 52.3.a.i, (that would limit the disclosure of certain information to affected state regulatory commissions) could lead to exploitation. Illinois Commission argues that the affected state regulatory commissions should have an absolute right to receive the MMU's notice of proposed changes to market rules and to the Tariff.³⁵⁶ Illinois Commission proposes a similar revision to section 52.3.a.ii to ensure that state regulatory commissions will be treated on the same terms as MISO and the Commission.³⁵⁷

³⁵⁴ *Id.*

³⁵⁵ Duke May 26, 2009 Comments at 5.

³⁵⁶ Illinois Commission May 21, 2009 Comments at 16-17.

³⁵⁷ *Id.* at 17.

iii. MISO Answer

265. MISO answers Duke to state that the functions in Order No. 719 are not restrictive and, thus, may be expanded by the RTO or ISO. MISO goes on to state that the language proposed was adopted by the stakeholders and that Duke has not identified a specific violation of Order No. 719.³⁵⁸

266. In response to Illinois Commission's proposal to require the MMU to provide in its reports the number of referrals submitted by the MMU to the Commission and a summary of the publicly available data associated with each referral, MISO argues that nothing in Order No. 719 requires this inclusion. Furthermore, it asserts that this is a matter primarily between the Commission and the MMU.

iv. Commission Determination

267. We find that MISO proposed language in section 52.3.a complies with the requirements of Order No. 719, except as noted below.

268. Contrary to the arguments raised by Illinois Commission, we will not require MISO to modify the language in section 52.3.a.i to ensure that state regulatory commissions receive information on the same basis as the Commission and MISO. In Order No. 719, we specifically found that the MMU should limit the dissemination of information regarding proposed changes to the market rules or the Tariff when the dissemination of information could lead to exploitation.³⁵⁹ The language proposed by MISO is consistent with this requirement and we will not (and cannot) revisit our determination of Order No. 719 in this proceeding.

269. With regard to Duke's arguments, we do not believe that Order No. 719 required MISO to adopt *verbatim* the language of the three core functions. We find, however, that section 52.3.a.iii fails to comply with Order No. 719 because it fails to require the MMU to notify or submit a referral to the Commission in instances where MISO's behavior may need to be investigated. Order No. 719 mandated that the MMU must not only notify or submit a referral in instances where market participants have engaged in suspected wrongdoing, but also in instances where the RTO or ISO has engaged in suspected

³⁵⁸ MISO June 15, 2009 Answer at 17.

³⁵⁹ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 354.

wrongdoing.³⁶⁰ Accordingly, we order MISO on compliance to modify section 52.3.a.iii to make clear that the MMU not only must identify and notify the Commission of instances where the market participants' behavior may need to be investigated, but also instances where MISO's behavior may need to be investigated.

270. In addition, we find that subsection 52.3.a.iii has not appropriately differentiated between the MMU's functions and relevant reporting requirements. This subsection attempts to address MISO's proposal for treatment of referrals of market flaws in addition to notifications or referrals of Market Violations. Referrals of market flaws (also addressed in subsection 52.3.a.i) are a separate MMU function, with separate reporting requirements. Information relating to referrals of market flaws, and the referrals themselves, may be provided to state regulatory commissions, while information relating to referrals of potential Market Violations, or the referrals themselves, may not. Referrals of market flaws are sufficiently addressed in subsection 52.3.a.i, and should not be addressed in subsection 52.3.a.iii. Accordingly, subsection 52.3.a.iii should focus only on the third core function of MMUs, including referrals of potential Market Violations. MISO's Tariff may not allow for the sharing of information relating to referrals of potential Market Violations with state regulatory commissions.³⁶¹ Further, we note that MISO's proposed Tariff language does not state that the IMM will notify the Commission of violations of Commission-approved orders, as required by Order No. 719.³⁶² We direct MISO to make the conforming changes in its compliance filing, due 90 days after the issuance of this order.

³⁶⁰ *Id.* (stating that the MMU should "identify and notify the Commission's Office of Enforcement of instances in which a market participant's behavior, *or that of the RTO or ISO*, may require investigation . . .") (emphasis added).

³⁶¹ *But see New York Indep. Sys. Operator, Inc.*, 136 FERC ¶ 61,116 (2011) (accepting confidentiality provisions that allowed NYISO and its MMU to share confidential information, including information concerning notifications and referrals to the Commission, with other RTOs/ISOs and MMUs under certain conditions and distinguishing notifications of potential Market Violations pursuant to 18 C.F.R. § 35.28(g)(3)(ii)(C) (2011) and referrals of Market Violations pursuant to 18 C.F.R. § 35.28(g)(3)(iv)(A) (2011). *See also Southwest Power Pool, Inc., order on reh'g*, 137 FERC ¶ 61,046 (2011) (accepting provisions that allow limited sharing of investigative and referral information between Commission staff and MMUs and RTOs/ISOs).

³⁶² *See* Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 354; 18 CFR § 35.28(b)(8) (2011) (defining "market violation" as: "a tariff violation, violation of a

(continued...)

d. Mitigation and Operations

271. In Order No. 719, the Commission expressed concern that the unfettered conduct of mitigation by MMUs would make them subordinate to RTOs and ISOs and thereby raise conflict of interest concerns. However, it also acknowledged that there were a number of advantages, such as expertise and impartiality, in retaining MMU input in the mitigation process. The Commission adopted a balanced approach that allows modified participation by the MMUs in mitigation, while protecting against the conflict of interest and subordination concerns inherent in their unfettered participation. Specifically, the Commission drew a distinction between prospective and retrospective mitigation, and directed that an MMU may only conduct retrospective mitigation, not prospective mitigation.³⁶³ However, in the event an RTO or ISO employs a hybrid MMU structure, it may authorize its internal MMU to conduct either or both types of mitigation, but only if it also assigns to its external MMU the responsibility and gives it adequate tools to monitor the quality and appropriateness of that mitigation.³⁶⁴

272. Order No. 719 also provided that an MMU may be permitted to provide inputs to its respective RTO or ISO to assist the latter in conducting prospective mitigation, including determining reference levels, identifying system constraints, and cost calculations.³⁶⁵ Further, Order No. 719 provided that purely administrative matters, such as enforcement of late fees, should be conducted by the RTO or ISO, not by the MMU, regardless of the MMU structure.³⁶⁶

273. Finally, Order No. 719 directed RTOs and ISOs to specify in their tariffs which functions are to be performed by MMUs, and which by RTOs and ISOs. Also, it required RTOs and ISOs to review their mitigation tariff provisions (whether performed by the

Commission-approved order, rule or regulation, market manipulation, or inappropriate dispatch that creates substantial concerns regarding unnecessary market inefficiencies.”).

³⁶³ Prospective mitigation is that which can affect market outcomes on a forward-going basis, such as altering prices or physical parameters of offers (i.e., ramp rates and start-up times) at or before the time they are considered in a market solution. All other mitigation is retrospective. Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 375.

³⁶⁴ *Id.* P 374-375.

³⁶⁵ *Id.* P 375.

³⁶⁶ *Id.* P 377.

MMU or by the RTO or ISO) with a view to making them as non-discretionary as possible, and to reflect any needed changes in their compliance filing.³⁶⁷

i. MISO Filing

274. MISO's market mitigation measures are set forth in Part III of Module D of its Tariff. While the existing Tariff required the external MMU (Potomac Economics) to impose mitigation measures, MISO acknowledges that it needed to make several changes to the Tariff to comply with the requirements in Order No. 719.

275. To that end, MISO proposes a new section 62.c to designate that only MISO may apply mitigation measures that can affect market outcomes on a going-forward basis and all other mitigation measures may be applied by either the MMU or MISO.³⁶⁸ In addition, MISO proposes to modify a number of sections to change responsibility for prospective mitigation measures from the MMU to MISO.³⁶⁹

276. Finally, MISO states that it and the MMU have reviewed the mitigation-related provisions of the Tariff with the view to making them as non-discretionary as possible. MISO asserts that the proposed Tariff is in compliance with the Commission's directive to make mitigation provisions as non-discretionary as possible.³⁷⁰

ii. Protests and Comments

277. Illinois Commission and Wisconsin PSC argue that the Tariff should make clear that MISO should have the exclusive right over only prospective mitigation.³⁷¹ Accordingly, they recommend that MISO further amend section 62.c to include the

³⁶⁷ *Id.* P 379.

³⁶⁸ MISO April Filing at 33.

³⁶⁹ *Id.* The sections modified include sections 63.2, 63.3(c), 63.4.1(e), 63.4.2(b), 64.1.2(c), 64.1.4(f), 64.3(c), 65.1, 65.2.1, 65.2.2(f), 65.5.2(c), and 65.5.3(a).

³⁷⁰ *Id.*

³⁷¹ Illinois Commission May 21, 2009 Comments at 6; Wisconsin PSC May 29, 2009 Comments at 2.

complete definition of “prospective mitigation,” as defined in Order No. 719.³⁷² They also propose that other references to MISO’s role in mitigation specifically refer to prospective mitigation, as in section 63.2.a.

278. Illinois Commission and Wisconsin PSC further claim that MISO’s proposed section 63.2.b is inconsistent with Order No. 719. In particular, they note that section 63.2.b states that “transmission provider” will consider whether a market participant’s conduct is anticompetitive. They suggest that MISO replace the word “transmission provider” with “IMM.” Similarly, the parties argue that section 65.1 of the Tariff allows both the MMU and MISO to monitor for anticompetitive conduct and also allows MISO to apply mitigation measures.³⁷³ They propose that MISO amend the language of section 65.1 to restore the role of monitoring to the MMU.

279. In addition, the Illinois Commission states that the proposed language in section 63.4.2.b, which deals with the identification of broad constrained areas, is unclear as to which entity will monitor conditions. It further believes that the language gives inappropriate discretion to MISO in determining whether to apply broad constrained areas identified by the MMU.³⁷⁴ Illinois Commission asserts that, once the MMU has determined that specified thresholds for mitigation have been triggered in a broad constrained area, the Commission should require MISO to apply the specified mitigation measures rather than permitting MISO the discretionary authority to apply them.³⁷⁵ To improve clarity in section 63.4.2 and to ensure that the mitigation measures are as non-discretionary as possible, Illinois Commission proposes to amend section 63.4.2 to: (1) assign the monitoring for conditions relating to the designation of broad constrained areas to the MMU; and (2) require MISO to apply specified mitigation measures.

280. Similar to broad constrained areas, Illinois Commission argues that section 63.4.1.e provides MISO with unwarranted and inappropriate discretion in determining

³⁷² Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 375 (defining prospective mitigation “to include only mitigation that can affect market outcomes on a forward-going basis, such as altering the prices of offers or altering the physical parameters of offers (e.g., ramp rates and start-up times) at or before the time they are considered in a market solution”).

³⁷³ Illinois Commission May 21, 2009 Comments at 7; Wisconsin PSC May 29, 2009 Comments at 2.

³⁷⁴ Illinois Commission May 21, 2009 Comments at 8.

³⁷⁵ *Id.*

whether to remove an area from the narrow constrained list once the MMU has made the determination that an area no longer qualifies for narrow constrained treatment.³⁷⁶ Accordingly, it proposes that the Commission require MISO to remove the designation once the MMU determines that such action is warranted. For similar reasons, Illinois Commission recommends that the Commission require MISO to revise subsection 64.1.2.c to apply mitigation measures in narrow constrained areas when identified by the MMU.³⁷⁷

281. With regard to the design of default offers, which are the prices paid to market participants if their offer is mitigated, Illinois Commission and Ohio Counsel argue that proposed section 65.2.1's inclusion of MISO in determining default offers raises a potential conflict of interest.³⁷⁸ Illinois Commission notes that this proposed section would allow MISO to determine the level of revenue that one of its customers will receive when market power is detected.³⁷⁹ Because this task involves a determination of revenue levels of market participants after market power has been detected, there is a potential conflict of interest in MISO performing this task. The parties argue that designing default offers should be a task performed by the MMU or, as the Illinois Commission argues, the MMU should only be required to consider the advice of MISO when designing default orders.³⁸⁰

iii. MISO Answer

282. In response to Illinois Commission, MISO agrees to include a verbatim definition of "prospective mitigation" in its Tariff, if so ordered by the Commission.³⁸¹ However, MISO does not agree with Illinois Commission's proposal to restrict MISO to only prospective mitigation. MISO asserts that the Commission permits transmission

³⁷⁶ *Id.* at 10.

³⁷⁷ *Id.*

³⁷⁸ Illinois Commission May 21, 2009 Comments at 9; Ohio Counsel May 26, 2009 Comments at 11.

³⁷⁹ Illinois Commission May 21, 2009 Comments at 9.

³⁸⁰ *Id.*

³⁸¹ MISO June 15, 2009 Answer at 17.

providers to apply both prospective and retroactive mitigation, but may delegate their retroactive mitigation duties to the MMU if they choose.³⁸²

283. MISO also disagrees with Illinois Commission when it argues that the MMU has sole responsibility for considering whether a market participant's behavior merited mitigation. MISO argues that the provisions in question (sections 63.2.b and 65.1) pertain to prospective mitigation and, thus, are properly assigned to MISO.³⁸³ MISO also argues that the Tariff assignment of responsibility in sections 63.4.2.b, 63.4.1.e, 64.1.2.c, and 65.2, pertaining to mitigation in broad and narrow constrained areas, are proper under Order No. 719.³⁸⁴ MISO notes that several of the Illinois Commission's changes pertain to language already approved by the Commission and are beyond the scope of this proceeding.

iv. Commission Determination

284. We find that MISO's proposal generally satisfies the requirements of Order No. 719 by defining the tasks that must be specifically assigned to its MMU and ensuring that the external MMU is prohibited from imposing prospective mitigation. Accordingly, we will accept the proposed Tariff revisions, except as noted below.

285. We do not agree with various concerns regarding MISO's authority to determine whether a market participant should be mitigated and to impose mitigation, including retrospective mitigation. Contrary to their claims, Order No. 719 did not prohibit or otherwise limit an RTO's or ISO's authority to assess the need for mitigation or its ability to impose mitigation measures, including retrospective and prospective mitigation. Rather, Order No. 719 focused on the potential conflict of interest that could arise if an MMU—not the ISO or RTO—imposed prospective mitigation, and established that MMUs cannot impose prospective mitigation except under specific, limited circumstances.³⁸⁵

286. In this context, we will not order MISO to revise section 62.c of the Tariff to prohibit MISO from imposing retrospective mitigation. We also will not order MISO to modify section 63.3.b (allowing MISO to determine whether conduct is anticompetitive)

³⁸² *Id.* at 18.

³⁸³ *Id.*

³⁸⁴ *Id.* at 19.

³⁸⁵ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 373.

or section 65.2.1 (allowing MISO to determine default offers). Nor do we agree that MISO should be denied any discretion in determining whether an area should be included as a broad constrained area or listed as a narrow constrained area, as set forth in section 63.4.2.b and 63.4.1.e of the Tariff. Order No. 719 did not require any of these activities and we will not impose such restrictions in this compliance filing.

287. However, we find that revised section 65.3 is inconsistent with the referral protocols of Order No. 719 and with the Commission requirements articulated in our Policy Statement on Market Monitoring Units (MMU Policy Statement).³⁸⁶ In the MMU Policy Statement, we stated that RTOs and ISOs could impose their own sanctions for a given activity, if three requirements are met: (a) the activity is expressly set forth in the Tariff, (b) the activity involves objectively identifiable behavior, and (c) the activity does not subject the actor to sanctions or consequences other than those expressly approved by the Commission and set forth in the Tariff, with the right of appeal to the Commission.³⁸⁷ All other activity that is suspected to be in violation of a Tariff provision or a Commission rule or regulation is to be referred by the MMU to the Commission's Office of Enforcement (OE).³⁸⁸ Such referrals are to follow the protocols set out in Order No. 719.³⁸⁹

288. Upon receiving a referral, OE will determine whether an investigation is needed and whether there has been a violation. In the case of a violation, the Commission will determine the type and amount of sanction to be imposed, by applying the principles and procedures set forth in the Commission's Revised Policy Statement on Enforcement.³⁹⁰

³⁸⁶ *Mkt. Monitoring Units in Reg'l Transmission Orgs. & Indep. Sys. Operators*, 111 FERC ¶ 61,267 (2005). We note that we have required the correction of similar deficiencies in our recent orders issued with respect to the Order No. 719 compliance filings of the CAISO and NYISO. *See California Indep. Sys. Operator Corp.*, 129 FERC ¶ 61,157 (2009); *New York Indep. Sys. Operator, Inc.*, 129 FERC ¶ 61,164 (2009) (*NYISO*), *order on reh'g*, 131 FERC ¶ 61,114 (2010).

³⁸⁷ *Mkt. Monitoring Units in Reg'l Transmission Orgs. & Indep. Sys. Operators*, 111 FERC ¶ 61,267 at P 5.

³⁸⁸ *Id.* P 6.

³⁸⁹ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 354; 18 C.F.R. § 35.28(g)(3)(iv) (2011).

³⁹⁰ *Enforcement of Stats., Regs. & Orders*, 123 FERC ¶ 61,156, at P 41-72 (2009).

289. MISO's section 65.3, which falls under section 65, entitled "Mitigation Measures," does not appropriately address behaviors that are to have sanctions imposed on them by the RTO versus those that are to be referred to the Commission. In particular, sections 65.1 and 65.3 (including sections 65.3.1.a, 65.3.1.b, 65.3.1.e, 65.3.2.e, and 65.3.5) improperly include language regarding referral of certain conduct to the Commission, even though that conduct is subject to sanctions in section 65.3. We find that this referral language creates confusion between those issues that would be resolved by the Commission and those that should be resolved by the MISO. Accordingly, we require MISO to correct these deficiencies by: (1) eliminating the language regarding referral of violations to the Commission in sections 65.1, 65.3.1.a (including deletion of the entire first sentence of 65.3.1.a), 65.3.1.e, 65.3.2.e, and 65.3.5, and making clear in section 65.3.1.a and 65.3.5 that the MISO will determine the appropriate sanction in accordance with section 65.3; (2) deleting section 65.3.1.b; (3) deleting the last sentence of section 65.3.1.e regarding the Commission's determination of penalties; and (4) rejecting proposed language in section 65.1 that would have the IMM refer conduct to the Commission for an appropriate sanction and making clear the MISO must determine the appropriate sanction in accordance with section 65.3. We direct MISO to make these revisions as part of its compliance filing due 90 days after the issuance of this order.

e. Ethics

290. In Order No. 719, the Commission adopted minimum ethical standards for MMUs and its employees that RTOs and ISOs must include in their tariffs.³⁹¹ Under these standards, the MMU and its employees: (1) must have no material affiliation with any market participant; (2) must not serve as an officer, employee, or partner of a market participant; (3) must have no material financial interest in any market participant or affiliate, with potential exceptions for mutual funds and non-directed investments; (4) must not engage in any market transactions other than the performance of their duties under the tariff; (5) must not be compensated, other than by the Commission-approved RTO or ISO that retains or employs the MMU, for any expert witness testimony or other commercial services, either to the Commission-approved RTO or ISO or to any other party, in connection with any legal or regulatory proceeding or commercial transaction relating to the RTO or ISO or to its markets; (6) may not accept anything of value from a market participant in excess of a *de minimis* amount; and (7) must advise a supervisor in the event they seek employment with a market participant, and must disqualify themselves from participating in any matter that would have an effect on the financial

³⁹¹ 18 C.F.R. § 35.28(g)(3)(vi) (2011).

interest of the market participants. RTOs and ISOs are free to propose more stringent ethics standards in their compliance filings.³⁹²

291. Order No. 719 also clarified that the minimum ethics standards do not prohibit employees of MMUs from performing independent monitoring for entities other than RTOs and ISOs. However, if the employing entity is a market participant in the RTO or ISO for whom the MMU performs market monitoring, the proposed work would entail the same conflict of interest as would any other consulting services. The Commission directed RTOs and ISOs to notify the Commission of such engagements in their respective compliance filing, and to propose a transition plan for dealing with conflicts in a manner consistent with Order No. 719.³⁹³

292. On rehearing in Order No. 719-A, the Commission modified the MMU's ability to monitor both an RTO or ISO and a market participant operating in the same RTO or ISO under certain circumstances.³⁹⁴ In particular, the Commission allowed an MMU for an RTO or ISO to enter into contracts to monitor a market participant operating in that same RTO or ISO for activity in that RTO or ISO so long as: "the relationship between the entity and the MMU and the MMU's scope of work for the entity are both mandated by the Commission in an order on the merits, the contract is filed with the Commission for review and approval, and the contract contains a provision that the entity must notify the Commission of any intention to terminate MMU employment, permission for which may be refused by the Commission."³⁹⁵

i. MISO Filing

293. MISO's MMU policy on conflicts of interest is currently set forth at Exhibit A of Attachment S-1 of its Tariff, which contains the MMU's retention agreement. MISO states that its current MMU's conflict of interest policy is based on the same fundamental principles as the Commission's ethical standards, as set forth in Order No. 719. It acknowledges, however, that the language of the policy and Commission's standards are not identical. Accordingly, MISO and the MMU have executed an amendment to the retention agreement to replace Exhibit A with the Commission's standards. The new

³⁹² Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 384.

³⁹³ *Id.* P 385.

³⁹⁴ Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 at P 164.

³⁹⁵ *Id.*

standards are set forth in section 52.2 of its Tariff and the retention agreement has been amended to include the MMU's obligation to comply with these standards.³⁹⁶

294. MISO notes that the MMU, Potomac Economics, performs market monitoring services for MidAmerican Energy Company, a MISO market participant. MISO has not made any filings regarding the requirements of Order No. 719 or Order No. 719-A that would indicate an engagement by its MMU that needs to be unwound.

ii. Commission Determination

295. We find that the proposed revisions regarding ethics satisfy the Commission's directives in Order No. 719.

f. Placement of Tariff Provisions

296. Order No. 719 directed RTOs and ISOs to place all of their market monitoring provisions in one centralized location of their tariffs, and to include, in the introductory portion of that section, a mission statement setting forth the goals to be achieved by the MMU, including the protection of both consumers and market participants by the identification and reporting of market design flaws and market power abuses.³⁹⁷ Under Order No. 719, MMU provisions may be duplicated elsewhere in the tariff if needed for clarity, but must contain a note that the provision in question is also found in the centralized MMU section. Also, Order No. 719 required RTOs and ISOs to include in their tariffs a provision stating that in the event of any inconsistency between provisions in the centralized MMU section and provisions set forth elsewhere, the provisions in the centralized MMU section control.³⁹⁸

i. MISO Filing

297. MISO states that its market monitoring provisions are generally consolidated into Module D of its current Tariff. To comply with the Commission's directive to centralize all of its MMU provisions in one location of its Tariff, MISO provided cross-references to any market monitoring sections that show up in other Modules (e.g., section 38.9.4, Attachment EE and Attachment S-1) and the introduction of Module D includes a

³⁹⁶ MISO April Filing at 34.

³⁹⁷ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 392.

³⁹⁸ *Id.* P 393.

statement providing that Module D's provisions prevails in any conflict that may arise with other Modules of the Tariff.³⁹⁹

298. Additionally, MISO proposes to include the MMU's mission statement in the introduction of Module D. This statement adopts the language in Order No. 719, "the protection of both consumers and Market Participants by the identification and reporting of market design flaws and market power abuses"⁴⁰⁰

ii. Commission Determination

299. We find that MISO has satisfied the Commission's directives in Order No. 719 requiring all of the market monitoring provisions to be placed in one centralized location of the tariff and contain a mission statement in the introductory portion of that section setting forth the goals to be achieved by the MMU, and the provisions in the centralized MMU section control in the event of any inconsistency between provisions in the centralized MMU section and provisions be set forth elsewhere.

g. Enhanced Information Dissemination

300. Order No. 719 required each RTO or ISO to include in its tariff a requirement that the MMU prepare an annual state of the market report on market trends and the performance of the wholesale market, as well as less extensive quarterly reports. These reports must be disseminated to Commission staff, staff of interested state commissions, the management and board of the RTO or ISO, and market participants, with the understanding that dissemination may be accomplished by posting on the RTO's or ISO's website.⁴⁰¹ Order No. 719 directed that MMUs be available for regular conference calls, which may be attended by the Commission, state commissions, representatives of the RTO or ISO, and market participants. The information to be provided in the MMU reports and in the conference calls may be developed on a case-by-case basis, but is generally to consist of market data and analyses of the type regularly gathered and prepared by the MMU in the course of its business, subject to appropriate confidentiality restrictions.⁴⁰²

³⁹⁹ MISO April Filing at 35.

⁴⁰⁰ *Id.*

⁴⁰¹ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 424.

⁴⁰² *Id.*

301. Additionally, Order No. 719 required RTOs and ISOs to release offer and bid data on a three-month lag. An RTO or ISO may propose a shorter lag time for the release of offer and bid data and provide accompanying justification. If the RTO or ISO demonstrates a potential collusion concern, it may propose a four-month lag period or some other mechanism to delay release of the data if it were otherwise to occur in the same season as reflected in the data.⁴⁰³ The identity of market participants must remain masked, although the RTO or ISO may propose a time period for eventual unmasking. Order No. 719 requires RTOs and ISOs to include in their compliance filings a justification of their policies on the aggregation (or lack of same) of offer and cost data, discussing participant harm, collusion and transparency.⁴⁰⁴

i. MISO Filing

302. MISO is proposing new language in section 57.1 of its Tariff to specify the reporting assignments of the MMU. This addition is divided into three parts: quarterly reports, annual reports, and periodic telephone calls. Section 57.1.a details the requirement for quarterly reports and specifies that the reports will be made to MISO's Board of Directors, the Commission, state regulatory commissions, and market participants. Section 57.1.b describes the annual report requirement including the requirements for recommendations and a description of all requests for investigations or complaints and their resolution. The annual report is to be made to the Board with copies provided to interested government agencies, as well as being posted on its website, subject to redaction of protected information. In proposed revisions to section 57.1.c, there is a provision for regular conference calls between the MMU and market participants, Commission staff and the staffs of authorized agencies.

303. Additionally, MISO proposes to revise sections 44.7 and 45.7 of its Tariff to implement the three-month lag period, in lieu of the current six-month period, for the dissemination of financial transmission rights offer and bid data. The language in these sections states “. . . shall not reveal [Bids] until three months” MISO also modified Article III, section 8(a) of the *pro forma* Non-Disclosure and Confidentiality Agreement, as set forth in Attachment Z of its Tariff, to reflect the mandated three-month period. Furthermore, MISO notes that its operational documents will be revised to conform to the required three-month period.

⁴⁰³ *Id.*

⁴⁰⁴ *Id.*

304. MISO currently provides disaggregated data on financial transmission rights offers and bids and argues that this practice offers greater transparency.⁴⁰⁵ However, MISO asserts that masking the identity of the market participants when releasing offer and bid data is important to preserve competition. Unmasking the data likely would result in proprietary commercial information being revealed, and this information could be used in anticompetitive ways. Therefore, MISO does not propose to change its current policy of masking participants' identities for this data. MISO asserts that the publication of individual, but masked, bids and offers "provides a reasonable balance between the need for greater transparency and the need to protect the competitive bidding process."⁴⁰⁶

ii. Protests and Comments

305. Illinois Commission and Wisconsin PSC state that proposed section 57.1.a, which requires quarterly and annual reports, does not provide much detail on the content required.⁴⁰⁷ They assert that the Tariff should require the MMU to include in the reports the number of referrals and a summary of publicly available data for each referral. Illinois Commission argues that this information on referrals is necessary to enable the parties to assess the markets and the behavior of market participants. It also proposes that deadlines for filing these reports be specified in the Tariff.⁴⁰⁸

306. Additionally, Illinois Commission argues that the unmasking of bid and offer data actually promotes competitive behavior rather than inhibiting competition. It believes that unmasked data prevents market participants from engaging in collusion or bid or offer fixing. It also notes that much of the same information is disclosed on a real-time basis in competitive electricity markets operated in England, Australia and Wales. Illinois Commission, accordingly, proposes that proposed sections 44.7 and 45.7 specify a time period after which the identity of bid and offer participants is unmasked (i.e., three to twelve months).⁴⁰⁹

⁴⁰⁵ MISO April Filing at 36.

⁴⁰⁶ *Id.*

⁴⁰⁷ Illinois Commission May 21, 2009 Comments at 13-14; Wisconsin PSC May 29, 2009 Comments at 2.

⁴⁰⁸ Illinois Commission May 21, 2009 Comments at 15.

⁴⁰⁹ *Id.* at 12.

307. DC Energy states that MISO only publishes cleared bid and offer data, and argues that the Commission should require MISO to release both cleared and non-cleared bid and offer data to provide greater transparency.⁴¹⁰

iii. MISO Answer

308. With regard to bid and offer data, MISO argues that the proposals of Illinois Commission and DC Energy go beyond the stakeholder decisions on what disclosure is needed to comply with Order No. 719. The stakeholders, according to MISO, determined that the proposal complies with Order No. 719, which did not require the unmasking of bid and offer data. MISO argues that further disclosure should be the subject of stakeholder discussion. MISO states that it has committed to discuss expanded access to reports with its stakeholders.

iv. Commission Determination

309. We find that the proposed revisions regarding enhanced information dissemination need to be further modified to comply with Order No. 719. In particular, we are concerned with the sentence in proposed section 57.1(b) which states “The annual report shall also include a description of all requests for investigation/complaints and the resolution or disposition thereof.”⁴¹¹ Such requests for investigation or complaints would be expected to be largely or completely confidential and should not be included in a public report. We direct MISO to remove this sentence. In addition, the final sentence in both section 57.1(a) and section 57.1(b) states: “The quarterly reports shall be made publicly available by the Transmission Provider by posting on its website, *subject to redaction or other measures necessary for the protection of Protected information.*”⁴¹² (Emphasis added.) The annual and quarterly reports are public documents; therefore, there is no reason to provide for the redaction associated with these documents. Accordingly, MISO must remove this sentence from both sections 57.1(a) and 57.1(b) and file these revisions as part of the compliance filing ordered below due 90 days after the date of this order.

⁴¹⁰ DC Energy May 26, 2009 Protest at 4-5.

⁴¹¹ MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet No. 1370A.

⁴¹² MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, First Revised Sheet No. 1370; MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet No. 1370A.

310. We do not agree with the Illinois Commission and Wisconsin PSC that the Tariff needs more detail regarding contents of the quarterly and annual reports. On the contrary, in Order No. 719, we specifically rejected requests to require a detailed list of information that should be included in the reports.⁴¹³ We stated that the “The nature of the information that may be helpful may vary from region to region, and may well evolve over time. Therefore, while an RTO or ISO is free to propose in its tariff details of the information it desires its MMU to provide, we will not require any particular menu.”⁴¹⁴ We will not revisit this issue in this proceeding.

311. Nor will we order MISO to unmask bid and offer data. Contrary to protestors’ arguments, Order No. 719 specifically declined any mandate that would require ISOs or RTOs to unmask bid and offer data.⁴¹⁵ Instead, the Commission “invite[d] RTOs and ISOs to propose a period when such unmasking might be permitted, if they believe it to be desirable.”⁴¹⁶ We will not require a contrary result here.

312. However, we are concerned that the language in sections 44.7 and 45.7 of MISO’s Tariff does not comply with Order No. 719. As noted above, Order No. 719 requires RTOs and ISOs to provide bid and offer data, yet MISO’s proposed language can be read that the provision of bid and offer data is an option rather than a requirement. Accordingly, we direct MISO to revise the language in these sections to provide an affirmative statement that such release of data will occur, providing that MISO: “will release [the bid and offer data] three months after the auction.” MISO is directed to make this change in the compliance filing, due 90 days after the issuance of this order.

313. Similarly, in response to DC Energy, we agree that there is some ambiguity as to whether MISO will provide data on all bids and offers or only on cleared bids and offers. Neither the Tariff nor MISO’s answer clarifies the issue. Accordingly, we will require MISO to clearly state in their Tariff on compliance that all bid and offer data will be provided rather than only cleared bids and offers.

⁴¹³ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 414.

⁴¹⁴ *Id.*

⁴¹⁵ *Id.* P 423.

⁴¹⁶ *Id.*

h. Tailored Requests for Information

314. In Order No. 719, the Commission stated that MMUs are to entertain state commissions' tailored requests for information regarding general market trends and performance of the wholesale market, but not requests for information designed to aid state enforcement actions. The Commission noted that granting or refusing such requests is at the MMU's discretion, based on its agreements with the RTO or ISO and the states, or otherwise based on time and resource availability.⁴¹⁷ Order No. 719 also directs RTOs and ISOs to develop confidentiality provisions to protect commercially sensitive material that may be included in responses to tailored requests for information.⁴¹⁸

i. MISO Filing

315. MISO proposes to maintain its current process for the disclosure of information to state regulatory agencies. Under its existing Tariff provisions, as set forth in section 38.9.4, MISO requires the requesting state regulatory agency to execute a standard non-disclosure form, as provided in Attachment EE to the Tariff. In addition, MISO proposes a new Tariff section, section 54.3.b, which states that the MMU will entertain tailored requests for information and will grant those requests at the MMU's discretion depending on time and resource availability. This new section adds the proviso that such information will exclude information designed to aid state enforcement actions and provides a cross reference to the provisions of section 38.9.4 and Attachment EE, as required by Commission regulations.

ii. Protests and Comments

316. EPSA and other parties claim that the proposed language of section 54.3.b is not in compliance with Order No. 719 because it does not allow affected market participants to review an information request to have the opportunity to provide further contextual information after it has been processed by the MMU.⁴¹⁹ EPSA argues that section 38.9.4.5(e) provides administrative procedures for an affected market participant to object to a request, but fails to provide an allowance to provide contextual information. It proposes that MISO develop Tariff provisions similar to those in ISO New England, which specifically allows market participants full review of an MMU's answer to

⁴¹⁷ *Id.* P 424, 459.

⁴¹⁸ *Id.* P 459.

⁴¹⁹ EPSA May 26, 2009 Comments at 7.

requests to either contest or contextualize the information to be sent to the requesting state.⁴²⁰

317. In addition, EPSA contends that the information provisions proposed for section 54 should contain explicit provisions for redaction of confidential information or should reference existing sections 56 and 57, which already contain redaction provisions for information released by the MMU.⁴²¹

318. Illinois Commission also raises concerns regarding the proposed language in section 54.3.b and how that language may impact requests for information under existing Tariff provisions. It argues that the language, which allows the MMU to “entertain” requests made under section 38.9.4 and Attachment EE, could be interpreted to modify the existing requirements in those provisions. It requests that MISO modify section 54.3.b to remove the connection between the compliance language and the existing language for providing material, by making them two separate request processes.

iii. MISO Answer

319. MISO argues that the removal of restrictions on information to be provided by the MMU to assist state enforcement actions would be contrary to the decision reached in Order No. 719 and that its stakeholders voted down a motion to remove that restriction.⁴²²

320. In response to EPSA, MISO argues that the procedures provided for in section 38.9.4.5(d) and (e) of its proposed Tariff give affected participants the opportunity to object to an information request from any authorized requestor.⁴²³ Any objection by an affected participant launches a consultation period and provides for Commission involvement. Accordingly, MISO asserts that section 54.3.b is consistent with Order No. 719.

⁴²⁰ *Id.* at 8.

⁴²¹ *Id.* at 8-9.

⁴²² MISO June 15, 2009 Answer at 21.

⁴²³ *Id.*

iv. Commission Determination

321. We agree with MISO that its proposed Tariff language complies with Order No. 719 and we accept it. The arguments made by Illinois Commission—that is, the filing weakens the existing Tariff provisions—are not persuasive. The addition of the term “entertain” to the MMU’s responsibility does not diminish the requirements in existing section 38.9.4 and Attachment EE to consider such requests while weighing the resources needed and protecting sensitive data.

322. EPSA is correct that Order No. 719 requires that market participants be given the opportunity to provide context to the data being provided by the MMU. As the Commission determined in Order No. 719, market participants should not only have an opportunity to object to or contest the data, they also should be given the opportunity “to provide context to the data, so long as the process does not unduly delay release of the information.”⁴²⁴ The language in sections 38.9.4.5(d) and (e), as currently drafted, does not provide market participants with the opportunity to provide context to the data being provided by the MMU. Accordingly, we require MISO to rectify this failure as part of its compliance filing, due 90 days after the issuance of this order.

i. Commission Referrals

323. Order No. 719 adopted protocols for referrals by MMUs to the Commission of suspected market violations and perceived market design flaws. These are set forth at 18 C.F.R. § 35.28(g)(iv)(v). By Commission rule, all information and documents obtained during the course of an investigation are non-public, except to the extent the Commission directs otherwise in a given instance, unless the material is already made public during an adjudicatory proceeding or disclosure is required by the Freedom of Information Act.⁴²⁵

i. MISO Filing

324. MISO has proposed to revise its Tariff to require the MMU to follow the Commission’s protocol for referrals by adding, by reference, the above requirement into section 53.3.

⁴²⁴ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 455.

⁴²⁵ *Id.* P 465 (citing 18 C.F.R. § 1b.9 (2011)).

ii. Commission Determination

325. We find that MISO’s proposed revisions in section 53.3 regarding Commission referrals comply with Order No. 719. However, we are concerned that the third sentence (i.e., the one that would allow MISO to avoid referring objectively identifiable violations) is not consistent with Commission policy. Recently, in *NYISO*, the Commission rejected similar language because it would allow the RTO/ISO—not the Commission—to determine what could be excluded from the referral protocol.⁴²⁶ The Commission ordered that the NYISO “may add a new provision to its tariff in which it lists the specific existing provisions in its tariff that it believes meet the three requirements for exclusion from the referral requirement.”⁴²⁷ These three requirements include: (i) activity that is expressly set forth in the tariff; (ii) activity that involves objectively identifiable behavior; and (iii) 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.⁴²⁸ To the extent that the NYISO did not make such a filing, the Commission emphasized that all instances of suspected Market Violations would need to be referred.⁴²⁹

326. Consistent with *NYISO*, we require MISO to delete the third sentence of section 53.3.1.a. 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, as discussed above. If MISO does not add such a provision, we remind MISO that its MMU must make a referral in all instances where the MMU has reason to believe that a Market Violation has occurred.

4. Miscellaneous Issues

327. Midwest TDUs highlight several typographical changes in their comments, and in its answer MISO agrees to make these changes. In particular, they request the following apparent drafting errors be corrected: (1) change the word “real-tim” in section 38.6 to read “real-time;” (2) replace “stat public utility commission” in section 1.569a with “state public utility commission;” and (3) insert a comma after “net of Real-Time Financial

⁴²⁶ *NYISO*, 129 FERC ¶ 61,164 at P 99.

⁴²⁷ *Id.*

⁴²⁸ *Id.* P 98 (citing *Mkt. Monitoring Units in Reg’l Transmission Orgs. & Indep. Sys. Operators*, 111 FERC ¶ 61,267 at P 5).

⁴²⁹ *Id.* P 99.

Schedules” both times the phrase occurs in the first sentence of section 40.3.3.c.i to be consistent the punctuation in section 40.3.3.c.ii.⁴³⁰

328. Midwest TDUs also request and MISO agrees to make the following changes to the definitions of DRR-Type I and DRR-Type II resources: (1) delete the reference to “Energy Consumer” from the first sentence of the definition of both DRR-Type I and DRR-Type II resources;⁴³¹ and (2) replace the phrase “hosted by” with “owned by” in both definitions.⁴³² We will require MISO to make those changes as part of its compliance filing. In the last sentence of section 40.3.4 g(i) (Second Revised Sheet 1145), the word “ove” should be “over” and the term “demand Response Resource” should be “Demand Response Resource.” In section 38.6 (1) on Original Sheet 655B, the comma in the first sentence, following the word “preclude” must be removed.

329. The Commission will require MISO to make the above-referenced changes as part of its compliance filing due 90 days after the issuance of this order.

The Commission orders:

- (A) MISO’s April Filing, is hereby accepted, as modified, to be effective June 27, 2009, as discussed in the body of this order.
- (B) MISO’s October ARC Filing is hereby accepted in part, as modified, to be effective March 1, 2010 and June 1, 2010, as discussed as the body of this order.

⁴³⁰ Midwest TDUs November 6, 2009 Protest at 18-19.

⁴³¹ Midwest TDUs state that this reference to “Energy Consumer” is a holdover from the earlier version of the Tariff. *Id.* at 18.

⁴³² Midwest TDUs state that it is unclear what “hosted by” means in this context, considering the word “Host” is included in at least one defined MISO Tariff term that uses the word in a very different way, and changing the definitions of DRR-Type I and DRR-Type II to replace the word “hosted” should reduce confusion. *Id.* at 19.

- (C) MISO is hereby directed to submit a compliance filing, due 90 days after the issuance of this order, as discussed in the body of this order.

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

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A – Abbreviated Names and Corresponding Parties

Abbreviation	Party Name
Alcoa	Alcoa Inc.; Alcoa Power Generating Inc.
Alliant Energy Corporate Services, Inc.	Alliant Energy Corporate Services, Inc.
Ameren	Ameren Services Co.
AMP	American Municipal Power-Ohio, Inc.; American Municipal Power, Inc.
Barriers Report	Report on Barriers to Comparable Treatment for Demand Response Resources
CAISO	California Independent System Operator Corp.
Calpine Corporation	Calpine Corporation
CMTC	Coalition of Midwest Transmission Customers
Comverge	Comverge, Inc.
Constellation	Constellation Energy Commodities Group, Inc.; Constellation NewEnergy, Inc.
Consumers Energy	Consumers Energy Company
CPower	CPower, Inc.
DC Energy	DC Energy Midwest, LLC
Demand Response Supporters	Demand Response Supporters (Coalition of Midwest Transmission Customers; EnerNOC, Inc.; EnergyConnect, Inc.; CPower, Inc.; Viridity Energy, Inc.; and Comverge, Inc.)
Detroit Edison	The Detroit Edison Company
DR Parties	DR Parties (Coalition of Midwest Transmission Customers; EnerNOC, Inc.; Wal-Mart Stores, Inc.)
Duke	Duke Energy Corporation
Dynergy	Dynergy Power Marketing, Inc.
ELCON	Electricity Consumers Resource Council
EnergyConnect	EnergyConnect, Inc.
EnerNOC	EnerNOC, Inc.

EPSA	Electric Power Supply Association
Exelon	Exelon Corporation
FirstEnergy	FirstEnergy Service Co.
Illinois Commission	Illinois Commerce Commission
Illinois Municipal	Illinois Municipal Electric Agency
Indiana Office of Utility Consumer Counselor	Indiana Office of Utility Consumer Counselor
Indianapolis Power & Light Co.	Indianapolis Power & Light Co.
Industrial Consumers	Industrial Consumers (Portland Cement Association; ArcelorMittal USA, Inc.)
ISO New England	ISO New England, Inc.
MidAmerican	MidAmerican Energy Co.
MISO	Midwest Independent Transmission System Operator, Inc.
MISO Transmission Owners	Midwest ISO Transmission Owners
Midwest TDUs	Midwest Transmission-Dependent Utilities (Great Lakes Utilities; Madison Gas & Electric Co.; Missouri Joint Municipal Electric Utility Commission; Missouri River Energy Services; WPPI Energy)
NASUCA	National Association of State Utility Consumer Advocates
NYISO	New York Independent System Operator, Inc.
Ohio Counsel	Office of the Ohio Consumers' Counsel
OMS	Organization of Midwest ISO States, Inc. (those that participated include Public Utilities Commission of Ohio; Michigan Public Service Commission; Kentucky Public Service Commission; Missouri Public Service Commission; Iowa Utilities Board; Indiana Utility Regulatory Commission; Minnesota Public Utilities Commission; Montana Public Service Commission; North Dakota Public Service Commission; Pennsylvania Public Utility Commission; South Dakota Public Utilities Commission; Wisconsin Public

	Service Commission)
PJM	PJM Interconnection, LLC
Potomac Economics	Potomac Economics, Ltd.
Public Service Commission of Wisconsin	Public Service Commission of Wisconsin
RRI Energy	RRI Energy, Inc.
SPP	Southwest Power Pool
Steel Producers	Steel Producers (Nucor Steel Marion, Inc.; Nucor Steel-Indiana; SDI-Pittsboro)
Wal-Mart	Wal-Mart Stores, Inc.
Wisconsin Electric Power Co.	Wisconsin Electric Power Co.
Wisconsin Industrial	Wisconsin Industrial Energy Group
Xcel	Xcel Energy Services Inc.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corp. Docket Nos. ER11-4100-000

PJM Interconnection, L.L.C. ER11-4106-000

Midwest Independent Transmission System Operator, Inc. ER11-4337-000

Midwest Independent Transmission System Operator, Inc. ER09-1049-000

ER09-1049-002

ER09-1049-003

(not consolidated)

(Issued December 15, 2011)

MOELLER, Commissioner, *dissenting in part*:

Demand response plays a very important role in markets by providing significant economic, reliability, and other market-related benefits when properly deployed.

For the reasons set forth in my dissents on Orders No. 745 and 745-A, I respectfully dissent.¹ While consumers may pay lower rates if some consumers

¹ *Demand Response Compensation in Organized Wholesale Energy Markets*, 134 FERC ¶ 61,187 (2011) (*Moeller Dissenting*) (“Order No. 745”) and *Demand Response Compensation in Organized Wholesale Energy Markets*, 137 FERC ¶ 61,215 (2011) (*Moeller Dissenting*) (“Order No. 745-A”), respectively.

voluntarily agree to use less electricity, the Federal Power Act requires this Commission to establish just and reasonable rates that are not discriminatory.² If the Commission requires the RTOs and ISOs to overcompensate for providing demand response, the resulting rates are both discriminatory and not just and reasonable.

In addition, as stated in my dissent today in Order No. 745-A, rather than impose a nationwide approach to demand response compensation, the Commission's objective of promoting demand response would have been better served if the regions were free to propose compensation methods that recognize the very real differences in the structures of the regional markets.

Philip D. Moeller
Commissioner

² 16 U.S.C. § 824d (2006).