

150 FERC ¶ 61,105  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;  
Philip D. Moeller, Tony Clark,  
Norman C. Bay.

Tilden Mining Company L.C.  
Empire Iron Mining Partnership

Docket No. EL14-103-000

v.

Midcontinent Independent System Operator, Inc.  
Wisconsin Electric Power Company

Michigan Public Service Commission

Docket No. EL14-104-000

v.

North American Electric Reliability Corporation  
Wisconsin Electric Power Company

ORDER DISMISSING COMPLAINTS

(Issued February 19, 2015)

1. On September 19, 2014, Tilden Mining Company L.C. and Empire Iron Mining Partnership (together, the Mines) filed a complaint against the Midcontinent Independent System Operator, Inc. (MISO) and Wisconsin Electric Power Company (Wisconsin Electric) (Mines' Initial Complaint) pursuant to sections 206, 306 and 309 of the Federal Power Act (FPA),<sup>1</sup> and Rule 206 of the Commission's Rules of Practice and Procedure.<sup>2</sup> In their Initial Complaint, the Mines ask the Commission to prohibit

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<sup>1</sup> 16 U.S.C. §§ 824e, 825e, and 825h (2012).

<sup>2</sup> 18 C.F.R. §385.206 (2014).

Wisconsin Electric from splitting the Wisconsin Electric Local Balancing Authority (WEC LBA)<sup>3</sup> into the WEC LBA and a new Michigan Upper Peninsula LBA without Commission approval, and to prohibit MISO from accepting and implementing the proposed formation of the Michigan Upper Peninsula LBA without a Commission-approved rate filing. On November 14, 2014, the Mines filed a Motion for Leave to File Amended Complaint and Amended Complaint against MISO and Wisconsin Electric (Mines' Amended Complaint).

2. Also on September 19, 2014, the Michigan Public Service Commission (Michigan Commission) filed a similar complaint pursuant to FPA sections 206, 306 and 309, and Rule 206 of the Commission's Rules of Practice and Procedure against NERC and Wisconsin Electric (Michigan Commission's Complaint). In its complaint, the Michigan Commission asks the Commission to reverse NERC's certification of the Michigan Upper Peninsula LBA, or in the alternative, to clarify that such certification will not have an effect on the allocation of System Support Resource (SSR) costs that would otherwise occur under MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff).<sup>4</sup>

3. As described more fully below, the Mines' Initial and Amended Complaints and the Michigan Commission's Complaint are primarily concerned with the effect of the creation of the new Michigan Upper Peninsula LBA on the allocation of costs between Wisconsin and Michigan customers associated with Presque Isle Units 5-9,<sup>5</sup> which has

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<sup>3</sup> We note that the term "Local Balancing Authority" is not a North American Electric Reliability Corporation (NERC)-defined term, but one used only in MISO as part of the MISO's BA/LBA Coordinated Functional Registration with NERC. NERC instead uses the term "Balancing Authority," defined as "[t]he responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports Interconnection frequency in real time." In this order, we use LBA to refer to both.

<sup>4</sup> The Tariff defines SSR Units as "[g]eneration Resources or Synchronous Condenser Units [(SCUs)] that have been identified in Attachment Y – Notification to this Tariff and are required by the Transmission Provider for reliability purposes, to be operated in accordance with the procedures described in Section 38.2.7 of this Tariff." MISO, FERC Electric Tariff, Module A, § 1.S "System Support Resource (SSR)" (30.0.0). Unless indicated otherwise, all capitalized terms shall have the same meaning given them in the Tariff.

<sup>5</sup> Presque Isle Units 5-9 are located in Marquette, Michigan within the American Transmission Company (ATC) footprint and provide up to 344 MW of capacity. *See*

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been designated an SSR by MISO. As such, we address these complaints jointly in this order.

4. Based on our findings in a related order,<sup>6</sup> discussed further below, which is being issued concurrently with this order, we find that once MISO develops a new SSR cost allocation methodology as instructed, the creation of a new Michigan Upper Peninsula LBA will not affect the allocation of SSR costs associated with the Presque Isle SSR Units, and we accordingly dismiss the complaints as moot.<sup>7</sup>

### **I. Background and Related Proceedings**

5. Under MISO's Tariff, market participants that have decided to retire or suspend a generation resource or SCU must submit a notice (Attachment Y Notice), pursuant to Attachment Y (Notification of Potential Resource/SCU Change of Status) of the Tariff, at least 26 weeks prior to the resource's retirement or suspension effective date. During this 26-week notice period, MISO will conduct a study (Attachment Y Study) to determine whether all or a portion of the resource's capacity is necessary to maintain system reliability, such that SSR status is justified. If so, and if MISO cannot identify an SSR alternative that can be implemented prior to the retirement or suspension effective date, then MISO and the market participant shall enter into an agreement, as provided in Attachment Y-1 (Standard Form SSR Agreement) of the Tariff, to ensure that the resource continues to operate, as needed.<sup>8</sup> The SSR agreement is filed with the Commission and specifies the terms and conditions of the service, including the compensation to be provided to the resource. For each SSR agreement filed with the Commission, a separate rate schedule must be filed to provide for the costs identified in the SSR agreement to be recovered from the identified load-serving entity (LSE)

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MISO Original SSR Agreement Filing, Docket No. ER14-1242-000, Transmittal Letter, at 2 (filed Jan. 31, 2014).

<sup>6</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,104 (2015) (Rehearing Order).

<sup>7</sup> In that order, the Commission also addresses another complaint filed by the Michigan Commission in Docket No. EL15-7-000, in which it argues that MISO's existing Tariff procedures for allocating SSR costs, when applied to the reduced boundaries of the newly created Michigan Upper Peninsula LBA, will produce unjust and unreasonable results. *See id.* P 170.

<sup>8</sup> *See Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163, *order on reh'g*, 109 FERC ¶ 61,157 (2004).

beneficiaries, consistent with section 38.2.7.k.of MISO's Tariff governing the allocation of such costs.

6. On July 25, 2012, in Docket No. ER12-2302-000, MISO submitted proposed Tariff revisions regarding the treatment of resources that submit Attachment Y Notices. On September 21, 2012, the Commission conditionally accepted MISO's proposed Tariff revisions effective September 24, 2012, subject to two compliance filings due within 90 and 180 days of the date of the order.<sup>9</sup> On July 22, 2014, the Commission conditionally accepted MISO's compliance filing, subject to further compliance.<sup>10</sup>

7. On January 31, 2014, in Docket No. ER14-1242-000, MISO submitted an SSR agreement under its Tariff between MISO and Wisconsin Electric for the purpose of providing compensation for the continued availability of Wisconsin Electric's Presque Isle Units 5-9 as SSR Units (Original Presque Isle SSR Agreement). Also on January 31, 2014, in Docket No. ER14-1243-000, MISO submitted a proposed Rate Schedule 43G under its Tariff, which specified the allocation of the costs associated with the continued operation of Presque Isle Units 5-9 as SSR Units (Original Presque Isle Rate Schedule 43G). At the time of the filing, section 38.2.7.k of MISO's Tariff required that the costs associated with the Original Presque Isle SSR Agreement be allocated to all LSEs within the ATC footprint on a *pro rata* basis.<sup>11</sup> On April 1, 2014, the Commission issued an order accepting the Original Presque Isle SSR Agreement and Original Presque Isle Rate Schedule 43G, suspending them for a nominal period, to be effective February 1, 2014, as requested, subject to refund and further Commission order.<sup>12</sup>

8. The proper allocation of the Presque Isle (and other units') SSR costs has been at issue in a number of recent and on-going Commission proceedings, including in a complaint proceeding filed by the Public Service Commission of Wisconsin (Wisconsin Commission) on April 3, 2014. In that complaint proceeding, the Wisconsin Commission argued that the MISO Tariff's approach to allocating SSR costs within

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<sup>9</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,237 (2012), *order on compliance*, 148 FERC ¶ 61,056 (2014) (SSR Compliance Order).

<sup>10</sup> SSR Compliance Order, 148 FERC ¶ 61,056. Compliance filings and requests for rehearing are pending before the Commission in Docket Nos. ER12-2302-003 and ER12-2302-002.

<sup>11</sup> See MISO Original Presque Isle Rate Schedule 43G Filing, Docket No. ER14-1243-000, Transmittal Letter, at 3 (filed Jan. 31, 2014).

<sup>12</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 147 FERC ¶ 61,004, at P 12 (2014).

ATC, which differed from the cost allocation approach for the rest of MISO, was unjust, unreasonable, and unduly discriminatory.

9. On July 29, 2014, the Commission issued an order that addressed the Wisconsin Commission's objections to MISO's cost allocation provisions.<sup>13</sup> In that order, the Commission found that the MISO Tariff was unjust, unreasonable, unduly discriminatory, or preferential because the ATC SSR *pro rata* cost allocation method, as applied in Presque Isle Rate Schedule 43G, did not follow cost causation principles.<sup>14</sup> The Commission directed MISO to remove the ATC SSR *pro rata* cost allocation provision from section 38.2.7.k of its Tariff, thereby extending to the ATC footprint the general SSR cost allocation Tariff language, which requires MISO to allocate SSR costs to "the LSE(s) which require(s) the operation of the SSR Unit for reliability purposes."<sup>15</sup> The Commission also required MISO to conduct a final load-shed study and submit a compliance filing to align cost allocation for its rate schedule for Presque Isle. In subsequent orders, the Commission required MISO to align cost allocation under the White Pine Rate Schedule 43H and the Second Revised Escanaba Rate Schedule 43 to address the Commission's findings in the Wisconsin Commission Complaint Order.<sup>16</sup>

10. On September 12, 2014, in Docket No. ER14-2860-000, MISO submitted a proposed replacement SSR agreement under its Tariff between MISO and Wisconsin Electric for Presque Isle Units 5-9 (Replacement Presque Isle SSR Agreement) and requested that the Original Presque Isle SSR Agreement be terminated effective October 15, 2014.<sup>17</sup> Also on September 12, 2014, in Docket No. ER14-2862-000,

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<sup>13</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,071 (2014) (Wisconsin Commission Complaint Order).

<sup>14</sup> *Id.* PP 59-61.

<sup>15</sup> *Id.* P 66.

<sup>16</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,136 (2014) and *Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,116 (2014), respectively.

<sup>17</sup> The Replacement Presque Isle SSR Agreement reflected: (1) a new Attachment Y Notice from Wisconsin Electric indicating its intent to retire, rather than temporarily suspend operation of, Presque Isle Units 5-9; and (2) increased SSR compensation in accordance with the Commission's determination that compensation provided under an SSR agreement should not exceed a resource's full cost of service. The proposed compensation for the fixed costs of keeping Presque Isle Units 5-9 operational under the Replacement Presque Isle SSR Agreement is \$8,084,500 per month, for a total of approximately \$117 million dollars over the requested term of

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MISO submitted a revised Presque Isle Rate Schedule 43G under its Tariff to reflect the new requested effective date of October 15, 2014. On November 10, 2014, the Commission issued an order accepting the Replacement Presque Isle SSR Agreement, suspending it for a nominal period, to be effective October 15, 2014, subject to refund, setting the cost-related issues for hearing and settlement judge proceedings, consolidating those proceedings with the ongoing hearing and settlement judge procedures established in the Wisconsin Commission Complaint Order, and terminating the Original Presque Isle SSR Agreement.<sup>18</sup> The Commission also noted that revised Presque Isle Rate Schedule 43G includes cost allocation language that involves several issues that have been raised on rehearing and compliance to the Wisconsin Commission Complaint Order.<sup>19</sup> Accordingly, the Commission accepted revised Presque Isle Rate Schedule 43G, suspended it for a nominal period, to be effective October 15, 2014, subject to refund and further Commission order in the Wisconsin Commission Complaint Order rehearing and compliance proceedings.

11. In response to the requests for rehearing on the Wisconsin Commission Complaint Order, as well as to arguments made in compliance proceedings addressing the individual SSR agreements and cost allocation rate schedules applicable to the ATC footprint, we are issuing, concurrently with this order, an order granting, among other things, clarification regarding the appropriate methodology for allocating SSR costs for certain SSRs, including Presque Isle Units 5-9, within the ATC footprint. This clarification has a direct bearing on the instant complaints, as it requires MISO to develop a cost allocation approach for the Presque Isle SSR Units that does not rely on LBA boundaries, as further discussed below.<sup>20</sup>

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14.5 months. See MISO Replacement Presque Isle SSR Agreement Filing, Docket No. ER14-2860-000, Transmittal Letter, at 2, 13 (filed Sept. 12, 2014) (citing *Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,057, at P 82 (2014)).

<sup>18</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,114 (2014) (November 10 Order).

<sup>19</sup> *Id.* P 78.

<sup>20</sup> Rehearing Order, 150 FERC ¶ 61,104 at PP 2, 80-89.

## II. Docket No. EL14-103-000

### A. Mines' Initial Complaint Against MISO and Wisconsin Electric

12. The Mines state that they operate iron ore mines near Ishpeming, Michigan and that they are electric customers of Wisconsin Electric. The Mines allege that Wisconsin Electric decided, for economic reasons, to create the new Michigan Upper Peninsula LBA to operate within the Michigan Upper Peninsula, “to change the allocation of SSR costs under MISO’s Tariff between customers in Wisconsin and those in the U[pper] P[eninsula] of Michigan.”<sup>21</sup> The Mines state that Wisconsin Electric has not provided any evidence that the creation of the new LBA will enhance reliability, maintaining that no new personnel are being hired by Wisconsin Electric to operate the Michigan Upper Peninsula LBA, and that it will continue to utilize the existing Energy Management System. In addition, the Mines note that NERC has denied any authority to address cost allocation issues as part of its review of a request to certify a new LBA.

13. The Mines state that the proposed split of the Wisconsin Electric LBA into the WEC LBA and the Michigan Upper Peninsula LBA will result in a significant shift of SSR costs from Wisconsin ratepayers to ratepayers in the Upper Peninsula of Michigan, with Michigan’s total share of Presque Isle SSR costs increasing from 14.31 percent to over 99 percent.<sup>22</sup> The Mines maintain that this kind of cost shifting raises policy concerns, and caution against “the slavish adherence to strict cost-causation principles which are antithetical to, and threaten the Balkanization of, the integrated electric power grid currently serving all electric consumers.”<sup>23</sup>

14. The Mines argue that the establishment of the Michigan Upper Peninsula LBA by Wisconsin Electric and the recognition of the new LBA by MISO must be reviewed by the Commission under FPA section 205.<sup>24</sup> The Mines argue that the creation of a new LBA in these circumstances is a rule “affecting or pertaining to” rates and charges of a public utility, and therefore must be shown to be just and reasonable under FPA section 205. Moreover, the Mines argue that MISO’s Tariff is unjust and unreasonable because it does not (1) require MISO to obtain Commission approval for a change in LBA boundaries despite the significant impact of such a change on rates, or (2) otherwise

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<sup>21</sup> Mines’ Initial Complaint at 4.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 5.

<sup>24</sup> *Id.* at 17-18.

provide procedural protections for ratepayers affected when such a change occurs. The Mines make similar arguments with respect to Wisconsin Electric's obligation to seek Commission approval before it can be allowed to create two separate LBAs.

15. The Mines accordingly ask the Commission to (1) prohibit Wisconsin Electric from implementing a separate Michigan Upper Peninsula LBA; (2) prohibit MISO from accepting and implementing the split in LBAs, absent a Commission-approved rate filing; (3) find that MISO's Tariff is unjust and unreasonable; and (4) clarify that neither MISO nor Wisconsin Electric may implement a change in an LBA boundary without Commission approval. In addition, the Mines ask the Commission to make a more general finding that, where formation of a new LBA has significant potential rate consequences, a regional transmission organization may not implement the change in LBA boundaries without Commission consideration and approval of the rate consequences.<sup>25</sup>

#### **B. Notice and Responsive Pleadings to Mines' Initial Complaint**

16. Notice of the Mines' Initial Complaint was published in the *Federal Register*, 79 Fed. Reg. 58,764 (Sept. 30, 2014), with interventions and protests due on or before October 9, 2014. Both MISO and Wisconsin Electric submitted timely answers to the Mines' Initial Complaint.

17. Timely motions to intervene were filed by: Wolverine Power Supply Cooperative, Inc. (Wolverine), ATC, the Michigan Public Power Agency (MPPA), Wisconsin Public Service Corp. (WPS), Consumers Energy Company (Consumers), Michigan Electric Transmission Company, LLC (METC), WPPI Energy, the City of Escanaba, Wisconsin Light and Power Co. (WP&L), Cloverland Electric Cooperative (Cloverland), DTE Electric Company (DTE), NERC, Verso Paper Corp. (Verso Paper), Integrys Energy Services, Inc. (Integrys), and the City of Mackinac Island (Mackinac). Notices of intervention were filed by the Michigan Commission and the Wisconsin Commission. On December 4, 2014, Upper Peninsula Power Co. (UPPCo) filed a motion to intervene out-of-time.

18. Substantive comments or protests were filed by: Verso Paper, Integrys, NERC, and a number of individual commenters, largely comprised of Wisconsin Electric retail ratepayers within the Upper Peninsula. In addition, comments were filed out of time by: U.S. Representative Dan Benishek; Michael E. Moody, Assistant Attorney General, Environment, Natural Resources, and Agriculture Division, on behalf of Rick Snyder, Governor of Michigan, Bill Schuette, Attorney General of Michigan, Fred Upton, U.S.

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<sup>25</sup> *Id.* at 21-22.

Representative, and Dan Benishek, U.S. Representative (Michigan Representatives).<sup>26</sup> On October 23, 2014, Michigan State Senator Carol M. Viventi, Secretary of the Michigan Senate, submitted Michigan Senate Resolution No. 187, urging the Commission to reverse its decision accepting MISO's revised SSR cost allocation methodology. On November 21, 2014, John C. Procario, Chairman, President and CEO of ATC, submitted a letter regarding electric supply issues in the Upper Peninsula of Michigan.<sup>27</sup>

19. Motions for leave to answer, and answers to the comments, protests, and answers of other entities were filed by Integrys, MISO, Verso Paper, Wisconsin Electric and the Michigan Commission.<sup>28</sup>

### 1. Answers

20. In its answer to the Mines, MISO first argues that it should be dismissed as a respondent because it has acted in conformity with its Tariff and all statutory and regulatory requirements. MISO maintains that it was "required to recognize Michigan Upper Peninsula's status as an LBA for purposes of SSR cost allocation" once the Michigan Upper Peninsula LBA was certified by NERC.<sup>29</sup> Moreover, MISO argues that

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<sup>26</sup> The comments submitted by the Michigan Representatives provide a history of efforts to address the potential retirement of the Presque Isle plant, including on-going efforts to build replacement generation that would operate at a much lower cost. They also raise concerns about the potential bias towards transmission or reliability-based solutions in the Commission's approach, and urge the Commission to consider alternative, lower-cost solutions.

<sup>27</sup> Mr. Procario's letter was submitted in response to the Michigan Representatives' comments, and provides further background on ATC's transmission planning-related efforts to address the potential retirement of the Presque Isle units, and on on-going transmission projects to increase reliability in the Upper Peninsula.

<sup>28</sup> While several of the answers to answers or comments were submitted after the Mines submitted their Amended Complaint, discussed in Section II.C. below, the arguments contained therein were made in response to arguments and comments filed in response to the Mines' Initial Complaint and are accordingly discussed in conjunction with the comments and protests to the Initial Complaint.

<sup>29</sup> MISO Answer to Mines' Initial Complaint at 2. Further, MISO contends that no authority exists for MISO to file NERC's balancing area certification and reliability decisions whenever they "affect" MISO's rates. MISO states that it is not a regional entity and thus lacks decisional or suspension authority with respect to matters that lie

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any FPA section 205 filing that MISO was required to make in order to reflect the creation of the Michigan Upper Peninsula LBA has been made via its FPA section 205 filing in Docket No. ER14-2952. Second, MISO maintains that the Mines are trying to relitigate MISO's already accepted methodology for allocating SSR costs, including a Commission order that MISO characterizes as confirming that "allocating SSR costs through LBAs is a permissible application of the Tariff."<sup>30</sup> MISO argues that the Commission has already determined that MISO has considerable flexibility in deciding on the methodology for the allocation of SSR costs to the LSEs that require the operation of the SSR Unit for reliability purposes; and using LBA allocation based on an optimal load-shed study is a just and reasonable application of Section 38.2.7.k, which is consistent with cost causation.<sup>31</sup>

21. MISO argues that the Mines are active participants in other pending proceedings in which other aspects of the Presque Isle SSR Agreement are at issue. Further, MISO argues that the Mines have not provided any basis to find the MISO Tariff unjust and unreasonable, and describes its Tariff, other approved governing documents (i.e., the Balancing Authority Agreement), and the FPA as setting out a "framework that clearly separates reliability matters from tariff and rate regulation."<sup>32</sup>

22. MISO also argues that there is no need for the tariff revisions proposed by the Mines because the MISO Tariff provides appropriate flexibility in allocating SSR costs, including a process that provides adequate notice and opportunity for parties to comment. Along these lines, MISO notes that its SSR cost allocation filing reflecting the formation of the Michigan Upper Peninsula LBA is pending before the Commission. Additionally, MISO contends that going beyond these existing procedures would unreasonably expand FPA section 205's filing requirement and is inconsistent with the just and reasonable contractual and regulatory framework that governs the relationship between MISO and its LBAs.<sup>33</sup>

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within NERC's purview, including balancing area certification, and that it otherwise has no grounds to challenge NERC's processes.

<sup>30</sup> *Id.* at 3 (citing SSR Compliance Order, 148 FERC ¶ 61,056 at P 49).

<sup>31</sup> *Id.* at 16.

<sup>32</sup> *Id.* at 4.

<sup>33</sup> *Id.*

23. In its answer, Wisconsin Electric maintains that the issues raised by the Mines' Initial Complaint are all pending before the Commission in other dockets.<sup>34</sup> Wisconsin Electric also argues that a change in LBA boundaries should not change the LSEs to which SSR costs are allocated. In addition, Wisconsin Electric responds to the Mines' arguments regarding the potential "Balkanization" of the grid that could result if reliability costs are not appropriately socialized by arguing that the Mines fail to provide any rationale or record support for a deviation from longstanding Commission policy regarding cost causation, beyond their claim that they will have to pay more.<sup>35</sup> Wisconsin Electric further argues that the Presque Isle SSR costs are generation costs, not transmission costs, and that any broad-based change in the Commission's approach to SSR cost allocation should be taken up in a rulemaking proceeding. Wisconsin Electric also argues that NERC has no responsibility with respect to cost allocation and that the Commission should acknowledge that MISO is not responsible for the certification of LBAs.<sup>36</sup>

24. In addition, both Wisconsin Electric and MISO contend that the Mines' Initial Complaint represents an attempt to re-litigate SSR cost allocation issues that either have been decided or are pending in other Commission proceedings. Accordingly, they argue that the parts of the Mines' Initial Complaint regarding the appropriateness of socialization of reliability costs are collateral attacks against previous Commission determinations, for which the Mines have had opportunity to request rehearing.<sup>37</sup> Wisconsin Electric contends that the Mines have not demonstrated why the existing proceedings are inadequate to address these concerns, such that its complaint should not be dismissed. Wisconsin Electric also argues that establishing a separate, yet redundant

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<sup>34</sup> Wisconsin Electric Answer to Mines' Initial Complaint at 2. However, Wisconsin Electric also takes the position that the Mines failed to protest MISO's compliance filing in Docket No. ER14-1243-004, and are trying to correct that oversight via this complaint. *Id.* at 6.

<sup>35</sup> *Id.* at 5.

<sup>36</sup> *Id.* at 15.

<sup>37</sup> MISO Answer to Mines' Initial Complaint at 15-16 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 148 FERC ¶ 61,057 at P 159; Letter order, Docket Nos. ER14-109-000 & ER14-111-000 (Dec. 12, 2013); Letter order, Docket Nos. ER14-112-000 & ER14-113-000 (Dec. 12, 2013)), Wisconsin Electric Answer to Mines' Initial Complaint at 4-5.

rate proceeding addressing the same cost allocation matter is administratively inefficient and unreasonable.<sup>38</sup>

## **2. Comments, Protests and Subsequent Answers**

25. Verso Paper and Integrys filed comments in support of the Mines' Initial Complaint, the Wisconsin Commission filed comments that generally oppose the Mines' arguments and requested relief, and NERC filed limited comments seeking to clarify its role in the certification process for the new Michigan Upper Peninsula LBA. In addition, numerous ratepayers made filings in support of the Mines' Initial Complaint, citing the potential economic hardship incurred by Michigan Upper Peninsula customers based on the LBA split and providing individual estimates of the expected increase in costs resulting from the reallocation of Presque Isle SSR costs.<sup>39</sup>

26. Integrys supports the Mines' arguments and requested relief, and argues that Wisconsin Electric is exploiting a "regulatory gap," with NERC asserting that its review is limited and MISO asserting that it lacks authority to review the proposed LBA. Integrys argues that Wisconsin Electric has used this regulatory gap to unilaterally reallocate Presque Isle SSR costs to Upper Peninsula distribution customers.<sup>40</sup> Integrys agrees with the Mines that it cannot be just and reasonable for a utility to be able to reallocate millions of dollars of costs without regulatory oversight and a determination that the new rate and cost shifts are just and reasonable.<sup>41</sup> In addition, Integrys asserts that Wisconsin Electric's customers are "being forced to pay for the costs caused not by them, but caused by the failure of Wisconsin Electric and ATC to reinforce the transmission system in the Upper Peninsula."<sup>42</sup> Integrys further notes that Wisconsin Electric already recovers costs for the Presque Isle units in its retail rate base, and points

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<sup>38</sup> Wisconsin Electric Answer to Mines' Initial Complaint 6-7.

<sup>39</sup> See Comments of Mackinac Island, Pinecrest Medical Care Facility, CCI Systems, Gina M. Harman, KHP Properties, LLC, Sangola Hardwoods, Inc., Northwoods Manufacturing Inc., Chris Harman, Conrad Stromberg, Dickenson County Healthcare System, Jim Myllyla, William Becker, Therese Kucharczyk, Darell J. Orman, Tina M. Perry, and Charles Perry.

<sup>40</sup> Integrys Comments at 5.

<sup>41</sup> *Id.* at 7.

<sup>42</sup> *Id.*

out that such generating costs are generally allocated 92 percent to Wisconsin customers and eight percent to Michigan customers.

27. Integrys also questions MISO's studies establishing the need for all of Presque Isle Units 5-9 to serve as system support, as the studies failed to consider Load Modifying Resources (LMR) registered with MISO. Specifically, Integrys argues that MISO failed to consider two LMRs that would total approximately 240 MW of the 300 MW of load that would be located in the proposed Michigan Upper Peninsula LBA.<sup>43</sup> Finally, Integrys argues that the Michigan Upper Peninsula LBA is too small and isolated an area to be treated as a separate LBA for cost allocation purposes, as the increased costs may trigger a loss of a large customer's load, forcing the remaining customers to bear an even higher share of the Presque Isle costs.<sup>44</sup>

28. Verso Paper agrees with the Mines that Wisconsin Electric has improperly used the NERC process "to gerrymander its LBA for the sole purpose of significantly shifting costs" to the Upper Peninsula of Michigan.<sup>45</sup> Verso Paper further agrees that the formation of the Michigan Upper Peninsula LBA is subject to the Commission's FPA jurisdiction as a matter affecting rates, and focuses much of its discussion on the Commission's standard for determining whether a given matter is subject to FPA section 205 jurisdiction.

29. In its comments, the Wisconsin Commission maintains that the appropriate forums for resolving the complainants' issues are the ongoing Commission proceedings that relate to the allocation of Presque Isle SSR costs. Moreover, the Wisconsin Commission asserts that "LBAs are mechanisms for allocating responsibility for reliability functions, and as such, have no intrinsic connection to cost allocation."<sup>46</sup> Instead, the Wisconsin Commission argues, MISO's "decision" to use LBAs to allocate SSR costs is one that was not required by its Tariff, and is only one of a number of methodologies that MISO could have chosen.<sup>47</sup>

30. In its limited comments on the Mines' Initial Complaint, NERC seeks to clarify that it did not "approve" Wisconsin Electric's proposal to split into two LBAs, but merely

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<sup>43</sup> *Id.* at 9-10.

<sup>44</sup> *Id.* at 11-12.

<sup>45</sup> Verso Paper Comments at 4.

<sup>46</sup> Wisconsin Commission Comments at 6.

<sup>47</sup> *Id.*

certified the Michigan Upper Peninsula LBA in accordance with its Rules of Procedure. NERC maintains that under those rules, its role is to ensure that entities are technically capable of performing their functions so as to better ensure reliability, and that cost allocation issues are beyond the scope of its jurisdiction.<sup>48</sup>

31. On October 24, 2014, MISO filed a motion for leave to answer and answer to Integrys's comments on MISO's failure to consider LMRs as part of its Presque Isle SSR studies. MISO argues that Integrys's arguments are an impermissible collateral attack on prior Commission rulings on MISO's studies. In addition, MISO argues that an LMR may not be used in the way that Integrys suggests. MISO maintains that even if registered with MISO, an LMR does not meet the criteria set forth by the Commission and the Tariff for including it as an offsetting, or alternative, resource to an SSR agreement, because LMRs must have "additional firmness of commitment" through "contractual assurances" and, for demand-side resources, "protocols for responding to Transmission Provider instructions."<sup>49</sup>

32. Integrys also filed a motion for leave to answer and answer on October 24, 2014, in response to Wisconsin Electric's Answer to the Mines' Initial Complaint. Integrys argues that Wisconsin Electric is effectively collaterally attacking the Commission's prior orders on MISO's SSR cost allocation methodology by continuing to put forward its preferred cost allocation theory, i.e., arguing for an allocation based on commercial pricing nodes rather than LBAs or LSEs. Integrys also argues that the use of commercial pricing nodes to allocate SSR costs is impractical, since the amount of energy withdrawals for a given LSE cannot be determined by the commercial pricing node alone. Moreover, Integrys argues that use of commercial pricing nodes to allocate costs only for Wisconsin Electric would be unduly discriminatory when MISO does not use that methodology to allocate costs for any other LSE.

33. On November 14, 2014, Verso Paper filed an answer in response to "various pleadings" filed in the Mines' Initial Complaint proceeding and related dockets, addressing two issues. First, Verso Paper makes a general argument regarding appropriate SSR cost allocation, advocating for an approach that would allocate costs similarly to the way costs are recovered when a plant is included as a state regulated asset (with Wisconsin customers paying 92 percent of Presque Isle's SSR costs and Michigan customers paying approximately eight percent). Verso Paper argues that the Presque Isle units continue to be owned by Wisconsin Electric and operated to provide bundled service and that Wisconsin Electric has an obligation to serve both its bundled retail

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<sup>48</sup> NERC Comments at 3.

<sup>49</sup> MISO Oct. 24 Answer at 8-9.

choice customers and its Michigan retail choice customers. In addition, Verso Paper disagrees with Wisconsin Electric's statement that it is "undisputed" that MISO has correctly identified the LSEs that benefit from the Presque Isle SSR units.<sup>50</sup> Verso Paper states that it has disputed MISO's load-shed study on at least three occasions, with no substantive response from MISO.<sup>51</sup>

34. On December 2, 2014, Wisconsin Electric filed a motion for leave to answer and answer in response to Verso Paper's answer. In addition to its procedural objections to Verso Paper's answer, Wisconsin Electric provides a substantive response to Verso Paper's arguments on MISO's allocation of SSR costs and its related load-shed study, maintaining that the Commission has already established that recovery of SSR costs is appropriate.<sup>52</sup> In addition, Wisconsin Electric argues that the LBA split should not result in a reallocation of SSR costs if MISO were using an allocation methodology that was consistent with its Tariff.<sup>53</sup>

35. On December 17, 2014, the Michigan Commission filed a motion for leave to answer and answer to Wisconsin Electric's answer to Verso Paper. The Michigan Commission argues that Verso Paper's concerns regarding the load-shed study, and similar concerns expressed by the Michigan Commission, are not collateral attacks on the Wisconsin Commission Complaint Order, as Wisconsin Electric claims in its comments.<sup>54</sup> The Michigan Commission adds that such concerns relate to the assumptions built into the load-shed study and that such implementation details were not the subject of the Wisconsin Commission Complaint Order.<sup>55</sup> Finally, the Michigan Commission argues that Wisconsin Electric's position that the allocation of SSR costs should not go beyond the "load pocket" area identified by the load-shed study is a collateral attack on the Wisconsin Commission Complaint Order, which expressly

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<sup>50</sup> Verso Paper Nov. 14 Answer at 6-7 (citing Wisconsin Electric November 3 Answer at 4).

<sup>51</sup> *Id.* at 7-8.

<sup>52</sup> Wisconsin Electric Dec. 2 Answer at 5.

<sup>53</sup> *Id.* at 6.

<sup>54</sup> Michigan Commission Dec. 17 Answer at 2-3.

<sup>55</sup> *Id.* at 3.

requires MISO to allocate SSR costs to “the LSE(s) which require(s) the operation of the SSR Units for reliability purposes.”<sup>56</sup>

36. The Michigan Commission contends that by focusing on the issue of load pockets, Wisconsin Electric is attempting to sidestep the issue of voltage and thermal contingencies, which would be caused by SSR unit retirements. By looking at thermal contingencies, according to the Michigan Commission, the costs would be allocated heavily to regions other than the Michigan Upper Peninsula, such that allocation by load pockets, as advocated by Wisconsin Electric, would be unjust and unreasonable.<sup>57</sup>

### C. Mines’ Amended Complaint

37. On November 14, 2014, the Mines filed the Mines’ Amended Complaint. In support of their motion for leave to amend, the Mines note that they could file a new complaint in a separate docket to address the issues they seek to raise, but argue that the interrelated nature of the issues raised in their Initial and Amended Complaints favor their being considered as part of one proceeding.<sup>58</sup>

38. As a substantive matter, the Mines’ Amended Complaint questions whether MISO’s Replacement Presque Isle SSR Agreement with Wisconsin Electric, filed in Docket No. ER14-2860-000, is valid or whether “it is merely an artifice, designed to enable [Wisconsin Electric] to double-recover costs that are already fully recovered through other regulatory tariff rate mechanisms.”<sup>59</sup> The Mines argue that Wisconsin Electric cannot cease operations at the Presque Isle plants without regulatory approvals from Michigan and Wisconsin; therefore, the Mines argue, termination of operations at Presque Isle cannot be “imminent.”<sup>60</sup> In addition, the Mines argue that the Replacement

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<sup>56</sup> *Id.* (citing Wisconsin Commission Complaint Order, 148 FERC ¶ 61,071 at P 66 and Section 38.2.7.k of MISO’s Tariff).

<sup>57</sup> *Id.* at 4-6 (citing Attachment Y Study dated August 15, 2014, Appendix A, Table 13a: Compare Thermal Results; ATC “2014 10-Year Assessment Projects” Planning Zones 1-3).

<sup>58</sup> Mines’ Amended Complaint at 2.

<sup>59</sup> *Id.* at 5.

<sup>60</sup> *Id.* at 6.

Presque Isle SSR Agreement is invalid because Presque Isle's costs can be recovered through existing rate structures.<sup>61</sup>

39. The Mines also argue that if an SSR cost allocation based on the split LBA can be effectuated without any kind of Commission approval, as MISO and Wisconsin Electric assert, then the Commission's exclusive FPA section 205 jurisdiction would be circumvented.<sup>62</sup> The Mines assert, as they did in their Initial Complaint, that there is no reliability-based justification for the proposed split of the Wisconsin Electric LBA, and that the new allocation of SSR costs would increase Michigan's share of SSR cost responsibility from 14.31 percent to over 99 percent.<sup>63</sup>

40. The Mines maintain that MISO violated its Tariff by accepting the Replacement Presque Isle SSR Agreement at issue because (1) Wisconsin Electric may not lawfully terminate operations at the Presque Isle plant without regulatory approvals; (2) MISO did not properly evaluate whether an SSR agreement is necessary to ensure continued operations; and (3) there is no economic justification for Wisconsin Electric to terminate operations at the Presque Isle plant because Wisconsin Electric's costs "are already recovered as embedded costs in Wisconsin Electric's regulated retail and wholesale rates."<sup>64</sup> The Mines make similar arguments in support of their requested relief against Wisconsin Electric, arguing that the Commission should find that the Replacement Presque Isle SSR Agreement is invalid, unjust and reasonable. The Mines also ask that the Commission order MISO not to pay Wisconsin Electric's SSR costs under the Replacement Presque Isle SSR Agreement and to refund any SSR costs already collected.

#### **D. Notice and Responsive Pleadings to Mines' Amended Complaint**

41. Notice of the Mines' Amended Complaint was published in the Federal Register, 79 Fed. Reg. 70,516-02 (Nov. 26, 2014), with comments and protests due on or before December 4, 2014. MISO and Wisconsin Electric filed timely answers to the Mines' Amended Complaint.

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<sup>61</sup> *Id.* at 9.

<sup>62</sup> *Id.* at 11-12.

<sup>63</sup> *See id.* at 19.

<sup>64</sup> *Id.* at 22.

### Answers

42. MISO, in its answer to the Mines' Amended Complaint, states that the correct venue in which to consider SSR costs is within the hearing and settlement procedures established in the November 10 Order or within a request for rehearing for that order. Additionally, MISO argues that many of the arguments in the Mines' Amended Complaint were addressed in that proceeding, rendering them collateral attacks against the November 10 Order.<sup>65</sup> MISO states that the Commission conditionally accepted the Replacement Presque Isle SSR Agreement in the November 10 Order, contrary to the Mines' assertion that the Replacement Presque Isle SSR Agreement is invalid and not just and reasonable.<sup>66</sup> MISO states that the November 10 Order addresses all of the issues now raised by the Mines regarding the validity of Presque Isle as an SSR, including the required regulatory approvals for retirement of Presque Isle and the effect of that retirement on reliability. MISO argues that the Mines overlook the essential reliability benefits derived from Presque Isle when they claim that existing cost recovery mechanisms are sufficient to cover Presque Isle's continued operation, and Wisconsin Electric cannot be required to operate Presque Isle in the absence of an SSR agreement, which MISO states is also noted in the November 10 Order.<sup>67</sup> Further, MISO states that "[t]his need to support the bulk electric system is the trigger to the Commission's authority to approve MISO's determination that the continued service of [Presque Isle] is required."<sup>68</sup>

43. In its answer to the Mines' Amended Complaint, Wisconsin Electric argues that the Mines have not provided sufficient evidence to demonstrate that the Replacement Presque Isle SSR Agreement is unjust and unreasonable under FPA section 206, and accordingly request that the Mines' Amended Complaint be rejected.<sup>69</sup> Wisconsin Electric also argues that dismissal of the Mines' Amended Complaint is needed to avoid

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<sup>65</sup> MISO Answer to Mines' Amended Complaint at 9-10.

<sup>66</sup> *Id.* (citing November 10 Order, 149 FERC ¶ 61,114 at P 24).

<sup>67</sup> *Id.* at 8 (citing November 10 Order, 149 FERC ¶ 61,114 at P 39).

<sup>68</sup> *Id.* at 9 (citing 16 U.S.C. § 824(b)(1) ("not have jurisdiction . . . over facilities for generation of electric energy. . .")).

<sup>69</sup> Wisconsin Electric Answer to Mines' Amended Complaint at 4-5.

undue delay in the proceeding, and undue burden on the many parties that have already commented on the Mines' Initial Complaint.<sup>70</sup>

44. Wisconsin Electric states that the new claims raised by the Mines are currently before the Commission in other proceedings, including arguments regarding the need to secure regulatory approvals to retire Presque Isle. Specifically, Wisconsin Electric notes that it has explained that whether facilities are approved as SSRs is subject to the Commission alone, and no Michigan law requires that the Michigan Commission approve Wisconsin Electric's decision to retire a facility. Wisconsin Electric also clarifies that it has the right to retire the Presque Isle units because it has sufficient resources to perform its duties and meet customer demand without the Presque Isle units. Wisconsin Electric also states that MISO has approved Presque Isle as an SSR, and that the Commission has found that MISO properly conducted the SSR study and procedures.<sup>71</sup>

45. Regarding the Mines' claim that the SSR agreement will lead to double recovery of the costs of the Presque Isle plant, Wisconsin Electric states that it has explained in a previous proceeding that the Mines' assertion is incorrect. First, Wisconsin Electric states that the Commission has stated that "all SSR units should be fully compensated for any costs incurred because of their extended service."<sup>72</sup> Second, Wisconsin Electric contends that retail jurisdiction proceedings, and not the Commission, will serve to ensure that double recovery does not occur. Third, Wisconsin Electric states that under the SSR Agreement, market revenues serve to offset the costs associated with the SSR Agreement. Consequently, if market revenues provide full recovery of the revenue requirements detailed in the SSR Agreement, then the SSR costs are covered and the costs to LSEs would be zero. Finally, Wisconsin Electric states that the Commission has already set cost compensation issues for hearing and settlement judge procedures, and, because the Mines do not provide any additional evidence in their Amended Complaint, there is no reason for the Commission to consider this issue in two separate proceedings. As such, Wisconsin Electric requests that the Mines' Amended Complaint be dismissed.<sup>73</sup>

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<sup>70</sup> *Id.* at 5-7.

<sup>71</sup> *Id.* at 7-8.

<sup>72</sup> *Id.* at 9.

<sup>73</sup> *Id.* at 8-10.

### **III. Docket No. EL14-104-000**

#### **A. Michigan Commission's Complaint Against NERC and Wisconsin Electric**

46. On September 19, 2014, the Michigan Commission filed a complaint against both NERC and Wisconsin Electric, objecting to NERC's certification of the Michigan Upper Peninsula LBA as a new LBA. The Michigan Commission requests that the Commission reverse NERC's certification of the Michigan Upper Peninsula LBA, or, in the alternative, that the Commission "make clear that NERC's approval of a split LBA will not have any impact upon the allocation of SSR costs that would otherwise occur under the [MISO] Tariff and the related Business Practice Manual."<sup>74</sup> The Michigan Commission argues that the split of Wisconsin Electric into two LBAs should be reversed because (1) the ReliabilityFirst<sup>75</sup> and NERC processes approving the new Wisconsin Electric LBA structure were procedurally defective, allowing no opportunity for affected customers to raise concerns about rate impacts; (2) NERC failed to address evidence of the cost impacts of the split; and (3) the requested split was not shown to be needed for reliability purposes.

47. As to the first claim, the Michigan Commission alleges that the NERC decision was procedurally defective because no notice was provided to the LSEs of the proposed split, and that the Michigan Commission and other affected parties had no opportunity to present evidence to ReliabilityFirst of the potential rate impacts resulting from the proposed LBA split. As to the second claim, the Michigan Commission states that it provided input to NERC about the cost implications of the split prior to NERC's approval, but that NERC ultimately determined that it had "no authority to address the cost allocation issues raised in response to the proposal to form the Michigan Upper Peninsula LBA."<sup>76</sup> Finally, as to the third claim, that the split was not needed for reliability purposes, the Michigan Commission challenges the ostensible operational reasons Wisconsin Electric provided for establishing two separate LBAs, and argues that the LBA split was initiated for the sole purpose of achieving a re-allocation of costs from Wisconsin customers to Michigan customers. Moreover, the Michigan Commission

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<sup>74</sup> Michigan Commission's Complaint at 2.

<sup>75</sup> ReliabilityFirst is the Regional Entity for the Wisconsin Electric operating area (i.e., the entity with certain delegated enforcement authority from NERC), and therefore had the initial responsibility to review Wisconsin Electric's application to create two separate LBAs.

<sup>76</sup> *Id.* at 13.

asserts that Wisconsin Electric admitted that the creation of the new metering boundary at the Michigan border “will not itself directly improve the physical reliability challenges” of that region.<sup>77</sup>

48. The Michigan Commission thus argues that the Commission should set aside NERC’s certification of separate LBAs within Wisconsin Electric due to a lack of demonstrable reliability benefits. In the alternative, the Michigan Commission asks the Commission to clarify that any such split will not affect the way SSR costs are allocated, arguing that such a clarification is necessary to “negate the incentive for an LSE to manipulate the allocation of costs by changing [LBA] boundaries.”<sup>78</sup>

## **B. Notice and Responsive Pleadings**

49. Notice of the Michigan Commission’s Complaint was published in the *Federal Register*, 79 Fed. Reg. 58,765 (Sept. 30, 2014), with interventions and protests due on or before October 9, 2014. Both NERC and Wisconsin Electric submitted timely answers to the Michigan Commission’s Complaint.

50. Timely motions to intervene were filed by: Wolverine, ATC, the Mines, MPPA, WPS, Exelon Corporation, Consumers, METC, WPPI Energy, WP&L, Cloverland, DTE, Verso Paper, Integrys, and Mackinac. A notice of intervention was filed by the Wisconsin Commission. On December 4, 2014, UPPCo filed a motion to intervene out-of-time.

51. Substantive comments or protests were filed by: Verso Paper, Integrys, the Wisconsin Commission, the Mines, and a number of individual commenters, largely comprised of Wisconsin Electric retail ratepayers within the Upper Peninsula. In addition, comments were filed out of time by the Michigan Representatives, Michigan State Senator Carol M. Viventi, and John C. Procario.

52. Motions for leave to answer and answers to the comments, protests, and answers of other parties were filed by Integrys, MISO, Verso Paper, Wisconsin Electric and the Michigan Commission.

### **1. Answers to Michigan Commission’s Complaint**

53. In its answer to the Michigan Commission’s Complaint, NERC maintains that the complaint fails to meet the minimum requirements of Rule 206 of the Commission’s

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<sup>77</sup> *Id.* at 14.

<sup>78</sup> *Id.* at 16.

Rules of Practice and Procedure because it does not “clearly identify the action or inaction which is alleged to violate applicable statutory or regulatory requirements.” NERC explains that its certification of the Michigan Upper Peninsula LBA was not procedurally defective, as NERC adhered to its Commission-approved internal Rules of Procedure by ensuring that the Michigan Upper Peninsula LBA “has the tools, processes, training and procedures” in place to allow it to meet all requirements applicable to an LBA.<sup>79</sup> NERC also maintains that its actions in certifying the Michigan Upper Peninsula LBA do not constitute “approval” of Wisconsin Electric’s proposal for purposes of cost allocation. Finally, NERC notes that it was not required under its Rules of Procedure to find that creation of the Michigan Upper Peninsula LBA was necessary in order to remedy physical reliability concerns, but merely to ensure that the proposed new LBA does not create reliability issues.

54. NERC also disagrees with the Michigan Commission’s contention that NERC is not required to entertain comments or evidence from stakeholders. NERC states that its evaluation is limited to a technical evaluation of the entity’s operational capabilities and ability to meet NERC’s Reliability Standards, which it has done.<sup>80</sup> NERC states that it confirmed Wisconsin Electric’s competency to operate the Michigan Upper Peninsula LBA reliably and issued its certification report on August 28, 2014.

55. In its answer to the Michigan Commission’s Complaint, Wisconsin Electric also argues that the complaint should be denied because NERC’s certification of the Michigan Upper Peninsula LBA did not violate any NERC rule or any portion of FPA section 215.<sup>81</sup> In addition, Wisconsin Electric argues that the complaint should be dismissed because “there already are existing proceedings at the Commission where all of the relief requested by [the Michigan Commission] (regarding SSR Unit cost impacts and cost allocation issues) is being addressed.”<sup>82</sup> Notably, Wisconsin Electric states that it opposes the use of the Michigan Upper Peninsula LBA to allocate the costs of the Presque Isle SSR units, and instead advocates for use of commercial nodes in allocating such costs. Wisconsin Electric explains that the MISO Tariff does not require use of LBA boundaries in assigning SSR costs, and asserts that any change in LBA boundaries should not result in a change in assignment of costs. Finally, Wisconsin Electric maintains that the Michigan Commission failed to provide any substantive basis for

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<sup>79</sup> NERC Answer at 2-3.

<sup>80</sup> *Id.* at 5-6.

<sup>81</sup> Wisconsin Electric Answer to Michigan Commission’s Complaint at 3.

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

overturning the NERC decision, and points out several operational benefits from the creation of the Michigan Upper Peninsula LBA.

56. Wisconsin Electric states that the Michigan Commission's Complaint should be denied for failure to provide adequate support for its claims regarding the substance of NERC's decision. Wisconsin Electric states that NERC has no authority to address cost allocation issues, as acknowledged by the Michigan Commission.<sup>83</sup>

57. Finally, Wisconsin Electric asserts that the Michigan Commission's Complaint should be denied due to failure to state a claim for which relief can be granted. Specifically, Wisconsin Electric states that the only entities that can be respondents in NERC proceedings under the NERC Rules and Procedures are Respondents, which the Michigan Commission is not because it is not a registered entity.<sup>84</sup> As such, Wisconsin Electric argues that the Michigan Commission lacks the standing to appeal a certification.

## **2. Comments, Protests and Subsequent Answers**

58. The timely comments submitted by Verso Paper and Integrys in Docket No. EL14-103-000, as well as a number of the subsequent answers submitted in that docket, discussed above, were also filed in response to the Michigan Commission's Complaint.

59. In addition, the Mines filed limited substantive comments in support of the Michigan Commission's Complaint, expressly requesting consolidation of the two complaint proceedings. The Mines, noting the overlap between the two complaints, urge the Commission to consolidate their complaint with the Michigan Commission's Complaint in the interest of efficiency.<sup>85</sup> The Mines also urge the Commission to expeditiously set the matter for hearing, grant the relief requested from the Commission, and prohibit implementation of the split of the WEC LBA and formation of the Michigan Upper Peninsula LBA without prior Commission approval.

60. On October 24, 2014, Wisconsin Electric filed an answer in response to the Mines' request for consolidation. Wisconsin Electric asserts that administrative efficiency would not be enhanced by such consolidation because the complaints are by two different parties and are against two different entities. Additionally, Wisconsin

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<sup>83</sup> *Id.* at 9-10 (citing Michigan Commission's Complaint Exhibit MI-2 at P 21).

<sup>84</sup> *Id.* at 12-13 (citing NERC Rules of Procedure, Appendix 4C, Attachment 2 – Hearing Procedures, Section 1.1.5 – Definitions (“respondent”)).

<sup>85</sup> Mines Comments at 3-4.

Electric contends that the two complaints concern different and unrelated regulatory functions, namely NERC's certification of the Michigan Upper Peninsula LBA and cost allocation under the MISO Tariff. Wisconsin Electric also argues against setting the Complaints for hearing procedures. It states that the Mines have not identified material issues of fact in dispute that would merit a hearing proceeding, only mentioning that they are interrelated.<sup>86</sup>

#### **IV. Discussion**

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

61. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which they were filed. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), we grant UPPCo's late-filed motion to intervene in each of the above-captioned dockets given its interest in the proceedings, the early stage of the proceedings, and the absence of undue prejudice or delay.

62. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We accept the answers filed in these proceedings because they have provided information that assisted us in our decision-making process.

##### **B. Commission Determination**

63. The Mines' Initial and Amended Complaints and the Michigan Commission's Complaint are concerned with MISO's use of an LBA-based cost allocation methodology for allocating the costs associated with the Presque Isle SSR Unit. As noted above, in the Rehearing Order issued concurrently with the instant order, we find that the cost allocation proposed by MISO for the Presque Isle SSR Unit, which uses the optimization-LBA approach in MISO's Business Practice Manual (BPM), is not just and reasonable, as it is inconsistent with section 38.2.7.k of MISO's Tariff, which requires MISO to allocate SSR costs to "the LSE(s) which require(s) the operation of the SSR Unit for reliability purposes." In the Rehearing Order, we require MISO to propose in a compliance filing a new study methodology that identifies the LSEs that require the Presque Isle SSR Unit for reliability purposes, along with a revised rate schedule that adjusts the allocation of SSR costs accordingly.<sup>87</sup> As such, this revised rate schedule will no longer be LBA-

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<sup>86</sup> Wisconsin Electric October 24 Answer at 4-5.

<sup>87</sup> Rehearing Order, 150 FERC ¶ 61,104 at PP 2, 80-89.

based. Further, in that order, we reject the LBA-based rate schedule filed in Docket No. ER14-2952-000 that both the Mines and the Michigan Commission find objectionable.<sup>88</sup> Accordingly, we dismiss the complaints as moot.

64. Given this, we do not reach the arguments put forth in the complaints that it is necessary for the Commission to approve the split of the WEC LBA and the creation of the Michigan Upper Peninsula LBA because of the effect of the split on jurisdictional rates, because we make clear in the Rehearing Order that the allocation of Presque Isle SSR costs will not depend on LBA boundaries.<sup>89</sup>

65. However, we do find it appropriate to address certain arguments raised in the complaints and answers, given the challenges both to NERC's processes and parties' ability to bring complaints at the Commission. First, we reject the arguments of the Mines and the Michigan Commission that NERC lacks jurisdiction to certify the Michigan Upper Peninsula LBA or that its certification process was deficient, and therefore find no basis for overturning NERC's certification of the new Michigan Upper Peninsula LBA. We agree with NERC that its certification process is governed by Commission-approved Rules of Procedure, and that under those rules NERC was obligated to assess whether the new Michigan Upper Peninsula LBA has the technical capability to ensure compliance with all applicable Reliability Standards.<sup>90</sup> NERC was

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<sup>88</sup> In fact, the Rehearing Order rejects MISO's filing, made in Docket No. ER14-2952-000, to reflect the impact on SSR cost allocation of Wisconsin Electric's split into the WEC LBA and the Michigan Upper Peninsula LBA. *See id.* PP 2, 100.

<sup>89</sup> In the Rehearing Order, we make no findings as to the whether the LBA-based BPM cost allocation methodology might produce just and reasonable cost allocations for SSR Units other than the SSR Units at issue in that order. As such, in the Rehearing Order, we find that if MISO proposes to apply its BPM methodology in future filings, MISO must address the concerns with the methodology that are identified in the Rehearing Order and show that the methodology allocates SSR costs to those LSEs that require the operation of the SSR Unit for reliability purposes, such that assignment of costs is commensurate with the benefits received by such LSEs. Rehearing Order, 150 FERC ¶ 61,104 at P 86, n.211. Accordingly, we decline to address any general concerns raised in the Mines' Initial and Amended Complaints and the Michigan Commission's Complaint with regard to the justness and reasonableness of the impact of the split of the WEC LBA on other SSRs, and the application of MISO's LBA-based BPM cost allocation for other SSRs, as speculative.

<sup>90</sup> *See* NERC Answer at 6-7 (citing to, inter alia, NERC Rule of Procedure § 500 (governing NERC's registration and certification process for [LBAs]), and § 501

(continued...)

neither required to find that creation of the new Michigan Upper Peninsula LBA would enhance reliability, nor to consider its potential economic implications. Our findings with respect to the adequacy of NERC's certification decision and review process should not be taken to suggest that we have no authority or obligation to review and approve any change in cost allocation or tariff rates that could occur as a result of a change in LBA status. However, in this situation, given our concurrent decision on the apportionment of SSR costs for the Presque Isle, Escanaba and White Pine SSR units, we find that NERC's certification of the new Michigan Upper Peninsula LBA will not have an impact on SSR cost allocation or otherwise affect rates as the complainants allege.

66. As for the arguments put forth in the Mines' Amended Complaint that state regulatory approvals are needed to terminate operations at the Presque Isle plant, that an SSR agreement may not be necessary, and that there is no economic justification for Wisconsin Electric to terminate operations at the Presque Isle plant, we find that we have answered each of these issues in other proceedings. As we state in the Rehearing Order, the Commission addressed these issues in the November 10 Order.<sup>91</sup> With respect to arguments that some or all of the Presque Isle Units 5-9 should not qualify for SSR treatment, the Commission found in the November 10 Order that MISO properly followed the SSR study and review process in accordance with the Tariff and adequately demonstrated that all five Presque Isle units are needed for reliability during the term of the SSR agreement that was accepted in the November 10 Order.<sup>92</sup> With regard to arguments that Wisconsin Electric did not receive the necessary state regulatory approvals to retire Presque Isle Units 5-9, the Commission found in the November 10 Order that if there are state laws that prevent the retirement, the enforcement of those laws is beyond the scope of the SSR proceeding.<sup>93</sup> With respect to Integrys's arguments that Wisconsin Electric already recovers costs for the Presque Isle units in its retail rate base, Wisconsin Electric's retail rates are not before us here, as such retail rates fall within the relevant state commissions' jurisdiction and not within this Commission's jurisdiction.<sup>94</sup> Furthermore, we find that retail rate treatment is not relevant to setting the

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("requiring any utility seeking registration to provide proper documentation demonstrating its ability to satisfactorily function as [an LBA]").

<sup>91</sup> Rehearing Order, 150 FERC ¶ 61,104 at P 99.

<sup>92</sup> November 10 Order, 149 FERC ¶ 61,114 at P 36.

<sup>93</sup> *Id.* P 38.

<sup>94</sup> *See Southwest Power Pool, Inc.*, 119 FERC ¶ 61,199 (2007).

just and reasonable level of compensation for Commission-jurisdictional service provided by an SSR Unit under the MISO Tariff.<sup>95</sup>

67. Last, we reject Wisconsin Electric's assertion that the Michigan Commission has failed to state a claim for which relief can be granted. Wisconsin Electric's argument is based on the assertion that the Michigan Commission cannot be a "respondent" under NERC's Rules of Procedure because a "respondent" is defined solely as a Registered Entity in Appendix 4C of the NERC Rules of Procedure and because it claims only "Respondents have standing to appeal a NERC ruling certifying new [LBAs]."<sup>96</sup> However, Wisconsin Electric's reliance on a definition used in Attachment 2 of Appendix 4C of the NERC Rules of Procedure, which governs hearing procedures as part of NERC's Compliance Monitoring and Enforcement program, is misplaced. These procedures relate to hearings on compliance and enforcement matters *at the NERC or Regional Entity level*, and not to appeals to the Commission of NERC certification decisions. To the extent NERC's Rules of Procedure address review of certification decisions, the relevant procedures are set out in Appendix 5A, Section VI, and provide that *any entity* may appeal an organization certification decision by a Regional Entity:

#### **Organization Certification Appeals Procedure**

##### **1. Appeal for an Organization Certification Finding.**

Any entity can appeal an organization Certification decision issued as a result of the Certification process.<sup>97</sup>

Moreover, with respect to the right to appeal a final NERC certification decision *to the Commission*, NERC's Rules of Procedure do not set out any restrictions as to the entities that can seek relief, and instead explicitly state that "[p]arties retain the right to seek further review of a decision in whatever regulatory agency or court that may have jurisdiction."<sup>98</sup> Therefore we reject Wisconsin Electric's arguments on this issue.

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<sup>95</sup> Rehearing Order, 150 FERC ¶ 61,104 at P 75.

<sup>96</sup> *See* Wisconsin Electric Answer to Michigan Commission's Complaint at 12 (citing to NERC Rules of Procedure 4C, Attachment 2 – Hearing Procedures, Section 1.1.5 – Definitions ("respondent")).

<sup>97</sup> NERC Rules of Procedure, Appendix 5A, Section VI.1 and Fig. 4.

<sup>98</sup> *Id.* at Section VI.2.d.

The Commission orders:

The Mines' Initial and Amended Complaints and the Michigan Commission's Complaint are hereby dismissed, as discussed in the body of this order.

By the Commission. Commissioner Honorable is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.