

140 FERC ¶ 61,060
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
System Operator, Inc.

Docket Nos. ER12-1265-000
ER12-1265-001
ER09-1049-005

ORDER ON REHEARING AND COMPLIANCE

(Issued July 19, 2012)

1. On April 29, 2009, in Docket No. ER09-1049-000, Midwest Independent Transmission System Operator, Inc. (MISO) submitted a compliance filing (April 2009 Compliance Filing), pursuant to Order No. 719,¹ which proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff).² On October 2, 2009, in Docket No. ER09-1049-002, MISO submitted an additional filing (October 2009 Compliance Filing) that set forth proposed Tariff revisions to allow the participation of Aggregators of Retail Customers (ARC)³ in MISO's markets and

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

² MISO, FERC Electric Tariff.

³ *See* section 1.8a of the MISO Tariff, which defines an 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 Reserve Markets, as a Module E Planning Resource or as an E[mergency] D[emand] R[esponse] resource.

additional Tariff provisions to comply with Order No. 719-A. In an order issued December 15, 2011,⁴ the Commission accepted MISO's April 2009 Compliance Filing and October 2009 Compliance Filing, subject to a further compliance filing. Several parties sought rehearing, as detailed below.

2. On March 14, 2012, as amended on March 23, 2012, MISO submitted a filing to comply with the Commission's Order No. 719 Compliance Order (collectively, March 2012 Filings).⁵

3. In this order, as discussed below, we deny the requests for rehearing and clarification of the Order No. 719 Compliance Order. We also conditionally accept MISO's March 2012 Filings, as amended, subject to the outcome of the proceeding regarding MISO's compliance with the requirements of Order No. 745 and a further compliance filing due within 30 days of the date of this order.

I. Background

A. Order Nos. 719 and 719-A

4. In Order No. 719, the Commission established reforms to improve the operation of organized wholesale electric power markets and amended its regulations under the Federal Power Act (FPA) 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 Regional Transmission Organizations (RTO) and Independent System Operators (ISO) 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.⁶

5. In the area of demand response, the Commission required RTOs and ISOs to: (1) accept bids from demand response resources in the RTOs' or ISOs' markets for

⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,214 (2011) (Order No. 719 Compliance Order).

⁵ MISO March 14, 2012 Compliance Filing, Docket No. ER12-1265-000 (March 2012 Compliance Filing); MISO March 23, 2012 Amended Compliance Filing, Docket No. ER12-1265-001 (March 2012 Amended Filing).

⁶ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 1.

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; (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; and (5) study whether further reforms were necessary to eliminate barriers to demand response in organized markets.⁷

6. To improve market monitoring, the Commission took several actions with regard to Market Monitoring Units (MMU), including: (1) requiring the MMU to perform several core functions; (2) expanding the dissemination of the MMU's recommendations regarding rule and tariff changes, and broadening the scope of behavior to be reported to the Commission; (3) modifying MMU participation in tariff administration and market mitigation and requiring each RTO and ISO to consolidate all its MMU provisions in one section of its tariff; and (4) expanding the dissemination of MMU market information, requiring more frequent reporting, and reducing the time periods before energy market bid and offer data are released to the public.

7. The Commission required each RTO or ISO to consult with its stakeholders and make a compliance filing to explain how the RTO's or ISO's existing practices comply with the final rule's reforms, or describe the entity's plans to attain compliance.⁸ 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*.⁹

8. On July 16, 2009, the Commission issued an order on rehearing, Order No. 719-A. The Commission granted in part and denied in part the requests for rehearing. The Commission directed each RTO and ISO to submit a compliance filing no later than 180 days after the issuance of Order No. 719-A. Among other things, 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 four million megawatt hours (MWh) in

⁷ *Id.* PP 4, 15.

⁸ *Id.* PP 8, 578-583.

⁹ *Id.* PP 97, 581; *see also* Errata Notice, Docket No. RM07-19-000 (Mar. 23, 2009) (clarifying deadline).

the previous fiscal year; and (2) the customers of utilities that distributed four million MWh or less in the previous fiscal year, where the relevant electric retail regulatory authority permits such customers' demand response to be bid into organized markets by an ARC. The Commission found 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 four 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 four 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.¹⁰ In addition, the Commission 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.¹¹

B. MISO Order Nos. 719 and 719-A Compliance Filings

9. On April 28, 2009, MISO submitted a compliance filing, pursuant to Order No. 719, which proposed revisions to its Tariff. Among other things, MISO maintained that its existing market design satisfies the directives in Order No. 719 regarding the participation of demand response resources in ancillary services markets and the associated offer parameters.¹² With regard to its market rules governing price formation during periods of operating reserve shortages, MISO described its existing procedures and maintained that its existing Tariff satisfies the six criteria identified by the Commission.¹³ While MISO contended that many of its existing market monitoring provisions already comply with Order No. 719, it submitted Tariff revisions in several sections, including to modify its listing of the MMU's core functions, specify the MMU's reporting assignments, alter its requirements for disseminating certain offer and bid data, and revise the MMU's protocol for making referrals to the Commission.¹⁴

10. On October 2, 2009, MISO submitted an additional filing proposing Tariff revisions to allow ARCs to participate in MISO's day-ahead and real-time markets,

¹⁰ Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 at PP 57-61; 18 C.F.R. § 35.28(g)(1)(iii) (2011).

¹¹ Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 at P 70.

¹² MISO April 2009 Compliance Filing, Transmittal Letter at 6-9, 11-12.

¹³ *Id.* at 20-25.

¹⁴ *Id.* at 30-38.

including associated registration requirements,¹⁵ and additional Tariff provisions to comply with Order No. 719-A. Among other things, MISO proposed to compensate each ARC at the market clearing price (MCP) for operating reserves and at the locational marginal price (LMP) minus the relevant Marginal Foregone Retail Rate (MFRR) for energy. MISO proposed to allocate the cost of compensating ARCs to load-serving entities by charging load-serving entities the LMP for the energy that was injected (i.e., that was not consumed) by the ARC and giving load-serving entities a corresponding credit at the relevant MFRR.¹⁶ MISO submitted Tariff provisions to share information regarding ARC participation in its markets,¹⁷ as well as credit requirements for ARCs.¹⁸ In addition, MISO proposed to change its method of measuring demand reductions for certain demand response resources and stated that it would include measurement and verification protocols for demand response resources in its Business Practices Manuals.¹⁹

11. On October 26, 2009, in Docket No. ER09-1049-003, MISO submitted an informational filing regarding the requirements in Order No. 719-A requiring RTOs and ISOs to distinguish between the retail customers of small utilities and large utilities for ARC eligibility purposes (October 2009 Informational Filing). The informational filing stated that the October 2009 Compliance Filing satisfied these requirements. MISO filed a second informational filing on January 25, 2010 (January 2010 Informational Filing), indicating that the October 2009 Compliance Filing and its existing Tariff fully comply with Order No. 719-A's information-sharing requirements associated with the provision of demand response resources by ARCs.

C. Order No. 719 Compliance Order

12. In the Order No. 719 Compliance Order, the Commission found that MISO's April 2009 Compliance Filing and certain proposals set forth in the October 2009 Compliance 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 aggregation of retail customers; (2) long-term power contracting; and (3) market-

¹⁵ MISO October 2009 Compliance Filing, Transmittal Letter at 10-13.

¹⁶ *Id.* at 13, 17-18. The allocation of the costs of the ARC demand response to the underlying (host) load-serving entity by adding the load reduction back in to the load-serving entity's settlement is also known as load reconstitution.

¹⁷ *Id.* at 18-19.

¹⁸ *Id.* at 11 & n.28.

¹⁹ *Id.* at 19-23.

monitoring policies.²⁰ Accordingly, the Commission accepted MISO's April 2009 Compliance Filing, to be effective June 27, 2009, as requested, subject to a further compliance filing. The Commission also accepted the October 2009 Compliance Filing, effective March 1, 2010 and June 1, 2010, as requested, subject to a further compliance filing. The Commission further found that the October 2009 Compliance Filing complies with Order No. 719-A, with certain modifications, and subject to a further compliance filing.

13. With regard to the provision of ancillary services by demand response resources, the Commission required MISO to submit a timeline for developing Business Practices Manuals for demand response resources and revisions to the definitions of "Demand Response Resource – Type I" and "Demand Response Resource – Type II."²¹ The Commission ordered MISO to provide further explanation of its implementation of certain offer parameters and to address concerns regarding whether its offer parameters for demand response resources are sufficiently flexible and whether demand response resources should be able to provide multi-part offers for ancillary services.²² In addition, the Commission deferred judgment as to whether MISO's measurement and verification protocols for demand response resources are just and reasonable and directed MISO to submit Tariff revisions to set forth these protocols in the MISO Tariff. The Commission also required MISO to address issues related to Host Load Zones,²³ including by providing a sufficient justification of its decision to maintain the one-to-one relationship between Host Load Zones and regulation-qualified Demand Response Resources – Type II.²⁴

14. The Commission rejected MISO's proposed compensation for ARCs, finding that the MFRR component of the formula lacked the specificity required for ratemaking purposes and was not tied to any objectively identifiable criteria. The Commission stated

²⁰ 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).

²¹ Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at PP 40-41.

²² *Id.* PP 52-53, 55.

²³ The MISO Tariff defines "Host Load Zone" as "[a] Load Zone that is a separate Commercial Pricing Node that has the same definition as a Demand Response Resource – Type II Commercial Pricing Node." MISO, FERC Electric Tariff, [1.281a, Host Load Zone, 1.0.0](#).

²⁴ Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at PP 79-81.

that MISO's proposal will permit "relevant electric retail regulatory authorities to set (or revise if they do not set) the MFRR at/to any value they deem appropriate depending on the policy objectives of the relevant electric retail regulatory authority."²⁵ The Commission stated that allowing such unfettered discretion in setting a critical rate component is contrary to the Commission's obligation to set FERC-jurisdictional rates. Accordingly, the Commission directed MISO to submit a just and reasonable ARC compensation proposal.²⁶ In addition, the Commission accepted MISO's proposal to allocate the costs associated with ARC compensation to the load-serving entity from which the demand response originates because it was consistent with the then-current allocation of other demand response costs, and noting that the cost allocation requirements of Order No. 745 would apply to the appropriate time periods.²⁷ However, the Commission required 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 load-serving entity in the day-ahead and real-time markets.²⁸ The Commission also required MISO to revise its determination of the LMP used for recovering ARC costs from load-serving entities.²⁹

15. The Commission required MISO to submit further explanation and Tariff revisions regarding its requirements for ARCs, including to clarify the definition of ARC and to address problems that may arise during the ARC registration process.³⁰ The Commission rejected MISO's proposal to require ARCs to specify the applicable measurement and verification methodology and MFRR during the registration process and required MISO to remove the associated Tariff provisions.³¹ The Commission required MISO to file its information sharing procedures as part of its Tariff and to revise the minimum credit

²⁵ *Id.* P 176.

²⁶ *Id.*

²⁷ *Id.* P 177. The issue of compensation and cost allocation for ARC-provided and other demand response in time periods when demand response is cost-effective at the LMP is addressed in the MISO Order No. 745 compliance proceeding. The compensation and cost allocation requirements of Order No. 745 will apply to these time periods. *Id.* n.243.

²⁸ *Id.* P 177.

²⁹ *Id.* P 193.

³⁰ *Id.* PP 119, 148, 151, 153-155.

³¹ *Id.* P 147.

requirements for ARCs.³² In addition, the Commission directed MISO to address the issue of small demand response resources in its Demand Response Working Group and submit any proposed Tariff provisions.³³

16. The Commission required MISO to provide adequate factual support for its pricing rules during periods of operating reserve shortages, including direct responses to the six criteria outlined by the Commission in Order No. 719.³⁴

17. Finally, the Commission required several revisions to MISO's market monitoring policies. Among other things, the Commission required MISO to modify its Tariff regarding the description of the MMU's core functions, including to provide that the MMU must identify and notify the Commission of instances where MISO's behavior may need to be investigated.³⁵ The Commission required Tariff revisions to clarify behaviors that are to have sanctions imposed on them by the RTO versus those that are to be referred to the Commission.³⁶ The Commission also required revisions to the requirements for the MMU's quarterly and annual reports, as well as the release of bid and offer data by MISO.³⁷ In addition, the Commission required MISO to modify Tariff provisions regarding responses to state commissions' tailored requests for information.³⁸

D. March 2012 Filings

18. On March 14, 2012, MISO submitted its filing to comply with the Order No. 719 Compliance Order, as discussed below. Among other things, MISO proposes Tariff revisions regarding the provision of ancillary services by demand response resources, including a new Attachment TT to the Tariff that contains measurement and verification protocols for demand response resources.³⁹ MISO proposes Tariff revisions regarding the registration, information sharing, credit, and other requirements for ARCs. MISO

³² *Id.* PP 204-206, 211.

³³ *Id.* P 120.

³⁴ *Id.* P 231.

³⁵ *Id.* PP 269-270.

³⁶ *Id.* P 289.

³⁷ *Id.* PP 309, 312-313.

³⁸ *Id.* P 322.

³⁹ MISO March 2012 Compliance Filing, Transmittal Letter at 2-6.

proposes to remove Tariff language regarding the MFRR and to compensate ARCs at the LMP.⁴⁰ MISO maintains that its existing Tariff provisions regarding price formation during periods of operating reserve shortages satisfy the six criteria described in Order No. 719.⁴¹ MISO also proposes revisions to the Tariff's market monitoring and mitigation provisions.⁴²

19. On March 23, 2012, MISO submitted proposed errata corrections to the March 2012 Compliance Filing to address minor errors in its procedures for sharing certain demand response resource information.⁴³

II. Requests for Rehearing, Notice of Filings, and Responsive Pleadings

20. Midwest TDUs⁴⁴ filed a timely request for rehearing of the Order No. 719 Compliance Order. MISO timely filed a request for clarification or, in the alternative, rehearing.⁴⁵ Organization of MISO States (OMS) filed a timely request for clarification.

21. Notice of MISO's March 2012 Compliance Filing was published in the *Federal Register*, 77 Fed. Reg. 16,927 (2012), with interventions and protests due on or before April 4, 2012. Notice of MISO's March 2012 Amended Filing was published in the

⁴⁰ *Id.* at 7-16.

⁴¹ *Id.* at 16-19.

⁴² *Id.* at 19-24.

⁴³ MISO March 2012 Amended Filing, Transmittal Letter at 1-2.

⁴⁴ For the purposes of this filing, Midwest TDUs include Great Lakes Utilities (Great Lakes), Madison Gas and Electric Company (Madison), Missouri Joint Municipal Electric Utility Commission (Missouri Joint Commission), Missouri River Energy Services (Missouri River), and WPPI Energy (WPPI).

⁴⁵ MISO requests rehearing of the Commission's findings regarding the treatment of demand response that is facilitated by behind-the-meter generation in the Order No. 745 Compliance Order. *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,212 (2011) (Order No. 745 Compliance Order). *See also Demand Response Compensation in Organized Wholesale Energy Markets*, Order No. 745, FERC Stats. & Regs. ¶ 31,322, *order on reh'g*, Order No. 745-A, 137 FERC ¶ 61,215 (2011), *reh'g denied*, Order No. 745-B, 138 FERC ¶ 61,148 (2012) (Order No. 745-B). This issue will be addressed in the Commission's Order No. 745 Rehearing and Compliance Order, issued concurrently with this order. *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,059 (2012) (Order No. 745 Rehearing and Compliance Order).

Federal Register, 77 Fed. Reg. 20,018, with interventions and protests due on or before April 13, 2012. Timely motions to intervene were filed by Ameren Services Company;⁴⁶ Coalition of Midwest Transmission Customers (Midwest Transmission Customers); Consumers Energy Company; Detroit Edison Company; EnerNOC, Inc. (EnerNOC); Exelon Corporation; MidAmerican Energy Company; Minnesota Large Industrial Group (Minnesota Industrials) and Wisconsin Industrial Energy Group (Wisconsin Industrials); Wisconsin Electric Power Company; and Xcel Energy Services, Inc. (Xcel).⁴⁷ Timely motions to intervene and comments and/or protests were submitted by Alcoa Inc. and Alcoa Power Generating, Inc. (jointly, Alcoa); American Municipal Power, Inc. (AMP); DC Energy Midwest, LLC (DC Energy); and Midwest TDUs.⁴⁸ A timely protest was jointly submitted by Midwest Transmission Customers, EnerNOC, EnergyConnect by Johnson Controls, Energy Curtailment Specialists, Inc., Minnesota Industrials, and Wisconsin Industrials (collectively, Demand Response Supporters).⁴⁹ A motion to intervene out-of-time was submitted by the Illinois Commerce Commission (Illinois Commission). MISO filed an answer to the comments and protests. Midwest TDUs filed an answer to MISO's answer and a supplemental response.

III. Discussion

A. Procedural Matters

22. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), 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) (2012), the Commission will grant the Illinois Commission's late-filed motion to intervene, given its

⁴⁶ Ameren Services Company submitted the filing on behalf of Ameren Illinois Company, Union Electric Company, Ameren Energy Marketing Company, Ameren Energy Generating Company, and AmerenEnergy Resources Generating Company.

⁴⁷ Xcel submitted the filing on behalf of Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation.

⁴⁸ For the purposes of this compliance proceeding, Midwest TDUs include Great Lakes, Madison, Missouri Joint Commission, Missouri River, Southern Minnesota Municipal Power Agency (Southern Minnesota), and WPPI.

⁴⁹ Demand Response Supporters protest MISO's proposal to allocate the cost of compensating demand response resources when the net benefits test of Order No. 745 is satisfied. This issue will be addressed in the Commission's Order No. 745 Rehearing and Compliance Order, issued concurrently with this order.

interest in the proceedings, the early stage of the proceedings, and the absence of undue prejudice or delay.

23. Rule 213(a)(2) of the Commission's Rules of Practice Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answer filed by MISO and the answer and supplemental response filed by Midwest TDUs and will, therefore, reject them.

B. Requests for Rehearing of the Order No. 719 Compliance Order in Docket No. ER09-1049-005

1. ARC Compensation and Settlement Procedures

a. Requests for Rehearing and Clarification

24. OMS, MISO and Midwest TDUs request that the Commission clarify the references to retail ratemaking to remove the implication that state commissions and other retail ratemaking authorities have unfettered discretion to set retail rates, that retail rates are not tied to objectively identifiable criteria, and that the retail rates are not sufficiently fixed and predictable.⁵⁰ OMS asserts that “state regulatory statutes set ‘objectively identifiable criteria’ to the same degree as the [FPA] under which [the] Commission sets wholesale electric rates.”⁵¹ OMS further asserts that “state retail tariffs are every bit as ‘fixed and predictable’ as wholesale electric tariffs regulated by [the] Commission” and, because they are not usually formula rates, retail rates are more readily determined by tariffs and other fixed documentation than wholesale rates.⁵²

25. MISO asserts that the relevant electric retail regulatory authority approves the MFRR of an entity prior to demand response resource participation, and MISO maintains that the MFRR is approved by the relevant electric retail regulatory authority in the state where the demand response resource is located. MISO states that it properly included language consistent with Order No. 719 in its compliance filing that required an ARC to include approved retail rates and states that the MFRR can only be changed by the relevant electric retail regulatory authority after parties are given notice and procedural opportunities to contest such rates. Thus, MISO requests that the Commission eliminate

⁵⁰ OMS Request for Clarification at 3; MISO Request for Rehearing at 2; Midwest TDUs Request for Rehearing at 3.

⁵¹ OMS Request for Clarification at 3.

⁵² *Id.*

the directive that MISO remove from its Tariff the requirement that the MFRR must be specified at the time of registration.⁵³ MISO asserts that the MFRR “is an integral piece of [its] calculation of the avoided lost benefit associated with a [demand response resource] transaction” and states that a specific number need not be quantified to approve a formula rate.⁵⁴

26. MISO and Midwest TDUs further assert that there is insufficient analysis to ascertain the Commission’s reasoning as to why the Commission believes that the MFRR is unspecific and not tied to any objective criteria.⁵⁵ Midwest TDUs claim that it is arbitrary and capricious for the Commission to allow inclusion of state and local taxes in rates, but reject MISO’s cost allocation proposal on the grounds that inclusion of the MFRR is contrary to the Commission’s obligation to set jurisdictional rates. MISO claims that the Commission’s determinations in the Order No. 745 Compliance Order and Order No. 719 Compliance Order do not comport with the assertion that the Commission is not intruding on state regulation. Instead, MISO claims the Commission is either “usurping the ability of [relevant electric retail regulatory authorities] to set retail rates, and consequently the MFRR, or the Commission is treading over the jurisdictional boundaries of the [FPA] and misstating its rejection of the MFRR.”⁵⁶

27. Midwest TDUs assert that the Commission regularly approves rates as just and reasonable that incorporate variables that are set by state authorities over which it does not have jurisdiction, and that may reflect state policies. As an example, Midwest TDUs maintain that transmission owners include state and local taxes in their Annual Revenue Requirement, which results in those taxes becoming variables in Commission-jurisdictional rates.⁵⁷ Midwest TDUs further assert that Schedule 10 of the MISO Tariff explicitly incorporates state and local property taxes into MISO’s formula for recovering its costs.⁵⁸ Midwest TDUs thus argue that there is no meaningful distinction to justify the

⁵³ MISO Request for Rehearing at 6 (citing Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 127). *See also* Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at P 147.

⁵⁴ *Id.* at 7.

⁵⁵ *Id.*; Midwest TDUs Request for Rehearing at 3-4.

⁵⁶ MISO Request for Rehearing at 8.

⁵⁷ Midwest TDUs Request for Rehearing at 4 (citing Uniform System of Accounts 408A, 18 C.F.R. Part 101 (2011)).

⁵⁸ *Id.*

Commission's approval of rates that include state and local taxes, and its refusal here to approve a rate that includes consideration of the MFRR set by the relevant electric retail regulatory authority.

28. Midwest TDUs assert that relevant electric retail regulatory authorities are in the best position to provide accurate and objective information on the retail demand response provider's avoided cost of purchasing electricity at retail. If the Commission is concerned that a relevant electric retail regulatory authority may misstate the MFRR, Midwest TDUs assert that the appropriate remedy would be to establish clear dispute resolution procedures to allow demand response providers and/or load-serving entities to challenge the relevant electric retail regulatory authority's statements, as the Commission did in the Order No. 719 Compliance Order.⁵⁹ Midwest TDUs argue that the MFRR is much more "fixed and predictable" and "tied to objectively identifiable criteria" than determining an accurate retail energy usage baseline from which to measure demand reductions.⁶⁰

29. MISO also comments that the Commission's rejection of the MFRR unjustly and unreasonably eliminates a tool for resolving the "missing money problem" that it claims arises when a demand response provider's load reduction results in the provider's load-serving entity not having to purchase that energy from the RTO, which creates a revenue shortfall for the RTO.⁶¹

b. Commission Determination

30. We deny rehearing and reaffirm our determination in the Order No. 719 Compliance Order. As we previously explained, MISO's proposed use of the MFRR as part of its compensation proposal results in a formula rate that is not sufficiently fixed and predictable,⁶² "as the MFRR component of the formula for that compensation lacks

⁵⁹ *Id.* at 5-6 (citing Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at P 153).

⁶⁰ *Id.* at 6.

⁶¹ MISO Request for Rehearing at 9.

⁶² Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at P 176 & n.239 (citing *Ocean State Power II*, 69 FERC ¶ 61,146, at 61,552 (1994) (*Ocean State II*)). In *Ocean State II* the Commission explained that: "[W]e can approve a formula rate because once we determine that the formula is just and reasonable, the protection against unreasonable rates is the fixed nature of the formula, which, so long as it is not changed, generally requires no further Commission monitoring." *Ocean State II*, 69 FERC at 61,552.

the specificity required for ratemaking purposes and is not tied to any objectively identifiable criteria.”⁶³ Parties raise no evidence or argument on rehearing that persuades us to depart from this determination.

31. OMS, MISO, and Midwest TDUs ask the Commission to clarify references to retail ratemaking to remove what they consider to be the implication that state commissions and other retail ratemaking authorities have unfettered discretion to set retail rates, that retail rates are not tied to objectively identifiable criteria, and that retail rates are not sufficiently fixed and predictable.⁶⁴ These parties misconstrue the Commission’s determination in the Order No. 719 Compliance Order. The Commission did not intend to impugn the ratemaking methods of other ratemaking authorities; the Commission did not make a broad, general finding that state commissions and other retail ratemaking authorities have unfettered discretion to set *retail rates* or that *retail rates* are not tied to objectively identifiable criteria or are not sufficiently fixed and predictable.⁶⁵ Rather, the Commission specifically determined that the *MFRR* component of the formula for ARC compensation lacks the specificity required for ratemaking purposes.⁶⁶ We reaffirm this determination. Neither proposed section 1.373a of the Tariff, which defines the MFRR, nor any of the proposed provisions in section 38.6, provide that the MFRR must be based on the applicable retail rate. MISO describes the MFRR as “*the proxy* for the price that the retail customers would have paid under their current retail tariff for energy they did not consume” and for which the demand response resource would have received compensation under the MISO Tariff.⁶⁷ No party explains how the proxy is equivalent to the retail rate, especially given that it was not required to be equivalent to a rate that otherwise would have been paid. As to how the rate is set, MISO stated that it “prefers not to get involved” and the “MFRR could presumably be positive or negative, based on the policy objectives of the particular [relevant electric retail

⁶³ Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at P 176 & n.240 (citing *FPC v. Texaco*, 417 U.S. 380, 395-396 (1974); *PG&E v. FERC*, 306 F.3d 1112, 1119 (D.C. Cir. 2002); *California PUC v. FERC*, 254 F.3d 250, 254-256 (D.C. Cir. 2001) (*California PUC*)).

⁶⁴ OMS Request for Clarification at 3; MISO Request for Rehearing at 2; Midwest TDUs Request for Rehearing at 2.

⁶⁵ Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at P 176.

⁶⁶ *Id.*

⁶⁷ MISO October 2009 Compliance Filing, Transmittal Letter at 13 (emphasis added).

regulatory authority].”⁶⁸ These statements, in conjunction with the lack of detail in the relevant proposed Tariff provisions, appear to allow excessive discretion in setting a critical rate component of the wholesale formula for ARC compensation, contrary to the Commission’s obligation to set jurisdictional rates. MISO thus does not provide sufficient support to enable the Commission to find that the resultant compensation formula incorporating the MFRR will result in a just and reasonable rate.⁶⁹

32. While MISO correctly asserts that the “Commission has long recognized that a specific number need not be quantified in order to approve a formula rate[,]”⁷⁰ the Commission does not require the MFRR to be a specific number for use in a formula rate. Rather, the Commission’s concern here is that the MFRR proposal and implementing Tariff provisions lack sufficiently fixed and predictable parameters for establishing the MFRR. Accordingly, we are unable to find MISO’s proposed use of the MFRR component of the formula rate just and reasonable.

33. Contrary to MISO’s and Midwest TDUs’ assertions, the MFRR is distinguishable from the state and local taxes that the Commission has accepted for inclusion in wholesale rates. Unlike the MFRR, state and local taxes are generally fixed based on objective criteria, such as income or depreciation. Consequently, state and local taxes are relatively fixed and predictable, as compared with the latitude permitted for the MFRR.

⁶⁸ *Id.* at 14.

⁶⁹ *Ocean State II*, 69 FERC at 61,552. While MISO indicates that the MFRR will be used in setting the retail rate for demand response purposes, *see* MISO Request for Rehearing at 5, this does not obligate the Commission to incorporate the MFRR for wholesale ratemaking purposes. *See, e.g., Louisiana Public Service Comm’n v. Entergy Servs., Inc.*, 76 FERC ¶ 61,168, at 61,955 (1996) (“a ratemaking methodology proposed at the retail level . . . does not govern the Commission’s determination of the appropriate ratemaking methodologies to be used in developing wholesale rates”) (citations omitted), *reh’g denied*, 80 FERC ¶ 61,282 (1997), *rev’d on other grounds*, 184 F.3d 892 (1999); *accord Cities of Bethany, et al. v. FERC*, 727 F.2d 1131, 1137 (D.C. Cir. 1984) (*Cities of Bethany*). In any event, our determination in this proceeding does not preclude use of the MFRR in setting retail rates. *Louisiana Public Service Comm’n v. Entergy Corp.*, 111 FERC ¶ 61,080, at P 22 (2005) (“The fact that state commissions, in setting retail rates, are not authorized to second guess our wholesale rate determinations is no way inconsistent with the Commission declining to overstep its bounds by directly prescribing retail rates.”).

⁷⁰ MISO Request for Rehearing at 7 (citing *California PUC*, 254 F.3d at 254; *Transwestern Pipeline Co. v. FERC*, 897 F.2d 570, 578 (D.C. Cir. 1990)).

34. Midwest TDUs assert that relevant electric retail regulatory authorities are in the best position to provide information on the retail demand response provider's avoided cost of purchasing electricity,⁷¹ which is integral to setting the MFRR. However, this assertion has no bearing on our decision to reject the MFRR. As discussed above, there was no requirement that the MFRR be set at the retail demand response provider's avoided cost of purchasing electricity.

35. We also find no need to establish dispute resolution procedures to address concerns over any particular MFRR since we reaffirm our rejection of MISO's proposed use of the MFRR generally for compensation purposes.

36. MISO asserts that the Commission's rejection of the MFRR unjustly and unreasonably eliminates a tool for resolving the "missing money problem." The missing money problem, MISO explains, is the RTO revenue shortfall that arises when a demand response provider's load reduction results in the provider's load-serving entity not having to purchase that energy from the RTO.⁷² In Order No. 745, the Commission recognized and addressed this issue by requiring the use of a net benefits test that accounts for the billing unit effect of dispatching demand response resources.⁷³ Moreover, because we have found the MFRR to be insufficiently fixed and predictable to use for cost allocation purposes, whether or not the MFRR may have served other functions is irrelevant.

37. Finally, MISO states that it included language in its October 2009 Compliance Filing that required an ARC to include approved retail rates in its registration of a resource and that the MFRR can only be changed by the relevant electric retail regulatory authority after parties are given notice and procedural opportunities to contest such rates.⁷⁴ However, such measures do not obviate our concerns regarding the discretion that relevant electric retail regulatory authorities would have in setting a critical rate component of the wholesale formula for ARC compensation, contrary to the Commission's obligation to set jurisdictional rates.

⁷¹ Midwest TDUs Request for Rehearing at 5.

⁷² MISO Request for Rehearing at 9. We note that the Commission dismissed MISO's rehearing request concerning the "missing money" issue in Order No. 745-B, finding that MISO had not identified any specific finding on this point in Order No. 745-A to which it objected or which related to the MFRR. Order No. 745-B, 138 FERC ¶ 61,148 at n.6.

⁷³ Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 3.

⁷⁴ MISO Request for Rehearing at 6.

2. ARC Cost Allocation

38. In the Order No. 719 Compliance Order, the Commission accepted MISO's proposed cost allocation methodology for ARCs because it was consistent with the then-current allocation of other demand response, and noting that the cost allocation requirements of Order No. 745 would apply to the appropriate time periods:

In terms of the allocation of costs associated with ARC demand response to the [load-serving entity] from which the demand response originates, the proposed allocation of the LMP as a charge to the [load-serving entity] is consistent with the current allocation of other demand response costs on the MISO system and, accordingly, we will accept the provision.⁷⁵

a. Request for Rehearing

39. Midwest TDUs object that the Commission, in the Order No. 719 Compliance Order, rejected MISO's proposed ARC compensation methodology, but nevertheless accepted direct assignment to load-serving entities of the costs of compensating demand response resources within their footprint. Midwest TDUs argue that the Commission should make acceptance of MISO's cost allocation methodology subject to revision due to the Commission's consideration of demand response compensation during hours when the net benefits test described in Order No. 745 is not satisfied.⁷⁶ Midwest TDUs express their view that load-serving entities should be allowed to elect direct assignment of demand response compensation costs during hours when the net benefits test is not satisfied, thereby avoiding an allocation of demand response costs associated with the retail loads of other load-serving entities. Midwest TDUs argue that, for load-serving entities that do not elect to have a direct assignment of costs, "it is unreasonable for the

⁷⁵ 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 the MISO Order No. 745 compliance proceeding. The compensation and cost allocation requirements of Order No. 745 will apply to these time periods. Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at P 177 n.243.

⁷⁶ According to Midwest TDUs, there is no approved compensation methodology for demand response resources when the net benefits test is not satisfied because, in the Order No. 745 Compliance Order, the Commission rejected MISO's proposal to not compensate demand response resources during hours when the net benefits test is not satisfied. Midwest TDUs Request for Rehearing at 9-10 and n.19 (citing Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 37).

Commission to approve a direct assignment cost allocation methodology” without information regarding the basis for the costs that are allocated.⁷⁷

40. Midwest TDUs state that the Commission previously recognized that the reasonableness of any methodology for allocating demand response compensation costs is necessarily related to the basis for determining the costs to be allocated. They state that the Commission’s specification in Order No. 745 of a particular, required cost allocation methodology during hours when the net benefits test is satisfied indicates that the Commission recognizes that the reasonableness of a cost allocation methodology is “intertwined” with the costs to be assigned and that, regardless of the basis for compensation, the Commission cannot assume that the direct assignment of demand response cost allocation methodology is just and reasonable in all cases during hours when the net benefits test is not satisfied.⁷⁸

41. Midwest TDUs also argue that determining the cost allocation during hours when the net benefits test is not satisfied may prove unnecessary. Midwest TDUs state that in the Order No. 745 Compliance Order, the Commission rejected MISO’s proposed compensation when the net benefits test is not satisfied and invited MISO to make a separate proposal under section 205 of the FPA.⁷⁹ Midwest TDUs state that cost allocation during hours when the net benefits test is not satisfied will be moot if MISO submits, and the Commission accepts, a proposal to not provide compensation to demand response resources when the net benefits test is not satisfied.⁸⁰

b. Commission Determination

42. We deny rehearing. In the Order No. 719 Compliance Order, the Commission accepted a proposal to allocate the costs associated with ARC demand response because the proposal was consistent with the then-current allocation of other demand response costs, and noting that the cost allocation requirements of Order No. 745 would apply to the appropriate time periods.⁸¹ We continue to find it reasonable.

⁷⁷ *Id.* at 10.

⁷⁸ *Id.* at 10-11 (citing Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 99).

⁷⁹ *Id.* at 11-12 (citing Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 37).

⁸⁰ *Id.* at 12.

⁸¹ Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at P 177 n.243.

43. We find Midwest TDUs' argument that the Commission should have made its acceptance of MISO's proposed cost allocation methodology contingent on its acceptance of a just and reasonable compensation methodology to lack merit. In the Order No. 719 Compliance Order, the Commission conditionally accepted in part and rejected in part MISO's compliance filing.⁸² Consequently, when MISO submitted a revised compensation proposal on compliance with the Order No. 719 Compliance Order, parties, including Midwest TDUs, had the opportunity to protest the compliance filing and explain why the revised compensation methodology does or does not render the cost allocation methodology unjust and unreasonable.⁸³ Indeed, Midwest TDUs' protests to MISO's March 2012 Filings are discussed below.⁸⁴ If the compensation methodology we accept below were to have rendered the cost allocation method no longer just and reasonable, we would have directed the appropriate modifications.

44. We disagree with Midwest TDUs' assertion that load-serving entities should be allowed to elect direct assignment of demand response compensation costs during hours when the net benefits test is not satisfied and Midwest TDUs' proposed treatment of load-serving entities that do not elect to have a direct assignment of costs. This approach is not the cost allocation methodology that MISO proposed for ARCs, which the Commission accepted, consistent with MISO's then-current allocation of other demand response costs,⁸⁵ and Midwest TDUs have not shown that the accepted cost allocation methodology is unjust, unreasonable or unduly discriminatory or preferential.

45. In addition, Midwest TDUs assert that cost allocation during hours when the net benefits test is not satisfied will be moot if MISO submits, and the Commission accepts, a proposal to not compensate demand response resources when the net benefits test is not satisfied. However, in its March 2012 Filings, addressed below, MISO proposes to modify Tariff language so that ARCs will be compensated at the LMP, rather than the LMP minus the MFRR, and load-serving entities will be allocated costs at the LMP without receiving corresponding credits at the MFRR.⁸⁶ Since MISO proposes to

⁸² *Id.* P 2, Ordering Paragraph (A).

⁸³ 18 C.F.R. § 385.214; *see also* Notice of MISO's March 2012 Compliance Filing, 77 Fed. Reg. 16,927 (2012) (requiring submission of interventions and protests on or before April 4, 2012); Notice of MISO's March 2012 Amended Filing, 77 Fed. Reg. 20,018 (requiring submission of interventions and protests on or before April 13, 2012).

⁸⁴ *See* discussion, *infra*, at paragraphs 128-130.

⁸⁵ Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at P 177.

⁸⁶ MISO, FERC Electric Tariff, [38.6, Aggregators of Retail Customers, 1.0.0](#).

compensate ARCs at the LMP, rather than at zero, we need not address Midwest TDUs' rehearing request on this point.

46. Notwithstanding our denial of Midwest TDUs' request for rehearing, we reiterate that our determination does not preclude MISO from subsequently proposing Tariff modifications pursuant to section 205 of the FPA, or other entities from filing a complaint pursuant to section 206 of the FPA.⁸⁷

3. Opportunity to Protest

47. As discussed above, in the Order No. 719 Compliance Order, the Commission conditionally accepted MISO's proposal for allocating the costs of compensating ARC demand response. This included MISO's proposal to identify the Actual Energy Injections sold by demand response resources, and then adding that amount to the host load-serving entities' billing determinants. The Commission required 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 [load-serving entity] in the day-ahead and real-time markets."⁸⁸

a. Request for Rehearing

48. Midwest TDUs assert that the Commission erred by not clarifying that parties will have the opportunity to protest MISO's compliance filing (i.e., the March 2012 Filings) with respect to the effects of MISO's proposed ARC-related Tariff modifications on other load-serving entities' billing determinants, charges, and credits.⁸⁹ Midwest TDUs explain that in their protest to MISO's October 2009 Compliance Filing, they had asked the Commission to direct MISO to "remove those Actual Energy Injections from the [load-serving entity] billing determinants for the MISO charges (or credits) for which demand response load reductions do not result in additional costs or burdens on MISO."⁹⁰ Midwest TDUs state that in the Order No. 719 Compliance Order, the Commission did

⁸⁷ 16 U.S.C. §§ 824d and 825e. *See* Order No. 745 Compliance Order, 137 FERC ¶ 71,212 at P 37.

⁸⁸ Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at P 177.

⁸⁹ Midwest TDUs Request for Rehearing at 2, 7-9.

⁹⁰ Midwest TDUs' reasoned that including demand response load reductions in load-serving entities' billing determinants for such charges constitutes an unjust and unreasonable deviation from cost causation principles. *Id.* at 7-8 and n.14 (citing Midwest TDUs November 6, 2009 Protest, Docket No. ER09-1049-002, at 12-14).

not rule on Midwest TDUs' protest, but acknowledged that MISO's proposed load reconstitution may have "significant effects" on other types of MISO charges and required further explanation on compliance.⁹¹ Midwest TDUs point out that the Commission did not require MISO to take any action other than provide an explanation, and unlike other issues, the Commission did not expressly state that parties would have an opportunity to protest MISO's compliance filing. They ask the Commission to clarify that parties will have the opportunity to protest MISO's compliance filing on the effects of MISO's ARC-related Tariff revisions on other load-serving entities' billing determinants, charges, and credits.⁹²

b. Commission Determination

49. We find it unnecessary to grant clarification. The Commission explicitly directed MISO to provide this information as part of its compliance filing,⁹³ and MISO complied with this request.⁹⁴ Pursuant to the Commission's Rules of Practice and Procedure, parties had the opportunity to protest all aspects of MISO's March 2012 Filings.⁹⁵ Indeed, Midwest TDUs specifically raise this concern in its protest to MISO's March 2012 Filings,⁹⁶ and we address it below.⁹⁷

⁹¹ *Id.* at 8 (citing Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at P 176).

⁹² *Id.* at 8-9.

⁹³ *See* Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at P 177.

⁹⁴ *See* discussion, *infra*, at paragraphs 117, 120, and 132 and accompanying footnotes. We note that MISO submitted this information in its compliance with the Order No. 745 Compliance Order, *see* MISO March 14, 2012 Compliance Filing, Docket No. ER12-1266-000, at 13. That filing was properly noticed, *see* Order No. 745 Rehearing and Compliance Order, 140 FERC ¶ 61,059 at P 21, and parties had the opportunity to intervene and protest.

⁹⁵ 18 C.F.R. § 385.211 (2011).

⁹⁶ Midwest TDUs Protest at 12. *See also* Midwest TDUs Protest, Docket No. ER12-1266, at 12, 14.

⁹⁷ *See* discussion, *infra*, at paragraph 132.

C. March 2012 Filings in Docket Nos. ER12-1265-000 and ER12-1265-001**1. Demand Response and Pricing During Periods of Operating Reserve Shortages in Organized Markets****a. General Comparability in Accepting Bids and Bidding Parameters****i. Order No. 719**

50. In Order No. 719, the Commission required each RTO and ISO to accept bids from demand response resources, on a basis comparable to any other resources for ancillary services that are acquired in a competitive bidding process, if demand response resources meet certain requirements for providing the service and submit bids 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.⁹⁸ The Commission modified this requirement in Order No. 719-A to address the concerns of small entities.⁹⁹ The Commission also required each RTO and ISO to establish policies and procedures to ensure that demand response resources are treated comparably to supply-side resources.¹⁰⁰

51. The Commission required each ISO and RTO to allow demand response resources to limit the duration, frequency and amount of their service in their bids to provide ancillary services or in their bids into joint energy-ancillary services markets. Such limits include specifying a maximum duration in hours that demand response resources may be dispatched, a maximum number of times that they may be dispatched during a day, and a maximum amount of electric energy reduction that they may be required to provide either daily or weekly.¹⁰¹

ii. April 2009 Compliance Filing

52. In its April 2009 Compliance Filing, MISO contended, among other things, that it already complies with the directive in Order No. 719 to allow demand response resources

⁹⁸ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at PP 47, 49.

⁹⁹ For details concerning the modifications made in Order No. 719-A, *see text, supra*, at paragraph 8 and accompanying footnotes.

¹⁰⁰ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 50.

¹⁰¹ *Id.* P 81.

to participate in its operating reserve market on comparable terms with other resources.¹⁰² MISO explained that demand response resources can participate in its markets as either a Demand Response Resource – Type I, which are capable of supplying a specific quantity of energy or contingency reserve through physical load interruption, or a Demand Response Resource – Type II, which can supply energy and/or operating reserves over a dispatchable range through controllable load or behind-the-meter generation.¹⁰³

53. MISO asserted that its offer parameters for Demand Response Resources – Type II satisfy the requirements of Order No. 719 by allowing them to specify a maximum run time, a maximum start-up limit, and a maximum daily energy limit.¹⁰⁴ MISO proposed to allow Demand Response Resources – Type I to specify a maximum number of times that they may be dispatched during a day and a maximum amount of electric energy reduction that they may be required to provide either daily or weekly. However, MISO stated that it cannot incorporate these new offer parameters until the fourth quarter of 2009.¹⁰⁵

iii. Order No. 719 Compliance Order

54. In the Order No. 719 Compliance Order, the Commission found that MISO's market design generally satisfied the bidding parameter requirements in Order No. 719 for Demand Response Resources-Type II resources, with a few exceptions.¹⁰⁶ The Commission found that MISO had not provided sufficient information to address the concern that Demand Response Resources – Type II should be able to submit offer curves, instead of just a single price and quantity value, for operating reserves, and required MISO to do so in its compliance filing.¹⁰⁷ The Commission also required MISO to address whether its offer parameters are sufficiently flexible, as well as the concern that the combination of offer parameters, and especially the maximum daily energy limit, will not sufficiently address the risk that demand response resources are called upon too frequently.¹⁰⁸ With regard to the new offer parameters for Demand Response Resources – Type I, the Commission required MISO to explain whether system requirements now

¹⁰² MISO April 2009 Compliance Filing, Transmittal Letter at 6-7.

¹⁰³ *Id.* at 8-9.

¹⁰⁴ *Id.* at 11-12.

¹⁰⁵ *Id.* at 12.

¹⁰⁶ Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at P 51.

¹⁰⁷ *Id.* P 55.

¹⁰⁸ *Id.* P 53.

allow implementation of these parameters and, if not, to provide a timeline for implementation.¹⁰⁹

55. The Commission directed MISO to specify a timeline for development of Business Practices Manuals addressing demand response resources, including ARCs.¹¹⁰ The Commission also required MISO to revise the definitions of Demand Response Resources – Types I and II, stating that they should be symmetrical and state each product that the resources can provide given the appropriate qualification. The Commission required MISO to modify the definition of “Demand Response Resource – Type I” to incorporate the defined term “Behind the Meter Generation.” The Commission required MISO to modify the definition of “Demand Response Resource – Type II” to state that they are eligible to qualify as capacity resources. The Commission also directed MISO to revise section 40.3.4.a.vii and 40.3.4.a.x of the Tariff as MISO had agreed to do in its answer.¹¹¹

iv. March 2012 Compliance Filing

56. MISO maintains that allowing Demand Response Resources – Type II to provide up to 10 price/quantity pairs for energy and a single price/quantity availability offer for operating reserves provides a complete representation of the resources’ costs because simultaneous co-optimization of the energy and operating reserve markets considers resources’ opportunity costs when clearing all products, and resources may reflect any additional costs to provide operating reserves via their single availability offer. MISO argues that the costs of changing its market structure to reflect, within their bid structure, the additional costs of providing operating reserves would exceed any potential benefits.¹¹²

57. With regard to whether demand response resources may be called upon too frequently, MISO does not believe that changes are needed. MISO states that it deploys resources for contingency reserves for each reserve sharing event on a *pro rata* basis that considers MISO’s total cleared contingency reserves and the size of the reserve sharing event. MISO states that, if a resource is incapable of providing contingency reserves after such an event, it may modify its subsequent offers accordingly.¹¹³ In addition,

¹⁰⁹ *Id.* P 52.

¹¹⁰ *Id.* P 40.

¹¹¹ *Id.* P 41.

¹¹² MISO March 2012 Compliance Filing, Transmittal Letter at 4-5.

¹¹³ *Id.* at 4.

MISO clarifies that system requirements now permit Demand Response Resources – Type I to specify certain operational limits in their offers.¹¹⁴

58. In response to the requirement that it specify a timeline for the development of Business Practices Manuals for demand response resources, MISO states that it will continue to meet each month with the Demand Response Working Group to address stakeholder concerns and that it intends to finalize the Business Practices Manuals at the August 2012 Demand Response Working Group meeting. MISO indicates that it has made the required modifications to the definitions of Demand Response Resources – Types I and II and to sections 40.3.4.a.vii and 40.3.4.a.x.¹¹⁵

v. **Comments and Protests**

59. Alcoa maintains that allowing demand response resources to provide a single price/quantity availability offer for operating reserves does not accommodate those demand response resources with costs to provide operating reserves that are not proportional to the quantity of reserves being provided (i.e., the relationship between cost and quantity is not linear). Alcoa reiterates its prior filed comments, asserting that for many demand response providers, such as Alcoa’s aluminum manufacturing operations, the supply of operating reserves may not be as linear as that of traditional generators. Alcoa explains that, in aluminum manufacturing operations, each interruption of the manufacturing process to provide demand response diminishes, in a non-linear fashion, the economics of providing further demand response. Alcoa illustrates this, saying that the impact on aluminum manufacturing processes when providing 10 MW of regulating reserves is not proportionate to the impact when providing 50 MW. Alcoa maintains that MISO has not supported its assertion that the costs of allowing demand response resources to submit offer curves for operating reserves outweigh the associated benefits. Accordingly, Alcoa asks the Commission to direct MISO to: (1) show that those costs are greater than the associated benefits; and (2) allow certain demand response resources, such as those providing regulating reserves, to submit offer curves for operating reserves.¹¹⁶

60. With regard to MISO meeting the Commission’s requirement that MISO address whether its offer parameters for demand response resources are sufficiently flexible, Alcoa insists that MISO’s response is “inadequate on its face.”¹¹⁷ According to Alcoa,

¹¹⁴ *Id.* at 3-4.

¹¹⁵ *Id.* at 2-3.

¹¹⁶ Alcoa Protest at 5-6.

¹¹⁷ *Id.* at 4.

MISO simply argues that its existing rules and practices are justified, stating that “[t]o the extent that any Resource may be incapable of providing [contingency reserves] after a given event, the Market Participant can modify its going-forward Resource offers to indicate such inability, using a method of their choosing.”¹¹⁸ Alcoa contends that requiring a demand response resource that is incapable of providing contingency reserves after a reserve event to modify its offers late or withdraw from the market exposes the resource to significant penalties, which creates a disincentive for demand response resources to participate in the market. Alcoa requests that the Commission direct MISO to provide a mechanism for a demand response resource to limit the frequency and duration with which it may be called upon to provide each operating reserve product. Alcoa adds that, currently, MISO could require demand response resources to reduce load for an entire day using regulating reserves, which creates significant risk for demand response providers. Alcoa argues that this risk could be mitigated via proper offer parameters and requests that the Commission require a mechanism to limit the total amount of demand response that can be taken from a given facility via operating reserves.¹¹⁹

61. Alcoa describes three additional barriers to demand response participation. First, Alcoa states that the “MAX DAILY ENERGY” offer parameter does not function to limit the maximum electrical energy that a resource may be called to provide if it providing regulating reserves. Alcoa states that this offer parameter requires the full range of regulating reserves that is available, which means that resources that offer to provide regulating reserves must offer their full range of regulating reserves as energy for the entire day. Alcoa argues that the Commission should require MISO to allow demand response resources to specify limits on the services that they can provide with the ability to opt in and out of providing energy or at least limit energy supply separately from other services.¹²⁰

62. Second, Alcoa argues that while most demand response resources can provide more regulation down service than regulation up service, MISO requires regulating reserves to be a “symmetric up/down product.”¹²¹ Alcoa argues that, as a result, demand response resources cannot clear their full physical capacity for regulation down in MISO’s market. Third, Alcoa opposes MISO’s requirement that a maximum of 10 percent of its spinning reserves may be procured from Demand Response Resources –

¹¹⁸ *Id.*; see also MISO March 2012 Compliance Filing, Transmittal Letter at 4.

¹¹⁹ Alcoa Protest at 4-5.

¹²⁰ *Id.* at 8-9.

¹²¹ *Id.* at 9.

Type I. Alcoa maintains that this creates a “two tier pricing system” when there are more resources available than is permissible under the 10-percent limitation, which Alcoa alleges can cause two resources providing the same service to receive different compensation and, thus, discourage participation. In addition, Alcoa argues that demand response resources may provide benefits (e.g., quicker response times) as compared to traditional resources, and MISO should adjust its models and compensation schemes to recognize these benefits.¹²²

vi. **Commission Determination**

63. We find that MISO has not fully complied with the Commission’s requirements regarding offer parameters for demand response resources. In the Order No. 719 Compliance Order, the Commission noted concerns that Demand Response Resources – Type II cannot provide a multi-part offer to sell operating reserves and required MISO to provide sufficient information to address this issue.¹²³ While MISO explains that allowing resources to provide only a single price/quantity availability offer for operating reserves may be appropriate for some resources, it has not addressed concerns that these parameters may be inappropriate for other resources. As Alcoa explains, certain Demand Response Resources-Type II cannot fully reflect their cost of providing operating reserves because their costs are not proportional to the quantity of reserves being provided. Without the ability to provide complete cost information, certain demand response resources will be unable to appropriately “specify limits on the duration, frequency and amount of their service,” consistent with the requirements of Order No. 719.¹²⁴ MISO’s contention that the cost of implementing the necessary adjustments to its offer parameters to accommodate those resources would outweigh the associated benefits is unsupported and unresponsive to the Commission’s requirement in the Order No. 719 Compliance Order that MISO provide sufficient information to address these concerns. Accordingly, we will require MISO to submit, in the compliance filing directed below, Tariff revisions to allow demand response resources to provide additional offer parameters such that they can better reflect the cost of providing operating reserves (e.g., through multi-part offer curves).

64. In the Order No. 719 Compliance Order, the Commission noted concerns that the combination of MISO’s existing offer parameters, and especially the maximum daily energy parameter, will not sufficiently address the risk that demand response resources are called upon too frequently. The Commission stated that MISO did not provide

¹²² *Id.* at 9-10.

¹²³ Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at P 55.

¹²⁴ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at PP 81, 86.

enough information to determine whether its offer parameters are sufficiently flexible and required MISO to address these issues.¹²⁵ MISO's response – that resources incapable of providing contingency reserves after a reserve event can modify their offers in future hours accordingly – does not address the concern that this could expose resources to deviation charges. Moreover, allowing demand response resources to modify their offers *after* a reserve event does not prevent MISO from using demand response resources too frequently *during* a reserve event (e.g., for a 24-hour period). As Alcoa explains, this could serve as a barrier to demand response resource participation in MISO's markets. Accordingly, we will require MISO to submit, in the compliance filing directed below, Tariff revisions to modify demand response resources' offer parameters to address these issues (such as by permitting maximum daily contingency reserve and regulating reserve limits).¹²⁶

65. Alcoa's arguments regarding additional barriers to demand response are beyond the scope of this compliance proceeding. Alcoa's concerns regarding the "MAX DAILY ENERGY" offer parameter and its request to offer regulation up and down separately were already addressed in the Order No. 719 Compliance Order, and the Commission did not require further compliance on these issues. In particular, the Commission stated that Order No. 719 found that allowing resources to offer into ancillary services markets without also offering into energy markets "could upset certain market efficiencies in co-optimized markets."¹²⁷ The Commission also found that Alcoa's request to offer regulation down separately "goes beyond the requirements of Order No. 719."¹²⁸

66. We will not address Alcoa's arguments regarding additional barriers to demand response, including MISO's requirement that Demand Response Resources – Type I may provide a maximum of 10 percent of MISO's spinning reserves and whether the MISO Tariff accounts for the benefits of demand response. We note that the Order No. 719 Compliance Order found that MISO had 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.¹²⁹ Alcoa's

¹²⁵ Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at P 53.

¹²⁶ We note that, consistent with Order No. 719, MISO should ensure that implementation of these offer parameter requirements do not lead to either demand-side or supply-side resources being afforded an undue advantage within ancillary services markets. Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 84.

¹²⁷ MISO Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at P 53.

¹²⁸ *Id.* P 54.

¹²⁹ *Id.* P 239.

arguments on the additional barriers to demand response are unrelated to the directives contained in the Order No. 719 Compliance Order and, therefore, they are beyond the scope of this proceeding.

67. We accept, as compliant with the Order No. 719 Compliance Order, MISO's proposed timeline for developing Business Practices Manuals for demand response resources, including its statement that it intends to finalize these manuals at the August 2012 Demand Response Working Group meeting.¹³⁰ Finally, we find that MISO has complied with the Commission's directives to modify the definitions of Demand Response Resources – Types I and II and to insert language into section 40.3.4.a.vii. However, in section 40.3.4.a.x, MISO has not inserted 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,” as required in the Order No. 719 Compliance Order.¹³¹ We will require MISO to submit, in the compliance filing directed below, Tariff revisions to insert this language into section 40.3.4.a.x.

b. Customer Baselines and Measurements

i. Measurement and Verification Protocols

(a) Order No. 719

68. In Order No. 719, the Commission required RTOs and ISOs to describe their efforts to develop customer baselines and to file a proposed mechanism for measuring and verifying any reduction by demand response resources.¹³²

(b) April 2009 Compliance Filing and October 2009 Compliance Filing

69. In its April 2009 Compliance Filing, MISO proposed to relax the one-to-one relationship between Host Load Zones and Demand Response Resources – Type I and Demand Response Resources – Type II that are not qualified to provide regulating reserves. MISO proposed to remove the associated requirement that such resources must submit a five-minute Dispatch Interval Demand Forecast for the Host Load Zone and replace it with measurement and verification protocols.¹³³

¹³⁰ MISO March 2012 Compliance Filing, Transmittal Letter at 2.

¹³¹ Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at PP 37, 41.

¹³² Order No. 719, FERC Stats. & Regs. ¶ 31,281 at PP 57, 61.

¹³³ MISO April 2009 Compliance Filing, Transmittal Letter at 18.

70. In its October 2009 Compliance Filing, MISO proposed to replace the forecasting requirements under the Load Zone Dispatch Interval Demand Forecast with measurement and verification procedures based on the North American Energy Standards Board (NAESB) guidelines.¹³⁴ In particular, MISO proposed to eliminate the requirement for a one-to-one relationship between the Host Load Zone and demand response resources, including the removal of the requirement that those resources provide Host Load Zone Dispatch Interval Demand Forecasts¹³⁵ when they submit offers to the day-ahead and real-time energy and operating reserves markets. MISO's revised definition of Measurement and Verification Procedures established that the details of these methodologies would be provided in new Business Practices Manuals.¹³⁶

(c) **Order No. 719 Compliance Order**

71. In the Order No. 719 Compliance Order, the Commission required MISO to submit Tariff revisions to remove references to the measurement and verification protocols being in the Business Practices Manuals and to set forth its measurement and verification protocols and metering guidelines for demand response resources. The Commission deferred judgment as to whether the proposed protocols are just and reasonable.¹³⁷

(d) **March 2012 Compliance Filing**

72. In its March 2012 Compliance Filing, MISO submitted its proposed measurement and verification protocols in a new Attachment TT to the Tariff, and MISO submitted

¹³⁴ MISO October 2009 Compliance Filing, Transmittal Letter at 19.

¹³⁵ MISO proposed to revise the definition of "Dispatch Interval Demand Forecast" so that it is:

A Host Load Zone demand forecast expressed in MW for each Dispatch Interval that is provided to [MISO] by the owner of a Demand Response Resource – Type II that is eligible to provide Regulating Reserve . . . that represents the Host Load Zone's expected average gross demand, expressed in MW, during the Dispatch Interval, assuming no Load reduction relating to Demand Response Resource – 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.

¹³⁶ MISO October 2009 Compliance Filing, Transmittal Letter at 19-20.

¹³⁷ Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at PP 79-80.

identical protocols in the Order No. 745 compliance proceeding.¹³⁸ According to MISO, Attachment TT has been developed based on NAESB standards and are designed so that consumption baselines remain accurate over time.¹³⁹ In particular, for each demand response resource providing energy, MISO proposes four potential methods of determining its consumption baseline and demand reduction:

- (1) Direct Load Control: The consumption baseline will be statistically estimated from hourly metered demand data, and MISO must approve the specific statistical methodology employed. The hourly metered demand data provided by the market participant for the consumption baseline will also be used to measure the resource's demand reduction. This methodology will apply only to direct load control programs, each of which consists of many small, distributed assets that are not metered for each five-minute dispatch interval (i.e., only Demand Response Resources – Type I are eligible).
- (2) Metered Generation: The consumption baseline will be the resource's actual metered generation for the hour that is two hours prior to the hour in which the demand response resource is initially instructed to reduce load. The resource's demand reduction will be measured as the difference between the consumption baseline and its metered output. This methodology will apply only to, and must be used by, demand response resources for which the demand response is facilitated by behind-the-meter generation.
- (3) Calculated Baselines: The consumption baseline will be a profile of hourly demand based on an average sample of historical data. Separate profiles will be determined for non-holiday weekdays and weekends/holidays. MISO will not use data that are more than 45 days old or from days on which a resource is dispatched for energy or operating reserves, deployed during an emergency, or has a reported

¹³⁸ MISO, FERC Electric Tariff, [ATTACHMENT TT, Measurement and Verification \("M and V"\) Criteria, 2.0.0.](#)

¹³⁹ MISO March 2012 Compliance Filing, Transmittal Letter at 15.

outage (i.e., event days).¹⁴⁰ The resource's demand reduction will be measured by comparing the resource's consumption baseline with its actual metered demand.

(4) Custom Baselines: The consumption baseline will be developed by the market participant sponsoring a demand response resource and must be approved by MISO. To determine the demand reduction, metered amounts will be subtracted from the consumption baseline. Custom Baselines may be used only if none of the other consumption baseline methodologies would produce reasonable estimates of a resource's demand reductions.¹⁴¹

73. For a Demand Response Resource – Type II that is qualified to provide regulating reserves (i.e., is regulation-qualified) or has Inter-Control Center Communications Protocol (ICCP) telemetry capabilities, MISO proposes that its consumption baseline equal its forecasted demand for the resource's Host Load Zone submitted via telemetry for each five-minute dispatch interval (i.e., the Dispatch Interval Demand Forecast).

74. For contingency reserves provided by a Demand Response Resource – Type II that is qualified to provide regulating reserves or has ICCP telemetry capabilities, MISO proposes that its consumption baseline equal its telemetered average demand in the 10-second period just prior to the start of the contingency event. MISO proposes to measure the resource's demand reduction as the difference between its consumption baseline and its telemetered demand in the 10-second period occurring exactly 10 minutes after the start of the contingency event. For contingency reserves provided by other demand response resources, MISO proposes to require market participants to submit data for each five-minute dispatch interval within five days after a contingency event. MISO proposes that the consumption baseline for a Demand Response Resource – Type I equal its metered demand for the five-minute dispatch interval immediately preceding the start of the contingency event. MISO proposes to measure the resource's demand reduction as

¹⁴⁰ The weekday profile will be based on the average of the 10, but not less than five, most recent weekdays that are not event days. The weekend/holiday profile will be based on the average of the four, but not less than two, most recent weekend days or holidays that are not event days. If the previous five-day period does not contain the minimum number of days required to generate a profile, the data will be supplemented by the largest (MW) matching event day(s) for that resource within the previous 45-day period. MISO, FERC Electric Tariff, [ATTACHMENT TT, Measurement and Verification \("M and V"\) Criteria, 1.0.0](#), § 4(b).

¹⁴¹ *Id.* §§ 4(a)-(d).

the difference between its consumption baseline and its metered demand for the 5-minute dispatch interval ending 10 minutes after the start of the contingency event.¹⁴²

75. MISO also proposes Tariff provisions in Attachment TT describing in detail the event timeline, settlement and dispute process, and meter data that demand response resources must submit. In particular, section 6 of proposed Attachment TT provides an event timeline, including the submission of meter data and settlement process. Section 7 describes the meter data that demand response resources must submit, and sections 7 and 8 specify the file format for daily and interval data. Section 9 describes the meter data types that can be submitted (e.g., hourly load data).¹⁴³

(e) **Comments**

76. Midwest TDUs ask the Commission to direct MISO to make available to other market participants information on any approved methodologies for setting Custom Baselines.¹⁴⁴ They argue that providing this information would provide transparency, facilitate the review of such methodologies, and ensure that customer baselines are set on a non-discriminatory basis. Specifically, Midwest TDUs assert that it is unjust, unreasonable and unduly discriminatory to allow the use of open-ended Custom Baselines, unless MISO documents approved alternative methodologies and makes them available to other market participants who may seek to develop or register comparable demand response resources.¹⁴⁵

77. Midwest TDUs argue that proposed Attachment TT unreasonably excludes self-scheduled load reductions from the determination of Calculated Baselines. They explain that event days generally are not included in those baselines, and if a demand response resource is dispatched under its own self-schedule, that day will be treated as an event day for the resource.¹⁴⁶ Midwest TDUs argue that by self-scheduling a load reduction, a demand response provider is acknowledging that the retail load at issue will be dropped, regardless of price. They contend that ignoring this load reduction in calculating the

¹⁴² *Id.*, [ATTACHMENT TT, Measurement and Verification \("M and V"\) Criteria, 1.0.0](#), § 5.

¹⁴³ *Id.* §§ 6-9.

¹⁴⁴ Midwest TDUs do not oppose the use of Custom Baselines, stating that Custom Baselines should provide MISO with “much-needed flexibility in this area.” Midwest TDUs Protest at 10.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 10-11.

consumption baseline for the demand response resource “is inconsistent with this posture and will result in overstating the Consumption Baseline.”¹⁴⁷ They further assert that determining Calculated Baselines without considering self-scheduled load reductions invites gaming. They maintain, for example, that an ARC representing a retail customer with declining energy needs could potentially self-schedule load reductions in each hour to earn revenue from demand response energy sales, while shielding its inflated consumption baseline from automatic correction. For these reasons, Midwest TDUs ask the Commission to direct MISO to revise Attachment TT to specify that “days including self-scheduled load reductions may be included when calculating Consumption Baselines.”¹⁴⁸

78. Demand Response Supporters assert that MISO fails to include all of the relevant details for its measurement and verification protocols in Attachment TT.¹⁴⁹ They point out that in the Order No. 719 Compliance Order, the Commission found that MISO must incorporate its measurement and verification protocols into its Tariff.¹⁵⁰ They argue that Attachment TT fails to include all of the ARC registration requirements contained in MISO’s draft Business Practices Manuals,¹⁵¹ and maintain that MISO’s registration process and deadlines for review significantly affect the rates, terms, and conditions of service and should be included in the MISO Tariff. Consequently, they ask the Commission to direct MISO to include these provisions in a subsequent compliance filing.¹⁵²

¹⁴⁷ *Id.* at 11.

¹⁴⁸ *Id.*

¹⁴⁹ Alcoa also generally supports the inclusion of measurement and verification protocols in the Tariff. Alcoa states that the Commission should review and approve these types of protocols. Alcoa Comments at 4.

¹⁵⁰ Demand Response Supporters Protest at 11 (citing Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at P 79).

¹⁵¹ *Id.* at 12 and n.36 (citing MISO, Demand Response Working Group, *M_V DRR LMP EDR Tariff Language Draft, Schedule ___ Measurement & Verification (M&V)*, at § IV(iii) (Mar. 1, 2012) available at https://www.midwestiso.org/Library/Repository/Meeting%20Material/Stakeholder/DRWG/2012/20120301/20120301%20DRWG%20Item%2004b%20M_V%20DRR%20LMR%20EDR%20Tariff%20Language%20Draft.pdf (Draft Tariff Language)).

¹⁵² *Id.* at 13.

(f) **Commission Determination**

79. We will conditionally accept MISO's proposed measurement and verification protocols in Attachment TT, subject to further Tariff revisions and/or explanation on compliance, as discussed below. MISO has described its efforts to develop customer baselines and has filed mechanisms to measure and verify any reduction by demand response resources, consistent with Order No. 719. MISO's measurement and verification protocols are based on NAESB standards and provide several approaches to measuring resources' consumption baselines and demand reductions. Among other things, MISO proposes methods of determining consumption baselines that are specific to direct load control and demand response facilitated by behind-the-meter generation, and it allows resources to submit Custom Baselines in the event that their standard consumption baseline methodologies do not produce reasonable estimates.

80. We note that, in response to Midwest TDUs' concerns regarding the disclosure of Custom Baselines, MISO states that it is willing to post on its OASIS accepted Custom Baselines after replacing any proprietary information with hypothetical data. We will require MISO to post on OASIS any accepted methodologies for determining Custom Baselines after replacing any proprietary information with hypothetical data. This disclosure will ensure that Custom Baseline methodologies are made available to all market participants, while avoiding the disclosure of proprietary information. We will require MISO to submit, in the compliance filing directed below, Tariff revisions to provide for this disclosure of accepted Custom Baseline methodologies.

81. We will not require MISO to include load reductions due to self-scheduled demand response in the determination of Calculated Baselines by excluding those load reductions from the definition of event day, as Midwest TDUs request. Load reductions due to demand response – whether it is self-scheduled or scheduled by MISO – are not representative of a load's behavior absent demand response. Including load reductions due to self-scheduled demand response when determining Calculated Baselines would decrease consumption baselines so that they are not representative of the underlying load. In addition, MISO proposes to exclude data that are more than 45-days old when calculating consumption baselines,¹⁵³ which should limit the ability of resources to engage in the gaming behavior identified by Midwest TDUs.

¹⁵³ We note that, in the event that the previous 45-day period does not contain the minimum number of non-event days required for determining a Calculated Baseline, MISO would supplement the demand profiles with values from certain Event Days. *See, e.g.,* MISO, FERC Electric Tariff, [ATTACHMENT TT, Measurement and Verification \("M and V"\) Criteria, 1.0.0](#), at § 4(b).

82. Except where noted herein, we find that MISO has provided sufficient detail in Attachment TT for ratemaking purposes,¹⁵⁴ and we will not require MISO to incorporate additional Tariff measurement and verification provisions that were considered as part of MISO's stakeholder process, as Demand Response Supporters request. As MISO notes, registration requirements for ARCs are set forth in section 38.6 of the Tariff, and we will not require MISO to incorporate these additional provisions into Attachment TT as part of MISO's measurement and verification protocols.

83. However, we are concerned that Attachment TT is unclear with regard to MISO's consumption baselines and demand reduction measures for regulation-qualified Demand Response Resources – Type II when they are providing energy. Section 5 of Attachment TT explains the determination of consumption baselines and demand reductions when regulation-qualified Demand Response Resources – Type II are providing contingency reserves, and the determinations do not rely on Dispatch Interval Demand Forecasts for the associated Host Load Zone. It is not clear what provisions apply to energy, however. The description in section 4(e) of Attachment TT of the determination of consumption baselines for regulation-qualified Demand Response Resources – Type II using Dispatch Interval Demand Forecasts does not specify the product(s) to which the description applies and could be read to apply to the provision of energy, regulating reserves, and contingency reserves.¹⁵⁵ Therefore, it is unclear whether the consumption baseline methodologies available to other resources (e.g., Calculated Baselines) are available to regulation-qualified Demand Response Resources – Type II when they are providing energy (rather than regulating reserves). We will require MISO to submit, in the compliance filing directed below, either: (1) Tariff provisions to make clear that section 4(e) applies only to Demand Response Resources – Type II that are providing regulating reserves (as opposed to those that are *qualified to provide* regulating reserves);¹⁵⁶ or (2) a justification for applying section 4(e) to regulation-qualified Demand Response Resources – Type II when they are providing contingency reserves and/or energy and corresponding Tariff provisions to make clear that section 4(e) applies to those resources when they provide regulating reserves, energy, and/or contingency reserves.

¹⁵⁴ We note that the “rule of reason” generally requires any provisions significantly affecting rates, terms and conditions of service to be included in the tariff. *See* Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at P 79 and n.117 (citing *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985) (*City of Cleveland*)).

¹⁵⁵ MISO, FERC Electric Tariff, [ATTACHMENT TT, Measurement and Verification \("M and V"\) Criteria, 1.0.0](#), § 4(e).

¹⁵⁶ We note that we require further compliance regarding MISO's proposal to retain its existing requirement for a one-to-one relationship between Host Load Zones and regulation-qualified Demand Response Resources – Type II. *See infra* P 94.

84. MISO has not revised existing sections 40.2.4 and 40.2.5 of the Tariff to reflect the measurement and verification protocols for demand response resources in Attachment TT. In particular, section 5 of Attachment TT provides that Demand Response Resources – Type II that are not qualified to provide regulating reserves are not required to provide telemetered output data when providing contingency reserves.¹⁵⁷ However, existing sections 40.2.4.b and 40.2.4.c suggest that only Demand Response Resources – Type I are exempt from the requirement to submit telemetered output data when providing contingency reserves.¹⁵⁸ Section 4(e) of Attachment TT provides that the Dispatch Interval Demand Forecasts may not exceed the Dispatch Interval Demand Forecast Cap and states that this cap can be “periodically updated at the request of the Market Participant but not more frequently than each quarter.”¹⁵⁹ This is not consistent with existing section 40.2.5.i, which provides that “Market Participants may request updates to the Dispatch Interval Demand Forecast Cap on a quarterly basis, in conjunction with the update of the Network Model.”¹⁶⁰ We will require MISO to submit, in the compliance filing directed below, revisions to make sections 40.2.4.b, 40.2.4.c, and 40.2.5.i consistent with the provisions of Attachment TT.

85. We are concerned that the existing Tariff’s description of demand response resource settlements also may not reflect the measurement and verification protocols in Attachment TT. In particular, several sections of the existing Tariff do not distinguish among (1) Demand Response Resources – Type I, (2) Demand Response Resources – Type II that are not qualified to provide regulating reserves, (3) regulation-qualified Demand Response Resources – Type II that are providing contingency reserves and/or energy, and (4) regulation-qualified Demand Response Resources – Type II that are providing regulating reserves. For example:

- 1) In sections 1.1a and 1.61, the definition of “Actual Energy Withdrawal” and “Calculated DRR-Type II Output,” respectively, indicate that Dispatch Interval Demand Forecasts are always used in settlements, a practice which

¹⁵⁷ MISO, FERC Electric Tariff, [ATTACHMENT TT, Measurement and Verification \("M and V"\) Criteria, 1.0.0](#), § 5.

¹⁵⁸ *Id.*, [40.2.4, Resource Requirements for Operating Reserve, 4.0.0](#), §§ 40.2.4.b-c.

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

¹⁶⁰ *Id.*, [40.2.5, Generation Offer and DRR II Offer Rules in RT EORM, 4.0.0](#), § 40.2.5.i.

may be inappropriate for demand response resources that are not providing regulating reserves;¹⁶¹

- 2) In section 40.3.3.c.i, market participants will be charged the applicable hourly LMP for any actual energy withdrawals “associated with a Host Load Zone or Demand Response Resources – Type I.” The treatment of Demand Response Resources – Type II that are not providing regulating reserves is not addressed;¹⁶²
- 3) In section 40.3.4, the calculation of Excessive/Deficient Energy Deployment Charges for Demand Response Resources – Type II relies on the use of Dispatch Interval Demand Forecasts and the “Calculated DRR-Type II Output” is set to zero MW if a resource does not submit a Dispatch Interval Demand Forecast,¹⁶³ which may be inappropriate for demand response resources that are not providing regulating reserves;
- 4) In section 40.3.4, resources will be assessed Excessive/Deficient Energy Deployment Charges based on their “average telemetered output” and this section refers to “net telemetered demand amounts” for Demand Response Resources – Type II,¹⁶⁴ which may not be appropriate for demand response resources whose consumption baselines do not rely upon telemetered data.

We will require MISO to review its Tariff and submit, in the compliance filing directed below, an explanation of how Attachment TT affects its settlements for all of the relevant types of demand response resources and to submit corresponding Tariff revisions to ensure that the Tariff appropriately reflects the measurement and verification protocols for all types of demand response resources.

86. In addition, we find that MISO has not fully complied with the Commission’s requirement to remove references to the measurement and verification protocols being in the Business Practices Manuals. In particular, the definition of “Measurement and Verification” in section 1.411 of the Tariff provides that “[t]he Transmission Provider shall provide in the Business Practices Manuals the details of the approved measurement

¹⁶¹ *Id.*, [1.1a, Actual Energy Injections:, 1.0.0, 1.61, Calculated DRR-Type II Output:, 2.0.0.](#)

¹⁶² *Id.*, [40.3.3, Real-Time EORM Market Settlement Calculations, 2.0.0.](#)

¹⁶³ *Id.*, [40.3.4, Charge for Excessive/Deficient Energy and Reserve Deployment, 4.0.0.](#)

¹⁶⁴ *Id.*

and verification methodologies.”¹⁶⁵ Section 40.2.4.a of the Tariff also provides that all regulation-qualified resources “must provide telemetered output data in accordance with the Business Practices Manuals.”¹⁶⁶ Except as discussed below, we will require MISO to submit, in the compliance filing directed below, Tariff revisions to reflect that MISO’s measurement and verification protocols are included in Attachment TT.

87. We are concerned that Attachment TT contains descriptions of the term “event day” that are inconsistent. Section 4(b) states that “[a]n ‘event’ day is one during which there was, for a resources in question, a real-time energy or ancillary services dispatch, an emergency deployment, or a reported outage.”¹⁶⁷ However, section 6 states that “[a]n event occurs for any Operating Day when a D[emand] R[esponse] R[esource] receives a Dispatch Target for Energy, a D[emand] R[esponse] R[esource] is deployed for Contingency Reserves, or a D[emand] R[esponse] R[esource] informs the Transmission Provider of an outage for an Operating Day.”¹⁶⁸ These sections do not use the same language to describe an “event day,” and only one of them mentions emergency deployments. We will require MISO to submit, in the compliance filing directed below, Tariff revisions to ensure that it consistently describes the meaning of “event day.”

88. Finally, we note that sections 7 and 8 of Attachment TT describe in detail the meter data that must be supplied for demand response resources, including the precise file formats for submitting daily and interval data. These implementation details do not have a substantive impact on rates, terms and conditions of service and should instead be included in MISO’s Business Practices Manuals. Accordingly, we will require MISO to submit, in the compliance filing directed below, revisions to sections 7 and 8 of Attachment TT to remove the daily and interval file formats from the Tariff.

ii. Host Load Zones

(a) April 2009 Compliance Filing and October 2009 Compliance Filing

89. In its April 2009 Compliance Filing and October 2009 Compliance Filing, MISO proposed to relax the one-to-one relationship between Host Load Zones and Demand

¹⁶⁵ *Id.*, [1.411, Measurement and Verification, 1.0.0](#).

¹⁶⁶ *Id.*, [40.2.4, Resource Requirements for Operating Reserve, 4.0.0](#), § 40.2.4.a.

¹⁶⁷ *Id.*, [ATTACHMENT TT, Measurement and Verification \("M and V"\) Criteria, 1.0.0](#).

¹⁶⁸ *Id.*

Response Resources – Type I and Demand Response Resources – Type II that are not qualified to provide regulating reserves. MISO explained that given the rigorous requirements necessary for assets to provide regulating reserves, including Automatic Generation Control, and MISO’s need to meet the North American Electric Reliability Corporation’s (NERC) Curtailment Service Provider and Balancing Authority Area Control Error Limit standards as the reliability coordinator, MISO considers it important for reliability reasons to closely monitor assets providing regulation.¹⁶⁹

(b) Order No. 719 Compliance Order

90. In the Order No. 719 Compliance Order, the Commission found MISO gave “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.”¹⁷⁰ The Commission directed MISO to provide sufficient justification of its decision to maintain the one-to-one relationship between a Demand Response Resource – Type II providing regulating reserves and the Host Load Zone. In addition, the Commission required MISO to provide a definition of Host Load Zone that is not simply stating the equivalence to another term, but rather defines the term, including in its broader context.¹⁷¹

(c) March 2012 Compliance Filing

91. MISO asserts that a one-to-one relationship between a Host Load Zone and Demand Response Resources – Type II is necessary to correctly model the output of Demand Response Resources – Type II.¹⁷² MISO contends that it must define a Demand Response Resources – Type II and the Host Load Zone using the same elemental pricing node¹⁷³ in the network model because Demand Response Resources – Type II are load-

¹⁶⁹ MISO October 2009 Compliance Filing, Transmittal Letter at 20, Robinson Test. at 22-23.

¹⁷⁰ Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at P 81.

¹⁷¹ *Id.*

¹⁷² MISO described the calculation of consumption baselines for regulation-qualified Demand Response Resources – Type II in Attachment TT, as discussed above.

¹⁷³ The MISO Tariff defines an “Elemental Pricing Node” as a single bus (i.e., a specific electric location with MISO or within other transmission systems within the Eastern Interconnection modeled in the network model) where the LMP is calculated. MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet Nos. 93 and 132.

based resources that require a forecast of actual load conditions to be properly dispatched. MISO states that forecast or actual loads “can only be submitted in the Network Model to an interconnection point modeled as a load.”¹⁷⁴ MISO states that modeling the Host Load Zone allows: (1) an owner of regulation-qualified Demand Response Resources – Type II to submit real-time load forecasts via telemetry; and (2) MISO to supply load forecasts for resources that are not qualified to provide regulating reserves and do not have real-time telemetry capabilities, with the presumption that these resources are following MISO’s dispatch instructions.¹⁷⁵

92. MISO contends that, without a load forecast from regulation-qualified Demand Response Resources – Type II, MISO will not have a real-time basis upon which to determine the energy that these resources will consume. MISO maintains that, absent a dispatch instruction from MISO, it cannot be expected that the production output of these resources would remain fixed. MISO states, for example, that the energy consumption of a regulation-qualified Demand Response Resource – Type II likely will increase if the demand for its product increases. MISO states that it must understand the resource’s participation in other markets to be able to dispatch the resource effectively. MISO contends that generation resources that participate in multiple markets through dynamic scheduling must submit to MISO their expected level of participation in the other market through a real-time telemetered value. In addition, MISO proposes revisions to the definition of “Host Load Zone.”¹⁷⁶

(d) Comments

93. Alcoa argues that MISO should treat offers from demand response resources as independent and unrelated to a Host Load Zone. Noting that it is the only Demand Response Resource – Type II providing regulating reserves in MISO’s markets and providing regulation, Alcoa explains that MISO’s Host Load Zone requirement forces Alcoa to purchase and clear energy in the day-ahead market before it can participate in the operating reserves market.¹⁷⁷ Alcoa states that this leads to double charges for it on a variety of MISO charges, including causing it to incur administrative fees and ancillary services charges, which do not apply to traditional generators. Alcoa characterizes this feature as a “perfect example of form over function” that it states is indicative of MISO’s reluctance to change its market models, which according to Alcoa, seem to have been

¹⁷⁴ MISO March 2012 Compliance Filing, Transmittal Letter at 5-6.

¹⁷⁵ *Id.* at 5-6.

¹⁷⁶ *Id.* at 6.

¹⁷⁷ Alcoa Protest at 6-7 (citing Alcoa Comments, Docket No. ER09-1049-000).

designed without considering the economics of providing demand response. Alcoa warns that continuing to require a one-to-one relationship between Host Load Zones and Demand Response Resources – Type II providing regulating reserves will serve as a barrier to participation by demand response. Alcoa suggests that a more reasonable approach to ensuring that demand response resources fulfill their obligations would be to require confirmation of physical asset performance through standardized measurement and verification techniques.¹⁷⁸

(e) **Commission Determination**

94. We find that MISO has not provided “sufficient justification of its decision to maintain the one-to-one relationship between a [Demand Response Resource] – Type II that are regulation qualified and the Host Load Zone,” as required in the Order No. 719 Compliance Order.¹⁷⁹ MISO’s description of the need for this requirement when modeling demand response resources’ output supports the need for measurement and verification requirements generally, and is not specific either to the provision of regulating reserves or to its proposal to retain the one-to-one relationship with the Host Load Zone. In the Order No. 719 Compliance Order, the Commission found that MISO had not shown “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.”¹⁸⁰ In its March 2012 Compliance Filing, MISO has not addressed this issue. In particular, MISO does not present any argument supporting the one-to-one relationship is necessary to ensure system reliability,¹⁸¹ nor that system reliability would be compromised if MISO were to modify its proposal and rely instead on an alternative measurement and verification protocol. Accordingly, we direct MISO to submit either: (1) a more detailed explanation of its reliability justification for maintaining a one-to-one

¹⁷⁸ *Id.* at 7.

¹⁷⁹ Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at P 81.

¹⁸⁰ *Id.*

¹⁸¹ We note that MISO identifies potential reliability concerns as a warrant for retaining the one-to-one relationship between Host Load Zones and regulation-qualified Demand Response Resources – Type II in the MISO Order No. 745 compliance proceeding. *See* MISO March 14, 2012 Filing, Docket No. ER12-1266-000, Transmittal Letter at 17. However, MISO’s description of this concern does not provide any new information, as it is nearly identical to the one presented in its October 2009 Compliance Filing, and MISO does not raise these concerns in its March 2012 Compliance Filing in this proceeding.

relationship between Host Load Zones and regulation-qualified Demand Response Resources – Type II, including why it is necessary to meet NERC reliability standards; or (2) Tariff revisions to remove the Host Load Zone requirement and instead rely on an alternative consumption baseline methodology for such resources.

2. Aggregation of Retail Customers

95. 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. In Order No. 719-A, to address the concerns of small utilities, the Commission directed ISOs and RTOs to amend their market rules to require affirmative permission from the relevant electric retail regulatory authority before accepting bids from ARCs that aggregate the demand response of small electric utilities (i.e., utilities distributing less than four million MWh per year).¹⁸²

a. General ARC Issues

i. Order No. 719

96. In Order No. 719, 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 smaller 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 findings to the Commission.¹⁸³

ii. April 2009 Compliance Filing

97. MISO explained that it continues to work with the Demand Response Working Group to explore and prepare the required assessment of the technical feasibility and value to the markets of small demand response resources providing ancillary services.¹⁸⁴

¹⁸² Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 at P 51.

¹⁸³ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 97.

¹⁸⁴ MISO April 2009 Compliance Filing, Transmittal Letter at 13.

iii. Order No. 719 Compliance Order

98. In the Order No. 719 Compliance Order, the Commission noted that, according to MISO, a year's experience with its ancillary services market would be necessary before investigating further changes regarding small demand response resources.¹⁸⁵ Noting that more than a year had passed since that market started, the Commission directed MISO to address the issue of small demand response resources in its Demand Response Working Group and submit any proposed Tariff revisions.¹⁸⁶

iv. March 2012 Compliance Filing

99. MISO states that it is in compliance with Order No. 719 and is, therefore, not submitting any proposed Tariff revisions. In support of this assertion, MISO states that the minimum size for resources to participate in its energy and operating reserve markets is one MW, and for resources to participate under its resource adequacy provisions the minimum size is 100 kw. MISO states that the minimum size requirements apply equally to demand response resources and generation resources and meet the requirements of Order No. 719 to provide comparable treatment while requiring all resources to meet certain size and other requirements.

100. MISO further states that the one MW minimum size requirement does not mean that smaller demand response assets are precluded from market participation. MISO states that small retail loads may be aggregated by either an ARC or by the retail loads' load-serving entities to produce an aggregated demand response resource with no MISO-imposed minimum size limit on each individual retail load.¹⁸⁷

v. Commission Determination

101. We find that MISO allows smaller demand response resources to participate in its markets, including through the aggregation of small retail loads by ARCs, and therefore complies with Order No. 719.

¹⁸⁵ Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at P 120 (referencing MISO October 28, 2009 Informational Filing, Docket No. RM07-19-001, at 4-5).

¹⁸⁶ *Id.*

¹⁸⁷ MISO March 2012 Compliance Filing, Transmittal Letter at 7-8.

b. ARC Registration and Certification**i. April 2009 Compliance Filing and October 2009 Compliance Filing**

102. In its October 2009 Compliance Filing, MISO proposed registration and certification requirements for ARCs, including the specific components that must be included in each registration request. MISO asserted that it will accept offers from an ARC unless and until it receives a notification from the relevant electric retail regulatory authority either: (1) contesting the certification of the ARC's retail load; or (2) claiming that the customer is no longer eligible to participate. MISO set forth the process for contesting a certification in section 38.6 of the Tariff. MISO stated 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.¹⁸⁸

ii. Order No. 719 Compliance Order

103. In the Order No. 719 Compliance Order, the Commission required MISO to submit several modifications to the ARC registration requirements in proposed section 38.6. Among other things, the Commission stated that the Tariff does not establish a timeline for MISO to provide notification of an ARC's registration request to the relevant electric retail regulatory authority and/or relevant load-serving entity or to complete the registration. The Commission stated that MISO did not address what will happen should a relevant electric retail regulatory authority and/or load-serving entity challenge a registration request and required MISO to address these issues with additional Tariff language on compliance.¹⁸⁹ The Commission required MISO to revise section 38.6(3) to read, in part, "unless and until the Transmission Provider receives a notification from the [relevant electric retail regulatory authority] that either (a) contests the certification provided by the ARC under sub-paragraph (1) of this section or (b) claims loss of eligibility of resources registered with the ARC."¹⁹⁰ In addition, the Commission

¹⁸⁸ MISO October 2009 Compliance Filing, Transmittal Letter at 10-12.

¹⁸⁹ Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at P 153.

¹⁹⁰ *Id.* P 154.

directed MISO label the notice and challenge provision located on Original Sheet No. 655F as subsection (3) and renumber any subsequent subsections as needed.¹⁹¹

iii. March 2012 Compliance Filing

104. In the March 2012 Compliance Filing, MISO proposes to revise its ARC registration and certification requirements in section 38.6 and its demand response resources registration requirements in section 38.7.2 by, among other things, proposing Tariff language describing the process for load-serving entities and local balancing authorities to review and approve demand response registration requests. In section 38.7.2.1, MISO proposes to give load-serving entities and local balancing authorities 10 days to review any new tasks, take any necessary actions, and/or approve or deny requests, or at the end of that period, requests will be approved by default. MISO states that demand response resources will be unable to participate in MISO's markets pending approval.¹⁹² MISO also proposes to revise section 38.6(3) to read, in part, "unless and until the Transmission Provider receives a notification from the [relevant electric retail regulatory authority] that either (a) contests the certification provided by the ARC under sub-paragraph (1) of this section or (b) claims loss of eligibility of resources registered with the ARC."¹⁹³

iv. Comments and Protests

105. Midwest TDUs contend that MISO has not complied with the directive in the Order No. 719 Compliance Order that it address what would happen should the relevant electric retail regulatory authority of load-serving entity challenge a registration request.¹⁹⁴ Midwest TDUs explain that, in such an event, MISO proposes to use the procedures in section 38.6(5) of the Tariff. However, Midwest TDUs maintain that section 38.6(5) states merely that demand response resources registered by ARCs are subject to the same information sharing protocols as all demand response resources, pursuant to section 38.7.2. Midwest TDUs argue that it is unclear what Tariff procedures associated with section 38.6(5), if any, might be germane to resolving a demand response resource registration and certification dispute. Accordingly, Midwest TDUs request that

¹⁹¹ *Id.* P 158.

¹⁹² MISO, FERC Electric Tariff, [38.7.2, Demand Response Resource Procedures, 2.0.0](#), § 38.7.2.1.

¹⁹³ *Id.*, [38.6, Aggregators of Retail Customers, 1.0.0](#), § 38.6(3).

¹⁹⁴ Midwest TDUs Protest at 13 (citing Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at P 153).

the Commission direct MISO to provide meaningful dispute resolution procedures applicable in instances where challenges to ARC registration and certification have been lodged.¹⁹⁵

106. Midwest TDUs assert that MISO has not included Tariff provisions consistent with the Commission directive that MISO revise section 38.6(3) of the Tariff to provide that MISO will continue to accept offers from an ARC “unless and until MISO receives a notification from the [relevant electric retail regulatory authority] that either (a) contests the certification provided by the ARC under sub-paragraph (1) of this section or (b) claims loss of eligibility of resources registered with the ARC.”¹⁹⁶ Midwest TDUs state that the Tariff language included in MISO’s filing instead provides that MISO will continue to accept offers from an ARC “unless and until the Transmission Provider receives a notification from the [relevant electric retail regulatory authority] contesting the certification under sub-paragraph (1) of this section, or (b) claims loss of eligibility of resource registered with the ARC.” Midwest TDUs argue that this language is ungrammatical and confusing and ask the Commission to direct MISO to accurately reflect the language required by the Order No. 719 Compliance Order.¹⁹⁷

107. Demand Response Supporters contend that MISO’s draft Business Practices Manuals provide MISO with an inexplicably long period of 90 days to review an ARC’s demand response resource application.¹⁹⁸ Noting that PJM has a significantly shorter review process, Demand Response Supporters ask the Commission to direct MISO to either justify its lengthy review process or dramatically shorten it on subsequent compliance.¹⁹⁹

108. AMP requests that the Commission direct MISO to correct certain typographical errors in section 38.7.2.3 of the Tariff.²⁰⁰

¹⁹⁵ *Id.* at 13-14.

¹⁹⁶ *Id.* at 13 (citing Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at P 154).

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at 12 and n.36 (citing MISO, Demand Response Working Group, Draft Tariff Language at § IV(iii)).

¹⁹⁹ Demand Response Supporters Protest at 13.

²⁰⁰ AMP identifies two instances where the Tariff incorrectly refers to a “contract” person instead of a “contact” person. AMP is also concerned that the Tariff states, in part, that “the addition of or change to a [demand response resource] will be approved by
(continued...)

v. **Commission Determination**

109. MISO has revised the ARC registration and certification requirements of section 38.6 and 38.7.2 consistent with the requirements of the Order No. 719 Compliance Order, except where noted below, and we will conditionally accept MISO's revisions to these sections.

110. We agree with Midwest TDUs that MISO has not sufficiently addressed what will happen should a challenge to the certification of an ARC occur, as required by the Order No. 719 Compliance Order.²⁰¹ In particular, section 38.7.2 specifies what happens if a load-serving entity or local balancing authority confirms or takes no action regarding a registration request, but does not specify what occurs if they challenge such a request. Moreover, MISO's revisions do not address the treatment of relevant electric retail regulatory authorities, including the timeline for providing them with notification of an ARC registration or what occurs if a relevant electric retail regulatory authority contests a registration, as required in the Order No. 719 Compliance Order.²⁰² Accordingly, we require MISO to submit, in the compliance filing directed below, Tariff revisions to specify what will happen should a challenge to the certification occur and to ensure that its proposed Tariff provisions address the treatment of relevant electric retail regulatory authorities making such a challenge, as directed in the Order No. 719 Compliance Order.

111. With respect to Midwest TDUs' argument regarding Tariff language in section 38.6(3), we require MISO to submit, in the compliance filing directed below, Tariff revisions to correct the first sentence to read, in part, "unless and until the Transmission Provider receives a notification from the [relevant electric retail regulatory authority] that either (a) contests the certification provided by the ARC under sub-paragraph (1) of this section or (b) claims loss of eligibility of resources registered with the ARC." We note that this language was specifically required in the Order No. 719 Compliance Order.²⁰³ In its compliance filing, MISO must also include Tariff revisions to make the corrections to section 38.7.2.3 suggested by AMP.

denied," and suggests eliminating the words "approved by." AMP Comments at 4-5 (citing MISO, FERC Electric Tariff, [38.7.2, Demand Response Resource Procedures, 2.0.0](#), § 38.7.2.3).

²⁰¹ Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at P 153.

²⁰² *Id.*

²⁰³ *Id.* P 154.

112. In the Order No. 719 Compliance Order, the Commission stated that the notice and challenge provision for ARC certification on Original Sheet No. 655F appears to be mislabeled and required MISO to label it as subsection 3. The Commission stated that this revision will ensure that the notice and challenge provision applies to all ARC certifications regardless of the utility's size. However, in the March 2012 Compliance Filing, MISO has not labeled this section as subsection 3, which causes the notice and challenge provisions to apply only where the relevant utility distributes four million MWh or less in the prior fiscal year.²⁰⁴ We will require MISO to submit, in the compliance filing directed below, revisions to section 38.6(2)b to move the label for subsection 3 so that it appears prior to the sentence starting "The Transmission Provider shall notify the [relevant electric retail regulatory authority . . .]" and to renumber any subsequent subsections accordingly.

113. As for Demand Response Supporters contention that MISO's draft Business Practices Manuals provide an "inexplicably long," 90-day period to review an ARC's demand response resource application, we will not require MISO to justify or shorten this. Demand Response Supporters have not explained how this 90-day period would have a significant impact on rates, terms and conditions of service, such that it belongs in the Tariff.²⁰⁵

c. ARC Compensation and Settlement Procedures

i. October 2009 Compliance Filing

114. In its October 2009 Compliance Filing, MISO proposed to compensate each ARC that reduces load in a given hour at the MCP for operating reserves and at the LMP minus the relevant MFRR for energy. MISO proposed to allocate the cost of compensating ARCs to load-serving entities by charging load-serving entities the LMP for the energy that was injected (i.e., that was not consumed) by the ARC and giving load-serving entities a corresponding credit at the relevant MFRR.²⁰⁶

115. In determining the LMP to use for compensating an ARC for providing energy, MISO stated that it will average the LMPs at the elemental pricing nodes of the retail

²⁰⁴ MISO, FERC Electric Tariff, [38.6, Aggregators of Retail Customers, 1.0.0](#), § 38.6(2)b.

²⁰⁵ *City of Cleveland*, 773 F.2d at 1376.

²⁰⁶ MISO October 2009 Compliance Filing, Transmittal Letter at 13, 17-18.

customers in the ARC at each ARC's commercial pricing node weighted by their respective demand reductions.²⁰⁷

ii. Order No. 719 Compliance Order

116. In the Order No. 719 Compliance Order, the Commission rejected MISO's proposal to compensate ARCs for energy at the LMP minus MFRR. The Commission found that the MFRR component of the compensation formula lacks the specificity required for ratemaking purposes and is not tied to any objectively identifiable criteria. The Commission directed MISO to submit a just and reasonable ARC compensation proposal that addresses the issues regarding the MFRR.²⁰⁸

117. The Commission directed 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 load-serving entity in the day-ahead and real-time markets."²⁰⁹

118. The Commission expressed concern regarding MISO's proposed method for determining the LMP associated with an ARC. In particular, the Commission found that when the ARC's commercial pricing node comprises elemental pricing nodes from load-serving entities with different LMPs, such a methodology could result in a load-serving entity with lower LMPs subsidizing a load-serving entity with higher LMPs. The Commission directed MISO to modify its Tariff to rectify this situation.²¹⁰

iii. March 2012 Compliance Filing

119. In its March 2012 Compliance Filings, MISO proposes to remove Tariff language regarding the MFRR, so that ARCs will be compensated at the LMP (rather than the LMP minus the MFRR) and load-serving entities will be allocated costs at the LMP (without receiving corresponding credits at the MFRR).²¹¹

120. In explaining the effect its changes related to load reconstitution will have on deviation and other charges, MISO states that it proposes to add the Actual Energy

²⁰⁷ *Id.*, Robinson Test. at 10-11.

²⁰⁸ Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at P 176.

²⁰⁹ *Id.* P 177.

²¹⁰ *Id.* P 193.

²¹¹ MISO, FERC Electric Tariff, [38.6, Aggregators of Retail Customers, 1.0.0.](#)

Injections for all demand response resources associated with a given load zone to the metered volume for the load zone in the calculation of Actual Energy Withdrawals. MISO states that this should avoid assessing real-time Revenue Sufficiency Guarantee charges and additional administrative charges to load-serving entities for deviations from their real-time demand forecast that occur due to demand response resources that provide demand reduction in the real-time market.²¹²

121. With regard to the determination of LMPs associated with ARCs, MISO states that its proposed use of load reconstitution to allocate the cost of compensating ARCs may result in a revenue surplus or inadequacy due to the difference between the LMPs for the demand response resources and for the corresponding load zone. MISO proposes that the costs associated with any such revenue surplus or inadequacy should be allocated to all load and not to either the demand response resources or load-serving entities. MISO proposes to revise section 40.3.3(iv) to allocate these costs to market participants based on their load ratio shares.²¹³

iv. Comments and Protests

122. Midwest TDUs argue that the March 2012 Compliance Filing fails to satisfy the Commission's directive to submit a just and reasonable ARC compensation proposal and is inconsistent with Order No. 745. Midwest TDUs state that the March 2012 Filings do not mention MISO's ARC compensation proposal, so it is unclear whether MISO is proposing a different compensation methodology for ARCs than it does for cost-effective demand response resources in the MISO Order No. 745 compliance proceeding. They maintain that MISO's ARC compensation proposal is contrary to Order No. 745 because it requires compensation at the LMP during hours when demand response is not cost effective, as determined by the net benefits test mandated by Order No. 745.²¹⁴ Midwest TDUs state that in Order No. 745, the Commission found, among other things, that "when wholesale energy market customers pay a reduced price attributable to demand response that does *not* reduce total costs to customers more than the costs of paying LMP to the demand response dispatched, *customers suffer a net loss.*"²¹⁵ They assert that, based on the findings in Order No. 745, MISO's ARC compensation proposal will cause

²¹² MISO March 2012 Compliance Filing, Transmittal Letter at 12.

²¹³ *Id.* at 13.

²¹⁴ Midwest TDUs Protest at 6 (citing Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 37).

²¹⁵ *Id.* at 7 (citing Order No. 745, FERC Stats. & Regs. ¶ 31,281 at P 50 (emphasis added by Midwest TDUs)).

customers to suffer a net economic loss by compensating demand response resources at the LMP during hours when the net benefits test is not satisfied and, therefore, is unjust and unreasonable and contrary to fundamental ratemaking and cost causation principles.²¹⁶ Midwest TDUs believe that it would be appropriate to not compensate ARCs when the net benefits test is not satisfied, consistent with MISO's initial proposal in the MISO Order No. 745 compliance proceeding.²¹⁷

123. Midwest TDUs argue MISO's ARC compensation proposal is particularly improper given MISO's proposal to allocate the associated costs. According to Midwest TDUs, MISO proposes to allocate the costs of compensating ARCs to the load-serving entity that hosts the demand response resource. They maintain that this cost allocation approach is inconsistent with Order No. 745, which rejected assigning all costs to load-serving entities when the net benefits test is satisfied.²¹⁸ Midwest TDUs add that MISO has not provided evidence to support that the host load-serving entity assigned ARC compensation costs will receive roughly proportional benefits. They argue that it would be impossible for MISO to make such a demonstration, given the Commission's finding in Order No. 745 that the cost of compensating demand response resources is greater than the associated consumer benefits during hours when the net benefits test is not satisfied.²¹⁹

124. Midwest TDUs add that MISO's ARC compensation methodology during hours when the net benefits test was not satisfied and alternative methodologies were not discussed in MISO's stakeholder process. Midwest TDUs request that the Commission direct MISO to explore these options and to submit a new compliance filing that proposes a just and reasonable ARC compensation methodology, based on an appropriate stakeholder process.²²⁰

125. Midwest TDUs argue that MISO should be required to explain how its revision to the definition of "Actual Energy Withdrawal" affects additional types of charges (i.e., other than administrative charges and real-time Revenue Sufficiency Guarantee charges). They maintain that the term "Actual Energy Withdrawal" is used throughout the Tariff

²¹⁶ *Id.* at 7-8.

²¹⁷ *Id.* at 9 (citing MISO August 19, 2011 Compliance Filing, Docket No. ER11-4337-000, Transmittal Letter at 5).

²¹⁸ *Id.* at 8 (citing Order No. 745, FERC Stats. & Regs. ¶ 31,281 at P 101).

²¹⁹ *Id.*

²²⁰ *Id.* at 9.

and affects many other charges. They maintain that the Commission should require MISO “to identify, explain, and justify all other MISO charges – in addition to full-LMP – that [a load-serving entity] will incur as a result.”²²¹ They add that the Commission should also require MISO to identify, explain, and justify any other changes to billing determinants, such as market load ratio share, as a result of MISO’s revision to the definition of “Actual Energy Withdrawal.”²²²

v. Commission Determination

126. We find that MISO has complied with the ARC compensation requirement of the Order No. 719 Compliance Order, and we will conditionally accept the associated Tariff revisions, subject to the modifications discussed below. As an initial matter, we note that in the Order No. 745 Rehearing and Compliance Order, issued concurrently with this order, the Commission conditionally accepts Tariff revisions regarding compensation for demand response resources (including ARCs) when the net benefits test is satisfied, and accepts a corresponding proposal to allocate the associated costs.²²³ These compensation and cost allocation provisions will supersede those proposed in this proceeding, including with regarding to the treatment of ARCs when the net benefits test is satisfied. Therefore, in determining whether MISO has complied with the ARC compensation requirements of the Order No. 719 Compliance Order, we need only consider compensation, and a corresponding cost allocation, when the net benefits test is not satisfied.

127. We find MISO’s proposal to compensate ARCs at the LMP to be just and reasonable because MISO’s proposal will compensate demand response resources hosted by ARCs the same as other demand response resources. Prior to Order No. 745, the Commission found that compensating demand response resources at the LMP during all hours is just and reasonable,²²⁴ and those findings were not altered by Order No. 745. In the Order No. 745 Compliance Order, the Commission explained that its action under section 206 of the FPA “did not extend to situations where the LMP is not greater than or equal to the threshold price, and as a result, compensation of demand response resources in those situations is beyond the scope of the compliance proceeding.”²²⁵ The

²²¹ *Id.* at 12.

²²² *Id.*

²²³ Order No. 745 Rehearing and Compliance Order, 140 FERC ¶ 61,059 at P 74.

²²⁴ *See, e.g., Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,172 (2008) (ASM Order).

²²⁵ Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 37.

Commission concluded, on procedural grounds, that MISO's existing compensation practices in hours when the net benefits test is not satisfied would remain unchanged as a result of Order No. 745.²²⁶ We note that our focus here is on compliance with Order No. 719, and we reiterate that our action does not preclude MISO from subsequently proposing Tariff modifications, pursuant to section 205 of the FPA, or other entities from making challenges under section 206 of the FPA.²²⁷

128. We disagree with Midwest TDUs' argument that compensating ARCs at the LMP when the net benefits test is not satisfied is contrary to Order No. 745 or has been proven unjust and unreasonable as a result of the Commission's findings regarding whether customers suffer a net loss when the net benefits test is not satisfied. As the Commission explained in Order No. 745-A, "[t]he Commission's section 206 action in Order No. 745 did not extend, however, to situations where the LMP is not greater than or equal to the threshold price."²²⁸ Moreover, in the Order No. 745 Compliance Order, the Commission specifically rejected as beyond the scope of Order No. 745 a compensation proposal *identical* to Midwest TDUs' (i.e., to not provide compensation) that applied to all demand response resources, including ARCs.²²⁹

129. We will not consider Midwest TDUs' argument that demand response resources should not receive compensation when the net benefits test is not satisfied. Having found MISO's compensation proposal just and reasonable, we need not consider alternative compensation methodologies (e.g., not providing compensation). As discussed above, in this order we conditionally accept MISO's proposal to compensate ARCs at the LMP.²³⁰ As the courts have noted, the Commission's review is limited to determining whether a proposal is just and reasonable and not unduly discriminatory or preferential, not "whether a proposed rate schedule is more or less reasonable than alternative rate designs."²³¹

²²⁶ *Id.* P 38.

²²⁷ *See, e.g., id.* P 37.

²²⁸ Order No. 745-A, 137 FERC ¶ 61,215 at P 131.

²²⁹ Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 37 & n.85 (citing Order No. 745-A, 137 FERC ¶ 61,215 at P 133).

²³⁰ *See* discussion, *supra*, at paragraph 126.

²³¹ *Cities of Bethany*, 727 F.2d at 1136; *see also Oxy USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995) (finding that, under the FPA, as long as the Commission finds a methodology to be just and reasonable, that methodology "need not be the only

(continued...)

130. We will not consider Midwest TDUs' generic arguments challenging the allocation to load-serving entities of the cost of compensating ARC costs (e.g., whether load-serving entities will receive commensurate benefits). These arguments could have been raised with regard to MISO's October 2009 Compliance Filing but were not and, therefore, constitute collateral attacks on the Order No. 719 Compliance Order. As the Commission's acceptance of MISO's proposal to allocate the costs associated with compensating ARCs was subject to further compliance by MISO, we are ready to consider any arguments made regarding specific adjustments to this cost allocation, in light of MISO's compensation proposal in this order. However, no party has presented arguments of this sort, and we are not convinced that MISO's ARC compensation proposal renders the allocation of costs to load-serving entities unjust and unreasonable or otherwise necessitates adjustments to MISO's cost allocation proposal.

131. We are concerned, however, that MISO's proposed Tariff revisions may not reflect MISO's ARC compensation proposal. In particular, MISO proposes to retain language in section 38.6(2)a providing that ARCs will receive credits for Emergency Demand Response resources, where the relevant utility distributed more than four million MWh in the prior fiscal year. However, MISO does not propose to retain similar language in cases where the relevant utility distributed four million MWh or less in the prior fiscal year.²³² We will require MISO to submit, in the compliance filing directed below, Tariff revisions to ensure that ARCs receive appropriate compensation for demand response associated with Emergency Demand Response resources.

132. We find that MISO has provided sufficient explanation regarding how changes to the definition of "Actual Energy Withdrawal" related to load reconstitution would affect deviation and other charges, such as administrative charges, to the host load-serving entity in the day-ahead and real-time markets. As MISO explains, load reconstitution will avoid assessing real-time Revenue Sufficiency Guarantee charges and administrative charges to load-serving entities due to deviations from their real-time demand forecast due to demand response from ARCs in the real-time market. This should also prevent demand response from adversely affecting load-serving entities' billing determinants for other types of charges and is consistent with the treatment of load-serving entities for other types of demand response resources. We will not require MISO to provide further

reasonable methodology, or even the most accurate one"); *Louisville Gas & Electric Co.*, 114 FERC ¶ 61,282, at P 29 (finding that "the just and reasonable standard under the FPA is not so rigid as to limit rates to a 'best rate' or 'most efficient' rate standard. Rather a range of alternative approaches often may be just and reasonable"), *order on reh'g, E.ON U.S. LLC*, 116 FERC ¶ 61,020 (2006).

²³² MISO, FERC Electric Tariff, [38.6, Aggregators of Retail Customers, 1.0.0](#), §§ 38.6(2)a-b.

explanation for every charge and billing determinant that potentially involves the definition of “Actual Energy Withdrawal,” as Midwest TDUs suggest. The Order No. 719 Compliance Order did not require this level of detail, and we are unconvinced that further explanation is needed.

d. Information Sharing Protocols

i. Order No. 719-A

133. In Order No. 719-A, the Commission required each RTO or ISO to develop through the stakeholder process, at a minimum, a communication protocol through which an affected load-serving entity would be notified when load served by the load-serving 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 participation for each enrolled demand response resource.²³³ 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, under-scheduling, 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, information sharing and verification measures.²³⁴ However, the Commission did not require each RTO or ISO to provide detailed information in real-time to affected load-serving entities.²³⁵

ii. October 2009 Compliance Filing and January 2010 Informational Filing

134. In its October 2009 Compliance Filing, MISO described its proposal to communicate information regarding ARCs. MISO proposed 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.²³⁶

135. In its January 2010 Informational Filing, MISO responded to parties’ requests for assurance that local balancing authorities and LSEs will have access to certain relevant information associated with the operation of ARCs by stating that it was working with its stakeholders to develop a coordination and information sharing process for the Business

²³³ Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 at P 69.

²³⁴ *Id.* P 70.

²³⁵ *Id.* P 69 n.97.

²³⁶ For a more thorough description of MISO’s proposal, *see* Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at PP 195-196.

Practices Manuals. In addition, MISO stated that it would verify that there was no double-counting in the Business Practices Manuals. MISO also stated that after due consideration and further stakeholder consultations, it concluded that additional Tariff revisions relating to compliance protocols were not necessary to supplement those proposed in its October 2009 Compliance Filing.²³⁷

iii. Order No. 719 Compliance Order

136. In the Order No. 719 Compliance Order, the Commission required MISO to file its information access and information sharing procedures as part of its Tariff. The Commission stated that 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. The Commission also required MISO to set forth in the Tariff its procedure to verify that there is no double counting.²³⁸

137. The Commission required MISO to provide clarification in its Tariff that local balancing authorities will participate with MISO in reviewing the composition of commercial pricing nodes proposed by ARCs and that local balancing authorities will have access to the electrical location and magnitude of resources in an ARC's portfolio of resources to perform operational planning studies. The Commission required MISO to provide clarification that MISO, via its Reliability Subcommittee, was continuing to discuss reliability concerns at the local balancing authority level, as well as the need for elemental pricing node information from the local balancing areas. Finally, the Commission ordered MISO to provide clarification that load-serving entities will have access to all pertinent metering, settlements, and measurement and verification information associated with the operation of an ARC in the load-serving entities' zones, and that they will be notified of cleared ARC load reduction offers in real-time through settlement data.²³⁹

138. The Commission determined that the use of email was both a reliable and efficient way 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. The Commission directed MISO to propose language to implement this

²³⁷ MISO January 2010 Informational Filing at 2.

²³⁸ Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at P 204.

²³⁹ *Id.* P 205.

procedure in its Tariff, including a timeline for when such notification will be sent to the local balancing authority.²⁴⁰

iv. March 2012 Filings

139. In its March 2012 Compliance Filing, MISO proposes to revise section 38.6(5) of the Tariff to state that demand response resources registered by an ARC are subject to the same information protocols as all demand response resources, pursuant to section 38.7.2 of the Tariff.²⁴¹ MISO proposes to clarify in section 38.7.2 that local balancing authorities will participate with MISO in reviewing the composition of commercial pricing nodes proposed by ARCs and that local balancing authorities will have access to the electrical location and magnitude of resources in an ARC's portfolio of resources to perform operational planning studies. MISO proposes to modify section 38.7.2 to clarify that load-serving entities will have access to all pertinent metering, settlements, and measurement and verification information associated with the operation of an ARC in a load-serving entity's zone, and that they will be notified of cleared ARC load reduction offers in real-time through settlement data. MISO also proposes to include language in section 38.7.2 addressing the avoidance of double counting and the use of email.²⁴²

140. In its March 2012 Amended Filing, MISO submitted proposed revisions to section 38.7.2 to revise its process for communicating day-ahead cleared schedules for demand response resources to local balancing authorities. In particular, MISO proposes to revise the section to (1) provide that local balancing authorities in which a demand response resource has a day-ahead schedule for energy will receive an email informing them that information pertaining to demand response resources' day-ahead schedules is available via MISO's market portal and (2) describe the information that will be posted via the market portal.²⁴³

v. Commission Determination

141. We will accept, as compliant with the Order No. 719 Compliance Order, MISO's proposed changes to sections 38.6(5) and 38.7.2 of the Tariff to provide information access and information sharing procedures. MISO provides clarification that local balancing authorities will participate with MISO in reviewing the composition of

²⁴⁰ *Id.* P 206.

²⁴¹ MISO March 2012 Compliance Filing, Transmittal Letter at 14-15.

²⁴² *Id.*

²⁴³ MISO March 2012 Amended Filing, Transmittal Letter at 2.

commercial pricing nodes proposed by ARCs and that local balancing authorities will have access to information on the electrical location and magnitude of resources in an ARC's portfolio. We also accept MISO's proposed clarification regarding information sharing with load-serving entities, as well as the proposed language regarding the use of email.

e. Credit Requirements

i. Order No. 719

142. In Order No. 719, the Commission stated that RTOs 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.²⁴⁴

ii. October 2009 Compliance Filing

143. In its October 2009 Compliance Filing, MISO amended its credit requirements under its Credit Policy, as set forth in 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. Among other things, MISO proposed 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.²⁴⁵

iii. Order No. 719 Compliance Order

144. In the Order No. 719 Compliance Order, the Commission directed 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. 741.²⁴⁶ The Commission also directed MISO to clarify its request in its December 15, 2009 Answer

²⁴⁴ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 158.

²⁴⁵ See MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Second Revised Sheet No. 2476.

²⁴⁶ Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at P 211 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 136 FERC ¶ 61,188 (2011); *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, *order denying reh'g*, Order No. 741-B, 135 FERC ¶ 61,242 (2011)).

to apply the minimum capacity requirement of one MWh in calculating an ARC's minimum credit requirements and to revise Attachment L of the Tariff as needed.²⁴⁷

iv. March 2012 Compliance Filing

145. MISO states that its formula for estimating an ARC's Total Potential Exposure uses a proxy value for the number of hours that are reasonably expected to be utilized for demand response resources within a given Total Potential Exposure window. As a result, MISO proposes to revise the formula for calculating an ARC's initial (or estimated) Total Potential Exposure to be consistent with the changes to its billing periods required in compliance with Order No. 741. In particular, MISO proposes a reduction to the proxy value from 345 hours to 304 hours based on the number of peak hours in a given Total Potential Exposure window. MISO argues that this reduction of the proxy hours is consistent with the seven-day reduction in the billing period that was applied by changing the invoicing to be based on the seven-day settlement as opposed to the fourteen-day settlement.

146. MISO argues that, in light of the recent protections put in place regarding the minimum requirements for participation for all market participants as part of Order No. 741, it is no longer necessary to consider a minimum requirement of one MW when calculating an ARC's initial value of Total Potential Exposure.²⁴⁸

v. Commission Determination

147. We find that MISO has satisfied the requirements of the Order No. 719 Compliance Order regarding its credit requirements for ARCs. In particular, MISO has revised its formula for calculating an ARC's Total Potential Exposure consistent with the changes to its billing periods required by Order No. 741. MISO has also clarified its request to apply a minimum capacity requirement in calculation an ARC's minimum credit requirement.

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

a. Order No. 719

148. 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

²⁴⁷ *Id.*

²⁴⁸ MISO March 2012 Compliance Filing, Transmittal Letter at 15.

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.²⁴⁹ 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.²⁵⁰ Each RTO or ISO must address how its selected method of shortage pricing interacts with its existing market design.²⁵¹

149. 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.²⁵²

²⁴⁹ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 194.

²⁵⁰ 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 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.

²⁵¹ *Id.* P 204.

²⁵² 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.* PP 246-247.

b. April 2009 Compliance Filing and October 2009 Compliance Filing

150. MISO stated that it provides for shortage pricing via a demand curve for operating reserves as part of its co-optimized energy and operating reserve 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.²⁵³

151. 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 stated that its compliance filing to the Ancillary Services Market Start-Up Order,²⁵⁴ as well as the ancillary services market rules previously approved by the Commission,²⁵⁵ show that it meets these criteria. It provided no other direct response to the six criteria. MISO stated that because the operating reserves market was less than four months old, there was an incomplete factual record to support its shortage pricing mechanism in the co-optimized energy and operating reserve markets.

c. Order No. 719 Compliance Order

152. The Commission agreed that there had been insufficient time for MISO to evaluate its pricing rules' effectiveness when it filed its compliance filing and, therefore, there was an insufficient basis for claiming that the six criteria had been met. As sufficient time had elapsed since the commencement of the market, the Commission required MISO to provide adequate factual support for its pricing rules during periods of operating reserve shortages, including direct responses to the six criteria outlined by the Commission in Order No. 719.²⁵⁶

²⁵³ MISO April 2009 Compliance Filing, Transmittal Letter at 20-21. For a more complete description of MISO's statements regarding its shortage pricing provisions, *see* Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at PP 215-219.

²⁵⁴ MISO April 2009 Compliance Filing, Transmittal Letter at 23-24 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,318 (2008) (Ancillary Services Market Start-Up Order)).

²⁵⁵ *Id.* at 21 (citing ASM Order, 122 FERC ¶ 61,172 at PP 191-220).

²⁵⁶ Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at P 231.

d. March 2012 Compliance Filing

153. MISO maintains that its shortage pricing during periods of operating reserve shortages satisfies the six criteria outlined by the Commission in Order No. 719. First, MISO argues that its pricing rules improve reliability during periods of operating reserve shortages. It states that, as operating reserves are depleted, it progressively raises energy and operating reserve prices within reserve zones, thereby increasing supply and reducing demand to improve reliability.²⁵⁷ Second, MISO contends that its pricing rules during shortage conditions make it worthwhile for customers to invest in demand response technologies because elevated prices increase customers' costs for consuming energy. Third, MISO maintains that its pricing rules encourage existing generation and demand resources to remain in business because high prices during shortage conditions create incentives for demand reductions and supply resource availability when and where they are needed most. Fourth, MISO asserts that its pricing rules during shortage conditions encourage the entry of new generation and demand resources. It states that new investment is driven by projections of future market prices and the resultant profits or cost savings, and MISO's pricing rules provide developers with certainty regarding elevated future energy prices during times of supply scarcity.²⁵⁸ Fifth, MISO argues that its pricing rules treat demand response resources comparably to other resources during operating reserve shortages because they are paid the same prices as generation resources. Sixth, MISO maintains that it has appropriate market power mitigation provisions during operating reserve shortages. Among other things, it states that it works closely with the IMM to evaluate whether market participants are attempting to exercise market power or engage in gaming behaviors and continually attempts to improve its market rules and procedures. MISO states that demand response resource participation in its energy and operating reserve markets is a good example of how promotion of demand response can discipline the bidding behavior of generation resources so that they provide market services to the MISO region at the most competitive levels.²⁵⁹

e. Commission Determination

154. We find that MISO has complied with the Commission's requirements regarding price formation during periods of operating reserve shortages. MISO has provided an adequate factual record to support its pricing rules during periods of operating reserve shortages. MISO has also provided a direct response to the six criteria outlined by the Commission in Order No. 719.

²⁵⁷ MISO March 2012 Filing, Transmittal Letter at 16-17.

²⁵⁸ *Id.* at 17.

²⁵⁹ *Id.* at 18.

4. Market Monitoring Policies

a. Order No. 719

155. In Order No. 719, the Commission established several requirements with regard to RTO and ISO market monitoring policies. Among other things, the Commission required RTOs and ISOs to release offer and bid data on a three-month lag.²⁶⁰ The Commission stated that MMUs are to entertain state commissions' tailored requests for information regarding general market rules and performance of the wholesale market. The Commission stated that market participants have the right to provide context to this data, so long as the process does not unduly delay release of the information.²⁶¹ The Commission also adopted protocols for referrals by MMUs to the Commission of suspected market violations and perceived market design flaws, which are set forth at 18 C.F.R. § 35.28(g)(iv)(v).²⁶²

b. April 2009 Compliance Filing

156. In its April 2009 Compliance Filing, MISO proposed, among other things, to revise sections 44.7 and 45.7 of its Tariff to implement the three-month lag period for the dissemination of financial transmission rights offer and bid data. 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.²⁶³ MISO proposed to retain its current process under section 38.9.4 of the Tariff regarding the disclosure of information to state regulatory agencies.²⁶⁴ MISO also proposed to revise section 53.3 to require its Independent Market Monitor to follow the Commission's protocol for referrals.²⁶⁵

²⁶⁰ The Commission stated that an RTO or ISO may propose a shorter lag time for the release of offer and bid data and provide accompanying justification. Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 424.

²⁶¹ *Id.* PP 446, 455.

²⁶² *Id.* P 465.

²⁶³ MISO April 2009 Compliance Filing, Transmittal Letter at 36.

²⁶⁴ *Id.* at 37.

²⁶⁵ *Id.* at 38.

c. Order No. 719 Compliance Order

157. In the Order No. 719 Compliance Order, the Commission expressed concern that sections 44.7 and 45.7 of the MISO Tariff can be read that the provision of bid and offer data is an option rather than a requirement and directed MISO to revise these sections to provide an affirmative statement that such release of data will occur.²⁶⁶ The Commission also stated that there is some ambiguity as to whether MISO will provide data on all bids and offers and required MISO to clearly state in its Tariff on compliance that all bid and offer data will be provided rather than only cleared bids and offers.²⁶⁷ The Commission noted that sections 38.9.4.5(d) and (e) do not provide market participants with the opportunity to provide context to data provided in response to information requests and required MISO to rectify this failure on compliance.²⁶⁸ The Commission also expressed concern that the third sentence of section 53.3.1.a, which would allow MISO rather than the Commission to determine if a violation could be excluded from the referral protocol as being objectively identifiable, is not consistent with Commission policy. The Commission required MISO to remove this sentence. The Commission stated that MISO may add a new provision listing the specific existing provisions in its Tariff that it believes meet the three requirements for exclusion from referral.²⁶⁹

d. March 2012 Compliance Filing

158. In its March 2012 Compliance Filing, MISO proposes to revise sections 44.7 and 45.7 to provide that MISO will release bid and offer data three months after the auction and that all bid and offer data will be provided rather than only cleared bids and offers.²⁷⁰ MISO proposes to revise section 38.9.4.5 to provide that a market participant will have three business days to provide to MISO and the Independent Market Monitor written information to provide context to the information sought by an information request, and that MISO or the Independent Market Monitor will include the contextual statement in their response to the information request.²⁷¹ MISO states that it will delete the third

²⁶⁶ Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at P 312.

²⁶⁷ *Id.* P 313.

²⁶⁸ *Id.* P 322.

²⁶⁹ *Id.* PP 325-326.

²⁷⁰ MISO, FERC Electric Tariff, [44.7, Continuing Confidentiality of FTR Bids, 1.0.0](#), [45.7, Continuing Confidentiality of FTR Bids, 1.0.0](#).

²⁷¹ MISO March 2012 Compliance Filing, Transmittal Letter at 23.

sentence of section 53.3.1.a regarding referrals by the Independent Market Monitor, as required by the Order No. 719 Compliance Order.²⁷² In addition, MISO proposes to remove language from section 53.1 that requires the Independent Market Monitor to review and analyze the schedules and offers submitted by several types of resources in or affecting any of MISO's markets and services.²⁷³

e. Comments and Protests

159. DC Energy contends that MISO's proposed Tariff revisions regarding the disclosure of bid and offer data do not fully comply with the Commission's directives. According to DC Energy, in the Order No. 719 Compliance Order, the Commission agreed with DC Energy that all bid and offer data, not just cleared bids and offers, would be provided.²⁷⁴ While DC Energy states that MISO's proposed revisions to sections 44.7 and 45.7 "are fully appropriate," it requests that the Commission direct MISO to also revise Article III, section 8(a) of Attachment Z of MISO's Tariff to clarify that all bid and offer information for all energy markets or market activities will be published with a 90-day lag.²⁷⁵

f. Commission Determination

160. We find that MISO has complied with the market monitoring requirements of Order No. 719, except where noted below, and we will conditionally accept the associated Tariff revisions.

161. In the Order No. 719 Compliance Order, the Commission required 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."²⁷⁶ While MISO proposes to revise sections 44.7 and 45.7 of the Tariff accordingly, this requirement was not limited to only those sections of the Tariff. Therefore, we agree with DC Energy that MISO should also revise Attachment Z to provide that all bid and offer data will be provided, rather than only

²⁷² *Id.* at 24.

²⁷³ MISO, FERC Electric Tariff, [53.1, Conditions, Functions or Actions Monitored, 2.0.0](#), § 53.1.a.

²⁷⁴ DC Energy Protest at 2-3 (citing Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at P 313).

²⁷⁵ *Id.*

²⁷⁶ Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at P 313.

cleared bids and offers. We will require MISO to submit, in the compliance filing directed below, revisions to modify Article III, section 8(a) of Attachment Z accordingly.

162. We also find that MISO has not complied with the Commission's requirement to remove the third sentence of section 53.3.1.a.²⁷⁷ We will require MISO to submit, in the compliance filing directed below, Tariff revisions to modify section 53.3.1.a accordingly. Consistent with the Order No. 719 Compliance Order, we note that MISO may add a new provision in that section or elsewhere in the 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.²⁷⁸

163. In addition, MISO proposes to remove language in section 53.1 providing that the MMU will review and analyze:

The schedules and Offers submitted for and actual dispatch of Generation Resources, Stored Energy Resources, Intermittent Resources, Dispatchable Intermittent Resources, Demand Resources, B[ehind] T[he] M[eter] G[eneration] and Demand Response Resource – Type I and Demand Response Resource – Type II in or affecting any of the Markets and Services.”²⁷⁹

MISO has not explained its rationale for proposing this change or whether it believes this change is necessary to comply with the requirements of the Order No. 719 Compliance Order. We will require MISO to submit, in the compliance filing directed below, either Tariff revisions to reinsert this language into section 53.1 or an explanation of why the removal of this language is necessary to comply with the Order No. 719 Compliance Order.

5. Effective Date

164. In the Order No. 719 Compliance Order, the Commission accepted MISO's April 2009 Compliance Filing, to be effective June 27, 2009, as requested, subject to further compliance. The Commission also accepted in part the October 2009 Compliance

²⁷⁷ *Id.* P 326.

²⁷⁸ *Id.*

²⁷⁹ MISO, FERC Electric Tariff, [53.1, Conditions, Functions or Actions Monitored, 2.0.0](#), § 53.1.a.

Filing, effective March 1, 2010 and June 1, 2010 as requested, subject to a further compliance filing.²⁸⁰

165. MISO requests that the Tariff revisions submitted in the March 2012 Compliance Filing have the same effective date as was granted by the Commission with regard to the Tariff revisions submitted in MISO's Order No. 745 compliance filing.²⁸¹ MISO asserts that the technical changes necessitated by the March 2012 Compliance Filing will "alter the way in which MISO settles the Energy market and are integrally related to the issues and changes that will be addressed in the Order No. 745 compliance filing."²⁸² MISO thus claims that an extension of time beyond the effective dates initially prescribed in the Compliance Order is essential for the purpose of allowing MISO to design, test, train, and implement the required systems and procedures necessary for continued reliable market conditions. In addition, MISO requests that the Tariff revisions submitted in the March 2012 Amended Filing have the same effective date as the Tariff revisions submitted in the March 2012 Compliance Filing.²⁸³

166. We will conditionally accept the Tariff revisions submitted in the March 2012 Filings effective June 12, 2012, as requested.

6. Miscellaneous Issues

167. We find that MISO has not fully complied with the Commission's requirement to correct certain typographical errors. MISO did not submit Tariff revisions to remove from section 38.6(1) "the comma in the first sentence, following the word 'preclude,'" or to "insert a comma after 'net of Real-Time Financial Schedules' both times the phrase occurs in the first sentence of section 40.3.3.c.i," as required by the Order No. 719 Compliance Order.²⁸⁴ We will require MISO to submit, in the compliance filing directed below, Tariff revisions to modify sections 38.6(1) and 40.3.3.c.i accordingly.

²⁸⁰ See, e.g., Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at ordering para. (A) – (B).

²⁸¹ MISO March 2012 Compliance Filing, Transmittal Letter at 25 (citing, e.g., MISO February 1, 2012 Motion for Extension of Time, Docket No. ER11-4337-000). See also *Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,143 (2012).

²⁸² MISO March 2012 Compliance Filing, Transmittal Letter at 25.

²⁸³ MISO March 2012 Amended Filing, Transmittal Letter at 2.

²⁸⁴ Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at PP 327-329.

168. MISO should submit, in the compliance filing directed below, Tariff revisions to ensure that the Tariff sheets conditionally accepted herein reflect Tariff revisions accepted in previous proceedings. For example, section I.A.7.c(i) of MISO's Credit Policy, as set forth in Attachment L of its Tariff, does not reflect language that was previously accepted by the Commission.²⁸⁵

169. We will require MISO to submit, in the compliance filing directed below, Tariff revisions to address the following concerns regarding the proposed Tariff revisions:

- 1) Throughout the Tariff, MISO should refer consistently to regulation-qualified Demand Response Resources – Type II as “Regulation Qualified Resources,” consistent with the term defined in section 1.557 of the Tariff.²⁸⁶
- 2) In several sections, MISO refers to the acronyms “AS Event,” “CPNode,” “C PNode,” “DRR,” “DR TOOL,” “END OD job,” “EPNode,” “Hourly DCL,” “Hourly Gen,” “LBA,” “m&v,” which are not defined in the Tariff.²⁸⁷
- 3) In several sections, MISO does not consistently capitalize terms to indicate that they are defined in the Tariff, or to refer to terms that are defined in the Tariff, including “Behind the Meter Generation,” “Bid,” “Business Day,” “Calendar Day,” “Contingency Reserve,” “Dispatch Instruction,” “Hour,” “Load,” “Metered,” “Offer,” “Operating Day,” “Outage,” “Resource,” “Settlement.”²⁸⁸
- 4) Section 38.7.2.1 should have a comma moved, so that it refers to “a Demand Response Resource, either located in the applicable LBA” rather than “a Demand Response Resource either, located in the applicable LBA.”²⁸⁹

²⁸⁵ *Midwest Independent Transmission System Operator, Inc.*, Docket Nos. ER12-1459-000 and ER12-1459-001 (Jun. 20, 2012) (letter order).

²⁸⁶ MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Third Revised Sheet No. 259.

²⁸⁷ *See, e.g., id.*, [38.6, Aggregators of Retail Customers, 1.0.0, ATTACHMENT TT, Measurement and Verification \("M and V"\) Criteria, 1.0.0.](#)

²⁸⁸ *See, e.g., id.*, [44.7, Continuing Confidentiality of FTR Bids, 1.0.0, ATTACHMENT TT, Measurement and Verification \("M and V"\) Criteria, 1.0.0.](#)

²⁸⁹ *Id.*, [38.7.2, Demand Response Resource Procedures, 2.0.0](#), § 38.7.2.1.

- 5) Section 38.7.2.1 should refer to “Demand Response Resource effective date” and “Demand Response Resource termination date” rather than “effective date” and “termination date,” respectively.²⁹⁰
- 6) Section 38.7.2.4 should refer to “cleared Day-Ahead Schedules” rather than “Day-Ahead Cleared Schedules,” which is not defined in the Tariff.²⁹¹
- 7) Sections 44.7 and 45.7 should refer to “FTR Auction” rather than “the auction,” which is not defined in the Tariff.²⁹²

170. We note that several Tariff sections in the March 2012 Filing reflect Tariff revisions proposed in the MISO Order No. 745 compliance proceeding.²⁹³ Therefore, our conditional acceptance of these sections in this proceeding is subject to the outcome of the MISO Order No. 745 compliance proceeding. Finally, to the extent that any of the Tariff revisions proposed in the March 2012 Filings are not specifically addressed herein, we accept them.

The Commission orders:

(A) The requests for rehearing and/or clarification in Docket No. ER09-1049-005 are hereby denied, as discussed in the body of this order.

(B) MISO’s proposed Tariff revisions in Docket Nos. ER12-1265-000 and ER12-1265-001 are hereby conditionally accepted, as discussed in the body of this order.

²⁹⁰ *Id.*

²⁹¹ *Id.* § 38.7.2.4.

²⁹² *Id.*, [44.7, Continuing Confidentiality of FTR Bids, 1.0.0](#), [45.7, Continuing Confidentiality of FTR Bids, 1.0.0](#).

²⁹³ *See, e.g., id.*, [38.7.2, Demand Response Resource Procedures, 2.0.0](#).

(C) MISO is hereby required to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

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

Commissioner Clark is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Midwest Independent Transmission System Operator, Inc. ER12-1266-000

ER12-1266-001

ER11-4337-001

Midwest Independent Transmission System Operator, Inc. ER12-1265-000

ER12-1265-001

ER09-1049-005

(not consolidated)

(Issued July 19, 2012)

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 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.

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.

² 16 U.S.C. § 824d (2006).

In addition, 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