

152 FERC ¶ 61,108
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 No. ER15-1876-000
Docket No. ER15-1535-000
(Consolidated)

ORDER ACCEPTING AND SUSPENDING TARIFF FILING, ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES, AND CONSOLIDATING
PROCEEDINGS

(Issued August 4, 2015)

1. On June 5, 2015, as supplemented on June 8, 2015, pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission's regulations,² Midcontinent Independent System Operator, Inc. (MISO) submitted an executed amended and restated System Support Resource (SSR) agreement by and between White Pine Electric Power, LLC (White Pine) and MISO under its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff)³ containing additional compensation for unanticipated

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. pt. 35 (2014).

³ MISO's Tariff defines SSRs as "Generation Resources or Synchronous Condenser Units [(SCU)] that have been identified in Attachment Y – Notification to this Tariff and are required by the Transmission Provider for reliability purposes, to be operated in accordance with the procedures described in Section 38.2.7 of this Tariff." MISO, FERC Electric Tariff, Module A, § 1.S "System Support Resource (SSR)" (30.0.0). Unless indicated otherwise, all capitalized terms shall have the same meaning given them in the MISO Tariff.

repairs to White Pine Unit No. 1,⁴ which is providing SSR service in MISO as described more fully below (Amended White Pine SSR Agreement). In this order, we accept MISO's filing, suspend it for a nominal period, to become effective June 1, 2015, as requested, subject to refund, set the proposed rate for hearing and settlement judge procedures, and consolidate this proceeding with the ongoing hearing and settlement judge procedures established by the Commission in Docket No. ER15-1535-000.⁵

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 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.⁶ The SSR agreement is filed with the Commission and specifies the terms and conditions of the service, including the compensation to be provided to the resource. For each SSR agreement filed with the Commission, a separate rate schedule must be filed to provide for the costs identified in the SSR agreement to be recovered from the identified beneficiaries.

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 two compliance filings due within

⁴ White Pine Unit No. 1 is a generator turbine located in White Pine, Michigan, within the footprint of the American Transmission Company, LLC (ATC) with a nameplate capacity of 20 MW that was the subject of SSR designation and associated proceedings beginning in calendar year 2014.

⁵ See *Midcontinent Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,244 (2015) (June 2015 White Pine SSR Order).

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

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 2012 SSR Order, subject to further compliance.⁸

4. A detailed history of proceedings related to the designation of White Pine Unit No. 1 as an SSR Unit and the allocation of White Pine SSR costs is provided in the June 2015 White Pine SSR Order.⁹ Of importance to the instant proceeding, on April 15, 2014, in Docket No. ER14-1724-000, MISO submitted a proposed SSR agreement between White Pine and MISO under its Tariff (the Original White Pine SSR Agreement) to ensure the continued availability of White Pine Unit No. 1 as an SSR Unit for a one-year term. On June 13, 2014, the Commission issued an order accepting the Original White Pine SSR Agreement and the associated rate schedule, suspending them for a nominal period, to be effective April 16, 2014, as requested, subject to refund and further Commission order.¹⁰ On August 21, 2014, the Commission issued a further order in Docket No. ER14-1724-000 addressing the proposed SSR compensation under Exhibit 2 to the Original White Pine SSR Agreement and the proposed revisions to the *pro forma* SSR agreement in Attachment Y-1 of MISO's Tariff.¹¹ Exhibit 2 to the Original White Pine SSR Agreement provided for the recovery of \$1,500,000 in costs associated with a turbine generator exciter overhaul, and provided that any costs in excess of this specified amount would be treated as unanticipated repairs under Section 9.E of the agreement.¹² The Original White Pine SSR Agreement also included provisions in Section 9.E to provide a mechanism for White Pine to receive cost recovery for unanticipated repairs (both emergency and non-emergency repairs) required to maintain system reliability.¹³

⁷ *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,237 (2012) (2012 SSR Order), *order on compliance*, 148 FERC ¶ 61,056 (2014) (SSR Compliance Order).

⁸ SSR Compliance Order, 148 FERC ¶ 61,056 at P 1.

⁹ *See* June 2015 White Pine SSR Order, 151 FERC ¶ 61,244 at PP 5-9.

¹⁰ *Midcontinent Indep. Sys. Operator, Inc.*, 147 FERC ¶ 61,199 (2014).

¹¹ *Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,136, at PP 30-32 (2014) (August 21 White Pine SSR Order), *reh'g denied*, 150 FERC ¶ 61,104 (2015).

¹² August 21 White Pine SSR Order, 148 FERC ¶ 61,136 at P 26.

¹³ *Id.*

5. On April 20, 2015, in Docket No. ER15-1535-000, MISO submitted a proposed SSR Agreement between MISO and White Pine to ensure the continued availability of White Pine Unit No. 1 as an SSR Unit for an additional one-year term, beginning April 16, 2015 (Revised White Pine SSR Agreement). The filing proposed modifications to the *pro forma* SSR agreement in Attachment Y-1 of MISO's Tariff, including: (1) a new placeholder Exhibit 3 to be used in future filings to describe the compensation for unanticipated repairs; and (2) the removal of provisions for turbine generator overhaul and the addition of language providing compensation for testing of the White Pine Unit No. 1 condenser under the unanticipated repair terms of Section 9.E.¹⁴ The Revised White Pine SSR Agreement also provided for additional compensation, adjusting White Pine Unit No. 1's annual fixed compensation from \$4,674,011 in the Original White Pine SSR Agreement to \$7,271,537.¹⁵ In the June 2015 White Pine SSR Order, the Commission accepted and suspended the Revised White Pine SSR Agreement, to be effective April 16, 2015, subject to refund, and set all SSR cost-related issues in the Revised White Pine SSR Agreement for hearing and settlement judge procedures.¹⁶

II. MISO's Filing

6. In its June 5, 2015 filing, MISO states that White Pine contacted MISO on June 1, 2015 to relate the results of testing that was conducted on White Pine Unit No. 1 following work on the turbine/generator overhaul of the unit.¹⁷ MISO states that White Pine's testing revealed hydrogen leaks that presented a danger to personnel and equipment if the unit were to be operated without repair. MISO's filing includes an affidavit that discusses the means by which the hydrogen leaks were identified and evaluated, including efforts to repair the leak situation without incurring significant costs, in order to provide the most cost effective approach to repairing White Pine Unit No. 1 such that it will provide safe and full generator operation.¹⁸ The Walsh Affidavit states

¹⁴ MISO Revised White Pine SSR Agreement Filing, Docket No. ER15-1535-000, Transmittal Letter at 4 (filed Apr. 20, 2015).

¹⁵ *Id.* at 8.

¹⁶ June 2015 White Pine SSR Order, 151 FERC ¶ 61,244 at P 32.

¹⁷ MISO Amended White Pine SSR Agreement Filing, Docket No. ER15-1876-000, Transmittal Letter at 2 (filed June 5, 2015).

¹⁸ *Id.*, Ex. D at 3-4 (Walsh Aff.).

that minor repair attempts were unsuccessful, and that several brackets on the generator will need to be shipped to a separate location for surface grinding.

7. MISO states that the repairs were unanticipated at the time that MISO and White Pine developed the budget for the Revised White Pine SSR Agreement, and that the incremental increase in the cost of the Revised White Pine SSR Agreement will be \$101,600.¹⁹ The Walsh Affidavit sets forth a breakdown of the costs, including the amounts allocated for disassembling and reassembling the generator, shipping, rotary surface grinding, and re-testing.²⁰ MISO explains that Section 9.E of the Revised White Pine SSR Agreement provides two routes for dealing with unanticipated repairs: (1) non-emergency repairs and (2) emergency repairs.²¹ MISO states that the test for whether a repair qualifies as an “emergency” is whether MISO reasonably believes that system security and reliability require any unanticipated repairs to be made before the Commission can act on a section 205 filing. MISO states that White Pine notified MISO that the hydrogen leak repairs can be conducted in approximately one month, but that repair periods are based on current availability, and could be extended if the direction to proceed is delayed such that White Pine Unit No. 1 may not be available for the summer of 2015.²² MISO contends that additional time waiting for approval of the hydrogen repairs would likely threaten the availability of the unit for much of the summer of 2015, which would partially defeat the purpose of designating White Pine Unit No. 1 as an SSR Unit. Given the situation, MISO states that it notified White Pine on June 4, 2015 to proceed with the hydrogen leak repairs on an emergency repair basis.

8. MISO states that, pursuant to the terms of the Revised White Pine SSR Agreement, MISO’s instruction to White Pine to proceed with hydrogen leak repairs on an emergency basis requires the instant section 205 filing.²³ MISO notes that Exhibit 3 to the Amended White Pine SSR Agreement proposes to recover \$101,600 for the repairs

¹⁹ *Id.*, Transmittal Letter at 3 (citing Ex. D at 12 (Walsh Aff.)).

²⁰ *Id.*, Ex. D at 4 (Walsh Aff.).

²¹ *Id.*, Transmittal Letter at 3.

²² *Id.* (citing Ex. D at 11 (Walsh Aff.)).

²³ *Id.* at 3-4.

over the remaining months of that agreement (June 2015 through April 2016).²⁴ MISO requests a June 1, 2015 effective date for the Amended White Pine SSR Agreement, and requests that the Commission waive the 60-day prior notice requirement in section 35.3(a) of the Commission's regulations.²⁵ MISO states that good cause exists to grant waiver of the prior notice requirement, as the filing is made pursuant to the unanticipated repairs provision of an SSR agreement that was accepted by the Commission, and a filing under the emergency provision for unanticipated repairs is necessarily made following the evaluation and instruction by MISO concerning the treatment for the repair situation. To the extent that the Commission determines that any requirement of 18 C.F.R. § 35 apply that MISO did not address, MISO requests waiver of such requirements.

III. Notice of Filing and Responsive Pleadings

9. Notice of MISO's June 5, 2015 filing was published in the *Federal Register*, 80 Fed. Reg. 33,515 (2015), with interventions and protests due on or before June 26, 2015.

10. Timely motions to intervene were filed by: Consumers Energy Company; American Transmission Company LLC; White Pine; WPPI Energy; Alliant Energy Corporate Services, Inc.; the City of Escanaba, Michigan; and Wisconsin Electric Power Company. The Upper Peninsula Power Company (UPPCo) filed a timely motion to intervene and comments. The Michigan Public Service Commission (Michigan Commission) filed a notice of intervention, protest, and motion to consolidate.

11. MISO filed a motion for leave to answer and answer to the protests on July 6, 2015. The Michigan Commission filed a motion for leave to answer and answer on July 13, 2015.

²⁴ MISO adds that White Pine has authorized MISO to represent to the Commission that it supports the adjustments in the Amended White Pine SSR Agreement for purposes of implementing MISO's decision to proceed with the unanticipated repairs. *Id.* n.12.

²⁵ *Id.* at 4. On June 8, 2015, in Docket No. ER15-1876-000, MISO made a supplemental filing to notify the Commission that the eTariff metadata associated with the June 5, 2015 filing incorrectly referenced an effective date of June 1, 2016, and that the correct effective date should be June 1, 2015, as requested in the transmittal letter of the June 5, 2015 filing.

12. UPPCo states that MISO filed the Amended White Pine SSR Agreement as an amended version of the Revised White Pine SSR Agreement to include an incremental increase to the costs in the Revised White Pine SSR Agreement, and argues that these two agreements contain common issues of fact and law that merit consolidation.²⁶ UPPCo states that consolidation would most efficiently use the Commission's resources. Furthermore, UPPCo contends that the Amended White Pine SSR Agreement contains the same deficiencies in SSR cost support that UPPCo identified in its protest of the Revised White Pine SSR Agreement.²⁷ UPPCo therefore requests that the Commission consolidate the instant proceeding with the ongoing hearing and settlement judge procedures on the proposed SSR cost compensation under the Revised White Pine SSR Agreement.²⁸ In the alternative, UPPCo requests that the Commission suspend the Amended White Pine SSR Agreement, subject to refund, and set all cost-related issues for hearing and settlement judge procedures.

13. The Michigan Commission protests the filing because the incremental cost of repairing hydrogen leaks has not been demonstrated to be just and reasonable.²⁹ The Michigan Commission states that this filing raises an additional element of the overall SSR costs of White Pine Unit No. 1, and that the Commission has already established hearing and settlement procedures to resolve all SSR cost-related issues associated with the Revised White Pine SSR Agreement. The Michigan Commission requests that the filing be consolidated with the ongoing hearing and settlement procedures in Docket No. ER15-1535-000, and argues that consolidation will promote a more efficient review and resolution of the overall SSR costs, including the hydrogen leak repair costs.

IV. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

²⁶ Motion to Intervene and Comments of the Upper Peninsula Power Company, Docket No. ER15-1876-000, at 3 (filed June 25, 2015).

²⁷ *Id.* at 4.

²⁸ *Id.* at 5.

²⁹ Notice of Intervention, Protest and Motion to Consolidate of the Michigan Public Service Commission, Docket No. ER15-1876-000, at 4-5 (filed June 26, 2015).

15. 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. Therefore, we reject the answers filed by MISO and the Michigan Commission.

B. Substantive Matters

16. We find that MISO has sufficiently supported the need for repairs to address the hydrogen leaks. Based on the record, we find it reasonable for MISO to conclude that such repairs were necessary to ensure that White Pine Unit No. 1 would be able to operate safely and reliably to satisfy its SSR requirements. No party disputes that the need for such repairs was evident only after testing was conducted subsequent to the generator overhaul, and that compensation for these repairs was not anticipated when MISO and White Pine developed the budget for the Revised White Pine SSR Agreement. Therefore, we find that these repairs properly fall within the category of "unanticipated repairs" as contemplated by section 9.E of the Revised White Pine SSR Agreement. In addition, given that MISO states that delay in receiving approval to commence repairs could threaten the availability of White Pine Unit No. 1 during most of the summer of 2015 and thereby impair system reliability, we find that MISO has properly designated this to be an emergency repair situation pursuant to section 9.E of the Revised White Pine SSR Agreement.

17. We find, however, based upon a review of the filing and the comments, that the costs associated with the repair of the hydrogen leaks raise issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures provided for below. Our preliminary analysis indicates that the costs associated with the repairs have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we accept the Amended White Pine SSR Agreement for filing, suspend it for a nominal period, to become effective June 1, 2015, as requested, subject to refund, and set it for hearing and settlement judge procedures.

18. We note that the appropriate level of cost recovery for 2015 SSR service from White Pine Unit No. 1 is already subject to the hearing and settlement procedures established by the Commission in the June 2015 White Pine SSR Order. Therefore, we consolidate this proceeding with Docket No. ER15-1535-000 for purposes of settlement, hearing and decision, as there are common issues of law and fact in these proceedings, and we find that consolidation will promote administrative efficiency.

19. Last, we grant MISO's request for waiver of the prior notice requirement for good cause shown. We agree that White Pine should be permitted to recover costs associated with an emergency repair that is critical to ensuring that reliability needs will be met pursuant to the Amended White Pine SSR Agreement.

The Commission orders:

(A) The Amended White Pine SSR Agreement is hereby accepted for filing and suspended for a nominal period, to become effective June 1, 2015, as requested, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the 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 the justness and reasonableness of MISO's proposed repair costs under the Amended White Pine SSR Agreement, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in the body of this order.

(C) This proceeding is hereby consolidated with Docket No. ER15-1535-000 for the purposes of settlement, hearing, and decision, as discussed in the body of this order.

(D) The settlement judge or presiding judge, as appropriate, designated in Docket No. ER15-1535-000, shall determine the procedures best suited to accommodate the consolidation ordered herein.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.