151 FERC ¶ 61,259
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Midcontinent Independent System Operator, Inc.	Docket Nos. ER14-292-000 ER14-294-000

ORDER ON TARIFF FILINGS

(Issued June 26, 2015)

1. On November 1, 2013, in Docket No. ER14-292-000, pursuant to section 205 of the Federal Power Act (FPA),[1] Midcontinent Independent System Operator, Inc. (MISO) submitted an executed System Support Resource (SSR) Agreement between Big Rivers Electric Cooperative (Big Rivers) and MISO designated as Original Service Agreement No. 6501 (Coleman SSR Agreement) under its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff)[2] for the provision of SSR service from Coleman Units 1-3.[3] Also on November 1, 2013, pursuant to section 205 of the FPA, in Docket No. ER14-294-000, MISO submitted proposed Rate Schedule 43F (Allocation of SSR Costs Associated with the Coleman SSR Units) under its Tariff. On December 30, 2013, the Commission accepted the Coleman SSR Agreement and Rate Schedule 43F,

[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] Coleman Units 1-3 are generation resources located in Hawesville, Kentucky that provide 443 MW of capacity.

suspended them for a nominal period, to be effective September 1, 2013, as requested, subject to refund and further Commission order.[4]

2. As discussed below, we address the reliability need for the Coleman SSR Agreement and establish hearing and settlement judge procedures on the going-forward costs included in the rate that MISO has negotiated with Big Rivers for operating Coleman Units 1-3 as an SSR Unit under the Coleman SSR Agreement.

3. As an initial matter, we note that on February 28, 2014, in Docket No. ER14-1391-000, pursuant to section 205 of the FPA, MISO submitted a request to terminate the Coleman SSR Agreement. Also, on February 28, 2014, in Docket No. ER14-1392-000, pursuant to section 205 of the FPA, MISO submitted a request to cancel Rate Schedule 43F associated with the Coleman SSR Agreement. MISO stated that development of a load curtailment program, as discussed more fully below, rendered the need for continued service by Coleman Units 1-3 after April 2014 unnecessary. On April 30, 2014, the Commission accepted MISO's request to terminate the Coleman SSR Agreement and request to cancel Rate Schedule 43F, effective May 1, 2014.[5] As such, the hearing and settlement judge procedures established herein concern the period of September 1, 2013 to May 1, 2014, which is the period during which the Coleman SSR Agreement and Rate Schedule 43F were in effect.

I. <u>Background</u>

4. 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 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

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[4] *Midcontinent Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,296, at P 15 (2013) (December 30 Order).

[5] *See Midcontinent Indep. Sys. Operator, Inc.*, 147 FERC ¶ 61,079 (2014) (Termination Order).

Attachment Y-1 (Standard Form SSR Agreement) of the Tariff, to ensure that the resource continues to operate, as needed.[6]

5. 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 two compliance filings due within 90 and 180 days of the date of the order.[7] On July 22, 2014, the Commission conditionally accepted MISO's compliance filing made in response to the SSR Order subject to further compliance.[8]

II. MISO's Filing of the Coleman SSR Agreement and Rate Schedule 43F

6. On November 1, 2013, in Docket No. ER14-292-000, MISO submitted the Coleman SSR Agreement to ensure the continued availability of Coleman Units 1-3 as an SSR Unit. According to MISO, 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 1-3, beginning on August 20, 2013 and resuming operations on January 1, 2015. MISO states that it completed its analysis of the Attachment Y-2 request and replied to Big Rivers on May 2, 2013. MISO states that, in its response, it identified reliability issues associated with the suspension of Coleman Units 1-3.[9]

7. On May 24, 2013, according to MISO, Big Rivers submitted a letter to MISO indicating its desire to suspend Coleman Units 1-3 for a period of 28 months, and included an Attachment Y Notice that designated September 1, 2013 as the beginning of the suspension. MISO states that it concluded that the proposed suspension of Coleman Units 1-3 during the 28-month suspension period, without curtailment of load by means of demand response, would result in violations of specific applicable reliability

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

[9] Coleman SSR Agreement, Docket No. ER14-292-000, Transmittal Letter at 2.

standards.[10] Consequently, MISO designated Coleman Units 1-3 as an SSR Unit until such time as appropriate alternatives can be implemented to mitigate reliability issues.[11]

8. MISO states that the SSR status of Coleman Units 1-3 was expected to continue until Century Aluminum of Kentucky General Partnership (Century Aluminum) was able to make load curtailment arrangements at its Hawesville, Kentucky smelter (Hawesville Smelter), which is located near Coleman Units 1-3.[12] MISO reports that these load curtailment arrangements, known as the Special Protection Scheme, are adequate to address possible transmission system overloads.[13] MISO states that it worked with Big Rivers and the MISO Independent Market Monitor (Market Monitor) to negotiate and develop an appropriate SSR agreement. MISO explains that Big Rivers proposed a 12-month SSR agreement for the period between September 1, 2013 and August 31, 2014. MISO requested waiver of the prior notice requirement to allow the proposed Coleman SSR Agreement to go into effect on September 1, 2013.

9. MISO states that the Coleman SSR Agreement was filed pursuant to section 38.2.7 of the Tariff and Attachment Y-1 of the Tariff, which, among other things, require MISO to assess feasible alternatives prior to entering into an SSR agreement. In addition to considering load curtailment at the Hawesville Smelter, MISO states that it assessed available feasible alternatives to entering into the Coleman SSR Agreement, including new generation or generator dispatch, system reconfiguration and operation guidelines, demand response, and transmission projects. MISO states that, following the

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[10] *See id.* & Exhibit B, Attachment Y Study Report at 9-12.

[11] *Id*.

[12] MISO's Filings, as well as the comments, protests, and answers filed in this proceeding, pre-date the termination of the Coleman SSR Agreement and associated Rate Schedule 43F, as accepted in the Termination Order, based on the implementation of the load curtailment arrangements at the Hawesville Smelter.

[13] In the Termination Order, the Commission summarized MISO's explanation of how MISO finalized the development of load curtailment arrangements with Century Aluminum at the Hawesville Smelter – resulting in the Special Protection Scheme. MISO had explained that the Special Protection Scheme provides the necessary load reductions to address local reliability issues that were presented when Big Rivers gave notice of its suspension of Coleman Units 1-3. *See* Termination Order, 147 FERC ¶ 61,079 at PP 7-13.

Attachment Y determination, it evaluated potential mitigation measures to address the thermal and voltage issues resulting from the suspension of Coleman Units 1-3. MISO reports that generation in the area did not provide feasible redispatch solutions to alleviate the voltage or thermal issues, existing operating guides and transmission reconfiguration options did not address voltage or thermal loading issues, and transmission upgrades could not be implemented within the timeframe of the suspension period. MISO states that it analyzed whether or not demand-side management could effectively address reliability issues that resulted from unplanned system outages and a number of further discussions were conducted with Century Aluminum to evaluate possible plans to develop a load curtailment option.[14]

10. As to costs, MISO states that, upon review of the operating cost information in collaboration with the Market Monitor, it finds that a monthly amount of $3,414,502 is equitable compensation for the fixed costs of maintaining Coleman Units 1-3, and that a monthly amount of $2,250,936 is equitable compensation if only Coleman Units 2-3 are required in the future to deal with reliability concerns. Because these monthly amounts are based on annual budgeted amounts, the Coleman SSR Agreement provides for a true-up of the payments for actual fixed costs.[15] As explained in testimony included in MISO's filing, this monthly rate represents going-forward costs only and does not include elements of a full cost-of-service rate. Specifically, according to the testimony, these negotiated monthly payments are based on an allocation of 2013 budgeted costs for: (1) non-labor O&M costs, plant labor, general and administrative costs, and property taxes and insurance; (2) going-forward capital costs on items that must be replaced to maintain the operation of Coleman Units 1-3; and (3) a 7.85 percent return on net rate base (carrying costs for fuel inventory, reagent and materials and supplies) amounting to $715,643 per year.[16] According to MISO, the Coleman SSR Agreement also provides for variable generation costs when MISO dispatches the Coleman Units to maintain system reliability, including mechanisms that ensure Big Rivers will not receive market revenues above variable generation costs.

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[14] Coleman SSR Agreement, Docket No. ER14-292-000, Transmittal Letter at 7.

[15] The monthly SSR amount is derived from annual budgeted amounts to operate the units and includes expenses, going forward capital costs, and return on net rate base, e.g., materials and supplies (Annual Budget). The Annual Budget, based on 2013 numbers, is $40,974,077. *See id.*, Exhibit E, Mr. Robert W. Berry Testimony at 5-6.

[16] *Id.*, Exhibit E, Mr. Robert W. Berry Testimony at 5.

11. In Docket No. ER14-294-000, MISO submitted Rate Schedule 43F to authorize MISO to allocate the SSR costs associated with Coleman Units 1-3. As stated in the filing, the Tariff requires that the costs pursuant to the Coleman SSR Agreement be allocated to Load Serving Entities that require operation of the SSR Unit for reliability purposes.[17] Finally, MISO requested waiver of the prior notice requirement to allow Rate Schedule 43F to go into effect on September 1, 2013 to correspond with the effective date of the Coleman SSR Agreement.

III. Comments and Protests

A. Century Aluminum

12. Century Aluminum states that it does not oppose MISO's determination that Coleman Units 1-3 should be designated as SSRs for a limited period of time. Century Aluminum states, however, that it does protest certain aspects of the Coleman SSR Agreement and urges the Commission to accept the Coleman SSR Agreement only if it is subject to the conditions set forth in its protest. Specifically, Century Aluminum states that live-line maintenance on three critical transmission lines should be required in order to minimize curtailment of the Hawesville Smelter, among other things, and that MISO should commit to consider transmission upgrades due to what Century Aluminum says are uncertainties over whether Coleman Units 1-3 will return to service within 28 months of its September 1, 2013 suspension (i.e., by January 1, 2016) as indicated in the Attachment Y Notice.[18]

13. Additionally, Century Aluminum states that the Special Protection Scheme is an appropriate replacement for the Coleman SSR Agreement, and therefore, the Commission should condition approval of the Coleman SSR Agreement on Big Rivers' full cooperation with prompt implementation of the Special Protection Scheme.[19]

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[17] Rate Schedule 43F, Docket No. ER14-294-000, Transmittal Letter at 2-4.

[18] Century Aluminum Protest at 7-15. Century Aluminum made similar arguments in its protest in Docket Nos. ER14-1391-000 and ER14-1392-000, which, as discussed below, have already been addressed by the Commission in the Termination Order, 147 FERC ¶ 61,079 at PP 42-46. For this reason, we do not summarize Century Aluminum's arguments here in full.

[19] *Id*. at 16-17.

14. Century Aluminum also protests aspects of the cost recovery provisions for the Coleman SSR Agreement. As a threshold matter, Century Aluminum states that, in order for the reconciliation provisions of the Coleman SSR Agreement to work properly, Big Rivers must provide the costs included in the Annual Budget. Century Aluminum explains that it does not protest the true-up mechanism in the Coleman SSR Agreement that requires MISO to pay Big Rivers based upon the actual costs incurred by Big Rivers in operating the Coleman Units. However, Century Aluminum states that, in order for the true-up mechanism to be properly administered and for Century Aluminum (as the party responsible for 99.5 percent of the SSR costs) to know whether such costs are just and reasonable, MISO should be required to identify up-front the cost elements that are included in the Annual Budget amount. Century Aluminum argues that, based on MISO's Coleman SSR Agreement filing, the Commission has no basis for determining whether the monthly SSR payment of $3,414,502 for Coleman Units 1-3 or the monthly SSR payment of $2,250,936 for Coleman Units 2-3 is just and reasonable. For these reasons, Century Aluminum states that MISO and Big Rivers should be required to identify the types of costs and level of each cost element that has been included in the monthly totals.[20]

15. Century Aluminum also alleges that Big Rivers should not be allowed to recover any maintenance outage costs. Century Aluminum maintains that assigning such costs to customers would be unjust and unreasonable because the customers are unlikely to receive the benefits (via continued unit operation) of any maintenance outage.[21]

16. Finally, Century Aluminum states that the proposed 7.85 percent return on net rate base is excessive and that any return should not be higher than Big Rivers' actual cost of capital. Century Aluminum explains that Big Rivers' actual cost of capital appears to be 5.012 percent. Furthermore, Century Aluminum states that, even after adding in Big Rivers' Times Interest Earned Ratio of 1.24 percent, the overall cost of capital would be 6.215 percent, not 7.85 percent.[22]

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[20] *Id*. at 17-18.

[21] *Id*. at 18-19.

[22] *Id*. at 19-20.

B. Public Interest Organizations[23]

17. Public Interest Organizations assert that the proposed SSR term should be shortened to May 2014 to coincide with when the Special Protection Scheme would be in place, and that MISO should address whether it attempted to identify other mitigation solutions. For example, Public Interest Organizations state that the Attachment Y Study does not address whether the potential for reliability issues could be resolved by transmission alternatives such as voltage support, load curtailment other than that provided by the Hawesville Smelter, or a new transmission upgrade project.[24] Public Interest Organizations also state that MISO should explain the conditions under which Coleman Unit 1 may require different treatment than Coleman Units 2-3 under the Coleman SSR Agreement.[25]

18. Furthermore, Public Interest Organizations argue that MISO has not justified payment of capital costs in the Coleman SSR Agreement. Public Interest Organizations note that, according to testimony attached to MISO's filing, the Coleman SSR Agreement includes payment of $8,200,658 in capital costs for the one year term of the Coleman SSR Agreement. Public Interest Organizations maintain that, because MISO's filing does not include an SSR budget, it is not possible to determine whether the items are acceptable and therefore whether the results regarding SSR payments are just and reasonable. Nonetheless, Public Interest Organizations contend that, if Big Rivers is planning to idle Coleman Units 1-3 for an extended period of time, MISO should not be paying Big Rivers to make capital investments in 2013-2014.[26]

IV. Answers

19. Big Rivers states it supports the Coleman SSR Agreement. First, Big Rivers argues that the term of the Coleman SSR Agreement will be limited by the implementation of feasible alternatives, and that revisions to the Coleman SSR Agreement provide MISO with additional flexibility to terminate the agreement when

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[23] Public Interest Organizations consists of the Sustainable FERC Project – NRDC and Earthjustice.

[24] Public Interest Organizations Protest at 4-6.

[25] *Id*. at 7.

[26] *Id*. at 6-7.

feasible alternatives are implemented.[27] Big Rivers also asserts that the Commission should not condition acceptance of the Coleman SSR Agreement on Big Rivers' performance of live-line maintenance.[28]

20. In its answer, MISO argues that Public Interest Organizations offer no alternative to the Coleman SSR Agreement. First, MISO argues that the one year Coleman SSR Agreement is not too lengthy because the Commission has limited SSR agreements to a period of one year. Second, MISO asserts that alternatives to the Coleman SSR Agreement were evaluated and reported. In response to Public Interest Organizations' argument that possible voltage support upgrades could mitigate the need for the Coleman SSR Agreement, MISO states that its reliability analysis identified severe thermal overloading as well as post-contingent voltage violations and voltage collapse conditions as the result of a suspension of Coleman Units 1-3. Third, MISO states that the termination provisions in the Coleman SSR Agreement aid flexible treatment of Coleman Units 1-3.[29]

21. Furthermore, MISO avers that Century Aluminum seeks to unreasonably expand the scope of MISO's SSR program. MISO contends that transmission maintenance procedures—such as live-line maintenance—are separate from MISO's SSR program. MISO also asserts that it should rely upon the Attachment Y Notice sworn statement as to when or whether an SSR will be able to return to regular service, because it is the best information available to MISO on the subject and MISO conducts its SSR program according to the Commission-approved notification process.

22. Century Aluminum responds that the Commission may, and should, consider live-line maintenance as a condition of approval of the Coleman SSR Agreement. Century Aluminum maintains that the Commission has authority to consider live-line maintenance in this proceeding because live-line maintenance is consistent with good and reasonable utility practice.[30] Additionally, Century Aluminum argues that transmission upgrades were not properly considered as a component of the feasible alternatives to the Coleman SSR Agreement. Century Aluminum also states that it identified substantial evidence

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[27] Big Rivers Answer at 4-6.

[28] *Id*. at 6-9.

[29] MISO Answer at 3-6.

[30] Century Aluminum Answer at 4-7 (citing *New England Power Pool*, 98 FERC ¶ 61,249 (2002)).

subsequent to Big Rivers' submission of its Attachment Y Notice that MISO should consider that indicates that Big Rivers is uncertain when, if ever, Coleman Units 1-3 will be placed back into full service.[31]

23. Regarding costs, Big Rivers contends that the Coleman SSR Agreement provides just and reasonable recovery of going-forward fixed and variable costs to maintain the availability of Coleman Units 1-3 during the term of the Coleman SSR Agreement. First, Big Rivers states that the proposed capital costs are necessary to maintain operation of Coleman Units 1-3. Big Rivers reports that the capital costs contributing to the annual SSR amount relate to the replacement of equipment. Big Rivers contends that the fact that some of these capital costs could benefit Coleman Units 1-3 when it is returned to service is inconsequential because the costs must be incurred to ensure the reliable operation of Coleman Unit 1-3, and compliance with applicable environmental regulations throughout the term of the Coleman SSR Agreement. Moreover, Big Rivers states that all fixed SSR costs are subject to a monthly true-up.[32]

24. Second, in response to Century Aluminum's argument that Big Rivers should not be allowed to recover any maintenance outage costs because customers are unlikely to receive the benefits of any maintenance outage, Big Rivers asserts that maintenance costs are appropriately included in the SSR costs. Big Rivers avers that it will need to perform maintenance on Coleman Units 1-3 during the term of the Coleman SSR Agreement in order to ensure their availability throughout the term of the Coleman SSR Agreement. Big Rivers adds that it should not be required to forego necessary maintenance on its units, which could result in unnecessary damage and expensive future repairs.[33]

25. Finally, Big Rivers argues that the proposed return on net rate base is just and reasonable. Big Rivers notes that the monthly SSR payments include a return on net rate base of 7.85 percent. According to Big Rivers, this return on rate base differs from a traditional return on net rate base because it represents only carrying costs associated with fuel inventory, reagent, and materials and supplies. Big Rivers therefore contends that Century Aluminum fails to realize that the Coleman SSR Agreement does not represent a "fully loaded" cost-of-service rate.[34]

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

[32] Big Rivers Answer at 9-11.

[33] *Id*. at 11.

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

26. Furthermore, MISO avers that the cost recovery contained in the Coleman SSR Agreement is appropriate. Specifically, MISO refutes Century Aluminum's protest of MISO's inclusion of capital costs for an upcoming Coleman unit outage in the category of maintenance capital costs. MISO responds that Century Aluminum will be able to avoid going-forward capital and maintenance costs, such as a scheduled outage on Coleman Unit 1 in June 2014, if the Special Protection Scheme alternative is implemented and MISO determines that the Coleman SSR Agreement can be terminated without jeopardizing reliability. In addition, MISO contends that the rate-of-return in the Coleman SSR Agreement is appropriate for the circumstances. MISO explains that, unlike a rate of return for a fully-loaded cost-based rate, the rate-of-return used for determining costs for Coleman Units 1-3 relates only to carrying costs for fuel inventory, reagent, and materials and supplies.[35]

27. Century Aluminum, on the other hand, argues that certain cost components of the Coleman SSR Agreement have not been shown to be just and reasonable. According to Century Aluminum, although the true-up mechanism will help ensure that actual costs are just and reasonable, MISO and Big Rivers must be required to identify up-front the cost elements that are included in the Annual Budget amount. Century Aluminum avers that the Commission currently has no basis for determining whether the monthly SSR payment, either initially or trued-up, is just and reasonable. In addition, Century Aluminum takes issue with MISO including costs associated with a planned maintenance outage on Coleman Unit 1 in the Coleman SSR Agreement's monthly budgeted availability payment. Century Aluminum alleges that customers paying for the SSR costs would receive no benefit from the upgrades because of the impending deployment of the Special Protection Scheme and impending termination of the Coleman SSR Agreement.[36]

28. Finally, Century Aluminum contends that the proposed 7.85 percent return on net rate base has not been demonstrated to be just and reasonable, is excessive, and should not exceed Big Rivers' actual cost of capital. Century Aluminum states that the return on net rate base should reflect Big Rivers' actual carrying costs, not some hypothetical return. Century Aluminum concludes that a 7.85 percent return would allow Big Rivers to earn more than necessary to operate Coleman Units 1-3 as an SSR.[37]

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[35] MISO Answer at 8-9.

[36] Century Aluminum Answer at 8-9.

[37] *Id*. at 9.

V. Commission Determination

29. As noted above, in the December 30 Order, the Commission accepted the Coleman SSR Agreement and associated Rate Schedule 43F, suspended them for a nominal period, to be effective September 1, 2013, as requested, subject to refund and further Commission order.[38] In this further order, we address the reliability need for the Coleman SSR Agreement and establish hearing and settlement judge procedures on the going-forward costs included in the rate that MISO has negotiated with Big Rivers for operating Coleman Units 1-3 as an SSR Unit under the Coleman SSR Agreement.[39]

30. We find that MISO has studied the proposed suspension of Coleman Units 1-3 and determined that the units are necessary for system reliability, and therefore, should be designated as an SSR Unit. We find that MISO has justified the need for the SSR Unit and has provided sufficient evidence demonstrating that it is necessary to mitigate certain NERC contingencies as required by NERC Reliability Standards.[40] As such, MISO has supported SSR designation for Coleman Units 1-3 as a last resort measure to ensure reliability.[41]

31. We accept MISO's explanation of its alternatives assessment. MISO states that no alternatives explored, other than the Special Protection Scheme, were feasible and that there was no significant stakeholder feedback on any other alternative.[42] As noted above, the Coleman SSR Agreement and associated Rate Schedule 43F were in fact terminated as of May 1, 2014 due to the implementation of the Special Protection Scheme.[43] As

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[38] December 30 Order, 145 FERC ¶ 61,296 at P 15. In that order, the Commission also addressed the procedural matters related to these proceedings, such as granting interventions and accepting answers. *Id.* PP 12-14.

[39] Because there are no protests filed, or any issues presented, regarding Rate Schedule 43F, we do not address it further in this order.

[40] *See* Coleman SSR Agreement, Docket No. ER14-292-000, Exhibit B, Attachment Y Study Report at 9-12.

[41] SSR Order, 140 FERC ¶ 61,237 at PP 134-139.

[42] *See* Coleman SSR Agreement, Docket No. ER14-292-000, Transmittal Letter at 7-9.

[43] *See* Termination Order, 147 FERC ¶ 61,079 at PP 42-46.

such, we disagree with Public Interest Organizations that MISO did not adequately consider other alternatives.

32. Regarding Century Aluminum's request that Big Rivers perform live-line maintenance and Century Aluminum's argument that transmission upgrades should have been considered as a feasible alternative to the Coleman SSR Agreement, we note that these issues were addressed in the Termination Order.[44] Additionally, regarding Century Aluminum's request that MISO and Big Rivers be directed to facilitate prompt implementation of the Special Protection Scheme, we find Century Aluminum's request to be moot. Public Interest Organizations' argument that the SSR term should be shortened to May 2014 to coincide with when the Special Protection Scheme would be in place is likewise moot as the Termination Order already addresses termination of the Coleman SSR Agreement and Rate Schedule 43F effective May 1, 2014.

33. Century Aluminum and Public Interest Organizations raise issues regarding the appropriate going-forward costs to be recovered under the Coleman SSR Agreement. Upon review, we find that the rates proposed under the Coleman SSR Agreement present issues of material fact that cannot be resolved based on the record before us.

34. Our preliminary analysis indicates that the proposed rates under the Coleman SSR Agreement have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we establish hearing and settlement judge procedures as to those rates for the period during which the Coleman SSR Agreement and Rate Schedule 43F were in effect, i.e., from September 1, 2013 to May 1, 2014.

35. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.[45] If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.[46]

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[44] *Id.*

[45] 18 C.F.R. § 385.603 (2014).

[46] If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of the date of this order. The Commission's website contains a list of Commission judges and a

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36. The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) The proposed rates under the Coleman SSR Agreement are hereby set for hearing and settlement judge procedures, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning going-forward costs included in the rate that MISO has negotiated with Big Rivers for operating Coleman Units 1-3 as an SSR Unit under the Coleman SSR Agreement. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2014), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every

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summary of their background and experience (http://www.ferc.gov/legal/adr/avail-judge.asp).

sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in this proceeding in a hearing room of the Commission, 888 First Street, NE Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.