

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Midcontinent Independent System Operator, Inc.

Docket Nos. ER14-1242-006  
ER14-2860-003  
ER14-2862-003  
(Consolidated)

ORDER GRANTING MOTION FOR EMERGENCY CLARIFICATION BY  
WISCONSIN ELECTRIC POWER COMPANY

(Issued July 23, 2015)

**I. BACKGROUND**

1. On August 1, 2013, Wisconsin Electric Power Company (Wisconsin Electric) notified the Midcontinent Independent System Operator, Inc. (MISO) that it planned to suspend certain generation resources. Specifically, Presque Isle Units 5–9. As a result, MISO completed an analysis to determine if the resources' capacities were necessary to maintain system reliability. The MISO analysis found that the proposed suspension would lead to reliability violations of the North American Electric Reliability Corporation reliability standards. Consequently, MISO designated Presque Isle Units 5–9 as System Support Resource (SSR) Units. This designation requires that the Presque Isle Units operate until alternatives can be implemented to mitigate reliability issues.
2. On January 31, 2014, MISO submitted to the Federal Energy Regulatory Commission (Commission) an SSR Agreement between it and Wisconsin Electric in Docket No. ER14-1242-000. The SSR Agreement (Original SSR Agreement) compensates Wisconsin Electric for the continued availability of Presque Isle Units 5–9 for the period between February 1, 2014 and June 1, 2015.
3. Also on January 31, 2014, MISO submitted a proposed Rate Schedule 43G under its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) in Docket No. ER14-1243-000. The Rate Schedule 43G (Original Rate Schedule) specifies the allocation of costs associated with the Original SSR Agreement.
4. On April 1, 2014, the Commission issued an order accepting the Original SSR Agreement and Original Rate Schedule, subject to refund and further Commission order.<sup>1</sup>

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<sup>1</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 147 FERC ¶ 61,004 (2014) (April Order).

5. On April 3, 2014, the Public Service Commission of Wisconsin submitted a complaint in Docket No. EL14-34-000 (Complaint). The Complaint alleges that the SSR cost allocation in the Original Rate Schedule is unjust, unreasonable, and unduly discriminatory.

6. On July 29, 2014, the Commission acted on these three dockets. It issued an order establishing hearing and settlement judge procedures regarding the fixed cost component of the Original SSR Agreement in Docket No. ER14-1242-000.<sup>2</sup> The Commission directed the Chief Judge to appoint a settlement judge in this proceeding.<sup>3</sup> The Commission also required MISO to submit a compliance filing revising cost allocation in the Original Rate Schedule filed in Docket No. ER14-1243-000 and referenced in Docket No. EL14-34-000.

7. On September 12, 2014, MISO submitted a Replacement SSR Agreement in Docket No. ER14-2860-000. The Replacement SSR Agreement compensates Wisconsin Electric for the continued availability of its 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. MISO states that it then negotiated and developed the Replacement SSR Agreement for the period October 15, 2014 through December 31, 2015.<sup>4</sup>

8. Also on September 12, 2014, MISO submitted a revised Rate Schedule 43G (First Revised Rate Schedule) under its Tariff in Docket No. ER14-2862-000. The First Revised Rate Schedule specifies the allocation of the costs associated with the continued operation of Presque Isle Units 5–9 as SSR Units.

9. On November 10, 2014, the Commission issued the following in Docket Nos. ER14-2860-000 and ER14-2862-000. Order Conditionally Accepting in Part,

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<sup>2</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,071, at P 122(D) (2014) (July Order). The July Order considered the Original SSR Agreement, the Original Rate Schedule, the Complaint, and a rehearing request on the April 1 Order. The Commission denied the rehearing request.

<sup>3</sup> July Order, at P 122(E).

<sup>4</sup> MISO requested a longer term for the Replacement SSR Agreement to allow for expenditures Wisconsin Electric would incur to comply with the Environmental Protection Agency's Mercury and Air Toxics Standard. The Commission granted the longer term in its November Order, *infra*.

Terminating in Part, and Accepting and Suspending Filings in Part, Establishing Hearing and Settlement Judge Procedures and Consolidating Proceedings (November Order).<sup>5</sup>

10. In the November Order, the Commission accepted the Replacement SSR Agreement, subject to refund. It further “set the cost-related issues for hearing and settlement judge proceedings, and consolidate[d] these proceedings with the ongoing hearing and settlement judge procedures established in the [July Order] issued in Docket Nos. ER14-1242, ER14-1243, and EL14-34 (Presque Isle SSR Proceedings).”<sup>6</sup> The Commission also accepted the First Revised Rate Schedule, subject to refund and further Commission order in the Presque Isle SSR Proceedings. Lastly, it terminated the Original SSR Agreement, effective on October 15, 2014.

11. In accepting the First Revised Rate Schedule in Docket No. ER14-2862-000, the Commission stated the following. The First Revised Rate Schedule “includes cost allocation language that involves several issues that have been raised on rehearing and compliance in the Presque Isle SSR Proceedings.”<sup>7</sup> Accordingly, the Commission noted the First Revised Rate Schedule is subject to “the outcome of the Commission’s action on the pending dockets in the Presque Isle SSR Proceedings.”<sup>8</sup>

12. In the November Order, the Commission mandated the following. In paragraph 79(C), it ordered the hearing to be held in abeyance to provide time for settlement judge procedures. In paragraph 79(D), the Commission “consolidated both Docket Nos. ER14-2860-000 and ER14-2862-000 with Docket No. ER14-1242-000, *et al.* for purposes of settlement, hearing, and decision.”<sup>9</sup>

13. On September 26, 2014, in Docket No. ER14-2952-000, MISO filed several revised rate schedules to reflect a revised cost allocation methodology. The filing included a revised Rate Schedule 43G for the Presque Isle SSR Units (Second Revised Rate Schedule).

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<sup>5</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,114 (2014) (November Order).

<sup>6</sup> *Id.* at P 1.

<sup>7</sup> *Id.* at P 78.

<sup>8</sup> *Id.* at P 24.

<sup>9</sup> *Id.* at P 79(D).

14. In its February 19, 2015 order (February Order), the Commission addressed several matters including the filing in Docket No. ER14-2952-000 and rehearing requests filed in Docket Nos. ER14-2860-000 and ER14-2862-000.<sup>10</sup>

15. In the February Order, the Commission rejected the Second Revised Rate Schedule in Docket No. ER14-2952-000. The Commission, therefore, required MISO to submit a compliance filing. That filing was to include the following. “[A] revised Presque Isle Rate Schedule 43G that adjusts the allocation of SSR costs” (Third Revised Rate Schedule) under the Replacement SSR Agreement filed in Docket No. ER14-2860-000.<sup>11</sup> The Commission clarified that this compliance filing would supersede the First Revised Rate Schedule in Docket No. ER14-2862-000, which was conditionally accepted in the November Order.

16. The Commission noted the “SSR compensation under the [Replacement SSR Agreement] was set for hearing and settlement procedures.”<sup>12</sup> In addition, it found that the “fixed cost component of the SSR compensation [in the Original SSR Agreement] is already subject to hearing and settlement procedures.”<sup>13</sup>

17. On June 29, 2015, the Chief Judge issued an Order Terminating Settlement Judge Procedures, Designating Presiding Administrative Law Judge, and Establishing Track II Procedural Time Standards. In this order, the Chief Judge terminated Docket Nos. ER14-1242-000, ER14-2860-000, and ER14-2862-000. He further directed the hearing to be conducted in Docket Nos. ER14-1242-006, ER14-2860-003, and ER14-2862-003. Additionally, I was assigned as Presiding Judge.

## II. WISCONSIN ELECTRIC’S MOTION

18. On July 13, 2015, as amended on July 14, 2015, Wisconsin Electric filed a Motion for Emergency Clarification (Motion). The Motion requested that I clarify certain matters. Specifically, that the cost allocation issues associated with the Replacement SSR Agreement between Wisconsin Electric and MISO are not among the issues set for hearing in this proceeding.

19. In the Motion, Wisconsin Electric explained that the Commission set compensation issues associated with the Original SSR Agreement for hearing in the July

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<sup>10</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,104 (2015) (February Order).

<sup>11</sup> *Id.* at P 152.

<sup>12</sup> *Id.* at P 148.

<sup>13</sup> *Id.*

Order. As noted by Wisconsin Electric, the Commission found the cost allocation provisions associated with the Original SSR Agreement did not follow cost causation principles.<sup>14</sup> The Commission, therefore, directed MISO to submit a compliance filing revising such provisions.

20. According to Wisconsin Electric, the November Order set compensation issues associated with the Replacement SSR Agreement for hearing. Moreover, the Commission accepted the First Revised Rate Schedule allocating costs associated with the Replacement SSR Agreement, subject to further Commission order in the Presque Isle SSR Proceedings.<sup>15</sup>

21. The February Order directed MISO to submit the Third Revised Rate Schedule that allocates SSR costs according to a revised cost allocation methodology. According to Wisconsin Electric, MISO submitted this compliance filing in Docket No. ER14-2952-003 on May 20, 2015. It stated that the Commission has not yet acted on the compliance filing.

22. Wisconsin Electric noted the Chief Judge's June 29, 2015 order terminating settlement judge procedures and setting matters for hearing also captioned Docket Nos. ER14-2862-000 and ER14-2862-003. It observed that the Presiding Judge's order scheduling a prehearing conference included these docket numbers in the caption as well.<sup>16</sup> Wisconsin Electric noted that these docket numbers are associated with MISO's Rate Schedule 43G for the Presque Isle SSR Units.

23. Consequently, Wisconsin Electric alleged that the inclusion of Docket No. ER14-2862 in these proceedings is in error. It argued that Docket No. ER14-2862 only concerns the Presque Isle Rate Schedule 43G. Wisconsin Electric believed that in light of the Commission order in Docket No. ER14-2862, there are no cost issues applicable to the associated proceeding.

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<sup>14</sup> Motion for Emergency Clarification by Wisconsin Power Company, Docket Nos. ER14-1242-000, *et al.*, at 2 (filed July 13, 2015) (citing July Order, at PP 59–61, 66, 108) (Motion).

<sup>15</sup> Motion, at 3 (citing November Order, at P 78).

<sup>16</sup> My Order Scheduling Prehearing Conference, issued on June 29, 2015, did not include Docket No. ER14-2862-000. The Chief Judge's order of the same day terminated settlement judge procedures in Docket No. ER14-2862-000 and set the hearing to be conducted in Docket No. ER14-2862-003.

### III. DISCUSSION

24. The July Order and November Order, as clarified in the February Order, set the fixed cost component of the Original SSR Agreement and all SSR compensation issues of the Replacement SSR Agreement for hearing and settlement procedures.<sup>17</sup>

25. The First Revised Rate Schedule is associated with the Replacement SSR Agreement. MISO originally filed the First Revised Rate Schedule in Docket No. ER14-2862-000.

26. In the November Order in which the Commission ruled on Docket No. ER14-2862-000, the Commission accepted the First Revised Rate Schedule, subject to “the outcome of the Commission’s action” in the Presque Isle SSR Proceedings.<sup>18</sup>

27. MISO then submitted a Second Revised Rate Schedule in Docket No. ER14-2952-000 to adjust its cost allocation methodology based on the November Order. The Commission, however, rejected this Second Revised Rate Schedule in its February Order. MISO has since submitted the Third Revised Rate Schedule in Docket No. ER14-2952-003 based on the Commission’s February Order.

28. In summary, MISO has tried correcting the Rate Schedule 43G for the Presque Isle SSR Units that it submitted in Docket No. ER14-2862-000 through its compliance filings in Docket Nos. ER14-2952-000 and ER14-2952-003. The Docket No. ER14-2952-000 filing was rejected outright in the February Order, and the Docket No. ER14-2952-003 filing is pending before the Commission.

29. Therefore, the First Revised Rate Schedule is still the Rate Schedule 43G for the Presque Isle SSR Units that is accepted by the Commission. It is, however, subject to the outcome of the “Presque Isle SSR Proceedings.”

30. The Commission requested a compliance filing to this First Revised Rate Schedule in its February Order when it required MISO to submit “a revised Presque Isle Rate Schedule 43G that adjusts the allocation of SSR costs” under the Replacement SSR Agreement.<sup>19</sup> As previously noted, whether the appropriate “revised Presque Isle Rate Schedule 43G” is the Third Revised Rate Schedule MISO submitted in Docket No. ER14-2952-003 is pending before the Commission. Thus, the “allocation of SSR costs”

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<sup>17</sup> July Order, at P 122(C); November Order, at PP 53, 79(C); February Order, at P 148.

<sup>18</sup> November Order, at PP 24, 79(F).

<sup>19</sup> February Order, at P 169(B).

in the Rate Schedule 43G for the Presque Isle SSR Units is before the Commission in Docket No. ER14-2952-003.

31. Consequently, any issues associated with allocation of SSR costs in Rate Schedule 43G from the Presque Isle SSR Units are before the Commission in Docket No. ER14-2952-003. Therefore, I find the issues associated with the allocation of SSR costs are beyond the scope of this hearing.

32. The Commission consolidated for hearing and settlement purposes both Docket Nos. ER14-2860-000 and ER14-2862-000 with the “Presque Isle SSR Proceedings,” *i.e.*, Docket Nos. ER14-1242, ER14-1243, and EL14-34.<sup>20</sup> Docket No. ER14-1242 is the only docket within the “Presque Isle SSR Proceedings” that is set for hearing and settlement procedures. Consequently, by consolidating Docket Nos. ER14-2860-000 and ER14-2862-000 with the “Presque Isle SSR Proceedings,” the Commission effectively consolidated Docket Nos. ER14-2860-000 and ER14-2862-000 with Docket No. ER14-1242-000. Therefore, the inclusion of Docket No. ER14-2862-003 was not in error.

33. Accordingly, I find the following issues are before me. The fixed cost component of the Original SSR Agreement in Docket No. ER14-1242 and all SSR compensation issues of the Replacement SSR Agreement in Docket No. ER14-2860. If any determinations on these cost issues affect the Rate Schedule 43G for the Presque Isle SSR Units, then the final rate schedule the Commission approves should reflect those determinations. This is necessary regardless of whether the final, Commission-accepted rate schedule is the First Revised Rate Schedule, the Third Revised Rate Schedule, or an entirely different rate schedule. Thus, while the issue of SSR cost allocation is beyond the scope of this hearing, Docket No. ER14-2862-003 is appropriately included in these proceedings. Therefore, the above caption correctly reflects the docket numbers assigned to this hearing.

SO ORDERED.

Michael J. Haubner  
Presiding Administrative Law Judge

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<sup>20</sup> November Order, at P 79(D).