150 FERC ¶ 61,147
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. ER15-765-000 ER15-767-000

ORDER CONDITIONALLY ACCEPTING AND SUSPENDING PROPOSED TARIFF SHEETS, AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued February 27, 2015)

1. On December 30, 2014, in Docket No. ER15-765-000, pursuant to section 205 of the Federal Power Act (FPA),[1] Midcontinent Independent System Operator, Inc. (MISO) submitted a proposed System Support Resource (SSR) Agreement between White Pine Electric Power, LLC (White Pine) and MISO, designated as Original Service Agreement No. 6509 under its Open Access, Transmission, Energy and Operating Reserve Markets Tariff (Tariff),[2] for the provision of SSR service by White Pine Unit No. 2 (White Pine 2 SSR Agreement).[3] Also on December 30, 2014, in Docket No. ER15-767-000, pursuant

[1] 16 U.S.C. § 824d (2012).

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

[3] White Pine Unit No. 2 is located in White Pine, Michigan, within the footprint of American Transmission Company LLC (ATC). It has a boiler that has historically been

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to section 205 of the FPA, MISO submitted proposed Rate Schedule No. 43I under its Tariff for the allocation of SSR costs associated with White Pine Unit No. 2. In this order, we conditionally accept the proposed White Pine 2 SSR Agreement, suspend it for a nominal period, to be effective January 1, 2015, as requested, subject to refund, for a term of three and one-half months, and set all cost-related issues for hearing and settlement judge procedures. We also conditionally accept the proposed Rate Schedule 43I, suspend it for a nominal period, to be effective January 1, 2015, as requested, subject to refund and compliance filing.

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

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coal-fired, but is currently fueled by natural gas purchased on the spot market. MISO White Pine 2 SSR Agreement Filing at 2.

[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).

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

4. On April 15, 2014, in Docket No. ER14-1724-000, MISO submitted an SSR Agreement to ensure the continued availability of White Pine Unit No. 1 as an SSR Unit until such time as appropriate alternatives can be implemented to mitigate reliability issues (White Pine 1 SSR Agreement). In Docket No. ER14-1725-000, MISO submitted a proposed Rate Schedule 43H under its Tariff, which specifies the allocation of the costs associated with the continued operation of White Pine Unit No. 1 as an SSR Unit. On June 13, 2014, the Commission accepted the White Pine 1 SSR Agreement and Rate Schedule 43H, and suspended them for a nominal period, to be effective April 16, 2014, as requested, subject to refund and further Commission order.[8]

5. On August 21, 2014, the Commission issued a further order addressing issues related to MISO's Attachment Y Study and MISO's assessment of feasible alternatives, the costs under the White Pine 1 SSR Agreement, MISO's modification of the Attachment Y-1 form agreement, the effective date, and the duration of the White Pine 1 SSR Agreement. The Commission also required MISO to submit a compliance filing in Docket No. ER14-1725-000 to revise the SSR cost allocation method under Rate Schedule 43H and directed MISO to provide refunds accordingly, consistent with the Commission's order on a complaint filed by the Wisconsin Public Service Commission in Docket No. EL14-34-000 that eliminated *pro rata* SSR cost allocation in the ATC footprint.[9] In addition, on February 19, 2015, the Commission issued an order that

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

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

[8] *Midcontinent Indep. Sys. Operator, Inc.*, 147 FERC ¶ 61,199 (2014).

[9] *Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,136, at PP 2, 43-45 (2014) (August 21 White Pine 1 Order) (citing *Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,071, at P 66 (2014) (Wisconsin Commission Complaint Order)).

addressed several proceedings related to the allocation of SSR costs in the ATC footprint under MISO's Tariff.[10]

II. Notice and Responsive Pleadings

6. Notice of MISO's filings in Docket Nos. ER15-765-000 and ER15-767-000 was published in the *Federal Register*, 80 Fed. Reg. 883-884 (2015), with interventions and protests due on or before January 20, 2015.

7. Timely interventions in Docket Nos. ER15-765-000 and ER15-767-000 were filed by: Alliant Energy Corporate Services, Inc.; ATC; Consumers Energy Company; White Pine; Wisconsin Public Service Corporation; WPPI Energy; Wisconsin Electric Power Company (Wisconsin Electric); Upper Peninsula Power Company (Upper Peninsula); and Cloverland Electric Cooperative (Cloverland). The Michigan Public Service Commission (Michigan Commission) filed a notice of intervention in both dockets.

8. Timely protests were filed in Docket Nos. ER15-765-000 and ER15-767-000 by Wisconsin Electric, Upper Peninsula, and Cloverland, and in Docket No. ER15-767-000 by the Michigan Commission.

9. On February 4, 2015, MISO filed a motion for leave to answer and an answer. On February 10, 2015, Upper Peninsula filed a motion for leave to answer and an answer.

III. Discussion

A. Procedural Matters

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

11. 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 are not persuaded to accept the answers and therefore reject them.

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[10] *Public Service Commission of Wisconsin v. Midcontinent Indep. Sys. Operator, Inc*., 150 FERC ¶ 61,104 (2015) (MISO ATC Footprint SSR Cost Allocation Order).

B. Substantive Matters

12. As discussed more fully below, we conditionally accept the proposed White Pine 2 SSR Agreement, suspend it for a nominal period, to be effective January 1, 2015, as requested, subject to refund, for a term of three and one-half months, and set all cost-related issues for hearing and settlement judge procedures. We also conditionally accept the proposed Rate Schedule 43I, suspend it for a nominal period, to be effective January 1, 2015, as requested, subject to refund and compliance filing.

1. White Pine 2 SSR Agreement

13. MISO states that White Pine owns the White Pine facilities located in White Pine, Michigan. These facilities include three generating units, including a spare that is currently non-operational and two other units that each provides approximately 20 MW of capacity. White Pine Unit No. 1 is the subject of the White Pine 1 SSR Agreement that runs through April 15, 2015. The other operational unit, White Pine Unit No. 2, is the subject of the instant filing. The White Pine facilities have two boilers that have historically been coal-fired, but are currently fueled by natural gas purchased on the spot market.

14. On April 29, 2014, White Pine submitted an Attachment Y Notice to MISO for retirement of White Pine Unit No. 2, beginning on January 1, 2015. MISO completed its analysis of the Attachment Y Notice and notified White Pine on May 22, 2014, that White Pine Unit No. 2 would be designated an SSR Unit until such time as appropriate alternatives could be implemented to mitigate reliability issues. MISO concluded that the proposed retirement of White Pine Unit No. 2, without curtailment of load by means of demand response or another alternative, would result in violations of specific applicable reliability standards.[11] As a result, MISO designated White Pine Unit No. 2 as an SSR Unit until such time as appropriate alternatives can be implemented to mitigate reliability issues.[12] MISO states that ATC has submitted the proposed MTEP15 Project 8089 to

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[11] Specifically, the study performed by MISO shows that the retirement of White Pine Unit No. 2 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 White Pine 2 SSR Agreement Filing, Transmittal at 2; *see also id.*, Exh. B (Att. Y Study Report) at 14.

[12] MISO White Pine 2 SSR Agreement Filing, Transmittal Letter at 2.

rebuild the Lakota – Mass 69 kV transmission facilities, with an expected in-service date of December 1, 2020.[13]

15. MISO states that it and White Pine began discussions of a draft SSR agreement based largely upon the White Pine 1 SSR Agreement, and White Pine agreed to a three and one-half month SSR agreement for White Pine Unit No. 2 for the period between January 1, 2015, and April 15, 2015. MISO states that the April date corresponds to the end of the White Pine 1 SSR Agreement, and the SSR designation for both units will be considered again during early 2015. MISO states that White Pine has agreed to continue operating White Pine Unit No. 2 on and after January 1, 2015.[14]

16. MISO states that there are "novel legal issues or other unique factors" that justify departures from the *pro forma* SSR agreement and that are consistent with Commission precedent, including the Commission's acceptance of terms and conditions stated in the White Pine 1 SSR Agreement.[15] These changes to the *pro forma* agreement include the following: (1) 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;[16] (2) new section 7.E states that MISO and White Pine will coordinate their schedules to permit White Pine to undergo both testing for capacity and for other requirements (such as for environmental and insurance requirements); (3) new section 9.D(7) clarifies that SSR payments are reduced if the Tested Capacity falls short of the SSR Capacity and if the SSR Units do not fully respond to MISO dispatches where the reductions are

[13] *Id*. at 7.

[14] *Id*.

[15] *Id*. at 3 (citing August 21 White Pine Order, 148 FERC ¶ 61,136).

[16] Module E-1 of MISO's Tariff specifies MISO's resource adequacy requirement procedures. The Tariff requires load-serving entities (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-r13 §§ 1.2, 2.2 (effective Jan. 1, 2014).

unexcused;[17] and (4) new provisions in section 9.E provide a mechanism for White Pine to receive cost recovery for unanticipated repairs required to maintain system reliability.[18]

17. MISO further states that the operation provisions in section 8 have been revised to clarify maintenance, planning data, and delivery obligations to be consistent with other Tariff provisions. For instance, section 8.C has been revised to clarify that: (1) MISO shall notify White Pine 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) all offers from the SSR Units during the term of the White Pine 2 SSR Agreement shall be cost-based.[19] According to MISO, these changes ensure that MISO and White Pine 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. Finally, the proposed modifications include a three and one-half month term length.

18. MISO states that, pursuant to section 38.2.7 and Attachment Y-1 of the Tariff, prior to entering into the White Pine 2 SSR Agreement, it assessed available, feasible alternatives to entering into the White Pine 2 SSR Agreement.[20] These assessments cover the topics of new generation, generation redispatch, system reconfiguration and operation guidelines, demand response and load control, and transmission projects.

19. MISO states that at a June 2014 meeting with stakeholders, there was no

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[17] Section 7.A(1) of Attachment Y-1 defines Tested Capacity as "[t]he capacity shown by [a one-hour performance test of the SSR Unit.]" Proposed section 1.E of Attachment Y-1 defines SSR Capacity as "the unit capabilities stated in Exhibit 1 if other than that stated in this Section."

[18] MISO states that it will make a filing under section 205 of the FPA before any unanticipated repair costs are incurred by White Pine, except in the case of emergency repairs. MISO also states that section 9.E contains the enhanced language, "until repairs have been completed," as directed by the Commission for the White Pine 1 SSR Agreement. MISO White Pine 2 SSR Agreement Filing, Transmittal Letter at 5 (citing August 21 White Pine 1 Order, 148 FERC ¶ 61,136 at P 139).

[19] *Id.* at 4.

[20] *Id.* at 6 (citing 2012 SSR Order, 140 FERC ¶ 61,237 at P 80; Exh. B, MISO's Attachment Y Study Report, Section VII (Alternatives Analysis)).

significant debate over the near-term need for the SSR status for White Pine Unit No. 2. According to MISO, stakeholders at the June 2014 meeting considered generation re-dispatch, available reconfiguration options, and demand response requirements. As noted above, MISO also states that ATC has submitted the proposed MTEP15 Project 8089 to rebuild the Lakota – Mass 69 kV transmission facilities, with an expected in-service date of December 1, 2020. MISO states that no further significant feedback from stakeholders was received regarding alternatives to the White Pine 2 SSR Agreement.[21]

20. MISO states the following with regard to its own review of generation alternatives. It explains that the only other generation that was available to be committed to support the load pocket was the Portage CT Unit that is designated "Emergency" and cannot be used to support ATC planned outages. In previous SSR alternatives discussions for White Pine Unit No. 1, MISO had discussed with the owner of the Portage CT Unit, Upper Peninsula, whether that unit could be made available as an alternative to the designation of White Pine Unit No. 1 as an SSR Unit. Upper Peninsula declined due to the uncertainty in usage requirements without more definite outage schedules from ATC. However, Upper Peninsula later contacted MISO in October 2014 with an interest in making the Portage CT Unit available for economic commitment. MISO states that, in a call in November 2014, Upper Peninsula provided additional information on the capability and limitations of the Portage CT Unit. To preserve the remaining life of the equipment, MISO proposed an agreement for limited use of the unit. According to MISO, that proposal, or a modification of such an agreement that would make the Portage CT Unit more available, remains under discussion. MISO states that without such a firm commitment for use of the Portage CT Unit, MISO is proceeding with the White Pine 2 SSR Agreement while continuing to consider the possibility of using the Portage CT Unit to allow termination of the White Pine 2 SSR Agreement in the future.[22]

21. MISO notes that the 2012 SSR Order requires that MISO report on its estimate of how long an SSR agreement will need to remain in effect,[23] and also directs MISO to modify the Attachment Y-1 *pro forma* SSR agreement to include language that an SSR agreement must not exceed a one-year term, except in exigent circumstances.[24]

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[21] *Id*. at 7.

[22] *Id*.

[23] *Id*. (citing 2012 SSR Order, 140 FERC ¶ 61,237 at PP 134-135).

[24] *Id*. (citing 2012 SSR Order, 140 FERC ¶ 61,237 at P 106).

Accordingly, MISO states that the White Pine 2 SSR Agreement appears to be required for the period until a transmission upgrade renders the SSR designation for White Pine Unit No. 2 unnecessary which is anticipated to be December 1, 2020,[25] unless another alternative becomes available before then.

22. MISO explains that under section 38.2.7.l of the Tariff, it shall no less than annually review the SSR Unit and transmission system characteristics to determine whether the SSR Unit is qualified to remain as an SSR Unit. Additionally, under both the Tariff and the White Pine 2 SSR Agreement, MISO retains the right to terminate the White Pine 2 SSR Agreement prior to the end of the term by giving 90 days written notice to White Pine. In accordance with section 38.2.7.e (Execution of SSR Agreement), the proposed term of the White Pine 2 SSR Agreement is three and one-half months as required by MISO in order to permit a timely reevaluation of the necessity to retain the SSR designation for White Pine Unit No. 2.[26]

23. With respect to compensation to White Pine, MISO states that Exhibit E, the affidavit of Steven Walsh, supports the proposed rates, which MISO claims are just and reasonable and no more than necessary to maintain the availability of the SSR Unit for such time as needed to maintain reliability. MISO states that its Independent Market Monitor and MISO have agreed that the negotiated monthly amount provided for in Exhibit 2 of the White Pine 2 SSR Agreement is equitable compensation for maintaining White Pine Unit No. 2 in operational status, which includes the cost of completing capital repairs listed in Exhibit 3 to the White Pine 2 SSR Agreement and other fixed costs.[27] MISO states that White Pine has agreed to the list of repairs and the negotiated level of compensation contained in the White Pine 2 SSR Agreement for the purposes of timely regulatory approval and certainty.[28]

24. MISO further states that the White Pine 2 SSR Agreement provides for variable generation costs when MISO dispatches the SSR Unit to maintain system reliability. The

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[25] *Id.* (referencing a proposal by ATC, MTEP15 Project 8089, to rebuild the Lakota-Mass 69 kV transmission facilities, with an expected in-service date of December 1, 2020).

[26] *Id.* at 8.

[27] *See id.*, Exh. E (Walsh affidavit) at 2-4.

[28] MISO White Pine 2 SSR Agreement Filing, Transmittal Letter at 9-10.

provisions in the White Pine 2 SSR Agreement for variable compensation conform to the Commission's directive regarding the White Pine 1 SSR Agreement, according to MISO. It also states that the White Pine 2 SSR Agreement contains equitable mechanisms to ensure that when the SSR Unit is dispatched, White Pine will not receive market revenues above variable generation costs.[29] Moreover, MISO states, the short term of the White Pine 2 SSR Agreement will permit MISO, with the assistance of stakeholders, to reevaluate the need for maintaining the SSR designation in early 2015 so customers will not have to pay the SSR costs for any longer than necessary to ensure system reliability.

25. MISO requests that the Commission grant an effective date of January 1, 2015, either through waiver of the 60-day prior notice requirement or by treating the White Pine 2 SSR Agreement as a filed service agreement. According to MISO, good cause exists to grant the waiver of the prior notice requirement. MISO states that the White Pine 2 SSR Agreement was filed as soon as possible, and that the delay in filing the White Pine 2 SSR Agreement was a consequence, in part, of the fact that the evaluation of alternatives as well as the negotiation of the White Pine 2 SSR Agreement terms and compensation could not be completed by earlier than the requested effective date, but the Tariff requires the SSR Unit to remain available. Notwithstanding this delay, MISO states that White Pine will maintain White Pine Unit No. 2 to ensure that it is available to maintain reliability as of January 1, 2015 and will incur costs doing so. In addition, MISO argues that the requested waiver of the prior notice requirement is required to permit MISO to comply with its Tariff and Commission precedent on the SSR program.[30] In the alternative, MISO requests an effective date of January 1, 2015, consistent with the Commission's requirement that service agreements be filed within 30 days of commencing service. MISO states that the White Pine 2 SSR Agreement is a *pro forma* agreement included in the Tariff, the executed versions of which are therefore service agreements.

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[29] *Id*. at 10.

[30] *Id*. at 8-9 (noting that section 38.2.7 of the Tariff provides that SSR Units are due "equitable compensation" in exchange for maintaining availability past their required shut-down date and that the Commission explained that SSR Units should be fully compensated and that nothing in the SSR program would require a generator to absorb any uncompensated going-forward costs.); MISO Rate Schedule 43I Filing, Transmittal Letter at 4-5 (same).

a. <u>Protests</u>

26. Upper Peninsula argues that the Commission should reject MISO's filing. Upper Peninsula states that since MISO has acknowledged that the Portage CT is a viable alternative for White Pine Unit No. 2, and MISO has dispatch rights over the Portage CT Unit for both economic and reliability reasons, MISO has failed to demonstrate that the White Pine 2 SSR Agreement is necessary to maintain reliability of the transmission system. Upper Peninsula further notes that the Commission, and the Tariff, provide for MISO's use of SSR agreements only as a last-resort measure to meet short-term reliability needs precipitated by the retirement or suspension of a resource and will ensure that SSR agreements have a limited duration, and will be entered into only after all potential SSR agreement alternatives have been examined.[31]

27. Upper Peninsula states that instead of entering into the redispatch agreement with MISO, Upper Peninsula decided to change the status of the Portage CT Unit from an emergency resource to an economic resource. Therefore, Upper Peninsula re-designated the Portage CT Unit as an economic resource, and MISO was given dispatch rights over the Portage CT Unit for both economic and reliability reasons, effective January 1, 2015. With the return of the Portage CT Unit to economic status, a contractual commitment with MISO to guarantee the availability of the Portage CT Unit is no longer necessary because the Portage CT Unit is now available to be dispatched by MISO without restriction when needed to maintain the reliability of the transmission system, according to Upper Peninsula. Further, Upper Peninsula argues that if it decided to retire or suspend the Portage CT Unit in the future, it would be required to provide at least 26 weeks' notice to MISO prior to taking such action in accordance with section 38.2.7 of the Tariff. Thus, it contends that MISO would have ample time to determine whether the Portage CT Unit was required to maintain reliability of the transmission system prior to any retirement or suspension of the Portage CT Unit.[32]

28. Alternatively, if the Commission does not reject the instant filing, Upper Peninsula argues that the matter should be suspended and set for hearing and settlement judge procedures. Upper Peninsula raises several issues, including: (1) the cost information related to White Pine Unit No. 2 provided in MISO's affidavit is listed in broad cost categories without detailed supporting information; (2) a lack of information as to how White Pine allocated costs between White Pine Unit No. 2 and White Pine Unit No. 1;

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[31] Upper Peninsula Protest at 4-5.

[32] *Id*. at 5-6.

(3) the costs reflected in the filing are excessive and lack supporting documentation; and (4) considering that White Pine and White Pine Unit No. 2 were recently acquired by Prairie Plant Systems Inc. from Traxys Power Group Inc. (Traxys),[33] it is unclear whether the depreciation amount is based on the book value resulting from the purchase price allocation or the book value while owned by Traxys.[34]

29. Cloverland argues that the White Pine 2 SSR Agreement should be suspended and set for hearing. It argues that the fixed rate components are undocumented, unverified, at times merely stated, and calculated incorrectly.[35] For example, Cloverland asserts that it is unclear what constitutes "Utilities" and "Financing" or why a portion of costs would not be shared with White Pine Unit No. 1. Cloverland further argues that MISO's filing is deficient because it lacks detailed cost support.

30. According to Cloverland, some cost of service items are overstated. It notes that the White Pine Unit No. 2 generator monthly costs are 125 percent of the nearly identical White Pine Unit No. 1 generator monthly costs, without any indication why costs should be so disparate.[36] Further, Cloverland asserts that many of the costs listed for White Pine Unit No. 2 are shared with White Pine Unit No. 1, yet those costs are not shared 50-50, contrary to Mr. Walsh's claims in his affidavit.[37]

31. In addition, Cloverland states that the Commission is clear that an SSR agreement may recover capital costs because it expects "SSR Agreements will be necessary on an infrequent, short-term basis and, therefore, the overall capital costs borne by MISO market participants should not be excessive."[38] Citing five SSR agreements, Cloverland states that SSR agreements are not infrequent in MISO. Given the multi-year life span expected for the White Pine 2 SSR Agreement, Cloverland asserts that the agreement is not short-term. Thus, it contends that recovery of White Pine Unit No. 2 capital costs –

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[33] *See* MISO White Pine 2 SSR Agreement Filing, Exh. E at P 3.

[34] Upper Peninsula Protest at 7-8.

[35] Cloverland Protest at 3-4.

[36] *Id.* at 5.

[37] *Id*.

[38] *Id*. at 6 (citing 2012 SSR Order, 140 FERC ¶ 61,237 at P 136).

$653,000 over three and one-half months, or 31 percent of the total recovery – is excessive and unreasonable.

32. Cloverland argues that instead of immediately recovering capital costs in current rates, MISO should use the usual and well-established accounting and rate treatment. That is, according to Cloverland, capital additions should be capitalized and included in White Pine's plant investment as they are completed, and then should be depreciated over the expected remaining lives of the units. Cloverland states that the depreciation, along with a return on the undepreciated investment (rate base less accumulated depreciation), may then be properly charged to customers that receive service from the units during those future years.[39]

b. Commission Determination

33. We find that MISO has studied the proposed retirement of White Pine Unit No. 2 and determined that the unit is necessary for system reliability, and therefore, should be designated as an SSR Unit. We find that MISO has justified the need for the unit and has provided sufficient evidence demonstrating that it is 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-003-0b (System Performance Following Loss of Two or More Bulk Electric System Elements (Category C)),[40] respectively, and that the unit will continue to be necessary until transmission upgrades can be put into service. As such, MISO has supported SSR designation for White Pine Unit No. 2 as a last resort measure to ensure reliability.[41]

34. We further find that MISO's proposed modifications, including the three and one-half month term, to the *pro forma* SSR agreement are just and reasonable. We have previously permitted these substantive revisions – save for the three and one-half month

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[39] *Id*.

[40] *See* N. Am. Elec. Reliability Corp., *Reliability Standards for the Bulk Electric Systems of North America* (February 2, 2015), *available at:* http://www.nerc.com/pa/Stand/Reliability%20Standards%20Complete%20Set/RSCompleteSet.pdf.

[41] 2012 SSR Order, 140 FERC ¶ 61,237 at PP 134-139.

term – in the White Pine 1 SSR Agreement, and MISO has made changes required by the Commission in the August 21 White Pine 1 Order.

35. We also accept MISO's explanation of its alternatives assessment. While Upper Peninsula contends that the Commission should reject the White Pine 2 SSR Agreement in light of the fact that the Portage CT Unit is now available as an alternative economic resource, we note that, before December 30, 2014, the date MISO filed the White Pine 2 SSR Agreement, Upper Peninsula had not yet committed to redesignate the generator as an economic resource; Portage CT was available as an emergency resource only, which would not have afforded it the availability required to maintain the reliability of the transmission system. While Upper Peninsula argues that a contractual commitment with MISO was no longer necessary once Upper Peninsula gave MISO dispatch rights over the Portage CT Unit, the Commission has previously recognized that MISO may need to obtain contractual assurances that a selected SSR alternative will be implemented prior to the required in-service date.[42] Therefore, it was reasonable that MISO chose the most fitting alternative that was available at that time, i.e., White Pine Unit No. 2. Moreover, we note that MISO must give 90 days' written notice to terminate the White Pine 2 SSR Agreement pursuant to the White Pine 2 SSR Agreement at section 3(A)3;[43] as such, even if termination were appropriate, and the instant filing does not present that issue, it would be largely ineffective here given the three and one-half month term of the White Pine 2 SSR Agreement. Accordingly, we deny Upper Peninsula's request to reject the White Pine 2 SSR Agreement. Since the White Pine 2 SSR Agreement is proposed to be in effect for only three and one-half months, we encourage MISO to evaluate the Portage CT Unit again for employment upon expiration of the White Pine 2 SSR Agreement when it revisits the question of alternatives to the continued operation of White Pine Unit No. 2.

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[42] *Midwest Indep. Transmission Sys. Operator, Inc.*, 148 FERC ¶ 61,056, at P 34 (2014). On September 19, 2014, in Docket No. ER12-2302-003, MISO submitted a compliance filing concerning the contractual agreement provisions, which is pending before the Commission.

[43] *See* White Pine 2 SSR Agreement Filing, Exh. D.

36. Additionally, we grant waiver of the prior notice requirement to allow the proposed White Pine 2 SSR Agreement, to be effective January 1, 2015, as requested.[44]

37. We find that cost-related issues under the proposed White Pine 2 SSR Agreement raise issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

38. Based upon a review of the filing and the comments, our preliminary analysis indicates that MISO's proposed rates under the White Pine 2 SSR Agreement have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept MISO's proposed White Pine 2 SSR Agreement for filing, suspend it for a nominal period, make it effective January 1, 2015 as requested, subject to refund, and set all cost-related issues for hearing and settlement judge procedures.

39. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.[45] If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.[46] The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

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[44] *See 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).

[45] 18 C.F.R. § 385.603 (2014).

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

2. Rate Schedule 43I for Allocation of SSR Costs

40. MISO states that the cost allocation proposed in Rate Schedule 43I is consistent with revised Tariff section 38.2.7, which the Commission conditionally approved in the 2012 SSR Order, and which requires that the costs pursuant to the White Pine 2 SSR Agreement shall be allocated to the LSEs that require the operation of the SSR Unit for reliability purposes.

41. MISO explains that the proposed cost allocation splits costs under the White Pine 2 SSR Agreement between two Local Balancing Authorities (LBA), and then further allocates costs to all LSEs within those LBAs based upon each LSE's contribution to the peak of its LBA. Specifically, Rate Schedule 43I allocates costs between the Upper Peninsula LBA and the Michigan Upper Peninsula LBA according to MISO's load-shed methodology,[47] which is followed by an allocation based upon peak usage of transmission facilities in each month as determined by each LSE's actual energy withdrawals during the monthly peak hour for each LBA.[48]

42. According to MISO, recognition of peak usage permits cost allocation that is similar to the manner in which "reliability-based transmission charges" are allocated. MISO also states that costs are charged based upon the time period when the SSR Unit is actually available for dispatch as an SSR-designated resource. MISO states that Schedule 43I does not apply a fixed percentage method which would be inflexible and incompatible with cost assignment in customer "choice" states such as Michigan where White Pine Unit No. 2 is located. Instead, the proposed cost allocation method identifies each LSE's actual energy withdrawals during the coincident peak hour and allocates costs accordingly. In this way, MISO states, the percentage of costs allocated to each LSE will vary each month based on the LSE's coincident peak hour energy usage during that month. MISO states that the proposed cost allocation method retains the advantage of being contained in a single MISO settlements system, which means that software development, maintenance, and financial controls are performed only once. The proposed cost allocation method also completely recovers the costs associated with the White Pine 2 SSR Agreement each month, as opposed to a demand-based rate that could only be calculated to approximately recover such costs, according to MISO.[49]

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[47] *See* MISO Rate Schedule 43I Filing, Exh. B (Attachment Y Study Report).

[48] MISO Rate Schedule 43I Filing, Transmittal Letter at 2-3.

[49] *Id*. at 3.

43. MISO requests waiver of the Commission's prior notice requirement to permit a January 1, 2015 effective date for Rate Schedule 43I for the same reasons that it requests waiver of the prior notice requirement and a January 1, 2015 effective date for the White Pine 2 SSR Agreement.[50]

a. Protests

44. Wisconsin Electric argues that MISO's proposed SSR cost allocation methodology is flawed. Wisconsin Electric acknowledges that in ordering load-shed studies, the Commission has highlighted the flexibility MISO has in how it will identify the LSEs that require the operation of the SSR Unit for reliability, i.e., the beneficiaries of an SSR Unit.[51] However, Wisconsin Electric argues that the result of MISO's methodology is not consistent with section 38.2.7 of the Tariff if MISO intends to allocate SSR Unit costs beyond the identified beneficiaries to all of the LSEs in the LBAs in which those beneficiaries reside.[52] According to Wisconsin Electric, the genesis of the unreasonable outcome lies in the application of MISO's methodology in its Business Practices Manual (BPM) to allocate SSR costs.

45. Wisconsin Electric argues that while the BPM reasonably describes MISO's use of a load-shed analysis and identifies the loads which are most effective in addressing the identified reliability issues with the retirement or suspension of the SSR Unit, MISO's methodology goes on to provide that the SSR costs are assigned to those LBAs where the loads reside. Wisconsin Electric contends that it is this step that severs the nexus between the reliability benefits of SSR Units and the allocation of the costs of those SSR Units. That is, the second step in MISO's process not only allocates SSR costs to the identified beneficiaries but also to non-beneficiaries that are located within the boundaries of the LBA in which the identified beneficiaries reside. Wisconsin Electric argues that such a cost allocation to non-beneficiaries is unreasonable. It argues that section 38.2.7.k of the Tariff requires that the SSR costs be allocated to those LSEs that require the operation of the SSR Unit for reliability purposes.[53]

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[50] *Id*. at 4-5.

[51] Wisconsin Electric Protest at 5-6 (citing Wisconsin Commission Complaint Order, 148 FERC ¶ 61,071 at P 66).

[52] *Id*. at 4-6.

[53] *Id*. at 5-6.

46. Wisconsin Electric states that the description of MISO's methodology in the BPM provides a means to allocate the SSR costs appropriately to the identified LSE beneficiaries, i.e., based on the actual energy withdrawals at the commercial pricing nodes associated with the identified beneficiaries from the optimal load-shed analysis.[54] Wisconsin Electric argues that such an allocation would be consistent with the Tariff because it would allocate the costs to the LSEs which require the operation of the SSR Unit for reliability purposes. Wisconsin Electric further argues that MISO has the flexibility under the Commission's orders to implement this approach.

47. Wisconsin Electric notes that in response to a deficiency letter in Docket No. ER14-2952-000, MISO claims that the LBA boundary provides a reasonable area to include other beneficiaries, and the cost allocation method of considering all loads within the LBA boundary is reasonably commensurate with allocation to loads that will require operation of the SSR Unit.[55] Wisconsin Electric disputes that claim, arguing that even if there is some inaccuracy in MISO's present method of identifying loads that benefit from an SSR Unit, the accuracy of MISO's method is not improved by further spreading costs to other loads that do not benefit. But, Wisconsin Electric asserts that MISO's response to another question in the deficiency letter indicates that MISO has, in its commercial model, sufficient information available to identify loads that should be allocated SSR-related costs. Wisconsin Electric argues that MISO should be required to refine its methodology, availing itself of its Commercial Model data if necessary, to achieve a closer and more accurate allocation of SSR costs than that produced by allocating costs based on LBAs.[56]

48. With respect to cost allocation under Rate Schedule 43I, Cloverland argues that it should be made subject to the Commission's allocation order in Docket No. ER14-2952-001, which specifically includes an allocation to White Pine Unit No.1, and the Commission's allocation orders in Docket Nos. ER14-2862-000 and ER14-1243-000,[57]

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[54] *Id*. at 7-8 (citing BPM-020-R10, section 6.2.6).

[55] *Id.* at 8 (citing MISO Response to the Commission's November 28, 2014 Deficiency Letter Regarding a Proposed Revision in Cost Allocation Rate Schedules 43, 43G, and 43H, Docket No. ER14-2952-000 (Deficiency Letter Response) at 3).

[56] *Id*. at 9 (citing MISO Deficiency Response, Docket No. ER14-2952-000, at 7).

[57] Cloverland Protest at 7 (citing *Midcontinent Indep. Sys. Operator, Inc*., 149 FERC ¶ 61,114, at P 78 (2014) (holding open cost allocation issues for further order)). These proceedings all concern SSR cost allocation for SSRs located in ATC's footprint,

(continued…)

which, as a matter of principle, ought to apply to all MISO SSR agreements. Cloverland objects to an LBA-based instead of an LSE-based allocation scheme.[58]

49. Cloverland argues that MISO has provided no analysis of the actual allocation to customers, the dollar impacts of its allocations, or the rate shock to customers caused by its allocation. Cloverland argues that MISO's circular logic on benefits – i.e., customers benefit in proportion to their cost allocation, because the cost allocation is a measure of their benefits – is no explanation of how a customer benefits or whether the costs allocated to that customer are proportionate to that benefit.[59]

50. Cloverland also contends that the proposed cost allocation is unduly discriminatory. It contends that allocating costs to LBAs however much LBAs may change, especially in response to the prior allocation, causes costs to shift dramatically without any change in system operation. Such an allocation scheme, considered in its totality instead of docket by docket, cannot allocate the cost of assuring reliability to the customers that actually benefit from that reliability. LBA boundaries play no role in determining which customers receive the reliability benefits associated with SSR units, according to Cloverland.[60]

51. Furthermore, Cloverland argues that following the LBA borders wherever they may lead for MISO cost allocation purposes is unreasonably unstable and unduly discriminatory. It argues that costs may shift drastically as LBAs are created, shrink, split up or move their borders in order to avoid SSR costs. It asserts that only large utilities can afford the expense of creating or modifying an LBA to avoid SSR cost

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and the Commission's requirement in the Wisconsin Commission Complaint Order to eliminate *pro rata* SSR cost allocation in the ATC footprint and replace it with the general SSR cost allocation Tariff provision that allocates SSR costs to "the LSE(s) which require(s) the operation of the SSR Unit for reliability purposes." As discussed below, these proceedings were addressed in the MISO ATC Footprint SSR Cost Allocation Order.

[58] Cloverland Protest at 7.

[59] *Id*. at 8.

[60] *Id*.

allocation, whereas smaller utilities, such as Cloverland, cannot afford to create an LBA just to avoid SSR costs.[61]

52. Cloverland also argues that the proposed cost allocation violates the cost causation principle in its assumptions that (i) any LSE located within a benefiting LBA will also receive benefits from the studied SSR Unit, and (ii) the benefits received by that LSE will be in proportion to its *pro rata* share of the LBA's coincident peak. In particular, Cloverland contends that MISO has failed to provide any evidence that Cloverland receives any system reliability benefit from White Pine Unit No. 2 or that the 21 percent cost allocation to Cloverland is proportionate to that benefit.[62]

53. Cloverland further argues that MISO's proposed cost allocation contradicts the Commission's explicit directives to assign costs to LSEs, citing the Commission's requirement that MISO remove the ATC *pro rata* cost allocation language from its Tariff and replace it with the general SSR cost allocation Tariff provision that allocates SSR costs to "the LSE(s) which require(s) the operation of the SSR Unit for reliability purposes."[63] It argues that MISO's cost allocation methodology does not consider whether an individual LSE actually receives any reliability benefits from the particular SSR Unit for which it is being assigned a share of the costs, but instead MISO assumes it. Cloverland also argues that this is contrary to section 38.2.7.k of the Tariff which provides that the costs pursuant to an SSR Agreement shall be allocated to the LSEs which require the operation of the SSR Unit for reliability purposes, and shall be specified in the SSR Agreement.[64]

54. Finally, Cloverland disputes that MISO must follow the contradictory provisions of section 6.2 of MISO's BPM. It states that the BPM provides that "[i]n all cases the Tariff is the governing document and not the BPMs."[65]

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[61] *Id*.

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

[63] *Id*. at 9 (citing Wisconsin Commission Complaint Order, 148 FERC ¶ 61,071 at P 66).

[64] *Id*. at 9-10.

[65] *Id*. at 10 (quoting BPM-020-R10 at 2).

55. Michigan Commission requests that the Commission reject the proposed SSR cost allocation or, after expiration of the 60-day notice period commencing on December 30, 2014, suspend it for five months.

56. Michigan Commission states that MISO filed proposed Rate Schedule 43I reflecting the cost allocation consequences associated with the operation of White Pine Unit No. 2 as an SSR. Michigan Commission further states that at Wisconsin Electric's request, NERC approved a change of the boundaries of an existing LBA within the MISO footprint. Specifically, Michigan Commission states that Wisconsin Electric created two new LBAs covering Wisconsin Electric's load and the loads of several small LSEs, by splitting the existing Wisconsin Energy Corporation LBA, which includes Wisconsin Electric's LSE area in Wisconsin and the Upper Peninsula of Michigan, into two LBAs: (1) a new Wisconsin Energy Corporation LBA covering its load in Wisconsin; and (2) a new Michigan Upper Peninsula LBA covering Wisconsin Electric's Michigan load and a small portion of northern Wisconsin. Michigan Commissions states that MISO's proposal divides White Pine Unit No. 2 SSR costs between the new Michigan Upper Peninsula LBA (88 percent) and the Upper Peninsula LBA (12 percent), according to MISO's load-shed methodology.[66]

57. Michigan Commission contends that MISO's deficiency response in Docket No. ER14-2952 provides undisputed facts demonstrating that the cost allocation consequences of Wisconsin Electric's reduction of its LBA boundaries are unduly discriminatory. Michigan Commission argues that the Commission should address such discrimination by requiring the allocation of SSR costs based on Wisconsin Electric's pre-existing Wisconsin Energy Corporation LBA. In the alternative, Michigan Commission argues, the Commission should allow such rate schedules to become effective on August 4, 2015,[67] subject to refund and subject to the outcome of a hearing on the following issues: (1) whether MISO's "optimal" load-shed study accurately identifies the beneficiaries of the SSR Units under appropriate real-time conditions; (2) whether SSR costs should be allocated to all LSEs located within LBAs identified by an accurate load-shed study; and (3) whether an LBA operator, that also happens to be an affected LSE, should be allowed to change LBA boundaries and thereby affect the

[66] Michigan Commission Protest at 2-3.

[67] An effective date of August 4, 2015, would be five months after the expiration of the 60-day notice period for the instant filing. But Michigan Commission states that it would not object to waiver of the final three days in the five month suspension period to allow for rate changes to become effective on the first of the month.

allocation of SSR costs (by reducing the LBA boundaries to an area roughly equivalent to the area identified by the "optimal" load-shed study).[68] In addition, Michigan Commission contends that MISO's allocation of the costs of White Pine Unit No. 2 in this docket should be made subject to the Commission's allocation order in Docket No. ER14-2952-001, which includes allocation of the costs of White Pine Unit No. 1 SSR costs, and the Commission's allocation orders in Docket Nos. ER14-2862-000 and ER14-1423-000.[69]

58. Upper Peninsula expresses the same concerns regarding insufficiency of cost support and cost of service issues for proposed Rate Schedule 43I that it raises regarding the White Pine 2 SSR Agreement, discussed above.

b. Commission Determination

59. With respect to MISO's proposed SSR cost allocation, we note that MISO filed the same cost allocation to allocate costs under SSR agreements for the Presque Isle (Rate Schedule 43G, Docket Nos. ER14-1243-004 and ER14-2862-000), White Pine Unit No. 1 (Rate Schedule 43H, Docket No. ER14-1725-001), and Escanaba (Rate Schedule 43, Docket No. ER14-2180-001) SSR Units, all of which, like White Pine Unit No. 2, are located in ATC's footprint and share other similar characteristics (ATC Footprint SSR Proceedings).[70] Each of the rate schedules filed in the ATC Footprint SSR Proceedings, like Rate Schedule 43I, applied MISO's general practice in its BPM of allocating costs to LBAs using an optimal load-shed methodology to determine the reliability benefits of the SSR Unit to each MISO LBA and then *pro rata* to all LSE's located in those LBA(s) based on actual energy withdrawals during the monthly peak hour. In an order addressing the ATC Footprint SSR Proceedings and other related proceedings, issued on February 19, 2015, however, the Commission determined that MISO's proposed cost allocations in the ATC Footprint SSR Proceedings which, like the instant filing, utilize

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[68] *Id*. at 3.

[69] *Id*. at 4 (citing *Midcontinent Indep. Sys. Operator, Inc*., 149 FERC ¶ 61,114 at P 78 (holding open cost allocation issues for further order)). Michigan Commission also incorporates by reference the arguments in its protest filed on January 16, 2015 in Docket No. ER14-2952.

[70] Cost allocation for the SSRs in the ATC Footprint SSR Proceedings was also the subject of a cost allocation filing in Docket No. ER14-2952, which also used MISO's BPM cost allocation methodology.

MISO's BPM methodology, are not just and reasonable as they are inconsistent with section 38.2.7.k of MISO's Tariff, which requires MISO to allocate SSR costs to "the LSE(s) which require(s) the operation of the SSR Unit for reliability purposes." Consequently, the Commission required MISO to propose in a compliance filing a new study methodology that identifies the LSEs that require these SSR Units for reliability purposes, along with revised rate schedules that adjust the allocation of SSR costs accordingly.[71]

60. Because MISO proposes the same cost allocation methodology in the instant filing as it originally proposed in the ATC Footprint SSR Proceedings, and because White Pine Unit No. 2 shares similar characteristics with the SSRs in the ATC Footprint SSR Proceedings, we have the same concerns with regard to application of the BPM methodology to White Pine Unit No. 2 that the Commission had with MISO's application of its BPM methodology in the ATC Footprint SSR Proceedings. This finding is supported by the protests in this proceeding which reiterate many of the same concerns the Commission found persuasive in the MISO ATC Footprint SSR Cost Allocation Order. As such, we conditionally accept Rate Schedule 43I, suspend it for a nominal period, to be effective January 1, 2015,[72] subject to refund, and require MISO to make a compliance filing within sixty (60) days of the date of this order to revise Rate Schedule 43I to include a cost allocation for White Pine Unit No. 2 that is consistent with the cost allocation methodology required in the MISO ATC Footprint SSR Cost Allocation Order.[73]

<u>The Commission orders</u>:

(A) The White Pine 2 SSR Agreement is hereby conditionally accepted for filing and suspended for a nominal period, to be effective January 1, 2015, subject to refund, as discussed in the body of this order.

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[71] ATC Footprint SSR Cost Allocation Order, 150 FERC ¶ 61,104 at PP 80-89.

[72] We grant waiver of the prior notice requirement to allow the Rate Schedule 43I to be effective January 1, 2015, as requested, for the same reasons discussed above with regard to our waiver of the prior notice requirement for the White Pine 2 SSR Agreement. *See supra* P 36.

[73] MISO ATC Footprint SSR Cost Allocation Order, 150 FERC ¶ 61,104 at PP 80-89.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning cost-related issues under the White Pine 2 SSR Agreement. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2014), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

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

(F) Rate Schedule 43I is hereby conditionally accepted for filing and suspended for a nominal period, to be effective January 1, 2015, subject to refund and a compliance filing to be made within sixty (60) days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Honorable is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.