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June 13, 2014

VIA ELECTRONIC FILING

Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First St., N.E.
Washington, D.C. 20426

Re: Allocation of SSR Costs Associated with Amended and Restated SSR Agreement with the City of Escanaba According to Rate Schedule No. 43; Docket No. ER14 - ____-000

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act ("FPA"), 16 U.S.C. § 824d and Part 35 of the Federal Energy Regulatory Commission's ("FERC" or "Commission") regulations, 18 C.F.R. § 35, *et. seq.*, the Midcontinent Independent System Operator, Inc. ("MISO") respectfully submits the enclosed Allocation of SSR Costs that are associated with the operation of the City of Escanaba's ("City's") generating facilities as SSR Units, pursuant to proposed Rate Schedule 43 under the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff ("Tariff").¹ An Amended and Restated System Support Resources ("SSR") Agreement by and between the City of Escanaba ("City") and MISO stating an effective date of June 15, 2014 ("Second Restated SSR Agreement") is the subject of a contemporaneously filing, and cost recovery under the Second Restated SSR Agreement is the subject of this transmittal letter.

I. BACKGROUND

The SSR provisions in the Tariff permit MISO to negotiate compensation for selected Generation Resources² where a Market Participant desires to Retire or Suspend operation of the

¹ On September 21, 2012, the Commission conditionally approved amendments to the SSR provisions in the Tariff to become effective on September 24, 2012, subject to compliance filings. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,237, at P 1 (2012) ("SSR Order"); *see also Compliance Filing of the Midwest Indep. Transmission Sys. Operator, Inc.*, FERC eLibrary Accession No. 20121218-5147, Docket No. ER12-2302 (filed Dec. 18, 2012).

² Capitalized terms not otherwise defined herein have the meanings ascribed thereto in Section 1 of the Tariff.

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facility but MISO determines that it is needed to maintain system reliability.³ Market Participants must submit a Notice to MISO at least 26 weeks in advance of any plan to Retire or Suspend a Generation Resource or a Synchronous Condenser Unit. Based upon information submitted by the Market Participant and MISO's knowledge of grid conditions, MISO determines if the facility should be designated as an SSR Unit. Upon such designation, MISO enters into agreements with Market Participants that have SSR Units to allow for recovery of certain going-forward costs, offset by expected payments for resource adequacy and net revenues from energy and ancillary services market transactions.

On October 5, 2012, MISO submitted a SSR filing in Docket ER13-38-000 containing an agreement between MISO and the City of Escanaba ("Original SSR Agreement"). The agreement covered the continued operation of two 12.5 MW units ("SSR Units") owned by the City and subject to Attachment Y in MISO's Tariff. On March 4, 2013, the Commission conditionally accepted the proposed Original SSR Agreement between MISO and the City, and ordered 60-day compliance filings.⁴

In accordance with Section 3.A.(4) of the Original SSR Agreement, MISO provided the City with notice that MISO may need the SSR Units for an extended period of time. The term stated in the SSR Agreement submitted in Docket ER14-1699-000 ("First Restated SSR Agreement") reflected a one-year renewal period, beginning on June 15, 2013. On August 13, 2013, the Commission accepted the proposed Second SSR Agreement between MISO and the City. On March 7, 2014, the Commission accepted MISO's compliance filing related to the First Restated SSR Agreement and Schedule 43.⁵

As provided in Section 3.A(4) of the First Restated SSR Agreement, MISO provided notice that MISO may need the SSR Units for another one-year period. The term of the new agreement, submitted contemporaneously with this filing, begins on June 15, 2014.

II. ALLOCATION OF SSR COSTS ASSOCIATED WITH THE ESCANABA SSR UNITS

The cost allocation in Schedule 43 is consistent with revised Section 38.2.7.k of MISO's Tariff and with the allocation previously accepted by the Commission.⁶ SSR costs are allocated to the footprint of the American Transmission Company ("ATC") based upon the peaks of each Local Balancing Authority ("LBA") within a month and to all LSEs within the ATC footprint based upon each LSE's contribution to the peak of its LBA.⁷ Schedule 43 accomplishes this allocation based upon peak usage of transmission facilities in each month, as determined by each LSE's Actual Energy Withdrawals during the monthly peak hour for each LBA.

³ See generally SSR Order at PP 2-4 (discussing the approval of the SSR provisions).

⁴ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,170 (2013).

⁵ *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,164 (2014).

⁶ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,164, Order at 8 (March 7, 2014) (Escanaba SSR Agreement and Rate Schedule 43).

⁷ See Revised Tariff Section 38.2.7.k.

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The included redlined comparison of the allocation to each LBA in the ATC footprint shows a more general statement for cost assignment to these LBAs than is contained in the Schedule 43 that accompanied the First Restated SSR Agreement. Consistent with similar schedules associated with other SSR filings, compensation elements are not individually named in the revised Schedule 43. Also, the more general statement is not dependent upon a list of named LBAs within the ATC footprint (currently five in number). The Schedule 43 included in this current filing would be equally applicable whether or not LBAs are reconfigured within the ATC footprint.⁸

Recognition of peak usage in Schedule 43 permits cost allocation that is similar to the manner in which “reliability-based transmission charges” are allocated.⁹ Schedule 43 does not apply a fixed percentage method which would be inflexible and incompatible with cost assignment in customer “choice” states such as Michigan where the SSR Units are located.¹⁰ The proposed cost allocation method, in contrast, identifies each LSE's Actual Energy Withdrawals during the coincident peak hour and allocates costs accordingly. In this way, the percentage of costs allocated to each LSE will vary each month based on the LSE's coincident peak hour energy usage during that month. The proposed cost allocation method retains the advantage of being contained in a single MISO settlements system, which means that software development, maintenance, and financial controls are performed only once.¹¹ The proposed cost allocation method also completely recovers the costs associated with the Amended SSR Agreement each month, as opposed to a demand-based rate that could only be calculated to approximately recover such costs.

⁸ On May 6, 2014, Wisconsin Electric Power Company publicly announced its intent to split the “WEC” LBA into two areas. The more general statement for cost assignment in Schedule 43 would properly apply the Tariff provisions related to the assignment of SSR costs whether five, six, or some other number of LBA areas exist.

⁹ *Midcontinent Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,170 (November 25, 2013) at P 16 (“accepted by this Commission, in a manner similar to reliability-based transmission charges”).

¹⁰ Customer switching began in the Upper Peninsula of Michigan, where the SSR Units are located, in June 2013. See Docket No. ER13-1695-000, MISO Transmittal Letter at n. 14 (April 14, 2013).

¹¹ Data and controls need not be developed to transfer billing determinants or costs between systems, which would complicate MISO’s controls and internal processes.

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III. DOCUMENTS SUBMITTED WITH THIS FILING

In addition to this transmittal letter, MISO is including the following:

- Exhibit A - Redline Rate Schedule 43, Allocation of SSR Costs Associated with the City of Escanaba SSR Units (Version 31.0)
- Exhibit B - Clean Rate Schedule 43, Allocation of SSR Costs Associated with the City of Escanaba SSR Units (Version 31.0).

IV. EFFECTIVE DATE

As discussed in the contemporaneously filed transmittal letter for the SSR Agreement, MISO requests a June 15, 2014 effective date for Rate Schedule 43 and for the SSR Agreement. MISO's requested effective date is consistent with the Commission's rule that service agreements must be filed within 30 days of commencing service.¹² The SSR Agreement is a *pro forma* agreement included in the Tariff, the executed versions of which are therefore service agreements.

V. NOTICE AND SERVICE

MISO has served a copy of this filing electronically, including attachments, upon all Tariff Customers under the Open Access Transmission, Energy and Operating Reserve Markets Tariff, MISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, MISO's Advisory Committee participants, as well as all state commissions within the Region.

In addition, the filing has been posted electronically on MISO's website at <https://www.misoenergy.org/Library/FERCFilingsOrders/Pages/FERCFilings.aspx> for other interested parties in this matter.

¹² Under the Commission's regulations, public utilities may adopt standard form service agreements that are included as part of the utility's tariff on file with the Commission. 18 C.F.R. § 35.10a(a). The Commission's regulations further provide that service agreements (defined at 18 C.F.R. § 35.2 as "an agreement that authorizes a customer to take electric service under the terms of a tariff") need only be filed within thirty days after service has commenced. 18 C.F.R. § 35.3(a)(2).

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VI. COMMUNICATIONS

Communications regarding this filing should be addressed to the following individuals, whose names should be placed on the official service list established by the Secretary in this proceeding:

Jeffrey L. Small*
Matthew R. Dorsett *
Midcontinent Independent
System Operator, Inc.
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Carmel, Indiana 46082-4202
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* Persons authorized to receive service

VII. CONCLUSION

For all of the foregoing reasons, MISO respectfully requests that the Commission accept the proposed Rate Schedule 43 without hearing, grant the proposed effective date of June 15, 2014, and grant waiver of any Commission regulations not addressed herein that the Commission may deem applicable to this filing.

Respectfully submitted,

/s/ Jeffrey L. Small
Jeffrey L. Small
Matthew R. Dorsett
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Counsel for MISO

EXHIBIT B

Allocation of SSR Costs Associated with the City of Escanaba SSR Units

In accordance with Section 9 and Exhibit 2 of the Amended and Restated System Support Resource (“SSR”) Agreement filed by MISO for the City of Escanaba SSR Units in Docket No. ER14-2176-000, such Agreement being for a period of service beginning on June 15, 2014, the monthly charges, and credits shall be netted and summed for each Month and apportioned, *pro rata*, to the Local Balancing Authorities (“LBAs”) in the footprint of the American Transmission Company (“ATC”) based on the monthly Actual Energy Withdrawals within each Local Balancing Authority for the monthly peak Hour (peak Hour based on the sum of Actual Energy Withdrawals) for each Local Balancing Authority. Such apportioned costs shall then be uplifted to Load Serving Entities in each Local Balancing Authority, *pro rata*, based on Actual Energy Withdrawals at Commercial Pricing Nodes for the monthly peak Hour (peak Hour based on the sum of Actual Energy Withdrawals, earliest peak Hour in the Month if more than one) within each Local Balancing Authority.

EXHIBIT A

MISO
 FERC Electric Tariff
 SCHEDULES

SCHEDULE 43
 Allocation of SSR Costs Associated with the Escanaba SSR Uni
~~30.0.0~~, 31.0.0

Allocation of SSR Costs Associated with the City of Escanaba SSR Units

In accordance with Section 9 and Exhibit 2 of the Amended and Restated System Support Resource (“SSR”) Agreement filed by MISO for the City of Escanaba SSR Units in Docket No. ~~ER13-1699~~ER14-2176-000, such Agreement being for a period of service beginning on June 15, ~~2013~~2014, the ~~monthly Availability Payments, monthly Dispatch Payments, monthly Performance-Related Payment Adjustments~~monthly charges, and ~~monthly Compensation for Unanticipated Repairs credits~~ shall be netted and summed for each Month and apportioned, *pro rata*, to the ~~ALTE, MGE, UPPC, WEC, and WPS~~-Local Balancing Authorities (“LBAs”) in the footprint of the American Transmission Company (“ATC”) based on the monthly Actual Energy Withdrawals within each Local Balancing Authority for the monthly peak Hour (peak Hour based on the sum of Actual Energy Withdrawals) for each Local Balancing Authority. Such apportioned costs shall then be uplifted to Load Serving Entities in each Local Balancing Authority, *pro rata*, based on Actual Energy Withdrawals at Commercial Pricing Nodes for the monthly peak Hour (peak Hour based on the sum of Actual Energy Withdrawals, earliest peak Hour in the Month if more than one) within each Local Balancing Authority.

FERC rendition of the electronically filed tariff records in Docket No. ER14-02180-000

Filing Data:

CID: C001344

Filing Title: 2014-06-13_Schedule 43 Escanaba Renewal

Company Filing Identifier: 10193

Type of Filing Code: 10

Associated Filing Identifier:

Tariff Title: FERC Electric Tariff

Tariff ID: 9

Payment Confirmation:

Suspension Motion:

Tariff Record Data:

Record Content Description, Tariff Record Title, Record Version Number, Option Code:

SCHEDULE 43, Allocation of SSR Costs Associated with the Escanaba SSR Uni, 31.0.0, A

Record Narrative Name:

Tariff Record ID: 5346

Tariff Record Collation Value: 811130880 Tariff Record Parent Identifier: 4199

Proposed Date: 2014-06-15

Priority Order: 1000000000

Record Change Type: CHANGE

Record Content Type: 1

Associated Filing Identifier:

Allocation of SSR Costs Associated with the City of Escanaba SSR Units

In accordance with Section 9 and Exhibit 2 of the Amended and Restated System Support Resource (“SSR”) Agreement filed by MISO for the City of Escanaba SSR Units in Docket No. ER14-2176-000, such Agreement being for a period of service beginning on June 15, 2014, the monthly charges, and credits shall be netted and summed for each Month and apportioned, *pro rata*, to the Local Balancing Authorities (“LBAs”) in the footprint of the American Transmission Company (“ATC”) based on the monthly Actual Energy Withdrawals within each Local Balancing Authority for the monthly peak Hour (peak Hour based on the sum of Actual Energy Withdrawals) for each Local Balancing Authority. Such apportioned costs shall then be uplifted to Load Serving Entities in each Local Balancing Authority, *pro rata*, based on Actual Energy Withdrawals at Commercial Pricing Nodes for the monthly peak Hour (peak Hour based on the sum of Actual Energy Withdrawals, earliest peak Hour in the Month if more than one) within each Local Balancing Authority.

Document Content(s)

FINAL Renewal2 Sch 43 Trans Letter.PDF.....1-5

Exh B Clean Tariff.PDF.....6-7

Exh A Marked Tariff.PDF.....8-9

FERC GENERATED TARIFF FILING.RTF.....10-11



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August 11, 2014

VIA ELECTRONIC FILING

Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First St., N.E.
Washington, D.C. 20426

**Re: Midcontinent Independent System Operator, Inc.
Presque Isle Power Plant-Related SSR Compliance Filing;
Docket No. ER14-1242**

Dear Secretary Bose:

Pursuant to the Order in the above-captioned case issued by the Federal Energy Regulatory Commission (“FERC” or “Commission”) on July 29, 2014,¹ and pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d and Part 35 of the Commission’s regulations, 18 C.F.R. § 35, *et. seq.*, the Midcontinent Independent System Operator, Inc. (“MISO”) respectfully submits a compliance filing in response to the July 29 Order in the above-captioned docket. MISO responds to the directives set forth in the July 29 Order and submits a proposed revision to the SSR Agreement for the Presque Isle Power Plant Units 5-9 (“PIPP”) under the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (“Tariff”).²

I. BACKGROUND

The July 29 Order addresses a number of issues related to MISO’s designation of PIPP, owned and operated by the Wisconsin Electric Power Company, as System Support Resources (“SSR”) units under the Tariff. The above-captioned docket originated from a MISO filing of a SSR Agreement covering PIPP, with a proposed effective date of February 1, 2014.

The Commission considered various protests that addressed the provisions of the PIPP SSR Agreement. While most arguments were rejected, the Commission directed MISO to make two adjustments to the text of the SSR Agreement. These adjustments are the subject of this filing. MISO has designated the SSR Agreement as Substitute Original Service Agreement No. 6506 under MISO’s Tariff.

¹ *Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,071 (July 29, 2014) (“July 29 Order”).

² Capitalized terms not otherwise defined herein have the meanings ascribed thereto in Section 1 of the Tariff.

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II. COMPLIANCE FILING

a. **Addition to Exhibit 2 to the PIPP SSR Agreement**

i. **Commission Directive**

The Commission required MISO to add the following provision to the end of Exhibit 2 to the SSR Agreement:³

Whenever the SSR Unit operates in the MISO Market for purposes other than system reliability, the SSR Unit will be committed, dispatched, and settled pursuant to the MISO Tariff, except in those hours where the SSR Unit Compensation is less than the SSR Unit Energy and Operating Reserve Credit. Under this exception, MISO will debit Participant (such debit to be equal to the difference between the SSR Unit Energy and Operating Reserve Credit and the SSR Unit Compensation).

ii. **Compliance**

In response to the directive in the July 29 Order, MISO adds the provision to the end of Exhibit 2, as shown in an attachment to this filing.

b. **Revision of the “Unanticipated Repairs” Provision**

i. **Commission’s Directive**

The July 29 Order “require[s] MISO . . . to submit . . . revisions adding . . . language to the sixth sentence of the first paragraph of section 9.E.”⁴ That section, in part, provides an exemption from a “Misconduct Event” that might otherwise impose performance penalties. The exemption would be applied following notification to MISO regarding the need for repairs. The added language states that the exemption terminates when “. . . repairs have been completed.”⁵

ii. **Compliance**

In response to the Commission’s directive, MISO revises Section 9.E to contain the additional language regarding unanticipated repairs.

³ July 29 Order at P 91.

⁴ *Id.* at P 100.

⁵ *Id.*, emphasis *sic*.

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III. DOCUMENTS SUBMITTED WITH THIS FILING

In addition to this Transmittal Letter, the following documents are being submitted with this filing:

Tab A – Redlined SSR Agreement (February 1, 2014 effective date);

Tab B – Clean SSR Agreement.

IV. EFFECTIVE DATES

In the July 29 Order, the Commission directed that the effective date for the SSR Agreement would be February 1, 2014.⁶ Therefore, the revisions to the SSR Agreement are submitted with that effective date.

V. NOTICE, SERVICE AND WAIVER

MISO has served a copy of this filing electronically, including attachments, upon each person designated on the official service list compiled by the Secretary in this proceeding, as well as on all Tariff Customers under the Tariff, MISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the MISO Advisory Committee participants, including state commissions within the Region.

In addition, the filing has been posted electronically on MISO's website at <https://www.misoenergy.org/Library/FERCFilingsOrders/Pages/FERCFilings.aspx> for other interested parties in this matter.

MISO respectfully submits that the requirements of Section 35.13 of the Commission's regulations that have not been specifically addressed herein are inapplicable to this filing. To the extent that the Commission determines any of these sections to be applicable to this filing, MISO respectfully requests waiver of the requirements of such sections.

⁶ *Id.* at P 114.

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VI. CONCLUSION

For all of the foregoing reasons, MISO respectfully requests that the Commission accept its compliance filing herein, without modification, suspension, or hearing, in compliance with the July 29 Order, and grant a waiver of any additional regulations the Commission may deem applicable in this instance.

Sincerely,

/s/ Jeffrey L. Small
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Matthew R. Dorsett
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CERTIFICATE OF SERVICE

I hereby certify that I have this day e-served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Carmel, Indiana, this 11th day of August 2014.

/s/ Amy Jones

Amy Jones

TAB B

SA 6506 Presque Isle - MISO SSR Agreement Version 32.0.0 Effective 2/1/2014

Substitute Original Service Agreement No. 6502

ATTACHMENT Y-1

Standard Form System Support Resource (“SSR”) Agreement

Between

Wisconsin Electric Power Company

and

The Midwest Independent Transmission System Operator, Inc.

ATTACHMENT Y-1

Standard Form System Support Resource (“SSR”) Agreement

Between

Wisconsin Electric Power Company

and

Midcontinent Independent System Operator, Inc.

This SSR Agreement (“Agreement”), effective as of the 1st of February, 2014 (“Effective Date”), is entered into by and between Wisconsin Electric Power Company, a corporation having offices located in Milwaukee, Wisconsin (“Participant”) and Midcontinent Independent System Operator, Inc. (“MISO”).

Recitals

WHEREAS:

- A. Participant owns or operates one or more Generation Resources or a Synchronous Condenser Unit (“SCU”) as defined in the MISO Tariff, and MISO requires Participant to supply service in the region served by MISO (“MISO Region”) in order to maintain the reliability of the Transmission System;
- B. MISO is the Regional Transmission Organization (“RTO”) for the MISO Region; and
- C. The Parties enter into this Agreement in order to establish the terms and conditions by which MISO and Participant will discharge their respective duties and responsibilities under the MISO Tariff.

Agreements

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, MISO and Participant (the “Parties”) hereby agree as follows:

Section 1. Unit-Specific Terms.

- A. Start Date: February 1, 2014.
- B. Start Time: 0000 Hrs.
- C. Units: Presque Isle Units 5-9 (located in Marquette, Michigan).

The units described above may also be referred to as the “Designated Units” or “Units” or “SSR Units” (“SSR Unit,” “Designated Unit,” or “SSR Unit” if reference to a single unit) in this Agreement.

- D. Description of Units:

Presque Isle Units 5 and 6 – Coal Fired 55 MW Steam Generators (each);

Presque Isle Units 7-9 – Coal Fired 78 MW Steam Generators (each); and,

supported by Diesel Generators (2) to supply emergency auxiliary power for only the generating units

as may be described in more detail on Exhibit 1 attached hereto.

- E. Name Plate Information

SSR Units: Presque Isle Units 5-9, 90 MW nameplate

- (a) SSR Capacity in MW:

For purposes of this Agreement, the term “SSR Capacity” shall mean the unit capabilities stated in Exhibit 1.

(b) Power Factor Lagging

(i) 0.90 P.F. (at Generator Main Leads)

(ii) _____ P.F. (at high side of Main Power Transformer)

(c) Power Factor Leading

(i) 0.95 P.F. (at Generator Main Leads)

(ii) _____ P.F. (at high side of Main Power Transformer)

F. Delivery Points:

WEC.PSQIGI5, WEC.PSQIGI6, WEC.PSQIGI7, WEC.PSQIGI8, and WEC.PSQIGI9

G. Revenue Meter Location (Use Resource IDs): N/A

H. Operational and Environmental Limitations (check and describe all that apply):

SSR Units:

(a) Operational

Maximum annual hours of operation: No limit through May 31, 2015

Maximum annual MWh: No limit through May 31, 2015

Maximum annual starts: twenty-four (24) per Unit

Other: _____

(b) Environmental

Maximum annual NO_x emissions: The Consent Decree filed October 1, 2007 in U.S. District Court for the Eastern District of Wisconsin to resolve allegations of violation of the New Source Review and New Source Performance Standard requirements under the Clean Air Act brought by the US Environmental Protection Agency and Michigan Department of

Environmental Quality (“Consent Decree”) requires Presque Isle to meet 12-month rolling tonnage limits, starting with the 12-month period ending December 31, 2015 (the initial 12-month rolling NO_x limit is 7,376 tons). The combined units must not exceed 1/12th of the applicable rolling limit in any month.

Maximum annual SO₂ emissions: The Consent Decree requires Presque Isle to meet 12-month rolling tonnage limits starting with the 12-month period ending December 31, 2015 (the initial 12-month rolling SO₂ limit is 17,257 tons). The Units must not exceed 1/12th of the applicable rolling limit in any month.

Other: The operation of the Units shall be subject to any additional limitations that may be imposed by the Michigan Department of Environmental Quality during the Term of this Agreement.

Section 2. Definitions.

- A. Unless herein defined, all definitions and acronyms found in the MISO Tariff shall be incorporated by reference into this Agreement and all references to Section 38.2.7 of the MISO Tariff shall be to those provisions as filed by MISO in FERC Docket No. ER12-2302 on December 18, 2012.
- B. “MISO Tariff” shall mean the document adopted by MISO, and subject to review by the Federal Energy Regulatory Commission (“FERC”), including any attachments or exhibits referenced in that document, as amended from time to time, that contains the scheduling, operating, planning, reliability, and settlement (including customer registration) policies,

rules, guidelines, procedures, standards, and criteria of MISO. For the purposes of determining responsibilities and rights at a given time, the MISO Tariff, as amended in accordance with the change procedure(s) described in the MISO Tariff, in effect at the time of the performance or non-performance of an action, shall govern with respect to that action.

- C. “Financing Person” shall mean any secured party, trustee, or mortgagee of an assigning Party, where the assignment is made for collateral security purposes.

Section 3. Term and Termination.

A. Term.

- (1) This Agreement is effective beginning on the Effective Date.
- (2) An SSR Agreement must not exceed a one (1) year term, except in exigent circumstances.
- (3) The “Term” of this Agreement is a period of twelve (12) months (starting on the Effective Date, the “Initial Term”); provided, however, that MISO, in its sole discretion, may terminate this Agreement for one or more Units prior to the end of the Term by giving at least ninety (90) days advance written notice to Participant.
- (4) The period beginning on the Start Date and ending when the Agreement terminates is called the “Full Term” of this Agreement.
- (5) An Initial Term may be extended by MISO if MISO provides at least one hundred eighty (180) days advance notice of such extension to the Participant.

- B. Termination by Participant. Participant may, at its option, immediately terminate this Agreement upon the failure of MISO to continue to be certified by the Federal Energy Regulatory Commission as an RTO.
- C. Effect of Termination and Survival of Terms. If this Agreement is terminated by a Party pursuant to the terms hereof with respect to any Unit, the rights and obligations of the Parties hereunder with respect to such Unit shall terminate, except that (1) the rights and obligations of the Parties that have accrued under this Agreement prior to the date of termination shall survive and (2) the rights and obligations of the Parties relating to any Unit with respect to which this Agreement has not been terminated shall survive.
- D. Notice. All notices (except for the two-hour advance notice specified in Section 7.A.(2) and operating notices exchanged in the ordinary course of business) required to be given under this Agreement shall be in writing, and shall be deemed delivered three (3) days after being deposited in the U.S. mail, first class postage prepaid, registered (or certified) mail, return receipt requested, addressed to the other Party at the address specified in this Agreement or shall be deemed delivered on the day of receipt if sent in another manner requiring a signed receipt, such as courier delivery or Federal Express delivery. Either Party may change its address for such notices by delivering to the other Party a written notice referring specifically to this Agreement. Notices required hereunder shall be in accordance with the applicable Sections of the MISO Tariff.

If to MISO:

General Counsel
Midcontinent Independent System Operator
720 City Center Drive
Carmel, IN 46032
Tel. No. (317) 249-5400

If to Participant:

Director – Power Marketing and Planning
Wisconsin Electric Power Company
333 W. Everett St. – A214
Milwaukee, WI 53203
Tel. No. (414) 221-2345

Cc:

General Counsel
Wisconsin Electric Power Company
333 W. Everett St.
Milwaukee, WI 53203
Tel. No. (414) 221-2345

Section 4. Representations, Warranties, and Covenants.

A. Participant represents, warrants, and covenants that:

- (1) Participant is duly organized, validly existing and in good standing under the laws of the jurisdiction under which it is organized, and is authorized to do business in the MISO Region;
- (2) Participant has full power and authority to enter into this Agreement and perform all of Participant's obligations, representations, warranties, and covenants under this Agreement;
- (3) Participant's past, present and future agreements or Participant's organizational charter or bylaws, if any, or any provision of any indenture, mortgage, lien, lease, agreement, order, judgment, or decree to which Participant is a party or by which its assets or properties are bound do not materially affect performance of Participant's obligations under this Agreement;
- (4) The execution, delivery and performance of this Agreement by Participant have been duly authorized by all requisite action of its governing body;

- (5) Except as set out in an exhibit (if any) to this Agreement, MISO has not, within the twenty-four (24) months preceding the Effective Date, terminated for Default any prior agreement with Participant, any company of which Participant is a successor in interest, or any Affiliate of Participant;
- (6) If any Defaults are disclosed on any such exhibit mentioned in subsection 4.A(5), either (a) MISO has been paid, before execution of this Agreement, all sums due to it in relation to such prior agreement, or (b) MISO, in its reasonable judgment, has determined that this Agreement is necessary for system reliability, and Participant has made alternate arrangements satisfactory to MISO for the resolution of the Default under the prior agreement with Participant, any company of which Participant is a successor in interest, or any Affiliate of Participant;
- (7) Participant has obtained, or will obtain prior to beginning performance under this Agreement, all licenses, registrations, certifications, permits and other authorizations and has taken, or will take prior to beginning performance under this Agreement, all actions required by applicable laws or governmental regulations except licenses, registrations, certifications, permits or other authorizations that do not materially affect performance under this Agreement;
- (8) Participant is not in violation of any laws, ordinances, or governmental rules, regulations or order of any Governmental Authority or arbitration board materially affecting performance of this Agreement and to which it is subject;
- (9) Participant is not Bankrupt, does not contemplate becoming Bankrupt nor, to its knowledge, will become Bankrupt;

- (10) Participant acknowledges that it has received and is familiar with the MISO Tariff; and
- (11) Participant acknowledges and affirms that the foregoing representations, warranties, and covenants are continuing in nature throughout the term of this Agreement. For purposes of this Section, “materially affecting performance” means resulting in a materially adverse effect on Participant’s performance of its obligations under this Agreement.

B. MISO represents, warrants, and covenants that:

- (1) MISO is the RTO certified under 18 C.F.R. §35.34 for the MISO Region and the subject Generation Resource/SCU is located within the MISO Region;
- (2) MISO is duly organized, validly existing and in good standing under the laws of Delaware, and is authorized to do business in the MISO Region;
- (3) MISO has full power and authority to enter into this Agreement and perform all of MISO’s obligations, representations, warranties, and covenants under this Agreement;
- (4) MISO’s past, present and future agreements or MISO’s organizational charter or bylaws, if any, or any provision of any indenture, mortgage, lien, lease, agreement, order, judgment, or decree to which MISO is a party or by which its assets or properties are bound do not materially affect performance of MISO’s obligations under this Agreement;
- (5) The execution, delivery and performance of this Agreement by MISO have been duly authorized by all requisite action of its governing body;

- (6) MISO has obtained, or will obtain prior to beginning performance under this Agreement, all licenses, registrations, certifications, permits and other authorizations and has taken, or will take prior to beginning performance under this Agreement, all actions required by applicable laws or governmental regulations except licenses, registrations, certifications, permits or other authorizations that do not materially affect performance under this Agreement;
- (7) MISO is not in violation of any laws, ordinances, or governmental rules, regulations or order of any Governmental Authority or arbitration board materially affecting performance of this Agreement and to which it is subject;
- (8) MISO is not Bankrupt, does not contemplate becoming Bankrupt nor, to its knowledge, will become Bankrupt; and
- (9) MISO acknowledges and affirms that the foregoing representations, warranties, and covenants are continuing in nature throughout the term of this Agreement. For purposes of this Section, “materially affecting performance,” means resulting in a materially adverse effect on MISO’s performance of its obligations under this Agreement.

Section 5. Participant Obligations.

Participant shall comply with, and be bound by, the MISO Tariff as it pertains to the provision of SSR Service.

Section 6. MISO Obligations.

MISO shall comply with, and be bound by, all MISO Tariff provisions.

Section 7. Capacity Tests for SSR Units.

A. Capacity Tests for SSR Reliability.

- (1) A “Capacity Test” is a one-hour performance test of an SSR Unit by Participant. The capacity as shown by a Capacity Test is called “Tested Capacity” and is determined by the applicable net meter readings during the Capacity Test.
- (2) MISO may require that a Capacity Test be run at MISO’s discretion at any time when an SSR Unit is on-line and declared dispatchable, but MISO may not require more than four (4) Capacity Tests for each Unit in a contract year. MISO must give Participant at least two (2) hours advance notice, after the SSR Unit is on-line and declared dispatchable, of a Capacity Test required by MISO, unless Participant agrees to less than two (2) hours. Participant may perform as many Capacity Tests as it desires, but Participant may not perform a Capacity Test without the prior approval of MISO, which approval MISO may not unreasonably withhold or delay. The Parties will reasonably cooperate to coordinate a Capacity Test. MISO has the right to reasonable advance notice of, and to have personnel present during, a Capacity Test.

B. Test Report. MISO shall give the Capacity Test results in writing (the “Capacity Test Report”) to Participant within twenty-four (24) hours after the test is run.

C. Effect of Test.

- (1) A determination of Tested Capacity is effective as of the beginning of the hour in which the Capacity Test is started.
- (2) For all hours in which Tested Capacity is less than SSR Capacity, then Billing Capacity is reduced as set out in Section 9.D below and remains so reduced until a

subsequent Capacity Test establishes that Tested Capacity equals or exceeds SSR Capacity.

- (3) After the Effective Date, MISO shall dispatch, as part of SSR energy, the electrical energy and/or reactive power produced by the SSR Units, including ramping energy and/or reactive power, during a Capacity Test requested by MISO, net of auxiliary equipment and other electrical requirements of the SSR Units that are supplied by the SSR Units. MISO shall also dispatch, as part of SSR energy, any electrical energy and/or reactive power produced by the SSR Units during a Capacity Test requested by Participant to attempt to show that Tested Capacity equals or exceeds SSR Capacity, net of auxiliary equipment and other electrical requirements of the SSR Units that are supplied by the SSR Units.

- D. Capacity Tests for Resource Adequacy. If the SSR Units are designated as a Capacity Resource pursuant to Module E-1 of the MISO Tariff, then the capacity test provisions of Module E-1 shall apply in addition to the Capacity Tests for System Reliability stated elsewhere in this Section 7.
- E. Coordination for Other Tests. The Parties shall coordinate scheduling of any testing of the SSR Units that is required consistent with Good Utility Practice (*e.g.*, testing in accordance with environmental and insurance requirements applicable to the Units), including the use of weekends and hours when the SSR Units are not expected to be used in order to complete the testing. During times for such testing, the SSR Units shall return to full service as dispatched by MISO (rescheduling the applicable testing) in the event of an emergency.

Section 8. Operation.

- A. Designated Unit Maintenance. Before the start of each contract year, Participant shall furnish MISO with its proposed schedule for Generator Planned Outages for inspection, repair, maintenance, and overhaul of the Designated Units for the contract year, in accordance with MISO's outage scheduling system. Participant shall promptly advise MISO of any later changes to the schedule. MISO shall approve or reject Generator Planned Outages in accordance with MISO's Business Practices Manual. MISO shall, if requested by Participant, endeavor to accommodate changes to the schedule to the extent that reliability of the MISO System is not materially affected by those changes. In all cases, MISO must find a time for Participant to perform maintenance in a reasonable timeframe as defined by Good Utility Practice.
- B. Planning Data. Participant shall timely report to MISO those items and conditions necessary for MISO's internal planning and compliance with MISO's guidelines in effect from time to time. The information supplied must include, without limitation, the following:
- (1) Availability Plan (*i.e.*, day-ahead offer) for the next day in accordance with MISO Tariff deadlines;
 - (2) Revised Availability Plan (*i.e.*, real time offer) reflecting changes in the Availability Plan in accordance with MISO Tariff deadlines; and
 - (3) Status of Designated Units with respect to Environmental Limitations, if any.
- Participant shall also timely report to MISO the status of the Designated Units with respect to Operational Limitations.
- C. Delivery.

- (1) MISO shall notify Participant of the hours and levels, if any, that the Designated Units are to operate through day-ahead commitment and real-time dispatch for system reliability. The set point, or the dispatch target, in the real-time dispatch shall be considered the “Delivery Plan” for the purposes of this Agreement. The day-ahead commitment and real time dispatch, including set points, shall be determined in the same manner and subject to the same limitations as other generation resources in MISO. MISO shall not notify Participant to operate the SSR Units in a way that would violate the limitations on operation set out in Section 1 above. Notwithstanding the foregoing, Participant shall be able to offer its SSR capability into the MISO Energy and Operating Reserves Markets outside of the Delivery Plan when the SSR Units are not needed to address the reliability issues pertaining to this Agreement, consistent with Section 38.2.7(h) of the Tariff. Such offers into MISO Markets shall be cost-based, including Start-Up, No Load, and Energy Offers. Participant shall also be encouraged to offer its available Zonal Resource Credits into the Planning Resource Auction pursuant to the terms of the Tariff.
- (2) Participant shall produce and deliver electrical energy from the SSR Units to the Delivery Point at the levels specified in the Delivery Plan, and shall maintain reactive power capability and voltage schedules in accordance with North American Electric Reliability Corporation (“NERC”) standards.
- (3) MISO may dispatch the Designated Units only when necessary to ensure transmission system security, including any emergency situation. MISO may not dispatch the Designated Units if compliance with the dispatch would cause the

Designated Units to exceed the Operational and Environmental Limitations, if any, set forth in Section 1 above or at levels inconsistent with those shown in the Availability Plan. Notwithstanding the foregoing, Participant retains the responsibility for operating the Designated Units in accordance with limits provided by applicable law.

- (4) During the hours of operation of the SSR Units specified in the Delivery Plan, Participant may only participate in the MISO Energy and Operating Reserve Markets from the SSR Units in accordance with the relevant conditions in the MISO Tariff.

Section 9. Payment Provisions.

A. For the transfer of any funds under this Agreement directly between MISO and Participant and pursuant to the Settlement procedures described in the MISO Tariff, the following shall apply:

- (1) Participant appoints MISO to act as its agent with respect to such funds transferred and authorizes MISO to exercise such powers and perform such duties as described in this Agreement or the MISO Tariff, together with such powers or duties as are reasonably incidental thereto.

- (2) MISO shall not have any duties, responsibilities to, or fiduciary relationship with Participant and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement except as expressly set forth herein or in the MISO Tariff.

- B. Compensation for the SSR Units. MISO shall compensate Participant according to the terms of Exhibit 2 to this Agreement.
- C. Settlement Provisions for the SSR Units. At the conclusion of each calendar month, MISO shall conduct a settlement process for the SSR Units, consistent with the MISO Tariff requirements.
- D. Performance-Related Payment Adjustments.
- (1) For the SSR Units, a “Misconduct Event” means any hour or hours during which Participant is requested to, but does not, deliver to MISO electrical energy from each unit at a level within a tolerance band of plus or minus five (5) MW of the level shown in the Delivery Plan on each hour (on a megawatt-hour/hour basis) or does not maintain reactive capability consistent with NERC standards; provided that, it shall not be deemed a Misconduct Event if (a) such failure to deliver energy and/or reactive power is due to the occurrence of a Force Majeure Event or the action or inaction of the Local Balancing Authority or the Transmission Operator, or (b) Participant has reported an outage or derating through the Outage Scheduler and the report by Participant is not intentionally incomplete, inaccurate, or dishonest regarding the availability of the Designated Units.
 - (2) Each day that a Misconduct Event continues after Participant receives written notice from MISO of the Misconduct Event is a separate Misconduct Event. A Misconduct Event is measured on a daily basis.
 - (3) Participant is excused from the Misconduct Event payment reduction

arising from any Misconduct Event that is (a) not due to intentionally incomplete, inaccurate, or dishonest reporting to MISO by Participant of the availability of the Designated Units, or (b) caused by a failure of the MISO Transmission System.

- (4) If a Misconduct Event is not excused, then to reflect this lower-than-expected quality of firmness, MISO's payments to Participant are reduced by the Unexcused Misconduct Amount not to exceed \$10,000 per day in the aggregate for all SSR Units.
- (5) MISO shall inform Participant, in writing, of its determination if a Misconduct Event is unexcused within twenty-four (24) hours of such determination being made.
- (6) MISO may offset any amounts due by Participant to MISO under this section against any amounts due by MISO to Participant under this Agreement.
- (7) Subject to the maximum amount set forth in clause (4) above, the Unexcused Misconduct Amount reduces payments to Participant (see Exhibit 2), and is composed of two parts:
 - (a) A fixed component equal to a proportionate reduction in the Monthly SSR Payment to Participant (see Exhibit 2) according to the reduction in Billing Capacity below the SSR Capacity, calculated for that portion of the month during which such reduction occurs. Billing Capacity is the lower of (i) the SSR Capacity and (ii) the Tested Capacity

if lower than SSR Capacity for reasons not reported through the Outage Scheduler or if such reporting to MISO is intentionally incomplete, inaccurate, or dishonest.

(b) A variable component equal to the product of: (i) the difference between: a) the level shown in the Delivery Plan and b) the amount of electrical energy and/or reactive power delivered to MISO; and (ii) an SSR Unit's Hourly Ex Post LMP in any hour or hours in which a Misconduct Event occurs.

E. Compensation for Unanticipated Repairs. During the Term of this Agreement, any necessary repair or repairs to the SSR Units shall not entitle Participant to any additional compensation under this Agreement, except as provided herein. For the purposes of this Section, "unanticipated" repairs are those for which compensation is not provided for in the Annual SSR Amount contained in Exhibit 2 to this Agreement. If the need arises to make an unanticipated repair to one or more of the SSR Units, Participant shall notify MISO before incurring said repair costs, together with reasonable information in support thereof. Upon such notification, MISO shall notify Participant either that: (i) it elects to exercise its rights to terminate regarding the affected Units by giving ninety (90) days advance written notice to Participant because the unanticipated repairs could not result in the return to service on a timeline that serves system reliability; or (ii) it agrees that Participant shall make such repairs, subject to the terms of parts (1) and (2) of this Section 9.E. In no circumstances shall the costs of repairs authorized by MISO pursuant to this Agreement be the responsibility of Participant. Participant shall not be deemed to have a Misconduct Event, nor shall Participant be subject to any other performance

penalties under this Agreement or the MISO Tariff for the period of time after Participant notifies MISO of the need for repairs as provided in this Section 9.E until repairs have been completed. MISO will provide to Participant written notification pursuant to the terms of parts (1) and (2) of this Section 9.E that directs Participant to make such repairs. MISO and Participant agree that “unanticipated repairs” in this Section 9.E shall not include the costs of complying with Mercury and Air Toxics Standards (“MATS”) requirements.

- (1) Non-Emergency Repairs. Except as provided for in part 2 of this Section 9.E, before MISO may issue a notice to fund unanticipated repairs, MISO shall make and receive approval of a Federal Power Act (“FPA”) Section 205 filing at FERC to modify this Agreement to provide for the recovery of such repair costs and shall serve such filing on all parties to whom such repair costs would be allocated. Participant shall not make such unanticipated repairs unless and until MISO informs Participant in writing that it has received FERC approval to modify this Agreement to provide for the recovery of such costs.
- (2) Emergency Repairs. If MISO reasonably believes that system security and reliability require any unanticipated repairs to be made before FERC can act on a Section 205 filing (“Emergency Repairs”), then MISO shall so notify Participant in writing and direct Participant to make such Emergency Repairs and MISO shall make a Section 205 filing at FERC as soon as reasonably practicable thereafter to modify this Agreement to provide for recovery of such repair costs. In the case of Emergency Repairs, if FERC later determines MISO’s decision to approve such Emergency Repairs was imprudent or otherwise does not accept such

modifications to the Agreement, then the costs of the Emergency Repairs shall be allocated pursuant to Section 38.2.7(k) of the MISO Tariff.

- F. Allocation of SSR Compensation. MISO will charge the LSEs that benefit from operation of the subject SSR Units in accordance with MISO Tariff Schedule 43G.

Section 10. Default.

A. Event of Default.

- (1) Failure to make payment or transfer funds as provided in the MISO Tariff shall constitute a material breach and shall constitute an event of default ("Default") unless cured within three (3) Business Days after delivery by the non-breaching Party of written notice of the failure to the breaching Party. Provided further that if such a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three (3) times within a rolling twelve (12)-month period, the fourth such breach shall constitute a Default by the breaching Party.
- (2) For any material breach other than a failure to make payment or transfer funds, the occurrence and continuation of any of the following events shall constitute an event of Default by Participant:
 - (a) Except as excused under subsection (4) or (5) below, a material breach, other than a failure to make payment or transfer funds, of this Agreement by Participant, including any material failure by

Participant to comply with the MISO Tariff, unless cured within fourteen (14) Business Days after delivery by MISO of written notice of the material breach to Participant. Participant must begin work or other efforts within three (3) Business Days to cure such material breach after delivery by MISO of written notice of such material breach by Participant and must prosecute such work or other efforts with reasonable diligence, consistent with Good Utility Practice, until the breach is cured. Provided further that if a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three (3) times within a rolling twelve (12)-month period, the fourth (4th) such breach shall constitute a Default.

- (b) Participant becomes Bankrupt, except for the filing of a petition in involuntary bankruptcy, or similar involuntary proceedings that is dismissed within ninety (90) days thereafter.
 - (c) A Designated Unit's operation is abandoned without intent to return it to operation during the Full Term; or
 - (d) Three or more unexcused Misconduct Events occur during a contract year.
- (3) Except as excused under subsection (4) or (5) below, a material breach of this Agreement by MISO, including any material failure by MISO to comply with the MISO Tariff, other than a failure to make payment or transfer funds, shall constitute a Default by MISO unless cured within

fourteen (14) Business Days after delivery by Participant of written notice of the material breach to MISO. MISO must begin work or other efforts within three (3) Business Days to cure such material breach after delivery by Participant of written notice of such material breach by MISO and must prosecute such work or other efforts with reasonable diligence, consistent with Good Utility Practice, until the breach is cured. Provided further that if a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three (3) times within a rolling twelve (12)-month period, the fourth such breach shall constitute a Default.

- (4) For any material breach other than a failure to make payment or transfer funds, the breach shall not result in a Default if the breach cannot reasonably be cured within fourteen (14) calendar days, prompt written notice is provided by the breaching Party to the other Party, and the breaching Party began work or other efforts to cure the breach within three (3) Business Days after delivery of the notice to the breaching Party and prosecutes the curative work or efforts with reasonable diligence, consistent with Good Utility Practice, until the curative work or efforts are completed.
- (5) If, due to a Force Majeure Event, a Party is in breach with respect to any obligation hereunder, such breach shall not result in a Default by that Party.

B. Remedies for Default.

- (1) MISO's Remedies for Default. In the event of a Default by Participant, MISO may pursue any remedies MISO has under this Agreement, at law, or in equity, subject to the provisions of Section 12: Dispute Resolution of this Agreement. In the event of a Default by Participant, if the MISO Tariff does not specify a remedy for a particular Default, MISO may, at its option, upon written notice to Participant, immediately terminate this Agreement, with termination to be effective upon the date of delivery of notice.
- (2) Participant's Remedies for Default.
 - (a) Unless otherwise specified in this Agreement or in the MISO Tariff, and subject to the provisions of Section 12: Dispute Resolution of this Agreement, in the event of a Default by MISO, Participant's remedies shall be limited to:
 - (i) Immediate termination of this Agreement upon written notice to MISO,
 - (ii) Monetary recovery in accordance with the Settlement procedures set forth in the MISO Tariff, and
 - (iii) Specific performance.
 - (b) However, in the event of a material breach by MISO of any of its representations, warranties or covenants, Participant's sole remedy shall be immediate termination of this Agreement upon written notice to MISO.
 - (c) If as a final result of any dispute resolution MISO, as the settlement agent, is determined to have over-collected from a Market Participant(s), with the

result that refunds are owed by Participant to MISO, as the settlement agent such Market Participant(s) may request MISO to allow such Market Participant to proceed directly against Participant, in lieu of receiving full payment from MISO. In the event of such request, MISO, in its sole discretion, may agree to assign to such Market Participant MISO's rights to seek refunds from Participant, and Participant shall be deemed to have consented to such assignment. This subsection (c) shall survive termination of this Agreement.

- (3) A Default or breach of this Agreement by a Party shall not relieve either Party of the obligation to comply with the MISO Tariff.

C. Force Majeure.

- (1) If, due to a Force Majeure Event, either Party is in breach of this Agreement with respect to any obligation hereunder, such Party shall take reasonable steps, consistent with Good Utility Practice, to remedy such breach. If either Party is unable to fulfill any obligation by reason of a Force Majeure Event, it shall give notice and the full particulars of the obligations affected by such Force Majeure Event to the other Party in writing or by telephone (if followed by written notice) as soon as reasonably practicable, but not later than fourteen (14) calendar days, after such Party becomes aware of the event. A failure to give timely notice of the Force Majeure event shall constitute a waiver of the claim of Force Majeure Event. The Party experiencing the Force Majeure Event shall also provide notice, as soon as reasonably practicable, when the Force Majeure Event ends.

(2) Notwithstanding the foregoing, a Force Majeure Event does not relieve a Party affected by a Force Majeure Event of its obligation to make payments or of any consequences of non-performance pursuant to the MISO Tariff or under this Agreement, except that the excuse from Default provided by subsection 10.A(5) above is still effective.

D. Duty to Mitigate. Except as expressly provided otherwise herein, each Party shall use commercially reasonable efforts to mitigate any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

Section 11. Limitation of Damages and Liability and Indemnification.

A. EXCEPT AS EXPRESSLY LIMITED IN THIS AGREEMENT OR MISO BUSINESS PRACTICES, MISO OR PARTICIPANT MAY SEEK FROM THE OTHER, THROUGH APPLICABLE DISPUTE RESOLUTION PROCEDURES SET FORTH IN MISO PROTOCOLS, ANY MONETARY DAMAGES OR OTHER REMEDY OTHERWISE ALLOWABLE UNDER INDIANA LAW, AS DAMAGES FOR DEFAULT OR BREACH OF THE OBLIGATIONS UNDER THIS AGREEMENT; PROVIDED, HOWEVER, THAT NEITHER PARTY IS LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR INJURY THAT MAY OCCUR, IN WHOLE OR IN PART, AS A RESULT OF A DEFAULT UNDER THIS AGREEMENT, A TORT, OR ANY OTHER CAUSE, WHETHER OR NOT A PARTY HAD KNOWLEDGE OF THE CIRCUMSTANCES THAT RESULTED IN THE SPECIAL, INDIRECT, PUNITIVE OR

CONSEQUENTIAL DAMAGES OR INJURY, OR COULD HAVE FORESEEN THAT SUCH DAMAGES OR INJURY WOULD OCCUR.

- B. The Parties have expressly agreed that, other than subsections A and B of this Section, this Agreement shall not include any other limitations of liability or indemnification provisions, and that such issues shall be governed solely by applicable law, in a manner consistent with the Choice of Law and Venue subsection 13.A of this Agreement, regardless of any contrary provisions that may be included in or subsequently added to the MISO Tariff (outside of this Agreement).

Section 12. Dispute Resolution.

- A. In the event of a dispute, including a dispute regarding a Default, under this Agreement, Parties to this Agreement shall first attempt resolution of the dispute using the applicable dispute resolution procedures set forth in the MISO Tariff.
- B. In the event of a dispute, including a dispute regarding a Default, under this Agreement, each Party shall bear its own costs and fees, including, but not limited to attorneys' fees, court costs, and its share of any mediation or arbitration fees.

Section 13. Miscellaneous.

- A. Choice of Law and Venue. Notwithstanding anything to the contrary in this Agreement, this Agreement shall be deemed entered into in Indiana and, with the exception of matters governed exclusively by federal law, shall be governed by and construed and interpreted in accordance with the laws of the State of Indiana that apply to contracts executed in and performed entirely within the State of Indiana, without reference to any rules of conflict of laws. Neither Party waives primary jurisdiction as a defense; provided that any court

suits regarding this Agreement shall be brought in a state or federal court located within Indiana, and the Parties hereby waive any defense of *forum non-conveniens*.

B. Assignment.

(1) Notwithstanding anything herein to the contrary, a Party shall not assign or otherwise transfer all or any of its rights or obligations under this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed, except that a Party may assign or transfer its rights and obligations under this Agreement without the prior written consent of the other Party (if neither the assigning Party or the assignee is then in Default of any Agreement with MISO):

- (a) Where any such assignment or transfer is to an Affiliate of the Party; or
- (b) Where any such assignment or transfer is to a successor to or transferee of the direct or indirect ownership or operation of all or part of the Party, or its facilities; or
- (c) For collateral security purposes to aid in providing financing for itself, provided that the assigning Party will require any secured party, trustee or mortgagee to notify the other Party of any such assignment. Any financing arrangement entered into by either Party pursuant to this Section will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the other Party of the date and particulars of any such exercise of assignment right(s). If requested by the Party making any such collateral assignment to a

Financing Person, the other Party shall execute and deliver a consent to such assignment containing customary provisions, including representations as to corporate authorization, enforceability of this Agreement and absence of known Defaults, notices of Default, and an opportunity for the Financing Person to cure Defaults.

(2) An assigning Party shall provide prompt written notice of the assignment to the other Party. Any attempted assignment that violates this Section is void and ineffective. Any assignment under this Agreement shall not relieve either Party of its obligations under this Agreement, nor shall either Party's obligations be enlarged, in whole or in part, by reason thereof.

C. No Third Party Beneficiary. Except with respect to the rights of other Market Participants in Section 10.B and the Financing Persons in Section 13.B, (1) nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any third party, (2) no third party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder and (3) this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or the services to be provided hereunder. Nothing in this Agreement shall create a contractual relationship between one Party and the customers of the other Party, nor shall it create a duty of any kind to such customers.

D. No Waiver. Parties shall not be required to give notice to enforce strict adherence to all provisions of this Agreement. No breach or provision of this Agreement shall be deemed waived, modified or excused by a Party unless such waiver, modification or excuse is in

writing and signed by an authorized officer of such Party. The failure by or delay of either Party in enforcing or exercising any of its rights under this Agreement shall (1) not be deemed a waiver, modification or excuse of such right or of any breach of the same or different provision of this Agreement, and (2) not prevent a subsequent enforcement or exercise of such right. Each Party shall be entitled to enforce the other Party's covenants and promises contained herein, notwithstanding the existence of any claim or cause of action against the enforcing Party under this Agreement or otherwise.

- E. Headings. Titles and headings of paragraphs and sections within this Agreement are provided merely for convenience and shall not be used or relied upon in construing this Agreement or the Parties' intentions with respect thereto.
- F. Severability. In the event that any of the provisions, or portions or applications thereof, of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, that determination shall not affect the enforceability or validity of the remaining portions of this Agreement, and this Agreement shall continue in full force and effect as if it had been executed without the invalid provision; provided, however, if either Party determines, in its sole discretion, that there is a material change in this Agreement by reason thereof, the Parties shall promptly enter into negotiations to replace the unenforceable or invalid provision with a valid and enforceable provision. If the Parties are not able to reach an agreement as the result of such negotiations within fourteen (14) days, either Party shall have the right to terminate this Agreement on three (3) days written notice.
- G. Entire Agreement. Any exhibits attached to this Agreement are incorporated into this Agreement by reference and made a part of this Agreement as if repeated verbatim in this

Agreement. This Agreement represents the Parties' final and mutual understanding with respect to its subject matter. It replaces and supersedes any prior agreements or understandings, whether written or oral. No representations, inducements, promises, or agreements, oral or otherwise, have been relied upon or made by any Party, or anyone on behalf of a Party, that are not fully expressed in this Agreement. An agreement, statement, or promise not contained in this Agreement is not valid or binding.

- H. Amendment. The standard form of this Agreement may only be modified through the procedure for modifying the MISO Tariff described in the MISO Tariff. Any changes to the terms of the standard form of this Agreement shall not take effect until a new Agreement is executed between the Parties.
- I. MISO's Right to Audit Participant. Participant shall keep detailed records for a period of three years of all activities under this Agreement giving rise to any information, statement, charge, payment or computation delivered to MISO under the MISO Tariff. Such records shall be retained and shall be available for audit or examination by MISO as hereinafter provided. MISO has the right during Business Hours and upon reasonable written notice and reasonable cause to examine the records of Participant as necessary to verify the accuracy of any such information, statement, charge, payment or computation made under this Agreement. If any such examination reveals any inaccuracy in any information, statement, charge, payment or computation, the necessary adjustments in such information, statement, charge, payment, computation, or procedures used in supporting its ongoing accuracy will be promptly made.

- J. Participant's Right to Audit MISO. Participant's right to data and audit of MISO shall be as described in the MISO Tariff and shall not exceed the rights described in the MISO Tariff.
- K. Further Assurances. Each Party agrees that during the term of this Agreement it will take such actions, provide such documents, do such things and provide such further assurances as may reasonably be requested by the other Party to permit performance of this Agreement.
- L. Conflicts. This Agreement is subject to applicable federal, state, and local laws, ordinances, rules, regulations, orders of any Governmental Authority and tariffs. Nothing in this Agreement may be construed as a waiver of any right to question or contest any federal, state and local law, ordinance, rule, regulation, order of any Governmental Authority, or tariff. In the event of a conflict between this Agreement and an applicable federal, state, and local law, ordinance, rule, regulation, order of any Governmental Authority or tariff, the applicable federal, state, and local law, ordinance, rule, regulation, order of any Governmental Authority or tariff shall prevail, provided that Participant shall give notice to MISO of any such conflict affecting Participant. In the event of a conflict between the MISO Tariff and this Agreement, the provisions expressly set forth in this Agreement shall control.
- M. No Partnership. This Agreement may not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party has any right, power, or authority to enter any agreement or undertaking for, or act on behalf of, or to act as or be an agent

or representative of, or to otherwise bind, the other Party except as provided in Section 9.A.

N. No State Public Utility Created. This Agreement may not be interpreted or construed as modifying the jurisdictional status of MISO, including, but not limited to establishment of MISO as a state public utility under the laws of any jurisdiction, as a result of MISO's performance under this Agreement.

O. Construction. In this Agreement, the following rules of construction apply, unless expressly provided otherwise or unless the context clearly requires otherwise:

- (1) The singular includes the plural, and the plural includes the singular.
- (2) The present tense includes the future tense, and the future tense includes the present tense.
- (3) Words importing any gender include the other gender.
- (4) The word "shall" denotes a duty.
- (5) The word "must" denotes a condition precedent or subsequent.
- (6) The word "may" denotes a privilege or discretionary power.
- (7) The phrase "may not" denotes a prohibition.
- (8) References to statutes, tariffs, regulations or the MISO Tariff include all provisions consolidating, amending, or replacing the statutes, tariffs, regulations or the MISO Tariff referred to.
- (9) References to "writing" include printing, typing, lithography, and other means of reproducing words in a tangible visible form.

- (10) The words “including,” “includes,” and “include” are deemed to be followed by the words “without limitation.”
- (11) Any reference to a day, week, month or year is to a calendar day, week, month or year unless otherwise indicated.
- (12) References to Articles, Sections (or subdivisions of Sections), Exhibits, annexes or schedules are to this Agreement, unless expressly stated otherwise.
- (13) Unless expressly stated otherwise, references to agreements, the MISO Tariff and other contractual instruments include all subsequent amendments and other modifications to the instruments, but only to the extent the amendments and other modifications are not prohibited by this Agreement.
- (14) References to persons or entities include their respective successors and permitted assigns and, for governmental entities, entities succeeding to their respective functions and capacities.
- (15) References to time are to Eastern Standard Time.
- (16) References to any capitalized word or phrase not defined herein shall have the meanings from the MISO Tariff.

P. Multiple Counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

SIGNED, ACCEPTED AND AGREED TO by each undersigned signatory who, by signature hereto, represents and warrants that he or she has full power and authority to execute this Agreement.

Midcontinent Independent System Operator, Inc.:

By: /s/ Richard Doying_____

Name: Richard Doying_____

Title: Exec. VP Operations & Corp. Services

Date: _____

Participant, Wisconsin Electric Power Company:

By: /s/ Gale E. Klappa_____

Name: Gale E. Klappa_____

Title: President and Chief Executive Officer

Date: 1/29/2014_____

EXHIBIT 1

Detailed Description of SSR Units

Presque Isle Units 5-9, including two (2) diesel generators for emergency auxiliary power

Location: Marquette, Michigan; occupying 65 acres of land on the shore of Lake Superior

Coal-based:

Units 5-9 burn low-sulfur sub-bituminous coal
#2 Fuel Oil used for diesel generators and boiler start-up

Year in Service: Unit 5: 1974
Unit 6: 1975
Unit 7: 1978
Unit 8: 1978
Unit 9: 1979

The following ratings are pursuant to Net Generating Capacity (MW Module E) using sub-bituminous coal:

Unit 5: 55 MW
Unit 6: 55 MW
Unit 7: 78 MW
Unit 8: 78 MW
Unit 9: 78 MW

Coal Handling: Transportation by self-unloading coal boats as permitted by Lake Superior shipping season limitations.

Storage: 800,000-ton capacity pile; 1,200-1,600-ton capacity coal bunkers within plant

EXHIBIT 2

Description of SSR Unit Going-Forward Compensation

A. Fixed Component of Compensation

Pursuant to Section 9 of the Agreement, MISO shall pay Participant a Monthly SSR Payment of \$4,352,832, representing monthly allocations of the Annual SSR Amount (all five Units combined) each month during the term of the Agreement. If this Agreement is terminated with respect to one or more Units, but less than all five, the Monthly SSR Payment shall be reduced by an amount to be determined by the Parties following the notice of termination to reflect the removal of such Unit(s) from service under this Agreement. Such reduced amount shall be submitted by MISO to FERC for approval in a Federal Power Act (“FPA”) Section 205 filing to modify this Agreement to provide for the reduced Monthly SSR Payment, which filing shall be served on all parties to whom such costs would be allocated under MISO Tariff Schedule 43G. The FERC-approved reduced amount shall be applicable the later of (a) the date that is ninety (90) days following notice of termination or (b) the date on which MISO elected to make such termination effective. Each Monthly SSR Payment shall be made regardless of dispatch of the SSR Units during that month. If this Agreement is terminated effective during the course of a calendar month, then the Monthly SSR Payment shall be prorated for that month. The compensation provided for under this Agreement may be further modified pursuant to Section 7.C (adjustment to Monthly SSR Payment based on Capacity Tests provided for pursuant to Section 7.A) and/or Section 9.D (“Performance-Related Payment Adjustments”) and/or Section 9.E (“Compensation for Unanticipated Repairs”) of the Agreement. Compensation shall be settled on a monthly basis.

If the Agreement is terminated by MISO prior to the end of the Term, MISO shall compensate Participant for its costs of fuel procured, but not consumed or useable for the operation of other Units that remain in operation, as of the date of such termination, net of any fuel resale revenues and including reasonable costs to achieve such revenues, based on the termination of the Agreement (“Mitigated Coal Cost”). For the completion of the applicable cost calculations, Participant shall submit the Mitigated Coal Cost to MISO such that the information is received by MISO within 180 days after the last day that the terminated Unit is operated for SSR purposes. Such submissions to MISO shall be sent to MISO at the address stated in Section 3.D of this Agreement, to the attention of the Manager of Market Settlements. The Mitigated Coal Cost amount shall be submitted by MISO to FERC for approval in a Federal Power Act (“FPA”) Section 205 filing to modify this Agreement to provide for both the amount of compensation for the Mitigated Coal Cost and the manner in which such costs will be collected, which filing shall be served on all parties to whom such costs would be allocated under MISO Tariff Schedule 43G.

B. Variable Component of Compensation

Pursuant to Section 9 of the Agreement, MISO shall pay Participant its Production Cost for the amount of Actual Energy Injections (as defined in Module A of the MISO Tariff) and Operating Reserve Cost in each instance that MISO dispatches an SSR Unit. For the purposes of this Agreement, “Production Cost” shall mean the Energy output cost of the SSR Unit based upon Start Up, No Load, and Energy Offer cost components that reflect the actual costs of physically operating the SSR Unit, and “Operating Reserve Cost” shall mean the actual cost to provide Operating Reserves. All Production Costs and Operating Reserve Costs will be subject

to audit by MISO, and will be subject to audit and enforcement by the Independent Market Monitor.

Through the MISO settlement process, MISO will ensure that Participant is paid the “SSR Unit Compensation,” which is equal to the sum of Production Cost for the amount of Actual Energy Injections (as defined in Module A of the MISO Tariff) and Operating Reserve Cost over all the Delivery Plan Instructed Hours of Operation in the Day for that SSR Unit. MISO will compare the SSR Unit Compensation to the “SSR Unit Energy and Operating Reserve Credit.” The SSR Unit Energy and Operating Reserve Credit are those charges and credits calculated pursuant to Sections 39.3 Day-Ahead Energy and Operating Reserve Market and 40.3 Real Time Energy and Operating Reserve Market Settlement of the MISO Tariff, plus any revenues from Schedule 2 associated with the SSR Unit or from Planning Resource designation and any charges assessed through Schedule 17 and Schedule 24. In those hours where the SSR Unit Compensation is greater than the SSR Unit Energy and Operating Reserve Credit, MISO will make the applicable make-whole payment to Participant (such make-whole payment to be equal to the difference between the SSR Unit Compensation and the SSR Unit Energy and Operating Reserve Credit). In those hours where the SSR Unit Compensation is less than the SSR Unit Energy and Operating Reserve Credit, MISO will debit from Participant (such debit to be equal to the difference between the SSR Unit Energy and Operating Reserve Credit and the SSR Unit Compensation).

During the Term of the Agreement, compensation for reliability commitments shall be paid to Participant under this Exhibit 2 and not according to Voltage and Local Reliability payment provisions.

Whenever the SSR Unit operates in the MISO Market for purposes other than system reliability, the SSR Unit will be committed, dispatched, and settled pursuant to the MISO Tariff, except in those hours where the SSR Unit Compensation is less than the SSR Unit Energy and Operating Reserve Credit. Under this exception, MISO will debit Participant (such debit to be equal to the difference between the SSR Unit Energy and Operating Reserve Credit and the SSR Unit Compensation).

TAB A

SA 6506 Presque Isle - MISO SSR Agreement Version ~~31~~32.0.0 Effective 2/1/2014

Substitute Original Service Agreement No. 6502

ATTACHMENT Y-1

Standard Form System Support Resource (“SSR”) Agreement

Between

Wisconsin Electric Power Company

and

The Midwest Independent Transmission System Operator, Inc.

ATTACHMENT Y-1

Standard Form System Support Resource (“SSR”) Agreement

Between

Wisconsin Electric Power Company

and

Midcontinent Independent System Operator, Inc.

This SSR Agreement (“Agreement”), effective as of the 1st of February, 2014 (“Effective Date”), is entered into by and between Wisconsin Electric Power Company, a corporation having offices located in Milwaukee, Wisconsin (“Participant”) and Midcontinent Independent System Operator, Inc. (“MISO”).

Recitals

WHEREAS:

- A. Participant owns or operates one or more Generation Resources or a Synchronous Condenser Unit (“SCU”) as defined in the MISO Tariff, and MISO requires Participant to supply service in the region served by MISO (“MISO Region”) in order to maintain the reliability of the Transmission System;
- B. MISO is the Regional Transmission Organization (“RTO”) for the MISO Region; and
- C. The Parties enter into this Agreement in order to establish the terms and conditions by which MISO and Participant will discharge their respective duties and responsibilities under the MISO Tariff.

Agreements

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein,

MISO and Participant (the "Parties") hereby agree as follows:

Section 1. Unit-Specific Terms.

- A. Start Date: February 1, 2014.
- B. Start Time: 0000 Hrs.
- C. Units: Presque Isle Units 5-9 (located in Marquette, Michigan).

The units described above may also be referred to as the "Designated Units" or "Units" or "SSR Units" ("SSR Unit," "Designated Unit," or "SSR Unit" if reference to a single unit) in this Agreement.

- D. Description of Units:

Presque Isle Units 5 and 6 – Coal Fired 55 MW Steam Generators (each);

Presque Isle Units 7-9 – Coal Fired 78 MW Steam Generators (each); and,

supported by Diesel Generators (2) to supply emergency auxiliary power for only the generating units

as may be described in more detail on Exhibit 1 attached hereto.

- E. Name Plate Information

SSR Units: Presque Isle Units 5-9, 90 MW nameplate

- (a) SSR Capacity in MW:

For purposes of this Agreement, the term “SSR Capacity” shall mean the unit capabilities stated in Exhibit 1.

(b) Power Factor Lagging

(i) 0.90 P.F. (at Generator Main Leads)

(ii) _____ P.F. (at high side of Main Power Transformer)

(c) Power Factor Leading

(i) 0.95 P.F. (at Generator Main Leads)

(ii) _____ P.F. (at high side of Main Power Transformer)

F. Delivery Points:

WEC.PSQIGI5, WEC.PSQIGI6, WEC.PSQIGI7, WEC.PSQIGI8, and WEC.PSQIGI9

G. Revenue Meter Location (Use Resource IDs): N/A

H. Operational and Environmental Limitations (check and describe all that apply):

SSR Units:

(a) Operational

Maximum annual hours of operation: No limit through May 31, 2015

Maximum annual MWh: No limit through May 31, 2015

Maximum annual starts: twenty-four (24) per Unit

Other: _____

(b) Environmental

Maximum annual NO_x emissions: The Consent Decree filed October 1, 2007 in U.S. District Court for the Eastern District of Wisconsin to resolve allegations of violation of the New Source Review and New Source Performance Standard requirements under the Clean Air Act brought by the US Environmental Protection Agency and Michigan Department of Environmental Quality (“Consent Decree”) requires Presque Isle to meet 12-month rolling tonnage limits, starting with the 12-month period ending December 31, 2015 (the initial 12-month rolling NO_x limit is 7,376 tons). The combined units must not exceed 1/12th of the applicable rolling limit in any month.

Maximum annual SO₂ emissions: The Consent Decree requires Presque Isle to meet 12-month rolling tonnage limits starting with the 12-month period ending December 31, 2015 (the initial 12-month rolling SO₂ limit is 17,257 tons). The Units must not exceed 1/12th of the applicable rolling limit in any month.

Other: The operation of the Units shall be subject to any additional limitations that may be imposed by the Michigan Department of Environmental Quality during the Term of this Agreement.

Section 2. Definitions.

- A. Unless herein defined, all definitions and acronyms found in the MISO Tariff shall be incorporated by reference into this Agreement and all references to Section 38.2.7 of the

MISO Tariff shall be to those provisions as filed by MISO in FERC Docket No. ER12-2302 on December 18, 2012.

- B. “MISO Tariff” shall mean the document adopted by MISO, and subject to review by the Federal Energy Regulatory Commission (“FERC”), including any attachments or exhibits referenced in that document, as amended from time to time, that contains the scheduling, operating, planning, reliability, and settlement (including customer registration) policies, rules, guidelines, procedures, standards, and criteria of MISO. For the purposes of determining responsibilities and rights at a given time, the MISO Tariff, as amended in accordance with the change procedure(s) described in the MISO Tariff, in effect at the time of the performance or non-performance of an action, shall govern with respect to that action.
- C. “Financing Person” shall mean any secured party, trustee, or mortgagee of an assigning Party, where the assignment is made for collateral security purposes.

Section 3. Term and Termination.

A. Term.

- (1) This Agreement is effective beginning on the Effective Date.
- (2) An SSR Agreement must not exceed a one (1) year term, except in exigent circumstances.
- (3) The “Term” of this Agreement is a period of twelve (12) months (starting on the Effective Date, the “Initial Term”); provided, however, that MISO, in its sole

discretion, may terminate this Agreement for one or more Units prior to the end of the Term by giving at least ninety (90) days advance written notice to Participant.

- (4) The period beginning on the Start Date and ending when the Agreement terminates is called the “Full Term” of this Agreement.
- (5) An Initial Term may be extended by MISO if MISO provides at least one hundred eighty (180) days advance notice of such extension to the Participant.

B. Termination by Participant. Participant may, at its option, immediately terminate this Agreement upon the failure of MISO to continue to be certified by the Federal Energy Regulatory Commission as an RTO.

C. Effect of Termination and Survival of Terms. If this Agreement is terminated by a Party pursuant to the terms hereof with respect to any Unit, the rights and obligations of the Parties hereunder with respect to such Unit shall terminate, except that (1) the rights and obligations of the Parties that have accrued under this Agreement prior to the date of termination shall survive and (2) the rights and obligations of the Parties relating to any Unit with respect to which this Agreement has not been terminated shall survive.

D. Notice. All notices (except for the two-hour advance notice specified in Section 7.A.(2) and operating notices exchanged in the ordinary course of business) required to be given under this Agreement shall be in writing, and shall be deemed delivered three (3) days after being deposited in the U.S. mail, first class postage prepaid, registered (or certified) mail, return receipt requested, addressed to the other Party at the address specified in this Agreement or shall be deemed delivered on the day of receipt if sent in another manner

requiring a signed receipt, such as courier delivery or Federal Express delivery. Either Party may change its address for such notices by delivering to the other Party a written notice referring specifically to this Agreement. Notices required hereunder shall be in accordance with the applicable Sections of the MISO Tariff.

If to MISO:

General Counsel
Midcontinent Independent System Operator
720 City Center Drive
Carmel, IN 46032
Tel. No. (317) 249-5400

If to Participant:

Director – Power Marketing and Planning
Wisconsin Electric Power Company
333 W. Everett St. – A214
Milwaukee, WI 53203
Tel. No. (414) 221-2345

Cc:

General Counsel
Wisconsin Electric Power Company
333 W. Everett St.
Milwaukee, WI 53203
Tel. No. (414) 221-2345

Section 4. Representations, Warranties, and Covenants.

A. Participant represents, warrants, and covenants that:

- (1) Participant is duly organized, validly existing and in good standing under the laws of the jurisdiction under which it is organized, and is authorized to do business in the MISO Region;

- (2) Participant has full power and authority to enter into this Agreement and perform all of Participant's obligations, representations, warranties, and covenants under this Agreement;
- (3) Participant's past, present and future agreements or Participant's organizational charter or bylaws, if any, or any provision of any indenture, mortgage, lien, lease, agreement, order, judgment, or decree to which Participant is a party or by which its assets or properties are bound do not materially affect performance of Participant's obligations under this Agreement;
- (4) The execution, delivery and performance of this Agreement by Participant have been duly authorized by all requisite action of its governing body;
- (5) Except as set out in an exhibit (if any) to this Agreement, MISO has not, within the twenty-four (24) months preceding the Effective Date, terminated for Default any prior agreement with Participant, any company of which Participant is a successor in interest, or any Affiliate of Participant;
- (6) If any Defaults are disclosed on any such exhibit mentioned in subsection 4.A(5), either (a) MISO has been paid, before execution of this Agreement, all sums due to it in relation to such prior agreement, or (b) MISO, in its reasonable judgment, has determined that this Agreement is necessary for system reliability, and Participant has made alternate arrangements satisfactory to MISO for the resolution of the Default under the prior agreement with Participant, any company of which Participant is a successor in interest, or any Affiliate of Participant;

- (7) Participant has obtained, or will obtain prior to beginning performance under this Agreement, all licenses, registrations, certifications, permits and other authorizations and has taken, or will take prior to beginning performance under this Agreement, all actions required by applicable laws or governmental regulations except licenses, registrations, certifications, permits or other authorizations that do not materially affect performance under this Agreement;
- (8) Participant is not in violation of any laws, ordinances, or governmental rules, regulations or order of any Governmental Authority or arbitration board materially affecting performance of this Agreement and to which it is subject;
- (9) Participant is not Bankrupt, does not contemplate becoming Bankrupt nor, to its knowledge, will become Bankrupt;
- (10) Participant acknowledges that it has received and is familiar with the MISO Tariff; and
- (11) Participant acknowledges and affirms that the foregoing representations, warranties, and covenants are continuing in nature throughout the term of this Agreement. For purposes of this Section, “materially affecting performance” means resulting in a materially adverse effect on Participant’s performance of its obligations under this Agreement.

B. MISO represents, warrants, and covenants that:

- (1) MISO is the RTO certified under 18 C.F.R. §35.34 for the MISO Region and the subject Generation Resource/SCU is located within the MISO Region;

- (2) MISO is duly organized, validly existing and in good standing under the laws of Delaware, and is authorized to do business in the MISO Region;
- (3) MISO has full power and authority to enter into this Agreement and perform all of MISO's obligations, representations, warranties, and covenants under this Agreement;
- (4) MISO's past, present and future agreements or MISO's organizational charter or bylaws, if any, or any provision of any indenture, mortgage, lien, lease, agreement, order, judgment, or decree to which MISO is a party or by which its assets or properties are bound do not materially affect performance of MISO's obligations under this Agreement;
- (5) The execution, delivery and performance of this Agreement by MISO have been duly authorized by all requisite action of its governing body;
- (6) MISO has obtained, or will obtain prior to beginning performance under this Agreement, all licenses, registrations, certifications, permits and other authorizations and has taken, or will take prior to beginning performance under this Agreement, all actions required by applicable laws or governmental regulations except licenses, registrations, certifications, permits or other authorizations that do not materially affect performance under this Agreement;
- (7) MISO is not in violation of any laws, ordinances, or governmental rules, regulations or order of any Governmental Authority or arbitration board materially affecting performance of this Agreement and to which it is subject;

- (8) MISO is not Bankrupt, does not contemplate becoming Bankrupt nor, to its knowledge, will become Bankrupt; and
- (9) MISO acknowledges and affirms that the foregoing representations, warranties, and covenants are continuing in nature throughout the term of this Agreement. For purposes of this Section, “materially affecting performance,” means resulting in a materially adverse effect on MISO’s performance of its obligations under this Agreement.

Section 5. Participant Obligations.

Participant shall comply with, and be bound by, the MISO Tariff as it pertains to the provision of SSR Service.

Section 6. MISO Obligations.

MISO shall comply with, and be bound by, all MISO Tariff provisions.

Section 7. Capacity Tests for SSR Units.

A. Capacity Tests for SSR Reliability.

- (1) A “Capacity Test” is a one-hour performance test of an SSR Unit by Participant. The capacity as shown by a Capacity Test is called “Tested Capacity” and is determined by the applicable net meter readings during the Capacity Test.
- (2) MISO may require that a Capacity Test be run at MISO’s discretion at any time when an SSR Unit is on-line and declared dispatchable, but MISO may not require more than four (4) Capacity Tests for each Unit in a contract year. MISO

must give Participant at least two (2) hours advance notice, after the SSR Unit is on-line and declared dispatchable, of a Capacity Test required by MISO, unless Participant agrees to less than two (2) hours. Participant may perform as many Capacity Tests as it desires, but Participant may not perform a Capacity Test without the prior approval of MISO, which approval MISO may not unreasonably withhold or delay. The Parties will reasonably cooperate to coordinate a Capacity Test. MISO has the right to reasonable advance notice of, and to have personnel present during, a Capacity Test.

- B. Test Report. MISO shall give the Capacity Test results in writing (the “Capacity Test Report”) to Participant within twenty-four (24) hours after the test is run.
- C. Effect of Test.
- (1) A determination of Tested Capacity is effective as of the beginning of the hour in which the Capacity Test is started.
 - (2) For all hours in which Tested Capacity is less than SSR Capacity, then Billing Capacity is reduced as set out in Section 9.D below and remains so reduced until a subsequent Capacity Test establishes that Tested Capacity equals or exceeds SSR Capacity.
 - (3) After the Effective Date, MISO shall dispatch, as part of SSR energy, the electrical energy and/or reactive power produced by the SSR Units, including ramping energy and/or reactive power, during a Capacity Test requested by MISO, net of auxiliary equipment and other electrical requirements of the SSR

Units that are supplied by the SSR Units. MISO shall also dispatch, as part of SSR energy, any electrical energy and/or reactive power produced by the SSR Units during a Capacity Test requested by Participant to attempt to show that Tested Capacity equals or exceeds SSR Capacity, net of auxiliary equipment and other electrical requirements of the SSR Units that are supplied by the SSR Units.

- D. Capacity Tests for Resource Adequacy. If the SSR Units are designated as a Capacity Resource pursuant to Module E-1 of the MISO Tariff, then the capacity test provisions of Module E-1 shall apply in addition to the Capacity Tests for System Reliability stated elsewhere in this Section 7.
- E. Coordination for Other Tests. The Parties shall coordinate scheduling of any testing of the SSR Units that is required consistent with Good Utility Practice (*e.g.*, testing in accordance with environmental and insurance requirements applicable to the Units), including the use of weekends and hours when the SSR Units are not expected to be used in order to complete the testing. During times for such testing, the SSR Units shall return to full service as dispatched by MISO (rescheduling the applicable testing) in the event of an emergency.

Section 8. Operation.

- A. Designated Unit Maintenance. Before the start of each contract year, Participant shall furnish MISO with its proposed schedule for Generator Planned Outages for inspection, repair, maintenance, and overhaul of the Designated Units for the contract year, in accordance with MISO's outage scheduling system. Participant shall promptly advise

MISO of any later changes to the schedule. MISO shall approve or reject Generator Planned Outages in accordance with MISO's Business Practices Manual. MISO shall, if requested by Participant, endeavor to accommodate changes to the schedule to the extent that reliability of the MISO System is not materially affected by those changes. In all cases, MISO must find a time for Participant to perform maintenance in a reasonable timeframe as defined by Good Utility Practice.

B. Planning Data. Participant shall timely report to MISO those items and conditions necessary for MISO's internal planning and compliance with MISO's guidelines in effect from time to time. The information supplied must include, without limitation, the following:

- (1) Availability Plan (*i.e.*, day-ahead offer) for the next day in accordance with MISO Tariff deadlines;
 - (2) Revised Availability Plan (*i.e.*, real time offer) reflecting changes in the Availability Plan in accordance with MISO Tariff deadlines; and
 - (3) Status of Designated Units with respect to Environmental Limitations, if any.
- Participant shall also timely report to MISO the status of the Designated Units with respect to Operational Limitations.

C. Delivery.

- (1) MISO shall notify Participant of the hours and levels, if any, that the Designated Units are to operate through day-ahead commitment and real-time dispatch for system reliability. The set point, or the dispatch target, in the real-time dispatch

shall be considered the “Delivery Plan” for the purposes of this Agreement. The day-ahead commitment and real time dispatch, including set points, shall be determined in the same manner and subject to the same limitations as other generation resources in MISO. MISO shall not notify Participant to operate the SSR Units in a way that would violate the limitations on operation set out in Section 1 above. Notwithstanding the foregoing, Participant shall be able to offer its SSR capability into the MISO Energy and Operating Reserves Markets outside of the Delivery Plan when the SSR Units are not needed to address the reliability issues pertaining to this Agreement, consistent with Section 38.2.7(h) of the Tariff. Such offers into MISO Markets shall be cost-based, including Start-Up, No Load, and Energy Offers. Participant shall also be encouraged to offer its available Zonal Resource Credits into the Planning Resource Auction pursuant to the terms of the Tariff.

- (2) Participant shall produce and deliver electrical energy from the SSR Units to the Delivery Point at the levels specified in the Delivery Plan, and shall maintain reactive power capability and voltage schedules in accordance with North American Electric Reliability Corporation (“NERC”) standards.
- (3) MISO may dispatch the Designated Units only when necessary to ensure transmission system security, including any emergency situation. MISO may not dispatch the Designated Units if compliance with the dispatch would cause the Designated Units to exceed the Operational and Environmental Limitations, if

any, set forth in Section 1 above or at levels inconsistent with those shown in the Availability Plan. Notwithstanding the foregoing, Participant retains the responsibility for operating the Designated Units in accordance with limits provided by applicable law.

- (4) During the hours of operation of the SSR Units specified in the Delivery Plan, Participant may only participate in the MISO Energy and Operating Reserve Markets from the SSR Units in accordance with the relevant conditions in the MISO Tariff.

Section 9. Payment Provisions.

A. For the transfer of any funds under this Agreement directly between MISO and Participant and pursuant to the Settlement procedures described in the MISO Tariff, the following shall apply:

(1) Participant appoints MISO to act as its agent with respect to such funds transferred and authorizes MISO to exercise such powers and perform such duties as described in this Agreement or the MISO Tariff, together with such powers or duties as are reasonably incidental thereto.

(2) MISO shall not have any duties, responsibilities to, or fiduciary relationship with Participant and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement except as expressly set forth herein or in the MISO Tariff.

- B. Compensation for the SSR Units. MISO shall compensate Participant according to the terms of Exhibit 2 to this Agreement.
- C. Settlement Provisions for the SSR Units. At the conclusion of each calendar month, MISO shall conduct a settlement process for the SSR Units, consistent with the MISO Tariff requirements.
- D. Performance-Related Payment Adjustments.
- (1) For the SSR Units, a “Misconduct Event” means any hour or hours during which Participant is requested to, but does not, deliver to MISO electrical energy from each unit at a level within a tolerance band of plus or minus five (5) MW of the level shown in the Delivery Plan on each hour (on a megawatt-hour/hour basis) or does not maintain reactive capability consistent with NERC standards; provided that, it shall not be deemed a Misconduct Event if (a) such failure to deliver energy and/or reactive power is due to the occurrence of a Force Majeure Event or the action or inaction of the Local Balancing Authority or the Transmission Operator, or (b) Participant has reported an outage or derating through the Outage Scheduler and the report by Participant is not intentionally incomplete, inaccurate, or dishonest regarding the availability of the Designated Units.
 - (2) Each day that a Misconduct Event continues after Participant receives written notice from MISO of the Misconduct Event is a separate

Misconduct Event. A Misconduct Event is measured on a daily basis.

- (3) Participant is excused from the Misconduct Event payment reduction arising from any Misconduct Event that is (a) not due to intentionally incomplete, inaccurate, or dishonest reporting to MISO by Participant of the availability of the Designated Units, or (b) caused by a failure of the MISO Transmission System.
- (4) If a Misconduct Event is not excused, then to reflect this lower-than-expected quality of firmness, MISO's payments to Participant are reduced by the Unexcused Misconduct Amount not to exceed \$10,000 per day in the aggregate for all SSR Units.
- (5) MISO shall inform Participant, in writing, of its determination if a Misconduct Event is unexcused within twenty-four (24) hours of such determination being made.
- (6) MISO may offset any amounts due by Participant to MISO under this section against any amounts due by MISO to Participant under this Agreement.
- (7) Subject to the maximum amount set forth in clause (4) above, the Unexcused Misconduct Amount reduces payments to Participant (see Exhibit 2), and is composed of two parts:
 - (a) A fixed component equal to a proportionate reduction in the

Monthly SSR Payment to Participant (see Exhibit 2) according to the reduction in Billing Capacity below the SSR Capacity, calculated for that portion of the month during which such reduction occurs. Billing Capacity is the lower of (i) the SSR Capacity and (ii) the Tested Capacity if lower than SSR Capacity for reasons not reported through the Outage Scheduler or if such reporting to MISO is intentionally incomplete, inaccurate, or dishonest.

(b) A variable component equal to the product of: (i) the difference between: a) the level shown in the Delivery Plan and b) the amount of electrical energy and/or reactive power delivered to MISO; and (ii) an SSR Unit's Hourly Ex Post LMP in any hour or hours in which a Misconduct Event occurs.

- E. Compensation for Unanticipated Repairs. During the Term of this Agreement, any necessary repair or repairs to the SSR Units shall not entitle Participant to any additional compensation under this Agreement, except as provided herein. For the purposes of this Section, "unanticipated" repairs are those for which compensation is not provided for in the Annual SSR Amount contained in Exhibit 2 to this Agreement. If the need arises to make an unanticipated repair to one or more of the SSR Units, Participant shall notify MISO before incurring said repair costs, together with reasonable information in support thereof. Upon such notification, MISO shall notify Participant either that: (i) it elects to exercise its rights to terminate regarding the affected Units by giving ninety (90) days

advance written notice to Participant because the unanticipated repairs could not result in the return to service on a timeline that serves system reliability; or (ii) it agrees that Participant shall make such repairs, subject to the terms of parts (1) and (2) of this Section 9.E. In no circumstances shall the costs of repairs authorized by MISO pursuant to this Agreement be the responsibility of Participant. Participant shall not be deemed to have a Misconduct Event, nor shall Participant be subject to any other performance penalties under this Agreement or the MISO Tariff for the period of time after Participant notifies MISO of the need for repairs as provided in this Section 9.E. until repairs have been completed. MISO will provide to Participant written notification pursuant to the terms of parts (1) and (2) of this Section 9.E that directs Participant to make such repairs. MISO and Participant agree that “unanticipated repairs” in this Section 9.E shall not include the costs of complying with Mercury and Air Toxics Standards (“MATS”) requirements.

- (1) Non-Emergency Repairs. Except as provided for in part 2 of this Section 9.E, before MISO may issue a notice to fund unanticipated repairs, MISO shall make and receive approval of a Federal Power Act (“FPA”) Section 205 filing at FERC to modify this Agreement to provide for the recovery of such repair costs and shall serve such filing on all parties to whom such repair costs would be allocated. Participant shall not make such unanticipated repairs unless and until MISO informs Participant in writing that it has received FERC approval to modify this Agreement to provide for the recovery of such costs.

- (2) Emergency Repairs. If MISO reasonably believes that system security and reliability require any unanticipated repairs to be made before FERC can act on a Section 205 filing (“Emergency Repairs”), then MISO shall so notify Participant in writing and direct Participant to make such Emergency Repairs and MISO shall make a Section 205 filing at FERC as soon as reasonably practicable thereafter to modify this Agreement to provide for recovery of such repair costs. In the case of Emergency Repairs, if FERC later determines MISO’s decision to approve such Emergency Repairs was imprudent or otherwise does not accept such modifications to the Agreement, then the costs of the Emergency Repairs shall be allocated pursuant to Section 38.2.7(k) of the MISO Tariff.
- F. Allocation of SSR Compensation. MISO will charge the LSEs that benefit from operation of the subject SSR Units in accordance with MISO Tariff Schedule 43G.

Section 10. Default.

A. Event of Default.

- (1) Failure to make payment or transfer funds as provided in the MISO Tariff shall constitute a material breach and shall constitute an event of default ("Default") unless cured within three (3) Business Days after delivery by the non-breaching Party of written notice of the failure to the breaching Party. Provided further that if such a material breach, regardless of whether such breach is cured within the allotted time after notice of the

material breach, occurs more than three (3) times within a rolling twelve (12)-month period, the fourth such breach shall constitute a Default by the breaching Party.

(2) For any material breach other than a failure to make payment or transfer funds, the occurrence and continuation of any of the following events shall constitute an event of Default by Participant:

(a) Except as excused under subsection (4) or (5) below, a material breach, other than a failure to make payment or transfer funds, of this Agreement by Participant, including any material failure by Participant to comply with the MISO Tariff, unless cured within fourteen (14) Business Days after delivery by MISO of written notice of the material breach to Participant. Participant must begin work or other efforts within three (3) Business Days to cure such material breach after delivery by MISO of written notice of such material breach by Participant and must prosecute such work or other efforts with reasonable diligence, consistent with Good Utility Practice, until the breach is cured. Provided further that if a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three (3) times within a rolling twelve (12)-month period, the fourth (4th) such breach shall constitute a Default.

- (b) Participant becomes Bankrupt, except for the filing of a petition in involuntary bankruptcy, or similar involuntary proceedings that is dismissed within ninety (90) days thereafter.
 - (c) A Designated Unit's operation is abandoned without intent to return it to operation during the Full Term; or
 - (d) Three or more unexcused Misconduct Events occur during a contract year.
- (3) Except as excused under subsection (4) or (5) below, a material breach of this Agreement by MISO, including any material failure by MISO to comply with the MISO Tariff, other than a failure to make payment or transfer funds, shall constitute a Default by MISO unless cured within fourteen (14) Business Days after delivery by Participant of written notice of the material breach to MISO. MISO must begin work or other efforts within three (3) Business Days to cure such material breach after delivery by Participant of written notice of such material breach by MISO and must prosecute such work or other efforts with reasonable diligence, consistent with Good Utility Practice, until the breach is cured. Provided further that if a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three (3) times within a rolling twelve (12)-month period, the fourth such breach shall constitute a Default.

- (4) For any material breach other than a failure to make payment or transfer funds, the breach shall not result in a Default if the breach cannot reasonably be cured within fourteen (14) calendar days, prompt written notice is provided by the breaching Party to the other Party, and the breaching Party began work or other efforts to cure the breach within three (3) Business Days after delivery of the notice to the breaching Party and prosecutes the curative work or efforts with reasonable diligence, consistent with Good Utility Practice, until the curative work or efforts are completed.
- (5) If, due to a Force Majeure Event, a Party is in breach with respect to any obligation hereunder, such breach shall not result in a Default by that Party.

B. Remedies for Default.

- (1) MISO's Remedies for Default. In the event of a Default by Participant, MISO may pursue any remedies MISO has under this Agreement, at law, or in equity, subject to the provisions of Section 12: Dispute Resolution of this Agreement. In the event of a Default by Participant, if the MISO Tariff does not specify a remedy for a particular Default, MISO may, at its option, upon written notice to Participant, immediately terminate this Agreement, with termination to be effective upon the date of delivery of notice.
- (2) Participant's Remedies for Default.

- (a) Unless otherwise specified in this Agreement or in the MISO Tariff, and subject to the provisions of Section 12: Dispute Resolution of this Agreement, in the event of a Default by MISO, Participant's remedies shall be limited to:
- (i) Immediate termination of this Agreement upon written notice to MISO,
 - (ii) Monetary recovery in accordance with the Settlement procedures set forth in the MISO Tariff, and
 - (iii) Specific performance.
- (b) However, in the event of a material breach by MISO of any of its representations, warranties or covenants, Participant's sole remedy shall be immediate termination of this Agreement upon written notice to MISO.
- (c) If as a final result of any dispute resolution MISO, as the settlement agent, is determined to have over-collected from a Market Participant(s), with the result that refunds are owed by Participant to MISO, as the settlement agent such Market Participant(s) may request MISO to allow such Market Participant to proceed directly against Participant, in lieu of receiving full payment from MISO. In the event of such request, MISO, in its sole discretion, may agree to assign to such Market Participant MISO's rights to seek refunds from Participant, and Participant shall be deemed to have

consented to such assignment. This subsection (c) shall survive termination of this Agreement.

- (3) A Default or breach of this Agreement by a Party shall not relieve either Party of the obligation to comply with the MISO Tariff.

C. Force Majeure.

- (1) If, due to a Force Majeure Event, either Party is in breach of this Agreement with respect to any obligation hereunder, such Party shall take reasonable steps, consistent with Good Utility Practice, to remedy such breach. If either Party is unable to fulfill any obligation by reason of a Force Majeure Event, it shall give notice and the full particulars of the obligations affected by such Force Majeure Event to the other Party in writing or by telephone (if followed by written notice) as soon as reasonably practicable, but not later than fourteen (14) calendar days, after such Party becomes aware of the event. A failure to give timely notice of the Force Majeure event shall constitute a waiver of the claim of Force Majeure Event. The Party experiencing the Force Majeure Event shall also provide notice, as soon as reasonably practicable, when the Force Majeure Event ends.
- (2) Notwithstanding the foregoing, a Force Majeure Event does not relieve a Party affected by a Force Majeure Event of its obligation to make payments or of any consequences of non-performance pursuant to the MISO Tariff or under this Agreement, except that the excuse from Default provided by subsection 10.A(5) above is still effective.

- D. Duty to Mitigate. Except as expressly provided otherwise herein, each Party shall use commercially reasonable efforts to mitigate any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

Section 11. Limitation of Damages and Liability and Indemnification.

- A. EXCEPT AS EXPRESSLY LIMITED IN THIS AGREEMENT OR MISO BUSINESS PRACTICES, MISO OR PARTICIPANT MAY SEEK FROM THE OTHER, THROUGH APPLICABLE DISPUTE RESOLUTION PROCEDURES SET FORTH IN MISO PROTOCOLS, ANY MONETARY DAMAGES OR OTHER REMEDY OTHERWISE ALLOWABLE UNDER INDIANA LAW, AS DAMAGES FOR DEFAULT OR BREACH OF THE OBLIGATIONS UNDER THIS AGREEMENT; PROVIDED, HOWEVER, THAT NEITHER PARTY IS LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR INJURY THAT MAY OCCUR, IN WHOLE OR IN PART, AS A RESULT OF A DEFAULT UNDER THIS AGREEMENT, A TORT, OR ANY OTHER CAUSE, WHETHER OR NOT A PARTY HAD KNOWLEDGE OF THE CIRCUMSTANCES THAT RESULTED IN THE SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR INJURY, OR COULD HAVE FORESEEN THAT SUCH DAMAGES OR INJURY WOULD OCCUR.
- B. The Parties have expressly agreed that, other than subsections A and B of this Section, this Agreement shall not include any other limitations of liability or indemnification provisions, and that such issues shall be governed solely by applicable law, in a manner

consistent with the Choice of Law and Venue subsection 13.A of this Agreement, regardless of any contrary provisions that may be included in or subsequently added to the MISO Tariff (outside of this Agreement).

Section 12. Dispute Resolution.

- A. In the event of a dispute, including a dispute regarding a Default, under this Agreement, Parties to this Agreement shall first attempt resolution of the dispute using the applicable dispute resolution procedures set forth in the MISO Tariff.
- B. In the event of a dispute, including a dispute regarding a Default, under this Agreement, each Party shall bear its own costs and fees, including, but not limited to attorneys' fees, court costs, and its share of any mediation or arbitration fees.

Section 13. Miscellaneous.

- A. Choice of Law and Venue. Notwithstanding anything to the contrary in this Agreement, this Agreement shall be deemed entered into in Indiana and, with the exception of matters governed exclusively by federal law, shall be governed by and construed and interpreted in accordance with the laws of the State of Indiana that apply to contracts executed in and performed entirely within the State of Indiana, without reference to any rules of conflict of laws. Neither Party waives primary jurisdiction as a defense; provided that any court suits regarding this Agreement shall be brought in a state or federal court located within Indiana, and the Parties hereby waive any defense of *forum non-conveniens*.
- B. Assignment.

- (1) Notwithstanding anything herein to the contrary, a Party shall not assign or otherwise transfer all or any of its rights or obligations under this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed, except that a Party may assign or transfer its rights and obligations under this Agreement without the prior written consent of the other Party (if neither the assigning Party or the assignee is then in Default of any Agreement with MISO):
- (a) Where any such assignment or transfer is to an Affiliate of the Party; or
 - (b) Where any such assignment or transfer is to a successor to or transferee of the direct or indirect ownership or operation of all or part of the Party, or its facilities; or
 - (c) For collateral security purposes to aid in providing financing for itself, provided that the assigning Party will require any secured party, trustee or mortgagee to notify the other Party of any such assignment. Any financing arrangement entered into by either Party pursuant to this Section will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the other Party of the date and particulars of any such exercise of assignment right(s). If requested by the Party making any such collateral assignment to a Financing Person, the other Party shall execute and deliver a consent to such assignment containing customary provisions, including

representations as to corporate authorization, enforceability of this Agreement and absence of known Defaults, notices of Default, and an opportunity for the Financing Person to cure Defaults.

- (2) An assigning Party shall provide prompt written notice of the assignment to the other Party. Any attempted assignment that violates this Section is void and ineffective. Any assignment under this Agreement shall not relieve either Party of its obligations under this Agreement, nor shall either Party's obligations be enlarged, in whole or in part, by reason thereof.
- C. No Third Party Beneficiary. Except with respect to the rights of other Market Participants in Section 10.B and the Financing Persons in Section 13.B, (1) nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any third party, (2) no third party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder and (3) this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or the services to be provided hereunder. Nothing in this Agreement shall create a contractual relationship between one Party and the customers of the other Party, nor shall it create a duty of any kind to such customers.
- D. No Waiver. Parties shall not be required to give notice to enforce strict adherence to all provisions of this Agreement. No breach or provision of this Agreement shall be deemed waived, modified or excused by a Party unless such waiver, modification or excuse is in

writing and signed by an authorized officer of such Party. The failure by or delay of either Party in enforcing or exercising any of its rights under this Agreement shall (1) not be deemed a waiver, modification or excuse of such right or of any breach of the same or different provision of this Agreement, and (2) not prevent a subsequent enforcement or exercise of such right. Each Party shall be entitled to enforce the other Party's covenants and promises contained herein, notwithstanding the existence of any claim or cause of action against the enforcing Party under this Agreement or otherwise.

- E. Headings. Titles and headings of paragraphs and sections within this Agreement are provided merely for convenience and shall not be used or relied upon in construing this Agreement or the Parties' intentions with respect thereto.
- F. Severability. In the event that any of the provisions, or portions or applications thereof, of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, that determination shall not affect the enforceability or validity of the remaining portions of this Agreement, and this Agreement shall continue in full force and effect as if it had been executed without the invalid provision; provided, however, if either Party determines, in its sole discretion, that there is a material change in this Agreement by reason thereof, the Parties shall promptly enter into negotiations to replace the unenforceable or invalid provision with a valid and enforceable provision. If the Parties are not able to reach an agreement as the result of such negotiations within fourteen (14) days, either Party shall have the right to terminate this Agreement on three (3) days written notice.

- G. Entire Agreement. Any exhibits attached to this Agreement are incorporated into this Agreement by reference and made a part of this Agreement as if repeated verbatim in this Agreement. This Agreement represents the Parties' final and mutual understanding with respect to its subject matter. It replaces and supersedes any prior agreements or understandings, whether written or oral. No representations, inducements, promises, or agreements, oral or otherwise, have been relied upon or made by any Party, or anyone on behalf of a Party, that are not fully expressed in this Agreement. An agreement, statement, or promise not contained in this Agreement is not valid or binding.
- H. Amendment. The standard form of this Agreement may only be modified through the procedure for modifying the MISO Tariff described in the MISO Tariff. Any changes to the terms of the standard form of this Agreement shall not take effect until a new Agreement is executed between the Parties.
- I. MISO's Right to Audit Participant. Participant shall keep detailed records for a period of three years of all activities under this Agreement giving rise to any information, statement, charge, payment or computation delivered to MISO under the MISO Tariff. Such records shall be retained and shall be available for audit or examination by MISO as hereinafter provided. MISO has the right during Business Hours and upon reasonable written notice and reasonable cause to examine the records of Participant as necessary to verify the accuracy of any such information, statement, charge, payment or computation made under this Agreement. If any such examination reveals any inaccuracy in any information, statement, charge, payment or computation, the necessary adjustments in

such information, statement, charge, payment, computation, or procedures used in supporting its ongoing accuracy will be promptly made.

- J. Participant's Right to Audit MISO. Participant's right to data and audit of MISO shall be as described in the MISO Tariff and shall not exceed the rights described in the MISO Tariff.
- K. Further Assurances. Each Party agrees that during the term of this Agreement it will take such actions, provide such documents, do such things and provide such further assurances as may reasonably be requested by the other Party to permit performance of this Agreement.
- L. Conflicts. This Agreement is subject to applicable federal, state, and local laws, ordinances, rules, regulations, orders of any Governmental Authority and tariffs. Nothing in this Agreement may be construed as a waiver of any right to question or contest any federal, state and local law, ordinance, rule, regulation, order of any Governmental Authority, or tariff. In the event of a conflict between this Agreement and an applicable federal, state, and local law, ordinance, rule, regulation, order of any Governmental Authority or tariff, the applicable federal, state, and local law, ordinance, rule, regulation, order of any Governmental Authority or tariff shall prevail, provided that Participant shall give notice to MISO of any such conflict affecting Participant. In the event of a conflict between the MISO Tariff and this Agreement, the provisions expressly set forth in this Agreement shall control.

- M. No Partnership. This Agreement may not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party has any right, power, or authority to enter any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party except as provided in Section 9.A.
- N. No State Public Utility Created. This Agreement may not be interpreted or construed as modifying the jurisdictional status of MISO, including, but not limited to establishment of MISO as a state public utility under the laws of any jurisdiction, as a result of MISO's performance under this Agreement.
- O. Construction. In this Agreement, the following rules of construction apply, unless expressly provided otherwise or unless the context clearly requires otherwise:
- (1) The singular includes the plural, and the plural includes the singular.
 - (2) The present tense includes the future tense, and the future tense includes the present tense.
 - (3) Words importing any gender include the other gender.
 - (4) The word "shall" denotes a duty.
 - (5) The word "must" denotes a condition precedent or subsequent.
 - (6) The word "may" denotes a privilege or discretionary power.
 - (7) The phrase "may not" denotes a prohibition.

- (8) References to statutes, tariffs, regulations or the MISO Tariff include all provisions consolidating, amending, or replacing the statutes, tariffs, regulations or the MISO Tariff referred to.
- (9) References to “writing” include printing, typing, lithography, and other means of reproducing words in a tangible visible form.
- (10) The words “including,” “includes,” and “include” are deemed to be followed by the words “without limitation.”
- (11) Any reference to a day, week, month or year is to a calendar day, week, month or year unless otherwise indicated.
- (12) References to Articles, Sections (or subdivisions of Sections), Exhibits, annexes or schedules are to this Agreement, unless expressly stated otherwise.
- (13) Unless expressly stated otherwise, references to agreements, the MISO Tariff and other contractual instruments include all subsequent amendments and other modifications to the instruments, but only to the extent the amendments and other modifications are not prohibited by this Agreement.
- (14) References to persons or entities include their respective successors and permitted assigns and, for governmental entities, entities succeeding to their respective functions and capacities.
- (15) References to time are to Eastern Standard Time.

(16) References to any capitalized word or phrase not defined herein shall have the meanings from the MISO Tariff.

P. Multiple Counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

SIGNED, ACCEPTED AND AGREED TO by each undersigned signatory who, by signature hereto, represents and warrants that he or she has full power and authority to execute this Agreement.

Midcontinent Independent System Operator, Inc.:

By: /s/ Richard Doying

Name: Richard Doying

Title: Exec. VP Operations & Corp. Services

Date: _____

Participant, Wisconsin Electric Power Company:

By: /s/ Gale E. Klappa

Name: Gale E. Klappa

Title: President and Chief Executive Officer

Date: 1/29/2014

EXHIBIT 1

Detailed Description of SSR Units

Presque Isle Units 5-9, including two (2) diesel generators for emergency auxiliary power

Location: Marquette, Michigan; occupying 65 acres of land on the shore of Lake Superior

Coal-based:

Units 5-9 burn low-sulfur sub-bituminous coal
#2 Fuel Oil used for diesel generators and boiler start-up

Year in Service: Unit 5: 1974
Unit 6: 1975
Unit 7: 1978
Unit 8: 1978
Unit 9: 1979

The following ratings are pursuant to Net Generating Capacity (MW Module E) using sub-bituminous coal:

Unit 5: 55 MW
Unit 6: 55 MW
Unit 7: 78 MW
Unit 8: 78 MW
Unit 9: 78 MW

Coal Handling: Transportation by self-unloading coal boats as permitted by Lake Superior shipping season limitations.

Storage: 800,000-ton capacity pile; 1,200-1,600-ton capacity coal bunkers within plant

EXHIBIT 2

Description of SSR Unit Going-Forward Compensation

A. Fixed Component of Compensation

Pursuant to Section 9 of the Agreement, MISO shall pay Participant a Monthly SSR Payment of \$4,352,832, representing monthly allocations of the Annual SSR Amount (all five Units combined) each month during the term of the Agreement. If this Agreement is terminated with respect to one or more Units, but less than all five, the Monthly SSR Payment shall be reduced by an amount to be determined by the Parties following the notice of termination to reflect the removal of such Unit(s) from service under this Agreement. Such reduced amount shall be submitted by MISO to FERC for approval in a Federal Power Act (“FPA”) Section 205 filing to modify this Agreement to provide for the reduced Monthly SSR Payment, which filing shall be served on all parties to whom such costs would be allocated under MISO Tariff Schedule 43G. The FERC-approved reduced amount shall be applicable the later of (a) the date that is ninety (90) days following notice of termination or (b) the date on which MISO elected to make such termination effective. Each Monthly SSR Payment shall be made regardless of dispatch of the SSR Units during that month. If this Agreement is terminated effective during the course of a calendar month, then the Monthly SSR Payment shall be prorated for that month. The compensation provided for under this Agreement may be further modified pursuant to Section 7.C (adjustment to Monthly SSR Payment based on Capacity Tests provided for pursuant to Section 7.A) and/or Section 9.D (“Performance-Related Payment Adjustments”) and/or Section 9.E (“Compensation for Unanticipated Repairs”) of the Agreement. Compensation shall be settled on a monthly basis.

~~Effective On: November 19, 2013~~

If the Agreement is terminated by MISO prior to the end of the Term, MISO shall compensate Participant for its costs of fuel procured, but not consumed or useable for the operation of other Units that remain in operation, as of the date of such termination, net of any fuel resale revenues and including reasonable costs to achieve such revenues, based on the termination of the Agreement (“Mitigated Coal Cost”). For the completion of the applicable cost calculations, Participant shall submit the Mitigated Coal Cost to MISO such that the information is received by MISO within 180 days after the last day that the terminated Unit is operated for SSR purposes. Such submissions to MISO shall be sent to MISO at the address stated in Section 3.D of this Agreement, to the attention of the Manager of Market Settlements. The Mitigated Coal Cost amount shall be submitted by MISO to FERC for approval in a Federal Power Act (“FPA”) Section 205 filing to modify this Agreement to provide for both the amount of compensation for the Mitigated Coal Cost and the manner in which such costs will be collected, which filing shall be served on all parties to whom such costs would be allocated under MISO Tariff Schedule 43G.

B. Variable Component of Compensation

Pursuant to Section 9 of the Agreement, MISO shall pay Participant its Production Cost for the amount of Actual Energy Injections (as defined in Module A of the MISO Tariff) and Operating Reserve Cost in each instance that MISO dispatches an SSR Unit. For the purposes of this Agreement, “Production Cost” shall mean the Energy output cost of the SSR Unit based upon Start Up, No Load, and Energy Offer cost components that reflect the actual costs of physically operating the SSR Unit, and “Operating Reserve Cost” shall mean the actual cost to provide Operating Reserves. All Production Costs and Operating Reserve Costs will be subject

to audit by MISO, and will be subject to audit and enforcement by the Independent Market Monitor.

Through the MISO settlement process, MISO will ensure that Participant is paid the “SSR Unit Compensation,” which is equal to the sum of Production Cost for the amount of Actual Energy Injections (as defined in Module A of the MISO Tariff) and Operating Reserve Cost over all the Delivery Plan Instructed Hours of Operation in the Day for that SSR Unit. MISO will compare the SSR Unit Compensation to the “SSR Unit Energy and Operating Reserve Credit.” The SSR Unit Energy and Operating Reserve Credit are those charges and credits calculated pursuant to Sections 39.3 Day-Ahead Energy and Operating Reserve Market and 40.3 Real Time Energy and Operating Reserve Market Settlement of the MISO Tariff, plus any revenues from Schedule 2 associated with the SSR Unit or from Planning Resource designation and any charges assessed through Schedule 17 and Schedule 24. In those hours where the SSR Unit Compensation is greater than the SSR Unit Energy and Operating Reserve Credit, MISO will make the applicable make-whole payment to Participant (such make-whole payment to be equal to the difference between the SSR Unit Compensation and the SSR Unit Energy and Operating Reserve Credit). In those hours where the SSR Unit Compensation is less than the SSR Unit Energy and Operating Reserve Credit, MISO will debit from Participant (such debit to be equal to the difference between the SSR Unit Energy and Operating Reserve Credit and the SSR Unit Compensation).

During the Term of the Agreement, compensation for reliability commitments shall be paid to Participant under this Exhibit 2 and not according to Voltage and Local Reliability payment provisions.

~~Effective On: November 19, 2013~~

Whenever the SSR Unit operates in the MISO Market for purposes other than system reliability, the SSR Unit will be committed, dispatched, and settled pursuant to the MISO Tariff, except in those hours where the SSR Unit Compensation is less than the SSR Unit Energy and Operating Reserve Credit. Under this exception, MISO will debit Participant (such debit to be equal to the difference between the SSR Unit Energy and Operating Reserve Credit and the SSR Unit Compensation).

FERC rendition of the electronically filed tariff records in Docket No. ER14-01242-002
Filing Data:
CID: C001344
Filing Title: 2014-08-11_SA 6506_Presque Isle SSR Compliance Filing
Company Filing Identifier: 10257
Type of Filing Code: 80
Associated Filing Identifier: 10077
Tariff Title: Midwest ISO Agreements
Tariff ID: 13
Payment Confirmation:
Suspension Motion:

Tariff Record Data:
Record Content Description, Tariff Record Title, Record Version Number, Option Code:
SA 6506, Presque Isle SSR Agreement, 32.0.0, A
Record Narrative Name:
Tariff Record ID: 10130
Tariff Record Collation Value: 293733376 Tariff Record Parent Identifier: 4507
Proposed Date: 2014-02-01
Priority Order: 1500000000
Record Change Type: CHANGE
Record Content Type: 1
Associated Filing Identifier: 10077

SA 6506 Presque Isle - MISO SSR Agreement Version 32.0.0 Effective 2/1/2014

Substitute Original Service Agreement No. 6502

ATTACHMENT Y-1

Standard Form System Support Resource (“SSR”) Agreement

Between

Wisconsin Electric Power Company

and

The Midwest Independent Transmission System Operator, Inc.

ATTACHMENT Y-1

Standard Form System Support Resource (“SSR”) Agreement

Between

Wisconsin Electric Power Company

and

Midcontinent Independent System Operator, Inc.

This SSR Agreement (“Agreement”), effective as of the 1st of February, 2014 (“Effective Date”), is entered into by and between Wisconsin Electric Power Company, a corporation having offices located in Milwaukee, Wisconsin (“Participant”) and Midcontinent Independent System Operator, Inc. (“MISO”).

Recitals

WHEREAS:

- A. Participant owns or operates one or more Generation Resources or a Synchronous Condenser Unit (“SCU”) as defined in the MISO Tariff, and MISO requires Participant to supply service in the region served by MISO (“MISO Region”) in order to maintain the reliability of the Transmission System;
- B. MISO is the Regional Transmission Organization (“RTO”) for the MISO Region; and
- C. The Parties enter into this Agreement in order to establish the terms and conditions by which MISO and Participant will discharge their respective duties and responsibilities under the MISO Tariff.

Agreements

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, MISO and Participant (the “Parties”) hereby agree as follows:

Section 1. Unit-Specific Terms.

- A. Start Date: February 1, 2014.
- B. Start Time: 0000 Hrs.
- C. Units: Presque Isle Units 5-9 (located in Marquette, Michigan).

The units described above may also be referred to as the “Designated Units” or “Units” or “SSR Units” (“SSR Unit,” “Designated Unit,” or “SSR Unit” if reference to a single unit) in this Agreement.

- D. Description of Units:

Presque Isle Units 5 and 6 – Coal Fired 55 MW Steam Generators (each);

Presque Isle Units 7-9 – Coal Fired 78 MW Steam Generators (each); and,

supported by Diesel Generators (2) to supply emergency auxiliary power for only the generating units

as may be described in more detail on Exhibit 1 attached hereto.

- E. Name Plate Information

SSR Units: Presque Isle Units 5-9, 90 MW nameplate

(a) SSR Capacity in MW:

For purposes of this Agreement, the term “SSR Capacity” shall mean the unit capabilities stated in Exhibit 1.

(b) Power Factor Lagging

(i) 0.90 P.F. (at Generator Main Leads)

(ii) _____ P.F. (at high side of Main Power Transformer)

(c) Power Factor Leading

(i) 0.95 P.F. (at Generator Main Leads)

(ii) _____ P.F. (at high side of Main Power Transformer)

F. Delivery Points:

WEC.PSQIGI5, WEC.PSQIGI6, WEC.PSQIGI7, WEC.PSQIGI8, and WEC.PSQIGI9

G. Revenue Meter Location (Use Resource IDs): N/A

H. Operational and Environmental Limitations (check and describe all that apply):

SSR Units:

(a) Operational

Maximum annual hours of operation: No limit through May 31, 2015

Maximum annual MWh: No limit through May 31, 2015

Maximum annual starts: twenty-four (24) per Unit

Other: _____

(b) Environmental

Maximum annual NO_x emissions: The Consent Decree filed October 1, 2007 in U.S. District Court for the Eastern District of Wisconsin to resolve allegations of violation of the New Source Review and New Source Performance Standard requirements under the Clean Air Act brought by the US Environmental Protection Agency and Michigan Department of Environmental Quality (“Consent Decree”) requires Presque Isle to meet 12-month rolling tonnage limits, starting with the 12-month period ending December 31, 2015 (the initial 12-month rolling NO_x limit is 7,376 tons). The combined units must not exceed 1/12th of the applicable rolling limit in any month.

Maximum annual SO₂ emissions: The Consent Decree requires Presque Isle to meet 12-month rolling tonnage limits starting with the 12-month period ending December 31, 2015 (the initial 12-month rolling SO₂ limit is 17,257 tons). The Units must not exceed 1/12th of the applicable rolling limit in any month.

Other: The operation of the Units shall be subject to any additional limitations that may be imposed by the Michigan Department of Environmental Quality during the Term of this Agreement.

Section 2. Definitions.

- A. Unless herein defined, all definitions and acronyms found in the MISO Tariff shall be incorporated by reference into this Agreement and all references to Section 38.2.7 of the MISO Tariff shall be to those provisions as filed by MISO in FERC Docket No.

ER12-2302 on December 18, 2012.

- B. “MISO Tariff” shall mean the document adopted by MISO, and subject to review by the Federal Energy Regulatory Commission (“FERC”), including any attachments or exhibits referenced in that document, as amended from time to time, that contains the scheduling, operating, planning, reliability, and settlement (including customer registration) policies, rules, guidelines, procedures, standards, and criteria of MISO. For the purposes of determining responsibilities and rights at a given time, the MISO Tariff, as amended in accordance with the change procedure(s) described in the MISO Tariff, in effect at the time of the performance or non-performance of an action, shall govern with respect to that action.
- C. “Financing Person” shall mean any secured party, trustee, or mortgagee of an assigning Party, where the assignment is made for collateral security purposes.

Section 3. Term and Termination.

A. Term.

- (1) This Agreement is effective beginning on the Effective Date.
- (2) An SSR Agreement must not exceed a one (1) year term, except in exigent circumstances.
- (3) The “Term” of this Agreement is a period of twelve (12) months (starting on the Effective Date, the “Initial Term”); provided, however, that MISO, in its sole discretion, may terminate this Agreement for one or more Units prior to the end of the Term by giving at least ninety (90) days advance written notice to Participant.

- (4) The period beginning on the Start Date and ending when the Agreement terminates is called the “Full Term” of this Agreement.
- (5) An Initial Term may be extended by MISO if MISO provides at least one hundred eighty (180) days advance notice of such extension to the Participant.
- B. Termination by Participant. Participant may, at its option, immediately terminate this Agreement upon the failure of MISO to continue to be certified by the Federal Energy Regulatory Commission as an RTO.
- C. Effect of Termination and Survival of Terms. If this Agreement is terminated by a Party pursuant to the terms hereof with respect to any Unit, the rights and obligations of the Parties hereunder with respect to such Unit shall terminate, except that (1) the rights and obligations of the Parties that have accrued under this Agreement prior to the date of termination shall survive and (2) the rights and obligations of the Parties relating to any Unit with respect to which this Agreement has not been terminated shall survive.
- D. Notice. All notices (except for the two-hour advance notice specified in Section 7.A.(2) and operating notices exchanged in the ordinary course of business) required to be given under this Agreement shall be in writing, and shall be deemed delivered three (3) days after being deposited in the U.S. mail, first class postage prepaid, registered (or certified) mail, return receipt requested, addressed to the other Party at the address specified in this Agreement or shall be deemed delivered on the day of receipt if sent in another manner requiring a signed receipt, such as courier delivery or Federal Express delivery. Either Party may change its address for such notices by delivering to the other Party a written notice referring specifically to this Agreement. Notices required hereunder shall be in

accordance with the applicable Sections of the MISO Tariff.

If to MISO:

General Counsel
Midcontinent Independent System Operator
720 City Center Drive
Carmel, IN 46032
Tel. No. (317) 249-5400

If to Participant:

Director – Power Marketing and Planning
Wisconsin Electric Power Company
333 W. Everett St. – A214
Milwaukee, WI 53203
Tel. No. (414) 221-2345

Cc:

General Counsel
Wisconsin Electric Power Company
333 W. Everett St.
Milwaukee, WI 53203
Tel. No. (414) 221-2345

Section 4. Representations, Warranties, and Covenants.

A. Participant represents, warrants, and covenants that:

- (1) Participant is duly organized, validly existing and in good standing under the laws of the jurisdiction under which it is organized, and is authorized to do business in the MISO Region;
- (2) Participant has full power and authority to enter into this Agreement and perform all of Participant's obligations, representations, warranties, and covenants under this Agreement;
- (3) Participant's past, present and future agreements or Participant's organizational charter or bylaws, if any, or any provision of any indenture, mortgage, lien, lease,

agreement, order, judgment, or decree to which Participant is a party or by which its assets or properties are bound do not materially affect performance of Participant's obligations under this Agreement;

- (4) The execution, delivery and performance of this Agreement by Participant have been duly authorized by all requisite action of its governing body;
- (5) Except as set out in an exhibit (if any) to this Agreement, MISO has not, within the twenty-four (24) months preceding the Effective Date, terminated for Default any prior agreement with Participant, any company of which Participant is a successor in interest, or any Affiliate of Participant;
- (6) If any Defaults are disclosed on any such exhibit mentioned in subsection 4.A(5), either (a) MISO has been paid, before execution of this Agreement, all sums due to it in relation to such prior agreement, or (b) MISO, in its reasonable judgment, has determined that this Agreement is necessary for system reliability, and Participant has made alternate arrangements satisfactory to MISO for the resolution of the Default under the prior agreement with Participant, any company of which Participant is a successor in interest, or any Affiliate of Participant;
- (7) Participant has obtained, or will obtain prior to beginning performance under this Agreement, all licenses, registrations, certifications, permits and other authorizations and has taken, or will take prior to beginning performance under this Agreement, all actions required by applicable laws or governmental regulations except licenses, registrations, certifications, permits or other authorizations that do not materially affect performance under this Agreement;

- (8) Participant is not in violation of any laws, ordinances, or governmental rules, regulations or order of any Governmental Authority or arbitration board materially affecting performance of this Agreement and to which it is subject;
- (9) Participant is not Bankrupt, does not contemplate becoming Bankrupt nor, to its knowledge, will become Bankrupt;
- (10) Participant acknowledges that it has received and is familiar with the MISO Tariff; and
- (11) Participant acknowledges and affirms that the foregoing representations, warranties, and covenants are continuing in nature throughout the term of this Agreement. For purposes of this Section, “materially affecting performance” means resulting in a materially adverse effect on Participant’s performance of its obligations under this Agreement.

B. MISO represents, warrants, and covenants that:

- (1) MISO is the RTO certified under 18 C.F.R. §35.34 for the MISO Region and the subject Generation Resource/SCU is located within the MISO Region;
- (2) MISO is duly organized, validly existing and in good standing under the laws of Delaware, and is authorized to do business in the MISO Region;
- (3) MISO has full power and authority to enter into this Agreement and perform all of MISO’s obligations, representations, warranties, and covenants under this Agreement;
- (4) MISO’s past, present and future agreements or MISO’s organizational charter or bylaws, if any, or any provision of any indenture, mortgage, lien, lease,

agreement, order, judgment, or decree to which MISO is a party or by which its assets or properties are bound do not materially affect performance of MISO's obligations under this Agreement;

- (5) The execution, delivery and performance of this Agreement by MISO have been duly authorized by all requisite action of its governing body;
- (6) MISO has obtained, or will obtain prior to beginning performance under this Agreement, all licenses, registrations, certifications, permits and other authorizations and has taken, or will take prior to beginning performance under this Agreement, all actions required by applicable laws or governmental regulations except licenses, registrations, certifications, permits or other authorizations that do not materially affect performance under this Agreement;
- (7) MISO is not in violation of any laws, ordinances, or governmental rules, regulations or order of any Governmental Authority or arbitration board materially affecting performance of this Agreement and to which it is subject;
- (8) MISO is not Bankrupt, does not contemplate becoming Bankrupt nor, to its knowledge, will become Bankrupt; and
- (9) MISO acknowledges and affirms that the foregoing representations, warranties, and covenants are continuing in nature throughout the term of this Agreement. For purposes of this Section, "materially affecting performance," means resulting in a materially adverse effect on MISO's performance of its obligations under this Agreement.

Section 5. Participant Obligations.

Participant shall comply with, and be bound by, the MISO Tariff as it pertains to the provision of SSR Service.

Section 6. MISO Obligations.

MISO shall comply with, and be bound by, all MISO Tariff provisions.

Section 7. Capacity Tests for SSR Units.

A. Capacity Tests for SSR Reliability.

- (1) A “Capacity Test” is a one-hour performance test of an SSR Unit by Participant. The capacity as shown by a Capacity Test is called “Tested Capacity” and is determined by the applicable net meter readings during the Capacity Test.
- (2) MISO may require that a Capacity Test be run at MISO’s discretion at any time when an SSR Unit is on-line and declared dispatchable, but MISO may not require more than four (4) Capacity Tests for each Unit in a contract year. MISO must give Participant at least two (2) hours advance notice, after the SSR Unit is on-line and declared dispatchable, of a Capacity Test required by MISO, unless Participant agrees to less than two (2) hours. Participant may perform as many Capacity Tests as it desires, but Participant may not perform a Capacity Test without the prior approval of MISO, which approval MISO may not unreasonably withhold or delay. The Parties will reasonably cooperate to coordinate a Capacity Test. MISO has the right to reasonable advance notice of, and to have personnel present during, a Capacity Test.

B. Test Report. MISO shall give the Capacity Test results in writing (the “Capacity Test

Report”) to Participant within twenty-four (24) hours after the test is run.

C. Effect of Test.

- (1) A determination of Tested Capacity is effective as of the beginning of the hour in which the Capacity Test is started.
- (2) For all hours in which Tested Capacity is less than SSR Capacity, then Billing Capacity is reduced as set out in Section 9.D below and remains so reduced until a subsequent Capacity Test establishes that Tested Capacity equals or exceeds SSR Capacity.
- (3) After the Effective Date, MISO shall dispatch, as part of SSR energy, the electrical energy and/or reactive power produced by the SSR Units, including ramping energy and/or reactive power, during a Capacity Test requested by MISO, net of auxiliary equipment and other electrical requirements of the SSR Units that are supplied by the SSR Units. MISO shall also dispatch, as part of SSR energy, any electrical energy and/or reactive power produced by the SSR Units during a Capacity Test requested by Participant to attempt to show that Tested Capacity equals or exceeds SSR Capacity, net of auxiliary equipment and other electrical requirements of the SSR Units that are supplied by the SSR Units.

D. Capacity Tests for Resource Adequacy. If the SSR Units are designated as a Capacity Resource pursuant to Module E-1 of the MISO Tariff, then the capacity test provisions of Module E-1 shall apply in addition to the Capacity Tests for System Reliability stated elsewhere in this Section 7.

E. Coordination for Other Tests. The Parties shall coordinate scheduling of any testing of

the SSR Units that is required consistent with Good Utility Practice (*e.g.*, testing in accordance with environmental and insurance requirements applicable to the Units), including the use of weekends and hours when the SSR Units are not expected to be used in order to complete the testing. During times for such testing, the SSR Units shall return to full service as dispatched by MISO (rescheduling the applicable testing) in the event of an emergency.

Section 8. Operation.

- A. Designated Unit Maintenance. Before the start of each contract year, Participant shall furnish MISO with its proposed schedule for Generator Planned Outages for inspection, repair, maintenance, and overhaul of the Designated Units for the contract year, in accordance with MISO's outage scheduling system. Participant shall promptly advise MISO of any later changes to the schedule. MISO shall approve or reject Generator Planned Outages in accordance with MISO's Business Practices Manual. MISO shall, if requested by Participant, endeavor to accommodate changes to the schedule to the extent that reliability of the MISO System is not materially affected by those changes. In all cases, MISO must find a time for Participant to perform maintenance in a reasonable timeframe as defined by Good Utility Practice.
- B. Planning Data. Participant shall timely report to MISO those items and conditions necessary for MISO's internal planning and compliance with MISO's guidelines in effect from time to time. The information supplied must include, without limitation, the following:
- (1) Availability Plan (*i.e.*, day-ahead offer) for the next day in accordance with MISO Tariff deadlines;

(2) Revised Availability Plan (*i.e.*, real time offer) reflecting changes in the Availability Plan in accordance with MISO Tariff deadlines; and

(3) Status of Designated Units with respect to Environmental Limitations, if any. Participant shall also timely report to MISO the status of the Designated Units with respect to Operational Limitations.

C. Delivery.

(1) MISO shall notify Participant of the hours and levels, if any, that the Designated Units are to operate through day-ahead commitment and real-time dispatch for system reliability. The set point, or the dispatch target, in the real-time dispatch shall be considered the “Delivery Plan” for the purposes of this Agreement. The day-ahead commitment and real time dispatch, including set points, shall be determined in the same manner and subject to the same limitations as other generation resources in MISO. MISO shall not notify Participant to operate the SSR Units in a way that would violate the limitations on operation set out in Section 1 above. Notwithstanding the foregoing, Participant shall be able to offer its SSR capability into the MISO Energy and Operating Reserves Markets outside of the Delivery Plan when the SSR Units are not needed to address the reliability issues pertaining to this Agreement, consistent with Section 38.2.7(h) of the Tariff. Such offers into MISO Markets shall be cost-based, including Start-Up, No Load, and Energy Offers. Participant shall also be encouraged to offer its available Zonal Resource Credits into the Planning Resource Auction pursuant to the terms of the Tariff.

- (2) Participant shall produce and deliver electrical energy from the SSR Units to the Delivery Point at the levels specified in the Delivery Plan, and shall maintain reactive power capability and voltage schedules in accordance with North American Electric Reliability Corporation (“NERC”) standards.
- (3) MISO may dispatch the Designated Units only when necessary to ensure transmission system security, including any emergency situation. MISO may not dispatch the Designated Units if compliance with the dispatch would cause the Designated Units to exceed the Operational and Environmental Limitations, if any, set forth in Section 1 above or at levels inconsistent with those shown in the Availability Plan. Notwithstanding the foregoing, Participant retains the responsibility for operating the Designated Units in accordance with limits provided by applicable law.
- (4) During the hours of operation of the SSR Units specified in the Delivery Plan, Participant may only participate in the MISO Energy and Operating Reserve Markets from the SSR Units in accordance with the relevant conditions in the MISO Tariff.

Section 9. Payment Provisions.

A. For the transfer of any funds under this Agreement directly between MISO and Participant and pursuant to the Settlement procedures described in the MISO Tariff, the following shall apply:

- (1) Participant appoints MISO to act as its agent with respect to such

funds transferred and authorizes MISO to exercise such powers and perform such duties as described in this Agreement or the MISO Tariff, together with such powers or duties as are reasonably incidental thereto.-

(2) MISO shall not have any duties, responsibilities to, or fiduciary relationship with Participant and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement except as expressly set forth herein or in the MISO Tariff.

B. Compensation for the SSR Units. MISO shall compensate Participant according to the terms of Exhibit 2 to this Agreement.

C. Settlement Provisions for the SSR Units. At the conclusion of each calendar month, MISO shall conduct a settlement process for the SSR Units, consistent with the MISO Tariff requirements.

D. Performance-Related Payment Adjustments.

(1) For the SSR Units, a "Misconduct Event" means any hour or hours during which Participant is requested to, but does not, deliver to MISO electrical energy from each unit at a level within a tolerance band of plus or minus five (5) MW of the level shown in the Delivery Plan on each hour (on a megawatt-hour/hour basis) or does not maintain reactive capability consistent with NERC standards; provided that, it shall not be deemed a Misconduct Event if (a) such failure to deliver energy and/or reactive

power is due to the occurrence of a Force Majeure Event or the action or inaction of the Local Balancing Authority or the Transmission Operator, or (b) Participant has reported an outage or derating through the Outage Scheduler and the report by Participant is not intentionally incomplete, inaccurate, or dishonest regarding the availability of the Designated Units.

- (2) Each day that a Misconduct Event continues after Participant receives written notice from MISO of the Misconduct Event is a separate Misconduct Event. A Misconduct Event is measured on a daily basis.
- (3) Participant is excused from the Misconduct Event payment reduction arising from any Misconduct Event that is (a) not due to intentionally incomplete, inaccurate, or dishonest reporting to MISO by Participant of the availability of the Designated Units, or (b) caused by a failure of the MISO Transmission System.
- (4) If a Misconduct Event is not excused, then to reflect this lower-than-expected quality of firmness, MISO's payments to Participant are reduced by the Unexcused Misconduct Amount not to exceed \$10,000 per day in the aggregate for all SSR Units.
- (5) MISO shall inform Participant, in writing, of its determination if a Misconduct Event is unexcused within twenty-four (24) hours of such determination being made.

(6) MISO may offset any amounts due by Participant to MISO under this section against any amounts due by MISO to Participant under this Agreement.

(7) Subject to the maximum amount set forth in clause (4) above, the Unexcused Misconduct Amount reduces payments to Participant (see Exhibit 2), and is composed of two parts:

(a) A fixed component equal to a proportionate reduction in the Monthly SSR Payment to Participant (see Exhibit 2) according to the reduction in Billing Capacity below the SSR Capacity, calculated for that portion of the month during which such reduction occurs. Billing Capacity is the lower of (i) the SSR Capacity and (ii) the Tested Capacity if lower than SSR Capacity for reasons not reported through the Outage Scheduler or if such reporting to MISO is intentionally incomplete, inaccurate, or dishonest.

(b) A variable component equal to the product of: (i) the difference between: a) the level shown in the Delivery Plan and b) the amount of electrical energy and/or reactive power delivered to MISO; and (ii) an SSR Unit's Hourly Ex Post LMP in any hour or hours in which a Misconduct Event occurs.

E. Compensation for Unanticipated Repairs. During the Term of this Agreement, any necessary repair or repairs to the SSR Units shall not entitle Participant to any additional

compensation under this Agreement, except as provided herein. For the purposes of this Section, “unanticipated” repairs are those for which compensation is not provided for in the Annual SSR Amount contained in Exhibit 2 to this Agreement. If the need arises to make an unanticipated repair to one or more of the SSR Units, Participant shall notify MISO before incurring said repair costs, together with reasonable information in support thereof. Upon such notification, MISO shall notify Participant either that: (i) it elects to exercise its rights to terminate regarding the affected Units by giving ninety (90) days advance written notice to Participant because the unanticipated repairs could not result in the return to service on a timeline that serves system reliability; or (ii) it agrees that Participant shall make such repairs, subject to the terms of parts (1) and (2) of this Section 9.E. In no circumstances shall the costs of repairs authorized by MISO pursuant to this Agreement be the responsibility of Participant. Participant shall not be deemed to have a Misconduct Event, nor shall Participant be subject to any other performance penalties under this Agreement or the MISO Tariff for the period of time after Participant notifies MISO of the need for repairs as provided in this Section 9.E until repairs have been completed. MISO will provide to Participant written notification pursuant to the terms of parts (1) and (2) of this Section 9.E that directs Participant to make such repairs. MISO and Participant agree that “unanticipated repairs” in this Section 9.E shall not include the costs of complying with Mercury and Air Toxics Standards (“MATS”) requirements.

- (1) Non-Emergency Repairs. Except as provided for in part 2 of this Section 9.E, before MISO may issue a notice to fund unanticipated repairs, MISO shall make

and receive approval of a Federal Power Act ("FPA") Section 205 filing at FERC to modify this Agreement to provide for the recovery of such repair costs and shall serve such filing on all parties to whom such repair costs would be allocated. Participant shall not make such unanticipated repairs unless and until MISO informs Participant in writing that it has received FERC approval to modify this Agreement to provide for the recovery of such costs.

- (2) Emergency Repairs. If MISO reasonably believes that system security and reliability require any unanticipated repairs to be made before FERC can act on a Section 205 filing ("Emergency Repairs"), then MISO shall so notify Participant in writing and direct Participant to make such Emergency Repairs and MISO shall make a Section 205 filing at FERC as soon as reasonably practicable thereafter to modify this Agreement to provide for recovery of such repair costs. In the case of Emergency Repairs, if FERC later determines MISO's decision to approve such Emergency Repairs was imprudent or otherwise does not accept such modifications to the Agreement, then the costs of the Emergency Repairs shall be allocated pursuant to Section 38.2.7(k) of the MISO Tariff.

- F. Allocation of SSR Compensation. MISO will charge the LSEs that benefit from operation of the subject SSR Units in accordance with MISO Tariff Schedule 43G.

Section 10. Default.

A. Event of Default.

- (1) Failure to make payment or transfer funds as provided in the MISO Tariff

shall constitute a material breach and shall constitute an event of default ("Default") unless cured within three (3) Business Days after delivery by the non-breaching Party of written notice of the failure to the breaching Party. Provided further that if such a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three (3) times within a rolling twelve (12)-month period, the fourth such breach shall constitute a Default by the breaching Party.

(2) For any material breach other than a failure to make payment or transfer funds, the occurrence and continuation of any of the following events shall constitute an event of Default by Participant:

(a) Except as excused under subsection (4) or (5) below, a material breach, other than a failure to make payment or transfer funds, of this Agreement by Participant, including any material failure by Participant to comply with the MISO Tariff, unless cured within fourteen (14) Business Days after delivery by MISO of written notice of the material breach to Participant. Participant must begin work or other efforts within three (3) Business Days to cure such material breach after delivery by MISO of written notice of such material breach by Participant and must prosecute such work or other efforts with reasonable diligence, consistent with Good Utility Practice, until the breach is cured. Provided

further that if a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three (3) times within a rolling twelve (12)-month period, the fourth (4th) such breach shall constitute a Default.

- (b) Participant becomes Bankrupt, except for the filing of a petition in involuntary bankruptcy, or similar involuntary proceedings that is dismissed within ninety (90) days thereafter.
 - (c) A Designated Unit's operation is abandoned without intent to return it to operation during the Full Term; or
 - (d) Three or more unexcused Misconduct Events occur during a contract year.
- (3) Except as excused under subsection (4) or (5) below, a material breach of this Agreement by MISO, including any material failure by MISO to comply with the MISO Tariff, other than a failure to make payment or transfer funds, shall constitute a Default by MISO unless cured within fourteen (14) Business Days after delivery by Participant of written notice of the material breach to MISO. MISO must begin work or other efforts within three (3) Business Days to cure such material breach after delivery by Participant of written notice of such material breach by MISO and must prosecute such work or other efforts with reasonable diligence, consistent with Good Utility Practice, until the breach is cured.

Provided further that if a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three (3) times within a rolling twelve (12)-month period, the fourth such breach shall constitute a Default.

- (4) For any material breach other than a failure to make payment or transfer funds, the breach shall not result in a Default if the breach cannot reasonably be cured within fourteen (14) calendar days, prompt written notice is provided by the breaching Party to the other Party, and the breaching Party began work or other efforts to cure the breach within three (3) Business Days after delivery of the notice to the breaching Party and prosecutes the curative work or efforts with reasonable diligence, consistent with Good Utility Practice, until the curative work or efforts are completed.
- (5) If, due to a Force Majeure Event, a Party is in breach with respect to any obligation hereunder, such breach shall not result in a Default by that Party.

B. Remedies for Default.

- (1) MISO's Remedies for Default. In the event of a Default by Participant, MISO may pursue any remedies MISO has under this Agreement, at law, or in equity, subject to the provisions of Section 12: Dispute Resolution of this Agreement. In the event of a Default by Participant, if the MISO Tariff does not specify a

remedy for a particular Default, MISO may, at its option, upon written notice to Participant, immediately terminate this Agreement, with termination to be effective upon the date of delivery of notice.

(2) Participant's Remedies for Default.

- (a) Unless otherwise specified in this Agreement or in the MISO Tariff, and subject to the provisions of Section 12: Dispute Resolution of this Agreement, in the event of a Default by MISO, Participant's remedies shall be limited to:
 - (i) Immediate termination of this Agreement upon written notice to MISO,
 - (ii) Monetary recovery in accordance with the Settlement procedures set forth in the MISO Tariff, and
 - (iii) Specific performance.
- (b) However, in the event of a material breach by MISO of any of its representations, warranties or covenants, Participant's sole remedy shall be immediate termination of this Agreement upon written notice to MISO.
- (c) If as a final result of any dispute resolution MISO, as the settlement agent, is determined to have over-collected from a Market Participant(s), with the result that refunds are owed by Participant to MISO, as the settlement agent such Market Participant(s) may request MISO to allow

such Market Participant to proceed directly against Participant, in lieu of receiving full payment from MISO. In the event of such request, MISO, in its sole discretion, may agree to assign to such Market Participant MISO's rights to seek refunds from Participant, and Participant shall be deemed to have consented to such assignment. This subsection (c) shall survive termination of this Agreement.

- (3) A Default or breach of this Agreement by a Party shall not relieve either Party of the obligation to comply with the MISO Tariff.

C. Force Majeure.

- (1) If, due to a Force Majeure Event, either Party is in breach of this Agreement with respect to any obligation hereunder, such Party shall take reasonable steps, consistent with Good Utility Practice, to remedy such breach. If either Party is unable to fulfill any obligation by reason of a Force Majeure Event, it shall give notice and the full particulars of the obligations affected by such Force Majeure Event to the other Party in writing or by telephone (if followed by written notice) as soon as reasonably practicable, but not later than fourteen (14) calendar days, after such Party becomes aware of the event. A failure to give timely notice of the Force Majeure event shall constitute a waiver of the claim of Force Majeure Event. The Party experiencing the Force Majeure Event shall also provide notice, as soon as reasonably practicable, when the Force Majeure Event ends.
- (2) Notwithstanding the foregoing, a Force Majeure Event does not relieve a Party

affected by a Force Majeure Event of its obligation to make payments or of any consequences of non-performance pursuant to the MISO Tariff or under this Agreement, except that the excuse from Default provided by subsection 10.A(5) above is still effective.

- D. Duty to Mitigate. Except as expressly provided otherwise herein, each Party shall use commercially reasonable efforts to mitigate any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

Section 11. Limitation of Damages and Liability and Indemnification.

- A. EXCEPT AS EXPRESSLY LIMITED IN THIS AGREEMENT OR MISO BUSINESS PRACTICES, MISO OR PARTICIPANT MAY SEEK FROM THE OTHER, THROUGH APPLICABLE DISPUTE RESOLUTION PROCEDURES SET FORTH IN MISO PROTOCOLS, ANY MONETARY DAMAGES OR OTHER REMEDY OTHERWISE ALLOWABLE UNDER INDIANA LAW, AS DAMAGES FOR DEFAULT OR BREACH OF THE OBLIGATIONS UNDER THIS AGREEMENT; PROVIDED, HOWEVER, THAT NEITHER PARTY IS LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR INJURY THAT MAY OCCUR, IN WHOLE OR IN PART, AS A RESULT OF A DEFAULT UNDER THIS AGREEMENT, A TORT, OR ANY OTHER CAUSE, WHETHER OR NOT A PARTY HAD KNOWLEDGE OF THE CIRCUMSTANCES THAT RESULTED IN THE SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR INJURY, OR COULD HAVE FORESEEN THAT SUCH DAMAGES OR INJURY WOULD OCCUR.

- B. The Parties have expressly agreed that, other than subsections A and B of this Section, this Agreement shall not include any other limitations of liability or indemnification provisions, and that such issues shall be governed solely by applicable law, in a manner consistent with the Choice of Law and Venue subsection 13.A of this Agreement, regardless of any contrary provisions that may be included in or subsequently added to the MISO Tariff (outside of this Agreement).

Section 12. Dispute Resolution.

- A. In the event of a dispute, including a dispute regarding a Default, under this Agreement, Parties to this Agreement shall first attempt resolution of the dispute using the applicable dispute resolution procedures set forth in the MISO Tariff.
- B. In the event of a dispute, including a dispute regarding a Default, under this Agreement, each Party shall bear its own costs and fees, including, but not limited to attorneys' fees, court costs, and its share of any mediation or arbitration fees.

Section 13. Miscellaneous.

- A. Choice of Law and Venue. Notwithstanding anything to the contrary in this Agreement, this Agreement shall be deemed entered into in Indiana and, with the exception of matters governed exclusively by federal law, shall be governed by and construed and interpreted in accordance with the laws of the State of Indiana that apply to contracts executed in and performed entirely within the State of Indiana, without reference to any rules of conflict of laws. Neither Party waives primary jurisdiction as a

defense; provided that any court suits regarding this Agreement shall be brought in a state or federal court located within Indiana, and the Parties hereby waive any defense of forum non-conveniens.

B. Assignment.

(1) Notwithstanding anything herein to the contrary, a Party shall not assign or otherwise transfer all or any of its rights or obligations under this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed, except that a Party may assign or transfer its rights and obligations under this Agreement without the prior written consent of the other Party (if neither the assigning Party or the assignee is then in Default of any Agreement with MISO):

- (a) Where any such assignment or transfer is to an Affiliate of the Party; or
- (b) Where any such assignment or transfer is to a successor to or transferee of the direct or indirect ownership or operation of all or part of the Party, or its facilities; or
- (c) For collateral security purposes to aid in providing financing for itself, provided that the assigning Party will require any secured party, trustee or mortgagee to notify the other Party of any such assignment. Any financing arrangement entered into by either Party pursuant to this Section will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify

the other Party of the date and particulars of any such exercise of assignment right(s). If requested by the Party making any such collateral assignment to a Financing Person, the other Party shall execute and deliver a consent to such assignment containing customary provisions, including representations as to corporate authorization, enforceability of this Agreement and absence of known Defaults, notices of Default, and an opportunity for the Financing Person to cure Defaults.

- (2) An assigning Party shall provide prompt written notice of the assignment to the other Party. Any attempted assignment that violates this Section is void and ineffective. Any assignment under this Agreement shall not relieve either Party of its obligations under this Agreement, nor shall either Party's obligations be enlarged, in whole or in part, by reason thereof.

- C. No Third Party Beneficiary. Except with respect to the rights of other Market Participants in Section 10.B and the Financing Persons in Section 13.B, (1) nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any third party, (2) no third party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder and (3) this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or the services to be provided hereunder. Nothing in this Agreement shall create a contractual relationship between one Party and the

customers of the other Party, nor shall it create a duty of any kind to such customers.

- D. No Waiver. Parties shall not be required to give notice to enforce strict adherence to all provisions of this Agreement. No breach or provision of this Agreement shall be deemed waived, modified or excused by a Party unless such waiver, modification or excuse is in writing and signed by an authorized officer of such Party. The failure by or delay of either Party in enforcing or exercising any of its rights under this Agreement shall (1) not be deemed a waiver, modification or excuse of such right or of any breach of the same or different provision of this Agreement, and (2) not prevent a subsequent enforcement or exercise of such right. Each Party shall be entitled to enforce the other Party's covenants and promises contained herein, notwithstanding the existence of any claim or cause of action against the enforcing Party under this Agreement or otherwise.
- E. Headings. Titles and headings of paragraphs and sections within this Agreement are provided merely for convenience and shall not be used or relied upon in construing this Agreement or the Parties' intentions with respect thereto.
- F. Severability. In the event that any of the provisions, or portions or applications thereof, of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, that determination shall not affect the enforceability or validity of the remaining portions of this Agreement, and this Agreement shall continue in full force and effect as if it had been executed without the invalid provision; provided, however, if either Party determines, in its sole discretion, that there is a material change in this Agreement by reason thereof, the Parties shall promptly enter into negotiations

to replace the unenforceable or invalid provision with a valid and enforceable provision. If the Parties are not able to reach an agreement as the result of such negotiations within fourteen (14) days, either Party shall have the right to terminate this Agreement on three (3) days written notice.

- G. Entire Agreement. Any exhibits attached to this Agreement are incorporated into this Agreement by reference and made a part of this Agreement as if repeated verbatim in this Agreement. This Agreement represents the Parties' final and mutual understanding with respect to its subject matter. It replaces and supersedes any prior agreements or understandings, whether written or oral. No representations, inducements, promises, or agreements, oral or otherwise, have been relied upon or made by any Party, or anyone on behalf of a Party, that are not fully expressed in this Agreement. An agreement, statement, or promise not contained in this Agreement is not valid or binding.
- H. Amendment. The standard form of this Agreement may only be modified through the procedure for modifying the MISO Tariff described in the MISO Tariff. Any changes to the terms of the standard form of this Agreement shall not take effect until a new Agreement is executed between the Parties.
- I. MISO's Right to Audit Participant. Participant shall keep detailed records for a period of three years of all activities under this Agreement giving rise to any information, statement, charge, payment or computation delivered to MISO under the MISO Tariff. Such records shall be retained and shall be available for audit or examination by MISO as hereinafter provided. MISO has the right during Business Hours and upon reasonable

written notice and reasonable cause to examine the records of Participant as necessary to verify the accuracy of any such information, statement, charge, payment or computation made under this Agreement. If any such examination reveals any inaccuracy in any information, statement, charge, payment or computation, the necessary adjustments in such information, statement, charge, payment, computation, or procedures used in supporting its ongoing accuracy will be promptly made.

- J. Participant's Right to Audit MISO. Participant's right to data and audit of MISO shall be as described in the MISO Tariff and shall not exceed the rights described in the MISO Tariff.
- K. Further Assurances. Each Party agrees that during the term of this Agreement it will take such actions, provide such documents, do such things and provide such further assurances as may reasonably be requested by the other Party to permit performance of this Agreement.
- L. Conflicts. This Agreement is subject to applicable federal, state, and local laws, ordinances, rules, regulations, orders of any Governmental Authority and tariffs. Nothing in this Agreement may be construed as a waiver of any right to question or contest any federal, state and local law, ordinance, rule, regulation, order of any Governmental Authority, or tariff. In the event of a conflict between this Agreement and an applicable federal, state, and local law, ordinance, rule, regulation, order of any Governmental Authority or tariff, the applicable federal, state, and local law, ordinance, rule, regulation, order of any Governmental Authority or tariff shall prevail, provided that Participant shall give notice to MISO of any such conflict affecting Participant. In

the event of a conflict between the MISO Tariff and this Agreement, the provisions expressly set forth in this Agreement shall control.

M. No Partnership. This Agreement may not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party has any right, power, or authority to enter any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party except as provided in Section 9.A.

N. No State Public Utility Created. This Agreement may not be interpreted or construed as modifying the jurisdictional status of MISO, including, but not limited to establishment of MISO as a state public utility under the laws of any jurisdiction, as a result of MISO's performance under this Agreement.

O. Construction. In this Agreement, the following rules of construction apply, unless expressly provided otherwise or unless the context clearly requires otherwise:

- (1) The singular includes the plural, and the plural includes the singular.
- (2) The present tense includes the future tense, and the future tense includes the present tense.
- (3) Words importing any gender include the other gender.
- (4) The word "shall" denotes a duty.

- (5) The word "must" denotes a condition precedent or subsequent.
- (6) The word "may" denotes a privilege or discretionary power.
- (7) The phrase "may not" denotes a prohibition.
- (8) References to statutes, tariffs, regulations or the MISO Tariff include all provisions consolidating, amending, or replacing the statutes, tariffs, regulations or the MISO Tariff referred to.
- (9) References to "writing" include printing, typing, lithography, and other means of reproducing words in a tangible visible form.
- (10) The words "including," "includes," and "include" are deemed to be followed by the words "without limitation."
- (11) Any reference to a day, week, month or year is to a calendar day, week, month or year unless otherwise indicated.
- (12) References to Articles, Sections (or subdivisions of Sections), Exhibits, annexes or schedules are to this Agreement, unless expressly stated otherwise.
- (13) Unless expressly stated otherwise, references to agreements, the MISO Tariff and other contractual instruments include all subsequent amendments and other modifications to the instruments, but only to the extent the amendments and other modifications are not prohibited by this Agreement.

(14) References to persons or entities include their respective successors and permitted assigns and, for governmental entities, entities succeeding to their respective functions and capacities.

(15) References to time are to Eastern Standard Time.

(16) References to any capitalized word or phrase not defined herein shall have the meanings from the MISO Tariff.

P. Multiple Counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

SIGNED, ACCEPTED AND AGREED TO by each undersigned signatory who, by signature hereto, represents and warrants that he or she has full power and authority to execute this Agreement.

Midcontinent Independent System Operator, Inc.:

By: /s/ Richard Doying_____

Name: Richard Doying_____

Title: Exec. VP Operations & Corp. Services

Date: _____

Participant, Wisconsin Electric Power Company:

By: /s/ Gale E. Klappa_____

Name: Gale E. Klappa_____

Title: President and Chief Executive Officer

Date: 1/29/2014_____

EXHIBIT 1

Detailed Description of SSR Units

Presque Isle Units 5-9, including two (2) diesel generators for emergency auxiliary power

Location: Marquette, Michigan; occupying 65 acres of land on the shore of Lake Superior

Coal-based:

Units 5-9 burn low-sulfur sub-bituminous coal
#2 Fuel Oil used for diesel generators and boiler start-up

Year in Service: Unit 5: 1974
 Unit 6: 1975
 Unit 7: 1978
 Unit 8: 1978
 Unit 9: 1979

The following ratings are pursuant to Net Generating Capacity (MW Module E) using
sub-bituminous coal:

Unit 5: 55 MW
Unit 6: 55 MW
Unit 7: 78 MW
Unit 8: 78 MW
Unit 9: 78 MW

Coal Handling: Transportation by self-unloading coal boats as permitted by Lake Superior
shipping season limitations.

Storage: 800,000-ton capacity pile; 1,200-1,600-ton capacity coal bunkers within plant

EXHIBIT 2

Description of SSR Unit Going-Forward Compensation

A. Fixed Component of Compensation

Pursuant to Section 9 of the Agreement, MISO shall pay Participant a Monthly SSR Payment of \$4,352,832, representing monthly allocations of the Annual SSR Amount (all five Units combined) each month during the term of the Agreement. If this Agreement is terminated with respect to one or more Units, but less than all five, the Monthly SSR Payment shall be reduced by an amount to be determined by the Parties following the notice of termination to reflect the removal of such Unit(s) from service under this Agreement. Such reduced amount shall be submitted by MISO to FERC for approval in a Federal Power Act ("FPA") Section 205 filing to modify this Agreement to provide for the reduced Monthly SSR Payment, which filing shall be served on all parties to whom such costs would be allocated under MISO Tariff Schedule 43G. The FERC-approved reduced amount shall be applicable the later of (a) the date that is ninety (90) days following notice of termination or (b) the date on which MISO elected to make such termination effective. Each Monthly SSR Payment shall be made regardless of dispatch of the SSR Units during that month. If this Agreement is terminated effective during the course of a calendar month, then the Monthly SSR Payment shall be prorated for that month. The compensation provided for under this Agreement may be further modified pursuant to Section 7.C (adjustment to Monthly SSR Payment based on Capacity Tests provided for pursuant to Section 7.A) and/or Section 9.D ("Performance-Related Payment Adjustments") and/or Section 9.E ("Compensation for Unanticipated Repairs") of the Agreement. Compensation shall be settled on a monthly basis.

If the Agreement is terminated by MISO prior to the end of the Term, MISO shall compensate Participant for its costs of fuel procured, but not consumed or useable for the operation of other Units that remain in operation, as of the date of such termination, net of any fuel resale revenues and including reasonable costs to achieve such revenues, based on the termination of the Agreement ("Mitigated Coal Cost"). For the completion of the applicable cost calculations, Participant shall submit the Mitigated Coal Cost to MISO such that the information is received by MISO within 180 days after the last day that the terminated Unit is operated for SSR purposes. Such submissions to MISO shall be sent to MISO at the address stated in Section 3.D of this Agreement, to the attention of the Manager of Market Settlements. The Mitigated Coal Cost amount shall be submitted by MISO to FERC for approval in a Federal Power Act ("FPA") Section 205 filing to modify this Agreement to provide for both the amount of compensation for the Mitigated Coal Cost and the manner in which such costs will be collected, which filing shall be served on all parties to whom such costs would be allocated under MISO Tariff Schedule 43G.

B. Variable Component of Compensation

Pursuant to Section 9 of the Agreement, MISO shall pay Participant its Production Cost for the amount of Actual Energy Injections (as defined in Module A of the MISO Tariff) and Operating Reserve Cost in each instance that MISO dispatches an SSR Unit. For the purposes of this Agreement, "Production Cost" shall mean the Energy output cost of the SSR Unit based upon Start Up, No Load, and Energy Offer cost components that reflect the actual costs of physically operating the SSR Unit, and "Operating Reserve Cost" shall mean the actual cost to provide Operating Reserves. All Production Costs and Operating Reserve Costs will be subject

to audit by MISO, and will be subject to audit and enforcement by the Independent Market Monitor.

Through the MISO settlement process, MISO will ensure that Participant is paid the "SSR Unit Compensation," which is equal to the sum of Production Cost for the amount of Actual Energy Injections (as defined in Module A of the MISO Tariff) and Operating Reserve Cost over all the Delivery Plan Instructed Hours of Operation in the Day for that SSR Unit. MISO will compare the SSR Unit Compensation to the "SSR Unit Energy and Operating Reserve Credit." The SSR Unit Energy and Operating Reserve Credit are those charges and credits calculated pursuant to Sections 39.3 Day-Ahead Energy and Operating Reserve Market and 40.3 Real Time Energy and Operating Reserve Market Settlement of the MISO Tariff, plus any revenues from Schedule 2 associated with the SSR Unit or from Planning Resource designation and any charges assessed through Schedule 17 and Schedule 24. In those hours where the SSR Unit Compensation is greater than the SSR Unit Energy and Operating Reserve Credit, MISO will make the applicable make-whole payment to Participant (such make-whole payment to be equal to the difference between the SSR Unit Compensation and the SSR Unit Energy and Operating Reserve Credit). In those hours where the SSR Unit Compensation is less than the SSR Unit Energy and Operating Reserve Credit, MISO will debit from Participant (such debit to be equal to the difference between the SSR Unit Energy and Operating Reserve Credit and the SSR Unit Compensation).

During the Term of the Agreement, compensation for reliability commitments shall be paid to Participant under this Exhibit 2 and not according to Voltage and Local Reliability payment provisions.

Whenever the SSR Unit operates in the MISO Market for purposes other than system reliability, the SSR Unit will be committed, dispatched, and settled pursuant to the MISO Tariff, except in those hours where the SSR Unit Compensation is less than the SSR Unit Energy and Operating Reserve Credit. Under this exception, MISO will debit Participant (such debit to be equal to the difference between the SSR Unit Energy and Operating Reserve Credit and the SSR Unit Compensation).

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Jeffrey L. Small
Attorney
Direct Dial: 317-249-5248
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April 15, 2014

VIA ELECTRONIC FILING

Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First St., N.E.
Washington, D.C. 20426

**Re: Allocation of SSR Costs Associated with White Pine Unit No. 1
MISO Rate Schedule No. 43H; Docket No. ER14 - ____ -000**

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act (“FPA”), 16 U.S.C. § 824d and Part 35 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) regulations, 18 C.F.R. § 35, *et. seq.*, the Midcontinent Independent System Operator, Inc. (“MISO”) respectfully submits the enclosed Allocation of SSR Costs that are associated with the operation of the White Pine Electric Power, LLP (“WPEP”) White Pine Unit No. 1 (“White Pine 1”) as an SSR Unit, pursuant to proposed Rate Schedule 43H under the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (“Tariff”).¹

I. BACKGROUND

The System Support Resources (“SSR”) Tariff provisions permit MISO to negotiate compensation for selected Generation Resources² where a Market Participant desires to retire or suspend operation of the facility but MISO determines that it is needed to maintain system reliability.³ Market Participants must submit a Notice to MISO at least 26 weeks in advance of any plan to Retire or Suspend a Generation Resource or a Synchronous Condenser Unit. Based upon information submitted by the Market Participant and MISO’s knowledge of transmission system conditions, MISO determines if the facility should be designated as an SSR Unit. Upon such designation, MISO enters into agreements with Market Participants that own or operate

¹ On September 21, 2012, the Commission conditionally approved amendments to the SSR provisions in the Tariff to become effective on September 24, 2012, subject to compliance filings. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,237, at P 1 (2012) (“SSR Order”); *see also Compliance Filing of the Midwest Indep. Transmission Sys. Operator, Inc.*, FERC eLibrary Accession No. 20121218-5147, Docket No. ER12-2302 (filed Dec. 18, 2012).

² Capitalized terms not otherwise defined herein have the meanings ascribed thereto in Section 1 of the Tariff.

³ *See generally* SSR Order at PP 2-4 (discussing the approval of the SSR provisions).

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SSR Units to allow for recovery of certain going-forward costs, offset by expected payments for resource adequacy and net revenues from energy and ancillary services market transactions.

WPEP owns the generating facilities that are located in White Pine, Michigan. These facilities include two currently operable units (Units 1 and 2), the first of which provides approximately 20 MW of capacity and was the subject of WPEP's Attachment Y Notice. White Pine 1 has historically been a coal fired steam unit, but currently uses natural gas as its fuel. WPEP submitted to MISO an Attachment Y Notice, dated October 15, 2013, in which WPEP stated its intention to retire White Pine 1. The date for the retirement was April 16, 2014.

MISO completed its reliability analysis and notified WPEP on March 7, 2014 that White Pine 1 would be SSR-designated until such time as appropriate alternatives could be implemented to mitigate reliability issues. MISO concluded that the proposed suspension of White Pine 1 would result in violations of specific, applicable reliability standards. As a result, the White Pine 1 was designated SSRs until such time as appropriate alternatives could be implemented to mitigate reliability issues.

II. Allocation of SSR Costs Associated with the White Pine 1 SSR Unit

Contemporaneously with this filing, MISO has submitted an SSR Agreement to the Commission as a just and reasonable agreement to ensure the reliability of the MISO Region.⁴ Consistent with the SSR Order,⁵ MISO is herewith submitting a separate Rate Schedule 43H to authorize MISO to allocate SSR costs that are associated with the White Pine 1 SSR Unit. The cost allocation proposed in Rate Schedule 43H is consistent with revised Section 38.2.7.k of the Tariff (which the Commission conditionally approved in Docket No. ER12-2302⁶). The Tariff requires that the costs pursuant to the SSR Agreement shall be allocated to the Load Serving Entities ("LSEs") that require the operation of the SSR Unit for reliability purposes, and shall be specified in the SSR Agreement.

The cost allocation in Schedule 43H is consistent with revised Section 38.2.7.k of MISO's Tariff and with the allocation previously accepted by the Commission.⁷ SSR costs are

⁴ MISO respectfully requests that the this filing and the related SSR Agreement proceeding be consolidated, consistent with the Commission's practice to consolidate matters where there are common issues of law or fact and consolidation will ultimately result in greater administrative efficiency. *See e.g., Sw. Power Pool, Inc.*, 125 FERC ¶ 61,001, at P 26 (2008); *Startrans IO L.L.C.*, 122 FERC ¶ 61,306, at P 64 (2008); *PP&L Resources, Inc.*, 90 FERC ¶ 61,203, at 61,653 (2000).

⁵ SSR Order at P 155.

⁶ *Id.* at P 153.

⁷ *See, e.g., Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,164, Order at 8 (March 7, 2014) (Escanaba SSR Agreement and Rate Schedule 43). The cost allocation for White Pine 1 is the same as that submitted by MISO for the Escanaba SSR Units in Docket No. ER13-1695.

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allocated to the footprint of the American Transmission Company (“ATC”) based upon the peaks of each Local Balancing Authority (“LBA”) within a month and to all LSEs within the ATC footprint based upon each LSE’s contribution to the peak of its LBA.⁸ Schedule 43H accomplishes this allocation based upon peak usage of transmission facilities in each month, as determined by each LSE’s Actual Energy Withdrawals during the monthly peak hour for each LBA.

Recognition of peak usage permits cost allocation that is similar to the manner in which “reliability-based transmission charges” are allocated.⁹ Costs are charged based upon the time period when the unit is actually available for dispatch as an SSR-designated resource. Schedule 43H does not apply a fixed percentage method which would be inflexible and incompatible with cost assignment in customer “choice” states such as Michigan where the White Pine 1 SSR Unit is located.¹⁰ The proposed cost allocation method, in contrast, identifies each LSE’s Actual Energy Withdrawals during the coincident peak hour and allocates costs accordingly. In this way, the percentage of costs allocated to each LSE will vary each month based on the LSE’s coincident peak hour energy usage during that month. The proposed cost allocation method retains the advantage of being contained in a single MISO settlements system, which means that software development, maintenance, and financial controls are performed only once.¹¹ The proposed cost allocation method also completely recovers the costs associated with the Amended SSR Agreement each month, as opposed to a demand-based rate that could only be calculated to approximately recover such costs.

⁸ See Revised Tariff Section 38.2.7.k.

⁹ *Midcontinent Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,170 (November 25, 2013) at P 16 (“accepted by this Commission, in a manner similar to reliability-based transmission charges”).

¹⁰ Customer switching began in the Upper Peninsula of Michigan, where the SSR Units are located, in June 2013. See Docket No. ER13-1695-000, MISO Transmittal Letter at n. 14 (April 14, 2013).

¹¹ Data and controls need not be developed to transfer billing determinants or costs between systems, which would complicate MISO’s controls and internal processes.

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III. DOCUMENTS SUBMITTED WITH THIS FILING

In addition to this transmittal letter, MISO is including the following:

- Exhibit A - Clean New Rate Schedule 43H, Allocation of SSR Costs Associated with the White Pine SSR Unit.
- Exhibit B - Redline New Rate Schedule 43H, Allocation of SSR Costs Associated with the White Pine SSR Unit.

IV. EFFECTIVE DATE

As discussed in the contemporaneously filed transmittal letter for the SSR Agreement, MISO requests an April 16, 2014 effective date for Rate Schedule 43H and for the SSR Agreement. MISO's reliability analysis previously deemed White Pine 1 as required for reliability, and WPEP was notified that the facilities qualified to become an SSR Unit. As required by the Tariff, MISO and WPEP entered into good faith negotiations over the proper compensation to include in the SSR Agreement. WPEP has agreed to maintain the availability of the SSR Unit (*i.e.* White Pine 1 has remained available to maintain system reliability) pursuant to MISO's request, and WPEP will incur costs that would otherwise be covered by the rate contained in the SSR Agreement. The SSR agreement and the associated Schedule 43H are being submitted as soon as possible following the complexities involved in working through the notification, evaluation, decision-making, and negotiation process.

MISO respectfully requests that the April 16, 2014 effective date be granted either through waiver of the prior notice rule or by treating Rate Schedule 43H as a service agreement under the Commission's 30-day rule for such filings.¹² The SSR Agreement is a *pro forma* agreement included in the Tariff, the executed versions of which are therefore service agreements. Also, good cause exists to grant the waiver of the prior notice rule. The delay in filing Rate Schedule 43H was a consequence, in part, of the fact that negotiation of the SSR Agreement could not be completed in time to provide sixty days prior notice, but the Tariff required the SSR Unit to remain available. WPEP has agreed to maintain its SSR Unit, and ensured that it will available to maintain reliability.

¹² Under the Commission's regulations, public utilities may adopt standard form service agreements which are included as part of the utility's tariff on file with the Commission. 18 C.F.R. § 35.10a(a). The Commission's regulations further provide that service agreements (defined at 18 C.F.R. § 35.2 as "an agreement that authorizes a customer to take electric service under the terms of a tariff") need only be filed within thirty days after service has commenced. 18 C.F.R. § 35.3(a)(2).

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The waiver is also required to permit MISO to comply with its Tariff and Commission precedent on the SSR program. Section 38.2.7 of the Tariff provides that SSR Units are due “equitable compensation” in exchange for maintaining availability past its required shut-down date, in this case, April 16, 2014. Moreover, in approving the SSR program, the Commission explained that the SSR Units should be “fully compensated” and that “nothing in the SSR program would require a generator to absorb any uncompensated going-forward costs.”¹³ If the April 16, 2014 effective date is not granted for the SSR Agreement and Rate Schedule 43H, then WPEP will have provided SSR service on an uncompensated basis while the required Tariff process took its course. This would be an inequitable outcome, and one that would seem to violate both the Tariff and Commission precedent.

For the foregoing reasons, MISO respectfully requests that the Commission waive its sixty (60) day notice requirement, as specified in Section 35.3(a) of the Commission’s regulations, 18 C.F.R. § 35.3(a), and make Rate Schedule 43H effective as of February 1, 2014. To the extent that the Commission determines that any requirement of 18 C.F.R. § 35 apply that have not been specifically addressed herein, MISO respectfully requests waiver of such requirements.

V. NOTICE AND SERVICE

MISO has served a copy of this filing electronically, including attachments, upon all Tariff Customers under the Open Access Transmission, Energy and Operating Reserve Markets Tariff, MISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, MISO’s Advisory Committee participants, as well as all state commissions within the Region.

In addition, the filing has been posted electronically on MISO’s website at <https://www.misoenergy.org/Library/FERCFilingsOrders/Pages/FERCFilings.aspx> for other interested parties in this matter.

¹³ See also *Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶ 61,157, at P 293 (2004) (“Finally, we emphasize that all SSR units should be fully compensated for any costs incurred because of their extended service. For example, nothing in the SSR program would require a generator to absorb any uncompensated going-forward costs.”).

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April 15, 2014
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VI. COMMUNICATIONS

Communications regarding this filing should be addressed to the following individuals, whose names should be placed on the official service list established by the Secretary in this proceeding:

Jeffrey L. Small*
Matthew R. Dorsett *
Midcontinent Independent
System Operator, Inc.
P.O. Box 4202
Carmel, Indiana 46082-4202
Telephone: (317) 249-5400
Fax: (317) 249-5912
jsmall@misoenergy.org
mdorsett@misoenergy.org

* Persons authorized to receive service

VII. CONCLUSION

For all of the foregoing reasons, MISO respectfully requests that the Commission accept the proposed Rate Schedule 43H without hearing, grant the proposed effective date of April 16, 2014, and grant waiver of any Commission regulations not addressed herein that the Commission may deem applicable to this filing.

Respectfully submitted,

/s/ Jeffrey L. Small

Jeffrey L. Small
Matthew R. Dorsett
Midcontinent Independent System
Operator, Inc.
720 City Center Drive
Carmel, Indiana 46032
Telephone: (317) 249-5400
Fax: (317) 249-5912
jsmall@misoenergy.org
mdorsett@misoenergy.org

Counsel for MISO

EXHIBIT A

Allocation of SSR Costs Associated with White Pine Unit No. 1 SSR Unit

In accordance with Section 9 and Exhibit 2 of the System Support Resource (“SSR”) Agreement filed by MISO for the White Pine SSR Unit No. 1 in Docket No. ER14-1724-000, such Agreement being for a period of service beginning on April 16, 2014, the monthly charges and credits shall be netted and summed for each month and apportioned, *pro rata*, to the ALTE, MGE, UPPC, WEC, and WPS Local Balancing Authority areas based on the monthly Actual Energy Withdrawals within each Local Balancing Authority for the monthly peak Hour (peak Hour based on the sum of Actual Energy Withdrawals) for each Local Balancing Authority. Such apportioned costs shall then be uplifted to Load Serving Entities in each Local Balancing Authority, *pro rata*, based on Actual Energy Withdrawals at Commercial Pricing Nodes for the monthly peak Hour (peak Hour based on the sum of Actual Energy Withdrawals, earliest peak Hour in the Month if more than one) within each Local Balancing Authority.

EXHIBIT B

Allocation of SSR Costs Associated with White Pine Unit No. 1 SSR Unit

In accordance with Section 9 and Exhibit 2 of the System Support Resource (“SSR”) Agreement filed by MISO for the White Pine SSR Unit No. 1 in Docket No. ER14-1724-000, such Agreement being for a period of service beginning on April 16, 2014, the monthly charges and credits shall be netted and summed for each month and apportioned, *pro rata*, to the ALTE, MGE, UPPC, WEC, and WPS Local Balancing Authority areas based on the monthly Actual Energy Withdrawals within each Local Balancing Authority for the monthly peak Hour (peak Hour based on the sum of Actual Energy Withdrawals) for each Local Balancing Authority. Such apportioned costs shall then be uplifted to Load Serving Entities in each Local Balancing Authority, *pro rata*, based on Actual Energy Withdrawals at Commercial Pricing Nodes for the monthly peak Hour (peak Hour based on the sum of Actual Energy Withdrawals, earliest peak Hour in the Month if more than one) within each Local Balancing Authority.

FERC rendition of the electronically filed tariff records in Docket No. ER14-01725-000
Filing Data:
CID: C001344
Filing Title: 2014-04-15_Schedule 43H - White Pine SSR
Company Filing Identifier: 10139
Type of Filing Code: 10
Associated Filing Identifier:
Tariff Title: FERC Electric Tariff
Tariff ID: 9
Payment Confirmation:
Suspension Motion:

Tariff Record Data:
Record Content Description, Tariff Record Title, Record Version Number, Option Code:
SCHEDULE 43H, Allocation of SSR Costs Associated with White Pine Unit, 31.0.0, A
Record Narrative Name:
Tariff Record ID: 10180
Tariff Record Collation Value: 811712512 Tariff Record Parent Identifier: 4199
Proposed Date: 2014-04-16
Priority Order: 1000000000
Record Change Type: NEW
Record Content Type: 1
Associated Filing Identifier:

Allocation of SSR Costs Associated with White Pine Unit No. 1 SSR Unit

In accordance with Section 9 and Exhibit 2 of the System Support Resource (“SSR”) Agreement filed by MISO for the White Pine SSR Unit No. 1 in Docket No. ER14-1724-000, such Agreement being for a period of service beginning on April 16, 2014, the monthly charges and credits shall be netted and summed for each month and apportioned, *pro rata*, to the ALTE, MGE, UPPC, WEC, and WPS Local Balancing Authority areas based on the monthly Actual Energy Withdrawals within each Local Balancing Authority for the monthly peak Hour (peak Hour based on the sum of Actual Energy Withdrawals) for each Local Balancing Authority. Such apportioned costs shall then be uplifted to Load Serving Entities in each Local Balancing Authority, *pro rata*, based on Actual Energy Withdrawals at Commercial Pricing Nodes for the monthly peak Hour (peak Hour based on the sum of Actual Energy Withdrawals, earliest peak Hour in the Month if more than one) within each Local Balancing Authority.

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