

144 FERC ¶ 61,128
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission
System Operator, Inc.

Docket Nos. ER13-37-002
ER13-38-001
ER13-37-003
ER13-38-002
(not consolidated)

ORDER GRANTING REHEARING AND ACCEPTING COMPLIANCE FILINGS
SUBJECT TO FURTHER COMPLIANCE

(Issued August 13, 2013)

1. On April 3, 2013, the Midwest Independent Transmission System Operator, Inc. (MISO)¹ filed a request for clarification or, in the alternative, request for rehearing² of the Commission's March 4, 2013 order in this proceeding.³
2. On May 3, 2013, MISO made a compliance filing in Docket No. ER13-38-002, submitting a revised Attachment Y-1 System Support Resource (SSR) Agreement between the City of Escanaba (Escanaba) and MISO (SSR Agreement).⁴ On the same date, MISO made a compliance filing in Docket No. ER13-37-003,⁵ concerning Rate Schedule 43, which provides for cost allocation under the SSR Agreement.

¹ Effective April 26, 2013, MISO changed its name from "Midwest Independent Transmission System Operator, Inc." to "Midcontinent Independent System Operator, Inc."

² Referred to herein as the "Request for Clarification or Rehearing."

³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,170 (2013) (Escanaba SSR Order).

⁴ May 3, 2013 Compliance Filing, Docket No. ER13-38-002.

⁵ May 3, 2013 Compliance Filing, Docket No. ER13-37-003.

3. As discussed below, this order grants MISO's request for rehearing and accepts MISO's compliance filings, subject to a further compliance filing.

I. Background

4. On August 6, 2004, the Commission conditionally accepted MISO's proposed revisions to its Transmission and Energy Markets Tariff⁶ regarding the retirement or suspension of generation resources and Synchronous Condenser Units (SCU), including provisions regarding the designation and treatment of SSRs.⁷ On September 21, 2012, the Commission conditionally accepted MISO's amended SSR Tariff provisions.⁸

5. On October 5, 2012, pursuant to section 205 of the Federal Power Act (FPA),⁹ MISO submitted the proposed SSR Agreement, based on MISO's determination pursuant to an Attachment Y notification of its Tariff that Escanaba's generation units (SSR Units) could not immediately retire as they were necessary in order to maintain local reliability.¹⁰ Also, on October 5, 2012, as revised on October 25, 2012, MISO submitted proposed Rate Schedule 43 (Allocation of SSR Costs Associated with the Escanaba SSR Units).¹¹

⁶ Now referred to as MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff).

⁷ *Midwest Indep. Transmission System Operator, Inc.*, 108 FERC ¶ 61,163 (TEMT Order), *reh'g denied*, 109 FERC ¶ 61,157 (2004) (TEMT Rehearing Order) (together, TEMT II Orders). The Tariff defines SSRs as "Generation Resources or [SCUs] that have been identified in Attachment Y-Notification to this Tariff and are required by the Transmission Provider for reliability purposes, to be operated in accordance with the procedures described in [s]ection 38.2.7 of th[e] Tariff." Fourth Revised Vol. No. 1, First Revised Sheet No. 288, § 1.643. Unless indicated otherwise, all capitalized terms shall have the same meaning given them in the Tariff.

⁸ *Midwest Indep. Transmission System Operator, Inc.*, 140 FERC ¶ 61,237 (2012) (SSR Order).

⁹ 16 U.S.C. § 824d (2006).

¹⁰ MISO October 5, 2012 Transmittal Letter (Docket No. ER13-38-000) at 2.

¹¹ MISO October 5, 2012 Transmittal Letter (Docket No. ER13-37-000) at 1.

II. The Escanaba SSR Order

6. In the Escanaba SSR Order, the Commission conditionally accepted the SSR Agreement and Rate Schedule 43, effective June 15, 2012, subject to a further compliance filing.¹²

7. The Commission directed MISO to revise section 9.G of the SSR Agreement to eliminate the language allowing MISO to unilaterally determine whether or not it will fund unanticipated repairs to the SSR Units or to terminate the SSR Agreement if the unanticipated repairs are of such a scope that they would preclude the SSR Units from fulfilling their contractual obligations.¹³ The Commission found that section 9.G is inconsistent with the need to have the SSR Units available for reliability purposes.¹⁴

8. The Commission also directed MISO to revise section 3.A to remove “or extend” from the SSR Agreement, which allowed MISO the sole discretion to extend the term of the SSR Agreement by giving 90 days’ notice, because the Commission found this language to be inconsistent with its previous finding that SSRs should be limited and of short duration.¹⁵ Finally, with regard to the concern of whether load-serving entities (LSE) taking Point-to-Point Transmission Service are allocated SSR Agreement costs, the Commission required MISO to explain either that there are no LSEs in the American Transmission Company (ATC) footprint taking Point-to-Point Transmission Service or that there are LSEs in the ATC footprint taking Point-to-Point Transmission Service and revising Rate Schedule 43 as necessary to include such LSEs.¹⁶

III. Discussion

A. Procedural Matters

9. Notice of MISO’s tariff filings in Docket No. ER13-37-003 and Docket No. ER13-38-002 was published in the *Federal Register*, 78 Fed. Reg. 21,960 (2013), with interventions and protests due on or before May 24, 2013. No interventions or protests were filed.

¹² Escanaba SSR Order, 142 FERC ¶ 61,170 at P 1.

¹³ *Id.* P 55.

¹⁴ *Id.*

¹⁵ *Id.* P 46 (citing TEMT II Rehearing Order, 109 FERC ¶ 61,157 at P 288).

¹⁶ *Id.* P 74.

B. Request for Clarification or Rehearing

10. MISO requested clarification or, in the alternative, rehearing of the finding in the Escanaba SSR Order that directs MISO to eliminate language in section 9.G of the SSR Agreement that allows MISO to unilaterally determine whether or not it will fund unanticipated repairs to the SSR Units or to terminate the SSR Agreement if the unanticipated repairs are of such a scope that they would preclude the SSR Units from fulfilling their contractual obligations, because it was inconsistent with the need to have the SSR Units available for reliability purposes.¹⁷ According to MISO, the intent of the termination language contained in section 9.G of the proposed SSR Agreement was to permit termination by MISO under circumstances where unanticipated repairs could not be accomplished in a manner that would preserve system reliability.¹⁸

11. According to MISO, the Escanaba SSR Order could be interpreted to require MISO to continue payments to Escanaba to compensate for unanticipated, extraordinary repairs to the SSR Units even under circumstances where a unit could not be returned to service in a timeframe that could serve system reliability purposes.¹⁹ MISO requests that the Commission clarify that MISO should be permitted to terminate the SSR Agreement before extraordinary costs are incurred. MISO states that Escanaba's going forward costs will be covered, but the costs under some unanticipated circumstances that affect the suitability of the SSR Units to serve their intended reliability purpose should not be incurred by Escanaba.²⁰

12. According to MISO, section 9.G of the SSR Agreement does not conflict with the Commission's TEMT II Orders or the SSR Order.²¹ MISO argues that neither order stated that costs should be incurred in a situation where an SSR Unit encounters a failure and cannot be returned to service on a timeline that serves system reliability. MISO maintains that it should retain its ability to assess the difference regarding whether system

¹⁷ Request for Clarification or Rehearing at 2 (citing Escanaba SSR Order, 142 FERC ¶ 61,170 at P 55).

¹⁸ *Id.*

¹⁹ *Id.* at 3.

²⁰ *Id.* The SSR Agreement provides that “[i]n no circumstances shall the costs of repairs authorized by MISO pursuant to this Agreement be the responsibility of Participant [Escanaba].” SSR Agreement, section 9.G.

²¹ Request for Clarification or Rehearing at 4.

reliability is served by extensive, unanticipated repairs prior to such costs being incurred by the SSR Unit.²²

13. MISO maintains that, contrary to the Escanaba SSR Order, section 10.A (Default) and the companion section 10.B (Remedies for Default) are insufficient to prevent the SSR Agreement from wastefully requiring extensive repairs even when no reliability purpose is served.²³

14. MISO maintains that the Commission originally approved section 3.A(2) of the *pro forma* SSR agreement that expressly permits MISO to terminate an SSR agreement for any reason following a 90-day notice.²⁴ According to MISO, the Escanaba SSR Order did not change that result regarding section 3.A(2) of the SSR Agreement. MISO also states that at the same time, the Escanaba SSR Order concluded that the explanation for the exercise of MISO's reliability judgment located in section 9.G (i.e., unanticipated repairs) should be removed from the SSR Agreement. MISO maintains that the Escanaba SSR Order could require MISO to flow through costs of repair after a 90-day notice pursuant to section 3.A(2), only to see those repair efforts abandoned if they are directed at repairing a generator that cannot return to service until after the limited SSR period.

15. MISO argues that the Commission has previously accepted the idea that an inoperable unit is ineligible for a SSR designation and thus similar reasoning should apply to the unusual circumstance where an SSR Unit becomes inoperable due to an unanticipated, major failure during the course of the SSR Agreement that renders a generator inoperable for the remainder of the SSR Agreement.²⁵ MISO states that the section 9.G termination provision permits MISO the ability to return such a generator to ineligible status based upon MISO's reliability-directed determination. MISO argues it should be able to retain the limited ability, under section 9.G of the SSR Agreement, to terminate the SSR Agreement immediately if system reliability is no longer preserved due to unanticipated events.

16. In the alternative, in the event the Commission intended to require MISO to continue under the SSR Agreement even when expenditures on repairs cannot be accomplished to preserve system reliability, MISO requests rehearing.²⁶

²² *Id.* at 5.

²³ *Id.* (citing Escanaba SSR Order, 142 FERC ¶ 61,170 at P 55).

²⁴ *Id.* at 6 (citing SSR Order, 108 FERC ¶ 61,163 at P 368).

²⁵ *Id.* (citing SSR Order, 108 FERC ¶ 61,163 at P 136).

²⁶ Request for Clarification or Rehearing at 3 (citing Escanaba SSR Order, 142 FERC ¶ 61,170 at P 55).

C. MISO's Compliance Filings

17. In response to the Commission's directives in the Escanaba SSR Order, MISO made two compliance filings.

18. In Docket No. ER13-37-003, MISO submitted a revised Rate Schedule 43 that incorporates the information obtained regarding Transmission Customers that take Point-to-Point Transmission Service. According to MISO, the revised Rate Schedule 43 describes the manner in which costs associated with the SSR Units are collected, taking into account the Point-to-Point Transmission Service provided in the area benefitted by operation of the SSR Units.²⁷

19. In Docket No. ER13-38-002, MISO submitted the revised SSR Agreement.²⁸ According to MISO, it removed the words "or extend" from section 3.A. MISO also states that it has revised the SSR Agreement to eliminate provisions contained in section 9.G regarding MISO's unilateral right to determine that unanticipated repairs to the SSR Units should not take place and to correspondingly terminate the SSR Agreement, which is also the subject of its Request for Clarification or Rehearing.

D. Commission Determination

20. We will grant MISO's request for rehearing of the Commission's determination in the Escanaba SSR Order that requires MISO to revise section 9.G of the SSR Agreement to eliminate the language allowing MISO to unilaterally determine whether or not it will fund unanticipated repairs to the SSR Units or to terminate the SSR Agreement if the unanticipated repairs are of such a scope that they would preclude the SSR Units from fulfilling their contractual obligations. The Commission's determination regarding proposed section 9.G of the SSR Agreement in the Escanaba SSR Order was not intended to remove, or otherwise limit, MISO's ability to evaluate whether unanticipated repairs are reasonable and prudent in the circumstance that the SSR Units cannot be returned to service on a timeline that serves system reliability.

21. As the Commission reiterated in the Escanaba SSR Order, the TEMT II Orders and the SSR Order require "that the owner of SSR Units must be fully compensated for *reasonably and prudently incurred costs that are necessary to ensure continued availability.*"²⁹ We are persuaded by MISO's argument that neither the TEMT II Orders nor the SSR Order requires that unanticipated repair costs should be incurred in a

²⁷ May 3, 2013 Compliance Filing, Docket No. ER13-37-003.

²⁸ May 3, 2013 Compliance Filing, Docket No. ER13-38-002.

²⁹ Escanaba SSR Order, 142 FERC ¶ 61,170 at P 55 (citing SSR Order, 140 FERC ¶ 61,237 at P 126) (emphasis added).

situation where an SSR Unit encounters a failure such that the necessary repairs will not allow the SSR Unit to return to service on a timeline that serves system reliability.³⁰ In such situation, we agree that such expenditures are not among the “reasonably and prudently incurred costs that are necessary to ensure continued availability” that are discussed in the TEMT II Orders and the SSR Order. Furthermore, we agree that it is reasonable for MISO, as part of its analysis to determine whether an SSR Agreement is still appropriate, to assess whether such repair costs should be incurred or whether termination is appropriate.³¹ Thus, we grant rehearing and direct MISO, in a compliance filing to be made within 30 days of this order, to reinstate the language that the Escanaba SSR Order required to be deleted from section 9.G.³²

22. Notwithstanding the above, MISO must provide notice of any termination of the SSR Agreement to the Commission, as the Commission’s regulations require that:

When a rate schedule, tariff or service agreement or part thereof required to be on file with the Commission is proposed to be cancelled or is to terminate by its own terms and no new rate schedule, tariff or service agreement or part thereof is to be filed in its place, a filing must be made to cancel such rate schedule, tariff or service agreement or part thereof at least sixty days but not more than one hundred-twenty days prior to the date such cancellation or termination is proposed to take effect.³³

Thus, whether MISO is terminating an SSR Agreement and its associated rate schedule under section 3, section 9.G, or any other section of the SSR Agreement, it must submit a filing with the Commission. In such filing, MISO must explain which section of the SSR

³⁰ Request for Clarification or Rehearing at 5.

³¹ We also are persuaded by MISO’s argument (*see* Request for Clarification or Rehearing at 5) that section 10.A (Default) and the companion section 10.B (Remedies for Default) of the SSR Agreement are insufficient to prevent the SSR Agreement from requiring extensive repairs to the SSR Units when no reliability purpose is served. Section 9.G, as revised by the Escanaba SSR Order to remove the termination provisions, would require that any unanticipated repairs be made, and therefore, a default would not result and neither section 10.A nor 10.B of the SSR Agreement could be invoked. Nor would default arise from a force majeure event that causes the need for major unanticipated repairs under section 10.A(5) of the SSR Agreement.

³² Since the Commission is granting rehearing, MISO’s request for clarification is moot.

³³ 18 C.F.R. § 35.15 (2013).

Agreement has triggered the termination and, as appropriate, how MISO will ensure reliability in the interim.

23. We also accept MISO's compliance filing in Docket No. ER13-37-003, revising Rate Schedule 43 to incorporate the information obtained regarding Transmission Customers that take Point-to-Point Transmission Service and describing the manner in which costs associated with the SSR Units are collected, taking into account the Point-to-Point Transmission Service provided in the area benefitted by operation of the SSR Units.

24. Last, we accept MISO's compliance filing in Docket No. ER13-38-002, removing the words "or extend" from section 3.A, subject to further compliance as discussed above concerning section 9.G. Specifically, the Commission found that the language in section 3.A was inconsistent with the Commission's previous finding that SSRs should be limited and of short duration.³⁴

The Commission orders:

(A) MISO's request for rehearing is granted, as discussed in the body of this order.

(B) MISO's compliance filing in Docket No. ER13-37-003 is hereby accepted, as discussed in the body of this order.

(C) MISO's compliance filing in Docket No. ER13-38-002 is hereby conditionally accepted, subject to a further compliance filing, as discussed in the body of this order.

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

By the Commission. Commissioner Wellinghoff is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

³⁴ Escanaba SSR Order, 142 FERC ¶ 61,170 at P 46 (citing TEMT II Rehearing Order, 109 FERC ¶ 61,157 at P 288).