

155 FERC ¶ 61,133
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, and Tony Clark.

Midcontinent Independent System
Operator, Inc.

Docket No. ER15-767-002

ORDER ON COMPLIANCE FILING

(Issued May 3, 2016)

1. On May 20, 2015, in response to the Commission’s directives in an order issued February 27, 2015,¹ Midcontinent Independent System Operator, Inc. (MISO) submitted a compliance filing (May 20 Compliance Filing) proposing a revised Rate Schedule 43I associated with the System Support Resource (SSR)² agreement between MISO and White Pine Electric Power, LLC (White Pine) for SSR service from White Pine’s Unit No. 2 (White Pine 2 SSR Agreement).³ In this order, we find that MISO’s revised Rate Schedule 43I generally complies with the directives of the White Pine 2 SSR Order; however, we direct a further compliance filing as a result of subsequent Commission decisions related to this proceeding, as discussed below.

¹ *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,147 (2015) (White Pine 2 SSR Order).

² MISO’s Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) defines SSRs as “Generation Resources or [SCUs] 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)” (39.0.0). Unless otherwise defined herein, capitalized terms shall have the meaning given to them in the MISO Tariff.

³ White Pine Unit No. 2 is located in White Pine, Michigan, within the footprint of American Transmission Company LLC (ATC).

I. Background

2. Under MISO's Tariff, market participants that have decided to retire or suspend a Generation Resource or Synchronous Condenser Unit (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 alternative to the SSR 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.⁴

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 accepted, subject to condition, 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.⁵ On July 22, 2014, the Commission accepted MISO's compliance filing, subject to condition.⁶ On December 17, 2015, the Commission issued an order on rehearing and accepted MISO's further compliance filing, subject to condition.⁷

II. White Pine 2 SSR Order

4. In the White Pine 2 SSR Order, the Commission accepted, subject to condition, the White Pine 2 SSR Agreement in Docket No. ER15-765-000, suspended it for a nominal period, to be effective January 1, 2015, as requested, subject to refund, for a term of three and one-half months, and set all cost-related issues for hearing and

⁴ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163, *order on reh'g*, 109 FERC ¶ 61,157 (2004).

⁵ *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,237 (2012).

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

⁷ *Midwest Indep. Transmission Sys. Operator, Inc.*, 153 FERC ¶ 61,313 (2015).

settlement judge procedures.⁸ The Commission also accepted, subject to condition, the associated proposed Rate Schedule 43I in Docket No. ER15-767-000, suspended it for a nominal period, to be effective January 1, 2015, as requested, subject to refund and required a compliance filing. Specifically, because MISO proposed the same cost allocation methodology for Rate Schedule 43I as it originally proposed for three other SSR Units in the ATC footprint, and because White Pine Unit No. 2 shares similar characteristics with the SSRs in those proceedings, the Commission required MISO to make a compliance filing within sixty (60) days of the order to revise Rate Schedule 43I to include a cost allocation for White Pine Unit No. 2 that is consistent with the cost allocation methodology for the other three ATC SSRs as filed by MISO in Docket Nos. ER14-2952-003, *et al.*⁹

III. May 20 Compliance Filing

5. In the May 20 Compliance Filing, MISO submitted its revised Rate Schedule 43I in compliance with the directive in the White Pine 2 SSR Order to revise Rate Schedule 43I to include a cost allocation methodology that is consistent with the cost allocation methodology for the other three ATC SSRs as filed by MISO in Docket Nos. ER14-2952-003, *et al.* in compliance with the February 2015 Order. As a result, MISO revised Rate Schedule 43I so that it refers to the new Rate Schedule 43A that was filed by MISO to comply with the February 2015 Order (referred to herein as “the MISO ATC Cost Allocation Method”).

IV. Notice of MISO’s May 20 Compliance Filing and Responsive Pleadings

6. Notice of MISO’s May 20 Compliance Filing was published in the *Federal Register*, 80 Fed. Reg. 30,225 (2015), with interventions and protests due on or before June 10, 2015. On June 10, 2015, Wisconsin Electric Power Company (Wisconsin Electric) filed a motion to intervene¹⁰ and comments supporting revised Rate Schedule 43I. On June 10, 2015, WPPI Energy also filed comments in support of revised

⁸ By order issued on October 27, 2015, the Commission approved an Offer of Settlement that resolved all cost and compensation issues set for hearing in Docket No. ER15-765-000. *Midcontinent Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,095 (2015).

⁹ See White Pine 2 SSR Order, 150 FERC ¶ 61,147 at P 60 (citing *Pub. Serv. Comm’n of Wisconsin v. Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,104, at PP 80-89 (2015) (February 2015 Order)).

¹⁰ We note that Wisconsin Electric is already an intervenor in this proceeding, and therefore, it is unnecessary for us to act on its motion to intervene in the instant order.

Rate Schedule 43I. On June 10, 2015, Michigan Public Service Commission (Michigan Commission) filed a protest. On June 25, 2015, MISO filed an answer.

V. Comments and Protests

A. Supporting Comments

7. WPPI Energy and Wisconsin Electric support the proposed MISO ATC Cost Allocation Method as complying with the Commission's directives in the White Pine 2 SSR Order and the Commission's cost causation principles, and they request that MISO's May 20 Compliance Filing be accepted and made effective on the dates requested.¹¹

B. Michigan Commission Protest

8. Michigan Commission states that it "incorporates its protest filed in the related MISO SSR proceeding, Docket No. ER15-2952-003."¹² It argues that MISO fails to describe adequately the conditions, assumptions, and calculations underlying the new methodology, and that MISO did not provide the percentage or total amount of SSR costs allocated to each load-serving entity (LSE) or even data from which a calculation of the costs allocated to each LSE could be performed by parties or the Commission. Michigan Commission argues that absent such information, parties have no way of determining whether the new methodology is just and reasonable. It also states that MISO failed to include any underlying documents, testimony, affidavits, or study supporting the methodology or showing how the methodology is to be applied.¹³

9. Michigan Commission also contends that MISO did not explain the relationship of conditions in the new methodology to actual responses taken during reliability events, or base its models on actual or anticipated power flows during reliability events; for instance, Michigan Commission protests MISO's calculation of thermal constraints using hypothetical power flows in the MISO Network Model in order to associate physical load buses with the EPNodes in MISO's Commercial Model.¹⁴

¹¹ Comments of WPPI Energy at 2-3; Comments of the Wisconsin Electric Power Company at 3-4.

¹² Michigan Commission Protest at 1.

¹³ *Id.* at 5-6.

¹⁴ *Id.* at 6-7.

10. Michigan Commission argues that MISO's new methodology is based solely on two factors: the extent to which load contributes to thermal reliability constraints and the extent to which load would cause voltage violations in the absence of the SSR Unit.¹⁵ Michigan Commission asserts that MISO has failed to identify other factors that could be used to identify LSEs that require operation of the SSR Units. Michigan Commission asks that MISO be directed to revise its new study to reflect actual market responses to the retirement of White Pine Unit No. 2; in the alternative, it argues that parties are entitled to discovery and hearing procedures and any opportunity to demonstrate the extent to which use of actual demands would produce a very different end result, including the identification of LSEs in Wisconsin that are contributing to thermal reliability issues or to voltage violations.¹⁶

11. Michigan Commission also argues that it would seek discovery to determine the reasonableness of MISO's proposed 80 percent impact factor to cut-off the allocation of SSR costs for LSE load that is contributing to thermal constraint and voltage violations.¹⁷

12. Michigan Commission asks the Commission to reject MISO's filing until MISO provides all underlying data supporting the proposed methodology, subject to confidentiality requirements, so that parties may evaluate MISO's proposal.¹⁸ Michigan Commission argues that the filing should be subject to the outcome of court review of the Commission's July 29, 2014 order,¹⁹ in which the Commission found that MISO's preexisting *pro rata* SSR cost allocation methodology applicable to the ATC footprint is unjust and unreasonable, and the February 2015 Order.²⁰

13. Michigan Commission states that hearing procedures will provide an opportunity for MISO to support its denial to parties other than MISO transmission owners of access

¹⁵ *Id.* at 6.

¹⁶ *Id.* at 7-8.

¹⁷ *Id.* at 8.

¹⁸ *Id.* at 9.

¹⁹ *Midcontinent Indep. Sys. Operator, Inc. and Pub. Serv. Comm'n of Wisconsin v. Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,071 (2014).

²⁰ Michigan Commission Protest at 13-14.

to information concerning power flows, monthly market data, and other data inputs into MISO's allocation of SSR costs.²¹

14. Michigan Commission also argues against the provision of retroactive refunds. It argues that retroactive application of MISO's new SSR cost allocation methodology is contrary to Commission precedent, section 206 of the Federal Power Act (FPA), and the filed rate doctrine.²² Michigan Commission contends that the justness and reasonableness of the new methodology must be analyzed in the context of MISO's long-standing allocation of transmission project costs on a zone-wide basis in the ATC footprint.²³ Michigan Commission states that it would not be just and reasonable to make Michigan ratepayers responsible for 100 percent of the costs of SSR Units that are needed because no transmission upgrades have been constructed in the Upper Peninsula after requiring Michigan ratepayers over the past decade to pay a *pro rata* share of the costs of transmission upgrades that benefit Wisconsin.²⁴

VI. Commission Determination

A. Procedural Matters

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept MISO's answer and will, therefore, reject it.

B. Substantive Matters

16. We accept, subject to condition, revised Rate Schedule 43I effective January 1, 2015,²⁵ as it generally complies with the Commission's directive in the White Pine 2 SSR Order that MISO incorporate the same cost allocation method in Rate Schedule 43I that

²¹ *Id.* at 9.

²² *Id.* at 12-16.

²³ *Id.* at 8-10.

²⁴ *Id.* at 10.

²⁵ The Commission can revise a proposal filed under section 205 of the FPA as long as the filing utility accepts the change. *See City of Winnfield, La. v. FERC*, 744 F.2d 871, 875-77 (D.C. Cir. 1984). The filing utility is free to indicate that it is unwilling to accede to the Commission's conditions by withdrawing its filing.

MISO filed on May 20, 2015 in Docket Nos. ER14-2952-003, *et al.*, for three other ATC SSRs in compliance with the February 2015 Order.²⁶ Specifically, MISO proposes by reference to Rate Schedule 43A to incorporate the MISO ATC Cost Allocation Method into revised Rate Schedule 43I. In an order issued on September 17, 2015, the Commission accepted (with modifications) the MISO ATC Cost Allocation Method, finding that it allocates SSR costs associated with the three other ATC SSRs to the LSEs serving loads that require the operation of each SSR Unit for reliability purposes in compliance with the Commission's directives in the February 2015 Order.²⁷ Accordingly, for these same reasons, we find that revised Rate Schedule 43I, which incorporates the MISO ATC Cost Allocation Method, is a just and reasonable methodology for allocating the costs for White Pine Unit No. 2, because as the Commission noted in the White Pine 2 SSR Order, White Pine Unit No. 2 is located in the ATC footprint and shares similar characteristics with the other three SSRs in ATC's footprint.²⁸ However, because the Commission in the SSR Cost Allocation Compliance Order rejected Rate Schedule 43A as a generally applicable rate schedule to allocate SSR costs, we direct MISO to make a compliance filing within 30 days of the date of this order incorporating the MISO ATC Cost Allocation Method (as modified) directly into Rate Schedule 43I.

17. Further, although the Commission found in the SSR Cost Allocation Compliance Order that the MISO ATC Cost Allocation Method generally complied with the Commission's directives in the February 2015 Order, the Commission found that certain aspects of the methodology had not been shown to be just and reasonable and directed further compliance. Specifically, the Commission directed MISO to make a compliance filing: (1) providing a description how load distribution factors will be calculated, including the point in time to be analyzed;²⁹ (2) removing the 80 percent threshold to

²⁶ May 20 Compliance Filing at 3.

²⁷ *Midcontinent Indep. Sys. Operator, Inc.*, 152 FERC ¶ 61,216, at PP 1, 59-60 (2015) (SSR Cost Allocation Compliance Order). The Commission, however, rejected proposed Rate Schedule 43A as a generally applicable rate schedule because as drafted it could be automatically applied by MISO to allocate the costs of all SSR Units in the future and not just the three SSR Units located in ATC that were the subject of the February 2015 Order; accordingly, the Commission directed that the MISO ATC Cost Allocation Method as modified be incorporated into the individual rate schedules applicable to each of the three ATC SSRs. *Id.*

²⁸ *See* White Pine 2 SSR Order, 150 FERC ¶ 61,147 at P 60.

²⁹ SSR Cost Allocation Compliance Order, 152 FERC ¶ 61,216 at P 70.

determine SSR beneficiaries;³⁰ (3) providing that SSR costs are assigned based on the actual energy withdrawals during the coincident peak volume for the system, rather than the non-coincident peak volume for each CPNode;³¹ and (4) describing how the Daily Load Weighting Factor and the aggregate load distribution factor in the MISO ATC Cost Allocation Method are calculated and related clarifications.³²

18. On October 8, 2015, MISO submitted a compliance filing in Docket No. ER14-2952-005 pursuant to the Commission's directives in the SSR Cost Allocation Compliance Order outlined above (October Compliance Filing). In an order issued concurrently with the instant order, we find that the October Compliance Filing complies with the directives of the SSR Cost Allocation Compliance Order.³³ In the concurrently issued SSR Cost Allocation Compliance Order II, we also direct MISO to file a detailed refund report within 45 days of the date of that order, including a description of how MISO intends to effectuate the payment of refunds to those LSEs that were overcharged under the previous method used to allocate costs to the three ATC SSRs that were subject to the February 2015 Order.

19. Accordingly, while MISO has in the May 20 Compliance Filing complied with the Commission's directives in the White Pine 2 SSR Order that its compliance filing use the same cost allocation methodology as its compliance filing made in response to the February 2015 Order for the other three ATC SSRs (i.e., the MISO ATC Cost Allocation Method), the Commission directed changes to that methodology in the SSR Cost Allocation Compliance Order which are accepted in the SSR Cost Allocation Compliance Order II issued today. Therefore, herein we direct MISO to submit in a compliance filing to be made within 30 days of the date of this order the same changes to Rate Schedule 43I as those ordered to the MISO ATC Cost Allocation Method in the SSR Cost Allocation Compliance Order, which are accepted today in the SSR Cost Allocation Compliance Order II. We likewise direct MISO to file a detailed refund report within 45 days of the date of this order describing any refunds in the instant proceeding, including a description of how MISO intends to effectuate the payment of refunds to those LSEs that were overcharged under the previous method used to allocate costs under the White Pine 2 SSR Agreement.

³⁰ *Id.* P 71. This addresses Michigan Commission's concern regarding the 80 percent threshold.

³¹ *Id.* P 72.

³² *Id.* P 73.

³³ *Midcontinent Indep. Sys. Operator, Inc.*, 155 FERC 61,134, at P 53 (2016) (SSR Cost Allocation Compliance Order II).

20. Last, we note that in accepting the MISO ATC Cost Allocation Method subject to condition, the Commission in the SSR Cost Allocation Compliance Order already addressed Michigan Commission's arguments raised here which are substantially similar to those it raised in that earlier proceeding, and therefore, we do not address these arguments separately here. For example, in the SSR Cost Allocation Compliance Order, the Commission rejected arguments that more information is needed as to how the MISO ATC Cost Allocation Method is to be applied and that access to additional underlying data is necessary to understand the methodology.³⁴ The Commission rejected calls to require MISO to provide critical energy infrastructure information or settlement information to non-MISO members under an appropriate protective order because MISO considers such information confidential under its Tariff and the MISO Transmission Owners Agreement.³⁵ In accepting the MISO ATC Cost Allocation Method, the Commission also addressed concerns with the calculation of thermal constraints using hypothetical power flows and related concerns.³⁶ The Commission rejected Michigan Commission's argument that the MISO ATC Cost Allocation Method is based solely on two factors and is therefore unjust and unreasonable because it fails to identify other factors that could be used to identify LSEs that require operation of the SSR.³⁷ The Commission likewise rejected all arguments related to the ability of the Commission to order refunds of SSR costs as beyond the scope of compliance. In addition, the Commission noted that it would not address implementation of the refund requirement until it has approved MISO's new study methodology in its entirety and MISO has filed a detailed refund report.³⁸

The Commission orders:

(A) MISO's May 20 Compliance Filing is hereby accepted, subject to condition, effective January 1, 2015, as discussed in the body of this order.

(B) MISO is hereby directed to submit a further compliance filing, due within 30 days of the date of this order, as discussed in the body of this order.

³⁴ SSR Cost Allocation Compliance Order, 152 FERC ¶ 61,216 at PP 62-64.

³⁵ *Id.* P 64.

³⁶ *Id.* P 60.

³⁷ *Id.* P 65.

³⁸ *Id.* P 74 (citing February 2015 Order, 150 FERC ¶ 61,104 at P 93 n.231).

(C) MISO is hereby directed to file a detailed refund report within 45 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Honorable is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.