

145 FERC ¶ 61,163
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System Operator, Inc. Docket No. ER13-1962-000

Docket Nos. ER13-1963-000
ER13-1963-001

ORDER ACCEPTING AND SUSPENDING TARIFF FILINGS SUBJECT TO
REFUND AND FURTHER COMMISSION ORDER

(Issued November 25, 2013)

1. On July 11, 2013, pursuant to section 205 of the Federal Power Act (FPA),¹ Midcontinent Independent System Operator, Inc. (MISO) submitted a proposed unexecuted System Support Resource (SSR)² agreement between Ameren Energy Marketing (Ameren) and MISO designated as Service Agreement No. 6502 (Edwards SSR Agreement) under its Tariff.³ Also on July 11, 2013, as revised on September 26, 2013, pursuant to section 205 of the FPA, MISO submitted a proposed Rate Schedule 43C under its Tariff addressing allocation of the costs associated with the Edwards SSR Agreement.⁴ In this order, we accept the Edwards SSR Agreement and Rate Schedule 43C, as amended, and suspend them for a nominal period, to be effective January 1, 2013, as requested, subject to refund and further Commission order.

¹ 16 U.S.C. § 824d (2012).

² MISO's Open Access Transmission, Energy, and Operating Reserve Markets Tariff (Tariff) defines SSRs as "Generation Resources or Synchronous Condenser 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, [1.643, System Support Resource \(SSR\):, 0.0.0](#). Unless indicated otherwise, all capitalized terms shall have the same meaning given them in the MISO Tariff.

³ *Id.* [SA 6502, Ameren-MISO SSR Agreement, 0.0.0](#).

⁴ *Id.* [Schedule 43C, Allocation of SSR Costs Associated with the Edwards 1 SSR Un, 1.0.0](#).

I. Background

2. 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.⁵ As accepted in the TEMT II Orders, market participants that have decided to retire or suspend a generation resource or SCU must submit a notice (Attachment Y Notice), pursuant to Attachment Y (Notification of Potential Resource/Synchronous Condenser Unit 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.⁶ 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.⁷

3. 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."⁸ 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.⁹

4. 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.¹⁰ As relevant here, MISO proposed to

⁵ *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163 (TEMT II Order), *reh'g denied*, 109 FERC ¶ 61,157 (2004) (TEMT II Rehearing Order) (together, TEMT II Orders).

⁶ TEMT II Rehearing Order, 109 FERC ¶ 61,157 at P 293.

⁷ *Id.* PP 288, 559.

⁸ TEMT II Order, 108 FERC ¶ 61,163 at PP 370, 372.

⁹ *Id.* P 372.

¹⁰ MISO Filing to Revise SSR Provisions, Transmittal Letter, Docket No. ER12-2302-000 at 2-3 (July 25, 2012).

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.

5. On September 21, 2012, the Commission conditionally accepted the amended SSR Tariff provisions in the SSR Order effective September 24, 2012, subject to two compliance filings due within 90 and 180 days of the date of the order.¹¹ 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 explain its process for identifying SSR alternatives and its basis for selecting an SSR alternative among those identified.¹² The Commission also directed MISO to insert language into its Tariff articulating that an SSR agreement must not exceed a one-year term except in exigent circumstances.¹³ Finally, the Commission found MISO's proposal to limit SSR compensation to include only "going forward costs" to be consistent with MISO's initial description of its SSR program and required MISO to define the term "going forward costs" on compliance.¹⁴

6. On December 18, 2012, MISO submitted a filing to comply with the requirements of the SSR Order (December 18 Compliance Filing). MISO proposes, among other things, to define "going forward costs" as "the costs that will be incurred by an SSR Unit owner or operator to remain in-service that are in excess of the costs the SSR Unit would have incurred had it been retired or suspended."¹⁵ MISO states that this definition is consistent with the definition of "Going-Forward Costs" found in section 61.1.c of the MISO Tariff.¹⁶

7. On July 11, 2013, pursuant to section 205 of the FPA, MISO submitted the unexecuted Edwards SSR Agreement between Ameren and MISO, which MISO designated as Service Agreement No. 6502 under its Tariff (Docket No. ER13-1962-

¹¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,237 (2012) (SSR Order).

¹² SSR Order, 140 FERC ¶ 61,237 at P 36.

¹³ *Id.* P 106.

¹⁴ *Id.* P 145 (citing MISO March 31, 2004 Filing, Docket No. ER04-691-000, McNamara Test. at 49).

¹⁵ MISO, Compliance Filing, Docket No. ER12-2302-001, FERC Electric Tariff, [38.2.7, System Support Resources, 3.0.0](#), § 38.2.7.i.ii (filed Dec. 18, 2012) (December 18 Compliance Filing).

¹⁶ MISO, FERC Electric Tariff, [61.1, Data, 0.5.0](#), § 61.1.c ("Going-Forward Costs: Data or information related to the costs of keeping a Planning Resource in operation.").

000). MISO states that the Edwards SSR Agreement is the result of MISO's determination that the planned retirement of Ameren's Edwards 1 facility would cause reliability issues. MISO states that the Edwards SSR Agreement generally conforms to the *pro forma* agreement in Attachment Y-1 of the MISO Tariff, and that it is being submitted unexecuted at the request of Ameren due to Ameren's and MISO's inability to come to an agreement on the amount of compensation Ameren should receive.¹⁷ The Edwards SSR Agreement does not include compensation for the fixed costs of existing plant (recovered as depreciation expense, return on rate base, and associated taxes), the inclusion of which is the subject of Ameren's complaint¹⁸ in Docket No. EL13-76-000.¹⁹ MISO states that the Edwards SSR Agreement was developed for a period of 12 months beginning on January 1, 2013. MISO requests an effective date of January 1, 2013 for the Edwards SSR Agreement, noting that, pursuant to MISO's request, Ameren has maintained the availability of Edwards 1 since that date.

8. Also on July 11, 2013, as revised on September 26, 2013, pursuant to section 205 of the FPA, MISO submitted a proposed Rate Schedule 43C under its Tariff regarding the allocation of the costs associated with the continued operation of Edwards 1 as an SSR (Docket No. ER13-1963-000).²⁰ MISO also requests an effective date of January 1, 2013 for Rate Schedule 43C.

¹⁷ MISO Edwards SSR Agreement Transmittal at 1.

¹⁸ For purposes of this order, both AmerenEnergy Resources Generating Company and Ameren Energy Marketing will be referred to as Ameren.

¹⁹ On July 5, 2013, in Docket No. EL13-76-000, pursuant to section 206 of the FPA, 16 U.S.C. § 824e (2012), Ameren filed a complaint against MISO requesting that the Commission find that, to compensate Ameren's Unit No. 1 (Edwards) 1 for its continued service for reliability as an SSR unit, the SSR rate should not be limited to its incremental costs of operation. Specifically, Ameren alleges that MISO violated its Tariff by narrowly interpreting the term "going forward" costs so as to exclude the fixed costs of existing plant, which is recovered as depreciation expense, return on rate base, and associated taxes. Alternatively, Ameren avers that, if the Commission finds that the MISO Tariff currently limits compensation to incremental costs, then the Commission should find that section of the MISO Tariff to be unjust and unreasonable and fix a new rate that provides SSR units with their fixed costs of existing plant. We make no findings in this order regarding Ameren's complaint in Docket No. EL13-76-000 and, instead, make our findings in this order subject to a further Commission order.

²⁰ Allocation of SSR Costs Associated with a Change in Status for Edwards 1, MISO Rate Schedule No. 43C, Transmittal Letter, Docket No. ER13-1963-000, at 2-3 (July 11, 2013).

II. Notice of Filings and Responsive Pleadings

9. Notice of the Edwards SSR Agreement and associated Rate Schedule 43C were published in the *Federal Register*, 78 Fed. Reg. 43,192 (2013), with protests and interventions due on or before July 31, 2013.
10. On August 27, 2013, under delegated authority, the Commission staff issued a letter informing MISO that the July 11, 2013 filings in Docket Nos. ER13-1962-000 and ER13-1963-000 were deficient and requesting additional information (Deficiency Letter).
11. On September 26, 2013, MISO submitted its response to the Deficiency Letter in Docket Nos. ER13-1962-000 and ER13-1963-000 (Response).
12. Notice of MISO's September 26, 2013 Response in Docket Nos. ER13-1962-000 and ER13-1963-000 was published in the *Federal Register*, 78 Fed. Reg. 61,942 (2013), with protests and interventions due on or before October 17, 2013.
13. The entities that filed notices of intervention, motions to intervene, protests, comments, and answers are listed in the Appendix to this order. However protestors raise concerns about the need for the Edwards SSR Agreement. In addition, numerous parties raise arguments regarding the appropriate level of compensation that Ameren should receive for operating Edwards 1 pursuant to the Edwards SSR Agreement.²¹ We also note that no party commented or protested the amended Rate Schedule 43C that MISO included in its Response to the Deficiency Letter.

III. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which they sought intervention.
15. 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 the answers filed by those parties listed in the Appendix because they provided information that assisted us in our decision-making process.

²¹ We note that many of these parties cross-filed their pleadings in Docket Nos. EL13-76-000, ER13-1962-000, and ER13-1963-000. We will address arguments regarding the need for the Edwards SSR Agreement and Ameren's compensation in a subsequent Commission order.

B. Commission Determination

16. We accept the Edwards SSR Agreement and Rate Schedule 43C, suspend them for a nominal period, to be effective January 1, 2013,²² subject to refund and further Commission order.

The Commission orders:

The Edwards SSR Agreement and Rate Schedule 43C are hereby accepted for filing and suspended for a nominal period, to be effective January 1, 2013, subject to refund and further Commission order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²² We grant waiver of the prior notice requirement to allow the proposed Edwards SSR Agreement and Rate Schedule 43C to be effective January 1, 2013, as requested. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,170, at PP 84-86 (waiver of prior notice rule granted in order accepting an SSR agreement and associated rate schedule), *order on reh'g*, 144 FERC ¶ 61,128 (2013) (*Escanaba*).

Appendix

Except where noted below, parties filed pleadings in Docket Nos. EL13-76-000, ER13-1962-000, and ER13-1963-000.

Motions to Intervene

Ameren Services Company²³

American Municipal Power, Inc. (Docket No. ER13-1962-000)

Association of Businesses Advocating Tariff Equity²⁴

Coalition of MISO Transmission Customers (MISO Transmission Customers)

Consumers Energy Company

DTE Electric Company (Docket Nos. ER13-1962-000 and ER13-1963-000)

Dynegy Power Marketing, LLC and Dynegy Midwest Generation, LLC (Docket Nos. EL13-76-000 and ER13-1962-000)

Electric Power Supply Association (EPSA)

Exelon Corporation (Docket Nos. EL13-76-000 and ER13-1962-000)

Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier) and Southern Illinois Power Cooperative (Southern Illinois)

Illinois Industrial Energy Consumers (Illinois Industrials)

Illinois Municipal Electric Agency (Illinois Municipal)

Minnesota Large Industrial Group (Minnesota Industrials) and Wisconsin Industrial Energy Group (Wisconsin Industrials)

²³ Ameren Services Company filed the motions on behalf of Ameren Illinois Company and Union Electric Company.

²⁴ Association of Business Advocating Tariff Equity states that its current members are: Alcoa, Inc.; Cargill; Chrysler Group LLC; Delphi Corporation; Dow Chemical Co.; Dow Corning Corporation; Eaton Corporation; Edwards C. Levy Co.; Enbridge Energy, Limited Partnership; Ford Motor Company; General Motors Company; Gerdau MacSteel; J. Rettenmaier USA LP; Marathon Petroleum Corporation; Martin Marietta Magnesia Specialties, Inc.; Metal Technologies, Inc.; MPI Research; Praxair, Inc.; and United States Gypsum Company.

Monitoring Analytics, LLC (PJM Market Monitor) (Docket Nos. EL13-76-000 and ER13-1962-000)

New Jersey Board of Public Utilities (Docket Nos. EL13-76-000 and ER13-1962-000)

Noble Americas Energy Solutions LLC (Noble Americas)

Southwestern Electric Cooperative, Inc. (Southwestern)

Wabash Valley Power Association, Inc. (Wabash Valley)

Wisconsin Electric Power Company

Wisconsin Paper Council

Notices of Intervention

Indiana Utility Regulatory Commission (Indiana Commission) (Docket No. ER13-1963-000)

Organization of MISO States

Motions to Intervene and Comments and/or Protests

Midwest TDUs²⁵ (Docket Nos. EL13-76-000 and ER13-1962-000)

Prairie Power, Inc. (Prairie Power)

Public Interest Organizations²⁶ (Docket Nos. ER13-1962-000 and ER13-1963-000)

Retail Energy Supply Association²⁷

²⁵ Midwest TDUs consist of Madison Gas and Electric Company, Missouri River Energy Services, Southern Minnesota Municipal Power Agency, and WPPI Energy.

²⁶ Public Interest Organizations consist of Earthjustice, Environmental Law and Policy Center, and The Sustainable FERC Project.

²⁷ Retail Energy Supply Association's members include: AEP Energy, Inc.; Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Hess Corporation; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd.; and TriEagle Energy, L.P.

Notices of Intervention and Comments

Illinois Commerce Commission (Illinois Commission) (Docket No. ER13-1962-000)

Indiana Commission (Docket Nos. EL13-76-000 and ER13-1962-000)

Comments and/or Protests

EPSA (Docket Nos. EL13-76-000 and ER13-1962-000)

Hoosier-Southern Illinois

Illinois Municipal-Wabash Valley

Industrial Customers²⁸ (ER13-1962-000 and ER13-1963-000)

Noble Americas

PJM Market Monitor (Docket Nos. EL13-76-000 and ER13-1962-000)

Southwestern (Docket Nos. ER13-1962-000 and ER13-1963-000)

Other Motions and/or Protests

AmerenEnergy Resources Generating Company (AERG or Ameren) and Ameren Energy Marketing Company (AEM or Ameren) (Motion to Intervene, Limited Protest, and Motion to Consolidate)²⁹

PSEG Companies³⁰ (Out-of-Time Motion to Intervene) (Docket Nos. ER13-1962-000 and ER13-1963-000)

Answers

Ameren (August 15, 2013)

Ameren (August 23, 2013)

Ameren (September 12, 2013)

²⁸ Industrial Customers consist of Association of Businesses Advocating Tariff Equity, Illinois Industrials, Minnesota Industrials, MISO Transmission Customers, Wisconsin Industrials, and Wisconsin Paper Council.

²⁹ On August 2, 2013, Ameren filed the signature page to this motion.

³⁰ The PSEG Companies consist of PSEG Power LLC and PSEG Energy Resources & Trade LLC.

Ameren (November 1, 2013)

EPSA (August 15, 2013) (Docket Nos. EL13-76-000 and ER13-1962-000)

Illinois Municipal-Wabash Valley (August 13, 2013)

Illinois Municipal-Wabash Valley (September 5, 2013)

Industrial Customers (August 28, 2013) (Docket Nos. EL13-76-000 and ER13-1962-000)

MISO (August 15, 2013) (Docket Nos. ER13-1962-000 and ER13-1963-000)

MISO (October 31, 2013) (Docket Nos. ER13-1962-000 and ER13-1963-001)

NRG Companies (August 15, 2013) (Docket Nos. EL13-76-000 and ER13-1962-000)

PJM Market Monitor (September 23, 2013) (Docket Nos. EL13-76-000 and ER13-1962-000)