

June 14, 2015, in accordance with Section 38.2.7 of the MISO tariff. Escanaba requested that the subject units be permitted to shut down for a 36-month period commencing on June 15, 2012. In the months that followed, Escanaba worked with MISO to develop and execute the first System Support Resource (“SSR”) Agreement, which is the subject of these proceedings.

On October 5, 2012, MISO filed the SSR Agreement in Docket No. ER13-38 and filed a corresponding rate schedule for allocating the costs of the SSR Agreement in Docket No. ER13-37 (the MISO cost allocation schedule was designated “Rate Schedule No. 43”). MISO requested an effective date of June 15, 2012 for both the SSR Agreement as well as the cost allocation Rate Schedule No. 43.

II. MOTION FOR LEAVE TO ANSWER

Certain comments filed in response to the two MISO filings were characterized as protests. Accordingly, Escanaba moves for leave to file this answer. Generally, answers to protests are not permitted;² however, the Commission allows such answers when the answer provides useful and relevant information that will assist the Commission in the decision making process,³ clarifies the issues,⁴ assures a complete record in the proceeding,⁵ or permits the issues

² 18 C.F.R. § 385.213(a) (2012).

³ See, e.g., *Midwest Indep. Transmission System Operator, Inc.*, 131 FERC ¶ 61,285 (2010); *Southwest Power Pool, Inc.*, 131 FERC ¶ 61,252 at P 19 (2010), *reh’g denied* 137 FERC ¶ 61,075 (2011) (accepting answers that “provided information that assisted us in our decision-making process”); *Duke Energy Kentucky, Inc.*, 122 FERC ¶ 61,182 at P 25 (2008) (accepting answers that “provided information that assisted us in our decision-making process”); *Tallgrass Transmission, LLC, et al.*, 125 FERC ¶ 61,248 at P 26 (2008); *PJM Interconnection, L.L.C.*, 120 FERC ¶ 61,092 at P 9 (2007); *Midwest Indep. Transmission System Operator, Inc., and PJM Interconnection, L.L.C.*, 120 FERC ¶ 61,083 at P 23 (2007) (answer permitted when it provides information to assist the Commission in its decision-making process).

⁴ See, e.g., *Entergy Services Inc.*, 123 FERC ¶ 61,227 (2009).

⁵ See, e.g., *Pacific Interstate Transmission Co.*, 85 FERC ¶ 61,378 at p. 62,443 (1998), *reh’g denied*, 89 FERC ¶ 61,246 (1999); *Morgan Stanley Capital Group, Inc. v. New York Indep. System Operator, Inc.*, 93 FERC ¶ 61,017 at p. 61,036 (2000) (accepting an answer that was “helpful in the development of the record...”).

to be narrowed.⁶ The Commission should accept this answer because it will clarify the issues before the Commission, will narrow the scope of the issues in dispute, and will generally assist the Commission in the decision-making process.

III. ANSWER

A. Escanaba Should Be Compensated for Providing SSR Service Since June 15, 2012, Even if Cost Allocation Exclusively to the ATC Zone is Time-Limited

Escanaba supports MISO's filings and provides this answer to respond to the objections to MISO's requested June 15, 2012 effective date for the SSR Agreement. There are two questions presented in these two dockets: (1) whether MISO's SSR Agreement with Escanaba effective June 15, 2012 is just and reasonable; and (2) whether the costs of the SSR Agreement are appropriately allocated to ATC zone load-serving entities as of June 15, 2012. The first question must be answered in the affirmative.⁷ Under the MISO tariff, SSR service is a "contracted service"⁸ between only MISO and the owner of the unit, and the June 15, 2012 effective date for the SSR Agreement reflects the fact that Escanaba must be compensated from that point forward for the reliability service it provides. If the Commission finds that waiver of the prior notice rule is not justified as to the second question (allocation of the costs of the SSR Agreement to the ATC zone), the Commission could order MISO to develop a more equitable

⁶ See, e.g., *PJM Interconnection, LLC*, 84 FERC ¶ 61,224, at p. 62,078 (1998); *New Energy Ventures, Inc. v. Southern California Edison Co.*, 82 FERC ¶ 61,335 at p. 62,323, n.1 (1998).

⁷ Escanaba believes that there are no prior notice issues with the June 15, 2012 effective date for the SSR Agreement itself (as distinct from Rate Schedule No. 43), insofar as the SSR Agreement does not charge any entity with its costs. Rather, the SSR Agreement merely reflects MISO's procurement of SSR reliability service from Escanaba. If the Commission declines to grant waiver of the prior notice rule for Rate Schedule No. 43 as requested by MISO, an alternative cost allocation may be warranted for that prior period.

⁸ See Section 38.2.7(c) of the MISO Tariff ("SSR service is a contracted service between the Market Participant that owns or operates an SSR Unit and [MISO]").

cost allocation for the time period between the June 15, 2012 effective date of the SSR Agreement and the effective date for Rate Schedule No. 43.

Regardless of how the Commission treats Rate Schedule No. 43, Escanaba should be appropriately compensated for providing a critical reliability service to MISO, at MISO's request, and by maintaining its units beyond the notice period required by the MISO tariff. While Escanaba is sympathetic to the prior notice concerns voiced by some load-serving entities in the ATC zone to whom costs are allocated under Rate Schedule No. 43, there are strong countervailing concerns that justify the June 15, 2012 effective date for the SSR Agreement.

First, Escanaba submitted its Attachment Y notices because the City was losing money by continuing to operate the two steam turbines that are the subject of the SSR Agreement. As established in MISO's filing, the Escanaba units are dispatched too infrequently to recover their full fixed and variable costs of operation. Owners of generating facilities in MISO have full rights to retire or mothball their facilities as long as they comply with the requirements of the tariff and comply with the Attachment Y notice provisions. Escanaba satisfied those tariff requirements and was permitted to mothball the units on June 15, 2012 unless MISO determined they were needed for reliability. However, once MISO determines that a unit is needed for reliability, the MISO tariff requires the unit to maintain its availability in return for SSR compensation.

Second, the filed rate doctrine requires fully compensating Escanaba for its SSR service.⁹ As noted by MISO, Section 38.2.7 of the MISO Tariff provides that SSR Units are due

⁹ See *Michigan Public Power Agency v. Midwest Indep. Transmission System Operator, Inc.*, 118 FERC ¶ 61,083 at P 31 (2007) (stating that the filed rate doctrine generally “forbids a regulated entity to charge rates for its services other than those properly filed with the appropriate federal regulatory authority”), citing *Ark. La. Gas Co. v. Hall*, 453 U.S. 571, 577 (1981).

“equitable compensation.” Moreover, in approving the SSR program, the Commission clearly explained that that SSR Units should be “fully compensated” and that “nothing in the SSR program would require a generator to absorb any uncompensated going-forward costs.”¹⁰ In its recent order accepting amendments to the SSR provisions to the MISO tariff, the Commission re-affirmed the need to fully compensate units for SSR service.¹¹

Third, general equitable principles require compensating Escanaba for its service. As explained by MISO, Escanaba fully complied with the notice provisions of the tariff and has maintained its units since June 15, 2012, continuing to operate at a loss, at the request of MISO and under the full understanding it would be compensated for the service. There was an unfortunate delay in filing this agreement because the tariff in effect before the recent amendments did not set aside additional time for negotiating the SSR Agreement after the notice period expired. In addition, as MISO noted, it had never executed an SSR Agreement before and neither party understood the time it would take to formulate compensation and negotiate the agreement, insofar as there was no precedent. In other words, it would be fundamentally unfair to penalize Escanaba simply for being the first entity to be asked to provide SSR service. Further, it would be unfair and confiscatory not to allow MISO to honor its commitment to the City and reimburse it for the reliability service it provided during the period before the agreement was filed.

To the extent the Commission believes that waiver of the prior notice requirement is not warranted regarding charges to ATC zone load-serving entities, Escanaba suggests the notice

¹⁰ See *Midwest Indep. Transmission System Operator, Inc.*, 109 FERC ¶ 61,157 at P 293 (2004) (“Finally, we emphasize that all SSR units should be fully compensated for any costs incurred because of their extended service. For example, nothing in the SSR program would require a generator to absorb any uncompensated going-forward costs.”).

¹¹ *Midwest Indep. Transmission System Operator, Inc.*, 140 FERC ¶ 61,237 at PP 134-145 (2012).

issue is only an infirmity to the requested effective date for Rate Schedule No. 43, the cost allocation rate schedule in Docket No. ER13-37. It should not stand in the way of granting the June 15, 2012 effective date for the SSR Agreement itself in Docket No. ER13-38. While that solution raises a question about who pays the costs of Escanaba's SSR service from the June 15, 2012 effective date of the SSR Agreement to a later effective date for Rate Schedule No. 43, the Commission could require MISO on compliance to file an appropriate cost allocation proposal for that period.

B. Escanaba Agrees It Should Not Double-Recover

Wisconsin Public Service Company and Upper Peninsula Power Company ask for assurance that, if a June 15, 2012 effective date is granted, Escanaba will not double recover for both the SSR costs and its market activities after June 15, 2012. Escanaba agrees that implementing the June 15, 2012 effective date will require netting out any market revenues received since that date from any compensation under the SSR Agreement so that Escanaba does not double-recover. Indeed, such netting would be required by operation of the SSR Agreement, which requires the netting out of market revenues during the term of its SSR service, regardless of whether the units were dispatched for reliability or market economics.

IV. CONCLUSION

The City of Escanaba respectfully asks the Commission to find the SSR Agreement just and reasonable and grant an effective date of June 15, 2012.

Respectfully submitted,

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Dated: November 13, 2012
Washington, D.C.

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of November, 2012, I have caused a copy of the foregoing document to be served electronically on each person listed on the Secretary's official service list for the above-referenced proceeding.

/s/ Christopher R. Jones _____
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