148 FERC ¶ 61,071
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.	ER14-1242-000 ER14-1242-001 ER14-1243-000 ER14-1243-001
Public Service Commission of Wisconsin v. Midcontinent Independent System Operator, Inc.	Docket No.	EL14-34-000

ORDER ON COMPLAINT, TARIFF FILINGS, AND REHEARING, AND ESTABLISHING HEARING AND SETTLEMENT PROCEDURES

(Issued July 29, 2014)

1. On January 31, 2014, in Docket No. ER14-1242-000, pursuant to section 205 of the Federal Power Act (FPA),[1] Midcontinent Independent System Operator, Inc. (MISO) submitted a proposed System Support Resource (SSR) Agreement between Wisconsin Electric Power Company (Wisconsin Electric) and MISO, designated as Original Service Agreement No. 6502 (Presque Isle SSR Agreement) under its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff).[2] Also on January 31, 2014, in Docket No. ER14-1243-000, pursuant to section 205 of the FPA, MISO

[1] 16 U.S.C. § 824d (2012).

[2] The Tariff defines SSRs as "[g]eneration Resources or Synchronous Condenser Units [(SCUs)] that have been identified in Attachment Y – Notification to this Tariff and are required by the Transmission Provider for reliability purposes, to be operated in accordance with the procedures described in Section 38.2.7 of this Tariff." MISO, FERC Electric Tariff, Module A, § 1.S "System Support Resource (SSR)" (30.0.0).

submitted proposed Rate Schedule 43G (Allocation of SSR Costs Associated with the Presque Isle SSR Units) under its Tariff. On April 1, 2014, the Commission issued an order accepting the Presque Isle SSR Agreement and associated Rate Schedule 43G and suspending them for a nominal period, subject to refund and further Commission order.[3]

2. As discussed below, in this order, we establish hearing and settlement judge procedures in Docket No. ER14-1242-000 on the issue of SSR compensation under the Presque Isle SSR Agreement. In this order, we also require a compliance filing in Docket No. ER14-1243-000 to revise Rate Schedule 43G.

3. On April 3, 2014, in Docket No. EL14-34-000, the Public Service Commission of Wisconsin (Wisconsin Commission) submitted a complaint pursuant to sections 206 and 306 of the FPA[4] and Rule 206 of the Rules of Practice and Procedure[5] (Complaint). The Complaint alleges that the SSR cost allocation provision in section 38.2.7.k of MISO's Tariff, and the provision's implementation in Rate Schedule 43G with respect to the Presque Isle SSR Agreement between MISO and Wisconsin Electric, is unjust, unreasonable, and unduly discriminatory. As further discussed below, in this order, we grant the Complaint and find that the Tariff is unjust, unreasonable, unduly discriminatory, or preferential. We direct MISO to submit Tariff revisions with revised SSR cost allocation provisions in a compliance filing due within 30 days of the date of this order, to take effect on April 3, 2014. We also establish a refund effective date of April 3, 2014 and order MISO to provide refunds as of this date, as further described below.

4. On May 1, 2014, the Environmental Law and Policy Center, Sustainable FERC Project, Earthjustice, and Sierra Club (collectively, the Public Interest Organizations) filed a request for rehearing of the April 1 Order conditionally accepting the Presque Isle SSR Agreement and Rate Schedule 43G, subject to refund and further Commission order.[6] As further discussed below, we deny the request for rehearing.

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[3] *Midcontinent Indep. Sys. Operator, Inc.*, 147 FERC ¶ 61,004 (2014) (April 1 Order).

[4] 16 U.S.C. §§ 824e, 825e (2012).

[5] 18 C.F.R. § 385.206 (2013).

[6] Joint Petition for Rehearing of Public Interest Organizations, Docket Nos. ER14-1242-001 and ER14-1243-001 (filed May 1, 2014) (Public Interest Organizations Rehearing Request).

I. Background

5. Under MISO's Tariff, market participants that have decided to retire or suspend a generation resource or SCU must submit a notice (Attachment Y Notice), pursuant to Attachment Y (Notification of Potential Resource/SCU Change of Status) of the Tariff, at least 26 weeks prior to the resource's retirement or suspension effective date. During this 26-week notice period, MISO will conduct a study (Attachment Y Study) to determine whether all or a portion of the resource's capacity is necessary to maintain system reliability, such that SSR status is justified. If so, and if MISO cannot identify an SSR alternative that can be implemented prior to the retirement or suspension effective date, then MISO and the market participant shall enter into an agreement, as provided in Attachment Y-1 (Standard Form SSR Agreement) of the Tariff, to ensure that the resource continues to operate, as needed.[7]

6. On July 25, 2012, in Docket No. ER12-2302-000, MISO submitted proposed Tariff revisions regarding the treatment of resources that submit Attachment Y Notices. On September 21, 2012, the Commission conditionally accepted MISO's proposed Tariff revisions effective September 24, 2012, subject to two compliance filings due within 90 and 180 days of the date of the order.[8] The Commission reiterated that the evaluation of alternatives to an SSR designation is an important step that deserves the full consideration for MISO and its stakeholders to ensure that SSR agreements are used only as a limited, last-resort measure and required, among other things, that MISO document its process for identifying and screening SSR alternatives.[9]

II. MISO's Filings

7. On January 31, 2014, in Docket No. ER14-1242-000, MISO submitted the Presque Isle SSR Agreement for purposes of providing compensation for the continued availability of Wisconsin Electric's Presque Isle Units 5-9 as SSR Units.[10] According to

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[7] *See Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163 (2004 SSR Order), *order on reh'g*, 109 FERC ¶ 61,157 (2004) (2004 SSR Rehearing Order).

[8] *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,237 (2012) (2012 SSR Order), *order on compliance*, 148 FERC ¶ 61,056 (2014).

[9] 2012 SSR Order, 140 FERC ¶ 61,237 at P 36.

[10] Presque Isle Units 5-9 are located in Marquette, Michigan within the footprint of the American Transmission Company LLC (ATC) and provide up to 344 MW of capacity.

MISO, on August 1, 2013, Wisconsin Electric submitted its Attachment Y Notice to MISO for suspension of Presque Isle Units 5-9, beginning on February 1, 2014 and resuming operations June 1, 2015.[11] MISO states that it completed the analysis of the Attachment Y Notice and replied to Wisconsin Electric on October 16, 2013. MISO determined that the proposed suspension of Presque Isle Units 5-9 during the 16-month suspension period, without curtailment of load by means of demand response or other alternative, would result in reliability violations.[12] Consequently, MISO designated Presque Isle Units 5-9 as SSR Units until such time as appropriate alternatives can be implemented to mitigate reliability issues.

8. MISO states that its analysis of the proposed alternatives identified no near term solutions that would eliminate or reduce the number of units needed to address the reliability issues that are caused by the suspension of Presque Isle Units 5-9.[13] MISO reports that it worked with Wisconsin Electric and the MISO Independent Market Monitor to negotiate and develop the Presque Isle SSR Agreement. According to MISO, Wisconsin Electric submitted a draft agreement for MISO's consideration, and Wisconsin Electric agreed to a 12-month term for the period between February 1, 2014 and January 31, 2015. MISO states that Wisconsin Electric has agreed to continue operating Presque Isle Units 5-9 on and after February 1, 2014.[14] MISO requested waiver of the prior notice requirement to allow the proposed Presque Isle SSR Agreement to go into effect on February 1, 2014.

9. In Docket No. ER14-1243-000, MISO submitted a proposed Rate Schedule 43G under its Tariff, which specifies the allocation of the costs associated with the continued operation of Presque Isle Units 5-9 as SSR Units.[15] As stated in the filing, section

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[11] MISO Presque Isle SSR Agreement Filing, Transmittal Letter, Docket No. ER14-1242-000, at 2 (filed Jan. 31, 2104) (Presque Isle SSR Agreement Filing).

[12] Specifically, the study performed by MISO showed that the suspension of Presque Isle Units 5-9 would cause violations of North American Electric Reliability Corporation (NERC) reliability standards under Category B (loss of a single element) and Category C (loss of two or more elements) contingencies. *See* Presque Isle SSR Agreement Filing, Ex. B (Attachment Y Study Report) at 2.

[13] *Id.*, Transmittal Letter at 7-8.

[14] *Id.* at 2.

[15] MISO Rate Schedule 43G Filing, Docket No. ER14-1243-000 (filed Jan. 31, 2014) (Rate Schedule 43G Filing).

38.2.7.k of MISO's Tariff requires that the costs associated with the Presque Isle SSR Agreement be allocated to all load-serving entities (LSEs) within the ATC footprint on a *pro rata* basis. MISO requested waiver of the prior notice requirement to allow Rate Schedule 43G to go into effect on February 1, 2014 to correspond with the effective date of the Presque Isle SSR Agreement.

III. April 1, 2014 Order

10. On April 1, 2014, the Commission issued an order accepting the Presque Isle SSR Agreement and associated Rate Schedule 43G, suspending them for a nominal period, to be effective February 1, 2014, as requested, subject to refund and further Commission order.[16] In that order, the Commission accepted the interventions, comments and answers filed in that proceeding. In this further order, we address the arguments presented.

IV. Request for Rehearing

11. On May 1, 2014, the Public Interest Organizations filed a request for rehearing of the April 1 Order. The Public Interest Organizations request that the Commission grant rehearing and reject MISO's proposed Presque Isle SSR Agreement and Rate Schedule 43G, and order MISO to more properly evaluate demand response alternatives and to explain and initiate a process that will eventually allow the units to retire. Alternatively, they request that the Commission provide a reasoned explanation for its decision to accept the Presque Isle SSR Agreement and Rate Schedule 43G.

V. Wisconsin Commission's Complaint

12. On April 3, 2014, in Docket No. EL14-34-000, the Wisconsin Commission submitted a Complaint alleging that the ATC-specific SSR cost allocation provision in section 38.2.7.k of MISO's Tariff, and the provision's implementation in Rate Schedule 43G with respect to the Presque Isle SSR Agreement, is unjust, unreasonable, and unduly discriminatory.[17] The Wisconsin Commission states that it is the Wisconsin agency charged with regulation and supervision of all public utilities in the state, and that it seeks to protect Wisconsin ratepayers from paying a disproportionate share of the costs for

[16] April 1 Order, 147 FERC ¶ 61,004 at P 12.

[17] Complaint at 4.

reliability provided by the Presque Isle SSR Units.[18] Section 38.2.7.k of MISO's Tariff states:

> The costs pursuant to the SSR Agreement shall be allocated to the LSE(s) which require(s) the operation of the SSR Unit for reliability purposes, and shall be specified in the SSR Agreement. For the purposes of this Section, any costs of operating an SSR Unit allocated to the footprint of [ATC] shall be allocated to all LSEs within the footprint of [ATC] on a *pro rata* basis.

The Wisconsin Commission states that, when MISO assigns SSR costs to LSEs outside of the ATC footprint, MISO conducts a load-shed analysis to identify the Local Balancing Authorities (LBAs) benefitting from designating a unit as an SSR.[19] However, the Wisconsin Commission notes that such a load-shed study is not required once MISO determines that the load affected by the SSR designation lies within the ATC footprint.

13. The Wisconsin Commission states that the Presque Isle power plant is located in the Upper Peninsula of Michigan (Upper Peninsula) on the far northern end of the ATC transmission footprint, and that the plant is the sole generator of any significant size in the Upper Peninsula.[20] The Wisconsin Commission asserts that the plant was constructed in the 1950s to provide power for the Tilden and Empire iron ore mines located approximately 17 miles from the plant, which are currently owned by Cliffs National Resources Inc. (Cliffs).[21] The Wisconsin Commission notes that the mining load in the area is approximately 280 MW, fed by several ATC 138 kV transmission lines.[22] The Wisconsin Commission asserts that, until recently, the mines made up approximately 80 percent of Wisconsin Electric's load in the Upper Peninsula. However, the Wisconsin

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[18] *Id*. at 7. The Wisconsin Commission notes that any wholesale rates paid by LSEs pursuant to the MISO Tariff are ordinarily passed through to Wisconsin retail rate customers.

[19] *Id*. at 3 n.8.

[20] *Id*. at 2, 7. The Wisconsin Commission states that the next largest generator is in Green Bay, Wisconsin, 150 miles to the south.

[21] *Id*. at 7. The Wisconsin Commission states that the power plant originally had nine generating units totaling 592 MW, but that four of the original units were retired over time. *Id*. at 13.

[22] *Id*.

Commission notes that the Michigan legislature amended its "customer Choice and Electricity Reliability Act" in 2008 to place conditions on customer retail choice. First, the amendment imposed a 10 percent cap on Michigan load serving entity retail sales that could be shifted to alternative electric suppliers, and second, it exempted the Tilden and Empire mines from the cap so that they could exercise customer choice. The Wisconsin Commission notes that Cliffs exercised its retail choice in July 2013 and changed its electrical supplier for the mines from Wisconsin Electric to Integrys Energy Services, Inc., prompting Wisconsin Electric to notify MISO of its intentions to suspend operations of Presque Isle Units 5-9 for 16 months, and ultimately leading to the filing of the Presque Isle SSR Agreement and associated Rate Schedule 43G.[23]

A. The ATC *Pro Rata* Cost Allocation Provision Does Not Meet Cost Causation Principles

14. The Wisconsin Commission states that, during its assessment of the Attachment Y Notice submitted by Wisconsin Electric for Presque Isle Units 5-9, MISO conducted a load-shed analysis to determine which load in each of the five LBAs within the ATC footprint benefits from continued operation of Presque Isle Units 5-9, and provided a percentage allocation of costs by LBA. The Wisconsin Commission states that the load-shed analysis showed that 58 percent of the reliability impact of the Presque Isle SSR Agreement is located in the Upper Peninsula, while only 42 percent of the benefitting load is in Wisconsin.[24] However, because SSR costs for Presque Isle Units 5-9 are allocated to the footprint of ATC, it notes that the cost allocation provision contained in section 38.2.7.k of MISO's Tariff assigns cost recovery for SSR units not according to benefit, but on a *pro rata* basis to all LSEs in the ATC footprint. The Wisconsin Commission states that MISO determines the *pro rata* share based upon the peak load of each LBA during the month; after each LBA's share of cost is determined, every LSE within that LBA is assigned costs based on its contribution to the peak of its LBA.[25] Using this allocation method, the Wisconsin Commission states that most of the costs of

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[23] *Id*. at 8. The Wisconsin Commission states that Cliffs represented 80 percent of Wisconsin Electric's load in the Upper Peninsula. The Wisconsin Commission states that the loss of Cliffs and other smaller customers exercising their customer choice led to Wisconsin Electric losing approximately 85 percent of its Michigan sales. *Id*. at 15.

[24] *Id*. at 3; Ex. B (Neumeyer Aff.) at 3-4. In other words, MISO's load-shed analysis showed that 42 percent of the load that would need to be shed if the Presque Isle SSR Units were immediately suspended is located in Wisconsin, while the remaining 58 percent is located in the Upper Peninsula.

[25] *Id*. at 26.

the Presque Isle SSR Agreement are allocated to Wisconsin LSEs, because that is where the bulk of load in the ATC footprint is located. As a result, the Wisconsin Commission states that 92 percent of the projected $52.23 million in annual fixed costs under the Presque Isle SSR Agreement will be allocated to LSEs in Wisconsin, even though Wisconsin LSEs only receive 42 percent of the reliability benefits associated with the Presque Isle SSR Units (according to MISO's load-shed study).[26]

15. The Wisconsin Commission argues that this *pro rata* allocation is unjust and unreasonable because it does not satisfy the Commission's traditional cost causation principle that "all approved rates [must] reflect to some degree the costs actually caused by the customer who pays them."[27] The Wisconsin Commission states that the ATC carve-out allocates costs to the ratepayers of Wisconsin LSEs without providing benefits that are at least roughly commensurate to the costs imposed. The Wisconsin Commission additionally notes that ATC is not an LBA, and thus does not have the same reliability responsibilities as other LBAs that are allocated SSR costs. Thus, according to the Wisconsin Commission, the ATC carve-out ignores the linkage between cost assignment and reliability responsibility that is the underlying rationale for SSR cost allocation.[28] The Wisconsin Commission states that the affected LSEs in Wisconsin will seek recovery for these costs in their retail rates, and this prompts the concern of the Wisconsin Commission on behalf of retail consumers that receive no corresponding benefit from the continued operation of Presque Isle Units 5-9.[29]

16. The Wisconsin Commission states that in the rest of MISO, SSR costs are allocated to the LSEs that require the operation of the SSR Unit for reliability purposes.[30]

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[26] *Id*. at 9, 27. The Wisconsin Commission notes that it approximated the cost allocation percentage based on historical information, and that the load ratio allocations will be slightly different when MISO calculates them based on actual energy withdrawals during each monthly peak. *Id*. at 27 n.111.

[27] *Id*. at 24-25 (citing *Black Oak Energy, LLC v. FERC*, 725 F.3d 230, 364 (D.C. Cir. 2013) (*Black Oak v. FERC*); *E. Ky. Power Coop., Inc. v. FERC*, 489 F.3d 1299, 1303 (D.C. Cir. 2007); *Illinois Commerce Comm'n v. FERC*, 576 F.3d 470, 476-477 (7th Cir. 2009); *CED Rock Springs, LLC*, 116 FERC ¶ 61,163, at P 37 (2006)).

[28] *Id*. at 29.

[29] *Id*. at 10 n.40.

[30] *Id*. at 11.

The Wisconsin Commission states that this more generally applicable allocation would provide a more just, reasonable, and non-discriminatory allocation of the Presque Isle SSR Unit costs.[31] The Wisconsin Commission notes that this method would distribute costs based on the relative impact on load of LSEs in the various affected areas, and not just on the fact that the LSE is located in the ATC footprint.[32] The Wisconsin Commission asserts that MISO should allocate 58 percent of the costs of the Presque Isle SSR Agreement to Michigan LSEs and 42 percent to Wisconsin LSEs, consistent with MISO's load-shed study.

B. The ATC *Pro Rata* Cost Allocation Provision is Unduly Discriminatory

17. The Wisconsin Commission also alleges that the ATC carve-out is discriminatory, because it only applies to the ATC footprint. The Wisconsin Commission asserts that this disparate treatment between ratepayers is only permissible if there is a valid reason for the disparity, and no such reason exits, as the presence of the Tariff provision is due to oversight rather than thoughtful ratemaking, as explained below.[33] The Wisconsin Commission states that there are no characteristics of the area inside the ATC footprint that justify such discrimination. According to the Wisconsin Commission, LSEs in Wisconsin whose territories are concentrated in the southern portion of the ATC footprint are affected by this discrimination, even though they will receive little or no reliability benefit from the operation of Presque Isle Units 5-9 as SSR Units.[34] The Wisconsin Commission states that the electricity bill savings for Cliffs from exercising retail choice inappropriately shifts costs to Wisconsin ratepayers that are not electrically benefitted by operation of Presque Isle Units 5-9.[35]

C. History of the ATC *Pro Rata* Cost Allocation Provision

18. The Wisconsin Commission asserts that the history of section 38.2.7.k of MISO's Tariff shows the ATC cost allocation provision to be an accident of timing. The Wisconsin Commission states that ATC, now a transmission-owning member of MISO, originally proposed to operate as a single control area and become the balancing authority

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[31] *Id*. at 32.

[32] *Id*. at 33.

[33] *Id*. at 24 (citing *Black Oak v. FERC*, 725 F.3d at 239; 16 U.S.C. § 824d (2012)).

[34] *Id*. at 30-31.

[35] *Id*. at 32.

for its region.[36] However, the Wisconsin Commission states that the Commission rejected ATC's request by orders on May 16, 2003 and April 13, 2004.[37] While ATC was in the process of making this request, the Commission was also considering MISO's initial Tariff filing. According to the Wisconsin Commission, on March 31, 2004, before the Commission rejected ATC's proposal to be a single control area, the Commission approved MISO's Tariff compliance filing containing the carve-out for cost allocation in the ATC footprint.[38] The Wisconsin Commission asserts that the Tariff stated:

> The costs of operating an SSR Unit plus any other payments made pursuant to the SSR contract shall be allocated on a *pro rata* basis to the Market Participants Serving Load as an LSE or on behalf of an LSE in the Control Areas(s) which requires the operation of the SSR Unit for reliability purposes. For the purposes of this Section, any SSR Unit located within the footprint of [ATC] shall be allocated to all Market Participants within the footprint of [ATC] on a *pro-rata* basis.

The Wisconsin Commission states that this Tariff language was not discussed in the order, except to note that "SSR costs are appropriately assigned to market participants serving load in the affected control areas," and that the continued presence of the language in the Tariff has never been discussed by the Commission.[39] The Wisconsin Commission argues that the carve-out for allocation in the ATC footprint was apparently included by MISO to facilitate the treatment of ATC as a single control area, and was intended to clarify how costs were to be allocated in ATC; it was not intended to create an exception for ATC.[40] The Wisconsin Commission asserts that that when ATC's request to operate as a single control area was rejected by the Commission, this language should have been removed.

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[36] *Id*. at 18. The Wisconsin Commission states that on December 22, 2000, it granted a certificate of authority to ATC to become the transmission company that would replace the transmission service of a number of Wisconsin electric utilities.

[37] *Id*. at 19 (citing *Midwest Indep. Transmission Sys. Operator, Inc*., 103 FERC ¶ 61,191 (2003); *Midwest Indep. Transmission Sys. Operator, Inc*., 107 FERC ¶ 61,015 (2004)).

[38] *Id*. (citing 2004 SSR Order, 108 FERC ¶ 61,163 at P 372).

[39] *Id.*

[40] *Id*. at 20.

19. The Wisconsin Commission notes that the carve-out language remained unnoticed for years, until MISO submitted proposed revisions to its SSR provisions in 2012 in anticipation of needing to designate several SSR Units.[41] The Wisconsin Commission states that, although stakeholders expressed concerns about the vagueness of the allocation provisions in the Tariff, the Commission held that market participants would have the opportunity to contest the allocation of SSR costs when MISO submits its required filing under section 205 of the FPA at the time it seeks to charge customers for SSR costs.[42] The Wisconsin Commission states that the ATC carve-out provision was implemented in 2013 when MISO filed an SSR agreement between MISO and the City of Escanaba, Michigan (the Escanaba Agreement).[43] The Wisconsin Commission states that it did not raise any objections in that proceeding because the Escanaba Agreement was a small transaction that involved 25 MW of capacity and a fixed annual payment of about $3.7 million per year, and the small scale combined with the novelty of the first SSR agreement involving the ATC *pro rata* cost allocation provision "did not ring alarm bells."[44] The Wisconsin Commission also asserts that *Escanaba* is distinguishable because the Escanaba Agreement provided the required support for a 25 MW municipal facility prior to its conversion to a biomass-fuel facility and planned transfer into private ownership, whereas Presque Isle Units 5-9 have a keystone generation role for grid

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[41] *Id*. at 21. The Wisconsin Commission notes that the Tariff language was substantively untouched, but was changed to state:

> The costs pursuant to the SSR Agreement shall be allocated to the LSE(s) which require(s) the operation of the SSR Unit for reliability purposes, and shall be specified in the SSR Agreement. For purposes of this Section, any costs of operating an SSR Unit allocated to the footprint of [ATC] shall be allocated to all LSEs within the footprint of [ATC] on a *pro rata* basis.

The Wisconsin Commission notes that this language is identical to current Tariff section 38.2.7.k.

[42] *Id*. (citing 2012 SSR Order, 140 FERC ¶ 61,237 at PP 148-151).

[43] *Id*. at 22 (citing *Midwest Indep. Transmission Sys. Operator, Inc*., 142 FERC ¶ 61,170 (2013) (*Escanaba*)).

[44] *Id*. at 23.

reliability in the Upper Peninsula even though the units are uneconomic for lack of retail revenue load.[45]

D. Requested Relief

20. The Wisconsin Commission asks that the Commission: (1) find that the ATC *pro rata* SSR cost allocation methodology in section 38.2.7.k of MISO's Tariff, in itself and as implemented in Rate Schedule 43G, is unjust, unreasonable and unduly discriminatory; (2) order MISO to remove the ATC cost allocation methodology from section 38.2.7.k of MISO's Tariff and make any necessary modification to Rate Schedule 43G; and (3) set a just, reasonable, and non-discriminatory allocation for the costs of the Presque Isle SSR Agreement.[46] The Wisconsin Commission further asks the Commission to: (1) extend to the ATC footprint the general benefits-based SSR cost allocation methodology under section 38.2.7.k that applies to the rest of MISO; and (2) apply the generally-applicable SSR cost allocation methodology to the Presque Isle SSR Agreement, effective as of the earliest possible date.[47]

21. Alternatively, the Wisconsin Commission requests that the Commission grant a limited waiver of the applicability of the ATC carve-out in section 38.2.7.k of MISO's Tariff and Rate Schedule 43G with regard to the allocation of costs arising from the Presque Isle SSR Agreement, and that such waiver be extended to any renewals of the agreement.[48] The Wisconsin Commission asks that the waiver be made effective February 1, 2014, the date that the Presque Isle SSR Agreement and Rate Schedule 43G become effective, as those filings were accepted subject to refund. The Wisconsin Commission argues that the Tariff waiver meets the Commission's requirements for such waivers because it: (1) is of limited scope, because it deals with one power plant located on an electrically-isolated peninsula; (2) remedies a concrete problem by properly

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[45] *Id*. at 34. The Wisconsin Commission's testimony states that the keystone position of Presque Isle Units 5-9 stems from the electrical isolation of the Upper Peninsula and the unique generation and transmission issues present there, which include: limited access to the peninsula due to the presence of Lake Superior and Lake Michigan, demand from large iron ore mines that operate around the clock and cannot be shut down, sparse communities, and the fact that transmission and generation developed under a vertically-integrated utility model. *Id.*, Ex. B (Neumeyer Aff.) at 5.

[46] *Id*. at 33, 36.

[47] *Id*. at 36-37.

[48] *Id*. at 34, 37-38.

identifying which entities should pay for the reliability from which they benefit, in accordance with MISO's load-shed analysis; and (3) does not have undesirable consequences, because the relief sought in the Complaint will prevent harm to non-benefitting parties and avoid jurisdictional cost-shifting windfalls.[49] The Wisconsin Commission asks that the Commission grant the earliest lawful refund effective date for any amounts paid under the Presque Isle SSR Agreement and Rate Schedule 43G.[50]

22. As another alternative, the Wisconsin Commission requests that the Commission set the Complaint for hearing, but 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.[51] The Wisconsin Commission also states that the issues raised in the Complaint warrant fast track processing under Rule 206(b)(11) of the Commission's Rules of Practice and Procedure,[52] as the Presque Isle SSR Agreement and Rate Schedule 43G are effective as of February 1, 2014, and expedited issuance of an order would simplify the implementation by MISO of any change in the allocation methodology.[53] Finally, the Wisconsin Commission requests a waiver of Rule 203(b)(3) of the Commission's Rules of Practice and Procedure,[54] to permit inclusion of additional persons on the Commission's service list.

VI. Notice and Responsive Pleadings

23. Notice of the Complaint in Docket No. EL14-34-000 was published in the *Federal Register*, 79 Fed. Reg. 20,195 (2014), with interventions and protests due on or before May 5, 2014. MISO submitted an answer to the Complaint on April 28, 2014. The Michigan Public Service Commission filed a notice of intervention and comments on May 5, 2014. Timely motions to intervene were submitted by: Michigan Municipal Electric Association; ATC; Wisconsin Industrial Energy Group; Coalition of MISO Transmission Customers; Verso Paper Corporation; Tilden Mining Company, L.C.; Citizens Utility Board of Wisconsin; Manitowoc Public Utilities; Consumers Energy

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[49] *Id*. at 35.

[50] *Id*. at 37-38.

[51] *Id*. at 5 (citing 18 C.F.R. § 385.603 (2013)).

[52] 18 C.F.R. § 385.206(b)(11) (2013).

[53] Complaint at 5, 40.

[54] 18 C.F.R. § 385.203(b)(3) (2013).

Company; Wolverine Power Supply Cooperative, Inc.; Exelon Corporation; Cloverland Electric Cooperative, Alger Delta Cooperative Electric Association, and Ontonagon County Rural Electrification Association; NewPage Corporation; Xcel Energy Services, Inc.; Dairyland Power Cooperative; and Michigan Technological University. Motions to intervene and comments were filed by: the Public Interest Organizations; Wisconsin Electric; Wisconsin Power and Light Company (Wisconsin Power); Madison Gas and Electric Company (Madison Gas and Electric); WPPI Energy; Customers First! Coalition; Wisconsin Customers Coalition; Citizens Against Rate Excess; and Municipal Electric Utilities of Wisconsin. Motions to intervene and protests were filed by Tilden Mining Company L.C. and Empire Iron Mining Partnership (the Mines); Wisconsin Public Service Corporation and Upper Peninsula Power Corporation (WPSC/UPPCo); Great Lakes Utilities; and Integrys Energy Services, Inc. (Integrys). The Missouri Joint Municipal Electric Utility Commission submitted a motion to intervene out-of-time.

24. Alger Delta Cooperative Electric Association filed a notice of withdrawal of its motion to intervene on June 9, 2014.

25. The Wisconsin Commission submitted a motion to answer and answer to the comments and protests on May 16, 2014. Wisconsin Power submitted a motion to answer and answer to the comments and protests on May 19, 2014. ATC and WPSC/UPPCo filed motions to answer and answers on May 20, 2014. WPSC/UPPCo filed a subsequent motion to answer and additional answer on May 30, 2014.

A. MISO Answer

26. In its answer to the Complaint, MISO clarifies that the percentage allocation by LBA contained in the load-shed study were preliminary and not final results.[55] MISO states that the load-shed analysis, which would guide the assignment of costs to LBAs in the absence of the ATC cost allocation provision in the Tariff, was not necessary for the purpose of assigning Presque Isle SSR costs under the Tariff. MISO states that it would have to complete its assessment of the impacts on loads of the identified contingent conditions that require the SSR designation in order to arrive at final results that are consistent with the Tariff. According to MISO, the final results could be different than the preliminary results that were quoted by the Wisconsin Commission.[56]

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[55] MISO Answer to the Complaint, Docket No. ER14-34-000, at 5 (filed Apr. 28, 2014).

[56] *Id*. at 5.

B. Comments in Support

27. Commenters in support of the Complaint generally agree that MISO's proposed allocation of costs associated with the Presque Isle SSR Agreement, as mandated by section 38.2.7.k of the Tariff, is not roughly commensurate with the cost causers and beneficiaries of the agreement.[57] The Wisconsin Customers Coalition states that Wisconsin customers are being asked to pay $26.1 million more on an annual basis under the ATC cost allocation calculation than they would under a pure reliability-based allocation, according to MISO's load-shed analysis.[58] Madison Gas and Electric notes that although it does not cause any of the costs that give rise to the SSR designation for Presque Isle Units 5-9 and does not derive any benefit from that designation, it is allocated a portion of the Presque Isle SSR costs while LSEs located within similarly situated LBAs in MISO are not.[59] The Public Interest Organizations note that the Mines are still receiving power from Presque Isle Units 5-9 despite no longer paying their fair share of the costs to maintain the plant, and they argue that Cliffs should not be insulated from the reliability effects that its decision to change electricity suppliers has had on the system.[60] Wisconsin Electric recognizes that, as pertains to the Presque Isle SSR Agreement, the majority of the benefits from the continued operation of the Presque Isle SSR Units rests with LSEs in Michigan, not those in Wisconsin, and agrees that the Presque Isle SSR Agreement does not allocate costs within the ATC footprint in the same manner that such costs are allocated elsewhere in MISO. Wisconsin Electric asks that

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[57] *See, e.g.*, Comments of the Public Interest Organizations, Docket No. EL14-34-000 at 5 (filed May 5, 2014) (Public Interest Organizations Comments in Support of the Complaint); Comments of Madison Gas and Electric Company, Docket No. EL14-34-000 at 6-7 (filed May 5, 2014) (Madison Gas and Electric Comments in Support of the Complaint); Comments of Wisconsin Power and Light Company, Docket No. EL14-34-000 at 3-4 (filed May 5, 2014) (Wisconsin Power Comments in Support of the Complaint).

[58] Wisconsin Customers Coalition Comments, Docket No. EL14-34-000, at 8 (filed May 5, 2014) (Wisconsin Customers Coalition Comments in Support of the Complaint).

[59] Madison Gas and Electric Comments in Support of the Complaint at 7.

[60] Public Interest Organizations Comments in Support of the Complaint at 8.

any changes to the cost allocation methodology in the ATC footprint be prospective and not applied to the Presque Isle SSR Agreement.[61]

28. Commenters agree that the ATC cost allocation provision has no logical place in the current MISO Tariff. Madison Gas and Electric Company states that the initial socialization of costs among ATC member utilities helped align the member utilities' interests with the system as a whole, which resulted in more efficient transmission-planning decisions.[62] However, Madison Gas and Electric says that it is now apparent that socialization of SSR-related costs is misguided because the cost-sharing does not create any beneficial incentives that justify the deviation from cost-causation principles. Commenters state that the Tariff language in section 38.2.7.k was not based on economics or analyses, and that the continued presence of the language in the Tariff has never been discussed by the Commission nor been vetted through the traditional stakeholder process.[63] Wisconsin Power argues that MISO never initially received stakeholder approval for the ATC Tariff language.[64]

29. Commenters argue that *pro rata* ATC cost allocation will prevent LSEs from fully exploring potential alternative solutions to SSR agreements because they are not exposed to the full costs of keeping an SSR unit online.[65]

30. Wisconsin Power states that SSR costs in the ATC footprint should be allocated the same way that Revenue Sufficiency Guarantee (RSG) costs associated with Voltage and Local Reliability (VLR) units are allocated, because both types of units are needed for the same reason – to support system reliability.[66] Wisconsin Power asserts that the

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[61] Wisconsin Electric Power Company Comments, Docket No. EL14-34-000 at 4-5 (filed May 5, 2014).

[62] Madison Gas and Electric Comments in Support of the Complaint at 8-9.

[63] Comments of Municipal Electric Utilities of Wisconsin, Docket No. EL14-34-000, at 5 (filed May 5, 2014); Wisconsin Power Comments in Support of the Complaint at 5.

[64] Wisconsin Power Comments in Support of the Complaint, McNamara Aff. at 6-10.

[65] *Id.*; Wisconsin Customers Coalition Comments in Support of the Complaint at 8.

[66] Wisconsin Power Comments in Support of the Complaint at 6-7.

majority of the MISO footprint appropriately allocates VLR and SSR costs in a similar manner. Wisconsin Power asserts that the exception to this rule is the ATC footprint, where there is a large disparity between how VLR and SSR costs are allocated. Wisconsin Power notes that, in the ATC footprint, as in the rest of MISO, VLR make-whole payments are allocated to the electrically-close LBAs that benefit from the VLR commitment.[67] However, in the ATC footprint only, states Wisconsin Power, SSR costs are allocated on a *pro rata* basis to all of the ATC LSEs without any consideration to the actual reliability benefits that an entity receives.

C. Comments in Opposition/Protests

1. MISO's Load-Shed Study is Preliminary

31. Commenters argue that the Wisconsin Commission has not met its heavy dual burden of proof to demonstrate, based on substantial evidence, that the Tariff in effect is unjust and unreasonable and that the solution it proposes is just and reasonable.[68] Commenters argue that MISO's load-shed study is preliminary and does not provide an adequate basis to support the Wisconsin Commission's conclusion that cost allocation in the Presque Isle SSR Agreement is unjust and unreasonable.[69] They note that there was a group of contingencies that remained unresolved by the load-shed study, and assert that these contingencies could lead to cascading outages.[70]

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[67] *Id.* at 7 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,171, at P 78 (2012)). RSG costs associated with VLR commitments are allocated to market participants within each LBA where the VLR resource is located on a *pro rata* basis, per their actual energy withdrawals in the LBA. *See* MISO, FERC Electric Tariff, Module C (Energy and Operating Reserve Markets), § 40.3.3(a)(xviii) (Real-Time Energy and Operating Reserve Market Settlement Calculation) (34.0.0).

[68] Protest of the Wisconsin Public Service Corporation and Upper Peninsula Power Co., Docket No. EL14-34-000, at 12-13 (filed May 5, 2014) (WPSC/UPPCo Protest of the Complaint); Tilden Mining Company, L.C. and Empire Iron Mining Partnership Protest of the Complaint, Docket No. EL14-34-000, at 12 (filed May 5, 2014) (The Mines Protest of the Complaint).

[69] The Mines Protest of the Complaint at 22-23; WPSC/UPPCo Protest of the Complaint at 29-30.

[70] Citizens Against Rate Excess Comments on the Complaint, Docket No. EL14-34-000, at 10 (filed May 5, 2014).

2. **The ATC *Pro Rata* Cost Allocation Provision is not Unduly Discriminatory and Meets Cost Causation Principles**

32. Commenters argue that the Wisconsin Commission has not met its burden to show that cost allocation using the generally applicable method would be just and reasonable when applied in the ATC footprint.[71] Commenters argue that cross-border cost sharing in the region happens in other contexts, and the mere fact that Wisconsin ratepayers shoulder more SSR costs does not make the Presque Isle SSR Agreement unjust and unreasonable.[72] They explain that Wisconsin Electric operates its electric utility operations on an integrated system-wide basis. Because 93 percent of Wisconsin Electric's total system demand is in Wisconsin, they state that Wisconsin Electric's Wisconsin ratepayers bear the vast majority of total system costs, including the costs of Presque Isle. Citizens Against Rate Excess state that Michigan's Upper Peninsula customers are required to pay an allocated share of the costs of Wisconsin Electric's generating assets located in Wisconsin, even when power from that generation cannot be delivered to Michigan.[73] In addition, they state that Wisconsin's renewable portfolio standards are structured so that Wisconsin Electric's costs of compliance with the standards may be billed on a system-wide basis and passed to Michigan ratepayers.[74]

33. Commenters argue that there are rational bases for allocating SSR costs *pro rata* among LSEs in the ATC footprint. Citizens Against Rate Excess claim that Northeast Wisconsin and the Upper Peninsula have unique characteristics such as limited access to transmission, greater distance between load and generation, and a low-voltage system, all of which increase the danger of voltage collapse, thereby increasing the importance of local generation for local voltage support.[75] Commenters argue that the reliability effects of operating Presque Isle Units 5-9 to prevent large-scale voltage collapse extend to the entire ATC footprint, and it is not unjust and unreasonable for all ratepayers in the ATC footprint to pay their *pro rata* share of the Presque Isle SSR units.[76] They state that

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[71] The Mines Protest of the Complaint at 29.

[72] *Id.* at 24; Citizens Against Rate Excess Comments on the Complaint at 17; Motion to Intervene and Answer in Opposition of Integrys Energy Services, Inc., Docket No. EL14-34-000, at 5 (filed May 5, 2014) (Integrys Comments on the Complaint.)

[73] Citizens Against Rate Excess Comments on the Complaint at 16.

[74] *Id.* at 18.

[75] *Id.* at 11-12.

[76] *Id.*; The Mines Protest of the Complaint at 22, 25-26.

isolating the costs of transmission service solely to Michigan customers located on the Upper Peninsula would result in those customers paying a disproportionate share of reliability costs.[77] Commenters allege that the ATC cost allocation provision provides a just and reasonable solution that promotes regional planning and regional solutions to reliability issues to ensure access to competitive wholesale energy markets.[78]

34. Commenters argue that the ATC cost allocation provision is actually consistent with the way SSR costs are allocated generally. WPSC/UPPCo note that MISO's general SSR benefits-based methodology is LBA-based, where MISO determines which LBAs benefit from the SSR Unit.[79] WPSC/UPPCo state that this can work for most of MISO, because each pricing zone is coextensive with a single LBA; thus, the determination of benefits on the basis of the LBA is a determination of benefits associated with a pricing zone.[80] But because the ATC pricing zone includes five LBAs, WPSC/UPPCO state that the general cost allocation method would result in five sub-allocations of SSR costs in ATC. Commenters state that the ATC SSR cost allocation provision actually ensures that the costs of SSR units are allocated on a zonal basis (*pro rata* to all LSEs in the five LBAs that make up the ATC pricing zone), just as such costs are allocated to other MISO pricing zones.[81]

3. SSR Costs are Essentially Transmission Reliability Costs and Should be Allocated in a Similar Manner

35. WPSC/UPPCo argue that SSR units are transmission reliability assets, just like the transmission facilities that are built to obviate the need for SSR units.[82] They state that the MISO Tariff recognizes this fact because it provides compensation to generators that qualify as SSR units under MISO's Transmission Expansion Planning Protocol. Therefore, they conclude that SSR costs are essentially transmission reliability costs, and

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[77] The Mines Protest of the Complaint at 25-26; Citizens Against Rate Excess Comments on the Complaint at 10-11.

[78] The Mines Protest of the Complaint at 28; WPSC/UPPCO Protest of the Complaint at 25.

[79] WPSC/UPPCo Protest of the Complaint at 26.

[80] *Id.*

[81] *Id.* at 27; The Mines Protest of the Complaint at 11.

[82] WPSC/UPPCo Protest of the Complaint at 14-15.

they should be allocated the same way; namely, on a pricing zone basis. WPSC/UPPCo note that over the past decade, billions of dollars in transmission reliability costs have been allocated to LSEs within the ATC footprint on a *pro rata* basis, regardless of how individual costs or projects benefitted individual LSEs.[83]

4. History of the ATC *Pro Rata* Cost Allocation Provision

36. Commenters state that the ATC *pro rata* SSR cost allocation provision has already been found by the Commission to be just and reasonable, and that MISO has correctly implemented its Tariff. For instance, the Mines state that the Commission initially approved the separate provision for the *pro rata* allocation of SSR unit costs in the ATC footprint on August 6, 2004, and again in 2012 when the Commission accepted MISO's revisions to its SSR Tariff.[84] In addition, the Mines state that the Commission has already specifically approved section 38.2.7.k of MISO's Tariff in the *Escanaba* order, where it found that the "*pro rata* allocation of SSR costs to LSEs throughout the ATC footprint" was "just and reasonable."[85] The Mines state that the Wisconsin Commission has presented no evidence of changed circumstances since the Commission last approved the Tariff provision that would warrant overturning the Commission's prior orders.

37. Commenters refute the Wisconsin Commission's assertion that the ATC cost allocation provision was left in the MISO Tariff by mistake, arguing instead that single system operation and *pro rata* cost allocation were foundational principles of ATC. WPSC/UPPCo claim that the area covered by the ATC footprint was previously comprised of five separate control areas with separate planning, construction, operations, and generation dispatch, such that LSEs were hesitant to construct transmission beyond their own needs.[86] WPSC/UPPCo assert that the initial formation of ATC was intended to eliminate transmission rate pancaking and improve transmission reliability through the creation of a single-purpose transmission company that would operate the combined transmission system on a single system basis under MISO's jurisdiction.[87] They state

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[83] *Id.* at 22-26.

[84] The Mines Protest of the Complaint at 17-18 (citing 2012 SSR Order, 140 FERC ¶ 61,237 at P 154).

[85] *Id.* at 18-19 (citing *Escanaba*, 142 FERC ¶ 61,170 at P 72).

[86] WPSC/UPPCO Protest of the Complaint at 16.

[87] *Id.* at 9, 17 (citing Wis. Stat. § 196.485(1)(ge), 196.485(1m)(c)). Wis. Stat. § 196.485(l)(ge) states:

(continued…)

that the costs of this single system were to be shared *pro rata* on a load ratio share basis amongst the LSEs and their customers through a single zonal network transmission rate in order to avoid the balkanization that previously affected efficient expansion of the transmission system.[88]

38. WPSC/UPPCo state that the ATC cost allocation provision was implemented due to a Wisconsin law that required ATC to operate under any MISO tariff as a single zone. The statute states that transmission companies must "[a]pply for membership in [MISO] as a single zone for pricing purposes that includes the transmission area[.]"[89] The statute also required ATC to implement a five-year transition to an average transmission network service rate based on average, system-wide costs to replace the zonal rates of each control area.[90] Finally, the statute required transmission companies to "elect to be included in a single zone for the purpose of any tariff administered by [MISO.]"[91] Great Lakes Utilities states that the Wisconsin statute evinced a clear state policy to create a single price for transmission throughout eastern Wisconsin, and argues that MISO's treatment of ATC as a single rate zone for SSR cost allocation purposes is consistent with the treatment of ATC as a single transmission pricing zone.[92]

> Transmission company means a corporation...that has as its sole purpose the planning, constructing, operating, maintaining and expanding of transmission facilities that it owns to provide for an adequate and reliable transmission system that meets the needs of all users that are dependent on the transmission system and that supports effective competition in the energy markets without favoring any market participant.

The Wisconsin Commission certified ATC as a transmission company under the Wisconsin statute on December 22, 2000. *See* Complaint, Ex. DEE-2 at 1-2.

[88] WPSC/UPPCO Protest of the Complaint at 9, 17.

[89] *Id.* at 17 (citing Wis. Stat. § 196.485(3m)(a)1.d).

[90] *Id.* (citing Wis. Stat. §§ 196.485(3m)(a)1.d & 4).

[91] *Id.* (citing Wis. Stat. § 196.485(3m)(a)1.f).

[92] Protest of Great Lakes Utilities, Docket No. EL13-34-000, at 6-7 (filed May 5, 2014) (Great Lakes Utilities Protest of the Complaint).

39. WPSC/UPPCo also argue that all of the formational documents for ATC were guided by the principles of single zone operation and the *pro rata* sharing of transmission reliability costs. For example, they state that ATC's original OATT included a five-year transition to a single zonal network rate and *pro rata* sharing of congestion and redispatch costs.[93] According to WPSC/UPPCo, this evidence refutes the Wisconsin Commission's claim that the ATC *pro rata* cost allocation provision was left in the Tariff through oversight.

5. The Request for Relief Should be Denied

40. Commenters request that the Commission dismiss the Complaint because the Wisconsin Commission has not met its dual burden of proof under section 206 of the FPA.[94] Commenters request that, if the Commission determines that the Complaint has merit, the Commission schedule the matter for hearing and settlement procedures in order to allow stakeholders to develop appropriate Tariff changes that take into account the nature of ATC's unique transmission system and consumer costs.[95] Integrys asserts that MISO could prepare a study that assesses the appropriate Tariff changes.[96] WPSC/UPPCo state that if the Commission requires any changes to the Tariff, it should require MISO to clarify that SSR costs are to be allocated to the pricing zones that benefit, because LBAs are vestigial geographical distinctions that are meaningless for present cost allocation purposes, as power flows do not recognize LBA boundaries and LBAs do not reflect the proximity of generation and load.[97] Alternatively, WPSC/UPPCo ask the Commission to require that the separate LBAs within ATC be consolidated into one LBA. Great Lakes Utilities generally supports the Wisconsin Commission's contention that the existing allocation of SSR costs in ATC is unjust and unreasonable, but argue that the proposal to eliminate the ATC cost allocation provision fails to acknowledge that the provision is the result of a policy demand made by the State

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[93] WPSC/UPPCo Protest of the Complaint at 19.

[94] *Id*. at 12-13; The Mines Protest of the Complaint at 12; Citizens Against Rate Excess Comments at 20.

[95] The Mines Protest of the Complaint at 38; Integrys Comments on the Complaint at 5; Comments of the Michigan Public Service Commission, Docket No. EL14-34-000, at 7 (filed May 5, 2014).

[96] Integrys Comments on the Complaint at 6.

[97] WPSC/UPPCo Protest of the Complaint at 12, 27.

of Wisconsin.[98] Great Lakes Utilities suggests a modified version of the ATC carve-out provision whereby the costs of any SSR unit proposed to be allocated to any LSE within the Wisconsin portion of the ATC footprint would be allocated on a *pro rata* basis to all LSEs within the Wisconsin portion of the footprint.[99]

41. The Mines argue that the Complaint is defective and should be dismissed because it does not comply with the Commission's filing requirements with respect to requesting confidential treatment of information under section 388.112 of the Commission's rules.[100] Specifically, the Mines state that the Complaint did not include a proposed protective agreement or identify a previously filed protective agreement that applies to the confidential material.

42. Commenters allege that the Wisconsin Commission's alternative request for a waiver of section 38.2.7.k of MISO's Tariff for the Presque Isle SSR Agreement does not meet the Commission's standards for tariff waivers. WPSC/UPPCo state that the waiver is not limited in scope because it goes to the heart of how all costs will be allocated in the Presque Isle SSR Agreement and any future renewals.[101] They argue that the waiver would not remedy a concrete problem but actually create additional problems, because it would create confusion as to how costs should be allocated in every future SSR agreement in the ATC footprint. The Mines state that Michigan ratepayers would be harmed under the general reliability-based cost allocation methodology in MISO's Tariff, and Michigan LSEs would face an additional $26 million in cost responsibility for the Presque Isle SSR Units.[102] They also state that granting a waiver would result in undue discrimination, because similarly-situated SSR units within the ATC footprint would be allocated differently, due to the Commission's previous application of section 38.2.7.k to the Escanaba Agreement.

43. The Mines also protest the Wisconsin Commission's request that relief be granted back to February 1, 2014. They state that the Commission's authority to remedy an unlawful rate under section 206 of the FPA is prospective, and that "[t]he filed rate

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[98] Great Lakes Utilities Protest of the Complaint at 4-5.

[99] *Id*. at 12.

[100] The Mines Protest of the Complaint at 13-14.

[101] WPSC/UPPCo Protest of the Complaint at 31.

[102] The Mines Protest of the Complaint at 30.

doctrine bars an amendment to MISO's ATC SSR Tariff retroactively."[103] They further argue that the Commission typically denies refunds in cases where there is no over-recovery or violation of the filed rate, and that the Wisconsin Commission has not alleged that the total level of cost recovery under the Presque Isle SSR Agreement is inappropriate or that there is any over-recovery. They argue that there is no requirement to establish a refund effective date under section 206(b) of the FPA where the proceeding is instituted upon complaint.

D. Answers

1. Answers in Support of the Complaint

44. The Wisconsin Commission argues that the Complaint establishes a *prima facie* case that the Tariff is unjust, unreasonable, and unduly discriminatory because it demonstrates that the ATC *pro rata* SSR cost allocation Tariff provision violates Commission precedent and policy by allocating costs without regard to the benefits received. The Wisconsin Commission asserts that none of the intervenors have presented evidence that justifies allocating SSR costs *pro rata* in the ATC footprint.[104]

45. The Wisconsin Commission states that the preliminary nature of the load-shed study is irrelevant to its Complaint, because the load-shed study merely demonstrates that a cost allocation based on reliability benefits would be different from the current *pro rata* cost allocation, which bears no relation to the benefits provided.[105] The Wisconsin Commission argues that the preliminary nature of the load-shed analysis also does not affect the remedy requested, because MISO has stated that it will complete the study and allocate the Presque Isle SSR costs based on the results of the study if the Commission orders it to apply the prevailing methodology for allocating SSR costs.[106]

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[103] *Id.* at 32.

[104] Wisconsin Commission Answer to Protests, Docket No. EL14-34-000, at 4, 6-7 (filed May 16, 2014) (Wisconsin Commission Answer).

[105] *Id.* at 5, 7.

[106] *Id.* at 5, 7-8.

46. The Wisconsin Commission and Wisconsin Power assert that SSR units are not in fact equivalent to transmission facilities.[107] Wisconsin Power states that, while SSRs do support local system reliability, this alone is not sufficient evidence to consider SSR costs and transmission costs to be synonymous.[108] The Wisconsin Commission states that SSR units provide only local reliability benefits, while transmission facilities provide wide-spread, long-term regional benefits.[109] Wisconsin Power states that there are also many other possible solutions to an SSR agreement, including demand response, new generation, and targeted load shed, but the costs of these potential alternative solutions are not allocated *pro rata* in ATC.[110] The Wisconsin Commission and Wisconsin Power argue that SSR service is a generation service, like VLR and reactive power, and should be treated comparably.[111] Specifically, reactive power costs are allocated to five pricing zones within ATC and VLR costs are allocated directly to the electrically-close local areas that benefit from the resource commitment and which do nothing to relieve the need for the VLR commitment. The Wisconsin Commission notes that the Commission accepted a MISO application to change the cost allocation for VLRs to one based on LBAs, finding that local load is the primary beneficiary of VLR commitments, and therefore, allocating RSG costs associated with VLR commitments predominately to local load is reasonable.[112]

47. The Wisconsin Commission disputes claims that ATC has unique characteristics that justify cost socialization in ATC.[113] The Wisconsin Commission acknowledges that transmission costs were socialized when ATC was formed in order to align the interests of the member utilities with the interests of ATC as a whole, but states that such

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[107] *Id*. at 8-10; Wisconsin Power and Light Company Answer, Docket No. EL14-34-000 at 3 (filed May 19, 2014) (Wisconsin Power Answer).

[108] Wisconsin Power Answer at 3-4. Wisconsin Power notes that reactive power and regulation services both support system reliability, but they are not classified as transmission.

[109] Wisconsin Commission Answer at 9.

[110] Wisconsin Power Answer at 4.

[111] Wisconsin Commission Answer at 10; Wisconsin Power Answer at 5.

[112] Wisconsin Commission Answer at 10 (citing *Midwest Indep. Transmission Sys. Operator, Inc*., 140 FERC ¶ 61,171 at P 78).

[113] *Id.* at 11 (citing Complaint, Ex. B (Neumeyer Aff.) at 4).

socialization makes no sense when applied to SSR costs.[114] The Wisconsin Commission argues that decisions concerning ATC member utilities' generation assets are not subject to the ATC transmission planning process; rather, the decision to operate or shut down a generator belongs to the utility. The Wisconsin Commission states that socializing the costs of the Presque Isle SSR Units to other ATC members will not promote any regional decision-making. The Wisconsin Commission also takes issue with arguments that Wisconsin law requires socialization of SSR costs. The Wisconsin Commission states that the Commission should defer to it to interpret Wisconsin laws that it is entrusted to enforce, and concludes that nothing requested in the Complaint would put ATC out of compliance with Wisconsin law.[115]

48. The Wisconsin Commission states that the Commission has never ruled on the justness and reasonableness of the ATC SSR cost allocation provision. First, the Wisconsin Commission notes that the *Escanaba* order merely found that the proposed rate schedule for the 25 MW Escanaba unit was just and reasonable, and therefore did not address the merits of a suggestion that MISO adopt a VLR-type allocation for the costs.[116] The Wisconsin Commission states that *Escanaba* did not hold that a *pro rata* cost allocation in the ATC footprint would be just and reasonable in any future proceeding. The Wisconsin Commission argues that a rate that was just and reasonable in one situation can become unjust and unreasonable when applied later, and that one purpose of section 206 of the FPA is to provide a mechanism for challenging such formerly approved rates.[117]

49. The Wisconsin Commission argues that it is wholly within the Commission's discretion to grant refunds for an unjust and unreasonable allocation of costs, and that the facts in this case warrant refunds.[118] The Wisconsin Commission states that refunds will not alter past decisions made in reliance on a rate design in effect because there was no

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[114] *Id*. at 12.

[115] *Id*. at 12-13.

[116] *Id*. at 14 (citing *Escanaba*, 142 FERC ¶ 61,170 at P 75).

[117] *Id*. at 14-15.

[118] *Id*. at 16-17 (citing *Louisiana Pub. Serv. Comm'n v. Entergy Corp.*, 132 FERC ¶ 61,133, at P 28 (2010) (finding that section 206 of the FPA does not prohibit refunds for misallocated costs); *Louisiana Pub. Serv. Comm'n v. Entergy Corp.*, 142 FERC ¶ 61,211, at P 51 (2013) (*Entergy*), *appeal pending*, *Louisiana Pub. Serv. Comm'n v. FERC*, No. 13-1155 (D.C. Cir. filed Sept. 18, 2013)).

allocation of costs for Presque Isle SSR service in effect when Cliffs chose to exercise its retail choice. The Wisconsin Commission states that refunds are warranted because the SSR Agreement allocates costs in a manner that diverges from the benefits conferred. The Wisconsin Commission asserts that section 206 of the FPA requires the Commission to establish a refund effective date whenever it institutes a proceeding under section 206, regardless of whether the Commission institutes the proceeding on its own motion or on complaint.[119]

2. Answers in Protest

50. WPSC/UPPCo state that MISO's preliminary load-shed study does not provide adequate evidence that is sufficient to establish a *prima facie* case under section 206 of the FPA because the study does not resolve a group of severe contingencies in east-central Wisconsin, which suggests that the final study could be materially and directionally different than the preliminary study.[120]

51. WPSC/UPPCo refute claims that the ATC cost allocation provision creates inappropriate economic incentives.[121] WPSC/UPPCo argue that allocating costs to the individual LSEs or generation owners who allegedly cause transmission reliability costs may result in decisions made without regard to what is best for the transmission system as a whole. WPSC/UPPCo acknowledge that the decision to shut down a generator is made without regard to the transmission system, but argue that ATC's and MISO's response to that decision is made on the basis of what is best for the transmission system.[122] WPSC/UPPCo reiterate that SSR costs are transmission reliability costs and should be allocated the same way the transmission reliability upgrades to eliminate the SSR costs would be allocated. WPSC/UPPCo refute claims that SSRs are unlike transmission facilities because they do not provide wide-spread, long-term regional benefits, because the same thing could be said for many transmission system upgrades.

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[119] *Id*. at 18-19 (citing 16 U.S.C. § 824e(b) (2012)).

[120] WPSC/UPPCo Additional Answer to Comments, Docket No. EL14-34-000, at 3 (filed May 30, 2014) (WPSC/UPPCo Additional Answer).

[121] WPSC/UPPCo Answer to Comments, Docket No. EL14-34-000, at 9-10 (filed May 20, 2014).

[122] *Id.* at 11.

52. WPSC/UPPCo note that, the day after comments on the Complaint were due, Wisconsin Electric informed LSEs within the ATC zone that it was splitting its single LBA into two, increasing the number of LBAs within ATC from five to six.[123] WPSC/UPPCo state that the split required no review by ATC or MISO, nor approval by the Wisconsin Commission or the Commission, but that it will shift $20 million a year from Wisconsin Electric's Wisconsin customers to its Michigan customers. WPSC/UPPCo argue that the unilateral LBA split underscores the arbitrariness of using LBA boundaries for cost allocation.

53. WPSC/UPPCo argue that SSR costs are not equivalent to VLR costs because VLR commitments are intended to address day-to-day local reliability issues and VLR costs are incurred only when (1) a resource is committed by MISO in either the day-ahead or real-time energy market and (2) the revenue from the energy market is insufficient to cover the variable costs of the resource.[124] WPSC/UPPCo state that, by contrast, an SSR agreement is a last-resort measure that commits a unit to uneconomic dispatch for an extended period of time and is intended to remain in place until a transmission reliability upgrade is completed. WPSC/UPPCo state that MISO's SSR payments to a generator cannot be considered the provision of SSR service or generator service, because the MISO Tariff offers no generation service and there is no such thing as SSR service.[125]

54. ATC submitted a limited answer asserting that it has no substantive position on the issues presented in the Complaint, but is concerned that certain parties blur the distinction between (1) MISO's allocation of costs associated with SSR service within the ATC footprint pursuant to the MISO Tariff and (2) the allocation of costs related to providing transmission service within the ATC footprint pursuant to the MISO Tariff.[126] ATC states that cost allocation for transmission service in the ATC footprint is not expressly addressed in the Complaint; thus, any discussion of cost allocation for providing such transmission service is outside the scope of this proceeding. WPSC/UPPCo respond that they do not argue that MISO's SSR Tariff provisions are not distinct from its Tariff provisions governing transmission service, only that SSR costs should be allocated in the same way as transmission upgrade costs that would replace the SSR Unit.[127]

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[123] *Id.* at 12.

[124] *Id.* at 13-14.

[125] WPSC/UPPCo Additional Answer at 5.

[126] ATC Answer, Docket No. EL14-34-000, at 3-4 (filed May 20, 2014).

[127] WPSC/UPPCo Additional Answer at 7.

VII. Discussion

A. Complaint

1. Procedural Matters

55. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the notice of intervention and timely, unopposed motions to intervene in Docket No. EL14-34-000 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 grants Missouri Joint Municipal Electric Utility Commission's late-filed motion to intervene given its interest in the proceedings, the early stages of the proceedings, and the absence of undue prejudice or delay.

56. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 213(a)(2) (2013), prohibits an answer unless otherwise ordered by the decisional authority. We accept the answers filed by the Wisconsin Commission, Wisconsin Power, ATC, and WPSC/UPPCo because they provided information that assisted us in our decision-making process.

57. We grant Wisconsin Electric's request for a waiver of Rule 203(b)(3) of the Commission's Rules of Practice and Procedure[128] to permit inclusion of additional persons on the Commission's service list.

58. We reject the Mines' claim that the Complaint should be dismissed because it contains what is labeled a "protective order" and a draft non-disclosure certificate instead of a draft "protective agreement" as required by 18 C.F.R. § 388.112(b)(2) (2013). We find that the Mines' argument places form above substance, and that the protective order and the non-disclosure certificate filed with the Complaint are consistent with Commission regulations and practice. The Commission's regulations allow intervenors to request copies of non-public documents upon execution of the protective agreement filed with the non-public document. We find that Wisconsin Commission's protective order and draft non-disclosure certificate contain the same provisions governing the use of all privileged documents that would be contained in a protective agreement, and thus they properly allow the Wisconsin Commission to respond to requests for privileged

[128] 18 C.F.R. § 385.203(b)(3) (2013).

documents.[129] Indeed, the Wisconsin Commission stated that it sent Cliffs a copy of the protective order and a non-disclosure certificate so that it might provide Cliffs with a copy of the privileged version of the Complaint, but that Cliffs did not sign the certificate.[130]

2. Substantive Matters

a. The ATC *Pro Rata* SSR Cost Allocation is Unjust, Unreasonable, Unduly Discriminatory, or Preferential

59. We find that the Wisconsin Commission has met its burden under section 206 of the FPA to show that the ATC *pro rata* cost allocation provision in MISO's Tariff is unjust, unreasonable, unduly discriminatory, or preferential because, as demonstrated in the application of this provision under Rate Schedule 43G, it does not follow cost causation principles. Therefore, as further discussed below, we grant the Complaint and direct MISO in a compliance filing due within 30 days of the date of this order to remove the ATC *pro rata* cost allocation provision from section 38.2.7.k of its Tariff.

60. The underlying facts on which the Wisconsin Commission bases its Complaint are undisputed. Section 38.2.7.k of MISO's Tariff states in full:

> Allocation of SSR Unit Costs. The costs pursuant to the SSR Agreement shall be allocated to the LSE(s) which require(s) the operation of the SSR Unit for reliability purposes, and shall be specified in the SSR Agreement. For the purposes of this Section, any costs of operating an SSR Unit allocated to the footprint of [ATC] shall be allocated to all LSEs within the footprint of [ATC] on a *pro rata* basis.

Because MISO found that the costs of operating the Presque Isle SSR Units were to be allocated to the ATC footprint, Rate Schedule 43G assigns cost recovery for those units on a *pro rata* basis to all LSEs in the ATC footprint, as required by MISO's Tariff. Using this allocation method, most of the costs of the Presque Isle SSR Agreement (approximately 92 percent) are allocated to Wisconsin LSEs, because that is where the bulk of load in the ATC footprint is located. However, during its assessment of the

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[129] In addition, we note that the Commission has previously found that the Commission's Model Protective Order may be used as a guide for protective agreements. *See Filing of Privileged Materials and Answers to Motions*, Order No. 769, FERC Stats. & Regs. ¶ 31,337 at P15 (2012) (cross-referenced at 141 FERC ¶ 61,049, at P 15 (2012)).

[130] Wisconsin Commission Answer at 1 n.4.

Attachment Y Notice submitted by Wisconsin Electric for Presque Isle Units 5-9, MISO conducted a load-shed analysis to determine which load in each of the LBAs within the ATC footprint benefits from continued operation of Presque Isle Units 5-9. The preliminary load-shed analysis showed that 58 percent of the reliability impact of the Presque Isle SSR Agreement is located in the Upper Peninsula, while only 42 percent of the benefitting load is in Wisconsin.

61. We agree with the Wisconsin Commission that the *pro rata* ATC cost allocation method applied in Rate Schedule 43G, which would allocate 92 percent of the Presque Isle SSR costs to LSEs located in Wisconsin even though MISO's preliminary load-shed study indicates that such LSEs only receive 42 percent of the reliability benefit, does not satisfy the Commission's fundamental cost causation principle that "all approved rates [must] reflect to some degree the costs actually caused by the customer who pays them."[131] Indeed, there are no studies or other evidence in the record that support an allocation of 92 percent of the Presque Isle SSR costs to customers in Wisconsin, as would occur under the existing ATC allocation methodology, and there is substantial evidence in the record demonstrating that the methodology does not reflect a proper allocation of costs to those customers. We find that the preliminary nature of the load-shed study does not undermine our determination, because it demonstrates that a cost allocation for SSR Units based on reliability benefits would be different from the current ATC *pro rata* cost allocation, which bears little, if any, relation to the benefits provided under the Presque Isle SSR Agreement.

62. We find that the assignment of SSR costs to all LSEs within the ATC footprint based on their load share ratio is contrary to the Commission's previously stated support for a nexus between the reliability benefits of SSR Units and the allocation of those SSR costs. When the Commission initially approved MISO's SSR program in 2004, the Commission found the SSR proposal to be "a reasonable reliability assurance measure consistent with our recently enunciated policy on reliability compensation issues," which required that a proposal to assure market reliability: "(1) has a clear triggering event; (2) explains why market design options are not appropriate; and (3) *assigns costs to beneficiaries*."[132] When MISO proposed revisions to its general SSR cost allocation method in 2012, MISO explained that its modifications would ensure that SSR costs are allocated to market participants based upon the reliability benefits received.[133] In the 2012 SSR Order accepting the revisions, the Commission rejected an element of MISO's

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[131] *Black Oak v. FERC*, 725 F.3d at 364.

[132] 2004 SSR Order, 108 FERC ¶ 61,163 at P 371 n.226 (emphasis added).

[133] 2012 SSR Order, 140 FERC ¶ 61,237 at P 147.

proposal that would have excluded recovery of costs for environmental upgrades, noting the implications of not affording such cost recovery:

> SSRs are required to continue operating to preserve the reliability of MISO's system and… it is reasonable to allocate the costs resulting from their continued operations to the [LSEs] that necessitated the SSR designation. Moreover, failure to ensure that SSRs appropriately recover the costs associated with their continued operations could cause the associated costs to be allocated in a manner inconsistent with cost causation principles.[134]

The Commission described MISO's proposal in the 2012 SSR Order as one that "allocat[ed] the costs of compensating SSRs to the [LSEs] that benefit from the operation of the SSR Unit" and found MISO's proposed revisions to be just and reasonable.[135] Although both the 2004 SSR Order and the 2012 SSR Order also accepted the ATC-specific *pro rata* SSR cost allocation provision alongside the general benefits-based SSR cost allocation, we now find that, based on the record before us, the ATC *pro rata* cost allocation in MISO's Tariff can result in an unjust and unreasonable SSR cost allocation.

63. We disagree with the argument that the Commission specifically approved the ATC *pro rata* cost allocation Tariff provision in the *Escanaba* order, where it found that the "*pro rata* allocation of SSR costs to LSEs throughout the ATC footprint" was "just and reasonable."[136] The factual record in *Escanaba* did not establish that the ATC *pro rata* allocation provision was unjust and unreasonable, that is, the Commission applied the filed rate. By contrast, in this section 206 complaint proceeding, the Wisconsin Commission challenges the filed rate and establishes a record that illustrates the unjust and unreasonable application of the ATC *pro rata* cost allocation provision.

64. We disagree with the protesters' suggestion that the unresolved contingencies in the load-shed study indicate the potential for large-scale voltage collapse throughout ATC, thereby rendering *pro rata* sharing of Presque Isle SSR costs among all LSEs within the ATC footprint just and reasonable. We find this argument to be speculative, and note that in the event the final load-shed study directed below indicates the potential for such voltage collapse, MISO would be required to allocate Presque Isle SSR costs to all LSEs that require the Presque Isle SSR Units for reliability in that circumstance. We

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[134] *Id.* P 136.

[135] *Id.* PP 147, 153.

[136] *Escanaba,* 142 FERC ¶ 61,170 at P 72.

do not address the protesters' suggestion that the costs of SSR Units should be allocated in the same manner as the costs of transmission reliability assets that are built to obviate the need for SSR Units, i.e., on a pricing zone basis. We find that reaching these arguments is unnecessary to the Commission's finding that the record in this proceeding demonstrates that allocating SSR costs *pro rata* among all load in the ATC footprint violates cost causation principles and the Commission's prior statements that SSR cost allocation should be commensurate with reliability benefits received from continued operation of an SSR Unit.

65. We are not persuaded that the history of the ATC SSR cost allocation provision requires a different determination. Although ATC may have been originally formed as a single pricing zone within MISO in order to promote the sharing of costs for regional transmission planning, that original intent does not require all costs to be shared equally in perpetuity. We agree with the Wisconsin Commission that the original intent of ATC formation is not served by the *pro rata* sharing of SSR costs to all LSEs in the ATC footprint, because decisions concerning the operational status of ATC member utilities' generation assets are not subject to the ATC transmission planning process; thus, *pro rata* cost sharing of SSR Units will not promote any regional decision-making. In any event, the desire to serve the original intent of ATC formation does not, in and of itself, render the proposed cost allocation just and reasonable, nor does it override the requirement in MISO's Tariff and Commission policy that SSR costs be allocated to market participants based upon the reliability benefits received from the designation of the SSR Unit in order to satisfy cost causation principles. Furthermore, we are not persuaded that removing the ATC *pro rata* cost allocation provision from MISO's Tariff contradicts Wisconsin law requiring that ATC "[a]pply for membership in [MISO] as a single zone for pricing purposes that includes the transmission area"[137] or "elect to be included in a single zone for the purpose of any [MISO Tariff.]"[138] As Wisconsin Power explains, this law only applies to transmission companies – it does not require that the costs of individual member utilities' SSR Units be allocated as a single rate within the ATC footprint.[139]

b. <u>Relief Granted</u>

66. We direct MISO to remove the ATC *pro rata* SSR cost allocation provision from section 38.2.7.k of its Tariff in a compliance filing due within 30 days of the date of this order, thereby extending to the ATC footprint the general SSR cost allocation Tariff

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[137] Wis. Stat. § 196.485(3m)(a)1.d.

[138] Wis. Stat. § 196.485(3m)(a)1.f.

[139] Wisconsin Power Answer at 4.

language, which requires MISO to allocate SSR costs to "the LSE(s) which require(s) the operation of the SSR Unit for reliability purposes." We find that this general SSR cost allocation provision provides a just and reasonable method of allocating SSR costs in the ATC footprint because it satisfies the Commission's fundamental cost causation principle that all approved rates reflect the costs actually caused by the customer who pays them. Under this general SSR cost allocation language, MISO has flexibility in how it will identify the particular LSEs that require the SSR Unit for reliability. We find that the preliminary load-shed study conducted by MISO during its assessment of the Attachment Y Notice for Presque Isle Units 5-9 reflects a just and reasonable method to ensure that those LSEs requiring use of the Presque Isle SSR Units are allocated the costs incurred under the Presque Isle SSR Agreement.[140] However, in order to ensure that costs will be allocated to those LSEs that benefit from the Presque Isle SSR Units, we direct MISO to submit a final load-shed study in the compliance filing due within 30 days from the date of this order. We further direct MISO to submit in the compliance filing revised Tariff sheets amending Rate Schedule 43G so that the Presque Isle SSR Unit costs are allocated according to the percentages in MISO's final load-shed study.

67. In cases where, as here, the Commission institutes an investigation on complaint under section 206 of the FPA, section 206(b) requires the Commission to 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.[141] Consistent with our general policy,[142] we set the refund effective date at April 3, 2014.

68. The Commission's general policy when ordering changes to a cost allocation or rate design under section 206 of the FPA is that such changes be implemented prospectively, without refunds.[143] However, the Commission has broad equitable

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[140] No party to these proceedings argues that MISO's load-shed study methodology is not reliable in identifying the LSEs that require the SSR Units for reliability. In addition, MISO's general practice in allocating SSR costs to non-ATC areas is to conduct such a load-shed study to determine the relative reliability impact to LSEs of operation without the SSR unit. *See* MISO Transmission Planning Business Practice Manual, BPM-020-r10 § 6.2.6 (effective Apr. 10, 2014).

[141] 16 U.S.C. § 824e(b) (2012).

[142] *See, e.g.*, *Seminole Elec. Coop., Inc. v. Fla. Power & Light Co.*, 65 FERC ¶ 61,413, at 63,139 (1993); *Canal Elec. Co.*, 46 FERC ¶ 61,153, at 61,539 (1989), *reh'g denied*, 47 FERC ¶ 61,275 (1989).

[143] *See, e.g.*, *Entergy*, 142 FERC ¶ 61,211 at P 51.

discretion in determining whether and how to apply remedies in any particular case.[144] Based on the record in this proceeding, we find it appropriate to exercise our discretion in fashioning remedies and order refunds as of the date the Complaint was filed. First, we note that the revised cost allocation does not represent a new cost allocation methodology, but rather conforms the allocation of SSR costs in the ATC footprint to the existing methodology applied throughout the rest of the MISO region. Furthermore, the costs at issue in this case are limited to those associated with a single SSR Unit, to be allocated among a defined set of customers within a limited geographic area, for a limited period of less than four months. Finally, these refunds will not require broader adjustments to MISO's markets. Accordingly, we direct MISO to refund, with interest,[145] any costs allocated to LSEs under Rate Schedule 43G from April 3, 2014 until the date of this order that were in excess of the costs to be allocated to those LSEs under MISO's final load-shed study.

69. Because the Commission's determination in this order is to extend the generally applicable SSR cost allocation method in section 38.2.7.k of MISO's Tariff to the ATC footprint, the Commission need not address the alternative relief proposed by the various commenters.[146]

B. Merits of Presque Isle SSR Agreement and Rate Schedule 43G

70. As noted above, in its April 1 Order, the Commission accepted for filing and suspended for a nominal period, to be effective February 1, 2014, the Presque Isle SSR Agreement and Rate Schedule 43G, subject to refund and further Commission order. In this further order, we address arguments concerning the reliability need for Presque Isle Units 5-9 as SSR Units and establish hearing and settlement procedures on the issue of SSR compensation under the Presque Isle SSR Agreement, as discussed below. We also require a compliance filing that amends Rate Schedule 43G in accordance with the Commission's determination on the Complaint, as discussed below.

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[144] *See Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 159 (D.C. Cir. 1967) (the Commission's breadth of discretion is "at its zenith" when fashioning remedies).

[145] Interest should be calculated pursuant to 18 C.F.R. § 35.19a (2013).

[146] *See, e.g.*, *Oxy USA, Inc. v. FERC*, 64 F.3d 679, 691 (D.C. Cir. 1995); *Cities of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984); *California Indep. Sys. Operator, Corp.*, 124 FERC ¶ 61,271, at P 107 (2008); *Midwest Indep. Transmission Sys. Operator, Inc*., 140 FERC ¶ 61,060, at P 129 (2012).

1. Presque Isle SSR Agreement

a. Attachment Y Study, Required Number of Units

i. Filing

71. MISO states that it conducted an Attachment Y Study in order to determine if designation of Presque Isle Units 5-9 as SSR Units is necessary for transmission system reliability.[147] MISO conducted a reliability analysis for both summer peak and shoulder peak load conditions to determine: (1) whether system performance of Presque Isle was within equipment design voltage and thermal limitations; and (2) whether the system remained stable for applicable contingencies within NERC Transmission Planning Standards, should Presque Isle Units 5-9 be suspended.[148] MISO asserts that the reliability analysis showed that several NERC Category B and C contingencies would result in thermal criteria violations and voltage collapse for both summer peak and shoulder load conditions if Presque Isle Units 5-9 go offline.[149] MISO states that it also performed voltage stability analysis to determine the number of Presque Isle units required in order to meet transmission system reliability criteria.[150] According to MISO, all five Presque Isle units will be needed as SSR Units. MISO asserts that four units are necessary due to both steady state and voltage stability operating limits, and one additional unit is needed to ensure unit maintenance and necessary environmental retrofits.[151]

72. MISO states that it provided for an open stakeholder planning process to assess feasible alternatives to an SSR agreement. MISO states that it reviewed the reliability analysis with stakeholders on November 20, 2013 and January 17, 2014 to assess available alternatives to the Presque Isle SSR Agreement, including new generation or generator dispatch, system reconfiguration and operation guidelines, demand response, and transmission projects. According to MISO, the stakeholder discussions concluded that: (1) new generation would not be available before the end of the proposed

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[147] Presque Isle SSR Agreement Filing, Ex. B (Attachment Y Study Report) at 6.

[148] *Id.* at 2.

[149] *Id.* at 2, 12. NERC Category B contingencies result in the loss of a single element. NERC Category C contingencies result in the loss of two or more elements.

[150] *Id.* at 13.

[151] *Id.*

suspension period for Presque Isle Units 5-9; (2) generation re-dispatch would not mitigate all of the system reliability issues observed; (3) demand response would not be available over a large enough area in order to make it practical as an alternative; (4) reconfiguration would be insufficient to resolve the reliability problems; and (5) few, if any, transmission upgrades adjustments could be implemented within the timeframe for the suspension period.[152] Thus, MISO concludes that the reliability issues observed if Presque Isle Units 5-9 are suspended could not be mitigated by other means, and that all five units should be included in the Presque Isle SSR Agreement.[153] MISO notes that it has not planned transmission upgrades for service after the Presque Isle SSR Agreement terminates.[154]

ii. Comments

73. The Public Interest Organizations state that they are concerned that MISO did not adequately model demand response alternatives. They first note that in its filing, MISO states that 370 MW of load shed is the optimal amount of load shed necessary to eliminate all voltage stability, thermal, and voltage criteria violations for 2014 summer peak load conditions for NERC Category B contingencies.[155] Yet the Public Interest Organizations state that MISO has neither defined "optimal load shed" nor explained why 370 MW of load shed is necessary to eliminate or reduce the reliability issues caused by the suspension of Presque Isle Units 5-9 in the event of a NERC Category B contingency. The Public Interest Organizations comment that MISO modeled 116 MW of demand response coming from the Empire mine, which could result in one fewer Presque Isle SSR Unit needed for reliability, but that MISO has not explained why it did not take advantage of this demand response.[156] They also note that MISO did not model demand response for the Tilden mine.[157] The Public Interest Organizations request that the

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[152] *Id.* at 15-16.

[153] *Id.* at 19.

[154] *Id.*, Transmittal Letter at 8.

[155] Comments of the Public Interest Organizations, Docket Nos. ER14-1242-000 and ER14-1243-000, at 18 (filed Feb. 21, 2014) (Public Interest Organizations Comments).

[156] *Id.* at 19.

[157] *Id.* According to the Public Interest Organizations, the Tilden mine comprises a large portion (more than 164 MWs) of Presque Isle's load.

Commission order MISO to clarify its generic demand response study by: (1) defining "optimal load shed"; (2) explaining why more megawatts of demand response are needed than Presque Isle Units 5-9 are capable of providing; (3) explaining how much demand response would be needed to mitigate the most severe NERC Category C contingencies; (4) explaining why it did not include demand response from the Empire mine as a way of eliminating the need for one of the Presque Isle units; (5) explaining why it did not model demand response, or some other load reduction or automatic load shed, at the Tilden mine; and (6) modeling the effects of demand response from the Tilden mine.[158]

74. The Public Interest Organizations state that, based on discussion during stakeholder meetings, it is unclear whether the fifth spare back-up Presque Isle unit is in fact necessary under the SSR to maintain reliability.[159] They request that the Commission direct MISO to: (1) identify how many units will typically be needed to maintain reliability; (2) explain whether there is currently available an additional unit that would ensure unit maintenance and necessary retrofits; and (3) explain why an additional unit is necessary.[160]

iii. MISO Answer

75. MISO responds that the "optimal load shed" of 370 MW is the least load shed associated with eliminating reliability issues, and that this amount exceeds the capacity of Presque Isle Units 5-9.[161] MISO explains that loads identified for curtailment are typically distributed more widely among several locations that do not have the same impact on the constraints as that from the loss of the Presque Isle plant, and so more demand response is required to achieve a similar amount of relief for the reliability issues that occur when there is a loss of the generation resource. MISO states that its stakeholder meetings did not reveal any entity willing to commit to the demand response requirement identified, whether at the Tilden mine or otherwise. MISO also states that it conducted demand response analysis related to the Empire mine in response to stakeholder interest.[162]

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[158] *Id.* at 18-20.

[159] *Id.* at 20.

[160] *Id.* at 20-21.

[161] Answer of MISO, Docket Nos. ER14-1242-000 and ER14-1243-000, at 10 (filed Mar. 10, 2014) (MISO Answer).

[162] *Id.* at 11.

76. MISO asserts that the Attachment Y Study adequately documented the need for all five Presque Isle units to be designated as SSR Units.[163] MISO asserts that four of the five generating units must be online around the clock to maintain reliability in the Upper Peninsula, and because the units cannot be operated all the time, each unit must be rotated offline for maintenance.

iv. Commission Determination

77. We find that MISO has properly followed the SSR study and review process in accordance with the Tariff, and we accept MISO's explanation of its alternatives assessment. We find that MISO has adequately demonstrated that it sought alternatives from stakeholders in meetings held on November 20, 2013 and January 17, 2014, and stakeholders determined that demand response would not be available over a large enough area in order to make it practical as an alternative. We find it unnecessary for MISO to conduct further study on demand response because MISO has indicated that no entity would be willing to commit to any identified demand response requirement. We find that MISO has justified the need for the units and has provided sufficient evidence demonstrating that they are necessary to mitigate NERC Category B and C contingencies required by NERC reliability standards TPL-002-0b (System Performance Following Loss of a Single Bulk Electric System Element (Category B)) and TPL-003-0a (System Performance Following Loss of Two or More Bulk Electric System Elements (Category C)),[164] respectively, and that the units will continue to be necessary until transmission upgrades can be put into service. We also find that MISO has adequately shown that all five Presque Isle units are needed for reliability. We accept MISO's explanation that four Presque Isle units are necessary due to both steady state and voltage stability operating limits, and one unit must be rotated offline to ensure unit maintenance and implement any necessary environmental retrofits.

b. SSR Cost Determination

i. Filing

78. MISO states that the Presque Isle SSR Agreement provides for recovery of both fixed and variable going-forward costs to maintain the availability of Presque Isle Units

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[163] *Id.*

[164] *See* N. Am. Elec. Reliability Corp., *Reliability Standards for the Bulk Electric Systems of North America* (July 26, 2013), *available at:* http://www.nerc.com/pa/Stand/Reliability%20Standards%20Complete%20Set/RSCompleteSet.pdf.

5-9 for reliability.[165] Under Exhibit 2 of the SSR Agreement, MISO will pay Wisconsin Electric a fixed monthly payment of $4,352,832 to compensate Wisconsin Electric for maintaining the availability of the SSR Units.[166] MISO asserts that this rate is just and reasonable and no more than is necessary to maintain the availability of the SSR Units as long as needed for reliability. MISO notes that Wisconsin Electric agreed to this amount in the interests of regulatory approval and certainty even though it felt that a higher level of compensation would be justified under the Tariff. MISO notes that the agreement does not contain compensation for environmental upgrades associated with meeting the Environmental Protection Agency's Mercury and Air Toxics Standards (MATS) in 2016.[167]

79. MISO states that the fixed cost component of the SSR compensation is based on historical actual costs for the Presque Isle units for the three-year period between 2010-2012 and includes the following cost components: (1) operations and maintenance (O&M) costs; (2) ongoing capital expenditure, and (3) return on inventories.[168] According to testimony submitted with the filing, the O&M cost component is comprised only of plant labor and non-labor O&M costs that Wisconsin Electric would be able to avoid upon suspension of Presque Isle Units 5-9 – it does not include any allocations of corporate overhead, utilities costs, landfill maintenance, or costs of keeping a skeleton crew at the plant during suspension.[169] MISO states that an ongoing capital expenditures recovery of $13.5 million, based on the historical three-year annual level, is necessary to maintain the operation of the SSR Units during the term of the Presque Isle SSR Agreement.[170] MISO explains that the third cost component is a return on historical inventory levels to compensate Wisconsin Electric for the carrying cost of coal and oil

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[165] Presque Isle SSR Agreement Filing, Ex. E (Akkala Test.) at 6.

[166] *Id.*, Transmittal Letter at 10.

[167] *Id.*

[168] *Id.*, Ex. E (Akkala Test.) at 6.

[169] *Id.* at 7.

[170] *Id.* MISO's testimony states that cost recovery is limited to the difference between what the costs would be if Presque Isle Units 5-9 were suspended from operation versus what they would be if Wisconsin Electric were required to maintain the units' availability for reliability. *Id.* at 6.

fuel inventories and materials and supplies (M&S) inventories.[171] MISO asserts that the Presque Isle SSR Agreement includes an 11.53 percent rate annual carrying cost, which is based on Wisconsin Electric's approved economic cost of capital from its Wisconsin retail rate case.[172]

80. MISO states that the fixed cost component does not compensate Wisconsin Electric for the marginal costs of generating, and so the Presque Isle SSR Agreement also provides for variable generation costs when MISO dispatches an SSR Unit to maintain system reliability.[173] Specifically, Wisconsin Electric will offer Presque Isle Units 5-9 in each available hour at cost when necessary for reliability. Each time that MISO dispatches an SSR Unit, MISO will pay Wisconsin Electric its Production Cost (reflecting the actual cost of physically operating the SSR Unit to provide energy) and its Operating Reserve Cost (reflecting the actual cost to provide Operating Reserves). Through the MISO settlement process, MISO states that it will make applicable make-whole payments in the hours when the applicable market-clearing price is less than the dispatch price, and it will debit the settlement statements for each hour in which the applicable market-clearing price is above the dispatch rate.[174] MISO states that this process ensures that Wisconsin Electric will not recover more than its cost-based offer from MISO's reliability-related dispatches while receiving SSR compensation.[175]

ii. <u>Comments in Support</u>

81. Wisconsin Electric states that the proposed SSR compensation is just and reasonable because each fixed cost component in the proposed compensation is limited to the difference between what costs would be if the Presque Isle SSR Units were suspended for operation versus what they would be if Wisconsin Electric were required to maintain the units' availability for reliability.[176]

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[171] *Id.* at 9.

[172] *Id.*

[173] *Id.* at 7, 10.

[174] *Id.*, Transmittal Letter at 10.

[175] *Id.*, Ex. E (Akkala Test.) at 11.

[176] Comments in Support of Filings of Wisconsin Electric Power Company, Docket Nos. ER14-1242-000 and ER14-1243-000, at 4-5 (filed Feb. 21, 2014) (Wisconsin Electric Comments).

82. Wisconsin Electric notes that the three-year average annual actual O&M costs for operating Presque Isle Units 5-9 was $39 million, but that the annual revenue requirement only includes the cost of plant labor and non-labor O&M costs that Wisconsin Electric would be able to avoid upon suspension, about $35 million.[177] Wisconsin Electric states that $13.5 million in capital costs are reasonably included in the annual SSR compensation because they are necessary to maintain the operation of the Presque Isle units. According to Wisconsin Electric, these costs include essential repairs that enable the continued operation of the units that were capitalized to reflect the benefit to future accounting periods.[178] Wisconsin Electric justifies its carrying costs of inventory by noting that it excluded M&S inventories specific to Presque Isle that could not be used at other Wisconsin Electric generating facilities in the event of suspension, which amounted to 90 percent of inventory. Thus, Wisconsin Electric states that it included only 10 percent of the historical M&S inventories in the carrying cost calculation for the purpose of developing the annual SSR compensation.[179] Wisconsin Electric maintains that the Presque Isle SSR Agreement is just and reasonable because it would compensate Wisconsin Electric for prudently-incurred going-forward costs associated with maintaining availability of Presque Isle Units 5-9, where all cost estimates are based on a three-year average of actual costs incurred at the facility.

iii. <u>Other Comments</u>

83. WPPI Energy asserts that MISO's filing does not provide sufficient data to enable the Commission and stakeholders to assess the reasonableness of the proposed rate.[180] WPPI Energy maintains that if MISO proposes to extend the Presque Isle SSR Agreement beyond its initial 12-month term, it should engage in a more inclusive and transparent process so that affected LSEs can have more comfort that the negotiated rates are reasonable. In addition, WPPI Energy submits that MISO's audit rights under the agreement should be accompanied by provisions for accountability and transparency to stakeholders.

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[177] *Id.* at 6.

[178] *Id.* at 5.

[179] *Id.* at 6.

[180] Comments of WPPI Energy, Docket Nos. ER14-1242-000 and ER14-1243-000, at 13 (filed Feb. 21, 2014) (WPPI Energy Comments).

84. The Public Interest Organizations state that they are concerned that the Presque Isle SSR Agreement overcompensates Wisconsin Electric with regard to capital costs. They note that the proposed amount of $13.5 million in capital costs for the one-year term of the agreement is not based on any specific capital projects that will be undertaken, but rather was derived from an annual average of capital expenditures undertaken at the Presque Isle plant between 2010 and 2012.[181] The Public Interest Organizations note that neither MISO nor Wisconsin Electric has provided any evidence as to why an average of past years' capital expenditures is likely to be representative of a year in which the plant is only running for reliability purposes.[182] They state that MISO has not provided a capital budget that identifies the capital expenditures expected to be required during the term of the agreement, and indeed, that MISO has only identified one $2.8 million capital project that will be undertaken. The Public Interest Organizations argue that in the absence of specific evidence showing that the proposed compensation for capital expenditures is actually needed to ensure that the plant is able to run for reliability purposes during the term of the Presque Isle SSR Agreement, MISO should not provide compensation for these expenditures.[183]

85. In addition, the Public Interest Organizations argue that MISO failed to justify the 11.53 percent rate of return on capital costs of inventory. They note that this proposed rate of return is identical to the rate of return that Wisconsin Electric received in a prior rate case before the Wisconsin Public Service Commission.[184] The Public Interest Organizations argue that allowance for the capital costs of carrying inventory should reflect the owner's demonstrated capital costs, rather than a hypothetical rate of return based on a prior rate case, which includes a profit margin for the company that would not be justifiable to include in an SSR context.[185] The Public Interest Organizations request that the Commission reject MISO's proposal and direct MISO to resubmit a proposal for

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[181] Public Interest Organizations Comments at 14-15.

[182] *Id.* at 15.

[183] *Id.*

[184] *Id.* at 16.

[185] *Id.* at 17. The Public Interest Organizations also state that MISO has failed to justify the discrepancy between the 11.5 percent rate of return proposed here and the 7.85 percent rate of return on carrying costs of inventory proposed in another pending SSR filing for the Coleman facility in Docket Nos. ER14-292-000 and ER14-294-000, which is owned by the Big Rivers Electric Cooperative.

capital cost compensation that is based on evidence of the actual cost to Wisconsin Electric of carrying inventory at the Presque Isle plant during the term of the Presque Isle SSR Agreement.

86. Wisconsin Power argues that in the event the Presque Isle plant is sold or continues to operate after no longer being designated as an SSR Unit, any capital expenditures that were included in SSR payments should be credited back (with interest and less depreciation) to the entities that funded the costs.[186] Wisconsin Power argues that any potential future owner of the Presque Isle units should not enjoy the benefits of the capital expenditures while being spared the costs.[187]

iv. <u>Answers</u>

87. Wisconsin Electric refutes the claim that inclusion of $13.2 million in capital expenditures will overcompensate Wisconsin Electric for capital costs. Wisconsin Electric states that the Presque Isle plant will continue to be committed and dispatched under the Presque Isle SSR Agreement in the same manner as it has operated in the last three years, and it is therefore reasonable to anticipate that expenditures will be in line with past spending.[188] Wisconsin Electric also argues that the issue of crediting capital expenditures back to entities paying the SSR costs in the event the plant is sold or continues to operate after no longer being designated as SSR Units is premature, and is more appropriately addressed upon occurrence of either event.[189] MISO adds that the capital costs are akin to fixed O&M costs reasonably needed to operate the SSR Units during the term of the Presque Isle SSR Agreement, and thus are properly included in the SSR compensation calculation as "capital costs associated with continued operation" under section 38.2.7.i of MISO's Tariff.[190] MISO also argues that refund opportunities are only provided under section 38.2.7.d.ii of the Tariff for capital expenditures needed to meet environmental regulations or for network upgrades that were necessitated by the Attachment Y Notice, where the owner or operator of the SSR Unit rescinds its decision

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[186] Comments of Wisconsin Power and Light Company, Docket Nos. ER14-1242-000 and ER14-1243-000, at 9 (filed Feb. 21, 2014) (Wisconsin Power Comments).

[187] *Id.* at 9.

[188] Answer of Wisconsin Electric Power Company, Docket Nos. ER14-1242-000 and ER14-1243-000, at 5 (filed Mar. 10, 2014) (Wisconsin Electric Answer).

[189] *Id.*

[190] MISO Answer at 9.

to suspend or retire the unit.[191] MISO states that no such capital expenditures are involved here.

88. Wisconsin Electric rejects the claim that the carrying costs of inventories should reflect the company's actual costs of capital, as that approach goes beyond what the Commission requires. Wisconsin Electric states that the Commission has found that SSR compensation is negotiated, and cost-of-service rate design precision is not required.[192] Wisconsin Electric argues that the annual carrying costs are just and reasonable as they: (1) only include about 10 percent of Wisconsin Electric's historical M&S inventories; (2) are based off of Wisconsin Electric's Wisconsin Commission-approved 11.53 percent economic cost of capital from its Wisconsin rate case; and (3) only permit recovery of the difference between what costs would be if the Presque Isle units were suspended for operation, versus what they would be if Wisconsin Electric were required to maintain the units' availability for reliability.[193] MISO argues that the Public Interest Organizations assume, without analysis, that the 11.53 percent rate of return that Wisconsin Electric received in a prior rate case would be an inappropriately high rate of return for all SSR contracts.[194] MISO argues that it cannot conduct complete rate cases in preparation for each of its SSR agreements, and that it was just and reasonable to negotiate a rate of return for the calculation of going-forward compensation based upon a state regulatory rate of return.

v. Commission Determination

89. Based upon a review of the filing and the comments, our preliminary analysis indicates that the fixed cost component of the SSR compensation has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. For instance, we find that MISO has not adequately supported: (1) the proposed 11.53 percent annual rate of return on capital costs of inventory; and (2) the proposed $13.5 million compensation for the capital costs associated with keeping the SSR Units operational for the term of the Presque Isle SSR Agreement. Accordingly, we set for hearing the fixed cost component of Presque Isle SSR compensation, subject to refund. While we are setting this matter for a trial-type evidentiary hearing, we

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[191] *Id.*

[192] Wisconsin Electric Answer at 6 (citing *Midwest Indep. Transmission Sys. Operator, Inc*., 140 FERC ¶ 61,237, at P 140 (2012)).

[193] *Id.* at 6-7.

[194] MISO Answer at 10.

encourage the parties to make every effort to settle their disputes 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.[195] 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.[196] The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge 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.

90. We also find that Exhibit 2 of the Attachment Y-1 form agreement does not include any language relating to compensation when the SSR Unit operates for economic rather than reliability purposes. Therefore, we direct MISO, in the compliance filing to be made within 30 days of this order, to submit Tariff revisions adding the following paragraph to the end of Exhibit 2:[197]

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

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[195] 18 C.F.R. § 385.603 (2013).

[196] 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 days of the date 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).

[197] *See Midwest Indep. Transmission Sys. Operator, Inc.*, 148 FERC ¶ 61,057, at P 157 (2014) (Ameren Complaint Order); MISO Edwards Year 1 SSR Agreement Filing, Docket No. ER13-1962-000, Ex. E (Attachment Y-1 Form Agreement, Ex. 2 § B) (filed July 11, 2013).

91. With respect to stakeholder input into the rate associated with the Presque Isle SSR Agreement, we note that MISO's Tariff requires MISO, as the Transmission Provider, to work with the generation owner (i.e., the Market Participant) to negotiate "the level of compensation due the Market Participant for the SSR Unit" that is then submitted to the Commission under section 205 of the FPA as part of the overall SSR Agreement.[198] We find that interested parties have sufficient opportunity to challenge the proposed rate such that further protections, as described by the protestors, are not necessary.

92. With respect to capital expenditures, Wisconsin Power requests that if the Presque Isle power plant is sold or continues to operate after no longer being designated as an SSR Unit, any capital expenditures that were included in SSR payments should be credited back (with interest and less depreciation) to the entities that funded the costs. We note that in the order on MISO's compliance filing directed by the 2012 SSR Order, the Commission required further compliance in order to address the "treatment of SSRs that later return to service."[199] Specifically, the Commission directed MISO to ensure that the Tariff addresses: (1) the treatment of resources that were previously designated SSRs but are no longer operating pursuant to an SSR agreement (e.g., retired or suspended resources with expired SSR agreements) that later return to service; (2) the treatment of suspended SSRs that later return to service on schedule and without rescinding a decision to suspend operations (e.g., resources that return to service consistent with an initial Attachment Y Notice to suspend operations); and (3) the treatment of other, i.e., non-environmental, capital costs associated with their continued operation.[200] We further note that details regarding payback of such capital costs could be accomplished on a case-by-case basis by the SSR owner through a section 205 filing that proposes a pay-back schedule when the unit returns to service.

93. Finally, we note that the issue of SSR compensation was recently considered by the Commission in its order on the complaint submitted by AmerenEnergy Resources Generating Company. In that order, the Commission required MISO to revise its Tariff to provide SSR owners the right to make their own SSR compensation filings, effective July 22, 2014.[201] As such, we note that Wisconsin Electric could seek to make its own

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[198] MISO, FERC Electric Tariff, Module C, § 38.2.7.i (31.0.0).

[199] *Midwest Indep. Transmission Sys. Operator, Inc.*, 148 FERC ¶ 61,056 at P 44 (citing 2012 SSR Order, 140 FERC ¶ 61,237 at P 138).

[200] *Id.*

[201] Ameren Complaint Order, 148 FERC ¶ 61,057 at P 93.

FPA section 205 filing to revise, prospectively, the compensation currently included in the Presque Isle SSR Agreement.

c. Modification to Attachment Y-1 Form Agreement

i. Filing

94. MISO states that there are novel legal issues or other unique factors that justify departures from the *pro forma* SSR agreement contained in Attachment Y-1 to MISO's Tariff.[202] These changes to the *pro forma* agreement include: (1) Section 3.A(5) provides for at least 180 days' notice for extension of the agreement, instead of the *pro forma* 90 days, to account for the unusually long planning period for the coal procurement and shipping process;[203] (2) new section 7.D states that, if the SSR Units are designated as Capacity Resources pursuant to Module E-1 of MISO's Tariff, those SSR Units will be subject to the Module E-1 capacity testing requirements that became effective on October 1, 2012;[204] (3) new section 7.E states that MISO and Wisconsin Electric will coordinate their schedules to permit Wisconsin Electric to undergo both testing for capacity and for other requirements (such as for environmental and insurance requirements); and (4) new provisions in section 9.E provide a mechanism for Wisconsin Electric to receive cost recovery for unanticipated repairs required to maintain system reliability.[205]

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[202] Presque Isle SSR Agreement Filing, Transmittal Letter at 3.

[203] *Id.* at 4.

[204] Module E-1 of MISO's Tariff specifies MISO's resource adequacy requirement procedures. The Tariff requires LSEs in the MISO region to have sufficient Planning Resources to meet their anticipated peak demand requirements, plus an appropriate reserve margin. Capacity Resources are a type of Planning Resource that may be used by an LSE to account for the entity's resource performance and availability. MISO Resource Adequacy Business Practice Manual, BPM-011-r12 §§ 1.2, 5.6 (effective Aug. 1, 2013) (Resource Adequacy BPM).

[205] Presque Isle SSR Agreement Filing, Transmittal Letter at 4-6. MISO states that it will make a section 205 filing before any unanticipated repair costs are incurred by Wisconsin Electric, except in the case of emergency repairs. MISO's proposed language states that unanticipated repairs do not include the costs of complying with MATS standards.

95. MISO further states that the operation provisions in section 8 of the *pro forma* agreement have been revised to clarify maintenance, planning data, and delivery obligations to be consistent with other Tariff provisions. For instance, section 8.C has been revised to clarify that (1) MISO shall notify Wisconsin Electric of the hours and levels, if any, that the SSR Unit is to operate through day-ahead commitment and real-time dispatch for system reliability and (2) the set-point in the real-time dispatch shall be considered the "delivery plan" for the purposes of the Presque Isle SSR Agreement.[206] According to MISO, these changes ensure that MISO and Wisconsin Electric have a common understanding of how the SSR Units are to be made available to MISO for system reliability and how the SSR Units may be otherwise operated.

ii. Comments

96. WPPI Energy argues that the Presque Isle SSR Agreement frustrates the intended use of the SSR Units as Planning Resources that can earn Planning Reserve revenues under Module E-1 of MISO's Tariff.[207] WPPI Energy notes that section 7.D of the Presque Isle SSR Agreement contemplates that SSR Units may be designated as Capacity Resources under Module E-1, and section 8.C(1) encourages market participants to offer their available Zonal Resource Credits into the Planning Reserve Auction.[208] However, WPPI Energy argues that the Presque Isle SSR Agreement is not structured to enable Wisconsin Electric to offer the Presque Isle SSR Units into the auction for the June 1, 2014 to May 31, 2015 planning year because the agreement is proposed to terminate on January 31, 2015.[209] Even if the agreement were to be extended beyond the January 31, 2015 termination date, WPPI Energy states that the agreement requires 180 days' notice

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[206] *Id.* at 5.

[207] MISO assesses charges against LSEs that have not met their resource adequacy obligations, and revenues from these charges are distributed among certain LSEs that have met their obligations. Resource Adequacy BPM §§ 1.2, 5.6.

[208] WPPI Energy Comments at 9. Zonal Resource Credits are MW units of Planning Resources that have been converted into a credit that is eligible to be offered by a market participant into the Planning Resource Auction, which establishes the clearing price needed to satisfy an LSE's resource adequacy obligations for a planning year. Resource Adequacy BPM § 5.5.

[209] WPPI Energy Comments at 10. Section 69A.5(a) of MISO's Tariff requires resources to be available for the entire planning year to qualify as Planning Resources.

of such extension, which would not be required until several months after the Planning Resource Auction is run in April 2014.[210]

97. Wisconsin Power notes that section 9.E of the proposed Presque Isle SSR Agreement allows for additional compensation to be requested for unanticipated repairs, which are defined by MISO as "repairs for which compensation is not provided for in the Annual SSR Amount contained in Exhibit 2 to the [agreement]."[211] But Wisconsin Power states that Exhibit 2 does not provide information on any compensation for repairs that may be already included in the SSR payment amount. Wisconsin Power requests that the Commission require MISO to: (1) clarify the definition of "unanticipated repairs"; (2) explain what constitutes an unanticipated repair; and (3) explain how it will be determined if an unanticipated repair cost should be included in Presque Isle's SSR payments.[212]

iii. Answers

98. Wisconsin Electric challenges the claim that the 180-day renewal notice provision improperly prevents Wisconsin Electric from committing Presque Isle Units 5-9 for the Planning Reserve Auction for the June 1, 2014 planning year.[213] Wisconsin Electric argues that this amount of notice is necessary to fuel the plant in the event that a renewal is required, because the planning and procurement process for coal must be scheduled well in advance and coordinated with lake vessel availability and weather limitations. In addition, Wisconsin Electric states that 180 days constitutes sufficient notice to Presque Isle employees and the community at large before a termination of operations at one or more units. MISO adds that the Presque Isle SSR Agreement does not require Wisconsin Electric to offer capacity into the Planning Resource Auction for the SSR Units because the extra costs resulting from this requirement are expected to be larger than the revenues Wisconsin Electric might receive.[214]

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[210] *Id.* at 10. WPPI Energy notes that the 180-day notice would not be required until August 2014, while the Planning Resource Auction would be run in April 2014.

[211] Wisconsin Power Comments at 8.

[212] *Id.*

[213] Wisconsin Electric Answer at 4.

[214] MISO Answer at 12.

99. MISO also addresses comments on unanticipated repairs and capital costs. MISO states that the fixed monthly payments under Exhibit 2 to the Presque Isle SSR Agreement compensate Wisconsin Electric for ongoing capital expenditures at the historical three-year annual actual level of $13.5 million, which essentially amounts to compensation for anticipated repairs.[215] MISO states that capitalized expenditures in amounts that fall well outside the historical three-year average, such as for a significant failure during the period of the Presque Isle SSR Agreement, could be submitted by Wisconsin Electric for recovery under section 9.E of the agreement as an unanticipated repair. MISO alleges that the Commission has previously accepted this arrangement for compensation.[216]

iv. Commission Determination

100. We find the proposed modifications to the Attachment Y-1 form agreement to be just and reasonable. We find it reasonable to allow 180 days' notice for extending the Presque Isle SSR Agreement to reflect the longer planning period for the coal procurement and delivery process. We also find that MISO has adequately clarified the type of additional compensation that might be requested for unanticipated repairs under section 9.E of the Presque Isle SSR Agreement, and we find this provision consistent with a similar provision accepted in *Harbor Beach*.[217] However, we note that, as proposed, section 9.E does not adequately address the issue of how unanticipated repairs can impact Misconduct Events. Therefore, we require MISO, in the compliance filing due within 30 days of the date of this order, to submit Tariff revisions adding the following language to the sixth sentence of the first paragraph of section 9.E:[218]

> Participant shall not be deemed to have a Misconduct Event, nor shall Participant be subject to any other performance penalties under this agreement or the MISO Tariff for the period of time after Participant notifies MISO of the need for repairs as provided in this Section 9.E until repairs have been completed.

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[215] *Id.* at 8.

[216] *Id.* at 8-9 (citing *Midwest Indep. Transmission Sys. Operator, Inc*., 144 FERC ¶ 61,151 (2013) (*Harbor Beach*)).

[217] *Harbor Beach*, 144 FERC ¶ 61,151 at P 25.

[218] *See* Ameren Complaint Order, 148 FERC ¶ 61,057 at P 215.

d. Application of Voltage and Local Reliability Payment Provisions

i. Filing

101. Exhibit 2 of MISO's proposed Presque Isle SSR Agreement provides: "During the Term of the Agreement, compensation for reliability commitments shall be paid to Participant under this Exhibit 2 and not according to Voltage and Local Reliability payment provisions." Thus, for all reliability unit commitments during the period in which the Presque Isle SSR Agreement is in force, the SSR payments would replace the compensation the Presque Isle units might otherwise receive under MISO's RSG Tariff provisions for VLR unit commitments.

ii. Comments

102. Wisconsin Power argues that MISO has not provided any support or rationale for overriding the application of the Tariff's VLR payment provisions through the Presque Isle SSR Agreement. Wisconsin Power recognizes that Presque Isle Units 5-9 have been committed to run in the past for reasons related to issues with transmission system voltage or other local reliability concerns, and that these commitments have been considered by MISO to be VLR commitments.[219] Commenters state that, pursuant to the MISO Tariff, any RSG costs associated with VLR commitments must be allocated directly to the electrically-close local areas that benefit from the commitment costs and which do nothing to relieve the need for the VLR commitment.[220] Commenters argue that the added language to Exhibit 2 would replace this Tariff compensation mechanism for VLR commitments with *pro rata* allocation of VLR costs to all LSEs in the ATC footprint. Commenters argue that this language inappropriately shifts costs from the LSEs that directly benefit from the VLR commitments to other LSEs that are not receiving any direct benefits from the commitments.[221]

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[219] Wisconsin Power Comments at 4.

[220] *Id.* at 6-7; Wisconsin Customers Coalition Comments, Docket Nos. ER14-1242-000 and ER14-1243-000, at 8 (filed Feb. 21, 2014).

[221] Wisconsin Power Comments at 6-7; Wisconsin Customers Coalition Comments at 8.

iii. Answers

103. Wisconsin Electric argues that the language in Exhibit 2 is required by section 38.2.7.k of MISO's Tariff, which states that any costs of operating an SSR Unit in the footprint of ATC shall be allocated to all LSEs within the footprint of ATC on a *pro rata* basis.[222] WPPI Energy argues that MISO's proposed language is consistent with language recently approved by the Commission in Docket No. ER14-202, where the Commission found that "when SSRs are required to run for reliability purposes, they will be compensated pursuant to the appropriate SSR agreement and are ineligible for make-whole payments."[223] WPPI Energy states that challenges to the proposed language in Exhibit 2 are prohibited collateral attacks on the Commission's express acceptance of the concept that, when a unit becomes subject to an SSR agreement, its compensation for reliability-related unit commitment is made exclusively pursuant to the SSR agreement and not under the VLR provisions (which would produce a different cost allocation).[224] MISO further notes that applying VLR cost allocation methods to SSR Units was also rejected in *Escanaba* in the context of the Commission's consideration of the SSR cost allocation to the ATC footprint.[225]

104. Wisconsin Power asserts that MISO must not ignore its VLR Tariff provisions if Presque Isle Units 5-9 are called for VLR service while designated as SSR Units, and that any costs incurred for VLR commitments associated with the dispatch of the Presque Isle units should be allocated locally as required by the Tariff.[226] Wisconsin Power asserts that this approach is consistent with the Commission's statement in the order establishing

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[222] Wisconsin Electric Answer at 3.

[223] Answer of WPPI Energy, Docket Nos. ER14-1242-000 and ER14-1243-000, at 11 (filed Mar. 10, 2014) (citing *Midcontinent Indep. Sys. Operator, Inc*., 145 FERC ¶ 61,276, at P 11 (2013)).

[224] *Id*. at 4.

[225] MISO Answer at 5 (citing *Harbor Beach*, 144 FERC ¶ 61,151 at P 39).

[226] Wisconsin Power and Light Company Answer, Docket Nos. ER14-1242-000 and ER14-1243-000, at 3-5 (filed Mar. 18, 2014).

the VLR Tariff provisions that "local load is the primary beneficiary of VLR commitments, and therefore [allocating] these costs predominantly to local load is reasonable."[227]

105. Wisconsin Power also argues that *Escanaba* is distinguishable because the proposed language in Exhibit 2 of the Presque Isle SSR Agreement (allowing MISO to avoid VLR cost allocation) was not included in the *Escanaba* case.[228] Instead, Wisconsin Power states that the Commission in *Escanaba* rejected a proposal to completely replace the ATC SSR cost allocation method with the MISO VLR cost allocation method.[229] Wisconsin Power also argues that MISO and WPPI Energy mistakenly rely on a prior Commission proceeding in Docket No. ER14-202-000 that dealt with dispatch and related communications between MISO and market participants that operate SSR Units.[230] Wisconsin Power asserts that the proposed Tariff changes in that proceeding adjusted the notification requirements associated with dispatch of SSRs in order to treat them similarly to other, non-SSR Units in MISO.[231] Wisconsin Power states that in this case, SSR Units should also be treated similarly to non-SSR Units with respect to the determination of VLR payments and related cost allocation.

106. Wisconsin Power clarifies that it does not advocate a separate monthly compensation process for the Presque Isle SSR Units; rather, it proposes that VLR revenues received would be an input into the monthly MISO SSR settlement process that ensures the Presque Isle Units are kept whole for remaining online for system reliability.[232] Wisconsin Power notes that MISO's Tariff states: "any compensation to the SSR Unit will be reduced by…any other compensation paid under the market."[233]

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[227] *Id*. at 5 (citing *Midwest Indep. Transmission Sys. Operator, Inc*., 140 FERC ¶ 61,171 at P 78).

[228] *Id*. at 6.

[229] *Id*. at 4 (citing *Escanaba*, 142 FERC ¶ 61,170 at P 72).

[230] *Id*. at 6.

[231] *Id*. (citing *Midwest Indep. Transmission Sys. Operator, Inc*., 145 FERC ¶ 61,276 at P 10).

[232] *Id*. at 7.

[233] *Id*. (citing section 38.2.7.i(ii) of MISO's Tariff).

Wisconsin Power argues that VLR revenues qualify as "any other compensation paid under the market," and should therefore be deducted from the Presque Isle SSR costs during the settlement process.

iv. Commission Determination

107. We find the proposed language in Exhibit 2 of the Presque Isle SSR Agreement to be just and reasonable, as the language is narrowly written to address reliability commitments. That is, when Presque Isle is run for reliability purposes, the Presque Isle SSR Agreement applies. We note that SSR agreements are distinguished from units providing VLR service because the SSR Unit owner has sought to retire or suspend the SSR Unit and is receiving compensation to remain online. Consistent with MISO's existing Tariff, SSR-designated units are permitted to run for economic reasons when such runs do not diminish availability to perform for reliability purposes. As the Commission has stated previously, when SSR Units are required to run for reliability purposes, they will be compensated pursuant to the appropriate SSR agreement and are ineligible for make-whole payments.[234] Further, when SSR Units operate in the market economically, any costs associated with make-whole payments will be recovered pursuant to the relevant Tariff provisions which the Commission has already determined to be just and reasonable.[235]

e. Effective Date and Duration of the Presque Isle SSR Agreement

i. Filing

108. MISO stated that the Presque Isle SSR Agreement appears to be required for the entirety of the 16-month suspension period proposed by Wisconsin Electric.[236] However, in accordance with Section 38.2.7e of the Tariff, MISO proposed a term of 12 months for the agreement. MISO stated that it retains the right to terminate the Presque Isle SSR Agreement prior to the end of the term by giving 90 days written notice to Wisconsin Electric. MISO also stated that it will annually review the Presque Isle units and grid characteristics to determine whether the units remain qualified for SSR designation.

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[234] *See Midcontinent Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,276 at P 11.

[235] *Id.*

[236] Presque Isle SSR Agreement Filing, Transmittal Letter at 8.

109. MISO requested that the Commission waive the prior notice requirement and grant an effective date of February 1, 2014 for the Presque Isle SSR Agreement.[237] MISO stated that the Presque Isle SSR Agreement was submitted as soon as possible following the complex process of notification, evaluation, decision-making, and negotiation, including assessing the feasibility of possible alternatives to the designation of Presque Isle Units 5-9 as SSR Units. MISO stated that the Presque Isle SSR Agreement could not be negotiated before the proposed suspension of Presque Isle Units 5-9. According to MISO, good cause exists to grant the waiver because, if the February 1, 2014 effective date is not granted, Wisconsin Electric will have provided SSR service on an uncompensated basis while the required Tariff process took its course.[238] Alternatively, MISO requested an effective date of February 1, 2014, consistent with the Commission's rule that service agreements must be filed within 30 days of commencing service.[239] MISO stated that the Presque Isle SSR Agreement is a *pro forma* agreement included in the Tariff, the executed version of which is therefore a service agreement.[240] In the April 1 Order, the Commission granted the requested waiver and allowed the Presque Isle SSR Agreement to go into effect on February 1, 2014.[241]

ii. <u>Comments</u>

110. Commenters contend that MISO has not explained its process for resolving reliability issues in the Upper Peninsula should the suspension of Presque Isle Units 5-9 continue beyond the initial 16-month period.[242] Specifically, commenters state that

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[237] *Id.* at 8-9.

[238] *Id.* at 9.

[239] *Id.*

[240] MISO noted that 18 C.F.R. § 35.10(a) (2013) allows public utilities to adopt standard form of service agreements as part of the utility's tariff on file with the Commission. MISO further stated that under 18 C.F.R. § 35.3(a)(2) (2013), service agreements (defined at 18 C.F.R. § 35.2 as "an agreement that authorizes a customer to electric service under the terms of the Tariff") need only be filed within 30 days after service has commenced.

[241] April 1 Order, 147 FERC ¶ 61,004 at P 12.

[242] Public Interest Organizations Comments at 21; Comments of the Customers First! Coalition, Docket Nos. ER14-1242-000 and ER14-1243-000, at 5 (filed Feb. 20, 2014) (Customers First! Coalition Comments).

MISO has not put forth any long-term alternatives for reducing the reliability issues (such as new generation and/or transmission) and that it will most likely continue to be uneconomical for Wisconsin Electric to continue to operate Presque Isle Units 5-9, especially due to the anticipated future need to pay for costs related to the MATS standards by April 2016.[243] The Public Interest Organizations state that because the anticipated future need for retrofit costs are not addressed by the Presque Isle SSR Agreement, continued operation of Presque Isle Units 5-9 may become even less economical over time.[244] Commenters request that the Commission order MISO to fully explain its plan for the long-term solution to meet reliability should the Presque Isle SSR Agreement extend beyond January 31, 2015 or the 16-month extension period.[245]

111. WPPI Energy states that there is no certainty as to the future of the Presque Isle plant, because Wisconsin Electric has issued a request for proposals to sell the plant before June 2015.[246] WPPI Energy states that MISO's unsupported claim of resumption of operation in June 2015 does not recognize the need for a permanent solution to the reliability problems in the Upper Peninsula. WPPI Energy notes that MISO's Attachment Y Study indicated that elimination of the Empire mine load would reduce reliability need to four Presque Isle SSR Units.[247] WPPI Energy suggests that the Presque Isle SSR Agreement be restructured such that, in the event that the Empire mine ceases operations before the end of the initial term of the agreement (or an extension term), ATC ratepayers are not saddled with SSR costs unnecessary for reliability.[248]

iii. <u>Answers</u>

112. Wisconsin Electric and MISO argue that any comments alleging that the filing fails to propose a permanent solution to the reliability problem in the Upper Peninsula are premature.[249] Wisconsin Electric states that MISO's Attachment Y Study was

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[243] Public Interest Organizations Comments at 21-22; Customers First! Coalition Comments at 5.

[244] Public Interest Organizations Comments at 22.

[245] *Id*.; WPPI Energy Comments at 6.

[246] WPPI Energy Comments at 6.

[247] *Id*. at 10.

[248] *Id*. at 11-12.

[249] Wisconsin Electric Answer at 3-4; MISO Answer at 6-7.

appropriately limited to the term of the Presque Isle SSR Agreement because Wisconsin Electric notified MISO that it would suspend plant operations, not retire the plant. Although Wisconsin Electric states that it issued a request for proposals to purchase the Presque Isle plant, this request was conditioned upon continued operation of the plant. Wisconsin Electric states that if it decides to retire the plant, it will submit a new Attachment Y Notice to MISO.[250] MISO adds that addressing retrofit costs in the Presque Isle SSR Agreement, as proposed by the Public Interest Organizations, would be inappropriate considering Wisconsin Electric's intention to continue operating the plant.[251]

113. MISO addresses WPPI Energy's concern that the Presque Isle SSR Agreement does not take account of changed circumstances that may alter the need for continued operation of all five Presque Isle units, such as elimination of the Empire mine load. MISO states that the Empire mine has announced plans for continued operations through the end of 2017.[252] In any event, MISO asserts that it may terminate the agreement if circumstances change, and Exhibit 2 of the agreement permits termination of less than all five Presque Isle SSR Units.[253]

iv. Commission Determination

114. We find that the April 1 Order appropriately granted waiver of the prior notice requirement and allowed the Presque Isle SSR Agreement to be effective February 1, 2014, as requested, for a term of 12 months.[254] As the Commission stated in *Escanaba*, "all SSR units should be fully compensated for any costs incurred because of their extended service" and "nothing in the SSR program would require a generator to absorb any uncompensated going-forwards costs."[255] Here, the record indicates that Presque Isle Units 5-9 have been providing reliability service pursuant to the Presque Isle SSR Agreement since February 1, 2014. Thus, it is appropriate that Wisconsin Electric be

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[250] Wisconsin Electric Answer at 4.

[251] MISO Answer at 7.

[252] *Id*. at 11.

[253] *Id*. at 11-12.

[254] April 1 Order, 147 FERC ¶ 61,004 at P 12.

[255] *Escanaba*, 142 FERC ¶ 61,170 at P 84 (citing 2004 SSR Rehearing Order, 109 FERC ¶ 61,157 at P 293).

made whole for the costs it incurred while providing SSR service. We agree with Wisconsin Electric and MISO that any comments alleging that the filing fails to propose a permanent solution to the reliability problem in the Upper Peninsula are premature. However, we note that the circumstances surrounding the need for this SSR agreement indicate that Presque Isle Units 5-9 may be needed after January 31, 2015. If MISO determines that Presque Isle Units 5-9 are needed beyond January 31, 2015, MISO must file a revised SSR agreement with the Commission and must justify that no alternatives exist to designation of Presque Isle Units 5-9 as SSR units.

2. Rate Schedule 43G

a. Filing

115. MISO submitted proposed Rate Schedule 43G in Docket No. ER14-1243-000 that would authorize MISO to allocate SSR costs that are associated with the Presque Isle SSR Units. MISO proposes to allocate the SSR costs among all LBAs in the footprint of ATC based on each LBA's peak load within a month, and then to all LSEs within those LBAs based upon each entity's contribution to the peak of its LBA.[256] MISO states that Rate Schedule 43G accomplishes this allocation based upon peak usage of transmission facilities in each month, as determined by each LSE's actual energy withdrawals during the monthly peak hour for each LBA. In this way, MISO notes that the percentage of costs allocated to each LSE will vary each month based on the entity's coincident peak hour energy usage during that month. MISO states that the cost allocation in Schedule 43G is consistent with section 38.2.7.k of MISO's Tariff and with the allocation previously accepted by the Commission.[257]

116. MISO requested waiver of the prior notice requirement to allow Rate Schedule 43G to go into effect on February 1, 2014 to correspond with the effective date of the Presque Isle SSR Agreement. MISO stated that good cause exists to grant the waiver for the same reasons given in Docket No. ER14-1242-000. In the April 1 Order, the Commission granted the requested waiver and allowed Rate Schedule 43G to go into effect on February 1, 2014.[258]

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[256] Rate Schedule 43G Filing, Transmittal Letter at 3.

[257] *Id.* at 3 (citing *Midcontinent Indep. Sys. Operator, Inc.*, Docket Nos. ER14-109 and ER14-111, Letter Order at 2 (December 12, 2013)).

[258] April 1 Order, 147 FERC ¶ 61,004 at P 12.

b. Comments and Commission Determination

117. Many parties provided comments both in support of and in protest of the *pro rata* cost allocation in Rate Schedule 43G. These comments align with the comments submitted in the Complaint in Docket No. EL14-34-000.

118. We require MISO to submit a compliance filing that aligns cost allocation under Rate Schedule 43G with the Commission's determination on the Complaint in Docket No. EL14-34-000. As previously discussed, the Commission has granted the Complaint and found that: (1) the ATC *pro rata* SSR cost allocation provision in section 38.2.7.k of MISO's Tariff is not just and reasonable; (2) the general benefits-based SSR cost allocation method in section 38.2.7.k of MISO's Tariff should be applied to the ATC footprint; and (3) the cost allocation in Rate Schedule 43G must be revised accordingly, effective April 3, 2014. As stated above, MISO must submit a compliance filing within 30 days of the date of this order containing revised Tariff sheets amending the SSR cost allocation under Rate Schedule 43G in accordance with the Commission's determination on the Complaint, with such revised cost allocation to be effective as of April 3, 2014. We also affirm the Commission's determination in the April 1 Order granting waiver of the prior notice requirement and allowing Rate Schedule 43G to be effective on February 1, 2014.

C. Request for Rehearing

1. Request for Rehearing

119. In their request for rehearing of the April 1 Order, the Public Interest Organizations argue that the Commission's decision-making approach undermines MISO's review process and is likely to result in unjust and unreasonable rates.[259] The Public Interest Organizations contend that MISO has no process in place for resolving the reliability problems that are causing the need for the Presque Isle SSR Agreement, and MISO's failure to consider alternatives increases the likelihood that the Presque Isle SSR Agreement will continue indefinitely. They argue that approval of the Presque Isle SSR Agreement and Rate Schedule 43G without considering them on their merits is likely to perpetuate the indefinite SSR agreement, and consumers will continue to pay millions of dollars each month with no retirement date in sight.[260]

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[259] Public Interest Organizations Rehearing Request at 3.

[260] *Id*. at 3. The Public Interest Organizations state that total annual payments under the Presque Isle SSR Agreement could approach $100 million per year.

120. According to the Public Interest Organizations, the Presque Isle SSR Agreement includes a provision which creates additional likelihood of delay. Section 3.A.5 of the Agreement requires MISO to notify Wisconsin Electric by July 31, 2014 (six months prior to the end of the one year term on January 31, 2015) if it intends to renew the agreement. The Public Interest Organizations state that there have been no recent stakeholder meetings to address the reliability issues that could allow the units to eventually retire, and they argue that MISO is less likely to develop solutions to reduce or eliminate the reliability issues associated with retiring the Presque Isle facility until it is clear whether or not the Commission will overturn its conditional approval of the Presque Isle SSR Agreement.[261]

121. The Public Interest Organizations also express concern that the Commission's conditional approval of the Presque Isle SSR Agreement will discourage stakeholders and MISO from examining all potentially achievable alternatives in future generation retirement processes.[262] They state that the Commission's acceptance of SSR agreements without ruling on the merits perpetuates costly agreements, thereby harming the public interest and increasing the likelihood of unjust and unreasonable rates. The Public Interest Organizations request that the Commission grant rehearing and reject MISO's proposed Presque Isle SSR Agreement and Rate Schedule 43G, and order MISO to more properly evaluate demand response alternatives and to explain and initiate a process that will eventually allow the units to retire. Alternatively, they request that the Commission provide a reasoned explanation for its decision to accept the Presque Isle SSR Agreement and Rate Schedule 43G.

2. Commission Determination

122. The request for rehearing is denied. To the extent the Public Interest Organizations are concerned about the implications of conditional approval of the Presque Isle SSR Agreement and Rate Schedule 43G without considering them on their merits, the Commission finds that those concerns are moot upon the issuance of this order. The Public Interest Organizations' concerns about MISO's consideration of the alternatives to the Presque Isle SSR Agreement are addressed above, in the body of this order.

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[261] *Id*. at 4.

[262] *Id*. at 5.

The Commission orders:

(A) The Complaint filed by the Wisconsin Commission in Docket No. EL14-34-000 is hereby granted, as discussed in the body of this order.

(B) MISO is hereby directed to submit Tariff revisions and a final load-shed study in a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

(C) The fixed cost component of SSR compensation under the Presque Isle SSR Agreement, filed by MISO in Docket No. ER14-1242-000, is hereby set for hearing and settlement judge procedures, as discussed in the body of this order.

(D) 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 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 certain provisions of the Presque Isle SSR Agreement, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (E) and (F) below.

(E) 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 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 days of the date of this order.

(F) Within 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 60 days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(G) 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 15 days of the date of the presiding judge's designation, convene a prehearing conference in this

proceeding 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 by the Commission's Rules of Practice and Procedure.

(H) The Public Interest Organizations' request for rehearing filed in Docket Nos. ER14-1242-001 and ER14-1243-001 is hereby denied, as discussed in the body of this order.

(I) The refund effective date established in Docket No. EL14-34-000 pursuant to section 206(b) of the FPA is set at April 3, 2014.

(J) MISO is hereby directed to make refunds to LSEs in the ATC footprint as necessary to give effect to the revised cost allocation in Rate Schedule 43G, as described in the body of this order.

(K) MISO is hereby directed to submit a refund report within 30 days after refunds are granted to affected customers.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.