144 FERC ¶ 61,127
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

Midcontinent Independent System Operator, Inc. Docket Nos. ER13-1695-000
ER13-1699-000

ORDER CONDITIONALLY ACCEPTING TARIFF FILINGS

(Issued August 13, 2013)

1. On June 14, 2013, pursuant to section 205 of the Federal Power Act (FPA),[1] Midcontinent Independent System Operator, Inc. (MISO)[2] submitted an Amended and Restated System Support Resource (SSR) Agreement between the City of Escanaba, Michigan (Escanaba) and MISO, designated as First Revised Service Agreement No. 6500 (Amended Escanaba SSR Agreement) under its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff).[3] Also on June 14, 2013, pursuant to section 205 of the FPA, MISO submitted revisions to Rate Schedule 43 (Allocation of SSR Costs Associated with the Escanaba SSR Units) under its Tariff (Amended Rate

[1] 16 U.S.C. § 824d (2006).

[2] Effective April 26, 2013, MISO changed its name from "Midwest Independent Transmission System Operator, Inc." to "Midcontinent Independent System Operator, Inc."

[3] The Tariff defines SSRs as "[g]eneration Resources or Synchronous Condensor 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.

Schedule 43).[4] In this order, we conditionally accept, effective June 15, 2013 as requested, subject to compliance filings, both the Amended Escanaba SSR Agreement and the Amended Rate Schedule 43 relating to the allocation of costs of the Amended Escanaba SSR Agreement as discussed in detail below.

I. Background

2. On August 6, 2004, the Commission conditionally accepted MISO's proposed revisions to its Transmission and Energy Markets Tariff[5] regarding the retirement or suspension of generation resources and SCUs, including provisions regarding the designation and treatment of SSRs.[6] On September 21, 2012, the Commission conditionally accepted MISO's amended SSR Tariff provisions.[7]

3. On October 5, 2012, in Docket No. ER13-38-000, MISO submitted the Original Escanaba SSR Agreement for the purpose of providing compensation for the continued availability of the SSR Units until such time as the SSR Units are no longer needed for reliability purposes. MISO stated that the Original Escanaba SSR Agreement generally conforms to the *pro forma* agreement in Attachment Y-1 of the Tariff as conditionally accepted by the Commission in the SSR Order.[8] MISO requested an effective date of June 15, 2012.

4. On October 5, 2012, in Docket No. ER13-37-000, as revised on October 25, 2012 in Docket No. ER13-37-001, MISO submitted the Original Rate Schedule 43 (Allocation

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[4] As discussed more fully below, the Commission accepted the original Escanaba SSR Agreement (Original Escanaba SSR Agreement) and original associated Rate Schedule 43 (Original Rate Schedule 43), which MISO seeks to amend and revise in the instant June 14, 2013 filings, in an order issued on March 4, 2013. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,170 (2013) (Escanaba SSR Order).

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

[6] *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163 (TEMT Order), *reh'g denied*, 109 FERC ¶ 61,157 (2004) (TEMT Rehearing Order) (together, TEMT II Orders).

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

[8] MISO October 5, 2012 Transmittal Letter at 1 (Docket No. ER13-38-000).

of SSR Costs Associated with the Escanaba SSR Units) under its Tariff. As stated in that filing, section 38.2.7.j of the Tariff requires that the costs associated with the Original Escanaba SSR Agreement will be allocated to all load-serving entities (LSEs) within the footprint of the American Transmission Company LLC (ATC) on a *pro rata* basis. MISO requested an effective date of June 15, 2012 for the Original Rate Schedule 43 to correspond with Escanaba's requested effective date for mothballing the SSR Units.

5. As noted above, on March 4, 2013, in the Escanaba SSR Order, the Commission conditionally accepted both the Original Escanaba SSR Agreement and the Original Rate Schedule 43, allocating the costs to LSEs within the ATC footprint effective June 15, 2012.[9] Specifically, in the Escanaba SSR Order, the Commission conditionally accepted the Original Escanaba SSR Agreement subject to MISO revising section 3.A (to remove language that would allow MISO to extend the SSR agreement in its sole discretion) and section 9.G (to remove language that would allow MISO discretion to fund unanticipated repairs or terminate the SSR agreement), as well as subject to revising the Original Rate Schedule 43 "as necessary" in the event that there are Transmission Service Customers taking point-to-point Transmission Service.[10] On April 2, 2013, MISO filed a request for clarification or rehearing concerning the compliance directive in the Escanaba SSR Order concerning section 9.G of the Original Escanaba SSR Agreement, and on May 3, 2013, MISO made the compliance filings directed by the Commission in the Escanaba SSR Order. MISO's request for clarification or rehearing and its compliance filing are addressed in an order issued concurrently with the instant order.[11]

II. MISO's Filings

A. Amended Escanaba SSR Agreement

6. The Original Escanaba SSR Agreement was the first time MISO has used an SSR agreement in order to forestall the proposed retirement or mothballing of generating units in order to prevent a violation of reliability standards. However, under its own terms, the Original Escanaba SSR Agreement expired on June 14, 2013. MISO states that, pursuant to section 38.2.7.1 of its Tariff, it is required to annually review the SSR unit and grid

[9] As accepted by the Commission, the Original Escanaba SSR Agreement had a term of 12 months (i.e., terminating on June 14, 2013).

[10] *See* Escanaba SSR Order, 142 FERC ¶ 61,170 at PP 46, 55, & 74, respectively.

[11] *See Midwest Indep. Transmission Sys. Operator, Inc.*, 144 FERC ¶ 61,128 (2013).

characteristics to determine whether the SSR unit is qualified to remain as an SSR Unit.[12] MISO states that in accordance with section 3.A(4) of the Original Escanaba SSR Agreement, it provided Escanaba with notice on March 14, 2013 that MISO may need the SSR Units for an extended period of time. MISO states that the term stated in the Amended Escanaba SSR Agreement[13] reflects a one-year renewal period, beginning on June 15, 2013. MISO states that the Amended Escanaba SSR Agreement is substantively the same as that previously conditionally approved by the Commission in the Escanaba SSR Order, as adjusted in the compliance filing submitted by MISO in Docket No. ER13-38-003 on May 3, 2013. MISO contends that the Amended Escanaba SSR Agreement maintains the reliability of the MISO system and provides for equitable compensation for the SSR Units' continued availability.[14] MISO states that the Amended Escanaba SSR Agreement generally conforms to the *pro forma* agreement in Attachment Y-1 of MISO's Tariff,[15] however, MISO also states that there were "novel legal issues or other unique factors" that justified departures from the *pro forma* SSR agreement in formulating the Original Escanaba SSR Agreement, and that those same issues and factors apply to the Amended Escanaba SSR Agreement. MISO also states that the proposed modifications from the *pro forma* SSR agreement are also generally consistent with the enhancements that were conditionally approved by the Commission in the SSR Order, and are just and reasonable given the subject SSR Units.[16]

7. MISO states that the Amended 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"[17] prior to entering into an SSR agreement. MISO states that it has assessed available feasible alternatives to entering into the Amended Escanaba SSR Agreement including new generation or generator dispatch, system reconfiguration and operation guidelines, demand response, and transmission projects. MISO also states that the circumstances of the subject area and

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[12] MISO June 14, 2013 Transmittal Letter at 6 (Docket No. ER13-1699-000).

[13] Midcontinent Independent System Operator, Inc., FERC FPA Electric Tariff, Midwest ISO Agreements, SA 6500, The City of Escanaba - MISO SSR, 2.0.0.

[14] MISO June 14, 2013 Transmittal Letter at 3 (Docket No. ER13-1699-000).

[15] *Id.* at 1.

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

[17] Tariff section 38.2.7.c.

MISO's evaluation of those circumstances has not changed since MISO completed its Y-1 study of the Escanaba area.[18]

8. MISO states that it evaluated options put forth by stakeholders, including the installation of capacitors as well as specific system reconfiguration recommendations, but found that none of these alternatives would resolve the reliability issues caused by the generator change of status. MISO states that it presented and discussed the outcome of this analysis at a January 31, 2013 West Technical Study Task Force meeting.[19]

9. MISO states that it also further discussed the reliability issues related to the SSR Units and the need to extend the Original Escanaba SSR Agreement at an April 5, 2013 MTEP 13 West Subregional Planning Meeting and a May 24, 2013 West Technical Study Task Force meeting. MISO states that, as a result of these discussions, it affirmed that due to environmental regulation issues, the Gladstone generation unit has limited availability to be utilized for reliability purposes, and remains only available for MISO to dispatch in a declared system emergency (per MISO Transmission Emergencies Procedure RTO-EOP-004). Therefore, MISO states, consistent with its evaluation of the Gladstone generation unit in support of the Original Escanaba SSR Agreement, the Gladstone generation unit is still not a viable alternative to mitigate the reliability issues posed by the retirement of the SSR Units. MISO contends that even if the restriction was released, the Gladstone generation unit has less generation capacity than the SSR Units, and therefore, would still not suffice to meet the reliability need. MISO states that it also determined, consistent with its study in support of the Original Escanaba SSR Agreement, that there is no viable demand response alternative.[20]

10. In addition, MISO states that it has determined that there are no new generation additions in the generation queue that would alleviate the need for the SSR Unit and no transmission system reconfigurations, operating steps, or Remedial Action Plans available that would mitigate the subject reliability issues.[21]

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[18] MISO June 14, 2013 Transmittal Letter at 4 (Docket No. ER13-1699-000).

[19] *Id.* at 5.

[20] *Id.* at 5-6.

[21] *Id.* at 6.

11. MISO states that MISO and Escanaba have agreed to extend the Original Escanaba SSR Agreement at the level of compensation provided for in the Original Escanaba SSR Agreement.[22] Therefore, MISO states that, per the Commission approved Original Escanaba SSR Agreement, MISO will continue to pay Escanaba an annual payment of $3,710,279 for fixed steam generation costs[23] and $71.57 per MWh for each instance that MISO dispatches the SSR Units for system reliability. MISO will also make applicable make-whole payments in the hours when the applicable market-clearing price is less than the dispatch price and will debit the settlement statements for each hour in which the applicable market-clearing price is above the dispatch rate. MISO states that, in addition, whenever the SSR Units operate in the MISO market for purposes other than system reliability, any energy market revenues in excess of incremental costs measured by the positive difference between the locational marginal price and $71.57 per MWh, plus any Operating Reserve revenues and revenues from Planning Resource designation, will be debited from Participant's (i.e., Escanaba's) settlement statements.[24]

B. Amended Rate Schedule 43

12. Contemporaneous to filing the Amended Escanaba SSR Agreement, MISO has also submitted a separate Amended Rate Schedule 43[25] effective June 15, 2013 to authorize MISO to allocate SSR costs that are associated with the SSR Units.[26] MISO asserts that the proposed cost allocation is consistent with revised section 38.2.7.k of the Tariff.[27] 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,

[22] *Id.* at 7.

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

[24] *See* Amended Escanaba SSR Agreement at Exhibit 2, "Description of Compensation of SSR Units."

[25] Midcontinent Independent System Operator, Inc., FERC Electric Tariff, SCHEDULE 43, Allocation of SSR Costs Associated with the Escanaba SSR Unit, 3.0.0.

[26] MISO June 14, 2013 Transmittal Letter at 2-3 (Docket No. ER13-1695-000).

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

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.[28]

13. In the Original Rate Schedule 43, MISO included a demand-based recovery mechanism that recovered SSR costs from network transmission customers in the impacted zones.[29] MISO states that intervenors in the original Escanaba proceeding and stakeholders in various MISO forums have raised concerns about using a demand-based recovery mechanism because: (1) charges made according to the prior year's network customers may not account for changes before or during the course of an SSR agreement (especially in retail choice states like Michigan and Illinois); and (2) network customers are not all of the entities that are taking service on behalf of impacted loads in the Local Balancing Authority Areas (e.g., point-to-point customers serve as LSEs).[30] Thus, MISO has included an energy-based cost allocation mechanism in Amended Rate Schedule 43 to replace the demand-based cost allocation mechanism that it previously proposed, and that the Commission accepted in the Escanaba SSR Order.

14. MISO also states that an energy-based cost allocation mechanism complies with the Tariff language and is also justified because it would resolve two of the issues raised in the Escanaba SSR Order: (1) energy charges to LSEs would ensure recovery from entities withdrawing energy during the contract period; and (2) all customers taking service would be charged. MISO also asserts that this approach is supported because retail switching has begun to take place in the Upper Peninsula of Michigan. In addition, MISO states that an energy-based cost allocation methodology is appropriate because a Generation Resource is being prevented from retiring to address a local reliability problem.[31]

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[28] *See* Tariff section 38.2.7.j.

[29] Escanaba SSR Order, 142 FERC ¶ 61,170 at PP 61-75.

[30] MISO notes, however, that in the Escanaba SSR Order, the Commission required MISO to revise the recovery mechanism on compliance to include charges to point-to-point customers. *See* MISO June 14, 2013 Transmittal Letter at 3 (Docket No. ER13-1695-000). MISO made this revision in its May 3, 2013 compliance filing in Docket No. ER13-37-003, which we accept in an order being issued concurrently with this order. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 144 FERC ¶ 61,128 (2013).

[31] MISO June 14, 2013 Transmittal Letter at 3-4 (Docket No. ER13-1695-000).

15. MISO notes that if, prior to retiring, the SSR Units were economically committed in the MISO energy and ancillary services markets, then the facility would address the local reliability issue and the credits the unit received would be charged to buyers in MISO's locational marginal pricing markets. In contrast, if the SSR Units were not economically committed, then MISO would commit them under the voltage or local reliability designation to address the local reliability issue. In such an instance, MISO argues that any locational marginal pricing credits the units received would be charged to LSEs in the market, and any MISO make-whole payments would be charged to the LSEs in the relevant Local Balancing Authority Area(s).[32]

16. MISO also states that an energy-based cost allocation methodology allows MISO to equitably charge LSEs during the hours when the SSR Units are needed, such as during shoulder months when there is low demand. Thus, MISO argues that its proposed energy-based recovery mechanism for costs incurred in connection with the Amended Escanaba SSR Agreement properly allocates costs according to the Tariff, has support from stakeholders, and is administratively efficient.[33]

III. Notice and Responsive Pleadings

17. Notice of MISO's filing in Docket No. ER13-1695-000 was published in the *Federal Register*, 78 Fed. Reg. 38,706 (2013), with interventions and protests due on or before July 5, 2013. Notice of MISO's filing in Docket No. ER13-1699-000 was published in the *Federal Register*, 78 Fed. Reg. 38,708 (2013), with interventions and protests due on or before July 5, 2013.

18. DTE Electric Company, Escanaba, ATC, Consumers Energy Company, Wisconsin Public Service Corporation and Upper Peninsula Power Company, Wisconsin Electric Power Company, the Coalition of MISO Transmission Customers, Illinois Industrial Energy Consumers, the Association of Businesses Advocating Tariff Equity, Wisconsin Paper Council, the Minnesota Large Industrial Group and the Wisconsin Industrial Energy Group, and Wisconsin Power and Light Company filed timely motions to intervene in both dockets. The Industrial Customers[34] filed a protest in both dockets.

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[32] *Id.* at 4.

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

[34] The Industrial Customers include the Coalition of MISO Transmission Customers, the Wisconsin Industrial Energy Group, the Wisconsin Paper Council, the Minnesota Large Industrial Group (and together with Wisconsin Industrial Energy Group

(continued…)

19. On July 19, 2013, Dairyland Power Cooperative (Dairyland) filed a motion to intervene out-of-time in both dockets. On July 22, 2013, MISO filed a motion for leave to answer and answer to the protests.

A. **Protest**

20. With regard to Amended Rate Schedule 43, the Industrial Customers maintain that MISO has failed to demonstrate that an energy-based allocator is just and reasonable and not unduly discriminatory.[35] The Industrial Customers note that the language in section 38.2.7.k of the Tariff does not require that SSR costs be allocated on an energy basis, nor does it preclude MISO from allocating the SSR Units' costs on a demand basis. According to the Industrial Customers, MISO relies on the unsupported assertion that such an allocator is consistent with revised section 38.2.7.k of the Tariff even though the Commission has previously approved a demand-based allocator for these very same SSR Units.[36]

21. The Industrial Customers argue that MISO mischaracterizes the relevance of the timing issue when determining the allocation methodology that should be used, and that allocation of costs to customers that benefit within the contract period is feasible by utilizing a demand-based approach, because to the extent that "real time" energy withdrawals are available for customers, demand information can also be derived.[37] The Industrial Customers also argue that since SSR costs are a substitute for transmission costs, they should be allocated on the basis of demand.[38] The Industrial Customers argue that transmission requirements are not driven by total energy use, but rather the

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and Wisconsin Paper Council, the MISO Industrial Group), the Association of Businesses Advocating Tariff Equity, and the Illinois Industrial Energy Consumers.

[35] Industrial Customers Protest at 3.

[36] *Id.*

[37] The Industrial Customers also state that in its response to the Commission's deficiency letter in Docket Nos. ER13-1225-000 and ER13-1226-000 (concerning another SSR agreement and associated rate schedule in MISO), MISO acknowledged that demand-based cost allocation is feasible, as demonstrated by the Original Rate Schedule 43. *Id.* at 4.

[38] The Industrial Customers also assert that MISO's neighboring regional transmission organization, PJM Interconnection, L.L.C., allocates Reliability Must Run costs, which are analogous to SSR costs, on the basis of demand. *Id.* at 4.

transmission system must be sized to reliably serve the maximum demand at a single instance in time. As such, they argue that MISO's notion that the allocation of SSR related costs should change "over time" is without merit because transmission requirements are driven by system peak demand, and timing is only relevant for SSR cost allocation to the extent that peak demand should be determined during the contract period.[39]

22. The Industrial Customers further argue that because transmission requirements (for which the SSR Units are substituting) are driven by the maximum demand placed on the system, an energy-based cost allocation methodology would be inconsistent with cost causation and would result in large consumers of energy with high load factors subsidizing smaller consumers with more variable consumption.[40] The Industrial Customers argue that by charging them on an energy basis, more efficient customers are forced to pay for the variability of consumption by smaller consumers.

23. The Industrial Customers note that because of the potential for suppliers of load to change, MISO essentially claims that an energy-based allocation methodology is appropriate because it would easily accommodate load switching.[41] However, the Industrial Customers argue that just because an energy-based allocator might be easier does not mean that cost causation principles may be ignored.

24. The Industrial Customers take issue with MISO's argument that an energy-based cost recovery mechanism ensures that all customers taking service would be charged (i.e., entities are appropriately identified). The Industrial Customers assert that while MISO's proposal would allocate costs to LSEs that withdraw energy during the SSR contract period, it could just as easily base recovery on LSEs' relative peak loads. Further, Industrial Customers assert that such an approach would better identify and charge customers because it relates directly to the service being provided by the SSR Units, which is transmission service.[42]

25. The Industrial Customers also argue that MISO's claim that an energy-based allocation method is appropriate because Escanaba's SSR status is necessary to address a local reliability problem is unsupported, because under the Tariff local reliability

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[39] *Id.* at 5.

[40] *Id.*

[41] *Id.* at 6.

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

problems are addressed with Baseline Reliability Projects, the costs for which are allocated via a demand-based allocation method. The Industrial Customers also assert that MISO's arguments that an energy-based recovery mechanism is consistent with how Escanaba would be compensated if it were not retiring are irrelevant to this proceeding, because the SSR Units are being used to address a reliability problem that results from inadequate transmission, and therefore, the associated costs are appropriately treated as transmission costs and allocated on the basis of demand.[43] The Industrial Customers also assert that even if the Commission were to find that generation resources are the alternative to the SSR Units, a demand-based allocation method would still be appropriate as the purpose of the SSR Units would be to contribute to resource adequacy, the capacity obligations for which are allocated using a demand-based methodology.[44]

26. The Industrial Customers argue that, consistent with the allocation method used for the SSR Units under the Original Escanaba SSR Agreement, the Escanaba SSR costs should be allocated on the basis of LSEs' relative demands.[45] According to the Industrial Customers, the demand-based 12-coincident peak (12-CP) methodology is the appropriate method for allocating transmission costs, and thereby SSR costs, and this approach is consistent with the Tariff. The Industrial Customers also assert that such a demand-based methodology recognizes and reflects the importance of operation during shoulder months because costs are allocated based on the peak for each month, including the shoulder months. The Industrial Customers further assert that SSRs are used only when other resources have been used and there is still a reliability problem, and therefore, the SSR Units will most likely be used during the peaks of shoulder months.[46]

27. In response to MISO's assertion that an energy-based recovery mechanism is administratively efficient from MISO's standpoint, the Industrial Customers note that MISO does not say why.[47]

28. The Industrial Customers also argue that a demand-based cost allocation would be consistent with the cost allocation accepted by the Commission for the Original Escanaba

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

[44] *Id.* at 8-9.

[45] *Id.*

[46] *Id.* 9-10.

[47] *Id.* at 10.

SSR Agreement in the Escanaba SSR Order, as well as the Tariff and other Commission orders.[48]

29. Alternatively, in the event that the Commission determines that some of the costs should be allocated on an energy basis, the Industrial Customers state that the Commission should determine that only the variable costs incurred under the Amended Escanaba SSR Agreement should be allocated on an energy basis.[49] The Industrial Customers note that if the SSR Unit is not dispatched during the term of the Amended Escanaba SSR Agreement period, fixed costs would comprise the entirety of the costs under the agreement.

B. MISO's Answer

30. MISO notes that the Industrial Customers do not argue that MISO's proposal violates its Tariff or a Commission order. MISO states that the Tariff language in section 38.2.7.k is consistent with a variety of cost allocation methods. MISO maintains that the Commission should consider MISO's permissible allocation methodology under the circumstances of the instant case.[50]

31. According to MISO, charges based upon energy withdrawals provide a means to charge LSEs during the actual contract period, and not based upon past measurements of demand. According to MISO, accuracy regarding charges to those actually benefitted by the SSR Unit operation is improved by using energy-based charges. Furthermore, MISO states it realized the hazards of demand-based charges in the original Escanaba case where operating entities change over time.[51]

32. In response to the Industrial Customers' analogy for the SSR process relating to transmission planning (i.e., transmission requirements are driven by the system peak demand), MISO maintains that SSR-designated units deal with a variety of local reliability issues, some of which could mean having an SSR unit available during off-peak periods. According to MISO, an energy-based allocation methodology charges LSEs across all hours to cover these off-peak conditions when an SSR is needed, and it

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[48] *Id.* at 10-12.

[49] *Id.* at 12.

[50] MISO Answer at 3 (Docket No. ER13-1699-000).

[51] *Id*. at 4.

asserts that the SSR Units are often committed for reliability in the shoulder months and also are run for all days in some of those off peak months.[52]

33. MISO also continues to maintain that an energy-based cost allocation methodology is consistent with the manner in which costs associated with Escanaba would be recovered if the units continued market operations and did not retire, and that this is not irrelevant as claimed by the Industrial Customers. MISO also takes issue with the Industrial Customers' arguments concerning the SSR Units and resource adequacy, and assert that the purpose of the Amended Escanaba SSR Agreement is to provide reliability services.[53]

34. According to MISO, while the Industrial Customers fail to see any reason for MISO's assertion that the proposed energy-based cost recovery methodology is administratively efficient, cost allocations that are energy-based are administratively efficient because all the calculations and cost distributions are performed in one settlements system (i.e., software development, maintenance, and financial controls are performed only once), whereas with a demand-based cost allocation method, both the transmission and markets settlements processes and data are used.[54]

IV. Discussion

A. Procedural Matters

35. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which they were filed.

36. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2013), the Commission will grant Dairyland'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.

37. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest unless otherwise ordered by the

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

[53] *Id*. at 5-6.

[54] *Id.* at 6.

decisional authority. We will accept MISO's answer because it has provided information that assisted us in our decision-making process.

B. Commission Determination

38. As discussed more fully below, we conditionally accept both the Amended Escanaba SSR Agreement and the Amended Rate Schedule 43 relating to the allocation of costs of the Amended Escanaba SSR Agreement, effective June 15, 2013 as requested, subject to a compliance filing, as discussed below.

39. We find that MISO has demonstrated that the circumstances of the subject area and MISO's evaluation of those circumstances have not changed since MISO completed its Attachment Y-1 study of the SSR Units. We also note that no party disputes this assertion. Additionally, we find that MISO has adequately assessed the available feasible alternatives to entering into the Amended Escanaba SSR Agreement, including new generation or generator dispatch, system reconfiguration and operation guidelines, demand response, and transmission projects. As such, we find that MISO has adequately studied whether the SSR Units should continue to be designated as SSRs under its Tariff, and has reasonably determined that the SSR Units will continue to be needed to ensure system reliability for the term of the Amended Escanaba SSR Agreement. Thus, we conditionally accept the Amended Escanaba SSR Agreement, effective June 15, 2013, subject to MISO revising section 9.G of the Amended Escanaba SSR Agreement consistent with the compliance requirements set forth by the Commission in an order in Docket No. ER13-38-002 being issued concurrently with this order.[55]

40. Additionally, we reiterate that if MISO requires further extension of the designation of the 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.[56] We expect that this process will provide stakeholders ample opportunity to raise new issues or propose or revisit potential alternatives should the circumstances warrant.

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[55] *See Midwest Indep. Transmission Sys. Operator, Inc.*, 144 FERC ¶ 61,128 (2013).

[56] 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* Escanaba SSR Order, 142 FERC ¶ 61,170 at P 43.

41. We also conditionally accept MISO's Amended Rate Schedule 43, effective June 15, 2013, as requested. This acceptance is conditioned on MISO, in a compliance filing to be made within 30 days of this order, either offering additional support for its proposed energy-based cost allocation, or proposing a different form of cost allocation for the recovery of the costs associated with the Amended Escanaba SSR Agreement. MISO's Amended Rate Schedule 43, which proposed to replace the demand-based cost allocation mechanism previously approved by the Commission for the SSR Units in the Escanaba SSR Order with an energy-based cost allocation mechanism, is insufficiently supported and thus not demonstrated to be just and reasonable with respect to the SSR Units.

42. We note that in the Escanaba SSR Order, the Commission found that "it is reasonable for MISO to use a demand-based cost allocation methodology as is used to allocate the cost of transmission facilities built to maintain reliability."[57] The Commission observed that the SSR Units were required to address transmission system reliability concerns and accepted MISO's argument that costs associated with such reliability issues should be allocated using a demand-based charge. Thus, the costs of the SSR Units were properly allocated, as was originally proposed by MISO and accepted by this Commission, in a manner similar to reliability-based transmission charges.

43. MISO has provided no evidence that a demand-based charge, such as that accepted in the Escanaba SSR Order, is no longer feasible for cost recovery under the Amended Escanaba SSR Agreement,[58] or that continuing with a demand-based cost recovery would result in any significant administrative burden or is in any way inconsistent with its Tariff.

44. Further, we are not persuaded by MISO's new argument that an energy-based cost allocation methodology is consistent with how the costs associated with Escanaba would be recovered if the unit did not retire but continued market operations, as this argument ignores the key fact that Escanaba is not continuing market operations under the Amended Escanaba SSR Agreement. Instead, LSEs are being required to pay the cost of Escanaba's continuing operation solely to meet a reliability need.

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[57] Escanaba SSR Order, 142 FERC ¶ 61,170 at P 73.

[58] MISO has provided for recovery from point-to-point customers in its May 3, 2013 compliance filing in Docket No. ER13-37-003, which we are accepting concurrently in *Midwest Indep. Transmission Sys. Operator, Inc.*, 144 FERC ¶ 61,128 (2013).

45. We also are not persuaded by MISO's argument that an energy-based charge better allows MISO to equitably charge LSEs during the hours when an SSR Unit is needed, including during shoulder months when there is low demand. While MISO asserts in its answer that the SSR Units are often committed for reliability in the shoulder months, and that the SSR Units are run for all days in some of those off peak months,[59] MISO has not demonstrated that the SSR Units are substantially needed in off-peak days of the week and/or hours of the day to justify allocation based on total energy used each month. Thus, MISO has not demonstrated that an energy-based cost allocation would result in a just and reasonable allocation of costs associated with the Amended Escanaba SSR Agreement. We agree with the Industrial Customers that a demand-based 12-CP methodology also recognizes and reflects the importance of operation during shoulder months because costs are allocated based on the peak for each month, including the shoulder months.

46. Additionally, MISO and transmission owners already accommodate 12-CP demand-based transmission charges in retail choice states within the MISO footprint.[60] We note that MISO has not provided any explanation for why a 12-CP demand-based charge for SSR costs – that are incurred solely to address reliability concerns - could not similarly be accommodated here.

47. As emphasized above, the Commission previously accepted as just and reasonable a demand-based charge for allocating the costs associated with the Original Escanaba SSR Agreement. MISO's Tariff does not, however, prescribe a specific form of cost allocation. Thus, the Commission directs MISO to submit a compliance filing within 30 days of this order that either offers additional support for its proposed energy-based cost allocation, or proposes a different form of cost allocation for the recovery of the costs associated with the Amended Escanaba SSR Agreement.

The Commission orders:

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

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[59] MISO Answer at 5.

[60] *See, e.g.*, Midcontinent Independent System Operator, Inc., FERC Electric Tariff, 15, METC Rate Formula Template, 4.0.0.

(B) The Amended Rate Schedule 43 relating to the allocation of costs of the Amended Escanaba SSR Agreement is conditionally accepted, subject to a compliance filing, as discussed in the body of this order.

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

By the Commission. Chairman Wellinghoff is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.