

156 FERC ¶ 61,193
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Midcontinent Independent System Operator, Inc.

Docket Nos. ER12-1266-005
ER12-1266-006

ORDER ON COMPLIANCE

(Issued September 22, 2016)

1. On September 30, 2013, Midcontinent Independent System Operator, Inc. (MISO) submitted a filing¹ in compliance with Order No. 745² proposing revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to comply with the Commission's May 16, 2013 order on rehearing and compliance.³ On July 8, 2016, MISO submitted a filing in this proceeding to address discrepancies in section 40.3.3 of its Tariff.⁴ The Commission accepts these filings in part and accepts subject to condition in part, as discussed below.

¹ MISO September 30, 2013 Compliance Filing, Docket No. ER12-1266-005 (September 2013 Compliance Filing).

² *Demand Response Compensation in Organized Wholesale Energy Markets*, Order No. 745, FERC Stats. & Regs. ¶ 31,322 (Order No. 745), *order on reh'g*, Order No. 745-A, 137 FERC ¶ 61,215 (2011), *reh'g denied*, Order No. 745-B, 138 FERC ¶ 61,148 (2012), *vacated sub nom. Elec. Power Supply Ass'n v. FERC*, 753 F.3d 216 (D.C. Cir. 2014), *rev'd & remanded sub nom. FERC v. Elec. Power Supply Ass'n*, 136 S. Ct. 760 (2016).

³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,146 (2013) (May 2013 Order).

⁴ MISO July 8, 2016 Filing, Docket No. ER12-1266-006 (July 2016 Reconciliation Filing).

I. Background

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

2. In Order No. 719,⁵ 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. In an order issued on December 15, 2011,⁶ the Commission conditionally accepted MISO's filings in compliance with Order No. 719, notably rejecting MISO's proposed compensation for demand response hosted by aggregators of retail customers (ARC).⁷ In an order issued July 19, 2012, the Commission conditionally accepted MISO's March 2012 filings made in compliance with the Order No. 719 Compliance Order, including MISO's revised proposal to compensate demand response hosted by ARCs at the market price for energy, the locational marginal price (LMP).⁸ In an order issued on May 16, 2013, the Commission denied the request for rehearing and clarification of the Order No. 719 Rehearing and Compliance Order and conditionally accepted MISO's August 2012 compliance filing⁹ related to Order No. 719, subject to a further compliance filing.¹⁰ In an order issued concurrently with this order, the Commission conditionally

⁵ *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶ 31,281 (2008) (Order No. 719), *order on reh'g*, Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 (2009), *order on reh'g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

⁶ *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,214 (2011) (Order No. 719 Compliance Order).

⁷ The term "ARC" refers to an entity that aggregates demand response bids (which are mostly from retail loads). Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 3 n.3.

⁸ *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,060, at P 127 (2012) (Order No. 719 Rehearing and Compliance Order).

⁹ MISO August 20, 2012 Compliance Filing, Docket No. ER12-1266-003 (August 2012 Compliance Filing).

¹⁰ *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,145 (2013) (Order No. 719 Order on Compliance Filing).

accepts MISO's September 2013 compliance filing related to Order No. 719,¹¹ subject to the submission of a further compliance filing.¹²

B. Order No. 745 and MISO's Order No. 745 Compliance Filings

3. 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 energy and operating reserve markets and real-time energy and operating reserve markets) administered by Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs) and amended the Commission's regulations under the FPA.¹³ Specifically, Order No. 745 required each RTO and ISO to pay a demand response resource the LMP, under certain circumstances. The Commission required each RTO and ISO, including MISO, to make a compliance filing, proposing Tariff revisions necessary to implement the compensation approach adopted in Order No. 745, including a net benefits test, a cost allocation mechanism, and an assessment of the RTO's or ISO's 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.

4. In the order on compliance issued December 15, 2011, the Commission conditionally accepted in part and rejected in part MISO's August 19, 2011 compliance filing,¹⁴ subject to MISO submitting a further compliance filing.¹⁵ On March 14, 2012, as amended March 23, 2012, MISO submitted its filing in compliance with the December 2011 Order on Compliance.¹⁶ In an order issued on July 19, 2012, the Commission

¹¹ MISO September 30, 2013 Compliance Filing, Docket No. ER12-1265-005 (September 2013 Order No. 719 Compliance Filing).

¹² *Midcontinent Indep. Sys. Operator, Inc.*, 156 FERC ¶ 61,194 (2016) (2016 Order No. 719 Compliance Order).

¹³ Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 6.

¹⁴ MISO August 19, 2011 Compliance Filing, Docket No. ER11-4337-000 (August 2011 Compliance Filing).

¹⁵ *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,212, at P 2 (2011) (December 2011 Order on Compliance).

¹⁶ MISO March 14, 2012 Compliance Filing, Docket No. ER12-1266-000 (March 2012 Compliance Filing); MISO March 23, 2012 Amended Compliance Filing,

(continued...)

denied requests for rehearing and clarification of the December 2011 Order on Compliance and conditionally accepted MISO's March 2012 Compliance Filings, requiring further compliance.¹⁷ On August 21, 2012, MISO submitted its filing in compliance with the July 2012 Order.¹⁸ In the May 2013 Order, the Commission conditionally accepted MISO's August 2012 Compliance Filing, requiring a further compliance filing.¹⁹

5. On September 30, 2013, MISO submitted its September 2013 Compliance Filing, which is discussed below. This fourth round of compliance focuses on the following: the Net Benefits Price Threshold and demand response compensation; cost allocation across zones and between day ahead and real-time market participants; Actual Energy Withdrawals; and issues related to Tariff terminology and consistency.

6. On July 8, 2016, MISO submitted a filing (July 2016 Reconciliation Filing) to address discrepancies in section 40.3.3 of its Tariff which had been discussed with Commission staff during a noticed phone call.²⁰

II. Notice of Filing and Responsive Pleadings

7. Notice of MISO's September 2013 Compliance Filing was published in the *Federal Register*, 78 Fed. Reg. 61,996 (2013), with interventions and protests due on or before October 21, 2013. On October 21, 2013, Midwest TDUs²¹ and Xcel Energy

Docket No. ER12-1266-001 (March 2012 Amended Filing) (together, March 2012 Compliance Filings).

¹⁷ *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,059, at P 3 (2012) (July 2012 Order).

¹⁸ MISO August 21, 2012 Compliance Filing, Docket No. ER12-1266-003 (August 2012 Compliance Filing).

¹⁹ May 2013 Order, 143 FERC ¶ 61,146.

²⁰ Notice, Docket Nos. ER12-1265-005, ER12-1265-006, ER12-1266-005 (June 2, 2016).

²¹ 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.

Services (Xcel) each filed timely protests. On November 4, 2013, MISO filed an answer to the protests.

8. Notice of MISO's July 2016 Reconciliation Filing was published in the *Federal Register*, 81 Fed. Reg. 46,668 (2016), with interventions and protests due on or before July 29, 2016. None was filed.

III. Discussion

9. We accept in part and accept subject to condition in part the September 2013 Compliance Filing, as discussed below. We accept subject to condition the July 2016 Reconciliation Filing, as discussed below. To the extent that any Tariff revisions submitted in response to the Commission's directives are not discussed herein, we accept them.

A. Procedural Matters

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2016), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept MISO's answer because it has assisted us in our decision-making process.

B. Cost Allocation

1. Cost Allocation Across Zones

a. Background

11. 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 LMPs for energy at the time the demand response resource is committed or dispatched.²² 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 demand reduction or to propose revised Tariff provisions that conform to this requirement.²³

²² Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 102.

²³ *Id.*

12. 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.²⁴

13. In the December 2011 Compliance Order, the Commission rejected MISO's cost allocation methodology and required MISO to submit Tariff revisions to remove any language associated with the rejected cost allocation proposal and to propose a just and reasonable cost allocation proposal.²⁵

14. In its March 2012 Compliance Filing, MISO proposed a new, zonal cost allocation methodology, under which it would 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.²⁶ MISO proposed to identify 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 and Reserve Zone Configuration Studies.²⁷

15. In the July 2012 Order, the Commission conditionally accepted MISO's proposed cost allocation Tariff provisions in its March 2012 Compliance Filing. However, it found several deficiencies. The Commission found that MISO had 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). Consequently, it required MISO to submit Tariff revisions 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 (i.e., when there is not price separation between one or more specific

²⁴ August 2011 Compliance Filing, Transmittal Letter at 10, 12.

²⁵ December 2011 Order on Compliance, 137 FERC ¶ 61,212 at P 99.

²⁶ March 2012 Compliance Filing, Transmittal Letter at 10; MISO, FERC Electric Tariff, § 40.3.3.a(xvii) (2.5.0).

²⁷ MISO stated 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. March 2012 Compliance Filing, Transmittal Letter at 11-12.

reserve zones), those reserve zones will share the cost associated with compensating those demand response resources during the hour.²⁸

16. The Commission also stated that MISO's proposed Tariff revisions in section 40.3.3.a(xvii) did not differentiate sufficiently between costs that are calculated on a zonal basis versus a market-wide basis. In particular, this Tariff section had provided 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, then "the amount of total Demand Response Resource compensation allocated to Real-Time Energy purchases" will be limited to certain costs.²⁹ The Commission noted that the proposed Tariff language did not provide that this limitation in the amount of compensation allocated to real-time energy purchases would apply only within the relevant reserve zone. The proposed Tariff revisions also stated that any compensation not recovered from real-time energy purchases "will be allocated, pro rata, to Market Participants based on their Load Ratio Share."³⁰ The Commission found that this language did not specify that the costs would be recovered from all market participants on a system-wide basis, and so the Commission required MISO to submit revisions to the Tariff to address these concerns.³¹

17. In its August 2012 Compliance Filing, MISO proposed to comply with the Commission's directive regarding allocation of costs across zones when constraints are not binding through proposed section 40.3.3.a(xix) (Reserve Zone Demand Response Resource Compensation Recovery Charge).³² Section 40.3.3.a(xix) of the Tariff provided that, for demand response in reserve zones where there are active transmission constraints, the Transmission Provider will recover the demand response resource compensation from the reserve zones in which the demand response is located. MISO argued that constraints are binding when the Marginal Congestion Components of the LMPs are non-zero. MISO stated that it would treat one or more reserves zones as being adjacent to one another when they feature no price separation resulting from actively

²⁸ July 2012 Order, 140 FERC ¶ 61,059 at P 102.

²⁹ *Id.* P 109.

³⁰ *Id.*

³¹ *Id.*

³² These provisions are now found in section 40.3.3.a(xxii) of the Tariff as submitted in the September 2013 Compliance Filing.

binding constraints (which MISO describes as the Marginal Congestion Component within the zone equaling zero). Additionally, MISO stated that when transmission constraints for reserve zone(s) are not actively binding, then MISO shall recover the total demand response resource compensation from the reserve zones where the demand response resource is located along with any other reserve zone(s) that does not have price separation from the reserve zone(s) where the demand response resource is located.³³

18. MISO did not address the Commission's directive regarding differentiating between costs that are calculated on a zonal basis versus a market-wide basis.

b. May 2013 Order

19. With respect to the Commission's directive regarding the allocation of cost-effective demand response resources in hours when transmission constraints are not binding, the Commission found that MISO's proposed cost allocation methodology did not fully address the concerns the Commission expressed in the July 2012 Order.³⁴ MISO asserted that it complied with the Commission's directive to propose Tariff revisions to allocate costs to adjacent reserves zones when they feature no price separation resulting from actively binding constraints.³⁵

20. However, the Commission determined that MISO's proposed Tariff language did not accomplish this result. Instead, it required that there be no price separation *between the MISO-wide reference bus* and any Commercial Pricing Node in any of the zones in which the cost-effective demand response costs are to be allocated such that the Marginal Congestion Component is zero (and thus the same for all zones for which costs are allocated).³⁶ Under proposed section 40.3.3a(xix), MISO used the existence of non-zero Marginal Congestion Components of LMPs at Commercial Pricing Nodes within a zone to limit the zones to which cost-effective demand response costs are to be allocated. A Marginal Congestion Component measures the congestion cost between the reference bus

³³ August 2012 Compliance Filing, Transmittal Letter at 10.

³⁴ May 2013 Order, 143 FERC ¶ 61,146 at P 43.

³⁵ August 2012 Compliance Filing, Transmittal Letter at 6. Note that the proposal and this discussion do not focus on differences in marginal losses that also factor into market prices.

³⁶ The MISO-wide reference bus is an aggregation of fixed market load buses, which may change from hour to hour, and represents the point from which congestion is measured.

and a particular Commercial Pricing Node, and calculates the cost of congestion based on that comparison. Accordingly, two zones could feature the same non-zero Marginal Congestion Components such that they do not exhibit actual price separation from each other and have no actively binding constraint, yet they would be determined under proposed section 40.3.3a(xix) to have a binding constraint between them.

21. The Commission found that this would prevent cost allocation of cost-effective demand response associated with one or both zones to both of the zones.³⁷ In this scenario, there would be no demand response resource cost sharing among multiple reserve zones on the same side of a constraint, even where there are the same non-zero Marginal Congestion Components (and where there is, accordingly, no actual cost separation). Contrary to the Commission's directive in the July 2012 Order that MISO allocate costs of cost-effective demand response to multiple reserve zones when their transmission constraints are not actively binding,³⁸ no costs would be allocated to adjacent reserve zones whose non-zero Marginal Congestion Components reflect only that constraints other than between those specific reserve zones are binding.³⁹ As a result of this concern, the Commission rejected this proposed cost allocation methodology and directed MISO to address this concern on compliance.⁴⁰

22. The Commission also shared concerns expressed by protesters. For example, the Commission agreed that the Marginal Congestion Components could differ at least slightly between zones, perhaps only at a few Commercial Pricing Nodes within the zone, a substantial portion of the time, effectively allocating all costs within zones under MISO's proposal.⁴¹ The Commission also agreed that MISO did not demonstrate: (1) that any constraint within a reserve zone will always result in a restriction of the Demand Response Resource across reserve zones; or (2) that constraints within reserve

³⁷ May 2013 Order, 143 FERC ¶ 61,146 at P 44.

³⁸ See July 2012 Order, 140 FERC ¶ 61,059 at P 102.

³⁹ May 2013 Order, 143 FERC ¶ 61,146 at P 45.

⁴⁰ The Commission did not specifically reject the use of the Marginal Congestion Components for determining whether or not there were binding constraints between reserve zones, but rather rejected the proposal that costs would not be shared among reserve zones based on the existence of non-zero Marginal Congestion Components within those zones.

⁴¹ May 2013 Order, 143 FERC ¶ 61,146 at P 46.

zones optimally correspond to constraints between zones. If MISO still sought to use the Marginal Congestion Component to allocate demand response resource costs, the Commission directed MISO to address such concerns on compliance.⁴²

23. With respect to the Commission's directive⁴³ requiring MISO to properly differentiate between costs that are calculated on a zonal basis versus a market-wide basis, the Commission found that MISO had not proposed any revisions to section 40.3.3.a(xvii) of the Tariff and directed MISO to submit revisions to the Tariff to address the Commission's concerns.⁴⁴

c. September 2013 Compliance Filing

24. Regarding the Commission's directive requiring MISO to propose a new cost allocation methodology addressing the allocation of cost-effective demand response resource costs during hours when transmission constraints are not actively binding, MISO proposes such a methodology relying on the Hourly Ex Post Market Clearing Prices of Operating Reserve products. According to MISO, for any hour in which the transmission constraints associated with the reserve zone(s) in which the cost-effective demand response resource is located are not actively binding, it will recover the total demand response resource compensation from that reserve zone(s) as well as all other reserve zones that do not exhibit price separation.⁴⁵ MISO states that there are no actively binding constraints associated with reserve zones "if the Hourly Ex Post MCP [Market Clearing Price] for any Operating Reserve product within the Reserve Zone(s) is less than or equal to the minimum of the Hourly Ex Post MCPs across all Reserve Zones, for any Operating Reserve product."⁴⁶

⁴² *Id.* P 47.

⁴³ The Commission found that MISO had complied with its second, third, and fourth directives from the July 2012 Order. *Id.* PP 50-52.

⁴⁴ *Id.* PP 35, 53.

⁴⁵ MISO, FERC Electric Tariff, § 40.3.3.a(xxii) (14.0.0).

⁴⁶ *Id.* MISO further explains that "...in the clearing of Operating Reserves in the Real Time Energy & Operating Reserves Market, MISO will have to procure Operating Reserves in that Reserve Zone out of merit to meet the local requirement if the minimum Operating Reserve requirement in a Reserve Zone is a binding constraint in the MISO's unit dispatch system. As a result, price separation will occur in the Hourly Ex Post MCPs of Operating Reserves across Reserve Zones; the Reserve Zone with the binding

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25. For any hour in which the transmission constraints associated with the reserve zone(s) in which the cost-effective demand response resource is located are actively binding, MISO states that total demand response resource compensation would be allocated to the reserve zone(s) in which such demand response resource is located.⁴⁷ Such compensation would be allocated *pro rata* based upon the demand response resource's Actual Energy Injections within each reserve zone if that resource is located in more than one reserve zone. Regardless of whether the transmission constraints are binding or not, MISO shall allocate costs to Market Participants *pro rata* in the appropriate reserve zones according to the amount of their Real-Time Energy Purchases in the reserve zone during that hour.⁴⁸

26. Regarding the Commission's directive⁴⁹ requiring MISO to properly differentiate between costs that are allocated on a zonal basis as opposed to a market-wide basis, MISO states that its proposed Tariff revisions account for the situation where the amount of Actual Energy Injections exceeds the amount of Real-Time Energy Purchases in that reserve zone.⁵⁰ Specifically, MISO explains that the amount of total demand response resource compensation recovered from Real-Time Energy Purchases would be limited to the proportion of the Real-Time Energy Purchases in relation to the amount of Actual Energy Injections.⁵¹ Finally, MISO explains that any demand response resource

minimum Operating Reserve requirement will have higher Hourly Ex Post MCPs. The absence of higher Hourly Ex Post MCPs in the Reserve Zone where a DRR is deployed is evidence that transmission constraints are not binding, and the costs of the deployed DRR will be allocated across all Reserve Zones to Market Participants making Real-Time Energy Purchases" (footnote omitted). September 2013 Compliance Filing, Transmittal Letter at 4.

⁴⁷ MISO, FERC Electric Tariff, § 40.3.3.a(xxii) (14.0.0).

⁴⁸ *Id.*

⁴⁹ The Commission found that MISO had complied with its second, third, and fourth directives from the July 2012 Order. May 2013 Order, 143 FERC ¶ 61,146 at PP 50-52.

⁵⁰ September 2013 Compliance Filing, Transmittal Letter at 5.

⁵¹ MISO states that "...the amount of total DRR compensation allocated to Real-Time Energy Purchases will be equal to the product of the (i) total DRR compensation in the Reserve Zone(s) and (ii) the quotient of (a) Real-Time Energy Purchases for all Reserve Zone(s) included in the cost allocation of DRR compensation and (b) DRR

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compensation not recovered from Real-Time Energy Purchases will be allocated to Market Participants *pro rata* based upon market-wide load ratio share.⁵²

27. Because MISO has proposed a new methodology that does not include the use of the Marginal Congestion Component, MISO states that it was therefore not required to address the concerns identified in the May 2013 Order regarding the use of the Marginal Congestion Component and constraints across and within reserve zones.⁵³

d. Comments

28. Regarding MISO's compliance with the Commission's directive to develop a new cost allocation methodology, Midwest TDUs state that MISO's proposed cost allocation methodology "is impossible to understand" because the description is contradictory.⁵⁴ For example, Midwest TDUs assert that in the first paragraph, MISO states the costs will be allocated "to 'the Reserve Zone(s) where the DRR which reduces demand during such Hour is located and any other Reserve Zone(s) that also benefit from the reduction in demand;'" in the second paragraph, MISO states that costs will be recovered "from all Reserve Zone(s) that do not have price separation;" and in the third paragraph, MISO states the costs will be allocated "to 'the Reserve Zone(s) in which the DRR is located along with all other Reserve Zone(s).'"⁵⁵

29. Midwest TDUs also state that this proposed cost allocation methodology was only presented to stakeholders at the Demand Response Working Group on October 2, 2013, after it had been submitted to the Commission, and this presentation raised enough questions that it was decided that further discussion was warranted at the next meeting.⁵⁶ Midwest TDUs request that the Commission reject this proposal and order MISO to

Actual Energy Injections for all Reserve Zone(s) included in the cost allocation of DRR compensation." MISO, FERC Electric Tariff, § 40.3.3.a(xxii) (14.0.0); September 2013 Compliance Filing, Transmittal Letter at 5.

⁵² *Id.*; September 2013 Compliance Filing, Transmittal Letter at 5.

⁵³ September 2013 Compliance Filing, Transmittal Letter at 4. *See* May 2013 Order, 143 FERC ¶ 61,146 at P 47.

⁵⁴ Midwest TDUs Protest at 2-3.

⁵⁵ *Id.* at 3.

⁵⁶ *Id.* at 3-4.

develop a new cost allocation methodology and to use the stakeholder process to ensure that there is proper feedback and sufficient understanding of the proposal.⁵⁷

e. Answer

30. In its answer, MISO asserts that, contrary to Midwest TDUs' arguments, section 40.3.3.a(xxii) does not describe the cost allocation methodology in a contradictory manner.⁵⁸ According to MISO, the first paragraph of its proposed cost allocation methodology does not discuss cost allocation when constraints are not actively binding, but rather provides a high level overview of the applicability of the Tariff provisions, the assignment of costs based upon reductions in demand, and a definition of "DRR compensation."⁵⁹ According to MISO, only the second and third paragraphs of its proposed cost allocation methodology discuss allocation when constraints are not actively binding. For example, MISO states that the second paragraph explicitly responds to the Commission's directives, using the same terminology from paragraph 31 of the May 2013 Order,⁶⁰ and the third paragraph reaffirms the beginning of the second paragraph and also states the resulting cost allocation when constraints are not actively binding.⁶¹ MISO also states, however, that the phrase "that do not have price separation" found at the end of the first sentence of the second paragraph may have been misleading to Midwest TDUs and may be deleted; according to MISO, the concept of price separation is already discussed in the second paragraph, and the phrase was included to be consistent with paragraph 31 of the May 2013 Order.⁶²

31. Regarding stakeholder involvement, MISO asserts that stakeholders were involved in the development of the cost allocation methodology proposed in the August 2012 Compliance Filing that was subsequently rejected.⁶³ MISO states that the extension

⁵⁷ *Id.* at 4.

⁵⁸ MISO Answer at 5.

⁵⁹ *Id.*

⁶⁰ *Id.* at 5-6.

⁶¹ *Id.* at 6.

⁶² *Id.*

⁶³ *Id.* (citing May 2013 Order, 143 FERC ¶ 61,146 at P 45).

granted by the Commission⁶⁴ allowed MISO to present a new cost allocation methodology to the Demand Response Working Group on September 4, 2013.⁶⁵ MISO maintains that it did not receive guidance on this matter from that meeting or from three prior meetings, and when it solicited written comments it did not receive any regarding those issues raised by Midwest TDUs.⁶⁶ MISO states that it developed a “geographic cost assignment method” which is the cost allocation methodology proposed in the September 2013 Compliance Filing, and it was this methodology that was presented to the Demand Response Working Group on October 2, 2013, as mentioned by the Midwest TDUs.⁶⁷

f. Commission Determination

32. With regard to the Commission’s directive to propose a new cost allocation methodology addressing the allocation of cost-effective demand response resource costs during hours when transmission constraints are not actively binding, we accept MISO’s proposed cost allocation methodology in section 40.3.3, subject to condition. If MISO proposes a revised methodology based on the methodology proposed in the September 2013 Compliance Filing, we direct MISO to propose this revised methodology and address the concerns discussed below in a further compliance filing due within 30 days of this order. If MISO chooses to propose an entirely new methodology, we direct MISO to propose this new methodology in a compliance filing due within 30 days of this order. Consistent with the May 2013 Order as discussed below,⁶⁸ these Tariff revisions will be effective 120 days from the date of the future order accepting these revisions.

33. As discussed above, 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 LMPs for energy at the time the demand

⁶⁴ See *Notice of Extension of Time*, Docket Nos. ER12-1265-002, ER12-1265-003, ER09-1049-006, and ER12-1266-003 (June 20, 2013) (*Notice of Extension of Time*).

⁶⁵ MISO Answer at 6.

⁶⁶ *Id.* at 6-7.

⁶⁷ *Id.* at 7.

⁶⁸ See *infra* PP 75-76.

response resource is committed or dispatched.⁶⁹ In subsequent compliance orders, the Commission found that MISO failed to comply with this requirement in Order No. 745 because MISO's proposed cost allocation methodologies did not demonstrate that when transmission constraints are not actively binding, the benefits of the demand response do not extend beyond the boundaries of the reserve zone in which the demand response resource is located.⁷⁰ Here, we find that MISO's September 2013 Compliance Filing also does not include such a showing and therefore we require MISO, as discussed below, to demonstrate that its cost allocation methodology meets the requirements of Order No. 745.

34. Initially, we note that the second sentence of the second paragraph of the proposed section 40.3.3.a(xxii) states, "The Reserve Zone(s) in which such [demand response resource] is located is considered to have no actively binding transmission constraints if the Hourly Ex Post [Market Clearing Prices] for any Operating Reserve product within the Reserve Zone(s) *is less than or equal to the minimum of the Hourly Ex Post [Market Clearing Prices] across all Reserve Zones*, for any Operating Reserve product."⁷¹ We interpret this sentence to mean that the reserve zone in which the demand response resource is located will only be considered to have an actively binding transmission constraint if it has Hourly Ex Post Market Clearing Prices for all Operating Reserve products that are greater than the minimum of the Hourly Ex Post Market Clearing Prices for any and all Operating Reserve products across all *other* reserve zones. This may be a just and reasonable method to determine the existence of a binding transmission constraint across zones for purposes of demand response resource cost allocation. However, MISO's proposal lacks any explanation of how LMPs will not be reduced in any other reserve zones under such a condition, such that they should not be allocated any of the costs associated with demand response compensation.

35. Additionally, we have the following concerns with MISO's proposed Tariff revisions. First, we note that the first sentence of the second paragraph and the third paragraph of the proposed section 40.3.3.a(xxii) provide contradictory descriptions of the conditions that allow costs to be allocated between zones when there is not a binding constraint. The first sentence of the second paragraph allocates costs to all zones that do not have price separation, while the third paragraph does not consider price

⁶⁹ See *supra* P 11.

⁷⁰ July 2012 Order, 140 FERC ¶ 61,059 at P 102; May 2013 Order, 143 FERC ¶ 61,146 at P 43.

⁷¹ MISO, FERC Electric Tariff, § 40.3.3.a(xxii) (14.0.0) (emphasis added).

separation, and instead allocates costs to the reserve zone in which the demand response resource is located and all other reserve zones. This discrepancy makes it unclear what circumstances must be present for cost allocation to occur between zones (such as whether all Hourly Ex Post Market Clearing Prices must be equal). Second, MISO's proposed Tariff revisions are unclear as to whether costs may be allocated across "lower-priced" reserve zones (i.e. those reserve zones that do not have Hourly Ex Post Market Clearing Prices above the "minimum level" described in the second sentence of the second paragraph of proposed section 40.3.3.a(xxii)) that have different prices. According to MISO's proposed Tariff revisions and the explanation in its transmittal letter, it appears that binding constraints only occur between a "higher" priced reserve zone and all reserve zones that do not have this "higher" price. These revisions do not explain, however, why the price differential between "higher-priced" reserve zones and reserve zones that do not have this "higher" price indicates the presence of actively binding transmission constraints such that costs cannot be allocated, but a price differential between two "lower-priced" reserve zones does not indicate the presence of actively binding transmission constraints.

36. Third, MISO's proposed Tariff revisions are unclear as to whether costs can be shared among "higher-priced" reserve zones that have the same Hourly Ex Post Market Clearing Price. If reserve zones have the same "higher-price," these reserve zones should be able to share costs among them as there is no price separation and therefore no actively binding transmission constraints between them.

37. Lastly, it is unclear from MISO's reasoning in its transmittal letter that constraints would not be binding from a lower priced reserve zone to the higher priced reserve zone as implied by MISO's statement that "the absence of higher Hourly Ex Post [Market Clearing Prices] in the Reserve Zone where a DRR is deployed is evidence that transmission constraints are not binding, and the costs of the deployed DRR will be allocated across *all* Reserve Zones to Market Participants making Real-Time Energy Purchases."⁷² This revision does not explain why higher priced reserve zones would receive benefits from a demand response resource in a lower priced reserve zone. In the compliance filing directed below, if MISO proposes to employ the methodology proposed in the September 2013 Compliance Filing, we therefore require MISO to either (1) explain how its currently proposed Tariff revisions address these issues; or (2) file revised Tariff language addressing these issues.

38. In addition, if MISO proposes to employ the methodology proposed in the September 2013 Compliance Filing, we also direct MISO to provide Tariff language in

⁷² September 2013 Compliance Filing, Transmittal Letter at 4 (emphasis added).

the second paragraph of section 40.3.3.a(xxii) that indicates that the binding transmission constraints are only between the reserve zone in which the demand response resource is located and adjacent or contiguous reserve zones or explain why making this differentiation should not be required. We further require MISO to explain why the comparison between the prices of Operating Reserve products in the reserve zone in which the demand response resource is located and all other reserve zones should not be based on the prices of the same Operating Reserve product and how doing so (as opposed to comparing the prices of any Operating Reserve products) is compliant with Order No. 745.

39. With respect to Midwest TDUs' assertion concerning the stakeholder process, we find that MISO appropriately engaged stakeholders to the extent possible and provided sufficient opportunity for comment. Interested parties also had the opportunity to comment on the methodology through this proceeding, and, as MISO states, the only party to do so was Midwest TDUs.

40. Finally, we will accept MISO's proposed Tariff revisions that differentiate between costs that are allocated on a zonal basis as opposed to a market-wide basis as compliant with the Commission's directive in the May 2013 Order.

2. Cost Allocation Between Day Ahead and Real-Time Market Participants

a. Background

41. In its March 2012 Compliance Filing, MISO proposed a cost allocation under which it would allocate the cost of compensating cost-effective demand response resources in a given hour to the "Real-Time Energy buyers" based on their "Real-Time Energy purchases" in the reserve zone(s) where the demand response resources that reduce demand are located.⁷³

42. The Commission in the July 2012 Order stated that it shared protesters' concerns regarding MISO's earlier proposal to allocate the costs of compensating cost-effective demand response to "Real-Time Energy buyers" based on their "Real-Time Energy purchases." The Commission found that MISO had neither defined these terms nor justified limiting its proposed cost allocation to only market participants who purchase energy in the real-time market. It required MISO to submit, among other things, definitions of the terms "Real-Time Energy buyers" and "Real-Time Energy purchases"

⁷³ March 2012 Compliance Filing, Transmittal Letter at 10; MISO, FERC Electric Tariff, § 40.3.3.a(xvii) (2.5.0).

or, instead, proposed revisions to the specification of cost allocation in the proposed zonal method, in order to refer to one or more terms that are defined in the Tariff.⁷⁴

43. In order to comply with this directive, in its August 2012 Compliance Filing MISO proposed to remove the phrase “Real-Time Energy Buyers” in section 40.3.3.a(xix) and to replace this phrase with the defined Term “Market Participants” to clarify that the allocation of the costs of compensating cost-effective demand response applies to all market participants with real-time energy purchases. MISO also proposed to modify section 40.3.3.a(xix) to delete its reference to “Real-Time Energy purchases.”

b. May 2013 Order

44. The Commission accepted MISO’s proposed Tariff revisions with respect to “Real-Time Energy buyers,” including elimination of this term from section 40.3.3.a(xix) the Tariff. The Commission also found, however, that the undefined term “Real-Time Energy purchases” remained in numerous locations within section 40.3.3.a(xix) and thus directed MISO to either define this term or replace it with terms defined in the Tariff.⁷⁵

c. September 2013 Compliance Filing

45. In its September Compliance Filing, MISO proposes a definition of “Real-Time Energy Purchases” in Module A of the Tariff. This term is defined as follows:

For a Market Participant, a value in MWh equal to the sum of the following, as applicable:

- (i) For Load Zones, the maximum of (a) the difference between (1) Actual Energy Withdrawals (net of Real-Time Financial Schedules) and (2) Day-Ahead Schedules for Energy or (b) zero (0);
- (ii) for Resources, the maximum of (a) the difference between (1) Day-Ahead Schedules for Energy or (2) Actual Energy Injections (net of Real-Time Financial Schedules) or (b) zero (0);

⁷⁴ July 2012 Order, 140 FERC ¶ 61,059 at P 104.

⁷⁵ May 2013 Order, 143 FERC ¶ 61,146 at P 61.

- (iii) for Virtual Transactions, the Day-Ahead Schedule resulting from a cleared Virtual Supply Offer;
- (iv) for Import Schedules, the maximum of (a) the difference between (1) the Day-Ahead Import Schedule and (2) the Real-Time Import Schedule and (b) zero (0);
- (v) for Export Schedules, the maximum of (a) the difference between (1) the Real-Time Export Schedule and (2) the Day-Ahead Export Schedule and (b) zero (0); and
- (vi) for Real-Time Financial Schedules without any associated Actual Energy Injections or Actual Energy Withdrawals pursuant to Section 40.3.3.a.xvii(i) and 40.3.3.a.xvii(ii), the volume associated with the seller side of the Real-Time Financial Schedule.⁷⁶

d. Commission Determination

46. We accept MISO's proposed definition of "Real-Time Energy Purchases," subject to condition. We find that MISO has, in general, complied with the Commission's directive to define this term because this definition provides sufficient detail in terms of identifying the components of Real-Time Energy Purchases and explaining the manners in which they will be calculated, where appropriate. We find, however, that section 1.532a(vi) (now section 1.R, Real-Time Energy Purchases) identifies sections 40.3.3.a(xvii)(i) and 40.3.3.a(xvii)(ii), but subsections (i) and (ii) do not appear in section 40.3.3.a(xvii). Therefore, we require MISO to correct these references.

C. Miscellaneous Issues

1. Background

47. In the July 2012 Order, the Commission, among other directives, required MISO to submit in the August 2012 Compliance Filing additional Tariff revisions to define various undefined acronyms, including "LBA."⁷⁷ The Commission required MISO to make Tariff revisions to section 38.7.1 of the Tariff, which refers to "net-benefits

⁷⁶ MISO, FERC Electric Tariff, § 1.532a (0.0.0).

⁷⁷ July 2012 Order, 140 FERC ¶ 61,059 at P 138 & n.269 (citing MISO, FERC Electric Tariff, § 38.7.2 (1.0.0)).

methodology,” which is not defined in the Tariff.⁷⁸ It also required MISO to make revisions to section 40.3.3.a(xvii) of the Tariff to refer to “Net Benefits Price Threshold” rather than simply “Net Benefits Threshold.”⁷⁹ The Commission also directed that 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.”⁸⁰

48. On compliance, MISO stated that it is not correcting the use of “net-benefits methodology” because this was not a defined term in the Tariff.⁸¹ MISO proposed to amend Section 40.3.3.a(xix) of the Tariff to add “Price” between “Net Benefits” and “Threshold.”⁸²

2. May 2013 Order

49. The Commission conditionally accepted MISO’s proposed Tariff revisions described above as consistent with the directives in the July 2012 Order. However, the Commission also required several additional modifications and clarifications. First, with respect to the net benefits methodology, the Commission found that MISO had misconstrued and therefore not complied with the directive to define precisely what the term “net-benefits methodology” means. If MISO intended to use the term “net-benefits methodology” in the Tariff, the Commission required MISO to define the term.⁸³

50. Additionally, the Commission found that MISO did not comply with the directive to revise section 39.3.2C to read in part “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.” The Commission also required MISO to submit in its compliance filing Tariff revisions to address eleven specific typographical and editorial concerns.⁸⁴

⁷⁸ *Id.* P 138 & n.271.

⁷⁹ *Id.* P 138 & n.275.

⁸⁰ *Id.* P 138 & n.274.

⁸¹ August 2012 Compliance Filing, Transmittal Letter at 15.

⁸² *Id.*

⁸³ May 2013 Order, 143 FERC ¶ 61,146 at P 96.

⁸⁴ *Id.* P 97.

3. September 2013 Compliance Filing

51. Regarding the directive to define the term “net-benefits methodology,” MISO states that, in its September 2013 Order No. 719 Compliance Filing, it revises section 38.7.1 to remove the usage of this term. MISO states that in the September 2013 Order No. 719 Compliance Filing, it also complies with the enumerated directives listed in paragraph 97 of the May 2013 Order.⁸⁵

4. Commission Determination

52. Regarding MISO’s compliance with the directive to define the term “net-benefits methodology” and with the enumerated directives listed in paragraph 97 of the May 2013 Order, the Commission addresses those in the concurrently issued order regarding compliance with the Order No. 719 Order on Compliance Filing.⁸⁶

53. With respect to MISO’s proposed revisions to section 39.3.2C, we find that further compliance is required. MISO, without explanation, has reinserted and removed language in section 39.3.2C. In MISO’s August 2011 Compliance Filing in Docket No. ER11-4337, MISO inserted language providing that MISO would not compensate demand response resources when the applicable hourly LMP is below the Net Benefits Price Threshold.⁸⁷ In addition, the August 2011 Compliance Filing included language differentiating between the treatment of demand response that is facilitated by behind-the-meter generation and other types of demand response resources – MISO proposed to compensate the latter but not the former.⁸⁸

⁸⁵ MISO notes that it supplemented its September 2013 Compliance Filing submitted in Docket No. ER12-1265-005 to include the definition of “Aggregate Power Supply Curve,” and the enumerated directive requiring the capitalization of the “c” in “capacity” was addressed by the Commission when it granted rehearing on this issue in *Midwest Indep. Transmission Sys. Operator, Inc.*, 144 FERC ¶ 61,012 (2013). September 2013 Compliance Filing, Transmittal Letter at 9 (citing September 2013 Order No. 719 Compliance Filing, Transmittal Letter at 9-11).

⁸⁶ 2016 Order No. 719 Compliance Order, 156 FERC ¶ 61,194 at PP 8, 29-30.

⁸⁷ August 2011 Compliance Filing, section 39.3.2C.

⁸⁸ *Id.*

54. In the December 2011 Order on Compliance, the Commission ordered MISO to remove language that MISO had proposed such that there would be no compensation for demand response resources when the applicable hourly LMP is below the Net Benefits Price Threshold.⁸⁹ The Commission found that the revisions were beyond the scope of the proceeding because the “Commission’s section 206 action [in Order No. 745] 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.”⁹⁰ The Commission also ordered MISO to remove language differentiating between the compensation for demand response that is facilitated by behind-the-meter generation and other types of demand response resources because the definitions of Demand Response Resource – Type I and Demand Response Resource – Type II both allow for behind-the-meter generation.⁹¹ Finally, the Commission required MISO to address the terms Financial Schedule “sales” and “purchases,” which were not defined in the Tariff.⁹²

55. In MISO’s March 2012 Compliance Filing, MISO made the required revisions to section 39.3.2C. In the July 2012 Order, the Commission accepted MISO’s proposed Tariff revisions regarding demand response compensation and behind-the-meter generation⁹³ as well as the use of the terms Financial Schedule “sales” and “purchases.”⁹⁴ The version of section 39.3.2C contained in the August 2012 Compliance Filing reflected this Commission-accepted language.

56. In its September 2013 Compliance Filing, however, MISO reinserted or removed language in section 39.3.2C, thereby substantively modifying language that had just been accepted in the July 2012 Order. In order to correct these errors, we direct MISO to insert in section 39.3.2C the following language which properly reflects the language that has been approved by the Commission in the December 2011 and July 2012 Orders:

⁸⁹ December 2011 Order on Compliance, 137 FERC ¶ 61,212 at P 37.

⁹⁰ *Id.*

⁹¹ *Id.* P 72.

⁹² *Id.* P 131.

⁹³ July 2012 Order, 140 FERC ¶ 61,059 at P 74.

⁹⁴ *Id.* P 135.

When the Day-Ahead LMP is greater than or equal to the Net Benefit Price Threshold, Market Participants that sell Energy in the Day-Ahead Energy and Operating Reserve Market from Demand Response Resources shall be credited each Hour at the Day-Ahead LMP at the applicable Commercial Pricing Node. When the Day-Ahead LMP is less than the Net Benefit Price Threshold, Market Participants that sell Energy in the Day-Ahead Energy and Operating Reserve Market from Demand Response Resources shall be credited each Hour at the Day-Ahead LMP at the applicable Commercial Pricing Node. Market Participants with Day-Ahead Financial Schedules will be charged or credited the applicable Day-Ahead LMP for Day-Ahead Financial Schedule.

D. Tariff Inconsistencies

1. Inconsistencies Between Tariff Provisions Accepted in the July 2012 Order and MISO's August 2012 Compliance Filing

a. May 2013 Order

57. The Commission stated that MISO, without explanation, reinserted or removed language that the Commission had previously approved regarding compensation for demand response resources and behind-the-meter generation in sections 40.3.3.b(vi), 40.3.3.c(ii), and 40.3.3.c(iii). These modifications were neither red-lined nor explained by MISO.⁹⁵

58. The Commission noted that in MISO's August 2011 Compliance Filing in Docket No. ER11-4337, MISO inserted language providing that MISO would not compensate demand response resources when the applicable hourly LMP is below the Net Benefits Price Threshold.⁹⁶ In addition, the August 2011 Compliance Filing included language differentiating between the treatment of demand response that is facilitated by behind-the-meter generation and other types of demand response resources. MISO proposed to compensate the latter but not the former, if cleared in the real-time and/or day-ahead market at the applicable hourly LMP.⁹⁷

⁹⁵ May 2013 Order, 143 FERC ¶ 61,146 at P 98.

⁹⁶ *Id.* P 99 (citing August 2011 Compliance Filing, sections 40.3.3.b(vi), 40.3.3.c(ii), 40.3.3.c(iii)).

⁹⁷ *Id.*

59. In the December 2011 Order on Compliance, the Commission ordered MISO to remove language that MISO had proposed such that there would be no compensation for demand response resources when the applicable hourly LMP is below the Net Benefits Price Threshold.⁹⁸ The Commission found that the revisions were beyond the scope of the proceeding because the “Commission’s section 206 action [in Order No. 745] 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.”⁹⁹ The Commission also ordered MISO to remove language differentiating between the compensation for demand response that is facilitated by behind-the-meter generation and other types of demand response resources because the definitions of Demand Response Resource – Type I and Demand Response Resource – Type II both allow for behind-the-meter generation.¹⁰⁰

60. In MISO’s March 2012 Compliance Filing, MISO made the required revisions to sections 40.3.3.b(vi), 40.3.3.c(ii), and 40.3.3.c(iii). In the Commission’s July 2012 Order, it accepted MISO’s proposed Tariff revisions regarding demand response compensation and behind-the-meter generation.¹⁰¹ In the July 2012 Order, the Commission also noted that MISO properly inserted language ensuring that demand response resource offers from ARCs would be compensated at the applicable hourly LMP as long as they are cost effective as determined by the net benefits test.¹⁰²

61. In its August 2012 Compliance Filing, however, MISO reinserted (in the case of sections 40.3.3.c(ii) and 40.3.3.c(iii)) or removed (in the case of section 40.3.3.c(ii)) language, thereby substantively modifying language that had just been accepted in the July 2012 Order.¹⁰³

⁹⁸ December 2011 Order on Compliance, 137 FERC ¶ 61,212 at P 37.

⁹⁹ *Id.*

¹⁰⁰ May 2013 Order, 143 FERC ¶ 61,146 at P 100 (citing December 2011 Order on Compliance, 137 FERC ¶ 61,212 at P 72).

¹⁰¹ *Id.* P 101 (citing July 2012 Order, 140 FERC ¶ 61,059 at P 74).

¹⁰² July 2012 Order, 140 FERC ¶ 61,059 at P 74.

¹⁰³ May 2013 Order, 143 FERC ¶ 61,146 at P 104.

62. In the May 2013 Order, the Commission ordered MISO to comply with four specific requirements in its compliance filing to ensure that the Tariff contained language that had been approved by the Commission in its December 2011 and July 2012 Orders.¹⁰⁴

63. In the May 2013 Order, the Commission also found that in section 40.3.3.c(iii) MISO inappropriately re-inserted language that determine Demand Response Resource excessive energy payments in relation to the net benefits threshold and payments to behind the meter generation.¹⁰⁵ The Commission required MISO to remove this language and to establish that Demand Response Resource excessive energy credits are to be credited to the market participant as the lesser of the applicable hourly ex post LMP and the hourly excessive energy price.¹⁰⁶

64. The Commission also found that Tariff section 40.3.3 in MISO's August 2012 Compliance Filing contained numerous other inconsistencies (either added or removed language) with provisions in MISO's March 2012 Compliance Filing that were neither explained nor redlined in MISO's August 2012 Compliance Filing. These included inconsistencies between the two filings with respect to sections 40.3.3.a(i), 40.3.3.a(ii)(2), 40.3.3.a(ii)(4), 40.3.3.a(ii)(7), 40.3.3.a(iii)(1), 40.3.3.a(iii)(2), 40.3.3.a(iii)(7), 40.3.3.a(v), 40.3.3.a(vi), 40.3.3.a(viii), 40.3.3.a(xvii), and 40.3.3.c(iv).¹⁰⁷ The Commission therefore directed MISO to provide either (1) detailed explanations for the basis for each such discrepancy (excluding those specifically accepted in the July 2012 Order) between the section 40.3.3 provisions in MISO's March and August 2012 Compliance Filings, including, where applicable, a description of any dockets in which the Commission has accepted the provisions included in MISO's August 2012 Compliance Filing; or (2) proposed Tariff revisions to address such inconsistencies.¹⁰⁸

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* P 105 (citing December 2011 Order on Compliance, 137 FERC ¶ 61,212 at PP 37, 72; July 2012 Order, 140 FERC ¶ 61,059 at P 74).

¹⁰⁶ May 2013 Order, 143 FERC ¶ 61,146 at P 103.

¹⁰⁷ *Id.* P 104.

¹⁰⁸ *Id.* P 105.

65. In addition, MISO, without explanation, included in its August 2012 Compliance Filing numerous proposed revisions to Tariff Schedule 27: Real-Time Offer Revenue Sufficiency Guarantee Payment and Day-Ahead Margin Assurance Payment. The Commission found that MISO's proposed revisions to Schedule 27 were beyond the scope of this compliance filing and were without support or explanation. The Commission therefore directed MISO to remove any proposed revisions to Schedule 27 unless and until they have been accepted by the Commission in another proceeding.¹⁰⁹

b. September 2013 Compliance Filing

66. MISO states that it had responded to the Commission's directives regarding revisions to section 40.3.3 in its September 2013 Order No. 719 Compliance Filing.¹¹⁰ MISO also states that it withdraws its request for the Tariff revisions to Schedule 27 as part of this compliance filing. According to MISO, it previously submitted proposed revisions to Schedule 27 of its Tariff in Docket No. ER12-1664 (Order No. 755 compliance), and these revisions were approved by the Commission on September 20, 2012.¹¹¹ Further revisions to Schedule 27 were also proposed in Docket No. ER12-668-001 on August 21, 2012, which were approved by the Commission on July 30, 2013.¹¹² MISO asserts that the revisions in those two dockets, when taken together, essentially reflect the revisions that were submitted in MISO's August 2012 Compliance Filing.¹¹³

c. July 2016 Reconciliation Filing

67. MISO submitted Tariff revisions to section 40.3.3 reconciling discrepancies in the Tariff to ensure that the Tariff language in this proceeding as well as the currently

¹⁰⁹ *Id.* P 107.

¹¹⁰ September 2013 Compliance Filing, Transmittal Letter at 12 (citing September 2013 Order No. 719 Compliance Filing, Transmittal Letter at 14-15).

¹¹¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,224 (2012).

¹¹² *Midwest Indep. Transmission Sys. Operator, Inc.*, ER12-668-000, ER12-668-001, ER12-668-002 (July 30, 2013) (delegated letter order).

¹¹³ September 2013 Compliance Filing, Transmittal Letter at 12.

effective version of the Tariff conforms to the Commission approved Tariff language.¹¹⁴ MISO requests an effective dates of June 1, 2012¹¹⁵ and May 1, 2016.¹¹⁶

d. Commission Determination

68. With respect to the Commission's directives requiring MISO to revise section 40.3.3, MISO's subsequent filings related to section 40.3.3 and the recently submitted reconciliation filing in this docket have addressed a majority of the Commission's concerns. However, there are discrepancies in the July 2016 Reconciliation Filing that we require MISO to address on compliance.

69. We find MISO's proposed language submitted in the July 2016 Reconciliation Filing with the requested effective date of June 1, 2012 acceptable; however, we require MISO to refile such language with a requested effective date of June 12, 2012. As a result of MISO's requesting an effective date prior to the effective dates approved in this proceeding, the proposed changes would not apply to the version of the Tariff that has been previously submitted in this proceeding with a later effective date and accordingly would not implement the intended changes. We therefore require MISO to resubmit the corrected language from the July 2016 Reconciliation Filing in a compliance filing with an effective date that matches the effective dates that the Commission has accepted in this proceeding.¹¹⁷ The Tariff sheets to be submitted on compliance will supersede, in their entirety, the Tariff sheets submitted in Docket No. ER12-1266-006 with the requested effective date of June 1, 2012 and thus the Tariff sheets with the June 1, 2012 effective date are rejected as moot.

¹¹⁴ Specifically, MISO submitted revisions to sections 40.3.3.a.ii., 40.3.3.a.iii, 40.3.3.a.v(b), 40.3.3.a.vi., 40.3.3.a.viii., 40.3.3.a.xvi, 40.3.3.a.xvii, and 40.3.3.c.iii.

¹¹⁵ See July 2016 Reconciliation Filing, Transmittal Letter at 2-4.

¹¹⁶ *Id.* at 3 n.2.

¹¹⁷ The pending language currently before the Commission in Docket Nos. ER16-1766-000, ER16-2225-000, and ER16-2355-000, or any other filings proposing changes to section 40.3.3, which have effective dates prior to the effective date of June 12, 2012 accepted in this proceeding, should be included and highlighted as pending in the Tariff sheets that are submitted in the compliance filing with the June 12, 2012 effective date in this proceeding.

70. We accept the Tariff sheets submitted with the effective date of May 1, 2016, subject to the outcome of the pending proceedings implicating section 40.3.3 with effective dates through May 1, 2016, including but not limited to Docket Nos. ER16-1766-000, ER16-2225-000, ER12-678-008, ER14-1736-001, and ER16-2355-000, and subject to MISO making the following revisions or providing explanations on compliance for why such revisions are not warranted: (1) delete “Day-Ahead Schedule Deviation and” from section 40.3.3.a.vi.(b)(ii); (2) change the references in section 40.3.3.a.ix for Market-Wide Net Deviations back to sections “40.3.3.a.vii and 40.3.3.a.viii;” (3) change the reference in section 40.3.3.a.xiii for how net charges/credits should be distributed from section 40.3.3.a.xvi (Revenue Neutrality) to section 40.3.3.a.xvii (Regulation Deployment Adjustment).

71. Regarding MISO’s proposal to withdraw Tariff revisions to Schedule 27 as part of this compliance filing, we accept this withdrawal provided that the currently effective version of Schedule 27 accurately reflects only Commission-accepted language, as MISO indicates in its transmittal letter.

2. Inconsistencies Between eLibrary and eTariff Filings

a. May 2013 Order

72. The Commission stated that, pursuant to Order No. 714,¹¹⁸ the Commission requires public utilities to file all tariffs, tariff revisions and rate change applications with the Commission.¹¹⁹ In that order, the Commission specified that no substantive differences should exist between the tariff provisions filed as part of the XML data (in eTariff) and the tariff provisions filed as attachments (in eLibrary).¹²⁰ To the extent that such differences exist and are significant, the Commission stated that it will need to address them on a case-by-case basis.¹²¹ As such, MISO’s filings in eTariff and in eLibrary should be identical. However, in this proceeding in the August 2012 Compliance Filing, MISO omitted certain parts of the filing in eTariff that it included in eLibrary. For example, sections 1.74, 39.2.5a, 39.3.1, 39.3.1A, and 39.3.1B were included with changes in redline in the eLibrary filing but not in eTariff. Conversely, section 1.569a was included in the eTariff but not the eLibrary filing. The Commission

¹¹⁸ *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).

¹¹⁹ *Id.* P 114.

¹²⁰ *Id.* P 59.

¹²¹ *Id.*

also noted inconsistency between the eTariff and eLibrary filings in section 38.6(3), in which only the eLibrary version contains the phrase “or energy provision of an EDR resource.” Additionally, in section 40.2.6(b)(viii), the eLibrary version refers to “Module E-1” and the eTariff version refers to “Section 69.” To resolve these discrepancies, the Commission directed MISO to review the entire eLibrary and eTariff filings from this proceeding and, with respect to each inconsistency, required MISO to submit appropriate changes to either the eTariff version or the eLibrary version, or both, to ensure consistency, as well as an explanation supporting each change.¹²²

b. September 2013 Compliance Filing

73. MISO states that it responds to these requirements in the September 2013 Order No. 719 Compliance Filing.¹²³

c. Commission Determination

74. We address compliance with these directives in the concurrently issued order regarding compliance with the 2016 Order No. 719 Compliance Order.¹²⁴

E. Effective Date

1. Background and May 2013 Order

75. In the July 2012 Order, the Commission granted MISO’s request for a June 12, 2012 effective date, consistent with the effective date of the other Tariff provisions accepted in this proceeding.¹²⁵

76. In its August 2012 Compliance Filing, MISO asked the Commission to grant an effective date for section 40.3.3.a(xix) of the Tariff of 120 days after issuance of an order approving that section of the Tariff.¹²⁶ MISO explained that implementation of the

¹²² May 2013 Order, 143 FERC ¶ 61,146 at P 109.

¹²³ September 2013 Compliance Filing, Transmittal Letter at 13 (citing September 2013 Order No. 719 Compliance Filing, Transmittal Letter at 16-17).

¹²⁴ See 2016 Order No. 719 Compliance Order, 156 FERC ¶ 61,194 at P 40.

¹²⁵ July 2012 Order, 140 FERC ¶ 61,060 at P 139 & n.277 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,143 (2012)).

¹²⁶ August 2012 Compliance Filing, Transmittal Letter at 15.

proposed Tariff revisions in this section (which relate to real-time cost allocation) will require MISO to modify its market settlement applications, including making changes to market participant settlement statements. MISO asserted that setting an effective date 120 days after issuance of the order approving section 40.3.3.a(xix) for this section will provide MISO the necessary time to implement and test the software changes needed to implement the Tariff modification. According to MISO, it will also provide market participants sufficient time to update shadow settlements and understand the implications and impact of the proposed revisions.

77. In the May 2013 Order, the Commission granted, for good cause shown, MISO's requested extension of the effective date for revised section 40.3.3.a(xix) of the Tariff until 120 days after the Commission accepted the August 2012 Compliance Filing, subject to MISO revising section 40.3.3a(xix) and resubmitting it on compliance with this order. Accordingly, the 120-day period would not begin until after the Commission accepted MISO's new proposed revised section 40.3.3a(xix).¹²⁷

2. Comments

78. Xcel asserts that, although it does not object to any of the substantive revisions proposed in the September 2013 Compliance Filing and it recognizes it did not seek rehearing of the May 2013 Order, it does take issue with the proposed effective date identified by MISO in its transmittal letter. Xcel states that it interpreted ordering paragraph (A) of the May 2013 Order to mean that the Tariff revisions proposed in August 2012 would be effective June 12, 2012.¹²⁸ Xcel notes that the May 2013 Order also states that the "July [2012] Order granted MISO's request for a June 12, 2012 effective date, consistent with the effective date of the other Tariff provisions accepted in this proceeding';[] i.e., the Tariff revisions filed in March 2012 to be effective June 12, 2012."¹²⁹ Xcel states that it does not interpret the May 2013 Order to also require the further compliance Tariff revisions ordered by the Commission to be effective retroactively to June 12, 2012,¹³⁰ with the exception of section 40.3.3.a(xix), which it

¹²⁷ May 2013 Order, 143 FERC ¶ 61,146 at P 112.

¹²⁸ Xcel Protest at 3.

¹²⁹ *Id.* (citing May 2013 Order, 143 FERC ¶ 61,146 at P 110).

¹³⁰ *Id.*

notes would be effective 120 days after the Commission order.¹³¹ Xcel supports an effective date of October 1, 2013 or, alternatively, November 1, 2013.¹³²

79. Xcel argues that a retroactive effective date for the Tariff revisions proposed in the September 2013 Compliance Filing would be problematic for at least two reasons. First, although Xcel states that the September 2013 Compliance Filing results in fairly substantial Tariff revisions, that filing cannot modify prior behavior of Market Participants in MISO's Energy and Ancillary Services Market. MISO states that demand response resources acted pursuant to the Tariff provisions then in effect, even if there was an understanding the Tariff could change later, and MISO incurred costs and settled market charges based on the then-effective Tariff.¹³³ Second, the proposed cost allocation methodology might not be accepted by the Commission, and this creates uncertainty regarding what cost allocation provisions apply for the period between June 2012 and the September 2013 Compliance Filing.¹³⁴

80. According to Xcel, the uncertainty regarding the applicable cost allocation provisions between June 2012 and the September 2013 Compliance Filing results in what is tantamount to a refund and surcharge from a Market Participant perspective, since the allocation of costs will change based upon the effective date chosen.¹³⁵ In support of its position, Xcel cites to an order where the Commission found that refunds are appropriate where a company collects revenues in excess of the amount to which it was entitled; however, the Commission also found that refunds are not appropriate where a company collects the proper amount of revenues but it is determined subsequently that the allocation of those revenues should be changed.¹³⁶ Xcel notes that the Commission in that order "concluded 'where the rate design but not the revenue requirement is in question, as is the case here, we find that our traditional policy of not requiring refunds is

¹³¹ *Id.* at 2.

¹³² *Id.* at 3.

¹³³ *Id.* at 4.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.* at 5 (citing *Black Oak Energy, L.L.C. v. PJM Interconnection, L.L.C.*, 136 FERC ¶ 61,040, at P 24 (2011) (*Black Oak Energy*), *reh'g denied*, 139 FERC ¶ 61,111 (2012), *aff'd in part, remanded in part sub nom. Black Oak Energy, LLC v. FERC*, 725 F.3d 230 (D.C. Cir. 2013)).

fair and equitable since it does not either deprive the utility of legitimate revenue, attempt to impose surcharges on other customers, or affect the prior business decisions of the parties.”¹³⁷ Xcel states that a prospective effective date for the proposed Tariff revisions is therefore appropriate because Market Participants can change their conduct in response to the Tariff revisions, and MISO can bill the correct reserve zones for demand response resource costs incurred based on the future conduct of Market Participants.¹³⁸ Xcel states that a prospective effective date would allow Xcel’s affiliates Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, to implement appropriate changes that have been made necessary by the proposed Tariff revisions.¹³⁹

3. Answer

81. After noting that the Commission has stated that “issue preclusion...prevents parties...from raising new issues that should have been presented as part of a prior litigated claim,”¹⁴⁰ MISO asserts that the effective date issue was resolved in the July 2012 Order and affirmed in the May 2013 Order.¹⁴¹ According to MISO, the only issues raised by Xcel are issues that were previously subject to the Commission’s review in this proceeding, not issues that might justify relief.¹⁴² MISO also states that Xcel does not identify any flaws in the September 2013 Compliance Filing. Rather, MISO asserts that Xcel only states that prospective effective dates would permit them to implement changes.¹⁴³ MISO states that these arguments are not timely, and should therefore be rejected.¹⁴⁴ Finally, because the Commission has already granted an extended effective

¹³⁷ Xcel Protest at 5 (citing *Black Oak Energy*, 136 FERC ¶ 61,040 at P 44 (2011)).

¹³⁸ *Id.* at 5.

¹³⁹ *Id.* at 6.

¹⁴⁰ MISO Answer at 7 (citing *People of the State of California, ex rel. Edmund G. Brown, Jr. Attorney General of the State of California v. Powerex Corp., et al.*, 139 FERC ¶ 61,210, at P 11 (2012)).

¹⁴¹ *Id.* at 8.

¹⁴² *Id.*

¹⁴³ *Id.* (citing Xcel Protest at 6).

¹⁴⁴ *Id.*

date for section 40.3.3.a(xix), MISO argues that the Commission has therefore already addressed Xcel's concerns over clarity and the effect that Tariff modifications have on Market Participants' behavior.¹⁴⁵

4. Commission Determination

82. We agree with Xcel regarding Ordering Paragraph (A) of the May 2013 Order. Specifically, in the May 2013 Order the Commission only accepted the August 2012 Compliance Filing effective June 12, 2012 and stated that revised section 40.3.3.a(xix), which applied to the future proposal of a cost allocation methodology addressing the allocation of cost-effective demand response resource costs during hours when transmission constraints are not actively binding, would become effective 120 days after being accepted by the Commission. Similarly, despite MISO's assertions to the contrary, the July 2012 Order only accepted the March 2012 Compliance Filings effective June 12, 2012. In neither instance did the Commission indicate that all subsequent filings related to MISO's compliance with Order No. 745 would have the same June 12, 2012 effective date.

83. With respect to the September 2013 Compliance Filing, we still find it appropriate, however, to grant an effective date of June 12, 2012 for revisions other than those to section 40.3.3.a(xxii). Regarding the effective date for the proposed revisions to section 40.3.3.a(xxii) that deal with demand response cost allocation between reserve zones when there are no binding transmission constraints, we affirm the Commission's previous determination, and require that the effective date should be 120 days from the issuance of a future order in which we accept cost allocation provisions addressing demand response cost allocation between reserve zones when there are no binding transmission constraints. Thus, there would be no retroactive application of the zonal cost allocation methodology to be accepted, and no possibility of refunds or surcharges. This should alleviate Xcel's concerns regarding uncertainty over what cost allocation provisions were applicable between June 2012 and the September 2013 Compliance Filing.

The Commission orders:

(A) MISO's September 2013 Compliance Filing is hereby accepted subject to condition, effective June 12, 2012, with the exception of section 40.3.3.a(xxii), which is to be effective 120 days after the issuance of a future order accepting it, as discussed in the body of this order.

¹⁴⁵ *Id.* at 8-9.

(B) MISO's 2016 Reconciliation Filing is hereby accepted, subject to condition, as discussed in the body of this order.

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.