

2. On March 14, 2012, as amended on March 23, 2012, MISO submitted a filing to comply with the Commission's Order No. 745 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. 745 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. 719 and a further compliance filing due within 30 days of the date of this order.

I. Background

A. Order No. 719 and MISO Order No. 719 Compliance Filings

4. In Order No. 719, the Commission established reforms to improve the operation of organized wholesale electric power markets, including with respect to demand response, and amended its regulations under the Federal Power Act (FPA) accordingly.

5. Specifically, in the area of demand response, the Commission required Regional Transmission Organizations (RTO) and Independent System Operators (ISO) to: (1) accept bids from demand response resources in RTOs' and ISOs' markets for certain ancillary services on a basis comparable to other resources; (2) eliminate, during a system emergency, a charge to a buyer that takes less electric energy in the real-time market than it purchased in the day-ahead market; (3) in certain circumstances, permit an aggregator of retail customers (ARC)⁶ to bid demand response on behalf of retail customers directly into the organized energy market; (4) modify their market rules, as necessary, to allow

⁵ MISO March 14, 2012 Compliance Filing, Docket No. ER12-1266-000 (March 2012 Compliance Filing); MISO March 23, 2012 Amended Compliance Filing, Docket No. ER12-1266-001 (March 2012 Amended Filing).

⁶ 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.

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. On April 28, 2009, MISO submitted a compliance filing, pursuant to Order No. 719, which proposed revisions to its Tariff.⁸ In that filing, among other things, MISO addressed the aforementioned Order No. 719 requirements for demand response resources. 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.⁹ In an order issued December 15, 2011,¹⁰ the Commission conditionally accepted the April 2009 Compliance Filing and October 2009 Compliance Filing.

B. Order No. 745

7. On March 15, 2011, the Commission issued Order No. 745, which addressed compensation for demand response resources participating in wholesale energy markets (i.e., the day-ahead and real-time markets) administered by RTOs and ISOs and amended the Commission's regulations under the FPA.¹¹ Specifically, Order No. 745 required each RTO and ISO to pay a demand response resource the market price for energy (i.e., the locational marginal price or LMP) when two conditions are met. First, the demand response resource must have the capability to balance supply and demand as an alternative to a generation resource. Second, dispatching the demand response resource must be cost-effective as determined by a net benefits test in accordance with Order No. 745. The net benefits test, as described more fully below, is necessary to ensure that the overall benefit of the reduced LMP that results from dispatching demand response resources exceeds the costs of dispatching and paying LMP to those resources.

⁷ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at PP 4, 15.

⁸ MISO April 28, 2009 Order No. 719 Compliance Filing, Docket No. ER09-1049-000 (April 2009 Compliance Filing).

⁹ MISO October 2, 2009 Supplemental Order No. 719 Compliance Filing, Docket No. ER09-1049-002 (October 2009 Compliance Filing).

¹⁰ *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,214 (2011) (Order No. 719 Compliance Order).

¹¹ Order No. 745, FERC Stats. & Regs. ¶ 31,322.

8. In order to implement the net benefits test, the Commission directed each RTO and ISO to develop a mechanism to approximate the price level at which dispatching demand response resources would be cost-effective. The Commission required each RTO and ISO to make a compliance filing by July 22, 2011, proposing tariff revisions necessary to implement the compensation approach adopted in Order No. 745, including the net benefits test, a cost allocation mechanism, and an assessment of their demand response measurement and verification protocols and any modifications to those protocols that may be necessary to ensure adequate baseline measurement and verification of demand response performance. The Commission stated that each RTO's or ISO's compliance filing would become effective prospectively from the date of the Commission order addressing that filing.

C. MISO Order No. 745 Compliance Filing

9. On August 19, 2011, MISO submitted its Order No. 745 compliance filing. Among other things, MISO proposed to pay the applicable hourly LMP (i.e., the day-ahead LMP or hourly *ex post* LMP in the day-ahead or real-time market, respectively) to demand response resources that clear the day-ahead and/or real-time energy market when the LMP equals or exceeds the Net Benefits Price Threshold (i.e., when the deployment of demand response resources is cost effective). However, MISO proposed to provide no compensation to such resources if: (1) the applicable hourly LMP is below the Net Benefits Price Threshold, or (2) the demand response is facilitated by behind-the-meter generation, regardless of whether the demand response is cost effective. MISO also proposed that demand response resources should be ineligible to receive Revenue Sufficiency Guarantee credits¹² when they are ineligible to receive the applicable hourly LMP.¹³

10. MISO proposed to allocate demand response costs via: (1) a direct cost allocation to each load-serving entity responsible for serving the retail load of the demand response resources that benefit; (2) a zonal energy surcharge to all market participants in the reserve zone¹⁴ of the demand response resources that benefit by purchasing energy in the

¹² Revenue Sufficiency Guarantee credits ensure that market participants that are committed and scheduled by MISO in the day-ahead and/or real-time energy market recover their production and operating reserve costs. MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet No. 113 and First Revised Sheet No. 255.

¹³ MISO August 2011 Compliance Filing, Transmittal Letter at 5.

¹⁴ Section 1.574 of the MISO Tariff defines "Reserve Zone" as "[a] specific group of Resource, Load, and Interface C[ommercial] P[ricing] Nodes where a minimum Operating Reserve requirement is established through Reserve Zone Configuration

(continued...)

real-time market at reduced LMPs; and (3) to the extent that the total compensation paid to demand response resources exceeds the costs recovered under the cost allocation methodology in (1) and (2) above, MISO proposed to allocate the remaining costs *pro rata* to all market participants on its system.¹⁵ MISO proposed to directly allocate costs to load-serving entities in (1) above consistent with the benefits they receive by avoiding losses from selling energy to retail customers at their respective retail rates (i.e., when the hourly *ex post* LMP exceeds the applicable Marginal Foregone Retail Rate (MFRR)).

11. With regard to measurement and verification, MISO proposed Tariff revisions to keep the one-to-one relationship between the Host Load Zone¹⁶ and Demand Response Resources – Type II that are qualified to provide regulating reserves, and to eliminate the Host Load Zone requirement for demand response resources providing energy, contingency reserves, or capacity, as proposed in its October 2009 Compliance Filing in the MISO Order No. 719 compliance proceeding.¹⁷ MISO also proposed to establish registration requirements for demand response resources.¹⁸ As proposed in its October 2009 Compliance Filing, MISO maintained that its Business Practices Manuals would be updated to provide the implementation details for measurement and verification of demand response.¹⁹

D. Order No. 745-A

12. On December 15, 2011, the Commission denied rehearing of Order No. 745 and granted in part and denied in part requested clarifications.²⁰ Among other things, in

Studies. . .” MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet No. 264.

¹⁵ MISO August 2011 Compliance Filing, Transmittal Letter at 10-12.

¹⁶ 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.

¹⁷ MISO August 2011 Compliance Filing, Transmittal Letter at 7-8. *See also* MISO October 2009 Compliance Filing, Transmittal Letter at 19-20, Ex. C at 22-23.

¹⁸ MISO, FERC Electric Tariff, 38.7.2, Demand Response Resource Procedures, 0.0.0.

¹⁹ MISO August 2011 Compliance Filing, Transmittal Letter at 7-8.

²⁰ Order No. 745-A, 137 FERC ¶ 61,215.

Order No. 745-A, the Commission stated that the existence of behind-the-meter generation or the potential manner in which behind-the-meter generation is treated by RTOs and ISOs should not invalidate the payment of the LMP. The Commission explained that from the perspective of the grid, the manner in which a customer is able to produce a load reduction from its validly-established baseline (whether by shifting production, using internal generation, consuming less electricity, or other means) does not change the effect or value of the reduction to the wholesale grid.²¹ The Commission also determined that requests relating to the proper allocation of costs would be more appropriately addressed in the individual compliance filing proceedings.²²

E. Order No. 745 Compliance Order

13. In the Order No. 745 Compliance Order, the Commission conditionally accepted in part and rejected in part MISO's August 2011 Compliance Filing, subject to a further compliance filing and to the outcome of the MISO Order No. 719 proceeding.²³ Among other things, the Commission conditionally accepted MISO's proposal to pay the applicable hourly LMP to demand response resources when the applicable hourly LMP equals or exceeds the Net Benefits Price Threshold.²⁴ The Commission required MISO to revise several sections of its demand response compensation proposal, including the definition of "Net Benefits Supply Curve" in section 1.443c to ensure that the real-time offers used by MISO are updated monthly as new data become available.²⁵

14. The Commission rejected as beyond what was required to comply with Order No. 745 MISO's proposal to exclude from compensation demand response resources for which demand response is facilitated by behind-the-meter generation.²⁶ The Commission stated that Order No. 745 did not require an RTO or ISO to differentiate between demand

²¹ *Id.* P 66.

²² *Id.* P 118.

²³ The Commission granted MISO's request for additional time, so that the Tariff revisions are effective 120 days from the date of the Order No. 745 Compliance Order. Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 130.

²⁴ The Commission noted that, in several instances, the proposed Tariff revisions are identical to or modify Tariff provisions proposed in the MISO Order No. 719 compliance proceeding. *Id.* P 36.

²⁵ *Id.* P 45.

²⁶ *Id.* P 71.

response resources for which demand response is facilitated by behind-the-meter generation and other demand response resources.²⁷ The Commission also rejected MISO's proposal not to compensate demand response resources, and to make them ineligible for day-ahead and real-time Revenue Sufficiency Guarantee credits, when the applicable hourly LMP is less than the Net Benefits Price Threshold. The Commission found that the proposed Tariff revisions were beyond the scope of the Commission's directives in Order No. 745 because they addressed demand response compensation when the applicable hourly LMP is below the Net Benefits Price Threshold.²⁸

15. The Commission rejected MISO's proposed cost allocation methodology and directed MISO to submit a just and reasonable cost allocation proposal. The Commission stated that MISO's proposal to rely on the MFRR to directly allocate costs to load-serving entities was not sufficiently fixed and predictable,²⁹ as the MFRR component of the formula lacked the specificity required for ratemaking purposes and was not tied to any objectively identifiable criteria.³⁰ The Commission stated that MISO's proposal required that the relevant electric retail regulatory authorities specify the MFRR during the registration of demand response resources, and that allowing "such unfettered discretion to set the MFRR is contrary to the Commission's obligation to set jurisdictional rates."³¹

16. In addition, the Commission deferred judgment as to whether MISO had complied with the measurement and verification requirements of Order No. 745. The Commission required MISO to provide an explanation of how its measurement and verification protocols comply with the requirements of Order No. 745, and directed it to provide further explanation of, and modifications to, several related Tariff sections.³²

²⁷ *Id.* P 72.

²⁸ *Id.* P 37 (citing Order No. 745-A, 137 FERC ¶ 61,215 at P 133).

²⁹ *Id.* P 99 (citing *Ocean State Power II*, 69 FERC ¶ 61,146, at 61,552 (1994) (*Ocean State II*)).

³⁰ *Id.* (citing *FPC v. Texaco*, 417 U.S. 380, 395-96 (1974) (*FPC*); *PG&E v. FERC*, 306 F.3d 1112, 1119 (D.C. Cir. 2002) (*PG&E*); *California PUC v. FERC*, 254 F.3d 250, 254-56 (D.C. Cir. 2001) (*California PUC*)).

³¹ *Id.* (citing *California PUC*, 254 F.3d at 255; *PG&E*, 306 F.3d at 1119).

³² *Id.* PP 122-128.

17. On February 1, 2012, MISO filed a motion for extension of time to implement the Tariff revisions accepted in the Order No. 745 Compliance Order.³³ The Commission granted MISO's motion and made the Tariff revisions effective 180 days from the date of the Order No. 745 Compliance Order.³⁴

F. March 2012 Filings

18. On March 14, 2012, MISO submitted its filing to comply with the Order No. 745 Compliance Order, as discussed in detail below. Among other things, MISO proposes Tariff revisions regarding compensation for demand response resources, including provision of additional information regarding the determination of the Net Benefits Price Threshold. MISO proposes to allocate the cost of compensating cost-effective demand response resources to the reserve zones where the demand response resources that reduce demand are located. MISO also proposes measurement and verification protocols for demand response resources in a new Attachment TT to the Tariff.

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.³⁵

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

20. Electric Power Supply Association (EPSA) and Midwest TDUs³⁶ filed timely requests for rehearing of the Order No. 745 Compliance Order. MISO timely filed a request for clarification or, in the alternative, rehearing. 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. 16,827 (2012), with interventions and protests due on or before April 4, 2012. Notice of MISO's March 2012 Amended Filing was published in the

³³ MISO February 1, 2012 Motion for Extension of Time, Docket No. ER11-4337-000.

³⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,143 (2012) (Effective Date Order).

³⁵ MISO March 2012 Amended Filing, Transmittal Letter at 1-2.

³⁶ For the purposes of this proceeding, Midwest TDUs include Madison Gas and Electric Company, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, Southern Minnesota Municipal Power Agency, and WPPI Energy.

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;³⁷ Coalition of Midwest Transmission Customers (Midwest Transmission Customers); Consumers Energy Company; Detroit Edison Company; EnerNOC, Inc. (EnerNOC); Exelon Corporation; Minnesota Large Industrial Group (Minnesota Industrials) and Wisconsin Industrial Energy Group (Wisconsin Industrials); Wisconsin Electric Power Company; and Xcel Energy Services, Inc. (Xcel).³⁸ 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); Environmental Law & Policy Center and Union of Concerned Scientists (jointly, Environmental and Science Protesters); Michigan South Central Power Agency (Michigan South Central); and Midwest TDUs. 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). 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.

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 (2011), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2011), the Commission will grant Illinois Commission's late-filed motion to intervene, given its 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 and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answer filed by MISO because it has assisted us in our decision-making process.

³⁷ 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.

³⁸ Xcel submitted the filing on behalf of Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation.

B. Requests for Rehearing of the Order No. 745 Compliance Order in Docket No. ER11-4337-001

1. Compensation for Demand Response Facilitated by Behind-the-Meter Generation

a. Requests for Rehearing

24. Midwest TDUs and EPSA assert that the Commission's rejection of MISO's proposal to exclude from compensation demand response that is facilitated by behind-the-meter generation was arbitrary, capricious, and unsupported by substantial evidence. Midwest TDUs acknowledge that prior to Order No. 745, the definition of demand response resources in MISO's Tariff encompassed demand response facilitated by behind-the-meter generation. They argue, however, that because Order No. 745 mandated a new level of compensation (i.e., compensation at the LMP) for cost-effective demand response resources, MISO was entitled to change its previous treatment of demand response resources. Specifically, Midwest TDUs claim that it is arbitrary and capricious for the Commission to impose a new compensation methodology for demand response resources and then hold that the definition of demand response eligible to receive that new compensation falls outside of the scope of this proceeding.³⁹ Midwest TDUs and EPSA claim that it is improper for the Commission to require MISO to uphold a definition of demand response that it used prior to implementing Order No. 745.⁴⁰ EPSA asserts that compensation at the LMP is inappropriate because behind-the-meter generation "is 'an incremental increase in Energy behind the meters,' rather than a 'demand response reduction in energy pursuant to Order No. 745,'" and therefore does not qualify as a net reduction in consumption.⁴¹

25. EPSA argues that MISO's proposal to eliminate compensation for demand response facilitated by behind-the-meter generation is supported by the Commission's statement in Order No. 745-A that changes to market rules governing the treatment of behind-the-meter generation "are *properly* considered as part of" an ISO/RTO's compliance filing."⁴² Noting that MISO had existing (pre-Order No. 745) Tariff

³⁹ Midwest TDUs Request for Rehearing at 8-9.

⁴⁰ *Id.* at 8.

⁴¹ EPSA Request for Rehearing at 13-14.

⁴² *Id.* at 3 & n.12, 12 & n.46 (quoting Order No. 745-A, 137 FERC ¶ 61,215 at P 66 (emphasis added)).

provisions governing demand response facilitated by behind-the-meter generation, EPISA argues that MISO's proposed revisions were within the scope of Order No. 745.

26. Midwest TDUs and EPISA further assert that if behind-the-meter generation is treated as demand response and paid the LMP, then behind-the-meter generation will receive double compensation, as compared to generation located in front of the meter.⁴³ EPISA states that permitting behind-the-meter generation to be paid the LMP will "exacerbate the existing discrimination in favor of [behind-the-meter generation] in MISO's current rules, which permit [behind-the-meter generation] to participate in MISO's markets without being subject to comparable requirements."⁴⁴ EPISA claims that compensation of behind-the-meter generation at the LMP creates a danger of market manipulation by demand response providers and discourages the development of cleaner, more efficient wholesale generation.⁴⁵

27. Midwest TDUs and EPISA further assert that allowing behind-the-meter generation to receive double compensation is unjust and unreasonable and unduly discriminatory and preferential and will create gaming opportunities.⁴⁶ EPISA claims that paying the LMP to loads for "phantom load reductions" and compensating behind-the-meter generation at the LMP will encourage the development of behind-the-meter generation and displace wholesale generation.⁴⁷ EPISA argues that this will result in fracturing ISOs and RTOs, destroying the economic efficiency and reliability they currently provide.⁴⁸ EPISA asserts that the FPA does not authorize the Commission to mandate undue discrimination against wholesale generation in order "to incent and subsidize generation

⁴³ *Id.* at 14; Midwest TDUs Request for Rehearing at 9. Midwest TDUs explain that "double compensation" arises when behind-the-meter generation owned by retail customers is paid the LMP plus the avoided retail rate, whereas generation in front of the meter offered directly into the market is paid only the LMP. *Id.* EPISA alleges that this subsidizes behind-the-meter generation that EPISA alleges are less efficient and more polluting than other generators. EPISA Request for Rehearing at 14-15.

⁴⁴ EPISA Request for Rehearing at 15.

⁴⁵ *Id.* at 20.

⁴⁶ Midwest TDUs Request for Rehearing at 9.

⁴⁷ EPISA Request for Rehearing at 19.

⁴⁸ *Id.*

that is not part of the wholesale market.”⁴⁹ EPSA alleges that the Commission has not satisfied its obligation to engage in reasoned decision making because the Commission did not respond to parties’ objections that behind-the-meter generation should not qualify as demand response and should not receive the LMP.⁵⁰

28. EPSA further argues that the Commission should not require MISO or any ISOs and RTOs to pay behind-the-meter generation the LMP until questions concerning the environmental implications of utilizing demand response resources facilitated by behind-the-meter generation have been answered.⁵¹

b. Commission Determination

29. We deny rehearing and affirm our prior determination that the issue of compensation for demand response facilitated by behind-the-meter generation is beyond the scope of compliance with Order No. 745.⁵² As Midwest TDUs and EPSA acknowledge, before the Commission issued Order No. 745, the MISO Tariff already permitted behind-the-meter generation to receive compensation for facilitating demand response.⁵³ Order No. 745 focused exclusively on the amount of payment demand response would receive and did not require any changes with respect to whether load relying on behind-the-meter generation would be entitled to demand response compensation. Therefore, in the Order No. 745 Compliance Order, the Commission reasonably denied MISO’s proposal to not compensate demand response facilitated by behind-the-meter generation because such change was not required to comply with Order No. 745. This proposal was simply beyond the scope of compliance.

30. EPSA maintains that in Order No. 745-A, the Commission declared that changes to market rules governing the treatment of behind-the-meter generation “are ‘properly considered as part of’ an ISO’s/RTO’s compliance filing.”⁵⁴ However, EPSA quotes the Commission out of context, omitting key qualifiers. Read in full context, the

⁴⁹ *Id.* at 15.

⁵⁰ *Id.* at 16 & n.60 (citing EPSA Comments at 16-18, 24-26).

⁵¹ *Id.* at 20-21.

⁵² Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at PP 71-72.

⁵³ *See, e.g.*, Midwest TDUs Request for Rehearing at 8-9.

⁵⁴ EPSA Request for Rehearing at 3 & n.3, 12 & n.46 (citing Order No. 745-A, 137 FERC ¶ 61,215 at P 66).

Commission stated: “Details associated with *the use and measurement* of [behind-the-meter generation] to facilitate demand response are already part of some RTO and ISO tariffs, and any changes to *such* rules are properly considered either as part of the individual RTO and ISO compliance filings or separate section 205 or 206 filings, *as appropriate.*”⁵⁵ This statement concerning the use and measurement of behind-the-meter generation does not justify eliminating compensation for demand response facilitated by behind-the-meter generation; nor does it preclude MISO from making a filing under section 205 or 206 of the FPA to propose pertinent Tariff modifications, as appropriate.⁵⁶

31. In addition, we note that in Order No. 745, the Commission directed each RTO and ISO to include as part of its compliance filing: (1) “an explanation of how its measurement and verification protocols will continue to ensure that appropriate baselines are set, and that demand response will continue to be adequately measured and verified as necessary to ensure the performance of each demand response resource”;⁵⁷ and (2) if necessary, revisions needed to ensure that measurement and verification of demand response adequately capture the performance (or non-performance) of each participating demand response market participant.⁵⁸ In the Order No. 745 Compliance Order, the Commission directed MISO to revise its measurement and verification protocols, if necessary, to allow for demand response facilitated by behind-the meter generation.⁵⁹ The Commission conditionally accepts in the order on compliance and rehearing of the Order No. 719 Compliance Order, issued concurrently with this order, MISO’s proposed Attachment TT, which will enable MISO to use a validly-established baseline to measure demand reductions from the perspective of the wholesale grid.⁶⁰ If, based on operational experience, EPSA believes that “phantom load reductions” are a problem despite

⁵⁵ Order No. 745-A, 137 FERC ¶ 61,215 at P 66 (emphasis added).

⁵⁶ 16 U.S.C. §§ 824d and 824e (2006).

⁵⁷ Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 94.

⁵⁸ *Id.*

⁵⁹ Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 73.

⁶⁰ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,060 (2012) (Order No. 719 Rehearing and Compliance Order). MISO also filed (the identical) Attachment TT in this proceeding. See MISO, FERC Electric Tariff, ATTACHMENT TT, Measurement and Verification ("M and V") Criteria, 1.0.0.

implementation of Attachment TT, then EPSA may raise its concerns in a section 206 filing.⁶¹

2. Net Benefits

a. Compensation Below the Net Benefits Price Threshold

32. In the Order No. 745 Compliance Order, the Commission rejected MISO's proposal to not compensate demand response resources when the applicable hourly LMP is below the Net Benefits Price Threshold. The Commission also rejected MISO's proposal to make demand response resources ineligible for day-ahead and real-time Revenue Sufficiency Guarantee credits by setting their production costs to zero when the applicable hourly LMP is less than the Net Benefits Price Threshold. The Commission explained that:

In both cases, we find that the proposed Tariff revisions are beyond the scope of the Commission's directives in Order No. 745 because they address demand response compensation when the applicable hourly LMP is below the Net Benefits Price Threshold. As we explain in the concurrently issued order on rehearing of Order No. 745, the Commission's action in Order No. 745, undertaken pursuant to section 206 of the FPA, was limited to situations where a demand response resource has the capability to balance supply and demand as an alternative to a generation resource, and where dispatch of the demand response resource is cost-effective as determined by a net benefits test. The Commission's section 206 action 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 this compliance proceeding. We will require MISO to submit, in the compliance filing directed below, Tariff revisions to remove these proposed provisions. If MISO wishes to propose changes with respect to circumstances that were not addressed by the Commission's section 206 action in Order No. 745, the appropriate forum for such a proposal would be a separate 205 filing.^[62]

⁶¹ 16 U.S.C. § 824e (2006).

⁶² Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 37 (footnotes omitted).

i. Request for Rehearing

33. EPSA asserts that the Commission erred by rejecting, as beyond the scope of the proceeding, MISO's proposal to apply its existing demand response compensation provisions to demand response resources when the net benefits test is not satisfied, pursuant to which such resources did not receive any compensation.⁶³ EPSA states that MISO was determined to apply its existing demand response compensation provisions to demand response resources when the net benefits test is not satisfied, and MISO's only pertinent proposed Tariff revisions were to make such resources ineligible for Revenue Sufficiency Guarantee credits. EPSA contends that the Commission misunderstood MISO's proposal, as indicated by the Commission's compliance directive to MISO. Noting that the Commission ordered MISO to submit in a compliance filing "Tariff revisions to remove these proposed revisions," and listed these rejected provisions in footnote 86 of the Order No. 745 Compliance Order, EPSA states that all the rejected provisions listed in footnote 86 pertain to demand response resources' eligibility to receive Revenue Sufficiency Guarantee credits.⁶⁴

34. EPSA states that "[t]o the extent that the Commission relied on the manifestly false factual determination that MISO proposed revisions that it has not proposed, its decision is not supported by any evidence in the record, much less the substantial evidence to survive judicial review, and it must therefore grant rehearing."⁶⁵ EPSA states that the Commission may not legally require MISO to revise existing Tariff provisions that MISO has not proposed to change in this proceeding, unless it does so under section 206 of the FPA, which the Commission did not claim to be doing.⁶⁶

35. Further, EPSA argues that the Commission's determination ignores its statement that "Order No. 745 did not make any findings as to whether other approaches to

⁶³ EPSA Request for Rehearing at 22 (citing MISO August 2011 Compliance Filing, Transmittal Letter at 5). EPSA states that, under the existing MISO Tariff, demand response resources are paid the LMP when deployed, but the load-serving entity where the demand response resource is deployed is charged the LMP, resulting in a net payment of \$0. *Id.* & n.76.

⁶⁴ *Id.* (quoting Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 37 & n.86).

⁶⁵ *Id.* at 22-23.

⁶⁶ *Id.* at 22.

compensating [resources when the net benefits test is not satisfied] are acceptable.”⁶⁷ EPSA argues that it is therefore arbitrary and capricious for the Commission to interpret Order No. 745’s silence on revising existing rules as a prohibition on the ISO or RTO making changes in the rules governing the treatment of demand response resources when the net benefits test is not satisfied.

36. EPSA states that Order No. 745 was limited to situations when the net benefits test is not satisfied. EPSA contends that, notwithstanding the Commission’s contrary assertions, MISO complied accordingly: MISO’s proposed Tariff revisions apply only when the net benefits test is satisfied, whereas compensation for resources when this test is not satisfied would be governed by the existing MISO Tariff.⁶⁸ Thus, EPSA contends, MISO’s proposal to retain its existing Tariff language is consistent with the plain language of Order No. 745.

ii. Commission Determination

37. We deny rehearing. At the outset we note that EPSA’s request for rehearing on this issue is unclear. For example, EPSA vacillates between asserting, on the one hand, that when the net benefits test is not satisfied, MISO proposed to treat demand response resources under its existing Tariff provisions and the Commission unlawfully directed MISO to change these existing provisions (i.e., without exercising FPA section 206 authority); and, on the other hand, asserting that Order No. 745 does not preclude MISO from revising its treatment of demand response resources when the net benefits test is not satisfied, and acknowledging that MISO proposed Tariff revisions to make such resources ineligible for Revenue Sufficiency Guarantee credits.

38. We note that despite this lack of clarity, EPSA acknowledges that MISO proposed Tariff revisions to make demand response resources ineligible for Revenue Sufficiency Guarantee credits when the net benefits test is not satisfied. The requirements of Order No. 745 are “limited to situations where a demand response resource has the capability to balance supply and demand as an alternative to a generation resource and where dispatch of the demand response resource is cost-effective as determined by a net benefits test.”⁶⁹ The Commission, therefore, properly rejected as beyond the scope of compliance with Order No. 745 MISO’s proposed Tariff revisions concerning periods when the net

⁶⁷ *Id.* (citing Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 47 & n.115).

⁶⁸ *Id.* at 23-24.

⁶⁹ 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).

benefits test is not satisfied.⁷⁰ The Commission also noted that MISO could submit such proposed Tariff modifications in a subsequent filing pursuant to FPA section 205. We reiterate that if MISO wishes to propose changes with respect to circumstances that were not addressed by Order No. 745,⁷¹ MISO may submit such a filing.

b. Posting Net Benefits Price Thresholds

i. Request for Rehearing

39. MISO asserts that in the Order No. 745 Compliance Order, the Commission erred by requiring MISO to make a compliance filing reflecting that the Net Benefits Price Threshold will be updated each month. MISO states that it had offered to do precisely that in its August 2011 Compliance Filing. MISO elaborates that it proposed to incorporate into its Tariff the requirement to update and post on its website “on a rolling 12-month basis” the results of the net benefits test analysis for a calendar month no later than the 15th day of the preceding calendar month.⁷² MISO further claims that it provided a supporting whitepaper that contained an affirmative statement that MISO would update data and publicly post such data each month prior to the operating month.⁷³ MISO requests that the Commission clarify the Order No. 745 Compliance Order to reflect MISO’s compliance, or in the alternative, MISO requests rehearing of the conclusion in the Order No. 745 Compliance Order that MISO did not propose to update the real-time offers used by MISO on a monthly basis as new data become available.⁷⁴

ii. Commission Determination

40. We deny MISO’s request for clarification or rehearing concerning whether MISO complied with the Commission’s directive in Order No. 745 that the threshold prices be “updated monthly as *new data* becomes available.”⁷⁵ In the Order No. 745 Compliance

⁷⁰ *Id.* P 37 & n.86.

⁷¹ *Id.* P 37.

⁷² MISO Request for Rehearing at 10 (citing MISO August 2011 Compliance Filing, Transmittal Letter at 7).

⁷³ *Id.* (citing MISO August 2011 Compliance Filing, Att. A, *Net Benefits Test for Demand Response Compensation* at 6-9).

⁷⁴ *Id.* at 11.

⁷⁵ Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 45 (quoting Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 79 (emphasis added)).

Order, the Commission recognized MISO's statement that it will post on its website the supply curves and calculated threshold prices, on a rolling 12-month basis, for the day-ahead and real-time markets, as MISO alleges. However, the Commission found that the associated Tariff provisions did not meet all of the requirements of Order No. 745.⁷⁶ In addition to requiring monthly updates to the threshold prices as "new data" become available, the Commission required that "the supply curve analysis for the historic month that corresponds to the effective month should be updated for *current* fuel prices, unit availabilities, and any other significant changes to historic supply curve"⁷⁷ MISO's proposed Tariff provisions, however, did not accomplish this required monthly updating using current information.

41. In particular, we agree with MISO that its proposed Tariff section 38.7.1.3 would require MISO to determine and post on its website the monthly Net Benefits Price Threshold.⁷⁸ However, section 38.7.1 does not make clear when the website posting will occur or provide that these monthly prices will be updated monthly "as new data becomes available," using "current fuel prices, unit availabilities," etc. Nor does it include the phrase "rolling 12-month basis." Rather, proposed section 38.7.1.1 provided that MISO would initially use historical real-time offers from 2010, updated *annually* to create the net benefits supply curve by February 15th of each year, effective March 1st.⁷⁹ Construing sections 38.7.1.1 and 38.7.1.3 together, it appears that under proposed section 38.7.1, the monthly Net Benefits Price Threshold posted on MISO's website would reflect only cumulative annual data (2010 data plus 2011 data, etc.) for the month in

⁷⁶ *Id.* P 47.

⁷⁷ *Id.* P 45 (quoting Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 81 (emphasis added)).

⁷⁸ MISO, FERC Electric Tariff, 38.7.1, Net Benefits Price Threshold, 1.0.0, § 38.7.1.3 ("By the 15th of each Month prior to each operating Month, the Transmission Provider will determine the price-quantity point where the Net Benefits Supply Curve becomes inelastic for all larger quantities supplied. The Transmission Provider shall post this information on its website.").

⁷⁹ *Id.*, § 38.7.1.1 ("The Transmission Provider will initially use historical Real-Time Offers from all available Resources excluding Demand Response Resources for the period 2010, to create the price-quantity offer pairs reflective of the aggregate power supply capability. Additional offer pairs will subsequently be captured annually and used to create the Net Benefits Supply Curve by February 15th of each year to be effective on March 1st.").

question. MISO's proposed Tariff provisions did not require MISO to factor into its monthly posted prices the precise information the Commission required in Order No. 745 (i.e., "new data" or "current fuel prices, unit availabilities, and any other significant changes to the historic supply curve that would factor into the monthly posted amount").⁸⁰ Consequently, the Commission reasonably required MISO to submit proposed Tariff revisions to ensure that the prices posted on the 15th of each month reflect this monthly updated information.

3. Cost Allocation

a. Requests for Rehearing and Clarification

42. 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 retail rates are not sufficiently fixed and predictable.⁸¹ 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."⁸² 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.⁸³

43. 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 Order No. 745 Compliance Order be modified to eliminate the directive that MISO remove from its

⁸⁰ Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 81 (emphasis added).

⁸¹ OMS Request for Clarification at 3; MISO Request for Rehearing at 2; Midwest TDUs Request for Rehearing at 2.

⁸² OMS Request for Clarification at 3.

⁸³ *Id.*

Tariff the requirement that the MFRR must be specified at the time of registration.⁸⁴ 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.⁸⁵

44. 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.⁸⁶ 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.”⁸⁷

45. 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.⁸⁸ 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.⁸⁹ Midwest TDUs thus argue that there is no meaningful distinction to justify the Commission’s approval of rates that include state and local taxes, and its refusal here to

⁸⁴ MISO Request for Rehearing at 6 (citing Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 127).

⁸⁵ *Id.* at 7.

⁸⁶ *Id.*; Midwest TDUs Request for Rehearing at 3.

⁸⁷ MISO Request for Rehearing at 8.

⁸⁸ Midwest TDUs Request for Rehearing at 4 (citing Uniform System of Accounts 408A, 18 C.F.R. pt. 101 (2011)).

⁸⁹ *Id.*

approve a rate that includes consideration of the MFRR set by the relevant electric retail regulatory authority.

46. 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.⁹⁰ 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.⁹¹

47. 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.⁹²

b. Commission Determination

48. We deny rehearing and reaffirm our determination in the Order No. 745 Compliance Order. As we previously explained, MISO's proposed use of the MFRR as part of its cost allocation proposal results in a formula rate that "is not sufficiently fixed and predictable,⁹³" as the MFRR component of the rate lacks the specificity required for

⁹⁰ *Id.* at 5 (citing Order No. 719 Compliance Order, 137 FERC ¶ 61,214); *see also* EPSA Request for Rehearing at 12.

⁹¹ Midwest TDUs Request for Rehearing at 6 (citing Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 121).

⁹² MISO Request for Rehearing at 9; *see also* EPSA Request for Rehearing at 13.

⁹³ Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 99 & n.201 (citing *Ocean State II*, 69 FERC at 61,552). 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.

ratemaking purposes and is not tied to any objectively identifiable criteria.”⁹⁴ Parties raise no evidence or argument on rehearing that persuades us to depart from this determination.

49. 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.⁹⁵ These parties misconstrue the Commission’s determination in the Order No. 745 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.⁹⁶ Rather, the Commission specifically determined that the MFRR component of the formula lacks the specificity required for ratemaking purposes.⁹⁷ 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.⁹⁸ 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 regulatory authority].”⁹⁹

⁹⁴ Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 99 & n.202 (citing *FPC*, 417 U.S. at 395-396; *PG&E*, 306 F.3d at 1119; *California PUC*, 254 F.3d at 254-256).

⁹⁵ OMS Request for Clarification at 3; MISO Request for Rehearing at 2; Midwest TDUs Request for Rehearing at 2.

⁹⁶ Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 99.

⁹⁷ *Id.*

⁹⁸ MISO October 2009 Compliance Filing, Transmittal Letter at 13 (emphasis added).

⁹⁹ *Id.* at 14.

These statements, in conjunction with the lack of detail in the relevant proposed Tariff provisions, appear to allow excessive discretion to set the MFRR, 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 cost allocation formula incorporating the MFRR will result in a just and reasonable rate.¹⁰⁰

50. 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[,]"¹⁰¹ 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 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.

51. 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.

52. 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

¹⁰⁰ *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*, 89 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.").

¹⁰¹ 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)).

cost of purchasing electricity,¹⁰² 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.

53. 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 cost allocation purposes.

54. 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.¹⁰³ 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.¹⁰⁴ 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.

55. 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.¹⁰⁵ However, such measures do not obviate our concerns regarding the discretion that relevant electric retail regulatory authorities would have to set the MFRR, contrary to the Commission's obligation to set jurisdictional rates.

¹⁰² Midwest TDUs Request for Rehearing at 5.

¹⁰³ MISO Request for Rehearing at 9; *see also* EPSA Request for Rehearing at 13. 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.

¹⁰⁴ Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 3.

¹⁰⁵ MISO Request for Rehearing at 9.

C. MISO Compliance Filing in Docket Nos. ER12-1266-000 and ER12-1266-001

1. Net Benefits Test and Demand Response Compensation

a. Order No. 745

56. Order No. 745 required each RTO and ISO to pay a demand response resource the market price for energy (i.e., the LMP) when two conditions are met. First, the demand response resource must have the capability to balance supply and demand as an alternative to a generation resource. Second, dispatching the demand response resource must be cost-effective as determined by a net benefits test in accordance with Order No. 745. The Commission determined that the net benefits test is necessary to ensure that the overall benefit of the reduced LMP that results from dispatching demand response resources exceeds the costs of dispatching and paying the LMP to those resources.¹⁰⁶

57. The Commission required each RTO and ISO to implement a net benefits test to determine whether a demand response resource is a cost-effective alternative to generation for balancing supply and demand in any given hour. Specifically, Order No. 745 directed each RTO and ISO to undertake an analysis on a monthly basis, based on historical data and the prior year's supply curve, to identify a price threshold to estimate where customer net benefits would occur. The Commission further explained that the RTO or ISO should determine the threshold price corresponding to the point along the supply stack for each month at which the benefit to load from the reduced LMP resulting from dispatching demand response resources exceeds the increased cost to load associated with the billing unit effect, and update the calculation monthly as new information becomes available and post the threshold price on the RTO or ISO website.¹⁰⁷ The Commission required that the Commission-approved net benefits test methodology must be posted on the RTO or ISO's website, with supporting documentation.¹⁰⁸ The Commission further explained that the threshold point along the supply stack for each month will fall in the area where the supply curve becomes inelastic, rather than the extreme steep portion at the peak or in the flat portion of the supply curve.¹⁰⁹

¹⁰⁶ Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 6.

¹⁰⁷ *Id.* P 79.

¹⁰⁸ *Id.* P 81.

¹⁰⁹ *Id.* P 80.

b. August 2011 Compliance Filing

58. MISO proposed that when demand response resources clear in the day-ahead and/or real-time energy market in a given hour, the market would pay such resources the applicable hourly LMP for non-excessive energy if the applicable hourly LMP equals or exceeds the Net Benefits Price Threshold in effect for that month. MISO proposed that, if the applicable hourly LMP is instead less than the Net Benefits Price Threshold (i.e., if the demand response is not cost-effective), cleared demand response resources would receive no compensation. MISO also proposed to not compensate demand response resources if the demand response is facilitated by behind-the-meter generation, regardless of whether the associated demand response is cost-effective. In addition, MISO proposed that demand response resources that are not compensated at the LMP should not be kept whole for their production costs by receiving day-ahead and/or real-time Revenue Sufficiency Guarantee credits.¹¹⁰

59. In order to determine the Net Benefits Price Threshold, MISO proposed to construct supply curves from real-time offers (excluding those of demand response resources) for the previous year. In conjunction with appropriate explanatory variables, MISO proposed to use mathematical techniques to estimate a “smoothed,” aggregate net benefits supply curve.¹¹¹ Proposed section 38.7.1 of the Tariff provides that, for 2011, MISO would use historical real-time offers for 2010, and subsequently incorporate additional offer pairs on an annual basis, so that an updated net benefits supply curve would be determined on February 15th of each year to be effective on March 1st. MISO stated that, for each operating month, it would determine the Net Benefits Price Threshold by finding the price that corresponds to the point on the net benefits supply curve where the elasticity of supply is less than or equal to one for all greater quantities.¹¹² Proposed section 38.7.1 of the Tariff provides that this monthly threshold would be determined by the 15th day of each month prior to the operating month and posted on MISO’s website.¹¹³

¹¹⁰ MISO August 2011 Compliance Filing, Transmittal Letter at 5.

¹¹¹ *Id.* at 6, Att. A at 4-6.

¹¹² *Id.* at 6.

¹¹³ *Id.* at 7.

c. **Order No. 745 Compliance Order**

60. In the Order No. 745 Compliance Order, the Commission conditionally accepted in part and rejected in part MISO's compensation proposal, subject to the outcome of the MISO Order No. 719 compliance proceeding and further compliance.¹¹⁴ Specifically, the Commission rejected MISO's proposal to not compensate demand response resources when the applicable hourly LMP is below the Net Benefits Price Threshold. The Commission also rejected MISO's proposal to make certain demand response resources ineligible for day-ahead and real-time Revenue Sufficiency Guarantee credits. The Commission explained that these Tariff revisions were beyond the scope of the Commission's directives in Order No. 745 because they address demand response compensation when the applicable hourly LMP is below the Net Benefits Price Threshold.¹¹⁵ In addition, the Commission rejected MISO's proposal to exclude from compensation demand response resources for which the demand response is facilitated by behind-the-meter generation, stating that Order No. 745 did not require an RTO or ISO to differentiate between demand response resources on that basis.¹¹⁶ Accordingly, the Commission required MISO to submit Tariff revisions to revise the associated Tariff provisions.¹¹⁷

61. With regard to the treatment of ARCs, the Commission stated that the Order No. 719 Compliance Order rejected MISO's ARC compensation proposal and required MISO to submit a just and reasonable ARC compensation proposal.¹¹⁸ The Commission noted that MISO did not propose to modify the ARC compensation provisions in section 38.6 of the MISO Tariff in the August 2011 Compliance Filing, and stated that the requirements in Order No. 745 pertain to all demand response resources, including ARCs. As such, the Commission required MISO to demonstrate that demand response resource offers from ARCs that are cost effective as determined by the net benefits test

¹¹⁴ Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 36.

¹¹⁵ *Id.* P 37.

¹¹⁶ *Id.* PP 71-72.

¹¹⁷ *Id.* PP 37, 72.

¹¹⁸ *Id.* P 41, n.90 (citing Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at P 176).

will be compensated at the applicable hourly LMP in the day-ahead and real-time energy market, and required it to submit any associated Tariff revisions.¹¹⁹

62. The Commission expressed several concerns regarding the proposed definitions of “Net Benefits Price Threshold” and “Net Benefits Supply Curve” in sections 1.443b and 1.443c of the Tariff, respectively. Specifically, the Commission rejected section 1.443a, stating among other things, that the term “Net Benefits Test” is unnecessary as it is not used in any other sections of the Tariff.¹²⁰ The Commission noted that the definition of “Net Benefits Price Threshold” in section 1.443b is different from the definition proposed in section 38.7.1.3,¹²¹ and required MISO to submit Tariff revisions to make the definition in section 1.433b consistent with proposed section 38.7.1.3.¹²² As for the definition of “Net Benefits Supply Curve” in section 1.443c, the Commission directed MISO to revise it to ensure that the real-time offers MISO uses are updated monthly as new data become available. The Commission also required an explanation of whether day-ahead offers and/or demand response resource offers should be used to derive the supply curve, and, if needed, corresponding revisions to sections 1.433c and 38.7.1.1.¹²³

63. The Commission found that the determination of the Net Benefits Price Threshold in section 38.7.1 is not compliant with Order No. 745 and required MISO to provide additional information in the Tariff regarding the derivation of net benefits supply curves.¹²⁴ The Commission noted that MISO did not propose to update the net benefits

¹¹⁹ *Id.* P 41.

¹²⁰ *Id.* P 43.

¹²¹ The Commission stated that section 38.7.1.3 defined the Net Benefits Price Threshold as the “price-quantity point where the Net Benefits Supply Curve becomes inelastic for all larger quantities supplied,” consistent with the statement in Order No. 745 that “the threshold point along the supply stack for each month will fall in the area where the supply curve becomes inelastic.” *Id.* P 44 and n.93 (citing Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 80).

¹²² *Id.* P 44.

¹²³ *Id.* P 45.

¹²⁴ In particular, the Commission stated that the Tariff provisions do not include information regarding the explanatory variables that MISO will consider, the elimination of explanatory variables that are not statistically significant, or the aggregation of daily supply curves. *Id.* P 46.

supply curve to reflect new data, as it becomes available, on a monthly basis.¹²⁵ The Commission also stated that section 38.7.1.3 does not include the requirements for posting updated supply curve analyses, net-benefits methodology, threshold price for the previous 12 months, or supporting documentation. The Commission required MISO to submit Tariff revisions to ensure that it posts on its website all of the information required by Order No. 745.¹²⁶

d. March 2012 Compliance Filing

64. MISO proposes to remove Tariff provisions that make demand response resources ineligible for compensation when the applicable LMP is below the Net Benefits Price Threshold and/or when the demand response is facilitated by behind-the-meter generation.¹²⁷ MISO states that, as a result of these changes, demand response resources will be compensated at the LMP, regardless of whether the applicable hourly LMP equals or exceeds the Net Benefits Price Threshold. MISO also proposes to remove Tariff provisions that make certain demand response resources ineligible for day-ahead and real-time Revenue Sufficiency Guarantee credits.¹²⁸

65. With regard to the treatment of ARCs, MISO proposes revisions to section 40.3.3(c)ii of the Tariff to ensure that ARCs will be compensated at the LMP when the applicable hourly LMP equals or exceeds the Net Benefits Price Threshold.

66. MISO proposes to revise the definition of “Net Benefits Supply Curve” in section 1.443c to clarify that MISO will update the supply curve monthly as new data become available. MISO states that it will project the price of natural gas, the price of coal, and an outage index each month in order to determine the desired price threshold.¹²⁹ In addition, MISO also explains that day-ahead offers are not used when deriving the supply curve because the Net Benefits Price Threshold “is only of material impact” in the real-time market.¹³⁰ MISO states that demand response resources are paid the LMP in the day-ahead market, and there is not any “missing money” in the day-ahead market

¹²⁵ *Id.*

¹²⁶ *Id.* P 47.

¹²⁷ MISO March 2012 Compliance Filing, Transmittal Letter at 4, 9.

¹²⁸ *Id.* at 3-4.

¹²⁹ *Id.* at 7.

¹³⁰ *Id.* at 7-8.

requiring cost allocation protocols. MISO states that the Commission accepted these day-ahead design elements in the Order No. 745 Compliance Order.¹³¹

67. MISO proposes to revise section 38.7.1 of the Tariff to include additional information on the determination of the Net Benefits Price Threshold. In particular, MISO proposes to remove language describing MISO's determination of the net benefits supply curve, including the use of historical data and inclusion of updated offer information. MISO proposes Tariff revisions describing the determination of the Net Benefits Price Threshold, including the relevant explanatory variables. MISO also proposes to post, prior to the 15th of each month, its supply curve analysis, net-benefits methodology, Net Benefits Price Thresholds for the following month and previous year, and supporting documentation.¹³²

e. Comments

68. Midwest TDUs argue that MISO proposes a compensation methodology for demand response resources that disregards whether the net benefits test is satisfied. Midwest TDUs note that in the Order No. 745 Compliance Order, the Commission stated that Order No. 745 "did not extend to situations where the LMP is not greater than or equal to the threshold price" and directed MISO to eliminate proposed Tariff language providing that demand response resources would receive zero compensation when the net benefits test is not satisfied.¹³³ Midwest TDUs contend that changing the compensation methodology when the net benefits test is not satisfied, other than to remove the zero-compensation methodology, violates the Order No. 745 Compliance Order. Midwest TDUs argue that the MISO Order No. 719 compliance proceeding is the appropriate place for MISO to propose a compensation methodology for demand response resources when the net benefits test is not satisfied,¹³⁴ and notes that it has submitted a protest regarding this issue in that proceeding.¹³⁵

¹³¹ *Id.* at 8 (citing Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 43).

¹³² MISO, FERC Electric Tariff, [38.7.1, Net Benefits Price Threshold, 1.0.0](#).

¹³³ Midwest TDUs Protest at 4 (citing Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 37).

¹³⁴ *Id.* (citing Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at P 176).

¹³⁵ Midwest TDUs state that, if the Commission considers the merits of MISO's proposed compensation for demand response resources that are not cost-effective in this proceeding, it will incorporate its arguments made in Part II.A of its Motion to Intervene

(continued...)

69. Alcoa raises concerns regarding compensation for demand response resources when the applicable hourly LMP is below the Net Benefits Price Threshold. Alcoa states that MISO dispatches demand response resources on a five-minute basis, but provides compensation on an hourly basis. Alcoa asserts that applicable hourly LMPs at the end of an hour may be significantly lower than the five-minute, expected LMP at the beginning of the hour because of intra-hour price volatility and demand response. Alcoa argues that, while five-minute, expected LMPs used to dispatch demand response resources could indicate that they are cost-effective, the hourly LMPs determined at the end of the hour could fall, so that demand response is no longer cost-effective. Alcoa states that this could lead to payments to demand response providers substantially below the LMP, as has happened multiple times.¹³⁶ Alcoa argues that this is the equivalent to demand response providing a subsidy to the market because the reconstitution of load results in the demand response resource paying for load that it did not consume. Alcoa argues that the Commission should find that reducing a resource's revenues after it is dispatched by MISO because the applicable hourly LMP ultimately falls below the Net Benefits Price Threshold is unjust and unreasonable.¹³⁷

70. Alcoa also asserts that, even if the applicable hourly LMP is less than the Net Benefits Price Threshold, demand response resources can still provide value, as MISO would not have dispatched those resources if they were not the most economical dispatch solution. Alcoa maintains that demand response resources should not be penalized merely because MISO's dispatch system did not select the most economical solution. Alcoa argues that MISO should compensate demand response resources at the LMP whenever they are dispatched, adding that MISO should avoid calling on demand response resources when the applicable hourly LMP is less than the Net Benefits Price Threshold.¹³⁸

71. Michigan South Central supports allowing behind-the-meter generation to function as a supporting source for demand response resources and to compensate behind-the-meter generation in the same manner as other sources supporting demand response resources.¹³⁹

and Protest in Docket No. ER12-1265. *Id.* at 5.

¹³⁶ Alcoa Comments at 5.

¹³⁷ *Id.* at 5-6.

¹³⁸ *Id.* at 6.

¹³⁹ Michigan South Central Protest at 2-3.

f. Answer

72. In its answer, MISO agrees with Midwest TDUs that addressing demand response compensation when the applicable hourly LMP is below the Net Benefits Price Threshold is beyond the scope of this proceeding. MISO states that, in compliance with the Commission's directive, MISO struck its proposed zero-compensation methodology for demand response resources that are below the Net Benefits Price Threshold. MISO states that it has not proposed to change the compensation for such resources, as such changes are beyond the scope of this proceeding.¹⁴⁰

73. In response to Alcoa's argument that the reconstitution of load between the day-ahead and real-time markets does not result in just and reasonable compensation for demand response resources when the applicable hourly LMP is below the Net Benefits Price Threshold, MISO asserts that the Commission already determined otherwise in the Order No. 745 Compliance Order. MISO also states that if a demand response resource submits an offer price that is below the Net Benefits Price Threshold, then the resource is making a business decision, and MISO does not seek to artificially restrict the resource's offer price. MISO adds that requesting such a change would be beyond the scope of this proceeding.¹⁴¹

g. Commission Determination

74. We find that MISO has complied with the demand response resource compensation requirements of Order No. 745, except where noted below, and we will conditionally accept the associated Tariff revisions. In particular, MISO has complied with the Commission's requirement to remove Tariff language providing that demand response resources will not receive compensation when the applicable hourly LMP is below the Net Benefits Price Threshold and to make certain demand response resources ineligible for Revenue Sufficiency Guarantee credits.¹⁴² We also accept, as compliant with the Order No. 745 Compliance Order,¹⁴³ MISO's proposal to modify the Tariff to remove language that inappropriately differentiates between the treatment of demand response that is facilitated by behind-the-meter generation and other types of demand response resources. In addition, MISO has demonstrated that demand response resource

¹⁴⁰ MISO Answer at 4.

¹⁴¹ *Id.* at 4-5.

¹⁴² Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at PP 37, 72.

¹⁴³ *Id.* P 72.

offers from ARCs that are cost effective as determined by the net benefits test will be compensated at the applicable hourly LMP, consistent with the Commission's directive.¹⁴⁴

75. In the Order No. 745 Compliance Order, the Commission found that the Commission's action in Order No. 745 "was limited to situations where a demand response resource has the capability to balance supply and demand as an alternative to a generation resource, and where dispatch of [a] demand response resource is cost-effective as determined by a net benefits test."¹⁴⁵ Therefore, we agree with Midwest TDUs that compensation for demand response resources during hours when the applicable hourly LMP is below the Net Benefits Price Threshold is beyond the scope of this proceeding. However, MISO does not propose a new compensation methodology during those hours as part of its March 2012 Compliance Filing. Instead, MISO proposes Tariff revisions to remove its proposal to not provide any compensation to demand response resources during those hours and to insert provisions describing its existing compensation methodology (i.e., compensation at the LMP during those hours), which was previously accepted by the Commission.¹⁴⁶ This is consistent with the Commission's directive to remove rejected language from the Tariff, as well as the finding in the Order No. 745 Compliance Order that "MISO's compensation practices in hours when the applicable hourly LMP is less than the Net Benefits Price Threshold will not change in this proceeding."¹⁴⁷

76. For this reason, we will not address Alcoa's concerns regarding MISO's demand response resource compensation methodology in hours when the applicable hourly LMP is less than the Net Benefits Price Threshold or the corresponding cost allocation. These issues are beyond the scope of this proceeding; as Alcoa admits, "MISO's compensation practices in hours when the applicable hourly LMP is less than the N[et] B[enefits] P[rice] T[hreshold] has not changed from what it was before the proposed tariff changes were rejected in Order No. 745."¹⁴⁸

¹⁴⁴ *Id.* P 41.

¹⁴⁵ *Id.* P 37 (citing Order No. 745-A, 137 FERC ¶ 61,215 at P 133).

¹⁴⁶ *See, e.g., Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,172 (ASM Order), *order on reh'g*, 123 FERC ¶ 61,297 (2008).

¹⁴⁷ Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at PP 37-38.

¹⁴⁸ Alcoa Comments at 4.

77. We find, however, that MISO has not complied with certain requirements in the Order No. 745 Compliance Order regarding the definition of “Net Benefits Price Threshold” and “Net Benefits Supply Curve” in sections 1.433b and 1.433c of the Tariff, respectively. In the Order No. 745 Compliance Order, the Commission required MISO to submit Tariff revisions “to make the definition of ‘Net Benefits Price Threshold’ in section 1.433b consistent with proposed section 38.7.1.3.”¹⁴⁹ The Commission also required MISO to explain whether “demand response resource offers should be used to derive the supply curve and, if needed, corresponding revisions to sections 1.443c and 38.7.1.1.”¹⁵⁰ In its March 2012 Compliance Filing, MISO did not submit the required revisions to section 1.433b. Proposed sections 1.443c and 38.7.1.1 of the Tariff continue to contain conflicting language regarding whether MISO will use demand response resource offers when deriving the supply curve,¹⁵¹ and MISO did not provide a further explanation of the conflicting language in its compliance filing. Accordingly, we will require MISO to address these issues, consistent with the Commission’s previous directives, in the compliance filing directed below.

78. With regard to the provisions regarding the determination of the Net Benefits Price Threshold in section 38.7.1, we find that further Tariff revisions are needed to comply with the Order No. 745 Compliance Order. In that order, the Commission required MISO to provide additional information regarding the derivation of net benefits supply curves. In particular, the Commission noted that section 38.7.1 did not include information regarding “the explanatory variables that MISO will consider (e.g., a resource outage index), the elimination of explanatory variables that are not statistically significant, or the aggregation of daily supply curves.”¹⁵² MISO proposes Tariff revisions to refer to the relevant explanatory variables, but does not define these terms or use consistent terminology when describing them.¹⁵³ While MISO’s proposed Tariff

¹⁴⁹ Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 44.

¹⁵⁰ *Id.* P 45.

¹⁵¹ Section 1.443c refers to “available Resources,” while Section 38.7.1 refers to “available Resources, excluded Demand Response Resources.” MISO, FERC Electric Tariff, 1.443c, Net Benefits Supply Curve, 1.0.0, 38.7.1, Net Benefits Price Threshold, 1.0.0.

¹⁵² Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at PP 46-47.

¹⁵³ The proposed Tariff revisions refer to “an index to reflect outages” and “coal and natural gas fuel price data” for the determination of initial supply curves, but later refer to “the most recent available information on projected outages” and “future prices for coal, and natural gas prices obtained from the first business day of each month” for

(continued...)

revisions refer to an “aggregate power supply curve,” they do not mention daily supply curves or their aggregation, as required in the Order No. 745 Compliance Order. We therefore will require MISO to submit, in the compliance filing directed below, revisions to section 38.7.1 to address these issues consistent with the Commission’s previous directives.

79. Finally, we note that MISO proposes to remove information from section 38.7.1 without explanation, including: (1) the initial use of historical hourly information “for the period 2010”; (2) the subsequent use of data “for the previous year”; (3) the requirement that MISO will determine “a smoothed mathematical representation of the Net Benefits Supply Curve”; and (4) the subsection numbering denoting section 38.7.1.3.¹⁵⁴ MISO also proposes to remove all references to the defined term “Net Benefits Supply Curve” and to instead refer to “supply curve” and “aggregate power supply curve,” which are currently not defined in the Tariff.¹⁵⁵ The Commission did not require MISO to remove this language, and MISO has not demonstrated that these Tariff revisions are necessary to comply with the requirements of the Order No. 745 Compliance Order. We will therefore require MISO to include, in the compliance filing directed below, either an explanation of why these revisions are necessary to comply with the Order No. 745 Compliance Order or Tariff revisions to section 38.7.1 to reinsert the information described above.

2. Cost Allocation

a. Order No. 745

80. In Order No. 745, the Commission determined that it is just and reasonable to allocate the costs associated with demand response compensation proportionally to all entities that purchase from the relevant energy market in the area(s) where the demand response reduces the market prices for energy at the time the demand response resource is committed or dispatched.¹⁵⁶ Thus, the Commission required each RTO and ISO to make a compliance filing that either demonstrates that its current demand response cost allocation methodology appropriately allocates costs to those that benefit from the

the determination of subsequent supply curves. MISO, FERC Electric Tariff, 38.7.1, Net Benefits Price Threshold, 1.0.0.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 102.

demand reduction or proposes revised tariff provisions that conform to this requirement.¹⁵⁷

b. August 2011 Compliance Filing

81. MISO proposed in compliance with Order No. 745, among other things, to allocate the cost of compensating cost-effective demand response resources in the real-time energy market through a direct allocation to load-serving entities and a zonal energy surcharge to energy buyers, with any remaining costs allocated to all market participants based on load ratio share. MISO proposed to rely on the MFRR to directly allocate costs to load-serving entities as part of its cost allocation methodology.¹⁵⁸

82. MISO also proposed to revise the definition of “Actual Energy Withdrawal” so that the actual energy withdrawal for load zones that host demand response resources that are committed during a given hour would be the metered volume that flows out of the transmission system at each load zone, rather than the metered volume of the load zone “plus Actual Energy Injects [sic] within the Load Zone for the Demand Response Resources.”¹⁵⁹ MISO did not explain this change.

83. In addition, MISO proposed that load-serving entities would not be assessed real-time Revenue Sufficiency Guarantee Constraint Management Charges for deviations between their day-ahead and real-time positions caused by demand response delivered in real-time. MISO stated that such deviations “do not cause Revenue Sufficiency Guarantee charges.”¹⁶⁰

c. Order No. 745 Compliance Order

84. In the Order No. 745 Compliance Order, the Commission rejected MISO’s cost allocation methodology and required MISO to submit Tariff revisions to remove any language associated with the cost allocation proposal and a just and reasonable cost allocation proposal.¹⁶¹ The Commission noted that MISO did not explain several components of its cost allocation proposal, including its formula for calculating demand

¹⁵⁷ *Id.*

¹⁵⁸ MISO August 2011 Compliance Filing, Transmittal Letter at 10, 12.

¹⁵⁹ MISO, FERC Electric Tariff, [1.2, Actual Energy Withdrawal:, 1.0.0.](#)

¹⁶⁰ MISO August 2011 Compliance Filing, Transmittal Letter at 5.

¹⁶¹ Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 99.

response compensation. The Commission stated that MISO should explain the entirety of its cost allocation proposal, including the associated formulas, and ensure that the proposal is accurately reflected in the Tariff and applies only to those hours when compensating demand response resources at the applicable hourly LMP is cost effective, as determined by the net benefits test.¹⁶²

85. The Commission stated that the proposed revisions to the definition of “Actual Energy Withdrawal” alter MISO’s existing allocation of the cost of compensating demand response resources during all hours. The Commission directed MISO to explain the Tariff revisions that would be necessary to modify its existing cost allocation methodology to comply with the requirements of Order No. 745 and to ensure that those revisions apply only to the allocation of the cost of compensating demand response resources for energy when they are cost effective, as determined by the net benefits test.¹⁶³

86. With regard to the proposed revision to Revenue Sufficiency Guarantee Constraint Management Charges, the Commission stated that MISO did not support that deviations due to demand response do not cause the incurrence of Revenue Sufficiency Guarantee costs, explain why the proposed revision should be limited to Constraint Management Charges, or address whether the revision is related to the cost allocation proposal or otherwise necessary to comply with Order No. 745. The Commission stated that MISO should address these issues, to the extent that MISO continues to propose this revision in its compliance filing.¹⁶⁴

d. March 2012 Compliance Filing

87. MISO proposes to remove the Tariff language in section 40.3.3.a.xvii associated with its cost allocation proposal, thereby eliminating the direct cost allocation to load-serving entities. MISO proposes a new, zonal cost allocation methodology, under which it will allocate the cost of compensating cost-effective demand response resources in a given hour to the “Real-Time Energy buyers” in the reserve zone(s) where the demand response resources that reduce demand are located based upon each buyer’s share of real-time energy purchases in the reserve zone during the hour.¹⁶⁵ MISO proposes to identify

¹⁶² *Id.* P 100.

¹⁶³ *Id.* P 101.

¹⁶⁴ *Id.* P 102.

¹⁶⁵ MISO, FERC Electric Tariff, 40.3.3, Real-Time Energy and Operating Reserve Market Settlement Cal, 2.5.0, § 40.3.3.a.xvii.

the reserve zone(s) to which costs will be allocated for each demand response resource using the elemental pricing nodes identified during the resource's registration along with the outcome of Reserve Zone Configuration Studies.¹⁶⁶ MISO states that, if a demand response resource is located in more than one reserve zone, then the costs of compensating it will be apportioned *pro rata* to the affected reserve zones "based on the D[emand] R[esponse] R[esource] Actual Energy Injections."¹⁶⁷ MISO proposes to limit the costs recovered from a given reserve zone, so that the costs recovered based on real-time energy purchases in MWh do not exceed the demand response resources' actual energy injections in MWh. MISO proposes to allocate any remaining costs to market participants system-wide based on their load ratio shares.¹⁶⁸

88. MISO maintains that its proposed cost allocation methodology comports with the Commission's requirements that the method of allocating costs be proportional to all entities that purchase from the relevant energy market in the area(s) where the demand response reduces the market price for energy at the time when the demand response resource is committed or dispatched.¹⁶⁹ According to MISO, reserve zones are updated periodically to reflect transmission constraints and are the appropriate geographic region to reflect the preponderance of the benefits associated with demand response resources. MISO states that reserve zones are currently used to allocate operating reserve costs and are constructed to reflect transmission congestion that restricts deliverability and

¹⁶⁶ MISO states that Reserve Zone Configuration Studies establish the number of reserve zones and the assignment of resource, load, and/or interface elemental pricing nodes to specific reserve zones. MISO March 2012 Compliance Filing, Transmittal Letter at 11-12.

¹⁶⁷ *Id.* at 10. Section 1.1a of the MISO Tariff defines "Actual Energy Injections" for Demand Response Resources – Type II that are qualified to provide regulating reserves as "a calculated volume in MWh that is equal to i) the time-weighted average of the Dispatch Interval Demand Forecasts (positive value) for the Hour minus ii) the actual net interval data of the Host Load Zone (withdrawal positive, injection negative) for the Hour." For all other demand response resources, "Actual Energy Injections" are "a calculated volume in MWh that is equal to the amount as calculated or metered according to the specifications and protocols in the Measurement and Verification Procedures." MISO, FERC Electric Tariff, 1.1a, Actual Energy Injections., 1.0.0.

¹⁶⁸ *Id.*, 40.3.3, Real-Time Energy and Operating Reserve Market Settlement Cal, 2.5.0, § 40.3.3.a.xvii.

¹⁶⁹ MISO March 2012 Compliance Filing, Transmittal Letter at 10 (citing Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 102).

produces price separation for operating reserve products.¹⁷⁰ MISO adds that it rejected the allocation of costs on a system-wide basis because it would not equitably account for transmission constraints, which can cause price separation within MISO's large footprint.¹⁷¹

89. In response to the Commission's requirement to explain the Tariff revisions necessary to modify its existing cost allocation methodology, MISO states that it proposes to modify the definition of "Actual Energy Withdrawal" to "exclude the component 'Actual Energy Injections by the D[emand] R[esponse] R[esource] asset.'"¹⁷² MISO states that, when the applicable hourly LMP equals or exceeds the Net Benefits Price Threshold, this modification will ensure that costs are allocated to those who benefit.¹⁷³

90. MISO proposes to insert language in the definition of "Actual Energy Withdrawal" providing that "[f]or an Hour where the Hourly Ex Post LMP is less than the Net Benefits Price Threshold, the amount of Actual Energy Injections for all D[emand] R[esponse] R[esource]s associated with a given Load Zone are added to the Metered volume at the specified Load Zone."¹⁷⁴ MISO states that this change will avoid charging real-time Revenue Sufficiency Guarantee charges and administrative charges to a load-serving entity for deviations due to a demand response resource providing demand reduction in the real-time market.¹⁷⁵

e. Comments and Protests

91. Demand Response Supporters and Environmental and Science Protesters oppose MISO's use of reserve zones in its proposed cost allocation. Demand Response Supporters argue that MISO incorrectly assumes that the benefits of lower prices due to

¹⁷⁰ MISO states that the Commission approved the use of MISO's reserve zones for the allocation of operating reserve costs based, in part, on the fact that they reflect transmission constraints that could occur through resource redispatch. *Id.* at 11 (citing ASM Order, 122 FERC ¶ 61,172 at P 239).

¹⁷¹ *Id.*

¹⁷² *Id.* at 13.

¹⁷³ *Id.*

¹⁷⁴ MISO, FERC Electric Tariff, 1.2, Actual Energy Withdrawal., 2.0.0.

¹⁷⁵ MISO March 2012 Compliance Filing, Transmittal Letter at 14.

demand response are always contained within the associated reserve zone(s) and, therefore, fails to allocate costs to all of those who benefit from demand response. They maintain that reserve zone boundaries reflect only anticipated transmission congestion that could restrict energy deliverability, not whether transmission constraints are actively binding such that demand response benefits are confined to a particular reserve zone.¹⁷⁶

92. Environmental and Science Protesters request that the Commission find that MISO's cost allocation proposal does not allocate costs to all parties that benefit from demand response and fails to comply with the requirements of Order No. 745 and the Order No. 745 Compliance Order. They maintain that MISO does not make any effort to ensure that the beneficiaries of cost-effective demand response are limited to individual reserve zones. Environmental and Science Protesters state that an entity's geographic proximity to demand response is not determinative of whether the entity actually benefits, noting that in Order No. 745, the Commission stated that "the customers benefitting from lower LMP depends [sic] upon transmission constraints, and the price separation such constraints cause."¹⁷⁷ Environmental and Science Protesters assert that MISO proposes to use reserve zones as proxies for the transmission constraints that cause price separation, which is inconsistent with Order No. 745. Environmental and Science Protesters note that Order No. 745 requires MISO to identify "the area(s) where the demand response resource reduces the market price for energy at the time when the demand response resource is committed or dispatched."¹⁷⁸ According to Environmental and Science Protesters, MISO merely assumes that reserve zones adequately identify transmission constraints that will create price separation and does not further inquire whether actual price separation exists between zones at the moment when MISO commits or dispatches a demand response resource.¹⁷⁹ They argue that, at a minimum, reserve zones should reflect the transmission constraints that occur when a demand response resource's offer would exceed the Net Benefits Price Threshold, but MISO's reserve zones have largely static borders that have hardly changed since 2009.¹⁸⁰ Environmental

¹⁷⁶ Demand Response Supporters Protest at 7.

¹⁷⁷ Environmental and Science Protesters Protest at 5 (citing Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 100).

¹⁷⁸ *Id.* (citing Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 100).

¹⁷⁹ *Id.* at 4.

¹⁸⁰ Environmental and Science Protesters provide maps of MISO's reserve zones in January 2009 and March 2012. *See id.* at Att. A.

and Science Protesters conclude that MISO fails to provide evidence that reserve zones will accurately reflect areas experiencing price separation.¹⁸¹

93. Environmental and Science Protesters support allocating costs using smaller zones, and they request that the Commission require MISO to allocate costs to all zones in which the Net Benefits Price Threshold is exceeded. Environmental and Science Protesters share MISO's concerns regarding the use of large zones for cost allocation, claiming that relying on LMPs averaged over large zones could ignore the existence of transmission congestion (and thus allocate costs too widely). However, Environmental and Science Protesters contend that MISO's concerns regarding the use of small zones is relevant only when the number of zones becomes administratively burdensome or when demand response costs are allocated only to zones that host demand response resources in need of compensation. Environmental and Science Protesters support allocating costs to transmission pricing zones,¹⁸² similar to PJM. They argue that allocating costs across smaller zones in which the LMP exceeds the Net Benefits Price Threshold is feasible and could improve the granularity with which MISO can identify actual beneficiaries. Environmental and Science Protesters state that, according to PJM, "it is reasonable to infer that areas where the price is above the Net Benefits Test threshold price at the time of a compensable load reduction benefit from the load reductions."¹⁸³

94. Demand Response Supports assert that MISO should adopt a cost allocation methodology similar to PJM's approach. They note that, in accepting PJM's proposal to allocate costs to all zones with LMPs above the Net Benefits Price Threshold, the Commission found that the benefits of demand response spill over to other zones most of the time.¹⁸⁴ They also note PJM's statement that "[t]he comparatively low level of the Net Benefits Price Threshold means that it is likely that the LMPs in higher-prices zones benefited from the price effect of the load reductions even if those zones subsequently separate, at a still higher price, from the zone where the compensable load reduction

¹⁸¹ *Id.* at 6.

¹⁸² Section 1.671a of the Tariff defines "Transmission Pricing Zones" as "[t]he pricing zones that the Transmission Provider uses to allocate revenues for services, such as Reactive Supply and Voltage Control." MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Second Revised Sheet No. 298.

¹⁸³ Environmental and Science Protesters Protest at 6-7.

¹⁸⁴ Demand Response Supporters Protest at 7 (citing *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,216, at PP 77-78 (2011)).

occurred.”¹⁸⁵ According to Demand Response Supporters, MISO has not demonstrated that its footprint is materially different from PJM’s in this regard and asserts that it is likely that demand reductions in a particular MISO reserve zone, which are based on only rough approximations of actual power flows will give rise to benefits in other reserve zones. They maintain that, like the MISO region, PJM’s footprint is very diverse and has areas of transmission constraints.¹⁸⁶ In addition, Demand Response Supporters argue that, since MISO calculates the Net Benefits Price Threshold on a system-wide basis, it should allocate the costs of compensating demand response resources on a comparable basis.¹⁸⁷ They maintain that allocating costs to all zones where the LMP exceeds the threshold price, as is done in PJM, comports with Order No. 745 and is the easiest and most consistent way to allocate costs to all those who benefit from demand response.¹⁸⁸

95. Demand Response Supporters object to allocating the costs of demand response compensation only to real-time buyers, stating that all entities, including exports and virtual transactions, that benefit from lower prices due to demand response in the day-ahead and real-time markets should pay the associated costs. They maintain that, in Order No. 745, the Commission established a bright-line rule regarding cost allocation, requiring that costs be allocated “to all entities that purchase from the relevant energy market in the area(s) where the demand response resource reduces the market price for energy.”¹⁸⁹ They state that, in a recent Demand Response Working Group meeting, MISO stated that “[b]uyers that benefit from lower LMPs include, but are not limited to, [load-serving entities] that purchase Energy in the Real-Time market, power producers buying back their Day-Ahead position, as well as entities that have Day-Ahead cleared Virtual Supply Offers.”¹⁹⁰ Demand Response Supporters maintain that the proposed Tariff language is unclear regarding whether MISO will allocate the costs of demand response compensation to all those who benefit. Demand Response Supporters maintain that PJM’s cost allocation methodology adheres to the Commission’s directives in Order No. 745, stating that in PJM demand response resource costs “are recovered ratably from

¹⁸⁵ *Id.* at 7-8 (citing PJM July 22, 2011 Compliance Filing, Docket No. ER11-4106-000, Transmittal Letter at 22).

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* at 8-9.

¹⁸⁸ *Id.* at 9.

¹⁸⁹ *Id.* at 10 (citing Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 100).

¹⁹⁰ *Id.* at 9-10.

all exports from PJM and all loads in the identified Zones, based on a formula stated in the section.”¹⁹¹ Demand Response Supporters state that “all exports” and “all loads” should be clearly stated in the Tariff language regarding MISO’s cost allocation proposal.¹⁹²

96. Michigan South Central opposes holding load-serving entities responsible for demand response resource operating costs during hours when the applicable hourly LMP is below the Net Benefits Price Threshold, stating that this is patently unfair and violates cost causation principles.¹⁹³ In particular, Michigan South Central is concerned about situations when a demand response resource is unaffiliated with the load-serving entity to which it is connected. Michigan South Central asserts that a demand response resource will operate when the applicable hourly LMP is below the Net Benefits Price Threshold only if the resource is operating contrary to MISO’s direction or when an unanticipated system condition or system emergency has caused MISO to schedule the demand response resource to operate. Michigan South Central asserts that, in these situations, requiring unaffiliated load-serving entities to pay demand response resources’ costs does not send a useful price signal and effectively penalizes load-serving entities for conduct that they cannot control (i.e., for MISO’s scheduling decisions and/or resources’ operations). Michigan South Central dismisses MISO’s argument that this cost allocation is consistent with its existing practice, stating that MISO is proposing a new method of managing, compensating, and metering demand response resources, and “[t]here is no reason to continue this poor ratemaking practice while changing everything else.”¹⁹⁴ Michigan South Central urges the Commission to direct MISO to revise its proposal to socialize the cost of compensating demand response resources when the applicable hourly LMP is below the Net Benefits Price Threshold, contending that this is appropriate for costs that are not attributable to any entity.¹⁹⁵

¹⁹¹ *Id.* at 11 (quoting PJM July 22, 2011 Compliance Filing, Docket No. ER11-4106-000, Transmittal Letter at 23 (emphasis added)).

¹⁹² *Id.*

¹⁹³ Michigan South Central Protest at 3-5.

¹⁹⁴ *Id.* at 5.

¹⁹⁵ *Id.* at 6.

f. Answer

97. MISO argues that its cost allocation proposal will accurately capture transmission constraints on the system and will allocate costs to those benefiting from the decrease in LMPs. MISO contends that reserve zones reflect the likelihood that transmission constraints will limit the delivery of energy across zones and, therefore, the delivery of load reduction service through demand assets will similarly be constrained. MISO notes that reserve zones are currently used for the allocation of operating reserve costs.¹⁹⁶ MISO maintains that there is no basis for concluding that, if reserve zone borders do not change dramatically or frequently, then the reserve zones do not properly reflect transmission congestion and price separation. MISO states that reserve zones are studied and updated annually and that it has not needed to change reserve zone borders recently. MISO adds that it is unclear what Environmental and Science Protesters mean by “transmission pricing zones,” as MISO sets prices at commercial pricing nodes.¹⁹⁷

98. MISO maintains that applying PJM’s cost allocation approach in MISO would not be just and reasonable, as MISO could experience LMPs that are higher than the Net Benefits Price Threshold in only two reserve zones at opposite ends of MISO’s footprint, and in this circumstance dispatching a demand response resource in one of the high-priced reserve zones would not reduce LMPs in the other, high-priced reserve zone.¹⁹⁸ MISO also opposes allocating costs system wide, arguing that, given the broad footprint of MISO and transmission constraints that occur regularly therein, demand reduction in one area of the footprint usually will not benefit all energy purchasers throughout the MISO system.¹⁹⁹

99. With regard to Demand Response Supporters’ request that MISO allocate costs to all load, virtual transactions, and exports, MISO states that “[i]f D[emand] R[esponse] R[esources] reduce LMPs and provide a benefit to the Energy market, then it would only benefit those Market Participants that have purchased in the applicable Energy market.”²⁰⁰

¹⁹⁶ MISO Answer at 6.

¹⁹⁷ *Id.* at 8-9.

¹⁹⁸ *Id.* at 6-7.

¹⁹⁹ *Id.* at 7.

²⁰⁰ *Id.*

100. In response to Michigan South Central, MISO argues that the Commission has made clear that situations where the applicable hourly LMPs are below the Net Benefits Price Threshold are beyond the scope of this proceeding. MISO adds that the Commission has found the allocation of costs associated with ARCs to the load-serving entities from which the demand response originates to be just and reasonable.²⁰¹

g. Commission Determination

101. We find that MISO has complied with the Commission's directives to remove the Tariff language associated with its initial cost allocation methodology and submit a just and reasonable cost allocation proposal, and we will conditionally accept the associated Tariff revisions. We find that MISO's zonal cost allocation methodology, once modified as we require below, will allocate the cost of compensating cost-effective demand response resources in a manner that is just and reasonable. As the Commission stated in Order No. 745, because the dispatch of demand response resources will result in a lower LMP, which customers benefit from that lower LMP depends upon transmission constraints, and the price separation such constraints cause within the RTO.²⁰² Reserve zone boundaries are determined on a quarterly basis and, as MISO explains, are designed to reflect transmission constraints that restrict deliverability and produce price separation for operating reserves.²⁰³ MISO may adjust the number of reserve zones and/or the resource, load, or elemental pricing nodes assigned to specific reserve zones between quarterly updates of the reserve zones in order to reflect certain unplanned transmission or generator outages.²⁰⁴

102. However, we share protesters' concerns that reserve zone boundaries alone may not reflect whether transmission constraints are affecting the distribution of demand response benefits during a given hour. In Order No. 745, the Commission found that "[i]n some hours in which transmission constraints do not exist, RTOs establish a single LMP for their entire system (a single pricing area) in which case the demand response

²⁰¹ *Id.* at 5.

²⁰² Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 100.

²⁰³ *See, e.g.*, MISO, FERC Electric Tariff, 39.2.1A, Product Requirements for Operating Reserve, 1.0.0, §§ 39.2.1A.c-d.

²⁰⁴ In particular, such conditions must be expected to last for two or more operating days, cause adverse reliability conditions that cannot be resolved through normal operating procedures, and necessitate reserve zone changes to ensure reliability. *See id.* § 39.2.1A.f.

would result in a benefit to all customers on the system.”²⁰⁵ Under MISO’s proposal, the costs of compensating a cost-effective demand response resource will always be shared only within the reserve zone(s) in which the demand response resource resides. MISO has not demonstrated that in hours in which transmission constraints are not actively binding, the benefits of the demand response will not extend beyond the boundaries of the associated reserve zone(s). Accordingly, we will require MISO to submit, in the compliance filing directed below, modifications and associated Tariff revisions to its proposal to allocate the costs of compensating cost-effective demand response so that during any hour when the transmission constraints associated with one or more adjacent reserve zones are not actively binding (e.g., when there is not price separation between one or more reserve zones), those reserve zones will share the cost associated with compensating those demand response resources during the hour.

103. We expect that this modification to MISO’s cost allocation proposal will address concerns of Demand Response Supporters and Environmental and Science Protesters that reserve zones do not reflect whether transmission constraints are actively binding such that price separation occurs. We will not require MISO to further modify its cost allocation proposal to utilize a different zonal configuration or to adopt components of PJM’s cost allocation methodology, as protesters request. We find that, once modified as described herein, MISO’s cost allocation proposal will be just and reasonable, and consistent with the requirement of the Order No. 745 Compliance Order.²⁰⁶ Accordingly, we need not consider alternative cost allocation methodologies. 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.”²⁰⁷

²⁰⁵ Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 100.

²⁰⁶ Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 99 (requiring MISO to submit a “just and reasonable cost allocation proposal”).

²⁰⁷ *See, e.g., 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 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*, 116 FERC ¶ 61,020 (2006).

104. We share Demand Response Supporters' concerns regarding MISO's proposal to allocate the costs of compensating cost-effective demand response to "Real-Time Energy buyers" based on their "Real-Time Energy purchases." MISO has not defined these terms and, therefore, it is unclear whether MISO will appropriately allocate costs to all market participants who benefit from lower prices due to demand response. MISO has also not justified limiting its proposed cost allocation to only market participants who purchase energy in the real-time market. We will require MISO to submit, in the compliance filing directed below: (1) definitions of the terms "Real-Time Energy buyers" and "Real-Time Energy purchases" or revisions to instead, in the specification of cost allocation in the proposed zonal method, refer to one or more terms that are defined in the Tariff; (2) an explanation of whether MISO will allocate costs based on market participants' export, wheel-through, and/or virtual transactions and justification for its proposed treatment of such transactions; and (3) associated Tariff provisions that make this clear, should MISO propose to allocate demand response costs to additional resources. In its compliance filing, MISO should also justify limiting its cost allocation proposal to market participants that purchase energy in the real-time market or, in the alternative, justify allocating costs to additional market participants in the day-ahead market and submit corresponding Tariff revisions.

105. We will not address Michigan South Central's arguments regarding the allocation of the cost of compensating demand response resources during hours when the applicable hourly LMP is below the Net Benefits Price Threshold, as we find that to be beyond the scope of this proceeding. The Commission's action in Order No. 745, undertaken pursuant to section 206 of the FPA, was limited to situations where a demand response resource has the capability to balance supply and demand as an alternative to a generation resource, and where dispatch of the demand response resource is cost-effective as determined by a net benefits test. As the Commission stated in the Order No. 745 Compliance Order, "[t]he Commission's section 206 action did not extend to situations where the LMP is not greater than or equal to the threshold price."²⁰⁸

106. In addition to the concerns raised in the protests, the Commission has identified several aspects of MISO's proposed cost allocation methodology that do not comply with the Commission's prior directives. First, in the Order No. 745 Compliance Order, the Commission noted that MISO did not explain in detail its formula for calculating demand response compensation and required MISO to "explain the entirety of its cost allocation proposal, including the associated formulas, and ensure that the proposal is accurately reflected in the Tariff."²⁰⁹ We find that MISO has not fully complied with this

²⁰⁸ Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 37.

²⁰⁹ *Id.* P 100.

requirement. In the March 2012 Compliance Filing, MISO proposes to omit the formula explaining the determination of Demand Response Resource compensation and simply retains existing language providing that MISO shall recover “the total Demand Response Resource compensation” from the applicable reserve zone(s).²¹⁰ MISO has not defined the term “Demand Response Resource compensation,” nor described how it will determine this amount for each reserve zone. Accordingly, we will require MISO to submit, in the compliance filing directed below, an explanation of its determination of demand response resource compensation in each reserve zone, including any associated formulas, and revisions to ensure that the proposal is accurately reflected in the Tariff.

107. Second, the proposed revisions to section 40.3.3.a.xvii state that, when a demand response resource resides in more than one reserve zone, the total demand response resource compensation will be apportioned to each affected reserve zone, *pro rata*, “based on the Actual Energy Injections within each Reserve Zone.”²¹¹ This description is not consistent with MISO’s reference to injections by demand response resources in its transmittal letter, which states that such costs will be apportioned to “the affected Reserve Zones based on the D[emand] R[esponse] R[esource] Actual Energy Injections.”²¹² We will require MISO to submit, in the compliance filing directed below, an explanation of whether it will use the actual energy injections of demand response resources and/or other resources and corresponding Tariff revisions.

108. Third, we find that MISO has not fully complied with the Commission’s requirement that MISO ensure that its cost allocation proposal “applies only to those hours when compensating demand response resources at the LMP is cost effective, as determined by the net benefits test.”²¹³ In particular, MISO proposes to apply its cost allocation methodology in “each Hour in which a DRR’s LMP is greater than or equal to the Net Benefits Threshold.”²¹⁴ However, the MISO Tariff does not define the term “DRR’s LMP,” and this term is not used consistently in other Tariff sections that describe the application of the Net Benefits Price Threshold. We will require MISO to submit, in

²¹⁰ MISO, FERC Electric Tariff, 40.3.3, Real-Time Energy and Operating Reserve Market Settlement Cal, 2.5.0, § 40.3.3.a.xvii.

²¹¹ *Id.*

²¹² *Id.*, Transmittal Letter at 10.

²¹³ Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 100.

²¹⁴ MISO, FERC Electric Tariff, 40.3.3, Real-Time Energy and Operating Reserve Market Settlement Cal, 2.5.0, § 40.3.3.a.xvii.

the compliance filing directed below, Tariff revisions to either define “DRR’s LMP” or to refer to one or more terms that are defined in the Tariff.

109. In addition, we are concerned that MISO’s proposed Tariff revisions in section 40.3.3.a.xvii do not differentiate sufficiently between costs that are calculated on a zonal basis versus a market-wide basis. In particular, MISO states that, if for a given reserve zone in an hour the actual energy injections of all demand response resources exceed the amount of real-time energy purchases, “the amount of total Demand Response Resource compensation allocated to Real-Time Energy purchases” will be limited to certain costs.²¹⁵ However, the proposed Tariff language does not state that this limitation in the amount of compensation allocated to real-time energy purchases will apply only within the relevant reserve zone. The proposed Tariff revisions also state that any compensation not recovered from real-time energy purchases “will be allocated, pro rata, to Market Participants based on their Load Ratio Share.”²¹⁶ This language does not specify that the costs will be recovered from all market participants on a system-wide basis. We will require MISO to submit, in the compliance filing directed below, revisions to the Tariff to address these concerns.

110. In the Order No. 745 Compliance Order, the Commission required MISO to explain the Tariff revisions that will be necessary to modify its existing cost allocation methodology to comply with the requirements of Order No. 745 and to ensure that those revisions apply when the net benefits test is satisfied.²¹⁷ MISO explains that, to remove its existing cost allocation from the Tariff during hours when the applicable hourly LMP exceeds the Net Benefits Price Threshold, it must modify the definition of “Actual Energy Withdrawal” in section 1.2 to omit the “Actual Energy Injections by the D[emand] R[esponse] R[esource] asset.”²¹⁸ MISO also proposes Tariff revisions to ensure that, when the applicable hourly LMP is less than the Net Benefits Price Threshold, the actual energy injections for demand response resources associated with a given load zone are added to the load zone’s metered volume. This revision will ensure that MISO’s existing cost allocation methodology continues to apply when the net benefits test is not satisfied. Therefore, we find that the proposed revisions to section 1.2 of the MISO Tariff comply with the directives of the Order No. 745 Compliance Order. However, as the Commission noted in the Order No. 745 Compliance Order, MISO has

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 101.

²¹⁸ MISO March 2012 Compliance Filing, Transmittal Letter at 13.

not explained how the revisions to section 1.2 could modify other sections of the Tariff that use the term “Actual Energy Withdrawal,” or why such modifications are needed to comply with Order No. 745.²¹⁹ We will require MISO to provide further explanation in the compliance filing directed below.

111. With regard to the allocation of real-time Revenue Sufficiency Guarantee costs, MISO states that it proposes to clarify the definition of “Actual Energy Withdrawal” in section 1.2 by adding the actual energy injections for all demand response resources associated with a given load zone for hours where the hourly ex post LMP is less than the Net Benefits Price Threshold. MISO states that this change is necessary to avoid charging real-time Revenue Sufficiency Guarantee charges to load-serving entities for those deviations that occur due to the provision of demand response in the day-ahead market.²²⁰ However, as discussed in the Order No. 745 Compliance Order, the treatment of demand response resources when the net benefits test is not satisfied is beyond the scope of this proceeding. We will consider any necessary revisions to MISO’s allocation of real-time Revenue Sufficiency Guarantee costs as part of the MISO Order No. 719 compliance proceeding. Accordingly, we will conditionally accept the proposed revisions to section 1.2, subject to further compliance, as discussed above, and the outcome of the MISO Order No. 719 compliance proceeding.

3. Measurement and Verification and Registration Procedures

a. Measurement and Verification Protocols

i. Order No. 745

112. In Order No. 745, the Commission directed each RTO and ISO to include in its compliance filing an explanation of how its current measurement and verification procedures will continue to ensure that appropriate baselines are set, and that demand response will continue to be adequately measured and verified as necessary to ensure the performance of each demand response resource. The Commission directed each RTO and ISO to propose, if necessary, any changes needed to ensure that measurement and verification of demand response will adequately capture the performance (or non-performance) of each participating demand response market participant to be consistent with the requirements of Order No. 745.²²¹

²¹⁹ Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 101.

²²⁰ MISO March 2012 Compliance Filing, Transmittal Letter at 14.

²²¹ Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 94.

ii. August 2011 Compliance Filing

113. In its August 2011 Compliance Filing, MISO continued to propose, as it did in its October 2009 Compliance Filing, to incorporate North American Energy Standards Board (NAESB) standards regarding measurement and verification, and maintained that its Business Practices Manuals will be updated to provide the implementation details for measurement and verification of demand response. For most demand response resources, MISO proposed to relax the one-to-one relationship between the Host Load Zone and demand response resource assets and to eliminate the Load Zone Dispatch Internal Demand Forecast requirement. MISO proposed to replace this requirement with measurement and verification protocols, and proposed Tariff revisions stating that these protocols are described in the Tariff and Business Practices Manuals. However, for Demand Response Resources – Type II that are qualified to provide regulating reserves (i.e., that are regulation-qualified), MISO proposed, as it did in the MISO Order No. 719 compliance proceeding, to maintain the one-to-one relationship between the Host Load Zone and demand response resource asset. MISO stated that closely monitoring these resources is necessary to ensure reliability and to satisfy North American Electric Reliability Corporation (NERC) standards.²²²

iii. Order No. 745 Compliance Order

114. In the Order No. 745 Compliance Order, the Commission deferred judgment as to whether MISO had complied with the measurement and verification requirements of Order No. 745, noting that MISO was required to include its measurement and verification protocols in its Tariff in the MISO Order No. 719 compliance proceeding.²²³ The Commission required MISO to provide an explanation of how its measurement and verification protocols, as amended in the ongoing MISO Order No. 719 compliance proceeding, comply with Order No. 745's measurement and verification requirements.²²⁴ The Commission required MISO to explain its proposal to require Demand Response Resources – Type I that are deployed for contingency reserves to provide five-minute interval demand data, rather than a “minimum of” five-minute data.²²⁵ The Commission

²²² MISO August 2011 Compliance Filing, Transmittal Letter at 7-8.

²²³ Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at PP 121-122 (citing Order No. 719 Compliance Order, 137 FERC ¶ 61,214 at P 79 n.118).

²²⁴ *Id.* (citing Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 94).

²²⁵ *Id.* P 123.

also required MISO to remove references to the measurement and verification protocols being in the Business Practices Manuals.²²⁶

115. The Commission conditionally accepted MISO's proposed language regarding the definition of Host Load Zone and the one-to-one relationship between Host Load Zones and regulation-qualified Demand Response Resources – Type II, subject to the outcome of the MISO Order No. 719 compliance proceeding and further explanation and Tariff revisions on compliance.²²⁷ The Commission noted that MISO had removed, without explanation, language in several Tariff sections specific to the one-to-one relationship to the Host Load Zone for Demand Response Resources – Type II providing regulating reserves. The Commission also stated that the definition of “Measurement and Verification” procedures in section 1.411 excludes, without explanation, regulation-qualified Demand Response Resources – Type II.²²⁸

iv. March 2012 Compliance Filing

116. 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 identical protocols in the MISO Order No. 719 compliance proceeding.²²⁹ According to MISO, Attachment TT has been developed based on NAESB standards and is designed so that consumption baselines remain accurate over time.²³⁰ Among other things, MISO argues that it is necessary to retain the one-to-one relationship between Host Load Zones and regulation-qualified Demand Response Resources – Type II because closely monitoring assets that are providing regulating reserves is important to ensuring reliability and meeting NERC standards. Moreover, MISO contends that modeling the Host Load Zone requires such resources to submit real-time load forecasts via telemetry, and without this forecast, MISO would not have a real-time basis to determine the energy that the demand response resource will consume.²³¹

²²⁶ *Id.* P 124.

²²⁷ *Id.* P 125.

²²⁸ *Id.* P 126.

²²⁹ For a complete description of proposed Attachment TT, *see* Order No. 719 Rehearing and Compliance Order, 140 FERC 61,060, at PP 72-75.

²³⁰ MISO March 2012 Compliance Filing, Transmittal Letter at 15.

²³¹ *Id.* at 17-18.

117. MISO states that Demand Response Resources – Type I deployed to provide contingency reserves should provide five-minute metered demand data, as allowing resources to provide a “minimum of” five-minute data would improperly permit the submission of meter data at a frequency greater than five minutes.²³² MISO also proposes to remove references to its measurement and verification protocols being in its Business Practices Manuals.

v. Comments

118. Alcoa finds MISO’s explanation for requiring a Host Load Zone for regulation-qualified Demand Response Resources – Type II to be insufficient. Alcoa argues that this requirement causes double payment of miscellaneous MISO administrative fees that generation resources do not have to pay. Alcoa explains that a demand response resource pays fees on the demand response signal and the actual Host Load Zone load. Alcoa states that the process that a generator uses to create a dynamic load forecast would work equally well for regulation-qualified Demand Response Resources – Type II, which should have the option to use a dynamic load forecast (instead of being required to have a one-to-one relationship between the Host Load Zone and demand response assets and to provide Load Zone Dispatch Internal Demand Forecast). Alcoa explains that, just as a generator produces a load curve, a demand response resource also produces a load curve. Accordingly, Alcoa argues that these resources could be dispatched in the same process and insists that “the Host Load Zone is an extraneous, non-comparable requirement that should be eliminated.”²³³

vi. Answer

119. In response to Alcoa, MISO states that it has reinstated Tariff language describing the one-to-one relationship to the Host Load Zone for certain demand response resources to comply with the Commission’s directive to “submit either an explanation for the removal of the language specific to regulation-qualified Demand Response Resources – Type II or revisions to ensure that the proposed Tariff revisions appropriately apply to such resources.”²³⁴ MISO reiterates that it is necessary for a regulation-qualified Demand Response Resources – Type II to submit Host Load Zone forecasts to reflect the resource’s expectations against its participation in both the energy and operating reserve

²³² *Id.* at 16.

²³³ Alcoa Comments at 6-7.

²³⁴ MISO Answer at 9 (citing Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 126).

markets and to closely monitor all assets that are providing regulating reserves to ensure system reliability.²³⁵

vii. Commission Determination

120. We find that MISO has generally satisfied the measurement and verification requirements of Order No. 745, and we will accept the associated Tariff revisions, subject to a further compliance filing, as discussed below, and the outcome of the MISO Order No. 719 compliance proceeding. As required in the Order No. 745 Compliance Order,²³⁶ MISO has explained how these measurement and verification protocols in Attachment TT comply with Order No. 745. In particular, MISO has shown that these measurement and verification protocols will continue to ensure that appropriate baselines are set and that MISO can verify that demand response resources have performed, consistent with the requirements of Order No. 745.²³⁷ MISO has also explained the use of five-minute demand data for certain demand response resources, and revised references to its Business Practices Manuals, consistent with the requirements of the Order No. 745 Compliance Order.²³⁸

121. We note that, in the Order No. 719 Rehearing and Compliance Order, issued concurrently with this order, the Commission conditionally accepts an identical version of proposed Attachment TT and requires associated Tariff revisions on compliance.²³⁹ As the version (1.0.0) of Attachment TT submitted in the MISO Order No. 719 compliance proceeding will supersede the version (0.0.0) submitted in this proceeding, we need not reiterate the Attachment TT compliance requirements articulated in the Order No. 719 Rehearing and Compliance Order.²⁴⁰

²³⁵ *Id.*

²³⁶ Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 122.

²³⁷ Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 94.

²³⁸ Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at PP 123-124.

²³⁹ Order No. 719 Rehearing and Compliance Order, 140 FERC 61,060 at PP 79-88.

²⁴⁰ Demand Response Supporters' protest regarding Attachment TT and ARC registration is addressed in the Order No. 719 Rehearing and Compliance Order, issued concurrently with this order. *Id.* P 82.

122. We will not address Alcoa's arguments regarding MISO's justification for maintaining the one-to-one relationship between Host Load Zones and regulation-qualified Demand Response Resources – Type II because those arguments are beyond the scope of this proceeding. In the Order No. 745 Compliance Order, the Commission conditionally accepted Tariff revisions regarding the treatment of regulation-qualified Demand Response Resources – Type II, subject to further compliance and the outcome of the MISO Order No. 719 compliance proceeding.²⁴¹ The Commission did not require MISO to justify its decision to maintain this Host Load Zone requirement, noting instead that the Order No. 719 Compliance Order required MISO to provide sufficient justification of its decision to maintain this requirement. We note that Alcoa raised similar concerns regarding MISO's decision to maintain the one-to-one relationship between Host Load Zones and regulation-qualified Demand Response Resources – Type II in the MISO Order No. 719 compliance proceeding, and these arguments are addressed in the Order No. 719 Rehearing and Compliance Order.²⁴²

123. MISO has not complied with the Commission's requirement in the Order No. 745 Compliance Order to either explain its removal of certain Tariff language specific to regulation-qualified Demand Response Resources – Type II (despite its statement that such provisions should apply to these resources) or to submit revisions to ensure that the proposed Tariff revisions appropriately apply to such resources.²⁴³ In particular, the Commission noted that the definition of "Measurement and Verification" in section 1.411 submitted in the August 2011 Compliance Filing excludes, without explanation, regulation-qualified Demand Response Resources – Type II,²⁴⁴ but MISO does not explain or modify section 1.411 in its March 2012 Compliance Filing. MISO's proposed revisions to the definition of "Calculated DRR-Type II Output" in section 1.61 continue to refer to Host Load Zones but are not limited to apply only to regulation-qualified Demand Response Resources – Type II. In its March 2012 Compliance Filing, MISO does not explain the removal of language specific to Host Load Zones in sections 39.3.1, 39.3.2C, 40.2.5.b.xxxii, 40.3.3.a.i, 40.3.4.a.vii, 40.3.4.a.x, and 40.3.4.a.xii in its August 2011 Compliance Filing.

²⁴¹ Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 124.

²⁴² Order No. 719 Rehearing and Compliance Order, 140 FERC 61,060 at P 94.

²⁴³ The Commission specifically referenced sections 1.61, 39.3.1, 39.3.2C, 40.2.5.b.xxxii, 40.3.3.a.i, 40.3.4.a.vii, 40.3.4.a.x, and 40.3.4.a.xii of the MISO Tariff. Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 126 n.261.

²⁴⁴ *Id.*

124. Accordingly, we will require MISO to submit, in the compliance filing directed below, either an explanation for the removal of the language specific to regulation-qualified Demand Response Resources – Type II and/or revisions to ensure that the Tariff appropriately applies to such resources. Consistent with the Order No. 719 Rehearing and Compliance Order, MISO should also submit Tariff revisions to ensure that, when referring to Demand Response Resources – Type II that are eligible to provide regulating reserves, it consistently characterizes them as “Regulation Qualified Resources.”²⁴⁵

b. Demand Response Resource Registration

i. August 2011 Compliance Filing

125. MISO proposed section 38.7.2 of the Tariff to provide procedures for the registration of demand response resources, including a listing of the information that market participants must provide to register.²⁴⁶ Among other things, section 38.7.2 requires that MISO notify the relevant electric retail regulatory authority of the registration of relevant retail customers and the level of their participation. It also specifies that relevant electric retail regulatory authorities seeking to assert that laws or regulations expressly prohibit an end-use customer’s participation in MISO’s markets must provide requisite certification within ten business days of receipt of notice for MISO of a registration request (i.e., the 10-day deadline).²⁴⁷

ii. Order No. 745 Compliance Order

126. The Commission found that the proposed registration requirements in section 38.7.2 of the Tariff do not explain what will happen under the Tariff if: (1) the relevant electric retail regulatory authority challenges a registration request before the 10-day deadline; (2) an otherwise prohibited customer registers its demand response resources; (3) an end-use customer becomes non-compliant after having registered with MISO; (4) a demand response resource submits an offer before the 10-day deadline; or (5) the relevant electric retail regulatory authority rejects the demand resource’s registration after the 10-day deadline. The Commission stated that the Tariff does not establish the timeline for MISO to provide notifications to relevant electric retail regulatory authorities and to

²⁴⁵ Order No. 719 Rehearing and Compliance Order, 140 FERC 61,060 at P 169.

²⁴⁶ Registration requirements for ARCs in section 38.6 of the Tariff are addressed in the Order No. 719 Rehearing and Compliance Order. *Id.* PP 109-113.

²⁴⁷ MISO, FERC Electric Tariff, 38.7.2, Demand Response Resource Procedures, 0.0.0.

complete registration. In addition, the Commission found that MISO had not addressed in the Tariff how it will deal with situations where a market participant fails to designate a contact person for the load-serving entity, relevant electric retail regulatory authority, and/or local balancing authority for notification purposes. Accordingly, the Commission directed MISO to further explain its registration requirements, and modify proposed section 38.7.2 of the Tariff, as appropriate.²⁴⁸

iii. March 2012 Filings

127. In its March 2012 Compliance Filing, MISO describes its registration procedures for demand response resources, stating that it will not accept offers from demand response resources until after the ten-day deadline and will automatically accept a demand response resource's registration following the ten-day deadline, unless the relevant electric retail regulatory authority objects. MISO states that relevant electric retail regulatory authorities can reject a demand response resource's registration at any time, including after the ten-day notice period, and the demand asset will be promptly removed from participating in MISO's markets. MISO adds that if an otherwise prohibited customer registers its demand response resources or an end-use customer becomes non-compliant after having registered with MISO, then MISO will not allow the customer to participate in its markets.²⁴⁹

128. MISO provides further explanation and Tariff revisions to section 38.7.2 of the Tariff to describe its registration procedures for demand response resources. Among other things, MISO explains that if the relevant electric retail regulatory authority challenges a demand response resource's registration request before the 10-day deadline, then MISO will not approve the registration request. MISO states that if an otherwise prohibited customer registers its demand response resources or if an end-use customer becomes non-compliant after having registered with MISO, then MISO will terminate the market participant's ability to participate in the energy market. MISO also states that if a demand response resource submits an offer before the 10-day deadline, then MISO will not accept such an offer. Finally, MISO states that a relevant electric retail regulatory authority may reject a registration request at any time, and if it rejects a demand response resource's registration request after the 10-day deadline, then the demand asset would be promptly removed from participating in the market.²⁵⁰

²⁴⁸ Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 128.

²⁴⁹ MISO March 2012 Compliance Filing, Transmittal Letter at 19.

²⁵⁰ *Id.* at 19-20.

129. 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 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.²⁵¹

iv. Comments

130. AMP requests that the Commission direct MISO to correct certain typographical errors in section 38.7.2.3 of the Tariff.²⁵²

v. Answer

131. MISO states that it will correct the typographical errors in section 38.7.2.3 of the Tariff identified by AMP, if so directed by the Commission.²⁵³

vi. Commission Determination

132. With regard to MISO's proposed provisions related to the registration of demand response resources in section 38.7.2 of the Tariff, we find that MISO has not fully complied with the requirements of the Order No. 745 Compliance Order. Proposed section 38.7.2 introduced a 10-day deadline for relevant retail regulatory authorities to assert that laws or regulations expressly prohibit an end-use customer's participation in a transmission provider's markets. However, as the Commission noted in the Order No. 745 Compliance Order, the Tariff did not establish a timeline for MISO to notify the relevant electric retail regulatory authority of a demand response resource's registration and to complete the registration.²⁵⁴ Accordingly, to address this and related concerns, the

²⁵¹ MISO March 2012 Amended Filing, Transmittal Letter at 2.

²⁵² 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 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, 1.0.0, § 38.7.2.3).

²⁵³ MISO Answer at 9.

²⁵⁴ Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 128.

Commission required MISO to further explain its registration requirements, and to propose revisions to proposed section 38.7.2, as appropriate.²⁵⁵ MISO did not provide a further explanation of the timing, nor did it modify section 38.7.2 to provide the timeline. We will require MISO to submit, in the compliance filing directed below, a further explanation of this issue and modifications to section 38.7.2 to provide the timeline. In its compliance filing, MISO must also include Tariff revisions to make the corrections to section 38.7.2.3 suggested by AMP and agreed upon by MISO.

133. We also find that MISO has not appropriately revised section 38.7.2 to reflect its explanation of its registration procedures, as required in the Order No. 745 Compliance Order. In particular, section 38.7.2 states that relevant electric retail regulatory authorities seeking to assert that laws or regulations expressly prohibit an end-use customer's participation "must provide requisite certification within ten business days of receipt of notice from the Transmission Provider of a registration request."²⁵⁶ Section 38.7.2 does not reflect MISO's statements in its March 2012 Compliance Filing that (1) MISO will not accept offers from new demand response resources until after the ten-day deadline; (2) MISO will automatically accept a demand response resource's registration following the ten-day deadline, unless the relevant electric retail regulatory authority objects; (3) relevant electric retail regulatory authorities can reject a demand response resource's registration at any time, including after the ten-day notice period, and the demand asset will be promptly removed from participating in MISO's markets; and (4) if an otherwise prohibited customer registers its demand response resources or an end-use customer becomes non-compliant after having registered with MISO, then MISO will not allow the customer to participate in its markets.²⁵⁷ Accordingly, we will require MISO to submit, in the compliance filing directed below, Tariff revisions to include such information in section 38.7.2.

4. Other Issues

134. In the Order No. 745 Compliance Order, the Commission noted that MISO proposed to define the term "Measurement and Verification" rather than "Measurement and Verification Procedures," and required MISO to use the term "Measurement and Verification procedures" (without the use of the capitalized word "Procedures")

²⁵⁵ *Id.*

²⁵⁶ MISO, FERC Electric Tariff, 38.7.2, Demand Response Resource Procedures, 1.0.0.

²⁵⁷ MISO March 2012 Compliance Filing, Transmittal Letter at 19.

consistently throughout the Tariff, such as in section 1.1a.²⁵⁸ In its March 2012 Compliance Filing, MISO states that it has “modified [s]ections 39.2.5A, 40.3.4(xii), and 40.3.4(xiii) to remove the term ‘Measurement and Verification Procedures’ from the Tariff, and instead refer to the new Attachment TT.”²⁵⁹ However, we find that MISO has not fully complied with the Commission’s directive, as section 1.1a continues to refer incorrectly to “Measurement and Verification Procedures.”²⁶⁰ We will conditionally accept the proposed revisions to refer to Attachment TT rather than “Measurement and Verification Procedures.” We will require MISO to submit, in the compliance filing directed below, Tariff revisions to refer consistently to the term “Measurement and Verification procedures” and/or “Attachment TT.”

135. The Commission noted, in the Order No. 745 Compliance Order, that sections 39.3.2C and 40.3.3.c.ii refer to Financial Schedule “sales” and “purchases,” which are not defined in the Tariff, and required MISO to address this issue on compliance.²⁶¹ While MISO modified proposed section 39.3.2C, it did not modify section 40.3.3.c.ii. Accordingly, we will conditionally accept the proposed revisions to section 39.3.2C and require MISO to submit, in the compliance filing directed below, revisions to section 40.3.3.c.ii, consistent with the Commission’s previous directive.

136. In several instances, MISO proposes Tariff revisions in the MISO Order No. 719 compliance proceeding that are not reflected in, and are superseded by, corresponding Tariff revisions proposed in this proceeding. As a result, the most recent version of MISO’s Tariff that would apply after the conditional acceptance of the Tariff revisions proposed in this proceeding will not reflect all of the Tariff revisions accepted in the Order No. 719 Rehearing and Compliance Order, which is issued concurrently with this order. Accordingly, we will require MISO to submit, in the compliance filing directed below, revisions to ensure that Tariff revisions accepted in the Order No. 719 Rehearing and Compliance Order are appropriately reflected in the Tariff sheets accepted in this proceeding, as needed, including in:

²⁵⁸ Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 131.

²⁵⁹ MISO March 2012 Compliance Filing, Transmittal Letter at 20.

²⁶⁰ MISO, FERC Electric Tariff, 1.1a, Actual Energy Injections:, 1.0.0.

²⁶¹ Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 131.

- 1) Section 1.141, the provision that a Demand Response Resource – Type I is capable of providing energy, contingency reserves, or capacity “through Behind the Meter Generation and/or controllable Load.”²⁶²
- 2) Section 1.141, the provision that “[g]iven the appropriate qualification, Demand Response Resources – Type I resources can provide the following products: Energy, Operating Reserve, and capacity under Module E.”²⁶³
- 3) Section 1.142, the provision that “[g]iven the appropriate qualification, Demand Response Resources – Type II resources can provide the following products: Energy, Operating Reserve, and capacity under Module E.”²⁶⁴
- 4) Section 1.569a, the reference to “state” rather than “stat.”²⁶⁵
- 5) Section 40.3.3.c.iv, the provision that:

Below Net Benefits Threshold Revenue Neutrality: The Transmission Provider shall distribute any revenue inadequacy or surplus that results from differences between the LMP for a DRR CPNode and the LMP for the associated Load Zone(s) CPNode, *pro rata*, to Market Participant Loads based on their Market Load Ratio Share.²⁶⁶
- 6) Section 40.3.4.a.vii, the provision that “[i]f the Demand Response Resource – Type II has not been committed for Energy for that Hour, the Calculated Demand Response Resource – Type II Output shall be equal to zero (0) MW.”²⁶⁷

²⁶² MISO, FERC Electric Tariff, 1.141, Demand Response Resource-Type I; 0.5.0.

²⁶³ *Id.*

²⁶⁴ *Id.*, 1.142, Demand Response Resource-Type II; 0.5.0

²⁶⁵ *Id.*, 1.569a, Relevant Electric Retail Regulatory Authority (RERRA); 0.5.0.

²⁶⁶ *Id.*, 40.3.3, Real-Time Energy and Operating Reserve Market Settlement Cal, 2.4.0, § 40.3.3.c.iv.

²⁶⁷ *Id.*, 40.3.4, Charge for Excessive/Deficient Energy and Reserve Deployment, 4.4.0, § 40.3.4.a.vii.

7) Section 40.3.4.g.i, the reference to “Demand Response Resource Tolerance Band” rather than “demand Response Resource Tolerance Band.”²⁶⁸

137. We will require MISO to 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, it should submit corrections to sections 40.3.4.e(ii)-(iii) as they do not reflect revisions accepted in Docket No. ER12-2908-002.

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

- 1) In several sections, MISO refers to acronyms that are not defined in the Tariff, including “CPNode,” “C PNode,” “DRR,” “EPNode,” and/or “LBA.”²⁶⁹
- 2) In several sections, MISO does not consistently capitalize terms to indicate that they are defined in the Tariff, including “business day,” “month,” and “offer,” and “outages.”²⁷⁰
- 3) Section 38.7.1 refers to “net-benefits methodology,” which is not defined in the Tariff.²⁷¹
- 4) Section 38.7.2.4 should refer to “cleared Day-Ahead Schedules,”²⁷² rather than “Day-Ahead Cleared Schedules,” which is not defined in the Tariff.²⁷³
- 5) Section 39.3.2C should state, in part, that “Demand Response Resources shall be credited each Hour at the Day-Ahead LMP” and refer to the “Day-Ahead LMP for Day-Ahead Financial Schedules.”²⁷⁴

²⁶⁸ *Id.*, § 40.3.4.g.i.

²⁶⁹ *See, e.g., id.*, 38.7.2, Demand Response Resource Procedures, 1.0.0.

²⁷⁰ *See, e.g., id.*, 38.7.1, Net Benefits Price Threshold, 1.0.0.

²⁷¹ *Id.*

²⁷² Section 1.123 of the MISO Tariff defines the term “Day-Ahead Schedule.” *Id.*, Fourth Revised Vol. No. 1, Original Sheet No. 113.

²⁷³ *Id.*, 38.7.2, Demand Response Resource Procedures, 1.0.0, § 38.7.2.4.

6) Section 40.3.3.a.xvii should refer to “Net Benefits Price Threshold” rather than “Net Benefits Threshold.”²⁷⁵

7) Section 40.3.4.a.xiv should refer to “Attachment TT” rather than “the Attachment TT.”²⁷⁶

139. Finally, to the extent that any of the proposed Tariff revisions are not specifically addressed herein, we accept them, except for those provisions that are related to the MISO Order No. 719 compliance proceeding, which we conditionally accept, subject to the outcome of that proceeding. With regard to the effective date of the proposed Tariff revisions accepted herein, we grant MISO’s requested effective date of June 12, 2012, consistent with the effective date of the other Tariff sheets accepted in this proceeding.²⁷⁷

The Commission orders:

(A) The requests for rehearing and/or clarification in Docket No. ER11-4337-001 are hereby denied, as discussed in the body of this order.

(B) MISO’s proposed Tariff revisions in Docket Nos. ER12-1266-000 and ER12-1266-001 are hereby conditionally accepted, as discussed in the body of this order.

²⁷⁴ *Id.*, 39.3.2C, Charges and Payments for Purchases and Sales for DRRs, 4.0.0.

²⁷⁵ *Id.*, 40.3.3, Real-Time EORM Market Settlement Calculations, 2.0.0,
§ 40.3.3.a.xvii.

²⁷⁶ *Id.*, 40.3.4, Charge for Excessive/Deficient Energy and Reserve Deployment,
4.5.0, § 40.3.4.a.xiv.

²⁷⁷ *See* Effective Date Order, 138 FERC ¶ 61,143.

(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 statement 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

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).

requires the RTOs and ISOs to overcompensate for providing demand response, the resulting rates are both discriminatory and not just and reasonable.

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