

147 FERC ¶ 61,079
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. ER14-1391-000
ER14-1392-000

ORDER ACCEPTING TERMINATION OF TARIFF FILINGS

(Issued April 30, 2014)

1. On February 28, 2014, pursuant to section 205 of the Federal Power Act (FPA),¹ Midcontinent Independent System Operator, Inc. (MISO) submitted a Request to Terminate the System Support Resources (SSR) Agreement² between Big Rivers Electric Corporation (Big Rivers) and MISO (Coleman SSR Agreement) (Request for Termination).³ Also on February 28, 2014, pursuant to section 205 of the FPA, MISO submitted a Request to Cancel Schedule 43F⁴ associated with the Coleman SSR

¹ 16 U.S.C. § 824d (2012).

² MISO's Open Access Transmission, Energy, and Operating Reserve Markets Tariff (Tariff) defines SSRs as "[g]eneration 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, 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.

³ The Coleman SSR Agreement was designated as Service Agreement No. 6501 under MISO's Tariff.

Agreement. In this order, the Commission accepts MISO's Request for Termination of the Coleman SSR Agreement and Request to Cancel Schedule 43F, effective May 1, 2014, as requested.

I. Background

2. On August 6, 2004, the Commission conditionally accepted MISO's proposed revisions to its Transmission and Energy Markets Tariff⁵ regarding the retirement or suspension of generation resources and SCUs, including provisions regarding the designation and treatment of SSRs.⁶ On September 21, 2012, the Commission conditionally accepted MISO's amended SSR Tariff provisions.⁷

3. On December 19, 2012, Big Rivers submitted an Attachment Y-2 (Request for Non-Binding Study Regarding Potential SSR Status) to MISO in order to address the possible suspension of Coleman Units Nos. 1-3 (Coleman Units),⁸ beginning on August 20, 2013 and resuming operations on January 1, 2015. MISO completed its analysis of the Attachment Y-2 request and replied to Big Rivers on May 2, 2013. MISO identified reliability issues associated with the suspension of Coleman Units 1-3.⁹

4. On May 24, 2013, Big Rivers submitted an Attachment Y (Notification of Potential Generation Resources/SCU Change of Status) to MISO indicating its desire to suspend the Coleman Units for a period of 28 months, from September 1, 2013 to

⁴ We note that the "Schedule 43F" to which MISO refers to in the Request to Cancel Schedule 43F is the Rate Schedule 43F that MISO previously filed with the Commission in association with its filing of the Coleman SSR Agreement.

⁵ Now referred to as MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff), as noted above.

⁶ *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163, *reh'g denied*, 109 FERC ¶ 61,157 (2004).

⁷ *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,237 (2012) (SSR Order).

⁸ The Coleman Units are located in Hawesville, Kentucky and provide 443 MW of capacity.

⁹ Coleman SSR Agreement Transmittal Letter, Docket No. ER14-292-000, at 2-3 (filed Nov. 1, 2013).

January 1, 2016. MISO stated that, after conducting an Attachment Y Study, it concluded that the proposed suspension of the Coleman Units during the 28-month suspension period, without curtailment of load by means of demand response, would result in violations of specific applicable reliability standards. Consequently, MISO designated the Coleman Units as an SSR Unit until such time as appropriate alternatives can be implemented to mitigate reliability issues.¹⁰

5. On November 1, 2013, in Docket No. ER14-292-000, MISO submitted the Coleman SSR Agreement for the purpose of providing compensation for the continued availability of the Coleman Units as an SSR. On November 1, 2013, in Docket No. ER14-294-000, MISO also submitted a proposed Rate Schedule 43F under its Tariff regarding the allocation of the costs associated with the continued operation of the Coleman Units under the Coleman SSR Agreement. As stated in that filing, the Tariff requires that the costs pursuant to an SSR agreement be allocated to Load Serving Entities (LSEs) that require operation of the SSR Unit for reliability purposes. MISO requested an effective date of September 1, 2013 for both the Coleman SSR Agreement and Schedule 43F.¹¹

6. On December 30, 2013, the Commission accepted the Coleman SSR Agreement and Rate Schedule 43F, suspended them for a nominal period, subject to refund and further Commission order.¹²

II. Request to Terminate Coleman SSR Agreement and Request to Cancel Schedule 43F¹³

7. MISO states that it has determined that the Coleman Units are not required to serve in an SSR status past the 60 days provided in MISO's notice of termination, which

¹⁰ *Id.*

¹¹ MISO, Coleman SSR Agreement, Transmittal Letter, Docket No. ER14-292-000, at 10-11 (filed Nov. 1, 2013); MISO, Coleman Rate Schedule 43F, Transmittal Letter, Docket No. ER14-294-000, at 2-3 (filed Nov. 1, 2013).

¹² *Midcontinent Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,296 (2014) (December 30, 2013 Order).

¹³ The information provided by MISO in the Request to Cancel Schedule 43F in Docket No. ER14-1392-000 mirrors the information that was provided in the Request for Termination of the Coleman SSR Agreement in Docket No. ER14-1391-000, and therefore, we do not separately summarize the Request to Cancel Schedule 43F.

releases the Coleman Units from SSR designation on May 1, 2014.¹⁴ As discussed more fully below, MISO states that development of a Special Protective Scheme providing for load curtailments at the Century Aluminum of Kentucky General Partnership (Century Aluminum) smelter (Hawesville Smelter) located near the SSR units renders the need for continued service by the Coleman Units after April 2014 unnecessary.¹⁵

8. MISO states that the Commission's regulations specify 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.¹⁶

MISO also notes that the Commission may order other timing “[f]or good cause shown.”¹⁷

9. MISO states that Big Rivers executed a Consent to Termination on February 26, 2014, which provides that Big Rivers “agrees to termination of the Coleman SSR Agreement” and “authorizes MISO to submit th[e] Consent to Termination to FERC”¹⁸ MISO states that other persons affected are those assigned responsibility for the SSR costs provided pursuant to Rate Schedule 43F. According to MISO, those SSR costs were 99.5 percent assigned to the Big Rivers Local Balancing Authority and 0.5 percent to the Southern Illinois Gas and Electric (Southern Illinois) Local Balancing Authority.¹⁹

¹⁴ See Request for Termination of Coleman SSR Agreement, Ex. B, Notice of Termination.

¹⁵ *Id.* at 2.

¹⁶ *Id.* (quoting 18 C.F.R. § 35.15 (2013)).

¹⁷ *Id.* (quoting 18 C.F.R. § 35.15).

¹⁸ *Id.* at 3 (quoting Ex. A, Consent to Termination)

¹⁹ *Id.*

10. MISO asserts that Century Aluminum's Special Protective Scheme is a workable alternative to the Coleman SSR Agreement. MISO explains that the Attachment Y Study Report, which accompanied the Coleman SSR Agreement, states the alternatives to the agreement that were reviewed. According to MISO, because Big Rivers submitted a request to suspend the Coleman Units 1-3, transmission upgrades would not have been in place before the expected return of Coleman Units 1-3 to service. MISO reports that it carefully considered transmission, generation, and demand response alternatives to address the local reliability issue, but none was available at the date noticed by Big Rivers for the beginning of the suspension.²⁰

11. MISO reiterates that, as discussed in the transmittal sheet accompanying the Coleman SSR Agreement and the Attachment Y Study Report, the SSR status of the Coleman Units was expected to continue until load curtailment arrangements from Century Aluminum were in place to adequately address possible transmission system overloads.²¹ MISO states that the Special Protective Scheme alternative was discussed at a Central Transmission System Task Force stakeholder conference on July 25, 2013. MISO states that MISO, Century Aluminum, Big Rivers and other persons engaged in meetings and conference calls during summer/fall 2013 to develop the Special Protective Scheme to allow the industrial load to be curtailed for reliability issues that resulted from the suspension of the Coleman Units. MISO states that the Special Protective Scheme has been further developed and refined, which is the cause for the instant filing.²²

12. MISO states that Century Aluminum is prepared to implement the Special Protective Scheme, which will allow more flexibility to shed load automatically by employing relay equipment to monitor conditions and trip blocks of plant load to reduce loading on the transmission facilities. MISO reports that Century Aluminum has applied for, and received, SERC Reliability Corporation (SERC) acceptance for the Special Protective Scheme in accordance with North American Electric Reliability Corporation (NERC)/SERC standards.²³ According to MISO, the facilities needed to implement the Special Protective Scheme, such as the relay equipment, are also the subject of a service

²⁰ *Id.*

²¹ *Id.* (citing Coleman SSR Agreement Transmittal Letter, Ex. B, Attach. Y Study Report).

²² *Id.* at 3-4.

²³ *Id.* at 4 (citing Ex. C, SERC Letter Regarding Special Protective Scheme Facilities).

agreement between MISO and Century Aluminum for Reliability Coordination Service pursuant to an Attachment KK-1 Service Agreement.²⁴

13. MISO states that, as shown in the Attachment KK-1 Service Agreement, Century Aluminum will provide information needed by MISO to monitor the Special Protective Scheme facilities.²⁵ MISO states that information will also be provided for network modeling coordination and that the Special Protective Scheme will be included in the MISO network model. MISO explains that it has developed an operating guide in consultation with Century Aluminum, Big Rivers, and the other transmission owners in the area that might be affected by the Special Protective Scheme. MISO states that training of Century Aluminum personnel in connection with the Special Protective Scheme will take place prior to the termination of the Coleman SSR Agreement. MISO states that with all of these elements in place, it is prepared for the Special Protective Scheme to provide the necessary load reductions to address local reliability issues that were presented when Big Rivers gave notice of its suspension of the Coleman Units.²⁶

III. Notice of Filings and Responsive Pleadings

14. Notice of MISO's filings in Docket Nos. ER14-1391-000 and ER14-1392-000 was published in the *Federal Register*, 79 Fed. Reg. 13,290 (2014) with interventions and protests due on or before March 21, 2014.

15. The following entities made filings in both Docket Nos. ER14-1391-000 and ER14-1392-000. Consumers Energy Company (Consumers Energy) submitted a timely motion to intervene. On March 21, 2014, Century Aluminum submitted a protest.²⁷ On April 7, 2014, MISO submitted an answer. On April 8, 2014, Big Rivers submitted a motion to intervene out-of-time and motion for leave to answer and answer.

²⁴ *Id.* (citing Ex. D., Form of Service Agreement for Reliability Coordination Service).

²⁵ *Id.* (citing Ex. D, § 5.1.).

²⁶ *Id.*

²⁷ While Century Aluminum's pleading was captioned as an answer, because the filing protests MISO's Request for Termination and Request to Cancel Schedule 43F, we will treat it as a protest.

A. Century Aluminum Protest

16. Century Aluminum states that it does not oppose the termination of the Coleman SSR Agreement effective May 1, 2014. However, Century Aluminum contends that the Special Protective Scheme does not present a viable long-term solution to address reliability issues presented by the suspension of the Coleman Units.²⁸

17. Century Aluminum asserts that live-line maintenance should be imposed as a condition of approval of the termination of the Coleman SSR Agreement. Century Aluminum explains that, pursuant to a Direct Agreement between it and Big Rivers, Century Aluminum is obligated to pay all Coleman SSR costs allocated to the Big Rivers Load Balancing Authority.²⁹ Century Aluminum adds that it has agreed, via the Direct Agreement, to reimburse Big Rivers for the incremental costs of live-line maintenance and has agreed to indemnify Big Rivers against all associated liability, both before and after implementation of the Special Protective Scheme. According to Century Aluminum, live-line maintenance is a critical component of the feasible alternatives to the Coleman SSR Agreement necessary for the continued operation of the Hawesville Smelter. Century Aluminum alleges that, while the Special Protective Scheme will facilitate the termination of the Coleman SSR Agreement, it does not alleviate the potential for catastrophic curtailments of the Hawesville Smelter upon the termination of the Coleman SSR Agreement.³⁰

18. Century Aluminum asserts that the Commission may appropriately consider live-line maintenance as a condition of approval of the termination of the Coleman SSR Agreement. Century Aluminum states that live-line maintenance is consistent with good and reasonable utility practice used by other Kentucky utilities.³¹ Moreover, Century

²⁸ Century Aluminum Protest at 3-4.

²⁹ *Id.* at 2 (citing Century Aluminum, Protest, Docket Nos. ER14-292-000 and ER14-294-000, at 2 (filed Nov. 22, 2014)). Century Aluminum states that the Direct Agreement was approved by the Kentucky Public Utilities Commission (Kentucky Commission) on August 14, 2013. *In re Joint Application of Kenergy Corp. and Big Rivers Elec. Corp. for Approval of Contracts and for a Declaratory Order*, Case No. 2013-00221 (Ky. Pub. Serv. Comm'n Aug. 14, 2013) (Kentucky Commission Order).

³⁰ Century Aluminum Protest at 5-7.

³¹ *Id.* at 6 (citing Kentucky Commission Order at 14).

Aluminum states that live-line maintenance is consistent with Section 38.2.7 of the MISO Tariff and the Commission's directive that "transmission planning processes at the regional level consider and evaluate, on a non-discriminatory basis, possible transmission alternatives and produce a transmission plan that can meet a transmission planning region's needs more efficiently and cost-effectively."³²

19. Century Aluminum states that, in this context, live-line maintenance would entail performing scheduled maintenance on the affected Big Rivers transmission lines while those lines remain energized. Century Aluminum explains that live-line maintenance would allow Big Rivers to perform maintenance on three critical transmission lines while the lines are energized, which would help the transmission system remain in a more robust state. Century Aluminum maintains that without live-line maintenance, the transmission system would be operating without key transmission elements and may require that Century Aluminum substantially reduce load levels at the Hawesville Smelter.³³ Century Aluminum therefore contends that Big Rivers' refusal to perform live-line maintenance threatens to jeopardize the ongoing viability of the Hawesville Smelter.

20. Furthermore, Century Aluminum reports that the Coleman SSR Agreement is interrelated with a series of agreements by and among Big Rivers, Century Aluminum, and Kenergy Corporation for continued service to the Hawesville Smelter (Century Transaction), which was designed to avoid closure of the Hawesville Smelter on August 30, 2013 and to reflect and accommodate MISO's likely designation of the Coleman Units as SSRs. Century Aluminum states that if live-line maintenance is not performed following implementation of the Special Protective Scheme, the Hawesville Smelter's viability will be subject to sustained and persistent load curtailments, thus defeating the purpose of the Century Transaction.³⁴

21. Century Aluminum alleges that termination of the Coleman SSR Agreement should also be conditioned on MISO's commitment to consider long-term transmission solutions. Century Aluminum states that Big Rivers submitted an Attachment Y Notice to MISO on May 24, 2013, indicating its desire to suspend the Coleman Units from September 1, 2013 to January 1, 2016. Century Aluminum adds that, based entirely on

³² *Id.* (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,215 at PP 29, 41 (2014)).

³³ *Id.* at 6.

³⁴ *Id.*

the January 1, 2016 return-to-service date provided in the Attachment Y Notice, MISO determined that “since Big Rivers submitted a request to suspend [the Coleman Units], transmission upgrades would not have been in place before the expected return of [the Coleman Units] to service.”³⁵ However, Century Aluminum states, since Big Rivers sent its Attachment Y Notice to MISO, substantial and well-documented evidence suggests that Big Rivers’ inability to return the Coleman Units to full operational status by January 1, 2016 is nearly certain. Moreover, Century Aluminum avers that the return of the Coleman Units from suspension is largely dependent on uncertain and presently unfavorable economic factors. Century Aluminum argues that, while MISO’s Tariff requires MISO to evaluate the information available in the Attachment Y Notice, it does not preclude MISO from considering additional information. Therefore, Century Aluminum concludes that because the return-to-service of the Coleman Units by January 1, 2016 is highly unlikely, MISO has the authority and obligation to have considered long-term transmission solutions to address the reliability concerns created by the suspension of the Coleman Units.³⁶

22. Furthermore, Century Aluminum contends that MISO has the requisite Tariff authority, and obligation, to factor into its transmission planning paradigm the likelihood that the Coleman Units will not be returning to full operational status on or before January 1, 2016. Century Aluminum states that, in its planning process, MISO should consider the localized, “unhedgeable” congestion costs that the Hawesville Smelter has incurred and may incur going-forward that are associated with outages of the Coleman Units. Century Aluminum argues that transmission upgrades could be a necessary and cost-effective means of addressing issues related to longer-term idling or retirement of the Coleman Units.³⁷

23. Century Aluminum requests that the Commission condition approval of the termination of the Coleman SSR Agreement upon MISO’s confirmation that final true-ups of all actual SSR costs will be conducted. Specifically, Century Aluminum asserts that the Commission should require MISO to conduct final true-ups of SSR costs and adhere to Rate Schedule 43F cost allocation requirements until all costs are recovered and credited. Century Aluminum states that those true-ups require a final Commission determination on the cost-of-service issues Century Aluminum raised in its protest to the Coleman SSR Agreement. According to Century Aluminum, Exhibit 2(A) to the

³⁵ *Id.* at 8 (quoting Coleman SSR Agreement Transmittal Letter at 7).

³⁶ *Id.* at 9.

³⁷ *Id.*

Coleman SSR Agreement provides that all actual costs incurred under the Coleman SSR Agreement are subject to true-up and reconciliation “within 55 days after the last of the month for each month of the Agreement.”³⁸ However, Century Aluminum explains that the Coleman SSR Agreement does not include an explicit true-up requirement for final costs in the event the Coleman SSR Agreement is terminated before the end of its initial term. Century Aluminum requests that the Commission require MISO to confirm it will conduct final cost true-ups to ensure that the final costs incurred under the Coleman SSR Agreement are just and reasonable, notwithstanding the early termination of the Coleman SSR Agreement. Century Aluminum also requests that the final cost true-ups be performed consistently with Century Aluminum’s stated positions on cost-of-service issues.³⁹

24. Finally, Century Aluminum requests that the Commission’s acceptance of the termination of the Coleman SSR Agreement be conditioned on the ongoing cost allocation obligations of Rate Schedule 43F until all costs are recovered and properly credited. Century Aluminum notes that Rate Schedule 43F allocates 99.5 percent of the costs associated with the Coleman SSR Agreement to the Big Rivers Load Balancing Authority and 0.5 percent to the LSEs located in the Southern Illinois Load Balancing Authority. According to Century Aluminum, it has compensated Big Rivers for 100 percent of the costs associated with the Coleman SSR Agreement, and is therefore entitled to reimbursement of the 0.5 percent of the costs allocated to and recovered from LSEs in the Southern Illinois Load Balancing Authority.⁴⁰

B. MISO Answer

25. MISO asserts that Century Aluminum re-argues issues from the earlier dockets. Regarding live-line maintenance, MISO states that Big Rivers’ transmission maintenance procedures were in place before its Attachment Y Notice was submitted to MISO. MISO adds that Century Aluminum never argued that live-line maintenance would obviate the need to designate the Coleman Units as SSR units and for the costs associated with retaining the Coleman Units for reliability purposes.⁴¹

³⁸ *Id.* (quoting Coleman SSR Agreement, Ex. D, at 34).

³⁹ *Id.* at 10.

⁴⁰ *Id.* at 10-11.

⁴¹ MISO Answer at 5.

26. MISO states that the reliability issues identified in the Attachment Y Study that resulted in designating the Coleman Units as SSR units are mitigated by implementation of the Special Protective Scheme without the need for live-line maintenance. MISO states that its Tariff requires MISO to “perform an Attachment Y Reliability Study to determine whether the Generation Resource . . . is necessary for the reliability of the Transmission System based on the criteria set forth in the Business Practices Manuals” and to consider “feasible alternatives to the proposed SSR Agreement.”⁴² MISO contends that, while Century Aluminum argues that the Commission should order live-line maintenance as a condition of its approval of the termination of the Coleman SSR Agreement, Century Aluminum does not argue that termination of the Coleman SSR Agreement and implementation of the Special Protective Scheme will result in violation of reliability standards. MISO alleges that Century Aluminum’s effort to force Big Rivers to adjust its transmission maintenance procedures to provide a greater level of reliability is separate from the approval or the termination of the SSR designation for the Coleman Units.⁴³ MISO concludes that any delay in terminating the Coleman SSR Agreement and the associated Schedule 43F as the result of the dispute between Century Aluminum and Big Rivers over the desirability of live-line maintenance, and whether Big Rivers’ actions constitute “good utility practice,” would result in the Coleman SSR Agreement remaining in place even though it is no longer a “last resort measure,” as required by the Commission.⁴⁴

27. In response to Century Aluminum’s argument that it is unlikely that the Coleman Units will not return-to-service by January 1, 2016, MISO states that the Commission required it to include in its SSR Tariff procedures assurances that an Attachment Y Notice would be definitive.⁴⁵ MISO explains that, in its Attachment Y Notice, Big

⁴² *Id.* (quoting Tariff § 38.2.7c).

⁴³ *Id.* at 5.

⁴⁴ *Id.* at 5-6.

⁴⁵ *Id.* at 6. Section 38.2.7.a., of the Tariff provides:

A Market Participant certifies by submitting an Attachment Y Notice that such Market Participant has made a definitive decision to Retire or Suspend a Generation Resource . . . and the Attachment Y Notice shall be executed by an officer of the owner or operator of the Generation Resource . . .

(continued...)

Rivers' Chief Operating Officer Robert Berry swore that the operation of the Coleman Units would be suspended and would resume operation 28 months later.⁴⁶ According to MISO, this is the best information available to MISO on this subject, and MISO conducts its SSR program according to the Commission-approved notification process.⁴⁷

28. Furthermore, in response to Century Aluminum's argument that "MISO should consider the localized, unhedgeable congestion costs that the Hawesville Smelter has incurred" and "factor those cost consequences into its transmission planning process," MISO states that Attachment Y studies identify reliability issues, and SSR agreements serve to address the immediate need to maintain reliability.⁴⁸ MISO adds that it does not compel a resource owner to remain operational to reduce congestion. However, MISO states that its economic planning processes consider congestion as a driver for future transmission upgrades.⁴⁹

29. MISO argues that cost true-up settlement should proceed as intended in the Coleman SSR Agreement and Rate Schedule 43F. MISO explains that the intent of Exhibit 2(A) to the Coleman SSR Agreement was that the called for true-ups would be conducted for all periods during which the Coleman SSR Agreement was in effect. MISO states that these compensation provisions did not explicitly deal with the timing that would result when the Commission suspended the Coleman SSR Agreement in the December 30, 2013 Order. MISO states that it supports compensating Big Rivers as provided in the Coleman SSR Agreement, adjusted regarding timing as requested by Century Aluminum to provide for the true-ups stated in Exhibit 2(A) for the entire period when the Coleman SSR Agreement was in effect.⁵⁰

attesting to the facts supporting that claim, who had the legal authority to bind such Market Participant.

Tariff § 38.2.7.a.

⁴⁶ *Id.* at 6 (citing Coleman SSR Agreement Transmittal Letter, Attach. A, Attach. Y Notice).

⁴⁷ *Id.* at 7.

⁴⁸ *Id.* (quoting MISO Answer, Docket No. ER14-292-000, at 7 (filed Dec. 9, 2014)).

⁴⁹ *Id.*

⁵⁰ *Id.* at 7-8.

30. Finally, MISO states that it agrees with Century Aluminum that the costs associated with the Coleman SSR Agreement should be assigned as provided for in Rate Schedule 43F.⁵¹ Therefore, MISO states that the Commission's adjustment occasioned by the timing difficulties discussed above should also apply to the implementation of Schedule 43F assignment provisions until compensation matters are finally resolved for the period ending on April 30, 2014.⁵²

C. Big Rivers Answer

31. Big Rivers argues that it does not oppose termination of the Coleman SSR Agreement or cancellation of Rate Schedule 43F, but it requests that the Commission reject, as inappropriate interference with Big Rivers' management functions, Century Aluminum's request that Big Rivers be required to perform live-line maintenance. Alternatively, Big Rivers contends that, if the Commission determines that it is appropriate to consider requiring Big Rivers to perform live-line maintenance, resolution of the issue raises issues of material fact that can be resolved only through an evidentiary hearing.⁵³

32. Big Rivers contends that the Commission should accept MISO's Request for Termination of the Coleman SSR Agreement without imposing further conditions. Big Rivers reports that, since MISO filed the Coleman SSR Agreement, Big Rivers has diligently cooperated with Century Aluminum and MISO to implement load curtailment arrangements, including the Special Protective Scheme at the Hawesville Smelter, that adequately address possible transmission system overloads and obviate the need for the Coleman SSR Agreement. Big Rivers adds that, beginning in July 2013, it regularly participated in calls with MISO, Century Aluminum, SERC, and other affected transmission owners to discuss implementation of the Special Protective Scheme for the Hawesville Smelter. According to Big Rivers, MISO, Century Aluminum, and Big Rivers planned for the Coleman SSR Agreement to extend only until load curtailment arrangements were in place for Century Aluminum's retail load and that, based on discussions with MISO, Big Rivers negotiated a retail load curtailment agreement with Century Aluminum relating to the Hawesville Smelter, which was approved by the

⁵¹ MISO notes that Rate Schedule 43F provides for such assignment "in accordance with Section 9 and Exhibit 2 of the SSR Agreement filed by MISO for the Coleman SSR Units"

⁵² MISO Answer at 8.

⁵³ Big Rivers Answer at 2.

Kentucky Commission. Big Rivers asserts that the Special Protective Scheme and Century Transaction provide assurance that potential overloads on the MISO transmission system can be adequately addressed by reductions of the Hawesville Smelter load.⁵⁴

33. Big Rivers argues that, contrary to Century Aluminum's request, the Commission should not require Big Rivers to perform live-line maintenance as a condition of terminating the Coleman SSR Agreement and canceling Rate Schedule 43F. Big Rivers states that the MISO Attachment Y Study did not identify live-line maintenance as an alternative that could mitigate reliability issues addressed by designating the Coleman Units as SSRs. Similarly, Big Rivers maintains that live-line maintenance should not be required as a condition for terminating the Coleman SSR Agreement since the Commission has never required a transmission provider to perform line-line maintenance and has stated that "it does not intend to establish live-line maintenance as the standard for transmission maintenance and construction."⁵⁵ Big Rivers contends that, despite Century Aluminum's argument that live-line maintenance will reduce costs associated with its aluminum smelting operations, live-line maintenance will not improve the reliability of the bulk electric system. Specifically, Big Rivers contends that live-line maintenance would not decrease the likelihood of a forced outage on the Big Rivers transmission system. Moreover, Big Rivers notes that live-line maintenance is not required to comply with NERC Reliability Standards.⁵⁶

34. Big Rivers further explains that the Century Transaction requires, among other things, that Big Rivers perform transmission maintenance consistent with good utility practice. Big Rivers reports that the Century Transaction does not, however, specify the use of live-line maintenance.⁵⁷ Big Rivers states that, in negotiating the Century Transaction, Century Aluminum advocated for a requirement that Big Rivers perform live-line maintenance and that Big Rivers consistently rejected any such requirement. In addition, Big Rivers notes that, in the Kentucky Commission Order, the Kentucky Commission stated that "[t]he issue of line-line maintenance is one that the parties to the [Century Transaction] must resolve amongst themselves."⁵⁸ Big Rivers adds that

⁵⁴ *Id.* at 6-7.

⁵⁵ *Id.* at 8 (quoting *New England Power Pool*, 98 FERC ¶ 61,249 (2002)).

⁵⁶ *Id.*

⁵⁷ *Id.* (citing Kentucky Commission Order).

⁵⁸ *Id.* at 8-9 (quoting Kentucky Commission Order at 15).

Century Aluminum knew and understood Big Rivers' position on live-line maintenance and the Kentucky Commission's determination when it entered into the Century Agreement.⁵⁹

35. Big Rivers states that it is not willing to commit its workers or those employed by a third party vendor to perform complex live-line maintenance on its transmission system for tasks such as reconductoring of its transmission system, pole change-outs, or insulator replacement. Big Rivers explains that it has not trained its personnel to perform live-line maintenance and that performing live-line maintenance requires "highly-qualified, well-trained, experienced contractors that understand the technical aspect of energized projects and have developed detailed work practices and acquired appropriate, well-maintained tools to address the working conditions on energized equipment."⁶⁰

36. Moreover, Big Rivers contends that, as the owner of its transmission system, it has, and should be permitted to retain, the discretion to determine the appropriate method of maintenance required on a case-by-case basis. Big Rivers states that it is ultimately responsible for choosing the level of risk that it is willing to accept regarding the reliable maintenance of its transmission system and the safety of its workers. Big Rivers adds that the Commission has made clear that "managers of a utility have broad discretion in conducting their business affairs and in incurring costs necessary to provide services to their customers."⁶¹ Therefore, Big Rivers argues, consistent with the Commission's long-standing principle of affording broad discretion to the conduct of utilities, live-line maintenance should not be required as a condition for terminating the Coleman SSR Agreement.⁶²

37. Big Rivers further argues that, although Century Aluminum has committed to reimburse Big Rivers for the costs associated with procuring a vendor to perform live-

⁵⁹ *Id.* at 9.

⁶⁰ *Id.* (quoting Century Aluminum, Protest, Docket No. ER14-292-000, Ex., B, Morrow Test. at 24 (filed Nov. 22, 2013)).

⁶¹ *Id.* at 9 (quoting *New England Power Co.*, 31 FERC ¶ 61,047, at 61,084 (1985), *aff'd*, 42 FERC ¶ 61,016, *reh'g denied*, 43 FERC ¶ 61,285, *aff'd sub nom. Violet v. FERC*, 800 F.2d 280 (1st Cir. 1986); *see also Bay Gas Storage Company, Ltd.*, 130 FERC ¶ 61,016, at P 23 (2010); *Entergy Servs. Inc.*, 124 FERC ¶ 63,026, at P 278 (2008); *Dakota Gasification Co.*, Opinion No. 410, 77 FERC ¶ 61,271, at 61,271 (1996)).

⁶² *Id.* at 9-10.

line maintenance, Big Rivers would remain ultimately responsible for the quality of any maintenance work performed. According to Big Rivers, any injury, loss of life, accidents, negligence, or improper acts by a vendor could result in extensive investigations before the Kentucky Commission or other reliability authorities, which could result in substantial costs and use of management resources for an organization of Big Rivers' size and not-for-profit status. In addition, Big Rivers posits that granting Century Aluminum's request to require Big Rivers to perform live-line maintenance could have far-reaching implications on the maintenance practices of other transmission owners and operators.⁶³ Big Rivers adds that, though the Commission has accepted service agreement and maintenance plans whereby parties have agreed to perform live-line maintenance, the Commission has never directed a transmission owner to perform live-line maintenance.⁶⁴

38. Alternatively, Big Rivers avers that if the Commission has any questions about the appropriateness of live-line maintenance with respect to Big Rivers' facilities, such a question raises issues of material fact and should be resolved through an evidentiary hearing. Big Rivers adds that the Commission should postpone termination of the Coleman SSR Agreement pending completion of an evidentiary hearing relating to Big Rivers' use of live-line maintenance. Big Rivers maintains that, absent a full examination of the facts and circumstances relating to the need for live-line maintenance, the Commission should defer to Big Rivers' broad discretion in conducting its business affairs and in incurring costs necessary to provide services to its customers.⁶⁵

⁶³ *Id.* at 10.

⁶⁴ *Id.* at n.24 (citing *Am. Elec. Power. Serv. Corp.*, Docket No. ER13-1976-000 (Sept. 5, 2013) (delegated letter order) (accepting interconnection agreement contemplating both dead-line and live-line maintenance); *New England Power Pool*, 97 FERC ¶ 61,093 (2001) (accepting New England Power Pool's proposal to perform live-line maintenance but rejecting incentive rate treatment)).

⁶⁵ *Id.* at 11.

IV. Discussion

A. Procedural Matters

39. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), Consumer Energy's timely, unopposed motion to intervene serves to make it a party to this proceeding.⁶⁶

40. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2013), the Commission will grant Big Rivers' late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

41. 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 MISO's and Big Rivers' answers because they have provided information that assisted us in our decision-making process.

B. Commission Determination

42. We accept MISO's Request for Termination of the Coleman SSR Agreement and Request to Cancel Schedule 43F effective May 1, 2014, as requested. In doing so, we reject Century Aluminum's request to impose live-line maintenance as a condition of the termination of the Coleman SSR Agreement and cancellation of Schedule 43F. We also decline Century Aluminum's request to condition the termination of the Coleman SSR Agreement and cancellation of Rate Schedule 43F on MISO's commitment to consider long-term transmission upgrades. We also find that in its answer, MISO has adequately addressed Century Aluminum's other concerns related to final cost true-ups and cost allocation under Rate Schedule 43F. Last, we note that any other issues raised as to the Coleman SSR Agreement and Rate Schedule 43F will be addressed when the Commission issues its further order consistent with the December 30, 2013 Order.

43. At the outset, we note that no party opposes MISO's Request for Termination of the Coleman SSR Agreement or the Request to Cancel Schedule 43F. Century Aluminum does, however, request that the Commission require Big Rivers to perform

⁶⁶ Century Aluminum is not a party to the proceeding because it did not file a motion to intervene. 18 C.F.R. § 385.211(a)(2) ("The filing of a protest does not make the protestant a party to the proceeding. The protestant must intervene under Rule 214 to become a party.").

live-line maintenance as a condition of its acceptance of the Request for Termination of the Coleman SSR Agreement and the Request to Cancel Schedule 43F. We disagree with Century Aluminum and find that, based on the record, live-line maintenance is not necessary to alleviate the reliability issues caused by the suspension of the Coleman Units. In the Attachment Y Study Report, MISO did not identify live-line maintenance as a feasible alternative that could mitigate reliability issues addressed by designating the Coleman Units as SSR units. As noted by MISO, the Attachment Y Study Report states that the reliability issues are mitigated by the implementation of the Special Protective Scheme, without referring to any need for live-line maintenance.

44. Furthermore, we note that Century Aluminum itself does not contend that live-line maintenance is needed to mitigate the reliability issues identified by the Attachment Y Study Report. Century Aluminum instead asserts that, given Century Aluminum's need to maintain firm transmission service, live-line maintenance would increase the robustness of the transmission system and increase the viability of the Hawesville Smelter by reducing the amount of curtailed load. Century Aluminum does not argue that live-line maintenance is necessary to comply with NERC Reliability Standards or any other applicable reliability standards. As a result, we disagree with Century Aluminum that the Commission should account for potential load curtailments at the Hawesville Smelter, or any issues not identified in the Attachment Y Study, in its consideration of the Request for Termination of the Coleman SSR Agreement. For these reasons, we need not consider Century Aluminum's other arguments that advocate for live-line maintenance.

45. We also find it reasonable based on the facts of this case that MISO did not consider a long-term transmission solution as an alternative to the Coleman SSR Agreement. This is because in the Attachment Y Notice, Big Rivers definitively stated that the operation of the Coleman Units would only be suspended for a period of 28 months. The Tariff provides that:

A Market Participant certifies by submitting an Attachment Y Notice that such Market Participant has made a *definitive decision* to Retire or Suspend a Generation Resource . . . and the Attachment Y Notice shall be executed by an officer of the owner or operator of the Generation Resource . . . attesting to the facts supporting that claim, who had the legal authority to bind such Market Participant. The decision to Retire *must be definitive at the time of submittal of the Attachment Y Notice*, and remain so, unless

modified by rescission prior to receiving Attachment Y Reliability Study results from the Transmission Provider⁶⁷

The Tariff does not provide another mechanism by which MISO is to verify the validity of a market participant's decision to retire or suspend operations. Thus, despite Century Aluminum's contention that there is significant uncertainty surrounding the return of the Coleman Units to service by January 1, 2016, we find it reasonable for MISO to rely upon the representations made in the Attachment Y Notice that the Coleman Units would resume operations within 28 months, and to have determined that the Special Protective Scheme is the appropriate solution to the reliability issues presented by the suspension of the Coleman Units.

46. In addition, we disagree with Century Aluminum that MISO should be required to consider the localized, unhedgeable congestion costs that the Hawesville Smelter has incurred and may incur going-forward as a result of the suspension of the Coleman Units.⁶⁸ The purpose of the Attachment Y Study is to "determine whether a Generation Resource . . . is necessary for the reliability of the Transmission System"⁶⁹ The Tariff does not, however, provide that an Attachment Y Study should consider congestion costs to specific customers. Nonetheless, to the extent that Century Aluminum seeks to lower congestion costs with transmission upgrades, we encourage Century Aluminum to work with MISO and other stakeholders in developing transmission plans for the MISO region in the future as part of MISO's transmission planning process.

47. Regarding Century Aluminum's request that the Commission require MISO to conduct final true-ups of SSR costs and adhere to Rate Schedule 43F cost allocation requirements until all costs are recovered and credited, we find that, in its answer, MISO has sufficiently addressed Century Aluminum's concerns. MISO states that it supports compensating Big Rivers as provided in the Coleman SSR Agreement, adjusted regarding timing as requested by Century Aluminum to provide for the true-ups stated in Exhibit 2(A) for the entire period when the Coleman SSR Agreement was in effect.⁷⁰ We also find that MISO has satisfied Century Aluminum's request that it confirm that the costs associated with the Coleman SSR Agreement will be assigned as provided for in

⁶⁷ Tariff § 38.2.7.a (emphasis added).

⁶⁸ Century Aluminum Protest at 9.

⁶⁹ Tariff § 38.2.7c.

⁷⁰ MISO Answer at 7.

Schedule 43F. As noted by MISO, Schedule 43F provides for such assignment “[i]n accordance with Section 9 and Exhibit 2 of the . . . [Coleman SSR Agreement] filed by MISO for the Coleman SSR Units” We are satisfied with MISO’s response that the Commission’s adjustment for timing considerations should apply to the implementation of Schedule 43F assignment provisions until compensation matters are finally resolved for the period ending on April 30, 2014.⁷¹

The Commission orders:

The Request for Termination of the Coleman SSR Agreement and the Request to Cancel Schedule 43F are hereby accepted for filing, to be effective May 1, 2014.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁷¹ *Id.* at 8.