

Tariff Filings, Denying Rehearing, Instituting Section 206 Proceedings, Establishing Hearing and Settlement Judgment Procedures, and Consolidating Proceedings issued in Docket Nos. ER13-1962-000, *et al.*,² Illinois Power Marketing Company (Illinois Power) submitted a revised unexecuted Amended and Restated System Support Resource (SSR)³ Agreement between Illinois Power and MISO under the Tariff (Illinois Power Restated SSR Agreement).⁴ As discussed more fully below, the Illinois Power Restated SSR Agreement revises the rate set forth in the unexecuted Amended and Restated SSR Agreement (Edwards Year 2 SSR Agreement) that was filed by MISO on January 30, 2014, in Docket No. ER14-1210-000, designated as Service Agreement No. 6502 under the Tariff.⁵ In this order, we accept the Illinois Power Restated SSR Agreement, suspend it for a nominal period, to become effective August 8, 2014, subject to refund and compliance, set Illinois Power's proposed rates under the Illinois Power Restated SSR Agreement for hearing and settlement judge procedures, and consolidate this proceeding with the ongoing hearing and settlement judge procedures established by the Ameren Complaint Order in Docket No. ER13-1962-000, *et al.* (Edwards SSR Proceedings).

I. Background

2. Under the 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

² *Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,057 (2014) (Ameren Complaint Order).

³ The Midcontinent Independent System Operator's (MISO's) Open Access Transmission, Energy, and Operating Reserve Markets Tariff (Tariff) defines SSRs as "Generation Resources or Synchronous Condenser Units [(SCU)] that have been identified in Attachment Y – Notification to this Tariff and are required by the Transmission Provider for reliability purposes, to be operated in accordance with the procedures described in Section 38.2.7 of this Tariff." MISO, FERC Electric Tariff, [1.643, System Support Resource \(SSR\):, 0.0.0](#). Unless indicated otherwise, all capitalized terms shall have the same meaning given them in the MISO Tariff.

⁴ Illinois Power Marketing Company, FERC FPA Electric Tariff, Ameren Energy Marketing Company General Tariff, [SSR Agreement, Amended and Restated System Support Resources Agreement, 0.0.0](#).

⁵ MISO, FERC FPA Electric Tariff, Midwest ISO Agreements, [SA 6502, Illinois Power-MISO SSR Agreement, 31.0.0](#).

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.⁶

3. 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.⁷ On July 22, 2014, the Commission conditionally accepted MISO's compliance filing made in response to the SSR Order subject to further compliance.⁸

4. On July 5, 2013, pursuant to section 206 of the Federal Power Act (FPA),⁹ AmerenEnergy Resources Generating Company filed a complaint (Complaint) in Docket No. EL13-76-000 against MISO, which was supplemented by Illinois Power Marketing Company and Illinois Power Resources Generating, LLC¹⁰ on February 20, 2014. The Complaint argued that the Commission should find that, regarding SSR compensation, the term "going forward costs" includes the fixed costs of existing plant, which are

⁶ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163, *order on reh'g*, 109 FERC ¶ 61,157 (2004).

⁷ *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,237 (2012) (2012 SSR Order), *order on compliance*, 148 FERC ¶ 61,056 (2014) (2014 SSR Order).

⁸ 2014 SSR Order, 148 FERC ¶ 61,056 at P 1.

⁹ 16 U.S.C. § 824e (2012).

¹⁰ On December 2, 2013, Illinois Power Holdings acquired several Ameren Corporation subsidiaries, including AmerenEnergy Resources Generating Company and Ameren Energy Marketing. AmerenEnergy Resources Generating Company was renamed as Illinois Power Resources Generating, LLC, and Ameren Energy Marketing was renamed as Illinois Power Marketing Company. For purposes of this order, both AmerenEnergy Resources Generating Company and Ameren Energy Marketing will be referred to as Ameren, and both Illinois Power Marketing Company and Illinois Power Resources Generating, LLC will be referred to as Illinois Power.

recovered as depreciation expense, return on rate base, and associated taxes; or alternatively, the Commission should find that the existing Tariff is unjust and unreasonable and unduly discriminatory or preferential, to the extent that it does not compensate SSRs for the fixed costs of existing plant.

5. On July 11, 2013 in Docket No. ER13-1962-000, pursuant to section 205 of the FPA,¹¹ MISO submitted a proposed unexecuted SSR agreement between Ameren and MISO designated as Service Agreement No. 6502 under its Tariff (Edwards Year 1 SSR Agreement) for Edwards Unit 1, covering a one-year term beginning on January 1, 2013 and terminating on December 31, 2013. The Edwards Year 1 SSR Agreement only included compensation for Ameren's going-forward costs and did not include any compensation for Ameren's fixed costs of existing plant. On November 25, 2013, the Commission accepted the Edwards Year 1 SSR Agreement and the associated rate schedule, suspended them for a nominal period, to be effective January 1, 2013, as requested, subject to refund and further Commission order.¹²

6. On January 30, 2014 in Docket No. ER14-1210-000, pursuant to section 205 of the FPA, MISO filed the Edwards Year 2 SSR Agreement for Edwards Unit 1, covering a one-year term beginning on January 1, 2014 and terminating on December 31, 2014. Like the Edwards Year 1 SSR Agreement, the Edwards Year 2 SSR Agreement also only included compensation for Illinois Power's going-forward costs and did not include any compensation for Illinois Power's fixed costs of existing plant. On March 31, 2014, the Commission accepted the Edwards Year 2 SSR Agreement and the associated rate schedule, suspended them for a nominal period, to be effective January 1, 2014, as requested, subject to refund and further Commission order.¹³

7. On July 22, 2014, the Commission issued the Ameren Complaint Order which addressed several issues raised in these proceedings. Among other things, the Commission denied the Complaint as to Ameren's argument that the term "going forward costs" in the then-existing Tariff could be construed to include the fixed costs of existing plant, but granted the Complaint and found the Tariff to be unjust, unreasonable, and unduly discriminatory or preferential because when MISO negotiates with a market participant to determine the level of SSR compensation, the Tariff did not allow SSRs compensation for the fixed costs of existing plant. Additionally, the Commission found the MISO Tariff to be unjust, unreasonable, and unduly discriminatory or preferential

¹¹ 16 U.S.C. § 824d (2012).

¹² *Midcontinent Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,163 (2013).

¹³ *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,238 (2014).

because it provided MISO with unilateral rights to file rates under unexecuted SSR agreements.¹⁴

8. The Commission directed MISO, in a compliance filing due within 60 days of the date of the Ameren Complaint Order, to revise its Tariff to reflect that SSR compensation should not exceed a resource's full cost-of-service, including the fixed costs of existing plant (rather than providing that this compensation must not exceed a resource's going-forward costs), effective as of the date of the Ameren Complaint Order.¹⁵ In addition, the Commission directed MISO, in a compliance filing due within 60 days of the date of the Ameren Complaint Order, to revise the Tariff to address the situation where MISO and the generation owner cannot agree on the appropriate level of compensation for an SSR agreement, effective as of the date of the Ameren Complaint Order. The Commission required that the Tariff should provide that: (1) in instances where MISO and the generation or SCU owner cannot agree on compensation for SSR service, the generation owner or SCU owner may submit a FPA section 205 filing for the rate associated with the unexecuted SSR agreement; and (2) MISO will be required to file an unexecuted SSR agreement with the Commission that includes only the non-rate terms and conditions within 15 days after MISO and the generation or SCU owner determine that they are at an impasse regarding the appropriate level of compensation.¹⁶ The Commission also established hearing and settlement judge procedures in order to address issues of material fact with regard to the appropriate level of compensation under the Edwards Year 1 SSR Agreement and Edwards Year 2 SSR Agreement.¹⁷

II. Illinois Power's Filing

9. Illinois Power states that, pursuant to the Ameren Complaint Order, it is filing the Illinois Power Restated SSR Agreement to provide for a monthly compensation (Monthly SSR Payment) based on its full cost-of-service from Edwards Unit 1 for 2014 SSR service, which is currently provided under the Edwards Year 2 SSR Agreement that expires December 31, 2014. Illinois Power asserts that, as set forth in the Direct Testimony of Alan C. Heintz, the Monthly SSR Payment is \$1,344,570. According to Illinois Power, its cost data consists of those items required to support the Monthly SSR Payment. As a result, Illinois Power states that it requests waiver of those provisions of

¹⁴ Ameren Complaint Order, 148 FERC ¶ 61,057 at P 82.

¹⁵ *Id.* P 87.

¹⁶ *Id.* P 93.

¹⁷ *Id.* PP 82, 88.

section 35.13 of the Commission's regulations that are not necessary for a fixed monthly charge for SSR service for 2014.¹⁸

10. Illinois Power requests an effective date for the Illinois Power Restated SSR Agreement of January 1, 2014. Illinois Power requests waiver of the Commission's prior notice requirements so that the Illinois Power Restated SSR Agreement can be effective on January 1, 2014. Illinois Power contends that the Commission has granted waiver of its notice requirements in the context of SSR service where the service has been provided prior to the SSR agreement being filed with Commission. For example, Illinois Power explains that, in the Ameren Complaint Order, the Commission rejected a request for rehearing of the Commission's decision to allow the Edwards Year 1 SSR Agreement to become effective January 1, 2013, even though the agreement was not filed until July 11, 2013.¹⁹

11. Furthermore, Illinois Power asserts that, with respect to SSR service for 2014, it first identified its proposed Monthly SSR Payment in its Motion to Intervene, Limited Protest, Supplement to Complaint, and Request to Consolidate Proceedings (Motion to Supplement Complaint) made in Docket No. ER14-1210-000, *et al.* Illinois Power reports that the Monthly SSR Payment, which reflects the fixed costs of existing plant, is the amount included in its protest in Docket No. ER14-1210-000. Consequently, Illinois Power argues that interested parties have been aware of and have challenged Illinois Power's proposed Monthly SSR Payment for 2014 for an extended period of time.²⁰ Illinois Power maintains that the rate set forth in the protest is intended to fully compensate Illinois Power for the costs incurred to ensure the continued availability of Edwards Unit 1.²¹

¹⁸ Illinois Power Transmittal Letter at 6-7.

¹⁹ *Id.* at 7-8 (citing Ameren Complaint Order, 148 FERC ¶ 61,057 at P 160 (stating that "all SSR units should be fully compensated for any costs incurred because of their extended service") (quoting *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,170, at P 84 (2013) (First Escanaba SSR Extension Order))).

²⁰ *Id.* at 8 (citing Illinois Municipal Electric Agency (Illinois Municipal) and Wabash Valley Power Association, Inc. (Wabash Valley), Joint Protest, Docket No. ER14-1210-000, *et al.* (filed Feb. 20, 2014); Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier Energy) and Southern Illinois Power Cooperative (Southern Illinois), Joint Protest, Docket No. ER14-1210-000, *et al.* (filed Feb. 20, 2014))).

²¹ *Id.*

12. Illinois Power states that, with the Commission's finding in the Ameren Complaint Order that SSR owners should have the right to make their own FPA section 205 filings for compensation, and indicating that Illinois Power could make such a filing as of July 22, 2014, Illinois Power's Monthly SSR Payment is being filed with the Commission after more than six months of SSR service. Illinois Power argues that the Commission should, in light of the extraordinary circumstances of MISO being vested under the MISO Tariff with filing SSR agreements, waive the prior notice requirement and grant the requested January 1, 2014 effective date for the Illinois Power Restated SSR Agreement so that Illinois Power can be fully compensated for the cost of providing SSR service.²²

13. Illinois Power also asserts that the Monthly SSR Payment, including the cost support included in its filing, is already subject to the Edwards SSR Proceedings. Illinois Power therefore requests consolidation of this proceeding with the Edwards SSR Proceedings.²³

14. Finally, Illinois Power states that the Illinois Power Restated SSR Agreement filed herein is limited to its proposed cost-of-service rate – i.e., the revised Monthly SSR Payment – and that it does not include any of the changes that the Commission directed be made to the non-rate terms and conditions of the Edwards Year 2 SSR Agreement in the Ameren Complaint Order. Illinois Power notes that MISO has submitted a separate compliance filing in Docket No. ER14-1210-001 that addresses the non-rate terms and conditions required by the Commission's directives in the Ameren Complaint Order. As such, Illinois Power states that once the Commission addresses the instant Illinois Power cost-of-service rate filing and MISO's filing in Docket No. ER14-1210-001, a compliance filing incorporating the Commission's findings with regard to the two filings will need to be made.²⁴

III. Notice of Filings and Responsive Pleadings

15. Notice of the Illinois Power Restated SSR Agreement was published in the *Federal Register*, 79 Fed. Reg. 49,298 (2014), with protests and interventions due on or before August 28, 2014.

²² *Id.* (citing *Cent. Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,1066, *on reh'g denied*, 61 FERC ¶ 61,089 (1992) (*Central Hudson*)).

²³ *Id.* at 8-9.

²⁴ *Id.* n.25.

16. Ameren Services Company, Prairie Power Inc., and Wisconsin Electric Power Company filed timely motions to intervene. The Illinois Commerce Commission (Illinois Commission) filed a notice of intervention. Southern Illinois Power Cooperative (Southern Illinois) and Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier) filed a timely motion to intervene and protest. Illinois Municipal Electric Agency (Illinois Municipal) and Wabash Valley Power Association, Inc. (Wabash Valley) filed timely motions to intervene and a joint protest. MISO filed a timely motion to intervene and comments. On September 2, 2014, Southwestern Electric Cooperative, Inc. (Southwestern) filed a motion to intervene out-of-time, request for consolidation, and protest. On September 3, 2014, the Illinois Commission filed a motion to file comments out-of-time and comments. On September 12, 2014, Illinois Power filed a request for leave to answer and answer. On September 26, 2014, Illinois Municipal/Wabash Valley filed a joint answer.

A. Protests and Comments

1. Effective Date

17. Hoosier/Southern Illinois, Illinois Municipal/Wabash Valley, Southwestern, and the Illinois Commission assert that the Commission should deny Illinois Power's request for an effective date of January 1, 2014 for the Illinois Power Restated SSR Agreement. They further argue that the Commission should deny Illinois Power's claim for waiver of the FPA section 205 notice requirements for any period prior to July 22, 2014.

18. The Illinois Commission argues that the effective date should not be at issue here because Illinois Power raised the effective date issue in the Ameren Complaint Order proceedings and the Commission explained in the Ameren Complaint Order that "Illinois Power may make a section 205 filing proposing its own SSR compensation, including fixed costs of existing plant, *as of the date of this order.*"²⁵ Moreover, the Illinois Commission notes that, in the Ameren Complaint Order, the Commission found that:

We note that the hearing and settlement judge procedures established below in Docket Nos. ER13-1962-000 and ER14-1210-000 will also determine Ameren's compensation under the entire term of the Edwards Year 1 SSR Agreement effective January 1, 2013 and the term of the Edwards Year 2 SSR Agreement effective January 1, 2014 until the date of this order, pursuant to existing Tariff language providing that SSR agreements will provide compensation only for the unit's going-forward costs. *For the*

²⁵ Illinois Commission Comments at 3 (quoting Ameren Complaint Order, 148 FERC ¶ 61,057 at P 209 (emphasis added)).

*period beginning on the date of this order, the level of compensation that MISO filed in the Edwards Year 2 SSR Agreement will be evaluated against the appropriate level of compensation for Illinois Power's full cost-of-service, including fixed costs of existing plant. Any rate increase above the level that MISO filed would only take effect prospectively from the date of the Commission order adopting the increased rate.*²⁶

19. Hoosier/Southern Illinois and Illinois Municipal/Wabash Valley allege that Illinois Power's claim for waiver of FPA section 205's notice requirements for any period prior to July 22, 2014 should be denied by the Commission as an attempt to receive an unlawful retroactive rate increase. Hoosier/Southern Illinois argue that the filed rate doctrine forbids retroactive implementation of the Illinois Power Restated SSR Agreement. According to Hoosier/Southern Illinois, while it is true that a rate may be subject to retroactive adjustment when customers have received sufficient advance notice that retroactive adjustment is possible, that is not the case here. Hoosier/Southern Illinois aver that advance notice "in no way dilutes the general rule that once a rate is in place with ostensible full legal effect and is not made provisional, it can be changed only prospectively."²⁷ Here, Hoosier/Southern Illinois explain, the Tariff provision in place from January 1, 2014 through July 22, 2014 limited compensation of SSR units to going-forward costs, which the Commission acknowledged excluded recovery of fixed costs such as depreciation, return on investment, and related taxes.²⁸ Hoosier/Southern Illinois also note that the Commission's acceptance of the Tariff provision pertaining to "going-forward costs" was with full legal effect, rather than provisional.²⁹ As such, Hoosier/Southern Illinois conclude that, notwithstanding the Commission's subsequent finding that limiting SSR compensation to going-forward costs is unjust and unreasonable, the Commission is without power to retroactively substitute a just and reasonable rate for the one it has found to be unjust and unreasonable.³⁰

²⁶ *Id.* at 4 (quoting Ameren Complaint Order, 148 FERC ¶ 61,057 at n.176 (emphasis added)).

²⁷ Hoosier/Southern Illinois Protest at 5-6 (quoting *Columbia Gas Transmission Corp. v. FERC*, 895 F.2d 791, 797 (D.C. Cir. 1990) (*Columbia Gas*)).

²⁸ *Id.* at 6 (citing Ameren Complaint Order, 148 FERC ¶ 61,057 at P 82).

²⁹ *Id.* (citing Ameren Complaint Order, 148 FERC ¶ 61,057 at P 48).

³⁰ *Id.*

20. Illinois Municipal/Wabash Valley similarly argue that Illinois Power cannot be given a waiver to retroactively recover rates under FPA section 205 for a period during which it had no right to file for those rates. Illinois Municipal/Wabash Valley assert that, in the orders approving the Edwards Year 1 SSR Agreement and Edwards Year 2 SSR Agreement, the SSR agreements were permitted to go into effect retroactively under the terms of the then-existing MISO Tariff and involved only such costs as could be fairly recovered under the then effective terms of the Tariff. Illinois Municipal/Wabash Valley conclude that the Commission's authority to allow a waiver of the statutory notice requirements cannot be made to stretch that far to permit retroactive rate increases for periods during which the filing utility had no right to request a rate increase.³¹

21. Illinois Municipal/Wabash Valley assert that Illinois Power's claim for an FPA section 205 waiver for a retroactive rate increase rests on an FPA section 206 remedy and thus cannot be permitted. Illinois Municipal/Wabash Valley explain that FPA section 206 provides that, after making the requisite findings as it did here, "the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be *thereafter* observed and in force, and shall fix the same by order."³² Illinois Municipal/Wabash Valley add that only in the case of a refund being ordered for customers under FPA section 206(b) does the Commission have authority to provide retroactive relief prior to the date of its order.³³ Illinois Municipal/Wabash Valley conclude that "[section] 206(b) authorizes only retroactive refunds (rate decreases), not retroactive rate increases"³⁴

22. Hoosier/Southern Illinois, Illinois Municipal/Wabash Valley, and the Illinois Commission also aver that waiver of the prior notice rule is not justified. Hoosier/Southern Illinois state that the Commission will generally waive the 60-day prior notice requirement in only two circumstances. According to Hoosier/Southern Illinois, the first circumstance is in the case of an uncontested filing that does not change rates and the second is when the filing would reduce rates and charges. Hoosier/Southern Illinois contend that neither criterion is met here. Hoosier/Southern Illinois and the Illinois Commission reject Illinois Power's characterization of the circumstances as "extraordinary" because Illinois Power had to provide SSR service and because the Tariff

³¹ Illinois Municipal/Wabash Valley Protest at 7-10.

³² *Id.* (quoting 16 U.S.C. § 824e(a) (2012) (emphasis added)).

³³ *See* 16 U.S.C. § 824e(b) (2012).

³⁴ Hoosier/Southern Illinois Protest at 6-7 (quoting *City of Anaheim v. FERC*, 558 F.3d 521, 525 (D.C. Cir. 2009)).

contained a provision that the Commission has now found to be unjust and unreasonable.³⁵

23. Hoosier/Southern Illinois and Illinois Municipal/Wabash Valley also claim that Illinois Power's arguments that retroactive rates are permissible in this case on the grounds of prior notice cannot be squared with judicial and Commission precedent. Illinois Municipal/Wabash Valley explain that the Commission can implement retroactive rate surcharges in certain limited circumstances when parties have been put on notice that the contested rates should be subject to potential increases. However, according to Illinois Municipal/Wabash Valley, the proceedings under which that limited ability to require a retroactive rate increase involved cases in which refunds had previously been required for lawfully filed rates.³⁶ In addition, Illinois Municipal/Wabash Valley state that the Commission can, under its remedial authority, require surcharges to correct a legal error exposed by court review, or to provide an equitable remedy based on reliance on an order later found to be unlawful.³⁷ Illinois Municipal/Wabash Valley assert that those conditions do not apply here.³⁸

24. Hoosier/Southern Illinois and Illinois Municipal/Wabash Valley take issue with Illinois Power's statement that "[Illinois Power] first identified its proposed Monthly SSR Payment in the ER14-1210-000 Protest."³⁹ Hoosier/Southern Illinois claim that such action is not sufficient to provide notice that rates may be revised retroactively. According to Hoosier/Southern Illinois, retroactive rate adjustment is lawful only "when the Commission itself places parties on notice . . . that the rates they will be paying are subject to retroactive adjustment at a later date."⁴⁰

³⁵ *Id.* at 7-8; Illinois Commission Comments at 5-7.

³⁶ Illinois Municipal/Wabash Valley Protest at 10 (citing *La. Pub. Serv. Comm'n v. FERC*, 482 F.3d 510, 520 (D.C. Cir. 2007); *Canadian Ass'n of Petroleum Producers v. FERC*, 254 F.3d 289, 299 (D.C. Cir. 2001); *Natural Gas Clearinghouse v. FERC*, 965 F.2d 1066, 1075 (D.C. Cir. 1992) (*Natural Gas Clearinghouse*)).

³⁷ *Id.* at 11 (citing *Natural Gas Clearinghouse*, 965 F.2d at 1074-1076; *Office of Consumers' Counsel v. FERC*, 826 F.2d 1136, 1139 (D.C. Cir. 1987)).

³⁸ *Id.*

³⁹ Hoosier/Southern Illinois Protest at 6 (quoting Illinois Power Transmittal Letter at 8).

⁴⁰ *Id.* (quoting *Columbia Gas*, 895 F.2d at 796-797).

2. Illinois Power's Proposed Rate for Cost-of-Service Recovery

25. The Illinois Commission, Southwestern, and Illinois Municipal/Wabash Valley assert that a full evidentiary hearing is required as to Illinois Power's proposed cost-of-service rate. The Illinois Commission and Illinois Municipal/Wabash Valley note that Illinois Power has filed the same cost support that it previously filed with its Motion to Supplement Complaint. The Illinois Commission states that, in that proceeding, the Commission determined that there were issues of fact regarding the proposed rates that could not be determined on the basis of the submissions and set the matter for evidentiary hearing and settlement judge procedures. The Illinois Commission further argues that, because the rate matters presented by Illinois Power in the instant filing have already been directed by the Commission for treatment in hearing and/or settlement procedures, no additional or separate action on these rate matters is appropriate at this time.⁴¹

26. Illinois Municipal/Wabash Valley state that they protested Illinois Power's Motion to Supplement Complaint and the accompanying cost-of-service testimony of Alan C. Heintz.⁴² However, Illinois Municipal/Wabash Valley restate the arguments they made in their protest of Illinois Power's Motion to Supplement Complaint in Docket No. ER14-1210-000, *et al.* Specifically, Illinois Municipal/Wabash Valley argue that a full evidentiary hearing is necessary to: (1) verify Illinois Power's claimed inputs; (2) determine the underpinnings of Illinois Power's assumptions for the claimed rate of return on equity; (3) examine Illinois Power's cost of long-term debt; (4) evaluate Illinois Power's claim for depreciation for the entire gross plant investment in a single year; and (5) investigate other cost-of-service issues such as labor costs, administrative and general expenses, and fixed operation and maintenance costs.⁴³ Illinois Municipal/Wabash Valley add that the Commission should also impose suspension and refund requirements before accepting Illinois Powers' proposed rate.⁴⁴ Illinois Municipal/Wabash Valley also state that there are serious questions concerning the proper net book value for Edwards Unit 1 given the recent change in ownership control of Edwards Unit 1 and that a purchase accounting adjustment to the book value will have been made. Illinois

⁴¹ Illinois Commission Comments at 8 (citing Ameren Complaint Order, 148 FERC ¶ 61,057 at P 209).

⁴² Illinois Municipal/Wabash Valley Protest at 12 (citing Illinois Municipal/Wabash Valley, Joint Protest, Docket No. EL13-76-000 (filed. Apr. 14, 2014)).

⁴³ *Id.* at 12-15.

⁴⁴ *Id.* at 2.

Municipal/Wabash Valley state that the Commission's order authorizing the disposition of jurisdictional facilities and acquisition of securities between Dynegy and the former Ameren affiliates did not require Dynegy and its affiliates to identify or justify the purchase accounting adjustment that was to be made nor to submit a compliance filing with such information following completion of the merger.⁴⁵ Southwestern adds that Illinois Power's requested fixed costs have not been established by the Commission or investigated to date by transmission customers.⁴⁶

27. MISO states that it is concerned with how compensation for an SSR agreement would be submitted, accepted, and implemented, and that, as administrator of the Tariff, MISO should be the entity that ultimately submits revisions to the Tariff, including SSR agreements. While MISO takes no position at this time regarding the compensation requested by the Illinois Power, it observes that the Ameren Complaint Order does not detail the procedure under which compensation may be adjusted for filed SSR agreements. According to MISO, the Ameren Complaint Order would be served if, should the Commission approve additional compensation for Edwards Unit 1, the Commission directs MISO to revise its Tariff in its role as Tariff administrator.⁴⁷

IV. Discussion

A. Procedural Matters

28. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which they sought intervention.

29. Pursuant to Rule 2014(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), the Commission will grant Southwestern's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

30. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest or answer unless otherwise

⁴⁵ *Id.* at 15-16 (citing *Ameren Energy Generating Co., et al.*, 145 FERC ¶ 61,034, at PP 82, 97 (2013) (requiring only standard post-merger accounting entries)).

⁴⁶ Southwestern Protest at 7.

⁴⁷ MISO Comments at 2-3.

ordered by the decisional authority. We are not persuaded to accept Illinois Power's and Illinois Municipal/Wabash Valley's answers and we will therefore reject them.

B. Substantive Matters

31. We conditionally accept the Illinois Power Restated SSR Agreement, suspend it for a nominal period, to become effective August 8, 2014, subject to refund and compliance, set Illinois Power's proposed rates under the Illinois Power Restated SSR Agreement for hearing and settlement judge procedures, and consolidate this proceeding with the ongoing hearing and settlement judge procedures in the Edwards SSR Proceedings. Accordingly, as discussed further below, we deny Illinois Power's request for waiver of the prior notice requirement for the Illinois Power Restated SSR Agreement back to January 1, 2014.

32. As an initial matter, we note that our acceptance here of the Illinois Power Restated SSR Agreement is subject to the outcome of Docket No. ER14-1210-001, MISO's compliance filing containing revised non-rate terms and conditions for the Edwards Year 2 SSR Agreement made pursuant to the Ameren Complaint Order (Compliance SSR Agreement). However, we note the unusual nature of these two proceedings. Specifically, the Compliance SSR Agreement in Docket No. ER14-1210-001, submitted by MISO, is replacing an SSR Agreement with an effective date of January 1, 2014. The Illinois Power Restated SSR Agreement in the instant proceeding, which provides for cost-of-service rates, is being conditionally accepted here to become effective August 8, 2014. Accordingly, as of August 8, 2014, Illinois Power and MISO will maintain this SSR Agreement in their respective Tariffs. Once the compliance filing in Docket No. ER14-1210-001 is addressed by the Commission, Illinois Power must submit a compliance filing in this proceeding to conform the non-rate terms and conditions in the Illinois Power Restated SSR Agreement to reflect the non-rate terms and conditions accepted by the Commission in Docket No. ER14-1210-001. If any further revisions to the non-rate terms and conditions in the Edwards Year 2 SSR Agreement are subsequently accepted by the Commission, Illinois Power must also submit a filing to conform the non-rate terms and conditions in the Illinois Power Restated SSR Agreement to reflect the non-rate terms and conditions in the Edwards Year 2 SSR Agreement. Likewise, once the compliance filing in Docket No. ER14-1210-001 is addressed by the Commission, MISO must submit a compliance filing in that proceeding to conform the rates in the Edwards Year 2 SSR Agreement to reflect the rates in the Illinois Power Restated SSR Agreement for the period effective August 8, 2014 through the end of that agreement. If any further revisions to the rates in the Illinois Power Restated SSR Agreement are subsequently accepted by the Commission, MISO must also submit a filing to conform the rates in the Edwards Year 2 SSR Agreement to reflect those rates in the Illinois Power Restated SSR Agreement.

1. Illinois Power's Proposed Rate for Cost-of-Service Recovery

33. We find that the revised Monthly SSR Payment for 2014 SSR service from Edwards Unit 1 proposed under the Illinois Power Restated SSR Agreement raises issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. Our preliminary analysis indicates that the proposed cost-of-service rate has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept the Illinois Power Restated SSR Agreement for filing, suspend it for a nominal period, make it effective August 8, 2014, subject to refund, and set it for hearing and settlement judge procedures.

34. We note that the proposed Monthly SSR Payment set forth in Illinois Power's filing is already subject to the hearing and settlement procedures in the Edwards SSR Proceedings. Therefore, we grant Illinois Power's request to consolidate this proceeding with the Edwards SSR Proceedings for purposes of settlement, hearing and decision, as there are common issues of law and fact in these proceedings, and we find that consolidation will promote administrative efficiency.

35. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance. The settlement judge or presiding judge previously designated in the Edwards SSR Proceedings shall determine the procedures best suited to accommodate the consolidation ordered herein.⁴⁸

36. Regarding MISO's comments concerning the procedures by which compensation may be adjusted for filed SSR agreements, we find that this is beyond the scope of this proceeding. If MISO believes that Tariff revisions are necessary, it may make a filing pursuant to section 205.

37. Illinois Power asserts that the cost support data that it provided in its filing consists of "those items required to support the Monthly SSR Payment," but it then requests waiver of other, unspecified provisions of section 35.13 of the Commission's regulations "that are not necessary for a fixed monthly charge for SSR service for 2014."⁴⁹ Given that we are setting this proceeding for hearing, the judge and the parties will have

⁴⁸ 18 C.F.R. § 385.503 (2014).

⁴⁹ Illinois Power Transmittal Letter at 6-7.

sufficient opportunity in that context to identify and present (or challenge) the cost support data necessary to justify (or challenge) the proposed rate.

2. Effective Date

38. We deny Illinois Power's request for waiver of the prior notice requirement for the Illinois Power Restated SSR Agreement back to January 1, 2014.

39. The Ameren Complaint Order stated that the ability of a generator to recover full cost-of-service under an SSR agreement was effective as of the date of that order,⁵⁰ and further explained that the Commission can only make a rate increase under FPA section 206 effective prospectively from the date of the order fixing the new rate.⁵¹ Additionally, to permit cost-of-service rate recovery back to January 1, 2014 would violate the filed rate doctrine. As a general rule, the filed rate doctrine dictates that "once a rate is in place with ostensibly full legal effect and is not made provisional, it can then be changed only prospectively."⁵² Here, the Tariff on file as of January 1, 2014 only provided that SSR owners receive their "going-forward" costs under SSR agreements. The Tariff did not permit for cost-of-service cost recovery until July 22, 2014 when the Ameren Complaint Order was issued, and thus there was no rate on file that could have permitted for cost-of-service recovery as of January 1, 2014, as requested by Illinois Power.⁵³

⁵⁰ See Ameren Complaint Order, 148 FERC ¶ 61,057 at P 87 ("As a result of our findings, we direct MISO, in a compliance filing due within 60 days of the date of this order, to revise its Tariff to reflect that SSR compensation should not exceed a resource's full cost-of-service, including the fixed costs of existing plant (rather than providing that this compensation must not exceed a resource's going-forward costs), *effective as of the date of this order.*") (emphasis added).

⁵¹ Ameren Complaint Order, 148 FERC ¶ 61,057 at P 87 n.173 (citing *Elec. Dist. No. 1 v. FERC*, 774 F.2d 490, at 492-493 (D.C. Cir. 1985); *City of Anaheim v. FERC*, 558 F.3d 521, at 525-526 (D.C. Cir. 2009)).

⁵² *Columbia Gas*, 895 F.2d 791 at 797.

⁵³ The Commission's "good cause" waiver authority under section 205 of the FPA does not permit it to make a retroactive rate adjustment, and the courts have recognized only two circumstances in which a rate adjustment may take effect prior to a section 205 filing: when parties have notice that a rate is tentative and may be later adjusted with retroactive effect, or when they have agreed to make a rate effective retroactively. See *Consol. Edison Co. of NY, Inc. v. FERC*, 347 F.3d 964, 969 (D.C. Cir. 2003). See also *Mirant Ams. Energy Mktg., L.P., et al. v. ISO New England Inc.*, 112 FERC ¶ 61,056, at P 18 (2005) (finding that the Commission did not improperly use its prior notice waiver

(continued...)

Furthermore, we agree that the supplement filed by Illinois Power in Docket No. ER14-1210-000 to support its proposed rate fails to provide sufficient notice to parties so as to justify a retroactive rate increase. The mere inclusion of cost support for a proposed rate increase sought in a complaint or supplement thereto cannot circumvent the requirements of section 206 that the Commission can only fix a rate increase prospectively from the date of the order fixing the new rate.⁵⁴

40. Nonetheless, due to the unique circumstances of the present case, we waive the 60-day prior notice requirement to allow the Illinois Power Restated SSR Agreement to become effective August 8, 2014, which is one day after filing. We find that the circumstances of this case constitute good cause to waive the 60-day prior notice requirement to allow the Illinois Power Restated SSR Agreement to become effective one day after filing.⁵⁵ In the Ameren Complaint Order, generators were provided the opportunity under the Tariff to seek a full cost-of-service rate under an SSR agreement, as well as submit their own FPA section 205 filings for the rate associated with SSR agreements, as of the date of that order.⁵⁶ In these circumstances, we believe it is appropriate to waive the 60-day prior notice requirement and allow the Illinois Power Restated SSR Agreement to become effective on August 8, 2014, one day after filing.

41. Last, we note that issues regarding the proper effective date for cost-of-service cost recovery and retroactive ratemaking have been raised by parties in requests for rehearing of the Ameren Complaint Order.⁵⁷ These arguments will be addressed in a later Commission order.

authority to give a rate retroactive effect absent actual notice to affected parties, because the rates authorized under the agreements that were in effect were no higher than the rates actually charged); *Nat'l Grid Generation LLC*, 148 FERC ¶ 61,075, at P 14 (2014) (allowing a formula rate reset filing to go into effect May 28, 2013, two days prior to the date of filing, because the filing was made pursuant to the provisions of a power supply agreement that became effective on May 28, 2013).

⁵⁴ *Cf. Columbia Gas*, 895 F.2d 791 at 797.

⁵⁵ *Central Hudson*, 60 FERC ¶ 61,106 at 61,339.

⁵⁶ The Ameren Complaint Order made these Tariff revisions effective as of July 22, 2014. *See Ameren Complaint Order*, 148 FERC ¶ 61,057 at P 93.

⁵⁷ *See Illinois Power Request for Rehearing and Clarification*, Docket Nos. ER13-1962-001, *et al.*, at 22-25 (filed Aug. 21, 2014).

The Commission orders:

(A) The Illinois Power Restated SSR Agreement is hereby conditionally accepted for filing and suspended for a nominal period, to become effective August 8, 2014, subject to refund, and subject to a compliance filing, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the FPA and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of Illinois Power's proposed rate under the Illinois Power Restated 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 the body of this order.

(C) Docket No. ER14-2619-000 is hereby by consolidated with Docket No. ER13-1962-000, *et al.* for the purposes of settlement, hearing, and decision, as discussed in the body of this order.

(D) The settlement judge or presiding judge, as appropriate, designated in the Edwards SSR Proceedings shall determine the procedures best suited to accommodate the consolidation ordered herein.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.