148 FERC ¶ 61,116
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System Operator, Inc. Docket Nos. ER14-2176-000
ER14-2180-000

ORDER CONDITIONALLY ACCEPTING TARIFF FILINGS

(Issued August 12, 2014)

1. On June 13, 2014, pursuant to section 205 of the Federal Power Act (FPA)[1] Midcontinent Independent System Operator, Inc. (MISO) submitted an Amended and Restated System Support Resource (SSR) Agreement between the City of Escanaba, Michigan (Escanaba) and MISO, designated as Third Revised Service Agreement No. 6500 (Second Restated Escanaba SSR Agreement) under its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff)[2] for the continued provision of SSR service by the generating facilities known as Escanaba Units 1 and 2 (Escanaba SSR Units).[3] Also on June 13, 2014, pursuant to section 205 of the FPA, MISO submitted revisions to Rate Schedule 43 (Allocation of SSR Costs Associated with

[1] 16 U.S.C. § 824d (2012).

[2] The 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 Escanaba SSR Units are located in Escanaba within the footprint of the American Transmission Company (ATC). Previous Commission orders addressed MISO's explanation that on December 19, 2011, Escanaba submitted an Attachment Y Notice seeking to mothball the Escanaba SSR Units for the period between June 15, 2012 and June 14, 2015, and MISO's determination that the mothballing of these units, prior to the completion of certain transmission upgrades, would result in reliability violations requiring the designation of both units as SSRs. *See infra* n.4.

the Escanaba SSR Units) under its Tariff (Second Revised Rate Schedule 43).[4] In this order, we conditionally accept both the Second Restated Escanaba SSR Agreement and the Second Revised Rate Schedule 43, to be effective June 15, 2014, as requested, subject to compliance filings. We require MISO to submit a compliance filing in Docket No. ER14-2176-000 to revise Exhibit 2 of the Second Restated Escanaba SSR Agreement. We also require MISO to submit a compliance filing in Docket No. ER14-2180-000 to revise the SSR cost allocation method under the Second Revised Rate Schedule 43 and direct MISO to provide refunds accordingly, as further described below.

I. Background

2. Under MISO's Tariff, 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/SCU Change of Status) of the 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 Reliability 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, and if MISO cannot identify an SSR alternative that can be implemented prior to the retirement or suspension effective date, then MISO and the market participant shall enter into an agreement, as provided in Attachment Y-1 (Standard Form SSR Agreement) of the Tariff, to ensure that the resource continues to operate, as needed.[5]

3. On July 25, 2012 in Docket No. ER12-2302-000, MISO submitted proposed Tariff revisions regarding the treatment of resources that submit Attachment Y Notices. On September 21, 2012, the Commission conditionally accepted MISO's proposed Tariff revisions effective September 24, 2012, subject to compliance filings due within 90 and

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[4] The Commission accepted the original Escanaba SSR Agreement (Original Escanaba SSR Agreement) and original associated Rate Schedule 43 (Original Rate Schedule 43) in an order issued on March 4, 2013. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,170, *order on reh'g and compliance*, 144 FERC ¶ 61,128 (2013) (Original Escanaba SSR Order). The Commission conditionally accepted the Amended and Restated Escanaba SSR Agreement (First Restated Escanaba SSR Agreement) and revised associated Rate Schedule 43 (First Revised Rate Schedule 43) in an order issued on August 13, 2013. *Midcontinent Indep. Sys. Operator, Inc.*, 144 FERC ¶ 61,127 (2013), both of which were further revised in a compliance filing accepted in an order issued on March 7, 2014, *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,164 (2014) (First Escanaba SSR Extension Orders).

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

180 days of the date of the order.[6] 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 alternatives.[7] On July 22, 2014, the Commission conditionally accepted MISO's compliance filing made in response to the 2012 SSR Order subject to further compliance.[8]

II. MISO's Filings

A. Second Restated Escanaba SSR Agreement

4. MISO states that the Original Escanaba SSR Agreement was entered into by MISO to forestall the proposed mothballing of the Escanaba SSR Units in order to prevent a violation of reliability standards. Under its own terms, the Original Escanaba SSR Agreement expired on June 14, 2013. MISO states that the First Restated Escanaba SSR Agreement reflected a one-year renewal period, beginning on June 15, 2013 and ending on June 14, 2014. MISO states that the Second Restated Escanaba SSR Agreement reflects a further one-year renewal period, beginning on June 15, 2014 and ending on June 14, 2015.[9]

5. MISO states that the Second Restated Escanaba SSR Agreement contains essentially the same provisions as the Original Escanaba SSR Agreement and the First Restated Escanaba SSR Agreement, but that it has been updated to deal with compensation and related terms as well as a few other matters that result from experience gained dealing with SSR agreements.[10] For example, MISO states that the compensation provisions contained in Exhibit 2 of the Second Restated Escanaba SSR Agreement have been adjusted to provide a cost-based approach (i.e., a formula rate based on actual costs) for compensating Escanaba for the variable costs of operating the Escanaba SSR Units. Additionally, MISO states that the changes to Exhibit 2 are complemented by provisions

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

[7] 2012 SSR Order, 140 FERC ¶ 61,237 at P 36.

[8] *Midwest Indep. Transmission Sys. Operator, Inc.*, 148 FERC ¶ 61,056 (2014).

[9] MISO June 13, 2014 Transmittal Letter at 1-2 (Docket No. ER14-2176-000) (Second Restated Escanaba SSR Agreement Transmittal Letter).

[10] *Id*. at 3.

in Section 8.C(4) and Section 9.C relating to the manner in which Escanaba must submit its offers and Schedule 2 revenues, respectively.[11]

6. MISO states that the Second Restated Escanaba SSR Agreement is being filed pursuant to section 38.2.7 of its 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.[12] MISO states that it has assessed available feasible alternatives to entering into the Second Restated Escanaba SSR Agreement.[13] MISO reports that the assessments considered the feasibility of new generation or generation dispatch, system reconfiguration and operation guidelines, demand response, and transmission projects.[14] MISO states that the circumstances of the area studied and MISO's evaluation of those circumstances have not changed since MISO completed the Escanaba Study, which found no feasible alternatives to the Escanaba SSR Units.[15]

7. MISO states that it discussed the Escanaba SSR Units at a May 30, 2014 West Technical Study Task Force meeting, where the continued need for SSR designation was reviewed. MISO asserts that, during the discussion, no additional alternative was raised by participants that would render the Escanaba SSR Units unnecessary for reliability purposes. According to MISO, no new generation additions are in the generation queue that would alleviate the need for the Escanaba SSR Units, and no transmission system reconfiguration, operating steps, or Remedial Action Plans are available that would mitigate the reliability issues.[16]

8. MISO states that, as described in the Escanaba Study, completion of ATC's "Chandler-Old Mead Road project and the Chalk Hills-Old Mead Road 138 kV line of the Bay Lake project" should resolve the need for Escanaba Units 1 and 2 as SSR Units.[17] MISO adds that the last of these transmission reliability projects is currently scheduled to

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

[12] *Id*. at 4 (quoting Tariff, § 38.2.7.c.).

[13] *Id.* at 4-5 (citing MISO, Deficiency Letter Response, Docket No. ER13-38-000, Ex. 3, SSR Study Report Final (Escanaba Study), at 11-12 (filed Jan. 3, 2013).

[14] Second Restated Escanaba SSR Agreement Transmittal Letter at 5.

[15] *Id*.

[16] *Id*. at 7.

[17] *Id*.

be completed by December 31, 2016. As a result, MISO expects that the Escanaba SSR Units are necessary until that time.[18]

9. MISO states that under the Second Restated Escanaba SSR Agreement, it will continue to pay Escanaba a monthly payment of $309,190 ($3,710,279 annually) for maintaining the Escanaba SSR Units in operational status.[19] However, according to MISO, the compensation provisions in Exhibit 2 regarding variable generation costs were revised from the fixed amounts stated in the Original Escanaba SSR Agreement and the First Restated Escanaba SSR Agreement to amounts based upon the actual cost of generation as monitored by MISO and the Independent Market Monitor. MISO states that this variable compensation is a feature of more recent SSR agreements filed by MISO,[20] and addresses Escanaba's concerns regarding variability in some of its costs to operate the Escanaba SSR Units (e.g., fuel costs).[21]

10. In addition, MISO states that the Second Restated Escanaba SSR Agreement contains mechanisms to ensure that when the Escanaba SSR Units are dispatched, Escanaba will not receive market revenues above variable generation costs. Specifically, Exhibit 2 of the Second Restated Escanaba SSR Agreement provides that MISO will compare the SSR Unit Compensation to the "SSR Unit Energy and Operating Reserve Credit," and will provide credits or debits as necessary to ensure that the Escanaba SSR Units are not improperly compensated for variable costs when being dispatched for reliability purposes.[22]

11. Finally, MISO states that the Second Restated Escanaba SSR Agreement has been updated with other adjustments to the *pro forma* SSR agreement contained in Attachment Y-1 to MISO's Tariff to correct flaws to the earlier agreements.[23] These include: (1) Section 3.D recognizes that the two-hour advance notice that is provided for under

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[18] *Id*.

[19] *Id*. at 8. This total annual amount is composed of $3,481,515 in operation and maintenance costs, a $50,000 management fee, and $178,764 in plant insurance. MISO states that the rate does not include, for example, a rate of return on rate base, depreciation, or other cost components of a full cost-based rate.

[20] *See, e.g., Midcontinent Indep. Sys. Operator, Inc.*, 147 FERC ¶ 61,004 (2014).

[21] Second Restated Escanaba SSR Agreement Transmittal Letter at 9.

[22] *See* Second Restated Escanaba SSR Agreement, Ex. 2, § B (Variable Component of Compensation).

[23] Second Restated Escanaba SSR Agreement Transmittal Letter at 3.

Section 7.B(2) of the First Restated Escanaba SSR Agreement cannot be practically provided in writing and that the notice provisions must match the information provided for both MISO and the Participant; (2) the responsibility for providing information regarding Operational Limitations is corrected in conformance with the general obligations on the Participant in Section 8.B and regarding the Environmental Limitations that are partly the topic of Section 8.B(3); (3) Section 9.F(3) is modified to clarify that the SSR Agreement is entered into to ensure the reliability of the "MISO Transmission System"; (4) Section 13.A is modified to reference Indiana as the choice in law to be consistent with Section 11.A regarding monetary damages as provided for under Indiana law; (5) new Section 9.F(7) is added detailing how payments to the Participant will be calculated for Unexcused Misconduct Events; and (6) ministerial changes are made to Sections 4.A(5), 4.A(6), and 13.B(1)(c).

B. Second Revised Rate Schedule 43

12. Contemporaneous to filing the Second Restated Escanaba SSR Agreement, MISO has also submitted a separate Second Revised Rate Schedule 43[24] to authorize MISO to allocate SSR costs that are associated with the Escanaba SSR Units.[25] MISO asserts that the proposed cost allocation is consistent with section 38.2.7.k of the Tariff.[26] That is, MISO states that SSR costs are generally assigned on a *pro rata* basis to the affected LSEs that require the operation of the SSR Unit for reliability purposes, except that any SSR Unit costs allocated to the footprint of ATC are allocated to all LSEs within the footprint of ATC on a *pro rata* basis.[27] The Second 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).[28]

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[24] MISO, FERC FPA Electric Tariff, Schedules, Schedule 43, Allocation of SSR Costs Associated with the Escanaba SSR Units (31.0.0).

[25] MISO June 13, 2014 Transmittal Letter at 2-3 (Docket No. ER14-2180-000) (Second Revised Rate Schedule 43 Transmittal Letter).

[26] 2012 SSR Order, 140 FERC ¶ 61,237 at P 153.

[27] Second Revised Rate Schedule 43 Transmittal Letter at 2-3 (citing MISO Tariff (MISO, FERC Electric Tariff, Module C, Energy and Operating Reserve Markets, General Provisions, General Responsibilities and Requirements, Market Participants, System Support Resources (31.0.0))).

[28] Second Revised Rate Schedule 43 Transmittal Letter at 3.

13. MISO asserts that recognition of peak usage in Second Revised Rate Schedule 43 permits cost allocation that is similar to the manner in which reliability-based transmission charges are allocated.[29]

III. Notice and Responsive Pleadings

14. Notice of MISO's filing in Docket No. ER14-2176-000 was published in the *Federal Register*, 79 Fed. Reg. 35,343 (2014), with interventions and protests due on or before July 7, 2014. Notice of MISO's filing in Docket No. ER14-2180-000 was published in the *Federal Register*, 79 Fed. Reg. 35,749 (2014), with interventions and protests due on or before July 7, 2014.

15. ATC, Escanaba, Dairyland Power Cooperative, Wisconsin Electric Power Company, and Consumers Energy Company filed timely motions to intervene in both dockets. Wisconsin Public Service Corporation and Upper Peninsula Power Corporation (WPSC/UPPCo) and Wisconsin Power and Light Company (Wisconsin Power) filed timely motions to intervene and comments in both dockets. Michigan Public Service Commission (Michigan Commission) filed notices of intervention in both dockets. Public Service Commission of Wisconsin (Wisconsin Commission) filed notices of intervention in both dockets and a protest in Docket No. ER14-2180-000. On July 8, 2014. WPPI Energy (WPPI) filed a motion to intervene out-of-time.

16. On July 14, 2014, MISO filed an answer in both dockets.

17. On July 16, the Environmental Law and Policy Center (Environmental Center) filed comments out-of-time in Docket No. ER14-2176-000.

18. On July 21, 2014, the Michigan Commission filed a motion to supplement its notice of intervention and comments in both dockets.

A. Protest and Comments

19. The Wisconsin Commission notes that on April 3, 2014, in Docket No. EL14-34-000, it submitted a complaint alleging that the ATC-specific SSR cost allocation provision in section 38.2.7.k of MISO's Tariff,[30] and the provision's implementation with

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[29] *Id*.

[30] Section 38.2.7.k of MISO's Tariff stated:

> The costs pursuant to the SSR Agreement shall be allocated to the LSE(s) which require(s) the operation of the SSR Unit for reliability purposes, and shall be specified in the SSR Agreement. For the purposes of this Section, any costs of operating an SSR Unit allocated to the footprint of [ATC] shall be allocated to all LSEs within the footprint of [ATC] on a *pro rata* basis.

respect to another SSR located in the ATC footprint, is unjust, unreasonable, and unduly discriminatory (Wisconsin Commission Complaint).[31] The Wisconsin Commission likewise protests the application of the ATC carve-out to the allocation of SSR costs under the Second Restated Escanaba SSR Agreement. Specifically, the Wisconsin Commission alleges: (1) the allocation of SSR costs does not correspond to well-established cost causation principles; (2) the ATC carve-out is arbitrary and unduly discriminatory; and (3) no reason for the ATC carve-out exists in the Commission's decisional record.[32] The Wisconsin Commission requests that the Commission incorporate by reference in this proceeding the facts and arguments set forth in the Wisconsin Commission Complaint. The Wisconsin Commission states that the Wisconsin Commission Complaint summarizes the factual and legal bases for its protest in the instant proceeding as follows:

> Allocating the costs of the SSR agreement "pro rata" among the LSEs in the ATC footprint is not just and reasonable, because this method of allocation does not satisfy the cost allocation principle that "all approved rates [must] reflect to some degree the costs actually caused by the customer who must pay them." The ATC carve-out provision does not assign the SSR costs to an LSE because its load *benefits* electrically from the continued operation of [the SSR Unit], but rather because the LSE is *located in the transmission footprint of ATC*. Consideration of cost causation or benefitting load is wholly absent from the allocation analysis.
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> The ATC carve-out is also discriminatory, because it only applies to the ATC footprint *and nowhere else in MISO*. The FPA prohibits rates that "maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, [] as between localities." Such "disparate treatment between ratepayers" is only permissible if there is "a valid reason for the disparity." In this case, . . . *no reason for the ATC carve-out exists in the record*, and the available evidence suggests that its presence in the MISO Tariff is due to oversight, and not to thoughtful ratemaking.[33]

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[31] Wisconsin Commission Protest at 6-7. We note that the Commission issued an order granting the Wisconsin Commission Complaint on July 29, 2014, *Midcontinent Indep. Sys. Operator, Inc*. 148 FERC ¶ 61,071 (2014) (Wisconsin Commission Complaint Order), which will be discussed more fully below.

[32] Wisconsin Commission Protest at 6.

[33] *Id*. at 6-7 (quoting Wisconsin Commission Complaint at 24) (emphasis in original) (citations omitted).

20. Similarly, Wisconsin Power argues that MISO's Tariff should be amended to align the existing ATC SSR cost allocation methodology with the rest of the MISO footprint and with the Commission's long standing cost causation principles. Wisconsin Power thus supports using MISO's prevailing methodology for the allocation of SSR costs in this proceeding as it is non-discriminatory and allocates SSR costs roughly commensurate with those that receive the benefits of running the Escanaba SSR Units.[34]

21. WPSC/UPPCo support the Second Restated Escanaba SSR Agreement and the associated Second Revised Rate Schedule 43 for an additional one-year term for reliability purposes. However, WPSC/UPPCo state that they take this opportunity to provide advance comment to the Commission that any further requests by MISO to extend the Escanaba SSR Agreement beyond June 15, 2015 demand added scrutiny as incremental transmission reinforcements are installed. Specifically, WPSC/UPPCo note that this is the second time MISO has requested to extend the Original Escanaba SSR Agreement and that MISO indicates that it will need to request two additional extensions until December 31, 2016, the date the last transmission reliability project is expected to be completed. WPSC/UPPCo assert that they are concerned that the Escanaba SSR Agreement may be extended beyond the point when it is truly needed as a last resort for reliability purposes. According to WPSC/UPPCo, the Commission should not allow MISO unlimited discretion at the expense of ratepayers to continually extend the terms of the Escanaba SSR Agreement as transmission projects become available and cost-effective solutions suggested by stakeholders present themselves over time.[35]

22. In addition, WPSC/UPPCo state that they support the *pro rata* cost allocation of SSR costs in the ATC footprint under section 38.2.7.k of MISO's Tariff. WPSC/UPPCo recommend that the Commission reject the arguments made by the Wisconsin Commission in its protest. WPSC/UPPCo argue that the Commission should not make SSR cost allocation subject to the outcome of the Wisconsin Commission Complaint in Docket No. EL14-34-000.[36]

23. The Michigan Commission also argues that the Second Revised Rate Schedule 43 is a just and reasonable methodology for the allocation of costs of the Escanaba SSR in the ATC footprint. The Michigan Commission asserts that MISO's allocation of SSR costs in this proceeding is consistent with both the plain meaning of the MISO Tariff and MISO's prior allocation of the costs of other SSRs within the ATC footprint. As a result, the Michigan Commission avers that any party seeking to challenge the appropriateness

[34] Wisconsin Power Comments at 3.

[35] WPSC/UPPCo Comments at 2-3.

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

of the Tariff is required to carry the burden of demonstrating that the approved methodology is no longer just and reasonable in a FPA section 206 proceeding.[37]

24. In addition, the Michigan Commission contends that MISO's allocation of SSR costs in this proceeding ensures the continued operation of needed facilities for system reliability in Wisconsin and Michigan. The Michigan Commission states that any attempt to modify the Second Revised Rate Schedule 43 ignores: (1) the delicate balance of competing interests and reliability concerns that were vetted in the MISO stakeholder process and reflected in the Tariff; and (2) the benefits that have historically been recognized by entities in Wisconsin and Michigan. Accordingly, the Michigan Commission requests that the Commission accept, without conditions, MISO's filings and reject all arguments that are an attempt to utilize this proceeding as a forum to collaterally attack provisions of the Tariff that have been deemed just and reasonable.[38]

25. The Environmental Center states that it is not seeking to intervene in this proceeding and is not requesting that the Commission deny MISO's request for the extension of the Escanaba SSR Agreement. The Environmental Center contends that it seeks only to comment on the successes and failures of the stakeholder process at MISO so that the process can continue to improve going forward. The Environmental Center reports that MISO has been responsive in working with it and its experts in 2013 and 2014 to better understand the reliability problems that exist in the Escanaba area. Nonetheless, the Environmental Center avers that this process still needs improvement.[39]

B. MISO's Answer

26. MISO states that no argument was submitted that suggests MISO failed to follow its Tariff regarding the assignment of SSR costs. Specifically, MISO states that it allocated costs associated with the Second Restated Escanaba SSR Agreement to the ATC footprint as required by the Tariff, which has been accepted by the Commission and is not appropriately at issue in this proceeding.[40]

27. Additionally, MISO refutes WPSC/UPPCo's assertion that "MISO . . . contemplates that it will need to request two additional extensions until December 31, 2016. . . ."[41] MISO states that it reviews the circumstances surrounding any Attachment

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[37] Michigan Commission Comments at 2-3.

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

[39] Environmental Center Comments at 2-3.

[40] MISO Answer at 4.

[41] *Id*. (quoting WPSC/UPPCo Comments at 2-3).

Y Notice to Suspend or Retire a generating unit, and updates its appraisal of those circumstances, as additional information is received regarding operation of the generating unit, progress on transmission upgrades, and other factors that may obviate the need for SSR designation of a unit.[42]

IV. Discussion

A. Procedural Matters

28. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), 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 were filed.[43]

29. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept the answer filed by MISO because it provided information that assisted us in our decision-making process.

30. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), the Commission will grant WPPI's late-filed motion to intervene given its interest in the proceedings, the early stage of the proceedings, and the absence of undue prejudice or delay.

B. Substantive Matters

1. Second Restated Escanaba SSR Agreement

31. As discussed more fully below, we conditionally accept the Second Restated Escanaba SSR Agreement, effective June 15, 2014, as requested, subject to a compliance filing to be made within 30 days of the date of this order, as discussed below.

32. We find that MISO has demonstrated that the circumstances of the subject area and MISO's evaluation of those circumstances continue to require the designation of the Escanaba SSR Units as SSRs. Additionally, we find that MISO has adequately addressed the available feasible alternatives to entering into the Second Restated Escanaba SSR Agreement, including new generation or generation dispatch, system reconfiguration and

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

[43] The Environmental Center 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.").

operation guidelines, demand response, and transmission projects. As such, we find that MISO has adequately studied whether the Escanaba SSR Units should continue to be designated as SSRs under its Tariff, and has reasonably determined that the Escanaba SSR Units will continue to be needed to ensure system reliability for the term of the Second Restated Escanaba SSR Agreement.

33. Additionally, as to WPSC/UPPCo's concerns that the Second Restated Escanaba SSR Agreement will be extended twice more, we reiterate that if MISO requires further extension of the designation of the Escanaba SSR Units after the 12 month extension accepted here, MISO will once again be required to follow the SSR study and review process in accordance with the provisions of Attachment Y of its Tariff, including the requirement to include stakeholders in the process of evaluating alternatives.[44] We expect that this process will provide stakeholders ample opportunity to raise new issues or propose or revisit potential alternatives should the circumstances warrant.

34. We find the proposed updates contained in the Second Restated Escanaba SSR Agreement to be just and reasonable, with one modification ordered herein. We note that MISO has proposed new language in Section 8.C(4) of the Second Restated Escanaba SSR Agreement relating to the operation of the Escanaba SSR Units for non-reliability purposes (i.e., how Escanaba must submit its offers). However, we find that Exhibit 2 of the Attachment Y-1 Form Agreement does not include any language relating to compensation when the SSR Unit operates for economic rather than reliability purposes. Therefore, we direct MISO, in the compliance filing to be made within 30 days of this order, to submit Tariff revisions adding the following paragraph to the end of Exhibit 2:[45]

> Whenever the SSR Unit operates in the MISO Market for purposes other than system reliability, the SSR Unit will be committed, dispatched, and settled pursuant to the MISO Tariff, except in those hours where the SSR Unit Compensation is less than the SSR Unit Energy and Operating Reserve Credit. Under this exception, MISO will debit Participant (such

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[44] MISO Tariff, § 32.2.7.l ("On at least an annual basis, the Transmission Provider will review Generation Resource or SCU characteristics to determine whether the Generation Resource or SCU is qualified to remain as an SSR Unit in coordination with a review of the Transmission Provider's annual regional transmission expansion plan in accordance with Attachment FF.") We note that the transmission upgrades necessary to relieve the reliability concerns in the Escanaba area are not anticipated to come on-line until December 31, 2016. *See* Original Escanaba SSR Order, 142 FERC ¶ 61,170 at P 43.

[45] *See Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,057, at P 157 (2014) (Ameren Complaint Order). *See also* Wisconsin Commission Complaint Order, 148 FERC ¶ 61,071 at P 90.

debit to be equal to the difference between the SSR Unit Energy and Operating Reserve Credit and the SSR Unit Compensation).

35. Finally, we note that the issue of SSR compensation was recently considered by the Commission in the Ameren Complaint Order. In that order, the Commission required MISO to revise its Tariff to provide SSR owners the right to make their own SSR compensation filings, effective July 22, 2014.[46] As such, we note that Escanaba could seek to make its own FPA section 205 filing to revise, prospectively, the compensation currently included in the Second Restated Escanaba SSR Agreement.

2. Second Revised Rate Schedule 43

36. As described more fully below, we conditionally accept Second Revised Rate Schedule 43, effective June 15, 2014, as requested, subject to a compliance filing to be made within 30 days of the date of this order, as discussed below.

37. We direct MISO to submit a compliance filing that aligns cost allocation under Second Revised Rate Schedule 43 with the Commission's order on the Wisconsin Commission Complaint in Docket No. EL14-34-000. In that order, the Commission found that: (1) the ATC *pro rata* SSR cost allocation provision in section 38.2.7.k of MISO's Tariff is not just and reasonable and should be removed from the Tariff; and (2) the general benefits-based SSR cost allocation method in section 38.2.7.k of MISO's Tariff, which requires MISO to allocate SSR costs to "the LSE(s) which require(s) the operation of the SSR Unit for reliability purposes," should be applied to the ATC footprint.[47] The Commission required MISO to revise the cost allocation in the SSR rate schedule that was the subject of the Wisconsin Commission Complaint according to the percentages in MISO's final load-shed study directed in that proceeding, with such Tariff revisions effective on April 3, 2014, the date that the Wisconsin Commission Complaint was filed.[48] Consistent with the Wisconsin Commission Complaint Order, we direct MISO to conduct a load-shed study that identifies the LSEs which require the operation of the Escanaba SSR Units for reliability purposes and submit this load-shed study in a compliance filing within 30 days of the date of this order. We also direct MISO to submit in the compliance filing Tariff revisions adjusting the SSR cost allocation under Second Revised Rate Schedule 43 such that the Escanaba SSR Units' costs are allocated in accordance with the load-shed study, with such revised cost allocation to be effective as of June 15, 2014.

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[46] Ameren Complaint Order, 148 FERC ¶ 61,057 at P 93.

[47] Wisconsin Commission Complaint Order, 148 FERC ¶ 61,071 at P 66.

[48] *Id.* PP 66, 118.

38. Furthermore, in the Wisconsin Commission Complaint Order, the Commission exercised its broad equitable discretion in determining whether and how to apply remedies[49] and required MISO to refund any costs allocated to LSEs under the subject rate schedule from April 3, 2014 until the date of the Wisconsin Commission Complaint Order that were in excess of the costs to be allocated to those LSEs under MISO's final load-shed study.[50] Based on the record in this proceeding, and consistent with our directive in the Wisconsin Commission Complaint Order, we similarly find it appropriate here to exercise our discretion in fashioning remedies and order refunds as of the effective date of Second Revised Rate Schedule 43 and the Second Revised Escanaba SSR Agreement. Therefore, we direct MISO to refund, with interest,[51] any costs allocated to LSEs under Second Revised Rate Schedule 43 from June 15, 2014 until the date of this order that were higher than the costs to be allocated to those LSEs according to the forthcoming load-shed study. We direct MISO to submit a refund report within 30 days after refunds are granted to affected customers.

<u>The Commission orders</u>:

(A) The Second Restated Escanaba SSR Agreement is conditionally accepted, subject to a compliance filing, as discussed in the body of this order.

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

(C) MISO is hereby directed to make refunds to LSEs in the ATC footprint as necessary to give effect to the revised cost allocation in the Second Revised Escanaba SSR Rate Schedule 43, as discussed in the body of this order.

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[49] *See Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 159 (D.C. Cir. 1967) (the Commission's breadth of discretion is "at its zenith" when fashioning remedies).

[50] Wisconsin Commission Complaint Order, 148 FERC ¶ 61,071 at P 68.

[51] Interest should be calculated pursuant to 18 C.F.R. § 35.19a (2013).

(D) MISO is hereby directed to submit a refund report within 30 days after refunds are granted to affected customers, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.