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B. WPS and UPPCO

WPS and UPPCO, each a subsidiary of Integrys Energy Group, Inc., each moves to intervene in these proceedings. Both are engaged in the generation, distribution and sale of electricity to retail and wholesale customers. WPS provides this service in Eastern Wisconsin and in the Upper Peninsula of Michigan. UPPCO's service area is limited to the Upper Peninsula of Michigan. WPS and UPPCO are market participants in Midwest ISO and are customers and equity owners of American Transmission Company, LLC ("ATC"), which is a MISO Transmission Owner and a for-profit transmission company with transmission facilities located chiefly in Wisconsin and the Upper Peninsula of Michigan and also in a small part of Illinois. Because WPS and UPPCO are located within ATC and will be subject to the charges that are the subject of the SSR Agreement filed by MISO in this docket, WPS and UPPCO have a unique interest in the outcome of these proceedings that cannot adequately be represented by any other participant in these proceedings. Their motion to intervene should be granted and WPS and UPPCO so move.

II. BACKGROUND

Attachment Y to the MISO Tariff gives MISO the authority to negotiate with a Market Participant when the Market Participant proposes to mothball a Generation Resource and MISO determines that the facility is needed to maintain system reliability. As described in MISO's October 5, 2012 filing, under Attachment Y, the Market Participant must notify MISO at least 26 weeks in advance of its intention to mothball or disconnect a generator. MISO then determines if the generator should be designated as a SSR Unit. If MISO designates the generator as a SSR Unit, the Market Participant is eligible to receive payments on a going-forward basis, for resource adequacy and net revenues from energy market transactions. In the ATC transmission pricing zone, costs identified in the SSR Agreement and paid to the Market Participant are assigned to and recovered from Load Serving Entities ("LSEs") on a *pro rata* basis.

According to MISO, on December 19, 2011, Escanaba submitted its Attachment Y form seeking to mothball Escanaba's Generation Resource (specifically, Units 1 and 2) for the period June 15, 2012 through June 14, 2015 so that the facility can be converted from a coal-fired facility to a biomass-fueled generator. On May 25, 2012 MISO responded to Escanaba with the conclusion that mothballing as proposed by Escanaba would result in violations of applicable reliability standards. According to MISO, certain already-planned transmission system upgrades would alleviate the reliability concerns but those upgrades are not expected to be in service until December 2016. MISO then commenced negotiations of the SSR Agreement, which was filed with the Commission on October 5, 2012, with a proposed June 15, 2012 effective date, making Escanaba eligible for SSR payments for nearly 4 months without any LSE even knowing that it would be subject to an allocable share of these costs.

Escanaba, like WPS/UPPCO, is located in ATC. Both WPS and UPPCO will be assigned a *pro rata* share of the costs under new Rate Schedule 43, filed on October 5, 2012, by MISO in Docket No. ER12-37-000. Thus, the terms and conditions of the SSR Agreement, as well as the payment amounts, are of great concern to WPS/UPPCO.

In its most recent order on MISO's SSR scheme, the Commission required MISO to submit with each SSR Agreement a description of the alternatives considered, the earliest termination date of the SSR Agreement, as well as how MISO will ensure grid reliability once the unit retires.¹ With respect to a description of the alternatives considered, MISO must show that the SSR arrangement is the "last resort measure."²

The SSR Agreement deviates from the *pro forma* agreement in a number of respects. The Escanaba SSR Agreement contains: (1) an assignment provision that recognizes that Escanaba has entered into an agreement with a third party to sell the facility and the third party will take, by assignment, the SSR Agreement, releasing Escanaba from all liability that may arise under the Agreement; (2) a termination provision which allows MISO to terminate the SSR Agreement on notice to Escanaba when the SSR Agreement is no longer necessary to maintain system reliability; (3) language that requires that the facility meet capacity obligations specified in Module E-1, which became effective on October 1, 2012; (4) certain operations-related provisions to deal with generator outage procedures; (5) provisions that provide for payment for "unanticipated repairs"; (6) changes to reflect current MISO settlement provisions; and (7) a direct reference to the applicability of Rate Schedule 43 as the source for revenues under the Agreement. MISO must comply with its Tariff in executing and implementing any SSR

¹ *Midwest Independent Transmission System Operator, Inc.*, 140 FERC ¶ 61,237 (2012) ("September 21 Order").

² September 21 Order at P.138.

Agreement. MISO has failed to follow its Tariff in a number of respects. As will be shown below, without modification, the SSR Agreement is unjust and unreasonable.

III. PROTEST

The SSR Agreement is unjust and unreasonable and the Commission must require MISO to modify it in a number of respects. Importantly, MISO has not supported that it explored all options and that the SSR classification is a “last resort measure”. In addition, provisions respecting unanticipated repairs must be modified to eliminate any possibility that Escanaba, or its assignee, could receive compensation for repairs as unexpected repairs when the expenses are or should have been properly included in the expenses that are expressly identified in the Agreement or subject to recovery from insurance proceeds. Finally, waiver of the 60 day notice period should be denied, and if not denied, MISO must confirm that Escanaba will not be compensated both for participating in the MISO Market as a Generation Resource and as an SSR Unit. MISO should be directed to comply with the Commission’s filing requirements in the future.

A. MISO has not Shown that Classification of Escanaba’s Generation Resource as an SSR Unit was a “Last Resort Measure”

MISO has not shown that classification of Escanaba’s Generation Resource as an SSR Unit was a “last resort measure” as required by the Commission. MISO should be directed to provide further support for its conclusion that declaration of Escanaba as an SSR Unit is necessary.

Exhibit C to the October 5 filing contains MISO’s 5 page “Report of Need and Alternatives” included purportedly as sufficient support for MISO’s conclusion that Escanaba’s facility is properly considered an SSR Unit. In its Report, MISO suggests that MISO’s analysis

shows that “a single initiating event could result in an uncontrolled loss of load in the area.”³ MISO then makes an unsupported statement that it considered “all available alternatives” and determined that an SSR Agreement was the only viable one. MISO concludes in the Report (at 4) that “no transmission switching options” are available to relieve MISO’s reliability concerns. MISO asserts that no alternative generation is available and no generation in the interconnection queue is available that could relieve the issue.

While MISO was supposed to but has not yet engaged stakeholders in the discussion of possible alternatives, WPS/UPPCo are not sure that an annual SSR Agreement is the only viable alternative to ensure reliability in the area. For example, WPS/UPPCO understands that there may be a reliability issue under ATC’s implementation of Category C5 contingencies under NERC planning Standard TPL-003. Category C5 contingencies consider the forced outage of any two circuits of a multiple circuit tower line. WPS/UPPCO also understands that ATC considers Category C5 contingencies concurrent with the planned maintenance outage of any other bulk electric system equipment.⁴ A notable component of the NERC category C5 contingency analysis is that the planned loss of demand or curtailed firm transfers is an acceptable response to a system limitation.⁵ MISO has failed to describe whether or not it considered demand reduction as an alternative to the SSR agreement and if it did, the reasoning for its dismissal.

Furthermore, the contingencies considered under requirement R1.3.12 of NERC’s planning standard addressing single contingencies, known as Category B contingencies, also consider the planned maintenance outage of a transmission facility followed by the forced outage

³ MISO Report at 1.

⁴ Reference filing letter page 3 of 14, “Until alternative solutions are completed, however, Generation Resources will be required for system reliability support during periods of maintenance of transmission facilities in the area.”

⁵ Reference Exhibit C, page 3 of 5, NERC TPL003-0a Table I.

of a second transmission facility. It would appear that by managing maintenance outages on the ATC system, the Escanaba facilities might not be needed as SSR Units at all, or if needed, would be needed far less than 8,760 hours upon which the annual revenue requirement of the SSR payment is based. With respect to generation, it is not clear what generators MISO determined were unable to assist in reliability measures. Finally, MISO's determination that under "some contingencies" and "certain conditions" without this 25 MW generating facility on-line, load reduction could be as high as 102 MW should be further supported. In short, MISO has not shown that declaration of the Escanaba facilities as SSR Units is a last resort measure. It is entirely possible that more effective and economical alternatives are available to mitigate the risk that a forced outage occurs concurrently during a maintenance outage.⁶

B. The SSR Agreement Must be Modified to Limit the Recovery for Unexpected Repairs

Section 9G of the SSR Agreement describes a mechanism for recovery by the SSR Unit for costs that are "unanticipated" and for which compensation is not provided for in the rates included in the Agreement. Under Section 9G, Escanaba or its assignee must notify MISO before incurring the cost and MISO determines whether to terminate the Agreement or fund the repairs. MISO should be ordered to include language in the SSR Agreement that makes it clear that a cost is not "unanticipated" and eligible for recovery if insurance proceeds are available to fund the repair. In addition, in order to ensure that there is no incentive to delay ordinary maintenance for which it is receiving a fixed payment in order to recover a different cost as an "unanticipated" cost, the Commission should order MISO to include specific language that recovery under Section 9G will not be available if the Participant did not properly maintain its

⁶ Options include demand response, only making the Escanaba units available during the transmission maintenance periods, temporary generation, and maintenance procedures which allow quick restoration of the line out for maintenance.

facility and the unanticipated cost could have been avoided by the exercise of proper maintenance or operating activity.

Section 9G should be amended as indicated above because there should be no incentive for the SSR Unit to maximize its revenues at the expense of LSEs in the ATC zone. If insurance coverage is available for the repair, the Participant should seek coverage for the repair, not just assume that the LSEs in the zone will pay. Similarly, LSEs should not be forced to bear the costs of repairs that, while they may be unexpected to MISO based on the usual maintenance expenses reviewed by MISO, could be expected based on the actual actions or inactions of the Participant at or prior to the need to incur the charge.

C. Waiver of the 60-Day Notice Period Should be Denied Unless MISO Provides Additional Cost Support

MISO seeks waiver of the 60 day notice period in order for the SSR Agreement, filed October 5, 2012, to be accepted effect June 15, 2012. In the Commission's *Prior Notice Policy Statement*,⁷ the Commission requires that in order to obtain waiver, MISO must show extraordinary circumstances support the request. MISO did not attempt to make such a showing; instead arguing that "very good cause" exists. MISO offers scant support for failing to file the SSR Agreement until four months after the June 15, 2012 "effective date" of the service. This June 15, 2012 date was identified in Escanaba's December 2011 notification to MISO that it intended to mothball on that date. MISO notified Escanaba on May 2012 that the generator was needed for reliability. It then takes MISO nearly four more months to file the SSR Agreement.

MISO's only explanation for its delay in filing the SSR Agreement is a stated need to consult with the Independent Market Monitor ("IMM") and that it entered into good faith negotiations with Escanaba over a rate to be charged. These reasons are insufficient to explain

⁷ *Prior Notice Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 (1993).

such significant delays in putting the SSR arrangements in place. Without further support of waiver, including assurances that Escanaba will not double recover for both the SSR costs and its market activities, waiver should be denied. In any event, whether waiver is granted or denied in this case, MISO should be directed to more timely file agreements and to consult immediately with Market Participants regarding alternatives as it is required to do under its Tariff.

WPS/UPPCO are harmed by this delay in a number of ways. First, WPS/UPPCO were not aware that they would be asked to pay for charges arising back to June 15, 2012. This lack of notice is one of the reasons the Commission issued its *Prior Notice Policy Statement*. Second, WPS/UPPCO have not been given any opportunity: (1) to provide feedback and stakeholder input on the declaration that the Escanaba generators are SSR Units; or (2) to determine or explore whether there are any viable alternatives or limitations that should be put in place. According to MISO, this SSR service has already been provided for four months. In fact, MISO has yet to seek any feedback from stakeholders as to alternatives and has not provided any additional information with respect to possible alternatives. WPS/UPPCO are going to be charged under proposed Rate Schedule 43 for this SSR Agreement and *must* be assured that Escanaba is not receiving SSR payments from LSEs in ATC, including WPS and UPPCO, and receiving make whole payments from MISO during the June – October 2012 period. Under the *Prior Notice Policy Statement*, MISO has not met the standard for waiver of the 60 day filing requirement.

IV. CONCLUSION

MISO has not shown that the SSA Agreement is just and reasonable. Based on the information submitted, MISO has not shown that the SSA arrangement with Escanaba is a “last resort measure.” By failing to engage stakeholders, even after filing the SSA Agreement, MISO

- 10 -

cannot receive feedback or information on other alternatives. WPS/UPPCO have identified a few possible alternatives here, showing that MISO did not, as it states, “consider all alternatives.” In addition, certain provisions governing, for example, recovery of unexpected repairs, must be modified to remove any incentive to recover more than the going-forward costs of operation as negotiated in the SSR Agreement. Finally, MISO has not made the requisite showing to support waiver of the 60-day filing requirement. MISO waited from May 2012 until October 5, 2012 to file what it determined to be an SSR arrangement with a generator. The reasons given do not support a nearly five month delay, especially when MISO has not ensured Market Participants that Escanaba will not double recover for this period – as a Generation Resource participating in the MISO Market and as a SSR Unit. In any event MISO must be ordered by the Commission to more timely file SSR Agreements.

WHEREFORE, for the foregoing reasons, WPS and UPPCO respectfully request that their Motions to Intervene be granted and their Protest be considered by the Commission in this proceeding.

Respectfully submitted,

/s/Elizabeth W. Whittle

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Dated: October 26, 2012

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Motion to Intervene and Protest via e-mail on each person listed on the Commission's official service list.

Dated in Washington, DC this 26th day of October, 2012.

/s/Elizabeth Whittle
Elizabeth W. Whittle

Document Content(s)

MTI and Protest ER13-38-000.PDF.....1-11