

148 FERC ¶ 61,057  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System Operator, Inc.                      Docket Nos. ER13-1962-000  
ER13-1962-001

Docket Nos. ER13-1963-000  
ER13-1963-001  
ER13-1963-002

Docket No. ER14-1210-000

Docket No. ER14-1212-001

Docket No. EL14-53-000

AmerenEnergy Resources Generating Company                      Docket No. EL13-76-000

v.

Midcontinent Independent System Operator, Inc.

ORDER GRANTING IN PART AND DENYING IN PART COMPLAINT,  
ADDRESSING TARIFF FILINGS, DENYING REHEARING, INSTITUTING  
SECTION 206 PROCEEDING, ESTABLISHING HEARING AND SETTLEMENT  
JUDGE PROCEDURES, AND CONSOLIDATING PROCEEDINGS

(Issued July 22, 2014)

TABLE OF CONTENTS

	<u>Paragraph Numbers</u>
I. Background .....	<a href="#">3.</a>
II. Summary of Findings .....	<a href="#">9.</a>

III. Complaint .....	<a href="#"><u>12.</u></a>
A. Complaint in Docket No. EL13-76-000.....	<a href="#"><u>12.</u></a>
B. February 20, 2014 Supplement .....	<a href="#"><u>17.</u></a>
C. Notice of Filings and Responsive Pleadings .....	<a href="#"><u>20.</u></a>
D. MISO’s Answer to the Complaint.....	<a href="#"><u>23.</u></a>
E. Comments and Protests on the Complaint.....	<a href="#"><u>25.</u></a>
F. Answers to MISO’s Answer and Protests, Comments, and Other Answers .....	<a href="#"><u>47.</u></a>
G. Initial Answers to February 20, 2014 Supplement .....	<a href="#"><u>59.</u></a>
H. Comments and Protests in Response to Notice of February 20, 2014 Supplement.....	<a href="#"><u>63.</u></a>
I. Discussion .....	<a href="#"><u>80.</u></a>
1. Procedural Matters.....	<a href="#"><u>80.</u></a>
2. Commission Determination .....	<a href="#"><u>82.</u></a>
IV. Edwards Year 1 .....	<a href="#"><u>94.</u></a>
A. Edwards Year 1 SSR Agreement in Docket No. ER13-1962-000.....	<a href="#"><u>94.</u></a>
B. Edwards Year 1 Rate Schedule 43C in Docket No. ER13-1963-000 .....	<a href="#"><u>101.</u></a>
C. Comments and Protests .....	<a href="#"><u>102.</u></a>
D. Answers .....	<a href="#"><u>117.</u></a>
E. Deficiency Letter and Response .....	<a href="#"><u>125.</u></a>
F. Protest to Deficiency Letter Response and Answer .....	<a href="#"><u>130.</u></a>
G. November 25, 2013 Order .....	<a href="#"><u>138.</u></a>
H. Request for Rehearing of the November 25, 2013 Order in Docket Nos. ER13-1962-001 and ER13-1963-002.....	<a href="#"><u>139.</u></a>
I. Discussion .....	<a href="#"><u>144.</u></a>
1. Procedural Matters.....	<a href="#"><u>144.</u></a>
2. Commission Determination .....	<a href="#"><u>145.</u></a>
V. Edwards Year 2 .....	<a href="#"><u>161.</u></a>
A. Edwards Year 2 SSR Agreement in Docket No. ER14-1210-000.....	<a href="#"><u>161.</u></a>
B. Edwards Year 2 Rate Schedule 43C in Docket No. ER14-1212-001 .....	<a href="#"><u>167.</u></a>
C. Comments and Protests .....	<a href="#"><u>169.</u></a>
D. Answers .....	<a href="#"><u>190.</u></a>
E. March 31, 2014 Order.....	<a href="#"><u>207.</u></a>
F. Commission Determination .....	<a href="#"><u>208.</u></a>

1. On July 5, 2013, pursuant to section 206 of the Federal Power Act (FPA),<sup>1</sup> AmerenEnergy Resources Generating Company (Ameren Generating) filed a complaint (Complaint) in Docket No. EL13-76-000 against Midcontinent Independent System Operator, Inc. (MISO), which was supplemented by Illinois Power Marketing Company (Illinois Power Marketing) and Illinois Power Resources Generating, LLC (Illinois Power Generating)<sup>2</sup> on February 20, 2014 (February 20, 2014 Supplement). The Complaint concerns compensation under System Support Resource (SSR) agreements, pursuant to MISO's Open Access Transmission, Energy, and Operating Reserve Markets Tariff (Tariff),<sup>3</sup> specifically as it relates to compensation for the provision of SSR service under two unexecuted SSR agreements for the Edwards Unit No. 1 generating facility (Edwards Unit 1).<sup>4</sup>

2. In this order we deny in part and grant in part the Complaint, as supplemented by Illinois Power's February 20, 2014 Supplement, effective on the date of this order, and require MISO to submit a compliance filing within 60 days of the date of this order. We also establish hearing and settlement judge procedures. As discussed further below, this order also addresses the level of compensation and other issues related to the two

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<sup>1</sup> 16 U.S.C. § 824e (2012).

<sup>2</sup> On December 2, 2013, Illinois Power Holdings acquired several Ameren Corporation subsidiaries, including Ameren Generating and Ameren Energy Marketing (Ameren Marketing). Ameren Generating was renamed as Illinois Power Generating, and Ameren Marketing was renamed as Illinois Power Marketing. For purposes of this order, both Ameren Generating and Ameren Marketing will be referred to as Ameren, and both Illinois Power Marketing and Illinois Power Generating will be referred to as Illinois Power.

<sup>3</sup> The MISO Tariff defines SSRs as "Generation Resources or Synchronous [Condenser] Units [(SCU)] that have been identified in Attachment Y – Notification to this Tariff and are required by the Transmission Provider for reliability purposes, to be operated in accordance with the procedures described in Section 38.2.7 of this Tariff." MISO, FERC Electric Tariff, Module A, Common Tariff Provisions, II, General Provisions, 1, Definitions, 1.S, Definitions – S (30.0.0). Unless indicated otherwise, all capitalized terms shall have the same meaning given them in the MISO Tariff.

<sup>4</sup> Edwards Unit 1 is a 90 MW coal-fired steam boiler generator located in the Peoria area of Illinois. As discussed further below, based on an Attachment Y Notice of retirement, MISO notified Ameren on December 17, 2012 that MISO had designated Edwards Unit 1 as an SSR unit until the completion of transmission reinforcements in December 2016.

unexecuted SSR agreements and associated rate schedules filed by MISO for SSR service provided by Edwards Unit 1,<sup>5</sup> as well as institutes an FPA section 206 proceeding in Docket No. EL14-53-000 and establishes a refund effective date to require MISO to revise its Tariff to adequately describe the technical study process by which MISO is to evaluate whether potential SSRs are needed for reliability purposes. Last, the order denies a pending request for rehearing.

## **I. Background**

3. 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 Reliability 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>6</sup>

4. 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.<sup>7</sup> Among other things, the Commission found MISO's proposal to limit SSR compensation to include only "going forward costs" to be

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<sup>5</sup> As discussed more fully below, Docket Nos. ER13-1962 and ER13-1963 involve the SSR agreement and Rate Schedule 43C associated with the first year of SSR service by Edwards Unit 1. Docket Nos. ER14-1210 and ER14-1212 involve the SSR agreement and Rate Schedule 43C associated with the second year of SSR service by Edwards Unit 1.

<sup>6</sup> See *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163 (TEMT II Order), *reh'g denied*, 109 FERC ¶ 61,157 (2004) (TEMT II Rehearing Order) (together, TEMT II Orders). This version of the MISO Tariff is referred to in this order as the pre-SSR Order Tariff.

<sup>7</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,237 (2012) (SSR Order).

consistent with MISO's initial description of its SSR program and required MISO to define the term "going forward costs" on compliance.<sup>8</sup>

5. On December 18, 2012, MISO submitted a filing to comply with the requirements of the SSR Order (December 18 Compliance Filing). Among other things, MISO proposes to define "going forward costs" as "the costs that will be incurred by an SSR Unit owner or operator to remain in-service that are in excess of the costs the SSR Unit would have incurred had it been retired or suspended."<sup>9</sup> MISO states that this definition is consistent with the definition of "Going-Forward Costs" found in section 61.1.c of the Tariff.<sup>10</sup>

6. The Complaint, which was filed on July 5, 2013 as noted above, alleges that MISO interprets its Tariff too narrowly in addressing SSR compensation and the Commission should find that the term "going forward costs" includes the fixed costs of existing plant, which are recovered as depreciation expense, return on rate base, and associated taxes; or alternatively, the Commission should find that the existing Tariff is unjust and unreasonable and unduly discriminatory or preferential, to the extent that it does not compensate SSRs for the fixed costs of existing plant.

7. On July 11, 2013 in Docket No. ER13-1962-000, pursuant to section 205 of the FPA,<sup>11</sup> MISO submitted a proposed unexecuted SSR agreement between Ameren Marketing and MISO designated as Service Agreement No. 6502 under its Tariff

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<sup>8</sup> *Id.* P 145 (citing MISO, Application, Docket No. ER04-691-000, McNamara Test. at 49 (filed Mar. 31, 2004) (March 31, 2004 Filing)).

<sup>9</sup> MISO, Compliance Filing, Docket No. ER12-2302-001, FERC Electric Tariff, Module C, Energy and Operating Reserve Markets, II, General Provisions, 38, General Responsibilities and Requirements, 38.2, Market Participants, 38.2.7, System Support Resources (3.0.0), § 38.2.7.i.ii (filed Dec. 18, 2012). In an order issued concurrently, the Commission conditionally accepts MISO's December 18 Compliance Filing. *Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,056 (2014) (SSR Compliance Order).

<sup>10</sup> MISO, FERC Electric Tariff, Module D, Market Monitoring and Mitigation Measures, II, Independent Market Monitoring Plan, 61, List of Data the IMM May Request, 61.1, Data (30.0.0), § 61.1.c ("Going-Forward Costs: Data or information related to the costs of keeping a Planning Resource in operation.").

<sup>11</sup> 16 U.S.C. § 824d (2012).

(Edwards Year 1 SSR Agreement) for Edwards Unit 1,<sup>12</sup> covering a one-year term beginning on January 1, 2013 and terminating on December 31, 2013. The Edwards Year 1 SSR Agreement only includes compensation for Ameren's going-forward costs and does not include any compensation for Ameren's fixed costs of existing plant.<sup>13</sup> Also on July 11, 2013, as revised on September 26, 2013, in Docket No. ER13-1963-000, pursuant to section 205 of the FPA, MISO submitted a proposed Rate Schedule 43C under its Tariff addressing allocation of the costs associated with the Edwards Year 1 SSR Agreement (Edwards Year 1 Rate Schedule 43C).<sup>14</sup> On November 25, 2013, the Commission accepted the Edwards Year 1 SSR Agreement and Edwards Year 1 Rate Schedule 43C, suspended them for a nominal period, to be effective January 1, 2013, as requested, subject to refund and further Commission order.<sup>15</sup> Two parties filed a joint request for rehearing of the November 25, 2013 Order.

8. On January 30, 2014 in Docket No. ER14-1210-000, pursuant to section 205 of the FPA, MISO filed an unexecuted SSR Agreement between Illinois Power Marketing and MISO designated as Service Agreement No. 6502 under its Tariff (Edwards Year 2 SSR Agreement) for Edwards Unit 1,<sup>16</sup> covering a one-year term beginning on January 1, 2014 and terminating on December 31, 2014. Like the Edwards Year 1 SSR Agreement, the Edwards Year 2 SSR Agreement also only includes compensation for Illinois Power's going-forward costs and does not include any compensation for Illinois Power's fixed

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<sup>12</sup> MISO, Midwest ISO Agreements, 3, Service Agreements, SA 6502, Ameren-MISO SSR Agreement (0.0.0).

<sup>13</sup> As discussed further below, in its protest to MISO's filing of the Edwards Year 1 SSR Agreement, Ameren provides discussion and testimony regarding its fixed costs of existing plant, which it argues supports an additional \$12,833,094 in annual compensation for Edwards Unit 1. Ameren cross-filed this protest in the Complaint proceeding in Docket No. EL13-76-000 on July 31, 2013. *See* Ameren Protest at 12, Attachment 2 (Heintz Test.) at 5-8, Attachment 4 (Edwards Unit 1 Cost-of-Service Exhibits) at 1-14. Ameren also filed a motion to consolidate Docket Nos. EL13-76-000, ER13-1962-000, and ER13-1963-000. *Id.* at 15.

<sup>14</sup> MISO, FERC Electric Tariff, 3, Schedules, Schedule 43C, Allocation of SSR Costs Associated with the Edwards 1 SSR Un (1.0.0).

<sup>15</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,163 (2013) (November 25, 2013 Order).

<sup>16</sup> MISO, Midwest ISO Agreements, 3, Service Agreements, SA 6502, Ameren-MISO SSR Agreement (31.0.0).

costs of existing plant.<sup>17</sup> On January 31, 2014 in Docket No. ER14-1212-000, pursuant to section 205 of the FPA, MISO submitted a proposed Rate Schedule 43C under its Tariff addressing allocation of the costs associated with the Edwards Year 2 SSR Agreement (Edwards Year 2 Rate Schedule 43C).<sup>18</sup> On March 31, 2014, the Commission accepted the Edwards Year 2 SSR Agreement and Edwards Year 2 Rate Schedule 43C, suspended them for a nominal period, to be effective January 1, 2014, as requested, subject to refund and further Commission order.<sup>19</sup>

## **II. Summary of Findings**

9. This order addresses the Complaint, the two unexecuted Edwards Unit 1 SSR service agreements and associated rate schedules, and the request for rehearing of the November 25, 2013 Order, as well as institutes an investigation under FPA section 206. In this order, we deny the Complaint as to Ameren's argument that the fixed costs of existing plant should be interpreted to be going-forward costs under the current MISO Tariff. However, we grant the Complaint's alternative request for relief and find that the MISO Tariff is unjust, unreasonable, and unduly discriminatory or preferential because it does not allow MISO to compensate SSRs for their fixed costs of existing plant. Also, we grant the Complaint, as supplemented by the February 20, 2014 Supplement, and find that the Tariff is unjust, unreasonable, and unduly discriminatory or preferential because the Tariff provides MISO with unilateral rights to file rates under unexecuted SSR Agreements. We direct MISO to submit Tariff revisions in a compliance filing due within 60 days of the date of this order to implement these revisions effective as of the date of this order. We also establish a refund effective date of July 5, 2013 and establish hearing and settlement judge procedures in the Complaint proceeding in Docket No. EL13-76-000 in order to address issues of material fact with regard to the appropriate level of compensation to Illinois Power to provide it recovery of the fixed costs of

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<sup>17</sup> As discussed further below, in the February 20, 2014 Supplement, Illinois Power provides discussion and testimony regarding its fixed costs of existing plant, which it argues support an additional \$5 million in annual compensation for Edwards Unit 1 under the Edwards Year 2 SSR Agreement. Illinois Power February 20, 2014 Supplement, Ex. No. IMP/IPRG-2, Heintz Test., at 9. Illinois Power cross-filed the February 20, 2014 Supplement in Docket Nos. EL13-76-000, ER13-1962-000, and ER14-1210-000, and requested that these dockets be consolidated.

<sup>18</sup> MISO, FERC Electric Tariff, 3, Schedules, Schedule 43C, Allocation of SSR Costs Associated with the Edwards 1 SSR Un (32.0.0).

<sup>19</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,238 (2014) (March 31, 2014 Order).

existing plant under the Edwards Year 2 SSR Agreement. We also consolidate the proceeding in Docket No. EL13-76-000 with the proceedings described below in Docket Nos. ER13-1962-000 and ER14-1210-000.

10. As noted above, the November 25, 2013 Order accepted and suspended the Edwards Year 1 SSR Agreement, subject to further order. In this order, we address arguments concerning the reliability need for Edwards Unit 1 as an SSR, as well as establish hearing and settlement judge procedures in Docket No. ER13-1962-000 on the issue of the appropriate level of going-forward costs included in the rate that MISO has negotiated with Ameren for operating Edwards Unit 1 as an SSR unit under the Edwards Year 1 SSR Agreement. We also deny the request for rehearing of the November 25, 2013 Order. Last, we institute an investigation pursuant to section 206 of the FPA and find that the Tariff is unjust, unreasonable, and unduly discriminatory or preferential because the Tariff does not adequately describe the technical study process by which MISO is to evaluate whether potential SSRs are needed for reliability purposes and the related information that should be provided by MISO when filing SSR agreements with the Commission. We direct MISO to submit Tariff revisions in the compliance filing due within 60 days of the date of this order to address this issue effective as of the date of this order. We also establish a refund effective date of the date the notice of the initiation of the investigation in Docket No. EL14-53-000 is published in the *Federal Register*.

11. On March 31, 2014, the Commission accepted and suspended the Edwards Year 2 SSR Agreement, subject to further order. In this order, we address arguments concerning the reliability need for Edwards Unit 1 as an SSR. We also establish hearing and settlement judge procedures in Docket No. ER14-1210-000 on the issue of the costs included in the rate that MISO has negotiated with Illinois Power Marketing for operating Edwards Unit 1 as an SSR unit under the Edwards Year 2 SSR Agreement (i.e., the going-forward costs), as well as the fixed costs of existing plant as proposed by Illinois Power in the February 20, 2014 Supplement. The hearing and settlement judge procedures will evaluate the level of cost recovery, including the amount of any potential rate increase that may be appropriate to allow Illinois Power to recover its full cost-of-service as discussed below.<sup>20</sup>

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<sup>20</sup> As discussed below, any rate increase would only take effect prospectively from the date of the Commission order adopting the increased rate after hearing and settlement judge procedures.

### III. Complaint

#### A. Complaint in Docket No. EL13-76-000

12. First, Ameren argues that the Tariff provides for appropriate SSR compensation because fixed costs of existing plant are appropriately considered going-forward costs. According to Ameren, interpreting going-forward costs in such a manner is consistent with principles of depreciation accounting because “[t]he primary objective of depreciation accounting is to *allocate the cost of utility property to the periods during which the property is used in utility operations, i.e., over the useful service life*, in a systematic and rational manner.”<sup>21</sup> Second, Ameren alleges that, while investment in existing plant is appropriately considered a sunk cost that is not avoidable by retirement, the fact remains that physical plant costs should be permitted to be recovered when the property is used in utility operations. Ameren explains that, although it would have foregone the opportunity to earn additional revenues if Edwards Unit 1 had retired on schedule, it has not been permitted to retire and has instead been required by MISO to remain operational for the benefit of system reliability. To support its argument, Ameren cites to precedent in ISO New England, Inc. (ISO-NE) where the Commission rejected an incremental cost approach proposed by one party who sought to deny a reliability must-run (RMR)<sup>22</sup> unit certain costs, including depreciation.<sup>23</sup> Thus, Ameren concludes that, because the pre-SSR Order Tariff did not include a definition of going-forward costs, the

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<sup>21</sup> Complaint at 12-13 (quoting *Depreciation Accounting*, Notice of Proposed Rulemaking, 64 Fed. Reg. 42,304, at 42,305 (1999) (emphasis added) (*Depreciation Accounting*)).

<sup>22</sup> RMRs are similar to SSRs.

<sup>23</sup> Complaint at 13-14 (citing *Mirant Kendall, LLC, Mirant Americas Energy Marketing, L.P.*, 109 FERC ¶ 61,227, at P 36 (2004) (“NSTAR’s request that the Commission exclude the O&M, A&G, depreciation and property tax expenses from Mirant’s revenue requirement is rejected. The Commission has historically permitted recovery of fixed costs for the discrete period in which the specified RMR units are in operation. Despite NSTAR’s assertion that Mirant would have foregone these revenues had the RMR units shut down as originally proposed, the fact remains that the units have not shut down. Further these fixed costs are essential costs of a service that Mirant will be providing to NSTAR’s customers during the term of the Agreement . . . .”), *order on reh’g*, 110 FERC ¶ 61,272 (2005) (*Mirant Kendall*)).

term should be interpreted to include fixed costs of existing plant so as to be consistent with the Commission's prior holdings on the issue.<sup>24</sup>

13. Alternatively, Ameren argues that, if the Tariff precludes recovery of return on rate base and depreciation, it is unjust and unreasonable and the Commission should order it changed. Ameren maintains that in other Regional Transmission Organizations/Independent System Operators (RTO/ISO), the Commission has consistently rejected the argument that generators needed for reliability should only be paid incremental costs, and thus, it would be unduly discriminatory to treat generators in MISO differently. For example, Ameren cites to several Commission orders in ISO-NE in which the Commission stated that only allowing for the recovery of variable and marginal costs would be insufficient to ensure that RMR units are available to provide the requested reliability services.<sup>25</sup> According to Ameren, in these ISO-NE orders, the Commission rejected arguments attempting to exclude depreciation and other expenses from the costs that could be recovered under RMR contracts.<sup>26</sup> Ameren also contends that in PJM Interconnection, L.L.C. (PJM), the Commission has refused to adopt a going-forward only approach to compensating RMR units and addresses this issue on a case-by-case basis.<sup>27</sup>

14. Based on this precedent, Ameren argues that there is no legitimate basis to apply a different rule in MISO. Ameren notes that, in developing the SSR program, the Commission expressly drew parallels to other eastern markets. Ameren adds that, while

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<sup>24</sup> *Id.* at 14.

<sup>25</sup> *Id.* at 15-16 (citing *Bridgeport Energy, LLC*, 112 FERC ¶ 61,077, *order on reh'g*, 113 FERC ¶ 61,311, at P 36 (2005) (stating that “providing only minimum, marginal and variable cost recovery to these units may not allow them to be maintained in a manner in which they can continue to operate reliably, and it would defeat the purpose of the contracts to ensure that the units are ‘available’ to support reliability”), *order on reh'g*, 114 FERC ¶ 61,265 (2006) (*Bridgeport Energy*); *Milford Power Company, LLC*, 112 FERC ¶ 61,154, at P 28 (2005) (“Providing only variable and marginal costs . . . could also limit the units’ ability to operate reliably as in-merit resources . . . .”).

<sup>26</sup> *Id.* at 16-17 (quoting *Mirant Kendall*, 109 FERC ¶ 61,227 at P 36).

<sup>27</sup> *Id.* at 17 (citing *GenOn Power Midwest, LP*, 140 FERC ¶ 61,080 (2012) (*GenOn*) (setting for hearing and settlement judge procedures an RMR unit’s proposed Cost-of-Service Recovery Rate).

the Commission has referred to the SSR program as providing going-forward costs, it has not done so to the exclusion of other cost categories.<sup>28</sup>

15. In addition, Ameren argues that long-standing Commission and court precedent hold that generators providing utility service must recover their full cost-of-service, including the fixed costs of existing plant, regardless of whether the resource is needed for reliability. Citing to Commission and U.S. Supreme Court precedent regarding cost-of-service ratemaking, Ameren maintains that cost-of-service includes “all operating expenses, including depreciation, depletion, and taxes, plus a fair return on the rate base.”<sup>29</sup>

16. Further, Ameren asserts that SSRs provide public utility service and are therefore entitled to recover their full cost-of-service to avoid confiscatory ratemaking. According to Ameren, U.S. Supreme Court precedent holds that rates that fail to yield a reasonable return on the value of property used to provide a service for the public may be unjust, unreasonable, and confiscatory, and such rates could result in constitutional violations of the Fifth and Fourteenth Amendments.<sup>30</sup> Ameren argues that since Edwards Unit 1 is being used in public utility service, Ameren is therefore entitled to a return on the remaining undepreciated investment during the time it is being used for such service, and failure to do so would be confiscatory.<sup>31</sup> Ameren avers that recovering full cost-of-service is even more essential since Ameren has been required by MISO to continue operating despite its stated intent to retire.<sup>32</sup> Finally, Ameren states that resources operating in the MISO market or under cost-based regulation have a reasonable

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<sup>28</sup> *Id.* at 18.

<sup>29</sup> *Id.* at 19-20 (quoting *Wisconsin v. Fed. Power Comm’n*, 373 U.S. 294, 298 (1963)); *see also Ala. Power Co. v. FERC*, 160 F.3d 7, 8 (D.C. Cir. 1998) (citing Charles F. Phillips, Jr., *The Regulation of Public Utilities* 177 (3d ed. 1993)); *Chicago v. Fed. Power Comm.*, 458 F.2d 731, 734 (D.C. Cir. 1971) (citing *City of Chicago v. F.P.C.*, 128 U.S. App. D.C. 107, 110, 385 F.2d 629, 632 (1967), *cert. denied*, *Public Service Comm. v. F.P.C.*, 390 U.S. 945 (1968)).

<sup>30</sup> *Id.* at 20-21 (citing *Bluefield Water Works & Improvement Company v. Public Service Commission of the State of West Virginia*, 262 U.S. 679, 690 (1923) (*Bluefield*)).

<sup>31</sup> *Id.* at 21-22 (citing *Depreciation Accounting*, 64 Fed. Reg. 42,304 at n.10 (“The primary objective of depreciation accounting is to allocate the cost of utility property to the periods during which the property is used in utility operations . . . ”)).

<sup>32</sup> *Id.* at 22.

opportunity to recover their fixed costs, but limiting SSRs to only their going-forward costs by not permitting them to recover infra-marginal market revenues denies them this opportunity.<sup>33</sup>

**B. February 20, 2014 Supplement**

17. In the February 20, 2014 Supplement, Illinois Power supplemented the Complaint with cost-of-service information for Edwards Unit 1 in connection with the Edwards Year 2 SSR Agreement, including the testimony of Alan C. Heintz.<sup>34</sup> According to Illinois Power, Mr. Heintz established that the monthly revenue requirement for Edwards Unit 1 is \$1,344,570, which exceeds the \$927,860 “Monthly SSR Amount” provided under the unexecuted Edwards Year 2 SSR Agreement filed by MISO. Illinois Power maintains that this difference is based on depreciation expense, return on rate base, and income taxes associated with that amount.<sup>35</sup>

18. Illinois Power maintains that MISO’s approach to filing unexecuted SSR agreements can put SSR owners in a difficult position. It notes that the monthly payment of \$927,860 provided under the Edwards Year 2 SSR Agreement is less than the amount it sought in its negotiations with MISO. Illinois Power states that MISO “made clear that absent agreement with [Illinois Power], it would either include no revenue requirement in its filing or would only include those costs with which it agreed.”<sup>36</sup> According to Illinois Power, this put it in the position of either agreeing to the various adjustments proposed by MISO and the Independent Market Monitor (MISO Market Monitor) or risking having no revenue requirement, or only a partial one, filed with the Commission. It argues that in the future, MISO should be required to file both the generator’s revenue requirement and

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<sup>33</sup> *Id.* at 23-24. Ameren states that under the *pro forma* SSR agreement, SSR units may continue to bid into the market, but they must “forego any market revenues in excess of its marginal operating costs.” *Id.* at 23.

<sup>34</sup> Illinois Power February 20, 2014 Supplement at 11, Ex. No. 2 (Direct Testimony of Alan C. Heintz), Ex. No. 3 (Summary of Technical Experience of Alan C. Heintz), Ex. No. 4 (Edwards Unit 1 Cost-of-Service Exhibits).

<sup>35</sup> *Id.* at 7. Accordingly, Illinois Power is seeking \$16,134,845 in total annual compensation, including going-forward and fixed costs of existing plant under the Edwards Year 2 SSR Agreement, roughly a \$5,749,091 decrease in the \$21,883,936 in total annual compensation, including going-forward and fixed costs of existing plant that Ameren sought under the Edwards Year 1 SSR Agreement.

<sup>36</sup> *Id.* at 9.

the MISO position with respect to that revenue requirement in order to protect the generation owner's rights under FPA section 205. It argues that, with the Commission's refund obligation, ratepayers are adequately protected under such an approach while, absent such an approach, generators remain at risk of under-compensation.<sup>37</sup>

19. Illinois Power also requests consolidation of Docket Nos. EL13-76-000, ER13-1962-000, and ER14-1210-000. The February 20, 2014 Supplement also includes a "limited protest" to MISO's filing of the Edwards Year 2 SSR Agreement and associated Edwards Year 2 Rate Schedule 43C in Docket Nos. ER14-1210-000 and ER14-1212-000, which is discussed below in the section of this order addressing the Edwards Year 2 SSR Agreement and Rate Schedule 43C.

### **C. Notice of Filings and Responsive Pleadings**

20. Notice of the Complaint was published in the *Federal Register*, 78 Fed. Reg. 43,876 (2013), with answers, interventions, and comments due on or before July 31, 2013.

21. Notice of Illinois Power's February 20, 2014 Supplement was issued on March 25, 2014, with protests and interventions due on or before April 14, 2014.

22. The entities that filed notices of intervention, motions to intervene, protests, comments, and answers are listed in the Appendix to this order. The entity abbreviations listed in the Appendix will be used throughout this order.

### **D. MISO's Answer to the Complaint**

23. In its July 25 Answer, MISO responds that the Tariff does not allow for the compensation Ameren requests, and if Tariff revisions to modify the compensation paid to those who control generation resources are desired, Ameren should engage in discussions with "those persons who would bear the burden of financially supporting the continued availability and use of SSRs."<sup>38</sup>

24. According to MISO, it worked with Ameren to develop rates for Edwards Unit 1 that were consistent with the SSR Order and the Tariff. MISO states that testimony from Ameren's witness, including the associated cost history and calculations, demonstrates that the rate filed by MISO properly reflects the incremental costs of providing SSR

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<sup>37</sup> *Id.* at 8-10.

<sup>38</sup> MISO July 25 Answer at 4.

service at Edwards Unit 1.<sup>39</sup> MISO notes that the testimony also discusses a separate payment based on the actual costs of each dispatch.<sup>40</sup> While MISO acknowledges that the Edwards Year 1 SSR Agreement does not represent a full cost-of-service rate, it reiterates that the annual SSR unit compensation is limited to going-forward costs, consistent with section 38.2.7.i.ii of the Tariff. MISO argues that, if Ameren believes that the proposed compensation is unjust and unreasonable, the Tariff allows Ameren to protest the associated SSR agreement.<sup>41</sup> MISO declined to comment further on Ameren's alternative argument that if the SSR compensation provisions in the Tariff restrict recovery to incremental costs, such Tariff provisions are unjust and unreasonable, again noting that any future modifications to the Tariff regarding this issue should be discussed between the affected generators and those who would bear the financial burden of supporting the continued availability and use of SSRs.<sup>42</sup> Finally, MISO states that if the Commission finds the existing Tariff provisions regarding SSR compensation to be unjust and unreasonable, MISO will work with stakeholders to develop an alternative compensation methodology.<sup>43</sup>

#### **E. Comments and Protests on the Complaint**

25. EPSA maintains that Ameren's only burden in the Complaint and Edwards Unit 1 proceedings should be to demonstrate, consistent with section 205 of the FPA, that a full cost-of-service rate is just and reasonable; Ameren lawfully cannot be required to prove, pursuant to section 206 of the FPA, that MISO's proposed going-forward cost rate is

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<sup>39</sup> *Id.* at 5-6.

<sup>40</sup> *Id.* at 6 (citing MISO, Edwards Year 1 SSR Agreement, Ex. G (Direct Testimony of Eric Seidler) at 9). Ameren's witness' testimony further states that:

[A]ny supplemental revenue received through the MISO markets beyond the SSR compensation will be debited or credited against the SSR compensation in the settlements process to ensure against double-recovery. These additional revenue streams include Schedule 2 payments for reactive power and any capacity revenues attributable to Edwards [Unit] 1.

MISO, Edwards Year 1 SSR Agreement, Ex. G, Seidler Test. at 9.

<sup>41</sup> MISO July 25 Answer at 7.

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

<sup>43</sup> *Id.*

unjust and unreasonable or unduly discriminatory in order to prevail.<sup>44</sup> EPSA maintains that public utilities, including Ameren, have a right to propose a rate for service under section 205 of the FPA that must be allowed to take effect if it is just and reasonable and not unduly discriminatory.<sup>45</sup> EPSA is concerned that the customer, MISO, has proposed a rate for wholesale sales under section 205 of the FPA, while the public utility, Ameren, has been left to challenge the rate under section 206 of the FPA. EPSA concludes that this may be consistent with the Tariff, but it is inconsistent with the FPA.<sup>46</sup>

26. EPSA and Indiana Commission maintain that, consistent with the SSR Order, SSRs should be entitled to full compensation for all necessary costs incurred as a result of their continued operation to maintain reliability. EPSA states that the Commission should require that SSRs receive full compensation for their costs, consistent with the Complaint. It disagrees with MISO's suggestion that MISO's interpretation and application of its Tariff to exclude the costs of existing plant is entitled to deference.<sup>47</sup> EPSA notes that the existing Tariff does not define going-forward costs. It contends that in the SSR Order requiring MISO to define these costs in its Tariff, the Commission made clear that "all SSR units should be fully compensated for any costs incurred because of their extended service."<sup>48</sup> EPSA argues that the Commission has not addressed whether MISO's proposed definition of going-forward costs comports with the SSR Order, but the Commission has already required that SSRs receive full compensation for their costs.<sup>49</sup>

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<sup>44</sup> EPSA Protest at 5-6 (citing *Florida Gas Transmission Co. v. FERC*, 604 F.3d 636, 653 (D.C. Cir. 2010) (discussing sections 4 and 5 of the Natural Gas Act and stating that "[u]nder section 4, the pipeline bears the burden of proof. Under section 5, [the Commission] does. We often have rejected FERC's attempts to shift its section 5 burden"); *Iberdrola Renewables, Inc. v. FERC*, 597 F.3d 1299, 1301 (D.C. Cir. 2010) ("the pipeline bears the burden to show the proposed rate is reasonable in a section 4 action, whereas the shipper bears the burden to show an established rate is not in a section 5 case"))).

<sup>45</sup> *Id.* at 5 (citing, *e.g.*, 16 U.S.C. § 824d (2012)).

<sup>46</sup> *Id.* at 5-6. EPSA makes this same argument with regard to the Edwards Year 1 SSR Agreement and Edwards Year 1 Rate Schedule 43C. *Id.*

<sup>47</sup> *Id.* at 6 (citing MISO July 25 Answer at 4).

<sup>48</sup> *Id.* (citing SSR Order, 140 FERC ¶ 61,237 at P 145).

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

27. Indiana Commission is concerned that, consistent with the Complaint, MISO's interpretation of the meaning of going-forward costs in its Tariff may fail to provide adequate compensation for SSRs to ensure that they are able to continue operating reliably. According to Indiana Commission, it seemed apparent, based on the SSR Order and MISO's filing submitted in compliance with that order, that "going forward costs" would be deemed to include all costs necessary to continue operation of a facility to maintain reliability. However, Indiana Commission states that MISO's interpretation of the Tariff regarding going-forward costs is contrary to the Commission's SSR Order, which states that "limiting cost recovery in this manner would be contrary to the Commission's previous finding that SSRs should be fully compensated for any costs incurred because of their extended service."<sup>50</sup> To help resolve this uncertainty regarding the definition of going-forward costs, Indiana Commission requests that the Tariff clearly define the categories of costs that may be included in SSR compensation.<sup>51</sup>

28. Industrial Customers disagree with Ameren's argument that allowing SSRs to recover the fixed costs of existing plant is consistent with the existing Tariff. Industrial Customers contend that the existing Tariff limits SSR compensation to going-forward costs, and the Tariff's description of the cost components that will be considered in negotiating SSR compensation does not mention the embedded fixed costs sought by Ameren.<sup>52</sup> They add that MISO's proposed definition of going-forward costs in its filing to comply with the SSR Order indicates that MISO never intended to provide SSRs with the opportunity to recoup embedded costs such as those requested by Ameren.<sup>53</sup> According to Industrial Customers, MISO knows best what it intended the definition of going-forward costs to include, and Ameren is attempting to redefine MISO's intent because it stands to benefit from its own proposed definition. Industrial Customers also argue that the "subject timeframe of the operation for SSR purposes is, by definition,

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<sup>50</sup> Indiana Commission Comments at 4 (citing SSR Order, 140 FERC ¶ 61,237 at P 139).

<sup>51</sup> *Id.*

<sup>52</sup> Industrial Customers August 1 Protest at 8 (citing MISO, FERC Electric Tariff, Module C, Energy and Operating Reserve Markets, II, General Provisions, 38, General Responsibilities and Requirements, 38.2, Market Participants, 38.2.7, System Support Resources (2.0.0), § 38.2.7.h.i).

<sup>53</sup> *Id.* (citing MISO December 18 Compliance Filing, FERC Electric Tariff, Module C, Energy and Operating Reserve Markets, II, General Provisions, 38, General Responsibilities and Requirements, 38.2, Market Participants, 38.2.7, System Support Resources (3.0.0), § 38.2.7.i.ii).

prospective and not retrospective,” and Ameren’s prior investment in Edwards Unit 1 cannot have been made with the forethought of being designated an SSR after a decision to deactivate the unit.<sup>54</sup>

29. Noble Americas, Retail Energy Supply Association, and Midwest TDUs request that the Commission deny the Complaint. Noble Americas maintains that the Tariff permits SSRs to recover only going-forward costs associated with continued operations and does not authorize the additional compensation sought by Ameren. It argues that the Commission should not modify the Tariff to permit SSRs to recover the fixed costs of existing plant because market participants and customers would be forced to bear additional, unforeseen costs, which would be exacerbated if applied retroactively.<sup>55</sup> Retail Energy Supply Association adds that Ameren has voluntarily elected to retire its generator, and if Ameren cannot cease operations because of a reliability need, then Ameren should recover its going-forward costs consistent with the Tariff. Retail Energy Supply Association maintains that this compensation renders Ameren’s continued operations financially neutral.<sup>56</sup> Both Retail Energy Supply Association and Noble Americas aver that, if Ameren believes that additional compensation is necessary, it should use the MISO stakeholder process to change the Tariff.<sup>57</sup> Furthermore, Midwest TDUs state that MISO has restricted SSR compensation to going-forward costs since the TEMT II Orders.<sup>58</sup> They state that in the SSR Order, the Commission accepted MISO’s proposal to reflect in the Tariff that SSR compensation is limited to going-forward costs because “[t]his limitation is consistent with MISO’s initial description of its SSR program.”<sup>59</sup> Midwest TDUs note that Ameren did not seek rehearing of the TEMT II

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<sup>54</sup> *Id.* at 9.

<sup>55</sup> Noble Americas Protest at 13.

<sup>56</sup> Retail Energy Supply Association Protest at 10.

<sup>57</sup> *Id.*; Noble Americas Protest at 13.

<sup>58</sup> Midwest TDUs Protest at 4, 7 (citing TEMT II Order, 108 FERC ¶ 61,163 at P 368 (“[M]ISO will enter into agreements with SSR units to allow for *recovery of certain going-forward costs*, offset by expected payments for resource adequacy and revenues from energy market transactions” (emphasis added by Midwest TDUs))). Midwest TDUs add that the Commission clarified that SSRs should be fully compensated for “any costs incurred because of their extended service, including new investments necessary for environmental and other permit compliance.” *Id.* at 5 (citing TEMT II Rehearing Order, 109 FERC ¶ 61,157 at P 293).

<sup>59</sup> *Id.* at 5-7 (citing SSR Order, 140 FERC ¶ 61,237 at P 145).

Orders or the SSR Order limiting SSR compensation to going-forward costs. They add that Ameren did not protest MISO's proposed definition of going-forward costs in its filing to comply with the SSR Order and conclude that "Ameren's initial silence in the face of MISO's compliance filing is telling."<sup>60</sup>

30. Industrial Customers contend that Ameren voluntarily agreed to be bound by the terms of the Tariff, including MISO's practice of limiting SSR compensation to going-forward costs, which has applied since the inception of the SSR program.<sup>61</sup> They contend that, in the TEMT II Orders approving the SSR program, the Commission found that SSRs should be compensated for any "costs incurred because of their extended service" and should not "absorb any uncompensated going-forward costs."<sup>62</sup> Industrial Customers maintain that the Tariff revisions regarding SSR compensation accepted in the SSR Order were consistent with the TEMT II Orders. They conclude that, as a result, Ameren had no guarantee of receiving compensation for embedded costs for any future SSR units and had a reasonable expectation that it would recover only going-forward costs.<sup>63</sup> According to Industrial Customers, Ameren agreed to be bound by the terms of MISO's Tariff in order to receive the opportunity to earn market revenues via MISO's markets, but now that those benefits are subsiding with the impending retirement of Edwards Unit 1, Ameren seeks to avoid the responsibilities it undertook by becoming a market participant. Industrial Customers argue that the Commission should deny the Complaint in order to prevent Ameren from leveraging its must-run status to obtain higher compensation than it is able to obtain in MISO's markets.<sup>64</sup>

31. Hoosier-Southern Illinois and Illinois Municipal-Wabash Valley characterize the Complaint regarding the definition of "going forward costs" in the MSO Tariff as an improper collateral attack. Hoosier-Southern Illinois contend that in the SSR Order, the Commission accepted MISO's proposed Tariff language to limit SSR cost recovery to going-forward costs and required MISO to define these going-forward costs on

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<sup>60</sup> *Id.* at 4-8.

<sup>61</sup> Industrial Customers note that Ameren Generating and Ameren Marketing executed MISO's Market Participant Agreement on February 7, 2005, and February 3, 2005, respectively. Industrial Customers August 1 Protest at n.20.

<sup>62</sup> *Id.* at 4 (citing TEMT II Rehearing Order, 109 FERC ¶ 61,157 at P 293).

<sup>63</sup> *Id.* at 4-5.

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

compliance.<sup>65</sup> According to Hoosier-Southern Illinois, MISO proposes a definition of this term in its subsequent compliance filing, but Ameren did not contest the definition of going-forward costs in its comments.<sup>66</sup> With regard to Ameren's claim that interpreting the Tariff to limit cost recovery to only going-forward costs is unjust and unreasonable, Hoosier-Southern Illinois maintain that this argument is an improper collateral attack on the SSR Order that approved this Tariff language.<sup>67</sup> Illinois Municipal-Wabash Valley argue that Ameren is attempting an "impermissible end-run around" the SSR Order approving Tariff language limiting SSR compensation to going-forward costs in order to request preferential treatment. They note that no requests for rehearing of the SSR Order were filed, and Ameren failed to comment on this issue with regard to MISO's corresponding compliance filing.<sup>68</sup>

32. Several parties maintain that allowing SSRs to recover the fixed costs of existing plant would be contrary to existing MISO precedent. Hoosier-Southern Illinois and Illinois Municipal-Wabash Valley maintain that other utilities in MISO have not been granted recovery of the additional costs sought by Ameren. They note that, in the Escanaba Order, SSR compensation was limited to actual going-forward costs.<sup>69</sup> Illinois Municipal-Wabash Valley add that, in the Harbor Beach Order proceeding, MISO's proposed SSR compensation is limited to going-forward costs.<sup>70</sup> Hoosier-Southern Illinois also contend that limiting SSR compensation to going-forward costs is consistent with the Commission's repeated insistence that SSRs should remain in service on only a

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<sup>65</sup> Hoosier-Southern Illinois July 31 Protest at 2 (citing SSR Order, 140 FERC ¶ 61,237 at P 145).

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

<sup>67</sup> *Id.* at 5.

<sup>68</sup> Illinois Municipal-Wabash Valley July 31 Protest at 5.

<sup>69</sup> *See, e.g.*, Hoosier-Southern Illinois July 31 Protest at 4 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,170, at PP 24, 48 (Escanaba Order), *order on reh'g*, 144 FERC ¶ 61,128 (2013) (Escanaba Rehearing Order)).

<sup>70</sup> Illinois Municipal-Wabash Valley July 31 Protest at n.14 (citing Escanaba Order, 142 FERC ¶ 61,170; MISO, Harbor Beach SSR Compensation Filing, Docket No. ER13-1225-000 (filed April 2, 2013); MISO, Harbor Beach SSR Agreement Filing, Docket No. ER13-1226-000 (filed April 2, 2013)). *See also* *Midcontinent Indep. Sys. Operator, Inc.*, 144 FERC ¶ 61,151 (2013) (Harbor Beach Order).

short-term basis and as a last resort.<sup>71</sup> Midwest TDUs maintain that the Commission already accepted an SSR agreement that provides compensation for going-forward costs in the Escanaba Order and requests that the Commission deny the Complaint.<sup>72</sup> Public Interest Organizations contend that allowing SSRs to recover their going-forward costs is consistent with the approach taken in the Escanaba Order and Harbor Beach Order, and Ameren has not provided sufficient justification for taking a different approach for Edwards Unit 1. They add that the Commission has already declined to require MISO to adopt the cost-of-service approach to SSR compensation requested by Ameren.<sup>73</sup>

33. EPSA, Illinois Commission, Hoosier-Southern Illinois, Industrial Customers and the PJM Market Monitor rely upon precedent in other RTOs/ISOs to support their positions. EPSA, for example, contends that providing SSRs full cost-of-service compensation is consistent with Commission precedent in other RTOs/ISOs. EPSA argues that, in interpreting the meaning of going-forward costs in the Tariff, the Commission should be guided by its prior holdings in other RTO/ISO markets where the full cost-of-service has been permitted<sup>74</sup> and allowing only incremental cost recovery has been rejected.<sup>75</sup> It maintains that in ISO-NE, the Commission rejected the notion that RMR units should only receive their incremental costs, explaining that it “has historically permitted recovery of fixed costs for the discrete period in which the specified RMR units are in operation,” and that “these fixed costs are essential costs of service that [the generator] will be providing to . . . customers during the term of the Agreement, and as

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<sup>71</sup> Hoosier-Southern Illinois July 31 Protest at 4 (citing SSR Order, 140 FERC ¶ 61,237 at P 36; TEMT II Rehearing Order, 109 FERC ¶ 61,157 at P 291).

<sup>72</sup> Midwest TDUs Protest at 8.

<sup>73</sup> Public Interest Organizations Comments at 5-6 (citing SSR Order, 140 FERC ¶ 61,237 at PP 140, 145 (“We will not require MISO to adopt a cost-based, rather than negotiated, approach for determining SSR compensation. . . .”)).

<sup>74</sup> EPSA Protest at 8 (citing *Berkshire Power Co., LLC*, 114 FERC ¶ 61,099 at P 11, *on reh’g*, 115 FERC ¶ 61,253 (2006) (“providing only going forward, or minimum variable, cost recovery to [RMR] units may not allow them to be maintained in a manner in which they can continue to operate reliably, and it would defeat the purpose of the contracts which is to ensure that units are, in fact, ‘available’ to support reliability”)).

<sup>75</sup> *Id.* at 7 (citing *Mirant Kendall*, 109 FERC ¶ 61,227 at P 36; *PSEG Power Connecticut, LLC*, 110 FERC ¶ 61,441, at P 24, *on reh’g*, 113 FERC ¶ 61,210 (2005); *Bridgeport Energy*, 112 FERC ¶ 61,077 at P 36).

such, we reject [the] incremental cost approach.”<sup>76</sup> EPSA does state, however, that RMR and SSR agreements can distort market prices by understating the value of resources necessary to reliably serve load and should be used only as a last resort, and it notes that these concerns have also been raised in New York Independent System Operator, Inc. (NYISO).<sup>77</sup>

34. Illinois Commission, on the other hand, maintains that every RTO/ISO has tariff language concerning compensation for RMR units or SSRs to address the specific circumstances affecting its region. It contends that the Commission’s finding eight years ago that RMRs in ISO-NE should be compensated on a cost-of-service basis does not necessarily mean that such an outcome should apply to SSRs in MISO, particularly in light of the Commission’s recent acceptance of Tariff language regarding going-forward costs. Illinois Commission notes that in the SSR Order, the Commission declined to require MISO to adopt cost-based, rather than negotiated, compensation and asserts that nothing has changed to warrant revisiting this recent finding.<sup>78</sup> According to Illinois Commission, this finding in the SSR Order, in conjunction with the absence of a *pro forma* rule governing compensation for RMR units and SSRs, indicate that Ameren’s claim that the Tariff is unduly discriminatory is unwarranted. Illinois Commission notes that Ameren did not raise undue discrimination concerns with regard to the Tariff revisions accepted in the SSR Order. Illinois Commission concludes that the Commission should reject the Complaint.<sup>79</sup>

35. Similarly, Hoosier-Southern Illinois and Industrial Customers maintain that Ameren’s reliance on cases from other RTOs/ISOs with different tariff provisions governing cost recovery is inapposite. Hoosier-Southern Illinois argue, for instance, that in *GenOn*, the PJM tariff specifically provided for “a cost-of-service rate to recover the entire cost of operating the generating unit,” which differs from the going-forward costs

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<sup>76</sup> *Id.* (citing *Mirant Kendall*, 109 FERC ¶ 61,227 at P 36).

<sup>77</sup> *Id.* at 8 (referring to EPSA’s Comments In Support Of Complaint, Docket No. EL13-62-000 (filed May 30, 2013); Complaint Requesting Fast Track Processing of the Independent Power Producers of New York, Inc., Docket No. EL13-62-000 (filed May 10, 2013); and Comments of TC Ravenswood, LLC, Docket No. EL13-62-000 (filed May 30, 2012)).

<sup>78</sup> Illinois Commission July 31 Comments at 6-7 (citing SSR Order, 140 FERC ¶ 61,237 at P 140).

<sup>79</sup> *Id.* at 7-8.

recovered under the MISO Tariff.<sup>80</sup> Hoosier-Southern Illinois conclude that Ameren's claim that it is the victim of undue discrimination is without merit. Industrial Customers state that undue discrimination does not exist if market participants are dissimilarly situated and maintain that SSRs in MISO are not similarly-situated to generators in other RTOs/ISOs "in terms of the contractual arrangements that govern their participation."<sup>81</sup> Industrial Customers argue that the Commission has recognized that RTOs/ISOs differ in how they address must-run generation compensation and that these differences do not give rise to undue discrimination.<sup>82</sup> According to Industrial Customers, market participants agreed, or the Commission imposed, differing approaches to RMR compensation in PJM and ISO-NE, and the Commission's decisions do not bind its consideration of SSR compensation in MISO. Industrial Customers add that the Commission has not definitively ruled on whether RMRs in PJM are entitled to receive their embedded costs, which indicates that the Commission understands the differing treatment of RMR units and SSRs among the RTOs/ISOs.<sup>83</sup>

36. The PJM Market Monitor also contends that Ameren mischaracterizes the precedent in PJM regarding RMR compensation. It states that there does not appear to be any difference between the limitation of RMR cost recovery to "the entire cost of operating the generating unit" until deactivation in Part V of the PJM tariff and the limitation on SSR cost recovery to "going forward costs" in Attachment Y of the MISO Tariff. According to the PJM Market Monitor, neither PJM nor MISO permit recovery of investments made prior to a unit's decision to deactivate. With regard to the PJM RMR cases cited by Ameren, the PJM Market Monitor contends that the pending settlement in *GenOn*<sup>84</sup> and the settlement that the Commission previously accepted in *Exelon*<sup>85</sup> do not

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<sup>80</sup> Hoosier-Southern Illinois July 31 Protest at 4-5 (citing *GenOn*, 140 FERC ¶ 61,080 at P 35).

<sup>81</sup> Industrial Customers August 1 Protest at 11 (citing *Cities of Bethany*, 727 F.2d 1131, 1138 (D.C. Cir. 1984)).

<sup>82</sup> *Id.* at 11-12 (citing *PSEG Energy Resources & Trade, LLC*, 111 FERC ¶ 61,121, at PP 22-23 (2005)).

<sup>83</sup> Industrial Customers state that, in PJM, Commission approval is only needed for RMR designation if a unit does not choose to use the Default Avoidable Cost recovery method provided for in the PJM tariff. *Id.* at 12-13.

<sup>84</sup> The PJM Market Monitor contends that competing settlements in *GenOn* are pending before the Commission, and neither settlement, if accepted, would permit RMR recovery of embedded costs. According to the PJM Market Monitor, one of the pending settlements specifically excludes embedded costs from being recovered in RMR

(continued...)

support Ameren's position that these cases serve as precedent for including embedded costs in RMR compensation.

37. EPSA agrees with Ameren's argument that limiting SSR compensation to going-forward costs equates to a constitutional taking under the Fifth and Fourteenth Amendments. EPSA contends that the Commission should permit SSRs to receive full cost-of-service, as Ameren requests, because to do otherwise would be confiscatory. It states that requiring generators to remain in service without providing full compensation for their costs, including a return on investment and depreciation, is confiscatory.<sup>86</sup> According to EPSA, while the Tariff provides that levels of compensation will be negotiated with MISO, a Commission order requiring MISO to provide SSRs with full cost recovery would minimize disputes in the negotiation process and ensure that generators are willing to remain in service to maintain reliability and, thereby, minimize the need for costly transmission upgrades. EPSA also notes that permitting full cost recovery for SSRs is an appropriate incentive in light of the fact that reliance on SSRs will likely increase in the future due to economic and regulatory conditions in the MISO region.<sup>87</sup>

38. Industrial Customers, however, request that the Commission dismiss Ameren's claim that paying SSRs their going-forward costs equates to a taking under the Constitution and find that Ameren is not entitled to recover embedded costs for Edwards Unit 1. They maintain that Ameren has not been denied a property right because by agreeing to be bound by the Tariff, Ameren agreed to receive only going-forward costs under SSR agreements. Noting Ameren's argument that, under *Bluefield*, a taking occurs unless it is able to earn a "reasonable return on the value of the property used at the time

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compensation, and the other is a black box settlement that does not provide any rationale for the settlement value. PJM Market Monitor Comments at 4-5.

<sup>85</sup> *Id.* at 3-5 (citing *Exelon Generating Co., LLC*, 135 FERC ¶ 61,190 (2011) (approving settlement and establishing a revised RMR Rate Schedule) (*Exelon*)). The PJM Market Monitor contends that the settlement approved in *Exelon* includes a black box settlement amount, which does not establish precedent for recovery of embedded costs. *Id.* at 5.

<sup>86</sup> EPSA Protest at 11 (citing *Brooks-Scanlon Co. v. R.R. Comm'n*, 251 U.S. 396 (1920) (holding that a regulated entity has a constitutional right to cease unprofitable operations)).

<sup>87</sup> *Id.* at 11-12.

it is being used,”<sup>88</sup> Industrial Customers argue that allowing Edwards Unit 1 to recover its going-forward costs will provide Ameren with a reasonable return. They state that according to Ameren’s own analysis, Edwards Unit 1 was not an economical unit, was operating at a loss, and had no prospect of becoming profitable. They add that if Edwards Unit 1 were retired, Ameren would not have any expectation of recovering any embedded costs associated with Edwards Unit 1. According to Industrial Customers, Ameren is actually better off under the SSR agreement for Edwards Unit 1 as compared with retirement because Ameren is able to recover all of the going-forward costs of remaining operational. In addition, Industrial Customers argue that the cost-based approach discussed in *Bluefield* is inapplicable because Ameren has the authority to sell at market-based rates and, therefore, is not guaranteed recovery of its embedded costs. They state that applying the cost-based principles discussed in *Bluefield* in order to make a takings claim would allow Ameren to recoup costs in excess of what it would receive under its chosen market-based rate design.<sup>89</sup>

39. EPSA argues in favor of cost-of-service compensation for SSR units by equating SSR units to transmission facilities that are needed to address reliability concerns. EPSA argues that, like transmission facilities, SSRs should recover their full cost-of-service because SSRs function as short-term substitutes for transmission. It contends that utilities substitute between generation and transmission investments when developing their systems.<sup>90</sup> EPSA also maintains that the Commission has recognized that RMR or SSR agreements are often necessary to compensate for “weak” or “inadequate” transmission infrastructure, and that “RMR costs represent the real costs associated with an insufficient transmission infrastructure.”<sup>91</sup> According to EPSA, limiting SSR compensation to incremental costs, when transmission facilities meeting the same reliability need would be entitled to receive their full cost-of-service, is unduly

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<sup>88</sup> Industrial Customers August 1 Protest at 6 (citing Complaint at 20).

<sup>89</sup> *Id.* at 6-8.

<sup>90</sup> EPSA Protest at 9 (citing *AES Southland, Inc.*, 94 FERC ¶ 61,248, at 61,871 n.6 (2001)).

<sup>91</sup> *Id.* (citing *Blumenthal v. ISO New England, Inc.*, 117 FERC ¶ 61,038, at PP 66-67 (2006), *order on reh’g*, 118 FERC ¶ 61,205 (2007); *California Indep. Sys. Operator Corp.*, 90 FERC ¶ 61,345, at 62,134 (2000) (RMR units must be scheduled “because of physical limitations on the transmission grid), *order on reh’g*, 101 FERC ¶ 61,007 (2002)).

discriminatory.<sup>92</sup> Since MISO is requiring Edwards Unit 1 to remain operational until certain transmission facilities are constructed, EPSA maintains that Ameren should be “entitled to the same cost recovery as will be the owner of those transmission facilities, including recovery of costs of existing plant.”<sup>93</sup>

40. Conversely, Hoosier-Southern Illinois and Industrial Customers present arguments that rely on market-power principles to oppose allowing SSRs to recover costs that exceed their going-forward costs. Hoosier-Southern Illinois argue that depreciation, return, and taxes are not costs incurred only as a result of an SSR’s continued service and, thus, are inappropriate for inclusion in SSR compensation. They contend that providing SSRs with guaranteed recovery of all fixed and variable costs as long as the unit continues to operate would provide the SSR owner with an incentive to keep the unit in operation for as long as possible. They add that providing such an incentive is “particularly problematic where, as here, the generation owner is also a transmission owner with considerable control over whether and how quickly the underlying reliability issue is resolved.”<sup>94</sup>

41. Further, Industrial Customers argue that allowing recovery of embedded costs would allow Ameren to receive a windfall at the expense of customers in the MISO region. They contend that Ameren decided to retire Edwards Unit 1 because it was operating at a loss, and once a decision to retire a unit is made, there is no expectation of embedded cost recovery because upon retirement, the unit owner writes off the asset and takes the associated embedded costs off the books. Industrial Customers contend that MISO customers should “pay for all costs that are incurred or are necessary to run the unit after the write off occurs.”<sup>95</sup> In addition, Industrial Customers maintain that if SSRs were allowed to fully recover embedded costs, the unit owners would receive more compensation than under a market-based approach, which would provide SSRs an advantage compared to competitive units that operate under a market-based approach. They conclude that the Commission should deny the Complaint because uneconomical

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<sup>92</sup> *Id.* at 10 (citing TC Ravenswood, LLC, Comments, Affidavit of Roy J. Shanker, Docket No. EL13-62-000, at PP 10, 26 (filed May 10, 2013)).

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

<sup>94</sup> Hoosier-Southern Illinois July 31 Protest at 4.

<sup>95</sup> Industrial Customers August 1 Protest at 10.

units should not receive such a windfall simply because MISO determines that they are necessary for reliability purposes.<sup>96</sup>

42. Similarly, the PJM Market Monitor contends that Ameren's request for full cost-of-service recovery is an attempt to change the regulatory paradigm applicable to RMR assets. It states that a key characteristic of competitive markets is that investors, not customers, are at risk for investments in generating assets, and attempting to recover embedded fixed costs through RMR contracts is equivalent to investors attempting to transfer the costs of failed investments to customers when the RTO/ISO needs to keep a unit in service past its retirement for system reliability.<sup>97</sup> The PJM Market Monitor asserts that "[a]llowing generation owners to exercise the market power that they possess when they are needed to provide RMR or SSR service and to improperly transfer some portion of their investment risk to customers is not consistent with regulation through competitive markets."<sup>98</sup> It argues that a consistent regulatory regime should apply to wholesale electricity markets and that prohibiting the recovery of embedded fixed costs by RMR units prevents the exercise of market power and ensures that generators are treated fairly.<sup>99</sup>

43. Last, several parties argue that Ameren has not supported its estimate of the fixed costs of existing plant for Edwards Unit 1 under the Edwards Year 1 SSR Agreement. Illinois Municipal-Wabash Valley argue that, for this reason, the Commission should summarily dismiss the Complaint. They contend that Ameren has provided no support for how the over \$12 million in additional depreciation, return on capital investment, and income tax expenses were calculated or why these costs should be recoverable. Illinois Municipal-Wabash Valley add that Ameren's compensation arguments should be addressed via an evidentiary hearing to investigate MISO's proposed compensation for Edwards Unit 1.<sup>100</sup> Hoosier-Southern Illinois argue that Ameren has not demonstrated how it calculated the additional \$12,833,094 in compensation sought for Edwards Unit 1 or why these costs should be recoverable. Hoosier-Southern Illinois and Illinois Municipal-Wabash Valley maintain that Ameren does not indicate what return on equity it used in its calculation or whether it included the appropriate depreciation value in its

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<sup>96</sup> *Id.* at 10-11.

<sup>97</sup> PJM Market Monitor Comments at 3-5.

<sup>98</sup> *Id.* at 3.

<sup>99</sup> *Id.* at 5.

<sup>100</sup> Illinois Municipal-Wabash Valley July 31 Protest at 4-5.

nearly \$8 million annual depreciation expense adder.<sup>101</sup> Indiana Commission argues that, in moving from market-based rates to a cost-of-service rate for an SSR, Ameren should provide to the Commission supporting documentation and verification of the costs it would include in the costs of continuing operation as an SSR.<sup>102</sup>

44. Illinois Commission expresses concerns regarding the sufficiency of Ameren's cost estimates, distinctions Ameren made regarding the types of costs, and the procedure Ameren used to introduce its cost estimates into the record. Illinois Commission requests that the Commission reject the Complaint because Ameren did not provide analytical support for its requested relief, as required by section 206 of the FPA.<sup>103</sup> Illinois Commission contends that Ameren failed to provide supporting material for its cost estimates, information as to the return on equity used to develop the return on rate base, or any analysis that the return on equity is just and reasonable under current capital market conditions. According to Illinois Commission, Ameren's purported costs are almost certainly overstated because Ameren used 2011 data to support its estimates. It maintains that the rate base would be reduced in 2012 because Edwards Unit 1 would have been depreciated an additional year, unless Ameren put an amount of capital investment into Edwards Unit 1 that exceeded the amount of depreciation of the unit. Illinois Commission argues that this level of investment would be extremely unlikely because Ameren has been considering suspending operations of Edwards Unit 1 since 2011. Illinois Commission notes that, as the rate base decreases, the return and associated income tax would also decline.<sup>104</sup>

45. In the event that the Commission grants the Complaint, Illinois Commission urges the Commission to distinguish between the request for depreciation costs and the recovery of return on rate base and associated taxes. Illinois Commission contends that Ameren's argument for a return on rate base and income taxes is without merit because Ameren would have no guarantee of recovering a return on its rate base in the market and, if there is no return on rate base, there would be no income taxes due. Illinois Commission asserts that an argument could be made for recovery of some amount of depreciation expense because depreciation would still need to be accounted for and reflected in financial statements while Edwards Unit 1 remains in service. Illinois

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<sup>101</sup> Hoosier-Southern Illinois July 31 Protest at 3; Illinois Municipal-Wabash Valley July 31 Protest at 4-5.

<sup>102</sup> Indiana Commission Comments at 5.

<sup>103</sup> Illinois Commission July 31 Comments at 8, 11.

<sup>104</sup> *Id.* at 8-10.

Commission requests that, to consider Ameren's request for recovery of depreciation costs, a detailed demonstration regarding accumulated depreciation up to this point is required because Edwards Unit 1 has been operating in the market, rather than under a formal regulatory process, for a significant number of years. In the alternative to this formal cost-based analysis of the depreciation component, Illinois Commission states that the Commission could consider "a negotiated adder approach, provided that the customers who would be required to pay the adder and/or their representatives are included in the negotiation."<sup>105</sup>

46. Finally, with regard to Ameren's approach of filing support for its proposed cost recovery at the time it protested MISO's unexecuted SSR agreement for Edwards Unit 1, Illinois Commission believes that the Commission should "not look with favor upon the procedural process being employed" by Ameren.<sup>106</sup> Illinois Commission contends that Ameren should have been in possession of the support for its purported fixed cost calculations at the time of the Complaint. It argues that Ameren does not provide any basis for parties to evaluate its claims because "other parties will have the same time to respond to MISO's Unexecuted SSR Agreement Filing as A[meren]."<sup>107</sup> For example, according to Illinois Commission, the only procedural mechanism other parties would have to respond to Ameren's studies would be through the filing of an answer to Ameren's protest, which the Commission is not obligated to accept. Illinois Commission concludes that Ameren appears to be attempting to deny those who would be required to pay Ameren's requested costs the right to evaluate whether the level of those costs is appropriate. It requests that, if the Commission determines that Ameren should recover additional fixed costs, the Commission should find the Complaint deficient and order the provision of proper cost support in an appropriate filing.<sup>108</sup>

**F. Answers to MISO's Answer and Protests, Comments, and Other Answers**

47. In its August 15 Answer, Ameren argues that intervenors provide no substantive reason to exclude the disputed costs from Edwards Unit 1 SSR compensation. Ameren argues that intervenors miss the fundamental trade-off for an SSR unit that, in exchange for cost-based compensation, an SSR unit is prevented from offering its capacity above

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<sup>105</sup> *Id.* at 8-9.

<sup>106</sup> *Id.* at 10.

<sup>107</sup> *Id.* at 10-11.

<sup>108</sup> *Id.* at 11.

its variable costs and earning infra-marginal revenues. More broadly, Ameren asserts that SSR units are no longer operating in a market paradigm and that market principles do not apply to a generator in SSR status. Ameren states that, if market principles did apply, then compensation would be set at the value of lost load, which, according to Ameren, almost certainly would be higher than Ameren's proposed cost-of-service rate.<sup>109</sup> Ameren also argues that intervenors have not supported why Edwards Unit 1 should only be paid some, but not all, of the costs that the Commission has always considered to be legitimate costs of providing utility service.<sup>110</sup>

48. Ameren also argues that there is no basis in the FPA for the Commission to accept a rate that renders the utility "financially neutral." Ameren contends that the term "financially neutral" is inaccurate because every day Edwards Unit 1 operates as an SSR reduces the salvage value of the plant that can be recovered upon retirement. As such, Ameren concludes that excluding depreciation means that the going-forward cost rate is not even enough to render it financially neutral.<sup>111</sup>

49. Ameren criticizes the proposed compensation by arguing that rates composed of going-forward costs do not fit within either of the recognized regulatory regimes – those being market-based rates or cost-of-service rates. Partial cost recovery without access to market revenues, it argues, is not a recognized regulatory paradigm.<sup>112</sup> Further, in response to intervenors' claims that Commission precedent in other RTOs/ISOs is not relevant here because MISO should be free to apply its own rules, Ameren argues that these intervenors do not present a reason why generators in MISO are not similarly situated to those in other RTOs/ISOs. Ameren contends that, under the FPA, undue discrimination occurs when similarly-situated entities are treated in a discriminatory manner without sufficient foundation for that disparate treatment.<sup>113</sup>

50. Ameren also claims that it raised this SSR compensation issue with the Commission in a timely manner. Ameren explains that, in its December 18 Compliance Filing, MISO did not raise compensation issues in enough specificity to put Ameren on

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<sup>109</sup> Ameren August 15 Answer at 5-9.

<sup>110</sup> *Id.* at 9.

<sup>111</sup> *Id.* at 9-11.

<sup>112</sup> *Id.* at 11-13.

<sup>113</sup> *Id.* at 13-15.

notice of which costs would be excluded under MISO's interpretation of going-forward costs.<sup>114</sup>

51. Industrial Customers and the PJM Market Monitor take issue with EPSA's characterization of SSR/RMR units as transmission assets and reject the argument that such units should be treated comparably for recovery of embedded costs.<sup>115</sup> The PJM Market Monitor contrasts transmission and generation assets by pointing out that transmission assets are not competitive investments and that competitive markets treat transmission and generation assets differently.<sup>116</sup> Industrial Customers state that in making these claims, EPSA fails to take into account the useful life of the SSR unit. Industrial Customers argue that Ameren had the opportunity to collect the sunk costs of Edwards Unit 1 through market-based rates while it was operating the unit as a generation facility, which represents the useful life of the plant. According to Industrial Customers, the plant no longer has any useful life, as evidenced by Ameren's decision to retire the unit. Industrial Customers further note that the transmission facilities that will replace the need for the Edwards Year 1 SSR Agreement will be in the early stages of their useful lives, and will receive an opportunity to recover fixed costs because the assets are being made available for service during their useful lives. It is inappropriate, Industrial Customers aver, to compare a generating unit that is seeking to retire with an in-service transmission asset. Rather, it would be more appropriate to compare an SSR unit with a transmission asset that was seeking to retire, in which case the only economically justifiable compensation would be going-forward costs that leave the owner no worse off than had it been allowed to carry through with its decision to retire the facility.<sup>117</sup>

52. Industrial Customers also argue that EPSA ignores the advantages and disadvantages associated with market-based rates – that in some years, returns will be higher, and in some years lower, than what would be supported through cost-based rates. Industrial Customers argue that EPSA's approach would essentially provide a revenue floor for market-based rates. Industrial Customers propose that, if revenues were high, the unit owner would retain the earnings; however, if revenues were low enough to force retirement or bankruptcy and the unit was needed for reliability, the unit owner would be

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<sup>114</sup> *Id.* at 15.

<sup>115</sup> Industrial Customers August 28 Answer at 3-6; PJM Market Monitor September 23 Answer at 2-4.

<sup>116</sup> PJM Market Monitor September 23 Answer at 2.

<sup>117</sup> Industrial Customers August 28 Answer at 3-5.

guaranteed return of and on investment in the unit through the SSR program. Industrial Customers argue that just because the unit can no longer be run efficiently or profitably, the fact remains that Ameren was given the opportunity to recoup its sunk costs, and it forfeited that opportunity when it decided to retire the unit.<sup>118</sup>

53. Ameren, in its September 12 Answer to Industrial Customers' answer, states that Industrial Customers provide no basis to support their assertion that Edwards Unit 1 is fully depreciated. Ameren argues that just because a unit's continued service comes at the requirement of the RTO/ISO to maintain reliability, rather than voluntary market participation, depreciation expense is no less a legitimate cost of that continued service. Ameren also rejects the argument that it should not be permitted to recover any contribution to fixed costs now because it previously operated as a market-regulated unit. Rather, Ameren states that it has never argued that it should recover costs incurred during its time as a market-based rate unit, but instead Ameren argues that current depreciation expense for the period the unit operates in SSR status is among the costs incurred during the time of SSR service. Finally, Ameren states that Eric Seidler, the Director of Asset Management at Ameren Marketing, testified that most of the depreciation expense comes from the Boiler Plant and Accessory Electric accounts, which Ameren argues demonstrates that the depreciation expense is directly tied to the actual maintenance and use of Edwards Unit 1 during its time of SSR service.<sup>119</sup>

54. EPSA and NRG Companies contend that the PJM Market Monitor mischaracterizes the PJM tariff in its arguments that PJM does not permit full cost-of-service recovery for RMR units. EPSA and NRG Companies maintain that, in its protest, the PJM Market Monitor omits relevant language from the PJM tariff. They note that the full language of section 119 of the PJM tariff expressly provides for the possibility of a cost-of-service rate.<sup>120</sup> EPSA argues that the cost components of a cost-of-service rate

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<sup>118</sup> *Id.* at 5-6.

<sup>119</sup> Ameren September 12 Answer at 3-5.

<sup>120</sup> EPSA August 15 Answer at 5-8; NRG Companies August 15 Answer at 3-4. Section 119 of the PJM tariff states:

[A] Generation Owner with a generating unit proposed for Deactivation that continues operating beyond its proposed Deactivation Date may file with the Commission a cost-of-service rate to recover the entire cost of operating the generating unit until such time as the generating unit is deactivated . . . .

(continued...)

are well understood and that the PJM Market Monitor's interpretation is incorrect because the PJM tariff offers RMR generators a choice between cost recovery under either sections 114 and 115 or section 119 of the tariff. EPSA alleges that the PJM Market Monitor's interpretation of the language in section 119 would allow a generator to recover the same costs permitted by sections 114 and 115, which would render the option meaningless.<sup>121</sup> In addition, NRG Companies reject the PJM Market Monitor's reliance on the black box settlement value reached in the *GenOn* proceeding as evidence that RMR generators in PJM are entitled only to going-forward costs. NRG Companies explain that it is not unusual for parties to reach a settlement for less than the initially-requested amount, because actual costs may have differed from estimated costs, and recognizing the give and take of the settlement process.<sup>122</sup>

55. EPSA argues that the PJM Market Monitor's position is misguided from a policy perspective because cost-of-service rates have been the Commission's answer to market power issues in the transmission sector. EPSA argues that this fact is even more relevant because an SSR unit provides an interim solution to a reliability problem. EPSA also takes issue with the PJM Market Monitor's claim that the owner of an RMR unit seeking a cost-of-service rate is "chang[ing] the prevailing paradigm as it suits them," arguing that concerns of generators toggling between cost-based and market-based rates ignores the fact that, were it not for the SSR agreement, the unit would have permanently deactivated.<sup>123</sup>

56. The PJM Market Monitor disputes EPSA's characterization of the term "cost-of-service rate" in the PJM tariff. The PJM Market Monitor argues that EPSA cannot ignore the tariff language that follows that term and that explicitly limits cost-of-service recovery to the "entire cost of operating the generating unit until such time as the generating unit is deactivated."<sup>124</sup> The PJM Market Monitor argues that because of this

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PJM, Intra-PJM Tariffs, OATT, OATT Open Access Transmission Tariff, V, OATT V. Generation Deactivation, 119, OATT 119 Cost-of-Service Recovery Rate (1.0.0).

<sup>121</sup> EPSA August 15 Answer at 6-7.

<sup>122</sup> NRG Companies August 15 Answer at 5-7.

<sup>123</sup> EPSA August 15 Answer at 8-11 (quoting PJM Market Monitor Comments at 9-10).

<sup>124</sup> PJM Market Monitor September 23 Answer at 2-3 (quoting PJM, Intra-PJM Tariffs, OATT, OATT Open Access Transmission Tariff, V, OATT V. Generation Deactivation, 119, OATT 119 Cost-of-Service Recovery Rate (1.0.0)).

language, it is not necessary to refer to industry norms. The PJM Market Monitor further argues that EPSA's argument fails to account for the cited rationale for traditional cost-of-service ratemaking, which is necessary to attract capital. The PJM Market Monitor argues that there is no need to attract capital to provide SSR service because the assets exist, and the SSR service is only required as a stopgap measure. The PJM Market Monitor contrasts this with traditional cost-of-service ratemaking generally, which it argues concerns compensation to asset owners over a long period of service. It argues that MISO and PJM have adopted rules that conform to the new regulatory paradigm and should not be required to use concepts that no longer apply to the regulatory approach that prevails in their markets. In addition, the PJM Market Monitor argues that NRG Companies have not shown that any of the precedent granting cost-of-service recovery to RMR generators is relevant to compensation for RMR service in PJM, where the market rules were developed by stakeholders and approved by the Commission.<sup>125</sup>

57. With regard to Ameren's denial that it is attempting to leverage its SSR status, the PJM Market Monitor responds that an attempt to recover the lost value of market investments could constitute an exercise of market power. The PJM Market Monitor also takes issue with Ameren's claim that market principles do not apply to a generator on SSR status because, when running for reliability, market concepts of revenue adequacy provide no point of reference for determining whether SSR compensation is just and reasonable. Moreover, the PJM Market Monitor disagrees with Ameren's assertion that, if market principles were applicable to these units, then the compensation would be set at the value of lost load, which Ameren asserts would be higher than its proposed cost-of-service rate. By contrast, the PJM Market Monitor argues that a market-based rate for the SSR unit would be locational marginal pricing, but only when the unit produces energy. The PJM Market Monitor points out that the MISO Tariff and PJM tariff provide for compensation even when the unit does not produce energy and that no party argues that the SSR unit should be compensated exclusively through the market, because, among other reasons, the unit has market power. The PJM Market Monitor states that the solution is to compensate SSR units for their going-forward costs.<sup>126</sup>

58. The PJM Market Monitor reiterates that the PJM tariff does not allow inclusion of embedded costs in RMR compensation. It points out that PJM market rules are not needed to authorize general findings for non-market cost-of-service rates. With regard to EPSA's claim that the PJM Market Monitor's position amounts to a redundancy between cost recovery under sections 114 and 115 as compared to under section 119, the PJM Market Monitor points out that section 119 is necessary, among other things, if the level

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<sup>125</sup> *Id.* at 2-4.

<sup>126</sup> *Id.* at 4.

of *new* investment to provide RMR service going forward exceeds \$2,000,000 because the section 115 formula caps new investment at that level.<sup>127</sup>

### **G. Initial Answers to February 20, 2014 Supplement**

59. Hoosier-Southern Illinois ask the Commission to reject Illinois Power's February 20, 2014 Supplement to the Complaint. Hoosier-Southern Illinois state that, pursuant to Rule 206(f), "[u]nless otherwise ordered by the Commission, answers, interventions, and comments to a complaint must be filed within 20 days after the complaint is filed."<sup>128</sup> According to Hoosier-Southern Illinois, Illinois Power cites no precedent that would permit it to supplement a seven-months-old complaint without seeking leave of the Commission and without giving interested parties any opportunity to respond. Alternatively, Hoosier-Southern Illinois argue that, should the Commission accept the supplement, it should find that the submission of the supplement established a new filing (and thus a new refund effective date), and it should therefore notice the supplemented complaint for intervention, comments and protest.<sup>129</sup>

60. In its answer to Hoosier-Southern Illinois, Illinois Power asserts that Illinois Power is within its rights to supplement the Complaint. First, Illinois Power contends that the plain language of Rule 215 permits participants to modify their pleading at any time in a proceeding not set for hearing. Illinois Power states that Hoosier-Southern Illinois' attention is misplaced because, while Rule 206(f) applies to the manner in which one may file an initial complaint seeking Commission action, Rule 215 governs the manner in which a party may modify or amend an existing pleading.<sup>130</sup> Second, Illinois Power argues that the Commission frequently accepts supplemental complaints in matters not set for hearing.<sup>131</sup>

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<sup>127</sup> *Id.* at 4-5.

<sup>128</sup> Hoosier-Southern Illinois March 7 Answer at 4 (quoting 18 C.F.R. § 385.206(f)).

<sup>129</sup> *Id.* at 4-5 (citing *Duke Power Co.*, 57 FERC ¶ 61,215, at 61,713 (1991) (*Duke Power*)).

<sup>130</sup> Illinois Power March 21 Answer at 5-6 (citing 18 C.F.R. § 385.206, 18 C.F.R. § 215).

<sup>131</sup> *Id.* at 6 (citing *EnerNOC v. First Energy Corp.*, 135 FERC ¶ 61,027 (2011)).

61. Furthermore, Illinois Power argues that the filing of the supplement has no effect on the effective date of the Complaint. According to Illinois Power, Hoosier-Southern Illinois' reliance on *Duke Power* is misplaced because that case is neither controlling nor factually similar to the matter. Illinois Power states that, unlike in *Duke Power*, the instant matter presents no excess cost concerns. Rather, Illinois Power asserts that the supplement was filed to notify the Commission and interested parties that, in the event Illinois Power prevails in the Complaint proceeding, the revenue requirement will decrease as a result of the Dynegy, Inc. (Dynegy) acquisition.<sup>132</sup> Illinois Power adds that Hoosier-Southern Illinois neglect to bring to the Commission's attention more recent precedent, which states that, in cases involving a complaint under section 206 of the FPA, it is the Commission's "general policy," in cases involving an amended complaint, to "set the refund effective date 60 days after the date of the date of filing of the original complaint."<sup>133</sup>

62. Finally, Illinois Power states that it supports providing interested parties with notice and an opportunity to respond to the supplement to the Complaint.<sup>134</sup>

#### **H. Comments and Protests in Response to Notice of February 20, 2014 Supplement**

63. Hoosier-Southern Illinois reiterate some of the arguments made in their July 31 Protest to the Complaint. Hoosier-Southern Illinois contend that no other utility in MISO has been granted recovery of the costs that Illinois Power is seeking to recover in the Edwards Year 2 SSR Agreement. They also note that depreciation, return on rate base, and associated taxes do not fit within the definition of going-forward costs that MISO provided in the December 18 Compliance Filing.<sup>135</sup>

64. Hoosier-Southern Illinois also take issue with Illinois Power's request for a rate of return of 12.38 percent. According to Hoosier-Southern Illinois, this is the rate of return that MISO transmission owners have been allowed to use for calculation of transmission rates. Hoosier-Southern Illinois state that the service at issue is a generation service and

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<sup>132</sup> *Id.* at 7-8 (citing *Duke Power*, 57 FERC ¶ 61,215 at 61,713)

<sup>133</sup> *Id.* at 8-9 (quoting *Alliant Energy Corp. Serv. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,499, at P 24 (2005)).

<sup>134</sup> *Id.* at 9. As noted above, the Commission noticed the February 20, 2014 Supplement on March 25, 2014.

<sup>135</sup> Hoosier-Southern Illinois April 14 Protest at 3.

further note that Illinois Power does not cite any instance in which the Commission found 12.38 percent to be a just and reasonable rate of return for generation service in present economic conditions. They conclude that, if the Commission permits Illinois Power to collect a return on investment as part of its SSR revenue requirement, then the Commission should set for hearing the issue of the appropriate return to be used.<sup>136</sup>

65. Illinois Municipal-Wabash Valley similarly argue that both the Complaint and the February 20, 2014 Supplement should be dismissed because neither provides the proper support necessary in order for Illinois Power to recover the additional compensation claimed. Illinois Municipal-Wabash Valley assert that in the Escanaba Order, the costs permitted to be recovered were limited to actual going-forward costs, and no other utility in MISO has been permitted to recover the additional costs of depreciation, return on capital investment, and additional income tax compensation. They add that, as MISO stated in its answer to the Complaint, Ameren and Illinois Power cannot obtain the relief they seek because such relief is barred under the Tariff. According to Illinois Municipal-Wabash Valley, the request for additional compensation constitutes an impermissible collateral attack on prior Commission orders approving the relevant compensation provisions of the Tariff, and Ameren and Illinois Power are seeking preferential treatment.<sup>137</sup>

66. Alternatively, Illinois Municipal-Wabash Valley argue that, if the February 20, 2014 Supplement is accepted, discovery and a full evidentiary hearing are required to resolve the questions raised by the information provided by Illinois Power. As an initial matter, they assert that all claimed data inputs must be verified in discovery and subject to a full evidentiary hearing because, since neither Illinois Generating nor Illinois Marketing is a regulated utility, the data inputs are not publicly available and cannot be confirmed.<sup>138</sup> Regarding return on equity, Illinois Municipal-Wabash Valley state that the decisions upon which Illinois Power relies in supporting a return of 12.38 percent concern the sale of reactive power by an independent power producer. Illinois Municipal-Wabash Valley assert that these decisions do not apply here, where Illinois Power seeks a cost-of-service rate for the sale of system power. In addition, Illinois Municipal-Wabash Valley contend that the 12.38 percent rate of return appears high in comparison to recent trends. They further observe that, although the cost recovery exhibit states that it covers the 12-month period that ended December 31, 2012, the cost elements on the first page contain input from different periods. For example, they state

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<sup>136</sup> *Id.*

<sup>137</sup> Illinois Municipal-Wabash Valley April 14 Protest at 2-3.

<sup>138</sup> *Id.* at 4.

that all fixed operations and maintenance (O&M) and part of cash working capital are based on estimated expenses for 2014, and gross plant and accumulated depreciation are computed for 2013. Accordingly, Illinois Municipal-Wabash Valley conclude that the net depreciated plant in service for 2013 should be at least the average of the beginning of year and end of year balances of accumulated depreciation for the calendar year, which would reflect a half-year of depreciation and reduce rate base by about \$2 million.<sup>139</sup>

67. With respect to the cost of long-term debt, Illinois Municipal-Wabash Valley argue that a full evidentiary hearing is required. They state that the 7.84 percent figure provided by Illinois Power's witness appears to be roughly 200 basis points higher than it would be for a typical regulated utility. They acknowledge that this increased figure may be due to the fact that financial markets recognize the risk of deregulated markets. However, Illinois Municipal-Wabash Valley assert that, if Illinois Power wants the security of a cost-of-service rate, its return on equity and cost of long-term debt should mirror that of regulated utilities.<sup>140</sup>

68. Regarding depreciation, Illinois Municipal-Wabash Valley argue that claiming depreciation for the entire gross plant investment in a single year should not be permitted. First, Illinois Municipal-Wabash Valley argue that it provides a windfall at customers' expense. They maintain that any remaining plant value would have been written off as a loss had Edwards Unit 1 been retired, and therefore Illinois Power should not be permitted to recover the full plant value through depreciation because of two additional years of service. At most, Illinois Municipal-Wabash Valley argue, Illinois Power should be permitted to recover what would have been recovered under a standard depreciation schedule over the two-year period because any remaining depreciation would have been written off. If Illinois Power is indeed permitted to recover the entire gross plant investment in one year, however, Illinois Municipal-Wabash Valley assert that any future SSR payment must be recomputed with zero net plant in service for that service. Illinois Municipal-Wabash Valley also state that, if any depreciation expense is permitted, the amount must be correctly determined. They state that Illinois Power's claimed expense of over \$4 million for one year is too high. Specifically, they note that this amount is based upon Edwards Unit 1's share of common costs of \$591,529. However, Illinois Municipal-Wabash Valley further note that Illinois Power claims an amount ten times that (\$5,915,290) as Plant In Service Rate Base on an Edwards Production Plant of \$3,485,071.<sup>141</sup>

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<sup>139</sup> *Id.* at 4-5.

<sup>140</sup> *Id.* at 5-6.

<sup>141</sup> *Id.* at 6-7.

69. Illinois Municipal-Wabash Valley also identify concerns regarding labor costs, administrative and general (A&G) expense, and fixed O&M that they claim must be examined. They state that labor appears to assume that 100 percent of plant labor was related to fixed O&M and none related to variable O&M. They maintain that this assumption must be examined by analyzing O&M labor by production expense accounts and using the proper method to separate fixed and variable labor amounts. Regarding A&G, Illinois Municipal-Wabash Valley argue that there is no support for the \$1,065,874 Illinois Power claims or for its allocation. As with labor costs, they note that Illinois Power states it used 2012 costs to determine A&G. Regarding fixed O&M, Illinois Municipal-Wabash Valley assert that each of the claimed costs must be supported, especially the \$4.7 million turbine overhaul. They argue that support for the overhaul is necessary because its impact is exacerbated by adding one-eighth of this amount to rate base as an element of cash working capital.<sup>142</sup>

70. Finally, Illinois Municipal-Wabash Valley aver that there are questions regarding the net book value attributable to Edwards Unit 1. According to Illinois Municipal-Wabash Valley, a purchase accounting adjustment to book value would have been made due to the acquisition of Ameren Generating and Ameren Marketing by Illinois Power Holdings/Dynegy. Illinois Municipal-Wabash Valley maintain, however, that, in the order approving the merger of Dynegy and the former Ameren affiliates, the Commission never required “Dynegy and its affiliates to identify or justify the purchase accounting adjustment that was to be made, nor to submit a compliance filing with such information following the completion of the merger on the grounds that what was involved there was Ameren’s market-based rate authorizations.”<sup>143</sup> According to Illinois Municipal-Wabash Valley, Illinois Power is now seeking to recover a return on the net book value of Edwards Unit 1 under the Edwards SSR agreements, which are cost-of-service regulated contracts.<sup>144</sup> They assert that Illinois Power has not provided any explanation for either the basis of the net book value of Edwards Unit 1 or the basis upon which Illinois Power allocated the net book value reductions between Edwards Unit 1 and the other Edwards generating units.<sup>145</sup> Illinois Municipal-Wabash Valley argue that, if the Commission

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<sup>142</sup> *Id.* at 7.

<sup>143</sup> *Id.* at 7-8 (citing *Ameren Energy Generating Co.*, 145 FERC ¶ 61,034, at P 82 (2013)).

<sup>144</sup> *Id.* at 8.

<sup>145</sup> *Id.* Illinois Municipal-Wabash Valley state that “[t]he percentage of the fair market value adjustment attributed to [Edwards Unit 1] is shown as 2.90 [percent], while the corresponding percentages for [Edwards Unit Nos. 2 and 3] are shown as 21.07

(continued...)

considers allowing Illinois Power a return on rate base, Illinois Power must identify and justify the purchase accounting adjustments that were made following the merger. Illinois Municipal-Wabash Valley add that they should be permitted to conduct discovery on the net book value of Edwards Unit 1 through a full evidentiary hearing.<sup>146</sup>

71. Illinois Power argues that Illinois Municipal-Wabash Valley have not established a basis for the February 20, 2014 Supplement to be summarily dismissed. Illinois Power notes that Illinois Municipal-Wabash Valley raise the same argument in their protest filed on July 31, 2013. Illinois Power therefore incorporates by reference the arguments previously made by Ameren in Ameren's August 15 Answer in response to these arguments.<sup>147</sup>

72. Illinois Power argues that acceptance of the Complaint does not require an evidentiary hearing, and discovery is not necessary because the February 20, 2014 Supplement provides sufficiently detailed data. Regarding arguments made by Illinois Municipal-Wabash Valley asserting that a hearing is necessary because Illinois Power is not a regulated utility and the data inputs are not publicly available and cannot be confirmed, Illinois Power states that the Commission has already rejected this argument.<sup>148</sup> Illinois Power therefore maintains that the Commission may accept rates based on data inputs submitted in a filing without ordering discovery or a full evidentiary hearing.<sup>149</sup>

73. Illinois Power maintains that arguments raised by Illinois Municipal-Wabash Valley and Hoosier-Southern Illinois regarding return on equity should be rejected. According to Illinois Power, it is appropriate to use the transmission owner's 12.38 percent return on equity for the sale of reactive power because SSR service is a substitute for transmission and is in the form of the provision of reactive power. Illinois Power adds that, since it is not a publicly-traded company, it does not have the appropriate bond ratings typically used in a Discounted Cash Flow analysis for

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[percent] and 42.93 [percent], respectively, and the percentage for the Edwards plant common facilities is shown as 33.10 [percent].” *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> Illinois Power April 29 Answer at 3-4.

<sup>148</sup> *Id.* at 4-5 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 134 FERC ¶ 61,016 (2011) (January 11 Order)).

<sup>149</sup> *Id.*

determining return on equity. According to Illinois Power, the Commission has previously permitted independent power producers to use an interconnected utility's return for reactive power compensation and, as previously stated above, it is appropriate to apply this rate to Illinois Power because SSR service is a substitute for transmission service.<sup>150</sup>

74. Illinois Power responds to concerns raised by Illinois Municipal-Wabash Valley regarding the test year periods used for determining cost recovery. According to Illinois Power, the starting point was a test year for the 12 months ended December 31, 2012 because this was the most recent actual calendar year data available when costs were being negotiated with MISO. Illinois Power adds that the first adjustment to the data accounted for the decrease in Edwards Unit 1 and common plant costs as a result of the change in ownership which occurred on December 2, 2013; therefore, the cost data is necessarily year-end 2013 data.<sup>151</sup>

75. Illinois Power states that the second adjustment reflected O&M costs negotiated with and reviewed by MISO and the MISO Market Monitor. Illinois Power argues that the basis for using 2014 O&M costs is specifically set forth in Mr. Truesdel's testimony.<sup>152</sup> According to Illinois Power, with Edwards Unit 1 scheduled for retirement at the end of 2012, O&M costs necessary to ensure it would operate beyond 2012 were not incurred. Illinois Power maintains that it was therefore necessary to identify and recover the O&M costs that will be incurred in 2014 to continue to operate Edwards Unit 1.<sup>153</sup> Regarding the 7.84 percent cost of long-term debt, Illinois Power states that, contrary to assertions made by Illinois Municipal-Wabash Valley, this figure does indeed reflect the cost of long-term debt of regulated utilities as stated by Mr. Heintz in his testimony.<sup>154</sup>

76. With respect to Illinois Municipal-Wabash Valley's concerns regarding the recovery of depreciation for entire gross plant investment in a single year, Illinois Power

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<sup>150</sup> *Id.* at 5-7.

<sup>151</sup> *Id.* at 7.

<sup>152</sup> *Id.* at 7-8 (citing MISO, Edwards Year 2 SSR Agreement, Ex. MISO-1, Truesdel Test. at 8).

<sup>153</sup> *Id.*

<sup>154</sup> *Id.* at 8 (citing Illinois Power February 20, 2014 Supplement, Ex. No. IMP/IPRG-2, Heintz Test., at 6).

maintains that such recovery is appropriate. First, Illinois Power states that Edwards Unit 1 was written down on its books in connection with the December 2, 2013, change in ownership. Second, it states that the Edwards Year 2 SSR Agreement is limited to a one-year term and contains a notice process in order for MISO to enter into a new agreement. If Edwards Unit 1 is required to provide SSR service beyond 2014, Illinois Power states that it will reduce plant by the amount of depreciation expense allowed in this proceeding in any rates for future periods to avoid double recovery.<sup>155</sup> Regarding Illinois Municipal-Wabash Valley's request for an explanation for the use of the \$591,529 and \$5,915,290 figures found in the February 20, 2014 Supplement, Illinois Power states that the \$591,529 (one-tenth of gross plant) is a depreciation expense while the \$5,915,290 is gross plant. According to Illinois Power, the \$591,529 is based on the ten years of remaining useful life of the common plant.<sup>156</sup>

77. Illinois Power asserts that Illinois Municipal-Wabash Valley incorrectly assume that 100 percent of plant labor is related to fixed O&M; rather, these costs were broken out between fixed and variable, and the variable costs are not included because those costs are to be billed separately. Illinois Power also notes that A&G expense is based on actual 2012 costs, representing the most recent A&G costs for which Edwards Unit 1 had data. In response to concerns regarding the impact of the overhaul on cash working capital, Illinois Power reiterates that 2014 budgeted O&M costs, including overhaul costs, were reviewed and approved by MISO and the MISO Market Monitor, and the amount of the cash working capital is merely a function of underlying non-fuel O&M and A&G.<sup>157</sup>

78. Finally, Illinois Power responds to concerns that the net book value for Edwards Unit 1 and Illinois Power's allocation of the net book value reductions between Edwards Unit 1 and other generating units are not justified. According to Illinois Power, the percentage of the fair market value adjustments are shown as follows: Edwards Unit 1 – 2.90 percent; Edwards Unit No. 2 – 21.07 percent; Edwards Unit No. 3 – 42.93 percent; and Edwards plant common facilities – 33.10 percent. Illinois Power states that Illinois Municipal-Wabash Valley misunderstood the downward adjustment to the net book value to reflect the purchase price of the generating units. Specifically, Illinois Power states that “[t]he downward adjustment for the Edwards plant was approximately \$120.3 million.[ ] The 2.9 [percent] of the \$120.3 million was allocated to Edwards

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<sup>155</sup> *Id.* at 9.

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

<sup>157</sup> *Id.* at 10.

[Unit] 1 based on net plant, resulting in a 50 [percent] decrease in net plant for Edward[s Unit] 1 as a result of the purchase.”<sup>158</sup>

79. Illinois Municipal-Wabash Valley respond to several of the arguments made by Illinois Power. Specifically, Illinois Municipal-Wabash Valley assert that Illinois Power’s reliance on Commission precedent to support its opposition to discovery on the issue of data points is misplaced.<sup>159</sup> In addition, Illinois Municipal-Wabash Valley take issue with: (1) the proposed 12.38 percent rate of return, (2) the claimed depreciation for the entire gross plant investment in a single year, and (3) the calculation of labor-related costs. For these reasons, Illinois Municipal-Wabash Valley contend that a full evidentiary hearing is necessary.<sup>160</sup>

## **I. Discussion**

### **1. Procedural Matters**

80. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the notices of intervention and timely, unopposed motions to intervene in Docket No. EL13-76-000 serve to make the entities that filed them parties to the proceeding. Pursuant to Rule 214(d) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2013), the Commission will grant Industrial Customers’ late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

81. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept the answers filed by those parties listed in the Appendix because they provided information that assisted us in our decision-making process.

### **2. Commission Determination**

82. We deny in part and grant in part the Complaint, as supplemented by Illinois Power’s February 20, 2014 Supplement. Specifically, we deny the Complaint as to

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<sup>158</sup> *Id.* at 11.

<sup>159</sup> Illinois Municipal-Wabash Valley May 14 Answer at 2-3 (citing January 11 Order, 134 FERC ¶ 61,016).

<sup>160</sup> *Id.* at 3-4.

Ameren's argument that the term "going forward costs" in the existing Tariff can be construed to include the fixed costs of existing plant. However, we grant the Complaint and find that section 38.2.7.h of the Tariff is unjust, unreasonable, and unduly discriminatory or preferential because when MISO negotiates with a market participant to determine the level of SSR compensation, the Tariff does not allow SSRs compensation for the fixed costs of existing plant, which are recovered as depreciation expense, return on rate base, and associated taxes. Additionally, we grant the Complaint, as supplemented by the February 20, 2014 Supplement, and find that the Tariff is unjust, unreasonable, and unduly discriminatory or preferential because the Tariff provides MISO with unilateral rights to file rates under unexecuted SSR Agreements. We also establish hearing and settlement judge procedures in order to address issues of material fact with regard to the appropriate level of compensation under the Edwards Year 1 SSR Agreement and Edwards Year 2 SSR Agreement.

83. We disagree with Ameren that MISO's interpretation of going-forward costs is inconsistent with the Tariff, and therefore, we deny this argument in the Complaint. As the Commission noted in the TEMT II Orders, MISO initially proposed to allow SSRs to recover certain going-forward costs,<sup>161</sup> which MISO discussed in the associated testimony.<sup>162</sup> In the SSR Order, the Commission accepted MISO's proposal to reflect in its Tariff that "[t]he SSR Agreement will provide compensation only for going forward costs," noting that this limitation is consistent with MISO's initial description of its SSR program in 2004.<sup>163</sup> In MISO's December 18 Compliance Filing to comply with the SSR Order, which is conditionally accepted in an order issued concurrently,<sup>164</sup> MISO proposes to define these going-forward costs as "the costs that will be incurred by an SSR Unit owner or operator to remain in-service that are in excess of the costs the SSR Unit would

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<sup>161</sup> TEMT II Order, 108 FERC ¶ 61,163 at P 368 ("[M]ISO will enter into agreements with SSR units to allow for recovery of certain *going-forward costs* . . . ." (emphasis added)); TEMT II Rehearing Order, 109 FERC ¶ 61,157 at P 291 ("[N]othing in the SSR program would require a generator to absorb any uncompensated *going-forward costs* . . . ." (emphasis added)).

<sup>162</sup> MISO March 31, 2004 Filing, McNamara Test. at 49 ("[MISO] will allow for the recovery of certain going forward costs on a unit-by-unit basis. Eligible costs are costs that would be incurred by the SSR Unit owner to provide service above the costs the SSR Unit would have incurred anyway had it been retired, placed into extended reserve shutdown, or disconnected.").

<sup>163</sup> SSR Order, 140 FERC ¶ 61,237 at P 145.

<sup>164</sup> *See supra* n.9.

have incurred had it been retired or suspended.”<sup>165</sup> Ameren’s request that the Commission find that going-forward costs are equivalent to a resource’s full cost-of-service rate, including fixed costs incurred prior to the effective date of an SSR agreement, is inconsistent with the Commission’s description of going-forward costs in the SSR Order and its compliance directive, as well as previous MISO testimony describing the SSR program and MISO’s proposed definition of going-forward costs accepted in the SSR Compliance Order.<sup>166</sup>

84. Nevertheless, we grant the Complaint’s alternative request for relief and find that section 38.2.7.h of the Tariff is unjust, unreasonable, and unduly discriminatory or preferential because, when MISO negotiates with a market participant to determine the level of SSR compensation, the Tariff does not allow MISO to compensate SSRs for the fixed costs of existing plant. While the Commission has accepted a range of reasonable compensation methodologies for RMR units in RTOs/ISOs, we find that it is unjust and unreasonable to not allow SSRs to receive compensation for the fixed costs of existing plant given MISO’s authority under its Tariff to unilaterally require a generator that seeks to retire or suspend operations to remain online in order to address reliability concerns.<sup>167</sup>

85. When a generator or SCU is operating voluntarily in a competitive marketplace, such as MISO, the Commission need only provide the generator with the opportunity to recover its costs, such as the embedded costs that Ameren seeks in this proceeding, via market-based rates.<sup>168</sup> However, when a unit owner seeks to retire or suspend operations

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<sup>165</sup> December 18 Compliance Filing, FERC Electric Tariff, Module C, Energy and Operating Reserve Markets, II, General Provisions, 38, General Responsibilities and Requirements, 38.2, Market Participants, 38.2.7, System Support Resources (3.0.0), § 38.2.7.i.ii.

<sup>166</sup> SSR Compliance Order, 148 FERC ¶ 61,056 (2014) at P 484.

<sup>167</sup> MISO, FERC Electric Tariff, Module C, Energy and Operating Reserve Markets, II, General Provisions, 38, General Responsibilities and Requirements, 38.2, Market Participants, 38.2.7, System Support Resources (2.0.0), § 38.2.7 (“[I]f the Transmission Provider determines that SSR Unit status is justified for a Generation Resource or SCU, the Transmission Provider and such Market Participant *shall* enter into an SSR Agreement, in accordance with the Attachment Y-1 form of agreement . . . .” (emphasis added)).

<sup>168</sup> *E.g.*, *Bridgeport Energy*, 113 FERC ¶ 61,311 at P 29 (“[I]n a competitive marketplace, the Commission is responsible only for assuring that Bridgeport is provided the *opportunity* to recover its costs.” (emphasis in original)).

due to the unit no longer being economic but MISO categorizes a generator or SCU as an SSR and determines that the unit is the last resort option to maintain reliability, thereby requiring the generator or SCU to enter into an SSR agreement, MISO's Tariff effectively denies the generator or SCU the opportunity to recover its fixed costs of existing plant even though the generator or SCU must continue to provide utility service.<sup>169</sup> This is because under these circumstances, the generator or SCU is essentially forced into an SSR agreement under the Tariff that requires it to continue to provide utility service while only allowing it to negotiate with MISO for compensation that must not exceed its going-forward costs.

86. We disagree with protesters that allowing recovery of embedded costs would allow Ameren to receive a windfall at the expense of customers in the MISO region, or otherwise provide an incentive to keep SSRs in operation for as long as possible. Under the Tariff, MISO determines whether a resource is needed for reliability and, if so, assesses whether there are any alternatives to the continued operation of the resource pursuant to an SSR agreement; thus, MISO can use this authority to essentially force a generator or SCU to continue to provide utility service. Recovery of fixed costs under these circumstances is not a windfall. Moreover, we note that SSR agreements should only be approved as a measure of "last resort"<sup>170</sup> and "must not exceed a one-year term except in exigent circumstances."<sup>171</sup> Additionally, in the SSR Order, the Commission stated that "we expect that MISO will designate resources as SSRs only when there are *no* other SSR alternatives available to address a reliability issue prior to a resource's retirement or suspension date . . . ."<sup>172</sup>

87. As a result of our findings, we direct MISO, in a compliance filing due within 60 days of the date of this order, to revise its Tariff to reflect that SSR compensation should not exceed a resource's full cost-of-service, including the fixed costs of existing

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<sup>169</sup> While the generator or SCU may decline to enter into an SSR agreement, it can only do so if it agrees to continue operating in the market. In the SSR Order, the Commission conditionally accepted, subject to further compliance, MISO's proposed Tariff revisions in section 38.2.7.a giving resources that qualify as SSRs the option to not enter into an SSR agreement with MISO and to instead agree in writing to continue to operate by either modifying the effective date in its Attachment Y Notice or rescinding its Attachment Y Notice altogether. SSR Order, 140 FERC ¶ 61,237 at P 101.

<sup>170</sup> SSR Order, 140 FERC ¶ 61,237 at P 36.

<sup>171</sup> *Id.* P 106.

<sup>172</sup> *Id.* P 99 (emphasis added).

plant (rather than providing that this compensation must not exceed a resource's going-forward costs), effective as of the date of this order.<sup>173</sup>

88. As part of its February 20, 2014 Supplement, Illinois Power submitted supplemental information to support a full cost-of-service rate for Edwards Unit 1 under the Edwards Year 2 SSR Agreement.<sup>174</sup> We find that Illinois Power's support raises issues of material fact regarding the appropriate level of compensation that cannot be resolved based on the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.<sup>175</sup> The hearing will determine the appropriate level of compensation for Illinois Power's fixed costs of existing plant for continued service from Edwards Unit 1 under the remaining term of the Edwards Year 2 SSR Agreement (i.e., from the date of this order until the Edwards Year 2 SSR Agreement expires on December 31, 2014).<sup>176</sup> We also grant Illinois Power's request to consolidate Docket Nos. EL13-76-000, ER13-1962-000, and ER14-1210-000 for purposes of settlement, hearing and decision, as there are common issues of law and fact

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<sup>173</sup> The Commission can only make a rate increase under section 206 effective prospectively from the date of the order fixing the new rate. *See, e.g., Electrical District No. 1 v. FERC*, 774 F.2d 490, 492-493 (D.C. Cir. 1985) (*Electrical District*); *City of Anaheim v. FERC*, 558 F.3d 521, 525-526 (D.C. Cir. 2009) (*City of Anaheim*).

<sup>174</sup> Illinois Power provided further support for its full cost-of-service rate in its April 29 Answer.

<sup>175</sup> In response to Hoosier-Southern Illinois' concern that the February 20, 2014 Supplement should be noticed, we note that notice of the February 20, 2014 Supplement was issued, which provided parties with an opportunity to submit protests and interventions.

<sup>176</sup> We note that the hearing and settlement judge procedures established below in Docket Nos. ER13-1962-000 and ER14-1210-000 will also determine Ameren's compensation under the entire term of the Edwards Year 1 SSR Agreement effective January 1, 2013 and the term of the Edwards Year 2 SSR Agreement effective January 1, 2014 until the date of this order, pursuant to existing Tariff language providing that SSR agreements will provide compensation only for the unit's going-forward costs. For the period beginning on the date of this order, the level of compensation that MISO filed in the Edwards Year 2 SSR Agreement will be evaluated against the appropriate level of compensation for Illinois Power's full cost-of-service, including fixed costs of existing plant. Any rate increase above the level that MISO filed would only take effect prospectively from the date of the Commission order adopting the increased rate.

in these proceedings, and therefore, consolidation will promote administrative efficiency.<sup>177</sup>

89. In cases where, as here, the Commission institutes an investigation on complaint under section 206 of the FPA, section 206(b) requires that the Commission establish a refund effective date that is no earlier than the date a complaint was filed, but no later than five months after the filing date. Consistent with our general policy of providing maximum protection to customers and Complainants' requested relief, we will set the refund effective date at July 5, 2013.

90. Section 206(b) also requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision. Based on our review of the record, we expect that, if this case does not settle, the presiding judge should be able to render a decision within twelve months of the commencement of hearing procedures, or, if the case were to go to hearing immediately, by May 30, 2015. Thus, we estimate that if the case were to go to hearing immediately, we would be able to issue our decision within approximately eight months of the filing of briefs on and opposing exceptions, or by March 31, 2016.

91. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>178</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.<sup>179</sup> The settlement judge

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<sup>177</sup> As such, we also grant Ameren's motion to consolidate Docket Nos. EL13-76-000 and ER13-1962-000, but deny its request to also consolidate Docket No. ER13-1963-000, given our determination to accept MISO's proposed Edwards Year 1 Rate Schedule 43C in Docket No. ER13-1963-000, as amended in Docket No. ER13-1963-001, without further procedures, as explained below.

<sup>178</sup> 18 C.F.R. § 385.603 (2014).

<sup>179</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

shall report to the Chief Judge and the Commission within 30 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

92. As noted above, we grant the Complaint, as supplemented by the February 20, 2014 Supplement, and find, pursuant to the Commission's authority under section 206 of the FPA, that section 38.2.7 of MISO's Tariff is unjust, unreasonable, unduly discriminatory or preferential because it provides MISO with unilateral rights to file the rates for generators or SCUs providing utility service pursuant to unexecuted SSR agreements.<sup>180</sup> As such, consistent with Illinois Power's arguments, we find that in the future, the MISO Tariff should allow generation or SCU owners designated as SSRs to file their own revenue requirement in order to protect that generation or SCU owner's rights under FPA section 205. This is because when MISO unilaterally files a rate under an unexecuted SSR agreement that is lower than the compensation preferred by the generation or SCU owner – as occurred with regard to the Edwards Year 1 and Year 2 SSR Agreements – the Commission's ability to provide relief to the generation or SCU owner may be limited. For example, while we are establishing hearing and settlement judge procedures to determine the appropriate level of compensation under the Edwards Year 2 SSR Agreement, including the fixed costs of existing plant discussed in Illinois Power's February 20, 2014 Supplement, the Commission cannot fix a higher rate for service under the Edwards Year 2 SSR Agreement until after the hearing and settlement

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<sup>180</sup> MISO, FERC Electric Tariff, Module C, Energy and Operating Reserve Markets, II, General Provisions, 38, General Responsibilities and Requirements, 38.2, Market Participants, 38.2.7, System Support Resources (3.0.0), §§ 38.2.7.c (“If no alternative is identified as available by the Attachment Y Notice date to Retire or Suspend, then the Transmission Provider shall file the SSR Agreement with an effective date as of the Attachment Y Notice date to Retire or Suspend”), 38.2.7.e (“The Transmission Provider will file an SSR Agreement with the Commission for approval if the Transmission Provider's analysis determines that the Generation Resource or SCU is required for reliability of the Transmission System”), 38.2.7.i.i (“The Transmission Provider will propose appropriate compensation for the Market Participant owning the Generation Resources or SCUs deemed to be SSR Units.”), 38.2.7.1 (“If an SSR Unit continues to be required for reliability of the Transmission System, then the Transmission Provider will have the unilateral right to enter into a subsequent SSR Agreement by . . . negotiating and filing a new SSR Agreement at the Commission”).

judge process has concluded.<sup>181</sup> Therefore, for the period between the effective date of the Edwards Year 2 SSR Agreement and the conclusion of the hearing process, the Commission cannot apply a rate that exceeds the compensation level initially proposed by MISO due to the limits of the Commission's authority to provide retroactive relief under section 206. In contrast, if the generation or SCU owner (e.g., Illinois Power) had been able to file its higher preferred rate pursuant to FPA section 205, the Commission could potentially have accepted the rate subject to refund, thereby allowing the generator or SCU to secure an earlier effective date for its proposed rate while any necessary further procedures are conducted.

93. Therefore, pursuant to our authority under section 206 of the FPA, we direct MISO in a compliance filing due within 60 days of the date of this order to revise the Tariff to address the situation where MISO and the generation owner cannot agree on the appropriate level of compensation for an SSR agreement, effective as of the date of this order. The Tariff should provide that: (1) in instances where MISO and the generation or SCU owner cannot agree on compensation for SSR service, the generation owner or SCU owner may submit a FPA section 205 filing for the rate associated with the unexecuted SSR agreement; and (2) MISO will be required to file an unexecuted SSR agreement with the Commission that includes only the non-rate terms and conditions within 15 days after MISO and the generation or SCU owner determine that they are at an impasse regarding the appropriate level of compensation. MISO shall also make all necessary conforming revisions to the Tariff to ensure that this requirement is properly implemented.

#### **IV. Edwards Year 1**

##### **A. Edwards Year 1 SSR Agreement in Docket No. ER13-1962-000**

94. MISO states that the Edwards Year 1 SSR Agreement is the result of MISO's determination that the planned retirement of Ameren's Edwards Unit 1 facility (now owned by Illinois Power) would cause reliability issues. MISO explains that Edwards Unit 1 is a 90 MW coal-fired steam boiler located in the Peoria area of Illinois. According to MISO, on August 9, 2011, Ameren submitted an Attachment Y Notice to MISO to suspend Edwards Unit 1 as of February 6, 2012, for a period of 36 months, and on December 12, 2012, Ameren submitted a revised Attachment Y Notice to retire Edwards Unit 1, effective December 31, 2012. MISO states that it notified Ameren on

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<sup>181</sup> The Commission can only make a rate increase under section 206 of the FPA effective prospectively from the date of the order fixing the new rate. *See, e.g., Electrical District*, 774 F.2d 490 at 492-493; *City of Anaheim*, 558 F.3d 521 at 525-526.

December 17, 2012, that MISO had designated Edwards Unit 1 as an SSR unit until such time as appropriate alternatives can be implemented to mitigate reliability issues.<sup>182</sup>

95. The Attachment Y Study Report included with the filing explains that the MISO transmission planning process is a collaborative effort with participation of transmission owners and MISO in the development of the study parameters and review of the study results. It also states that Ameren Transmission Company (Ameren Transmission) conducted the analysis on behalf of MISO and provided the study results to MISO for review and comment.<sup>183</sup> MISO states that the study concluded that the proposed retirement of Edwards Unit 1 would result in violations of Ameren Transmission's local planning criteria during the summer and shoulder peak load periods until completion of transmission reinforcements that include the 345 kV Maple Ridge-Fargo Line and Maple Ridge Substation in December 2016. MISO explains that the Attachment Y Study Report shows that the existing Ameren Transmission system in the Peoria area is not adequate to withstand the suspension of operations of Edwards Unit 1, because the system could be subjected to overloads and low voltages for several North American Electric Reliability Corporation (NERC) Category C<sup>184</sup> contingency events involving coincident outage of generators (the study modeled the outages of Edwards Unit Nos. 2 and 3) or the coincident outage of a transmission line or transformer and generator.<sup>185</sup>

96. In its analysis of possible alternatives to the Edwards Year 1 SSR Agreement, the Attachment Y Study Report notes that curtailing load could mitigate some of these multiple contingency events. It further states that, although curtailing load to avert transmission overloads and low voltages for multiple outage events does not violate NERC Reliability Standards, it does violate Ameren Transmission's local planning criteria and is therefore not a recommended plan of action. The Attachment Y Study Report also assessed new generation, generation redispatch, system reconfiguration and operation guidelines, demand response, and transmission projects as possible feasible alternatives. None of the alternatives were deemed feasible.<sup>186</sup>

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<sup>182</sup> MISO, Edwards Year 1 SSR Agreement, Transmittal Letter at 2.

<sup>183</sup> *Id.* Ex. D at 6.

<sup>184</sup> NERC Reliability Standard TPL-003-0a (System Performance Following Loss of Two or More Bulk Electric System Elements (Category C)).

<sup>185</sup> MISO, Edwards Year 1 SSR Agreement Filing, Ex. D at 13-14.

<sup>186</sup> *Id.*

97. MISO states that it reviewed feasible alternatives with stakeholders, but that no alternatives other than demand response were presented. MISO states that Ameren Illinois, the primary load-serving entity in the area, identifies a large industrial load in the area that could be considered as a potential demand response alternative. MISO explains that, upon evaluation, the demand response was insufficient to resolve the voltage issues. MISO explains that this is due to the fact that reactive power can be delivered by a generator, but not by the demand response alternative.<sup>187</sup>

98. MISO states that, upon notifying Ameren of Edwards Unit 1's designation as an SSR unit, it began working with Ameren and the MISO Market Monitor to negotiate and develop the Edwards Year 1 SSR Agreement. MISO states that the Edwards Year 1 SSR Agreement was developed between MISO and Ameren for a period of 12 months beginning on January 1, 2013. MISO states that there are "novel legal issues or other unique factors" that justify departures from the Standard Form SSR Agreement and that are consistent with Commission precedent. Thus, MISO proposes several modifications in the Edwards Year 1 SSR Agreement, including, among other changes: (1) revisions to explicitly state that the Edwards Year 1 SSR Agreement may be terminated if Ameren returns Edwards Unit 1 to commercial operation; (2) new provisions indicating that Edwards Unit 1 will be subject to MISO's capacity testing requirements under Module E-1 of the Tariff and that monthly SSR payments will be proportionately reduced if the tested capacity is less either than the stated SSR capacity or the capacity stated in the outage scheduler; (3) changes necessary to align the Edwards Year 1 SSR Agreement with the current structure of the MISO markets; (4) adjustments to permit MISO to dispatch Edwards Unit 1 outside of the environmental limits set forth in section 1 of the Edwards Year 1 SSR Agreement if Ameren authorizes the additional dispatch in keeping with Ameren's fleet-wide environmental requirements; and (5) an addition to Exhibit 2 to describe how Ameren will be compensated.<sup>188</sup>

99. MISO states that the Edwards Year 1 SSR Agreement is being filed unexecuted, at Ameren's request, due to Ameren's and MISO's inability to come to an agreement on the amount of compensation Ameren should receive. MISO maintains that its Tariff provides for only "going forward costs" as compensation for operating under an SSR agreement. MISO states that it and the MISO Market Monitor reviewed the financial operating cost information provided by Ameren for Edwards Unit 1 and agreed that a monthly availability payment of \$750,070 is equitable compensation for maintaining Edwards Unit 1 in operational status. The information provided by MISO in supporting testimony shows that compensation for Edwards Unit 1 is based on 2011 costs for all

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<sup>187</sup> *Id.* Transmittal Letter at 7.

<sup>188</sup> *Id.* at 3-6.

categories except O&M. O&M costs are based on 2013 budgeted O&M expenses. MISO states that additional compensation, based on a per MWh charge, is provided if Edwards Unit 1 is dispatched. The Edwards Year 1 SSR Agreement provides that this per MWh charge will be comprised of Ameren's production costs and operating reserve costs for the amount of actual energy injections in each instance that MISO dispatches Edwards Unit 1 for system reliability, including a \$6.21 per MWh component for pollution control costs, less any market revenues.<sup>189</sup>

100. MISO requests an effective date of January 1, 2013 for the Edwards Year 1 SSR Agreement, noting that, pursuant to MISO's request, Ameren has maintained the availability of Edwards Unit 1 since that date. MISO states that the complexities of working through the notification, evaluation, decision-making, and negotiation process has resulted in this late filing of the agreement. MISO states that if the effective date is not granted, then Ameren will have provided SSR service on an uncompensated basis for months. MISO requests that the requested effective date be granted either through waiver of the Commission's prior notice requirement, or by treating the Edwards Year 1 SSR Agreement as a late-filed service agreement. MISO requests that, if the Commission treats the Edwards Year 1 SSR Agreement as a late-filed service agreement, it limit Ameren's revenue recovery to variable O&M costs from January 1, 2013 to August 10, 2013, the date on which the service agreement would be effective under a 30-day rule for service agreements, so that Ameren would not be required to operate at a loss.<sup>190</sup>

**B. Edwards Year 1 Rate Schedule 43C in Docket No. ER13-1963-000**

101. In the Edwards Year 1 Rate Schedule 43C, MISO originally proposed to allocate, on a *pro rata* basis, the Edwards Year 1 SSR Agreement costs among those load-serving entities that require the operation of the SSR Unit for reliability purposes consistent with an energy-based cost allocation mechanism.<sup>191</sup> MISO explains that an energy-based cost allocation mechanism ensures (1) recovery from entities that withdraw energy during the contract period, and (2) all customers taking service would be allocated SSR costs. MISO adds that an energy-based cost allocation mechanism is appropriate for Edwards Unit 1 because the unit is being prevented from retiring to address a local reliability

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<sup>189</sup> *Id.* at 10-11.

<sup>190</sup> *Id.* at 8-10.

<sup>191</sup> Allocation of SSR Costs Associated with a Change in Status for Edwards Unit No. 1, MISO Rate Schedule No. 43C, Transmittal Letter, Docket No. ER13-1963-000, at 2-3 (July 11, 2013).

problem.<sup>192</sup> Furthermore, as with the Edwards Year 1 SSR Agreement, MISO requests a January 1, 2013 effective date for Edwards Year 1 Rate Schedule 43C. MISO's reasons for requesting waiver of the Commission's 60-day prior notice requirement for Edwards Year 1 Rate Schedule 43C are identical to the reasons MISO requests the waiver for the Edwards Year 1 SSR Agreement.<sup>193</sup> As noted below, MISO revised original Rate Schedule 43C in response to a Commission staff deficiency letter dated August 27, 2013 (Deficiency Letter).

**C. Comments and Protests**<sup>194</sup>

102. Some commenters support the Edwards Year 1 SSR Agreement as filed. Midwest TDUs urge the Commission to accept the Edwards Year 1 SSR Agreement as filed, arguing that the compensation provided in the agreement is consistent with the Tariff.<sup>195</sup> Ameren states that its protest, described below, is limited to the issue of SSR compensation, and that Ameren agrees with and supports MISO's filing insofar as Ameren agrees an SSR agreement is appropriate for Edwards Unit 1. Ameren also supports the proposed effective date of January 1, 2013. Further, Ameren agrees with MISO's representation that the fixed component of the compensation in the Edwards Year 1 SSR Agreement accurately represents MISO's definition of fixed incremental going-forward costs for Edwards Unit 1.<sup>196</sup>

103. In contrast, protestors raise concerns about the need for the Edwards Year 1 SSR Agreement. For example, Illinois Commission states that the record indicates that the Edwards Year 1 SSR Agreement is not needed to maintain compliance with applicable regional reliability entity standards or NERC Reliability Standards and that Edwards Unit 1 has only been designated as an SSR unit to meet Ameren Transmission's local planning criteria. Illinois Commission states that it is unclear whether Ameren Transmission or MISO conducted the required reliability assessment regarding the retirement of Edwards

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

<sup>193</sup> *Id.* at 4-6.

<sup>194</sup> Because MISO revised original Rate Schedule 43C in response to the Deficiency Letter, this order does not summarize or address any arguments made by parties with regard to the energy-based cost allocation mechanism found in the original Edwards Year 1 Rate Schedule 43C.

<sup>195</sup> Midwest TDUs Protest at 7.

<sup>196</sup> Ameren Protest at 10.

Unit 1, and requests that the Commission direct MISO to clarify who conducted the assessment. In addition, Illinois Commission requests that the Commission direct MISO to clarify the date of the Attachment Y Study Report.<sup>197</sup> Illinois Commission points out that NERC Reliability Standards permit controlled and limited load shedding under certain Category C contingencies, but Ameren Transmission's local planning criteria do not. Illinois Commission acknowledges that MISO's Business Practices Manuals state that local planning criteria will be respected in evaluating the need for an SSR agreement. However, Illinois Commission argues that the consequences of failure to achieve different reliability standards are not the same, explaining that it is not unreasonable to consider whether the additional cost of achieving the level of reliability established in Ameren Transmission's local planning criteria is worth the cost of the Edwards Year 1 SSR Agreement from the ratepayers' perspective. Thus, Illinois Commission requests that the Commission take note of the fact that Edwards Unit 1 is not needed to meet either NERC or regional reliability entity standards, but rather is needed because if Edwards Unit 1 is not available, voltage issues could arise under certain low-probability multiple contingency events and Ameren Transmission's local planning criteria do not permit any shedding of load in those circumstances. Illinois Commission requests that the Commission consider whether imposing the costs of the Edwards Year 1 SSR Agreement on ratepayers under these circumstances is just and reasonable.<sup>198</sup>

104. Illinois Commission, Public Interest Organizations, and Noble Americas contend that MISO did not fully explore all alternatives to the Edwards Year 1 SSR Agreement. Illinois Commission is concerned with what appears to be an increasing number of SSR agreements. Illinois Commission argues that, given the level of costs for these SSR agreements, consumers would be better served if MISO were to adopt a more formalized, comprehensive, and market-based process for the exploration of alternatives to SSR agreements.<sup>199</sup> Noble Americas claims that MISO provided only a perfunctory analysis for why the four alternatives evaluated could not ensure system reliability. Noble Americas argues that, therefore, MISO should meaningfully evaluate and explain such alternatives, as anything less will erode the standard that SSR agreements are a measure of last resort.<sup>200</sup> Public Interest Organizations argue that the Commission should require MISO to look at a combination of feasible alternatives – including demand response and potential upgrades to provide additional voltage support – and determine the cost-

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<sup>197</sup> Illinois Commission July 31 Comments at 20.

<sup>198</sup> *Id.* at 13-15.

<sup>199</sup> *Id.* at 20-21.

<sup>200</sup> Noble Americas Protest at 10-12.

effectiveness of the voltage upgrades and demand response as compared to the requested Edwards Year 1 SSR Agreement.<sup>201</sup>

105. Illinois Commission points out that the Attachment Y Study Report states that the evaluation of the proposed unavailability of Edwards Unit 1 was limited to summer peak conditions only, yet MISO states in its transmittal letter that the analysis concluded that Edwards Unit 1 was needed during both summer and shoulder peak load periods. Illinois Commission requests that the Commission direct MISO to reconcile this apparent inconsistency. Illinois Commission also argues that MISO failed to address why the peak period contingency violations identified in the Attachment Y Study Report could not be addressed through an SSR agreement of less than one year. Thus, Illinois Commission requests that the Commission direct MISO to justify the proposed term of the Edwards Year 1 SSR Agreement, including the nexus between the proposed duration of the agreement and the underlying reliability need for it.<sup>202</sup>

106. Protestors also raise a number of concerns regarding the proposed level of compensation for Edwards Unit 1. For example, Illinois Commission asserts that the Edwards Year 1 SSR Agreement permits Ameren to recover O&M costs in the 2013 agreement for investments that may, or may not, be needed in 2014.<sup>203</sup> Hoosier-Southern Illinois and Illinois Municipal-Wabash Valley argue that MISO, in calculating the proposed rate, did not explain why it mixed 2011 and 2013 costs, rather than using a single test year. Thus, these protestors request that the Commission set the matter for hearing so that a proper examination of the proposed rate can be made.<sup>204</sup>

107. Illinois Commission requests that the Commission direct MISO to explain the rationale for basing its pollution control cost adder (\$6.21 per MWh for every hour the plant is dispatched for reliability) on Ameren's fleet-wide pollution control expense allocable to Edwards Unit 1, rather than the actual pollution control expense incurred by the unit.<sup>205</sup>

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<sup>201</sup> Public Interest Organizations Comments at 6-8.

<sup>202</sup> Illinois Commission July 31 Comments at 23-24.

<sup>203</sup> *Id.* at 11-13. *See also* Public Interest Organizations Comments at 10-11; Prairie Power Comments at 4.

<sup>204</sup> Hoosier-Southern Illinois July 31 Protest at 5; Illinois Municipal-Wabash Valley July 31 Protest at 3-4.

<sup>205</sup> Illinois Commission July 31 Comments at 13.

108. Public Interest Organizations allege that Dynegy, the then-prospective purchaser of Edwards Unit 1, had announced plans to upgrade Edwards Unit 1's environmental controls for particulate matter in 2014. Public Interest Organizations argue that MISO has not discussed this potential upgrade, including: (1) whether it is needed to maintain compliance with applicable legal requirements; (2) how much it would cost; or (3) whether work on the upgrade would interfere with the unit's SSR availability. Public Interest Organizations are also concerned that if the upgrade is not completed, then Edwards Unit 1 may be unable to comply with environmental requirements in violation of MISO's Tariff. Last, Public Interest Organizations want to ensure that any environmental upgrade costs would be refunded if Edwards Unit 1 returns from retirement.<sup>206</sup>

109. In contrast to other protestors who assert that the proposed compensation for Edwards Unit 1 is too high, Ameren instead contends that the proposed compensation is too low. In its protest, Ameren raises the same compensation arguments that it raises in the Complaint. For example, Ameren asks the Commission to find that the SSR rate should not be limited to its incremental costs of operation, or a narrow application of "going forward costs" as defined by MISO. Ameren states that the Commission should find that the fixed costs of existing plant – recovered as depreciation expense, return on rate base, and associated taxes – should be included in SSR compensation for Edwards Unit 1. Ameren states that, therefore, the Commission should conditionally accept the Edwards Year 1 SSR Agreement and order a compliance filing to revise the monthly SSR payment to include the fixed costs of existing plant.<sup>207</sup>

110. Ameren also states that the Commission should order revisions to the variable cost formula to ensure that certain MISO charges do not result in Edwards Unit 1 providing SSR service at a loss. Specifically, Ameren explains that the settlement formula contained in Exhibit 2 to the Edwards Year 1 SSR Agreement does not net out MISO administrative charges, local balancing authority cost recovery charges, Revenue Sufficiency Guarantee charges, Excessive/Deficient Energy Deployment Charges, and Contingency Reserve Deployment Failure Charges to which Ameren will be subject solely as a result of Edwards Unit 1's continued operation at MISO's request. Thus, Ameren states that MISO should net these charges out when calculating the variable costs it takes Edwards Unit 1 to operate when dispatched.<sup>208</sup>

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<sup>206</sup> Public Interest Organizations Comments at 6-10.

<sup>207</sup> Ameren Protest at 10-11.

<sup>208</sup> *Id.* at 12-14.

111. Illinois Commission states that it supports the Edwards Year 1 SSR Agreement's requirement that Ameren offer Edwards Unit 1 capacity into MISO's Planning Resource Auction. However, Illinois Commission requests that the Commission direct MISO to explain how this requirement would work due to the inconsistency between the SSR agreement term, which operates on a calendar year basis, and the Planning Resource Auction commitment term, which operates from June 1 through May 31 of the following year. Illinois Commission also requests that the Commission direct MISO to clarify its use of the term "operation" in section 9.E of the Edwards Year 1 SSR Agreement.<sup>209</sup> Illinois Commission explains that it presumes that the charges referred to in section 9.E are not references to the settlements for unit operation described in sections A or B of Exhibit 2, but rather that section 9.E intends to refer to the compensation amounts described in the first paragraph of Exhibit 2, which compensate Ameren for standing ready to operate as an SSR unit when called upon by MISO for reliability purposes.<sup>210</sup>

112. Illinois Commission expresses concerns regarding the timeline for MISO to conduct the Attachment Y Reliability Study. Specifically, Illinois Commission states that, given that Ameren first submitted its Attachment Y Notice to suspend operation of Edwards Unit 1 to MISO in August 2011, it is unclear why MISO was not able to provide its reliability analysis until December 2012. Illinois Commission further notes that Ameren did not withdraw its Attachment Y Notice to suspend until October 19, 2012, when it submitted a replacement Attachment Y Notice to retire, rather than suspend, Edwards Unit 1. Illinois Commission claims that this means Ameren did not give the requisite 26-week notice for retirement, since it requested a retirement date approximately two months after the submission of its Attachment Y Notice to retire.<sup>211</sup> Illinois Municipal-Wabash Valley also argue that Ameren failed to provide notice of its retirement 26 weeks prior to its proposed retirement date.<sup>212</sup>

113. Illinois Commission contends that if MISO had completed its reliability analysis on Ameren's suspension request as required by the Tariff, MISO and Ameren would have had more than 12 months to negotiate the SSR compensation, prior to the date Edwards Unit 1 needed to be available as an SSR. Illinois Commission argues that ratepayers

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<sup>209</sup> Section 9.E of the Edwards Year 1 SSR Agreement states, "MISO will charge the [load-serving entities] that benefit from operation of the subject SSR Unit in accordance with MISO Tariff Schedule 43C."

<sup>210</sup> Illinois Commission July 31 Comments at 25-26.

<sup>211</sup> *Id.* at 16-18.

<sup>212</sup> Illinois Municipal-Wabash Valley July 31 Protest at 7-9.

should not be held responsible for payments if the negotiation timeframe for SSR compensation was shortened due to errors by MISO (i.e., failure to provide the Attachment Y Reliability Study report within the required timeframe following Ameren's notice to suspend) or Ameren (i.e., failure to provide the requisite 26-week notice of its intention to retire). Thus, Illinois Commission requests that the Commission require MISO and/or Ameren to provide a detailed explanation regarding the timelines, processes, and effective dates for Ameren's Attachment Y Notices and MISO's reliability analyses associated with both the planned suspension and planned retirement of Edwards Unit 1.<sup>213</sup>

114. Illinois Municipal-Wabash Valley, Noble Americas, and Retail Energy Supply Association argue that MISO has not justified a waiver of the Commission's prior notice requirements to permit the rate to go into effect January 1, 2013. Illinois Municipal-Wabash Valley state that, absent extraordinary circumstances, the Commission will not grant waiver of notice when an agreement for new service is filed on or after the day service has commenced. Illinois Municipal-Wabash Valley contend that the Commission should not now change policy on the basis of vague references to self-created complexities of decision-making to waive prior notice of rates in effect for over six months before filing. Further, Illinois Municipal-Wabash Valley, Noble Americas, and Retail Energy Supply Association argue that MISO's willingness to engage in an additional six months of negotiations, rather than filing an unsigned agreement based on the Standard Form SSR Agreement, should not be allowed to serve as a basis for a waiver of the Commission's prior notice requirements. Retail Energy Supply Association contends that Attachment Y cannot be read to permit generation owners to drag out negotiations and then create a blank check for collection of reliability payments retroactively. According to Illinois Municipal-Wabash Valley, MISO's reliance upon the Commission's decision in the Escanaba Order to grant waiver of prior notice is insufficient. Illinois Municipal-Wabash Valley claim that the facts in that case were different from the facts here – that (1) the City of Escanaba provided the requisite 26-week notice; (2) the filing was made less than three months after the proposed effective date; and (3) the agreement was filed executed.<sup>214</sup>

115. Noble Americas and Retail Energy Supply Association claim that, if the Commission accepts the waiver of the prior notice requirement, it would impose new retroactive rates, terms, and conditions on customers who did not have adequate prior notice. Illinois Municipal-Wabash Valley and Retail Energy Supply Association request

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<sup>213</sup> Illinois Commission July 31 Comments at 18-20.

<sup>214</sup> Illinois Municipal-Wabash Valley July 31 Protest at 6-7; Noble Americas Protest at 5-8; Retail Energy Supply Association Protest at 6-7.

that the Commission require that any retroactive collections be made incrementally on a going-forward basis, to avoid subjecting customers to rate shock.<sup>215</sup> Retail Energy Supply Association also contends that the Commission should direct MISO to file SSR agreements and corresponding rate schedules in a more timely manner, and further, that MISO should provide advance notice that a potential SSR unit has been identified.<sup>216</sup> Noble Americas further argues that MISO's reliance on retroactive effective dates is troubling, and requests that the Commission require MISO to commit to several things. First, Noble Americas argues that MISO should cease seeking effective dates that pre-date the requisite filing with the Commission for SSR agreements that materially depart from the Standard Form SSR Agreement and do not meet the Commission's standard for an FPA section 205 waiver. Second, MISO should disclose to market participants and the Commission within five business days of execution those SSR agreements that comport with the Standard Form SSR Agreement. Third, MISO must provide stakeholders with notice of the range of costs it could incur as a result of a particular SSR designation. Fourth, MISO should provide timely and detailed notice of what reliability needs MISO is attempting to address when those reliability needs become known to MISO, as well as alternatives MISO is considering to meet the reliability needs. Fifth and finally, the Commission should direct MISO to participate in a technical conference at the Commission to explain why MISO believes that retroactive approval of materially modified SSR agreements is just and reasonable, under what circumstances retroactive approval of an SSR agreement is or is not warranted, what assistance MISO needs to promptly file SSR agreements upon execution, and to develop a process by which MISO can provide its stakeholders with more notice and involvement in the SSR designation effort.<sup>217</sup>

116. Finally, Illinois Commission requests that the Commission direct MISO to explain what it means by the term "variable operations and maintenance costs" as MISO uses that term in its transmittal letter.<sup>218</sup> Illinois Commission states that the effective date

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<sup>215</sup> Illinois Municipal-Wabash Valley July 31 Protest at 9-10; Retail Energy Supply Association Protest at 7-9.

<sup>216</sup> Retail Energy Supply Association Protest at 9.

<sup>217</sup> Noble Americas Protest at 4-5.

<sup>218</sup> *Id.* at 26. The MISO Edwards Year 1 SSR Agreement Transmittal Letter states:

To the extent that the Commission believes that waiver of prior notice is not appropriate, MISO respectfully requests that the Commission treat the SSR Agreement as a late-filed service agreement, limiting Ameren's

(continued...)

alternatives that MISO presents cannot be properly evaluated without this additional clarification.

**D. Answers**

117. MISO responds to Illinois Commission's concerns regarding its use of Ameren Transmission's local planning criteria by explaining that MISO's consideration of local transmission owner planning criteria is required by its Tariff and Business Practices Manuals. MISO also clarifies for Illinois Commission that the local transmission owner necessarily provides input into MISO's determinations under the Tariff, but that MISO completed its reliability analysis, as the filing states, when it performed its independent review and comment on the study.<sup>219</sup>

118. MISO argues that, contrary to the claims of some protestors, it provided stakeholders with sufficient opportunities to provide alternatives to the Edwards Year 1 SSR Agreement. MISO states that these protestors are vague regarding the process that they seek regarding MISO's consideration of alternatives, including the added time that they would commit to the process. Further, MISO states that it requested that stakeholders provide alternatives, yet only one potential alternative was presented. MISO further explains that, as documented in the Attachment Y Study Report, it independently studied the potential alternatives to the Edwards Year 1 SSR Agreement and found that none of the alternatives was capable of maintaining system reliability in the required time frame. In response to Illinois Commission's concerns regarding the increasing number of SSR agreements and the costs of these agreements to electricity consumers in the Ameren Illinois Local Balancing Authority Area, MISO asserts that Illinois Commission provides neither a general proposal that might be followed in the future nor a specific criticism of MISO's consideration of alternatives related to Edwards Unit 1.<sup>220</sup>

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revenue recovery to variable operations and maintenance costs from January 1, 2013 to August 10, 2013, the date on which the service agreement would be effective under the 30-day rule for service agreements, so that Ameren would not be required to provide this reliability service at a loss.

MISO, Edwards Year 1 SSR Agreement, Transmittal Letter at 9.

<sup>219</sup> MISO August 15 Answer at 12-13.

<sup>220</sup> *Id.* at 10-12.

119. MISO reiterates the argument it makes in its answer to the Complaint, that MISO has properly interpreted and applied its own Tariff to include only going-forward costs. MISO agrees with Ameren that the net effect of the administrative and other charges described by Ameren falls within the definition of going-forward costs under its Tariff. Thus, MISO states that it is agreeable to inclusion of a substitute Exhibit 2, attached to MISO's answer, as a description of the compensation that should be provided for Edwards Unit 1.<sup>221</sup> In response to Illinois Commission's request for clarification of the term "operation" used in section 9.E of the Edwards Year 1 SSR Agreement, MISO states that the subject of Schedule 43C is the entirety of the compensation provided to support SSR service by Edwards Unit 1. MISO further states that it is agreeable to substitution of the words "extended service" for "operation" in section 9.E.<sup>222</sup> Furthermore, in response to protests that it has not supported the costs included in the filed Edwards Year 1 SSR Agreement, MISO states that it negotiated compensation with Ameren based on information on the operations of Edwards Unit 1, and provided evidence supporting the compensation amounts in the filing. MISO points out that costs for SSR units are based on a negotiated, rather than cost-based, approach. MISO also explains that the O&M expenditures that Illinois Commission questions are for amounts incurred during 2013, not in subsequent years.<sup>223</sup>

120. MISO disagrees with protests arguing that the requested effective date is not justified. MISO states that Commission precedent in the Escanaba Order supports the January 1, 2013 effective date because any later date would require Ameren to absorb going-forward costs incurred after January 1, 2013, when it is uncontested that Edwards Unit 1 began operating as an SSR unit to maintain system reliability.<sup>224</sup> MISO further contends that the Edwards Year 1 SSR Agreement is the result of extensive negotiations between MISO and Ameren to resolve potential disputes.

121. Illinois Municipal-Wabash Valley contend that Ameren's argument concerning full cost-of-service compensation for the fixed costs of existing plant should be rejected because it attempts to bolster Ameren's previous FPA section 206 Complaint with evidence that should have been supplied when Ameren filed the Complaint in Docket - No. EL13-76-000. Illinois Municipal-Wabash Valley explain that, because the Complaint demanded that the fixed costs of existing plant be included in SSR

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<sup>221</sup> *Id.* at 6-8.

<sup>222</sup> *Id.* at 16.

<sup>223</sup> *Id.* at 13-15.

<sup>224</sup> *Id.* at 9 (citing Escanaba Order, 142 FERC ¶ 61,170 at PP 84-85).

compensation, it was Ameren's obligation to include with the Complaint all relevant supporting documents and evidence, such as the testimony and other exhibits that Ameren purports quantify the fixed costs of existing plant for Edwards Unit 1. Illinois Municipal-Wabash Valley state that, by failing to file such evidentiary support with the Complaint, and instead filing it in a protest after the time to answer the Complaint had passed, Ameren denied parties the opportunity to challenge these documents in the Complaint proceeding.<sup>225</sup> Ameren responds by stating that, while it would have preferred a procedure where a generator needed for reliability proffers its own FPA section 205 filing and supports its costs, Ameren followed the Tariff by allowing MISO to file the unexecuted Edwards Year 1 SSR Agreement. Ameren adds that, by filing the Complaint in advance of MISO's filing, Ameren gave customers even more notice of Ameren's position.<sup>226</sup> Illinois Municipal-Wabash Valley also argue that, because Ameren's costs are without support, if the Ameren February 20, 2014 Supplement is accepted, a full evidentiary hearing is required as to Ameren's claims.<sup>227</sup>

122. In response, Ameren states that the most efficient way to address Illinois Municipal-Wabash Valley's concerns is to grant the Complaint and direct MISO to file a revised SSR agreement reflecting the additional rate components.<sup>228</sup>

123. In its August 15 Answer to certain comments and protests, Ameren alleges that MISO should not receive the benefit of the FPA section 205 burden of proof for the Edwards Year 1 SSR Agreement because, as the public utility providing the jurisdictional service, Ameren's proffered cost-of-service rate contained in its protest, not MISO's, should be the rate the Commission reviews to be just and reasonable. Ameren explains that, under section 205 of the FPA, the Commission must accept a rate filed by the utility if the Commission finds that the rate is just and reasonable. According to Ameren, applying this standard to MISO's filing in this case is problematic because MISO is the customer taking service, not the public utility providing jurisdictional service. Thus, Ameren argues that, in order to accept the Edwards Year 1 SSR Agreement, the Commission must first find that Ameren's proposed SSR compensation is unjust and

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<sup>225</sup> Illinois Municipal-Wabash Valley August 13 Answer at 4-5.

<sup>226</sup> Ameren August 23 Answer at 3-4.

<sup>227</sup> Illinois Municipal-Wabash Valley August 13 Answer at 5-8.

<sup>228</sup> Ameren August 23 Answer at 4-5.

unreasonable due to its inclusion of depreciation, return on rate base, and income taxes.<sup>229</sup>

124. Also in its August 15 Answer, Ameren claims that the Commission should grant MISO's requested waiver of the Commission's 60-day notice requirement and grant the requested January 1, 2013 effective date. First, Ameren states that MISO complied with its Tariff by posting to its Open Access Same-Time Information System on January 10, 2013 that Edwards Unit 1 had been designated as needed for reliability. Second, Ameren avers that Edwards Unit 1 has continued operation as an SSR at MISO's direction since January 1, 2013 and, pursuant to the Tariff, should be compensated accordingly. Third, Ameren asserts that granting waiver of the notice requirement is consistent with the Commission's findings in the Escanaba Order. Finally, Ameren notes that it is MISO that made the SSR designation, not Ameren.<sup>230</sup>

#### **E. Deficiency Letter and Response**

125. On August 27, 2013, Commission staff issued a Deficiency Letter requesting more information from MISO. First, the Deficiency Letter asked MISO to explain why the Attachment Y Reliability Study modeled most of the nearby peaking units as offline.<sup>231</sup> MISO responds that the peaking units remained offline since the load levels in the study case did not require the use of peaking units.<sup>232</sup> The Deficiency Letter also asked MISO to provide a list of relevant units that had previously submitted Attachment Y applications, and to explain why those units were modeled offline.<sup>233</sup> In response, MISO provides the lists of units, but requests confidential treatment of the list. MISO explains that those units were all previously approved for suspension or retirement.<sup>234</sup> Additionally, the Deficiency Letter asked MISO to explain how it evaluated alternatives to the Edwards Year 1 SSR Agreement in the Attachment Y Reliability Study.<sup>235</sup> MISO reports that, in assessing system reconfiguration options to alleviate loading of the

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<sup>229</sup> Ameren August 15 Answer at 4-5.

<sup>230</sup> *Id.* at 16-20.

<sup>231</sup> Deficiency Letter at 2.

<sup>232</sup> MISO Response at 2.

<sup>233</sup> Deficiency Letter at 2.

<sup>234</sup> MISO Response at 2.

<sup>235</sup> Deficiency Letter at 2.

Tazewell transformers and Tazewell – Flint Line, it found no practical solution without shifting the flows to cause overloads elsewhere due to the nature of the Peoria area load pocket. MISO further explains that its analysis showed that demand response does not resolve the transmission issues even with transmission reinforcements that are planned to be in place during the 2015-2016 timeframe.<sup>236</sup>

126. With regard to costs, the Deficiency Letter requested that MISO explain how it derived the budgeted 2013 O&M costs.<sup>237</sup> MISO's response includes an explanation of each O&M project that makes up the \$5,236,046 O&M budget. These projects include significant repairs, including \$950,000 to procure parts and set up for an overhaul of the turbine; \$500,000 to replace condenser tubes; and \$500,000 to repair a leaking boiler.<sup>238</sup> The Deficiency Letter also asked MISO to provide a full account of Ameren's costs for Edwards Unit 1 for the years 2010 through 2012.<sup>239</sup> In response, MISO explains that it used budgeted 2013 O&M costs, rather than an average of historical O&M costs, because the O&M costs for 2013 are significantly greater in order to be prepared to extend Edwards Unit 1's service through the end of 2014. MISO states that projects included in the 2013 O&M budget would not have been necessary but for the SSR designation and the expected life extension that MISO requested.<sup>240</sup>

127. The Deficiency Letter requested further explanation of the cost components included in the variable compensation for Edwards Unit 1.<sup>241</sup> MISO responds with a description of all costs that make up the production cost and operating reserve cost. Regarding the \$6.21 per MWh pollution control cost included in the variable compensation component, MISO explains that, because Edwards Unit 1 cannot run by itself in a manner that is compliant with the Illinois Multi-Pollutant Standard, MISO and Ameren developed the pollution control cost to reflect Ameren's fleet-wide compliance costs with the Illinois Multi-Pollutant Standard. MISO states that the Illinois Multi-Pollutant Standard allows system averaging to meet a rate limit for pollutants. MISO states that, thus, Ameren maintains fleet-wide compliance by operating certain units in an

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<sup>236</sup> MISO Response at 3.

<sup>237</sup> Deficiency Letter at 2.

<sup>238</sup> MISO Response at 3, Ex. C.

<sup>239</sup> Deficiency Letter at 2-3.

<sup>240</sup> MISO Response at 3-4, Ex. D.

<sup>241</sup> Deficiency Letter at 3.

over-compliance mode to compensate for the emissions of uncontrolled units such as Edwards Unit 1. For purposes of SSR compensation, MISO developed a per MWh adder to its incremental run charge that reflects this fleet-wide approach. MISO claims that the pollution control cost is just and reasonable because the more costly alternative would be treating Edwards Unit 1 by itself for environmental compliance purposes. MISO states that such stand-alone treatment would require Edwards Unit 1 to be retrofitted with costly environmental controls.<sup>242</sup>

128. In response to MISO's statement that an energy-based charge allowed it to equitably charge load-serving entities during the hours when an SSR unit is needed, the Deficiency Letter asked MISO to explain how this argument applies to the circumstances involving the Edwards Year 1 SSR Agreement. The Deficiency Letter also requested that MISO provide any evidence (such as a study based on off-peak conditions) demonstrating that Edwards Unit 1 may be substantially needed in off-peak days of the week and/or hours of the day to justify allocation based on total energy used each month.<sup>243</sup> MISO responds that an energy-based method for allocating SSR-related costs, as compared to a demand-based method that develops a transmission rate, has several advantages. First, MISO states that, by using a cost allocation rather than a rate-based approach, there is not an under- or over-collection of costs. Second, MISO states that, unlike traditional revenue requirements, SSR agreements typically involve both a fixed and variable component to the compensation requirements. Third, according to MISO, an energy-based approach appropriately allocates costs to point-to-point transmission service customers based on the utilization of such transmission service. MISO further explains that SSR units are often committed for local reliability purposes during times other than summer peak periods. MISO states that off-peak commitment can occur during shoulder months when scheduled outages occur for generating resources and/or transmission lines. However, MISO reports that it does not have studies regarding the use of Edwards Unit 1 for off-peak days and off-peak hours of the day.<sup>244</sup>

129. Nevertheless, MISO submitted a revised Schedule 43C to allocate the costs associated with the Edwards Year 1 SSR Agreement based on the time of peaks. MISO explains that, under this approach, SSR costs are allocated, *pro rata*, to the load-serving entities that benefit from the extended availability of Edwards Unit 1. MISO adds that the revised Schedule 43C accomplishes this allocation based upon peak usage of transmission facilities in each month, as determined by each load-serving entity's Actual

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<sup>242</sup> MISO Response at 4-8.

<sup>243</sup> Deficiency Letter at 3.

<sup>244</sup> MISO Response at 8-9.

Energy Withdrawals during the monthly peak hour for the Ameren Illinois Local Balancing Authority Area. MISO states that, similar to rate schedule that the Commission accepted in the Escanaba Order, the revised Edwards Year 1 Rate Schedule 43C utilizes a peak method, but that this new approach also retains the advantages stated above regarding energy-based cost allocation.<sup>245</sup>

**F. Protest to Deficiency Letter Response and Answer**

130. Southwestern contends that MISO's responses to the Deficiency Letter provide insufficient evidence of the need for the continued operation of Edwards Unit 1. First, regarding MISO's explanation for why it modeled most of the nearby peaking units as offline in the Attachment Y Reliability Study, Southwestern states that, if the available peaking units are not required to meet load levels, Southwestern does not understand why Edwards Unit 1 is needed. Southwestern argues that MISO should evaluate whether any of these available peaking units can resolve the reliability problems caused by Edwards Unit 1's retirement. In addition, as to the units that MISO modeled offline in the Attachment Y Reliability Study, Southwestern: (1) questions whether the units will actually be offline when Edwards Unit 1 is needed; (2) questions whether MISO evaluated the costs associated with any of the offline units; and (3) requests that MISO's list of the units that had previously submitted Attachment Y Notices be made public. Moreover, concerning MISO's evaluation of alternatives to designating Edwards Unit 1 as an SSR, Southwestern contends that MISO's responses are insufficient. Specifically, Southwestern challenges MISO's assumption that both Edwards Unit Nos. 2 and 3 would be out-of-service at the same time, reiterates its earlier concerns regarding MISO's decision to model peaking units as offline, and inquires as to whether an evaluation of MISO's operating procedures would have led it to find a more economical solution to the reliability problems caused by Edwards Unit 1's retirement. Southwestern concludes that the Commission should set MISO's designation of Edwards Unit 1 as an SSR for hearing so that Southwestern and other customers can fully evaluate the need for Edwards Unit 1.<sup>246</sup>

131. Furthermore, Southwestern argues that MISO's responses to the Deficiency Letter raises additional questions regarding the costs proposed to be recovered for the continued operation of Edwards Unit 1. Southwestern takes issue with, among other things, the capital costs included in the 2013 Edwards Unit 1 O&M Budget, the breakdown of Edwards Unit 1's actual costs for years 2010 through 2012, and MISO's statement that Edwards Unit 1's production costs include start-up costs, no-load costs, and incremental

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<sup>245</sup> *Id.* at 10 (citing Escanaba Rehearing Order, 144 FERC ¶ 61,128 at P 42).

<sup>246</sup> Southwestern Comments to Deficiency Letter at 3-8.

energy offer costs. Southwestern argues that Edwards Unit 1 should receive only fuel costs and perhaps environmental costs if such costs are not already included in the other payments to be charged for Edwards Unit 1.<sup>247</sup>

132. Southwestern avers that MISO failed to demonstrate the need for Edwards Unit 1 during off-peak hours and, therefore, all the common Edwards Unit 1 costs should be allocated based on a capacity ratio. Specifically, Southwestern contrasts MISO's allocation of materials and supplies costs on a capacity ratio basis with MISO's allocation of Fuel Stocks based on historical generation or energy basis. Southwestern alleges that the latter allocations result in significant over-allocation of Fuel Stocks to Edwards Unit 1 and that the capacity ratio should be used for allocating Fuel Stocks as well. Moreover, Southwestern maintains that the proper allocation factor for materials and supplies and Fuel Stocks should be based on Edwards Unit 1's share of expected energy generation during only those peak hours when Edwards Unit 1 may be used for reliability.<sup>248</sup>

133. MISO argues that Southwestern misconstrues and misapplies its response to the Deficiency Letter. MISO states that whether available peaking units could resolve local reliability problems was studied, along with other alternatives, before Edwards Unit 1 was designated as an SSR. The study of alternatives to extending the use of Edwards Unit 1 was not the subject of the Commission's first inquiry, and was therefore not the subject of MISO's response to the first inquiry. In response to Southwestern's suggestion that units that had already been approved to suspend or retire might be reactivated, MISO states that MISO has no process, and no authority under its Tariff, under which it may reactivate units that were previously approved for retirement or suspension.<sup>249</sup>

134. In its answer, MISO states that if it had approved the immediate retirement of Edwards Unit 1, Edwards Unit 1 would not have been available in 2016 when MISO's analysis showed reliability violations even in the presence of transmission upgrades expected to be in place in that year. Noting that the conditions in 2016 would be an improvement over those in 2012, MISO states that it therefore responded that its assessment during all times relevant to the Edwards Year 1 SSR Agreement showed the inadequacy of a 100 MW load curtailment to resolve reliability concerns. In response to Southwestern's questioning of whether MISO evaluated its operating procedures, MISO explains that, in its response to the Deficiency Letter, it reports the evaluation of opening transmission paths in connection with the contingent loss of Edwards Unit Nos. 2 and 3.

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<sup>247</sup> *Id.* at 8-11.

<sup>248</sup> *Id.* at 12.

<sup>249</sup> MISO October 31 Answer at 5.

MISO also notes that its response stated that “[a]ssessment of system reconfiguration options to alleviate loading of the Tazewell transformers and the Tazewell-Flint lines resulted in no practical solution without shifting the flows to cause overloads due to the nature of the Peoria area load pocket.”<sup>250</sup>

135. As for Southwestern’s recommendation regarding the return of such payments if Edwards Unit 1 is not retired, MISO states that its Tariff contains Commission-approved conditions and procedures for the circumstance where an SSR unit does not retire as previously stated by its owner. MISO states that it will appropriately address such a circumstance if and when it occurs. MISO also argues that Southwestern provides no support for its arguments that the ratio of administrative and general costs to total labor is unusually high and that Ameren’s capital structure is equity-heavy. MISO further argues that the use of transmission service rate of return, criticized by Southwestern, seems appropriate for SSR service that substitutes for transmission upgrades in light of the Commission-chosen analogy between SSR costs and transmission upgrade costs.<sup>251</sup>

136. MISO argues that the Edwards Year 1 SSR Agreement does not over-compensate for going-forward costs, because costs other than fuel are incrementally incurred when running Edwards Unit 1. MISO further contends that Southwestern confuses the types of costs recovered under the monthly SSR payment with those costs recovered under production costs. MISO states that the monthly SSR payment contains costs necessary to keep Edwards Unit 1 available and ready to operate.<sup>252</sup>

137. Southwestern asserts that MISO did not examine whether suspended or retired units could be reactivated as an alternative to designation of Edwards Unit 1 as an SSR. Southwestern states that MISO’s response indicates that it did not investigate the feasibility of reactivating units, which were previously approved for suspension or termination of their operations, even though these units could potentially provide service at a lower cost than the Edwards 1 Unit. According to Southwestern, such an examination is consistent with MISO’s responsibilities under its Business Practices Manual for transmission planning, which require MISO to investigate whether alternatives can be pursued at lower costs.<sup>253</sup> Furthermore, Southwestern contends that

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<sup>250</sup> *Id.* at 6.

<sup>251</sup> *Id.* at 7-8 (citing *Bluegrass Generation Co., L.L.C.*, 118 FERC ¶ 61,214, at P 86 (2007)).

<sup>252</sup> *Id.* at 7-9.

<sup>253</sup> Southwestern December 4 Answer at 5-6.

MISO's response to the Deficiency Letter and Southwestern's comments indicates that MISO did not investigate changes to the operating procedures as an alternative to designation of Edwards Unit 1 as an SSR. Southwestern argues that the Commission's directive to identify the system reconfiguration options and operating procedures that MISO evaluated should have required minimal effort on the part of MISO if these alternatives were appropriately evaluated. Southwestern concludes that MISO's response – that these options were not feasible – fails to identify the options MISO evaluated.<sup>254</sup>

**G. November 25, 2013 Order**

138. On November 25, 2013, the Commission issued an order accepting and suspending the Edwards Year 1 SSR Agreement and Edwards Year 1 Rate Schedule 43C, effective January 1, 2013,<sup>255</sup> subject to refund and further Commission order.<sup>256</sup>

**H. Request for Rehearing of the November 25, 2013 Order in Docket Nos. ER13-1962-001 and ER13-1963-002**

139. In their request for rehearing, Illinois Municipal-Wabash Valley argue that the Commission's failure to address arguments raised against the prior notice waiver request renders the November 25, 2013 Order arbitrary and capricious, and therefore constitutes reversible error. According to Illinois Municipal-Wabash Valley, the Commission must "examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made'" and "[a]gency action that fails either requirement is arbitrary and capricious."<sup>257</sup> Illinois Municipal-Wabash Valley aver that the November 25, 2013 Order fails to meet this requirement. Illinois Municipal-Wabash Valley state that they raised arguments against granting MISO's request for a waiver of the prior notice requirements, but the Commission failed to respond to these arguments in a meaningful way. Illinois

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<sup>254</sup> *Id.* at 6-8.

<sup>255</sup> In the November 25, 2013 Order, the Commission granted waiver of the prior notice requirement and allowed the proposed Edwards Year 1 SSR Agreement to be effective January 1, 2013, as requested. *See Escanaba Order*, 142 FERC ¶ 61,170 at PP 84-86 (waiver of prior notice rule granted in order accepting an SSR agreement and associated rate schedule).

<sup>256</sup> November 25, 2013 Order, 145 FERC ¶ 61,163.

<sup>257</sup> Illinois Municipal-Wabash Valley Request for Rehearing at 3 (quoting *Sw. Power Pool, Inc. v. FERC*, 736 F.3d 994, 997 (D.C. Cir. 2013)).

Municipal-Wabash Valley maintain that the Escanaba Order, which is cited by the Commission in the November 25, 2013 Order, is not binding precedent and cannot meet the standards of reasoned decision-making in light of the Commission's policy of what must be shown to obtain a waiver of the prior notice requirement. Finally, Illinois Municipal-Wabash Valley allege that the Commission allowed the rates to go into effect without any discussion of the arguments Illinois Municipal-Wabash Valley raised for a phased-in payment should the waiver be granted.<sup>258</sup>

140. Illinois Municipal-Wabash Valley also argue that the November 25, 2013 Order is an unreasoned departure from the principles set forth in *Central Hudson*<sup>259</sup> and reflected in a prior Commission policy statement.<sup>260</sup> Illinois Municipal-Wabash Valley state that, under *Central Hudson*, the Commission will generally waive the 60-day prior notice requirement if a filing is uncontested and does not affect rates or, alternatively, if a filing would reduce rates and charges. Illinois Municipal-Wabash Valley maintain that neither of those circumstances is present here.<sup>261</sup> Illinois Municipal-Wabash Valley add that, because no extraordinary circumstances justified the seven-month delay in submitting the MISO filing, the Commission erred by waiving the prior notice requirement.<sup>262</sup> Furthermore, Illinois Municipal-Wabash Valley explain that MISO first learned on August 9, 2011 that Ameren intended to suspend operation of Edwards Unit 1 for 36 months beginning on February 6, 2012. Illinois Municipal-Wabash Valley add that, on December 12, 2012, Ameren revised its Attachment Y Notice by identifying a proposed retirement date of December 31, 2012. Illinois Municipal-Wabash Valley conclude that, despite the fact that Ameren and MISO were actively discussing the planned retirement of Edwards Unit 1 for almost 18 months, MISO failed to explain why 18 months was insufficient time to complete these tasks. Also, Illinois Municipal-Wabash Valley assert that MISO failed to explain why, during the months of discussion, it could not have filed the unexecuted SSR agreement it eventually filed in July 2013.<sup>263</sup>

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<sup>258</sup> *Id.* at 3-4.

<sup>259</sup> *Id.* (citing *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106 (1992) (*Central Hudson*)).

<sup>260</sup> *Id.* (citing *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,983-61,984 (1993)).

<sup>261</sup> *Id.* at 4-5 (citing *Central Hudson*, 60 FERC at 61,338).

<sup>262</sup> *Id.* at 5.

<sup>263</sup> *Id.* at 5-6.

141. Illinois Municipal-Wabash Valley further argue that the Escanaba Order should not be controlling precedent here. First, Illinois Municipal-Wabash Valley state that the facts presented here are significantly different than those addressed in the Escanaba Order. According to Illinois Municipal-Wabash Valley, the delay in the Escanaba Order was between three and four months after the effective date, whereas in this case MISO seeks to apply rates retroactively for over six months. Illinois Municipal-Wabash Valley also note that, unlike in the present case, the SSR agreement in the Escanaba Order proceeding was executed when filed.<sup>264</sup>

142. Second, Illinois Municipal-Wabash Valley assert that, as a policy matter, the Escanaba Order should not be interpreted to allow a blanket exemption from the prior notice requirement and Commission precedent. Illinois Municipal-Wabash Valley state that in the Escanaba Order, the Commission permitted waiver solely because of a Commission order stating that “all SSR units should be fully compensated for any costs incurred because of their extended service.”<sup>265</sup> According to Illinois Municipal-Wabash Valley, no rational basis exists to allow this exemption for SSR units from obligations that otherwise apply to other utilities. Illinois Municipal-Wabash Valley suggest that there must be limits, such as only permitting retroactive application of SSR costs if parties comply with other applicable Commission regulations or can demonstrate “extraordinary” circumstances that justify a waiver under applicable Commission precedent. Illinois Municipal-Wabash Valley contend that, absent some qualification, the Commission has created a generic waiver of the prior notice requirements *sub-silentio*, which, absent adequate explanation, constitutes reversible error.<sup>266</sup>

143. Finally, Illinois Municipal-Wabash Valley argue that if, on rehearing, the Commission reconsiders the waiver request, it should not adopt MISO’s alternative argument that the Edwards Year 1 SSR Agreement was merely a service agreement not subject to the waiver requirements. According to Illinois Municipal-Wabash Valley, the Edwards Year 1 SSR Agreement does not meet the Commission’s definition of a service agreement.<sup>267</sup> Illinois Municipal-Wabash Valley conclude that there is no support for MISO’s statement that “the SSR Agreement is a *pro forma* agreement included in the

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<sup>264</sup> *Id.* at 6-7.

<sup>265</sup> *Id.* at 7 (quoting TEMT II Rehearing Order, 109 FERC ¶ 61,157 at P 293).

<sup>266</sup> *Id.*

<sup>267</sup> *Id.* at 8 (quoting 18 C.F.R. § 35.2(c)(2) (2011) (defining a service agreement as “an agreement that authorizes a customer to take electric service under the terms of a tariff”)).

Tariff, the executed versions of which are therefore service agreements,” and, therefore, there are no justifiable grounds for the Commission to waive the prior notice rules.<sup>268</sup>

## **I. Discussion**

### **1. Procedural Matters**

144. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept the answer filed by Southwestern because it provided information that assisted us in our decision-making process.<sup>269</sup>

### **2. Commission Determination**

145. In this further Commission order, as discussed more fully below, we address the reliability need for the Edwards Year 1 SSR Agreement, establish hearing and settlement judge procedures in Docket No. ER13-1962-000 on the going-forward costs included in the rate that MISO has negotiated with Ameren for operating Edwards Unit 1 as an SSR unit under the Edwards Year 1 SSR Agreement and address the request for rehearing, and the revised Edwards Year 1 Rate Schedule 43C. We also institute an investigation pursuant to FPA section 206 in Docket No. EL14-53-000, as discussed below.

146. With regard to the reliability need for the Edwards Year 1 SSR Agreement, we find that MISO has studied the proposed retirement of Edwards Unit 1 and determined that the unit is necessary for system reliability, and therefore, should be designated as an SSR consistent with the Tariff. The SSR provisions in the Tariff provide that MISO will perform an Attachment Y Reliability Study to determine whether a generation resource is necessary for the reliability of the transmission system based on the criteria set forth in its Business Practices Manuals.<sup>270</sup> Further, MISO’s Transmission Owners Agreement

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<sup>268</sup> *Id.* (quoting MISO, Edwards Year 1 SSR Agreement, Transmittal Letter at 10).

<sup>269</sup> We note that, in the November 25, 2013 Order, the Commission accepted the answers filed by parties before the November 25, 2013 Order was issued. Because Southwestern filed its answer on December 4, 2013, it is necessary to separately address that pleading here.

<sup>270</sup> MISO, FERC Electric Tariff, 38.2.7, System Support Resources, 2.0.0. MISO’s Business Practices Manuals state that in performing an Attachment Y Reliability Study, regional, state, and MISO member (local) planning criteria will be respected. MISO, *Business Practices Manual Transmission Planning*, Manual No. 020, at § 6.2.3 (May 28, 2013) *available at*

provides that MISO's planning activities "shall conform to applicable reliability requirements of NERC, applicable Regional Entities, or any successor organizations, each Owner's specific reliability requirements and operating guidelines, and all applicable requirements of federal or state laws or regulatory authorities."<sup>271</sup> The Transmission Owners Agreement also provides that "[d]isputes regarding reliability requirements and operating guidelines may be resolved through the Dispute Resolution process provided for in Attachment HH of the Tariff. Pending resolution of such disputes, the Owners' criteria shall be used by MISO until the issue is resolved."<sup>272</sup> We find that MISO has justified the need for the unit and has provided sufficient evidence demonstrating that it is necessary to mitigate contingencies specified under NERC Reliability Standard TPL-003-0a (System Performance Following Loss of Two or More Bulk Electric System Elements (Category C)),<sup>273</sup> as required by Ameren's local transmission planning standards.

147. Illinois Commission asks that we consider whether the additional cost of achieving the level of reliability established in Ameren Transmission's local planning standards is worth the cost of the Edwards SSR Agreements from the ratepayers' perspective. It appears that Illinois Commission may have jurisdiction over the application of Ameren's local planning standards.<sup>274</sup> To the extent that Illinois Commission has such authority, it can consider the exercise of its own jurisdiction. Alternatively, Illinois Commission may utilize the Dispute Resolution procedures in Attachment HH of the Tariff to consider

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<https://www.misoenergy.org/Library/BusinessPracticesManuals/Pages/BusinessPracticesManuals.aspx>.

<sup>271</sup> MISO, MISO Rate Schedules, MISO Transmission Owner Agreement, Article Three, Rights, Powers, and Obligations of MISO, Section I, Operation and Planning, C., Planning Activities. (30.0.0). *See also* MISO, FERC Electric Tariff, 4, Attachments, Attachment FF, Transmission Expansion Planning Protocol (16.0.0), § I.C.5.

<sup>272</sup> MISO, MISO Rate Schedules, MISO Transmission Owner Agreement, Article Three, Rights, Powers, and Obligations of MISO, Section I, Operation and Planning, A., Functional Control (30.0.0).

<sup>273</sup> MISO, Business Practices Manual Transmission Planning, Manual No. 020, at § 6.2.3 (May 28, 2013) *available at* <https://www.misoenergy.org/Library/BusinessPracticesManuals/Pages/BusinessPracticesManuals.aspx>.

<sup>274</sup> *See, e.g.*, 220 Ill. Comp. Stat. 5/16-125 (2014).

whether it is appropriate in the context of the retirement of Edwards Unit No. 1 to meet Ameren Transmission's local planning standards.

148. We disagree with the protestors who contend that it was inappropriate for Ameren Transmission to conduct the study to determine the need for an Ameren generating unit. While the Business Practices Manuals state that MISO will evaluate the performance of the Transmission System against applicable standards/criteria to determine a unit's SSR status,<sup>275</sup> nothing in the Tariff, Business Practices Manuals, or Transmission Owners Agreement states that MISO cannot rely on other parties to conduct such a study. We accept MISO's explanation that it conducted an independent review of the study based on the Tariff and Business Practices Manuals.

149. With regard to those protests questioning the need for the Edwards Year 1 SSR Agreement, MISO, as the independent transmission system operator responsible for assessing the reliability needs of the region, has the authority under its Tariff to designate Edwards Unit 1 as an SSR unit. We acknowledge the concerns protestors have raised regarding the potential cost impact of the increasing number of SSR agreements being filed; however, we again emphasize that MISO may designate an SSR only as a "last resort."<sup>276</sup> As discussed more fully below, in this case, MISO has provided an adequate explanation of how it determined that the Edwards Year 1 SSR Agreement is the last resort measure consistent with the Tariff.

150. As to those arguments questioning the need to continue operating Edwards Unit 1 for reliability, we find that MISO has sufficiently responded to concerns in both the response to the Deficiency Letter and its answer to Southwestern's protest to the Deficiency Letter response. Specifically, we note that MISO studied whether available peaking units could resolve local reliability problems. As to modeling as off-line those units that have submitted Attachment Y Notices, MISO explained in its response to the Deficiency Letter that it only modeled as off-line those units that had already been

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<sup>275</sup> MISO, Business Practices Manual Transmission Planning, Manual No. 020, at § 6.2.3 (May 28, 2013) *available at* <https://www.misoenergy.org/Library/BusinessPracticesManuals/Pages/BusinessPracticesManuals.aspx>.

<sup>276</sup> *See* SSR Order, 140 FERC ¶ 61,237 at P 36 (stating that the Commission will require MISO to submit an explanation of how it determined that an SSR is the last resort); TEMT II Rehearing Order, 109 FERC ¶ 61,157 at P 291 (same).

approved for suspension or retirement. We agree that MISO has no authority under its Tariff to reactivate units that were previously approved for retirement or suspension.<sup>277</sup> We disagree with Southwestern's argument that an evaluation of MISO's operating procedures would have led it to find a more economical solution to the reliability problems caused by Edwards Unit 1's retirement as we agree that MISO has demonstrated that Edwards Unit 1 is the last resort measure under the Tariff in order to meet reliability needs. We also reject Illinois Commission's argument that MISO failed to address why the peak period contingency violations identified in the Attachment Y Study Report could not be addressed through an SSR agreement of less than one year. MISO has demonstrated that Edwards Unit 1 is needed to ensure reliability throughout the entire term of the Edwards Year 1 SSR Agreement.

151. Additionally, MISO sought alternatives from stakeholders in a meeting held in June 2013. Based on the record in this proceeding, that meeting did not yield an SSR alternative sufficient to mitigate the voltage support needs identified by Ameren Transmission and independently confirmed by MISO. MISO states, and no protestors dispute, that stakeholders proposed only one potential demand response alternative, which MISO then fully evaluated. We therefore find that MISO followed the provisions in its Tariff for evaluating feasible alternatives. We also reject, as beyond the scope of this proceeding, protestors' suggestions that MISO make changes to the SSR process to allow for further exploration of alternatives to SSR agreements.<sup>278</sup>

152. While we are able to find based on the record in this case, including MISO's response to the Deficiency Letter, that MISO demonstrated a reliability need for Edwards Unit 1, we find that the Tariff does not adequately describe the technical study process by

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<sup>277</sup> We also reject Southwestern's request to make public MISO's list of the units that had previously submitted Attachment Y Notices. MISO's Tariff provides that MISO "shall continue to treat an Attachment Y notice as Confidential Information in the event that the Attachment Y Reliability Study results determine that the subject Resource is not required . . . and would not be eligible for treatment as an SSR Unit." MISO, FERC Electric Tariff, Module C, Energy and Operating Reserve Markets, II, General Provisions, 38, General Responsibilities and Requirements, 38.2, Market Participants, 38.2.7, System Support Resources (2.0.0). The release of the information on units that had previously been evaluated for retirement, and were therefore turned off in the study models, would have released information that should not be released as part of the Attachment Y process.

<sup>278</sup> We note that MISO's timeline and procedure for evaluating SSR alternatives are at issue in the MISO December 18 Compliance Filing, which is addressed in an order issued concurrently. SSR Compliance Order, 148 FERC ¶ 61,056 (2014).

which MISO is to evaluate whether potential SSRs are needed for reliability purposes and does not identify the related information that should be provided by MISO when filing SSR agreements with the Commission. Therefore, we find that the Tariff is unjust, unreasonable, and unduly discriminatory or preferential. Pursuant to our authority under section 206 of the FPA, we direct MISO to revise section 38.2.7 of its Tariff, as discussed in further detail below. We direct MISO to submit these Tariff revisions in the compliance filing due within 60 days of the date of this order.

153. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA requires that the Commission establish a refund effective date that is no earlier than the date of publication of notice of the Commission's initiation of its investigation in the *Federal Register*, and no later than five months subsequent to that date. Consistent with our general policy of providing maximum protection to customers, we establish a refund effective date of the date the notice of the initiation of the investigation in Docket No. EL14-53-000 is published in the *Federal Register*. In addition, section 206(b) requires that, if no final decision has been rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to this section, the Commission shall state the reasons why it failed to do so and shall state its best estimate as to when it reasonably expects to make such a decision. We expect that we should be able to render a decision within five months of the date that MISO submits the filing ordered below, or 148 FERC ¶ 61,056 (2014).

154. At the outset, we note that it is preferable for MISO to conduct the necessary studies to determine the reliability need for a potential SSR unit. However, if a transmission owner conducts the studies, then MISO should, at a minimum, review and verify the transmission owner's studies and indicate whether it agrees with the outcome of those studies. In either instance, SSR agreements filed with the Commission must describe the findings and methodologies in the related Attachment Y Reliability Studies and clearly state all potential reliability criteria violations. In cases where MISO's determination of SSR status is based on local planning criteria, the filing and associated study reports should provide a full discussion addressing the application of the local planning criteria. Such a discussion should provide documentation as to when the criteria became effective and which regulatory body, if any, approved the standard. Furthermore, regarding MISO's evaluation of feasible alternatives to entering into an SSR agreement, MISO should provide a short explanation of the proposed solutions, as well as timetables for when the preferred solution will be implemented. As noted above, we direct MISO to make these revisions in a compliance filing due within 60 days of the date of this order.

155. Additionally, in Docket No. ER13-1962, several parties raise issues regarding the appropriate going-forward costs to be recovered under the Edwards Year 1 SSR Agreement. As noted above, in the November 25, 2013 Order issued in this proceeding, the Commission accepted the Edwards Year 1 SSR Agreement and Edwards Year 1 Rate Schedule 43C, suspended them for a nominal period, to be effective January 1, 2013,

subject to refund and further Commission order. Upon review, in this further Commission order, we find that the rates proposed under the Edwards Year 1 SSR Agreement present issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. Our preliminary analysis indicates that the proposed rates under the Edwards Year 1 SSR Agreement have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we establish hearing and settlement judge procedures as to those rates. As noted above, this proceeding will be consolidated with Docket Nos. EL13-76-000 and ER14-1210-000 for hearing and settlement purposes.

156. With regard to Public Interest Organizations' allegations regarding Dynegy's plans to upgrade Edwards Unit 1's environmental controls in 2014, to the extent that Ameren is seeking recovery of environmental control costs under the Edwards Year 1 SSR Agreement, the need for and level of any such costs will be addressed by the hearing and settlement judge procedures we institute below.<sup>279</sup> As for whether work on the environmental upgrade will interfere with Edwards Unit 1's SSR availability, we note that the Edwards Year 1 and Year 2 SSR Agreements already provide for penalties should Edwards Unit 1 fail to perform when called upon by MISO.<sup>280</sup> Regarding Public Interest Organizations' concern that Edwards Unit 1 may violate environmental requirements if the upgrades are not completed, we agree that, pursuant to section 38.2.7.c of the Tariff, Edwards Unit 1 cannot continue operating if it is in violation of applicable laws and regulations, but currently there is no basis in the record to conclude that Edwards Unit 1 is in violation of any applicable laws and regulations or will be. Last, as made clear in the SSR Order and in the SSR Compliance Order, any environmental upgrade costs incurred for Edwards Unit 1 must be refunded consistent with the Tariff should Edwards Unit 1 return to regular service.<sup>281</sup>

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<sup>279</sup> We note that while the Edwards Year 1 SSR Agreement terminated on December 31, 2013, it was extended through 2014 by the Edwards Year 2 SSR Agreement. Accordingly, to the extent that Illinois Power, the new owner of Edwards Unit 1, is seeking recovery of environmental control costs under the Edwards Year 2 SSR Agreement, the need for and level of any such costs will likewise be addressed by the hearing and settlement judge procedures we institute below with regard to the rates charged under the Edwards Year 2 SSR Agreement.

<sup>280</sup> See MISO, Edwards Year 1 SSR Agreement, § 9.D; MISO, Edwards Year 2 SSR Agreement, § 9.D.

<sup>281</sup> SSR Order, 140 FERC ¶ 61,237 at P 138; SSR Compliance Order, at 148 FERC ¶ 61,056 (2014) P 44.

157. As stated above, Ameren takes issue with some language in original Exhibit 2 to the Edwards Year 1 SSR Agreement, which provides for how Edwards Unit 1 will be compensated. Specifically, Ameren expresses concern that Exhibit 2 as originally written failed to net out certain charges that would be incurred by Ameren for operating Edwards Unit 1 as instructed by MISO, resulting in Ameren operating at a loss. We agree that some of the language in the substitute Exhibit 2 proposed by MISO in its answer resolves this issue by reflecting that these charges are properly netted out, ensuring that Ameren would no longer operate at a loss. However, we find that other revisions found in MISO's substitute Exhibit 2 to the Edwards Year 1 SSR Agreement fail to differentiate which compensation provisions apply when Edwards Unit 1 is operating economically in MISO markets as opposed to when the unit is operating for reliability purposes. This problem occurs because in the substitute Exhibit 2 proposed by MISO in its answer, MISO removed headers that previously distinguished which compensation provisions applied for economic runs versus reliability-based runs. We note that the original Exhibit 2 to the Edwards Year 1 SSR Agreement contains headings that appropriately distinguish which compensation provisions apply in the case of economic runs and those which apply for reliability-based runs.<sup>282</sup> Therefore, we direct MISO, in a compliance filing due within 60 days of the date of this order, to insert, in the original Exhibit 2 to the Edwards Year 1 SSR Agreement, the following sentence from the substitute Exhibit 2 filed by MISO in its answer such that it replaces the language that failed to appropriately net out those certain charges described by Ameren:

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.

158. With regard to protestors' suggestion that Ameren did not submit a timely notice to retire, we find that the Tariff is ambiguous as to whether the submission of a revised Attachment Y Notice triggers a new 26-week notice period. Because the Tariff is ambiguous on this point, we do not find that Ameren did not timely submit its revised Attachment Y Notice to retire. We note that, according to MISO, Ameren's revised Attachment Y Notice did not materially affect MISO's analysis of the need for the continued operation of Edwards Unit 1. Nonetheless, it is possible to envision a scenario in which a shortened schedule could affect the analysis of long-term solutions to address

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<sup>282</sup> See MISO, Edwards Year 1 SSR Agreement, Ex. 2.

contingencies. Accordingly, we find that the Tariff is unjust, unreasonable, and unduly discriminatory or preferential. Pursuant to our authority under section 206 of the FPA, we direct MISO to revise the Tariff to require that a market participant provide MISO with an amended Attachment Y Notice at least 26 weeks prior to retiring or suspending operations if, in the amended Attachment Y Notice, the market participant states that it intends to retire rather than suspend operations, or vice versa. We direct MISO to submit these Tariff revisions in the compliance filing in Docket No. EL14-53-000 due within 60 days of the date of this order. We will accept MISO's offer, in response to Illinois Commission's concerns, to substitute the words "extended service" for "operation" in section 9.E of the Edwards Year 1 SSR Agreement. MISO should include corresponding revisions to the Edwards Year 1 SSR Agreement in the compliance filing due within 60 days of the date of this order.

159. With regard to the revised Edwards Year 1 Rate Schedule 43C, in the November 25, 2013 Order, we accepted the revised Edwards Year 1 Rate Schedule 43C, as amended, suspended it for a nominal period, to be effective January 1, 2013, as requested, subject to further Commission order. In this further Commission order, we find that, consistent with our findings in the Escanaba Order, it is reasonable for MISO to use a demand-based cost allocation methodology as is used to allocate the cost of transmission facilities built to maintain reliability.<sup>283</sup> This new demand-based form of cost allocation is also based on each load-serving entity's energy withdrawals during the peak hour in the Ameren Illinois Local Balancing Authority Area in each month. This new cost allocation provides greater flexibility by identifying each load-serving entity's actual energy withdrawals during the coincident peak hour of each month that the Edwards Year 1 SSR Agreement is in effect and allocates costs accordingly. We note that MISO's revised Edwards Year 1 Rate Schedule 43C renders moot the protests regarding the originally-proposed cost allocation. Furthermore, because we find that MISO has justified the use of a demand-based cost allocation methodology, we reject Southwestern's protest regarding the revised Edwards Year 1 Rate Schedule 43C.

160. Finally, we deny Illinois Municipal-Wabash Valley's request for rehearing of the November 25, 2013 Order concerning the Commission's waiver of its prior notice requirement allowing the Edwards Year 1 SSR Agreement and Rate Schedule 43C to become effective January 1, 2013. We find that the November 25, 2013 Order appropriately granted waiver of the prior notice requirement and allowed the Edwards Year 1 SSR Agreement and Rate Schedule 43C to be effective January 1, 2013. As we stated in the Escanaba Order, "all SSR units should be fully compensated for any costs incurred because of their extended service" and "nothing in the SSR program would

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<sup>283</sup> See Escanaba Order, 142 FERC ¶ 61,170 at P 72.

require a generator to absorb any uncompensated going-forwards costs.”<sup>284</sup> Here, the record indicates that Edwards Unit 1 was providing reliability service pursuant to the Edwards Year 1 SSR Agreement since January 1, 2013. Thus, it is appropriate that Edwards Unit 1 be made whole for the costs it incurred while providing SSR service.

## V. Edwards Year 2

### A. Edwards Year 2 SSR Agreement in Docket No. ER14-1210-000

161. MISO states that, according to the terms of the Edwards Year 1 SSR Agreement, it notified Ameren on September 26, 2013 that Edwards Unit 1 would be required to continue operating as an SSR for 2014. MISO states that it began working with Ameren to negotiate and develop an SSR agreement. MISO adds that, on December 2, 2013, Illinois Power Holdings acquired several Ameren Corporation subsidiaries, including Ameren Generating and Ameren Marketing. Thereafter, MISO states that it worked with Illinois Power and the MISO Market Monitor to develop a 12-month SSR agreement, beginning on January 1, 2014.<sup>285</sup>

162. As with the Edwards Year 1 SSR Agreement, MISO notes that there are novel legal issues or other unique factors that justify departures from the Standard Form SSR Agreement. Thus, MISO proposes several modifications in the Edwards Year 2 SSR Agreement, including, among other changes: (1) language that permits, rather than requires, Illinois Power to participate in the capacity auction;<sup>286</sup> (2) a provision for “unanticipated repairs” to deal more fully with the situation presented by an aging unit; (3) revisions made in response to Ameren’s protest regarding the Edwards Year 1 SSR Agreement; and (4) language in Exhibit 2 referring to significant costs associated with a turbine generator exciter overhaul.<sup>287</sup> As with the Edwards Year 1 SSR Agreement, the Edwards Year 2 SSR Agreement also contains provisions that require the assessment of a

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<sup>284</sup> *Id.* P 84 (citing TEMT II Rehearing Order, 109 FERC ¶ 61,157 at P 293).

<sup>285</sup> MISO, Edwards Year 2 SSR Agreement, Transmittal Letter at 3.

<sup>286</sup> MISO adds that this agreement contemplates more limited use of the aging Edwards Unit 1, which is reflected in the operational limitations indicating that Edwards Unit 1 is intended to serve only reliability needs and in the associated reduction in costs for maintaining Edwards Unit 1.

<sup>287</sup> MISO, Edwards Year 2 SSR Agreement, Transmittal Letter at 3-4.

penalty should Edwards Unit 1 fail to respond when called upon by MISO (i.e., should a “Misconduct Event” occur) as well as a methodology for assessing such penalties.<sup>288</sup>

163. Regarding the review of feasible SSR alternatives, MISO reports that it assessed available feasible SSR alternatives in the Attachment Y Study Report, which was included as Exhibit D to the Edwards Year 1 SSR Agreement. MISO states that it would be impractical to develop additional transmission solutions at this time, in part because these solutions would result in an incremental cost to customers and they would not be implemented in time to shorten the term of the Edwards Year 2 SSR Agreement. Therefore, according to MISO, the currently-proposed transmission projects provide the most effective and timely means of ensuring reliability without the operation of Edwards Unit 1. Furthermore, MISO states that a number of transmission upgrades were proposed in the MISO Transmission Expansion Plan process to eliminate the issues caused by the retirement of Edwards Unit 1. MISO states that the completion of the final transmission upgrade in December 2016 will resolve the need for the continued operation of Edwards Unit 1 as an SSR, and until that time, Edwards Unit 1 will be required for system reliability.<sup>289</sup>

164. Consistent with MISO’s obligation to ensure that alternatives to the Edwards Year 2 SSR Agreement are evaluated, MISO states that it reviewed feasible alternatives with stakeholders.<sup>290</sup> Specifically, MISO reports that it discussed Edwards Unit 1 at a June 5, 2013 Central Technical Study Task Force meeting, but no alternatives other than demand response were presented. According to MISO, only stakeholders that signed a non-disclosure agreement were allowed to participate because critical energy infrastructure information was discussed. MISO further states that, at a later meeting of the Central Technical Study Task Force on October 8, 2013, it reviewed the reliability issues and possible alternatives to renewal of the Edwards Year 1 SSR Agreement and explained that no feasible alternatives had been discovered. MISO reports that additional feedback regarding alternatives was not received from participants. MISO reiterates that, with completion of the Maple Ridge – Fargo Line in 2016, the remaining reliability issues will be resolved, and the need for an SSR agreement will cease.<sup>291</sup>

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<sup>288</sup> *See id.* § 9.D.

<sup>289</sup> *Id.* Transmittal Letter at 5.

<sup>290</sup> *See* MISO, FERC Electric Tariff, Module C, Energy and Operating Reserve Markets, II, General Provisions, 38, General Responsibilities and Requirements, 38.2, Market Participants, 38.2.7, System Support Resources (2.0.0), § 38.2.7.c.

<sup>291</sup> *Id.* at 5-6.

165. MISO states that it negotiated in good faith with Illinois Power to develop just and reasonable rates for the continued operation of Edwards Unit 1. MISO reports that the testimony of Kevin Truesdel, which is enclosed as Exhibit C to the Edwards Year 2 SSR Agreement, provides factual support for the proposed going-forward costs. MISO states that it and the MISO Market Monitor reviewed the financial operating cost information provided by Illinois Power for Edwards Unit 1 and agreed that a monthly amount of \$927,860 is equitable compensation for maintaining Edwards Unit 1 in operational status during 2014. The information provided by MISO in supporting testimony shows that compensation for Edwards Unit 1 is based on 2012 costs for all categories except O&M. According to Mr. Truesdel, O&M costs are based on 2014 budgeted O&M expenses.<sup>292</sup> MISO states that Mr. Truesdel's testimony supports a separate payment under the Edwards Year 2 SSR Agreement for the dispatch of Edwards Unit 1 based on the actual costs of each dispatch. Mr. Truesdel explains that, because Illinois Power will offer Edwards Unit 1 in each available hour at its marginal cost of generating, every time MISO dispatches Edwards Unit 1 for reliability, MISO will credit Illinois Power with the costs of its three-part offer, consisting of start-up costs, no-load costs, and incremental energy. Mr. Truesdel adds that, under the Edwards Year 2 SSR Agreement, the incremental energy component will be based on average fuel cost and will include a \$6.85 per MWh adder for pollution control.<sup>293</sup>

166. MISO requests a January 1, 2014 effective date for the Edwards Year 2 SSR Agreement. As it did with the Edwards Year 1 SSR Agreement, MISO requests that the January 1, 2014 effective date be granted either through waiver of the prior notice rule or by treating the Edwards Year 2 SSR Agreement as a late-filed service agreement.<sup>294</sup>

**B. Edwards Year 2 Rate Schedule 43C in Docket No. ER14-1212-001**

167. MISO states that SSR costs associated with Edwards Unit 1 are allocated to all load-serving entities within the Ameren Illinois Local Balancing Authority Area based upon each load-serving entity's contribution to peak load in this area. MISO adds that the allocation to the local balancing authority area in Edwards Year 2 Rate Schedule 43C was determined according to MISO's load shed methodology. According to MISO, the contribution to peak is based upon peak usage of transmission facilities in each month as determined by each load-serving entity's actual energy withdrawals during the monthly peak hour for the local balancing authority area. MISO notes that the percentage of

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<sup>292</sup> *Id.* at 8 (citing Ex. C, Truesdel Test. at 6-9).

<sup>293</sup> *Id.* at 8-9 (citing Ex. C, Truesdel Test. at 9-10).

<sup>294</sup> *Id.* at 6-7.

Edwards Unit 1 costs allocated to each load-serving entity will vary each month based on the load-serving entity's coincident peak hour energy usage during that month. MISO states that this method was accepted by the Commission for the allocation of costs associated with the Edwards Year 1 SSR Agreement. MISO observes that the proposed cost allocation method completely recovers the costs associated with the Edwards Year 2 SSR Agreement each month, as opposed to a fixed demand-based rate that could only be calculated to approximately recover such costs.<sup>295</sup>

168. As with the Edwards Year 2 SSR Agreement, MISO requests a January 1, 2014 effective date for Edwards Year 2 Rate Schedule 43C. MISO's reasons for requesting waiver of the Commission's 60-day prior notice requirement for Edwards Year 2 Rate Schedule 43C are identical to the reasons MISO requests the waiver for the Edwards Year 2 SSR Agreement.<sup>296</sup>

### **C. Comments and Protests**

169. Illinois Municipal-Wabash Valley, Hoosier-Southern Illinois and Illinois Commission assert that MISO has not provided sufficient justification for the costs to be recovered pursuant to the Edwards Year 2 SSR Agreement. Protestors take issue with, among other things, (1) the \$6.85 per MWh pollution control cost adder; (2) MISO's use of Ameren's historical costs in calculating the proposed level of compensation for Illinois Power; and (3) Illinois Power's proposed rate of return. For these reasons, protestors argue that the filed-for costs and proposed rate should be set for hearing.<sup>297</sup>

170. Regarding O&M environmental compliance costs for 2015,<sup>298</sup> Illinois Commission maintains that, since the need for an SSR agreement for 2015 has not yet

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<sup>295</sup> MISO, Edwards Year 2 Rate Schedule 43C, Transmittal Letter at 3-4 (citing November 25, 2013 Order, 145 FERC ¶ 61,163 at P 16).

<sup>296</sup> *Id.* at 5.

<sup>297</sup> Illinois Municipal-Wabash Valley Protest at 3-6; Hoosier-Southern Illinois February 20 Protest at 3-5; Illinois Commission February 20 Comments at 19-20.

<sup>298</sup> Such costs include: (1) replacement of high frequency power supplies for Mercury and Air Toxic Standards compliance in 2015 (\$750,000); (2) relocation of activated carbon injection proves for mercury removal for 2015 (\$350,000); and (3) environmental testing in advance of 2015 environmental regulations (\$200,000). *Id.* at 20-21 (citing Edwards Year 2 SSR Agreement Filing, Ex. MISO-1, Truesdel Test. at 8).

been established, these expenditures should not be recoverable in 2014. Even if it is determined that 2015 O&M investments must be undertaken in 2014 for 2015 operations, Illinois Commission asserts that the Edwards Year 2 SSR Agreement provides for an extension of this agreement, with 90 days' notice, wherein Illinois Power may install equipment for 2015 operations.<sup>299</sup> Finally, Illinois Commission requests that the Commission require Illinois Power to support its rate of return (which Illinois Commission calculated to be 10.44 percent) on materials and supplies and fuel inventory, prepaids, and cash working capital.<sup>300</sup>

171. Illinois Power argues that fixed SSR compensation should not be limited to incremental costs. Illinois Power incorporates by reference the arguments set forth by Ameren in the Complaint in Docket No. EL13-76-000. In particular, Illinois Power argues that MISO can consider the fixed costs of existing plant an appropriate going-forward cost. Illinois Power maintains that, to the extent that the Tariff does not permit SSRs to recover the fixed costs of existing plant, it is unjust and unreasonable because (1) the Commission has previously rejected an incremental cost approach for RMR units like Edwards Unit 1; (2) the Commission has permitted full going-forward cost recovery in other regions, and there is no reasonable basis to unduly discriminate against generators in MISO; (3) the fixed costs of existing plant are legitimate costs of service; (4) denying the recovery of legitimate costs leads to unjust, unreasonable, and confiscatory rates; and (5) a compensation scheme that provides for incremental cost recovery denies a generator an opportunity to recover its full fixed costs. Illinois Power states that, according to the testimony of Alan C. Heintz, the annual revenue requirement for Edwards Unit 1 is \$16,134,845, which yields a "Month SSR Amount" of \$1,344,570. Illinois Power asserts that this amount compares to MISO's proposed "Monthly SSR Amount" of \$927,860. Illinois Power contends that the difference between these is based on the depreciation expense, return on rate base, and income taxes associated with that amount.<sup>301</sup>

172. Illinois Power asserts that, as discussed in Ameren's protest to the Edwards Year 1 SSR Agreement proceeding, to the extent that Edwards Unit 1 is not permitted to net out administrative charges, Revenue Sufficiency Guarantee charges, and similar charges as a result of the continued operation of Edwards Unit 1, Edwards Unit 1 will be required to operate without recovering all of the associated variable costs. Therefore, Illinois Power

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<sup>299</sup> *Id.* (citing MISO, Edwards Year 2 SSR Agreement, § 3.A(5)).

<sup>300</sup> *Id.* at 21-22 (citing MISO, Edwards Year 2 SSR Agreement Filing, Truesdel Test. at 6-7).

<sup>301</sup> Illinois Power February 20, 2014 Supplement at 6-7.

requests that the Commission order MISO to make a compliance filing amending the variable cost formula in Exhibit 2 to the Edwards Year 2 SSR Agreement to ensure that the variable cost settlement nets out these charges and any other similar charges that would result in Edwards Unit 1 recovering less than its start-up, no-load, and incremental energy offer costs in any given hour.<sup>302</sup>

173. Furthermore, Illinois Municipal-Wabash Valley, Illinois Commission, and Hoosier-Southern Illinois also express concern over provisions in the Edwards Year 2 SSR Agreement regarding the turbine generator overhaul. Illinois Municipal-Wabash Valley assert that MISO failed to justify such a large expenditure for a unit that will soon retire. They question the purpose and timing of the overhaul, noting that the prudence of the investment and monthly charges attributed to the overhaul should be examined if Edwards Unit 1 were to be down for three months. Illinois Municipal-Wabash Valley also argue that there appears to be a “one-way true-up” regarding cost recovery for the overhaul. Illinois Municipal-Wabash Valley explain that, if the cost of overhaul is more than \$950,000 greater than the \$4.7 million estimate, the excess will apparently be treated as “unanticipated repairs.” However, Illinois Municipal-Wabash Valley state that there is no corresponding provision for a reduction should costs be lower than estimated. They also take issue with MISO’s statement that “Exhibit 2 in the [Edwards Year 2 SSR Agreement] recognizes that [Illinois Power’s] commitment to prudent expenditures on maintenance that cannot be reasonably mitigated should be compensated.”<sup>303</sup> Illinois Municipal-Wabash Valley question where and how any of these costs, and especially cost overruns, will be subject to a prudence inquiry.

174. Similarly, Illinois Commission argues that the Edwards Year 2 SSR Agreement exposes ratepayers to higher rates and greater risks. Specifically, Illinois Commission notes that, in addition to a 20 percent increase in fixed annual compensation, the Edwards Year 2 SSR Agreement permits Illinois Power to recover costs associated with “unanticipated repairs” unless MISO determines that “the unanticipated repairs could not be accomplished in a manner that would preserve system reliability.”<sup>304</sup> According to Illinois Commission, MISO is not permitted to engage in such a benefit/cost analysis regarding such proposed unanticipated repairs. In addition, Illinois Commission asserts that the Edwards Year 2 SSR Agreement appears to allow Illinois Power to install major

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<sup>302</sup> *Id.* at 8.

<sup>303</sup> Illinois Municipal-Wabash February 20 Protest at 5-6 (quoting MISO, Edwards Year 2 SSR Agreement Transmittal Letter at 4).

<sup>304</sup> Illinois Commission February 20 Comments at 11 (quoting MISO, Edwards Year 2 SSR Agreement, Attach. Y-1, § 9.E).

plant upgrades such as the turbine generator exciter overhaul project, recover those costs from captive ratepayers, and then terminate the agreement in order to participate in the electricity markets, at least until the alternatives identified by MISO have been implemented to maintain the reliability of the transmission system.<sup>305</sup> Illinois Commission therefore recommends that the Commission either direct MISO to delete the relevant sentence from the Edwards Year 2 SSR Agreement or require that, if Illinois Power terminates the agreement after installing significant capital equipment and returns to market operations, then the amounts paid by ratepayers toward such capital costs must be refunded.<sup>306</sup>

175. Hoosier-Southern Illinois assert that the provisions in Exhibit 2 regarding the compensation for the overhaul are unjust and unreasonable. They note that if Illinois Power commits to the overhaul, but MISO then exercises its right to terminate the agreement, the monthly unrecovered overhaul costs will continue to be paid to Illinois Power. Hoosier-Southern Illinois explain that, because termination of the agreement would eliminate the need for the overhaul, Illinois Power should be required to use its best efforts to cancel any planned repair work and to terminate any contracts related to the overhaul. Hoosier-Southern Illinois also observe that, if Illinois Power does not commit to the overhaul, the Edwards Year 2 SSR Agreement provides that “monthly settlements will be adjusted . . . to recover from Participant that portion of the Monthly Overhaul Cost payments made for these expected costs that were not incurred by Participant.”<sup>307</sup> Hoosier-Southern Illinois assert that ratepayers should be entitled to a refund of all the overhaul payments collected, with interest. Also, Hoosier-Southern Illinois contend that, should Illinois Power choose to terminate the Edwards Year 2 SSR Agreement but still participate in MISO’s markets, Illinois Power should be required to refund the overhaul payments it had collected, with interest.<sup>308</sup>

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<sup>305</sup> *Id.* at 22 (quoting MISO, Edwards Year 2 SSR Agreement, Ex. A., Attach. Y-1, § 3.B (“Participant may request that MISO terminate this Agreement if the Participant agrees in writing to continue to operate the Unit without any SSR Agreement until the alternative(s) identified by MISO have been implemented to maintain the reliability of the Transmission System.”)).

<sup>306</sup> *Id.* at 23.

<sup>307</sup> Hoosier-Southern Illinois February 20 Protest at 8-9 (quoting MISO, Edwards Year 2 SSR Agreement, Ex. 2).

<sup>308</sup> *Id.*

176. Hoosier-Southern Illinois take issue with the provisions of the Edwards Year 2 SSR Agreement concerning emergency repairs. Hoosier-Southern Illinois argue that, if MISO authorizes Illinois Power to make emergency repairs, but the Commission later determines that MISO's determination was imprudent, the costs of the imprudently-permitted repairs should be allocated pursuant to the outcome of a separate proceeding under FPA section 205. According to Hoosier-Southern Illinois, in such a proceeding, MISO could suggest a means of allocating the costs, and all affected load-serving entities would have the opportunity to comment upon MISO's proposal and to suggest alternatives. Hoosier-Southern Illinois therefore reject the Edwards Year 2 SSR Agreement's proposal to allocate such costs to the load-serving entities that require the operation of the SSR unit for reliability purposes.<sup>309</sup> Hoosier-Southern Illinois also suggest that section 9.E(1) should be revised to provide that, should Illinois Power choose to make non-emergency repairs prior to receiving notice from MISO, the costs of such repairs will be at Illinois Power's expense, rather than being allocated pursuant to Edwards Year 2 Rate Schedule 43C.<sup>310</sup>

177. Regarding misconduct events, Illinois Commission argues that the standard for imposing a performance penalty is too limited. According to Illinois Commission, the relevant provisions require MISO to establish that Illinois Power "intentionally provided incomplete, inaccurate, or dishonest reporting to MISO" regarding the availability of Edwards Unit 1 before a penalty is imposed.<sup>311</sup> Instead of requiring MISO to prove intent, Illinois Commission suggests that a penalty be imposed in any hour where MISO calls on Edwards Unit 1 in an emergency or to maintain reliability of the transmission system, and Edwards Unit 1 does not perform. Illinois Commission also notes that, because Illinois Power is receiving guaranteed fixed payments from captive ratepayers to keep Edwards Unit 1 available and failure to perform when called upon could have significant consequences for those ratepayers, it is not unreasonable to expect financial penalties for not performing. Finally, Illinois Commission finds the maximum \$10,000 penalty to be too low.<sup>312</sup>

178. Similarly, Hoosier-Southern Illinois note that, while section 9.D of the Edwards Year 2 SSR Agreement provides that, in the event of a misconduct event, MISO's

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<sup>309</sup> *Id.* at 9-10.

<sup>310</sup> *Id.* at 7-8.

<sup>311</sup> Illinois Commission February 20 Comments at 12-13 (citing MISO, Edwards Year 2 SSR Agreement, §§ 9.D(3), 9.D(4)).

<sup>312</sup> *Id.*

payment to Illinois Power will be reduced by “no more than \$10,000 per day,” the Standard Form SSR Agreement provides for a reduction of \$10,000 per day. Therefore, Hoosier-Southern Illinois argue that the Commission should instead require the \$10,000 per day reduction found in the Standard Form SSR Agreement, or alternatively, require that the Edwards Year 2 SSR Agreement specify how the level of the penalty will be determined. Like Illinois Commission, Hoosier-Southern Illinois also argue that MISO fails to support the provisions in the Edwards Year 2 SSR Agreement regarding unanticipated repairs. Specifically, Hoosier-Southern Illinois take issue with the language in section 9.E, which requires Illinois Power to notify MISO if the need arises to make an unanticipated repair to the SSR unit. MISO may then choose either to terminate the Edwards Year 2 SSR Agreement or to authorize Illinois Power to make the necessary repairs. Hoosier-Southern Illinois contend that, as presently drafted, Illinois Power would neither be deemed to have a misconduct event nor be subject to performance penalties for the time after Illinois Power notifies MISO of the need for repairs and MISO notifies Illinois Power in writing that it approves the repairs and directs the repairs to begin.<sup>313</sup> According to Hoosier-Southern Illinois, this provision permanently exempts Illinois Power from being deemed to have had a misconduct event, or from incurring any performance penalty, even after the authorized repairs have been completed. Hoosier-Southern Illinois therefore conclude that the Commission should direct MISO either to provide a justification or to add the words “until such repairs have been completed in a timely fashion” to the end of the first paragraph of section 9.E.<sup>314</sup>

179. Illinois Commission and Hoosier-Southern Illinois assert that MISO failed to justify the operational limitations set forth in section 1.H of the Edwards Year 2 SSR Agreement. Illinois Commission notes that the Edwards Year 1 SSR Agreement contained no limitations on the number of starts or hours of operation, but the Edwards Year 2 SSR Agreement sets a limit of a maximum of ten starts and 1,200 hours of operation. Illinois Commission also notes that according to the Attachment Y Study Report, Edwards Unit 1 is needed to meet summer peak, which could be 2,208 hours for June, July and August. According to Illinois Commission, MISO has not explained whether these limitations permit Edwards Unit 1 to adequately meet the reliability needs determined in the Attachment Y Study Report.<sup>315</sup> Similarly, Hoosier-Southern Illinois assert that MISO offered no justification for these operational limitations, and the

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<sup>313</sup> Hoosier-Southern Illinois February 20 Protest at 7 (citing MISO, Edwards Year 2 SSR Agreement, § 9.E).

<sup>314</sup> *Id.* at 6-7.

<sup>315</sup> Illinois Commission February 20 Comments at 9.

Commission should therefore not accept them. According to Hoosier-Southern Illinois, in exchange for risk-free compensation of its going-forward costs, Edwards Unit 1 should be required to run as often as needed to ensure reliability, unless MISO can demonstrate the need for more stringent operational limits.<sup>316</sup>

180. Illinois Commission also takes issue with the use of Ameren Transmission's local planning criteria. As it stated in its comments in the Edwards Year 1 SSR Agreement proceeding, Illinois Commission observes that the Edwards Year 1 SSR Agreement was based on violations of Ameren Transmission's local planning criteria, not NERC reliability standards. Specifically, while there were thermal loading issues and low voltage issues for several NERC Category C contingency events, Ameren Transmission's local planning criteria precluded the use of any involuntary load shedding for Category C events.<sup>317</sup> While Illinois Commission acknowledges that it is appropriate to consider Ameren Transmission's local planning criteria, Illinois Commission also argues that it is not unreasonable to also consider whether the benefit of achieving these criteria's level of reliability, beyond what is required to meet NERC or regional standards, is worth the cost of the Edwards Year 2 SSR Agreement from the ratepayers' perspective. Illinois Commission argues that such consideration would examine the likelihood of realizing the Category C multiple contingencies at issue, the impact of low voltage events, the amount and timing of possible load shed, and the time it would take to restore shed load that could occur.<sup>318</sup>

181. Regarding the Attachment Y Reliability Study described by MISO in its 2012 Attachment Y Study Report, Illinois Commission asserts that it is outdated. Illinois Commission observes that MISO completed the reliability analysis in December 2012 when it designated Edwards Unit 1 as an SSR for calendar year 2013. In that analysis, Illinois Commission notes that MISO used power system models for 2012 summer peak and 2016 summer peak. According to Illinois Commission, MISO's current filings do not indicate that it conducted a new reliability analysis regarding the need for the Edwards Year 2 SSR Agreement, and it is not clear whether either the 2012 summer peak or 2016 summer peak power system models are relevant to 2014 system conditions. Illinois Commission suggests that using a 2014 summer peak model would provide more relevant near-term results. Illinois Commission therefore requests that the Commission

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<sup>316</sup> Hoosier-Southern Illinois February 20 Protest at 6.

<sup>317</sup> Illinois Commission February 20 Comments at 8 (citing Illinois Commission July 31 Comments at 13-14).

<sup>318</sup> *Id.* at 6-9.

require MISO to either provide an updated Attachment Y Study Report or explain why the initial analysis was not updated.<sup>319</sup>

182. Illinois Commission also argues that it is unclear whether the Attachment Y Study Report identifies reliability issues only in the summer, or in shoulder periods as well. Illinois Commission cites to the Attachment Y Study Report, which states that the reliability analysis “‘was limited to summer peak conditions only’, namely 2012 and 2016 summer peak, and that previous studies had found no thermal or voltage concerns in winter peak or off-peak periods.”<sup>320</sup> Illinois Commission notes that in the Edwards Year 2 SSR Agreement transmittal letter, however, MISO states that violations occurred in both “the summer and shoulder peak load periods.”<sup>321</sup> According to Illinois Commission, if reliability issues have been identified only for the summer, then it is not clear why MISO has not limited the term of the Edwards Year 2 SSR Agreement to only the 2014 summer period. Illinois Commission therefore requests that the Commission require MISO to explain this discrepancy.<sup>322</sup>

183. Illinois Commission argues that MISO has not provided an update regarding the status of the transmission upgrades that would render continuance of the SSR agreements for Edwards Unit 1 no longer necessary. It therefore requests that the Commission require MISO to provide an update on the status of these upgrades. Illinois Commission adds that accelerating the in-service dates for these transmission upgrades may constitute a viable, cost-effective alternative to the continuation of SSR agreements for Edwards Unit 1 (in whole or in part). Moreover, Illinois Commission contends that, as MISO states in the Attachment Y Study Report, with the installation of certain transmission upgrades, the output of Edwards Unit 1 could be limited to a maximum 75 MW to remain within emission limits and avoid capital upgrades of emissions control equipment.<sup>323</sup>

184. Illinois Commission asserts that MISO has not fully executed its obligation to explore all alternatives to the designation of Edwards Unit 1 as an SSR. Illinois Commission maintains that it was not sufficient for MISO to bring up the issue of SSR alternatives at the June 5, 2013 and October 18, 2013 Central Technical Study Task Force

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<sup>319</sup> *Id.* at 13-14.

<sup>320</sup> *Id.* at 15 (quoting MISO, Edwards Year 1 SSR Agreement, Ex. D at 6).

<sup>321</sup> *Id.* (citing MISO, Edwards Year 2 SSR Agreement, Transmittal Letter at 2-3).

<sup>322</sup> *Id.* at 15-16 (citing SSR Order, 140 FERC ¶ 61,237 at P 106).

<sup>323</sup> *Id.* at 16-17 (citing MISO, Edwards Year 1 SSR Agreement, Ex. D at 15).

meetings. According to Illinois Commission, such meetings are generally lightly attended because of a narrow geographical focus, and they appeal to those interested in technical transmission issues. Illinois Commission also notes that MISO required stakeholders to sign a Non-Disclosure Agreement in order to participate. Illinois Commission asserts that MISO should adopt a more formal, comprehensive and market-based process for assessing SSR alternatives, including a widely-publicized request for proposals for alternatives to the Edwards Year 2 SSR Agreement. Similarly, Illinois Commission requests that MISO initiate a new request for proposals for alternatives to a potential renewal of the Edwards Year 2 SSR Agreement, should the need for such an agreement arise. Finally, Illinois Commission requests that the Commission require MISO to examine and report on the feasibility and cost of accelerating the construction of the transmission upgrades that would allow MISO to discontinue designating Edwards Unit 1 as an SSR.<sup>324</sup>

185. Illinois Commission observes that the Edwards Year 1 SSR Agreement required Ameren to offer Edwards Unit 1's capacity into MISO's planning resource auction, but the Edwards Year 2 SSR Agreement merely encourages participation in the MISO capacity auction. According to Illinois Commission, if Edwards Unit 1 were required to offer into the capacity auction and cleared, MISO's capacity auction rules would require it to offer its energy into the day-ahead energy market in all hours in which the plant is not on outage, thus providing additional competition between capacity resources and benefitting electricity consumers in the Ameren Illinois Local Balancing Authority Area. If Edwards Unit 1 does not participate in the capacity auction, however, Illinois Commission states that the result may be a higher auction clearing price in the Ameren Illinois Local Balancing Authority Area than would otherwise be the case. In addition, Illinois Commission argues that if Edwards Unit 1 does not participate in the capacity auction, consumers in the Ameren Illinois Local Balancing Authority Area would pay twice to ensure reliability of the grid: once in the form of the capacity auction commitment payments and a second time in the form of the approximately \$12 million SSR payment to maintain the availability of Edwards Unit 1.<sup>325</sup> Illinois Power, on the other hand, requests that the Commission confirm that its failure to participate in MISO's capacity auctions will not be deemed as either physical or economic withholding.<sup>326</sup>

186. Several procedural issues were raised as well. Hoosier-Southern Illinois assert, for example, that MISO fails to justify its request for waiver of the prior notice requirement

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<sup>324</sup> *Id.* at 17-19.

<sup>325</sup> *Id.* at 10.

<sup>326</sup> Illinois Power February 20, 2014 Supplement at 10.

or its alternative request to treat the Edwards Year 2 SSR Agreement as a service agreement. First, Hoosier-Southern Illinois argue that MISO has not met, nor does it claim to have met, the criteria set forth in *Central Hudson*. Hoosier-Southern Illinois note that, instead, MISO cites to the Escanaba Order, in which the Commission granted waiver with regard to an SSR agreement.<sup>327</sup> Hoosier-Southern Illinois argue that a Commission statement of what a just and reasonable rate should encompass does not permit MISO to ignore statutory filing requirements as to when the rate should be filed. They also argue that the Commission should not be persuaded by the fact that the waiver was granted for the Edwards Year 1 SSR Agreement. Hoosier-Southern Illinois contend that the use of SSR agreements was “a relatively new phenomenon at that time” and may have required more negotiation time, but that is not the case here because the issue of the appropriate level of compensation has already been submitted to the Commission.<sup>328</sup> Finally, Hoosier-Southern Illinois assert that MISO’s claim that the Edwards Year 2 SSR Agreement can be accepted as a service agreement should also be rejected because a service agreement “authorizes a customer to take electric service under the terms of a tariff,”<sup>329</sup> but the instant agreement contains deviations from the terms of the Tariff.<sup>330</sup>

187. Similarly, Illinois Commission states that it is not clear whether Illinois Power has met MISO’s Tariff requirement regarding notice of intent to retire Edwards Unit 1. Illinois Commission argues that there is no demonstration in the Edwards Year 2 SSR Agreement or Edwards Year 2 Rate Schedule 43C that Illinois Power satisfied the requirement in section 38.2.7.a of the Tariff that its Attachment Y Notice to retire must be submitted at least 26 weeks in advance. Illinois Commission requests that the Commission direct MISO and/or Illinois Power to clarify this issue.<sup>331</sup>

188. Regarding filing rights, Illinois Power argues that, as explained in Ameren’s answer in Docket No. ER13-1962-000, the seller, not the customer, has the right to propose a rate for service under FPA section 205. Illinois Power states that a proposed rate must be accepted if it is just and reasonable, even if another party proposes alternative rates that might be equally or more just and reasonable; therefore, Illinois

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<sup>327</sup> Hoosier-Southern Illinois February 20 Protest at 11 (citing Escanaba Order, 142 FERC ¶ 61,170 at P 85).

<sup>328</sup> *Id.* at 11-12.

<sup>329</sup> *Id.* at 12 (quoting 18 C.F.R. § 35.2(c)(2)).

<sup>330</sup> *Id.* at 10-13.

<sup>331</sup> Illinois Commission February 20 Comments at 23-24.

Power's only burden is to demonstrate that the recovery of Edwards Unit 1's full cost-of-service is just and reasonable.<sup>332</sup>

189. Illinois Power argues that, even if the Commission is not prepared to issue an order providing Edwards Unit 1 with its full cost-of-service, the Commission should accept the Edwards Year 2 SSR Agreement effective January 1, 2014, subject to refund and further Commission order, and grant waiver of the prior notice requirement, as was done for the Edwards Year 1 SSR Agreement. Illinois Power notes that Edwards Unit 1 has continued to provide SSR service, and has been incurring costs to do so, since January 1, 2014.<sup>333</sup>

#### **D. Answers**

190. In its answer, MISO responds to the arguments made by Illinois Power in its protest. First, MISO states that Illinois Power has authorized MISO to state that, regarding Illinois Power's request that the Edwards Year 2 SSR Agreement ensure that variable cost settlements net out certain charges that would otherwise prevent it from recovering its start-up, no-load, and incremental energy offer costs, Illinois Power considers the matter resolved and no revisions to the Edwards Year 2 SSR Agreement are required. Additionally, regarding Illinois Power's argument that it should have the right under section 205 of the FPA to file a rate, MISO states that the Commission has previously stated that it was "not persuaded to revisit the Commission's previous acceptance of a negotiated approach to determine SSR compensation."<sup>334</sup> Finally, MISO states that the Commission should clarify whether Illinois Power's failure to participate in the capacity auctions would constitute physical or economic withholding.<sup>335</sup> According to MISO, the Edwards Year 2 SSR Agreement does not contain any statement regarding physical or economic withholding, primarily because such determinations are largely made by the MISO Market Monitor.<sup>336</sup>

191. MISO asserts that it provided sufficient detail to support its costs. It notes that supporting evidence was provided in the testimony of Kevin Truesdel, which is included

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<sup>332</sup> Illinois Power February 20, 2014 Supplement at 8.

<sup>333</sup> *Id.* at 10-11.

<sup>334</sup> MISO March 7 Answer at 7 (citing SSR Order, 140 FERC ¶ 61,237 at P 140).

<sup>335</sup> *Id.* at 5-8.

<sup>336</sup> *Id.* at 8.

as Attachment C to the Edwards Year 2 SSR Agreement filing, and that evidence was supplemented by Illinois Power in the form of the testimony of Alan Heintz.<sup>337</sup>

192. Regarding operational limitations placed on Edwards Unit 1, MISO states that these limitations reflect the fact that the unit would likely require additional costly maintenance if it were to operate more frequently, and, based upon MISO's past operating experience, it states that ten starts and 1,200 hours of operation are sufficient to cover the summer and shoulder periods.<sup>338</sup> In addition, MISO states that it would be inappropriate to limit the term of the Edwards Year 2 SSR Agreement to only the 2014 summer period because "[t]he SSR Order requires a connection between the end point for the SSR Agreement and the timeline that permits the release of a generator to finally retire."<sup>339</sup> MISO also states that the Edwards Year 2 SSR Agreement does not require Edwards Unit 1 to participate in the capacity auction because the costs resulting from requiring participation would likely be larger than any expected benefits that might result from such a requirement. MISO explains that the Edwards Year 2 SSR Agreement contains flexible termination provisions by MISO that could cause additional financial exposure for replacing resource credits in MISO's capacity construct. MISO adds that an Attachment Y Notice can be submitted to MISO for a date that does not line-up with MISO's planning year.<sup>340</sup>

193. Regarding concerns over MISO's discretion to issue performance penalties, MISO argues that it does not have any discretion. MISO notes the relationship between sections 9.D(4) and 9.D(7), which require MISO to use the provided calculation of an Unexcused Misconduct Amount. MISO adds that the standard for assessing whether a misconduct event occurred is stated in the Standard Form SSR Agreement and is not the proper subject of these proceedings.<sup>341</sup>

194. MISO also responds to concerns raised by parties regarding the "unanticipated repairs" provision. MISO states that Illinois Power would not be permanently exempted from being assessed performance penalties after unanticipated repairs were reported; this is because, under section 9.D of the Edwards Year 2 SSR Agreement, Illinois Power

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<sup>337</sup> MISO March 7 Answer at 8-10.

<sup>338</sup> *Id.* at 10.

<sup>339</sup> *Id.*

<sup>340</sup> *Id.* at 10-11.

<sup>341</sup> *Id.* at 11.

could still be assessed such penalties if Edwards Unit 1 does not deliver and such failure to deliver is unexcused.<sup>342</sup> Regarding Illinois Commission's statement that MISO does not have the ability to engage in a "cost/benefit calculus" regarding unanticipated repairs, MISO asserts that this responsibility is consistent with the Commission's finding in the Escanaba Order that MISO should not preclude the possibility that significant repairs will be necessary to ensure an SSR unit's availability.<sup>343</sup> Finally, MISO contends that section 9.E(1) and related provisions regarding unanticipated repairs provide for a supervised approach to repair expenditures in order to protect those paying for such expenditures.<sup>344</sup>

195. Regarding concerns about costs associated with the overhaul, MISO states that Exhibit 2 to the Edwards Year 2 SSR Agreement contains provisions that ensure that, in the instance of termination, Illinois Power will only be entitled to recover costs that could not have been reasonably avoided after receiving notice of early termination from MISO. Further, MISO asserts that, in the event that Illinois Power does not commit to the overhaul, no costs will have been incurred on the project and all funds collected would be refunded through the adjustments stated in Exhibit 2 to the Edwards Year 2 SSR Agreement. Finally, MISO states that the only unilateral right Illinois Power has to terminate the Edwards Year 2 SSR Agreement is upon the failure of MISO to continue to be certified as an RTO/ISO, as stated in the Standard Form SSR Agreement; therefore, MISO contends that protesters' concerns regarding Illinois Power's ability to "terminate" the agreement and instead continue to operate without an SSR agreement, are not the subject of these proceedings.<sup>345</sup>

196. MISO disagrees with Hoosier-Southern Illinois' argument that the effective date of January 1, 2104 was not justified. MISO asserts that, in the Escanaba Order, the Commission found that an SSR unit should not be required to absorb uncompensated going-forward costs, and that, during the time a generator is subject to an SSR agreement, it shall qualify as an SSR unit.<sup>346</sup> MISO asserts that it is reasonable to grant waiver of the Commission's prior notice rule for the Edwards Year 2 SSR Agreement considering MISO's extended negotiations with Ameren, and later Illinois Power, regarding

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<sup>342</sup> *Id.* at 11-12.

<sup>343</sup> *Id.* at 12 (citing Escanaba Order, 142 FERC ¶ 61,170 at P 55).

<sup>344</sup> *Id.*

<sup>345</sup> *Id.* at 12-13.

<sup>346</sup> *Id.* at 14 (citing Escanaba Order, 142 FERC ¶ 61,170 at PP 84-85).

compensation.<sup>347</sup> MISO also notes that, during this same time, it worked to explore whether there were any viable alternatives to the Edwards Unit 1 SSR agreements.<sup>348</sup>

197. Regarding Illinois Commission's concerns over whether it was proper to use Ameren Transmission's local planning criteria in evaluating the need for Edwards Unit 1 to continue operations as an SSR, MISO asserts that Tariff section 38.2.7.c requires MISO to consider local transmission planning criteria. MISO adds that the Business Practices Manuals similarly state that local planning criteria should be respected. MISO states that the Attachment Y Reliability Study was performed consistent with these procedures and that participating in the stakeholder process would be the proper forum in which to raise concerns regarding the study process.<sup>349</sup>

198. MISO argues that the Edwards Year 2 SSR Agreement is a last resort reliability measure. MISO states that it did assess available feasible SSR alternatives. MISO reports that, when that assessment did not find any significant changes that would lead to a new Attachment Y Reliability Study, it provided an additional opportunity for stakeholders to provide input on whether conditions had changed as well as whether feasible SSR alternatives exist. MISO states that the Maple Ridge-Fargo 345kV Line will not be ready until 2016, and other upgrades have not experienced enough progress to advance Edwards Unit 1's retirement date. Moreover, MISO notes that its Tariff requires stakeholders to sign nondisclosure agreements prior to the discussion of sensitive information, and Illinois Commission failed to explain how a substitute process for the assessment of SSR alternatives would operate.<sup>350</sup> Finally, MISO explains that, contrary to Illinois Commission's claims, it received sufficient notice from Illinois Power regarding the retirement of Edwards Unit 1. MISO states that a second notice resulting from the change in ownership is not required by the Tariff.<sup>351</sup>

199. Regarding Illinois Commission's arguments about the need for the Edwards Year 2 SSR Agreement, Illinois Power states that it does not take a position on the issue, but rather, if the Commission finds that this agreement is not necessary, it should direct

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<sup>347</sup> *Id.* (citing Escanaba Order, 142 FERC ¶ 61,170 at P 85).

<sup>348</sup> *Id.* at 14-15.

<sup>349</sup> *Id.* at 15.

<sup>350</sup> *Id.* at 16-17.

<sup>351</sup> *Id.* at 17-18.

MISO to terminate the Edwards Year 2 SSR Agreement.<sup>352</sup> Additionally, in response to Illinois Commission's argument that the Edwards Year 2 SSR Agreement should only be in effect for the summer period, Illinois Power states that this proposal violates the Tariff. Specifically, Illinois Power asserts that Illinois Commission fails to address who would be responsible for the costs during the other months to keep Edwards Unit 1 available for SSR service for four months out of the year for each year that Edwards Unit 1 is needed. Illinois Power agrees with Illinois Commission, however, that, if Edwards Unit 1 is not needed after the 2014 summer period, the term of the Edwards Year 2 SSR Agreement could be revised to end after the 2014 summer period.<sup>353</sup>

200. Illinois Power states that it cannot be required to participate in the capacity markets as suggested by Illinois Commission. First, Illinois Power asserts that, if Edwards Unit 1 had been retired as planned, it would not be available to participate in the MISO capacity auction. Second, Illinois Power explains that, as recognized by Illinois Commission, there is a disconnect between the annual term of the Edwards Year 2 SSR Agreement and the delivery year. Illinois Power states that, should Edwards Unit 1 be offered into the capacity market for the June 2014 through May 2015 period, it would be in violation of the SSR provisions of the Edwards Unit 1 Attachment Y Notice and the requirement that Edwards Unit 1 cease operations at the latter of the Attachment Y Notice retire date or the end of the Edwards Year 2 SSR Agreement. Illinois Power states that, in order to avoid violating section 38.2.7 of the Tariff, it could purchase replacement capacity, but such costs would need to be recovered under the Edwards Year 2 SSR Agreement. Third, Illinois Power contends that the operational limitations of the Edwards Year 2 SSR Agreement also serve as a further basis for Edwards Unit 1 not participating in the capacity auction. Illinois Power reports that the operational limits are the result of negotiations with MISO to reduce the cost of the SSR service while considering MISO's required dispatch.<sup>354</sup> Illinois Power also argues that Illinois Commission's comparison of costs between 2013 and 2014 is irrelevant because it is the costs associated with the overhaul that are responsible for the increase identified in 2014.<sup>355</sup>

201. Illinois Power argues that performance-related payment adjustments under the Edwards Year 2 SSR Agreement should not be modified. Illinois Power refutes Hoosier-

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<sup>352</sup> Illinois Power Reply at 8.

<sup>353</sup> *Id.* at 9-10.

<sup>354</sup> *Id.* at 10-12.

<sup>355</sup> *Id.* at 12-13.

Southern Illinois' argument that MISO appears to have discretion over how the level of the penalty will be determined. Illinois Power states that it has no discretion, but, in order to reconcile section 9.D(7) with section 9.D(4), it was necessary to add the phrase "no more than" to section 9.D(4) to retain \$10,000 as the cap. Illinois Power also rejects Illinois Commission's request that penalties be imposed any time Edwards Unit 1 fails to perform when called upon, regardless of intent. Specifically, Illinois Power states that, in addition to this request constituting a collateral attack on the Standard Form SSR Agreement, Edwards Unit 1 is an old facility that may not always be immediately available for reasons beyond the control of Illinois Power. Illinois Power adds that, due to the incremental cost approach filed by MISO, there is no excess revenue under the Edwards Year 1 SSR Agreement to pay the penalty.<sup>356</sup>

202. Illinois Power contends that the Commission should reject proposals to amend the Edwards Year 2 SSR Agreement to include refund provisions. According to Illinois Power, such proposals would be a significant departure from the Standard Form SSR Agreement, would be a departure from traditional ratemaking principles of rates based on a test year, would impose additional burdens on Illinois Power, and is otherwise infeasible under the incremental cost approach. Regarding Illinois Commission's request for a review of actual A&G/labor and O&M costs, Illinois Power states that those costs are based on an incremental cost approach (i.e., costs that will be avoided as a result of Edwards Unit 1 no longer being in service) rather than 2014 budgeted costs. Illinois Power states that a comparison of 2014 actual A&G/labor against the A&G/labor costs based on the incremental cost approach would be a mismatch for comparison purposes. Regarding Hoosier-Southern Illinois' request that Illinois Power refund the amounts associated with the turbine generator overhaul if the overhaul is not undertaken, Illinois Power states that Exhibit 2 to the Edwards Year 2 SSR Agreement already provides for such a refund.<sup>357</sup>

203. Illinois Power alleges that it has no intention of operating Edwards Unit 1 after the end of its SSR service. Moreover, Illinois Power reports that it is required by the Illinois Pollution Control Board to retire Edwards Unit 1 as soon as MISO no longer requires it

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<sup>356</sup> *Id.* at 13-15.

<sup>357</sup> *Id.* at 15-17.

for reliability purposes.<sup>358</sup> Illinois Power also agrees with MISO that Edwards Unit 1's change in ownership does not warrant a second Attachment Y Notice.<sup>359</sup>

204. Illinois Power also addresses concerns regarding the cost of the turbine generator overhaul and the timing of the O&M costs related to 2015 pollution compliance. First, Illinois Power contends that the overhaul costs are necessary and cannot be treated as capital costs. Illinois Power explains that it agreed to continue operating Edwards Unit 1 with the condition that the unit be overhauled as soon as practical to address personnel safety and equipment reliability concerns. According to Illinois Power, planning an overhaul of this magnitude takes a minimum of six months.<sup>360</sup> Illinois Power states that it agreed to start the overhaul in October 2014, meaning that Edwards Unit 1 will not be overhauled for summer 2014 and that the overhaul is really to be available for 2015. Illinois Power states that, while MISO generally enters into SSR agreements with a term of one year, MISO indicated a need for Edwards Unit 1 beyond 2014. Illinois Power argues that, if recovery of overhaul costs were postponed until MISO gave notice of its intention to enter into an SSR Agreement for 2015, the overhaul would be delayed because Illinois Power needs an SSR agreement in place prior to starting the overhaul and incurring the associated costs. Illinois Power asserts that, due to personnel safety and equipment reliability concerns, delaying the overhaul beyond 2014 is an unacceptable risk.<sup>361</sup> Illinois Power also adds that the costs associated with the overhaul cannot be treated as capital because (1) the expected life of the overhaul is less than one year due to the term of the Edwards Year 2 SSR Agreement; (2) the incremental cost approach makes it unclear whether MISO or the MISO Market Monitor would permit recovery of the capital cost; and (3) Edwards Unit 1 will be retired as soon as it is no longer needed for SSR service and will not have an opportunity to recover future depreciation.<sup>362</sup>

205. Second, Illinois Power argues that the pollution-related O&M costs must be incurred in 2014. Illinois Power explains that, in order to comply with the Mercury and

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<sup>358</sup> *Id.* at 17 (citing *Ill. Power Holdings, LLC v. Ill. Env'tl. Prot. Agency*, Docket No. PCB 14-10, at 103 (Nov. 21, 2013) (*Illinois Power Holdings*); *Certificate of Acceptance*, Docket No. PCB 14-10 (filed Dec. 20, 2013)).

<sup>359</sup> *Id.* at 18.

<sup>360</sup> Illinois Power states that the overhaul is expected to take eight weeks and will include no efficiency improvements. *Id.* at 20.

<sup>361</sup> *Id.* at 18-20.

<sup>362</sup> *Id.* at 20.

Air Toxics Standards, and therefore be eligible for SSR service beyond 2014, the work needs to be scheduled in 2014 and the cost recovered under the Edwards Year 2 SSR Agreement. Illinois Power adds that it is economical and practical to install these environmental upgrades during the same outage that is conducted for the turbine generator overhaul.<sup>363</sup>

206. Finally, Illinois Power argues that the Commission must grant the requested effective date. Illinois Power contends that doing so is consistent with Commission precedent and equitability principles. According to Illinois Power, the Commission has granted waiver of the prior notice requirement in accepting previous SSR agreements filed by MISO.<sup>364</sup> Illinois Power also states that good cause exists because it worked with MISO and the MISO Market Monitor to reach an agreement on the appropriate level of compensation. Illinois Power emphasizes that the Tariff gives MISO, not the generator, the authority to file SSR agreements with the Commission.<sup>365</sup> In the alternative, Illinois Power argues that the Edwards Year 2 SSR Agreement should be accepted as a service that was filed within 30 days of service commencement.<sup>366</sup>

**E. March 31, 2014 Order**

207. On March 31, 2014, the Commission accepted the Edwards Year 2 SSR Agreement and Edwards Year 2 Rate Schedule 43C, suspended them for a nominal period, to be effective January 1, 2014, as requested, subject to refund and further Commission order.<sup>367</sup>

**F. Commission Determination**

208. In this further Commission order, we establish hearing and settlement judge procedures on the issue of the going-forward costs included in the rate that MISO has negotiated with Illinois Power for operating Edwards Unit 1 as an SSR unit under the Edwards Year 2 SSR Agreement, as we find that MISO has not supported the proposed

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<sup>363</sup> *Id.* at 21.

<sup>364</sup> *Id.* at 22 (citing Escanaba Order, 142 FERC ¶ 61,170 at PP 84, 86).

<sup>365</sup> *Id.* at 23.

<sup>366</sup> *Id.* at 24.

<sup>367</sup> March 31, 2014 Order, 146 FERC ¶ 61,238.

compensation based on going-forward costs for the Edwards Year 2 SSR Agreement.<sup>368</sup> For example, protestors have raised a number of concerns regarding cost support for the going-forward cost estimates that MISO has not fully addressed.<sup>369</sup> In addition, we note that, in determining the just and reasonable rate for recovery of costs associated with retrofits and upgrades under the Edwards Year 2 SSR Agreement, allowance should be made for the potential scrap and/or reuse of such upgrades and retrofits by Illinois Power. Accordingly, upon review, we find that the rates proposed under the Edwards Year 2 SSR Agreement present issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. Our preliminary analysis indicates that the proposed rates under the Edwards Year 2 SSR Agreement have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we establish hearing and settlement judge procedures as to those rates.

209. Additionally, as discussed above in connection with the Complaint proceeding in Docket No. EL13-76-000, we also establish hearing and settlement judge procedures to determine the appropriate level of compensation for Illinois Power's fixed costs of existing plant for the continued service of Edwards Unit 1 under the remaining term of the Edwards Year 2 SSR Agreement (i.e., the term from when the replacement full cost-of-service rate is implemented until the Edwards Year 2 SSR Agreement expires on December 31, 2014), including the amount of any potential rate increase that may be appropriate to allow Illinois Power to recover its full cost-of-service, and consolidate Docket No. EL13-76-000 with Docket Nos. ER13-1962-000 and ER14-1210-000 for purposes of hearing and settlement, as requested by Illinois Power in the February 20, 2014 Supplement. However, pursuant to our finding above that the Tariff must provide SSR owners with the right to make their own FPA section 205 filings for compensation

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<sup>368</sup> This would include, for example, review of the costs associated with the overhaul, including the \$950,000 which appears in both the Edwards Year 1 SSR Agreement and the Edwards Year 2 SSR Agreement (specifically, in Part A of Exhibit 2 as a \$950,000 cushion between the expected cost of the overhaul (\$4,679,500) and the amount over which any costs will be treated as unanticipated repairs (\$5,629,500)), because it is not clear from the record whether this \$950,000 represents a different investment.

<sup>369</sup> As discussed above, the going-forward costs that MISO negotiated with Ameren for operating Edwards Unit 1 as an SSR unit under the Edwards Year 1 SSR Agreement in Docket No. ER13-1962-000 is also set for hearing and settlement judge procedures.

under SSR agreements, Illinois Power may make a section 205 filing proposing its own SSR compensation, including fixed costs of existing plant, as of the date of this order.

210. Regarding the reliability need for the Edwards Year 2 SSR Agreement, as an initial matter, we note that the protests regarding the use of Ameren Transmission's local planning criteria<sup>370</sup> and whether the term of the SSR agreements should be limited to summer peak<sup>371</sup> were addressed above in our determinations for the Edwards Year 1 SSR Agreement. Additionally, we reject Illinois Commission's protests regarding the adequacy of MISO's Attachment Y Reliability Study. First, regarding Illinois Commission's request that MISO provide an updated reliability study for the Edwards Year 2 SSR Agreement, we note that, in its answer, MISO states that it found no significant changes that would lead to a different reliability analysis from that found in the Attachment Y Study Report conducted for the Edwards Year 1 SSR Agreement. Additionally, we find that MISO has provided a sufficient record supporting its review of feasible SSR alternatives.<sup>372</sup> Further, according to MISO, the transmission upgrades that will alleviate the need for the Edwards Year 2 SSR Agreement are still scheduled to be completed by the end of 2016.<sup>373</sup> We also reject Illinois Commission's arguments regarding the adoption of a more formalized process for evaluating SSR alternatives, including the possibility of accelerating the construction of transmission facilities that would alleviate the need for Edwards Unit 1 to continue operating as an SSR. We find that such arguments relate to the SSR process generally and are therefore outside the scope of this proceeding.<sup>374</sup>

211. With regard to protestors' suggestion that Illinois Power did not submit a timely Attachment Y Notice to retire, we find that this is not the case. As we state in section IV.I discussing our acceptance of the Edwards Year 1 SSR Agreement, we find that Ameren provided MISO with sufficient notice of its intention to retire Edwards Unit 1, in

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<sup>370</sup> *See supra* P 146.

<sup>371</sup> *Id.*

<sup>372</sup> MISO, Edwards Year 2 SSR Agreement, Transmittal Letter at 5-6.

<sup>373</sup> MISO March 7 Answer at 16.

<sup>374</sup> In the discussion above, the Commission also finds pursuant to FPA section 206 that section 38.2.7 of the Tariff is unjust, unreasonable, and unduly discriminatory or preferential and should be revised to better describe certain elements of SSR agreements filed with the Commission.

accordance with the Tariff. Furthermore, we agree with MISO and Illinois Power that the change in ownership did not require the submission of a second notice.<sup>375</sup>

212. We find that MISO has sufficiently justified the need for the overhaul to address safety and reliability concerns and reject arguments raised by Illinois Municipal-Wabash Valley questioning the need for the overhaul. We also reject Hoosier-Southern Illinois' arguments concerning costs associated with the overhaul. We find that the plain language of Exhibit 2 protects customers from responsibility for the costs of the overhaul in the event that Illinois Power does not conduct the overhaul during 2014 or in the event that MISO terminates the agreement early. Specifically, Exhibit 2 to the Edwards Year 2 SSR Agreement provides that: "Participant shall not be entitled to recover any Overhaul costs in the event that the Overhaul is not undertaken during 2014 or in the event that Overhaul costs could reasonably have been avoided after receiving notice of early termination from MISO."<sup>376</sup> Exhibit 2 further provides that, if the overhaul does not occur, "Monthly settlements shall be adjusted following termination of the Agreement . . . to recover from Participant that portion of the Monthly Overhaul Cost payments made for these expected costs that were not incurred by Participant." We do, however, agree with Hoosier-Southern Illinois that any payments to be recovered from Illinois Power should include interest. This is consistent with the Commission's finding in the SSR Order that SSR units that later return to service should be required to refund with interest all costs, less depreciation, of repairs or capital expenditures needed to meet applicable environmental regulations.<sup>377</sup> Accordingly, we direct MISO, in a compliance filing due within 60 days of the date of this order, to revise Exhibit 2 to the Edwards Year 2 SSR Agreement to provide that any payments to be recovered from Illinois Power include interest consistent with this finding.

213. We disagree with Illinois Commission regarding Illinois Power's ability to install major plant upgrades, recover those costs from captive ratepayers, and then terminate the agreement in order to participate in the electricity markets. As Illinois Power states in its reply, pursuant to an order of the Illinois Pollution Control Board, Illinois Power must permanently retire Edwards Unit 1 as soon as allowed by MISO.<sup>378</sup> Further, as noted above, even if Edwards Unit 1 were to continue operating after its designation as an SSR

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<sup>375</sup> MISO March 7 Answer at 17-18; Illinois Power Reply at 18.

<sup>376</sup> MISO, Edwards Year 2 SSR Agreement, Ex. 2, Part A.

<sup>377</sup> SSR Order, 140 FERC ¶ 61,237 at P 138.

<sup>378</sup> Illinois Power Reply at 17 (citing *Illinois Power Holdings*, Docket No. PCB 14-10 at 103).

ends, the SSR Order required MISO to provide Tariff revisions addressing the treatment of SSRs that later return to service, including to ensure that such resources refund with interest all costs, less depreciation, of repairs or capital expenditures needed to meet the applicable environmental regulations.<sup>379</sup>

214. We reject protestors' arguments regarding cost recovery associated with unanticipated repairs. First, with respect to non-emergency repairs, we reject Hoosier-Southern Illinois' suggestion that section 9.E(1) should be revised to provide that, should Illinois Power choose to make non-emergency repairs prior to receiving notice from MISO, the costs of such repairs will be at Illinois Power's expense, rather than being allocated pursuant to Edwards Year 2 Rate Schedule 43C. Instead, we find the existing language in section 9.E(1) to be sufficient. This existing language clearly prohibits Illinois Power from making such repairs until it receives notice from MISO. MISO may only issue such a notice by filing, and receiving approval of, an FPA section 205 filing to modify the Edwards Year 2 SSR Agreement to provide for the recovery of such repair costs.

215. In response to Hoosier-Southern Illinois' concern regarding the possibility that Illinois Power may be permanently exempted from having a misconduct event if unanticipated repairs have been undertaken, we accept the language proposed by Illinois Power to clarify this. We require MISO to submit, in the compliance filing due within 60 days of the date of this order, Tariff revisions to add the following language to the end of the first paragraph of section 9.E: "until Participant has notified MISO that the repairs have been completed."<sup>380</sup> This assumes, however, that Illinois Power has an obligation to notify MISO that repairs have been completed.

216. Similarly, with respect to emergency repairs, we reject Hoosier-Southern Illinois' argument that such repairs should be allocated pursuant to the outcome of a separate FPA section 205 proceeding if MISO authorizes Illinois Power to make the emergency repairs, but the Commission later finds that MISO's determination was imprudent. Again, we find that the existing language of the Edwards Year 2 SSR Agreement, which allocates the costs for emergency repairs to the Ameren Illinois Local Balancing Authority Area, is appropriate. We believe that adopting Hoosier-Southern Illinois' suggestion could discourage Illinois Power from making necessary emergency repairs if the cost recovery associated with such repairs is not clearly established. Finally, we reject Illinois Commission's argument that MISO cannot engage in a benefit/cost calculus regarding

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<sup>379</sup> SSR Order, 140 FERC ¶ 61,237 at P 138. *See also* SSR Compliance Order, 148 FERC ¶ 61,056 (2014) at P 44.

<sup>380</sup> Illinois Power Reply at n.41.

unanticipated repairs. As the Commission stated in the Escanaba Rehearing Order, it did not intend to limit “MISO’s ability to evaluate whether unanticipated repairs are reasonable and prudent in the circumstance that the SSR Units cannot be returned to service on a timeline that serves system reliability.”<sup>381</sup> In addition, the Commission found “that it is reasonable for MISO, as part of its analysis to determine whether an SSR Agreement is still appropriate, to assess whether such repair costs should be incurred or whether termination is appropriate.”<sup>382</sup> Moreover, in response to Illinois Municipal-Wabash Valley’s concerns regarding when overhaul costs will be subject to a prudence inquiry, we note that all unanticipated costs – including those associated with the overhaul – are subject to Commission review pursuant to section 9.E of the Edwards Year 2 SSR Agreement.

217. We reject Hoosier-Southern Illinois’ arguments regarding how penalties associated with misconduct events will be determined. Section 9.D(4) of the Edwards Year 2 SSR Agreement provides that “[i]f 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 of no more than \$10,000 per day.” Additionally, section 9.D(7) provides that:

The Unexcused Misconduct Amount shall be equal to the product of: (a) the difference between: (i) the level shown in the Delivery Plan and (ii) the amount of electrical energy and/or reactive power delivered to MISO; and (b) the SSR Unit’s Hourly Ex Post L[ocal] M[arginal] P[rice] in any hour or hours in which a Misconduct Event occurs.<sup>383</sup>

As Illinois Power points out in its reply, by providing a discrete methodology by which penalties are to be assessed, this provision does not allow MISO “unfettered discretion” to assess penalties.<sup>384</sup> Further, we agree with Illinois Power that it was necessary to insert the language “no more than” in section 9.D(4) to recognize the fact that, because of the section 9.D(7) analysis, penalties may not necessarily be \$10,000.<sup>385</sup> We also reject Illinois Commission’s assertion that penalties be imposed any time Edwards Unit 1 fails

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<sup>381</sup> Escanaba Rehearing Order, 144 FERC ¶ 61,128 at P 20.

<sup>382</sup> *Id.* P 21.

<sup>383</sup> MISO, Edwards Year 2 SSR Agreement, § 9.D(7).

<sup>384</sup> Illinois Power Reply at 13.

<sup>385</sup> *Id.* at 13-14.

to perform when called upon, regardless of intent. The language in question is contained in the Standard Form SSR Agreement and, thus, Illinois Commission's argument regarding that language constitutes an impermissible collateral attack on the Commission's acceptance of that Standard Form SSR Agreement.<sup>386</sup>

218. As to Illinois Power's request that the Commission confirm that its failure to participate in the capacity auction does not constitute economic or physical withholding, we find that we need not address the matter. Given the operational limitations presented in the Edwards Year 2 SSR Agreement and the information provided by MISO in its March 7 Answer, Edwards Unit 1 could not serve as a capacity resource and participate in the voluntary capacity auction. As MISO states, it has balanced competing interests and determined that "[t]he extra costs resulting from requiring a SSR owner to offer capacity into the Auction is expected to be larger than the benefits that might result from such a requirement."<sup>387</sup> As such, we need not address the concerns raised by parties regarding whether Edwards Unit 1's failure to participate in the voluntary capacity auction during the term of the Edwards Year 2 SSR Agreement would constitute economic or physical withholding. We disagree with Illinois Commission regarding the benefits that would result from Edwards Unit 1's participation in the capacity auction. While we recognize that economic benefits can result from increased participation in the capacity auctions, we do not believe that mandatory participation is warranted in this situation. Further, as noted by both Illinois Power and Illinois Commission, there is a disconnect between the annual term of the Edwards Year 2 SSR Agreement (January 1, 2014 to December 31, 2014) and the delivery year in the capacity auction (June 1, 2014 to May 31, 2014), which would make mandatory participation in the capacity auction burdensome for Illinois Power.

219. We reject Hoosier-Southern Illinois' and Illinois Commission's argument that MISO failed to support the operational limits contained in the Edwards Year 2 SSR Agreement.<sup>388</sup> Both parties take issue with limiting Edwards Unit 1's number of annual starts and total run hours. We find that MISO, as the independent transmission system operator responsible for assessing the reliability needs of the region, has the operating experience to determine whether operational limits are warranted. In its answer, MISO states that the operational limits on the number of run times and operating hours reflect that Edwards Unit 1 is an aging plant that will likely require additional and expensive

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<sup>386</sup> See TEMT II Order, 108 FERC ¶ 61,163.

<sup>387</sup> MISO March 7 Answer at 11.

<sup>388</sup> Hoosier-Southern Illinois February 20 Protest at 6; Illinois Commission February 20 Comments at 9.

maintenance if it is operated for more hours during 2014.<sup>389</sup> MISO further states that it has determined from past operating experience that ten starts and 1,200 total run hours are sufficient to cover summer and shoulder periods when Edwards Unit 1 will likely be needed for reliability purposes. We also note that MISO has placed limits on both annual starts and annual hours of operation in other SSR agreements.<sup>390</sup>

220. We agree with Illinois Power that, in order to comply with Mercury and Air Toxics Standards, which will go into effect in April 2015, pollution-related O&M costs must be incurred in 2014. We therefore reject Illinois Commission's argument that such costs not be recoverable in 2014. We also disagree with Illinois Commission that MISO should issue a formal notice regarding the need for Edwards Unit 1 as an SSR in 2015. The Tariff is clear that MISO cannot require a unit to operate as an SSR if doing so would violate applicable environmental regulations.<sup>391</sup> Moreover, the Attachment Y Study Report states that the transmission upgrades required to obviate the need for Edwards Unit 1 to continue operating as an SSR will not be in place until the end of 2016. MISO has demonstrated in this proceeding that this is still the case. As a result, it is reasonable for Illinois Power to incur such expenses and to seek recovery of such costs in 2014.

221. Furthermore, we note that the Tariff requires MISO to "reasonably assist the owner or operator of a potential SSR Unit in working with regulatory agencies to obtain environmental waivers or exemptions to the extent necessary to maintain the reliability of the Transmission System."<sup>392</sup> As a result, we direct MISO, in an informational filing due within 30 days of the date of this order, to describe how it assisted Ameren or Illinois

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<sup>389</sup> MISO March 7 Answer at 10.

<sup>390</sup> For example, the SSR agreement that was conditionally accepted in the Escanaba Order has an 8,500 hour limit on annual hours of operation. MISO, Escanaba SSR Agreement Transmittal Letter, Docket No. ER13-38-000, Ex. B., § 1.H (filed Oct. 5, 2012).

<sup>391</sup> MISO, FERC Electric Tariff, Module C, Energy and Operating Reserve Markets, II, General Provisions, 38, General Responsibilities and Requirements, 38.2, Market Participants, 38.2.7, System Support Resources (2.0.0), § 38.2.7.e.

<sup>392</sup> *Id.* § 38.2.7.c.

Power in obtaining environmental waivers or exemptions necessary to maintain the reliability of the Transmission System.<sup>393</sup>

222. In our determinations for the Edwards Year 1 SSR Agreement above,<sup>394</sup> we require MISO, on compliance, to insert language from the substitute Exhibit 2 MISO filed in its answer in that proceeding into the original Exhibit 2 filed with the Edwards Year 1 SSR Agreement to ensure that certain charges were properly netted out such that Edwards Unit 1 would not operate at a loss. Regarding the Edwards Year 2 SSR Agreement, we will similarly require MISO, in a compliance filing due within 60 days of the date of this order, to replace Part B of the Exhibit 2 filed with the Edwards Year 2 SSR Agreement, with the original Exhibit 2 filed with the Edwards Year 1 SSR Agreement as described above. As noted above, Illinois Power's concerns regarding the netting of certain costs resulting in Edwards Unit 1 recovering less than its start-up, no-load, and incremental energy offer costs in any given hour have already been settled between MISO and Illinois Power. This compliance requirement will ensure that these costs continue to be netted out.<sup>395</sup>

223. In the March 31, 2014 Order, we granted MISO's requested waiver of the prior notice requirement, thereby allowing the Edwards Year 2 SSR Agreement and associated Edwards Year 2 Rate Schedule 43C to become effective on January 1, 2014, as requested. For the reasons set forth in P 160, we reject Hoosier-Southern Illinois' arguments that MISO did not justify its request for waiver of the prior notice requirement.

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<sup>393</sup> This informational filing is for informational purposes only, and the Commission does not intend to notice or take formal action on such informational filing. We further note that, in the SSR Compliance Order issued concurrently with this order, we accept MISO's proposed language requiring a resource owner or operator that submits an Attachment Y Notice to make good faith efforts to minimize the potential costs to be incurred under an SSR agreement by seeking any available waivers or exemptions from environmental regulatory requirements that would necessitate improvements to the potential SSR Unit. SSR Compliance Order, 148 FERC ¶ 61,056 (2014) at P 47.

<sup>394</sup> *See supra* P 157.

<sup>395</sup> *See* Illinois Power February 20, 2014 Supplement at 8; MISO March 7 Answer at 6.

The Commission orders:

(A) The Complaint is hereby granted in part and denied in part, as discussed in the body of this order.

(B) MISO is hereby directed to submit a compliance filing within 60 days of the date of this order, as discussed in the body of this order.

(C) MISO is hereby directed to submit an informational filing within 30 days of the date of this order, as discussed in the body of this order.

(D) Docket Nos. EL13-76-000, ER13-1962-000, and ER14-1210-000 are hereby consolidated, as discussed in the body of this order.

(E) The Edwards Year 1 SSR Agreement and Edwards Year 2 SSR Agreement are hereby set for hearing and settlement judge procedures, as discussed in the body of this order.

(F) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning the limited issue of the costs included in the rate that MISO has negotiated with Ameren for operating Edwards Unit 1 as an SSR unit in Docket Nos. ER13-1962-000 and ER14-1210-000, as well as the rate proposed by Illinois Power in Docket No. EL13-76-000, reflecting its fixed costs of existing plant for the remaining term of the Edwards Year 2 SSR Agreement. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (G) and (H) below.

(G) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2013), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(H) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If

settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(I) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(J) The refund effective date established in Docket No. EL13-76-000 pursuant to section 206(b) of the Federal Power Act is July 5, 2013.

(K) Illinois Municipal-Wabash Valley's request for rehearing is denied.

(L) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of section 206 proceedings in Docket No. EL14-53-000.

(M) The refund effective date established pursuant to section 206(b) of the Federal Power Act for the initiation of section 206 proceedings in Docket No. EL14-53-000 will be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (L) above.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

## Appendix

### Motions to Intervene

Alliant Energy Corporate Services, Inc. (Docket No. EL13-76-000)

Ameren Services Company<sup>396</sup> (Docket Nos. EL13-76-000, ER13-1962-000, ER13-1963-000, ER14-1210-000, and ER14-1212-000)

American Municipal Power, Inc. (Docket No. ER13-1962-000)

Association of Businesses Advocating Tariff Equity<sup>397</sup> (Docket Nos. EL13-76-000, ER13-1962-000, and ER13-1963-000)

Coalition of MISO Transmission Customers (MISO Transmission Customers) (Docket Nos. EL13-76-000, ER13-1962-000, and ER13-1963-000)

Consumers Energy Company (Docket Nos. EL13-76-000, ER13-1962-000, and ER13-1963-000)

DTE Electric Company (Docket Nos. ER13-1962-000 and ER13-1963-000)

Dynegy Power Marketing, LLC and Dynegy Midwest Generation, LLC (Docket Nos. EL13-76-000 and ER13-1962-000)

Electric Power Supply Association (EPSA) (Docket Nos. EL13-76-000, ER13-1962-000, and ER13-1963-000)

Exelon Corporation (Docket Nos. EL13-76-000, ER13-1962-000, and ER14-1212-000)

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<sup>396</sup> Ameren Services Company filed the motions on behalf of Ameren Illinois Company and Union Electric Company.

<sup>397</sup> Association of Business Advocating Tariff Equity states that its current members are: Alcoa, Inc.; Cargill; Chrysler Group LLC; Delphi Corporation; Dow Chemical Co.; Dow Corning Corporation; Eaton Corporation; Edwards C. Levy Co.; Enbridge Energy, Limited Partnership; Ford Motor Company; General Motors Company; Gerdau MacSteel; J. Rettenmaier USA LP; Marathon Petroleum Corporation; Martin Marietta Magnesia Specialties, Inc.; Metal Technologies, Inc.; MPI Research; Praxair, Inc.; and United States Gypsum Company.

Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier) and Southern Illinois Power Cooperative (Southern Illinois) (Docket Nos. EL13-76-000, ER13-1962-000, and ER13-1963-000)

Illinois Industrial Energy Consumers (Illinois Industrials) (Docket Nos. EL13-76-000, ER13-1962-000, ER13-1963-000, ER14-1210-000, and ER14-1212-000)

Illinois Municipal Electric Agency (Illinois Municipal) (Docket Nos. EL13-76-000, ER13-1962-000, ER13-1963-000, ER14-1210-000, and ER14-1212-000)

Minnesota Large Industrial Group (Minnesota Industrials) and Wisconsin Industrial Energy Group (Wisconsin Industrials) (Docket Nos. EL13-76-000, ER13-1962-000, and ER13-1963-000)

Monitoring Analytics, LLC (PJM Market Monitor) (Docket Nos. EL13-76-000 and ER13-1962-000)

New Jersey Board of Public Utilities (Docket Nos. EL13-76-000 and ER13-1962-000)

Noble Americas Energy Solutions LLC (Noble Americas) (Docket Nos. EL13-76-000, ER13-1962-000, and ER13-1963-000)

NRG Companies<sup>398</sup> (Docket No. EL13-76-000)

Potomac Economics, Ltd. (Docket No. EL13-76-000)

PSEG Companies<sup>399</sup> (Docket No. EL13-76-000)

Southwestern Electric Cooperative, Inc. (Southwestern) (Docket Nos. EL13-76-000, ER13-1962-000, and ER13-1963-000)

Wabash Valley Power Association, Inc. (Wabash Valley) (Docket Nos. EL13-76-000, ER13-1962-000, ER13-1963-000, ER14-1210-000, ER14-1212-000, and ER14-1212-001)

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<sup>398</sup> NRG Companies consist of Bayou Cove Peaking Power LLC; Big Cajun I Peaking Power LLC; Cottonwood Energy Company LP; GenOn Energy Management, LLC; Louisiana Generating LLC; NRG Power Marketing LLC; NRG Sterlington Power LLC; and NRG Wholesale Generation LP.

<sup>399</sup> The PSEG Companies consist of PSEG Power LLC and PSEG Energy Resources & Trade LLC.

Wisconsin Electric Power Company (Docket Nos. EL13-76-000, ER13-1962-000, ER13-1963-000, ER14-1210-000, and ER14-1212-000)

Wisconsin Paper Council (Docket Nos. EL13-76-000, ER13-1962-000, and ER13-1963-000)

Xcel Energy Services, Inc. (Xcel)<sup>400</sup> (Docket No. EL13-76-000)

### **Notices of Intervention**

Arkansas Public Service Commission (Docket No. EL13-76-000)

Illinois Commerce Commission (Illinois Commission) (Docket Nos. ER14-1210-000 and ER14-1212-000)

Indiana Utility Regulatory Commission (Indiana Commission) (Docket No. ER13-1963-000)

Organization of MISO States (Docket Nos. EL13-76-000, ER13-1962-000, and ER13-1963-000)

### **Motions to Intervene and Comments and/or Protests**

Hoosier-Southern Illinois (Docket Nos. ER14-1210-000 and ER14-1212-000)

Midwest TDUs<sup>401</sup> (Docket Nos. EL13-76-000 and ER13-1962-000)

Prairie Power, Inc. (Prairie Power) (Docket Nos. EL13-76-000, ER13-1962-000, and ER13-1963-000)

Public Interest Organizations<sup>402</sup> (Docket Nos. EL13-76-000, ER13-1962-000, and ER13-1963-000)

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<sup>400</sup> Xcel filed the motion on behalf of Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation.

<sup>401</sup> Midwest TDUs consist of Madison Gas and Electric Company, Missouri River Energy Services, Southern Minnesota Municipal Power Agency, and WPPI Energy.

<sup>402</sup> For the purposes of Docket No. EL13-76-000, Public Interest Organizations consist of Earthjustice and Environmental Law and Policy Center. For the purposes of Docket Nos. ER13-1962-000 and ER13-1963-000, Public Interest Organizations also include The Sustainable FERC Project.

Retail Energy Supply Association<sup>403</sup> (Docket Nos. EL13-76-000, ER13-1962-000, and ER13-1963-000)

**Notices of Intervention and Comments**

Illinois Commission (Docket Nos. EL13-76-000, ER13-1962-000, and ER13-1963-000)

Indiana Commission (Docket Nos. EL13-76-000 and ER13-1962-000)

**Answer to Complaint**

Midcontinent Independent System Operator, Inc. (MISO) (Docket No. EL13-76-000)

**Comments and/or Protests**

EPSA (Docket Nos. EL13-76-000 and ER13-1962-000)

Hoosier-Southern Illinois (Docket Nos. EL13-76-000, ER13-1962-000, and ER13-1963-000)

Illinois Commission (Docket Nos. ER14-1210-000 and ER14-1212-001)

Illinois Municipal-Wabash Valley (Docket Nos. EL13-76-000, ER13-1962-000, ER13-1963-000, ER14-1210-000, and ER14-1212-001)

Industrial Customers<sup>404</sup> (ER13-1962-000 and ER13-1963-000)

Noble Americas (Docket Nos. EL13-76-000, ER13-1962-000, and ER13-1963-000)

PJM Market Monitor (Docket Nos. EL13-76-000 and ER13-1962-000)

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<sup>403</sup> Retail Energy Supply Association's members include: AEP Energy, Inc.; Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Hess Corporation; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd.; and TriEagle Energy, L.P.

<sup>404</sup> Industrial Customers consist of Association of Businesses Advocating Tariff Equity, Illinois Industrials, Minnesota Industrials, MISO Transmission Customers, Wisconsin Industrials, and Wisconsin Paper Council.

Southwestern (Docket Nos. ER13-1962-000 and ER13-1963-001)

**Other Motions and/or Protests**

AmerenEnergy Resources Generating Company (Ameren Generating) and Ameren Energy Marketing Company (Ameren Marketing) (Motion to Intervene, Limited Protest, and Motion to Consolidate)<sup>405</sup> (Docket Nos. EL13-76-000, ER13-1962-000, and ER13-1963-000)

Illinois Power Resources Generating, LLC (Illinois Power Generating) and Illinois Power Marketing Company (Illinois Power Marketing) (Motion to Intervene, Limited Protest, Supplement to Complaint, and Request to Consolidate Proceedings) (Docket Nos. EL13-76-000, ER13-1962-000, and ER14-1210-000)

Industrial Customers (Motion for Leave to File One Day Out of Time and Protest) (Docket No. EL13-76-000)

PSEG Companies (Out-of-Time Motion to Intervene) (Docket Nos. ER13-1962-000 and ER13-1963-000)

**Answers**

Ameren (August 15, 2013) (Docket Nos. EL13-76-000, ER13-1962-000, and ER13-1963-000)

Ameren (August 23, 2013) (Docket Nos. EL13-76-000, ER13-1962-000, and ER13-1963-000)

Ameren (September 12, 2013) (Docket Nos. EL13-76-000, ER13-1962-000, and ER13-1963-000)

Ameren (November 1, 2013) (Docket Nos. EL13-76-000, ER13-1962-000, and ER13-1963-000)

EPSA (August 15, 2013) (Docket Nos. EL13-76-000 and ER13-1962-000)

Hoosier-Southern Illinois (March 7, 2014) (Docket Nos. EL13-76-000, ER13-1962-000, and ER14-1210-000)

Illinois Municipal-Wabash Valley (August 13, 2013) (Docket Nos. EL13-76-000, ER13-1962-000, and ER13-1963-000)

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<sup>405</sup> On August 2, 2013, Ameren filed the signature page to this motion.

Illinois Municipal-Wabash Valley (September 5, 2013) (Docket Nos. EL13-76-000, ER13-1962-000, and ER13-1963-000)

Illinois Municipal-Wabash Valley (May 14, 2014) (Docket No. EL13-76-000)

Illinois Power (March 7, 2014) (Docket Nos. ER14-1210-000 and ER14-1212-000)

Illinois Power (March 21, 2014) (Docket Nos. EL13-76-000, ER13-1962-000, and ER14-1210-000)

Illinois Power (April 29, 2014) (Docket No. EL13-76-000)

Industrial Customers (August 28, 2013) (Docket Nos. EL13-76-000 and ER13-1962-000)

MISO (August 15, 2013) (Docket Nos. ER13-1962-000 and ER13-1963-000)

MISO (October 31, 2013) (Docket Nos. ER13-1962-000 and ER13-1963-001)

MISO (March 7, 2014) (Docket Nos. ER14-1210-000 and ER14-1212-001)

NRG Companies (August 15, 2013) (Docket Nos. EL13-76-000 and ER13-1962-000)

PJM Market Monitor (September 23, 2013) (Docket Nos. EL13-76-000 and ER13-1962-000)

Southwestern (December 4, 2013) (Docket Nos. ER13-1962-000 and ER13-1963-001)

**Request for Rehearing**

Illinois Municipal-Wabash Valley (December 24, 2013) (Docket Nos. ER13-1962-001 and ER13-1963-002)