

150 FERC ¶ 61,104
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Public Service Commission of Wisconsin

Docket Nos. EL14-34-001

v.

Midcontinent Independent System Operator, Inc.

ER14-1242-002
ER14-1242-003
ER14-1243-002
ER14-1243-004
ER14-1243-005

Midcontinent Independent System Operator, Inc.

ER14-1724-001
ER14-1724-002
ER14-1725-001
ER14-1725-002

ER14-2176-001
ER14-2176-002
ER14-2180-001
ER14-2180-002

ER14-2860-001
ER14-2862-001

ER14-2952-000
ER14-2952-001

Michigan Public Service Commission

EL15-7-000

v.

Midcontinent Independent System Operator, Inc.

ORDER ON REHEARING, ACCEPTING COMPLIANCE FILINGS, REJECTING
COMPLIANCE FILINGS AND REQUIRING FURTHER COMPLIANCE, AND
DISMISSING COMPLAINT

(Issued February 19, 2015)

1. In this order, we address several proceedings related to the allocation of costs associated with the operation of System Support Resource (SSR) Units under the Midcontinent Independent System Operator, Inc.'s (MISO) Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff).¹ In this order, we: (1) deny rehearing but grant clarification in part of the Commission's order on the complaint submitted under section 206 of the Federal Power Act (FPA)² in Docket No. EL14-34-000 by the Public Service Commission of Wisconsin (Wisconsin Commission);³ (2) reject MISO's filing submitted under section 205 of the FPA⁴ in Docket No. ER14-2952-000; (3) address the compliance filings submitted by MISO in accordance with the Wisconsin Commission Complaint Order, related to a proposed SSR agreement between Wisconsin Electric Power Company (Wisconsin Electric) and MISO, along with the

¹ The Tariff defines SSR Units 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.

² 16 U.S.C. § 824e (2012).

³ *Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,071 (2014) (Wisconsin Commission Complaint Order).

⁴ 16 U.S.C. § 824d (2012).

associated Presque Isle Rate Schedule 43G in Docket Nos. ER14-1242-002, ER14-1243-002, and ER14-1243-004; (4) deny rehearing of the Commission's order conditionally accepting a proposed SSR agreement between White Pine Electric Power, LLC (White Pine) and MISO in Docket No. ER14-1724-000, along with the associated White Pine Rate Schedule 43H in Docket No. ER14-1725-000;⁵ (5) deny rehearing of the Commission's order conditionally accepting a proposed SSR agreement between the City of Escanaba, Michigan (the City of Escanaba) and MISO in Docket No. ER14-2176-000, along with the associated Escanaba Rate Schedule 43 in Docket No. ER14-2180-000;⁶ (6) address the compliance filings submitted by MISO in compliance with the August 2014 Escanaba Order and the August 2014 White Pine Order in Docket Nos. ER14-1724-001, ER14-1725-001, ER14-2176-001, and ER14-2180-001; (7) deny rehearing of the Commission's order accepting and suspending, for a nominal period, subject to refund, a proposed SSR agreement between Wisconsin Electric and MISO in Docket No. ER14-2860-000 and the associated Presque Isle Rate Schedule 43G in Docket No. ER14-2862-000;⁷ and (8) dismiss the complaint submitted under section 206 of the FPA in Docket No. EL15-7-000 by the Michigan Public Service Commission (Michigan Commission).

2. In summary, as more fully described herein, we reaffirm the Commission's finding in the Wisconsin Commission Complaint Order that it is unjust, unreasonable, unduly discriminatory, or preferential for MISO to allocate SSR costs on a *pro rata* basis to all load-serving entities (LSEs) in the footprint of the American Transmission Company LLC (ATC), and thus we affirm the Commission's ruling requiring the removal of such language from MISO's Tariff for failure to follow cost causation principles. In its place, the Commission required in the Wisconsin Commission Complaint Order that SSR costs be allocated consistent with MISO's Tariff governing the allocation of SSR costs to the rest of MISO's footprint, which requires such costs to be allocated to the LSEs that require the operation of the SSR Units for reliability purposes. In this regard, we grant clarification of the Wisconsin Commission Complaint Order and find that, based on the record in these proceedings, MISO's current practice of allocating

⁵ *Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,136 (2014) (August 2014 White Pine Order).

⁶ *Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,116 (2014) (August 2014 Escanaba Order).

⁷ *Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,114 (2014) (November 10 Order).

SSR costs (which relies upon Local Balancing Authority (LBA) boundaries) can produce results that are not consistent with MISO's Tariff or cost causation principles by failing to allocate SSR costs to the LSEs that benefit from those SSR Units. Therefore, we require further compliance filings and direct MISO to file a new method to allocate the costs associated with the Presque Isle, White Pine and Escanaba SSR Units directly to benefitting LSEs. Finally, we reject the filing in Docket No. ER14-2592-000 (which reflects a new allocation of SSR costs based on new LBA boundaries for each of the three mentioned SSR Units), and dismiss the complaint filed in Docket No. EL15-7-000 (which contests the allocation of costs based on the new LBA boundaries) as moot, given our finding that MISO must allocate Presque Isle, White Pine and Escanaba SSR costs directly to benefitting LSEs.

I. Background

3. 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.⁸ The SSR agreement is filed with the Commission and specifies the terms and conditions of the service, including the compensation to be provided to the resource. For each SSR agreement filed with the Commission, a separate rate schedule must be filed to provide for the costs identified in the SSR agreement to be recovered from the identified LSE beneficiaries, consistent with section 38.2.7.k of MISO's Tariff.

4. 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

⁸ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163 (2004 SSR Order), *order on reh'g*, 109 FERC ¶ 61,157 (2004).

90 and 180 days of the date of the order.⁹ On July 22, 2014, the Commission conditionally accepted MISO's compliance filing, subject to further compliance.¹⁰

A. Presque Isle SSR Units

5. On January 31, 2014, in Docket No. ER14-1242-000, MISO submitted an SSR agreement under its Tariff between MISO and Wisconsin Electric for the purposes of providing compensation for the continued availability of Wisconsin Electric's Presque Isle Units 5-9 as SSR Units (Original Presque Isle SSR Agreement).¹¹ 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 (Original Presque Isle Rate Schedule 43G). At the time of the filing, section 38.2.7.k of MISO's Tariff required that the costs associated with the Original Presque Isle SSR Agreement be allocated to all LSEs within the ATC footprint on a *pro rata* basis.¹² On April 1, 2014, the Commission issued an order accepting the Original Presque Isle SSR Agreement and Original Presque Isle Rate Schedule 43G, suspending them for a nominal period, to be effective February 1, 2014, as requested, subject to refund and further Commission order.¹³

6. On April 3, 2014, in Docket No. EL14-34-000, the Wisconsin Commission submitted a complaint (Wisconsin Commission Complaint) pursuant to sections 206 and 306 of the FPA¹⁴ and Rule 206 of the Commission's Rules of Practice and Procedure.¹⁵

⁹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,237 (2012) (2012 SSR Order), *order on compliance*, 148 FERC ¶ 61,056 (2014) (SSR Compliance Order).

¹⁰ SSR Compliance Order, 148 FERC ¶ 61,056. Compliance filings and requests for rehearing are pending before the Commission in Docket Nos. ER12-2302-003 and ER12-2302-002.

¹¹ Presque Isle Units 5-9 are located in Marquette, Michigan within the ATC footprint and provide up to 344 MW of capacity. *See* MISO Original SSR Agreement Filing, Docket No. ER14-1242-000, Transmittal Letter at 2 (filed Jan. 31, 2014).

¹² *See* MISO Original Presque Isle Rate Schedule 43G Filing, Docket No. ER14-1243-000, Transmittal Letter at 3 (filed Jan. 31, 2014).

¹³ *Midcontinent Indep. Sys. Operator, Inc.*, 147 FERC ¶ 61,004, at P 12 (2014).

¹⁴ 16 U.S.C. §§ 824e, 825e (2012).

The Wisconsin Commission alleged that the SSR cost allocation provision in section 38.2.7.k of MISO's Tariff, and the provision's implementation in Original Presque Isle Rate Schedule 43G, was unjust, unreasonable, and unduly discriminatory or preferential. The Wisconsin Commission stated that when MISO assigns SSR costs to LSEs outside of the ATC footprint, MISO conducts a load-shed analysis to identify the LBAs benefitting from designating a unit as an SSR Unit.¹⁶ However, the Wisconsin Commission noted that such a load-shed study was not required once MISO determines that the load affected by the SSR designation lies within the ATC footprint. The Wisconsin Commission stated that, during its assessment of the Attachment Y Notice submitted by Wisconsin Electric for Presque Isle Units 5-9 (Presque Isle SSR Units), MISO conducted a load-shed analysis to determine which load in each of the five LBAs within the ATC footprint benefits from continued operation of Presque Isle Units 5-9, and provided a percentage allocation of costs by LBA. The Wisconsin Commission stated that the load-shed analysis showed that 58 percent of the reliability impact of the Original Presque Isle SSR Agreement was located in Michigan's Upper Peninsula, while only 42 percent of the benefitting load was in Wisconsin.¹⁷ The Wisconsin Commission asserted, however, that most of the costs of the Original Presque Isle SSR Agreement were allocated to Wisconsin LSEs pursuant to the ATC SSR *pro rata* cost allocation provision, as that is where the bulk of load is located. As a result, the Wisconsin Commission stated that 92 percent of the projected \$52.23 million in annual fixed costs under the Original Presque Isle SSR Agreement would be allocated to LSEs in Wisconsin, even though Wisconsin LSEs would only receive 42 percent of the reliability benefits associated with the Presque Isle SSR Units.¹⁸

7. On July 29, 2014, the Commission issued an order that addressed the Wisconsin Commission Complaint, the Original Presque Isle SSR Agreement, and Original Presque Isle Rate Schedule 43G.¹⁹ The Commission established hearing and settlement judge procedures on the issue of SSR compensation under the Original Presque Isle SSR Agreement.²⁰ The Commission also granted the Wisconsin Commission Complaint and

¹⁵ 18 C.F.R. § 385.206 (2014).

¹⁶ Wisconsin Commission Complaint at 12.

¹⁷ *Id.* at 13.

¹⁸ *Id.* at 14.

¹⁹ Wisconsin Commission Complaint Order, 148 FERC ¶ 61,071 (2014).

²⁰ *Id.* P 89.

found that the Tariff was unjust, unreasonable, unduly discriminatory, or preferential because the ATC SSR *pro rata* cost allocation provision applied in Original Presque Isle Rate Schedule 43G did not follow cost causation principles.²¹ The Commission directed MISO to remove the ATC SSR *pro rata* 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.”²² The Commission also required MISO to conduct a final load-shed study and submit a compliance filing to align cost allocation under Original Presque Isle Rate Schedule 43G with the Commission’s determination on the Wisconsin Commission Complaint.²³ Additionally, the Commission directed MISO to refund, with interest, any costs allocated to LSEs under Original Presque Isle Rate Schedule 43G from April 3, 2014 (the date of the Wisconsin Commission Complaint) until the date of the Wisconsin Commission Complaint Order that were in excess of the costs to be allocated to those LSEs under MISO’s final load-shed study.²⁴ Several parties filed requests for rehearing of the Wisconsin Commission Complaint Order in Docket Nos. ER14-1242-003, ER14-1243-005, and EL14-34-001. These requests for rehearing are addressed herein.

8. On August 11, 2014, MISO made a filing in Docket No. ER14-1242-002 to add language to the Original Presque Isle SSR Agreement related to compensation when the SSR Unit operates for economic rather than reliability purposes, and another filing in Docket No. ER14-1243-002 to remove the ATC SSR *pro rata* cost allocation provision from section 38.2.7.k of MISO’s Tariff, as required by the Commission in the Wisconsin Commission Complaint Order. Also on August 11, 2014, in Docket No. ER14-1243-004, MISO submitted the results of its final load-shed study, a revised Presque Isle Rate Schedule 43G, and a refund report.²⁵ MISO explained that in order to allocate SSR costs to LSEs that require the SSR Unit for reliability purposes, its Transmission Planning

²¹ *Id.* PP 59-61.

²² *Id.* P 66.

²³ *Id.* P 118.

²⁴ *Id.* P 68.

²⁵ MISO initially made the revision to Rate Schedule 43G on August 11, 2014 in Docket No. ER14-1243-003, but withdrew this filing after it was superseded by a corrected filing in Docket No. ER14-1243-004.

Business Practice Manual (BPM)²⁶ provides that it first allocates costs to LBAs using an optimal load-shed methodology to determine the reliability benefits of the SSR Units to each MISO LBA.²⁷ MISO explained that these load shed values for each North American Electric Reliability Corporation (NERC) contingency are 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 under the revised Presque Isle Rate Schedule 43G were: 5.66 percent to the Upper Peninsula Power Company LBA, 93.79 percent to the Wisconsin Electric LBA (WEC LBA), and 0.55 percent to the Wisconsin Public Service LBA.²⁸ These compliance filings are addressed herein.

9. On September 12, 2014, in Docket No. ER14-2860-000, MISO submitted a proposed replacement SSR agreement under its Tariff between MISO and Wisconsin Electric for Presque Isle Units 5-9 (Replacement Presque Isle SSR Agreement) and requested that the Original Presque Isle SSR Agreement be terminated effective October 15, 2014.²⁹ Also on September 12, 2014, in Docket No. ER14-2862-000, MISO

²⁶ MISO Transmission Planning Business Practices Manual, BPM-020-r10 (dated Apr. 10, 2014) at § 6.2.6 (System Support Resource Agreement Cost Allocation Methodology) (BPM), *available at* <https://www.misoenergy.org/Library/BusinessPracticesManuals/Pages/BusinessPracticesManuals.aspx>.

²⁷ *See* MISO Revised Rate Schedule 43G Filing, Docket No. ER14-1242-000, Tab C (Presque Isle SSR Cost Allocation Analysis Results) (filed Aug. 11, 2014).

²⁸ *See* MISO, FERC Electric Tariff, Schedule 43G (Allocation of SSR Costs Associated with the Presque Isle SSR Units) (33.0.0). MISO's revised Tariff language stated 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.

²⁹ The Replacement Presque Isle SSR Agreement reflected: (1) a new Attachment Y Notice from Wisconsin Electric indicating its intent to retire, rather than temporarily suspend operation of, Presque Isle Units 5-9; and (2) increased SSR compensation in accordance with the Commission's determination that compensation provided under an SSR agreement should not exceed a resource's full cost of service (citing *Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,057, at P 82 (2014)). The proposed compensation for the fixed costs of keeping Presque Isle Units 5-9 operational under the Replacement Presque Isle SSR Agreement is \$8,084,500 per month, for a total of approximately \$117 million dollars over the requested term of

(continued...)

submitted a revised Presque Isle Rate Schedule 43G under its Tariff to reflect the new requested effective date of October 15, 2014, which proposed the same cost allocation percentages as the Presque Isle Rate Schedule 43G filed in Docket No. ER14-1243-004. MISO also submitted an Attachment Y Study Report dated August 15, 2014 that provided summary information regarding its load-shed study.

10. On November 10, 2014, the Commission issued an order accepting the Replacement Presque Isle SSR Agreement, suspending it for a nominal period, to be effective October 15, 2014, subject to refund, setting the cost-related issues for hearing and settlement judge proceedings, consolidating these proceedings with the ongoing hearing and settlement judge procedures established in the Wisconsin Commission Complaint Order, and terminating the Original Presque Isle SSR Agreement.³⁰ The Commission also noted that revised Presque Isle Rate Schedule 43G includes cost allocation language that involves several issues that have been raised on rehearing and compliance in Docket Nos. ER14-1242, ER14-1243, and EL14-34.³¹ Accordingly, the Commission accepted revised Presque Isle Rate Schedule 43G, suspended it for a nominal period, to be effective October 15, 2014, subject to refund and further Commission order in Docket Nos. ER14-1242, ER14-1243, and EL14-34. Several parties filed requests for rehearing of the November 10 Order in Docket Nos. ER14-2860-001 and ER14-2862-001. These requests for rehearing are addressed herein.

B. Escanaba SSR Units

11. On June 13, 2014, in Docket No. ER14-2176-000, MISO submitted an SSR agreement between MISO and the City of Escanaba under its Tariff, for the continued provision of SSR service by the generating facilities known as Escanaba Units 1 and 2 (Escanaba SSR Units).³² In a contemporaneous filing in Docket No. ER14-2180-000,

14.5 months. *See* MISO Replacement Presque Isle SSR Agreement Filing, Docket No. ER14-2860-000, Transmittal Letter at 2, 13 (filed Sept. 12, 2014).

³⁰ November 10 Order, 149 FERC ¶ 61,114 (2014).

³¹ *Id.* P 78.

³² This SSR agreement was the third one-year SSR agreement filed by MISO for the Escanaba SSR Units (Second Restated Escanaba SSR Agreement). *See* MISO Second Restated Escanaba SSR Agreement Filing, Docket No. ER14-2176-000, Transmittal Letter at 2 (filed June 13, 2014). The Escanaba SSR Units are located in Escanaba, Michigan within the ATC footprint and are rated at approximately 12.5 MW each.

MISO submitted a Second Revised Escanaba Rate Schedule 43 under its Tariff to authorize MISO to allocate SSR costs that are associated with the Escanaba SSR Units. MISO asserted that the proposed cost allocation was consistent with section 38.2.7.k of the Tariff in effect at that time, which required MISO to assign SSR costs on a *pro rata* basis to all LSEs within the ATC footprint.³³

12. The Commission issued an order on August 12, 2014 conditionally accepting both the Second Restated Escanaba SSR Agreement and Second Revised Escanaba Rate Schedule 43, to be effective June 15, 2014, as requested, subject to compliance filings.³⁴ The Commission required MISO to submit a compliance filing to revise the Second Restated Escanaba SSR Agreement to include language relating to compensation when the SSR Unit operates for economic rather than reliability purposes.³⁵ The Commission directed MISO to conduct a load-shed study that identifies the LSEs which require the operation of the Escanaba SSR Units for reliability purposes.³⁶ The Commission directed MISO to submit in a compliance filing revisions adjusting the SSR cost allocation under Second Revised Escanaba Rate Schedule 43 such that the Escanaba SSR Units' costs are allocated in accordance with the load-shed study, consistent with the Wisconsin Commission Complaint Order, with such revised cost allocation to be effective as of June 15, 2014.³⁷ The Commission also directed MISO to refund, with interest, any costs allocated to LSEs under Second Revised Escanaba Rate Schedule 43 from June 15, 2014 until the August 12, 2014 date of the order that were higher than the costs to be allocated to those LSEs according to the forthcoming load-shed study.³⁸ Several parties filed requests for rehearing of the August 2014 Escanaba Order in Docket Nos. ER14-2176-002 and ER14-2180-002. These requests for rehearing are addressed herein.

13. In compliance with the Commission's directive, MISO submitted a revised Escanaba SSR Agreement in Docket No. ER14-2176-001 and a revised Escanaba Rate Schedule 43 in Docket No. ER14-2180-001 that allocates SSR costs to designated LBAs

³³ MISO Second Revised Escanaba Rate Schedule 43, Docket No. ER14-2180-000, Transmittal Letter at 2-3 (filed June 13, 2014).

³⁴ August 2014 Escanaba Order, 148 FERC ¶ 61,116 (2014).

³⁵ *Id.* P 34.

³⁶ *Id.* P 37.

³⁷ *Id.* PP 34, 37.

³⁸ *Id.* P 38.

and then *pro rata* to LSEs within each LBA, according to MISO's general practice.³⁹ The load-shed ratios proposed by MISO under revised Escanaba Rate Schedule 43 are 94.1 percent to the Upper Peninsula Power Company LBA and 5.9 percent to the WEC LBA.⁴⁰ MISO also submitted a refund report letter in Docket No. ER14-2180-001. These compliance filings are addressed herein.

C. White Pine SSR Units

14. On April 15, 2014, in Docket No. ER14-1724-000, MISO submitted a proposed SSR agreement between White Pine and MISO under its Tariff (the White Pine SSR Agreement) to ensure the continued availability of White Pine Unit 1 as an SSR Unit (White Pine SSR Unit).⁴¹ In a contemporaneous filing in Docket No. ER14-1725-000, MISO filed proposed White Pine Rate Schedule 43H under its Tariff to authorize MISO to allocate SSR costs that are associated with the White Pine SSR Unit. MISO stated that the proposed cost allocation in White Pine Rate Schedule 43H was consistent with the Tariff in effect at the time, which required MISO to assign SSR costs on a *pro rata* basis to all LSEs within the ATC footprint.⁴²

15. On June 13, 2014, the Commission issued an order accepting the White Pine SSR Agreement and associated White Pine Rate Schedule 43H, suspending them for a nominal period, to be effective April 16, 2014, as requested, subject to refund and further Commission order.⁴³ On August 21, 2014, the Commission issued a further order requiring MISO to submit a compliance filing to revise the White Pine SSR Agreement to include language relating to compensation when the SSR Unit operates for economic

³⁹ MISO Escanaba Rate Schedule 43 Compliance Filing, Docket No. ER14-2180-001, Tab C (Escanaba Load-Shed Study) (filed Sept. 10, 2014).

⁴⁰ See MISO, FERC Electric Tariff, Schedule 43 (Allocation of Costs Associated with the City of Escanaba SSR Units) (32.0.0).

⁴¹ White Pine Unit 1 is a generator turbine located in White Pine, Michigan within the ATC footprint with a nameplate capacity of 20 MW. See MISO White Pine SSR Agreement Filing, Docket No. ER14-1724-000, Transmittal Letter at 2 (filed Apr. 15, 2014).

⁴² MISO White Pine Rate Schedule 43H Filing, Docket No. ER14-1725-000, Transmittal Letter at 3 (filed Apr. 15, 2014).

⁴³ *Midcontinent Indep. Sys. Operator, Inc.*, 147 FERC ¶ 61,199 (2014).

rather than reliability purposes.⁴⁴ The Commission also directed MISO to align cost allocation under White Pine Rate Schedule 43H with the Wisconsin Commission Complaint Order.⁴⁵ Specifically, the Commission directed MISO to conduct a load-shed study that identifies the LSEs which require the operation of White Pine Unit 1 for reliability purposes and submit in a compliance filing Tariff revisions adjusting the SSR cost allocation under White Pine Rate Schedule 43H such that White Pine SSR costs are allocated in accordance with the load-shed study, with such revised cost allocation to be effective as of April 16, 2014.⁴⁶ The Commission also directed MISO to refund, with interest, any costs allocated to LSEs under Rate Schedule 43H from April 16, 2014 until the August 21, 2014 date of the order that were higher than the costs to be allocated to those LSEs according to the forthcoming load-shed study.⁴⁷ Several parties filed requests for rehearing of the August 2014 White Pine Order in Docket Nos. ER14-1724-002 and ER14-1725-002. These requests for rehearing are addressed herein.

16. In compliance with the Commission's directive, MISO submitted a revised White Pine SSR Agreement in Docket No. ER14-1724-001 and a revised White Pine Rate Schedule 43H in Docket No. ER14-1725-001 that allocates SSR costs to designated LBAs and then *pro rata* to LSEs within those LBAs, according to MISO's general practice.⁴⁸ The load-shed ratios proposed by MISO for the revised White Pine Rate Schedule 43H are: 12 percent to the Upper Peninsula Power Company LBA and 88 percent to the WEC LBA.⁴⁹ MISO also submitted a refund report in Docket No. ER14-1725-001. These compliance filings are addressed herein.

⁴⁴ August 2014 White Pine Order, 148 FERC ¶ 61,136 at PP 31-32.

⁴⁵ *Id.* P 43.

⁴⁶ *Id.* P 44.

⁴⁷ *Id.* P 45.

⁴⁸ MISO White Pine Rate Schedule 43H Compliance Filing, Docket No. ER14-1725-001, Tab C (White Pine Load-Shed Study) (filed Aug. 27, 2014).

⁴⁹ *See* MISO, FERC Electric Tariff, Schedule 43H (Allocation of SSR Costs Associated with the White Pine SSR Unit) (32.0.0).

D. MISO's Filing to Reflect the LBA Split in Docket No. ER14-2952-000

17. On September 26, 2014, in Docket No. ER14-2952-000, MISO filed a revised Escanaba Rate Schedule 43, a revised Presque Isle Rate Schedule 43G, and a revised White Pine Rate Schedule 43H to revise SSR cost allocation to reflect the creation of a new LBA within MISO's footprint.⁵⁰ MISO explained that the existing WEC LBA would be split into a newly reconfigured WEC LBA and a new Michigan Upper Peninsula LBA. MISO stated that NERC provisionally certified the Michigan Upper Peninsula LBA on June 13, 2014, and approved the LBA split to become effective on December 1, 2014.⁵¹

18. MISO stated that both (1) the pending Presque Isle Rate Schedule 43G filed in Docket No. ER14-1243-004 to comply with the Commission's directive in the Wisconsin Commission Complaint Order and (2) the revised Presque Isle Rate Schedule 43G accepted by the Commission in Docket ER14-2862-000 use the "WEC LBA" designation for the area that would encompass the newly reconfigured WEC LBA and the Michigan Upper Peninsula LBA when the LBA split goes into effect on December 1, 2014.⁵² In addition, MISO stated that the Escanaba Rate Schedule 43 pending before the Commission in Docket No. ER14-2180-001 and the White Pine Rate Schedule 43H pending before the Commission in Docket No. ER14-1725-001, both made in conformance with the Commission's findings in the Wisconsin Commission Complaint Order, use the same "WEC LBA" designation.⁵³ Accordingly, MISO stated that these three rate schedules should be revised to reflect the existence of new LBA boundaries effective December 1, 2014.

19. MISO stated that it conducted additional load-shed studies for the Presque Isle SSR Units, the Escanaba SSR Units, and the White Pine SSR Unit, which provide the LBA shares required to adjust the cost allocations in the associated rate schedules consistent with the findings in the Wisconsin Commission Complaint Order and the LBA split. Pursuant to these studies, the revised Presque Isle Rate Schedule 43G allocates SSR costs as follows: 93.57 percent to the Michigan Upper Peninsula LBA, 5.66 percent to the Upper Peninsula Power Company LBA, 0.22 percent to the WEC LBA, and

⁵⁰ MISO Filing to Revise ATC Rate Schedules, Docket No. ER14-2952-000, Transmittal Letter at 1 (filed Sept. 26, 2014) (Revised Rate Schedules Filing).

⁵¹ *Id.* at 2.

⁵² *Id.* at 4.

⁵³ *Id.* at 4-5.

0.55 percent to the Wisconsin Public Service LBA.⁵⁴ The revised Escanaba Rate Schedule 43 allocates SSR costs as follows: 5.9 percent to the Michigan Upper Peninsula LBA and 94.1 percent to the Upper Peninsula Power Company LBA.⁵⁵ The revised White Pine Rate Schedule 43H allocates SSR costs as follows: 88 percent to the Michigan Upper Peninsula LBA and 12 percent to the Upper Peninsula Power Company LBA.⁵⁶

20. On November 28, 2014, Commission staff issued a deficiency letter requesting more information from MISO. MISO filed a response to the deficiency letter in Docket No. ER14-2952-001 on December 17, 2014. Verso requested an extension of time to file comments to MISO's response on December 22, 2014. The Commission granted the request for extension on January 2, 2015, with comments to MISO's response due on January 16, 2015. MISO's proposed revised rate schedules are addressed herein.

E. Complaints

21. On September 19, 2014, in Docket Nos. EL14-103-000 and EL14-104-000, two complaints were filed with the Commission objecting to NERC's decision to allow Wisconsin Electric to split the existing WEC LBA into two new LBAs.⁵⁷ We address these complaints in a concurrently issued order. On October 20, 2014, in Docket No. EL15-7-000, the Michigan Commission filed a complaint arguing that MISO's existing Tariff procedures for allocating SSR costs, when applied to the reduced boundaries of the newly created Michigan Upper Peninsula LBA, will produce unjust and unreasonable results. The complaint filed in Docket No. EL15-7-000 is addressed herein.

⁵⁴ MISO, FERC Electric Tariff, Schedule 43G (Allocation of SSR Costs Associated with the Presque Isle SSR Units) (35.0.0).

⁵⁵ MISO, FERC Electric Tariff, Schedule 43 (Allocation of SSR Costs Associated with the Escanaba SSR Units) (33.0.0).

⁵⁶ MISO, FERC Electric Tariff, Schedule 43 (Allocation of SSR Costs Associated with the White Pine SSR Unit) (33.0.0).

⁵⁷ The complaint in Docket No. EL14-103-000 was filed by the Tilden Mining Company L.C. and the Empire Iron Mining Partnership (the Mines) against MISO and Wisconsin Electric. The complaint in Docket No. EL14-104-000 was filed by the Michigan Commission against NERC and Wisconsin Electric.

II. Requests for Rehearing of the Wisconsin Commission Complaint Order

A. Wisconsin Commission Complaint Order

22. The Commission granted the Wisconsin Commission Complaint and found that the Tariff was unjust, unreasonable, unduly discriminatory, or preferential because the ATC SSR *pro rata* cost allocation method did not follow cost causation principles.⁵⁸ The Commission found that the *pro rata* method applied in the Original Presque Isle Rate Schedule 43G allocated 92 percent of the cost of the Presque Isle SSR Units to LSEs located in Wisconsin even though such LSEs receive only 42 percent of the reliability benefit, according to a preliminary load-shed study conducted by MISO.⁵⁹ The Commission disagreed with the argument that the Commission had specifically approved the ATC SSR *pro rata* cost allocation provision when it accepted an SSR agreement between MISO and the City of Escanaba and related rate schedule by finding that the “*pro rata* allocation of SSR costs to LSEs throughout the ATC footprint” was “just and reasonable.”⁶⁰ The Commission found that the factual record in *Escanaba* did not establish that the ATC SSR *pro rata* cost allocation provision was unjust and unreasonable, that is, the Commission applied the filed rate.

23. The Commission did not address arguments that the costs of SSR Units should be allocated in the same manner as the costs of transmission reliability assets that are built to obviate the need for SSR Units, i.e., on a pricing zone basis. The Commission found that reaching these arguments was unnecessary to the Commission’s finding that allocating SSR costs *pro rata* among all load in the ATC footprint violates cost causation principles and the Commission’s prior statements that SSR cost allocation should be commensurate with reliability benefits received from continued operation of an SSR Unit.⁶¹ The Commission was also not persuaded that the history of the ATC SSR *pro rata* cost allocation provision required a different determination.⁶² The Commission found that, although ATC may have been originally formed as a single pricing zone within MISO in order to promote the sharing of costs for regional transmission planning, that original

⁵⁸ Wisconsin Commission Complaint Order, 148 FERC ¶ 61,071 at PP 59-61.

⁵⁹ *Id.* P 61.

⁶⁰ *Id.* P 63 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,170, at P 72 (2013) (*Escanaba*)).

⁶¹ *Id.* P 64.

⁶² *Id.* P 65.

intent did not require all costs to be shared equally in perpetuity. The Commission stated that *pro rata* cost sharing of SSR Units would not promote any regional decision-making because decisions concerning the operational status of ATC member utilities' generation assets are not subject to the ATC transmission planning process, and that the desire to serve the original intent of ATC formation does not override the requirement that SSR costs be allocated to LSEs based upon the reliability benefits received from the designation of the SSR Unit in order to satisfy cost causation principles.

24. The Commission directed MISO to make a compliance filing to remove the ATC SSR *pro rata* 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."⁶³ The Commission noted that MISO has flexibility in how it will identify the particular LSEs that require the SSR Unit for reliability, but found that in this case, the preliminary load-shed study conducted by MISO reflected a just and reasonable method to ensure that those LSEs requiring use of the Presque Isle SSR Units are allocated the costs incurred under the Presque Isle SSR Agreement. The Commission directed MISO to submit a final load-shed study in the compliance filing.

25. The Commission exercised its discretion in fashioning remedies and ordered refunds as of the April 3, 2014 refund effective date, the date the Wisconsin Commission Complaint was filed.⁶⁴ First, the Commission noted that the revised cost allocation did not represent a new cost allocation methodology, but rather conformed the allocation of SSR costs in the ATC footprint to the existing methodology applied throughout the rest of the MISO region. Second, the Commission stated that the costs at issue in that case were limited to those associated with a single SSR Unit, to be allocated among a defined set of customers within a limited geographic area, for a period of less than four months. Finally, the Commission stated that refunds would not require broad adjustments to MISO's markets.

B. Late Interventions and Requests for Rehearing

26. Cloverland Electric Cooperative (Cloverland) submitted a late-filed motion to intervene in Docket Nos. ER14-1243-005 and ER14-1243-004 on September 5, 2014. The City of Escanaba submitted a late-filed motion to intervene in Docket Nos. EL14-34-000, ER14-1242-000, and ER14-1243-000 on September 2, 2014. Requests for rehearing of the Wisconsin Commission Complaint Order were filed by: the Michigan

⁶³ *Id.* P 66.

⁶⁴ *Id.* P 68.

Commission; the City of Escanaba; the Wisconsin Commission; Verso Paper Corp. (Verso); Cloverland; Wisconsin Electric, WPPI Energy (WPPI); the Mines; and Integrys Energy Services, Inc. (Integrys). Answers to or comments on the requests for rehearing were filed by: Wisconsin Electric; MISO; Verso; the Wisconsin Commission; the Michigan Commission; the Mines; and the Wisconsin Customers Coalition.⁶⁵ The Michigan Commission filed two requests to supplement its request for rehearing on August 29, 2014 and November 21, 2014. The Mines filed a corrected request for rehearing on September 2, 2014.

27. Several parties filed requests for rehearing alleging that the Commission failed to meet its burden to identify new evidence or changed circumstances showing that (1) *pro rata* allocation of SSR costs in the ATC footprint has become unjust and unreasonable and (2) the new method of cost allocation ordered by the Commission is just and reasonable.⁶⁶

28. Integrys refutes the Commission's claim that there is no evidence to support an allocation of 92 percent of the Presque Isle SSR costs to Wisconsin customers.⁶⁷ Integrys notes that generation costs are allocated to Wisconsin Electric's customers in Wisconsin and Michigan using an allocation factor, and that pursuant to this factor, approximately 92 percent of the embedded costs are allocated to Wisconsin and 8 percent are allocated to Michigan. Integrys further argues that, because Wisconsin Electric includes the Presque Isle generation costs in its bundled retail rates, Wisconsin Electric is double-recovering those costs.

⁶⁵ The Wisconsin Customers Coalition is comprised of the Wisconsin Industrial Energy Group, Inc. and the Citizens Utility Board of Wisconsin.

⁶⁶ Request for Rehearing of the Michigan Public Service Commission, Docket No. EL14-34-001, *et al.*, at 11 (filed Aug. 28, 2014) (Michigan Commission Request for Rehearing of the Wisconsin Commission Complaint Order); Request for Rehearing of Cloverland Electric Cooperative, Docket No. EL14-34-001, *et al.*, at 3 (filed Aug. 28, 2014) (Cloverland Request for Rehearing of the Wisconsin Commission Complaint Order). On November 21, 2014, in Docket No. EL14-34-001, *et al.*, John C. Precario, Chairman, President and CEO of ATC, submitted a letter explaining electric supply issues in the Upper Peninsula of Michigan.

⁶⁷ Request for Rehearing of Integrys Energy Services, Inc., Docket No. EL14-34-001, *et al.*, at 18-20 (filed Aug. 28, 2014) (Integrys Request for Rehearing of the Wisconsin Commission Complaint Order).

1. MISO's Preliminary Load-Shed Study

29. The Michigan Commission and Cloverland state that it was inappropriate for the Commission to rely on MISO's preliminary load-shed study to determine that the ATC SSR *pro rata* cost allocation provision did not satisfy cost causation principles, because the load-shed study does not constitute substantial evidence that the existing method is not just and reasonable or that the new method ordered by the Commission is just and reasonable.⁶⁸ The Michigan Commission argues that the Commission did not adequately address arguments that: (1) the load-shed study was incomplete; (2) the study did not include a number of contingencies which could cause large scale voltage collapse in the ATC footprint; or (3) due to the existence of a low-voltage transmission system in the Upper Peninsula, the study would place a disproportionate share of SSR costs on ratepayers in the Upper Peninsula. Several parties further argue that it was arbitrary and capricious to revise the SSR cost allocation on the basis of a final load-shed study that the Commission had not yet seen, and that the Commission did not have the evidence in the record to decide if the new cost allocation methodology will be just and reasonable.⁶⁹ They assert that the Commission did not give affected customers opportunity to object to the validity of the final load-shed study.⁷⁰ The Michigan Commission and Cloverland assert that a full hearing is required to determine the impact of the revised SSR cost allocation on individual LSEs.⁷¹

⁶⁸ Michigan Commission Request for Rehearing of the Wisconsin Commission Complaint Order at 14-16, 44-45; Cloverland Request for Rehearing of the Wisconsin Commission Complaint Order at 4.

⁶⁹ Michigan Commission Request for Rehearing of the Wisconsin Commission Complaint Order at 45-47; Cloverland Request for Rehearing of the Wisconsin Commission Complaint Order at 4; Motion to Intervene Out-of-Time and Request for Clarification and Rehearing of the City of Escanaba, Michigan, Docket No. EL14-34-001, *et al.*, at 5 (filed Aug. 28, 2014) (The City of Escanaba Request for Rehearing of the Wisconsin Commission Complaint Order).

⁷⁰ Michigan Commission Request for Rehearing of the Wisconsin Commission Complaint Order at 46; Cloverland Request for Rehearing of the Wisconsin Commission Complaint Order at 4.

⁷¹ Michigan Commission Request for Rehearing of the Wisconsin Commission Complaint Order at 44-45; Cloverland Request for Rehearing of the Wisconsin Commission Complaint Order at 4.

2. History and Benefits of the ATC SSR *Pro Rata* Cost Allocation Provision

30. Several parties argue that the Commission engaged in unreasoned decision-making because the Commission ignored the history of the ATC SSR *pro rata* cost allocation provision and the benefits of the single pricing zone structure on which ATC was founded. They state that ratepayers in the ATC footprint have shared the costs and benefits of being part of an integrated, single zone transmission system for 14 years, and that the *pro rata* rate design was put in place to provide an incentive to support transmission infrastructure projects that benefit the entire ATC footprint.⁷² They state that there has been no change in the original ATC forming principles to justify a change to the *pro rata* allocation of SSR costs.⁷³ The Mines argue that all LSEs within the ATC footprint benefit from system reliability, and *pro rata* SSR cost sharing recognizes this principle.⁷⁴ While the Michigan Commission notes that the majority of energy and sales demand of ATC are in Wisconsin, and therefore Wisconsin customers may pay SSR costs in disproportion to the reliability benefits they receive, in other circumstances, Michigan customers may bear costs in which they receive little benefit.⁷⁵ Integrys argues that the Commission too narrowly interpreted what constitutes cost causation and ignored the other benefits that accrue to ATC.⁷⁶

⁷² Michigan Commission Request for Rehearing of the Wisconsin Commission Complaint Order at 17-18; Integrys Request for Rehearing of the Wisconsin Commission Complaint Order at 11-13.

⁷³ Request for Rehearing and Motion to Lodge of Verso Paper Corp., Docket No. EL14-34-001, *et al.*, at 8 (filed Aug. 28, 2014) (Verso Request for Rehearing of the Wisconsin Commission Complaint Order); Request for Rehearing of Tilden Mining Company L.C. and Empire Iron Mining Partnership, Docket No. EL14-34-001, *et al.*, at 4-5 (filed Aug. 28, 2014) (The Mines Request for Rehearing of the Wisconsin Commission Complaint Order).

⁷⁴ The Mines Request for Rehearing of the Wisconsin Commission Complaint Order at 5.

⁷⁵ Michigan Commission Request for Rehearing of the Wisconsin Commission Complaint Order at 18-20; *see also* Integrys Request for Rehearing of the Wisconsin Commission Complaint Order at 12. For example, the Michigan Commission states that Michigan customers have been allocated costs for generating facilities that are incapable of direct delivery of power to Michigan.

⁷⁶ Integrys Request for Rehearing of the Wisconsin Commission Complaint Order at 19-21. Integrys asserts that all ATC LSEs are beneficiaries of the infrastructure

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31. Several parties argue that the Commission erred in failing to find that an SSR Unit is a transmission reliability asset, and that the ATC SSR *pro rata* cost allocation provision was intended to be consistent with the historical allocation of transmission costs in the ATC footprint.⁷⁷ Verso states that all customers pay their *pro rata* share of transmission upgrades regardless of whether they benefitted from those upgrades, and the Michigan Commission asserts that it is unfair to charge customers in the Upper Peninsula for the costs of transmission facilities they do not benefit from while excluding Wisconsin customers from SSR costs in the Upper Peninsula.⁷⁸ The Michigan Commission and Verso argue that the Commission erred in finding that decisions concerning the operational status of SSR generators are not subject to the transmission planning process, because they argue that Order No. 1000 specifically requires the regional transmission planning process to include consideration of non-transmission alternatives.⁷⁹ Several parties state that requiring all members of the regional planning process to pay their *pro rata* share of SSR costs will improve the process by helping the region plan and implement transmission and related infrastructure upgrades.⁸⁰ The Michigan Commission argues that inconsistent allocation of transmission versus SSR

additions and improvements to the bulk transmission system in Wisconsin and the Upper Peninsula.

⁷⁷ Michigan Commission Request for Rehearing of the Wisconsin Commission Complaint Order at 32-38; Cloverland Request for Rehearing of the Wisconsin Commission Complaint Order at 4; Integrys Request for Rehearing of the Wisconsin Commission Complaint Order at 17-18.

⁷⁸ Verso Request for Rehearing of the Wisconsin Commission Complaint Order at 8-9; Michigan Commission Request for Rehearing of the Wisconsin Commission Complaint Order at 42.

⁷⁹ Michigan Commission Request for Rehearing of the Wisconsin Commission Complaint Order at 40-41 (citing *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323, at P 155 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, at P 93, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014)); Verso Request for Rehearing of the Wisconsin Commission Complaint Order at 14.

⁸⁰ Verso Request for Rehearing of the Wisconsin Commission Complaint Order at 12, 15; Integrys Request for Rehearing of the Wisconsin Commission Complaint Order at 21-22; The Mines Request for Rehearing of the Wisconsin Commission Complaint Order at 4-5.

costs could provide some stakeholders with disincentives to find a transmission-related solution in the Upper Peninsula, because such stakeholders would incur greater costs under a transmission solution (rather than an SSR designation) even if the overall cost of the transmission solution is less than maintaining SSR Units.⁸¹ The Michigan Commission also equates SSR costs to must-run costs. It states that stakeholders made a conscious decision to socialize the costs of must-run generation across the ATC footprint in 2001, and that in 2004 MISO included a provision to allocate must-run generation costs, referenced for the first time as SSR costs, on a zone-wide basis to be consistent with ATC's practices.⁸²

32. The Michigan Commission argues that the Commission erred in trying to distinguish its earlier acceptance of the ATC SSR *pro rata* cost allocation provision in *Escanaba*, where, according to the Michigan Commission, the Commission found that the *pro rata* allocation of SSR costs in the ATC footprint was just and reasonable because SSRs are related to transmission system reliability, and therefore the demand-based methodology was correlated to the reliability issues that underlie the SSR process.⁸³ Several parties argue that the Commission has repeatedly approved the ATC SSR *pro rata* cost allocation provision in several orders dating back to 2004 and that the Wisconsin Commission Complaint is a collateral attack on these orders.⁸⁴ The Michigan Commission argues that the Commission's cost causation principle only requires that approved rates reflect to some degree the costs actually caused by the customer who must pay them, and states that the Commission has found in numerous contexts that allocating transmission reliability costs on a pricing zone basis fulfills this principle.⁸⁵

⁸¹ Michigan Commission Request for Rehearing of the Wisconsin Commission Complaint Order at 41-42.

⁸² *Id.* at 33-35.

⁸³ *Id.* at 29-30 (citing *Escanaba*, 142 FERC ¶ 61,170 at PP 72-73.)

⁸⁴ *Id.* at 32, 35-38 (citing *Wisconsin Electric Power Co., et al.*, 97 FERC ¶ 61,337 (2001); *American Transmission Co., LLC*, 97 FERC ¶ 62,182 (2001); 2004 SSR Order, 108 FERC ¶ 61,163; *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,318, at P 175 (2008); 2012 SSR Order, 140 FERC ¶ 61,237 at P 153)); The Mines Request for Rehearing of the Wisconsin Commission Complaint Order at 6-8; Integrys Request for Rehearing of the Wisconsin Commission Complaint Order at 8-9.

⁸⁵ Michigan Commission Request for Rehearing of the Wisconsin Commission Complaint Order at 20.

33. Several parties argue that the Commission erred in not setting the matter for hearing to resolve material issues of fact, such as the Commission's conclusion that SSR/must-run generators are not included in the ATC planning process, the Commission's reliance on the preliminary load-shed study, the unfair discrepancy between the allocation of transmission costs versus SSR costs in the ATC footprint, whether the load-shed study is the only means to measure cost allocation, and whether the Commission's assumptions about the cost burdens that have been borne by Michigan ratepayers are accurate.⁸⁶

3. Effect of the LBA Split

34. Integrys asserts that the Commission did not have all of the facts when it granted the Wisconsin Commission Complaint on July 29, 2014, because it was not aware of the pending December 1, 2014 split of the WEC LBA or the financial impact that the split would have on Michigan customers.⁸⁷ Several parties state that the allocation of Presque Isle SSR costs using MISO's existing BPM methodology changes significantly if MISO were to allocate costs to the split WEC LBA versus the existing WEC LBA, causing Michigan Upper Peninsula customers to bear 93.57 percent of the costs of the \$52 million in costs for Presque Isle Units 5-9 on an annual basis.⁸⁸ The Wisconsin Commission,

⁸⁶ *Id.* at 47-48; Cloverland Request for Rehearing of the Wisconsin Commission Complaint Order at 5; Verso Request for Rehearing of the Wisconsin Commission Complaint Order at 19.

⁸⁷ Integrys Request for Rehearing of the Wisconsin Commission Complaint Order at 13-16.

⁸⁸ Request for Clarification of the Public Service Commission of Wisconsin, Docket No. EL14-34-001, *et al.*, at 9 (filed Aug. 28, 2014) (Wisconsin Commission Request for Clarification of the Wisconsin Commission Complaint Order); Integrys Request for Rehearing of the Wisconsin Commission Complaint Order at 15; Verso Request for Rehearing of the Wisconsin Commission Complaint Order at 18. The proposed compensation for the fixed costs of keeping Presque Isle Units 5-9 operational increased to approximately \$117 million dollars for the 14.5-month term under the Replacement Presque Isle SSR Agreement that was accepted by the Commission and set for hearing and settlement judge procedures in the November 10 Order in Docket No. ER14-2860-000. *See* MISO Replacement Presque Isle SSR Agreement Filing, Docket No. ER14-2860-000, Transmittal Letter at 13 (filed Sept. 12, 2014). In contrast, the proposed compensation for the fixed costs of keeping the White Pine SSR Unit operational is approximately \$3.2 million and the proposed compensation for the fixed costs of keeping the Escanaba SSR Units operational is approximately \$3.7 million. *See*

(continued...)

however, supports this cost allocation, and, pointing to an analysis of MISO's final load-shed study conducted by MISO's West Technical Study Task Force, argues that Michigan receives most of the benefit of Presque Isle operation and should therefore pay the costs.⁸⁹ Verso does not support this cost allocation, as it asserts that this rate impact to the Upper Peninsula is unjust and unreasonable, and that it creates a windfall for Wisconsin ratepayers of the former WEC LBA.⁹⁰ Integrys asserts that retaining the *pro rata* allocation of SSR costs in the ATC footprint protects Upper Peninsula customers from the unilateral action of Wisconsin Electric to split the WEC LBA.⁹¹

35. Verso argues that the LBA split has not been properly supported by Wisconsin Electric.⁹² Verso filed a motion to lodge evidence relating to: (1) the support for or opposition to the new Michigan Upper Peninsula LBA; and (2) the potential rate impact if the Michigan Upper Peninsula LBA is approved.⁹³ Verso argues that this information is directly related to the issue of SSR cost allocation in this proceeding.

36. WPPI argues that the LBA bifurcation should not control the allocation of SSR costs, because it does not alter the transmission and generation topology that causes incurrence of Presque Isle SSR costs.⁹⁴ WPPI argues that allocation of SSR costs across LSEs should track the extent to which each identifiable subset of load necessitates and benefits from SSR operation, and asks the Commission to rule on rehearing that the

MISO White Pine SSR Agreement Filing, Docket No. ER14-1724-000, Transmittal Letter at 2 (filed Apr. 15, 2014); MISO Second Restated Escanaba SSR Agreement Filing, Docket No. ER14-2176-000, Transmittal Letter at 2 (filed June 13, 2014).

⁸⁹ Wisconsin Commission Request for Clarification of the Wisconsin Commission Complaint Order at 10-11.

⁹⁰ Verso Request for Rehearing of the Wisconsin Commission Complaint Order at 18.

⁹¹ Integrys Request for Rehearing of the Wisconsin Commission Complaint Order at 16.

⁹² Verso Request for Rehearing of the Wisconsin Commission Complaint Order at 14-15.

⁹³ *Id.* at 24-25.

⁹⁴ WPPI Request for Rehearing of the Wisconsin Commission Complaint Order at 5-10.

allocation of Presque Isle SSR costs should differentiate between the Michigan and Wisconsin portions of the unsplit WEC LBA. WPPI states that the Wisconsin and Michigan portions of the historically defined WEC LBA should be assessed separately, regardless of any changes in the LBA boundary, which is not congruent with the causation of Presque Isle SSR costs and benefits.⁹⁵

4. Refunds

37. Several parties argue that the Commission erred in imposing refunds starting at the date of the filing of the Wisconsin Commission Complaint, given that this is a cost allocation case.⁹⁶ While these parties acknowledge that the Commission may exercise the discretion to direct MISO to provide refunds to Wisconsin ratepayers, they state that the Commission has imposed retroactive surcharges on Michigan ratepayers, which are barred by section 206 of the FPA.⁹⁷ Verso and the Mines explain that MISO has no money of its own to refund dollars, and that any dollars that MISO would use for such refunds must come from other customers, by surcharging those LSEs that paid too little according to the final load-shed study.⁹⁸ The City of Escanaba states that the Commission has held that the one-sided nature of its refund authority – i.e., that it lacks corresponding surcharge authority to pay for the refunds – is a primary basis for its policy of applying cost allocation changes only prospectively.⁹⁹ Verso and the Mines state that

⁹⁵ *Id.* at 11.

⁹⁶ Michigan Commission Request for Rehearing of the Wisconsin Commission Complaint Order at 49-52; The City of Escanaba Request for Rehearing of the Wisconsin Commission Complaint Order at 5-7; Verso Request for Rehearing of the Wisconsin Commission Complaint Order at 21-22; Cloverland Request for Rehearing of the Wisconsin Commission Complaint Order at 5; The Mines Request for Rehearing of the Wisconsin Commission Complaint Order at 9-11; Integrys Request for Rehearing of the Wisconsin Commission Complaint Order at 22-24.

⁹⁷ Michigan Commission Request for Rehearing of the Wisconsin Commission Complaint Order at 51 (citing *City of Anaheim, California v. FERC*, 558 F.3d 521 (D.C. Cir. 2009) (*City of Anaheim*)); Verso Request for Rehearing of the Wisconsin Commission Complaint Order at 22; The Mines Request for Rehearing of the Wisconsin Commission Complaint Order at 9-10.

⁹⁸ Verso Request for Rehearing of the Wisconsin Commission Complaint Order at 22; The Mines Request for Rehearing of the Wisconsin Commission Complaint Order at 9.

⁹⁹ The City of Escanaba Request for Rehearing of the Wisconsin Commission

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a rate increase may go into effect under section 206(a) of the FPA only when the final load-shed study is approved, and that the new SSR rates should be prospective from that day forward.¹⁰⁰

38. Several parties argue that, even if legally supported by section 206 of the FPA, the Commission's decision is an unjustified departure from precedent. They state that the Commission's long-standing policy is that when a Commission action under section 206 of the FPA requires only a cost allocation or a rate design change, the Commission's order will take effect prospectively, without refunds.¹⁰¹ The Michigan Commission states that the Commission follows this approach because parties cannot alter past decisions made in reliance on a rate design then in effect and because refunds could result in a situation where the utility would under-recover the legitimate costs because it would not have the opportunity to immediately file a new rate case to recover the revenue shortfall.¹⁰² Integrys states that the Commission's policy is to avoid retroactive implementation of rates and resettlements that would create substantial uncertainty in the markets, or where doing so would change the economic and commercial expectations of

Complaint Order at 6 (citing *Black Oak Energy, L.L.C. v. PJM Interconnection, L.L.C.*, 136 FERC ¶ 61,040 (2012) (*Black Oak*) (citing *City of Anaheim* for the proposition that it could not order PJM to recover surcharges to pay for refunds); *remanded on other grounds, Black Oak Energy, LLC v. FERC*, 725 F.3d 230 (D.C. Cir. 2013) (*Black Oak v. FERC*)).

¹⁰⁰ Verso Request for Rehearing of the Wisconsin Commission Complaint Order at 23-24; The Mines Request for Rehearing of the Wisconsin Commission Complaint Order at 10.

¹⁰¹ Michigan Commission Request for Rehearing of the Wisconsin Commission Complaint Order at 49 (citing *Occidental Chemical Corporation v. PJM Interconnection, L.L.C. and Delmarva Power & Light Co.*, 110 FERC ¶ 61,378, at P 10 (2005) (*Occidental*)); The City of Escanaba Request for Rehearing of the Wisconsin Commission Complaint Order at 5; Integrys Request for Rehearing of the Wisconsin Commission Complaint Order at 22.

¹⁰² Michigan Commission Request for Rehearing of the Wisconsin Commission Complaint Order at 50-51 (citing *Occidental*, 110 FERC ¶ 61,378 at P 10; *Union Electric Co.*, 64 FERC ¶ 61,355, at 63,468 (1993); *Black Oak*, 136 FERC ¶ 61,040 at P 26).

market participants with respect to their transactions which they cannot undo.¹⁰³ Integrys asserts that these customers are faced with retroactive adjustments back six months and had no means by which to adjust their operations, or plan for or anticipate these costs.¹⁰⁴

39. Several parties take issue with the Commission's statement that the "revised cost allocation does not represent a new cost allocation because it is merely conforming the allocation of SSR costs in the ATC footprint to the method applied throughout the rest of the MISO region."¹⁰⁵ They state that the allocation is a new cost allocation to ratepayers in the Upper Peninsula that will be subject to higher rates. The Michigan Commission and Integrys take issue with the Commission's indication that the SSR costs at issue are limited to costs associated with a single SSR Unit, to be allocated among a defined set of customers within a limited geographic area for a limited time period.¹⁰⁶ The Michigan Commission argues that this reasoning must be rejected because those characteristics apply to all cases involving refund obligations. In addition, due to the Commission's reliance on a preliminary load-shed study, the Michigan Commission argues that the Commission has no basis for considering the actual financial magnitude that its decision to allocate Presque Isle SSR costs will have on the defined set of customers.¹⁰⁷ Integrys argues that the fact that these costs are limited to one SSR Unit is of little comfort to the customers who must pay the annual costs of \$52 million which, if allocable to customers in the new Michigan Upper Peninsula LBA, will increase rates from \$0.95/MWh under

¹⁰³ Integrys Request for Rehearing of the Wisconsin Commission Complaint Order at 23 (citing *New York Indep. Sys. Operator, Inc.*, 92 FERC ¶ 61,073, at 61,307 (2000), *reh'g denied*, 97 FERC ¶ 61,154, at 61,673 (2001)).

¹⁰⁴ *Id.* at 24.

¹⁰⁵ *Id.* at 23-24; Michigan Commission Request for Rehearing of the Wisconsin Commission Complaint Order at 49 (citing Wisconsin Commission Complaint Order, 148 FERC ¶ 61,071 at P 68); The City of Escanaba Request for Rehearing of the Wisconsin Commission Complaint Order at 7.

¹⁰⁶ Michigan Commission Request for Rehearing of the Wisconsin Commission Complaint Order at 49 (citing Wisconsin Commission Complaint Order, 148 FERC ¶ 61,071 at P 68); Integrys Request for Rehearing of the Wisconsin Commission Complaint Order at 24.

¹⁰⁷ Michigan Commission Request for Rehearing of the Wisconsin Commission Complaint Order at 50.

the ATC SSR *pro rata* methodology to approximately \$16/MWh.¹⁰⁸ Finally, the Michigan Commission notes that the Commission's argument that refunds are appropriate because they will not require broader adjustments to MISO's markets must be rejected, as the ease of implementation is not a legitimate basis for ordering refunds.¹⁰⁹

5. Requests for Clarification

40. The Michigan Commission requests clarification that the flexibility given to MISO to determine a method to allocate SSR costs to the LSEs that benefit from the operation of the SSR Units will not require the state commissions to employ any particular allocation methodology at the retail rate level for purposes of allocating such costs within an LSE that operates in both Michigan and Wisconsin, because it is the state's exclusive jurisdiction to set retail rates.¹¹⁰

41. The City of Escanaba requests clarification that the Wisconsin Commission Complaint Order did not prejudice the justness and reasonableness of MISO's load-shed methodology as applied to any particular case or customers.¹¹¹ The City of Escanaba states that MISO's Tariff does not require the load-shed methodology, and argues that this methodology may not produce just and reasonable results in every case.

42. Wisconsin Electric requests clarification that any method MISO uses to identify the beneficiaries of an SSR Unit must be consistent with the Tariff requirement that costs are allocated to the LSEs that benefit.¹¹² Wisconsin Electric states that the current BPM method allocates costs beyond the identified LSE beneficiaries to the LBAs in which those beneficiaries reside, and is therefore unjust and unreasonable.¹¹³ Wisconsin

¹⁰⁸ Integrys Request for Rehearing of the Wisconsin Commission Complaint Order at 24.

¹⁰⁹ Michigan Commission Request for Rehearing of the Wisconsin Commission Complaint Order at 50 (citing Wisconsin Commission Complaint Order, 148 FERC ¶ 61,071 at P 68).

¹¹⁰ *Id.* at 52-55.

¹¹¹ The City of Escanaba Request for Rehearing of the Wisconsin Commission Complaint Order at 4.

¹¹² Request for Clarification or, in the Alternative, Rehearing of the Wisconsin Electric Power Company, Docket No. EL14-34-001, *et al.*, at 4 (filed Aug. 28, 2014).

¹¹³ *Id.* at 5-7.

Electric suggests that the only reasonable method is to allocate costs based on actual energy withdrawals at commercial pricing nodes.¹¹⁴

43. WPPI notes that the Commission specifically set for hearing the fixed cost component of Presque Isle SSR compensation, but made no such requirement for the variable cost component.¹¹⁵ WPPI requests that the Commission give parties an opportunity to review the variable costs collected pursuant to Presque Isle Rate Schedule 43G.¹¹⁶ WPPI states that the amount of variable costs, e.g., fuel, will not be known until after Presque Isle has actually been called upon under the Presque Isle SSR Agreement, and that verification of these variable costs is necessarily an after-the-fact review.¹¹⁷ WPPI recognizes that variable cost information will be subject to audit by MISO, but argues that it is insufficient to vest audit responsibility solely with MISO, because interested parties require the opportunity to participate in the review of the costs and must have the opportunity to challenge those costs.¹¹⁸

III. Responsive Pleadings to MISO's Filing to Reflect the Split of the WEC LBA Docket No. ER14-2952-000

A. Notice and Responsive Pleadings

44. Notice of MISO's filing in Docket No. ER14-2952-000 was published in the *Federal Register*, 79 Fed. Reg. 60,150 (2014), with interventions and protests due on or before October 17, 2014.

45. Timely motions to intervene were filed by: Wisconsin Public Service Corporation; Citizens Utility Board of Wisconsin; Consumers Energy Company; Wisconsin Industrial Energy Group; ATC; Midcontinent Municipal-Cooperative Network, LLC; and Wisconsin Power and Light Company. Timely motions to intervene and protests were filed by: Verso; the Mines; the City of Escanaba; and Integrys. WPPI filed a timely motion to intervene, comments, and partial protest. Cloverland filed a

¹¹⁴ *Id.* at 10.

¹¹⁵ WPPI Request for Rehearing of the Wisconsin Commission Complaint Order at 13 (citing Wisconsin Commission Complaint Order, 148 FERC ¶ 61,071 at P 89).

¹¹⁶ *Id.* at 13-16.

¹¹⁷ *Id.* at 14.

¹¹⁸ *Id.* at 14-15.

timely motion to intervene, separate comments, and a separate protest. The Michigan Commission filed a notice of intervention and protest. The Wisconsin Commission filed a notice of intervention and comments. Wisconsin Electric filed a request to hold the proceeding in abeyance and conditional protest on October 9, 2014. Wisconsin Electric filed a supplement to its protest on October 22, 2014.

46. Wisconsin Electric, the Michigan Public Power Agency, the Upper Peninsula Power Company, the City of Mackinac Island, and the Sault Ste. Marie Tribe of Chippewa Indians filed out-of-time motions to intervene.

47. Comments were filed by: Tina M. Perry; Charles Perry; U.S. Representative Dan Benishek; Gina M. Harman; 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 Letter). Carol M. Viventi, Secretary of the Michigan Senate, submitted Michigan Senate Resolution No. 187, urging the Commission to reverse its decision accepting MISO's revised SSR cost allocation methodology. John C. Precario, Chairman, President and Chief Executive Officer of ATC, filed a letter explaining electric supply issues in the Upper Peninsula of Michigan.

48. The Wisconsin Customers Coalition, Wisconsin Electric, the Michigan Commission, WPPI, the Wisconsin Commission, Verso, and MISO filed motions for leave to answer and answers to the protests. The Michigan Commission filed a motion for leave to answer and answer to Wisconsin Electric's answer. Wisconsin Electric filed a motion to answer and answer to Verso's answer. Cloverland filed a motion to reject the answer of the Wisconsin Commission or, in the alternative, a motion for leave to answer and answer on November 4, 2014. The Michigan Commission, WPPI, and Verso filed answers to Wisconsin Electric's request to hold the proceedings in abeyance. The Michigan Commission filed a supplement to its answer on October 22, 2014. On February 2, 2015, the Mines filed a motion to terminate the Replacement Presque Isle SSR Agreement as moot, because the Mines have returned to bundled distribution and power supply electric retail service from Wisconsin Electric effective February 1, 2015; thus, the Mines argue that the claimed justification for the agreement no longer exists.¹¹⁹

¹¹⁹ Motion of Tilden Mining Company L.C. and Empire Iron Mining Partnership, Docket No. ER14-2952-000 *et al.*, at 2 (filed Feb. 2, 2015).

B. Comments and Answers

49. The comments and protests submitted in response to MISO's filing in Docket No. ER14-2952-000, which includes revised SSR cost allocations for the White Pine SSR Unit, the Escanaba SSR Units, and the Presque Isle SSR Units to reflect the split of the WEC LBA, were submitted after the requests for rehearing of the Wisconsin Commission Complaint Order. Many comments reflect the same sentiments from the Wisconsin and Michigan parties with respect to SSR cost allocation in the ATC footprint. Wisconsin parties generally support MISO's proposed rate schedules because they contend that the revised cost allocations more appropriately identify the LSEs that benefit from continued operation of the SSR Units.¹²⁰ Michigan parties argue that the LBA cost allocation percentages proposed in the revised rate schedules are unjust and unreasonable because they would shift a large amount of SSR costs to a limited number of ratepayers in the Michigan Upper Peninsula.¹²¹ The City of Escanaba argues that an overly local allocation of SSR costs could undermine the purpose and efficacy of the SSR program.¹²² Michigan parties take issue with MISO's load-shed studies that support the revised cost allocations, asserting that they are insufficient to provide the justification for the

¹²⁰ Motion to Intervene and Comments of the Public Service Commission of Wisconsin, Docket No. ER14-2952-000, at 5-7 (filed Oct. 17, 2014); WPPI Energy Motion to Intervene and Comments Partially Supporting and Partially Protesting Revised Cost Allocation, Docket No. ER14-2952-000, at 5-7 (filed Oct. 17, 2014) (WPPI Comments on the Revised Rate Schedules Filing).

¹²¹ Protest of Tilden Mining Company L.C. and Empire Iron Mining Partnership, Docket No. ER14-2952-000, at 16 (filed Oct. 17, 2014) (The Mines Protest of the Revised Rate Schedules Filing); Notice of Intervention, Protest and Request for Five Month Suspension and Hearing of the Michigan Public Service Commission, Docket No. ER14-2952-000, at 6-7 (filed Oct. 17, 2014) (Michigan Commission Protest of the Revised Rate Schedules Filing); Motion to Intervene, Protest, Motion for Suspension, Hearing, and Settlement Judge Procedures of Verso Paper Corp., Docket No. ER14-2952-000, at 5-7 (filed Oct. 17, 2014) (Verso Protest of the Revised Rate Schedules Filing). The Michigan Commission states that the LBA split proposal increases the amount of Presque Isle SSR costs to the Michigan Upper Peninsula from \$7.4 million to \$96.3 million per year.

¹²² Motion to Intervene and Protest of the City of Escanaba, Michigan, Docket No. ER14-2952-000, at 5-6 (filed Oct. 17, 2014) (The City of Escanaba Protest of the Revised Rate Schedules Filing).

proposed cost allocations and that MISO has failed to provide any explanation regarding how the supplemental load-shed studies were prepared or how it arrived at the results.¹²³

50. The parties similarly debate whether Wisconsin Electric has justified the LBA split itself, and whether the use of the LBA boundaries in identifying the LSEs that benefit from the operation of the SSR Units is just and reasonable.¹²⁴ The Michigan Commission requests that the Commission reject the filing and direct MISO to file a revised allocation based on the LBA boundaries prior to NERC's approval of the LBA split.¹²⁵ Verso requests that the Commission reject the filing and either require MISO to allocate costs based on the unsplit WEC LBA or, in the alternative, grant rehearing of the Wisconsin Commission Complaint Order and return to *pro rata* allocation of SSR costs in the ATC footprint.¹²⁶ Integrys asks the Commission to order MISO to develop Tariff language to ensure that an entity such as Wisconsin Electric cannot manipulate its LBA to reallocate costs without first determining that the creation of the LBA for cost allocation purposes yields a just and reasonable rate.¹²⁷

51. Wisconsin Electric repeats its request that the Commission reject the filing and direct MISO to allocate the SSR costs associated with Presque Isle Units 5-9 based on the actual energy withdrawals at the commercial pricing nodes associated with the identified

¹²³ *Id.* at 4-5; Verso Protest of the Revised Rate Schedules Filing at 8; The Mines Protest of the Revised Rate Schedules Filing at 17; The City of Escanaba Protest of the Revised Rate Schedules Filing at 4-5.

¹²⁴ Michigan Commission Protest of the Revised Rate Schedules Filing at 9-13; Integrys Energy Services, Inc. Motion to Intervene and Protest, Docket No. ER14-2952-000, at 12-13 (filed Oct. 17, 2014) (Integrys Protest of the Revised Rate Schedules Filing); The Mines Protest of the Revised Rate Schedules Filing at 13-15; Verso Protest of the Revised Rate Schedules Filing at 5; MISO Answer, Docket No. ER14-2952-000, at 6 (filed Oct. 27, 2014); Wisconsin Commission Answer, Docket No. ER14-2952-000, at 7 (filed Oct. 27, 2014); Wisconsin Customers Coalition Answer, Docket No. ER14-2952-000, at 2-4 (filed Nov. 3, 2014).

¹²⁵ Michigan Commission Protest of the Revised Rate Schedules Filing at 13.

¹²⁶ Verso Protest of the Revised Rate Schedules Filing at 7.

¹²⁷ Integrys Protest of the Revised Rate Schedules Filing at 8.

beneficiaries from the optimal load-shed analysis.¹²⁸ Integrys objects to the suggestion of Wisconsin Electric to allocate SSR costs associated with Presque Isle Units 5-9 to LSEs via commercial pricing nodes. First, Integrys states that this treatment would be unduly discriminatory because it would vary from MISO's cost allocation practices in the rest of its footprint.¹²⁹ Second, Integrys states that this method is not feasible because of the nature of commercial pricing nodes, which are not geographic like LBAs, but are rather a collection of elemental pricing nodes that are used to set a market price for commercial pricing nodes.¹³⁰ Integrys argues that MISO would not be able to figure out, within its load-shedding modeling, the amount of energy withdrawals by an LSE by looking only at commercial pricing nodes, because the commercial pricing node is simply a weighted average market price. Integrys asserts that the actual energy withdrawals at commercial pricing nodes must be determined by adding up retail customer meter readings at the node. Other parties argue against such treatment because it could lead to a level of granularity that is not required by the FPA and that would improperly narrow the area from which Presque Isle SSR costs are recovered,¹³¹ and because it could decrease the number of market participants to whom costs are assessed but also magnify the financial impact on that reduced number of market participants.¹³²

52. Some parties assert that the filing uses an allocation methodology that in fact allocates costs to non-beneficiaries (i.e., it allocates costs to LSEs that do not require the operation of the SSR Units for reliability purposes).¹³³ Wisconsin Electric explains that although Cloverland is located entirely outside of the load-shed area identified by MISO, due to its inclusion in the new Michigan Upper Peninsula LBA, Cloverland's SSR cost

¹²⁸ Request to Hold Proceeding in Abeyance and Conditional Protest of Wisconsin Electric Power Company, Docket No. ER14-2952-000, at 9 (filed Oct. 17, 2014) (Wisconsin Electric Protest of the Revised Rate Schedules Filing).

¹²⁹ Integrys Protest of the Revised Rate Schedules Filing at 14.

¹³⁰ *Id.* at 15. Integrys explains that elemental pricing nodes are single points on the transmission grid, not an amount of customer load. *Id.* at 16.

¹³¹ Verso Protest of the Revised Rate Schedules Filing at 5-6.

¹³² Michigan Commission Answer, Docket No. ER14-2952-000, at 3-5 (filed Dec. 17, 2014).

¹³³ Wisconsin Electric Protest of the Revised Rate Schedules Filing at 6; Protest of Cloverland Electric Cooperative, Docket No. ER14-2952-000, at 6-8 (filed Oct. 17, 2014) (Cloverland Protest of the Revised Rate Schedules Filing).

responsibility changes from a 2.7 percent allocation under MISO's compliance filing in Docket No. ER14-1243-004 to a 22.6 percent allocation under the instant filing.¹³⁴ Cloverland argues that MISO has not provided any information demonstrating that this cost shift to Cloverland's service area, despite no changes in the SSR benefits provided to Cloverland's customers, is just and reasonable.¹³⁵ Cloverland states that MISO's allocation methodology under its BPM, which assigns costs to the LBA that receives reliability benefits from the operation of the SSR Unit and then *pro rata* to each LSE within those LBAs, gives no consideration of whether an individual LSE actually receives any reliability benefit from the SSR Unit for which it is assigned costs.¹³⁶

53. The Wisconsin Commission takes issue with arguments that Cloverland does not receive any reliability benefits from Presque Isle Units 5-9.¹³⁷ The Wisconsin Commission states that Cloverland resides within an LBA that MISO's load-shed study identified as containing load that would need to be shed if Presque Isle Units 5-9 did not operate, and notes that MISO's study cannot determine with precision the exact set of loads that would be at risk. The Wisconsin Commission states that the allocation by LBA accounts for this imprecision. Cloverland answers that no study has shown that its customers will receive any reliability benefit from Presque Isle Units 5-9, and that it should not bear 22 percent of the costs for the units.¹³⁸

54. In its answer to the comments and protests, MISO states that the filing is necessary because the existing rate schedules in the ATC footprint will be out of date if not acted upon by the Commission.¹³⁹ It states that all three rate schedules refer to the "WEC LBA," which will consist only of LSEs located in Wisconsin as of December 1, 2014, and that MISO will not at that time be authorized to allocate any SSR costs to LSEs in the new Michigan Upper Peninsula LBA. MISO states that it has complied with all of its applicable Tariff provisions, all relevant Commission orders, and all applicable business practices.

¹³⁴ Wisconsin Electric Protest of the Revised Rate Schedules Filing at 6; *see also* Integrys Protest of the Revised Rate Schedules Filing at 13-14.

¹³⁵ Cloverland Protest of the Revised Rate Schedules Filing at 3-6.

¹³⁶ *Id.* at 7-8.

¹³⁷ Wisconsin Commission Answer, Docket No. ER14-2952-000, at 6 (filed Oct. 27, 2014).

¹³⁸ Cloverland Answer, Docket No. ER14-2952-000, at 5 (filed Nov. 4, 2014).

¹³⁹ MISO Answer, Docket No. ER14-2952-000, at 5 (filed Oct. 31, 2014).

C. Deficiency Letter and MISO's Response

55. On November 28, 2014, Commission staff issued a deficiency letter requesting more information from MISO (November 28 Deficiency Letter). MISO submitted a response on December 17, 2014 in Docket No. ER14-2952-001 (MISO Deficiency Letter Response). First, the November 28 Deficiency Letter asked to what extent MISO considered whether its proposed revisions to the SSR cost allocation in its Docket No. ER14-2952-000 filing properly allocated SSR costs only to those LSEs that require operation of the SSR Units for reliability purposes.¹⁴⁰ MISO explains that LSEs do not have geographical boundaries and that an LSE can have an obligation to serve load within or outside the MISO footprint.¹⁴¹ MISO states that because its load-shed study examines an optimal or minimum load-shed solution based on planning model horizons, it is not an all-inclusive identification of load that can be reasonably expected to benefit under every circumstance. Therefore, MISO explains that the LBA boundary provides a reasonable area to include those other beneficiaries, and the cost allocation method using the LBA boundary allocates SSR costs reasonably commensurate with the loads that will require operation of the SSR Unit. MISO states that Cloverland is an LSE that serves load within the LBA that contains loads that are reasonably correlated with identified impacts of the unavailability of the SSR Unit, and that SSR cost allocation to Cloverland is consistent with the Tariff.¹⁴²

56. The November 28 Deficiency Letter asked MISO to explain how it would use load-shed studies to assign cost responsibility directly to the LSEs that require the SSR Units for reliability.¹⁴³ MISO responds that the optimal load-shed analysis is based on the planning models used to perform the Attachment Y analysis, which identified the LSEs that require the SSR service.¹⁴⁴ MISO further explains that the load-shed analysis models do not contemplate a relationship between the load buses and the LSEs, and therefore, an intermediate step is needed to associate the load shed buses with the LSEs by using the LBA as a common link. In order to implement a direct assignment of costs to LSEs, MISO states that additional planning model details would be needed to create the relationship between the load shed buses and the LSE. MISO states that even if this

¹⁴⁰ November 28 Deficiency Letter at 3.

¹⁴¹ MISO Deficiency Letter Response at 3.

¹⁴² *Id.* at 3-4.

¹⁴³ November 28 Deficiency Letter at 4.

¹⁴⁴ MISO Deficiency Letter Response at 4.

method existed, an optimal load-shed study would disproportionately allocate costs to a limited and inaccurately targeted set of loads. MISO adds that assigning cost responsibility directly to LSEs on a forward-looking basis is problematic considering that LSEs associated with physical load may change over time, and are not an exact representation of the physical loads that are the true beneficiaries of SSR operation.

57. The November 28 Deficiency Letter next requested that MISO explain any implementation issues that may arise if MISO allocated SSR costs directly to the LSEs.¹⁴⁵ MISO explains that, in addition to the need to develop additional planning model details to create the relationship between the load shed buses and the LSEs, allocation of SSR costs directly to LSEs does not work well when costs are assigned to loads that are eligible to choose their LSE in a retail choice state, which has the potential to cause large shifts during the period of an SSR agreement if customers switch suppliers.¹⁴⁶ In regards to the feasibility of allocating SSR costs based on actual energy withdrawals at the commercial pricing node, MISO states that assigning SSR costs at the LBA level is appropriate, reiterating that the optimal nature of the load-shed algorithm does not provide a precise representation of all beneficiaries and that using optimal load-shed studies to assign cost responsibility to individual LSEs may result in disproportionate allocation of costs to loads located closer in proximity to the SSR Unit.¹⁴⁷

58. MISO explains that there are several advantages to the existing SSR allocation method, including: (1) the method's use of modelled load information from the Attachment Y planning studies to determine the relative benefits of the SSR Unit operation using an optimal load-shed methodology; (2) the avoidance of unintended consequences for customers in retail choice states; (3) assignment of costs at the LBA level is reasonably commensurate with the benefits received by loads in the impacted LBA; (4) the existing method eliminates potentially disproportionate cost allocation to loads identified on a modelled load-shed algorithm that does not precisely represent the extent of the impact of a reliability event avoided by the SSR Unit; and (5) the existing method is similar to the approach used in MISO's voltage and local reliability cost allocation method.¹⁴⁸

¹⁴⁵ November 28 Deficiency Letter at 4.

¹⁴⁶ MISO Deficiency Letter Response at 5.

¹⁴⁷ *Id.* at 6.

¹⁴⁸ *Id.* at 5.

59. In response to a question about the level of detail available at the commercial pricing node, MISO states that its commercial model recognizes the relationship between the LSE and its load at its commercial location with the loads being represented by elemental pricing nodes in the commercial model. MISO explains that each commercial pricing node is assigned to an LSE.¹⁴⁹ MISO then uses the optimal load-shed method, which determines which loads are most effective in alleviating the reliability issue and identifies the LBAs where those load buses are modelled in the planning model. MISO then calculates the total amount of load-shed for all buses and issues for each affected LBA. MISO further explains that for each LBA, there is a set of commercial pricing nodes that exists in the MISO commercial model that is assigned to the LSE and SSR costs are allocated to all LSEs in the corresponding LBAs using the commercial model.

60. The November 28 Deficiency Letter requested more information regarding the possibility that loads not specifically identified in the optimal load-shed study could also benefit from the SSR Unit.¹⁵⁰ MISO responds that MISO's SSR cost allocation method does recognize that loads not specifically identified in the optimal load-shed study may also benefit, and for this reason, the method considers that cost responsibility should be applied to loads beyond the optimal locations using the LBA to extend cost responsibility to these beneficiaries. MISO explains that the optimal load-shed methodology identifies the minimum amount of load curtailment needed to mitigate all the reliability issues caused by the unavailability of the SSR Unit. MISO states that the models represent a snapshot of system conditions using a number of assumptions and that it cannot identify all beneficiaries with high precision.¹⁵¹

D. Notice of MISO's Response to the Deficiency Letter and Responsive Pleadings

61. Notice of MISO's response to the November 28 Deficiency Letter in Docket No. ER14-2952-001 was published in the *Federal Register*, 79 Fed. Reg. 77,468 (2014), with interventions and protests due on or before January 7, 2015. Verso requested an extension of time to file comments to MISO's response on December 22, 2014. The Commission granted the request for extension on January 2, 2015, such that comments to MISO's response were due on January 16, 2015. Timely comments were filed by: the Wisconsin Commission; WPPI; the City of Escanaba; the Mines; Cloverland; Wisconsin Electric; Verso; and the Michigan Commission. The Mines filed an answer to the

¹⁴⁹ *Id.* at 7.

¹⁵⁰ November 28 Deficiency Letter at 4.

¹⁵¹ MISO Deficiency Letter Response at 7-8.

comments on January 22, 2015. The Michigan Commission filed a motion to compel MISO, under an appropriate protective order, to release its complete optimal load-shed study and copies of all load-shed studies that did not converge to the Michigan Commission.¹⁵² The Michigan Commission subsequently withdrew its motion.¹⁵³

62. The Wisconsin Commission supports the continued use of MISO's BPM methodology, arguing that it is impossible to precisely quantify all benefitting loads, and the assignment of costs at the LBA level is reasonably commensurate with the benefits received by the loads in the impacted LBA.¹⁵⁴ WPPI agrees with MISO that bifurcation of the WEC LBA more appropriately allocates SSR costs to the loads that cause the need for the SSR operation, and that further granularity in SSR allocation is likely to create disproportionate and unreasonable results.¹⁵⁵ Verso agrees with MISO's conclusion that it should not allocate SSR costs directly to LSEs in the optimal load-shed area based on actual energy withdrawals at commercial pricing nodes, and states that in order to allocate costs in this manner, the Commission would need to review all information used in MISO's analysis.¹⁵⁶

63. The Michigan Commission argues that MISO fails to explain why MISO stakeholders chose to minimize the identification of load that could benefit from operation of an SSR Unit by using an optimal load-shed study that has several deficiencies, and asks the Commission to set MISO's optimal load-shed analysis for hearing.¹⁵⁷ The Michigan Commission also protests MISO's practice of allocating SSR

¹⁵² Motion to Compel of the Michigan Public Service Commission, Docket No. ER14-2952-001, at 3 (filed Jan. 26, 2015).

¹⁵³ Notice of Withdrawal of Motion to Compel of the Michigan Public Service Commission, Docket No. ER14-2952-001 (filed Feb. 6, 2015).

¹⁵⁴ Supporting Comments of the Public Service Commission of Wisconsin, Docket No. ER14-2952-001, at 3-5 (filed Jan. 16, 2015).

¹⁵⁵ Comments of WPPI Energy on Deficiency Filing, Docket No. ER14-2952-001, at 2 (filed Jan. 16, 2015).

¹⁵⁶ Comments of Verso Corporation, Docket No. ER14-2952-001, at 8-10 (filed Jan. 16, 2015).

¹⁵⁷ Comments and Protest of the Michigan Public Service Commission to Proposed Cost Allocation Schedules, Docket No. ER14-2952-001, at 10-11, 16 (filed Jan. 16, 2015).

costs to the LBAs indicated in the optimal load-shed study to compensate for the tendency of the study to minimize the estimated load affected by the SSR Unit, and argues that any such compensation is severely reduced by allowing Wisconsin Electric to create a new Michigan Upper Peninsula LBA with boundaries roughly equal to the minimized impact area identified by MISO's optimal load-shed study.¹⁵⁸ The Michigan Commission states that MISO's response makes clear that MISO stakeholders were concerned about the avoidance of SSR cost responsibility by retail choice customers switching suppliers, which resulted in the requirement that SSR costs be allocated to LSEs within each affected LBA based on actual monthly withdrawals of energy.¹⁵⁹ It states that if such stakeholders were aware of the changes in SSR cost responsibility that could result from a change in LBA boundaries, they would have prohibited that outcome.¹⁶⁰ Based on this reasoning, the Michigan Commission asks the Commission to direct MISO to allocate SSR costs based on the LBA boundaries in existence as of April 3, 2014, which includes the entire Wisconsin Electric LSE load area in Wisconsin and Michigan.¹⁶¹ Cloverland states that MISO's concern about cost shifts due to retail customers switching LSEs is unfounded because there is no retail choice in Wisconsin and retail choice in Michigan is limited.¹⁶² Wisconsin Electric notes that MISO's concern is a non-sequitur because, while the suppliers of the identified loads may change, the location of the loads themselves (i.e., the identified beneficiaries of the SSR Units) do not.¹⁶³

64. Cloverland reiterates its previous statements that the split of the WEC LBA and the allocation of Presque Isle SSR costs to the newly created Michigan Upper Peninsula LBA will increase Cloverland's SSR cost responsibility by over 700 percent without any

¹⁵⁸ *Id.* at 11-12.

¹⁵⁹ *Id.* at 13.

¹⁶⁰ *Id.* at 13-14.

¹⁶¹ *Id.* at 14-15.

¹⁶² Protest of Cloverland Electric Cooperative, Docket No. ER14-952-001, at 11 (filed Jan. 16, 2015) (Cloverland Protest to the MISO Deficiency Letter Response).

¹⁶³ Comments of Wisconsin Electric Power Company to Response to Deficiency Letter, Docket No. ER14-2952-001, at 8 (filed Jan. 16, 2015) (Wisconsin Electric Comments to the MISO Deficiency Letter Response).

change in reliability benefits to Cloverland.¹⁶⁴ Cloverland alleges that MISO has not explained how a cost allocation across the unsplit WEC LBA is no longer just and reasonable despite no change in operation of the SSR Units, no change in the load served by the SSR Units, and the lack of any evidence that the prior allocations were incorrect.¹⁶⁵

65. Cloverland states that MISO's optimal load-shed models are flawed because they assume that (1) any LSE located within a benefitting LBA will receive benefits from the studied SSR Unit, and (2) the benefits received by that LSE will be in proportion to its *pro rata* share of the LBA's coincident peak.¹⁶⁶ Wisconsin Electric states that MISO's response fails to address its ability to identify and allocate costs directly to LSE beneficiaries, and instead MISO states that to do so would require additional effort.¹⁶⁷ Wisconsin Electric and Cloverland argue that difficulty does not excuse an unjust and unreasonable cost allocation that does not meet the requirements of MISO's Tariff.¹⁶⁸ Cloverland notes that MISO's response states that its planning models used to perform optimal load-shed studies do not identify LSEs at the load shed buses, and argues that this statement shows that MISO's LBA-based cost allocation methodology gives no consideration to whether an LSE actually receives any reliability benefit from an SSR Unit, thus violating the Commission's cost causation principle.¹⁶⁹ Wisconsin Electric states that the identified inaccuracies in MISO's optimal load-shed study are not improved by spreading SSR costs to loads within an LBA boundary that do not benefit from the operation of the SSR Units.¹⁷⁰ Furthermore, Cloverland and Wisconsin Electric state that MISO admits that LSE-specific information is utilized in its commercial

¹⁶⁴ Cloverland Protest to the MISO Deficiency Letter Response at 4-5. Cloverland states that it receives no documented reliability benefit from the Presque Isle SSR Units, but that it would be allocated over 22 percent of Presque Isle SSR costs under proposed Presque Isle Rate Schedule 43G filed in Docket No. ER14-2952-000. *Id.* at 5.

¹⁶⁵ *Id.* at 6-8.

¹⁶⁶ *Id.* at 15-16.

¹⁶⁷ Wisconsin Electric Comments to the MISO Deficiency Letter Response at 3.

¹⁶⁸ *Id.* at 3-4; Cloverland Protest to the MISO Deficiency Letter Response at 10-11.

¹⁶⁹ Cloverland Protest to the MISO Deficiency Letter Response at 12-13, 15.

¹⁷⁰ Wisconsin Electric Comments to the MISO Deficiency Letter Response at 5.

models, which have the complete relationship between an individual load at a load bus as an elemental pricing node, up to a commercial pricing node and eventually to an LSE.¹⁷¹ Therefore, they argue that this information could be mapped to the planning model outputs to identify the specific LSE loads that should be allocated SSR-related costs. However, the City of Escanaba states that MISO's response provides no information to better understand the alternative proposals to allocate directly to LSEs based on commercial pricing nodes, and states that the Commission should not adopt any alternative methodology without a full understanding of its cost impacts.¹⁷²

66. Cloverland and the Mines argue against MISO's requested effective date of December 1, 2014, noting that the MISO Deficiency Letter Response constitutes an amendment to MISO's original September 26, 2014 filing in Docket No. ER14-2952-000, and that the original filing should not be effective until after the 60-day notice period, making the new effective date February 16, 2015.¹⁷³ They argue that the 60-day notice period should not be waived, because MISO did not make a good faith attempt to cure the deficiency in its filing.¹⁷⁴ Regardless of the effective date, Cloverland and Verso ask the Commission to suspend the filing for a five-month period because the rate schedules submitted in Docket No. ER14-2952-000 have not been shown to be just and reasonable.¹⁷⁵

67. The Mines ask the Commission to terminate the Replacement Presque Isle SSR Agreement as moot, because the Mines have returned to bundled distribution and power

¹⁷¹ Cloverland Protest to the MISO Deficiency Letter Response at 13; Wisconsin Electric Comments to the MISO Deficiency Letter Response at 6-7.

¹⁷² Protest of the City of Escanaba, Michigan, Docket No. ER14-2952-001, at 2-3 (filed Jan. 16, 2015).

¹⁷³ Cloverland Protest to the MISO Deficiency Letter Response at 20-21; Comments and Protest of Tilden Mining Company L.C. and Empire Iron Mining Partnership, Docket No. ER14-2952-001, at 3 (filed Jan. 16, 2015) (The Mines Protest to the MISO Deficiency Letter Response).

¹⁷⁴ Cloverland Protest to the MISO Deficiency Letter Response at 22-23; The Mines Protest to the MISO Deficiency Letter Response at 4.

¹⁷⁵ Cloverland Protest to the MISO Deficiency Letter Response at 24; Verso Comments on the MISO Deficiency Letter Response at 10-12.

supply electric retail service from Wisconsin Electric effective February 1, 2015.¹⁷⁶ In an answer filed on February 3, 2015, Verso notes that: (1) the Governor of Michigan announced that the Presque Isle plant will be sold to the Upper Peninsula Power Company (UPPCo), expected in July of 2015; and (2) the Mines have stated that they will return to retail service from Wisconsin Electric, effective February 1, 2015, until the sale to UPPCo.¹⁷⁷ Verso states that, in light of these developments, Presque Isle Units 5-9 will no longer be needed as SSR Units, and asks that the recovery of Presque Isle SSR costs end effective February 1, 2015.¹⁷⁸ Verso also asks that the Commission reject the allocation of Presque Isle SSR costs to the Michigan Upper Peninsula LBA, as UPPCo will provide electric service to the Upper Peninsula, leaving few, if any, customers to be served in Wisconsin.¹⁷⁹ Verso asks that, during the one-year period before February 1, 2015, the Commission require Presque Isle SSR costs to be allocated to the entire Wisconsin Electric service territory.¹⁸⁰ Cloverland supports the Mines' motion, arguing that the fact that Wisconsin Electric has not formally "unretired" the plant is irrelevant.¹⁸¹

¹⁷⁶ Motion of Tilden Mining Company L.C. and Empire Iron Mining Partnership, Docket No. ER14-2952-000 *et al.*, at 2 (filed Feb. 2, 2015).

¹⁷⁷ Verso Answer, Docket No. ER14-2952-000, at 2 (filed Feb. 3, 2015).

¹⁷⁸ *See also* Answer of the City of Mackinac Island in Support of Motion of Tilden Mining Company L.C. and Empire Iron Mining Partnership, Docket No. ER14-2952-000 *et al.*, at 2 (filed Feb. 18, 2015); Comments of the Michigan Public Service Commission

to the Motion of Tilden Mining Company L.C. and Empire Iron Mining Partnership, Docket No. ER14-2952-000 *et al.*, at 3 (filed Feb. 18, 2015).

¹⁷⁹ *Id.* at 3, 6.

¹⁸⁰ *Id.* at 4-5.

¹⁸¹ *See* Cloverland's Comments in Support of Motion of Tilden Mining Company L.C. and Empire Iron Mining Partnership, Docket No. ER14-2952-000 *et al.*, at 2 (filed Feb. 6, 2015).

IV. Discussion

A. Requests for Rehearing of the Wisconsin Commission Complaint Order and Related Issues Raised in Docket No. ER14-2952

1. Procedural Matters

68. 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 in Docket No. ER14-2952-000 serve to make the entities that filed them parties to that proceeding. 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 Wisconsin Electric, the Michigan Public Power Agency, the Upper Peninsula Power Company, the City of Mackinac Island, and the Sault Ste. Marie Tribe of Chippewa Indians in Docket No. ER14-2952-000 given the parties' interest in the proceeding and the absence of undue prejudice or delay.

69. We also grant the City of Escanaba's late-filed motion to intervene in Docket Nos. EL14-34-000, ER14-1242-000, and ER14-1243-004 and Cloverland's late-filed motion to intervene in Docket Nos. ER14-1243-005 and ER14-1243-004 after issuance of the Wisconsin Commission Complaint Order. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for granting such late intervention.¹⁸² We find that the City of Escanaba and Cloverland have met this higher burden of justifying late intervention.

70. 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 filed in Docket Nos. ER14-2952-000 and ER14-2952-001 because they have provided information that assisted us in our decision-making process.

71. Section 313(a) of the FPA¹⁸³ and Rule 713(b) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(b) (2014), require a request for rehearing to be filed within 30 days after issuance of any final decision or other final order in a

¹⁸² See, e.g., *Midwest Indep. Transmission Sys. Operator, Inc.*, 102 FERC ¶ 61,250, at P 7 (2003).

¹⁸³ 16 U.S.C. § 825k (2012).

proceeding. Accordingly, we reject the Michigan Commission's requests to supplement its request for rehearing filed in Docket Nos. EL14-34-001, ER14-1242-003, and ER14-1243-005 and the Mines' corrected request for rehearing submitted in Docket Nos. EL14-34-001, ER14-1242-003, and ER14-1243-005. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2014), prohibits an answer to a request for rehearing. Accordingly, we reject all answers to the requests for rehearing submitted in Docket Nos. EL14-34-001, ER14-1242-003, and ER14-1243-005.

72. We deny Verso's motion to lodge evidence in Docket No. EL14-34-001. The Commission was presented with information relating to the split of the WEC LBA in Docket No. ER14-2952-000, and therefore, Verso's motion to lodge is unnecessary. We deny the Mines' motion to terminate the Replacement Presque Isle SSR Agreement and Verso's request to end the allocation of Presque Isle SSR costs effective February 1, 2015, based on their assertions that the Mines will be taking service from Wisconsin Electric from February 1, 2015 until the Presque Isle Plant is sold to UPPCo in July of 2015. Wisconsin Electric, as the owner of the Presque Isle SSR Units, determines whether to notify MISO that it is seeking to rescind its Attachment Y Notice to retire, thereby allowing for termination of the Replacement Presque Isle SSR Agreement by MISO in accordance with section 3.A.3 of such agreement. Moreover, the Mines' and Verso's assertions are not, in and of themselves, sufficient to warrant termination of a filed agreement.¹⁸⁴ We note that the continuing justness and reasonableness of the Replacement Presque Isle SSR Agreement in the face of changed circumstances could be challenged under section 206 of the FPA.

2. Substantive Matters

a. Removal of the ATC SSR Pro Rata Cost Allocation Provision

73. We deny the requests for rehearing of the determination in the Wisconsin Commission Complaint Order that the ATC SSR *pro rata* cost allocation provision in MISO's Tariff is unjust, unreasonable, unduly discriminatory, or preferential because, as demonstrated in the application of this provision under Original Presque Isle Rate Schedule 43G, it does not follow cost causation principles. In the Wisconsin Commission Complaint Order, the Commission properly identified new evidence showing that *pro rata* allocation of SSR costs in the ATC footprint is unjust and unreasonable. Specifically, the preliminary load-shed study conducted by MISO indicated that Wisconsin LSEs would only receive 42 percent of the reliability benefit of

¹⁸⁴ Cf. *Midcontinent Indep. Sys. Operator, Inc.*, 147 FERC ¶ 61,079 (2014).

the Presque Isle SSR Units even though they would have been allocated 92 percent of the Presque Isle SSR costs under the Original Presque Isle Rate Schedule 43G. We affirm the finding that this does not satisfy the Commission's fundamental cost causation principle that all approved rates must reflect to some degree the costs actually caused by the customer who pays them.¹⁸⁵

74. No party has persuaded us that the preliminary load-shed study did not constitute substantial evidence that the ATC SRR *pro rata* cost allocation provision is not just and reasonable by failing to account for cost causation. We affirm our finding that the preliminary nature of the load-shed study does not invalidate the evidence presented by the study that the *pro rata* SSR cost allocation method was faulty. The study showed little, if any, correlation between those entities that benefited from the Presque Isle SSR Units and those entities that were allocated the costs of those SSR Units under the *pro rata* SSR cost allocation. Moreover, no party presented evidence that contradicted the preliminary load-shed study, beyond an unsubstantiated assertion that Wisconsin ratepayers may benefit more than the preliminary load-shed study indicated due to the possibility of widespread voltage collapse in the absence of the Presque Isle SSR Units.¹⁸⁶ In addition, contrary to the parties' arguments, the Commission did not approve a final load-shed study as providing a just and reasonable allocation methodology before it could be reviewed; rather, the Commission required submission of a final load-shed study in a compliance filing that would identify the LSE beneficiaries of the SSR Units in accordance with MISO's Tariff, which would be noticed for comment and reviewed. In this order, we now review the methodology underlying the final load-shed study and determine whether that methodology provides a just and reasonable SSR cost allocation, as described below.¹⁸⁷

75. We reject Integrys' argument that the Commission erred in finding that there was no evidence in the record to support an allocation of 92 percent of the Presque Isle SSR costs to Wisconsin customers. Integrys cites to a retail rate allocator used by Wisconsin Electric that allocates approximately 92 percent of Wisconsin Electric's embedded costs of generation to its Wisconsin customers. However, we find that the fact that the retail rate allocator for Wisconsin Electric's generation allocates 92 percent of that company's embedded generation costs to Wisconsin customers does not necessarily correlate to

¹⁸⁵ See *Black Oak v. FERC*, 725 F.3d at 364.

¹⁸⁶ Michigan Commission Request for Rehearing of the Wisconsin Commission Complaint Order at 14-16.

¹⁸⁷ See *infra* PP 80-89.

which load requires the designation of an SSR Unit for the purposes of establishing a just and reasonable allocation of SSR costs under the MISO Tariff. We also find that we need not address Integrys' argument that Wisconsin Electric is double-recovering SSR costs because Wisconsin Electric may be continuing to include the Presque Isle generation costs in its bundled retail rates. Wisconsin Electric's retail rates are not before us here, as such retail rates fall within the relevant state commissions' jurisdiction and not within this Commission's jurisdiction.¹⁸⁸ Furthermore, we find that retail rate treatment is not relevant to setting the just and reasonable level of compensation for Commission-jurisdictional service provided by an SSR Unit under the MISO Tariff.

76. We reject arguments that the Commission erred by ignoring the history of the ATC SSR *pro rata* cost allocation provision. The parties largely repeat the arguments made in the answers to the Wisconsin Commission Complaint, such as that the *pro rata* provision was put in place when ATC was formed due to the nature of the single zone transmission system, and that this rate design benefits the entire ATC footprint (for example, by incentivizing transmission projects), and that the ATC provision has been approved by the Commission in the past. The Commission addressed these arguments in the Wisconsin Commission Complaint Order,¹⁸⁹ and we affirm those findings here. Although *pro rata* SSR cost allocation may have been implemented intentionally due to the single zone transmission system in the ATC footprint, the parties have not shown that such a provision should remain in the Tariff regardless of new evidence indicating that this provision is not just and reasonable. In this case, the preliminary load-shed study has provided sufficient evidence that *pro rata* SSR cost allocation in the ATC footprint may result in unjust and unreasonable cost allocation that does not assign SSR costs to those LSEs that benefit from SSR Unit operation. No party has pointed to any specific evidence to suggest that Wisconsin LSEs require the SSR designation of Presque Isle such that 92 percent of the Presque Isle SSR costs are properly borne by Wisconsin LSEs. Without the ability to revisit the justness and reasonableness of Tariff provisions, regardless of the original intent in adopting them, the Commission would not be able to adapt the Tariff when new evidence is brought to light that justifies a different approach. Accordingly, we find that the Commission properly considered the history of the ATC *pro rata* SSR cost allocation methodology.

77. We also affirm that the acceptance of the ATC SSR *pro rata* cost allocation provision in prior Commission orders is not controlling here. The Commission's determination in *Escanaba* applied the existing ATC SSR *pro rata* cost allocation

¹⁸⁸ See *Southwest Power Pool, Inc.*, 119 FERC ¶ 61,199 (2007).

¹⁸⁹ Wisconsin Commission Complaint Order, 148 FERC ¶ 61,071 at P 65.

provision because the question of whether that provision continued to be just and reasonable was not raised in that proceeding.¹⁹⁰ Moreover, our determination in *Escanaba* concerned demand versus energy allocators; it was not an affirmation of the ATC SSR *pro rata* cost allocation provision itself.¹⁹¹ Furthermore, in the 2004 SSR Order (accepting the ATC SSR *pro rata* cost allocation provision, without discussion, as part of MISO's entire SSR program) and the 2012 SSR Order (accepting changes to MISO's general SSR cost allocation provision that are not relevant here), the ATC SSR *pro rata* cost allocation provision was not at issue and there was no record evidence to suggest that *pro rata* cost allocation was not just and reasonable as applied to a particular set of circumstances.¹⁹² Thus, these orders are not controlling. We affirm that, based on the record before us, the ATC SSR *pro rata* cost allocation provision in MISO's Tariff can result in an unjust and unreasonable SSR cost allocation.

78. We are not persuaded that SSR Units should always be considered transmission reliability assets, and that SSR costs should always be allocated in accordance with the historical allocation of transmission reliability costs in the ATC footprint, i.e., on a *pro rata* basis. There are notable differences between SSR Units and transmission assets. For instance, transmission upgrades provide benefits beyond operational reliability, such as increased transmission capacity for economic use and reduced line losses. Transmission upgrades are long-lived assets that provide multiple benefits over an extended period of time, whereas the short-term nature of SSR Units allows the beneficiaries of those SSR Units to be identified on a more granular level. Additionally, SSR Units in MISO have been obviated by both transmission solutions and demand response.¹⁹³ We affirm our finding in the Wisconsin Commission Complaint Order that, although ATC may have been originally formed as a single pricing zone within MISO in order to promote the sharing of costs for regional transmission planning, the original intent of ATC formation does not require that all costs be shared equally in perpetuity.¹⁹⁴ Moreover, the desire to serve the original intent of ATC formation does not, in and of

¹⁹⁰ *Id.* P 63.

¹⁹¹ *Escanaba*, 142 FERC ¶ 61,170 at P 73.

¹⁹² 2004 SSR Order, 108 FERC ¶ 61,163 at P 371; 2012 SSR Order, 140 FERC ¶ 61,237 at PP 147, 153.

¹⁹³ *See, e.g., Midcontinent Independent System Operator, Inc.*, 147 FERC ¶ 61,079 (2014).

¹⁹⁴ Wisconsin Commission Complaint Order, 148 FERC ¶ 61,071 at P 65.

itself, render the existing SSR cost allocation just and reasonable, nor does it override the Commission policy that SSR costs be allocated to market participants based upon the reliability benefits received from the designation of the SSR Unit in order to satisfy cost causation principles. We also disagree with the Michigan Commission's argument that SSR costs must be allocated in the same manner as must-run generation costs,¹⁹⁵ which were historically allocated on an ATC zone-wide basis. When the zone-wide cost allocation methodology for must-run units was initially accepted in the ATC footprint, the allocation of must-run costs was unprotested and accepted without discussion.¹⁹⁶ In the instant proceedings, evidence has been presented demonstrating that the current ATC SSR *pro rata* cost allocation methodology can result in unjust and unreasonable allocations.

79. We find that a full hearing on the proper cost allocation methodology is not necessary. Although parties have debated the appropriateness of relying on a preliminary load-shed study as a basis for granting the Wisconsin Commission Complaint, the Commission found that the study presented sufficient evidence to demonstrate that the *pro rata* cost allocation method in MISO's Tariff is not just and reasonable. We reject the arguments that a full hearing is necessary to determine the impact of the revised SSR cost allocation on individual LSEs. The results of the final load-shed study have been submitted by MISO, as has the Attachment Y Study Report dated August 15, 2014 with summary information of the final load-shed study. MISO has also provided information regarding the methodology underlying the final load-shed study in its response to the November 28 Deficiency Letter issued in Docket No. ER14-2952-001. We find that there is sufficient record evidence to evaluate the justness and reasonableness of the revised cost allocation submitted by MISO. Below, we address the results of the final load-shed study, in conjunction with MISO's response to the November 28 Deficiency Letter further explaining its BPM methodology for identifying the benefitting LSEs.

b. MISO's Revised SSR Cost Allocation Methodology

80. A number of parties seek rehearing or clarification of issues related to the use of LBAs in MISO's SSR cost allocation method and the effect of the LBA split on the results of that cost allocation method. For example, Wisconsin Electric requests clarification that any method MISO uses to identify the beneficiaries of an SSR Unit must

¹⁹⁵ Must run generation refers to generating units that must be run outside of a normal economic dispatch sequence for reliability purposes. *See Wisconsin Electric Power Co.*, 97 FERC ¶ 61,337 (2001).

¹⁹⁶ *Id.*

be consistent with the Tariff requirement that costs are allocated to the LSEs that benefit.¹⁹⁷ Wisconsin Electric states that the current BPM method allocates costs beyond the identified LSE beneficiaries to the LBAs in which those beneficiaries reside, and is therefore unjust and unreasonable; Wisconsin Electric suggests that the only reasonable method is allocating based on actual energy withdrawals at commercial pricing nodes.¹⁹⁸ WPPI similarly argues that LBA boundaries are not congruent with the causation of Presque Isle SSR costs and benefits.¹⁹⁹ Other parties argue that the Commission did not understand the financial impact of the LBA split on cost allocation at the time of the Wisconsin Commission Complaint Order.²⁰⁰

81. As noted above, MISO's SSR cost allocation methodology is described in its BPM. Under the BPM, MISO employs an optimal load-shed methodology to determine the relative reliability impact to each MISO LBA of operation without the SSR Units, and the load shed values for each contingency are organized by LBA location and accumulated to determine the total load shed for each LBA along with the corresponding share ratio (the optimization-LBA approach).²⁰¹ 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.²⁰² Also as noted above, MISO submitted the results of its final load-shed study, along with revised Presque Isle Rate Schedule 43G, in compliance with the Wisconsin Commission Complaint Order in Docket No. ER14-1243-004, which was replaced by the filing of revised Presque Isle Rate Schedule 43G in Docket No. ER14-2862-000, along with an Attachment Y Study Report dated August 15, 2014 containing

¹⁹⁷ Wisconsin Electric Request for Rehearing of the Wisconsin Commission Complaint Order at 4.

¹⁹⁸ *Id.* at 5-7, 10.

¹⁹⁹ WPPI Request for Rehearing of the Wisconsin Commission Complaint Order at 11.

²⁰⁰ Integrys Request for Rehearing of the Wisconsin Commission Complaint Order at 13-16; Verso Request for Rehearing of the Wisconsin Commission Complaint Order at 18.

²⁰¹ MISO BPM at § 6.2.6.

²⁰² *Id.* According to MISO, the methodology was reviewed and revised several times before it was endorsed by Planning Advisory Committee stakeholders on April 17, 2013, with a vote of 4 in favor, 2 against, and 1 abstention. MISO Deficiency Letter Response at 1.

summary information of the final load-shed study. This rate schedule was subsequently revised in Docket No. ER14-2952-000 due to the effect of the WEC LBA split on Presque Isle Rate Schedule 43G, as well as Escanaba Rate Schedule 43 and White Pine Rate Schedule 43H. Each of these rate schedules applies the optimization-LBA approach to SSR cost allocation methodology found in the MISO BPM.²⁰³

82. Given this, in order to fully examine the justness and reasonableness of the SSR cost allocations being submitted in these proceedings, as well as the rehearing and clarification arguments related to MISO's SSR cost allocation methodology in its BPM, we must also review the cost allocation results submitted in Docket No. ER14-2952-000, as that filing represents the most current information. The November 28 Deficiency Letter in Docket No. ER14-2952-001 directed MISO to provide further information as to whether the cost allocation methodology outlined in MISO's BPM properly allocates SSR costs only to those LSEs that require the operation of the SSR Unit for reliability purposes, and requested further information about MISO's BPM cost allocation methodology. That information is directly applicable to the rehearing of the Wisconsin Commission Complaint Order and the related compliance filings. In order to make a final determination of MISO's cost allocation method, we consider the record under Docket No. ER14-2952, including all comments to MISO's filing, MISO's Deficiency Letter Response, and comments to MISO's Deficiency Letter Response.

83. In its response to the November 28 Deficiency Letter, MISO argues that both methodological concerns and technical modeling challenges justify its allocation of SSR costs based on each LSE's *pro rata* share of its LBA's share of the SSR benefits, as determined by an optimal load-shed study, as opposed to allocating SSR costs directly to the beneficiary LSEs. We find that neither concern justifies the allocation of Presque Isle, White Pine, or Escanaba SSR costs based on the use of optimal load-shed studies and initial cost apportionment among LBAs, a methodology with substantial deficiencies. Although the Commission found in the Wisconsin Commission Complaint Order that MISO has flexibility in how it will identify the particular LSEs that require the SSR Unit for reliability, and noted that MISO's general practice is to conduct a load-shed study

²⁰³ MISO, Corrected Presque Isle Rate Schedule 43G Compliance Filing, Docket No. ER14-1243-004, Tab C (SSR Cost Allocation Analysis Results) (filed Aug. 11, 2014); MISO Revised Rate Schedule 43G Filing, Docket No. ER14-2862-000, Ex. C (Replacement Attachment Y Study Report) at 14 (filed Sept. 12, 2014); MISO Revised Rate Schedules Filing, Docket No. ER14-2952-000, Tab F (Presque Isle SSR Cost Allocation Analysis Results), Tab I (Escanaba SSR Cost Allocation Analysis Results), Tab L (White Pine SSR Cost Allocation Analysis Results) (filed Sept. 26, 2014).

according to its BPM,²⁰⁴ we now clarify that based on the record before us, the BPM optimization-LBA approach does not adequately identify the LSEs that require the operation of the Presque Isle, White Pine, and Escanaba SSR Units, because the LBA boundaries applicable to these SSR Units are inconsistent with the LSEs at risk of shedding load without operation of the SSR Units.

84. According to MISO, assignment of SSR costs at the LBA level is “reasonably commensurate”²⁰⁵ or “roughly commensurate”²⁰⁶ with the reliability benefits received by loads in the impacted LBAs. However, MISO provides no support for how apportioning SSR costs to LBAs is “reasonably” or “roughly” commensurate with Presque Isle, White Pine, and Escanaba SSR Unit benefits beyond general statements that the alternative, i.e., direct assignment to LSEs based on the optimal load-flow analysis, could be too narrow. We find that MISO’s assertions about deficiencies in the direct assignment of SSR costs to LSEs do not sufficiently justify the use of MISO’s BPM cost allocation methodology for the three rate schedules at issue here.

85. The use of LBAs to allocate SSR costs when several LSEs are within an LBA may result in the allocation of costs to LSEs that do not benefit from SSR Units. For example, where SSR costs are allocated throughout a large LBA, but the benefits of SSR Units are localized to a specific portion of the LBA, LSEs or loads within that LBA that do not benefit from the SSR Unit could be inappropriately allocated SSR costs. MISO has not described any attempts to evaluate to what extent allocation of Presque Isle, White Pine, or Escanaba SSR costs using the optimization-LBA approach actually allocates costs to the LSEs that require the operation of the SSR Unit for reliability, as required by the MISO Tariff. Without any evidence, MISO assumes that all LSEs in one benefiting LBA benefit from operation of the SSR Units in proportion to their *pro rata* share of the LBA’s coincident peak.²⁰⁷ For example, MISO did not demonstrate that customers remotely located from the Presque Isle SSR Units in the southern part of the unsplit WEC LBA benefited from the Presque Isle SSR Units, even though they were allocated a *pro rata* portion of the costs.

²⁰⁴ Wisconsin Commission Complaint Order, 148 FERC ¶ 61,071 at P 66 n.140.

²⁰⁵ MISO Deficiency Letter Response at 5.

²⁰⁶ *Id.* at 8.

²⁰⁷ See Cloverland Protest to the MISO Deficiency Letter Response at 11.

86. MISO describes why it believes that using optimal load-shed studies to allocate SSR costs directly to LSEs that require the SSR Units for reliability could allocate SSR costs too narrowly because the process of optimizing the load-shed solution in a model is not an all-inclusive identification of load that can be reasonably expected to benefit from the operation of SSR Units under every circumstance.²⁰⁸ Therefore, MISO concludes that the LBA boundary provides a reasonable area to include other beneficiaries, and that 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. In response to the question of whether MISO could allocate SSR costs based on actual energy withdrawals at the commercial pricing nodes, MISO states that its optimal load-shed studies should not be used to assign cost responsibility to individual LSEs, since this may result in the disproportionate allocation of costs to loads located in closer proximity to the SSR Unit and may not allocate costs to all loads that would benefit from the SSR Unit's operation.²⁰⁹ We find that MISO's use of the optimization-LBA approach in conjunction with the *pro rata* cost allocation to all LSEs in the LBA in allocating SSR costs for the three rate schedules at issue here has not been shown to produce results that are just and reasonable and not unduly discriminatory. As MISO itself acknowledges, the optimal load-shed methodology appears to be insufficient on its own to provide, with any degree of certainty, an all-inclusive identification of load that can be reasonably expected to benefit from the operation of the SSR Units under every circumstance. Due to these shortcomings, we direct MISO to submit, in a compliance filing due within 60 days of the date of this order, an alternative methodology to the optimization-LBA approach for the Presque Isle SSR Units, the Escanaba SSR Units, and the White Pine SSR Unit that will allocate SSR costs to LSEs that benefit from operation of these SSR Units, as required by the Tariff. MISO should submit a study methodology that identifies the LSEs that require the operation of the SSR Units for reliability purposes under conditions that are more representative of actual manual and/or automatic responses taken during reliability events, rather than the ideal conditions that are used by MISO in the optimal load-shed study.²¹⁰ We require that MISO, in its compliance filing, describe the conditions, assumptions, and calculations underlying this revised study methodology.

²⁰⁸ MISO Deficiency Letter Response at 3.

²⁰⁹ *Id.* at 6.

²¹⁰ We make no findings as to whether the BPM cost allocation methodology might produce just and reasonable cost allocations for other SSR Units. If MISO proposes to apply its BPM methodology in future filings, MISO must address the concerns with the methodology that we identify here and show that the methodology allocates SSR costs to those LSEs that require the operation of the SSR Unit for

(continued...)

87. We disagree with MISO's contention that the direct allocation of SSR costs to LSEs would be problematic in retail choice states because of changing loads. We find that, as Wisconsin Electric argues, while suppliers can change in a retail choice environment, the location of the loads themselves does not.²¹¹ As MISO states, monthly SSR charges are uplifted to LSEs in each LBA based on actual energy withdrawals at commercial pricing nodes located in each LBA for each month.²¹² However, MISO can assign SSR costs directly to LSEs based on the extent to which the loads that they serve benefit from the SSR Unit. As described by Integrys, MISO would need to determine the SSR benefits of specific LSEs based on their actual energy withdrawals at elemental pricing nodes rather than commercial pricing nodes.²¹³ We do not find such a process infeasible, because MISO already gathers real-time actual energy withdrawal information at the elemental pricing node level in order to determine locational marginal prices used for settling commercial pricing nodes.²¹⁴

88. MISO also describes technical impediments to direct allocation of SSR costs to LSEs. It argues that planning model loads do not contain LSE or commercial pricing node assignments, which are elements modeled in the commercial model. Additionally, MISO states that direct one-to-one mapping between the load buses in the planning models and the LSEs in the commercial model does not currently exist.²¹⁵ It contends that in order to implement a direct assignment approach, additional model details would be needed to create the relationship between the load shed buses and the LSEs. However, as Wisconsin Electric notes, MISO's Deficiency Letter Response explains that MISO's commercial model includes information regarding the relationship between an individual load at a load bus as an elemental pricing node, up to a commercial pricing node and eventually LSE. Thus, sufficient detail is available to calculate a direct allocation to

reliability purposes, such that assignment of costs is commensurate with the benefits received by such LSEs.

²¹¹ Wisconsin Electric Comments to the MISO Deficiency Letter Response at 8.

²¹² *Id.* at 7.

²¹³ Integrys Protest of the Revised Rate Schedules Filing at 14-17.

²¹⁴ MISO Energy and Operating Reserve Markets Business Practices Manual, BPM-002-r13 (dated Feb. 4, 2014) at § 5.1 (LMP Calculations), *available at* <https://www.misoenergy.org/Library/BusinessPracticesManuals/Pages/BusinessPracticesManuals.aspx>.

²¹⁵ MISO Deficiency Letter Response at 5.

beneficiary LSEs.²¹⁶ We find that MISO has not demonstrated that it is infeasible to modify its planning models to correct for the identified deficiencies and allow direct allocation to LSEs based on the benefits to the load that they serve at the load shed buses for the corresponding time period. We decline requests to set for hearing issues related to the optimal load-shed study, as we are requiring MISO to develop and apply a new study methodology that will avoid the deficiencies and unjust and unreasonable cost allocations presented by its optimal load-shed study.

89. In accordance with our discussion above, we direct MISO to use its revised study methodology to identify the LSEs that require the operation of the Presque Isle SSR Units, the Escanaba SSR Units, and the White Pine SSR Unit for reliability purposes. We direct MISO to submit, in the compliance filing due within 60 days of this order, Tariff revisions adjusting the SSR cost allocations under Escanaba Rate Schedule 43, Presque Isle Rate Schedule 43G, and White Pine Rate Schedule 43H, such that the SSR Units' costs are allocated in accordance with the new methodology, with such revised cost allocation to be effective for the Escanaba Rate Schedule 43 on June 15, 2014, for the White Pine Rate Schedule 43H on April 16, 2014, and for the Presque Isle Rate Schedule 43G on April 3, 2014.²¹⁷

c. Refunds

90. We reject requests for rehearing of our finding in the Wisconsin Commission Complaint Order that refunds of Presque Isle SSR costs are warranted back to the refund effective date of April 3, 2014. Several parties cite to the Commission's policy that when a Commission action under section 206 of the FPA requires only a cost allocation or a rate design change, the Commission's order will take effect prospectively, without refunds.²¹⁸ As the Commission explained in the Wisconsin Commission Complaint

²¹⁶ Wisconsin Electric Comments to the MISO Deficiency Letter Response at 7.

²¹⁷ The effective date for the required revision to Escanaba Rate Schedule 43 aligns with the effective date of a previous compliance filing conditionally accepted by the Commission in Docket No. ER14-2180-000. *See* August 2014 Escanaba Order, 148 FERC ¶ 61,116 at P 37. The effective date for the required revision to White Pine Rate Schedule 43H aligns with the effective date of a previous compliance filing conditionally accepted by the Commission in Docket No. ER14-1725-000. *See* August 2014 White Pine Order, 148 FERC ¶ 61,136 at PP 43-44.

²¹⁸ Michigan Commission Request for Rehearing of the Wisconsin Commission Complaint Order at 49; The City of Escanaba Request for Rehearing of the Wisconsin

Order, while the Commission has generally directed that changes to cost allocation or rate design under section 206 of the FPA be implemented prospectively, without refunds,²¹⁹ the Commission nevertheless has broad equitable discretion in determining whether and how to apply remedies in any particular case.²²⁰ Based on the record in this proceeding, the Commission found it appropriate to exercise its discretion in fashioning remedies and order refunds as of the date the Complaint was filed. In doing so, the Commission noted that the revised cost allocation does not represent a new cost allocation methodology, but rather conforms the allocation of SSR costs in the ATC footprint to the existing methodology applied through the rest of the MISO region, that the costs at issue in the Wisconsin Commission Complaint Order were limited to those associated with a single SSR Unit, to be allocated among a defined set of customers within a limited geographic area, for a limited period of less than four months, and that these refunds will not require broader adjustments to MISO's markets.²²¹

91. The parties seeking rehearing of this decision have not persuaded us that the decision to exercise the Commission's discretion to order refunds as of the date of the Complaint based on the record of the Wisconsin Commission Complaint proceeding was in error. Although several parties take issue with the Commission's findings, the justifications provided for exercising discretion to order refunds as of the date the Complaint was filed support the Commission's decision to exercise its discretion. While parties on rehearing challenge these justifications,²²² we find that these factors support the decision to exercise discretion in this case. In particular, the costs at issue in the Wisconsin Commission Complaint proceeding are limited to those associated with a

Commission Complaint Order at 5; Integrys Request for Rehearing of the Wisconsin Commission Complaint Order at 22.

²¹⁹ See, e.g., *Louisiana Pub. Serv. Comm'n v. Entergy Corp.*, 142 FERC ¶ 61,211, at P 51 (2010); but see *Louisiana Pub. Serv. Comm'n v. FERC*, 772 F.3d 1297 (D.C. Cir. 2014) (finding that the Commission failed to justify its reliance on a general policy of not ordering refunds in cost allocation and rate design cases without examining individual factors in each case).

²²⁰ See *Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 159 (D.C. Cir. 1967) (the Commission's breadth of discretion is "at its zenith" when fashioning remedies).

²²¹ Wisconsin Commission Complaint Order, 148 FERC ¶ 61,071 at P 68.

²²² See, e.g., Michigan Commission Request for Rehearing of the Wisconsin Commission Complaint Order at 49-50; Integrys Request for Rehearing of the Wisconsin Commission Complaint Order at 24.

single SSR Unit, to be allocated among a defined set of customers within a limited geographic area, for a limited period of less than four months, and these refunds will not require broader adjustments to MISO's markets. The circumstances raised in the Wisconsin Commission Complaint are that, as a result of an unjust and unreasonable cost allocation, LSEs in Wisconsin may have paid MISO too much of the total Presque Isle SSR costs while LSEs in Michigan may have paid too little. The Commission has broad authority under FPA section 206(b) to order refunds for misallocated costs when either the Commission or a complainant meets its burden under FPA section 206, and we do not find any circumstances present here that would prevent us from ordering refunds when the Wisconsin Commission carried its burden under FPA section 206 to establish that consumers have paid unjust and unreasonable rates.²²³ We find that the parties had reasonable notice that MISO's allocation of Presque Isle SSR costs might be held unjust or unreasonable as of the filing on April 3, 2014 of the Wisconsin Commission Complaint and the setting of that filing date as the refund effective date.²²⁴

92. Cases declining to order refunds in an FPA section 206 complaint case involving transactions in a regional transmission organization (RTO) market like MISO's typically have involved a change in market design where refunds would require re-running a market.²²⁵ Granting refunds beginning on April 3, 2014 does not require any markets to be re-run, as there is no need to recreate prices or economic behavior to determine which parties are responsible for SSR costs. Instead, MISO must merely identify the discrepancy in cost allocation amounts to LSEs between its previous cost allocation method and its final approved method.

93. Consistent with our finding, we will require MISO to refund, with interest,²²⁶ any costs allocated to LSEs under Presque Isle Rate Schedule 43G that are in excess of the costs to be allocated to those LSEs under the final approved study for the Presque Isle

²²³ *Westar Energy, Inc. v. FERC*, 568 F.3d 985, 989 (D.C. Cir. 2009).

²²⁴ *See Louisiana Pub. Serv. Comm'n v. FERC*, 482 F.3d 510, 520 (D.C. Cir. 2007) (finding that all parties in the case were on notice as of the filing of a complaint that Entergy's calculation of peak load responsibility might be held unjust and unreasonable.).

²²⁵ *Ameren Services Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 127 FERC ¶ 61,121, at P 157 (2009) (citing *Maryland Public Service Comm'n v. PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,169, at P 49 (2008)).

²²⁶ Interest should be calculated pursuant to 18 C.F.R. § 35.19a (2014).

SSR Units ordered herein, with such refunds to begin April 3, 2014. We similarly find it appropriate to order refunds with respect to the White Pine Rate Schedule 43H and Escanaba Rate Schedule 43, as these SSR applications took effect after the filing of the Wisconsin Commission Complaint and these SSR Units share common characteristics with the Presque Isle SSR Units and apply the same SSR cost allocation methodology that was found to be unjust and unreasonable based on the record in these proceedings. Therefore, we will require MISO to refund, with interest,²²⁷ any costs allocated to LSEs under White Pine Rate Schedule 43H that are higher than the costs to be allocated to those LSEs according to the forthcoming study for the White Pine SSR Unit, with such refunds to begin April 16, 2014.²²⁸ We will also require MISO to refund, with interest,²²⁹ any costs allocated to LSEs under Escanaba Rate Schedule 43 that are higher than the costs to be allocated to those LSEs according to the forthcoming study for the Escanaba SSR Units, with such refunds to begin June 15, 2014.²³⁰ Implementation of the refund requirements for these SSR Units will be addressed in a future order addressing MISO's new study methodology.²³¹

d. Specific Requests for Clarification

94. With respect to WPPI's request to include the variable cost component of Presque Isle SSR compensation in settlement and hearing processes, we clarify that the variable costs are included in the hearing and settlement procedures created in the Wisconsin

²²⁷ Interest should be calculated pursuant to 18 C.F.R. § 35.19a (2014).

²²⁸ The effective date for the required revision to White Pine Rate Schedule 43H aligns with the effective date of a previous compliance filing ordered by the Commission in Docket No. ER14-1725-000. *See* August 2014 White Pine Order, 148 FERC ¶ 61,136 at PP 43-44.

²²⁹ Interest should be calculated pursuant to 18 C.F.R. § 35.19a (2014).

²³⁰ The effective date for the required revision to Escanaba Rate Schedule 43 aligns with the effective date of a previous compliance filing ordered by the Commission in Docket No. ER14-2180-000. *See* August 2014 Escanaba Order, 148 FERC ¶ 61,116 at P 37.

²³¹ Other issues raised in the rehearing requests with respect to refunds are more appropriately addressed once the Commission has addressed MISO's new study methodology and MISO has filed a detailed refund report. We also note that, when refunds (if necessary) are implemented, state regulators have authority to determine the time period over which any reallocated costs will be passed through to retail ratepayers.

Commission Complaint Order. We agree that parties should have the opportunity to negotiate and discuss variable cost items.

95. We grant the Michigan Commission's request for clarification that the flexibility given to MISO to determine a method to allocate SSR costs to the LSEs that benefit from the operation of the SSR Units will not require the Michigan Commission or the Wisconsin Commission to employ any particular allocation methodology at the retail rate level for purposes of allocating such costs within an LSE that operates in both Michigan and Wisconsin. We grant the City of Escanaba's requests for clarification that (1) the Commission did not expressly find that the optimal load-shed methodology employed by MISO in the preliminary load-shed study necessarily produces just and reasonable cost allocation results and (2) MISO's Tariff does not require the load-shed methodology. We also grant Wisconsin Electric's requested clarification that any method MISO uses to identify the beneficiaries of an SSR Unit must be consistent with the Tariff requirement that costs are allocated to the LSEs that require the operation of the SSR Unit for reliability purposes.

96. We deny all requests for clarification that would require the application of LBA boundaries to the allocation of Presque Isle SSR costs or that challenge the legality of the split of the WEC LBA itself. As explained above, we find that application of the optimization-LBA approach in these proceedings does not properly identify the LSEs that require the operation of the White Pine, Escanaba, and Presque Isle SSR Units. In addition, the legality of the LBA split is before the Commission in two complaints filed in Docket Nos. ER14-103-000 and ER14-104-000, and the Commission rules on that issue in those dockets in a concurrently issued order.

e. **MISO's Filing to Reflect the WEC LBA Split in Docket No. ER14-2952-000**

97. We reject MISO's filing in Docket No. ER14-2952-000. As discussed above,²³² we find that the cost allocations proposed by MISO to allocate costs for the Presque Isle, White Pine, and Escanaba SSR Units, which use the optimization-LBA approach in MISO's BPM, 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." We require MISO to submit 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. Many of the issues raised by commenters

²³² See *supra* PP 80-89.

in Docket No. ER14-2952-000 relate to the issue of the SSR cost allocation percentages proposed in MISO's filing; since we have ruled on those issues above, we now address the remaining issues presented in Docket No. ER14-2952-000.

98. WPPI protests the continued failure of MISO to properly account for load that is pseudo-tied into and out of LBAs.²³³ We find this issue moot, as we find that the optimization-LBA approach used by MISO in these proceedings does not properly identify the LSEs that require the operation of the SSR Unit, and we direct MISO to devise an SSR cost allocation method that is not reliant on LBA boundaries.

99. The Mines argue that MISO's revised Presque Isle Rate Schedule 43G should be denied because MISO has not adequately supported the status of Presque Isle Units 5-9 as SSR Units.²³⁴ First, the Mines state that Wisconsin Electric may not retire Presque Isle Units 5-9 absent regulatory approval to discontinue service, and, without this approval, an SSR agreement is not necessary to ensure the continued operation of the SSR Units.²³⁵ Second, the Mines assert that existing market mechanisms are adequate to ensure continued operation of Presque Isle Units 5-9.²³⁶ The Michigan Representatives Letter suggests 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 5-9.²³⁷ The Commission addressed these issues in the November 10 Order. With respect to arguments that some or all of the Presque Isle Units 5-9 should not qualify for SSR treatment, the Commission found in the November 10 Order that MISO properly followed the SSR study and review process in accordance with the Tariff and adequately demonstrated that all five Presque Isle units are needed for reliability during the term of the SSR agreement that was accepted in the November 10 Order.²³⁸ With regard to arguments that Wisconsin Electric did not receive the necessary state regulatory approvals to retire Presque Isle Units 5-9, the Commission found in the

²³³ WPPI Protest of the Revised Rate Schedules Filing at 8-13.

²³⁴ The Mines Protest of the Revised Rate Schedules Filing at 4.

²³⁵ *Id.* at 6-10.

²³⁶ *Id.* at 11-13.

²³⁷ Michigan Representatives Letter, Docket No. ER14-2952-000, *et al.* (filed Oct. 28, 2014).

²³⁸ November 10 Order, 149 FERC ¶ 61,114 at P 36.

November 10 Order that if there are state laws that prevent the retirement, the enforcement of those laws is beyond the scope of the SSR proceeding.²³⁹

100. We disagree with the City of Escanaba's argument that MISO's filing in Docket No. ER14-2952-000 was procedurally deficient and that each revised rate schedule should be submitted in a separate section 205 filing because they include differing allocations, differing underlying levels of support, and differing issues.²⁴⁰ While the rate schedules have different resulting cost allocations, the basis for the change in cost allocations is the same – a change in the LBAs to which costs are being apportioned. Although we have directed MISO to revise its cost allocation methodology in these proceedings, so that it is no longer reliant on LBA boundaries, we find it reasonable for MISO to have made a single section 205 filing amending the appropriate rate schedules under its Tariff that were affected by the split of the WEC LBA.

B. MISO's Filings in Compliance with the Wisconsin Commission Complaint Order

1. MISO's Compliance Filings

101. Pursuant to directives set forth in the Wisconsin Commission Complaint Order, MISO submitted compliance filings in Docket Nos. ER14-1242-002, ER14-1243-002 and ER14-1243-004. MISO's compliance filing in Docket No. ER14-1242-002 added certain language to the end of Exhibit 2 and to Section 9.E ("Unanticipated Repairs") of the Presque Isle SSR Agreement, as required by the Wisconsin Commission Complaint Order.²⁴¹ In Docket No. ER14-1243-002, MISO submitted revisions to Tariff section 38.2.7.k to remove the ATC SSR *pro rata* cost allocation provision. In Docket No. ER14-1243-004, MISO submitted the results of its final load-shed study for the Presque Isle SSR Units and revisions to its cost allocation methodology under Presque Isle Rate Schedule 43G. Also in Docket No. ER14-1243-004, MISO submitted a refund report to address the requirement that MISO refund, with interest, any costs allocated to LSEs under Original Presque Isle Rate Schedule 43G from April 3, 2014 until the date of the Wisconsin Commission Complaint Order that were in excess of the costs to be allocated to those LSEs under MISO's final load-shed study. The report lists the total refund and interest amounts to each LSE.

²³⁹ *Id.* P 38.

²⁴⁰ The City of Escanaba Protest of the Revised Rate Schedules Filing at 4.

²⁴¹ Wisconsin Commission Complaint Order, 148 FERC ¶ 61,071 at PP 91, 100.

2. Notice and Responsive Pleadings

102. Notice of MISO's compliance filings in Docket Nos. ER14-1242-002, ER14-1243-002 and ER14-1243-004 were published in the *Federal Register*, 79 Fed. Reg. 49,300 (2014), with comments due on or before September 2, 2014.

103. Timely protests and comments were submitted in Docket No. ER14-1243-004 by the Wisconsin Commission, WPPI, the Environmental Law and Policy Center, Wisconsin Electric, and the Michigan Commission. Timely comments were submitted in Docket Nos. ER14-1242-002 and ER14-1243-002 by Verso. A timely protest was submitted in Docket Nos. ER14-1242-002 and ER14-1243-004 by Integrys. The City of Escanaba submitted an out-of-time motion to intervene and a timely limited protest in Docket No. ER14-1243-004. Cloverland submitted an out-of-time motion to intervene and protest in Docket No. ER14-1243-004. The Michigan Public Power Agency submitted an out-of-time motion to intervene in Docket Nos. ER14-1243-002 and ER14-1243-004.

104. Wisconsin Electric filed a motion for leave to answer and answer in all three dockets. Integrys and Verso filed motions for leave to answer and answer in Docket No. ER14-1243-004. MISO filed a motion for leave to answer and answer in Docket Nos. ER14-1242-002 and ER14-1243-004.

105. Notice of MISO's Refund Report compliance filing in Docket No. ER14-1243-004 was published in the *Federal Register*, 79 Fed. Reg. 58,763 (2014), with comments due on or before October 14, 2014. Timely protests were filed by the City of Escanaba and WPPI. MISO and WPPI filed motions for leave to answer and answers.

106. Comments were filed in all three dockets by 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 and in Docket No. ER14-1242-002 by Thomas J. Hoogterp (Comments of the Michigan Representatives).

3. Comments and Answers

107. Several parties raise the same issues that were raised in requests for rehearing of the Wisconsin Commission Complaint Order, such as: whether the application of MISO's SSR cost allocation methodology in Presque Isle Rate Schedule 43G complies with the Tariff language and the Commission's directive in the Wisconsin Commission Complaint Order requiring MISO to allocate costs directly to those LSEs that benefit

from the SSR units;²⁴² whether MISO's cost allocation methodology for the Presque Isle SSR Units tracks cost causation principles;²⁴³ whether MISO's final load-shed study accurately identifies the LSEs receiving the Presque Isle system reliability benefits;²⁴⁴ whether MISO should allocate Presque Isle SSR costs to the separate WEC and Michigan Upper Peninsula LBAs or to the unsplit WEC LBA;²⁴⁵ whether there are issues of material fact that must be resolved through hearing and settlement procedures;²⁴⁶ whether the revised cost allocation in revised Presque Isle Rate Schedule 43G should be effective April 3, 2014;²⁴⁷ and expressing concern about the possibility of rate increases in the

²⁴² Protest of Cloverland Electric Cooperative, Docket No. ER14-1243-004, at 3-4 (filed Sept. 9, 2014) (Cloverland Protest of Presque Isle Rate Schedule 43G); Protest of the Michigan Public Service Commission, Docket No. ER14-1243-004, at 1-3 (filed Sept. 2, 2014).

²⁴³ Protest of WPPI Energy, Docket No. ER14-1243-004, at 2-9 (filed Sept. 2, 2014) (WPPI Protest of Presque Isle Rate Schedule 43G); Protest of Wisconsin Electric Power Company, Docket No. ER14-1243-004, at 3-4, 8 (filed Sept. 2, 2014); Comments of Public Interest Organizations, Docket No. ER14-1243-004, at 5-7 (filed Sept. 2, 2014) (Public Interest Organizations Comments on Presque Isle Rate Schedule 43G); Cloverland Protest of Presque Isle Rate Schedule 43G at 4-5.

²⁴⁴ Cloverland Protest of Presque Isle Rate Schedule 43G at 5-6; Integrys Answer, Docket No. ER14-1243-004, at 8 (filed Sept. 17, 2014).

²⁴⁵ Protest of the Public Service Commission of Wisconsin Commission, Docket No. ER14-1243-004, at 4-5, 9 (filed Sept. 2, 2014) (Wisconsin Commission Protest of Presque Isle Rate Schedule 43G); WPPI Protest of Presque Isle Rate Schedule 43G at 7-8; Public Interest Organizations Comments on Presque Isle Rate Schedule 43G at 7; Integrys Answer, Docket No. ER14-1243-004, at 6 (filed Sept. 17, 2014).

²⁴⁶ Comments of Verso Paper Corp. on Compliance Filing, Request for Hearing and Settlement Procedures, and Motion for Consolidation, Dockets Nos. ER14-1243-002 and ER14-1242-002, at 4-9 (filed Sept. 2, 2014); Wisconsin Electric Answer, Docket No. ER14-1243-004, at 11-13 (filed Sept. 12, 2014).

²⁴⁷ Motion to Intervene Out-of-Time and Limited Protest of the City of Escanaba, Michigan, Docket No. ER14-1243-004, at 3-4 (filed Sept. 2, 2014); Wisconsin Commission Protest of Presque Isle Rate Schedule 43G at 4-5, 9.

Upper Peninsula of Michigan.²⁴⁸ WPPI also argues that MISO's compliance filing should consider the physical location of loads pseudo-tied into the LBAs.²⁴⁹

108. Integrys contends that in order for MISO to fully comply with the Wisconsin Commission Complaint Order, MISO's revised Presque Isle Rate Schedule 43G must be modified to state: (1) the term of the Presque Isle SSR Agreement is one year; (2) the change to the SSR methodology took effect April 3, 2014; and (3) the termination date of January 31, 2015.²⁵⁰

109. The City of Escanaba argues that MISO's refund report submitted in Docket No. ER14-1243-004 is incomplete and therefore misleading.²⁵¹ The City of Escanaba contends that MISO should have explained the complete reallocation of costs, instead of identifying only the LSEs that received refunds, because some LSEs received retroactive rate increases due to the Commission's decision to order refunds in a cost allocation case.²⁵² WPPI contends that the refund report does not comply with the Wisconsin Commission Complaint Order because it relies on a load-shed study that allocates SSR costs to LSEs that do not require operation of the Presque Isle SSR Units.²⁵³

110. In its answer to the comments, MISO contends that it strictly complied with the Commission's directives in the Wisconsin Commission Complaint Order by removing the ATC SSR *pro rata* cost allocation provision from the Tariff and allocating costs to the LSEs that benefit from the Presque Isle SSR Units based upon the final load-shed study ordered by the Commission.²⁵⁴ MISO also argues that several of the comments and

²⁴⁸ Comments of the Michigan Representatives.

²⁴⁹ WPPI Protest of Presque Isle Rate Schedule 43G at 9-11.

²⁵⁰ Protest of Integrys Energy Services, Inc., Docket Nos. ER14-1243-004 and ER14-1242-002, at 5-6 (filed Sept. 2, 2014).

²⁵¹ Protest of the City of Escanaba, Michigan, Docket No. ER14-1243-004, at 2 (filed Oct. 14, 2014).

²⁵² *Id.* at 2-3.

²⁵³ WPPI Energy Protest of Refund Report, Docket No. ER14-1243-004, at 2-7 (filed Oct. 14, 2014).

²⁵⁴ MISO Answer, Docket Nos. ER14-1242-002 and ER14-1243-004, at 3-4 (filed Sept. 17, 2014).

protests are collateral attacks on the Wisconsin Commission Complaint Order.²⁵⁵ Regarding the refund report, MISO states that it strictly complied with the Wisconsin Commission Complaint Order and did not provide information or use refund dates that were not directed by the Commission.²⁵⁶ MISO argues that some protests are untimely or repetitive requests for rehearing that should be rejected.²⁵⁷ In response to MISO's answer, WPPI argues that the issues raised in its protest to the refund report are properly presented and should be considered by the Commission.²⁵⁸

4. Commission Determination

a. Procedural Matters

111. 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 the City of Escanaba, Cloverland, and the Michigan Public Power Agency. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for granting such late intervention.²⁵⁹ We find that the movants have met this higher burden of justifying late intervention.

112. 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 filed in Docket Nos. ER14-1242-002, ER14-1243-002 and ER14-1243-004 because they have provided information that assisted us in our decision-making process.

²⁵⁵ *Id.* at 5, 10-11.

²⁵⁶ MISO Answer, Docket No. ER14-1243-004, *et al.*, at 4-5 (filed Oct. 29, 2014).

²⁵⁷ *Id.* at 6-7.

²⁵⁸ WPPI Energy Answer to MISO Answer, Docket No. ER14-1243-004, *et al.*, at 4-8 (filed Nov. 3, 2014).

²⁵⁹ *See, e.g., Midwest Independent Transmission System Operator, Inc.*, 102 FERC ¶ 61,250, at P 7 (2003).

b. Commission Determination

113. We reject the compliance filing of revised Presque Isle Rate Schedule 43G in Docket No. ER14-1243-004. As discussed above,²⁶⁰ we direct MISO to devise and file, in a compliance filing due within 60 days of the date of this order, a new study methodology that will identify the LSEs that require the operation of the Presque Isle SSR Units for reliability purposes, as required by the Tariff. We further require MISO to submit, in its compliance filing, a revised Presque Isle Rate Schedule 43G that adjusts the allocation of SSR costs under the Presque Isle SSR Agreement filed by MISO in Docket No. ER14-1242-002 accordingly, with such revised allocation to be effective as of April 3, 2014.²⁶¹ We do not address arguments about the effective date and appropriateness of the SSR cost allocation methodology proposed in Docket No. ER14-1243-004, as these issues have already been addressed on rehearing of the Wisconsin Commission Complaint Order.

114. We accept MISO's compliance filing in Docket No. ER14-1243-002 to remove the ATC SSR *pro rata* cost allocation provision from section 38.2.7.k of MISO's Tariff, effective April 3, 2014, as we find that MISO's filing complies with the directives of the Wisconsin Commission Complaint Order. We accept MISO's compliance filing in Docket No. ER14-1242-002 adding certain language to the end of Exhibit 2 and to Section 9.E ("Unanticipated Repairs") of the Presque Isle SSR Agreement, although we note that this filing is only in effect from February 1, 2014 until October 14, 2014, as it was superseded by the Replacement Presque Isle SSR Agreement accepted by the Commission in the November 10 Order in Docket No. ER14-2860-000. In the November 10 Order, the Commission noted that the Replacement Presque Isle SSR Agreement included the revisions to Exhibit 2 and section 9.E that were required in the Wisconsin Commission Complaint Order.²⁶²

115. With respect to WPPI's protest of MISO's failure to properly account for load that is pseudo-tied into and out of LBAs, we reiterate that this issue is moot, as we find that the optimization-LBA approach used by MISO in these proceedings does not properly

²⁶⁰ See *supra* PP 80-89.

²⁶¹ We note that Original Presque Isle Rate Schedule 43G accepted in Docket No. ER14-1242-000 was effective during the period of February 1, 2014 through April 2, 2014.

²⁶² November 10 Order, 149 FERC ¶ 61,114 at P 58.

identify the LSEs that require the operation of the SSR Unit, and we direct MISO to devise an SSR cost allocation method that is not reliant on LBA boundaries.

116. We dismiss MISO's refund report filed in Docket No. ER14-1243-004 as moot. As discussed above, we will require MISO to refund, with interest, any costs allocated to LSEs under Presque Isle Rate Schedule 43G that are in excess of the costs to be allocated to those LSEs under the final approved study for the Presque Isle SSR Units ordered herein, with such refunds to begin April 3, 2014.²⁶³

C. MISO's Filings in Compliance with the August 2014 White Pine Order and the August 2014 Escanaba Order

1. August 2014 White Pine Order

117. On August 21, 2014, the Commission conditionally accepted the White Pine SSR Agreement, effective April 16, 2014, but required MISO to include a clarification to section 9.E and some additional language in Exhibit 2 related to compensation when the SSR Unit operates for economic rather than reliability purposes.²⁶⁴ The Commission also conditionally accepted White Pine Rate Schedule 43H, effective April 16, 2014, and directed MISO to conduct a load-shed study that identifies the LSEs which require the operation of the White Pine SSR Unit for reliability purposes.²⁶⁵ The Commission directed MISO to submit in a compliance filing Tariff revisions adjusting the SSR cost allocation under White Pine Rate Schedule 43H such that the White Pine SSR Unit's costs are allocated in accordance with the load-shed study, with such revised cost allocation to be effective as of April 16, 2014. The Commission further directed MISO to refund any costs allocated to LSEs under White Pine Rate Schedule 43H from April 16, 2014 until the date of the August 2014 White Pine Order that were in excess of the costs to be allocated to those LSEs under the forthcoming load-shed study, and to submit a refund report within 30 days after refunds are granted to affected customers.²⁶⁶

²⁶³ *See supra* P 93.

²⁶⁴ August 2014 White Pine Order, 148 FERC ¶ 61,136 at PP 31, 32.

²⁶⁵ *Id.* P 44.

²⁶⁶ *Id.* P 45.

2. August 2014 Escanaba Order

118. On August 12, 2014, the Commission conditionally accepted the Second Restated Escanaba SSR Agreement, effective June 15, 2014, but required MISO to include language in Exhibit 2 related to compensation when the SSR Unit operates for economic rather than reliability purposes.²⁶⁷ The Commission also conditionally accepted Second Revised Escanaba Rate Schedule 43, effective June 15, 2014, as requested, and directed MISO to conduct a load-shed study that identifies the LSEs which require the operation of the Escanaba SSR Units for reliability purposes.²⁶⁸ The Commission directed MISO to submit in a compliance filing Tariff revisions adjusting the SSR cost allocation under Second Revised Escanaba Rate Schedule 43 such that the Escanaba SSR Units' costs are allocated in accordance with the load-shed study, with such revised cost allocation to be effective as of June 15, 2014. The Commission further directed MISO to refund any costs allocated to LSEs under Second Revised Escanaba Rate Schedule 43 from June 15, 2014 until the date of the August 2014 Escanaba Order that were in excess of the costs to be allocated to those LSEs under the forthcoming load-shed study, and to submit a refund report within 30 days after refunds are granted to affected customers.²⁶⁹

3. Compliance Filings

119. In Docket No. ER14-1724-001, in compliance with the Commission's directives in the August 2014 White Pine Order, MISO filed revisions to the White Pine SSR Agreement adding the requested language to section 9.E and Exhibit 2.²⁷⁰ In Docket No. ER14-1725-001, MISO submitted a revised White Pine Rate Schedule 43H that applies MISO's general practice of allocating costs to LBAs utilizing an optimal load-shed methodology to determine the reliability benefits of the SSR Unit to each MISO LBA, and then organizing these load shed values by LBA and accumulating to determine the total load shed for each LBA along with the corresponding cost share ratio.²⁷¹ Also in Docket No. ER14-1725-001, MISO submitted a report detailing the refunds of costs

²⁶⁷ August 2014 Escanaba Order, 148 FERC ¶ 61,116 at PP 31, 34.

²⁶⁸ *Id.* P 37.

²⁶⁹ *Id.* P 38.

²⁷⁰ MISO White Pine SSR Agreement Compliance Filing, Docket No. ER14-1724-001 (filed Aug. 27, 2014).

²⁷¹ MISO White Pine Rate Schedule 43H Compliance Filing, Docket No. ER14-1725-001, Tab C (White Pine Load-Shed Study) (filed Aug. 27, 2014).

allocated to LSEs under White Pine Rate Schedule 43H from April 16, 2014 until the date of the August 2014 White Pine Order that were in excess of the costs to be allocated to those LSEs under MISO's final load-shed study.

120. In Docket No. ER14-2176-001, in compliance with the Commission's directives in the August 2014 Escanaba Order, MISO filed revisions to the Second Restated Escanaba SSR Agreement adding the requested language to Exhibit 2.²⁷² In Docket No. ER14-2180-001, MISO submitted a revised Escanaba Rate Schedule 43 that applies MISO's general practice of allocating costs to LBAs utilizing an optimal load-shed methodology to determine the reliability benefits of the SSR Unit to each MISO LBA, and then organizing these load shed values by LBA and accumulating to determine the total load shed for each LBA along with the corresponding cost share ratio.²⁷³ MISO also submitted a letter in Docket No. ER14-2180-001 explaining that it settled monthly amounts according to the allocations stated in the August 2014 Escanaba Order, without refunds, and a refund report need not be granted under these circumstances.

4. Notice and Responsive Pleadings

121. Notice of MISO's compliance filings in Docket Nos. ER14-1724-001 and ER14-1725-001 was published in the Federal Register, 79 Fed. Reg. 53,053 (2014), with comments due on or before September 17, 2014. Cloverland and Verso filed out-of-time motions to intervene in Docket No. ER14-1725-001 on September 23, 2014 and October 10, 2014, respectively. The Wisconsin Commission filed a protest in Docket No. ER14-1725-001. Wisconsin Electric and the Michigan Commission submitted a protest in both dockets. MISO filed a motion for leave to answer and answer to the protests. WPPI filed a motion for leave to respond to MISO's answer.

122. Notice of MISO's refund report filed in Docket No. ER14-1725-001 was published in the Federal Register, 79 Fed. Reg. 58,763 (2014), with comments due on or before October 14, 2014. WPPI and the Michigan Commission filed timely protests. MISO filed a motion for leave to answer and answer on October 29, 2014. WPPI and the Michigan Commission filed a response to MISO's answer on November 3, 2014.

²⁷² MISO Second Restated Escanaba SSR Agreement Compliance Filing, Docket No. ER14-2176-001 (filed Sept. 10, 2014).

²⁷³ MISO Escanaba Rate Schedule 43 Compliance Filing, Docket No. ER14-2180-001, Tab C (Escanaba Load-Shed Study) (filed Sept. 10, 2014).

123. Notice of MISO's compliance filings in Docket Nos. ER14-2176-001 and ER14-2180-001 was published in the Federal Register, 79 Fed. Reg. 55,783 (2014), with comments due on or before October 1, 2014. Verso filed an out-of-time motion to intervene in Docket No. ER14-2180-001 on October 10, 2014. Wisconsin Electric and the Michigan Commission submitted a protest in both dockets. The City of Escanaba, the Wisconsin Commission, and WPPI filed protests in Docket No. ER14-2180-001. MISO filed a motion for leave to answer and answer to the protests. WPPI filed a motion for leave to respond to MISO's answer.

124. Notice of MISO's letter filed in Docket No. ER14-2180-001 was published in the Federal Register, 79 Fed. Reg. 58,763 (2014), with comments due on or before October 14, 2014. WPPI and the Michigan Commission filed timely protests. MISO filed a motion for leave to answer and answer on October 29, 2014. WPPI filed a response to MISO's answer on November 3, 2014.

5. Protests and Answers

125. Several parties submit protests of MISO's load-shed methodology as applied in the revised White Pine Rate Schedule 43H submitted in Docket No. ER14-1725-001 and the revised Escanaba Rate Schedule 43 submitted in Docket No. ER14-2180-001. These protests largely repeat the arguments that these same parties have made on rehearing of the Wisconsin Commission Complaint or in protest to MISO's final load-shed study and revised Presque Isle Rate Schedule 43G in Docket No. ER14-1243-004. The Michigan Commission notes that it has sought rehearing of the underlying Commission finding that the existing ATC SSR *pro rata* cost allocation provision is unjust and unreasonable.²⁷⁴ WPPI states that the benefits from operation of the White Pine SSR Unit and the Escanaba SSR Units are mostly confined to the Upper Peninsula, and argues that MISO should be required to submit a more fine-grained load-shed analysis that allocates SSR costs directly to the LSE beneficiaries, without reliance on LBA boundaries.²⁷⁵ WPPI also argues that the cost allocation methodology applied in both rate schedules does not

²⁷⁴ Conditional Protest of the Michigan Public Service Commission, Docket Nos. ER14-1724-001 and ER14-1725-001, at 2 (filed Sept. 17, 2014); Conditional Protest of the Michigan Public Service Commission, Docket Nos. ER14-2176-001 and ER14-2180-001, at 2 (filed Oct. 1, 2014).

²⁷⁵ Protest of WPPI Energy, Docket No. ER14-1725-001, at 3-7 (filed Sept. 17, 2014) (WPPI Protest of White Pine Compliance Filings); Protest of WPPI Energy, Docket No. ER14-2180-001, at 3-7 (filed Oct. 1, 2014) (WPPI Protest of Escanaba Compliance Filings).

properly account for the physical location of load that is pseudo-tied into and out of LBAs.²⁷⁶ The Wisconsin Commission argues that MISO should amend the cost allocation in both rate schedules to treat the WEC LBA as if it were already split into the Michigan Upper Peninsula LBA and the new WEC LBA, even though that split had not gone into effect at the time of MISO's compliance filing.²⁷⁷ Wisconsin Electric and the Wisconsin Commission ask the Commission to direct MISO to allocate SSR costs based on the actual energy withdrawals at the commercial pricing node.²⁷⁸

126. The City of Escanaba argues that MISO provides no support for its load-shed study submitted in Docket No. ER14-2180-001, and that stakeholders did not have the opportunity to review the inputs to the study or the results of the study before it was filed.²⁷⁹ The City of Escanaba asks the Commission to require MISO to provide further support that MISO's methodology and its localized allocation of the Escanaba SSR Unit costs meets its Tariff, and that other neighboring regions outside of the Upper Peninsula receive no benefit from the reliability impact of the Escanaba SSR Units.²⁸⁰

127. In its answer to the comments, MISO contends that it strictly complied with the Commission's directives in the August 2014 White Pine Order and the August 2014 Escanaba Order by conducting an optimal load-shed study consistent with its BPM methodology and applying this load-shed study to determine the allocation of costs to LSEs that benefit from the operation of the White Pine SSR Unit and the Escanaba SSR Units.²⁸¹ MISO also argues that several of the comments and protests are collateral

²⁷⁶ WPPI Protest of White Pine Compliance Filings at 7-9; WPPI Protest of Escanaba Compliance Filings at 7-9.

²⁷⁷ Protest of the Public Service Commission of Wisconsin, Docket No. ER14-1725-001, at 4-7 (filed Sept. 17, 2014); Protest of the Public Service Commission of Wisconsin, Docket No. ER14-2180-001, at 5-7 (filed Oct. 1, 2014).

²⁷⁸ Limited Protest of Wisconsin Electric Power Company, Docket Nos. ER14-1724-001 and ER14-1725-001, at 5-8 (filed Sept. 17, 2014); Protest of the Public Service Commission of Wisconsin, Docket No. ER14-2180-001, at 5-8 (filed Oct. 1, 2014).

²⁷⁹ Protest of the City of Escanaba, Michigan, Docket No. ER14-2180-001, at 3 (filed Oct. 1, 2014).

²⁸⁰ *Id.* at 4.

²⁸¹ MISO Answer, Docket Nos. ER14-1724-001 and ER14-1725-001, at 3-4 (filed Oct. 2, 2014) (MISO Answer to Protests of White Pine Compliance Filings); MISO

(continued...)

attacks on the Wisconsin Commission Complaint Order,²⁸² and that it would be improper for MISO to allocate costs to LBAs that were not yet in existence at the time of the compliance filing.²⁸³ Regarding pseudo-tied load, MISO states that the August 2014 White Pine Order and the August 2014 Escanaba Order did not address the applicability of SSR costs to pseudo-tied load, nor did they direct MISO to treat pseudo-tied load differently than other loads registered in the MISO market model.²⁸⁴ In response, WPPI argues that the Commission also did not direct MISO to treat remote load pseudo-tied into an LBA as if that load were physically located in that LBA, and that it is improper to allocate SSR costs to such physically remote load that does not benefit from the operation of the SSR Units.²⁸⁵

128. WPPI protests the refund reports on the grounds that the final load-shed studies are inconsistent with the Commission's directives in the August 2014 White Pine Order and the August 2014 Escanaba Order, and so any refunds or revised billing based on those studies is incorrect.²⁸⁶ The Michigan Commission protests the refund reports on the basis that the Commission should not have granted refunds and because MISO did not provide any workpapers in support of the refund reports.²⁸⁷ MISO answers that it strictly complied with the August 2014 White Pine Order and the August 2014 Escanaba Order

Answer, Docket Nos. ER14-2176-001 and ER14-2180-001, at 3-5 (filed Oct. 16, 2014) (MISO Answer to Protests of Escanaba Compliance Filings).

²⁸² MISO Answer to Protests of White Pine Compliance Filings at 4-5; MISO Answer to Protests of Escanaba Compliance Filings at 6-7.

²⁸³ MISO Answer to Protests of White Pine Compliance Filings at 5-7; MISO Answer to Protests of Escanaba Compliance Filings at 7-8.

²⁸⁴ MISO Answer to Protests of White Pine Compliance Filings at 5; MISO Answer to Protests of Escanaba Compliance Filings at 6.

²⁸⁵ WPPI Energy Reply to MISO Answer, Docket Nos. ER14-1724-001 and ER14-1725-001 (filed Oct. 10, 2014); WPPI Energy Reply to MISO Answer, Docket Nos. ER14-2176-001 and ER14-2180-001 (filed Oct. 30, 2014).

²⁸⁶ WPPI Protest of the Refund Report, Docket No. ER14-1725-001, at 1-2 (filed Oct. 14, 2014); WPPI Protest of the Refund Report, Docket No. ER14-2180-001, at 1-2 (filed Oct. 14, 2014).

²⁸⁷ MISO Protest of Refund Reports, Docket Nos. ER14-1725-001, *et al.*, at 4-7 (filed Oct. 14, 2014).

and that the protests are untimely or repetitive requests for rehearing that should be rejected.²⁸⁸

6. Commission Determination

a. Procedural Matters

129. 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 Cloverland and Verso. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for granting such late intervention.²⁸⁹ We find that Cloverland and Verso have met this higher burden of justifying late intervention.

130. 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 unless otherwise ordered by the decisional authority. We will accept the answers filed in Docket Nos. ER14-1724-001, ER14-1725-001, ER14-2176-001, and ER14-2180-001 because they have provided information that assisted us in our decision-making process.

b. Substantive Matters

131. We accept MISO's compliance filing in Docket No. ER14-2176-001 adding language to Exhibit 2 of the Second Restated Escanaba SSR Agreement, as we find that the filing is in compliance with the Commission's directive in the August 2014 Escanaba Order. We also accept MISO's compliance filing in Docket No. ER14-1724-001 adding language to section 9.E and Exhibit 2 of the White Pine SSR Agreement, as we find that the filing is in compliance with the Commission's directive in the August 2014 White Pine Order.

²⁸⁸ MISO Answer, Docket Nos. ER14-1725-001, *et al.*, at 4-7 (filed Oct. 29, 2014).

²⁸⁹ See, e.g., *Midwest Independent Transmission System Operator, Inc.*, 102 FERC ¶ 61,250, at P 7 (2003).

132. We reject MISO's revised Escanaba Rate Schedule 43 filed in Docket No. ER14-2180-001 and MISO's revised White Pine Rate Schedule 43H filed in Docket No. ER14-1725-001 as moot. As discussed above,²⁹⁰ we find that the cost allocations proposed by MISO to allocate costs for the Presque Isle, White Pine, and Escanaba SSR Units, which use the optimization-LBA approach in MISO's BPM, 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." We require MISO to submit 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.

133. We do not address arguments about the appropriateness of MISO's SSR cost allocation methodology, as these issues have already been addressed on rehearing of the Wisconsin Commission Complaint Order. With respect to WPPI's protest of MISO's failure to properly account for load that is pseudo-tied into and out of LBAs, we reiterate that this issue is moot, as we find that the optimization-LBA approach used by MISO in these proceedings does not properly identify the LSEs that require the operation of the SSR Unit, and we direct MISO to devise an SSR cost allocation method that is not reliant on LBA boundaries.

134. We dismiss the refund report letter filed in Docket No. ER14-2180-001 and the refund report filed Docket No. ER14-1725-001 as moot. As discussed above,²⁹¹ we will require MISO to refund any costs allocated to LSEs under Escanaba Rate Schedule 43 and White Pine Rate Schedule 43H that are in excess of the costs to be allocated to those LSEs under MISO's final approved studies for the SSR Units, with such refunds to begin April 16, 2014 for the White Pine SSR Unit and June 15, 2014 for the Escanaba SSR Units.

D. Requests for Rehearing of the August 2014 Escanaba Order and the August 2014 White Pine Order

1. Requests for Rehearing

135. The Michigan Commission filed a request for rehearing of the August 2014 Escanaba Order in Docket Nos. ER14-2176-002 and ER14-2180-002. It also filed a request for rehearing of the August 2014 White Pine Order in Docket Nos. ER14-1724-

²⁹⁰ See *supra* PP 80-89.

²⁹¹ See *supra* P 93.

002 and ER14-1725-002. The City of Escanaba filed a request for rehearing of the August 2014 Escanaba Order in Docket No. ER14-2180-002. These requests for rehearing repeat the arguments made by these parties in their respective requests for rehearing of the Wisconsin Commission Complaint Order. The Michigan Commission argues that the Wisconsin Commission Complaint Order should not be applied to the White Pine and the Escanaba dockets because the Commission failed to identify changed circumstances demonstrating that the *pro rata* allocation of SSR costs in the ATC footprint has become unjust and unreasonable.²⁹² The Michigan Commission takes issue with the Commission's decision in the Wisconsin Commission Complaint Order, contending that: (1) the Commission should not have relied on a preliminary load-shed study to support its finding that MISO's SSR cost allocation methodology as outlined in its BPM is unjust and unreasonable;²⁹³ (2) the Commission ignored the history of cost allocation in the ATC footprint and the benefits of a single-pricing zone structure on which ATC was established;²⁹⁴ (3) the Commission failed to show that *pro rata* allocation of SSR costs in the ATC footprint is discriminatory;²⁹⁵ (4) the Commission's decision is inconsistent with precedent;²⁹⁶ (5) the Commission failed to set the matter for

²⁹² Request for Rehearing of the Michigan Public Service Commission, Docket Nos. ER14-2176-002 and ER14-2180-002, at 11-13 (filed Sept. 11, 2014) (Michigan Commission Request for Rehearing of the August 2014 Escanaba Order); Request for Rehearing of the Michigan Public Service Commission, Docket Nos. ER14-1724-002 and ER14-1725-002, at 11-13 (Michigan Commission Request for Rehearing of the August 2014 White Pine Order).

²⁹³ Michigan Commission Request for Rehearing of the August 2014 Escanaba Order at 14-16, 39-40; Michigan Commission Request for Rehearing of the August 2014 White Pine Order at 13-15, 37-38.

²⁹⁴ Michigan Commission Request for Rehearing of the August 2014 Escanaba Order at 17-21, 26-30, 34-38; Michigan Commission Request for Rehearing of the August 2014 White Pine Order at 15-19, 32-37.

²⁹⁵ Michigan Commission Request for Rehearing of the August 2014 Escanaba Order at 21-23; Michigan Commission Request for Rehearing of the August 2014 White Pine Order at 20-21.

²⁹⁶ Michigan Commission Request for Rehearing of the August 2014 Escanaba Order at 23-26, 30-34; Michigan Commission Request for Rehearing of the August 2014 White Pine Order at 21-32.

hearing to resolve material issues of facts in dispute;²⁹⁷ and (6) the Commission's decision to impose retroactive refunds in a cost allocation case went against Commission precedent.²⁹⁸

136. The Michigan Commission states that the August 2014 Escanaba Order and the August 2014 White Pine Order effectively approved the final load-shed studies required by the Commission before they were submitted, without allowing parties to review and comment on the final studies.²⁹⁹ The City of Escanaba asks the Commission to clarify that the August 2014 Escanaba Order did not pre-judge the justness and reasonableness of MISO's load-shed methodology as applied to Escanaba Rate Schedule 43, as parties did not have any opportunity to comment on the revised load-shed study until it was submitted by MISO.³⁰⁰

2. Commission Determination

137. We deny the requests for rehearing. As discussed above,³⁰¹ we find that the cost allocations proposed by MISO to allocate costs for the Presque Isle, White Pine, and Escanaba SSR Units, which use the optimization-LBA approach in MISO's BPM, 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." We require MISO to submit 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. All arguments related to the appropriateness of the Commission's

²⁹⁷ Michigan Commission Request for Rehearing of the August 2014 Escanaba Order at 41-42; Michigan Commission Request for Rehearing of the August 2014 White Pine Order at 39-40.

²⁹⁸ Michigan Commission Request for Rehearing of the August 2014 Escanaba Order at 42-46; Michigan Commission Request for Rehearing of the August 2014 White Pine Order at 40-44.

²⁹⁹ Michigan Commission Request for Rehearing of the August 2014 Escanaba Order at 40-41; Michigan Commission Request for Rehearing of the August 2014 White Pine Order at 38-39.

³⁰⁰ City of Escanaba Request for Rehearing of the August 2014 Escanaba Order, Docket No. ER14-2180-002, at 2-3 (filed Sept. 11, 2014).

³⁰¹ *See supra* PP 80-89.

decision in the Wisconsin Commission Complaint Order have been addressed above on rehearing of the Wisconsin Commission Complaint Order.³⁰² We also find that, contrary to the arguments on rehearing, the Commission did not approve the results of the final load-shed studies submitted by MISO in Docket Nos. ER14-1725-001 and ER14-2180-001 as providing a just and reasonable allocation methodology before they could be reviewed; rather, the Commission required submission of final load-shed studies that would identify the LSE beneficiaries of the SSR Units in accordance with MISO's Tariff, which would be subject to notice and review. In this order, we have reviewed the results of MISO's final load-shed studies and determined that they do not provide a just and reasonable SSR cost allocation, as described above.³⁰³

E. Rehearing of the November 10 Order in Docket Nos. ER14-2860-000 and ER14-2862-000

1. November 10 Order

138. In the November 10 Order, the Commission accepted the Replacement Presque Isle SSR Agreement, which was submitted by MISO on September 12, 2014 after Wisconsin Electric notified MISO of its decision to retire Presque Isle Units 5-9 effective October 15, 2014.³⁰⁴ With regard to arguments that Wisconsin Electric had not received the necessary state regulatory approvals to retire Presque Isle Units 5-9, the Commission found that if there are state laws that prevent the retirement, the enforcement of those laws was beyond the scope of the proceeding.³⁰⁵ The Commission suspended the Replacement Presque Isle SSR Agreement for a nominal period, to be effective October 15, 2014, subject to refund, setting the cost-related issues for hearing and settlement judge proceedings, and consolidating these proceedings with the ongoing hearing and settlement judge procedures established in the Wisconsin Commission Complaint Order.³⁰⁶ The Commission found that exigent circumstances warranted a 14.5-month term for the Replacement Presque Isle SSR Agreement, because this term appropriately reflected the period over which most of the Environmental Protection Agency's Mercury and Air Toxics Standard (MATS) compliance expenditures would

³⁰² *See supra* PP 73-79.

³⁰³ *See supra* PP 80-89.

³⁰⁴ November 10 Order, 149 FERC ¶ 61,114 at P 9.

³⁰⁵ *Id.* P 38.

³⁰⁶ *Id.* P 53.

take place, and that the additional time would allow Wisconsin Electric commercially reasonable time to finish these compliance efforts.³⁰⁷

139. The Commission also accepted a revised Presque Isle Rate Schedule 43G, which was identical to the filing made in compliance with the Wisconsin Commission Complaint Order in Docket No. ER14-1243-004 with the exception of the new requested effective date of October 15, 2014.³⁰⁸ In response to a comment from WPPI, the Commission found 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.³⁰⁹

2. Requests for Rehearing

140. Requests for rehearing of the November 10 Order were filed by: MISO; Wisconsin Electric; WPPI; Integrys; the City of Mackinac Island; the Mines; the Michigan Commission; and the Wisconsin Commission. The City of Mackinac Island also filed two supplements to its request for rehearing on January 8, 2015 and January 13, 2015. The Michigan Commission filed an answer to the requests for rehearing on December 23, 2014.

141. The Wisconsin Commission asks the Commission to clarify that the final order in Docket Nos. ER14-2860-000 and ER14-2862-000 will direct MISO to allocate SSR costs in a manner consistent with Commission's order on rehearing and clarification of the Wisconsin Commission Complaint.³¹⁰

142. The Michigan Commission argues that the Commission failed to address allegations that Wisconsin Electric will double-recover fixed capital costs to the extent that Wisconsin Electric's SSR recovery and its wholesale and retail rates include the same capital costs of the Presque Isle generation assets.³¹¹ The Michigan Commission

³⁰⁷ *Id.* P 68.

³⁰⁸ *Id.* P 78.

³⁰⁹ *Id.* P 79.

³¹⁰ Request for Clarification of the Public Service Commission of Wisconsin, Docket Nos. ER14-2860-001 and ER14-2862-001, at 1 (filed Dec. 10, 2014) (Wisconsin Commission Request for Clarification of the November 10 Order).

³¹¹ Request for Rehearing of the Michigan Public Service Commission, Docket Nos. ER14-2860-001 and ER14-2862-001, at 13 (filed Dec. 10, 2014) (Michigan Commission Request for Rehearing of the November 10 Order).

also contends that the Commission failed to address concerns that the SSR process provides an incentive to the owner of rate-based generation to prematurely retire aging assets that are needed for MISO system reliability and also needed to meet a utility's state obligation to serve.³¹² Integrys notes that the Replacement Presque Isle SSR Agreement includes a formula rate that would include compensation for the projected costs of maintaining the Presque Isle SSR Units, plus a true-up adjustment to reflect actual costs.³¹³ Integrys states that this true-up mechanism would require MISO to submit 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. Integrys notes that if parties are not satisfied, their only recourse is to file a complaint under section 206 of the FPA, and any section 206 relief would be prospective. Integrys argues that the Commission erred when it failed to reject these true-up provisions because prospective relief in a formula rate for a short-term agreement is insufficient and inconsistent with the FPA.

143. Several parties repeat arguments that Wisconsin Electric failed to meet its burden of demonstrating that Presque Isle Units 5-9 are eligible for retirement.³¹⁴ Although the Commission found in the November 10 Order that these arguments were beyond the scope of the proceeding, the Michigan Commission and the Mines argue that this finding is inconsistent with MISO's Tariff requiring SSR cost recovery to be used as a last resort.³¹⁵ The Mines and the City of Mackinac Island argue that MISO has not made a showing that Wisconsin Electric can and will retire Presque Isle Units 5-9 without an

³¹² *Id.* at 14.

³¹³ Request for Rehearing of Integrys Energy Services, Inc., Docket Nos. ER14-2860-001 and ER14-2862-001, at 9-10 (filed Dec. 10, 2014) (Integrys Request for Rehearing of the November 10 Order).

³¹⁴ Michigan Commission Request for Rehearing of the November 10 Order at 7-9; Request for Rehearing of Tilden Mining Company L.C. and Empire Iron Mining Partnership, Docket Nos. ER14-2860-001 and ER14-2862-001, at 8-14 (filed Dec. 10, 2014) (The Mines Request for Rehearing of the November 10 Order); Request for Rehearing of the City of Mackinac Island, Docket Nos. ER14-2860-001 and ER14-2862-001, at 2-4 (filed Dec. 10, 2014) (The City of Mackinac Island Request for Rehearing of the November 10 Order).

³¹⁵ Michigan Commission Request for Rehearing of the November 10 Order at 9-12; The Mines Request for Rehearing of the November 10 Order at 3-4, 20-21.

SSR agreement.³¹⁶ The Michigan Commission argues that the Commission should acknowledge a state commission's objections to the retirement of generation units that a utility needs to meet its obligation to serve customers, and discontinue further Commission deliberations on the Replacement Presque Isle SSR Agreement.³¹⁷ The Mines argue that the Commission has denied intervenors a meaningful opportunity to challenge whether the regulatory requirements for the Replacement Presque Isle SSR Agreement have been met.³¹⁸

144. Several parties raise arguments that were raised on rehearing of the Wisconsin Commission Complaint Order, such as whether MISO should allocate SSR costs to the split WEC LBA and whether MISO's SSR allocation methodology is consistent with the Tariff.³¹⁹

145. The Mines and Integrys argue that the Commission's rationale for accepting the extended 14.5-month term for the Replacement Presque Isle SSR Agreement did not sufficiently articulate the presence of exigent circumstances to warrant the extended term.³²⁰ The Mines and Integrys argue that MISO did not justify the need for the premature replacement of the Original Presque Isle SSR Agreement.³²¹ Integrys contends that the Commission should have denied waiver of the 60-day filing requirement to allow the Original Presque Isle SSR Agreement to terminate on October 14, 2014, because parties were not on notice that the agreement would be terminated

³¹⁶ The Mines Request for Rehearing of the November 10 Order at 15-17; The City of Mackinac Island Request for Rehearing of the November 10 Order at 4-5.

³¹⁷ Michigan Commission Request for Rehearing of the November 10 Order at 11-12.

³¹⁸ The Mines Request for Rehearing of the November 10 Order at 17-18.

³¹⁹ Wisconsin Commission Request for Clarification of the November 10 Order; Request for Clarification or, in the Alternative, Rehearing of Wisconsin Electric Power Company, Docket Nos. ER14-2860-001 and ER14-2862-001, at 7-8 (filed Dec. 10, 2014); Michigan Commission Request for Rehearing of the November 10 Order at 15.

³²⁰ The Mines Request for Rehearing of the November 10 Order at 22-23; Integrys Request for Rehearing of the November 10 Order at 13-15.

³²¹ The Mines Request for Rehearing of the November 10 Order at 24-25.

early and the Commission has consistently denied waiver when the rate to be imposed will cause a rate increase for Tariff customers.³²²

146. WPPI and MISO request rehearing or clarification of the directive in the November 10 Order relating to pseudo-tied load.³²³ MISO states that Rate Schedule 43G allocates costs to LSEs in each LBA based on actual energy withdrawals at commercial pricing nodes, and that this phrase refers to MISO's commercial model, which recognizes the relationship between market participants and their load at its commercial location, not its physical location.³²⁴ MISO seeks clarification that the Commission intended for MISO to file a revision to Presque Isle Rate Schedule 43G to cure the identified inconsistency, or, in the alternative, MISO seeks rehearing of the Commission's failure to order a necessary revision to Presque Isle Rate Schedule 43G. WPPI argues that the Commission's directive should be implemented as an accounting practice (without modification to the language of the revised Presque Isle Rate Schedule 43G) that excludes pseudo-tied load before applying the revised commercial pricing node-based allocation.³²⁵

3. Commission Determination

a. Procedural Matters

147. Section 313(a) of the FPA³²⁶ and Rule 713(b) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(b) (2014), require a request for rehearing to be filed within 30 days after issuance of any final decision or other final order in a proceeding. Accordingly, we reject the City of Mackinac Island's supplements to its request for rehearing filed in Docket Nos. ER14-2860-001 and ER14-2862-001. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. §

³²² Integrys Request for Rehearing of the November 10 Order at 12-13.

³²³ WPPI Request for Clarification or, in the Alternative, Limited Rehearing, Docket Nos. ER14-2860-001 and ER14-2862-001, at 1-3 (filed Dec. 10, 2014) (WPPI Request for Clarification of the November 10 Order); MISO Request for Clarification or, in the Alternative, Rehearing, Docket Nos. ER14-2860-001 and ER14-2862-001, at 3-6 (filed Dec. 9, 2014) (MISO Request for Clarification of the November 10 Order).

³²⁴ MISO Request for Clarification of the November 10 Order at 4.

³²⁵ WPPI Request for Clarification of the November 10 Order at 7-10.

³²⁶ 16 U.S.C. § 825k (2012).

385.713(d) (2014), prohibits an answer to a request for rehearing. Accordingly, we reject the Michigan Commission's answer to the requests for rehearing submitted in Docket Nos. ER14-2860-001 and ER14-2862-001.

b. Substantive Matters

148. We deny the requests for rehearing. We find that SSR compensation under the Replacement Presque Isle SSR Agreement was set for hearing and settlement procedures, and that the fixed cost component of the SSR compensation is already subject to hearing and settlement procedures. Parties' concerns regarding SSR compensation, such as the appropriateness of the formula rate, will be addressed in the established proceedings. We do not address parties' concerns regarding double-recovery of fixed capital costs through Wisconsin Electric's retail rates. Wisconsin Electric's retail rates are not before us here, as such retail rates fall within the relevant state commissions' jurisdiction and not within this Commission's jurisdiction.³²⁷ Furthermore, we find that retail rate treatment is not relevant to setting the just and reasonable level of compensation for Commission-jurisdictional service provided by an SSR Unit under the MISO Tariff.

149. In response to Integrys' concerns about the formula rate, we clarify that any formula rate provisions in the Replacement Presque Isle SSR Agreement would be required to provide adequate terms outlining the scope of participation (i.e., who can participate in the information exchange process), the transparency of the information exchange, and the ability of customers to challenge the implementation of the formula rate as a result of the information exchange, as the Commission has required these same provisions in MISO's general formula rate protocols under Attachment O of its Tariff in Docket No. ER13-2379.³²⁸ The Commission has found that parties may challenge the prior years' annual updates under section 206 of the FPA if there becomes reason to believe that those prior years' annual updates were in violation of the filed rate, or that unjust and unreasonable (i.e., imprudently incurred) costs were passed through the formula in charges assessed pursuant to those updates, and the Commission has authority to order refunds of charges assessed pursuant to those prior years' annual updates to the extent those are found to have occurred.³²⁹ To the extent that the parties raise questions regarding MISO's load-shed study or the SSR allocation methodology contained in

³²⁷ See *Southwest Power Pool, Inc.*, 119 FERC ¶ 61,199 (2007).

³²⁸ See *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,212 (2014), *order on reh'g and clarification*, 150 FERC ¶ 61,024 (2015).

³²⁹ *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,024 at P 12.

MISO's BPM, we note that these arguments have already been addressed in this order on rehearing of the Wisconsin Commission Complaint Order.³³⁰

150. In response to arguments that Wisconsin Electric failed to meet its burden of demonstrating that Presque Isle Units 5-9 are eligible for retirement, we find that Wisconsin Electric properly followed the Commission-approved Tariff requirements for retiring generators. Wisconsin Electric submitted an Attachment Y Notice, MISO conducted an Attachment Y Study and a stakeholder process to review alternatives to SSR designation, and MISO determined that the units were required for reliability. We affirm the finding that MISO adequately demonstrated that it sought alternatives from stakeholders and that no feasible alternatives to address the reliability problems were identified, nor were any issues raised in the stakeholder process about the obligation of the Presque Isle Units 5-9 to serve under state law. To the extent that the Michigan Commission is concerned that the SSR process provides an incentive to the owner of rate-based generation to prematurely retire aging assets by availing themselves of the Attachment Y provisions of MISO's Tariff, we find that this issue is outside the scope of this proceeding.

151. We affirm the finding that exigent circumstances did sufficiently exist to justify a 14.5-month term for the Replacement Presque Isle SSR Agreement. We find that the extended period required to complete MATS-related upgrades to the SSR Units qualifies as exigent circumstances and necessitated the additional 2.5 months beyond the standard 12-month term for SSR agreements. The Commission notes that an SSR agreement with a term greater than 12 months is decided on a case-by-case basis and Wisconsin Electric commits to limiting future SSR agreements to 12-month terms.³³¹ We also affirm the finding that it is just and reasonable to terminate the Original Presque Isle SSR Agreement on October 14, 2014 because the Replacement Presque Isle SSR Agreement involved the decision to retire Presque Isle Units 5-9 instead of the prior decision to suspend, justifying the need for a revised negotiated agreement. The Commission finds that parties were on notice that the agreement may terminate early because early termination procedures are described in the Tariff.

152. In the November 10 Order, the Commission noted that revised Presque Isle Rate Schedule 43G included cost allocation language that involves several issues that had been raised on rehearing and compliance; accordingly, the Commission accepted revised

³³⁰ See *supra* PP 80-89.

³³¹ See Wisconsin Electric Answer to Protests, Docket Nos. ER14-2860-000 and ER14-2862-000, at 27 (filed Oct. 22, 2014).

Presque Isle Rate Schedule 43G, suspended it for a nominal period, to be effective October 15, 2014, subject to refund and a further Commission order.³³² As discussed above,³³³ we now find that the cost allocations proposed by MISO to allocate costs for the Presque Isle SSR Units, which use the optimization-LBA approach in MISO's BPM, 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." We require MISO to submit, in a compliance filing due within 60 days of the date of this order, a new study methodology that identifies the LSEs that require these SSR Units for reliability purposes. We further require MISO to submit, in its compliance filing, a revised Presque Isle Rate Schedule 43G that adjusts the allocation of SSR costs under the Replacement Presque Isle SSR Agreement filed by MISO in Docket No. ER14-2860-000 accordingly, with such revised cost allocation to be effective October 15, 2014. This future compliance filing will supersede the Presque Isle Rate Schedule 43G conditionally accepted in the November 10 Order.

153. As to the arguments of WPPI and MISO regarding the accounting of pseudo-tied load in SSR cost allocation, we find this issue now moot, as we find that the optimization-LBA approach used by MISO in these proceedings does not properly identify the LSEs that require the operation of the SSR Unit, and we direct MISO to devise an SSR cost allocation method that is not reliant on LBA boundaries.

F. Complaint of the Michigan Commission in Docket No. EL15-7-000

1. Complaint

154. On October 17, 2014, the Michigan Commission filed a complaint against MISO under sections 206, 306, and 309 of the FPA and Rule 206 of the Commission's Rules of Practice and Procedure seeking a determination from the Commission that the provisions of MISO's Tariff governing the allocation of SSR costs within the ATC footprint, when applied to the unique circumstance of cases involving a unilateral adjustment to an LBA boundary, are unjust and unreasonable (Michigan Commission Complaint).³³⁴ The Michigan Commission Complaint takes issue with the ability of a Balancing Area

³³² November 10 Order, 149 FERC ¶ 61,114 at P 78.

³³³ *See supra* PP 80-89.

³³⁴ Complaint of the Michigan Public Service Commission, Docket No. EL15-7-000, at 13 (filed Oct. 17, 2014).

Operator, such as Wisconsin Electric, to change the allocation of SSR costs under MISO's existing SSR cost allocation methodology by simply requesting a change to the LBA boundaries.³³⁵

155. The Michigan Commission asserts that Wisconsin Electric has manipulated the SSR cost allocation for the Presque Isle SSR Units by splitting its current WEC LBA into a Michigan Upper Peninsula LBA that covers the Upper Peninsula of Michigan and a new WEC LBA that covers the remaining portion of the former single WEC LBA.³³⁶ The Michigan Commission reiterates the arguments set forth in its complaint in Docket No. EL14-104-000, reasoning that the motivation behind the split of the WEC LBA was reallocation of SSR costs.³³⁷ Even so, regardless of the legality of the split, the Michigan Commission argues that the Commission must reject as unjust and unreasonable the end result of the split LBA on SSR cost allocation because it increases the percentage of costs to Michigan by more than 10 times from the previous SSR cost allocation under the single WEC LBA.³³⁸ The Michigan Commission states that the creation of the Michigan Upper Peninsula LBA will increase the allocation of Presque Isle SSR costs to the new Michigan Upper Peninsula LBA from 8.65 percent to 93.57 percent, and will increase the total allocation of Presque Isle SSR costs to the Michigan Upper Peninsula under the Wisconsin Commission Complaint Order from 14.31 percent to 99.23 percent.³³⁹ The Michigan Commission argues that LBA operators should not be permitted to manipulate SSR cost allocation through reducing the LBA boundaries to an area that corresponds with the area identified in MISO's load-shed study, because the load-shed study is inherently imperfect and designed to minimize the area that could be physically affected by retirement of the SSR Unit.³⁴⁰ The Michigan Commission argues that SSR cost allocation methodology should follow system reliability cost allocation methodology in order to incentivize the building of new system reliability projects to solve the SSR problem, as the entire ATC footprint would then have a stake in any SSR Unit costs.³⁴¹

³³⁵ *Id.* at 4.

³³⁶ *Id.* at 14.

³³⁷ *Id.* at 14-15.

³³⁸ *Id.* at 14-16.

³³⁹ *Id.* at 22.

³⁴⁰ *Id.* at 17.

³⁴¹ *Id.* at 18-19.

156. The Michigan Commission argues that the flexibility given to MISO to utilize LBAs in cost allocation determinations was never intended to allow a utility to achieve a desired allocation by *reducing* LBA boundaries; to the contrary, the Michigan Commission states that the Commission has expressed concern that an allocation of SSR costs by LBA boundaries could be too restrictive when such boundaries are not the same as the pricing zone.³⁴² The Michigan Commission asks the Commission to reject the allocation of SSR costs to the new Michigan Upper Peninsula LBA based on MISO's explanation that a broader geographic allocation is intended to account for the admitted imprecision of the load-shed study.³⁴³ If the Commission does not grant the Michigan Commission Complaint, the Michigan Commission requests that the Commission conduct a full analysis of the cost impact upon individual customers of the LBA split on Michigan Upper Peninsula LBA and other LBAs in the Michigan Upper Peninsula.³⁴⁴

2. Notice and Responsive Pleadings

157. Notice of the complaint filed in Docket No. EL15-7-000 was published in the *Federal Register*, 79 Fed. Reg. 64,186 (2014), with interventions and protests due on or before November 6, 2014.

158. Timely motions to intervene were filed by: ATC; Consumers Energy Company; NRG Companies;³⁴⁵ Wisconsin Power and Light Company; Michigan Public Power Agency; Exelon Corporation; and the City of Escanaba. A notice of intervention and answer was filed by the Wisconsin Commission on November 6, 2014. Timely motions to intervene and comments were filed by: the Mines; the Wisconsin Customers Coalition; Integrys; and WPPI. Timely motions to intervene and answers were filed by Cloverland, MISO and Wisconsin Electric.

159. Comments were filed by: U.S. Representative Dan Benishek; Michael E. Moody, Assistant Attorney General, Environment, Natural Resources, and Agriculture Division,

³⁴² *Id.* at 18-19 (citing SSR Compliance Order, 148 FERC ¶ 61,056 at P 49).

³⁴³ *Id.* at 23.

³⁴⁴ The Michigan Commission notes that it supports, for reasons stated in its request for rehearing of the Wisconsin Commission Complaint Order, a continuation of the pre-existing *pro rata* allocation of SSR costs to all LSEs in the ATC footprint without utilizing a load-shed study. *Id.* at 17 n.43.

³⁴⁵ For purposes of this filing, the NRG Companies are NRG Power Marketing LLC and GenOn Energy Management, LLC.

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. On October 23, 2014, Michigan State Senator Carol M. Viventi, Secretary of the Michigan Senate, submitted Michigan Senate Resolution No. 187, urging the Commission to reverse its decision accepting MISO's revised SSR cost allocation methodology. On November 21, 2014, John C. Precario, Chairman, President and CEO of ATC, submitted a letter regarding electric supply issues in the Upper Peninsula of Michigan (ATC Letter).

160. The Wisconsin Public Service Corporation, DTE Electric Company, Verso, and the Upper Peninsula Power Company filed out-of-time motions to intervene.

161. Motions for leave to answer and answers to the comments and answers were filed by Wisconsin Electric and the Michigan Commission.

3. Comments and Answers

162. Although ATC takes no substantive position on the Michigan Commission Complaint, ATC provides further detail on the company's continuing activities concerning reliability issues in the Upper Peninsula, Northeastern Wisconsin, and the retirement of Presque Isle.³⁴⁶ ATC notes that transmission is one of five types of alternatives considered when MISO determines the preferred solution for addressing a reliability issue related to a retiring generator.³⁴⁷ Further, ATC states that the company has estimated the cost of a comprehensive transmission solution that would allow retirement of Presque Isle Units 5-9 at between \$300 million and \$600 million.³⁴⁸

163. Integrys, the Mines, and Cloverland support the Michigan Commission Complaint and ask the Commission to grant the relief requested.³⁴⁹ Integrys argues that if the Commission grants rehearing and reverses its findings in the Wisconsin Commission

³⁴⁶ ATC Letter, Docket No. EL15-7-000 *et al.*, at 1 (filed Nov. 21, 2014).

³⁴⁷ *Id.*

³⁴⁸ *Id.* at 2.

³⁴⁹ Motion to Intervene and Comments in Support of Integrys Energy Services, Inc., Docket No. EL15-7-000, at 5 (filed Nov. 6, 2014); Comments of Tilden Mining Company L.C. and Empire Iron Mining Partnership in Support of Complaint, Docket No. EL15-7-000, at 3 (filed Nov. 6, 2014); Cloverland Electric Cooperative Motion to Intervene and Partial Protest, Docket No. EL15-7-000, at 2 (filed Nov. 6, 2014).

Complaint Order, the allocation of Presque Isle SSR costs will be assessed like transmission assets as intended.

164. WPPI disagrees with the Michigan Commission Complaint and states that the costs of the Presque Isle SSR Units should be allocated to the loads that cause the costs to be incurred.³⁵⁰ WPPI holds that the relief sought by the Michigan Commission conflicts with the Wisconsin Commission Complaint Order and asserts that the allocation of SSR costs to the unsplit WEC LBA will no longer be possible after December 1, 2014.³⁵¹

165. Several parties argue that the Michigan Commission Complaint should be dismissed because it is duplicative of other proceedings before the Commission.³⁵² They also claim that the Michigan Commission fails to meet its burden under FPA section 206 to establish a *prima facie* case that applying the cost allocation methodology in MISO's BPM to the Michigan Upper Peninsula LBA is unjust and unreasonable and therefore should be denied.³⁵³ MISO explains that while the Michigan Commission recognizes that an RTO must allocate costs to affected parties using a methodology that is "roughly proportionate" to the benefits that parties are expected to receive, it does not demonstrate that MISO's proposed allocation for the newly created Michigan Upper Peninsula in Docket No. ER14-2952-000 is not "roughly proportionate."³⁵⁴ The Wisconsin Commission and Wisconsin Electric state that the Michigan Commission Complaint is a collateral attack of the Wisconsin Commission Complaint Order.³⁵⁵

³⁵⁰ Intervention and Comments of WPPI Energy, Docket No. EL15-7-000, at 5 (filed Nov. 6, 2014).

³⁵¹ *Id.* at 7 (citing MISO Answer, Docket No. ER14-2952-000, at 4 n.11 (filed Oct. 27, 2014)).

³⁵² Notice of Intervention and Protest of the Public Service Commission of Wisconsin, Docket No. EL15-7-000, at 4-5 (filed Nov. 6, 2014) (Wisconsin Commission Protest of the Michigan Commission Complaint); MISO Answer to the Michigan Commission Complaint, Docket No. EL15-7-000, at 15-16 (filed Nov. 6, 2014); Motion to Intervene and Answer of Wisconsin Electric Power Company to the Michigan Commission Complaint, Docket No. EL15-7-000, at 4-9 (filed Nov. 6, 2014) (Wisconsin Electric Answer to the Michigan Commission Complaint).

³⁵³ Wisconsin Commission Protest of the Michigan Commission Complaint at 3; MISO Answer to the Michigan Commission Complaint at 12.

³⁵⁴ MISO Answer to the Michigan Commission Complaint at 13.

³⁵⁵ Wisconsin Electric Answer to the Michigan Commission Complaint at 4-9;

(continued...)

166. In response to the Michigan Commission's claim that the Commission "has expressed its concern that an allocation of SSR costs by LBA boundaries could be too restrictive when such boundaries are not the same as the pricing zone,"³⁵⁶ the Wisconsin Commission asserts that the statement was taken out of context and states that the Commission is merely saying that allocation by pricing zone could be too restrictive, and could conflict with MISO's current practice of allocating by LBAs if the pricing zone and LBA are not coextensive.³⁵⁷ MISO asserts that the Commission implied nothing about the boundaries of a particular LBA and did not restrict LBA reconfiguration.³⁵⁸ Similarly, MISO holds that while absolute precision in determining the exact set of the beneficiary loads is neither required nor possible, MISO's recognition of this fact in prior pleadings does not, by itself, suggest that LBA boundaries can never be reduced.³⁵⁹

4. Commission Determination

a. Procedural Matters

167. 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 in Docket No. EL15-7-000 serve to make the entities that filed them parties to that proceeding. 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 the Wisconsin Public Service Corporation, DTE Electric Company, Verso, and the Upper Peninsula Power Company given the parties' interest in the proceeding and the absence of undue prejudice or delay. Rule 213(a)(2) of the

Wisconsin Commission Protest of the Michigan Commission Complaint at 7.

³⁵⁶ Michigan Commission Complaint at 17-18 (citing SSR Compliance Order, 148 FERC ¶ 61,056 at P 49).

³⁵⁷ Wisconsin Commission Protest of the Michigan Commission Complaint at 15 (citing SSR Compliance Order, 148 FERC ¶ 61,056 at P 49 (emphasis added)). The Wisconsin Commission continues that the Commission in that case is also explaining, with reference to its 2012 SSR Order directing MISO to remove a provision from its Tariff that *required* the use of LBAs, that MISO's Tariff allows it to use pricing zones, or LBAs, but does not require it to do either. *Id.* at 15 (citing 2012 SSR Order, 140 FERC ¶ 61,237 at P 153).

³⁵⁸ MISO Answer to the Michigan Commission Complaint at 13.

³⁵⁹ *Id.*

Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers filed by the Wisconsin Electric and the Michigan Commission and will, therefore, reject them.

b. Substantive Matters

168. We dismiss the Michigan Commission Complaint as moot. As discussed above,³⁶⁰ we reject MISO's proposed allocation of Presque Isle SSR costs because we find that the use of the optimization-LBA approach in MISO's BPM to allocate costs for Presque Isle Units 5-9 is not just and reasonable, as it is 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." Therefore, we direct MISO to devise a new approach that will identify benefitting LSEs without relying on LBA boundaries. Thus, the Michigan Commission's concern with MISO's existing SSR cost allocation methodology is moot. We have also found that Presque Isle Units 5-9 were properly designated as SSR Units.

169. We do not discuss the legality of the split of the WEC LBA, as that issue is pending before the Commission in Docket Nos. EL14-103-000 and EL14-104-000 and the Commission is addressing these issues in a concurrently issued order.³⁶¹

The Commission orders:

(A) We deny the requests for rehearing and grant clarification in part of the Wisconsin Commission Complaint Order, as discussed in the body of this order.

(B) MISO is hereby directed to submit, in a compliance filing due within 60 days of this order, a new study methodology that will allow MISO to assign SSR costs directly to those LSEs that require the operation of the Presque Isle, White Pine, and Escanaba SSR Units for reliability purposes, as discussed in the body of this order. MISO is hereby directed to submit in its compliance filing the following rate schedules to reflect SSR cost allocation percentages in line with this revised cost allocation methodology, as discussed in the body of this order: (1) a revised Presque Isle Rate Schedule 43G that adjusts the allocation of SSR costs under the Presque Isle SSR Agreement filed by MISO in Docket No. ER14-1242-002, with such revised allocation to

³⁶⁰ See *supra* PP 80-89.

³⁶¹ *Tilden Mining Company L.C. v. Midcontinent Independent System Operator, Inc.*, 150 FERC ¶ 61,105 (2015).

be effective as of April 3, 2014; (2) a revised Presque Isle Rate Schedule 43G that adjusts the allocation of SSR costs under the Replacement Presque Isle SSR Agreement filed by MISO in Docket No. ER14-2860-000, with such revised cost allocation to be effective October 15, 2014; (3) a revised Escanaba Rate Schedule 43, to be effective on June 15, 2014; and (4) a revised White Pine Rate Schedule 43H, to be effective on April 16, 2014.

(C) We accept MISO's compliance filings in Docket Nos. ER14-1243-002, ER14-2176-001, and ER14-1724-001, as discussed in the body of this order. We reject MISO's compliance filing in Docket No. ER14-1243-004, as discussed in the body of this order. We accept MISO's compliance filing in Docket No. ER14-1242-002, to be effective from February 1, 2014 through October 14, 2015, as discussed in the body of this order.

(D) We reject MISO's proposed Escanaba Rate Schedule 43 filed in Docket No. ER14-2180-001 and the associated load-shed study, as discussed in the body of this order. We reject MISO's proposed White Pine Rate Schedule 43H filed in Docket No. ER14-1725-001 and the associated load-shed study, as discussed in the body of this order. We reject MISO's filing in Docket No. ER14-2952-000 to revise Escanaba Rate Schedule 43, Presque Isle Rate Schedule 43G, and White Pine Rate Schedule 43H, as well as the associated load-shed study, as discussed in the body of this order. We dismiss the refund reports filed by MISO in Docket Nos. ER14-1243-004, ER14-1725-001, and ER14-2180-001, as discussed in the body of this order.

(E) We deny the requests for rehearing of the August 2014 Escanaba Order and the August 2014 White Pine Order, as discussed in the body of this order.

(F) We deny the requests for rehearing of the November 10 Order, as discussed in the body of this order.

(G) We dismiss the complaint filed by the Michigan Commission in Docket No. EL15-7-000, 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.