

Illinois Power Marketing Company

Docket Nos. ER14-2619-001
ER14-2619-002

Docket No. ER14-2718-001

ORDER ON REHEARING AND COMPLIANCE FILINGS

(Issued October 15, 2015)

1. In this order, we address several proceedings relating to the level of compensation and other issues associated with the operation of System Support Resource (SSR)¹ Units under the MISO Tariff, and the SSR agreements between MISO and Illinois Power² regarding the provision of SSR service by the Edwards Unit No. 1 generating facility (Edwards Unit 1)³ for 2013, 2014, and 2015. As discussed more fully below, we: (1) grant rehearing in part and deny rehearing in part of the order addressing, among other things, a complaint by Ameren issued in Docket No. ER13-1962 *et al.*;⁴ (2) grant

¹ Midcontinent Independent System Operator, Inc.'s (MISO) Open Access Transmission, Energy, and Operating Reserve Markets Tariff (Tariff) defines SSRs as "Generation Resources or Synchronous Condenser Units [(SCU)] that have been identified in Attachment Y – Notification to this Tariff and are required by the Transmission Provider for reliability purposes, to be operated in accordance with the procedures described in Section 38.2.7 of this Tariff." MISO, FERC Electric Tariff, [1.643, System Support Resource \(SSR\), 0.0.0](#). Unless indicated otherwise, all capitalized terms shall have the same meaning given them in the MISO Tariff.

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

³ Edwards Unit 1 is a 90 MW coal-fired steam boiler generator located in the Peoria area of Illinois.

⁴ *Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,057 (2014) (Ameren Complaint Order).

clarification in part and deny rehearing in part of the order issued in Docket No. ER14-2619-000;⁵ (3) deny the request for rehearing of the order issued in Docket No. ER14-2718-000;⁶ (4) deny the request for rehearing of the order issued in Docket No. ER15-368-000;⁷ and (5) conditionally accept MISO's compliance filings in Docket Nos. ER14-1210-001, ER14-2605-000, and ER14-2605-001 effective July 22, 2014, subject to compliance filings due within 30 days of the date of this order.

2. In summary, as more fully described herein, we affirm the Commission's finding in the Ameren Complaint Order that a generator should be provided the opportunity to recover its fixed costs through a full cost-of-service rate when a generator in the MISO region is forced to continue to operate for reliability reasons pursuant to an SSR agreement under MISO's Tariff. We also affirm the Commission's finding that it cannot provide retroactive cost-of-service recovery because, among other reasons, under section 206 of the Federal Power Act (FPA),⁸ the Commission can only make a rate increase effective prospectively from the date of the order fixing the new rate. Accordingly, the Commission's previous determinations regarding recovery of costs in 2013 and 2014 for Edwards Unit 1 remain unchanged. We also address a number of other issues on rehearing and compliance, which are discussed below.

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 Section 38.2.7.a 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

⁵ *Ill. Power Mktg. Co.*, 149 FERC ¶ 61,017, at P 1 (2014) (Order on Illinois Power's Proposed Rate for 2014 SSR Service).

⁶ *Ill. Power Mktg. Co.*, 149 FERC ¶ 61,072, at P 35 (2014) (Order on Illinois Power's Proposed Rate for 2013 SSR Service).

⁷ *Midcontinent Indep. Sys. Operator Inc.*, 150 FERC ¶ 61,008 (2015) (Order on Unanticipated Repair Costs).

⁸ 16 U.S.C. § 824e (2012).

agreement, as provided in Attachment Y-1 (Standard Form SSR Agreement) of the Tariff, to ensure that the resource continues to operate, as needed.⁹

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 90 and 180 days of the date of the order.¹⁰ On July 22, 2014, the Commission conditionally accepted MISO's compliance filing, subject to further compliance.¹¹

5. On July 5, 2013, pursuant to section 206 of the FPA, Ameren filed a complaint (Ameren Complaint) in Docket No. EL13-76-000 against MISO, which was supplemented by Illinois Power on February 20, 2014. At the time the Ameren Complaint was filed, the then-existing Tariff limited SSR compensation to going-forward costs which, according to MISO's interpretation, did not include the fixed costs of existing plant. Ameren argued that the Commission should find that, regarding SSR compensation, the term going-forward costs includes the fixed costs of existing plant, which are recovered as depreciation expense, return on rate base, and associated taxes, or alternatively, the Commission should find that the existing Tariff is unjust and unreasonable and unduly discriminatory or preferential, to the extent that it does not compensate SSR Units for the fixed costs of existing plant. In the February 20, 2014 supplement to the Complaint, Illinois Power also argued that MISO's Tariff was unjust, unreasonable, and unduly discriminatory or preferential because it provided MISO with unilateral rights to file rates under unexecuted SSR agreements.

6. On July 11, 2013, in Docket No. ER13-1962-000, pursuant to section 205 of the FPA, MISO submitted a proposed unexecuted SSR agreement between Ameren and MISO (Edwards Year 1 SSR Agreement) for Edwards Unit 1, covering a one-year term beginning on January 1, 2013 and terminating on December 31, 2013. The Edwards Year 1 SSR Agreement only included compensation for Ameren's going-forward costs and did not include any compensation for Ameren's fixed costs of existing plant. On November 25, 2013, the Commission accepted the Edwards Year 1 SSR Agreement and

⁹ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163, *order on reh'g*, 109 FERC ¶ 61,157 (2004).

¹⁰ *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,237 (2012) (2012 SSR Order), *order on compliance*, 148 FERC ¶ 61,056 (2014) (2014 SSR Compliance Order).

¹¹ 2014 SSR Compliance Order, 148 FERC ¶ 61,056 at P 1.

the associated rate schedule, suspended them for a nominal period, to be effective January 1, 2013, as requested, subject to refund and further Commission order.¹²

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

A. The Ameren Complaint Order

8. On July 22, 2014, the Commission issued the Ameren Complaint Order in which, among other things, the Commission denied the Ameren Complaint as to Ameren's argument that the term going-forward costs in the then-existing Tariff could be construed to include the fixed costs of existing plant, but granted the Ameren Complaint as to the justness and reasonableness of the then-existing Tariff and found the Tariff to be unjust, unreasonable, and unduly discriminatory or preferential because when MISO negotiates with a market participant to determine the level of SSR compensation, the Tariff did not allow SSR Units compensation for the fixed costs of existing plant. Additionally, the Commission found the Tariff to be unjust, unreasonable, and unduly discriminatory or preferential because it provided MISO with unilateral rights to file rates under unexecuted SSR agreements.¹⁴

9. The Commission directed MISO to revise its Tariff to reflect that SSR compensation should not exceed a resource's full cost-of-service, including the fixed costs of existing plant (rather than providing that this compensation must not exceed a resource's going-forward costs), effective as of the date of the Ameren Complaint

¹² *Midcontinent Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,163 (2013) (Edwards Year 1 SSR Order).

¹³ *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,238 (2014) (Edwards Year 2 SSR Order).

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

Order.¹⁵ In addition, the Commission directed MISO to revise the Tariff to permit an SSR owner to submit a section 205 filing for the rate associated with an SSR agreement.¹⁶ The Commission also found that the Tariff does not adequately describe the technical study process by which MISO is to evaluate whether potential SSR Units are needed for reliability purposes and directed MISO to revise section 38.2.7 of its Tariff to provide additional detail on the technical study process.¹⁷ The Commission directed that these tariff changes be filed in a compliance filing to be made 60 days from the date of the Ameren Complaint Order.

10. In the Ameren Complaint Order, the Commission also established hearing and settlement judge procedures in Docket No. ER13-1962-000 on the issue of the appropriate level of going-forward costs included in the rate that MISO negotiated with Ameren for operating Edwards Unit 1 as an SSR unit under the Edwards Year 1 SSR Agreement.¹⁸ In addition, the Commission also established hearing and settlement judge procedures in Docket No. ER14-1210-000 on the issue of the costs included in the rate that MISO negotiated with Illinois Power for operating Edwards Unit 1 as an SSR Unit under the Edwards Year 2 SSR Agreement (i.e., the going-forward costs), as well as the fixed costs of existing plant as proposed by Illinois Power in its February 20, 2014 supplement to the Ameren Complaint for the then-remaining term of the Edwards Year 2 SSR Agreement. The Commission noted that the hearing and settlement judge procedures would evaluate the level of cost recovery, including the amount of any potential rate increase that may be appropriate to allow Illinois Power to recover its full cost-of-service. The Commission reiterated that any rate increase would only take effect prospectively from the date of the Commission order adopting the increased rate after hearing and settlement judge procedures. The Commission also noted that, pursuant to its finding that the Tariff must provide SSR owners with the right to make their own FPA section 205 filings for compensation under SSR agreements, Illinois Power may make a section 205 filing proposing its own SSR compensation, including fixed costs of existing plant, as of the date of the Ameren Complaint Order.¹⁹

¹⁵ *Id.* P 87. The Commission also established a refund effective date of July 5, 2013, which is the date the Ameren Complaint was filed.

¹⁶ *Id.* PP 92-93.

¹⁷ *Id.* PP 152-154.

¹⁸ *Id.* P 155.

¹⁹ *Id.* PP 208-209.

11. The following parties filed requests for rehearing of the Ameren Complaint Order, each of which will be addressed below: Illinois Power; the Independent Market Monitor for PJM (PJM Market Monitor); Coalition of MISO Transmission Customers, Wisconsin Industrial Energy Group, Wisconsin Paper Council, Minnesota Large Industrial Group, Association of Businesses Advocating Tariff Equity, and Illinois Industrial Energy Consumers (collectively, Industrial Customers); and Hoosier Energy Rural Electric Cooperative, Inc. and Southern Illinois Power Cooperative (collectively, Hoosier-Southern Illinois). The Michigan Public Service Commission filed a comment to the Ameren Complaint Order. MISO and Hoosier-Southern Illinois filed answers to the rehearing requests.

B. The Order on Illinois Power's Proposed Rate for 2014 SSR Service

12. On August 7, 2014, pursuant to section 205 of the FPA, Illinois Power submitted in Docket No. ER14-2619-000 a revised unexecuted Amended and Restated SSR Agreement between Illinois Power and MISO (Illinois Power Restated 2014 SSR Agreement) that proposed to revise the rate set forth in the Edwards Year 2 SSR Agreement to provide for a monthly compensation based on its full cost-of-service for Edwards Unit 1 for 2014 SSR service. Illinois Power also requested waiver of the Commission's prior notice requirements so that the Illinois Power Restated 2014 SSR Agreement could be effective January 1, 2014, the effective date of the Edwards Year 2 SSR Agreement. In the Order on Illinois Power's Proposed Rate for 2014 SSR Service, the Commission accepted the Illinois Power Restated 2014 SSR Agreement, suspended it for a nominal period, to become effective August 8, 2014, subject to refund and compliance, set Illinois Power's proposed rates under the Illinois Power Restated 2014 SSR Agreement for hearing and settlement judge procedures and consolidated that proceeding with the ongoing hearing and settlement judge procedures established by the Ameren Complaint Order. In doing so, the Commission reiterated that it can only make a rate increase under FPA section 206 effective prospectively from the date of the order fixing the new rate.²⁰ Additionally, the Commission stated that to permit full cost-of-service rate recovery back to January 1, 2014 would violate the filed rate doctrine because the Tariff on file as of January 1, 2014 only provided that SSR owners receive their going-forward costs. Thus, the Commission concluded that there was no rate on file that could have permitted full cost-of-service recovery as of January 1, 2014. Due to the unique circumstances of the case, the Commission waived the 60-day prior notice requirement to allow the Illinois Power Restated 2014 SSR Agreement to become effective August 8, 2014, which was one day after Illinois Power's filing.

²⁰ Order on Illinois Power's Proposed Rate for 2014 SSR Service, 149 FERC ¶ 61,017 at PP 38-39.

13. Illinois Power and MISO filed requests for rehearing of the Order on Illinois Power's Proposed Rate for 2014 SSR Service, which will be addressed below.

C. The Order on Illinois Power's Proposed Rate for 2013 SSR Service

14. On August 27, 2014, pursuant to section 205 of the FPA, Illinois Power submitted in Docket No. ER14-2718-000 a revised unexecuted Amended and Restated SSR Agreement between Illinois Power and MISO (Illinois Power Restated 2013 SSR Agreement) that proposed to revise the rate set forth in the Edwards Year 1 SSR Agreement to provide for a monthly compensation based on its full cost-of-service for Edwards Unit 1 for 2013 SSR service. Illinois Power also requested waiver of the Commission's prior notice requirements so that the Illinois Power Restated 2013 SSR Agreement could be effective on January 1, 2013, or, in the alternative, July 5, 2013 (the refund effective date established in the Ameren Complaint Order). In the Order on Illinois Power's Proposed Rate for 2013 SSR Service, the Commission rejected the Illinois Power Restated 2013 SSR Agreement. The Commission again observed that under FPA section 206 it can only provide prospective relief and that to permit cost-of-service recovery back to January 1, 2013 or July 5, 2013 would violate the filed rate doctrine. Additionally, the Commission stated that the protest filed by Ameren in Docket No. ER13-1962-000 to support its proposed rate fails to provide sufficient notice to parties so as to justify a retroactive rate increase.

15. Illinois Power filed a request for rehearing of the Order on Illinois Power's Proposed Rate for 2013 SSR Service, which will be addressed below.

D. The Order on Unanticipated Repair Costs

16. On November 10, 2014, pursuant to section 205 of the FPA, MISO submitted in Docket No. ER15-368-000 an unexecuted amended and restated SSR agreement between Illinois Power and MISO containing additional compensation for 2014 SSR service for unanticipated repairs to Edwards Unit 1 associated with a generator turbine overhaul. MISO explained that the additional compensation for unanticipated repairs was necessary to ensure that Edwards Unit 1 would be able to operate safely and reliably to satisfy its SSR requirement under the Edwards Year 2 SSR Agreement. MISO gave notice to Illinois Power to proceed with unanticipated repairs on an emergency basis pursuant to section 9.E of the Edwards Year 2 SSR Agreement.²¹

²¹ Under section 9.E of the Edwards Year 2 Agreement, a repair situation qualifies as an "emergency" repair if "MISO reasonably believes that system security and reliability require any unanticipated repairs to be made before FERC can act on a Section 205 filing."

17. On January 9, 2015, in the Order on Unanticipated Repair Costs, the Commission accepted MISO's filing, suspended it for a nominal period to become effective November 1, 2014, as requested, subject to refund, set the proposed rate for hearing and settlement judge procedures, and consolidated the proceeding with the hearing and settlement judge proceedings established by the Ameren Complaint Order in Docket No. ER13-1962-000, *et al.* The Commission agreed with MISO that the repairs were both "unanticipated" and properly designated as an emergency repair situation as contemplated by section 9.E of the Edwards Year 2 SSR Agreement.²² Nevertheless, the Commission determined that the costs associated with the repairs have not been shown to be just and reasonable and set the recovery of the additional compensation for the unanticipated repairs for hearing and settlement judge procedures.²³

18. MISO filed a request for rehearing of the Order on Unanticipated Repair Costs. Hoosier Energy Rural Electric Cooperative, Inc., Illinois Municipal Electric Agency, Prairie Power, Inc., Southern Illinois Power Cooperative, and Wabash Valley Power Association, Inc. (collectively, Customers) filed an answer to MISO's request for rehearing. These filings will be addressed below.

II. MISO's Compliance Filings

19. In response to the directives set forth in the Ameren Complaint Order, MISO submitted compliance filings in Docket Nos. ER14-1210-001, ER14-2605-000, and ER14-2605-001, as explained more fully below. In its filing made in Docket No. ER14-1210-001, MISO filed revised versions of the Edwards Year 1 SSR Agreement and Edwards Year 2 SSR Agreement to revise non-rate terms and conditions to ensure that certain charges are netted out and that compensation is properly accounted for in both agreements.²⁴ In its filing made in Docket No. ER14-2605-000, MISO submitted additional Tariff revisions regarding cost-of-service recovery for SSRs, the ability of generators to file their own rate for the provision of SSR service, the notice period, and information on obtaining environmental waivers.²⁵ In its filing made in Docket

²² Order on Unanticipated Repair Costs, 150 FERC ¶ 61,008 at PP 28-29.

²³ *Id.* PP 30-31.

²⁴ *See* Ameren Complaint Order, 148 FERC ¶ 61,057 at PP 157, 158, 212, 222.

²⁵ *See id.* PP 87, 93, 158, 221.

No. ER14-2605-001, MISO submitted Tariff revisions regarding the technical study process.²⁶

III. Notice of Filings and Responsive Pleadings

20. Notice of the compliance filing made in Docket No. ER14-1210-001 was published in the *Federal Register*, 79 Fed. Reg. 47,634 (2014), with protests and interventions due on or before August 27, 2014. Notice of the compliance filing made in Docket No. ER14-2605-000 was published in the *Federal Register*, 79 Fed. Reg. 47,634 (2014), with protests and interventions due on or before August 27, 2014. Notice of the compliance filing made in Docket No. ER14-2605-001 was published in the *Federal Register*, 79 Fed. Reg. 54,273 (2014), with protests and interventions due on or before September 23, 2014.

21. No entities filed protests or new interventions in Docket No. ER14-1210-001.

22. The following entities submitted filings in Docket No. ER14-2605-000: The Illinois Commerce Commission filed a notice of intervention. Ameren Services Company,²⁷ NRG Companies,²⁸ Wisconsin Electric Power Company, Illinois Power Marketing Company, Illinois Municipal Electric Agency, Wabash Valley Power Association, Inc., and Hoosier-Southern Illinois, each filed a timely motion to intervene. On August 28, 2014, Prairie Power, Inc. filed a motion to intervene out-of-time. On September 23, 2014, Exelon Corporation filed a motion to intervene out-of-time.

23. In Docket No. ER14-2605-001, Exelon Corporation filed a timely motion to intervene.

IV. Discussion

A. Procedural Matters

24. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the notice of intervention and timely, unopposed motions to

²⁶ *See id.* PP 152, 154.

²⁷ Ameren Services Company, a wholly-owned subsidiary of Ameren Corporation, is filing on behalf of its affiliated public utility operating companies, Ameren Illinois Company and Union Electric Company (d/b/a Ameren Missouri).

²⁸ For purposes of this filing, NRG Companies are NRG Power Marketing LLC and GenOn Energy Management, LLC.

intervene serve to make the entities that filed them parties to the proceeding in which they sought intervention. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2015), the Commission will grant the late-filed motions to intervene of Prairie Power, Inc. and Exelon Corporation in Docket No. ER14-2605-000 given their interest in the proceeding and the absence of undue prejudice or delay.

25. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2015), prohibits an answer to a request for rehearing. Accordingly, we will reject MISO's and Hoosier-Southern Illinois's answers to the rehearing requests of the Ameren Complaint Order. We also reject Customers' answer to MISO's rehearing request of the Order on Unanticipated Repair Costs.

B. Substantive Matters

1. Cost-of Service Rate Recovery

a. Rehearing Arguments

26. Illinois Power does not take issue with the Commission's determination in the Ameren Complaint Order that the MISO Tariff should provide for full cost-of-service recovery for SSR Units; however, Illinois Power argues that the Commission erred in finding that the then-existing Tariff did not already allow an SSR Unit to recover its full cost-of-service as going-forward costs. Illinois Power observes that MISO's proposal on compliance with the 2012 SSR Order to define going-forward costs as "the costs that will be incurred by an SSR Unit owner or operator to remain in-service that are in excess of the costs the SSR Unit would have incurred had it been retired or suspended" was not accepted until July 22, 2014, the same date as the issuance of the Ameren Complaint Order.²⁹ According to Illinois Power, at the time the Ameren Complaint was filed, and when the Edwards Year 1 and Year 2 SSR Agreements were being negotiated, the Tariff only stated that MISO would consider "at a minimum" the following cost categories: "(a) fixed and variable operating and maintenance costs to existing equipment; (b) applicable state, federal, local or property taxes; and (c) non-capital costs of any environmental waivers, allowances, and/or exemptions that are obtained by the SSR Unit and not otherwise recoverable by the SSR Unit owner or operator."³⁰ Illinois Power

²⁹ See 2014 SSR Compliance Order, 148 FERC ¶ 61,056 at P 48.

³⁰ Illinois Power Request for Rehearing, Docket No. ER13-1962-002, *et al.*, at 10 (citing December 2012 Compliance Filing, Docket No. ER12-2302-001 at Tab A, § 38.2.7.i.ii).

asserts that nothing in this language or the language accepted in the 2014 SSR Compliance Order should have prevented SSR Units from recovering full cost-of-service. Illinois Power reiterates arguments from the Ameren Complaint, maintaining that “a reasonable definition of going-forward costs should include a return on existing plant and depreciation”³¹ and that the Commission has previously determined that going-forward costs include fixed costs.³²

27. Both Industrial Customers and the PJM Market Monitor, however, argue that SSR Units in MISO should not be permitted to recover full cost-of-service because, had an SSR Unit retired as it had intended, it would have foregone the opportunity to recover such costs, and at any rate, it was likely not recovering such costs while it was operational. As such, they argue that cost-of-service recovery under such circumstances results in a windfall. Industrial Customers argue that the Ameren Complaint Order is arbitrary and capricious because it does not demonstrate a rational connection between the facts presented and the Commission’s conclusions. According to Industrial Customers, MISO’s unilateral ability to require generators to stay online for reliability reasons is not rationally connected to the Commission’s decision in the Ameren Complaint Order to allow for full cost-of-service recovery. Industrial Customers assert that, in the case of Edwards Unit 1, it was Ameren, not MISO, that was responsible for the circumstances that led to the designation of Edwards Unit 1 as an SSR Unit, because Ameren made the decision to retire the unit. Once a generator makes the decision to retire, Industrial Customers observe that the owner writes off the assets, and the fixed costs of the existing plant are taken off the books, leading to the inability to recover fixed costs of existing plant. Industrial Customers state that the Tariff as it existed prior to the Ameren Complaint Order was appropriate as it provided compensation only for going-forward costs which would be necessary to make the generator whole. Denying rehearing, Industrial Customers assert, could create a perverse incentive for generators to retire in order to gain additional compensation from customers beyond what they would have otherwise received in the market. Industrial Customers also observe that Ameren voluntarily entered into a Market Participant Agreement with MISO and explicitly agreed to be bound by the terms of the Tariff, including those provisions relevant to SSR Units.³³

³¹ *Id.* at 11 (quoting Ameren Complaint at 12).

³² *Id.* at 10-12 (citing *Mirant Kendall, LLC and Mirant Americas Energy Marketing, L.P.*, 109 FERC ¶ 61,227, at P 36 (2004)).

³³ Industrial Customers Request for Rehearing, Docket No. EL13-76-001, *et al.*, at 4-8.

28. Industrial Customers further argue that the Ameren Complaint Order is arbitrary and capricious because it uses an incorrect and unsupported baseline for its analysis that SSR Units should be compensated for the fixed costs of existing plant. Specifically, Industrial Customers assert that SSR Units are in fact going out of service and not being put into service; therefore, the Commission failed to recognize a distinction between “new entry and new exit.”³⁴ According to Industrial Customers, although a generator placed into service is generally afforded the opportunity to recover a return of and on its investment, this opportunity should not be provided to a generator whose own decision to exit the market and forego recovery of fixed costs is temporarily delayed because of its designation as an SSR Unit. Industrial Customers argue that compensation for fixed costs of existing plant would be appropriate if MISO required the retirement because, in that case, MISO would be preventing the opportunity for further recovery of these costs. Here, however, Industrial Customers maintain that MISO had no input into the generator’s business decision to retire and thereby forego the opportunity to recover these costs.³⁵

29. Industrial Customers also argue that the Ameren Complaint Order violates the Commission’s responsibility to protect consumers from excessive prices. According to Industrial Customers, customers are harmed because they must pay not only the going-forward costs for Edwards Unit 1, but they also must pay for fixed costs of the existing plant despite Ameren’s decision to forego the opportunity to recover these costs when it decided to retire. Industrial Customers assert that “Ameren is being compensated at levels greater than its pre-retirement revenue levels and at levels far greater than those necessary to compensate Ameren for the full and direct costs of operating Edwards under an SSR agreement.”³⁶

30. The PJM Market Monitor expresses similar concerns. After observing that in the Ameren Complaint Order the Commission permitted recovery of “fixed costs,” the PJM Market Monitor states that if the Commission only means fixed costs incurred specifically to provide SSR service will be recovered, it agrees that this new investment (including a return on and of capital) should be included, but requests clarification on that point. However, the PJM Market Monitor states that if the Commission intended to require the recovery of sunk fixed costs (fixed costs that a generator recognizes it will not recover in the market given the generator’s decision to retire or otherwise), then it

³⁴ *Id.* at 9.

³⁵ *Id.* at 8-10.

³⁶ *Id.* at 10-12.

requests rehearing, and, if rehearing is not granted, clarification about how such a requirement applies to the SSR procedures.³⁷

31. The PJM Market Monitor argues that rehearing is necessary because, contrary to the Commission's statement in the Ameren Complaint Order that the then-existing Tariff effectively denies a generator designated as an SSR the opportunity to recover its fixed costs of existing plant, the Tariff in fact does not deny an opportunity for cost recovery because a generator does have the opportunity to recover some or all of its fixed costs from the market. The PJM Market Monitor adds that if a generator has made a decision to retire, it was not likely recovering some or all of its sunk costs when it was operating in the market. According to the PJM Market Monitor, once the decision to retire has been made, the generator recognizes that it will no longer recover its sunk fixed costs; therefore, there can be no denial of an opportunity that does not exist. The PJM Market Monitor asserts that recovery of sunk costs could add an incentive to retire prematurely when a unit is required for reliability. In addition, it observes that in competitive markets, investors and not consumers manage investment risks, and while an SSR Unit is in service, the investors may gain but cannot lose, creating an advantageous position in a competitive market. The PJM Market Monitor also observes that generators are generally able to include the fixed costs of generation assets in rate base under state regulation, and it is not clear here how such recovery interacts with the SSR agreement.³⁸

32. The PJM Market Monitor would, however, support an incentive rate for SSR Units. According to the PJM Market Monitor, incentive rates avoid undue discriminatory treatment of SSR Units and also avoid unjustly and unreasonably shifting investment risks onto consumers. The PJM Market Monitor states that the PJM Interconnection, L.L.C. (PJM) tariff provisions for reliability-must-run (RMR) units³⁹ provide for an incentive rate to encourage the provision of RMR service on a voluntary basis, and a similar rate could be used in MISO where SSR service is involuntary. The PJM Market Monitor argues that such a rate could ensure that customers pay just and reasonable rates. Observing that SSR service is required based on whether the transmission system is configured to accommodate a retirement, the PJM Market Monitor also argues that permitting recovery of sunk fixed costs could create perverse incentives by permitting transmission owners to benefit from the timing of transmission investments in a manner that is against the interests of their customers. The PJM Market Monitor

³⁷ PJM Market Monitor Request for Rehearing, Docket No. ER13-1962-002, at 2.

³⁸ *Id.* at 2-4.

³⁹ RMRs are similar to SSRs in that they are both required to maintain system reliability.

maintains that it is discriminatory to set different rates based on unrecovered sunk fixed costs because SSR Units with unrecovered fixed costs would receive higher payments than SSR Units that have fully recovered their costs. The PJM Market Monitor argues that such differing payments would penalize providers who had lower unrecovered fixed costs as a result of making better decisions while operating in competitive markets.⁴⁰

33. If rehearing is not granted, the PJM Market Monitor argues that clarification is required for five issues. Specifically, it asks the Commission to provide the following clarifications: (1) other regional transmission organizations (RTOs), such as PJM, which provide an incentive rate for RMR service, will not be required to make any rule changes; (2) explain how fixed costs may be recovered;⁴¹ (3) a generator that has written off all or part of sunk investment costs is not permitted to recover any of its written off sunk fixed costs through SSR service; (4) a generator that has fully recovered its sunk fixed costs prior to providing SSR service is not entitled to any recovery of sunk costs through SSR service; and (5) to ensure against double recovery, fixed cost recovery should be “explicitly conditioned on prior confirmation from the participant that the asset subject to an SSR Service agreement is not included in rate base in any jurisdiction and that such costs are not otherwise subject to recovery.”⁴²

b. Commission Determination

34. We deny Illinois Power’s request for rehearing that the definition of going-forward costs in the Tariff that existed before issuance of the Ameren Complaint Order be construed to include the fixed costs of existing plant needed to provide SSR service. In doing so, we affirm the Ameren Complaint Order and continue to find that an interpretation that going-forward costs are equivalent to a resource’s full cost-of-service rate, including fixed costs incurred prior to the effective date of an SSR agreement, is inconsistent with the Commission’s description of going-forward costs in the 2012 SSR Order and its compliance directive, as well as previous MISO testimony describing the

⁴⁰ PJM Market Monitor Request for Rehearing, Docket No. ER13-1962-002, at 4-5.

⁴¹ The PJM Market Monitor argues that “recovery of sunk fixed costs should be limited to a monthly payment based on the actual expected remaining life of the investment under expected market conditions at the time of the investment.” *Id.* at 6.

⁴² *Id.* at 5-7.

SSR program and MISO's proposed definition of going-forward costs accepted in the 2014 SSR Compliance Order.⁴³

35. In response to the arguments raised by Industrial Customers and the PJM Market Monitor generally asserting that SSR Units should not be permitted to recover fixed costs of existing plant, we affirm the decision in the Ameren Complaint Order that "the Tariff is unjust, unreasonable, and unduly discriminatory or preferential because...the Tariff does not allow SSR Units compensation for the fixed costs of existing plant, which are recovered as depreciation expense, return on rate base, and associated taxes."⁴⁴ Because MISO has the ability to force a generator that wishes to retire to continue to provide utility service to meet reliability needs, even though it may be uneconomic for the generator to do so, a generator would effectively be denied the opportunity to recover its fixed costs if it were only permitted to recover going-forward costs.⁴⁵ Therefore, when a generator in the MISO region is forced to continue to operate for reliability reasons under the Tariff, even though it has made a business decision to suspend or retire due to economic or other reasons, the generator should be provided an opportunity to recover its fixed costs through a full cost-of-service rate.

36. Industrial Customers and the PJM Market Monitor argue, however, that by deciding to retire, an owner of an SSR Unit has already decided to forego this opportunity and should not then be permitted to recover a windfall since, at the time of retirement, the unit was uneconomic and the market was not providing an opportunity to recover fixed costs. Industrial Customers add that there is no rational connection between the Commission's decision to require an SSR Unit to recover fixed costs and MISO's ability to require a generator to continue providing service.

37. We disagree with these arguments. Although a retiring generator may view undepreciated costs as being sunk and may write-off any loss at the time of retirement, the fact remains that MISO has the ability to unilaterally delay this decision. During this delay, an SSR Unit owner is providing utility service, and as the Commission decided in the Ameren Complaint Order, when a generator is required to provide utility service, it should be permitted to recover costs beyond going-forward costs.⁴⁶ Because MISO can

⁴³ Ameren Complaint Order, 148 FERC ¶ 61,057 at P 83.

⁴⁴ *Id.* P 82.

⁴⁵ *Id.* P 85.

⁴⁶ *Id.* P 84 ("we find that it is unjust and unreasonable to not allow SSRs to receive compensation for the fixed costs of existing plant given MISO's authority under its Tariff

(continued...)

force a generator to continue operating, we find that the retiring generator should be permitted to recover costs beyond going-forward costs even if the generator seeking to retire would have otherwise foregone the opportunity to recover these costs.

38. We disagree with parties' arguments that Illinois Power would receive a windfall under such compensation and that full cost-of-service compensation would create perverse incentives. Under the Tariff, MISO determines whether a resource is needed for reliability and can force a generator to continue to provide utility service if no other alternatives are found. Recovery of fixed costs under these circumstances is not a windfall. Moreover, MISO may only designate a resource as an SSR Unit when MISO determines there are no other SSR alternatives available to address the reliability issue.⁴⁷ Additionally, in response to concerns that transmission owners could seek to benefit from the timing of transmission investments in a manner that is against the interests of their customers, we believe that there are other considerations, aside from obviating the need for the SSR Unit, that drive the timing of the development of any given transmission investment. For example, maintaining or advancing timing of the development of a given transmission investment may enable the transmission owner to more reliably serve its native load and transmission customers, in addition to obviating the need for the SSR Unit. Moreover, the timing of developing a transmission alternative is made transparent through discussions among MISO, the transmission owner, and stakeholders prior to the filing of the SSR agreement. Also, the Attachment Y Study that accompanies SSR filings discloses the timing of alternatives to SSR designation and explains changes to that timing. Finally, there is the prospect of active participation by parties such as load-serving entities and state commissions in SSR proceedings at the Commission.

39. We also reject Industrial Customers' argument that Illinois Power should be limited to going-forward costs because it agreed to be bound by the MISO Tariff (which did not include recovery of full cost-of-service by SSR Units) when it signed the Market Participation Agreement. The Tariff provides that parties do not give up their FPA section 205 or section 206 rights when they sign the Market Participant Agreement. That is, when a Market Participant takes service under the Tariff, that Market Participant does not give up its section 205 or section 206 rights to seek to change the Tariff. We also reject arguments that the Commission is violating its responsibility to protect consumers from excessive prices. As the Commission found in the Ameren Complaint Order and as

to unilaterally require a generator that seeks to retire or suspend operations to remain online in order to address reliability concerns.”).

⁴⁷ See MISO, FERC Electric Tariff, Module C, § 38.2.7.c, Evaluation of SSR Unit Application (37.0.0).

we affirm here, under the facts and circumstances, the provision for recovery of fixed costs of existing plant used to provide utility service is just and reasonable.

40. We decline to respond to requests for clarification made by the PJM Market Monitor because these arguments are beyond the scope of the MISO SSR program and the specific findings in the Ameren Complaint Order.

2. Retroactive Cost-of-Service Recovery

a. Rehearing Arguments

41. Illinois Power submitted requests for rehearing of: (1) the Ameren Complaint Order; (2) the Order on Illinois Power's Proposed Rate for 2013 SSR Service; and (3) the Order on Illinois Power's Proposed Rate for 2014 SSR Service, in each of which it makes similar arguments for why the Commission was incorrect in declining to permit retroactive cost-of-service rate recovery under the Edwards Year 1 SSR Agreement back to January 1, 2013 (or July 5, 2013) or under the Edwards Year 2 SSR Agreement back to January 1, 2014.

42. First, Illinois Power argues that the Ameren Complaint (filed in Docket No. EL13-76-000) and Illinois Power's two protests (filed in Docket Nos. ER13-1962-000 and ER14-1210-000) put all interested parties on notice that rates under the Edwards Year 1 SSR Agreement and the Edwards Year 2 SSR Agreement were subject to potential increase, and therefore, the Commission erred in holding in the Ameren Complaint Order that it only has the ability to order prospective relief.⁴⁸ Maintaining that *City of Anaheim, Cal. v. FERC* only prohibits the Commission "from setting rates retroactively before the date that purchasers had sufficient notice of a possible change,"⁴⁹ Illinois Power asserts that all interested parties had notice of the rates when they were filed in the aforementioned dockets.

43. Illinois Power also argues that the orders accepting the Edwards Year 1 SSR Agreement and the Edwards Year 2 SSR Agreement put parties on notice that the rates were subject to change because the orders expressly stated that the agreements were accepted for filing effective January 1, 2013 and January 1, 2014, respectively, "*subject*

⁴⁸ Illinois Power Request for Rehearing, Docket No. ER13-1962-002, *et al.*, at 13-14; Illinois Power Request for Rehearing, Docket No. ER14-2619-001, at 9-11; Illinois Power Request for Rehearing, Docket No. ER14-2718-001, at 10-12.

⁴⁹ Illinois Power Request for Rehearing, Docket No. ER13-1962-002, *et al.*, at 21 (citing *City of Anaheim, Cal. v. FERC*, 558 F.3d 521, at 524-525 (D.C. Cir. 2009)).

to further Commission order.”⁵⁰ Illinois Power contends that these orders made clear the Commission had not yet determined the just and reasonable rate level, but when it did, it would be effective January 1, 2013 for the Edwards Year 1 SSR Agreement and January 1, 2014 for the Edwards Year 2 SSR Agreement.⁵¹ Additionally, in response to the Commission’s reliance on its inability to retroactively adjust rates under section 206 of the FPA, Illinois Power argues that the Commission fails to explain why limitations imposed by section 206 are binding when Illinois Power’s protests were filed in MISO’s proceedings initiated under section 205.⁵²

44. In support of this position, Illinois Power presents D.C. Circuit precedent that it contends generally stands for the concept that an imposition of surcharges preceded by adequate notice will not be deemed retroactive ratemaking in violation of the filed rate doctrine.⁵³ Illinois Power argues that since parties knew from the outset that MISO’s proposed rate was only provisional, accepting Illinois Power’s requested level of compensation would not be a rate increase, much less a retroactive one.⁵⁴

⁵⁰ Illinois Power Request for Rehearing, Docket No. ER14-2619-001, at 10-11, 13-14 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,163 at P 16 (emphasis in original)); Illinois Power Request for Rehearing, Docket No. ER14-2718-001, at 11-12, 14 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,238 at PP 1, 19 (emphasis in original)).

⁵¹ Illinois Power Request for Rehearing, Docket No. ER13-1962-002, *et al.*, at 13-14; Illinois Power Request for Rehearing, Docket No. ER14-2619-001, at 12-14; Illinois Power Request for Rehearing, Docket No. ER14-2718-001, at 10-12.

⁵² Illinois Power Request for Rehearing, Docket No. ER14-2619-001, at 13; Illinois Power Request for Rehearing, Docket No. ER14-2718-001, at 13-14.

⁵³ Illinois Power Request for Rehearing, Docket No. ER13-1962-002, *et al.*, at 13 (citing *Canadian Ass’n of Petroleum Producers v. FERC*, 254 F.3d 289, 299 (2001) (“So long as the parties had adequate notice that surcharges might be imposed in the future, imposition of surcharges does not violate the filed rate doctrine.”) and *Natural Gas Clearinghouse v. FERC*, 965 F.2d 1066, 1075 (1992) (“The filed rate doctrine simply does not extend to cases in which buyers are on adequate notice that resolution of some specific issue may cause a later adjustment to the rate being collected at the time of service.”)).

⁵⁴ *Id.* at 13-14 (citing *La. Pub. Serv. Comm’n v. FERC*, 482 F.3d 510, 520 (2007) (*LPSC*) (stating that “the Commission fails to explain why the requirements of the filed rate doctrine would not be satisfied with respect to the refunds here at issue considering

(continued...)

45. Second, Illinois Power argues that the MISO Tariff provisions, specifically MISO's definition of going-forward costs, were provisional because the definition of going-forward costs was still subject to a pending compliance filing⁵⁵ and because at the time the Edwards Year 1 SSR Agreement and the Edwards Year 2 SSR Agreement were filed by MISO, the disputed Tariff provisions had been challenged by the Ameren Complaint. Because the MISO Tariff provisions were provisional, Illinois Power argues, the Commission was not prohibited from adjusting the rate.⁵⁶

46. Third, Illinois Power argues that retroactive ratemaking is permissible given prior Commission guidance in the SSR-related proceedings leading up to the Ameren Complaint Order that specifically provides SSR owners the ability to challenge MISO's SSR compensation filings.⁵⁷

47. Fourth, Illinois Power argues that the Ameren Complaint Order is evidence that the Commission recognized that the MISO Tariff previously provided for a flawed SSR compensation scheme that both failed to compensate SSR owners and unlawfully deprived SSR Unit owners of their section 205 filing rights. Illinois Power contends that since the Commission previously approved an unlawful scheme and usurped SSR owners

that all parties were on notice [that the rate might be held unjust or unreasonable] as of the filing of the Louisiana complaint.”)).

⁵⁵ Illinois Power contends that MISO defined going-forward costs in a compliance filing submitted December 18, 2012, but that the Commission did not act on this compliance filing until July 22, 2014 commensurate with the Ameren Complaint Order.

⁵⁶ Illinois Power Request for Rehearing, Docket No. ER14-2619-001, at 9-11; Illinois Power Request for Rehearing, Docket No. ER14-2718-001, at 10-11.

⁵⁷ Illinois Power Request for Rehearing, Docket No. ER13-1962-002, *et al.*, at 14 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶ 61,157, at P 289 (2004), *on reh'g*, 111 FERC ¶ 61,043 (2005) (stating that “nothing here affects parties’ already existing rights under section 205” in response to arguments that parties should be free to challenge any section 205 filings made by MISO under the SSR program); *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,237, at P 139 (2012) (stating that when “MISO submits an SSR Agreement to the Commission under section 205 of the FPA . . . the SSR owner will have an opportunity to present any concerns regarding its ability to fully recover the costs associated with its continued operations.”)).

of their rights, the Commission committed legal error and therefore is allowed to retroactively modify rights to correct such error.⁵⁸

48. Fifth, Illinois Power argues that the Commission failed to properly consider Illinois Power's alternative request for a July 5, 2013 effective date for the Illinois Power Restated 2013 SSR Agreement that aligned with the refund effective date established in the Ameren Complaint Order.⁵⁹

49. Sixth, Illinois Power argues that revising Tariff provisions on SSR compensation to allow for cost-of-service recovery is not a "rate increase" that may only be made prospectively under FPA section 206, but rather a change to the terms and conditions of the Tariff.⁶⁰ If characterized as a change to terms and conditions, Illinois Power argues that the Commission may provide retroactive relief to a refund effective date.⁶¹

50. Seventh, Illinois Power asserts that the Commission should follow its precedent in its 2014 order in the Wisconsin Commission Complaint Order proceeding.⁶² In that case, Illinois Power argues, the Commission ordered SSR costs to be reallocated among

⁵⁸ Illinois Power Request for Rehearing, Docket No. ER13-1962-002, *et al.*, at 15-16.

⁵⁹ Illinois Power Request for Rehearing, Docket No. ER14-2718-001, at 15 (citing Order on Illinois Power's Proposed Rate for 2013 SSR Service, 149 FERC ¶ 61,072 at P 36).

⁶⁰ Illinois Power Request for Rehearing, Docket No. ER13-1962-002, *et al.*, at 18-19; Illinois Power Request for Rehearing, Docket No. ER14-2718-001, at 15-18 (stating that at the time of the Ameren Complaint, no SSR rate for Edwards Unit 1 was on file with the Commission because MISO filed the unexecuted Edwards SSR agreement after the Ameren Complaint was filed).

⁶¹ Illinois Power Request for Rehearing, Docket No. ER13-1962-002, *et al.*, at 18-19 (citing *E.ON Climate & Renewables N. Am., LLC v. Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,076 (2011)).

⁶² See *Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,071, at P 68 (2014) (Wisconsin Commission Complaint Order), *order on reh'g*, 150 FERC ¶ 61,104, at PP 90-91 (2015) (Wisconsin Commission Complaint Order Rehearing).

customers retroactive to the date of the complaint which would require refunds for some customers and retroactive surcharges for others.⁶³

51. Eighth, regarding waiver of the prior notice requirements, Illinois Power argues that the Commission should make clear that Illinois Power is not precluded from requesting retroactive effectiveness of any SSR compensation rate filing.⁶⁴ Illinois Power contends that the Commission has repeatedly indicated that it will grant waiver of the prior notice requirement where there is good cause, or in extraordinary circumstances, and points to occasions where, Illinois Power argues, the Commission granted waiver of prior notice requirements under similar circumstances.⁶⁵ Illinois Power adds that due to protracted negotiations, the Commission has consistently granted waiver of the prior notice requirements for recent SSR agreements.⁶⁶

⁶³ Illinois Power Request for Rehearing, Docket No. ER13-1962-002, *et al.*, at 19 (citing Wisconsin Commission Complaint Order, 148 FERC ¶ 61,071 at P 68); *see also* Illinois Power Request for Rehearing, Docket No. ER14-2718-001, at 16-17. Illinois Power also asserts that the fact that the Wisconsin Commission Complaint Order dealt with cost allocation makes no difference because “If *Anaheim* or *Electrical District* prohibit the Commission from retroactively raising the rates paid by a customer, it makes no difference that the customer’s higher rate is the result of refunds for other customers.” Illinois Power Request for Rehearing, Docket No. ER13-1962-002, *et al.*, at 19-20.

⁶⁴ Illinois Power Request for Rehearing, Docket No. ER13-1962-002, *et al.*, at 23-24; Illinois Power Request for Rehearing, Docket No. ER14-2619-001, at 14-15; Illinois Power Request for Rehearing, Docket No. ER14-2718-001, at 18-19.

⁶⁵ Illinois Power Request for Rehearing, Docket No. ER13-1962-002, *et al.*, at 23-24 (citing *Michigan Elec. Transmission Co., LLC*, 138 FERC ¶ 61,202, at P 23 (2012) (granting waiver where the customer “took the service provided” and “continues to accept performance”); *id.* P 22 (rejecting argument that “the filed-rate doctrine bars the Commission from requiring Midland to pay for interconnection services received prior to the filing of the Facilities Agreement,” because “the Commission may grant a waiver of the requirement to timely file rates”); *Washington Water Power Co.*, 81 FERC ¶ 61,360, at 62,730 (1997) (granting waiver where seller had previously made a good faith attempt to file its rates)); Illinois Power Request for Rehearing, Docket No. ER14-2619-001, at 14-15; Illinois Power Request for Rehearing, Docket No. ER14-2718-001, at 18-19.

⁶⁶ Illinois Power Request for Rehearing, Docket No. ER13-1962-002, *et al.*, at 23-24; Illinois Power Request for Rehearing, Docket No. ER14-2619-001, at 14-15; Illinois Power Request for Rehearing, Docket No. ER14-2718-001, at 18-19.

52. Last, to the extent that clarification or rehearing of the Ameren Complaint Order is not granted, Illinois Power asserts that the Commission should clarify that prudently incurred costs-of-service that were not recovered under the Edwards Year 1 and Year 2 SSR Agreements from January 1, 2013 until the effective date of Illinois Power's rates filed in Docket Nos. ER14-2619-000 and ER14-2718-000 may be amortized over the remaining expected term of Edwards Unit 1's SSR service and recovered on a going-forward basis as an adder to Edwards Unit 1's cost-of-service.⁶⁷

b. Commission Determination

53. We deny the requests for rehearing concerning retroactive cost-of-service recovery. First, we disagree with Illinois Power's argument that the Commission erred in holding in the Ameren Complaint Order that the Commission only has the ability to order prospective relief in this case. The Tariff, as it existed from January 1, 2013 through July 21, 2014, only permitted going-forward cost recovery. It was not until the issuance of the Ameren Complaint Order on July 22, 2014 that full cost-of-service recovery was permitted. Therefore, there was no rate on file which would have allowed Illinois Power to recover its full cost-of-service until the issuance of the Ameren Complaint Order.

54. Second, because the Commission can only make a rate increase under section 206 of the FPA effective prospectively from the date of the order fixing the new rate,⁶⁸ we disagree with Illinois Power's arguments that it should be able to recover its full cost-of-service for the Edwards Year 1 SSR Agreement and for the period of the Edwards Year 2 SSR Agreement from January 1, 2014 until the date of the Ameren Complaint Order (July 22, 2014).

55. Regarding Illinois Power's argument that a complaint can serve as notice for purposes of retroactive ratemaking, the cases cited by Illinois Power do not support its position. Several of the cases cited by Illinois Power arise out of section 4 of the Natural Gas Act (analogous to section 205 of the FPA), which has been "interpreted to prohibit [the Commission] from setting rates retroactively before the date that purchasers had sufficient notice of a possible change."⁶⁹ Section 206 of the FPA, which is the authority used in the Ameren Complaint, involves an "entirely different-and stricter-set of

⁶⁷ Illinois Power Request for Rehearing, Docket No. ER13-1962-002, *et al.*, at 24.

⁶⁸ See Ameren Complaint Order, 148 FERC ¶ 61,057 at P 92 n.181 (citing *Dist. No. 1 v. FERC*, 774 F.2d 490 at 492-493 (D.C. Cir. 1985); *City of Anaheim*, 558 F.3d at 525-526.

⁶⁹ *City of Anaheim*, 558 F.3d at 525.

procedures than [section] 205.”⁷⁰ The D.C. Circuit has declined to conflate the rule against retroactive ratemaking under section 205 with the strict prohibition against setting rates retroactively under section 206.⁷¹ We also disagree that the finding in *LPSC* that suggests that a complaint may serve as notice to satisfy the requirements of section 206 and the filed rate doctrine is applicable here because, unlike the instant case, that decision concerned a reallocation of costs and not a rate increase under section 206. The Commission can only make a rate increase under section 206 of the FPA effective prospectively from the date of the order fixing the new rate.⁷² Moreover, we disagree with Illinois Power’s argument that the protests filed by Illinois Power constitute notice sufficient to overcome the requirements of section 206 of the FPA or the filed rate doctrine. Illinois Power does not point to any precedent that supports its position that a pleading such as a protest is sufficient to make a filed rate subject to retroactive adjustment. We also disagree with Illinois Power that its filing of protests in MISO’s proceedings initiated under section 205 would provide the Commission the ability to grant Illinois Power full cost-of-service compensation retroactively pursuant to a complaint under section 206 of the FPA. Illinois Power’s protests do not change the fact that the Commission can only make a rate increase under section 206 of the FPA effective prospectively from the date of the order fixing the new rate.

56. In response to Illinois Power’s argument regarding the prior Commission orders that accepted the Edwards Year 1 and 2 SSR agreements “subject to further Commission order,” we determine that Illinois Power cannot rely on these orders as establishing adequate notice for purposes of section 206 of the FPA. Even though the Commission stated in the orders that the compensation issues would be dealt with in later orders, the Commission can only set the rate under section 206 of the FPA prospectively from the date of the order fixing the new rate.

57. Regarding Illinois Power’s argument that the Commission was not prohibited from adjusting the rate because the Tariff provisions addressing SSR compensation were provisional because they had been challenged by Illinois Power and were subject to a pending compliance filing, we reiterate that it was not until the issuance of the Ameren Complaint Order on July 22, 2014 that cost-of-service recovery was permitted. Therefore, there was no rate on file which would have allowed Illinois Power to recover cost-of-service until the issuance of the Ameren Complaint Order.

⁷⁰ *Id.* at 525.

⁷¹ *Id.* (stating that section 205 retroactive ratemaking precedent does not justify retroactive ratemaking under section 206).

⁷² *See id.*

58. Regarding Illinois Power's arguments that retroactive ratemaking is permissible given previous guidance by the Commission that provided SSR owners the ability to challenge MISO's SSR compensation filings, while it is true that an SSR owner has the opportunity to present concerns, the relief the Commission may grant is necessarily restricted by the requirements of section 206 of the FPA and the requirements of the filed rate doctrine. As such, the Commission is not departing from its previous guidance, because section 206 of the FPA limits the Commission when setting rates. We also reject Illinois Power's claim that the Commission failed to adequately consider the unique and extraordinary circumstances of this case in denying the waiver of the prior notice requirement. As discussed above, the Commission can only make a rate increase under section 206 of the FPA effective prospectively from the date of the order fixing the new rate; the statutory limitation on the Commission's authority cannot be waived by extraordinary circumstances or by notice given to parties that the level of SSR compensation for Edwards Unit 1 was in dispute before the issuance of the Ameren Complaint Order.

59. We disagree with Illinois Power's argument that the Commission committed legal error and therefore is allowed to retroactively modify rates to correct such error. The Commission's acceptance of the previous Tariff provisions, which limited SSR cost recovery to going-forward costs and denied SSR owners filing rights under section 205 of the FPA, is not legal error. The Commission has the ability under section 206 of the FPA to find that previously accepted tariff provisions may no longer be just and reasonable, as is the case here.

60. We disagree with Illinois Power's request to allow full cost-of-service back to the July 5, 2013 refund effective date established by the Ameren Complaint Order. Illinois Power is conflating the requirement under section 206(b) of the FPA that requires the Commission set a refund effective date with the restrictions of section 206(a) of the FPA, which prohibit retroactive ratemaking. The Commission can only make a rate increase under section 206 of the FPA effective prospectively from the date of the order fixing the new rate. We disagree with Illinois Power's statement that accepting the Illinois Power Restated 2013 SSR Agreement is not a rate increase. This is because allowing the revised rate to go into effect retroactively for SSR service provided by Edwards Unit 1 in 2013 would retroactively increase the rate for such service, as the amount of SSR compensation would include recovery on and of existing plant in addition to going-forward costs.

61. We disagree with Illinois Power's argument that the ordered relief in the Ameren Complaint Order was merely a change to the terms of MISO's Tariff and not a rate increase. The Commission in the Ameren Complaint Order required MISO to revise its Tariff to reflect that SSR compensation should not exceed a resource's full cost-of-service, which allowed for increased compensation to SSR Unit owners that had previously been limited to compensation for going-forward costs. Although

Illinois Power is correct that the Commission required MISO to revise its Tariff in the Ameren Complaint Order, the effect of these tariff revisions is to increase rates in individual SSR agreements, which may only be done prospectively under section 206 of the FPA. If this Tariff change were applied retroactively to service for Edwards Unit 1 for time periods before the Ameren Complaint Order was issued, the amount of SSR compensation for such service would not be limited to going-forward costs, thereby retroactively raising the rates paid by MISO customers to compensate Illinois Power for maintaining Edwards Unit 1 in operational status during those time periods.

62. We disagree with Illinois Power's contention that the Commission can retroactively change the rate in the instant case because, in the Wisconsin Commission Complaint Order, the Commission ordered refunds in a cost allocation proceeding without regard to whether those refunds might result in retroactive rate increases for particular customers. The Wisconsin Commission Complaint Order is inapposite. In that case, the Commission exercised its equitable discretion in determining whether and how to apply remedies in any particular case, and found that, based on the record in that proceeding, it was appropriate to order refunds as of the date the complaint was filed under section 206(b) of the FPA.⁷³ In contrast, the instant proceeding, which involves a complaint to increase a rate, does not present an issue of potential refunds, and the Commission has no authority to increase rates retroactively, and is in fact specifically prohibited from doing so under FPA section 206(a).

63. We reject Illinois Power's alternative request that the cost-of-service that was not recovered under the Edwards Year 1 and Year 2 SSR Agreements may be amortized over the remaining Edwards Unit 1 SSR service, to be recovered on a going-forward basis as an adder to Edwards Unit 1's cost-of-service. As the Commission stated in the Ameren Complaint Order, and for the reasons explained above, full cost-of-service compensation is not available for Edwards Unit 1 prior to the date of the Ameren Complaint Order, regardless of the method or the timing that Illinois Power proposes to collect that compensation.

3. Tariff Administrator

a. Rehearing Argument

64. MISO seeks rehearing of the Order on Illinois Power's Proposed Rate for 2014 SSR Service regarding its role as Tariff Administrator. This issue stems from the Commission's directive in the Ameren Complaint Order that MISO revise its Tariff to

⁷³ Wisconsin Commission Complaint Order, 148 FERC ¶ 61,071 at P 68 (citing *Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 159 (D.C. Cir. 1967)).

permit an SSR owner to submit a section 205 filing for the rate associated with an SSR agreement where MISO and the SSR owner cannot agree on compensation for SSR service. MISO argues that, as Administrator of the MISO Tariff, MISO should be the entity that ultimately submits revisions to the Tariff, including SSR agreements. MISO states that the role of Tariff Administrator is described in the Commission's rules regarding RTO functions and that the RTO "must be the sole administrator of its own Commission-approved open access transmission tariff."⁷⁴ MISO argues that the Order on Illinois Power's Proposed Rate for 2014 SSR Service should be reversed because it conflicts with this legal authority granted to RTOs by permitting the owner or operator of an SSR Unit to independently submit a section 205 filing and determine rates charged for service over facilities operated by MISO in the absence of any MISO tariff filing.⁷⁵

65. Additionally, MISO seeks clarification of the Order on Illinois Power's Proposed Rate for 2014 SSR Service regarding the means for increasing compensation and the timing for future compliance filings. MISO argues that the Order on Illinois Power's Proposed Rate for 2014 SSR Service was not clear regarding how MISO would maintain the SSR Agreement filed by Illinois Power in its Tariff because the Order on Illinois Power's Proposed Rate for 2014 SSR Service did not specify when MISO should make a compliance filing conforming its rates in the Edwards Year 2 Agreement to reflect the rates in the Illinois Power Restated 2014 SSR Agreement. MISO suggests the Commission clarify that MISO should file a Tariff revision that provides for the additional compensation (subject to refund) for Edwards Unit 1 and then make an additional compliance filing that takes into consideration both the additional compensation and the Commission's decision regarding changes to terms and conditions for the Edwards Year 2 SSR Agreement in Docket ER14-1210-001.⁷⁶

⁷⁴ MISO Request for Rehearing, Docket No. ER14-2619-001, at 4 (citing 18 C.F.R. § 35.34(k)(1)(i)). MISO continues that Order No. 2000 "reaffirmed [FERC's] determination that RTOs, in order to ensure their independence from market participants, must have the independent and exclusive right to make section 205 filings that apply to the rates, terms and conditions of transmission service over the facilities operated by the RTO." *Id.* (citing *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at P 234 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001)).

⁷⁵ MISO Request for Rehearing, Docket No. ER14-2619-001, at 4-5.

⁷⁶ *Id.* at 5.

b. Commission Determination

66. In the Ameren Complaint Order, the Commission required MISO's Tariff to provide that: (1) in instances where MISO and the generation or SCU owner cannot agree on compensation for SSR service, the generation owner or SCU owner may submit a filing under section 205 of the FPA for the rate associated with the unexecuted SSR agreement; and (2) MISO will be required to file an unexecuted SSR agreement with the Commission that includes only the non-rate terms and conditions within 15 days after MISO and the generation or SCU owner determine that they are at an impasse regarding the appropriate level of compensation.⁷⁷ In the instant order, we conditionally accept MISO's compliance filing in Docket No. ER14-2605-000 that implements the directives set forth in the Ameren Complaint Order subject to MISO making a further compliance as discussed below.

67. We grant MISO's request for clarification and find that MISO and an SSR Unit owner must coordinate their filings. We direct MISO to make a further compliance filing in Docket No. ER14-2605-000 within 30 days of the date of this order to effectuate this coordination. Going forward, when there is a dispute regarding compensation and the SSR Unit owner exercises its right to submit a filing pursuant to section 205 of the FPA, the SSR agreement that MISO files would include terms and conditions of service as well as any compensation elements to which the parties agree. For any compensation element that is contested and sought by the SSR Unit owner in its own section 205 filing, the SSR agreement that MISO files would not include a rate for that compensation element but instead would indicate that it incorporates by reference the compensation element that the SSR Unit owner is ultimately authorized to recover through the SSR Unit owner's section 205 filing. The SSR Unit owner would file a rate schedule setting forth the rates for the compensation elements that are contested pursuant to section 205 of the FPA. We find that this clarification is necessary because the parties' interpretation of this directive has resulted in duplicative agreements filed by MISO and the SSR Unit owner.⁷⁸ These duplicative agreements introduce the potential for contradictory language to be included in agreements that pertain to the same service, and create an unnecessary administrative burden.

68. We deny MISO's request for rehearing regarding its role as Tariff Administrator. We affirm the finding in the Ameren Complaint Order that section 38.2.7 of MISO's

⁷⁷ Ameren Complaint Order, 148 FERC ¶ 61,057 at PP 92-93.

⁷⁸ For example, MISO and Illinois Power each filed an unexecuted SSR agreement for 2015 SSR service for Edwards Unit 1 in Docket Nos. ER15-943-000 and ER15-948-000, respectively.

Tariff was unjust, unreasonable, unduly discriminatory or preferential because it provided MISO with unilateral rights to file the rates for generators or SCUs providing utility service pursuant to unexecuted SSR agreements.⁷⁹ As the Commission stated in the Ameren Complaint Order, the MISO Tariff should allow generation or SCU owners designated as SSRs to file their own revenue requirement in order to protect that generation or SCU owner's rights under section 205 of the FPA because the Commission's ability to provide relief to the generation or SCU owner may be limited when MISO unilaterally files a rate under an unexecuted SSR agreement that is lower than the compensation preferred by the generation or SCU owner.⁸⁰ We disagree with MISO that the SSR Unit owner determines the rate when it makes its filing. While the SSR Unit owner can now make a rate filing under section 205 of the FPA, it is the Commission that determines whether the rate in that filing is just and reasonable.

4. Operational Limits of Edwards Unit 1

a. Rehearing Arguments

69. Hoosier-Southern Illinois requests rehearing regarding the Commission's decisions on the operational limitations of Edwards Unit 1 and exemptions from misconduct events. Regarding operational limitations, Hoosier-Southern Illinois argues that the Commission erred in relying upon MISO's "operational experience" in accepting these limitations. Hoosier-Southern Illinois asserts that MISO did not identify any specific facts regarding the condition of Edwards Unit 1 that would lead to the conclusion that the proposed operational limits are necessary, nor was there anything in the record indicating the age of the plant, the necessity of the repairs, or how increased repairs can be forestalled by imposing such limitations. Hoosier-Southern Illinois argues that the fact that other SSR agreements have included operational limitations does not necessarily justify those imposed here. Finally, Hoosier-Southern Illinois argues that MISO provided no support for its contention that 1,200 hours are sufficient to cover summer and shoulder periods.⁸¹

70. Regarding exemption from misconduct events, Hoosier-Southern Illinois observes that, in its protest, it objected to section 9.E of the Edwards Year 2 SSR Agreement as originally filed because it permanently exempted the SSR Unit from having a misconduct

⁷⁹ Ameren Complaint Order, 148 FERC ¶ 61,057 at P 92.

⁸⁰ *Id.*

⁸¹ Hoosier-Southern Illinois Request for Rehearing, Docket No. EL13-76-001, *et al.*, at 5-8.

event or incurring other performance penalties, even after the repairs have been completed.⁸² Hoosier-Southern Illinois explains that Illinois Power proposed to include “until Participant has notified MISO that the repairs have been completed” to resolve the issue, and the Commission accepted this revision.⁸³ Hoosier-Southern Illinois asserts, however, that the issue remains because there is no affirmative obligation requiring the SSR Unit owner to notify MISO that repairs have been completed. To resolve this issue, Hoosier-Southern Illinois argues that the Commission should grant rehearing and either direct MISO to add the language suggested by Hoosier-Southern Illinois⁸⁴ or direct MISO to add a requirement that Illinois Power must notify MISO within three business days after repairs have been completed.⁸⁵

b. Commission Determination

71. Regarding Hoosier-Southern Illinois’s arguments about MISO’s proposed operational limits, we disagree that the Commission’s acceptance of the proposed operational limits was in error. As the Commission stated in the Ameren Complaint Order, as the independent transmission system operator responsible for assessing the reliability needs of the region, MISO has the operating experience to determine whether operational limits are warranted. In addition, MISO provided additional information in its answer in Docket No. ER14-1210-000 to support the proposed operational limits, explaining that Edwards Unit 1 is an aging plant that will likely require additional and

⁸² If MISO authorized repairs to the SSR unit,

Participant shall not be deemed to have a Misconduct Event, nor shall Participant be subject to any other performance penalties under this Agreement or the MISO Tariff for the period of time after Participant notifies MISO of the need for repairs as provided in this Section 9.E and MISO provides to Participant written notification that it agrees to fund the costs of such repairs and directs Participant to make such repairs.

MISO, Edwards Year 2 SSR Agreement, Docket No. ER14-1210-000, section 9.E.

⁸³ Ameren Complaint Order, 148 FERC ¶ 61,057 at P 215.

⁸⁴ Hoosier-Southern Illinois proposed to add the following language to section 9.E of the Edwards Year 2 SSR Agreement: “until such repairs have been completed in a timely fashion.” Hoosier-Southern Illinois Request for Rehearing, Docket No. EL13-76-001, *et al.*, at 8.

⁸⁵ *Id.* at 8-9.

expensive maintenance if it is operated for more hours during 2014.⁸⁶ MISO also determined that 10 starts and 1,200 total run hours are sufficient to cover the summer and shoulder periods when Edwards Unit 1 is expected to be needed for reliability purposes.⁸⁷ We find that MISO has provided sufficient evidence to justify the operational limits of Edwards Unit 1.

72. We grant rehearing as we agree with Hoosier-Southern Illinois that additional language to section 9.E of the Edwards Year 2 SSR Agreement beyond that already required by the Ameren Complaint Order is needed to prevent a situation where Edwards Unit 1 is permanently exempted from having a misconduct event or being subject to other performance penalties after repairs are completed pursuant to section 9.E of the SSR agreement. In the Ameren Complaint Order, the Commission required MISO to submit in a compliance filing Tariff revisions to add the following language to the end of the first paragraph of section 9.E: “until Participant has notified MISO that the repairs have been completed,”⁸⁸ and, as discussed below, we require MISO to include this language, as revised herein, in the Tariff since it failed to do so on compliance.⁸⁹ We find that the language “until Participant has notified MISO that the repairs have been completed,” by itself, is not sufficient to ensure that an SSR Unit is not permanently exempted from having a misconduct event or being subject to other performance penalties, as we agree with Hoosier-Southern Illinois that timely notice should be given that the repairs have been completed. Accordingly, in a compliance filing to be made within 30 days of the date of this order, we direct MISO to submit Tariff revisions to add the following language to the end of the first paragraph of section 9.E, including the new underlined language: “until Participant has notified MISO that the repairs have been completed, such notice to be given within 3 business days of the completion of the repairs.”

5. Request for Rehearing of the Order on Unanticipated Repair Costs

73. As noted above, in the Order on Unanticipated Repair Costs, the Commission accepted MISO’s filing for emergency unanticipated repairs for Edwards Unit 1, suspended it for a nominal period to become effective November 1, 2014, as requested, subject to refund, set the proposed rate for hearing and settlement judge procedures, and

⁸⁶ MISO Answer, Docket No. ER14-1210-000, at 10 (filed Mar. 7, 2014).

⁸⁷ *Id.* at 10.

⁸⁸ Ameren Complaint Order, 148 FERC ¶ 61,057 at P 215.

⁸⁹ *See infra* P 82.

consolidated the proceeding with the hearing and settlement judge proceedings established by the Ameren Complaint Order.⁹⁰

a. Rehearing Argument

74. On rehearing, MISO objects to the Commission's decision to the extent that it sets recovery of the additional compensation for the unanticipated repairs for hearing and settlement judge procedures. MISO argues that setting the recovery of compensation for unanticipated repairs for hearing "has the effect of eliminating the distinction between emergency and non-emergency repairs contained in the [Edwards Year 2 SSR Agreement]."⁹¹ MISO contends that setting the recovery of compensation for unanticipated repairs for hearing calls into question the operation of the cost recovery mechanism that underlies the emergency repair provisions of the SSR agreement. Under the emergency repair provisions of the SSR agreement, MISO is required to notify the owner of the SSR Unit that the unanticipated repairs should be undertaken and the repairs proceed while MISO's section 205 filing is pending, contrasted with the non-emergency repairs provisions that require MISO to wait for approval from the Commission before directing the SSR Unit to make the repairs.⁹²

b. Commission Determination

75. We deny MISO's request for rehearing of the Order on Unanticipated Repair Costs. The Commission's decision to set the recovery of compensation for the unanticipated repair for hearing and settlement judge procedures and hearing does not adversely affect the process outlined in the Edwards Year 2 SSR Agreement, as MISO claims. In the present case, Illinois Power initiated the unanticipated repairs, before approval of such repairs by the Commission, under the expectation that there would be recovery under the emergency repair provisions of the SSR agreement. Setting the costs for hearing and settlement judge procedures does not prevent Illinois Power from making the repairs, nor does it prevent Illinois Power from recovering compensation for making the repairs. Illinois Power is entitled to recover its costs, but the Commission must make a determination as to whether the costs to be recovered are just and reasonable. Contrary to MISO's argument, the process followed in this proceeding remains different from a non-emergency situation where Illinois Power would be required to wait for the outcome of a filing pursuant to section 205 of the FPA before initiating the necessary repairs.

⁹⁰ *See supra* Section I.D.

⁹¹ MISO Request for Rehearing, Docket No. ER15-884-001, at 3.

⁹² *Id.* at 3.

6. MISO's Compliance Filings

a. August 6 Compliance Filing (Docket No. ER14-1210-001)

76. On August 6, 2014, MISO submitted proposed revisions responding to directives set forth in the Ameren Complaint Order requiring revisions to the Edwards Year 1 SSR Agreement and the Edwards Year 2 SSR Agreement. However, MISO's discussion of the compliance filing made in Docket No. ER14-1210-001 is found in the transmittal letter accompanying the filing in Docket No. ER14-2605-000. Therefore, in the compliance filing made in Docket No. ER14-1210-001, MISO requests that the Commission incorporate MISO's discussion of compliance found in the compliance filing made in Docket No. ER14-2605-000 as part of the transmittal letter in the compliance filing made in Docket No. ER14-1210-001.⁹³

77. In order to ensure that certain charges are netted out and compensation is properly accounted for, the Ameren Complaint Order required MISO to revise Exhibit 2 of both the Edwards Year 1 SSR Agreement and Edwards Year 2 SSR Agreement.⁹⁴ First, MISO added the following language to the original Exhibit 2 to the Edwards Year 1 SSR Agreement:

The SSR Unit Energy and Operating Reserve Credit are those charges and credits calculated pursuant to Sections 39.3 Day-Ahead Energy and Operating Reserve Market and 40.3 Real Time Energy and Operating Reserve Market Settlement of the MISO Tariff, plus any revenues from Schedule 2 associated with the SSR Unit or from Planning Resource designation and any charges assessed through Schedule 17 and Schedule 24.⁹⁵

78. Second, MISO inserted provisions from Exhibit 2 of the Edwards Year 1 SSR Agreement into Exhibit 2 of the Edwards Year 2 SSR Agreement to ensure that SSR

⁹³ MISO Transmittal Letter, Docket No. ER14-1210-001, at 1.

⁹⁴ The Commission directed separate revisions to the Edwards Year 1 SSR Agreement and the Edwards Year 2 SSR Agreement to make the agreements conforming and to ensure that both agreements properly netted out certain charges and that compensation is properly accounted for. *See* Ameren Complaint Order, 148 FERC ¶ 61,057 at PP 157, 222.

⁹⁵ MISO Transmittal Letter, Docket No. ER14-2605-000, at 6.

Units are appropriately compensated depending upon whether they are operating for reliability purposes or economically.⁹⁶

79. MISO also states that it has complied with additional directives requiring MISO to replace the term “operation” in section 9.E of the Edwards Year 1 SSR Agreement with “extended service,”⁹⁷ and it has also inserted a provision in Exhibit 2 to the Edwards Year 2 SSR Agreement providing for interest on any monies recovered from Illinois Power in connection with the turbine overhaul.⁹⁸

i. Commission Determination

80. We accept MISO’s proposed revisions to Exhibit 2 of the Edwards Year 1 and Year 2 SSR Agreements, as these revisions ensure that certain charges are netted out and that compensation is properly accounted for when calculating the variable costs it takes Edwards Unit 1 to operate when dispatched.

81. We accept MISO’s proposed revisions to section 9.E of the Edwards Year 1 SSR Agreement which replace the term “operation” with “extended service,” and we also accept the provision inserted in Exhibit 2 of the Edwards Year 2 SSR Agreement providing for interest on any monies recovered from Illinois Power in connection with the turbine overhaul.

82. We find, however, that MISO failed to comply with the Commission’s directive requiring revisions adding the following language to the end of the first paragraph of section 9.E of the Edwards Year 2 SSR Agreement: “until Participant has notified MISO that the repairs have been completed.”⁹⁹ MISO did not address this in any of its compliance filings. Accordingly, we require MISO to submit, in a compliance filing due within 30 days of this order, Tariff revisions consistent with the Commission’s prior directive and our finding above¹⁰⁰ to add the language “until Participant has notified MISO that the repairs have been completed, such notice to be given within 3 business

⁹⁶ *Id.* at 7-8.

⁹⁷ *Id.* at 6-7.

⁹⁸ *Id.* at 7.

⁹⁹ Ameren Complaint Order, 148 FERC ¶ 61,057 at P 215.

¹⁰⁰ *See supra* P 72.

days of the completion of the repairs” to the end of the first paragraph of section 9.E of the Edwards Year 2 SSR Agreement.

b. August 6 Compliance Filing (Docket No. ER14-2605-000)

83. On August 6, 2014, MISO submitted proposed Tariff revisions responding to directives set forth in the Ameren Complaint Order regarding compensation, the ability of a generator to file its own cost-of-service rate under section 205 of the FPA, the notice period, and information on obtaining environmental waivers.¹⁰¹

84. Regarding the Commission’s directive to revise the Tariff to reflect that an SSR Unit’s compensation should not exceed its full cost-of-service, MISO proposes to delete the description of going-forward costs in Tariff section 38.7.1.i and replace it with the following language: “The SSR Agreement will provide compensation only for costs incurred by an SSR Unit owner or operator that do not exceed the full cost-of-service (including the fixed cost of existing plant).”¹⁰²

85. In response to the Commission’s directive to revise the Tariff to address the situation where MISO and the generation owner cannot agree on an appropriate amount of compensation, MISO proposes adding the following language to Tariff section 38.7.1.i where negotiation of the SSR Agreement is addressed:

In an instance where the Transmission Provider and the Market Participant owning or operating the Generation Resources or SCUs deemed to be SSR Units cannot agree to the appropriate level of compensation due the Market Participant for the SSR Agreement: (a) the Transmission Provider shall file an unexecuted SSR Agreement with FERC that includes only terms and conditions that do not state compensation levels within 15 days after agreement cannot be reached; and (b) the Market Participant may submit a filing under Section 205 of the FPA that states the compensation the Market Participant deems appropriate that is associated with the SSR Agreement.

MISO states that the term “owning or operating” (as opposed to simply “owner”) is included, consistent with numerous other references in section 38.2.7 regarding the entities with whom MISO deals regarding SSR agreements. MISO also added a missing

¹⁰¹ See *id.* PP 87, 93, 158, 221.

¹⁰² MISO Transmittal Letter, Docket No. ER14-2605-000, at 2.

“or operating” in the text just above the proposed paragraph to maintain a consistent reference.¹⁰³

86. Regarding the Commission’s directive to revise the Tariff to require that a market participant provide MISO with an amended Attachment Y Notice at least 26 weeks prior to retiring or suspending operations if it intends to retire rather than suspend operations, or vice versa, MISO proposes to add the following language to Tariff section 38.2.7.a which discusses SSR notification procedures:

An Attachment Y Notice that amends an earlier notification to Suspend operations with notification that the Generation Resource or SCU will Retire, or vice versa, requires at least twenty-six (26) weeks prior notice to the Transmission Provider.¹⁰⁴

87. In response to the Commission’s directive requiring MISO to describe the ways in which it assisted Illinois Power in obtaining environmental compliance, MISO states that its personnel participated in conference calls that involved, among other persons, regulatory counsel for Illinois Power and also special environmental counsel for Illinois Power regarding the satisfaction of MATS requirements. MISO states that those calls discussed evaluation of limited operation of Edwards Unit 1, as well as how to obtain extensions for MATS compliance. MISO notes that the Tariff provision regarding its assistance in obtaining such extensions was discussed, including MISO’s specific offer to assist Illinois Power. According to MISO, its understanding of this Tariff provision is that counsel for Illinois Power was aware of and understood the obligations of both parties with respect to obtaining waivers and that Illinois Power did not (and currently does not) require such assistance. If these circumstances change, MISO states that it will provide reasonable assistance in obtaining any needed extensions permitting Edwards Unit 1 to continue operating for reliability purposes.¹⁰⁵

i. Commission Determination

88. We conditionally accept MISO’s proposed Tariff revisions, subject to a further compliance filing due within 30 days of the date of this order.

¹⁰³ *Id.* at 3.

¹⁰⁴ *Id.* at 4-5.

¹⁰⁵ *Id.* at 5.

89. We find that MISO has appropriately removed references to going-forward cost recovery, and the proposed language properly ensures that an SSR Unit will be permitted to recover up to its full cost-of-service, thereby addressing the concern raised by the Commission in the Ameren Complaint Order that an SSR Unit in MISO would otherwise be denied “the opportunity to recover its fixed costs of existing plant even though the generator or SCU must continue to provide utility service.”¹⁰⁶

90. We find that MISO’s proposed revisions have satisfied the Commission’s directive to revise the Tariff to require that a market participant provide MISO with an amended Attachment Y Notice at least 26 weeks prior to retiring or suspending operations if it intends to retire rather than suspend operations, or vice versa.¹⁰⁷ The proposed language resolves any ambiguity regarding submission of amended Attachment Y Notices and addresses the scenario in which a shortened schedule could affect the analysis of long-term solutions to address contingencies.

91. We also accept the description MISO provided in response to the Commission’s directive requiring MISO to submit an informational filing to describe the ways in which it assisted Illinois Power in obtaining environmental compliance. We reiterate our statement in the Ameren Complaint Order that this informational filing is for informational purposes only, and the Commission does not intend to notice or take formal action on such informational filing.¹⁰⁸

92. We find, however, that MISO’s proposed revisions have not satisfied the Commission’s directive to revise the Tariff to address the situation where MISO and the generation owner cannot reach agreement on an appropriate level of compensation.¹⁰⁹ As noted above in our discussion of MISO’s rehearing and clarification request on Tariff administration issues, the language proposed by MISO has led to duplicative agreements filed by MISO and the SSR Unit owner. As discussed above, we direct MISO to make a further compliance filing in Docket No. ER14-2605-000 within 30 days of the date of this order to clarify that MISO and an SSR Unit owner must coordinate their filings. Going forward, when there is a dispute regarding compensation and the SSR Unit owner exercises its right to submit a filing pursuant to section 205 of the FPA, the SSR agreement that MISO files would include terms and conditions of service as well as any

¹⁰⁶ Ameren Complaint Order, 148 FERC ¶ 61,057 at P 85.

¹⁰⁷ *Id.* P 158.

¹⁰⁸ *Id.* P 221 n.393.

¹⁰⁹ *Id.* P 92.

compensation elements to which the parties agree, and note compensation elements that are contested and sought by the SSR Unit owner and incorporate by reference the compensation that the SSR Unit owner is ultimately authorized to recover through the SSR Unit owner's section 205 filing. The SSR Unit owner would file a rate schedule setting forth the rates for the compensation elements that are contested pursuant to section 205 of the FPA. We find that this clarification is necessary because the parties' interpretation of this directive has resulted in duplicative agreements filed by MISO and the SSR Unit owner.¹¹⁰ These duplicative agreements introduce the potential for contradictory language to be included in agreements that pertain to the same service, and create an unnecessary administrative burden.

c. September 2 Compliance Filing (Docket No. ER14-2605-001)

93. On September 2, 2014, MISO submitted proposed Tariff revisions responding to directives set forth in the Ameren Complaint Order regarding the technical study process that MISO uses to evaluate whether potential SSR Units are needed for reliability purposes. In its September 2 compliance filing, MISO addresses two directives from the Commission that were not addressed in MISO's earlier compliance filing.¹¹¹ In the Ameren Complaint Order, the Commission found that "the Tariff does not adequately describe the technical study process by which MISO is to evaluate whether potential SSRs are needed for reliability purposes and does not identify the related information that should be provided by MISO when filing SSR agreements with the Commission."¹¹² Therefore, the Commission found that the Tariff was unjust, unreasonable, and unduly discriminatory or preferential and directed MISO to revise section 38.2.7 of its Tariff.

94. Related to the discussion of the "information that should be provided by MISO," the Commission directed:

SSR agreements filed with the Commission must describe the findings and methodologies in the related Attachment Y Reliability Studies and clearly state all potential reliability criteria violations. In cases where MISO's

¹¹⁰ For example, MISO and Illinois Power each filed an unexecuted SSR agreement for 2015 SSR service for Edwards Unit 1 in Docket Nos. ER15-943-000 and ER15-948-000, respectively.

¹¹¹ MISO Transmittal Letter, Docket No. ER14-2605-001, at 1 (citing MISO Transmittal Letter, Docket No. ER14-2605, Section II.1.c (filed Aug. 6, 2014)).

¹¹² *Id.* at 2 (citing Ameren Complaint Order, 148 FERC ¶ 61,057 at P 152).

determination of SSR status is based upon local planning criteria, the filing and associated study reports should provide a full discussion addressing the application of the local planning criteria. Such a discussion should provide documentation as to when the criteria became effective and which regulatory body, if any, approved the standard. Furthermore, regarding MISO's evaluation of feasible alternatives to entering into an SSR agreement, MISO should provide a short explanation of the proposed solution, as well as timetables for when the preferred solution will be implemented.

95. In response to the Commission's directives, MISO revises its Tariff to include information in Section 38.2.7.c ("Evaluation of SSR Unit Application") regarding its technical study process. MISO notes that this process was developed as part of an extensive stakeholder process.

96. MISO states that Section 38.2.7.c was also revised to add a paragraph that describes information in an Attachment Y study report that will accompany an SSR filing with the Commission. The following information (at a minimum) will be provided in such a study: methodology used, study assumptions, approved Transmission Owner planning criteria used (including when the criteria became effective and the approving regulatory body, if any), analysis results, an evaluation of alternatives and the conclusion of the study (including a short explanation of the proposed solution to any reliability issue identified and timetables for implementing the preferred solution). MISO states that this description contains the detail regarding local planning criteria and the analysis of alternatives that were required in the Ameren Complaint Order.¹¹³

i. Commission Determination

97. We conditionally accept MISO's revisions to Section 38.2.7 and Section 38.2.7.c of the Tariff, subject to further compliance. MISO has proposed several Tariff revisions to explain its technical study process regarding how it will evaluate whether potential SSR Units are needed for reliability purposes. MISO has also set forth the process of how it will evaluate potential SSR Units when the transmission owner conducts the studies. With respect to the revisions MISO made to Section 38.2.7.c of the Tariff regarding its technical study process, we direct MISO to make the following change:

An affirmation that *the* results, in whole or in part, from a previously filed report remain applicable may substitute for filing an entirely new report on the Attachment Y Reliability Study and the Attachment Y Alternatives Study.

¹¹³ *Id.* at 3.

98. We believe that adding *the* to the above section will clarify MISO's intent to use results that remain applicable and as such not have to file an entirely new study report. We direct MISO to submit its compliance filing within 30 days of the date of this order.

The Commission orders:

(A) We grant, in part, Hoosier-Southern Illinois's request for rehearing of the Ameren Complaint Order and deny the other requests for rehearing of the Ameren Complaint Order, as discussed in the body of this order.

(B) We grant, in part, MISO's request for clarification of the Order on Illinois Power's Proposed Rate for 2014 SSR Service and deny Illinois Power's request for rehearing of the Order on Illinois Power's Proposed Rate for 2014 SSR Service, as discussed in the body of this order.

(C) We deny the request for rehearing of the Order on Illinois Power's Proposed Rate for 2013 SSR Service, as discussed in the body of this order.

(D) We deny the request for rehearing of the Order on Unanticipated Repair Costs, as discussed in the body of this order.

(E) We conditionally accept MISO's compliance filings in Docket Nos. ER14-1210-001, ER14-2605-000, and ER14-2605-001, subject to compliance filings due within 30 days of the date of this order, as discussed in the body of this order.

(F) MISO is hereby directed to submit compliance filings due within 30 days of this order, as discussed in the body of this order.

By the Commission. Commissioner Honorable is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.