

140 FERC ¶ 61,237  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony T. Clark.

Midwest Independent Transmission  
System Operator, Inc.

Docket No. ER12-2302-000

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS AND  
REQUIRING COMPLIANCE FILINGS

(Issued September 21, 2012)

1. On July 25, 2012, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> Midwest Independent Transmission System Operator, Inc. (MISO) submitted proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff)<sup>2</sup> regarding the treatment of System Support Resources (SSR)<sup>3</sup> to reflect current system reliability, regulatory, and economic conditions (July 25 Filing). In this order, we conditionally accept MISO's proposed Tariff revisions effective September 24, 2012, subject to compliance filings due within 90 and 180 days of the date of this order, as discussed below.

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<sup>1</sup> 16 U.S.C. § 824d (2006).

<sup>2</sup> MISO, FERC Electric Tariff.

<sup>3</sup> The MISO Tariff defines SSRs as "Generation Resources or Synchronous Condensator 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 [s]ection 38.2.7 of th[e] Tariff." *Id.* Fourth Revised Vol. No. 1, First Revised Sheet No. 288, § 1.643.

## I. Background

### A. TEMT II Orders

2. On March 31, 2004, MISO submitted a filing to, among other things, address the retirement and suspension of generation resources and SCUs. Under MISO's proposal, market participants that have definitely 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 MISO 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, MISO and the market participant shall enter into an agreement (SSR Agreement), as provided in Attachment Y-1 (Standard Form SSR Agreement) of the MISO Tariff, to ensure that the resource continues to operate, as needed.<sup>4</sup>

3. On August 6, 2004, the Commission conditionally accepted MISO's proposed Tariff revisions regarding the retirement or suspension of generation resources and SCUs, including provisions regarding the designation and treatment of SSRs.<sup>5</sup> The Commission determined, among other things, that the proposed SSR provisions were "a reasonable backstop measure to assure reliability in the markets to be operated by [MISO]" and that the "SSR program is a prudent measure for protecting reliability."<sup>6</sup> With regard to MISO's negotiated approach to determining SSR costs, the Commission found that because the Tariff contains no rate mechanism, MISO must file under section 205 of the FPA for cost recovery at the time it seeks to charge customers for SSR costs.<sup>7</sup>

4. On November 8, 2004, the Commission denied requests for rehearing regarding MISO's SSR proposal, reiterating that it "approved the SSR program as a back-stop measure only and therefore expect[ed] the contracting for SSRs to be limited and of short duration."<sup>8</sup> Among other things, the Commission required MISO to "provide a report as

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<sup>4</sup> MISO March 31, 2004 Filing, Docket No. ER04-691-000.

<sup>5</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163, at P 368 (TEMT II Order), *reh'g denied*, 109 FERC ¶ 61,157 (2004) (TEMT II Rehearing Order) (together, TEMT II Orders).

<sup>6</sup> TEMT II Order, 108 FERC ¶ 61,163 at PP 370, 372.

<sup>7</sup> *Id.* P 372.

<sup>8</sup> TEMT II Rehearing Order, 109 FERC ¶ 61,157 at P 288.

part of its section 205 filing for an SSR contract that details the alternatives [MISO] evaluated, the estimated earliest termination date for the SSR, and how it will manage reliability once the SSR contract is terminated and the unit is retired.”<sup>9</sup> The Commission emphasized that “all SSR units should be fully compensated for any costs incurred because of their extended service.”<sup>10</sup>

## **B. July 25 Filing**

5. In its July 25 Filing, MISO explains that, since Attachments Y and Y-1 were accepted eight years ago, MISO has never needed to enter into an SSR Agreement. However, MISO believes that the SSR Tariff provisions will finally be implemented due to changing economic and regulatory conditions, including Environmental Protection Agency (EPA) regulations and renewable portfolio standards. As such, MISO proposes “enhancements and clarifications” to Tariff provisions related to SSRs and other resources that have decided to retire or suspend operations.<sup>11</sup> After many individual discussions and meetings with stakeholders, MISO proposes to revise the treatment of resources that submit Attachment Y Notices, including to clarify the resources that should file Attachment Y Notices; amend its disclosure practices; address the termination, retention, and transfer of interconnection rights; and allow certain resources to modify their Attachment Y Notices. MISO proposes Tariff revisions to allow a market participant to submit a notice (Attachment Y-2 Notice), pursuant to Attachment Y-2 (Request for Non-Binding Study Regarding Potential SSR Status) of the Tariff, to request an informational study (Attachment Y-2 Study) regarding whether a resource may qualify as an SSR without committing to retire or suspend the resource. MISO also proposes to change the terms and conditions for SSR Agreements and to modify the compensation of SSRs, as well as the allocation of the costs to compensate SSRs.

## **II. Notice of Filing and Responsive Pleadings**

6. Notice of MISO’s July 25 Filing was published in the *Federal Register*, 77 Fed. Reg. 46,430 (2012), with interventions and comments due on or before August 15, 2012. Motions to intervene were filed by ALLETE, Inc.; American Municipal Power, Inc.; Calpine Corporation; Coalition of Midwest Transmission Customers; Consumers Energy Company (Consumers); DC Energy Midwest, LLC; Detroit Edison Company (Detroit Edison); Exelon Corporation; Hoosier Energy Rural Electric Cooperative, Inc. and Southern Illinois Power Cooperative; and Xcel Energy Services Inc. Motions to

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.* P 293.

<sup>11</sup> MISO July 25 Filing, Transmittal Letter at 2-3.

intervene and comments and/or protests were submitted by Alliant Energy Corporate Services, Inc. (Alliant); Ameren Services Company on behalf of Ameren Energy Marketing Company, Ameren Illinois Company, and Union Electric Company (collectively, Ameren); Clean Wisconsin, Earthjustice, Environmental Law and Policy Center, Fresh Energy, Great Plains Institute, Natural Resources Defense Council, Sierra Club, Sustainable FERC Project, and Union of Concerned Scientists (collectively, Public Interest Organizations); Dynegy Midwest Generation, LLC (Dynegy); Michigan Public Power Agency and Michigan South Central Power Agency (jointly, Michigan Agencies); MidAmerican Energy Company (MidAmerican); and Wisconsin Electric Power Company (Wisconsin Electric). A notice of intervention and comments was submitted by Illinois Commerce Commission (Illinois Commission). A protest was submitted by Consumers-Detroit Edison. MISO filed an answer to the comments and protests. Consumers-Detroit Edison filed an answer to MISO's answer.

### **III. Discussion**

#### **A. Procedural Matters**

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest and an answer to an answer unless otherwise ordered by the decisional authority. We will accept the answers filed by MISO and Consumers-Detroit because they have provided information that assisted us in our decision-making process.

#### **B. Substantive Matters**

9. We will conditionally accept MISO's proposed revisions to its SSR program, subject to two compliance filings, due within 90 and 180 days of the date of this order, as discussed below. As an initial matter, we note that in the TEMT II Order accepting the SSR program, the Commission found that "the SSR program is a reasonable backstop measure" that would "impede competitive exit for a limited period when exit would jeopardize reliability."<sup>12</sup> In the TEMT II Rehearing Order, the Commission characterized the SSR programs as "a limited, last-resort measure" that would interfere with market participants' decisions to retire or suspend a resource "only when those decisions create a short-term reliability problem."<sup>13</sup> The Commission further explained that "the SSR

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<sup>12</sup> TEMT II Order, 108 FERC ¶ 61,163 at P 370.

<sup>13</sup> TEMT II Rehearing Order, 109 FERC ¶ 61,157 at P 291.

program is designed only to meet a short-term reliability need that would be precipitated by a generator retirement” and that the Commission “. . . approved the SSR program as a back-stop measure only and therefore expect the contracting for SSRs to be limited and of short duration.”<sup>14</sup>

10. We continue to expect that MISO will use SSR Agreements only as a last-resort measure to meet short-term reliability needs precipitated by the retirement or suspension of a resource and will ensure that SSR Agreements have a limited and short duration. To this end, several of the compliance requirements described below – including to ensure that MISO fully considers SSR alternatives and limits the term of SSR Agreements – should provide further assurance that MISO’s SSR program will function in this limited manner. Moreover, we reiterate that all SSR Agreements must be filed with the Commission for review, pursuant to section 205 of the FPA, and that MISO is required to provide a report, as part of those filings, that “details the alternatives [MISO] evaluated, the estimated earliest termination date for the SSR, and how it will manage reliability once the SSR contract is terminated and the unit is retired.”<sup>15</sup>

**1. Attachment Y Notices to Suspend or Retire Resources**

**a. Applicability of Attachment Y Notices**

11. Under existing section 38.2.7 of the MISO Tariff, a market participant is required to submit an Attachment Y Notice if it plans to: (1) decommission and retire a resource; (2) suspend the operation of a resource and place it into extended reserve shutdown for longer than two months; or (3) disconnect a resource from the MISO transmission system for longer than two months.<sup>16</sup> Existing section 38.2.7 also provides that MISO’s SSR provisions “do not apply to Generation Resources and SCUs located outside the Transmission Provider Region.”<sup>17</sup>

**i. July 25 Filing**

12. MISO proposes several revisions to the SSR-related Tariff provisions to clarify the applicability of Attachment Y, including to differentiate between plans to retire and plans

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<sup>14</sup> *Id.* P 288.

<sup>15</sup> *Id.*

<sup>16</sup> MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet No. 638.

<sup>17</sup> *Id.* Original Sheet No. 637.

to suspend resources.<sup>18</sup> According to MISO, due to potential confusion regarding the use of undefined terms, it is proposing to clarify throughout the Tariff that an SSR Agreement will be appropriate in two different situations involving the non-operation of a generator for more than two months: (1) the decision to retire facilities; or (2) the decision to suspend the operation of facilities. MISO proposes to define the terms “Retire”<sup>19</sup> and “Suspend”<sup>20</sup> and to explain throughout section 38.2.7 and related attachments the consequences of making these different types of decisions regarding a resource. MISO also proposes Tariff revisions to clarify when a resource owner need not submit an Attachment Y Notice, including resources that: (1) are unavailable due to a Generator Planned Outage; (2) have a forced outage or forced derate status; (3) are behind-the-meter generation resources; or (4) are identified as needed as blackstart units.<sup>21</sup> MISO states that its proposed Tariff revisions clarify that the treatment of these resources are addressed under the existing Tariff or MISO’s Business Practices Manuals, rather than the Tariff’s SSR provisions.<sup>22</sup>

13. MISO also proposes to modify section 38.2.7 in several places to clarify that “all or a portion” of a facility could be impacted by the SSR provisions. According to MISO, this improvement will provide market participants with additional flexibility to retire or suspend only a portion, rather than the entirety, of a resource’s capacity.<sup>23</sup>

14. MISO proposes revisions in section 38.2.7.a regarding the treatment of resources that are not directly interconnected to MISO:

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<sup>18</sup> MISO July 25 Filing, Transmittal Letter at 4.

<sup>19</sup> MISO proposes to define “Retire” as “[t]he permanent cessation of operation of a Generation Resource or SCU after a specified date that is provided to the Transmission Provider consistent with the requirements in [s]ection 38.2.7 and Attachment X.” MISO, FERC Electric Tariff, [1.584a, Retire, 0.0.0](#).

<sup>20</sup> MISO proposes to define “Suspend” as “[t]he temporary cessation of operation of a Generation Resource or an SCU for two (2) months or more commencing on a specified date that is provided to the Transmission Provider consistent with the requirements in [s]ection 38.2.7 and Attachment X.” *Id.* [1.634a, Suspend, 0.0.0](#).

<sup>21</sup> MISO July 25 Filing, Transmittal Letter at 6-9. MISO also proposes to clarify that its SSR provisions do not modify MISO’s obligations regarding the identification of blackstart units. *Id.* at 8.

<sup>22</sup> *Id.* Webb Test. at 9.

<sup>23</sup> *Id.* Transmittal Letter at 6.

Market Participants that own or operate Generation Resource or SCUs that are not directly interconnected to the Transmission System shall notify the Transmission Provider in accordance with Section 38.2.7(a) if the Market Participant plans to Retire or Suspend such facilities. The Transmission Provider shall coordinate with the entity to which the Generation Resources or SCU is directly connected to determine whether the Generation Resources or SCU is necessary for reliability of the Transmission System.<sup>[24]</sup>

MISO proposes to remove language from section 38.2.7 providing that MISO's SSR provisions do not apply to external resources.<sup>25</sup>

## ii. Comments

15. MidAmerican requests that MISO clarify the proposed exceptions to the requirement that resources submit Attachment Y Notices because sections 38.2.7 and 38.2.7.a do not describe these exceptions consistently.<sup>26</sup> According to MidAmerican, section 38.2.7 would require "any Market Participant planning to Retire or Suspend . . . for reasons other than a Generator Planned Outage" to submit an Attachment Y Notice, whereas section 38.2.7.a identifies at least three conditions, in addition to a Generator Planned Outage, in which a resource owner need not submit an Attachment Y Notice.

16. Dynegy believes that the Commission should accept MISO's proposed clarification of section 38.2.7 to allow a market participant the flexibility to reduce a specified portion of the capacity of such facilities, rather than require the retirement or suspension of operation of an entire facility. Dynegy also believes that the Commission should accept MISO's proposed clarification of the conflicts within the current Tariff provisions associated with MISO's Generator Planned Outage procedures.<sup>27</sup>

## iii. Commission Determination

17. MISO has not explained its proposed Tariff revisions in section 38.2.7.a to insert language discussing the treatment of resources that are not directly interconnected to

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<sup>24</sup> MISO, FERC Electric Tariff, [38.2.7, System Support Resources, 2.0.0](#), § 38.2.7.a.

<sup>25</sup> *Id.* § 38.2.7.

<sup>26</sup> MidAmerican recommends that MISO delete the second paragraph of section 38.2.7. MidAmerican Comments at 3 n.2.

<sup>27</sup> Dynegy Comments at 7.

MISO's transmission system or to remove language in section 38.2.7 providing that its SSR provisions do not apply to external entities. Among other things, MISO has not identified the resources that would be considered to be "not directly interconnected to the Transmission System,"<sup>28</sup> including whether these resources could also be considered "SCUs" or "Generation Resources," which are used throughout the proposal and already encompass certain "External Resources" and "Pseudo-tied" generators.<sup>29</sup> MISO has not described its process for coordinating with the entity to which the resource is interconnected (e.g., to complete the Attachment Y Study or to identify SSR alternatives). In the event that the resource is necessary for the reliability of MISO's transmission system, MISO has not addressed how it will ensure that the resource continues to operate (e.g., whether these resources must enter into SSR Agreements) nor how any costs associated with the resource's continued operation will be allocated. We will conditionally accept MISO's proposed clarifications to sections 38.2.7 and 38.2.7.a, subject to MISO submitting, in the compliance filing due within 90 days of the date of this order: (1) an explanation of how its Attachment Y process will apply to resources that are not directly interconnected to the MISO transmission system, including to address the issues identified above; (2) any Tariff revisions necessary to reflect its explanation regarding resources that are not directly interconnected; and (3) Tariff revisions to ensure consistency in the description of resources that need not file an Attachment Y Notice, as requested by MidAmerican.

**b. Attachment Y Studies and SSR Alternatives**

18. The existing MISO Tariff requires resource owners to provide at least 26 weeks' notice of plans to retire or suspend a resource by submitting an Attachment Y Notice. Attachment Y currently does not specify a deadline for a resource owner to provide MISO with all of the information that is necessary to complete an Attachment Y Study. It also does not specify a timeline for what will occur during the 26-week notice period, including the amount of time that MISO allows itself to complete the Attachment Y Study.<sup>30</sup>

19. With regard to the disclosure of Attachment Y Notices and Studies, section 38.2.7 of the existing MISO Tariff provides that MISO will "treat Attachment Y as Confidential Information" but will disclose the existence of an executed SSR Agreement.<sup>31</sup> The

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<sup>28</sup> MISO, FERC Electric Tariff, [38.2.7, System Support Resources, 2.0.0](#), § 38.2.7.a.

<sup>29</sup> See, e.g., *id.* Fourth Revised Vol. No. 1, First Revised Sheet No. 163, § 1.267.

<sup>30</sup> *Id.*, [38.2.7, System Support Resources, 1.0.0](#).

<sup>31</sup> *Id.* § 38.2.7.a.



existing language of Attachment Y provides that an Attachment Y Notice “is Confidential Information under the Transmission Provider’s Tariff and will not be made public by the Transmission Provider *unless* the Generation Resource/SCU becomes subject to an SSR Agreement.”<sup>32</sup>

20. The existing Tariff provides that, before entering into an SSR Agreement, MISO will assess feasible alternatives to SSR Agreements, including, as reasonable for each type of reliability concern identified: “(i) redispatch/reconfiguration through operator instruction; (ii) remedial action plans; (iii) special protection schemes initiated on Generation Resource trips or unplanned Transmission Outages; and (iv) demand response alternatives.”<sup>33</sup>

**i. July 25 Filing**

21. MISO states that under the existing Tariff, it is difficult for MISO to plan in an open and transparent manner for possible remedies to reliability issues necessitating an SSR Agreement because MISO stakeholders are unaware of Attachment Y Notices and Study results until after the SSR Agreement is executed. MISO also argues that if a resource retirement or suspension does not result in the need for an SSR Agreement, then there is never an opportunity for MISO to provide information to the broader stakeholder community of the resource’s intentions and the potential resulting impacts on market operations and planning.<sup>34</sup>

22. To address these issues, MISO proposes several changes to the timeline for completing and disclosing Attachment Y Studies. MISO proposes additional language to section 38.2.7.a to clarify that, within the overall 26-week notice period, MISO shall have up to 20 weeks to complete the Attachment Y Study and respond to the requesting market participant with the results of the study. MISO also proposes to require resource owners to provide MISO with the information that MISO needs to prepare an Attachment Y Study in a timely manner.<sup>35</sup> MISO states that, prior to disclosing the results of an Attachment Y Study to anyone, it will notify the resource owner that submitted the associated Attachment Y Notice that the study is complete. If the resource owner rescinds its Attachment Y Notice within five business days, then MISO will not disclose

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<sup>32</sup> *Id.* Fourth Revised Vol. No. 1, Original Sheet No. 3251 (emphasis added).

<sup>33</sup> *Id.* [38.2.7, System Support Resources, 1.0.0](#), § 38.2.7.b.

<sup>34</sup> MISO June 25 Filing, Webb Test. at 9-10.

<sup>35</sup> MISO, FERC Electric Tariff, [38.2.7, System Support Resources, 2.0.0](#), § 38.2.7.c.

the Attachment Y Notice or Study results to the resource owner or the public. If the resource owner does not rescind its Attachment Y Notice within five business days, then MISO proposes to post on its Open Access Same-Time Information System (OASIS): (1) that an Attachment Y Notice was submitted; and (2) whether the Attachment Y Study concluded that the resource was required for the reliability of the transmission system.<sup>36</sup> MISO states that the proposed Tariff changes will strike the proper balance between transparency and confidentiality concerns.<sup>37</sup>

23. In section 38.2.7.c, MISO proposes to revise its Tariff to provide that it will assess SSR alternatives “in an open and transparent planning process in accordance with the provisions of the Transmission Expansion Planning Protocol Attachment FF to the Tariff.”<sup>38</sup> In its list of SSR alternatives that MISO will consider, as appropriate for the type of reliability concern identified, MISO proposes to modify item (iv) so that it includes “committed demand response or Generator alternatives” and to insert an additional item (v) for “transmission expansions.”<sup>39</sup>

## ii. Comments and Protests

24. Public Interest Organizations express concern that MISO allows itself up to 20 weeks to perform the reliability assessment. Because the current Tariff requires a 26 week minimum notification, this could leave MISO about five weeks to solicit, evaluate, and implement solutions to the reliability issues, or, alternatively, to designate the unit as an SSR unit required for transmission system reliability. Public Interest Organizations also argue that under this timeline, other market participants will not have time to respond. Public Interest Organizations recommend that MISO should establish a series of deadlines and transparent stakeholder review points during the reliability assessment process. Further, Public Interest Organizations argue that the 26-week notification period is too short, and that a minimum notification period of at least one year would provide greater opportunity for MISO and other stakeholders to develop an expanded array of solutions while maintaining system reliability.<sup>40</sup>

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<sup>36</sup> *Id.* § 38.2.7.a.

<sup>37</sup> MISO June 25 Filing, Webb Test. at 11.

<sup>38</sup> MISO, FERC Electric Tariff, [38.2.7, System Support Resources, 2.0.0](#), § 38.2.7.c.

<sup>39</sup> *Id.*

<sup>40</sup> Public Interest Organizations Comments at 8-9.

25. Consumers-Detroit Edison disagree with MISO's proposed revisions to the confidentiality provisions related to the Attachment Y Studies. According to Consumers-Detroit Edison, currently the results of Attachment Y Studies are only made public in the event MISO determines that the retirement of the relevant resource would result in a reliability issue on the MISO system, thus requiring the execution of an SSR Agreement between MISO and the resource owner. They agree that this disclosure is appropriate because other MISO market participants will be directly impacted. However, they object to MISO's proposed disclosure of the result of an Attachment Y Study where MISO determines that there is no reliability impact on the MISO system resulting from the retirement of that resource, and thus there is no need for an SSR Agreement. Consumers-Detroit Edison maintain that there are a number of issues that may arise for the resource owner and other affected entities with respect to any unit retirement decision, including: (1) the potential economic impacts in the region where the generator is located; (2) the knowledge that MISO will publicize retirement decisions will make generation owners reluctant to make Attachment Y Study requests until the last minute; and (3) this delay in the Attachment Y Notices could ultimately lead to a longer SSR Agreement duration than would otherwise be necessary. Consumers-Detroit Edison further argue that given the sensitivity around generation retirement decisions, it is the resource owner, and not MISO, that should decide how and when to make any retirement notifications.<sup>41</sup>

26. Public Interest Organizations argue that more timely public release of Attachment Y Notices (e.g., immediately after MISO receives such notifications) would ensure that other MISO market participants receive timely information from MISO on which to react and will ensure a well-designed process that maintains a reliability electric system while retiring aging coal plants in an orderly fashion. Public Interest Organizations ask that MISO immediately disclose the notification to the public.<sup>42</sup>

27. Dynegy maintains that MISO's current proposal is not fully transparent as it only contemplates an OASIS posting after a response is provided by MISO to the market participant. According to Dynegy, the Commission should require MISO to promptly post all relevant information regarding an Attachment Y submittal on its OASIS within five business days of receipt of the submittal and to timely update the posting if and when new information becomes available.<sup>43</sup>

28. MidAmerican argues that MISO should clarify potentially conflicting Tariff provisions related to a definitive decision to retire or suspend a resource. MidAmerican

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<sup>41</sup> Consumers-Detroit Edison Protest at 13-14.

<sup>42</sup> Public Interest Organizations Comments at 4-9.

<sup>43</sup> Dynegy Comments at 5-6.

argues that, under section 38.2.7.a, a resource owner submitting an Attachment Y Notice must certify that it has made a “definitive decision” to retire or suspend a resource, yet the same section allows a resource owner to rescind its Attachment Y Notice prior to receiving the Attachment Y Study results. MidAmerican argues that “it is not clear how, prior to receiving its study results, the owner of a potential SSR can retain an apparently unlimited right to rescind a decision after attesting that the same decision is definitive.”<sup>44</sup>

29. MidAmerican maintains that MISO should clarify the provisions under which reliability studies will be posted. MidAmerican notes that proposed section 38.2.7.c implies that MISO will post all Attachment Y Study results, whereas proposed section 38.2.7.a contains various conditions under which the study results will not be posted (e.g., if a resource owner rescinds its decision to retire or suspend). MidAmerican states that MISO should clarify the potential conflict related to the posting of studies.<sup>45</sup>

30. Public Interest Organizations question how MISO will be able to perform accurate reliability assessments if more than one resource in a region has submitted Attachment Y and/or Y-2 Notices. If multiple resources are being evaluated for retirement or closure and different market participants own them, Public Interest Organizations question how MISO will be able to evaluate system conditions accurately and then provide analyses to the requesting entities and public while maintaining the confidentiality of pending reliability analyses. Public Interest Organizations argue that maintaining the confidentiality of these pending analyses, especially those for units that have formally notified MISO that they intend to retire or suspend under Attachment Y, could undermine the accuracy and validity of all of the study results.<sup>46</sup>

### iii. Answer

31. In response to the timeline concerns, MISO notes that the Tariff currently provides the longest notification period of any regional transmission organization or independent system operator. MISO believes that it would be unreasonable to require resource owners to know more than six months in advance what the appropriate economic decision for the future operation of the resource would be.<sup>47</sup>

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<sup>44</sup> MidAmerican Comments at 4.

<sup>45</sup> *Id.* at 6-7. MidAmerican suggests that MISO delete the sentence from section 38.2.7.c that appears merely to be a general statement subject to certain conditions in section 38.2.7.a. *Id.*

<sup>46</sup> Public Interest Organization Comments at 12.

<sup>47</sup> MISO Answer at 20.

32. MISO argues that market participants should not be able to withhold potentially market-influencing information, such as the results of an Attachment Y Study. MISO reiterates that it believes the proposed disclosure provisions are a reasonable compromise of diverse stakeholder views on the issue. MISO also states that it need not clarify the provisions in section 38.2.7.a regarding the posting of studies, because the general statement cited by MidAmerican is not in conflict with the further Tariff provisions.<sup>48</sup>

33. In response to MidAmerican's concerns regarding the rescission of Attachment Y Notices prior to receiving Attachment Y Study results, MISO explains that, according to market participants, market conditions are at times so volatile that an Attachment Y Notice to retire that appears conclusive at the time of submittal could change during the course of the MISO Attachment Y Study. MISO's primary concern in requiring a definitive decision in Attachment Y Notices is to minimize the impact that changes to those decisions have once the planning process for SSR alternatives commences. MISO argues that, given that the MISO planning process begins only after Attachment Y Study results are revealed to the customer, MISO is indifferent to rescission prior to that time, provided that all incurred study costs are recoverable. In order to clarify the perceived contradiction pointed out by MidAmerican, MISO agrees to clarify in the Tariff that the decision to retire must be definitive when submitting an Attachment Y Notice, and remain so, unless modified by rescission prior to receiving study results from MISO.<sup>49</sup>

#### iv. Commission Determination

34. We find Public Interest Organization's request that the 26-week notice period be lengthened to be beyond the scope of this proceeding. MISO has not proposed any changes to the notice period included in its Commission-approved Tariff, and the 26-week notice period is, therefore, not at issue here. However, we share Public Interest Organization's concern that MISO's proposal allows up to 20 weeks for MISO to perform the Attachment Y Study. Should MISO's analysis determine that a resource is needed for reliability purposes, it potentially leaves only five weeks before the conclusion of the 26-week notice period<sup>50</sup> for: (1) publicly disclosing Attachment Y Study results;

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<sup>48</sup> *Id.* at 12-13.

<sup>49</sup> *Id.* at 10.

<sup>50</sup> MISO proposes to give itself up to 20 weeks to respond to a resource owner that submitted an Attachment Y Notice that the Attachment Y Study results are completed. However, the resource owner then has up to five business days (approximately one week) to rescind its Attachment Y Notice to prevent disclosure of the Attachment Y Study results. Thus, if the resource owner does not rescind its Attachment Y Notice, a period of up to approximately 21 weeks will have elapsed prior to the public disclosure of

(continued...)

(2) identifying potential alternatives to signing an SSR Agreement through an open and transparent stakeholder process; and (3) if necessary, executing an SSR Agreement, including negotiating SSR compensation and determining the allocation of costs to load-serving entities, as discussed below. MISO has not shown that five weeks is sufficient time to accomplish these tasks. In addition, MISO has not addressed how its timeline may change in the event that a resource owner fails to provide information necessary to complete the Attachment Y Study in a timely manner.

35. We also find an inherent contradiction in the amount of time MISO is proposing for completing Attachment Y Studies (up to 20 weeks) and the amount of time proposed for informational Attachment Y-2 Studies (up to 75 days), as discussed below. MISO has not explained how the two types of studies differ or why Attachment Y Studies would take significantly longer to complete. MISO's proposal to use Attachment Y-2 Study results "[t]o the extent practicable" in preparing Attachment Y Studies also indicates that the two studies could be substantially similar.<sup>51</sup> We note that MISO proposes to use "reasonable efforts" to complete Attachment Y-2 Studies in only 60 days,<sup>52</sup> and under the Attachment Y-2 Study process proposed in section 38.2.7.n, MISO proposes to allow less than 20 weeks to complete both the Attachment Y-2 Study and the entire Attachment Y process.<sup>53</sup> MISO has not supported why Attachment Y Studies would take almost twice as long to complete than Attachment Y-2 Studies, nor why MISO will be able to complete Attachment Y Studies in less than 20 weeks under the Attachment Y-2 process proposed in section 38.2.7.n. To address our concerns regarding the timeline for the Attachment Y process, we will require MISO to submit, in the compliance filing due within 90 days of the date of this order, Tariff revisions to propose a complete timeline for the completion of each task in the Attachment Y process and an explanation of MISO's rationale for the time needed to complete each task.<sup>54</sup>

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Attachment Y Study results. MISO, FERC Electric Tariff, [38.2.7, System Support Resources, 2.0.0](#), § 38.2.7.a.

<sup>51</sup> *Id.* § 38.2.7.n. *See also* MISO July 25 Filing, Webb Test. at 16.

<sup>52</sup> MISO July 25 Filing, Transmittal Letter at 12.

<sup>53</sup> As explained below, MISO's proposed Attachment Y-2 process could leave as little as eight weeks to complete the entire Attachment Y process. *See infra* n.113. This eight-week period, combined with the 75-day (or approximately 11-week) period for completing the Attachment Y-2 Study, is less than 20 weeks.

<sup>54</sup> We note that, as part of this filing, MISO may submit proposed adjustments to its Attachment Y process and associated timelines, including the 26-week notice period.

36. MISO has proposed several Tariff revisions to explain its process for identifying SSR alternatives, including to ensure consideration of transmission, generation, and demand response alternatives, to apply its existing Attachment FF transmission planning process, and to collaborate with appropriate stakeholders.<sup>55</sup> However, MISO has not explained these Tariff revisions in detail, including how its existing planning process will ensure a thorough consideration of all types of SSR alternatives in an open and transparent manner. MISO also has not provided milestones for completing this process prior to entering into SSR Agreements, including how this process occurs within the framework of MISO's existing planning horizons. MISO has not supported its proposal in section 38.2.7.c to consider only "committed" demand response when evaluating SSR alternatives, nor has MISO defined the "Generator alternatives" that it will consider, including, for example, to ensure that this term encompasses distributed generation. The evaluation of alternatives to an SSR designation is an important step that deserves the full consideration of MISO and its stakeholders to ensure that SSR Agreements are used only as a "limited, last-resort measure," consistent with the TEMT II Rehearing Order.<sup>56</sup> We will require MISO to submit, in the compliance filing due within 90 days of the date of this order: (1) an explanation of its process for identifying SSR alternatives and its basis for selecting an SSR alternative among those identified;<sup>57</sup> (2) where an SSR alternative is not selected, an explanation of how it determined that an SSR is the last resort; (3) a proposal to complete this process prior to entering into SSR Agreements at the end of the 26-week notice period, including associated milestones; and (4) corresponding Tariff revisions, including to remove the term "committed" from section 38.2.7.c and to define the term "Generator alternatives."

37. With regard to the disclosure of Attachment Y Notices and Studies, we acknowledge that no brightline rule exists to determine the appropriate balance between ensuring transparency in the transmission planning process and ensuring that confidential information is not disclosed inappropriately. However, as the Commission stated in Order No. 890, proprietary generation or market information data that might harm a

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<sup>55</sup> MISO, FERC Electric Tariff, [38.2.7, System Support Resources, 2.0.0](#), § 38.2.7.c.

<sup>56</sup> TEMT II Rehearing Order, 109 FERC ¶ 61,157 at P 291.

<sup>57</sup> As discussed later in this order, we expect that this process will be consistent with that used by MISO in its Attachment FF planning process to evaluate and select alternatives to meet the identified needs of its system. *See, e.g.*, Attachment FF, sections I.A.5 & I.B.1.v.

competitive position should not be publicly disseminated.<sup>58</sup> In this instance, we will require MISO to submit, in the compliance filing due within 90 days of the date of this order, Tariff revisions to ensure that MISO will continue to treat Attachment Y Notices and Study results as confidential information in the event that an Attachment Y Study finds that a resource would not qualify as an SSR. We find that this approach will balance the need to inform the MISO stakeholder community when a resource qualifies as an SSR in order to permit the identification of SSR alternatives in an open and transparent manner, while allowing resource owners to retain the confidentiality of their business decisions to retire or suspend resources in the event that the resource does not qualify as an SSR. We find that MISO has not supported its claim that disclosing that a resource would *not* qualify as an SSR would aid resource siting decisions or the MISO transmission planning process, particularly given that the identification of SSR alternatives would be unnecessary. As Consumers-Detroit Edison explain, premature disclosure of a resource owner's retirement or suspension decisions may have unintended negative consequences, including delays in the Attachment Y process. For this reason, we also disagree with Public Interest Organizations and Dynegy that MISO should provide the disclosure of an Attachment Y Notice immediately after submission, because such early disclosure would occur before a resource is known to qualify as an SSR.

38. Further, because we are requiring MISO to revise its proposed Tariff language, we find that MidAmerican's request for clarification regarding the posting of Attachment Y Study results is rendered moot. We also find that it is reasonable for MISO to allow resource owners to alter their definitive decisions to retire or suspend a resource by rescinding their Attachment Y Notices prior to receiving Attachment Y Study results, as this will provide resource owners with the flexibility to reflect changes in their business decisions (e.g., due to regulatory changes) while MISO completes the Attachment Y Studies. However, we will require MISO to submit, in the compliance filing due within 90 days of the date of this order, Tariff revisions to provide that the decisions to retire or suspend operations must be definitive when submitting an Attachment Y Notice, unless modified by rescission prior to receiving study results, as MISO agrees to do in its answer.<sup>59</sup>

39. We share Public Interest Organizations' concerns regarding MISO's ability to simultaneously process multiple, potentially overlapping Attachment Y and/or Y-2

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<sup>58</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 312, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

<sup>59</sup> MISO Answer at 10.



Studies, particularly given the need to retain the confidentiality while conducting the studies. We will require MISO to submit, in the compliance filing due within 90 days of the date of this filing, an explanation of how it will conduct multiple and/or overlapping studies and, if needed, corresponding Tariff revisions.

**c. Interconnection Right Termination and Transfer**

**i. July 25 Filing**

40. MISO proposes that, except as provided in Attachment X or any applicable agreement for the interconnection of a generation resource or SCU, MISO will file with the Commission to terminate the interconnection rights of a generation resource or SCU held by an owner or operator that certifies by submitting an Attachment Y Notice that the owner or operator plans to retire the generation resource or SCU. MISO proposes that the termination of interconnection rights would become effective upon the later of the current termination date specified in an SSR Agreement, even if MISO gives prior notice of an earlier termination of an SSR Agreement, or the retire date certified in an application under Attachment Y.<sup>60</sup> MISO argues that these revisions will enforce the definitive nature of Attachment Y Notices to retire resources and allow MISO and its stakeholders to make more informed planning decisions. MISO adds that terminating interconnection rights for retiring resources will decrease artificial barriers that may restrict new entrants from seeking to use available transmission capacity.<sup>61</sup>

41. MISO also proposes that the owner or operator of a generation resource or SCU may retain its interconnection rights and continue to operate after the conclusion of an SSR Agreement or the retire date certified in its Attachment Y Notice if:

. . . the owner or operator of an SSR Unit planning to Retire a facility simultaneously submits with Attachment Y a request for interconnection pursuant to Attachment X of another facility or an increase in capacity of an existing facility at the identical point of interconnection, with a Commercial Operation Date within thirty-six (36) months of the Retire date of the existing Generation Resource or SCU, in which case the interconnection

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<sup>60</sup> MISO, FERC Electric Tariff, [38.2.7, System Support Resources, 2.0.0](#), § 38.2.7.i.

<sup>61</sup> MISO July 25 Filing, Transmittal Letter at 15 (citing Webb Test. at 22-23).

rights may be transferred to the new facility upon successful completion of the applicable interconnection procedures under Attachment X.<sup>62]</sup>

42. MISO argues that allowing resources to transfer interconnection rights to a new generator in this manner may facilitate the conversion of existing generators to alternative fuel sources.<sup>63</sup>

**ii. Comments and Protests**

43. Dynegy supports MISO's proposal to enforce the definitive nature of the Attachment Y Notices by allowing MISO to terminate a resource's interconnection rights if a resource owner that had planned to retire a facility fails to terminate operations as specified in an Attachment Y Notice or at the conclusion of an SSR Agreement. However, in order to ensure that such a requirement is applied consistently and in nondiscriminatory manner to all generation resources and SCUs, Dynegy believes that the Commission should *require* MISO to terminate the rights.<sup>64</sup>

44. According to Alliant, during the stakeholder process, it requested that MISO include new Tariff provisions that enable the retention of interconnection rights if a replacement generator is to be built at the site of the retiring generator. However, Alliant is concerned that limiting the retention period to 36 months after the retire date may not provide sufficient time to complete the removal of the retired unit and the construction of the replacement unit. Alliant submits that it is reasonable to allow the retention of interconnection rights for a longer period if the resource owner demonstrates that progress continues to be made on construction of the replacement unit.<sup>65</sup>

**iii. Answer**

45. MISO responds by stating that proposed section 38.2.7.i is consistent with the Large Generation Interconnection Agreement (GIA) provisions in the Tariff. MISO states that this provision equitably protects the rights of parties that would like to promptly use the interconnection rights held by an SSR but not utilized after a period of 36 months. MISO recognizes the balancing of benefits and potential adverse

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<sup>62</sup> MISO, FERC Electric Tariff, [38.2.7, System Support Resources, 2.0.0](#), § 38.2.7.i.

<sup>63</sup> MISO July 25 Filing, Webb Test. at 23.

<sup>64</sup> Dynegy Comments at 6-7.

<sup>65</sup> Alliant Comments at 6.

consequences associated with a more rapid termination of interconnection rights and believes that, on balance, the proposed language is just and reasonable.<sup>66</sup>

**iv. Commission Determination**

46. We accept the Tariff revisions providing that MISO shall file with the Commission to terminate the interconnection of a resource held by an owner or operator that certifies by submitting an Attachment Y Notice that the owner or operator plans to retire the resource upon the later of the current termination date specified in an SSR Agreement, even if MISO gives prior notice of an earlier termination of an SSR Agreement, or the retire date certified in the Attachment Y Notice. The requirement for MISO to terminate such interconnection service ensures the efficient use of interconnection service, since the interconnection service will no longer be used, and MISO's Filing to terminate is consistent with operational plans of the owner or operator of the resource that has already notified MISO that its resource will retire.<sup>67</sup>

47. We recognize the benefits to an owner or operator of a retiring resource of MISO's proposal to retain and transfer the retiring unit's interconnection service. We accept MISO's proposal permitting owners and operators of retiring facilities to retain and transfer interconnection service on the condition that MISO modify its proposal as further discussed below to better explain its proposal and to ensure that such proposal will be implemented in a just and reasonable and not unduly discriminatory manner. We require MISO to address these issues in a compliance filing due within 180 days of the date of this order.

48. At the outset, we note that MISO does not explain how its proposal is consistent with its Tariff. For example, MISO's *pro forma* GIA at Article 19 provides for an interconnection customer to reassign its GIA. However, the GIA itself, like the interconnection studies that precede its execution, considers the interconnection of a specific generator(s). MISO's Tariff does not explicitly address the reassignment of the interconnection service under a GIA, apart from the generators to which the GIA applies. Thus, MISO's proposal to transfer the GIA, apart from the generators to which the GIA applies, presents several questions as to how its proposed policy can be implemented.

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<sup>66</sup> MISO Answer at 19.

<sup>67</sup> Notwithstanding our acceptance of MISO's proposed termination of a retiring generator, we have questions regarding the process that MISO would use and rules that would apply to reinstating such retiring customer's interconnection if it returns to service. *Infra* P 64.

49. MISO does not indicate how it will evaluate a transfer of interconnection service nor does it describe the nature of interconnection service being transferred. Neither the Tariff revisions nor the testimony explain the meaning of “upon successful completion of the applicable interconnection procedures under Attachment X.”<sup>68</sup> For example, the revisions do not indicate what, if any, studies are required for the transfer of interconnection capability to the new generator; or whether the proposal would permit a new or expanding resource to receive the interconnection rights from a retiring resource where the retiring resource was not evaluated under the conditions that the new or expanded resource would use. The latter example could be presented in the case where an older thermal unit that is retiring may not have been studied off-peak but where the new or expanded unit may be operating off-peak.<sup>69</sup> Moreover, to the extent that further study was required to accommodate the transfer of the interconnection from an existing generator to a new generator (because, for example, the resource’s operating profiles and/or nameplate capacities are different), would such transfer amount to a material modification of the original interconnection service and thus be subject to study as a new interconnection request under Attachment X “Generator Interconnection Procedures?” Finally, during the time that the existing and retired generator retains but has not effectuated the transfer of interconnection capacity to the new generator, would such capacity be available for lower-queued interconnection customers wishing to take conditional interconnection service (until such time as the new generator becomes operational)?<sup>70</sup> Thus, MISO does not address whether there should be conditions for interconnection service to be transferred nor does MISO explain the nature of the interconnection service being transferred.<sup>71</sup>

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<sup>68</sup> MISO, FERC Electric Tariff, [38.2.7, System Support Resources, 2.0.0](#), § 38.2.7.i.

<sup>69</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,233, at P 298 (2012) (Queue Reform III), *reh’g denied*, 139 FERC ¶ 61,253, at P 144 (2012).

<sup>70</sup> Given the nature of our questions regarding how a transfer of interconnection capacity would work, we find it premature to address Alliant’s question regarding whether the existing generator should be able to retain interconnection capacity for a period longer than three years.

<sup>71</sup> As an example, MISO recently proposed, in Docket No. ER12-309-000, Net Zero Interconnection Service, which MISO stated was a form of Energy Resource Interconnection Service as that service is defined in section 3.2.1 of MISO’s Generator Interconnection Procedures in Attachment X of its Tariff. *See* Queue Reform III, 138 FERC ¶ 61,233.

50. MISO also does not address the potential competitive implications of its proposal in light of the recent issuance of a Commission order expressing concerns related to a similar proposal involving interconnection service.<sup>72</sup> In particular, we are concerned that MISO's present proposal creates opportunities for undue discrimination and preferential treatment by providing an owner of an existing generator the ability to grant access to this service to some customers and not to others. Once the owner or operator of the retiring generator makes the decision to transfer its interconnection service, apart from the generation unit that the interconnection service was awarded for, that transfer should occur in a manner that is just and reasonable and not unduly discriminatory or preferential.<sup>73</sup>

51. Moreover, we are concerned by the lack of transparency in MISO's proposal. Under MISO's proposal here, the owner or operator of the retiring unit submits the application for interconnection of the new unit, under Attachment X of the Tariff, at the same time that it submits the Attachment Y Notice of retirement of an existing generation resource or SCU. MISO's proposal does not provide a clear and consistent way in which generators seeking a transfer of interconnection service from a retiring generator may identify opportunities or how such a generator would be chosen for such service; and indeed the timing of the request for interconnection service under Attachment X suggests that there would likely be no such opportunity. In addition, MISO does not provide information as to the rates, terms, and conditions for the transfer of the interconnection service. As the Commission has stated before, the Commission has identified interconnection as an element of transmission service and, as a result, rates, terms and conditions of such service must be filed with the Commission under section 205 of the FPA.<sup>74</sup>

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<sup>72</sup> *Id.* PP 298-299. The proposal here and MISO's Net Zero Interconnection Service proposal are similar in that neither treatment, whether sharing interconnection service in Docket No. ER12-309-000, *et al.*, or transferring interconnection service in the present proposal, is contemplated in MISO's *pro forma* Tariff. *See also PJM Interconnection, L.L.C.*, 139 FERC ¶ 61,079, at P 53 (2012).

<sup>73</sup> Queue Reform III, 138 FERC ¶ 61,233 at P 300.

<sup>74</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008); 16 U.S.C. § 824d.

52. Given these concerns, we direct MISO to submit a compliance filing, within 180 days of the date of this order, revising its Tariff to implement additional procedures that ensure that the proposed transfer of interconnection service is offered on a fair, transparent, and nondiscriminatory basis and that comply with the filing requirements of section 205 of the FPA. We will leave it to MISO to develop an approach that is workable from its perspective and ensures that non-discriminatory open access principles are preserved; however, we expect that the revisions proposed in MISO's compliance filing will be informed by prior Commission efforts to promote open access and eliminate undue discrimination in other contexts. In sum, while we find that MISO's proposal to permit the transfer of interconnection capacity will promote the efficient use of the transmission system, we are concerned about the manner in which MISO proposes to implement this service and find that MISO's proposal requires modification in order to meet the Commission's standards respecting transparency and to eliminate the potential for undue discrimination. We expect that, on compliance, MISO will propose a MISO-administered process that ensures that transfer of interconnection service is offered in a manner that is consistent with section 205 of the FPA, generators operate in a manner that respects the rights of all market participants, and service is available on a fair, transparent and non-discriminatory basis.<sup>75</sup>

**d. Modification of Retirement and Suspension Decisions**

**i. July 25 Filing**

53. MISO proposes Tariff revisions to allow resource owners to rescind or modify a definitive decision to retire or suspend a resource under Attachment Y in certain circumstances.<sup>76</sup> MISO asserts that the existing Tariff does not provide flexibility for generators to alter their decisions in the face of substantially changing legal requirements, nor does it permit early return from suspension if such return would not create reliability issues, conflicts in system usage, or additional costs to any other market participants. MISO maintains that MISO's proposed Tariff revisions balance the need for planning certainty with flexibility to permit market participants to alter their resource status decisions under limited circumstances.<sup>77</sup>

54. With regard to suspensions, MISO proposes in section 38.2.7.a that a resource owner may only modify a decision to *suspend* a resource by submitting a request to MISO that "demonstrates significantly changed legal, regulatory, or economic conditions

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<sup>75</sup> See, e.g., Queue Reform III, 138 FERC ¶ 61,233 at PP 302-306.

<sup>76</sup> MISO July 25 Filing, Transmittal Letter at 10-11.

<sup>77</sup> *Id.* Webb Test. at 19-20.

justifying modification of an Attachment Y Suspend decision.” MISO proposes that in determining whether the resource may return prematurely from suspension, MISO will “evaluate factors, including, but not limited to: (i) any reliability impacts if the Generation Resource or SCU operates differently than planned for by the Transmission Provider based on the Attachment Y notification; and (ii) costs that the Transmission Provider, or other Market Participants, may incur as a result of such modified operations.”<sup>78</sup> MISO contends that these Tariff revisions accommodate market participants’ lack of certainty regarding how long a suspension will be desirable. However, MISO also argues that limiting the length of time that a market participant may remain in suspension will help to address uncertainty associated with network upgrades for indefinite suspensions.<sup>79</sup> MISO proposes this suspension limit in section 38.2.7.1, which provides that market participants may request suspensions for a resource via one or more Attachment Y requests for a maximum of 36 months during any five-year period.<sup>80</sup>

55. As for retirements, MISO proposes in section 38.2.7.i that a resource owner may retain its interconnection rights and continue to operate after the retire date certified in Attachment Y, or at the conclusion of an SSR Agreement, if:

. . . substantial changes to applicable law, regulations, or court or agency orders, pursuant to which the owner or operator of the Generation Resource or SCU originally relied upon in submitting the Attachment Y, occur either during the term of the SSR Agreement or during the time between the submission of an Attachment Y and the specified Retire date that significantly affect the economic operation of the resource.[<sup>81</sup>]

MISO also proposes that, if a resource owner that submitted an Attachment Y Notice to retire fails to terminate operations and if the construction of transmission system upgrades that were necessitated by the resource’s retirement have been approved by MISO’s Board of Directors as projects under Appendix A of MISO’s MTEP process, then the resource owner will be allocated the costs of such transmission system upgrades.<sup>82</sup> MISO argues that this cost allocation is appropriate because the development

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<sup>78</sup> MISO, FERC Electric Tariff, [38.2.7, System Support Resources, 2.0.0](#), § 38.2.7.a.

<sup>79</sup> MISO July 25 Filing, Webb Test. at 21.

<sup>80</sup> MISO, FERC Electric Tariff, [38.2.7, System Support Resources, 2.0.0](#), § 38.2.7.1.

<sup>81</sup> *Id.* § 38.2.7.i.

<sup>82</sup> *Id.*

of network upgrades to ensure continued reliability is based on the Attachment Y Notice, and if the generator reverses its retirement decision, “it would be inequitable in such a circumstances to require Network Upgrade costs to be recovered under the Tariff from Market Participants as Baseline Reliability Projects.”<sup>83</sup>

**ii. Comments**

56. Alliant supports allowing resource owners to rescind a retirement or suspension decision because environmental protection rules are not settled, which makes it difficult to plan with a high degree of certainty. Alliant also maintains that MISO’s proposal to require resource owners that rescind an Attachment Y Notice or SSR Agreement to pay for transmission system network update costs incurred prior to the rescission will ensure that owners carefully consider the implications of making a rescission.<sup>84</sup>

57. MidAmerican agrees that changes in decisions to suspend or retire are appropriate due to changing legal conditions and that MISO must restrict the conditions for changing those decisions to avoid compensating SSRs that do not actually intend to retire or suspend operations. However, MidAmerican seeks clarification of the conditions under which a resource owner may change its retirement or suspension decisions, whether those conditions differ at various stages of the process, and whether there are different conditions for retirements and suspensions.<sup>85</sup> With regard to the proposed conditions for modifying a decision to suspend a resource in section 38.2.7.a, MidAmerican argues that it is unclear whether these conditions apply any time after an Attachment Y Notice is submitted or whether they apply only after MISO has posted the related Attachment Y Study results. MidAmerican is also uncertain as to why MISO’s proposed conditions for modifying a decision to suspend a resource do not also apply when modifying a decision to retire a resource.<sup>86</sup>

58. MidAmerican notes that under section 38.2.7.a, resources would be allowed to change a decision to suspend a resource “based on significant changed legal, regulatory, or *economic conditions*,” whereas under section 38.2.7.i, resources may change a decision to retire based on “substantial changes to applicable law, regulations, or court or

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<sup>83</sup> MISO July 25 Filing, Webb Test. at 23.

<sup>84</sup> Alliant Comments at 4-5.

<sup>85</sup> MidAmerican Comments at 6.

<sup>86</sup> *Id.* at 5.



agency order.”<sup>87</sup> MidAmerican is uncertain why definitive decisions to suspend may be altered based on broad changes in economic conditions, while decisions to retire may be altered only to the extent that any economic changes are related to legal reforms.

59. MidAmerican contends that the proposed revisions in section 38.2.7.i to allow a resource to continue operating after the retire date specified in Attachment Y provides additional conditions under which a decision to retire, but not to suspend, may be modified, despite prior attestations that the decision was definitive. MidAmerican also contends that it is unclear why the proposed revisions provide that the substantial changes to applicable regulatory requirements must occur either “during the term of the SSR Agreement” or the period between the submission of an Attachment Y Notice and the specified retire date.<sup>88</sup> According to MidAmerican, this latter period would always include the term of any SSR Agreement.

**iii. Answer**

60. In its answer, MISO clarifies that planning actions are likely to be different for suspensions as compared to retirements. According to MISO, planning for alternatives to a retirement is more likely to be underway than planning for a suspension, and a generator in suspension has less certainty about the future preferred status of a facility than for a retiring generator. For those reasons, MISO argues, the conditions permitting modifications of decisions to retire are more restrictive than those for suspensions. MISO states that modifications to retirement decisions can only be made if “substantial changes to applicable law, regulations, or court or agency order” occur, while suspension decisions can be modified for these reasons and also if the market participant demonstrates significantly changed economic conditions.<sup>89</sup>

**iv. Commission Determination**

61. As MISO explains, its existing Tariff does not permit resources to return prematurely from suspensions or to rescind retirement decisions in the event that a resource’s return to service would not create reliability issues, conflicts in system usage, or additional costs to other market participants. MISO’s proposal to provide resources with greater flexibility to modify their retirement and suspension decisions is designed to balance the flexibility that resource owners need to alter those decisions due to changing

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<sup>87</sup> *Id.* at 6 (citing MISO, FERC Electric Tariff, [38.2.7, System Support Resources, 2.0.0](#), §§ 38.2.7.a, 38.2.7.i (emphasis added by MidAmerican)).

<sup>88</sup> *Id.* at 5-6.

<sup>89</sup> MISO Answer at 10-11.

regulatory requirements and economic conditions and the certainty of generator decisions MISO needs for its planning process.<sup>90</sup> We will conditionally accept MISO's proposal to allow resources to return from retirement or from suspensions prematurely, subject to the conditions discussed below.

62. MISO proposes to apply two different standards when evaluating requests for modifying or rescinding retirement or suspension decisions: (1) for retirements, a demonstration that certain regulatory conditions have substantially changed; and (2) for suspensions, a demonstration that certain regulatory or economic conditions have significantly changed and an evaluation of reliability impacts and potentially additional, unspecified factors.<sup>91</sup> We understand that MISO's proposed standards are intended to balance flexibility for generators and planning certainty, but we find that MISO has not justified its proposed restrictions on a resource owner's ability to return a resource to service. We will require MISO to submit, in the compliance filing due within 90 days of the date of this order, Tariff revisions to remove MISO's proposed standards for determining whether a resource owner may modify or rescind its decision to retire or suspend a resource.<sup>92</sup>

63. We note that, in section 38.2.7.i, MISO proposes that, if a resource owner that submitted an Attachment Y Notice to retire a resource fails to terminate the resource's operations, the resource owner will be allocated the cost of transmission system upgrades that were necessitated by the resource's retirement plans.<sup>93</sup> Allocating to resource owners the costs associated with their decisions to retire a resource and return the resource to service, or to suspend a resource and return the resource to service prematurely, would provide resource owners with flexibility to alter their business decisions regarding resource suspensions and retirements while ensuring sufficient certainty regarding those decisions for MISO's planning process, consistent with the balance sought by MISO's proposal. However, we are concerned that MISO has not explained how it will identify the costs of transmission system upgrades that were

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<sup>90</sup> MISO July 25 Filing, Webb Test. at 19-20.

<sup>91</sup> MISO, FERC Electric Tariff, [38.2.7, System Support Resources, 2.0.0](#), §§ 38.2.7.a, 38.2.7.i.

<sup>92</sup> As we are requiring MISO to remove its proposed standards for determining whether a resource owner may modify or rescind its resource retirement and suspension decisions, we need not address MidAmerican's request for clarification of those standards.

<sup>93</sup> MISO, FERC Electric Tariff, [38.2.7, System Support Resources, 2.0.0](#), § 38.2.7.i.

necessitated by a resource's retirement plans. MISO has not explained how it will determine cost responsibility for a transmission upgrade that is necessitated by multiple retirements,<sup>94</sup> or that qualifies for regional cost allocation.<sup>95</sup> MISO also proposes to allocate to the owner of a resource returning from retirement the cost of certain transmission upgrades that MISO has approved for construction and that MISO's Board of Directors has approved as Appendix A projects.<sup>96</sup> However, MISO has not demonstrated that a resource owner should be allocated transmission upgrade costs that have not yet been incurred and that are avoidable (e.g., certain costs may be avoided if construction has not yet commenced). To address all of these concerns, we will require MISO to submit, in the compliance filing due within 90 days of the date of this order: (1) an explanation, and corresponding Tariff revisions, regarding how it will identify the costs necessitated by a resource's retirement or suspension plans, including any reliability costs and transmission upgrade costs; (2) Tariff revisions providing that MISO will notify the resource owner of these costs to permit consideration by the resource of whether it should return from retirement or to service prematurely; and (3) Tariff revisions to allocate these costs to the resource owner in the event that the resource returns from retirement or to service prematurely.

64. Unless a retiring resource retains its interconnection rights, consistent with the proposed revisions to section 38.2.7.i discussed elsewhere in this order, MISO proposes to terminate a retiring resource's interconnection rights on its retire date, which means that the associated interconnection capacity may be transferred to another market participant. MISO has not addressed how a retired resource that did not retain its interconnection rights may acquire interconnection service in order to return to service, including whether and where it will re-enter MISO's interconnection queue, its cost responsibility for any associated upgrades, and whether this process can delay a resource's return from retirement. We will require MISO to submit, in the compliance filing due within 90 days of the date of this order, an explanation of how MISO will address these issues and, as needed, corresponding Tariff revisions.

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<sup>94</sup> For example, MISO has not addressed cost responsibility for a transmission upgrade necessitated by three resource retirements if only one of the resources returns from retirement or if a second resource returns from retirement during the following year.

<sup>95</sup> For example, MISO has not addressed cost responsibility for a transmission upgrade necessitated by a resource's retirement that also qualifies for regional cost allocation as a Multi-Value Project.

<sup>96</sup> MISO, FERC Electric Tariff, [38.2.7, System Support Resources, 2.0.0](#), § 38.2.7.i.

**2. Attachment Y-2 Requests for Informational SSR Studies****a. Non-Binding Studies and Cost Responsibility****i. July 25 Filing**

65. MISO proposes in new section 38.2.7.m and Attachment Y-2 to provide an optional procedure for market participants to request that MISO perform informational studies regarding whether a resource may qualify as an SSR. These Attachment Y-2 Studies would be conducted by MISO in situations where a market participant is considering retiring or suspending the operation of a resource for more than two months, but has not made a definitive decision to do so such that the submission of an Attachment Y Notice is appropriate. According to MISO, such informational studies will enable interested market participants to make more knowledgeable decisions regarding potential decisions to retire or suspend a facility. MISO states that, since an informational study may be requested a year or more before a resource owner is prepared to make a definitive decision to retire or suspend the operation of a resource, it is reasonable for both MISO and the resource owner to consider the results of an informational study to be non-binding. However, MISO states that the results of Attachment Y-2 Studies would be binding (i.e., the resource would qualify as an SSR) if the market participant elects to submit an Attachment Y Notice for the resource within 30 days after completion of the Attachment Y-2 Study.<sup>97</sup>

66. MISO proposes that the market participant that submits an Attachment Y-2 Notice to request an informational study would bear all of the costs that MISO incurs in conducting the Attachment Y-2 Study, including costs for any necessary expert consultants to assist MISO. According to MISO, Attachment Y-2 would require a market participant to deposit an initial sum of \$70,000 as partial payment, with a continuing obligation for the market participant to pay for all costs and expenses reasonably incurred in excess of the deposit amount. According to MISO, section 38.2.7.m would require MISO to refund any unused portion of such deposit upon completion of the study.<sup>98</sup>

**ii. Comments**

67. Dynegy believes that the Commission should accept the proposed revisions to the MISO Tariff allowing the cost of an Attachment Y-2 Study to be paid by the requesting market participant. According to Dynegy, though the Attachment Y-2 Studies will be helpful, the study results can only be non-binding, as MISO proposes, due to the

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<sup>97</sup> MISO July 25 Filing, Transmittal Letter at 11-12.

<sup>98</sup> *Id.* at 12.

numerous unknown variables, such as emerging environmental regulations and business decisions, that can affect the study results. However, Dynegy maintains that such an option has the potential to add a significant number of studies to the current MISO workload. As an alternative, Dynegy proposes that MISO could provide their power flow models to market participants who could then perform their own reliability studies in-house or using outside consultants.<sup>99</sup>

68. Alliant supports MISO's proposed Tariff provisions that enable a generator owner to request and pay for a non-binding study to determine whether a generator is needed for system reliability. Alliant states that MISO will charge the study costs directly to the requesting resource owner so that other market participants will not be underwriting the costs, and MISO has expertise in doing such studies.<sup>100</sup>

69. Ameren supports the non-binding nature of the Attachment Y-2 Study and MISO's proposal to provide a transition from the Attachment Y-2 process to the Attachment Y process should the results of the Attachment Y-2 Study expedite a decision on whether to retire a unit. Ameren also notes that MISO proposes to require a \$70,000 deposit from the market participant for the Attachment Y-2 Study, yet the proposed Tariff language provides that the transmission provider conduct a study to determine *whether it is likely* that a portion of all such resources would qualify as an SSR. Ameren believes a more definitive answer should be provided.<sup>101</sup>

70. Public Interest Organizations are concerned that a non-binding Attachment Y-2 Study process could provide a resource owner a tool by which to gain market power because the study results would provide the resource owner with information about which units are needed to maintain reliability and, therefore, receive SSR compensation. According to Public Interest Organizations, if the resource owner acted within the 30-day period to submit an Attachment Y Notice after receiving its Attachment Y-2 Study results (i.e., so that the Attachment Y-2 Study results would be binding), the resource would be in a very good position to continue operating, receive SSR compensation, and face little risk that MISO and its stakeholders could identify SSR alternatives.<sup>102</sup>

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<sup>99</sup> Dynegy Comments at 7.

<sup>100</sup> Alliant Comments at 3.

<sup>101</sup> Ameren Comments at 5-6.

<sup>102</sup> Public Interest Organization Comments at 10-11.

**iii. Answer**

71. In its answer, MISO explains that, because many variables may change between the time that an Attachment Y-2 Study is conducted and an Attachment Y Notice is made, it would not be practical to make the results of an Attachment Y-2 Study binding on MISO for an indefinite period of time. Thus, MISO maintains that an Attachment Y-2 Study cannot result in a “binding” decision of the results of a future Attachment Y Study without MISO knowing if, or when, a subsequent and consistent Attachment Y Notice may be submitted. MISO clarifies, however, that Attachment Y-2 Studies will be rigorous and will be applied to subsequent, consistent Attachment Y Notices submitted within the timing limitations proposed in section 38.2.7.n.<sup>103</sup>

72. MISO recognizes the balancing of benefits and potential adverse consequences associated with use of Attachment Y-2 and believes that the benefits of proposed Attachment Y-2 offer market participants a valuable tool to better understand the impacts that a generator may have on transmission system reliability. MISO clarifies that the Tariff does not obligate any party to use this tool; however, MISO believes that the tool should be available.<sup>104</sup>

**iv. Commission Determination**

73. We find that MISO’s proposal to conduct non-binding informational studies is just and reasonable. With the many regulatory changes anticipated, we agree with MISO that giving market participants the option to request these studies will provide useful information regarding system reliability that will help market participants to make decisions about resource retirements and suspensions.

74. With regard to Ameren’s comment that a more definitive answer is warranted than whether a resource would *likely* qualify as an SSR unit, we find that this concern fails to consider MISO’s overall process for addressing retirement and suspension decisions. The informational Attachment Y-2 study results are no less definitive than the binding Attachment Y study results, as neither study determines whether a resource will ultimately enter into an SSR Agreement with MISO. After the completion of either type of study, MISO and its stakeholders must evaluate whether there are SSR alternatives available to address the underlying reliability issue, which could result in MISO not pursuing an SSR Agreement with that resource. Further, as MISO states in its answer, MISO cannot know if an Attachment Y-2 Study will be binding if it does not know if or when a subsequent Attachment Y Notice will be submitted. For example, other

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<sup>103</sup> MISO Answer at 14.

<sup>104</sup> *Id.* at 15.

retirement or suspension decisions could be made in the meantime between the completion of an Attachment Y-2 Study and the subsequent submission of an Attachment Y Notice that would change the assumptions of the initial study.

75. Regarding Public Interest Organizations' concern, we find that MISO's proposal as a whole sufficiently forecloses any additional opportunities for a resource to exercise market power. If, as Public Interest Organizations argue, a resource elects to retire and becomes an SSR after seeing the informational study results, then MISO will instruct the unit to run as needed for system reliability. However, the SSR will not have an opportunity to receive excessive revenues as MISO will deduct from its SSR credits any infra-marginal rents that it obtains from market transactions.<sup>105</sup> If, on the other hand, the resource elects not to retire after the completion of the Attachment Y-2 Study, with the knowledge that it is either needed for reliability or not, MISO's existing market monitoring and mitigation measures should be sufficient to curtail any exercise of market power.<sup>106</sup> Therefore, we disagree with Public Interest Organizations' concern in this regard.

**b. Attachment Y-2 Timeline**

**i. July 25 Filing**

76. According to MISO, Attachment Y-2 provides that MISO would complete the informational study no later than 75 days from receipt of the study deposit, a completed Attachment Y-2 Notice, and all information necessary to complete the study specified in Attachment Y-2. According to MISO, this proposed time frame is sufficiently expeditious to provide a market participant with timely information regarding the status of a facility, while also allowing MISO sufficient time to conduct an effective study. In addition, MISO states that it is proposing in section 38.2.7.n of the Tariff to provide a seamless transition from the Attachment Y-2 process to the Attachment Y process. In particular, in section 38.2.7.n MISO proposes that:

[a]n Attachment Y that is submitted by a Market Participant within 30 business days after receipt of a response from the Transmission Provider for the same Generation Resource or SCU pursuant to an Attachment Y-2 study, may request a change of status of the Generation Resource or SCU

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<sup>105</sup> MISO, FERC Electric Tariff, [38.2.7, System Support Resources, 2.0.0](#), § 38.2.7.h.ii.

<sup>106</sup> In addition, as noted below, we will require MISO to disclose the results of Attachment Y-2 Studies to the Independent Market Monitor in the event that the study finds that a resource may qualify as an SSR.

commencing on a date 26 weeks from the date of receipt by the Transmission Provider of the related Attachment Y-2 study request. To the extent practicable, the Transmission Provider will use [Attachment] Y-2 study results in preparing the Attachment Y analysis.<sup>107]</sup>

MISO also indicates that it will make “reasonable efforts” to complete Attachment Y-2 Studies within 60 days.<sup>108</sup>

**ii. Comments**

77. Public Interest Organizations are concerned with MISO’s proposal to allow a resource owner to request a change of status commencing 26 weeks from MISO’s receipt of the Attachment Y-2 Notice. Public Interest Organizations claim that this transition further reduces the time available for other stakeholders to offer input and alternatives to MISO before MISO enters into an SSR Agreement. They assert that this proposal calls into question whether MISO will follow its proposed Tariff provision to “assess, in an open and transparent planning process in accordance with the provisions of the Transmission Expansion Planning Protocol Attachment FF to the Tariff, feasible alternatives to the proposed SSR Agreement.”<sup>109</sup>

**iii. Answer**

78. In response to Public Interest Organizations, MISO clarifies that the open and transparent planning for upgrades will begin as soon as the Attachment Y Notice is received, and providing a pre-study of that result via an Attachment Y-2 Study will only accelerate the Attachment Y Study response time.<sup>110</sup>

**iv. Commission Determination**

79. We find that MISO has not fully explained or supported its proposed timeline for completing Attachment Y-2 Studies or for allowing resources to transition to the Attachment Y process. As discussed above, MISO has not justified its proposal to allow itself up to 20 weeks to perform an Attachment Y Study, while giving itself up to only

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<sup>107</sup> MISO, FERC Electric Tariff, [38.2.7, System Support Resources, 2.0.0](#), § 38.2.7.n.

<sup>108</sup> MISO July 25 Filing, Transmittal Letter at 12.

<sup>109</sup> Public Interest Organizations Comments at 11-12 (citing MISO, FERC Electric Tariff, [38.2.7, System Support Resources, 2.0.0](#), § 38.2.7.c.).

<sup>110</sup> MISO Answer at 14-15.



75 days to complete a potentially binding Attachment Y-2 Study. MISO's proposed Tariff revisions also suggest that the 75-day period allotted to completion of the Attachment Y-2 Study could change under certain circumstances. In particular, proposed section 38.2.7.m states that MISO will use "reasonable efforts" to provide Attachment Y-2 Study results within 75 days, "unless an alternative period is mutually agreed to."<sup>111</sup> Attachment Y-2 also states that "[i]f the Market Participant does not provide all of the information requested by the Transmission Provider in a timely manner, then the Transmission Provider may be unable to complete the study within 75 days and will so advise the Market Participant."<sup>112</sup> In the event that a market participant transitions to the Attachment Y process under proposed section 38.2.7.n (i.e., so that the 26-week notice period commences when the Attachment Y-2 Notice was filed), it is unclear whether an Attachment Y-2 Study process that lasts longer than 75 days will affect the timelines for MISO's other milestones or hinder MISO's ability to complete all of the required tasks, including the consideration of SSR alternatives, if necessary.

80. Moreover, for resources that transition from the Attachment Y-2 process to the Attachment Y process, MISO has not explained how it can complete the *entire* Attachment Y process – including preparing an Attachment Y Study, waiting up to five business days to disclose the study results due to the possible rescission of the Attachment Y Notice, completing a stakeholder process to give thorough consideration to SSR alternatives, and if necessary, negotiate an SSR Agreement, including compensation and cost allocation – in as little as eight weeks following the completion of the Attachment Y-2 process.<sup>113</sup> We share Public Interest Organizations' concern that, if MISO attempts to compress the Attachment Y process in this manner, it may have insufficient time to evaluate SSR alternatives prior to entering into SSR Agreements. As the Commission stated in the TEMT II Rehearing Order, SSR Agreements should be used only as a "limited, last-resort measure" and, when submitting SSR Agreements under

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<sup>111</sup> MISO, FERC Electric Tariff, [38.2.7, System Support Resources, 2.0.0](#), § 38.2.7.m.

<sup>112</sup> *Id.* [ATTACHMENT Y-2, Request for Non-Binding Study Regarding Potential SSR Status, 0.0.0](#).

<sup>113</sup> Under the proposal, if MISO takes all 75 calendar days to complete the Attachment Y-2 Study, it must then provide the resource owner with up to five business days (approximately seven calendar days) to rescind its Attachment Y-2 Notice prior to disclosing the associated study results. Prior to commencing the Attachment Y process, the resource owner has up to 30 business days (approximately 42 calendar days) to submit an Attachment Y Notice. After this period, MISO could have as little as 58 calendar days (or about eight weeks) to complete the entire Attachment Y process. *See, e.g., id.* [38.2.7, System Support Resources, 2.0.0](#) § 38.2.7.m.

section 205 of the FPA, MISO must include a report that, among other things, details the SSR alternatives evaluated by MISO.<sup>114</sup> The evaluation of alternatives to an SSR designation is an important step that deserves the full consideration of MISO and its stakeholders before MISO decides to resort to a backstop measure.

81. To address these concerns, we will require MISO to submit, in the compliance filing due within 90 days of the date of this order, Tariff revisions to propose a complete timeline for the completion of each task in the Attachment Y-2 process, including when a resource transitions from the Attachment Y-2 process to the Attachment Y process, pursuant to proposed section 38.2.7.n. In its filing, MISO should explain its rationale for the time needed to complete each task and its process for identifying SSR alternatives, including associated milestones.

**c. Disclosure and Rescission**

**i. July 25 Filing**

82. According to MISO, Attachment Y-2 provides that MISO will post the fact that an Attachment Y-2 Notice was submitted and whether the associated resource is required for system reliability and may qualify as an SSR at the same time that it discloses this information to the market participant that requested the study. MISO states that some market participants believe that the results of such a study, which was funded exclusively by the market participant that requested the study, should be disclosed only to the funding party consistent with the practice of third-party contractors. According to MISO, it possesses a variety of sensitive and confidential information to which a third-party contractor would not have access, which is a likely reason that a market participant might prefer to have MISO, rather than a third-party contractor, conduct a study. MISO adds that it is likely that other market participants would be interested in obtaining the results of any such informational studies, for example, to aid in the evaluation of which geographic areas would be best to site a new generator or to develop a demand response resource.<sup>115</sup>

83. MISO further states that it would be difficult to conduct its regional planning process and to propose Transmission System enhancements to address the planned retirement of Generation Resources if it was required to maintain the confidentiality of the results of Attachment Y-2 Studies. According to MISO, market participants would reasonably question, for example, why MISO was proposing a transmission expansion for a particular area where adequate generation resources appeared to already exist, if

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<sup>114</sup> TEMT Rehearing Order, 109 FERC ¶ 61,157 at PP 288, 291.

<sup>115</sup> MISO July 25 Filing, Transmittal Letter at 12-13.

MISO attempted to efficiently respond to the likely retirement of generation resources at the same time that MISO was obligated to keep the results of Attachment Y-2 Studies confidential. MISO states that it also believes that the Commission has encouraged open and competitive energy markets through the public posting of key information on OASIS.<sup>116</sup> According to MISO, if a market participant does not want the results of an Attachment Y-2 Study to be made public, it may simply decline to request such a study from MISO by not submitting an Attachment Y-2 Notice.

84. According to MISO, proposed section 38.2.7.m also addresses concerns raised by some stakeholders regarding potential rescission of Attachment Y-2 Notices. MISO proposes that if a market participant chooses to rescind its Attachment Y-2 Notice prior to receiving any study results, then the confidentiality of the Attachment Y-2 Notice and the associated study results shall be preserved. According to MISO, if a market participant rescinds an Attachment Y-2 Notice, then such market participant shall not receive the results of the study and will continue to be responsible for the costs of the study incurred prior to the rescission.<sup>117</sup>

**ii. Comments and Protests**

85. Ameren maintains that should a market participant rescind an Attachment Y-2 Notice, the respective notice and the study results should remain confidential. Ameren also supports MISO's proposal to permit a market participant to rescind the Attachment Y-2 Notice at any time before receiving the result of the study due to ever changing market conditions that could influence the need for the Attachment Y-2 process.<sup>118</sup>

86. Consumers-Detroit Edison object to MISO's proposal to make public the result of MISO Attachment Y-2 Studies. They maintain that Attachment Y-2 Studies are intended to be informational studies only, and are premised upon the concept that a resource owner has not yet made a definitive decision to retire or suspend the resource. Therefore, they argue that MISO's proposal will have unintended negative consequences, including that resource owners may choose to avoid the risk of the disclosure by retaining a third-party contractor to perform the informational study, which would likely defer any notification to MISO of the study results.<sup>119</sup>

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<sup>116</sup> *Id.* at 13 (citing 18 C.F.R. § 37.6(b)(2)(iii) (2012)).

<sup>117</sup> *Id.* at 14.

<sup>118</sup> Ameren Comments at 5-7.

<sup>119</sup> Consumers-Detroit Edison Protest at 13-16.

87. Wisconsin Electric strongly disagrees with MISO's Attachment Y-2 disclosure proposal. According to Wisconsin Electric, market participants submitting Attachment Y-2 Notices have not made a definitive decision on the status of their facilities and are simply seeking information in order to assess their options. Wisconsin Electric argues that premature announcement of a market participant's consideration of retirement or suspension of a facility would lead to economic and political concerns in the community where the subject facility is located. It argues that market participants' decisions to retire or suspend operations at a facility have broad and serious consequences, and they must be permitted to gather the best information available to assess their options and support their ultimate decisions before making a public announcement.<sup>120</sup>

**iii. Answer**

88. In its answer, MISO argues that market participants should not be able to withhold potentially market-influencing information, such as the results of an Attachment Y-2 Study. MISO reiterates that it believes the proposed disclosure provisions are a reasonable compromise of diverse stakeholder views on the issue.<sup>121</sup>

**iv. Commission Determination**

89. We find that MISO's proposal to disclose Attachment Y-2 Study results at the same time that they are revealed to the market participant that requested the study is not just and reasonable. While an Attachment Y Notice indicates that a resource owner has made a definitive decision to retire or suspend the resource, resource owners submitting informational study requests under Attachment Y-2 merely seek information regarding a *potential* resource retirement or suspension. We find that MISO has not supported how information regarding *potential* retirements or suspensions would aid resource siting decisions or the MISO transmission planning process, particularly given that the identification of SSR alternatives would be unnecessary.<sup>122</sup> In the event that the resource definitively decides to retire or suspend operations, MISO must disclose the resource's

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<sup>120</sup> Wisconsin Electric Protest at 3-4.

<sup>121</sup> MISO Answer at 12-13.

<sup>122</sup> Furthermore, MISO itself envisions the possibility that a market participant that has submitted an Attachment Y-2 Notice could rescind its request prior to receiving the study results, thereby preserving the confidentiality of the Attachment Y-2 Notice and the associated study results. MISO has not explained why this situation would also not make it difficult to conduct its regional planning process, and appears, in the case of a rescission of a request, to be able to manage its planning responsibilities knowing of the potential retirement while still keeping the study results confidential.

Attachment Y Notice and the associated study results with sufficient time to consider SSR alternatives prior to entering into an SSR Agreement, as discussed elsewhere in this order. We agree with the concerns raised by some commenters that premature, and potentially unnecessary, disclosure that a resource owner is considering retirement or suspension could have negative consequences, including the avoidance of the Attachment Y-2 process. We will require MISO to submit, in the compliance filing due within 90 days of the date of this order, Tariff revisions to ensure that Attachment Y-2 Notices and Study results are treated as confidential information.

90. In addition, we will require MISO to disclose Attachment Y-2 Notices and study results to the Independent Market Monitor, in the event that the Attachment Y-2 Study finds that a resource would qualify as an SSR and is disclosed to the market participant that requested the study. We find that this could help to alleviate any concern that Attachment Y-2 Study results could provide information to resources that would aid them in gaming the market. We will require MISO to submit, in the compliance filing due within 90 days of the date of this order, Tariff revisions to ensure that Attachment Y-2 Study results that indicate that a resource may qualify as an SSR will be disclosed to the Independent Market Monitor in the event that it is disclosed to the market participant that requested the study.

### **3. Attachment Y-1 SSR Agreements**

#### **a. Applicability of Attachment Y-1**

91. The existing MISO Tariff provides that if MISO determines that SSR status is justified for a generation resource or SCU that has submitted an Attachment Y Notice of retirement or suspension, “the Transmission Provider and such Market Participant shall enter into an SSR Agreement, in accordance with the Attachment Y-1 form of agreement.”<sup>123</sup>

#### **i. July 25 Filing**

92. MISO proposes in section 38.2.7.c of the Tariff that in assessing the applicability of SSR status, MISO “will not require continued operation when the continued operation of a portion or all of Generation Resources or SCUs would be contrary to applicable law, regulations, or court or agency orders (such as a settlement with an environmental agency or a consent decree approved by a court).”<sup>124</sup>

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<sup>123</sup> MISO, FERC Electric Tariff, [38.2.7, System Support Resources, 1.0.0](#).

<sup>124</sup> *Id.* [38.2.7, System Support Resources, 2.0.0](#), § 38.2.7.c.

93. MISO also proposes in section 38.2.7.a that after MISO has disclosed that a resource qualifies as an SSR, the resource owner may modify the effective date of the definitive decision to suspend or retire the resource in its Attachment Y Notice if:

(1) the Transmission Provider has determined that demand response, generation, or transmission expansion alternatives are required; and (2) the owner or operator of the Generation Resource or SCU agrees in writing with the Transmission Provider to continue to operate the facility without entering into an SSR Agreement until the alternative(s) have been implemented to maintain the reliability of the Transmission System.<sup>[125]</sup>

**ii. Comments and Protests**

94. Consumers-Detroit Edison recognize that MISO's proposed revisions in section 38.2.7.c are consistent with the Commission's findings in the TEMT II Rehearing Order.<sup>126</sup> However, they argue that since SSR Agreements exist to remedy reliability issues, MISO must revise its Tariff to address the actions it will take if a resource cannot enter into an SSR Agreement, such as finding another reliability solution or publicly noticing the fact that there is an unresolved reliability problem. Consumers-Detroit Edison argue that MISO's position – that it will not dispatch certain units that are necessary for reliability – indicates that MISO endorses the use of transmission loading relief procedures, which should not be the case. Noting MISO's previous statement that "resources will only be designated as SSR Units after no other alternatives can be found that are more economic to mitigate reliability issues,"<sup>127</sup> Consumers-Detroit Edison maintain that there may be other economic alternatives to address reliability during the term of an SSR Agreement. In addition, Consumers-Detroit Edison argue that, when a resource's continued operation is contrary to applicability regulatory requirements, it is unclear whether the resource would not become an SSR or would become an SSR and not be dispatched by MISO. To address these issues, Consumers-Detroit Edison request that MISO add the following language to section 38.2.7.c:

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<sup>125</sup> *Id.* § 38.2.7.a.

<sup>126</sup> Consumers-Detroit Edison Protest at 3 (citing TEMT II Rehearing Order, 109 FERC ¶ 61,157 at P 291 ("... SSR designations cannot be imposed if continued operations of a plant would be contrary to applicable law, regulations, court or agency orders, such as a settlement with an environmental agency or a consent decree approved by a court.")).

<sup>127</sup> *Id.* at 4 (citing MISO March 31, 2004 Filing, Docket No. ER04-691-000, McNamara Test. at 46).

[i]f a Generation Owner informs the Transmission Provider that continued operation of the Generation Resource or SCU would result in a violation of a law, regulation or court or agency order, then the Generation Owner will not be required to enter an SSR Agreement. Instead, MISO will be either identifying another interim solution; state that they are making a study to identify a solution; or post on OASIS that a reliability problem has been identified, but neither a Generation Resource nor SCU solution is available.<sup>128]</sup>

95. Alliant states that it recommended MISO's proposal in section 38.2.7.a to allow a resource owner to decline becoming an SSR if the owner agrees in writing to continue operating the resource until the transmission system can be expanded and the resource safely retired. Alliant maintains that this option will enable the inclusion of a unit's retirement in MISO's transmission planning process, while avoiding the need to negotiate and file an SSR Agreement under section 205 of the FPA, including the associated annual revenue requirement and cost allocation provisions. Alliant asserts that "this option is desirable as it may reduce costs for those end-use customers that currently pay for the use of the generator."<sup>129</sup>

96. MidAmerican is uncertain whether MISO's proposed revisions to section 38.2.7.a indicate that an SSR owner can modify only the *effective date* of a definitive decision to retire or suspend, or if an SSR owner can modify the *decision* itself and rescind a decision in its entirety. MidAmerican argues that MISO should clarify this provision.<sup>130</sup>

### iii. Answers

97. MISO does not oppose the Tariff language proposed by Consumers-Detroit Edison, but believes that it is superfluous and potentially misleading. MISO maintains that language providing that a resource owner will not be required to enter into an SSR Agreement if the resource cannot operate without violating the law is redundant because MISO proposes similar language in section 38.2.7.c. MISO adds that the language describing MISO's actions in the event that a resource cannot enter into an SSR Agreement is unnecessary and misleading because MISO proposes Tariff revisions

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<sup>128</sup> *Id.* at 5.

<sup>129</sup> Alliant Comments at 5.

<sup>130</sup> MidAmerican Comments at 4-5.

requiring MISO to post the reliability need for an SSR and then pursue alternative remedies in an open stakeholder planning process.<sup>131</sup>

98. In response to MISO's argument that the Tariff language proposed by Consumers-Detroit Edison is superfluous and redundant, Consumers-Detroit Edison maintain that MISO does not cite any existing or proposed Tariff language that addresses their concern. Accordingly, Consumers-Detroit Edison request that MISO "provide such clarification."<sup>132</sup>

#### iv. Commission Determination

99. MISO's proposed revisions in section 38.2.7.c to limit the applicability of its SSR provisions are consistent with the Commission's requirement in the TEMT II Rehearing Order that "SSR designations cannot be imposed if continued operations of a plant would be contrary to applicable law, regulations, court or agency orders, such as a settlement with an environmental agency or a consent decree approved by a court."<sup>133</sup> We disagree with Consumers-Detroit Edison's analysis of the potential consequences if MISO cannot enter into an SSR Agreement, particularly their assertion that an SSR Agreement may not be the "only short term solution" to a reliability problem since – as MISO asserted in its initial SSR program proposal – MISO will designate SSRs if "no other alternatives can be found that are *more economic* to mitigate reliability issues."<sup>134</sup> With regard to this language, however, we note that in the TEMT II Rehearing Order, the Commission shared concerns "that certain provisions in the SSR program could be interpreted as open-ended obligations and therefore could result in a major long-term program with significant and longer-term commitments for owners of generating units," and explained that the Commission had "approved the SSR program as a *back-stop* measure only and therefore expect the contracting for SSRs to be *limited* and of *short duration*."<sup>135</sup> Designating SSRs merely because they are the most economic option available to address a reliability issue (e.g., when many other short-term options are available to address the reliability issue prior to the SSR's retirement or suspension date) would be contrary to the

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<sup>131</sup> MISO Answer at 8-9.

<sup>132</sup> Consumers-Detroit Edison Answer at 4.

<sup>133</sup> TEMT II Rehearing Order, 109 FERC ¶ 61,157 at P 291.

<sup>134</sup> Consumers-Detroit Edison Protest at 4 (quoting MISO March 31, 2004 Filing, Docket No. ER04-691-000, McNamara Test. at 46 (emphasis added by Consumers-Detroit Edison)).

<sup>135</sup> TEMT II Order, 109 FERC ¶ 61,157 at P 288 (emphasis added).



Commission's finding that "SSR designation is a limited, *last-resort* measure."<sup>136</sup> Accordingly, we expect that MISO will designate resources as SSRs only when there are *no* other SSR alternatives<sup>137</sup> available to address a reliability issue prior to a resource's retirement or suspension date (i.e., when the SSR would be the last-resort, short-term measure). In those instances where SSR alternatives *are* available, we expect that MISO will choose among those alternatives by applying its existing Tariff provisions regarding its planning process. As part of that transmission planning process, we expect that MISO will review and evaluate alternatives on a comparable basis<sup>138</sup> and select the most appropriate solution where such process includes both reliability and economic considerations.<sup>139</sup>

100. Nonetheless, we agree with Consumers-Detroit Edison that MISO should address what will happen in the event that an Attachment Y Study finds that a resource is needed for reliability, but the resource is ineligible to continue operating as an SSR, including how MISO would ensure continued system reliability. Further, the proposed Tariff revisions do not address whether an ineligible resource would be permitted not to enter into an SSR Agreement. We will require MISO to submit, in the compliance filing due within 90 days of the date of this order: (1) Tariff revisions providing that ineligible resources are not required to enter into SSR Agreements; and (2) an explanation, and corresponding Tariff revisions, regarding how MISO will maintain system reliability in the event that a resource qualifies for SSR status but is ineligible to continue operating as an SSR.

101. MISO's proposed revisions in section 38.2.7.a provide resources that qualify as SSRs the option to not enter into an SSR Agreement with MISO and to instead agree in writing to continue operating consistent with the treatment of other resources under the MISO Tariff. Regardless of whether a resource that qualifies as an SSR continues to operate in accordance with an SSR Agreement or in accordance MISO's existing Tariff provisions, the result is the same: the resource continues to operate, and system reliability is preserved. Accordingly, we will conditionally accept MISO's proposed revisions in section 38.2.7.a. With regard to MidAmerican's concern, our understanding

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<sup>136</sup> *Id.* P 291 (emphasis added).

<sup>137</sup> These SSR alternatives could include redispatch/reconfiguration through operator instruction, remedial action plans, special protection schemes initiated upon generation resource trips or unplanned transmission outages, demand response or generator alternatives, and transmission expansions. *See supra* PP 20, 23, and 36.

<sup>138</sup> *See, e.g.*, Attachment FF, Section I.B.1.v.

<sup>139</sup> *See, e.g.*, Attachment FF, Section I.A.5.

is that a resource can agree “in writing” to continue to operate by either modifying the effective date in its Attachment Y Notice or rescinding its Attachment Y Notice altogether. We will require MISO to reflect this understanding in its Tariff by submitting further revisions in the compliance filing due within 90 days of the date of this order.

**b. Term of SSR Agreements**

102. MISO’s existing *pro forma* SSR Agreement in Attachment Y-1 provides that SSR Agreements will have a term of twelve months and that an initial term may be extended by MISO if MISO provides at least 90 days’ advance notice of such extension.<sup>140</sup>

103. Section 38.2.7 of the existing MISO Tariff provides that contracted SSR service “shall be for an initial term of twelve (12) months, unless exigent circumstances require a longer term agreement.”<sup>141</sup> Section 38.2.7 also provides that MISO will conduct annual reviews of whether an SSR continues to qualify as an SSR, and if so, MISO will enter into a subsequent SSR Agreement at least ninety days prior to the termination date of an existing SSR Agreement.<sup>142</sup>

**i. July 25 Filing**

104. MISO proposes to revise section 3 of Attachment Y-1 to remove language providing that SSR Agreements will have an initial twelve-month term, so that the agreements may specify an initial term of any length.<sup>143</sup>

105. MISO proposes to modify language in section 38.2.7.d of the MISO Tariff to remove the requirement that SSR Agreements may have an initial term longer than twelve months due to exigent circumstances, so that the Tariff instead provides that contracted SSR service “shall be for a term of twelve (12) months, unless the Transmission Provider requires a different term.”<sup>144</sup> MISO also proposes to revise section 38.2.7.k to provide that MISO will review whether an SSR continues to qualify as an SSR “[o]n at least an annual basis,” and if the resource remains necessary for

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<sup>140</sup> MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet No. 3256, §§ 3.A(2), 3.A(4).

<sup>141</sup> *Id.* [38.2.7, System Support Resources, 1.0.0](#), § 38.2.7.c.

<sup>142</sup> *Id.* § 38.2.7.i.

<sup>143</sup> *Id.* [ATTACHMENT Y-1, Standard Form System Support Resource \(SSR\) Agreement, 1.0.0](#), §§ 3.A(2), 3.A(4).

<sup>144</sup> *Id.* [38.2.7, System Support Resources, 2.0.0](#), § 38.2.7.d.

reliability, MISO will enter into a subsequent SSR Agreement by providing 90 days' notice "and by negotiating and filing a new SSR Agreement at the Commission."<sup>145</sup>

**ii. Commission Determination**

106. We find that MISO has not supported its proposed revisions to Attachment Y-1 to allow MISO to specify an initial term other than twelve months for SSR Agreements. We understand that this revision could provide MISO with additional flexibility to specify a term of less than twelve months for SSR Agreements and, as a result, to re-examine whether an SSR's continued operation remains necessary to ensure system reliability, such that subsequent SSR Agreements are needed, more frequently than on an annual basis. However, we are concerned that the proposed revisions to section 38.2.7.d of the Tariff will give MISO excessive discretion in determining whether an SSR Agreement should have a term longer than 12 months, rather than doing so only in limited instances due to exigent circumstances. As the Commission previously explained, SSR Agreements should "be *limited* and of *short duration*."<sup>146</sup> Consistent with the TEMT II Orders, we will require MISO to submit, in the compliance filing due within 90 days of the date of this order, Tariff revisions to the *pro forma* SSR Agreement in Attachment Y-1 to insert language providing that an SSR Agreement must not exceed a one-year term except in exigent circumstances. In all cases, however, including those where the term of an SSR Agreement is less than one year, we will require MISO to submit a justification of the term of an SSR Agreement – including the nexus between the duration of the SSR Agreement, the underlying reliability need for the SSR, and the timeline for implementing the permanent solution to meet the reliability need necessitated by the SSR in the interim period – as part of the report required in the TEMT II Rehearing Order that must be provided in the section 205 filing for the SSR Agreement.

107. With regard to MISO's proposed revisions to section 38.2.7.k of the Tariff, we find that it is just and reasonable for MISO to review whether an SSR remains necessary for system reliability more frequently than on an annual basis, as discussed above, and to modify the Tariff to reflect that subsequent SSR Agreements should be filed with the Commission. However, we are concerned that this revision is not consistent with existing section 3.A(4) of Attachment Y-1, which indicates that MISO may instead extend the term of an existing SSR Agreement, without addressing whether MISO must negotiate a new SSR Agreement or file it with the Commission.<sup>147</sup> To address this

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<sup>145</sup> *Id.* § 38.2.7.k.

<sup>146</sup> TEMT II Rehearing Order, 109 FERC ¶ 61,157 at P 288 (emphasis added).

<sup>147</sup> MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet No. 3256, § 3.A(4). We note that existing section 13.L of Attachment Y-1 provides that

(continued...)

inconsistency, we will conditionally accept the proposed revisions to section 38.2.7.k of the Tariff, subject to MISO submitting, in the compliance filing due within 90 days of the date of this order, revisions to modify section 3.A(4) of Attachment Y-1 so that it is consistent with section 38.2.7.k.

108. Finally, as discussed above, MISO proposes Tariff revisions in section 38.2.7 to allow, under certain conditions, resources to return prematurely from suspensions and modify the effective date of their definitive decision to retire or suspend operations in Attachment Y. Whether MISO intends to apply these revisions to SSRs and modify the term of SSR Agreements are unclear, as MISO's propose Tariff revisions on this matter refer generally to generation resources and SCUs, which may qualify to be SSRs. We will require MISO to submit, in the compliance filing due within 90 days of the date of this order, a proposal to allow SSRs to modify their decisions to suspend operations and/or the effective date of their definitive decisions to retire or suspend so that they may remain in, or return to, service, consistent with the treatment of other resource retirements and suspensions.

**c. SSR Operations**

109. With regard to MISO's operational procedures for an SSR, the existing MISO Tariff requires an SSR to be operated in accordance with the terms of its SSR Agreement with MISO, which contains detailed terms and conditions regarding operation and compensation of the SSR.<sup>148</sup> Among other things, the Tariff provides that:

. . . the Transmission Provider shall have the right to dispatch the SSR Unit at any time for reliability of the facilities within the Transmission Provider Region. The Transmission Provider shall make every attempt to minimize the use of an SSR Unit. The Transmission Provider will dispatch the SSR Unit as early as possible once conditions are identified that require the use of the SSR Unit and will make best efforts to minimize the uneconomic dispatch of the SSR Unit(s).<sup>149</sup>

The existing MISO Tariff also provides that MISO will notify SSRs of the quantity and time period of energy, operating reserve, and/or other ancillary services required from each SSR "[n]o later than 1000 hours E[astern] S[tandard] T[ime] the day prior to the

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in the event of a conflict between the Tariff and an SSR Agreement, the SSR Agreement will control. *Id.* Original Sheet No. 3280, § 13.L.

<sup>148</sup> *Id.* [38.2.7, System Support Resources, 1.0.0.](#)

<sup>149</sup> *Id.* § 38.2.7.d.

Operating Day.”<sup>150</sup> The existing MISO Tariff also provides that when MISO has not requested that an SSR provide its full capacity, the SSR may submit offers to provide energy or ancillary services unless this would impair the SSR’s ability to provide service at MISO’s request.<sup>151</sup>

110. Existing section 8 of the *pro forma* SSR Agreement in Attachment Y-1 also describes MISO’s operational procedures for SSRs. Among other things, existing section 8.C provides that MISO will notify SSRs of the hours and levels that they are to operate “according to the Section 4 [sic], Scheduling of the [MISO] Tariff.”<sup>152</sup>

**i. July 25 Filing**

111. Aside from minor, editorial changes to sections 38.2.7.e and 38.2.7.g of the MISO Tariff, MISO does not propose to revise its SSR operational procedures.

**ii. Comments**

112. MidAmerican argues that MISO’s proposed Tariff revisions regarding scheduling for SSRs are contradictory. MidAmerican argues that section 38.2.7.e provides that MISO will make “every attempt” to minimize any use of an SSR, but the following sentence provides that MISO will make “best efforts” to minimize uneconomic dispatch and appears to permit unlimited economic dispatch.<sup>153</sup> MidAmerican adds that section 38.2.7.f states that MISO will provide operating schedules to SSRs “no later than 1000 hours E[astern] S[tandard] T[ime] the day prior to the Operating Day,” but it is unclear how MISO will determine whether SSRs must operate, either for economic or reliability purposes, several hours prior to determining the results of the day-ahead market. Further, MidAmerican maintains that section 8.C of the *pro forma* SSR Agreement in Attachment Y-1 provides that MISO will provide notification of the hours and levels that a unit is to operate “according to the Section 4 [sic], Scheduling of the [MISO] Tariff.” MidAmerican states that it has been unable to identify a section 4 of the Tariff addressing scheduling and asserts that MISO should assure that the scheduling provisions referenced in Attachment Y-1 are consistent with the proposed notification provisions of section 38.2.7.e.<sup>154</sup>

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<sup>150</sup> *Id.* § 38.2.7.e.

<sup>151</sup> *Id.* § 38.2.7.f.

<sup>152</sup> *Id.* Fourth Revised Vol. No. 1, Original Sheet No. 3265, §§ 8.C(1), 8.C(3).

<sup>153</sup> MidAmerican Comments at 7.

<sup>154</sup> *Id.* at 7-8.

**iii. Answer**

113. MISO believes that section 38.2.7.e provides it with reasonable discretion to minimize the dispatch of SSRs while making best efforts to minimize uneconomic dispatch and, therefore, is not contradictory. However, MISO is willing to clarify the conditions under which SSRs will be operated in a compliance filing. MISO commits to “make every effort to minimize the use of an SSR Unit to allow the market systems to work, to reach the efficient solutions and to avoid cost-based regulatory outcomes.”<sup>155</sup> In addition, MISO states that it provides operating schedules for SSRs “no later than 1000 hours Eastern Standard Time the day prior to the Operating Day” to ensure that those operating schedules clear as part of the day-ahead market solution.<sup>156</sup> MISO states that the alternative – setting SSR operating schedules after the day-ahead market closes – would require re-dispatch solutions and associated make-whole credits.

**iv. Commission Determination**

114. In the July 25 Filing, MISO does not propose substantive revisions to its operational procedures for SSRs, which were previously accepted by the Commission in the TEMT II Orders. Accordingly, we find that MidAmerican’s concerns regarding potential inconsistencies in the existing language describing MISO’s operational procedures for SSRs are beyond the scope of this proceeding. We encourage MidAmerican to work through the MISO stakeholder process to address any remaining concerns. We note that MISO may file further revisions to its SSR program in a future filing under section 205 of the FPA.

**d. SSR Compensation**

115. The existing MISO Tariff provides that prior to the execution of an SSR Agreement, MISO will negotiate with a prospective SSR to determine an appropriate level of compensation. The Tariff provides that when negotiating SSR compensation, MISO will evaluate several factors, including the “costs of repairs or upgrades needed to meet applicable environmental regulations or local operating permit requirements.”<sup>157</sup> The Tariff also provides that SSR compensation will be reduced by other payments made

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<sup>155</sup> MISO Answer at 17.

<sup>156</sup> *Id.*

<sup>157</sup> MISO, FERC Electric Tariff, [38.2.7, System Support Resources, 1.0.0](#), § 38.2.7.g.

to the SSR, including “expected revenue from Energy and Operating Reserve Market transactions.”<sup>158</sup>

**i. July 25 Filing**

116. According to MISO, when the Tariff provisions regarding SSR compensation were accepted by the Commission in 2004, MISO did not anticipate the extensive nature of the potential capital expenditures required for some resources to comply with the EPA’s recently-modified air and water quality requirements. For example, MISO maintains that proposed EPA requirements could necessitate hundreds of millions of dollars in capital upgrades to enable coal-powered generators to comply. MISO states that it would be unrealistic for MISO’s market participants to bear such a large capital burden through SSR Agreements, if the resource owners have made definite decisions to retire such generation resources.<sup>159</sup> MISO states that allowing SSRs to recover the costs of environmental compliance “raises questions of equity” in the event that other generators decide to recover those costs from their own customers.<sup>160</sup>

117. To address these concerns, MISO proposes to limit an SSR’s recovery of the cost of complying with environmental regulatory requirements to include only the non-capital costs of environmental waivers, allowances, and/or exemptions necessary to enable an SSR to operate.<sup>161</sup> In particular, MISO proposes to evaluate, at a minimum, several factors, including the “non-capital costs of any environmental waivers, allowances, and/or exemptions that are obtained by the SSR Unit and not otherwise recoverable by the SSR Unit owner or operator.”<sup>162</sup> MISO argues that interpreting its Tariff to permit SSRs to recover the cost of capital improvements to comply with environmental regulations would be illogical because if the required capital improvements were made, then the resource owner would likely no longer desire to retire the SSR. MISO also contends that the proposal will obviate the need to address recovery of those capital costs because MISO will not require resources to continue operating when the continued operation would be contrary to applicable law, regulations, or court or agency orders.<sup>163</sup>

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<sup>158</sup> *Id.*

<sup>159</sup> MISO July 25 Filing, Transmittal Letter at 7-8.

<sup>160</sup> *Id.* Webb Test. at 12-13.

<sup>161</sup> *Id.*, Transmittal Letter at 7.

<sup>162</sup> MISO, FERC Electric Tariff, [38.2.7, System Support Resources, 2.0.0](#), § 38.2.7.h.ii.

<sup>163</sup> MISO July 25 Filing, Webb Test. at 13.

In contrast, MISO agrees that SSRs should receive compensation for the non-capital costs of any environmental waivers, allowances, and/or exemptions that are required to enable existing SSR equipment to operate, as these costs mitigate the economic consequences of operating an SSR that is required to maintain the reliability of the transmission system.<sup>164</sup>

118. In addition, MISO proposes revisions to modify the reduction to SSR compensation that will be made as a result of other payments received by an SSR, including “infra-marginal rents from Energy and Operating Reserve Market transactions and any other compensation paid under the market or via other contractual arrangements.”<sup>165</sup>

## ii. Comments and Protests

119. Dynegy argues that the Commission should accept the proposed revisions in section 38.2.7.h.ii, which limit the recovery of costs associated with any environmental waivers, allowances, and/or exemptions required to enable SSRs to operate to those that are non-capital in nature. According to Dynegy, MISO likely never intended for SSR contracts to include cost recovery for the high level of anticipated capital expenditures that would be required to comply with environmental regulations, and allowing these capital costs to be recovered would be unduly burdensome to load. Dynegy adds that the hundreds of millions of dollars in capital upgrades necessary to comply with environmental regulations should signal impacted resources to exit the market, and it would be imprudent to attempt ratepayer recovery under a one-year SSR Agreement for these capital expenditures.<sup>166</sup>

120. Public Interest Organizations support excluding capital costs from SSR compensation because out-of-market payments for such capital costs would create an enormous and discriminatory advantage for generation owners that could use the SSR process to make unit improvements. However, Public Interest Organizations urge the Commission to request that MISO provide more explanation about the scope of the non-capital costs eligible for recovery under SSR Agreements, how to distinguish those costs from capital costs, and why allowing non-capital costs is just and reasonable. Public Interest Organizations also question how MISO will assist owners of potential SSRs in obtaining environmental waivers and whether MISO’s commitment to provide this assistance is inconsistent with MISO’s assurance that only the non-capital costs of these

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<sup>164</sup> *Id.* Transmittal Letter at 8.

<sup>165</sup> MISO, FERC Electric Tariff, [38.2.7, System Support Resources, 2.0.0](#), § 38.2.7.h.ii.

<sup>166</sup> Dynegy Comments at 8.



waivers will be included in SSR compensation. Public Interest Organizations request that MISO define what environmental waivers are contemplated and argue that retiring generators should not be permitted to operate in routine violation of applicable environmental standards.<sup>167</sup>

121. Consumers-Detroit Edison agree that SSR Agreements should not be used to fund resource retrofits due to environmental compliance. However, they argue that MISO's proposal would prevent the recovery of other capital costs associated with the continued operation of an SSR that are unrelated to environmental compliance.<sup>168</sup> According to Consumers-Detroit Edison, MISO's proposal will prevent SSRs from being fully compensated, contrary to the Commission statement in the TEMT II Rehearing Order that "... all SSR units should be fully compensated for any costs incurred because of their extended service."<sup>169</sup> They state that, under the Commission's Uniform System of Accounts, some costs associated with an SSR's continued operation must be recorded as capital due to the treatment of "retirement units."<sup>170</sup> They also contend that combustion turbine or combined cycle units would likely need to make significant capital investments (e.g., by replacing a jet engine on a combustion turbine unit) in order to continue in operation under an SSR Agreement.<sup>171</sup> Consumers-Detroit Edison maintain that, absent SSR cost recovery, these costs will be allocated to a utility's customers, rather than to SSR beneficiaries, or may be unrecoverable if rejected by the applicable state commission.<sup>172</sup> Noting that MISO will only designate SSRs if it cannot find more economic alternatives to mitigate reliability issues, Consumers-Detroit Edison argue that if MISO eliminates SSR recovery of capital investments, generation owners will not make the required investments in their unit because they know that MISO will not dispatch the unit.<sup>173</sup> Consumers-Detroit Edison request that the Commission require MISO to continue to allow SSRs to recover capital costs, subject to a refund provision

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<sup>167</sup> Public Interest Organizations Comments at 9-10.

<sup>168</sup> Consumers-Detroit Edison Protest at 5-7.

<sup>169</sup> *Id.* at 8, 11 (citing TEMT II Rehearing Order, 109 FERC ¶ 61,157 at P 293).

<sup>170</sup> *Id.* at 9-10.

<sup>171</sup> *Id.* at 10-11. Consumers-Detroit Edison included copies of their policy and process manuals for certain retirement units to demonstrate the types of capital investments that could be made to continue operating combined cycle and combustion turbine SSRs. *Id.* at 11, Att. A-B.

<sup>172</sup> *Id.* at 12-13.

<sup>173</sup> *Id.* at 4-5.

that requires SSRs that later return to service to refund with interest all costs, less depreciation, of repairs or capital expenditures needed to meet the applicable environmental regulations.<sup>174</sup>

122. Michigan Agencies maintain that SSR compensation should be a cost-based rate that is submitted, along with supporting cost data, to the Commission for review and approval, rather than a negotiated rate between MISO and an SSR owner. According to Michigan Agencies, a cost-based approach will ensure that the market participants responsible for paying SSR costs have an opportunity to review and comment upon the costs to be recovered and that the Commission review the rate to ensure that it is just and reasonable and not unduly discriminatory or preferential. Michigan Agencies are concerned that section 38.2.7.h fails to provide any level of transparency by allowing only MISO to negotiate with an SSR owner to determine the revenue requirement and then requiring MISO to file that negotiated rate with the Commission as part of the SSR Agreement. Michigan Agencies argue that the proposal would allow MISO and SSR owners to negotiate to include inappropriate capital costs, accelerate depreciation or other cost recovery, and allow some SSRs, but not others, to recover certain costs. Michigan Agencies contend that MISO's proposal will allow MISO to file a negotiated settlement without allowing load-serving entities to participate in those negotiations or challenge the relevant cost-based information.<sup>175</sup>

123. Illinois Commission requests that the Commission direct MISO to explain the rationale for its SSR compensation proposal, particularly the proposal to deduct an SSR's infra-marginal rents from its fixed and variable operating and maintenance costs. Illinois Commission understands infra-marginal rents to refer to the positive difference between the clearing price and an SSR's marginal cost, which consists primarily of variable operating costs such as fuel. According to Illinois Commission, by deducting only infra-marginal rents, rather than the total revenues earned in MISO's energy and operating reserve markets consistent with the existing Tariff, MISO will allow an SSR to recover its marginal costs twice, via its market revenues and under its SSR Agreement. Illinois Commission asserts that this will provide an incentive for an SSR to voluntarily operate in all hours when the clearing price exceeds its marginal cost.<sup>176</sup> Illinois Commission requests that the Commission require MISO to explain its rationale for providing this incentive to SSR owners. Illinois Commission adds that if MISO's rationale is not

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<sup>174</sup> Consumers-Detroit Edison propose specific Tariff revisions related to the recovery of repair costs and argue that the revisions would assist MISO in negotiations with SSR owners. *Id.* at 7-8.

<sup>175</sup> Michigan Agencies Protest at 4-6.

<sup>176</sup> Illinois Commission Comments at 3-5.

persuasive, the Commission should direct MISO to revert to the compensation formula in the existing Tariff, which deducts all expected revenue received via MISO's energy and operating reserve markets rather than only infra-marginal rents.<sup>177</sup> In addition, Illinois Commission argues that MISO has not explained the relationship between providing an incentive for SSRs to operate via its SSR compensation proposal in section 38.2.7.h.ii and MISO's commitment in section 38.2.7.e to minimize the number of intervals in which it will schedule an SSR to operate for reliability reasons. Illinois Commission requests that the Commission direct MISO to explain the relationship between these provisions.<sup>178</sup>

124. Alliant maintains that MISO should clarify the meaning of the phrase "infra-marginal rents" used in the description of the SSR annual revenue requirement in section 38.2.7.g.ii. Alliant states that if MISO intends the phrase to mean "energy and A[n]cillary S[ervice] M[arket] sales revenues less fuel costs," it should be stated in the Tariff that variable operations and maintenance expenses do not already include fuel costs. According to Alliant, if it does include fuel costs, then marginal revenues would be the incremental total revenues.<sup>179</sup> In addition, Alliant notes that the *pro forma* SSR Agreement in Attachment Y-1 provides that MISO or SSR owners may seek certain monetary damages or other remedies allowable under Texas law. Alliant believes that this has been in the Tariff since it was originally effectuated and requests that it be changed to fit MISO's current circumstances.<sup>180</sup>

### iii. Answers

125. MISO responds to Public Interest Organizations by arguing that its commitment to assist SSR owners in obtaining environmental waivers is entirely consistent with Tariff provisions prohibiting SSRs from recovering capital costs. According to MISO, implementation of EPA regulations could cause reliability problems, and it is committed to maintain reliability by assisting parties in obtaining EPA extensions. MISO also maintains that funding expensive capital projects is incompatible with the intention of some resources to retire in the near term. MISO states that while funding environmental

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<sup>177</sup> *Id.* at 6.

<sup>178</sup> *Id.* at 5-6.

<sup>179</sup> Alliant Comments at 6.

<sup>180</sup> *Id.* at 7.

capital costs is not acceptable, non-capital costs (e.g., emission allowances) will be allowed in SSR compensation.<sup>181</sup>

126. In response to Consumers-Detroit Edison, MISO states that payments recoverable under SSR Agreements are for the temporary, continuing operation of resources that are physically and legally operational, but which are not able to recover sufficient costs under market operations to sustain their operations. MISO states that, in cases where a generator has failed and requires new equipment (e.g., a new rotor), resource owners have sought to recover the associated costs using SSR Agreements. MISO clarifies that Attachment Y Notices are inapplicable to such facilities and that resource owners should instead report the inoperable status of a unit to the Control Room Operations Window system, so that MISO may factor these rare circumstances into its operations planning. According to MISO, compensation under an SSR Agreement is not intended to resolve all grid reliability issues that may occur as a result of equipment failures or due to the inability of generators to continue operations due to being inadequately equipped to legally operate (e.g., in the situation where new emissions control equipment would be needed). MISO intends to include costs that may be undertaken for routine maintenance, or other limited and reasonable costs that are necessary for the continued operation of an SSR, in SSR compensation as “fixed and variable operating and maintenance costs to existing equipment” under section 38.2.7.h.ii(a) of the Tariff.<sup>182</sup> MISO agrees to clarify section 38.2.7.h.ii so that limited capital expenditures needed for routine repairs that emerge while operating would be recoverable under an SSR Agreement, if the Commission directs MISO to do so.

127. MISO believes that the refunding option proposed by some commenters is inappropriate. According to MISO, making SSR compensation subject to refund, rather than not paying an SSR for capital costs, would be reasonable if all SSRs return to service after the capital improvements were made. However, MISO asserts that the intent of the SSR provisions in the Tariff are to maintain reliability when a market participant plans to retire a resource.<sup>183</sup> MISO maintains that it would not make sense to incur significant environmental upgrade costs that are uplifted to market participants, only to retire the now economically-viable unit. MISO argues that reimbursing an SSR that remains operable only for a short period while operating under an SSR Agreement for long-term environmental capital costs, which could amount to tens of millions of dollars, would unfairly burden load-serving entities that will be responsible for paying such compensation. As a result, MISO does not agree to replace the proposed Tariff

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<sup>181</sup> MISO Answer at 20-21.

<sup>182</sup> *Id.* at 6.

<sup>183</sup> *Id.* at 6-7 (citing MISO July 25 Filing, Webb Test. at 3-4, 12-13).

enhancements with the language suggested by Consumers-Detroit Edison. MISO states, furthermore, that retiring SSRs will be permitted to resume operations only if the impacting environmental regulations are reversed, and those regulations would be irrelevant to the now-compliant SSR. Thus, according to MISO, the resource owner or regulatory authorities may seek means to continue operation whether or not impacting laws had changed.<sup>184</sup>

128. MISO states that if a resource needed for reliability cannot legally continue operations, then MISO will not execute an SSR Agreement to require the resource to continue operating. MISO contends that the decision to fund any necessary environmental upgrades is made by the resource owner before the Attachment Y process, rather than after with an associated refund, as proposed by some commenters. According to MISO, incidental or routine capital costs needed for continued operation of a resource that emerge during the term of the SSR Agreement would be subject to recovery via SSR compensation, after review by MISO of the need and extent of such costs relative to the reliability needs of the SSR.<sup>185</sup>

129. In addition, MISO claims that concerns regarding the treatment of SSR costs under the Commission's Uniform System of Accounts are unfounded because an SSR cannot be defined as a retirement unit if the facility has not retired. MISO states that an SSR is, by definition, a resource that has not retired but can operate to provide system reliability.<sup>186</sup>

130. MISO agrees with Michigan Agencies and notes that all SSR Agreements will be submitted to the Commission for review and approval, as expressly provided in section 38.7.2.d. MISO believes that this Tariff provision is just and reasonable because only the Commission can authorize MISO to compensate SSRs and collect the associated costs from market participants. MISO states that, if required to do so on compliance, it will incorporate this obligation into the Tariff.<sup>187</sup>

131. MISO disagrees with Illinois Commission's assumption that all revenue equal to an SSR's marginal cost is essentially risk-free profit for the SSR owner. MISO asserts that all revenue that is equal to the SSR's marginal costs is cost recovery and does not represent profits. MISO states that if it were to deduct all market revenues in calculating

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<sup>184</sup> *Id.* at 7.

<sup>185</sup> *Id.* at 7-8.

<sup>186</sup> *Id.* at 8 (citing MISO July 25 Filing, Webb Test. at 14-15).

<sup>187</sup> *Id.* at 15-16.

an SSR's compensation, then the resource owner would not recover the entirety of its going forward costs, because the marginal costs embedded in the resource's offer include fuel costs, which are not part of the resource's estimated going forward costs. Moreover, MISO explains that in the Tariff, the term "infra-marginal rents" is defined as "the positive difference between the SSR Unit's market revenues and the integral of the SSR Unit's marginal costs."<sup>188</sup> MISO adds that if SSRs operate voluntarily when MISO has not asked them to operate to preserve reliability and thereby collect infra-marginal rents, then the burden imposed on load-serving entities to keep the SSR operable will decrease.<sup>189</sup>

132. In response to Alliant, MISO states that it is willing to modify Attachment Y-1 to refer to Indiana law, rather than Texas law, if requested to do so on compliance.<sup>190</sup>

133. In response to MISO, Consumers-Detroit Edison appreciate MISO's willingness to permit SSRs to recover limited capital expenditures needed for routine repairs and propose Tariff language to update section 38.2.7.h.ii accordingly. They request that the Commission require MISO to adopt this language and do not oppose the adoption of this language in lieu of certain Tariff language they previously proposed in their protest.<sup>191</sup> With regard to the treatment of "retirement units" under the Commission's Uniform System of Accounts, Consumers-Detroit Edison clarify that they were not referring to power plants, as MISO assumes, but "to each piece of equipment that is recorded under the Commission's Uniform System of Accounts."<sup>192</sup>

#### iv. Commission Determination

134. The Commission accepted MISO's existing SSR program as "a back-stop measure only" and expected that the contracting for SSRs would be "limited and of short duration."<sup>193</sup> In fact, to address this and other concerns, the Commission required MISO to provide a report as part of a section 205 filing for an SSR Agreement that detailed the alternatives MISO evaluated, the estimated earliest termination date for the SSR, and how

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<sup>188</sup> *Id.* at 19-20.

<sup>189</sup> *Id.* at 17.

<sup>190</sup> *Id.* at 20.

<sup>191</sup> Consumers-Detroit Edison Answer at 2-3 (citing Consumers-Detroit Edison Protest at 7).

<sup>192</sup> *Id.* at 3-4.

<sup>193</sup> TEMT II Rehearing Order, 109 FERC ¶ 61,157 at P 288.

MISO will manage reliability once the SSR Agreement is terminated and the unit is retired.<sup>194</sup>

135. Our compliance requirements here are consistent with the Commission's previous acceptance of the SSR program as only a short-term, back-stop measure. Namely, we are accepting MISO's proposed revisions subject to certain compliance requirements, including that: (1) MISO's review process ensures that alternatives to an SSR Agreement are fully considered so that the SSR is the last-resort measure to address the underlying reliability issue(s); (2) MISO will provide a report accompanying any SSR Agreements filed under section 205 of the FPA that explains the SSR alternatives that MISO evaluated (i.e., why there are no SSR alternatives available in the short-term prior to the resource's retirement or suspension date); and (3) MISO demonstrate that the duration of an SSR Agreement is limited to the amount of time required to address the identified reliability need or requirement (e.g., by implementing a longer-term SSR alternative that could not be implemented prior to the resource's retirement or suspension date). Assuming that MISO implements the SSR program as it was intended, we find that further compliance is required to ensure that SSRs are adequately compensated.

136. MISO's proposal to limit SSR cost recovery to exclude capital costs incurred to meet applicable environmental regulations or local operating permit requirements is contrary to the Commission's findings in the TEMT II Rehearing Order. In particular, the Commission stated that:

[i]f SSR requirements necessitate expensive retrofits, nothing in the SSR program would require a generator to absorb any uncompensated going-forward costs. Clearly, reasonable and prudent costs for repairs or upgrades needed to meet applicable environmental regulations or local operating permits that would not be incurred otherwise should be fully recoverable under any resulting SSR contract . . . we emphasize that all SSR units should be fully compensated for any costs incurred because of their extended service.<sup>195]</sup>

MISO does not address how its proposal could be construed to be consistent with the Commission's previous findings or cost causation principles. Instead, MISO argues that it would be "unrealistic" for its market participants "to bear such a large capital burden."<sup>196</sup> However, given that the SSR program will be implemented only as a back-

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<sup>194</sup> *Id.*

<sup>195</sup> TEMT II Rehearing Order, 109 FERC ¶ 61,157 at PP 291, 293.

<sup>196</sup> MISO July 25 Filing, Transmittal Letter at 7.

stop to addressing an identified reliability problem, we expect that SSR Agreements will be necessary on an infrequent, short-term basis and, therefore, the overall capital costs borne by MISO market participants should not be excessive. SSRs are required to continue operating to preserve the reliability of MISO's system and, as discussed below, it is reasonable to allocate the costs resulting from their continued operations to the load-serving entities that necessitated the SSR designation. Moreover, failure to ensure that SSRs appropriately recover the costs associated with their continued operations could cause the associated costs to be allocated in a manner inconsistent with cost causation principles. Finally, if an SSR chooses not to make the necessary upgrades and its continued operation is contrary to the applicable legal requirements, it could become ineligible to be treated as an SSR and discontinue operations, thereby jeopardizing the reliability of MISO's system.

137. Nonetheless, we understand MISO's concern that SSR Agreements could be used to make significant capital improvements to resources that will ultimately retire or to allow a resource owner to inappropriately recover the cost of long-term capital expenditures from load-serving entities in MISO. For example, an SSR eligible for waiver from an environmental regulatory requirement could instead make a costly capital improvement and seek recovery under an SSR Agreement; or an SSR could recover the cost of significant upgrades required by environmental regulations under an SSR Agreement and then return to service by rescinding their Attachment Y Notice. MISO suggests that the answer to these concerns is that if a resource needed for reliability cannot legally continue operations without capital expenditures, then MISO will not execute an SSR Agreement to require the generator to continue operating.<sup>197</sup> Yet if the SSR program works as it is intended, there would be no alternative sufficient after the retire date to preserve reliability other than the continued operation of the SSR. Thus, MISO's suggested outcome is insufficient to preserve reliability.

138. That said, we agree with MISO that SSRs should also seek to comply with the applicable environmental regulations in a manner that minimizes the costs that will be allocated to load-serving entities in MISO. Accordingly, we conditionally accept MISO's proposed Tariff revisions regarding SSR compensation, subject to MISO submitting, in the compliance filing due within 90 days of the date of this order, Tariff revisions to ensure that: (1) all potential SSR alternatives have been examined and the SSR is the last-resort measure to address the underlying reliability issue(s); (2) SSRs are

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<sup>197</sup> MISO agrees to clarify the Tariff so that *limited* capital expenditures needed for routine repairs that emerge while operating would be recoverable under an SSR Agreement, if the Commission directs MISO to do so. MISO Answer at 6. As explained below, we do not direct such clarification because the Tariff revisions are sufficiently clear.



able to fully recover the capital costs associated with their continued operation, including reasonable and prudent costs to comply with environmental regulations or local operating permit requirements;<sup>198</sup> and (3) address the treatment of SSRs that later return to service, including to implement a refund provision that requires SSRs that later return to service to refund with interest all costs, less depreciation, of repairs or capital expenditures needed to meet the applicable environmental regulations.

139. We disagree with Consumers-Detroit Edison's concerns that MISO's proposed Tariff revisions would prevent an SSR owner from recovering capital costs associated with an SSR's continued operation that are unrelated to environmental compliance. MISO's proposed use of the term "non-capital costs" in section 38.2.7.h.ii applies only to the "costs of any environmental waivers, allowances, and/or exemptions that are obtained by the SSR Unit and not otherwise recoverable by the SSR Unit owner or operator."<sup>199</sup> MISO's proposed language permits MISO to consider "*any* other compensation paid under the market or via other contractual arrangements" in negotiating SSR compensation.<sup>200</sup> Moreover, when MISO submits an SSR Agreement to the Commission under section 205 of the FPA, the SSR owner will have an opportunity to present any concerns regarding its ability to fully recover the costs associated with its continued operations. While MISO's answer indicates that it intends to limit SSR capital cost recovery to include only those capital costs attributable to routine repairs that emerge while operating under an SSR Agreement,<sup>201</sup> we find that limiting capital cost recovery in this manner would be contrary to the Commission's previous finding that SSR should be fully compensated for any costs incurred because of their extended service.<sup>202</sup> Therefore, we will not require MISO to adopt the Tariff language proposed in Consumers-Detroit Edison's answer.

140. We will not require MISO to adopt a cost-based, rather than negotiated, approach for determining SSR compensation, as Michigan Agencies request. In the TEMT II Order, the Commission accepted MISO's "negotiated approach" to determining SSR

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<sup>198</sup> In its compliance filing, MISO should include revisions in section 38.2.7.h.ii to ensure that SSRs can recover fixed and variable operating and maintenance costs to both new and existing equipment.

<sup>199</sup> MISO, FERC Electric Tariff, [38.2.7, System Support Resources, 2.0.0](#), § 38.2.7.h.ii.

<sup>200</sup> *Id.* (emphasis added).

<sup>201</sup> MISO Answer at 6.

<sup>202</sup> *See, e.g.*, TEMT II Rehearing Order, 109 FERC ¶ 61,157 at P 293.

costs, stating that “because the tariff contains no rate mechanism, [the Commission] will require [MISO] to file under section 205 of the FPA for cost recovery at the time it seeks to charge customers for SSR costs.”<sup>203</sup> We are not persuaded to revisit the Commission’s previous acceptance of a negotiated approach to determine SSR compensation. However, we note that Michigan Agencies’ request that MISO use a cost-based approach to determine SSR compensation is consistent with MISO’s approach for negotiating compensation, as MISO will provide compensation *only* for an SSR’s going forward costs and will consider cost-based factors, such as a resource’s fixed and variable operating and maintenance costs, when negotiating compensation.<sup>204</sup> We also note that load-serving entities that may be allocated SSR costs and other interested parties may present any concerns raised by the compensation provisions of SSR Agreements when those agreements are filed with the Commission.

141. In section 38.2.7.h.ii, MISO proposes to reduce an SSR’s compensation by “payments under Schedule 2 of th[e] Tariff, payments under resource adequacy programs, infra-marginal rents from Energy and Operating Reserve Market transactions, and any other compensation paid under the market or via other contractual arrangements.”<sup>205</sup> We disagree with Illinois Commission’s interpretation that the term “infra-marginal rents” would allow MISO to deduct only energy and operating revenues in excess of an SSR’s marginal cost, so that SSRs could recover their marginal costs twice. The proposed Tariff revisions specifically require MISO to deduct “any other compensation paid under the market,” which would include any market revenues excluded by the term “infra-marginal rents.” For this reason, we also disagree with Alliant’s interpretation that MISO could deduct only energy and operating reserve revenues less fuel costs. Nonetheless, we agree with Illinois Commission and Alliant that the meaning of the term “infra-marginal rents” in the Tariff is unclear. In its answer, MISO indicates that, contrary to its proposed Tariff revisions, it does not intend to deduct a resource’s marginal costs when calculating SSR compensation to ensure that SSRs recover fuel costs embedded in their offers,<sup>206</sup> but MISO does not address how these costs are different from the “variable operating and maintenance costs” that are already recoverable under section 38.2.7.h.ii.<sup>207</sup> We will require MISO to submit, in the

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<sup>203</sup> TEMT II Order, 108 FERC ¶ 61,163 at P 372.

<sup>204</sup> MISO, FERC Electric Tariff, [38.2.7, System Support Resources, 2.0.0](#), § 38.2.7.h.ii.

<sup>205</sup> *Id.*

<sup>206</sup> MISO Answer at 19-20.

<sup>207</sup> MISO, FERC Electric Tariff, [38.2.7, System Support Resources, 2.0.0](#), § 38.2.7.h.ii.

compliance filing due within 90 days of the date of this order: (1) an explanation of its proposal to deduct infra-marginal rents from SSR compensation, including how it will prevent double-recovery of an SSR's marginal costs; and (2) corresponding Tariff revisions, as needed, including to define the term "infra-marginal rents."

142. We are concerned that the proposed revisions to section 38.2.7 describing SSR compensation may not reflect adjustments to resources' compensation under the existing provisions of the *pro forma* SSR Agreement in Attachment Y-1. In particular, section 7.C(2) Attachment Y-1 provides that, for all hours in which an SSR's capacity, as measured during a performance test, is less than the SSR's nameplate capacity, "then Billing Capacity is reduced as set out in Section 9.E below and remains so reduced until a subsequent Capacity Test establishes that Tested Capacity equals or exceeds SSR Capacity."<sup>208</sup> However, neither section 38.2.7 of the Tariff nor section 9.E of Attachment Y-1 address any reductions to a unit's billing capacity as a result of performance test results. Section 9.E(4) provides that if a resource has a misconduct event,<sup>209</sup> MISO's payments to the resources will be reduced by \$10,000 per day to reflect the resource's "lower-than-expected quality of firmness,"<sup>210</sup> but this reduction is not discussed in section 38.2.7. MISO's proposed revisions to section 9.D indicates that MISO will conduct an annual true-up to match market and other revenues with SSR Unit annual revenue requirements "in accordance with [s]ection 38.2.7(h)," but the proposed revisions to section 38.2.7.h do not discuss any such annual true-up.<sup>211</sup> Section 9.B also indicates that MISO will make availability payments to all SSRs to ensure that they are available to provide reactive power,<sup>212</sup> which is not reflected in section 38.2.7. To ensure clarity regarding SSR compensation, we will require MISO to submit, in the compliance filing due within 90 days of the date of this order: (1) an explanation of any adjustments

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<sup>208</sup> *Id.* Fourth Revised Vol. No. 1, Original Sheet No. 3263, § 7.C(2).

<sup>209</sup> Under section 9.E(1) of Attachment Y-1, a misconduct event refers to any hours in which an SSR "is requested to, but does not, deliver to [MISO] electrical energy and/or reactive power at a level of at least 98 [percent] . . . of the level shown in the Availability Plan." *Id.* Original Sheet No. 3267, § 9.E(1).

<sup>210</sup> *Id.* Original Sheet No. 3268, § 9.E(4). A resource is excused from a payment reduction arising from any misconduct event that is not due to intentionally incomplete, inaccurate, or dishonest reporting to MISO of the resource's availability or that is caused by failure of the MISO transmission grid. *Id.* § 9.E(3).

<sup>211</sup> *Id.* [ATTACHMENT Y-1, Standard Form System Support Resource \(SSR\) Agreement, 1.0.0](#), § 9.D, [38.2.7, System Support Resources, 2.0.0](#), § 38.2.7.h.

<sup>212</sup> *Id.* Fourth Revised Vol. No. 1, Original Sheet No. 3266, § 9.B.

to an SSR's compensation due to reduced billing capacity, misconduct events, and annual true-ups; and (2) Tariff revisions to ensure consistency in the description of SSR compensation in section 38.2.7 and Attachment Y-1.

143. In its answer, MISO responds to Alliant's concerns and states that MISO is willing to modify Attachment Y-1 to refer to Indiana law, rather than Texas law, if requested to do so on compliance. We direct MISO to modify this language in the compliance filing due within 90 days of the date of this order.

144. MISO proposes revisions in section 38.2.7.h.i providing that market participants will receive appropriate compensation "for any fixed operations and maintenance expenses that could have been avoided through a Retire or Suspend decision."<sup>213</sup> This proposed limitation on SSR compensation seems contrary to MISO's negotiated approach to determining SSR compensation as well as subsequent Tariff revisions proposed in section 38.2.7.h.ii, which indicate that MISO will consider additional factors when negotiating compensation, including, for example, variable operating and maintenance costs and applicable taxes.<sup>214</sup> We will require MISO to submit, in the compliance filing due within 90 days of the date of this order, Tariff revisions to remove this limitation on SSR cost recovery from section 38.2.7.h.i.

145. In section 38.2.7.h.ii, MISO proposes to limit SSR compensation to include only "going forward costs."<sup>215</sup> This limitation is consistent with MISO's initial description of its SSR program, including that "[MISO] will allow for the recovery of certain going forward costs on a unit-by-unit basis. Eligible costs are costs that would be incurred by the SSR Unit owner to provide service above the costs the SSR Unit would have incurred anyway had it been retired, placed into extended reserve shutdown, or disconnected."<sup>216</sup> We will require MISO to submit, in the compliance filing due within 90 days of the date of this order, Tariff revisions to define the term "going forward costs."

**e. SSR Cost Allocation**

146. The existing MISO Tariff provides that the costs of compensating SSRs "will be allocated to the Market Participants serving Load that benefits [sic] from the operation of

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<sup>213</sup> *Id.* [38.2.7, System Support Resources, 2.0.0](#), § 38.2.7.h.i.

<sup>214</sup> *Id.* § 38.2.7.h.ii.

<sup>215</sup> *Id.*

<sup>216</sup> MISO March 31, 2004 Filing, Docket No. ER04-691-000, McNamara Test. at 49.

the SSR Unit.”<sup>217</sup> In particular, the Tariff provides that SSR costs “shall be allocated on a *pro rata* basis to the Market Participants serving Load as an Load Serving Entity [sic] . . . or on behalf of a L[oad] S[erving] E[ntity] in the Local Balancing Authority Area(s) which requires the operation of the Generation Resource or SCU for reliability purposes.”<sup>218</sup>

**i. July 25 Filing**

147. MISO proposes to continue allocating the costs of compensating SSRs to the load-serving entities that “benefit[] from the operation of the SSR Unit,” but the allocation would not be tied to local balancing authority area boundaries. In particular, MISO proposes in section 38.2.7.j to allocate costs to the load-serving entities that “require[] the operation of the SSR unit for reliability purposes, and shall be specified in the SSR [A]greements.”<sup>219</sup> MISO also proposes to add a new Exhibit 2 (Description of Cost Allocations for SSR Unit Compensation) to the *pro forma* SSR Agreement in Attachment Y-1 to describe how SSR compensation will be allocated.<sup>220</sup> MISO argues that the proposed modifications will ensure that SSR costs are allocated to market participants based upon the reliability benefits received, rather than relying on historical local balancing authority area demarcations that may no longer be relevant to regional reliability issues.<sup>221</sup>

**ii. Comments and Protests**

148. Michigan Agencies argue that MISO does not sufficiently describe its parameters for determining an allocation of SSR costs to load-serving entities. They state that, for interested parties to raise all relevant arguments regarding SSR cost allocations before the Commission, it is important that interested parties know the parameters, assumptions, and modeling MISO used in determining those allocations. According to Michigan Agencies, without knowing MISO’s study process and assumptions for SSR cost allocations, load-

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<sup>217</sup> MISO, FERC Electric Tariff, [38.2.7, System Support Resources, 1.0.0](#).

<sup>218</sup> *Id.* § 38.2.7.h. The Tariff also provides that the costs of operating SSRs located in the footprint of American Transmission Company will be allocated to all load-serving entities located within that footprint. *Id.*

<sup>219</sup> *Id.* §§ 38.2.7, 38.2.7.j.

<sup>220</sup> *Id.* [ATTACHMENT Y-1, Standard Form System Support Resource \(SSR\) Agreement, 1.0.0](#), Ex. 2.

<sup>221</sup> MISO July 25 Filing, Webb Test. at 25.

serving entities lack any assurance that those allocations will be just and reasonable. They request that the Commission require MISO to define the processes and assumptions that it proposes to use in determining SSR cost allocations. In addition, Michigan Agencies maintain that MISO's proposed Tariff revisions provide only that SSR Agreements will be filed with the Commission for approval and do not reflect MISO's claims that SSR cost allocations will be included in SSR Agreements or that interested parties may raise any related concerns with the Commission.<sup>222</sup>

149. Illinois Commission supports MISO's proposal to more precisely allocate SSR costs based on the reliability benefits received by market participants, including to a subset of load-serving entities within a local balancing authority area.<sup>223</sup> However, Illinois Commission maintains that MISO's proposed Tariff revisions do not address how MISO will quantify the reliability benefits received, determine which load-serving entities require the operation of an SSR for reliability purposes, or determine the load-serving entities that benefit from the operation of an SSR. Illinois Commission is concerned that, without additional detail in the Tariff, MISO's cost allocation proposal will not be enforced or will provide MISO with unrestrained discretion in allocating SSR costs. Illinois Commission disagrees with MISO's position that additional detail need not be included in the Tariff because SSR cost allocations will be filed with the Commission. According to Illinois Commission, load-serving entities, and the loads they serve, must understand how MISO will allocate SSR costs so that they can assess the risk that they will be allocated SSR costs and mitigate their exposure to SSR Agreements. Illinois Commission adds that additional detail in the Tariff is needed to ensure that MISO applies a consistent cost allocation approach for all SSR Agreements and avoids undue discrimination. Illinois Commission requests that the Commission direct MISO to incorporate additional detail in the Tariff regarding the allocation of SSR costs.<sup>224</sup> In addition, Illinois Commission requests that the Commission require MISO to explain, for retail open access states, how MISO will identify the subset of a load-serving entity's customers that benefit from an SSR Agreement and target the SSR cost allocation only to the subset of benefiting customers. Illinois Commission argues that it may be more appropriate for MISO to analyze the distribution of SSR benefits in a manner that identifies customer load locations with more granularity than a load-serving entity's entire load.<sup>225</sup>

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<sup>222</sup> Michigan Agencies Protest at 6-8.

<sup>223</sup> Illinois Commission Comments at 6-8.

<sup>224</sup> *Id.* 8-10.

<sup>225</sup> *Id.* at 10-11.

150. While Ameren supports allocating SSR costs to the load-serving entities that benefit from SSRs, Ameren is concerned that MISO has not addressed how it will determine which load-serving entities are impacted by a particular SSR Agreement. Ameren notes that the *pro forma* SSR Agreement in Attachment Y-1 contains a new, Exhibit 2 to describe the SSR cost allocation, but states that this exhibit has been left blank. Ameren requests that the Commission condition any acceptance of MISO's proposal on MISO working with its stakeholders to complete the Exhibit 2 and submit a detailed description of how MISO will determine which load-serving entities are impacted by a particular SSR Agreement.<sup>226</sup>

151. MidAmerican does not object to MISO's proposed SSR cost allocation, stating that MISO's criteria for identifying the load-serving entities that require the operation of an SSR for reliability purposes will likely vary for each SSR and that these criteria can be addressed when MISO proposes a specific allocation with the Commission. However, MidAmerican is concerned regarding MISO's proposal to reflect these cost allocations in Exhibit 2 of SSR Agreements because it is unclear how load-serving entities can be bound by SSR Agreements to which they are not a party. MidAmerican notes that MISO assesses charges pursuant to tariff provisions of general applicability or pursuant to agreements with specific parties. In addition, MidAmerican asserts that MISO does not appear to provide notification to load-serving entities that an SSR Agreement has been filed under section 205. MidAmerican argues that, while MISO and the Commission provide generic notifications of Tariff filings, load-serving entities should not have the burden of identifying whether a contract to which they are not parties may nonetheless purport to impose charges on them.<sup>227</sup>

**iii. Answer**

152. MISO believes that the proposed Tariff provisions provide sufficient explanation that an SSR's compensation will be allocated based upon calculated benefits received from the operation of the SSR. MISO adds that section 38.2.7.d of the Tariff provides that all affected load-serving entities will receive notice of the Commission proceeding regarding SSR Agreements and will have the opportunity to raise all issues relevant to the allocation of SSR costs. MISO does not oppose a stakeholder process to further discuss and detail specific practices that MISO will employ to identify the benefitting load-serving entities and intends to begin doing so at the MISO Planning Advisory Committee meeting in September 2012.<sup>228</sup>

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<sup>226</sup> Ameren Comments at 4-5.

<sup>227</sup> MidAmerican Comments at 8-9.

<sup>228</sup> MISO Answer at 9.

iv. **Commission Determination**

153. We find that MISO's proposed revisions to allocate SSR costs without regard to historical local balancing authority boundaries is just and reasonable in light of changes that have occurred in the MISO region since the Commission's initial acceptance of MISO's SSR program, including the launch of MISO's operating reserve market and the consolidation of balancing authority functions in MISO.<sup>229</sup> We will conditionally accept MISO's proposed revisions to the allocation of SSR costs, subject to the conditions discussed below.

154. We will not require MISO to provide additional information in its Tariff regarding SSR cost allocations to load-serving entities. In the TEMT II Order, the Commission recognized that MISO had proposed a "negotiated approach" to determining SSR costs and, because the Tariff contains no rate mechanism, the Commission required MISO "to file under section 205 of the FPA for cost recovery at the time it seeks to charge customers for SSR costs."<sup>230</sup> Accordingly, MISO is required to submit a filing under section 205 of the FPA for cost recovery at the time it seeks to charge customers for SSR costs, and therefore, the Commission will review the allocation of SSR costs when MISO submits any such section 205 filings, and market participants will have an opportunity to contest the allocation of SSR costs. The level of detail MISO provides in its Tariff revisions regarding its cost allocation proposal is also consistent with Tariff revisions previously approved by the Commission.<sup>231</sup> Nonetheless, we recognize concerns that providing additional information regarding MISO's process for identifying the load-serving entities that should pay SSR costs will, among other things, assist load-serving entities in understanding their potential SSR cost responsibility. We will require MISO to submit, in the compliance filing due within 90 days of the date of this order: 1) an explanation of the general principles MISO will apply to identify the load-serving entities that should pay SSR costs, including whether MISO will apply its existing planning process to identify SSR beneficiaries; and 2) Tariff revisions providing that, when MISO discloses the results of an Attachment Y Study finding that a resource qualifies as an SSR, MISO will also disclose how the associated SSR costs would be allocated in the event that MISO enters into an SSR Agreement. Disclosing the allocation of SSR costs in this manner will enable load-serving entities to better understand their potential responsibility of SSR costs and participate in the identification of any SSR alternatives.

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<sup>229</sup> MISO, July 25 Filing, Webb Test. at 25. *See also Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,172, *order on reh'g*, 123 FERC ¶ 61,297 (2008).

<sup>230</sup> TEMT II Order, 108 FERC ¶ 61,163 at P 372.

<sup>231</sup> *See, e.g.*, MISO, FERC Electric Tariff, Third Revised Vol. No. 1, Original Sheet No. 409.



155. MISO's proposal to provide the SSR cost allocation to load-serving entities in Exhibit 2 of each SSR Agreement is inappropriate, as third-party load-serving entities are not bound by the provisions of SSR Agreements. Existing section 13.C of MISO's *pro forma* SSR Agreement in Attachment Y-1 provides that except for certain sections pertaining to remedies for default and the assignment of a party's rights or obligations, "nothing in this [SSR] Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any third party."<sup>232</sup> We will require MISO to submit, in the compliance filing due within 90 days of the date of this order, Tariff revisions to remove Exhibit 2 from Attachment Y-1.<sup>233</sup> When MISO files under section 205 of the FPA for cost recovery at the time it seeks to charge customers for SSR costs, consistent with the TEMT II Order,<sup>234</sup> MISO should include an implementing schedule under its Tariff.

#### 4. Other Issues

156. Michigan Agencies request that, if the Commission denies its request for clarification regarding SSR compensation and cost allocation, the Commission should set the matter for evidentiary hearing.<sup>235</sup> Consumers-Detroit Edison request that the Commission reject MISO's proposed Tariff revisions regarding SSRs or, at a minimum, set the issues raised for hearing.<sup>236</sup>

157. We deny the requests for a factual hearing as unnecessary. Such a hearing is necessary only when material issues of fact are in dispute that cannot be resolved on the basis of the written record. We find that the written record provides a sufficient basis upon which to resolve the issues presented in this case.<sup>237</sup>

158. In addition, we will require MISO to submit, in the compliance filing due within 90 days of the date of this order, Tariff revisions to address the following issues:

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<sup>232</sup> *Id.* Fourth Revised Vol. No. 1, Original Sheet No. 3277, § 13.C.

<sup>233</sup> In its compliance filing, MISO should also include revisions to section 38.2.7, so that it no longer indicates that SSR Agreements will contain "the allocation of costs." *Id.* [38.2.7, System Support Resources, 2.0.0](#).

<sup>234</sup> TEMT II Order, 108 FERC ¶ 61,163 at P 372.

<sup>235</sup> Michigan Agencies Protest at 9.

<sup>236</sup> Consumers-Detroit Edison Protest at 17.

<sup>237</sup> *See, e.g., Seneca Power Partners, L.P. v. New York Independent System Operator, Inc.*, 138 FERC ¶ 61,207, at P 16 (2012).

- 1) In several sections, MISO does not consistently capitalize terms to indicate that they are defined in the Tariff, including “forced outage.”<sup>238</sup>
- 2) In several sections, MISO uses inconsistent terms when referring to an Attachment Y Notice or Study, including the terms Attachment Y “request,” “submission,” “study,” “analysis,” and “reliability analysis.”<sup>239</sup>
- 3) Section 38.2.7.a refers to “forced derate status,”<sup>240</sup> which is not defined in the Tariff.

159. Finally, to the extent that any of the proposed Tariff revisions are not specifically addressed herein, we accept them.

The Commission orders:

(A) MISO’s proposed Tariff revisions are hereby conditionally accepted, as discussed in the body of this order.

(B) MISO is hereby directed to submit a compliance filing within 90 days of the date of this order, as discussed in the body of this order.

(C) MISO is hereby directed to submit a compliance filing within 180 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Moeller is concurring with a separate statement to be issued at a later date.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>238</sup> See, e.g., MISO, FERC Electric Tariff, [38.2.7, System Support Resources, 2.0.0](#), § 38.2.7.a.

<sup>239</sup> See, e.g., *id.* §§ 38.2.7.a, 38.2.7.c.

<sup>240</sup> *Id.* § 38.2.7.a.