144 FERC ¶ 61,151
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

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| Midwest Independent Transmission System Operator, Inc. | Docket Nos. | ER13-1225-000<br>ER13-1226-000 |

ORDER ACCEPTING PROPOSED AGREEMENT AND CONDITIONALLY ACCEPTING PROPOSED RATE SCHEDULE

(Issued August 26, 2013)

1. On April 2, 2013, pursuant to section 205 of the Federal Power Act (FPA),[1] Midwest Independent Transmission System Operator, Inc. (MISO)[2] submitted a proposed System Support Resource (SSR) Agreement between the DTE Electric Company (DTE) and MISO designated as Original Service Agreement No. 6501 (SSR Agreement) under its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff).[3] Also on April 2, 2013, pursuant to section 205 of the FPA, MISO submitted proposed

[1] 16 U.S.C. § 824d (2006).

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

[3] The Tariff defines SSRs as "[g]eneration Resources or Synchronous Condensor Units [(SCU)] 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 Section 38.2.7 of this Tariff." MISO, FERC Electric 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.

Rate Schedule 43B (Allocation of SSR Costs Associated with the Harbor Beach SSR Units) under its Tariff.[4] In this order, we accept the SSR Agreement and grant waiver of prior notice requirements to permit the agreement to become effective October 1, 2012 as requested.[5] We also conditionally accept Rate Schedule 43B and grant waiver of the prior notice requirements to permit it to become effective October 1, 2012 as requested, subject to a compliance filing.

2. As discussed more fully below, we are accepting MISO's proposed SSR Agreement, effective October 1, 2012, because MISO has (1) shown that the Harbor Beach generation unit is necessary for reliability purposes; and (2) satisfied the requirements of the Tariff in effect at the time it processed DTE's Attachment Y application. However, if MISO determines that Harbor Beach is needed beyond September 30, 2013, MISO must file a revised SSR Agreement with the Commission and must justify that no alternatives exist to designation of Harbor Beach as an SSR unit, including the use of a stakeholder process as required by the Commission's September 21, 2012 order conditionally accepting MISO's amended SSR Tariff provisions, as discussed more fully below.[6]

# I. <u>Background</u>

3. On August 6, 2004, the Commission conditionally accepted MISO's proposed Tariff revisions regarding the retirement or suspension of generation resources and SCUs, including provisions regarding the designation and treatment of SSRs.[7] As accepted in the TEMT II Orders, market participants that have decided to retire or suspend a

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[4] As described by MISO, DTE's Harbor Beach Power Plant Unit No. 1 (Harbor Beach) is a 103 MW, natural circulation coal fired steam boiler located in Harbor Beach, Michigan. MISO explains that Harbor Beach has a de-rated capability of 95 MW net output. See SSR Agreement, Transmittal Letter, Docket No. ER13-1226-000, at 2 (Apr. 2, 2013).

[5] Section 3.A of the SSR Agreement states that the agreement is effective beginning on the effective date (i.e., October 1, 2012) and that the term of the SSR Agreement is for a period of 12 months (i.e., September 30, 2013).

[6] *Midwest Indep. Transmission Sys. Operator, Inc*., 140 FERC ¶ 61,237 (2012) (SSR Order).

[7] *Midwest Indep. Transmission Sys. Operator, Inc*., 108 FERC ¶ 61,163, at P 368 (TEMT II Order), *reh'g denied*, 109 FERC ¶ 61,157 (2004) (TEMT II Rehearing Order) (together, TEMT II Orders).

generation resource or SCU must submit a notice (Attachment Y Notice), pursuant to Attachment Y (Notification of Potential Resource/SCU Change of Status) of the MISO Tariff at least 26 weeks prior to the resource's retirement or suspension effective date. During this 26-week notice period, MISO will conduct a study (Attachment Y Study) to determine whether all or a portion of the resource's capacity is necessary to maintain system reliability, such that SSR status is justified. If so, MISO and the market participant shall enter into an SSR agreement, as provided in Attachment Y-1 (Standard Form SSR Agreement) of the Tariff, to ensure that the resource continues to operate, as needed.[8] Additionally, the Commission required, among other things, that MISO: (1) submit all SSR agreements for Commission review; (2) provide a description of alternatives that were evaluated; (3) discuss the estimated earliest termination date for the SSR agreement; and (4) explain how MISO would ensure grid reliability once the resource retires.[9]

4. The Commission determined, among other things, that the proposed SSR provisions were "a reasonable backstop measure to assure reliability in the markets to be operated by [MISO]" and that the "SSR program is a prudent measure for protecting reliability."[10] With regard to MISO's negotiated approach to determining SSR costs, the Commission found that because the Tariff contains no rate mechanism, MISO must file under section 205 of the FPA for cost recovery at the time it seeks to charge customers for SSR costs.[11]

5. On July 25, 2012, MISO filed proposed revisions to its SSR Tariff provisions, stating that while it had not designated an SSR unit to date, MISO anticipated implementing SSR provisions in the near future due to changing system reliability, regulatory, and economic conditions, including Environmental Protection Agency regulations and renewable portfolio standards.[12] As relevant here, MISO proposed to

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[8] TEMT II Rehearing Order, 109 FERC ¶ 61,157 at P 293.

[9] *Id*. PP 288, 559.

[10] TEMT II Order, 108 FERC ¶ 61,163 at PP 370, 372.

[11] *Id.* P 372. This version of the Tariff was in effect during MISO's evaluation of Harbor Beach's Attachment Y Notice and negotiation of the instant SSR Agreement and Rate Schedule 43B. This version of the Tariff is referred to in this order as the pre-SSR Order Tariff.

[12] MISO Filing to Revise SSR Provisions, Transmittal Letter, Docket No. ER12-2302-000 at 2-3 (July 5, 2012) (SSR Provisions Transmittal Letter).

revise: (1) the treatment of resources that submit Attachment Y Notices, including its disclosure practices; (2) the process for reviewing SSR alternatives; (3) the cost compensation for SSR units; (4) the recovery of SSR costs; and (5) the terms and conditions for SSR agreements.

6. On September 21, 2012, the Commission conditionally accepted the amended SSR Tariff provisions in the SSR Order. These provisions were made effective September 24, 2012, subject to two compliance filings due within 90 and 180 days of the date of the order. The Commission reiterated that the evaluation of alternatives to an SSR designation is an important step that deserves the full consideration of MISO and its stakeholders to ensure that SSR agreements are used only as a limited, last-resort measure and required, among other things, that MISO document its process for identifying and screening SSR alternatives.[13] Additionally, the Commission directed MISO to insert language into its Tariff articulating that an SSR agreement must not exceed a one-year term except in exigent circumstances.[14]

## II. MISO's Filings

7. According to MISO, on November 22, 2010, DTE submitted its Attachment Y Notice seeking to change the status of Harbor Beach to retired, but DTE did not declare a date for the requested retirement. MISO states that on March 5, 2012, DTE submitted a revised Attachment Y Notice dated March 2, 2012 that included a retirement date of January 1, 2012.[15] MISO states that it completed the analysis of the Attachment Y Notice, consistent with the confidentiality requirements of the pre-SSR Order Tariff, and replied to DTE on June 8, 2012. MISO determined that the retirement of Harbor Beach, prior to the completion of certain transmission upgrades, would result in reliability violations and designated it as an SSR unit.[16]

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[13] SSR Order, 140 FERC ¶ 61,237 at P 36.

[14] *Id*. P 106. This version of the Tariff was in effect on the execution and filing date of the instant SSR Agreement, as well as the filing date of Rate Schedule 43. This version of the Tariff is referred to in this order as the post-SSR Order Tariff.

[15] SSR Agreement, Transmittal Letter, Docket No. ER13-1226-000, at 2 (Apr. 2, 2013).

[16] Specifically, the study performed by MISO showed that the retirement of Harbor Beach would cause violations of NERC reliability standards under Category B (loss of a single element) and Category C (loss of two or more elements) contingencies. *See* SSR Agreement, Exhibit B, Docket No. ER13-1226-000, at 9-11 (Apr. 2, 2013).

8. According to MISO, an already-planned transmission system upgrade would alleviate the reliability concerns, but that upgrade is not expected to be in service until December 31, 2013. MISO describes the transmission upgrade as the Bauer-Rapson 345 kV line, the Rapson substation, and three 345/120 kV transformers at Rapson, which are a portion of the Michigan Thumb Wind Zone Project.[17] MISO states that it then began working with DTE and the MISO Independent Market Monitor (Market Monitor) to negotiate and develop the SSR Agreement. Although DTE's original intent was to retire the unit by January 1, 2012, because of the complexities of working through the notification, evaluation, decision-making, and agreement negotiation process, MISO states that the parties agreed on compensation for the availability of Harbor Beach beginning in October 1, 2012. According to MISO, DTE proposed a 12 month SSR Agreement for the period between October 1, 2012 and September 30, 2013. MISO states that DTE has voluntarily continued operating Harbor Beach through the present time.[18]

9. In Docket No. ER13-1225-000, MISO submitted the SSR Agreement for the purpose of providing compensation for the continued availability of Harbor Beach until such time as Harbor Beach is no longer needed for reliability purposes. MISO states that the SSR Agreement contains several deviations from the *pro forma* agreement in Attachment Y-1 of the Tariff conditionally accepted by the Commission in the SSR Order (i.e., the post-SSR Order Tariff).[19] MISO requests an effective date of October 1, 2012.

10. In Docket No. ER13-1226-000, MISO submitted Rate Schedule 43B to authorize MISO to allocate the SSR costs associated with Harbor Beach. As stated in the filing, MISO's post-SSR Order Tariff requires that the costs associated with the subject SSR Agreement will be allocated to all load-serving entities (LSE) which require the operation of Harbor Beach for reliability purposes. Finally, MISO requests an effective date of October 1, 2012 for Rate Schedule 43B to correspond with DTE's requested effective date for retiring Harbor Beach.

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[17] *Id*. at 7-8.

[18] *Id*. at 2-3.

[19] *Id*. at 3-6.

## III. Notice and Responsive Pleadings

11. Notices of MISO's filings in Docket Nos. ER13-1225-000 and ER13-1226-000 were published in the *Federal Register*, 78 Fed. Reg. 21,353 (2013) with interventions and protests due on or before April 23, 2013.

12. Exelon Corporation, Consumers Energy Company, ITC Transmission, and Wisconsin Electric Power Company filed timely motions to intervene in both Docket Nos. ER13-1225-000 and ER13-1226-000. Wisconsin Paper Council, Minnesota Large Industrial Group, Association of Businesses Advocating Tariff Equality, Illinois Industrial Energy Consumers, and Coalition of Midwest Transmission Customers filed timely motions to intervene in both Docket Nos. ER13-1225-000 and ER13-1226-000, and along with Wisconsin Industrial Energy Group,[20] (together, Industrial Customers) also filed a protest in Docket Nos. ER13-1225-000 and ER13-1226-000. DTE filed a timely motion to intervene and comments in the same dockets.

13. On May 7, 2013, MISO filed an answer in Docket Nos. ER13-1225-000 and ER13-1226-000. On May 22, 2013, Industrial Customers filed an answer in the same dockets.

14. On May 30, 2013, Commission staff issued a letter informing MISO that the April 2, 2013 filings were deficient and requesting additional information.

15. On June 27, 2013, MISO submitted its response to the May 30, 2013 letter.

16. Notice of MISO's June 27, 2013 letter response was published in the *Federal Register*, 78 Fed. Reg. 42,516 (2013) with interventions and protests due on or before July 18, 2013. Industrial Customers filed a protest to MISO's response in Docket Nos. ER13-1225-000 and ER13-1226-000.

## IV. Discussion

### A. Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which they were filed.

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[20] Wisconsin Industrial Energy Group did not file a motion to intervene.

18. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept MISO's and Industrial Customers' answers because they have provided information that assisted us in our decision-making process.

## B. Substantive Matters

### 1. SSR Agreement

#### a. Filing

19. MISO states that the SSR Agreement is being filed pursuant to section 38.2.7 of the Tariff and Attachment Y-1 of the Tariff, which, among other things, require MISO to assess feasible alternatives prior to entering into an SSR agreement.[21] MISO states that it has assessed available feasible alternatives to entering into the SSR Agreement, including new generation or generator dispatch, system reconfiguration and operation guidelines, demand response, and transmission projects. MISO states that there is an approved transmission project under construction that will resolve the need for the SSR Agreement. MISO states that it has specifically identified the Bauer-Rapson 345 kV line, the Rapson substation, and three 345/120 kV transformers at Rapson, which are a portion of the Michigan Thumb Wind Zone project and are scheduled to go into service December 31, 2013, as the transmission solution.[22]

20. MISO also states that it complied with section 38.2.7.a of the pre-SSR Order Tariff, which was in effect at the time MISO received the Attachment Y Notice from DTE and during the reliability study process. Under the pre-SSR Order Tariff, MISO was required to treat DTE's request for retirement of Harbor Beach as confidential information. However, MISO states that the SSR Order, which revised the Tariff to permit disclosure of an Attachment Y Notice, was issued during this time. MISO states that it has since discussed the Attachment Y Notice and associated reliability issues with its stakeholders. MISO states that, in accordance with section 38.2.7 of the post-SSR Order Tariff, it requested that stakeholders provide alternatives to the SSR Agreement in stakeholder meetings in December 2012 and in January 2013.[23] MISO specifically notes

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[21] SSR Agreement, Transmittal Letter, Docket No. ER13-1226-000, at 6 (Apr. 2, 2013).

[22] *Id*. at 7.

[23] *Id.* at 7-8.

that at a January 15, 2013 East Technical Study Task Force meeting, MISO specifically requested alternatives including but not limited to: (1) redispatch or reconfiguration; (2) remedial actions plans or special protection schemes; (3) demand response or generation alternatives; and (4) transmission expansions. MISO states that at this meeting with stakeholders no alternatives other than demand response were presented or discussed. However, MISO states that DTE, the primary LSE in the area, advised it that due to lack of large commercial and industrial load in the region, demand response would likely be insufficient to address voltage support needs.[24]

21. Under Exhibit 2 of the SSR Agreement, MISO will pay DTE a negotiated monthly amount of $457,541 for certain fixed going-forward costs, and a per MWh dispatch price of $56.08 for the amount of actual energy injections in each instance that MISO dispatches Harbor Beach for system reliability. Through the MISO settlement process, MISO will make applicable make-whole payments in the hours when the applicable market-clearing price is less than the dispatch price and will debit the settlement statements for each hour in which the applicable market-clearing price is above the dispatch rate. In addition, whenever Harbor Beach operates in the MISO market for purposes other than system reliability, any energy market revenues in excess of incremental costs measured by the positive difference between the locational marginal price (LMP) and $56.08 per MWh, plus any operating reserve revenues and revenues from planning resource designation, will be debited from DTE's settlement statements. MISO states that the Market Monitor and MISO have reviewed the financial operating cost information provided by DTE and have agreed that the negotiated monthly amount is equitable compensation for maintaining Harbor Beach in operational status. MISO explains that the monthly fixed cost is limited to operations and maintenance (O&M), insurance, and a small management fee required for an existing O&M provider.[25]

22. MISO states that the proposed term for the SSR Agreement will be 12 months, from October 1, 2012 to September 30, 2013, in accordance with section 38.2.7.e of the Tariff. MISO also states that it expects to enter into a subsequent SSR agreement with DTE for the period from October 1, 2013 until the completion of the planned transmission upgrades, expected to be December 31, 2013.[26]

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[24] *Id.* at 8.

[25] *Id*. at 11-12.

[26] *Id*. at 8-9.

23. MISO requests an October 1, 2012 effective date for the SSR Agreement be granted either through waiver of the prior notice requirement or by treating the SSR Agreement as a late-filed service agreement. MISO explains that the delay in filing was a consequence, in part, of the fact that MISO and DTE worked together to enable DTE to make the best decision with respect to unit operation taking into consideration the impact to reliability of service to electric service customers, and then commenced to negotiate appropriate compensation. MISO states that the waiver is also required to permit MISO to comply with its Tariff, which provides that an SSR unit is due equitable compensation in exchange for maintaining availability past its shut-down date, which DTE has done since October 1, 2012.[27]

### b. Comments

24. DTE submitted comments in support of the filing, requesting that the Commission issue an order accepting the SSR Agreement with the requested October 1, 2012, effective date. Industrial Customers restricted their comments to the cost allocation mechanism under rate Schedule 43B, and did not comment on other matters relating to the SSR Agreement itself.

### c. Commission Determination

25. We will accept the SSR Agreement. We find that MISO has studied the proposed retirement of Harbor Beach and determined that the unit is necessary for system reliability, and therefore, should be designated as an SSR consistent with its pre-SSR Order Tariff. MISO has justified the need for the unit and has provided sufficient evidence demonstrating that it is necessary to mitigate NERC Category B and C contingencies required by NERC reliability standards TPL-002-0b (System Performance Following Loss of a Single Bulk Electric System Element (Category B)) and TPL-003-0a (System Performance Following Loss of Two or More Bulk Electric System Elements (Category C)),[28] respectively, and that the unit will continue to be necessary until planned transmission upgrades are put into service in December 2013. Additionally, MISO sought alternatives from stakeholders in meetings held in December 2012 and January 2013. Based on the record in this proceeding, those meetings did not yield an SSR alternative sufficient to mitigate the voltage support needs identified by DTE. We

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[27] *Id*. at 9-10.

[28] *See* N. Am. Elec. Reliability Corp., *Reliability Standards for the Bulk Electric Systems of North America* (July 26, 2013), *available at:* http://www.nerc.com/pa/Stand/Reliability%20Standards%20Complete%20Set/RSCompleteSet.pdf.

therefore accept the SSR Agreement. We also accept the proposed compensation as being consistent with the Tariff.

26. We will grant waiver of the prior notice requirement and allow the proposed SSR Agreement to be effective October 1, 2012, as requested.[29] We note that implementing the October 1, 2012, effective date will require netting out any market revenues received since that date from any compensation under the SSR Agreement so that DTE does not double-recover, as provided for in Exhibit 2 of the SSR Agreement.[30] With respect to the duration of the SSR Agreement, we will accept MISO's proposal to have the SSR Agreement expire on September 30, 2013 (i.e., 12 months after the October 1, 2012, date DTE requested that Harbor Beach be retired). However, the circumstances surrounding the need for this SSR Agreement indicate that Harbor Beach may be needed after September 30, 2013. If MISO determines that Harbor Beach is needed beyond September 30, 2013, MISO must file a revised SSR Agreement with the Commission and must justify that no alternatives exist to designation of Harbor Beach as an SSR unit.

### 2. Rate Schedule 43B

#### a. Filing

27. In Rate Schedule 43B, MISO proposes to allocate, on a *pro rata* basis, the SSR Agreement costs among those LSEs that benefit from the operation of Harbor Beach utilizing an energy-based cost recovery method.[31] According to MISO, the post-SSR Order Tariff requires that the costs associated with the subject SSR Agreement be allocated to LSEs which require the operation of the SSR unit for reliability purposes. MISO argues that an energy-based cost recovery method is appropriate in this instance because, unlike the situation in *Escanaba*[32] where the Tariff specifically addressed how

[29] *See Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,170, at PP 84-86 (2013) (*Escanaba*) (waiver of prior notice rule granted in order accepting an SSR agreement and associated rate schedule).

[30] MISO FERC Electric Tariff, MISO Agreements, SA 6501, DTE Electric Company, 0.0.0, Exhibit 2.

[31] Allocation of SSR Costs Associated with the Harbor Beach SSR Unit, MISO Rate Schedule No. 43B, Transmittal Letter, Docket No. ER13-1225-000, at 3 (Apr. 2, 2013) (Harbor Beach Rate Schedule Transmittal Letter).

[32] A demand-based cost recovery mechanism for an SSR agreement was proposed by MISO and accepted by the Commission in *Escanaba*. *See Escanaba*, 142 FERC ¶ 61,170 at P 73.

to allocate the costs in the ATC footprint, a demand-based charge would be inconsistent with the Tariff. MISO explains that demand charges are allocated through MISO's transmission settlements to transmission customers, but transmission customers are not always LSEs and the Tariff requires that costs under an SSR agreement shall be allocated to those LSEs that require the SSR unit's operation for reliability purposes. In addition, MISO points out that stakeholders have raised concerns over using a demand-based mechanism because (1) charges are based on the prior year's use, which may not be consistent with usage under an SSR agreement (especially within retail choice states such as Michigan or Illinois) and (2) network customers do not represent the entire universe of entities taking service in the local balancing authority areas (e.g., point-to-point customers serving as LSEs).

28. Moreover, MISO argues that recovering the costs through an energy-based charge to LSEs ensures that those who withdraw energy during the contract period pay for that energy and that all customers that take service are charged. MISO also argues that if Harbor Beach did not retire and was economically committed, Harbor Beach would address any local reliability issue occurring at those times, and the credits the unit received would be charged to buyers in MISO's LMP markets. If not economically committed, then MISO would commit it under the voltage or local reliability designation, and any credits or make whole payments would be charged to LSEs. For these reasons, MISO argues that an energy-based charge is likewise appropriate when Harbor Beach operates as an SSR.[33] MISO adds that an energy-based charge is also appropriate because, along with its authority to designate generation resources as SSR units, it has flexibility to use those units to address local reliability issues, including using SSR units during periods when outages may occur but there is otherwise low demand. MISO concludes that it is more administratively efficient for it to administer an energy-based mechanism.[34]

### b. <u>Protest</u>

29. Industrial Customers dispute MISO's proposed energy-based cost allocation mechanism. Industrial Customers maintain that a demand-based recovery method is appropriate for the costs associated with Harbor Beach because these costs are

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[33] MISO also appears to argue that Harbor Beach represents a generation solution, albeit short-term, to the local reliability problem, and therefore, an energy-based cost allocation method is warranted, as opposed to a demand-based allocation, which is more appropriate for a transmission solution. *See* Harbor Beach Rate Schedule Transmittal Letter at 4.

[34] *Id.* at 4-5.

related to reliability and are being incurred as a gap-filler until new transmission is constructed. As such, they argue that the need to commit SSR units should be recognized as a transmission service with costs allocated to and recovered from network load on a 12 coincident peak (12-CP) basis, just like other transmission reliability charges. They also claim that MISO has failed to demonstrate that an energy-based cost recovery method is just and reasonable and not unduly discriminatory.[35]

30. To this end, Industrial Customers raise the following issues: (1) MISO Tariff section 38.2.7.j – the section dealing with SSR costs – is silent as to which type of cost recovery allocation is required; (2) in *Escanaba* the Commission approved a demand-based allocation; (3) MISO has not distinguished the present case from *Escanaba*, which stated that the "demand-based methodology is correlated to the reliability issues that underlie the SSR process;"[36] and (4) SSR units are related to transmission reliability, and principles of cost causation dictate that reliability is priced based on peak demand, not usage.[37]

31. Alternatively, Industrial Customers request that if the Commission determines some costs should be allocated on an energy-charge basis, the fixed SSR costs should be allocated on a demand-charge basis.[38]

### c. <u>Answers</u>

32. In its answer, MISO points out that Industrial Customers do not argue that the proposal violates the Tariff or a Commission order. MISO states that, although the Commission approved a demand-based charge in *Escanaba*, it did not rule out the energy-based allocation that was proposed by several protestors in that proceeding. MISO explains that it proposed the cost allocation methodology for Harbor Beach after the Commission ordered adjustments to MISO's proposed methodology in *Escanaba*,[39] and after consideration of both stakeholder input and the circumstances faced in Michigan. MISO states that its proposed energy-based cost allocation for Harbor Beach deals with the circumstances in this case as well as future situations that involve costs

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[35] Industrial Customers Initial Protest at 4-11.

[36] *Id.* at 5 (citing *Escanaba*, 142 FERC ¶ 61,170 at P 73).

[37] *Id.* at 4-11.

[38] *Id.* at 12-13.

[39] The order required MISO to include charges for point-to-point customers.

associated with SSR unit operation. MISO further reiterates the arguments in its transmittal and urges the Commission to accept the proposed cost allocation.[40]

33. In their answer, Industrial Customers contend that whether the proposal violates the Tariff or a Commission order is irrelevant. Industrial Customers maintain that their argument is that the proposal is inconsistent with cost causation principles and that MISO has failed to prove that its energy-based methodology is just and reasonable. Industrial Customers argue that MISO's arguments that an energy-based allocation method is easier in a retail choice state, such as Michigan, and that Harbor Beach's costs would be recovered on an energy basis if the plant were not being retired, are irrelevant to cost causation principles.[41]

### d. Deficiency Letter and Response

34. On May 30, 2013, Commission staff issued a letter informing MISO that its filing was deficient and requesting more information from MISO. First, the deficiency letter asked MISO to explain if its decision to use an energy-based cost allocation was the result of problems with billing LSEs a demand-based charge, and if so, whether MISO could nonetheless design and assess a demand-based charge to LSEs for SSR costs.[42] MISO responded that while MISO's transmission settlements process cannot readily accommodate variations in assessing demand-based charges to LSEs, MISO's market settlements process can accommodate different cost allocation methodologies. MISO explained that the market settlements system would, to the extent necessary, enable it to extrapolate lacking data, such as data on point-to-point service, in order to apply a demand-based charge.[43]

35. Second, the deficiency letter asked MISO to explain why the Tariff language referring to the cost allocation within the ATC footprint requires a demand-based charge. It also requested that MISO explain the rationale for concluding that the Tariff language in section 38.2.7 requires an energy-based charge.[44] MISO answers that both sections allow MISO to allocate costs on either a demand or an energy basis. MISO states that at

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[40] MISO Answer at 3-6.

[41] Industrial Customers Answer at 4-10.

[42] May 30, 2013, Deficiency Letter at 2.

[43] MISO's Response to May 30, 2013, Deficiency Letter at 2.

[44] May 30, 2013, Deficiency Letter at 2.

the time it proposed a demand-based charge for the SSR agreement at issue in *Escanaba*, MISO believed that a demand-based charge would be administratively efficient. MISO states further that it has reconsidered the cost allocation methodology used in *Escanaba* based on feedback from stakeholders and the existence of customer switching in the Upper Peninsula of Michigan. MISO also reiterates its argument that an energy-based cost allocation is appropriate because a generation resource is being prevented from retiring to address a local reliability problem.[45]

36. Third, the deficiency letter asked MISO to explain its argument that an energy-based charge allows MISO to equitably charge LSEs during the hours when an SSR unit is needed and how that applies to Harbor Beach.[46] Specifically, the deficiency letter asked MISO to provide any evidence demonstrating that the Harbor Beach units might be needed during the shoulder months. MISO responds that the majority of days when Harbor Beach was committed for reliability fell outside of the summer peak months, but does not explain whether those days during the shoulder months occurred on or off peak.[47]

### e. Protest to Deficiency Letter

37. Industrial Customers argue that, just as an energy-based charge would allocate costs to LSEs that withdraw energy during the SSR contract period, MISO could just as easily base recovery on the same LSEs' relative peak loads during the contract period. Industrial Customers state that SSR units are typically only needed and dispatched when all other resources have been called into service. Thus, Industrial Customers argue, even during shoulder months, Harbor Beach will likely be used during the peaks of the shoulder months, which the 12-CP method takes into account.[48]

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[45] MISO's Response to May 30, 2013, Deficiency Letter at 3-4.

[46] May 30, 2013, Deficiency Letter at 2-3.

[47] MISO's Response to May 30, 2013, Deficiency Letter at 4.

[48] Industrial Customers Protest to MISO's Deficiency Letter Response at 4-11.

### f. Commission Determination

38. We conditionally accept MISO's proposed Rate Schedule 43B, effective October 1, 2012, as requested.[49] This acceptance is conditioned on MISO, in a compliance filing to be made within 30 days of this order, either offering additional support for its proposed energy-based cost allocation, or proposing a different form of cost allocation for the recovery of the costs associated with the SSR Agreement. MISO has not demonstrated that an energy-based cost allocation for Harbor Beach is just and reasonable.

39. We note that in *Escanaba*, the Commission found that "it is reasonable for MISO to use a demand-based cost allocation methodology as is used to allocate the cost of transmission facilities built to maintain reliability."[50] The Commission observed that the SSR units were required to address transmission system reliability concerns and accepted MISO's argument that costs associated with such reliability issues should be allocated using a demand-based charge. Thus, in *Escanaba*, the costs of the SSR units were properly allocated in a manner similar to reliability-based transmission charges.

40. MISO has provided no evidence that a demand-based charge is infeasible for cost recovery under the SSR Agreement,[51] or would result in any significant administrative burden or is in any way inconsistent with its Tariff.

41. Further, we are not persuaded by MISO's argument that an energy-based cost allocation methodology is consistent with how the costs associated with Harbor Beach would be recovered if the unit did not retire but continued market operations, as this argument ignores the key fact that Harbor Beach is not continuing market operations under the SSR Agreement. Instead, LSEs are being required to pay the cost of Harbor Beach's continuing operation solely to meet a reliability need.

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[49] In doing so, we also grant the requested waiver of the prior notice rule consistent with our waiver as to the effective date of the SSR Agreement discussed above.

[50] *Escanaba*, 142 FERC ¶ 61,170 at P 73.

[51] For example, with regard to the SSR agreement and associated rate schedule in *Escanaba*, MISO provided for recovery from point-to-point customers in its May 3, 2013 compliance filing in Docket No. ER13-37-003, which was accepted by the Commission. *Midwest Indep. Transmission Sys. Operator, Inc.*, 144 FERC ¶ 61,128 (2013).

42. We also are not persuaded by MISO's argument that an energy-based charge better allows MISO to equitably charge LSEs during the hours when an SSR unit is needed, including during shoulder months when there is low demand. While MISO asserts in its response to the May 30, 2013 deficiency letter that Harbor Beach is often committed for reliability in the shoulder months,[52] MISO has not demonstrated that Harbor Beach is substantially needed in off-peak days of the week and/or hours of the day to justify allocation based on total energy used each month. Thus, MISO has not demonstrated that an energy-based cost allocation would result in a just and reasonable allocation of costs associated with the SSR Agreement. We agree with the Industrial Customers that a demand-based 12-CP methodology also recognizes and reflects the importance of operation during shoulder months because costs are allocated based on the peak for each month, including the shoulder months.

43. Additionally, MISO and transmission owners already accommodate 12-CP demand-based transmission charges in retail choice states within the MISO footprint.[53] We note that MISO has not provided any explanation for why a 12-CP demand-based charge for SSR costs – that are incurred solely to address reliability concerns - could not similarly be accommodated here.

44. As emphasized above, the Commission previously accepted as just and reasonable a demand-based charge for allocating SSR-related costs in *Escanaba*. MISO's Tariff does not, however, prescribe a specific form of cost allocation. Thus, the Commission directs MISO to submit a compliance filing within 30 days of this order that either offers additional support for its proposed energy-based cost allocation, or proposes a different form of cost allocation for the recovery of the costs associated with the SSR Agreement.

<u>The Commission orders</u>:

(A) The SSR Agreement is hereby accepted, as discussed in the body of this order.

(B) Rate Schedule 43B is hereby conditionally accepted, subject to a compliance filing, as discussed in the body of this order.

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[52] MISO's Response to May 30, 2013, Deficiency Letter at 4.

[53] *See, e.g.*, Midcontinent Independent System Operator, Inc., FERC Electric Tariff, [15, METC Rate Formula Template, 4.0.0](#).

(C) MISO is hereby directed 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. Chairman Wellinghoff is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,
Deputy Secretary.