

149 FERC ¶ 61,114
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent
System Operator, Inc.

Docket Nos. ER14-2860-000
ER14-2862-000

ORDER CONDITIONALLY ACCEPTING IN PART, TERMINATING IN PART,
AND ACCEPTING AND SUSPENDING FILINGS IN PART, ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES, AND CONSOLIDATING
PROCEEDINGS

(Issued November 10, 2014)

1. On September 12, 2014, 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. 6508 (Replacement SSR Agreement) under its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff).² MISO states that the Replacement SSR Agreement replaces an earlier SSR agreement that was submitted in Docket No. ER14-1242-000 (Original SSR Agreement) and requests that the Original SSR Agreement be terminated effective October 15, 2014. Also on September 12, 2014, pursuant to section 205 of the FPA, MISO submitted a proposed revision to Rate Schedule 43G (Revised Rate Schedule 43G) under its Tariff. In this order, we accept the Replacement SSR

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)” (32.0.0). Unless indicated otherwise, all capitalized terms shall have the same meaning given them in the Tariff.

Agreement, suspend it for a nominal period, to be effective October 15, 2014, as requested, subject to refund, set the cost-related issues for hearing and settlement judge proceedings, and consolidate these proceedings with the ongoing hearing and settlement judge procedures established in the July 29, 2014 Commission order issued in Docket Nos. ER14-1242, ER14-1243, and EL14-34 (Presque Isle SSR Proceedings).³ We accept the Revised Rate Schedule 43G, suspend it for a nominal period, to be effective October 15, 2014, as requested, subject to refund and further Commission order in the Presque Isle SSR Proceedings. We also terminate the Original SSR Agreement, effective on October 15, 2014.

I. Background

2. 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.⁴

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.⁵ 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.⁶ On July 22, 2014, the

³ *Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,071 (2014) (July 29 Order).

⁴ *See Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163, *order on reh'g*, 109 FERC ¶ 61,157 (2004).

⁵ *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,237 (2012) (2012 SSR Order), *order on compliance*, 148 FERC ¶ 61,056 (2014).

⁶ 2012 SSR Order, 140 FERC ¶ 61,237 at P 36.

Commission conditionally accepted MISO's compliance filing made in response to the 2012 SSR Order subject to further compliance.⁷

4. On January 31, 2014, in Docket No. ER14-1242-000, MISO submitted the Original SSR Agreement for purposes of providing compensation for the continued availability of Wisconsin Electric's Presque Isle Units 5-9 as SSRs.⁸ According to 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, 2015.⁹ Under this Attachment Y Notice, operation of Presque Isle Units 5-9 would have resumed before the Environmental Protection Agency's Mercury and Air Toxics Standards (MATS) would go into effect in April of 2016. 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 alternatives, would result in reliability violations.¹⁰ MISO stated 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 would be caused by the suspension of Presque Isle Units 5-9.¹¹ Consequently, MISO designated Presque Isle Units 5-9 as SSR Units until such time as appropriate alternatives can be implemented to mitigate reliability issues.

5. Also on January 31, 2014, in Docket No. ER14-1243-000, MISO submitted a proposed Rate Schedule 43G under its Tariff, which specified the allocation of the costs associated with the continued operation of Presque Isle Units 5-9 as SSR Units. As stated in the filing, section 38.2.7.k of MISO's Tariff required that the costs associated with the Original SSR Agreement be allocated to all load-serving entities (LSEs) within the ATC footprint on a *pro rata* basis.

⁷ *Midwest Indep. Transmission Sys. Operator, Inc.*, 148 FERC ¶ 61,056.

⁸ 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.

⁹ MISO Original SSR Agreement Filing, Transmittal Letter, Docket No. ER14-1242-000, at 2 (filed Jan. 31, 2014) (MISO Original SSR Agreement Filing).

¹⁰ 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* MISO Original SSR Agreement Filing, Ex. B (Original Attachment Y Study Report) at 2.

¹¹ MISO Original SSR Agreement Filing, Transmittal Letter at 7-8.

6. On April 1, 2014, the Commission issued an order accepting the Original 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.¹²

7. 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 FPA¹³ and Rule 206 of the Commission's Rules of Practice and Procedure¹⁴ (Complaint). The Complaint alleged 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 Original SSR Agreement between MISO and Wisconsin Electric, was unjust, unreasonable, and unduly discriminatory.

8. On July 29, 2014, as noted above, the Commission issued the July 29 Order, which addressed the Complaint, the Original SSR Agreement, and Rate Schedule 43G. The Commission established hearing and settlement judge procedures on the issue of SSR compensation under the Original SSR Agreement.¹⁵ The Commission also granted the Complaint and found that the Tariff was unjust, unreasonable, unduly discriminatory, or preferential because the *pro rata* ATC cost allocation method applied in Rate Schedule 43G did not follow cost causation principles.¹⁶ The Commission found that Commission policy requires SSR costs to be allocated to market participants based upon the reliability benefits received from the designation of the SSR Unit.¹⁷ The Commission directed MISO to remove the ATC *pro rata* SSR cost allocation provision from section 38.2.7.k of its Tariff, thereby extending to the ATC footprint the general SSR cost allocation Tariff language, which requires MISO to allocate SSR costs to "the LSE(s) which require(s) the operation of the SSR Unit for reliability purposes."¹⁸ The Commission also

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

¹³ 16 U.S.C. §§ 824e, 825e (2012).

¹⁴ 18 C.F.R. § 385.206 (2014).

¹⁵ July 29 Order, 148 FERC ¶ 61,071 at P 89.

¹⁶ *Id.* PP 59-61.

¹⁷ *Id.* P 65.

¹⁸ *Id.* P 66.

required MISO to submit a compliance filing to align cost allocation under Rate Schedule 43G with the Commission's determination on the Complaint.¹⁹

II. MISO's Filings

9. On September 12, 2014, in Docket No. ER14-2860-000, MISO submitted the Replacement SSR Agreement for purposes of providing compensation for the continued availability of Wisconsin Electric's Presque Isle Units 5-9 as SSR Units. According to MISO, on April 15, 2014, Wisconsin Electric notified MISO of its decision to retire Presque Isle Units 5-9 and submitted a second Attachment Y Notice to MISO for retirement of the units on October 15, 2014.²⁰ MISO states that it began working with Wisconsin Electric and the MISO Independent Market Monitor to negotiate and develop an appropriate agreement to replace the Original SSR Agreement for Presque Isle Units 5-9, which was made effective for a one year term beginning on February 1, 2014.²¹ MISO states that the resulting Replacement SSR Agreement is for a 14.5-month term between October 15, 2014 and December 31, 2015, a period that should encompass most of the time needed to complete the engineering work necessary for compliance with the Environmental Protection Agency's MATS. MISO states that Wisconsin Electric will undertake commercially reasonable efforts to make all five Presque Isle SSR Units compliant with MATS by spring of 2016.²²

10. MISO requests waiver of the prior notice requirement to allow the proposed Replacement SSR Agreement to go into effect on October 15, 2014. MISO states that a consent agreement to terminate the Original SSR Agreement effective October 15, 2014 was executed by MISO and Wisconsin Electric to ensure that no interruption in service or compensation will occur.²³

11. In Docket No. ER14-2862-000, MISO submitted Revised Rate Schedule 43G under its Tariff, which specifies the allocation of the costs associated with the continued

¹⁹ *Id.* P 118. An additional compliance requirement was levied regarding section 9.E of the Agreement pertaining to unanticipated repairs. *Id.* P 100.

²⁰ MISO Replacement SSR Agreement Filing, Transmittal Letter, Docket No. ER14-2860-000, at 2 (filed Sept. 12, 2014) (Replacement SSR Agreement Filing).

²¹ *Id.* at 3.

²² *Id.* at 10.

²³ *See id.*, Ex. B (Consent to Termination).

operation of Presque Isle Units 5-9 as SSR Units.²⁴ MISO explains that the cost allocation under Revised Rate Schedule 43G has been revised in accordance with the Commission's direction in the July 29 Order. Specifically, MISO states that costs associated with Presque Isle Units 5-9 are allocated first among the affected Local Balancing Areas (LBAs), and then to LSEs within those LBAs based upon peak usage of transmission facilities in each month.²⁵ MISO requests waiver of the prior notice requirement to allow Revised Rate Schedule 43G to go into effect on October 15, 2014 to correspond with the effective date of the Replacement SSR Agreement.²⁶

12. Finally, MISO states that parties have discussed Wisconsin Electric's announced split of the Wisconsin Electric LBA into two LBAs.²⁷ MISO states that it understands that the LBA split has been certified by NERC, effective December 1, 2014. That change, states MISO, will require adjustments in Schedule 43G during the term of the proposed Replacement SSR Agreement. MISO states that it will file the adjustments to Schedule 43G in a later filing, but well before the December 1, 2014 implementation date for the LBA split.²⁸

III. Notice and Responsive Pleadings

13. Notices of MISO's filings in Docket Nos. ER14-2860-000 and ER14-2862-000 were published in the *Federal Register*, 79 Fed. Reg. 56,353 (2014), with interventions and protests due on or before October 3, 2014.

14. Exelon Corporation filed a timely motion to intervene in Docket No. ER14-2860-000.

15. Timely motions to intervene in both Docket Nos. ER14-2860-000 and ER14-2862-000 were filed by: ATC; Consumers Energy; Wisconsin Power and Light Company; Wisconsin Industrial Energy Group; Michigan Public Power Agency; Upper Peninsula Power Company; and Earthjustice. Timely motions to intervene and comments

²⁴ MISO Revised Rate Schedule 43G Filing, Docket No. ER14-2862-000 (filed Sept. 12, 2014) (Revised Rate Schedule 43G Filing).

²⁵ *Id.* at 3.

²⁶ *Id.* at 4.

²⁷ *Id.* at 3.

²⁸ MISO made these adjustments to Rate Schedule 43G in a filing submitted in Docket No. ER14-2952-000 on September 26, 2014, which is currently pending before the Commission.

in both dockets were filed by: the Citizens Utility Board of Wisconsin and Wisconsin Customers Coalition; and the Wisconsin Public Service Corporation. Timely motions to intervene and protests in both dockets were filed by: Cloverland Electric Cooperative (Cloverland); Integrys Energy Services, Inc. (Integrys); Tilden Mining Company L.C. and Empire Iron Mining Partnership (the Mines); City of Mackinac Island; WPPI Energy (WPPI); and Wisconsin Electric. The Michigan Public Service Commission (Michigan Commission) filed a notice of intervention and protest in both dockets. The Wisconsin Commission filed a notice of intervention in Docket No. ER14-2860-000 and a notice of intervention and limited protest in Docket No. ER14-2862-000.

16. Verso Paper Corporation (Verso) filed a timely motion to intervene and protest in Docket No. ER14-2860-000 and an out-of-time motion to intervene in Docket No. ER14-2862-000. The City of Escanaba filed a timely motion to intervene in Docket No. ER14-2862-000 and an out-of-time motion to intervene in Docket No. ER14-2860-000. The Environmental Law and Policy Center filed an out-of-time motion to intervene in Docket Nos. ER14-2860-000 and ER14-2862-000.

17. The Bay Mills Indian Community of Michigan filed an out-of-time motion to intervene and a separate out-of-time protest in Docket Nos. ER14-2860-000 and ER14-2862-000, relying on the comments made in its motion to intervene and the comments made by the City of Mackinac Island and Cloverland. The Sault Ste. Marie Tribe of Chippewa Indians filed a timely motion to intervene and a separate out-of-time protest in Docket Nos. ER14-2860-000 and ER14-2862-000, relying on the comments made in its motion to intervene and the comments made by the City of Mackinac Island and Cloverland.

18. On October 7, 2014, WPPI filed an out-of-time supplement to its earlier protest in Docket Nos. ER14-2860-000 and ER14-2862-000.

19. Comments out of time were filed in Docket Nos. ER14-2860-000 and ER14-2862-000 by: Charles Perry; Tina M. Perry; U.S. Representative Dan Benishek; Gina M. Harman; Chris Harman; the City of Sault Ste. Marie; and Michael E. Moody, Assistant Attorney General, Environment, Natural Resources, and Agriculture Division, on behalf of Rick Snyder, Governor of Michigan, Bill Schuette, Attorney General of Michigan, Fred Upton, U.S. Representative, and Dan Benishek, U.S. Representative (Michigan Representatives).

20. On October 20, 2014, MISO filed an answer to the protests in both dockets. On October 20, 2014, in both dockets, the Michigan Commission filed an answer in response to the protests of the Wisconsin Commission and Wisconsin Electric. On October 22, 2014, Wisconsin Electric filed an answer to the protests in both dockets.

IV. Discussion

A. Procedural Matters

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

22. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), the Commission will grant the late-filed motions to intervene of Verso, The Environmental Law and Policy Center, City of Escanaba, and Bay Mills Indian Community of Michigan, given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

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

B. Substantive Matters

24. As discussed more fully below, we accept the proposed Replacement SSR Agreement, suspend it for a nominal period, to be effective October 15, 2014, as requested, for a term of 14.5 months, subject to refund, and set all cost-related issues for hearing and settlement judge procedures. We consolidate these proceedings with those already established by the July 29 Order in the Presque Isle SSR Proceedings. We also accept the proposed Revised Rate Schedule 43G, suspend it for a nominal period, to be effective October 15, 2014, as requested, subject to refund and the outcome of the Commission's action on the pending dockets in the Presque Isle SSR Proceedings.

1. Replacement SSR Agreement

a. Need for the Replacement SSR Agreement, Replacement Attachment Y Study, and Assessment of Alternatives

i. Filing

25. MISO states that it conducted the Replacement Attachment Y Study based on Wisconsin Electric's April 15, 2014 Attachment Y Notice for the retirement of Presque Isle Units 5-9 on October 15, 2014, in order to determine if designation of Presque Isle

Units 5-9 as SSR Units is necessary for transmission system reliability.²⁹ MISO explains that it conducted a reliability analysis for both summer peak and shoulder peak load conditions to determine: (1) whether system performance was within equipment design voltage and thermal limitations; and (2) whether the system remained stable for applicable contingencies within NERC Transmission Planning Standards. MISO asserts that the reliability analysis showed that several NERC Category B and Category C contingencies would result in voltage instability as well as thermal and voltage criteria violations for both summer peak and shoulder load conditions if Presque Isle Units 5-9 go offline.³⁰ 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.³¹ 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.³²

26. MISO states that it provided for an open stakeholder planning process to assess feasible alternatives to an SSR agreement. MISO states that the reliability assessment was reviewed and discussed with stakeholders at five Technical Studies Task Force meetings on November 20, 2013, December 19, 2013, January 17, 2013, July 9, 2014, and August 1, 2014.³³ MISO asserts that potential alternatives were discussed with stakeholders, including: (1) known new generation interconnection requests; (2) generation dispatch; (3) commitments for demand response; and (4) system operational steps, such as reconfigurations, special protection schemes, and transmission system additions.³⁴ MISO asserts that no LSE or end-use customer has proposed a demand side management program, but that any such program proposal will be reviewed during the

²⁹ Replacement SSR Agreement Filing, Ex. D (Replacement Attachment Y Study Report) at 2.

³⁰ *Id.* at 2, 12. NERC Category B is an emergency condition resulting from the loss of a single element. NERC Category C is an emergency condition resulting from the loss of two or more elements.

³¹ *Id.* at 13.

³² *Id.*

³³ *Id.*, Transmittal Letter at 9. Those meetings held prior to Wisconsin Electric's April 15, 2014 Attachment Y Notice relate to the reliability and alternatives analysis used to support the Original SSR Agreement and associated Rate Schedule 43G.

³⁴ *Id.*, Ex. D (Replacement Attachment Y Study Report) at 3, 15-20.

term of the Replacement SSR Agreement.³⁵ MISO states that no feasible alternatives were identified to alleviate the reliability issues that would result in substantial and sustained loss of load without the continued availability of Presque Isle Units 5-9. In particular, MISO notes that proposed generation was reviewed, but even an optimistic date for commercial operation of these generator proposals is beyond the scope of the review period. Consequently, MISO determined that an SSR agreement is necessary until sufficient mitigation measures are developed and implemented.³⁶ MISO states that it continues to work with stakeholders to evaluate alternatives to the SSR designation.³⁷

ii. Comments and Protests

27. Several parties argue that Wisconsin Electric has an obligation to serve its customers under Michigan law and has not received the necessary regulatory approvals from the Michigan Commission to retire Presque Isle Units 5-9.³⁸ The parties argue that as a public utility, Wisconsin Electric has an obligation to provide service to its customers independent of any SSR agreement. Parties argue that the Michigan Commission has plenary power to regulate public utility service in Michigan, and that Wisconsin Electric has neither sought, nor received, authorization from the Michigan Commission to discontinue reliable service to its customers; therefore, they conclude that Wisconsin Electric may not lawfully discontinue service.³⁹ The Mines further argue that Wisconsin Electric may not abandon service to its customers under Wisconsin law absent approval from the Wisconsin Commission and, with respect to its Commission-jurisdictional customers, absent approval from the Commission.⁴⁰ They argue that the Presque Isle generating plant is needed to provide reliable service to the affected customers and that Wisconsin Electric would be unable to fulfill its obligation to provide

³⁵ *Id.*, Transmittal Letter at 9.

³⁶ *Id.*, Ex. D (Replacement Attachment Y Study Report) at 20.

³⁷ *Id.* at 3.

³⁸ Protest of the City of Mackinac Island, Docket Nos. ER14-2860-000 and ER14-2862-000, at 1-2 (filed Oct. 3, 2014) (Protest of the City of Mackinac Island); Protest of Tilden Mining Company L.C. and Empire Iron Mining Partnership, Docket Nos. ER14-2860-000 and ER14-2862-000, at 15-16 (filed Oct. 3, 2014) (Protest of the Mines); Notice of Intervention and Protest of the Michigan Public Service Commission, Docket Nos. ER14-2860-000 and ER14-2862-000, at 5-8 (filed Oct. 3, 2014) (Protest of the Michigan Commission).

³⁹ Protest of the Mines at 16-20; Protest of the Michigan Commission at 6-7; Protest of the City of Mackinac Island at 1-2.

⁴⁰ Protest of the Mines at 21-22.

service without the plant's operations.⁴¹ The Mines argue that, because MISO has not shown that Wisconsin Electric can discontinue operating Presque Isle Units 5-9 without an SSR agreement, MISO has not shown that the Replacement SSR Agreement is needed as a last-resort measure for ensuring the continued operation of needed generation.⁴²

28. The Michigan Commission states that Wisconsin Electric was put on notice during Michigan Commission proceedings that Presque Isle Units 5-9 were essential to providing reliable service to Upper Peninsula customers absent alternative solutions.⁴³ The Michigan Commission claims that it would have rejected any retail-related efforts by Wisconsin Electric to retire the units in the absence of MISO's determination that the units qualify for SSR status. The Michigan Commission asks that the Replacement SSR Agreement be rejected.

29. The Mines argue that the Replacement SSR Agreement has not been justified because MISO failed to take into account the availability of MISO's wholesale power market as a viable market for Presque Isle power despite Wisconsin Electric's loss of retail load.⁴⁴ The Mines state that Wisconsin Electric's loss of retail load from the Mines and other customers created a corresponding wholesale demand for power from alternative electric suppliers. The Mines note that Wisconsin Electric's participation in MISO's forward capacity reserve market requires Wisconsin Electric to participate in the MISO wholesale Day Ahead and Real Time energy markets. The Mines state that Wisconsin Electric has an obligation to bid its marginal cost of operations for its capacity in those markets, and because there is demand for electric power at the wholesale level in the Upper Peninsula, Presque Isle's power will be dispatched at that marginal price bid by Wisconsin Electric.⁴⁵ Thus, the Mines argue, there is no justification for resorting to an SSR agreement.

30. The City of Mackinac Island states that MISO has not met its Tariff obligation to show that SSR Unit status is appropriate for Presque Isle Units 5-9 because Wisconsin Electric has not made a definitive decision to retire Presque Isle, and has not offered any explanation for the alleged decision to retire the units.⁴⁶ The City of Mackinac Island

⁴¹ *Id.* at 12-13; Protest of the City of Mackinac Island at 1-2; Protest of the Michigan Commission at 5-8.

⁴² Protest of the Mines at 24-25.

⁴³ Protest of the Michigan Commission at 7.

⁴⁴ Protest of the Mines at 26.

⁴⁵ *Id.* at 26-27.

⁴⁶ Protest of the City of Mackinac Island at 2.

states that the testimony submitted with the filing indicates that MATS costs will amount to \$7,521,000, and that it is not credible for MISO to claim that this amount forced Wisconsin Electric to seek retirement of Presque Isle Units 5-9. The City of Mackinac Island states that Wisconsin Electric has known about the MATS requirements long in advance of the compliance date, and thus MATS compliance should not force Wisconsin Electric to retire Presque Isle Units 5-9.⁴⁷ The Michigan Representatives suggest that there are other potential solutions, including generation solutions currently underway, that are less expensive and more effective than the provision of SSR service by Presque Isle Units 5-9 and that these solutions should be explored to resolve reliability needs.⁴⁸

31. Verso states that designating Presque Isle Units 5-9 as SSR Units for the next several years results from a market failure and that MISO has submitted no plan to the Commission that would eliminate Presque Isle Units 5-9 as SSR Units in the foreseeable future, even though MISO has known about the possible retirement of the plant and the subsequent reliability issues for several years.⁴⁹ Instead, Verso states that MISO proposes to establish unjust and unreasonable rates for the next several years as Presque Isle Units 5-9 continue as SSR Units.⁵⁰ Verso argues that the Commission must take steps to prevent further unjust and unreasonable rates. First, Verso asks the Commission to direct MISO to develop within 45 days a plan that includes the most cost effective infrastructure in order to (i) eliminate Presque Isle Units 5-9 as SSR Units no later than June 30, 2017 and (ii) expedite the implementation of this plan, including requesting any needed waivers of Commission rules or tariffs.⁵¹ Verso asks that the Commission act expeditiously to approve such a plan and require quarterly reporting to ensure that the approved plan stays on track.⁵²

⁴⁷ *Id.* at 3.

⁴⁸ Michigan Representatives Letter, Docket Nos. ER14-2860-000 *et al.*, (filed Oct. 28, 2014).

⁴⁹ Motion to Intervene, Protest, Motion for Consolidation, Suspension, Hearing, and Settlement Judge Procedures, and Request for Confidential Treatment of Verso Paper Corp., Docket Nos. ER14-2860-000 and ER14-2862-000, at 3-4 (filed Oct. 3, 2014) (Protest of Verso).

⁵⁰ *Id.* at 5.

⁵¹ *Id.* at 6-7.

⁵² *Id.* at 7.

32. Integrys asserts that MISO's load flow study indicated that no LSE had a Load Modifying Resource⁵³ registered, but that there is actually such a resource registered.⁵⁴ Because MISO performed the study as if there was no Load Modifying Resource, Integrys argues that it is possible that not all of the Presque Isle Units 5-9 should be considered for SSR treatment.

iii. Answers

33. MISO states that it has attempted to follow Commission orders and to properly exercise its authority to negotiate compensation for Presque Isle Units 5-9 based upon the letter from Wisconsin Electric notifying MISO that Wisconsin Electric decided to retire the Presque Isle units.⁵⁵ Regarding arguments that Presque Isle Units 5-9 do not have the ability to retire under Michigan Law, MISO states that it cannot comment on the merits of these arguments. MISO states that it did not consider the Michigan Commission's authority to maintain the operation of Presque Isle Units 5-9 when it designated them as SSR Units and states that, assuming the protests are correct about the Michigan Commission's authority, MISO would not be required under the Tariff to enter into an SSR agreement concerning Presque Isle Units 5-9 if the Michigan Commission exercised its authority to maintain the operation of the units.⁵⁶

34. In response to arguments claiming conflict with state law, Wisconsin Electric states that the determination regarding whether a facility is needed for reliability purposes is wholly subject to the Commission's wholesale jurisdiction under the FPA and not subject to retail jurisdiction.⁵⁷ Wisconsin Electric argues that SSR agreements may be needed to maintain the reliability of the bulk electric system, but that the Commission is unable to mandate the continued operation of facilities where there is no reliability

⁵³ A Load Modifying Resource is a resource that can reduce demand during emergencies or that has an obligation to be made available during emergencies. *See* MISO, FERC Electric Tariff, Module A, § 1.L "Load Modifying Resource" (32.0.0).

⁵⁴ Motion to Intervene and Protest of Integrys Energy Services, Inc., Docket Nos. ER14-2860-000 and ER14-2862-000, at 15 (filed Oct. 3, 2014) (Protest of Integrys).

⁵⁵ Motion for Leave to Answer and Answer of MISO, Docket Nos. ER14-2860-000 and ER14-2862-000, at 3 (filed Oct. 20, 2014) (MISO Answer).

⁵⁶ *Id.* at 10-11.

⁵⁷ Motion for Leave to Answer and Answer of Wisconsin Electric Power Company, Docket Nos. ER14-2860-000 and ER14-2862-000, at 6 (filed Oct. 22, 2014) (Wisconsin Electric Answer).

concern.⁵⁸ Thus, Wisconsin Electric states that the Commission would lack the authority to prevent Wisconsin Electric's retirement of units absent MISO's determination that the units are required for reliability purposes. Wisconsin Electric states that the jurisdictional and regulatory analysis ends there, but responds to several issues raised in the protests to eliminate ambiguity.⁵⁹ Wisconsin Electric contends that no provision of Michigan law specifically prohibits a utility from retiring a generation facility or requires Michigan Commission approval before retirement of a generation facility. Wisconsin Electric states that Michigan law obligates it to provide adequate distribution service to its retail customers in its Michigan service area, and because Wisconsin Electric claims it is able to meet the current needs of its current customers without Presque Isle Units 5-9, Wisconsin Electric states that it is not in violation of any Michigan statutes.⁶⁰

35. Wisconsin Electric states that Presque Isle Units 5-9 are not needed due to market failure as alleged by Verso, and even if they were, this would not be the proceeding to address market ills in MISO.⁶¹ Wisconsin Electric also refutes the Mines' assertion that the wholesale market remains a viable market for Presque Isle power, because it argues that the wholesale forward capacity reserve market and Day Ahead and Real Time energy markets do not provide sufficient revenue to cover the operating costs of Presque Isle Units 5-9.⁶² Even if the Presque Isle plant generated sufficient revenue from these markets, Wisconsin Electric states that the Mines' concerns would be moot because the revenue received from the market are used to directly offset the costs of operating Presque Isle Units 5-9 under the Replacement SSR Agreement. Wisconsin Electric also notes that absent the SSR designation, the Presque Isle plant would retire; therefore, the only reason Presque Isle would continue to participate in the wholesale markets would be due to the Replacement SSR Agreement.

iv. Commission Determination

36. 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 between November 20, 2013 and August 1, 2014, and no feasible alternatives that could resolve the identified reliability problems during the

⁵⁸ *Id.* at 7.

⁵⁹ *Id.* at 8.

⁶⁰ *Id.* at 6-10.

⁶¹ *Id.* at 10.

⁶² *Id.* at 11.

term of the Replacement SSR Agreement were identified. We find that MISO has justified the need for Presque Isle Units 5-9 as SSR Units, as it has provided sufficient evidence demonstrating that these units are necessary to mitigate NERC Category B and Category 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)),⁶³ respectively, and that the units will continue to be necessary until mitigation measures can be developed and implemented. 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.

37. We acknowledge the indication from the Michigan Representatives that Michigan decision-makers are working towards a longer-term generation solution in the Upper Peninsula, and we appreciate their efforts to proactively provide alternative solutions to the identified reliability concerns in the Upper Peninsula that would eliminate the need for the Presque Isle SSR arrangement. Although we find that MISO has met its Tariff requirements to consider alternative solutions for the proposed term of the Replacement SSR Agreement, we encourage MISO to work with various jurisdictions and stakeholders to identify all possible alternatives to SSR designation, and our acceptance of the Replacement SSR Agreement in this proceeding does not foreclose the development of non-transmission solutions to the identified reliability problems. Furthermore, we note that nothing precludes MISO from terminating the Replacement SSR Agreement with 90 days' advance written notice if an alternative solution is identified.

38. With regard to arguments that Wisconsin Electric has not received the necessary state regulatory approvals to retire Presque Isle Units 5-9, we find that if there are state laws that prevent the retirement, the enforcement of those laws is beyond the scope of this proceeding. The MISO Tariff allows generation owners to retire their generation units by submitting an Attachment Y Notice to MISO. The responsibility to ensure compliance with any state law requirements is on the electric utility that owns the generation asset. Section 38.2.7 of MISO's Tariff requires that the "Market Participant must submit all necessary information to enable the Transmission Provider to evaluate whether the SSR Unit status is appropriate for such Generation Resource," placing the burden on the Market Participant to show that its Generation Resource is eligible to retire. Section 38.2.7.d.iii(3) of the Tariff also provides procedures for a Market

⁶³ 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/RSEteSet.pdf>.

Participant to rescind the Attachment Y Notice if an SSR agreement is no longer appropriate.

39. With regard to the Mines' assertion that MISO's wholesale power market is a viable market for Presque Isle power, Wisconsin Electric has represented that, absent the SSR designation, the Presque Isle plant would retire; therefore, the Presque Isle plant would not participate in the wholesale markets. MISO's Tariff allows a generator to retire its generating units, and, failing an SSR designation, there is no mechanism in the MISO Tariff whereby a generator can be forced to continue to provide regular service if it wants to retire. With respect to Verso's request for MISO to develop a plan for infrastructure that would eliminate the need for Presque Isle Units 5-9, we note that MISO must evaluate alternatives to the Replacement SSR Agreement if it seeks to renew the agreement pursuant to the SSR Tariff provisions⁶⁴ and, as noted below, MISO states that it continues to meet with stakeholders on a regular basis to further develop and study a long-term mitigation plan. Furthermore, we note that MISO has a comprehensive regional transmission planning process already in place that provides for stakeholder involvement where infrastructure issues are evaluated.⁶⁵

b. SSR Cost Determination

i. Filing

40. MISO states that the Replacement SSR Agreement provides for recovery of both fixed and variable going-forward costs to maintain the availability of Presque Isle Units 5-9 for reliability. Under Exhibit 2 of the Replacement SSR Agreement, MISO will pay

⁶⁴ See MISO, FERC Electric Tariff, Module C, § 38.2.7 "System Support Resources" (31.0.0).

⁶⁵ The Commission approved Attachment FF of MISO's Tariff (Transmission Expansion Planning Protocol) in order to allocate the costs of regionally planned projects in MISO. See *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,106 (2006), *order on reh'g*, 117 FERC ¶ 61,241 (2006); *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,209, *order on reh'g*, 120 FERC ¶ 61,080 (2007). The Commission made further revisions to Attachment FF in several orders addressing MISO's compliance with Order No. 890 and Order No. 1000. See *Midwest Indep. Transmission Sys. Operator, Inc.*, 123 FERC ¶ 61,164 (2008), *order accepting compliance filing*, 127 FERC ¶ 61,169 (2009), *order accepting further compliance filing*, 130 FERC ¶ 61,232 (2010), *order on further compliance filing*, 148 FERC ¶ 61,211 (2014); *Midwest Indep. Transmission Sys. Operator, Inc., et al.*, 142 FERC ¶ 61,215 (2013), *order on reh'g and compliance*, 147 FERC ¶ 61,127 (2014). Attachment FF describes the process used by MISO in the consideration and development of the MISO Transmission Expansion Plan projects.

Wisconsin Electric a fixed monthly payment of \$8,084,500 to compensate Wisconsin Electric for maintaining the availability of the SSR Units.⁶⁶ MISO asserts that this rate is just and reasonable compensation for maintaining the availability of the SSR Units. MISO explains that this amount includes additional costs, such as depreciation, a return on rate base, and associated taxes, that were not included in the Original SSR Agreement. MISO states that the increased compensation accounts for the Commission's recent determination that compensation provided under an SSR agreement should not exceed a resource's full cost of service.⁶⁷ MISO also notes that, unlike the Original SSR Agreement, the Replacement SSR Agreement contains compensation for environmental upgrades associated with meeting MATS requirements.⁶⁸ MISO explains that at the time the Original SSR Agreement was negotiated, the Tariff provided SSR compensation for going-forward costs only, and the MATS-associated costs did not qualify as going-forward costs eligible for compensation. In addition, MISO states that the Replacement SSR Agreement goes beyond the Original SSR Agreement by clarifying that Wisconsin Electric will be compensated for unit testing, because testing is required to maintain the availability and reliability of the units.⁶⁹

41. MISO states that the fixed cost component of the SSR compensation under the Original SSR Agreement was based on historical actual costs for Presque Isle Units 5-9 for the three-year period from 2010-2012.⁷⁰ In contrast, MISO states that the Replacement SSR Agreement includes a "formula rate" that would include compensation for the projected costs of maintaining Presque Isle Units 5-9, plus a true-up adjustment, so that the parties' allocated costs will pay no more or less than the actual costs incurred to operate and maintain the SSR Units. MISO argues that, because it anticipates that Presque Isle Units 5-9 will be required for several years, a formula rate is a practical and equitable methodology.

42. According to MISO, after the 14.5-month term of the Replacement SSR Agreement ends, the reconciliation of the projected costs to the actual costs reported in FERC Form No. 1 will be the basis for the true-up compensation of the formula rate.⁷¹

⁶⁶ Replacement SSR Agreement Filing, Transmittal Letter at 13.

⁶⁷ *Id.* (citing *Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,057, at P 82 (2014) (*Ameren*)).

⁶⁸ MISO estimates that approximately \$7.5 million will be incurred to comply with MATS. *Id.*, Ex. G (Akkala Test.) at 10.

⁶⁹ *Id.* at 7.

⁷⁰ *Id.*, Ex. H (Wolter Test.) at 4.

⁷¹ *Id.*, Transmittal Letter at 14.

MISO explains that it will submit to the Commission an informational filing containing the true-up results from the “audit period” of April 15, 2016 through June 7, 2016, and host a meeting to review these results with interested parties on April 30, 2016. MISO states that it will accept documentation requests through May 15, 2016, and respond to those requests through May 31, 2016. According to MISO, interested parties would then have until June 7, 2016 to pursue issues through informal challenges, to which Wisconsin Electric will respond no later than June 14, 2016. MISO explains that this process will provide ample opportunity for interested parties to obtain the information needed to understand the costs incurred to operate and maintain Presque Isle Units 5-9 for reliability purposes. Once this process is complete, MISO explains that it will settle the outstanding true-up compensation within 14 days of June 30, 2016.⁷² MISO states that a true-up adjustment that exceeds three percent of the initial projected costs will require the settlement to take place in 12 equal monthly installments, and anything less will be settled in one payment. MISO further states that interest will accrue on outstanding amounts at Commission-approved interest rates.

43. MISO states that the SSR fixed compensation includes the following cost components: (1) non-fuel operations and maintenance (O&M) costs; (2) return of capital investment (depreciation expense); (3) return on capital investment; (4) carrying costs on inventories; (5) payroll taxes related to labor and property taxes;⁷³ (6) ongoing capital expenditures, including expenditures related to compliance with MATS standards, and (7) a true-up of projected costs to actual costs.⁷⁴ According to MISO, the non-fuel O&M cost component includes: (1) the labor O&M forecast, based on historical three-year average actual costs for operating Presque Isle Units 5-9 between 2010 and 2012, escalated three percent each year; (2) the non-labor O&M forecast derived from an estimate prepared by the Presque Isle asset manager for the 2015 calendar year; and (3) the forecast of direct costs incurred by Wisconsin Electric’s coal resource and environmental departments, derived using a combination of the non-labor O&M estimate and a three percent labor escalation.⁷⁵ MISO states that the non-fuel O&M projected

⁷² MISO states that an interested party may submit a complaint under section 206 of the FPA until June 20, 2016 if Wisconsin Electric has not addressed an issue to the party’s satisfaction. After this date, MISO asserts that the true-up settlement will be considered final. MISO further states that section 206 complaints, as well as informal challenges, are limited to the calculation of the true-up compensation itself and cannot be used to modify the formula rate. *Id.*, Ex. G (Akkala Test.) at 9.

⁷³ MISO states that this component was not included in the Original SSR Agreement due to oversight. *Id.*, Ex. H (Wolter Test.) at 11.

⁷⁴ *Id.* at 5.

⁷⁵ *Id.* at 6.

costs are \$14 million higher than the same component that was in the Original SSR Agreement, primarily because of the longer term and the recovery of labor costs for a skeleton crew that was excluded from the Original SSR Agreement.⁷⁶ MISO states that the depreciation expense component is based on actual 2013 depreciation expense and is comprised of (1) plant in service and (2) the Presque Isle plant's share of Wisconsin Electric's rail car fleet line. MISO asserts that there will be no true-up calculation for either depreciation expense or return on capital because Wisconsin Electric will be compensated for ongoing capital expenditures in the fixed SSR compensation amount; thus, neither depreciation expense nor return on capital will change during the term of the Replacement SSR Agreement.⁷⁷ MISO states that an ongoing capital expenditures recovery of \$12 million for the 14.5-month term of the Replacement SSR Agreement, based on the actual capital expenditures of \$10 million in 2013, plus the costs of compliance with MATS standards, is necessary to maintain the operation of the SSR Units during the term of the Replacement SSR Agreement.⁷⁸ MISO states that the formula rate also includes compensation for the carrying cost of materials and supplies (M&S) inventories and coal and oil fuel inventories.⁷⁹ MISO explains that the Original SSR Agreement excluded 90 percent of these costs because M&S inventories would remain on site during suspension of the SSR Units; however, those inventories would likely be eliminated if the units were retired, and MISO must compensate Wisconsin Electric to continue to carry those inventory balances.

44. MISO states that the fixed cost component does not compensate Wisconsin Electric for the marginal costs of generating, and so the Replacement SSR Agreement also provides for variable generation costs when MISO dispatches an SSR Unit to maintain system reliability.⁸⁰ 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 reimburse Wisconsin Electric for the costs of

⁷⁶ *Id.* at 7. MISO states that if Wisconsin Electric had suspended operation of Presque Isle Units 5-9, a skeleton crew would have been kept on site to maintain the units for operation post-suspension period; thus, the estimated costs of this skeleton crew were excluded from recovery under the Original SSR Agreement. However, MISO explains that under the Replacement SSR Agreement, these costs would not be incurred if the units were retired, and thus are properly included in non-fuel O&M projected costs. *Id.* at 7 n.1.

⁷⁷ *Id.* at 8, 9.

⁷⁸ *Id.* at 12.

⁷⁹ *Id.* at 10.

⁸⁰ *Id.* at 15.

its offer, which includes start-up costs, no-load, costs, incremental energy costs, and ancillary service product costs. Through the MISO settlement process, MISO states that it will make applicable make-whole payments in the hours where a unit's offer cost is greater than the net revenues, and it will debit the settlement statements for each hour in which the net revenues exceed the offer costs. 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.

ii. Protests

45. Parties state that the annual SSR costs Wisconsin Electric seeks to recover have nearly doubled from \$52 million (or \$4,352,832 monthly) in the Original SSR Agreement to \$97 million (or \$8,084,500 monthly) in the Replacement SSR Agreement.⁸¹ Several parties assert that MISO has not shown that these proposed costs are reasonable.⁸² As an example, some parties state that, given that an SSR agreement for Presque Isle Units 5-9 will remain necessary for several years, MISO has not demonstrated the reasonableness of immediately recovering the entire costs of all capital investments during the 14.5-month term.⁸³ They assert that the costs of these upgrades should instead be capitalized and included in Wisconsin Electric's plant investment as completed, and then depreciated over the expected remaining life of the units. Verso asserts that MISO has not demonstrated that the amount of forecasted capital expenditures for compliance with MATS is just and reasonable and that the Presque Isle plant net book value of over \$219 million appears to be overstated.⁸⁴ The City of Mackinac Island asserts that the legitimacy of the costs have not been properly vetted through cross-examination in a contested case proceeding and should not be accepted at face value.⁸⁵

46. Several parties also argue that the Replacement SSR Agreement allows MISO to double-recover SSR costs.⁸⁶ For instance, the Wisconsin Public Service Corporation

⁸¹ Comments of Wisconsin Public Service Corporation, Docket Nos. ER14-2860-000 and ER14-2862-000, at 3 (filed Oct. 3, 2014); Protest of the Michigan Commission at 9; Protest of Integrys at 13.

⁸² See Protest of the Mines at 33-37.

⁸³ *Id.* at 34; Protest of Cloverland Electric Cooperative, Docket No. ER14-2860-000, at 8-9 (filed Oct. 3, 2014) (Cloverland Protest of the Replacement SSR Agreement).

⁸⁴ Protest of Verso at 9-10.

⁸⁵ Protest of the City of Mackinac Island at 4.

⁸⁶ See Protest of the Mines at 35; Protest of Verso at 8; Protest of the Michigan Commission at 10.

states that the addition of fixed costs of existing plant to the SSR payments made under the Replacement SSR Agreement, such as depreciation expense, return on rate base, and associated taxes, may include costs that Wisconsin Electric is already recovering from its customers through its regulated rates.⁸⁷ The Wisconsin Public Service Corporation explains that this is because the fixed capital costs of Wisconsin Electric's regulated generation assets, including return on and of plant in service, are included in Wisconsin Electric's revenue requirements in the wholesale jurisdictions and the retail jurisdictions in Wisconsin and Michigan. The Wisconsin Public Service Corporation asserts that allowing these costs to be collected through SSR payments would allow for double-recovery, which would impermissibly incent the owners of rate based generation to prematurely retire aging assets that are needed for reliability, and to keep SSR Units in operation for as long as possible.⁸⁸ The Wisconsin Public Service Corporation requests that the Commission deny acceptance of the Replacement SSR Agreement to the extent that costs recovered under the agreement are already recovered in retail rates, and clarify that the Commission will explicitly condition acceptance of future SSR agreements on confirmation that the asset subject to the agreement is not included in rate base jurisdiction or subject to recovery through state regulated rates.⁸⁹

47. Several parties also take issue with the proposed formula rate. Cloverland argues that most of the data points into the proposed formula rate are vague or are not accompanied by supporting documentation.⁹⁰ Cloverland also argues that some formula rate components are overstated because they exceed Presque Isle's full cost of service. For instance, Cloverland states that the three percent yearly escalation of labor O&M costs is unjustified, because historical Presque Isle labor O&M costs declined an average of 5.7 percent between 2010-2013. Integrys states that while the O&M costs identified in the Original SSR Agreement were based on three year historical averages, the Replacement SSR Agreement seeks to impose a formula rate to collect estimated O&M projected costs of \$47 million a year – a 34 percent increase.⁹¹ Cloverland argues that the proposed economic cost of capital is based on a Wisconsin retail rate case, and the Commission is not bound by state commission determinations.⁹² Cloverland states that

⁸⁷ Comments of Wisconsin Public Service Corporation at 4.

⁸⁸ *Id.* at 4-5.

⁸⁹ *Id.* at 5-6.

⁹⁰ Cloverland Protest of the Replacement SSR Agreement at 2-4.

⁹¹ Protest of Integrys at 13-14.

⁹² Cloverland Protest of the Replacement SSR Agreement at 6-7.

customers should not have to repeatedly overpay and then receive a true-up.⁹³ WPPI asserts that, although it does not object to the use of the projected data with a true-up at the end of the Replacement SSR Agreement term, the proposed formula rate is flawed because it indicates that certain data in the formula is not subject to true-up.⁹⁴ WPPI argues that MISO did not provide sufficient supporting work papers to enable customers to verify the data used in the formula rate. WPPI additionally attests that the procedures that MISO and Wisconsin Electric have set forth to broaden the scope of participation, increase transparency, and provide challenge procedures under the formula rate protocols are insufficient.⁹⁵

48. Several parties support and rely on the comments made by Cloverland and the City of Mackinac Island.⁹⁶ Several comments were filed noting concern over the potential rate increases in the Upper Peninsula and the effect these increases will have on Michigan customers.⁹⁷ Several parties argue that the Replacement SSR Agreement raises numerous policy issues and disputed issues of material fact and request that the Commission suspend the filing for the maximum five months and set the application for settlement or hearing to allow an adequate investigation of the proposed SSR

⁹³ *Id.* at 5.

⁹⁴ Motion of WPPI Energy to Intervene, Protest, and Request for Suspension, Hearing and Settlement Procedures, Docket Nos. ER14-2860-000 and ER14-2862-000, at 4 (filed Oct. 3, 2014) (Protest of WPPI).

⁹⁵ *Id.* at 5-6. WPPI notes that in a 2013 order in Docket No. EL12-35, the Commission found the existing protocols for MISO's transmission formula rates to be insufficient, and that the procedures proposed by MISO in the Replacement SSR Agreement are similarly insufficient. *Id.* (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149, at PP 16-18 (2013)).

⁹⁶ Protest of the Bay Mills Indian Community, Docket Nos. ER14-2860-000 and ER14-2862-000, at 1 (filed Oct. 7, 2014); Protest of the Sault Ste. Marie Tribe of Chippewa Indians, Docket Nos. ER14-2860-000 and ER14-2862-000, at 2 (filed Oct. 3, 2014).

⁹⁷ Comments of the City of Sault Ste. Marie, Docket No. ER14-2860-000, *et al.* (filed Oct. 22, 2014); Comments of Tina Perry, Docket No. ER14-2860-000. *et al.* (filed Oct. 6, 2014); Comments of Charles Perry, Docket No. ER14-2860-000, *et al.* (filed Oct. 6, 2014); Comments of Chris Harman, Docket No. ER14-2860-000, *et al.* (filed Oct. 16, 2014); Comments of Gina Harman, Docket No. ER14-2860-000, *et al.* (filed Oct. 15, 2014); Comments of The Honorable Dan Benishek, Docket No. ER14-2860-000, *et al.* (filed Oct. 7, 2014).

compensation.⁹⁸ Verso makes a motion to consolidate the hearing in Docket No. ER14-2860-000 with the hearing and settlement procedures already ordered in Docket No. ER14-1242 in order to efficiently address common issues of law and fact.⁹⁹ Verso asserts that the issues in Docket ER14-1242 involving the fixed cost component of the SSR compensation for Presque Isle Units 5-9 are intertwined with the SSR compensation issues for Presque Isle in Docket ER14-2860-000.

iii. Answers

49. MISO contends that it followed the Commission's directives in the July 29 Order and its Tariff, and that protests challenging the results of MISO's compliance (such as claims that SSR compensation is unjust and unreasonable) should not be entertained by the Commission.¹⁰⁰ MISO argues that parties are entitled to challenge whether results from MISO complying with its Tariff are unjust and unreasonable in a complaint submitted under section 206 of the FPA. MISO argues that protests challenging the substantive aspects of the Tariff should be considered improper collateral attacks on approved Tariff language. MISO asserts that these types of claims would be proper through a timely request for rehearing of the 2012 SSR Order.¹⁰¹

50. Wisconsin Electric contends that claims of double recovery are unfounded, and that this claim misconstrues the purpose for compensation under an SSR agreement.¹⁰² Wisconsin Electric states that MISO is not engaged in traditional, cost-of-service compensation when compensating SSR costs. Instead, Wisconsin Electric argues, SSR Units are fully compensated for any costs incurred because of the extended service provided. Wisconsin Electric also states that retail jurisdiction proceedings will ensure against double recovery due to deferral of recovery of SSR costs programs in Michigan and Wisconsin.

51. Wisconsin Electric addresses the concerns with the proposed level of SSR cost recovery proposed in the Replacement SSR Agreement, including the components of the

⁹⁸ See Cloverland Protest of the Replacement SSR Agreement at 4; Protest of the Mines at 36; Protest of the Michigan Commission at 9-10; Protest of WPPI at 5; Protest of Integrys at 13; Protest of Verso at 11-12 (requesting a two-and-a-half month suspension).

⁹⁹ Protest of Verso at 12-13.

¹⁰⁰ MISO Answer at 5.

¹⁰¹ *Id.* at 7-8.

¹⁰² Wisconsin Electric Answer at 12-17.

true-up mechanism.¹⁰³ Wisconsin Electric argues that its data inputs into the formula are sufficiently supported, the cost components are reasonable and fully supported, and the formula review process is appropriate to the duration of the agreement. For example, Wisconsin Electric states that the \$219 million net book value of the Presque Isle plant has been subject to annual audit by external auditors and has been subject to review in numerous rate cases in both Wisconsin and Michigan.¹⁰⁴ Wisconsin Electric states that the proposed formula protects customers by ensuring that actual costs are paid, and this protection is furthered by the fact that any differences between annual actual and the forecasted costs will accrue interest.¹⁰⁵ Wisconsin Electric clarifies that the cost components in the formula that are not subject to true-up are those items that are not expected to change.¹⁰⁶ Wisconsin Electric takes issue with Cloverland's comments related to O&M expenses, noting that it provided a detailed monthly forecast of non-labor O&M expenses based upon an informed forecast of the costs of operating and maintaining the specific Presque Isle facilities.¹⁰⁷ Wisconsin Electric also notes that labor O&M costs are more likely to increase year-to-year than decrease, as Cloverland asserts.

52. Wisconsin Electric also disagrees with the assertion that contemporaneous recovery of capital expenditures is unreasonable.¹⁰⁸ Wisconsin Electric asserts that, but for the continuing need for Presque Isle Units 5-9 for reliability purposes, there would be no additional capital investment at Presque Isle; therefore, it would be unreasonable to apply traditional utility rate principles to the recovery of costs associated with continued operation of the facilities.¹⁰⁹ Wisconsin Electric states that utility rate payers, not MISO or its members, will bear the burden of the higher underappreciated book value of the Presque Isle plant when it is retired, and the only way to recover the additional capital expenditures from MISO members is through the SSR compensation process.¹¹⁰

¹⁰³ *Id.* at 17-26.

¹⁰⁴ *Id.* at 19.

¹⁰⁵ *Id.* at 19-20.

¹⁰⁶ *Id.* at 20.

¹⁰⁷ *Id.* at 21-22.

¹⁰⁸ *Id.* at 23.

¹⁰⁹ *Id.* at 23-24.

¹¹⁰ *Id.* at 24.

iv. **Commission Determination**

53. Based upon a review of the filing and the comments, our preliminary analysis indicates that the SSR compensation under the Replacement SSR Agreement has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, we accept the Replacement SSR Agreement for filing, suspend it for a nominal period to become effective October 15, 2014,¹¹¹ subject to refund, and set all SSR compensation issues, including the cost-of-service, formula rate, and true-up procedures, for hearing and settlement judge procedures. We note that the fixed cost component of SSR compensation for Presque Isle Units 5-9 is already subject to the hearing and settlement procedures established in the Presque Isle SSR Proceedings. Therefore, we grant the request of Verso to consolidate this proceeding with the Presque Isle SSR Proceedings for the 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.

54. While we are setting these matters for a trial-type evidentiary hearing, we 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. The settlement judge or presiding judge previously designated in the Presque Isle SSR Proceedings shall determine the procedures best suited to accommodate the consolidation ordered herein.¹¹²

c. **Modifications to the Attachment Y-1 Form Agreement Filing**

i. **Filing**

55. 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.¹¹³ 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

¹¹¹ We deny the requests to suspend the Replacement SSR Agreement for the full five-month period, so as to allow implementation of the MATS upgrades as soon as possible and in order not to delay the new terms of service reflecting full service retirement.

¹¹² 18 C.F.R. § 385.503 (2014).

¹¹³ Replacement SSR Agreement Filing, Transmittal Letter at 3.

procurement and shipping process;¹¹⁴ (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;¹¹⁵ (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);¹¹⁶ 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.¹¹⁷

56. 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.¹¹⁸ 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 Replacement SSR Agreement.¹¹⁹ 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.

¹¹⁴ *Id.* at 4.

¹¹⁵ 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-r14 §§ 1.2, 5 (effective Sept. 1, 2014).

¹¹⁶ Replacement SSR Agreement Filing, Transmittal Letter at 4.

¹¹⁷ *Id.* at 7. 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 states that unanticipated repairs do not include the costs of complying with MATS standards.

¹¹⁸ *Id.* at 5-6.

¹¹⁹ *Id.* at 5.

ii. Protest

57. Verso states that section 9.E requires clarification so that Wisconsin Electric does not double-recover unanticipated repairs, which are defined as repairs “for which compensation is not provided in the Annual SSR Amount contained in Exhibit 2 to this Agreement.”¹²⁰ Specifically, Verso states that the filing is not clear what repairs are already provided for in the Annual SSR Amount, which is necessary for Wisconsin Electric to determine which repairs have already been compensated and would thus not be recoverable under section 9.E.

iii. Commission Determination

58. 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 Replacement 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 Replacement SSR Agreement, and we find this provision consistent with a similar provision accepted by the Commission.¹²¹ We further find that MISO has properly included the language in section 9.E and Exhibit 2 that was required by the Commission in the July 29 Order.¹²²

d. Effective Date and Duration of the Replacement SSR Agreement**i. Filing**

59. MISO proposes a 14.5-month term for the Replacement SSR Agreement from October 15, 2014 until December 31, 2015.¹²³ Although MISO notes that this term is slightly longer than the one year term stated in the *pro forma* SSR agreement under its Tariff, MISO asserts that it is well within the expected period of need for Presque Isle Units 5-9 and encompasses the period over which most of the MATS compliance expenditures will take place. MISO states that Wisconsin Electric will make commercially reasonable efforts to make all five Presque Isle units MATS-compliant by

¹²⁰ Protest of Verso at 9.

¹²¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 144 FERC ¶ 61,151, at P 25 (2013).

¹²² July 29 Order, 148 FERC ¶ 61,071 at PP 90, 100.

¹²³ Replacement SSR Agreement Filing, Transmittal Letter at 10.

spring of 2016, and that such compliance will be assessed near the end of the 14.5-month term.

60. MISO states that the in-service dates for transmission enhancements which would relieve the need for the Replacement SSR Agreement are likely five to six years away, and that the Replacement SSR Agreement appears to be required for a period that exceeds the proposed 14.5-month term.¹²⁴ MISO states that it continues to meet with stakeholders on a regular basis to further develop and study a long-term mitigation plan. MISO contemplates that the term for any renewed SSR agreement would be for no more than one year. MISO also states that, pursuant to section 38.2.7.1 of its Tariff, MISO will annually review the SSR Units and grid characteristics to determine whether Presque Isle Units 5-9 are qualified to remain SSR Units, and that in fact, this review is taking place more frequently than annually.

61. MISO requests that the Commission waive the prior notice requirement and grant an effective date of October 15, 2014 for the Replacement SSR Agreement.¹²⁵ MISO argues that the Replacement 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 states that the Replacement SSR Agreement could not be negotiated before the proposed effective date in order to satisfy the prior notice rule. According to MISO, good cause exists to grant the waiver because, if the October 15, 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. Alternatively, MISO requests an effective date of October 15, 2014 consistent with the Commission's rule that service agreements must be filed within 30 days of commencing service.¹²⁶ MISO states that the Replacement SSR Agreement is a *pro forma* agreement included in the Tariff, the executed version of which is therefore a service agreement.¹²⁷

¹²⁴ *Id.*

¹²⁵ *Id.* at 11.

¹²⁶ *Id.* at 11-12.

¹²⁷ *Id.* at 12. MISO notes that 18 C.F.R. § 35.10(a) (2014) allows public utilities to adopt standard form of service agreements as part of the utility's tariff on file with the Commission. MISO further states that under 18 C.F.R. § 35.3(a)(2) (2014), service agreements (defined at 18 C.F.R. § 35.2 (2014) 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.

ii. Protests

62. The Mines state that MISO has not justified the need for the premature replacement of the currently effective Original SSR Agreement, effective as of February 1, 2014.¹²⁸ Integrys states that a new SSR agreement is not required by the notice of termination for Presque Isle Units 5-9, because Wisconsin Electric is receiving equitable compensation currently for the units under the Original SSR Agreement.¹²⁹ Integrys argues that parties have relied upon the term of the Original SSR Agreement for planning purposes, and that permitting early termination would cause significant harm to those LSEs and their customers located in the Upper Peninsula who have relied upon the costs for the term; specifically, Integrys argues that early termination and acceptance of the Replacement SSR Agreement would cost customers about \$13 million.¹³⁰ Integrys argues that Wisconsin Electric is anxious to receive the additional full cost-of-service revenues recently allowed by the Commission, but that the Commission did not encourage parties to terminate existing agreements in order to take advantage of such rate recovery.¹³¹ However, should the Commission permit the termination of the Original SSR Agreement, Integrys asks the Commission to deny waiver of the 60-day prior notice requirement, because parties had no warning that the Original SSR Agreement would be terminated early.¹³² Verso also asks the Commission to deny waiver of the prior notice requirement and make the Replacement SSR Agreement effective February 1, 2015, because there is no need to make the Replacement SSR Agreement effective when the Original SSR Agreement is still in effect, and but for MISO's voluntary action to terminate the Original SSR Agreement, that agreement would stay in effect.¹³³ Verso further argues that parties should not be deprived of their due process right to advance notice of rates merely because, as MISO describes, negotiation of the Replacement SSR Agreement could not be completed to satisfy the rule.

63. Parties argue that MISO has not explained why the proposed 14.5-month term proposed in the Replacement SSR Agreement is a just and reasonable term.¹³⁴ Integrys

¹²⁸ Protest of the Mines at 31.

¹²⁹ Protest of Integrys at 10.

¹³⁰ *Id.* at 11-12.

¹³¹ *Id.* at 8- 9 (citing *Ameren*, 148 FERC ¶ 61,057).

¹³² *Id.* at 10-11, 13; *see also* Protest of Verso at 10.

¹³³ Protest of Verso at 10.

¹³⁴ *See* Protest of the Mines at 32-33.

argues that there are no exigent circumstances which would justify a term greater than one year, especially when the additional time comes from terminating the Original SSR Agreement early.¹³⁵ Integrys argues that the collection of MATS costs is not an exigent circumstance because there are no immediate transmission reliability enhancements that will relieve the problem in the Upper Peninsula, and Wisconsin Electric will recover its MATS costs in its rates, whether recovery is in one or multiple SSR agreements.¹³⁶

iii. Answers

64. MISO contends that the Replacement SSR Agreement was a product of MISO's attempt to follow Commission orders and to properly exercise its authority to negotiate compensation for Presque Isle Units 5-9.¹³⁷ MISO states that the Replacement SSR Agreement for the 14.5-month period, a period that should encompass the time needed to comply with MATS, is the outcome of those negotiations. In response to arguments that the termination of the Original SSR Agreement and submission of a Replacement SSR Agreement is unsupported, MISO contends that it acted according to its Tariff. MISO argues that the Tariff allows for the rescission of the Original SSR Agreement, and that MISO responded properly to Wisconsin Electric's notice of retirement according to the Tariff by requiring Presque Isle Units 5-9 to remain in service pursuant to a new SSR agreement.¹³⁸

65. Wisconsin Electric states that the requested 14.5-month term is reasonable and should be accepted by the Commission.¹³⁹ Wisconsin Electric states that, at the time of the negotiation of the Original SSR Agreement, it expected to be able to reduce costs or dispose of the Presque Isle facilities; however, by the time it was forced to make MATS compliance decisions in April 2014, it was clear Presque Isle Units 5-9 would be needed for reliability over a longer period of time. Wisconsin Electric contends that the early termination of the Original SSR Agreement and the 14.5-month duration of the Replacement SSR Agreement work together to ensure continued reliability and a defined cost recovery mechanism consistent with Commission directives that units required to remain in service for reliability purposes must be compensated. Moreover, Wisconsin Electric argues that the 14.5-month term permits the term of any future SSR agreements to coincide with Wisconsin Electric's Form No. 1 for purposes of implementing the

¹³⁵ Protest of Integrys at 8.

¹³⁶ *Id.* at 9.

¹³⁷ MISO Answer at 3.

¹³⁸ *Id.* at 6-7.

¹³⁹ Wisconsin Electric Answer at 27.

formula compensation. Wisconsin Electric states that it commits to limiting future SSR agreements to 12-month terms.

66. Wisconsin Electric argues that the unique components of this Replacement SSR Agreement warranted some extra time to negotiate an agreement, and that waiver of the 60-day prior notice requirement is appropriate.¹⁴⁰ Wisconsin Electric states that this is particularly true where the parties have known about the need for Presque Isle Units 5-9 for quite some time.

iv. Commission Determination

67. We find it reasonable that the Replacement SSR Agreement be made effective prior to the date the Original SSR Agreement would have terminated by its terms on February 1, 2015. We also find it reasonable that the Original SSR Agreement be terminated on the effective date of the Replacement SSR Agreement. The Replacement SSR Agreement was negotiated with Wisconsin Electric upon submission of a new Attachment Y Notice to MISO indicating that Wisconsin Electric intended to retire Presque Isle Units 5-9, while the Original SSR Agreement was negotiated assuming a suspension of those units. Accordingly, the new Attachment Y Notice and subsequent Replacement Attachment Y Study present a new set of circumstances that warrant a new SSR agreement.¹⁴¹ We also grant waiver of the prior notice requirement and allow the Replacement SSR Agreement to be effective October 15, 2014, as requested.¹⁴² As the Commission has stated, “all SSR units should be fully compensated for any costs incurred because of their extended service.”¹⁴³ Here, the record indicates that Presque Isle Units 5-9 have been providing reliability service since February 1, 2014.

68. Moreover, we find that the particular circumstances in this case are exigent and warrant the proposed 14.5-month term for the Replacement SSR Agreement. We

¹⁴⁰ *Id.* at 27-28.

¹⁴¹ See *Ameren*, 148 FERC ¶ 61,057 at P 158 (requiring MISO to revise its Tariff to require that a market participant provide MISO with an amended Attachment Y Notice at least 26 weeks prior to retiring or suspending operations if, in the amended Attachment Y Notice, the market participant states that it intends to retire rather than suspend operations, or vice versa).

¹⁴² See *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,170, at PP 84-86 (*Escanaba*) (waiver of prior notice rule granted in order accepting an SSR agreement and associated rate schedule), *order granting reh'g*, 144 FERC ¶ 61,128 (2013).

¹⁴³ *Escanaba*, 142 FERC ¶ 61,170 at P 84.

understand from MISO that this term appropriately reflects the period over which most of the MATS compliance expenditures will take place, and that the additional time will allow Wisconsin Electric commercially reasonable time to finish these compliance efforts. Importantly, we note that Wisconsin Electric commits to limiting future SSR agreements to 12-month terms.

2. Revised Rate Schedule 43G

a. Filing

69. MISO submitted Revised Rate Schedule 43G in Docket No. ER14-2862-000 that would authorize MISO to allocate SSR costs that are associated with Presque Isle Units 5-9. MISO explains that the cost allocation proposed in the Revised Rate Schedule 43G is consistent with section 38.2.7.k of its Tariff, as that section was revised in compliance with the Commission's July 29 Order.¹⁴⁴ Specifically, MISO states that the Tariff requires that the costs pursuant to the Replacement SSR Agreement shall be allocated to the LSEs that require the operation of the SSR Units for reliability purposes. MISO explains that in order to implement this Tariff requirement, it first allocates costs to LBAs utilizing a load-shed methodology to determine the reliability benefits of Presque Isle Units 5-9 to each MISO LBA.¹⁴⁵ MISO states that it determines the load shed amount needed to resolve the reliability issues identified due to the change in status of the SSR Units, as a proxy for the reliability benefit of SSR Unit operation. These load shed values for each NERC contingency are then organized by LBA and accumulated to determine the total load shed for each LBA along with the corresponding cost share ratio. The load-shed ratios proposed by MISO for the Revised Rate Schedule 43G are: 5.66 percent to the Upper Peninsula Power Company LBA, 93.79 percent to the Wisconsin Electric Company LBA (Wisconsin Electric LBA), and 0.55 percent to the Wisconsin Public Service LBA.¹⁴⁶ MISO states that the costs are then allocated to LSEs within each LBA 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.¹⁴⁷ MISO requests waiver of the prior notice requirement to allow Revised Rate Schedule 43G to go into effect in October 15, 2014, to correspond with the effective date of the Replacement SSR Agreement.

¹⁴⁴ Revised Rate Schedule 43G Filing, Transmittal Letter at 2 (citing July 29 Order, 148 FERC ¶ 61,071 at P 59).

¹⁴⁵ *Id.*, Ex. C (Replacement Attachment Y Study Report) at 14.

¹⁴⁶ See MISO, FERC Electric Tariff, Schedule 43G (Allocation of Costs Associated with the Presque Isle SSR Units) (34.0.0).

¹⁴⁷ Revised Rate Schedule 43G Filing, Transmittal Letter at 3.

b. Protests

70. The Wisconsin Commission notes that its Complaint in Docket No. EL14-34-000 included calculations that presumed that Wisconsin Electric's LBA would be split, for operational reliability reasons, into two LBAs – a new Wisconsin Electric LBA and a new Michigan Upper Peninsula LBA.¹⁴⁸ The Wisconsin Commission notes that the split of the Wisconsin Electric LBA has been approved and certified by NERC, effective December 1, 2014.¹⁴⁹ However, the Wisconsin Commission notes that MISO has submitted two revised Rate Schedule 43G filings, one to comply with the July 29 Order in Docket No. ER14-1243-004 and one to reflect the proposed retirement of Presque Isle Units 5-9 in this Docket No. ER14-2862-000, both of which allocate the Presque Isle SSR costs to the un-split Wisconsin Electric LBA.¹⁵⁰ The Wisconsin Commission states that even more recently, on September 26, 2014, MISO filed in Docket No. ER14-2952-000 new rate schedules to allocate the costs of SSR agreements governing several generating units in the Upper Peninsula of Michigan, including Presque Isle Units 5-9, according to the forthcoming LBA split.¹⁵¹ The Wisconsin Commission argues that the treatment proposed under Docket No. ER14-2952-000 would correctly assign the dominant share of Presque Isle SSR costs to Michigan where the benefits are received.¹⁵²

71. The Wisconsin Commission states that, in continuing to treat the Wisconsin Electric LBA as un-split for purposes of this filing, MISO fails to achieve a just and reasonable allocation of SSR costs to Michigan where the electrically-benefitting LSE operations are located.¹⁵³ The Wisconsin Commission requests that the Commission require the cost allocation in Rate Schedule 43G to be revised as if there already exists a split of the Wisconsin Electric LBA into two LBAs, one for Wisconsin Electric's Wisconsin operations, and one for its Michigan operations.¹⁵⁴ The Wisconsin Commission asks that the revised cost allocation should be applied as of April 3, 2014,

¹⁴⁸ Notion of Intervention and Limited Protest of the Public Service Commission of Wisconsin, Docket No. ER14-2862-000, at 4 (filed Oct. 3, 2014).

¹⁴⁹ *Id.* at 3.

¹⁵⁰ *Id.* at 5.

¹⁵¹ *Id.* at 3.

¹⁵² *Id.* at 7.

¹⁵³ *Id.* at 6-7.

¹⁵⁴ *Id.* at 3.

the refund date established by the July 29 Order in Docket No. EL14-34-000.¹⁵⁵ WPPI also asks that the LBA split be considered at this time and claims that it is unjust and unreasonable to delay implementation of a just and reasonable cost allocation merely because of a lag in paperwork.¹⁵⁶

72. The Mines challenge the underlying purpose of splitting the Wisconsin Electric LBA into two LBAs.¹⁵⁷ They allege that Wisconsin Electric pursued the LBA split in order to shift SSR costs from Wisconsin ratepayers to ratepayers in the Upper Peninsula, and not for reliability improvements. The City of Mackinac Island contends that the record is devoid of all evidence regarding the need to split the Wisconsin Electric LBA into a new Wisconsin Electric LBA and a Michigan Upper Peninsula LBA and argues that, because the Wisconsin Commission failed to ask for SSR costs to be allocated according to the upcoming LBA split in its Complaint to the Commission, it should be foreclosed from changing its requested relief.¹⁵⁸ The City of Mackinac Island argues that MISO should continue to allocate costs pursuant to its existing Tariff, allocating costs *pro rata* across the ATC pricing zone.¹⁵⁹ Verso observes that the current situation is a market failure and that no one market area should pay for that market failure, but that these costs should be shared across the market.¹⁶⁰ Verso argues that the Commission should grant rehearing of the July 29 Order and return to the *pro rata* allocation consistent with ATC's forming principles, or in the alternative, set this filing for hearing and direct parties to develop a reasonable allocation of SSR costs.

73. Several parties argue that the MISO cost allocation methodology contradicts the July 29 Order and violates the MISO Tariff.¹⁶¹ They argue that allocating cost responsibilities to LBAs which receive system reliability benefits from Presque Isle Units 5-9 gives no consideration to whether an individual LSE actually receives any reliability

¹⁵⁵ *Id.* at 9.

¹⁵⁶ Protest of WPPI at 9.

¹⁵⁷ Protest of the Mines at 30.

¹⁵⁸ Protest of the City of Mackinac Island at 4.

¹⁵⁹ *Id.* at 5.

¹⁶⁰ Protest of Verso at 7.

¹⁶¹ Protest of Cloverland Electric Cooperative, Docket No. ER14-2862-000, at 3-6 (filed Oct. 3, 2014) (Cloverland Protest of Revised Rate Schedule 43G); Limited Protest of Wisconsin Electric Power Company, Docket Nos. ER14-2860-000 and ER14-2862-000, at 5-8 (filed Oct. 3, 2014) (Protest of Wisconsin Electric); Protest of WPPI at 8-11.

benefit from the plant and, therefore, Revised Rate Schedule 43G fails to comply with the Commission's directive in the July 29 Order. Further, they contend that there is conflict between the language of the Tariff, which requires MISO to allocate SSR costs to those LSEs that require the operation of the SSR Unit for reliability purposes, and the provisions of MISO's Transmission Planning Business Practice Manual, which directs MISO to assign costs to the LBA where benefitting load resides and then to LSEs within that LBA on a *pro rata* basis.¹⁶² Wisconsin Electric states that this methodology goes against the Tariff requirement because it allocates SSR costs to the non-beneficiaries within the boundaries of an LBA in which the identified beneficiaries reside.¹⁶³ In order to avoid this outcome, Wisconsin Electric asks the Commission to direct MISO to allocate SSR costs based on the actual energy withdrawals at the commercial pricing nodes associated with the identified beneficiaries from the optimal load shed analysis.¹⁶⁴

74. WPPI states that allocation of load across LSEs should track the extent to which each identifiable subset of load necessitates and benefits from SSR operation, which should be developed through a technical study of load-shed avoidance and be as fine-grained as practicable.¹⁶⁵ WPPI also argues that load that is pseudo-tied into the Wisconsin Electric LBA, but not physically present in that LBA, should not be included as Wisconsin Electric load for purposes of SSR cost allocation. WPPI contends that SSR costs should be instead allocated based on load that is physically present in the Wisconsin Electric LBA. WPPI states that physical topography, not metering, is what drives load-shedding, and therefore, pseudo-tied load should not be treated in the same way as physical load. WPPI argues that MISO's methodology, with its focus on reported loads in an LBA irrespective of physical location of that load, would allow loads to game the system by pseudo-tying physically present load in an LBA out of that LBA, thereby avoiding costs.

c. Answers

75. In response to arguments that MISO should have made the cost allocation determination according to the new LBA split instead of the values determined in the final load-shed study, MISO contends that the Tariff requires MISO to allocate costs consistent with the configuration of entities that would exist on October 15, 2014, the

¹⁶² Cloverland Protest of Revised Rate Schedule 43G at 6; Protest of Wisconsin Electric at 6-7.

¹⁶³ Protest of Wisconsin Electric at 7.

¹⁶⁴ *Id.* at 8.

¹⁶⁵ Protest of WPPI at 11-13; Supplement to Protest of WPPI Energy, Docket Nos. ER14-2860-000 and ER14-2862-000, at 2-4 (filed Oct. 7, 2014).

proposed effective date of Revised Rate Schedule 43G.¹⁶⁶ MISO describes the LBA split as hypothetical and presumed at that date. MISO believes that WPPI's protest challenging MISO's treatment of pseudo-ties is an improper collateral attack on approved Tariff language because the Tariff does not address the applicability of SSR costs to pseudo-ties load and it does not treat pseudo-tied loads differently than other loads registered in the MISO market model.¹⁶⁷

76. The Michigan Commission argues that the Wisconsin Commission's request to use the boundaries of the newly created Michigan Upper Peninsula LBA in place of the existing Wisconsin Electric LBA boundaries is contrary to MISO's existing Tariff and, therefore, not compliant with the July 29 Order, because the Wisconsin Electric LBA is the effective LBA for the period commencing April 3, 2014.¹⁶⁸ The Michigan Commission disagrees with Wisconsin Electric's request for allocation on the basis of commercial pricing nodes and argues that this methodology is beyond the scope of complying with the July 29 Order. The Michigan Commission adds that there is not enough information in the record to assess the impact on LSEs using Wisconsin Electric's proposal to allocate SSR costs based on energy drawn at the commercial pricing nodes.¹⁶⁹

77. Wisconsin Electric argues that the SSR process is not a market failure, as some parties insist, as the Commission has created a clear process for identification of resources and compensation of those resources. If there is a market failure, Wisconsin Electric argues that this proceeding is not the vehicle to address those concerns.¹⁷⁰ Wisconsin Electric also argues that cost allocation questions are beyond the scope of this proceeding. Wisconsin Electric contends that any remaining questions regarding cost allocation are an outgrowth of pending rehearing requests and protests, and are not changed by the submission of the instant Replacement SSR Agreement.¹⁷¹

¹⁶⁶ MISO Answer at 8-9.

¹⁶⁷ *Id.* at 7-8.

¹⁶⁸ Motion of the Michigan Public Service Commission for Leave to Answer and Answer to Limited Protests of the Public Service Commission of Wisconsin and Wisconsin Electric Power Company, Docket Nos. ER14-2860-000 and ER14-2862-000, at 2, 4 (filed Oct. 20, 2014).

¹⁶⁹ *Id.* at 5.

¹⁷⁰ Wisconsin Electric Answer at 10-11.

¹⁷¹ *Id.* at 15.

d. Commission Determination

78. Revised Rate Schedule 43G includes cost allocation language that involves several issues that have been raised on rehearing and compliance in the Presque Isle SSR Proceedings. Accordingly, we accept Revised Rate Schedule 43G, suspend it for a nominal period, to be effective October 15, 2014,¹⁷² subject to refund and a further Commission order in the Presque Isle SSR Proceedings.

79. We find that load pseudo-tied into or out of an LBA should be included in the LBA where the load is physically located for purposes of SSR cost allocation. This accounting method is most consistent with the Tariff, which requires MISO to allocate SSR costs to “the LSE(S) which require(s) the operation of the SSR Unit for reliability purposes.”¹⁷³ To rule otherwise would potentially lead to load requesting to be pseudo-tied into or out of an LBA for the sole purpose of avoiding future SSR cost responsibility. We direct MISO to make SSR cost allocation calculations consistent with this determination.

The Commission orders:

(A) The Replacement SSR Agreement is hereby accepted for filing and suspended for a nominal period, to be effective October 15, 2014, subject to refund, as discussed in the body of this order.

(B) The Original SSR Agreement is hereby terminated, effective on October 15, 2014, as discussed in the body of this order.

(C) 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 the SSR cost compensation under the Replacement 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.

¹⁷² We grant waiver of the prior notice requirement to allow the Rate Schedule 43G to be effective October 15, 2014, as requested, for the same reasons discussed above. *See supra* P 66. *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,170, at PP 84-86 (waiver of prior notice rule granted in order accepting an SSR agreement and associated rate schedule), *order on reh’g*, 144 FERC ¶ 61,128 (2013).

¹⁷³ July 29 Order, 148 FERC ¶ 61,071 at P 66.

(D) These proceedings are hereby consolidated with Docket No. ER14-1242-000, *et al.* for the purposes of settlement, hearing, and decision, as discussed in the body of this order.

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

(F) Revised Rate Schedule 43G is hereby accepted for filing and suspended for a nominal period, to be effective October 15, 2014, subject to refund and further Commission order in the Presque Isle SSR Proceedings, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.