146 FERC ¶ 61,164
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 Nos. ER13-1695-001
ER13-1699-001

ORDER ACCEPTING TARIFF FILINGS

(Issued March 7, 2014)

1. On September 12, 2013, the Midcontinent Independent System Operator, Inc. (MISO) submitted a revised Amended and Restated System Support Resource (SSR)[1] Agreement between the City of Escanaba (Escanaba) and MISO in compliance with the Commission's August 13 Order (Revised Amended and Restated Escanaba SSR Agreement).[2] In a separate filing also in compliance with the August 13 Order, MISO submitted a further revised Rate Schedule 43 providing for cost allocation under the Amended and Restated Escanaba SSR Agreement (Revised Rate Schedule 43). In this order, we accept, effective June 15, 2013, as requested, the Revised Amended and Restated Escanaba SSR Agreement and the Revised Rate Schedule 43, as discussed below.[3]

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[1] MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) defines SSRs as "Generation Resources or Synchronous Condensor Units 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.

[2] *Midcontinent Indep. Sys. Operator, Inc.*, 144 FERC ¶ 61,127 (2013) (August 13 Order).

[3] Midcontinent Independent System Operator, Inc., FERC FPA Electric Tariff, SCHEDULE 43, Allocation of SSR Costs Associated with the Escanaba SSR Unit, 4.0.0.

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I. **Background**

2. On October 5, 2012, MISO submitted a proposed SSR agreement between MISO and Escanaba (Escanaba SSR Agreement) and an associated Rate Schedule 43. The Escanaba SSR Agreement provided for the continued operation of two 12.5 MW generation units owned by Escanaba (Escanaba SSR Units) until such time as these units are no longer needed for reliability purposes. Rate Schedule 43 provided for recovery of costs under the Escanaba SSR Agreement through *pro rata* demand-based allocation to load-serving entities (LSEs) throughout the American Transmission Company LLC (ATC) footprint. In an order issued on March 4, 2013, the Commission conditionally accepted the Escanaba SSR Agreement and associated Rate Schedule 43.[4]

3. On June 14, 2013, MISO submitted an Amended and Restated Escanaba SSR Agreement to extend the term of the agreement for an additional one-year period, and an Amended Rate Schedule 43 in which MISO proposed to allocate the Escanaba SSR Units' costs on an energy basis.

4. In an order issued August 13, 2013, the Commission conditionally accepted, effective June 15, 2013, both the Amended and Restated Escanaba SSR Agreement and the Amended Rate Schedule 43.[5] The Commission conditionally accepted the Amended and Restated Escanaba SSR Agreement, subject to MISO reinstating language in section 9.G allowing MISO to determine whether or not it will fund unanticipated repairs or terminate the agreement if the unanticipated repairs would prevent the Escanaba SSR Units from fulfilling their contractual obligations.[6] The Commission also conditionally

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Midcontinent Independent System Operator, Inc., FERC FPA Electric Tariff, Midwest ISO Agreements, SA 6500, The City of Escanaba - MISO SSR, 4.0.0.

[4] *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,170 (March 4 Order), *order on reh'g*, 144 FERC ¶ 61,128 (2013) (August 13 Order on Rehearing).

[5] August 13 Order, 144 FERC ¶ 61,127.

[6] *Id.* P 39. In the March 4 Order, 142 FERC ¶ 61,170, the Commission directed MISO to remove language from section 9.G of the Escanaba SSR Agreement giving MISO the sole discretion to decide whether to fund unanticipated repairs or to terminate the agreement if the Escanaba SSR Units would not be able to meet their contractual obligations. In the August 13 Order on Rehearing, 144 FERC ¶ 61,128 at P 21, the Commission granted rehearing and directed MISO to reinsert the language the Commission had previously rejected. Because MISO had filed the proposed Amended and Restated Escanaba SSR Agreement before the Commission acted in the August 13

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accepted Amended Rate Schedule 43 subject to MISO's making a compliance filing either demonstrating that the Escanaba SSR Units are substantially needed in off-peak periods to justify allocation based on total energy used each month[7] or proposing a different cost allocation for the recovery of costs associated with the Amended and Restated Escanaba SSR Agreement.[8]

II. <u>MISO's Filings</u>

5. In Docket No. ER13-1699-001, MISO filed the Revised Amended and Restated Escanaba SSR Agreement that reinstates the language in section 9.G from the Escanaba SSR Agreement.[9]

6. In Docket No. ER13-1695-001, MISO submitted the Revised Rate Schedule 43 to allocate the costs associated with the Revised Amended and Restated Escanaba SSR Agreement.[10] According to MISO, costs incurred under the Revised Amended and Restated Escanaba SSR Agreement each month are allocated to all LSEs within the ATC footprint on a *pro rata* basis. MISO states that the Revised Rate Schedule 43 accomplishes this allocation based upon peak usage of transmission facilities in each month, as determined by each LSE's Actual Energy Withdrawals during the monthly peak hour for each Local Balancing Authority (LBA).

7. According to MISO, the proposed cost allocation method identifies each LSE's Actual Energy Withdrawals during the coincident peak hour and allocates costs accordingly. As such, MISO states, the percentage of costs allocated to each LSE will vary each month based on the LSE's coincident peak hour energy usage during that month. MISO states that this is similar to the cost allocation method that was accepted in connection with the Escanaba SSR Agreement. MISO also notes that recognition of peak usage permits cost allocation that is similar to the manner in which reliability-based transmission charges are allocated. In addition, MISO states that its proposed cost allocation method is more compatible with cost assignment in customer "choice" states

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Order on Rehearing, it was necessary for MISO to reinsert the previously excluded language from section 9.G into the Amended and Restated Escanaba SSR Agreement.

[7] August 13 Order, 144 FERC ¶ 61,127 at P 45.

[8] *Id.* P 47.

[9] September 12, 2013 Transmittal Letter (Docket No. ER13-1699-001) at 2.

[10] September 12, 2013 Transmittal Letter (Docket No. ER13-1695-001) at 2.

such as Michigan where the Escanaba SSR Units are located, because it identifies each LSE's Actual Energy Withdrawals during the coincident peak hour of each month and allocates costs accordingly. MISO maintains that the proposed cost allocation method retains the advantage of being contained in a single MISO settlements system, which means that software development, maintenance, and financial controls are performed only once. MISO states that the proposed cost allocation method also completely recovers the costs associated with the Revised Amended and Restated Escanaba SSR Agreement each month, as opposed to a demand-based rate that could only be calculated to approximately recover such costs.[11]

8. MISO also notes that Industrial Customers,[12] which were the only parties to file a protest of MISO's proposed cost allocation in this proceeding, have authorized MISO to represent that they support the proposed cost allocation stated in the Revised Rate Schedule 43.[13]

III. Notice and Responsive Pleadings

9. Notice of MISO's filings in Docket Nos. ER13-1695-001 and ER13-1699-001 was published in the *Federal Register*, 78 Fed. Reg. 58,299 (2013), with interventions and protests due on or before October 3, 2013.

10. Wisconsin Electric Power Company (Wisconsin Electric) filed a timely protest in Docket No. ER13-1695-001. On October 15, 2013, Industrial Customers filed a motion for leave to answer and answer to the protest. Both Wisconsin Electric and Industrial Customers are already parties to this proceeding.

A. Protest

11. Wisconsin Electric agrees that it is appropriate to allocate the Escanaba SSR Units' costs based upon actual energy withdrawals, and fully supports this aspect of the

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

[12] Industrial Customers include the Coalition of MISO Transmission Customers, Illinois Industrial Energy Consumers, the Association of Businesses Advocating Tariff Equity, Wisconsin Paper Council, the Minnesota Large Industrial Group, and the Wisconsin Industrial Energy Group.

[13] September 12, 2013 Transmittal Letter (Docket No. ER13-1695-001) at 3.

cost allocation methodology.[14] However, Wisconsin Electric urges the Commission to reject the proposal to base the allocation on peak usage of transmission facilities.

12. According to Wisconsin Electric, MISO's proposal is inconsistent with the methodology MISO's stakeholders have agreed upon in the stakeholder process and which MISO's Planning Advisory Committee recommended in an April 17, 2013 vote to be included in the Transmission Planning Business Practice Manual. Wisconsin Electric maintains that MISO should explain why it has deviated from the stakeholder-vetted methodology in this case by using only the monthly peak hour rather than all hours in the month, which stakeholders clearly supported.[15]

13. Wisconsin Electric also disagrees with MISO's statement that recognition of peak usage permits cost allocation that is similar to the manner in which reliability-based transmission charges are allocated, because it assumes that the Escanaba SSR Units are only needed on the peak hour. According to Wisconsin Electric, the use of peak values is inappropriate because, in the case of Escanaba, reliability is not at issue only in the peak hour of each month, but also in many other peak hours as well as in shoulder hours.[16]

14. Wisconsin Electric also maintains that certain customers, i.e., those with load that can be modified, could be incentivized by MISO's proposal to game the cost allocation. According to Wisconsin Electric, it will not be difficult for customers with modifiable load to identify peak hours and thus manipulate the cost allocation so that SSR costs are shifted to other customers.[17] In order to address its concerns, Wisconsin Electric requests that the Commission require MISO to remove from its cost allocation in Revised Rate Schedule 43 the peaking aspect of its proposal, and instead base allocations on actual energy withdrawals determined from the prior month.[18] In the alternative, Wisconsin Electric requests that the monthly peak hour for each individual LSE, as opposed to monthly coincident peak for each LBA, be used to determine cost allocation.

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[14] Wisconsin Electric Protest at 3.

[15] *Id*. at 4.

[16] *Id.*

[17] *Id*. at 6.

[18] *Id.* at 7.

B. Industrial Customers' Answer

15. In their answer to Wisconsin Electric, the Industrial Customers note that the Commission specifically recognized, in the August 13 Order, that "MISO ha[d] not demonstrated that the SSR Units are 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."[19] Additionally, Industrial Customers argue that Wisconsin Electric's evidence describing when the Escanaba SSR Units are needed during off-peak hours does not rise to the level of demonstrating a substantial need. In any case, Industrial Customers argue that if the Escanaba SSR Units are capable of addressing the reliability issues in the peak hours, they will necessarily be capable of fulfilling the obligation in the off-peak hours when the demand is lower.[20]

16. With respect to Wisconsin Electric's argument that certain customers would be incentivized to modify their load such that the cost allocation would shift to other customers, Industrial Customers aver that such an argument is misleading. Industrial Customers posit that customers that shift their usage during the peak hour help the overall transmission system and should be viewed positively because they are responding to pricing signals. Additionally, Industrial Customers state that SSR units are a substitute for transmission service, and a cost allocation method based on the actual withdrawal during the peak hour of every month is consistent with how other transmission costs are allocated.[21]

IV. Discussion

A. Procedural Matters

17. 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 unless otherwise ordered by the decisional authority. We will accept Industrial Customers' answer because it has provided information that assisted us in our decision-making process.

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[19] Industrial Customers Answer at 3-4 (citing to the August 13 Order, 144 FERC ¶ 61,127 at P 45).

[20] *Id.* at 3-4.

[21] *Id.* at 4.

B. Commission Determination

18. We accept both the Revised Amended and Restated Escanaba SSR Agreement and the Revised Rate Schedule 43, effective June 15, 2013 as requested, as discussed below.

19. We find that the Revised Amended and Restated Escanaba SSR Agreement reincorporates the language in section 9.G from the Escanaba SSR Agreement associated with the funding of unanticipated repairs and related unilateral termination rights as directed by the Commission in the August 13 Order.[22]

20. In the August 13 Order, the Commission conditionally accepted Amended Rate Schedule 43 subject to MISO 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 Amended and Restated Escanaba SSR Agreement. Here, MISO has proposed a different cost allocation methodology; but one that is consistent with the Commission's previous finding that a demand-based methodology is correlated to the reliability issues that underlie the SSR process.[23] We also agree with MISO that the proposed methodology addresses issues related to LSEs that reside in retail choice states because the proposed methodology will reflect each LSE's Actual Energy Withdrawals during the monthly peak hour. In addition, we agree with MISO's assessment that this approach is administratively efficient.[24]

21. We find Wisconsin Electric's protest to MISO's compliance filing to be unpersuasive and, in part, inconsistent with the Commission's previous findings. With respect to Wisconsin Electric's argument that MISO's proposal is inconsistent with the stakeholder agreed to methodology, we note that the April 17, 2013 vote of the Planning Advisory Committee referred to by Wisconsin Electric predates the Commission's directives to MISO regarding energy-based SSR cost allocation in the August 13 Order. In any event, MISO is not bound to implement recommendations of the Planning Advisory Committee.[25] Moreover, MISO was directed to file a proposal on compliance that addressed the concerns expressed by the Commission in the August 13 Order.

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[22] August 13 Order, 144 FERC ¶ 61,127.

[23] March 4 Order, 142 FERC ¶ 61,170 at P 73.

[24] September 12, 2013 Transmittal Letter (Docket No. ER13-1695-001) at 2-3.

[25] Appendix B of the MISO Transmission Owner's Agreement (Rate Schedule 1 of MISO's Tariff) states that MISO Planning Staff analyses should give consideration to

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22. Wisconsin Electric also argues that MISO's proposal does not reflect that there is a need for the Escanaba SSR Units in non-peak hours. However, this argument is also at odds with the Commission's previous findings. In the August 13 Order, the Commission rejected MISO's argument that an energy-based charge better allows MISO to charge LSEs during the hours when the Escanaba SSR Units are needed, in large part because MISO failed to demonstrate that the Escanaba SSR Units are substantially needed in off-peak days of the week and/or hours of the day to justify allocation on total energy used each month.[26] Wisconsin Electric does not proffer any new information relating to the use of the Escanaba SSR Units that persuades us to change the previous finding that off-peak usage does not rise to the level where an energy-based allocation method is appropriate.

23. Finally, with regard to Wisconsin Electric's argument that MISO's proposal to use the monthly peak hour to determine SSR cost allocation will lead to manipulation by customers with modifiable load, we disagree that implementing a business practice of minimizing load at times of peak demand by itself constitutes manipulation of cost allocation.

<u>The Commission orders</u>:

(A) The Revised Amended and Restated Escanaba SSR Agreement is accepted, effective June 15, 2013, as discussed in the body of this order.

(B) The Revised Rate Schedule 43 is accepted, effective June 15, 2013, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

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information from the Planning Advisory Committee and other sources but that MISO shall make the "final determination."

[26] *See* August 13 Order, 144 FERC ¶ 61,127 at P 45.