

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Tilden Mining Company L.C. and)	
Empire Iron Mining Partnership,)	
Complainants,)	
)	
v.)	Docket No. EL14-____-000
)	
Midcontinent Independent System)	
Operator, Inc., and)	
)	
Wisconsin Electric Power Company,)	
Respondents.)	

**COMPLAINT OF TILDEN MINING COMPANY L.C.
AND EMPIRE IRON MINING PARTNERSHIP
AGAINST MISO AND WEPCO**

Pursuant to Sections 206, 306, and 309 of the Federal Power Act (“FPA”), 16 U.S.C. §§ 824e, 825e, and 825h (2012), and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. § 385.206 (2014), Tilden Mining Company L.C. and Empire Iron Mining Partnership (“the Mines”), hereby file this Complaint against the Midcontinent Independent System Operator, Inc. (“MISO”), and Wisconsin Electric Power Company (“WEPCO”), respecting the actions by these parties to effectuate the splitting of WEPCO’s current single local balancing authority (“WEC LBA”) and the creation of a new LBA in the Michigan Upper Peninsula (“MIUP LBA”) without Commission approval.¹ In support of this filing, the Mines state as follows:

I. COMMUNICATIONS AND CORRESPONDENCE

Communications and correspondence regarding this pleading should be directed to the following persons:

¹ A glossary of abbreviations and acronyms and a list of exhibits are included at the end of this Complaint.

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II. PARTIES

The Mines operate iron ore mines near Ishpeming, Michigan, and are electric customers of WEPCO. The Mines currently participate in WEPCO's retail access service program under Michigan's electric customer choice law and receive electric supply from an alternative electric supplier. The Mines are located in the MISO region and are served by transmission-dependent entities in the American Transmission Company LLC ("ATC") footprint. As described below, the Mines would be significantly affected by WEPCO's proposal – as approved by the North American Electric Reliability Corporation ("NERC") and implemented by MISO – to split the WEC LBA and to create the MIUP LBA, because the proposal would produce a significant shift of System Support Resource ("SSR") costs to Michigan Upper Peninsula ("UP") ratepayers. Because the Mines are by far the largest electricity load in the region, they will bear the lion's share of any redistribution of costs flowing from the proposal to split the WEC LBA.

MISO is a Regional Transmission Organization ("RTO") that provides open-access transmission service under its Commission-regulated Open Access Transmission, Energy and Operating Reserve Markets Tariff ("Tariff") and monitors the high voltage transmission system throughout the Midwest United States, Manitoba, Canada, and an integrated southern region which includes much of Arkansas, Mississippi, and Louisiana.²

²

E.g., <https://www.misoenergy.org/AboutUs/Pages/AboutUs.aspx>.

WEPCO is a public utility organized under the laws of the State of Wisconsin.³ WEPCO is the principal utility of Wisconsin Energy Corporation, and its trade name is We Energies.⁴ WEPCO owns and operates generation facilities located within MISO and provides electric generation and distribution service to customers located primarily in Southeastern Wisconsin and the UP of Michigan.⁵ WEPCO is a Market Participant in MISO and an interconnected equity owner of ATC, a transmission owner in MISO. ATC's transmission footprint covers the UP of Michigan and much of Wisconsin, including nearly the entire eastern half of the state.⁶

III. EXECUTIVE SUMMARY

A. FACTUAL BACKGROUND

WEPCO, the operator of an LBA in MISO, decided for economic reasons to split the LBA and create a new LBA in an isolated load pocket, the UP of Michigan. The purpose for creating the new LBA was to change the allocation of SSR costs under MISO's Tariff between customers in Wisconsin and those in the UP of Michigan, despite the resulting unjust and unreasonable, and unduly discriminatory consequences of the proposed actions on rates charged in the UP.

In the hope of insulating its plans from scrutiny by the Commission, WEPCO concocted a scheme to wrap the proposed action in a mantle of "reliability." Notably, WEPCO has provided no evidence that reliability-related concerns in the existing LBA require the proposed split. Nor has WEPCO provided any evidence that the split will produce reliability

³ E.g., WEPCO May 5, 2014 Motion to Intervene and Comments, *Pub. Serv. Comm'n of Wis. v. Midcontinent Indep. Transmission Sys. Operator*, Docket No. EL14-34-000 at 3, Accession No. 20140505-5226.

⁴ E.g., https://www.we-energies.com/home/we_keyfacts.htm.

⁵ *Id.*

⁶ See Public Service Commission of Wisconsin Complaint, *Pub. Serv. Comm'n of Wis. v. Midcontinent Indep. Transmission Sys. Operator*, Docket No. EL14-34-000 at 3 (map), Accession No. 20140403-5147.

improvements in either of the resulting LBAs. Indeed, there is no evidence that WEPCO's proposal has any reliability benefits, and thus, the proposal cannot be justified on reliability grounds.

NERC and MISO became unwitting participants in this scheme. MISO denies authority to "approve" the proposed new LBA; although MISO will implement the change under its Tariff without seeking approval from the Commission. Likewise, NERC denies authority to address the "cost allocation issues" raised by WEPCO's proposal to form the MIUP LBA, despite the absence of evidence of any reliability justification for the proposal of what is, at bottom, an economically motivated restructuring of SSR rates by WEPCO.

The proposed split of the WEC LBA and creation of the MIUP LBA will have significant impacts on the allocation of Presque Isle SSR costs and, therefore, on SSR rates charged to customers in the UP. The creation of the MIUP LBA will result in significant shifting of SSR costs from Wisconsin ratepayers to the ratepayers in the UP. If the WEC LBA is split and the MIUP LBA is created as proposed by WEPCO, the total Michigan share of Presque Isle SSR costs will increase from 14.31% to 99.23%, while the Wisconsin share of those costs will decrease from 85.69% to 0.77%.

The reallocation of SSR costs associated with the split of the WEC LBA and formation of the MIUP LBA is as dramatic as the allocation of Presque Isle SSR costs about which the Public Service Commission of Wisconsin ("WPSC") complained in Docket No. ER14-34-000, and on the basis of which the Commission found the MISO Tariff to be unjust, unreasonable, and unduly discriminatory. The effect of the proposed split of the WEC LBA and the formation of the MIUP LBA on the allocation of SSR costs and the SSR rates in the UP is unjust, unreasonable, and unduly discriminatory, in violation of the FPA.

Under Sections 205 and 206 of the FPA, the Commission has jurisdiction to assure that the rates charged in the UP remain just and reasonable, and not unduly discriminatory. The Commission should exercise its jurisdiction to assure that the SSR rates charged pursuant to MISO's Tariff are just and reasonable under the unique circumstances of this case.

B. POLICY CONSIDERATIONS

This proceeding brings into sharp focus whether the Commission will abandon the Nation's long-standing policy commitment to socialization of electric power system reliability costs in favor of slavish adherence to strict cost-causation principles which are antithetical to, and threaten the Balkanization of, the integrated electric power grid currently serving all electric consumers.

The case also presents the jurisdictional question whether the Commission will assert its exclusive regulatory jurisdiction under the FPA to determine the "justness and reasonableness" of rules affecting the Presque Isle SSR rates, or will abdicate its responsibilities to protect the public interest under the FPA to usurpation by a local electric utility, an RTO, and a state commission pursuing narrow parochial interests.

1. Socialization of Reliability Costs

The national commitment to socialization of certain electric power system costs goes beyond the Commission's regulation under the FPA. The roots of that policy may be traced back to the enactment of the Rural Electrification Act on May 20, 1936, Pub. L. No. 74-605, 49 Stat. 1363, codified at 7 U.S.C. § 901 *et seq.*, as a consequence of which electrification of rural America became a reality. Without the Rural Electrification Act ("REA"), huge geographic areas of the United States (including areas in Wisconsin and the UP), which today enjoy access to electric power, would have remained without power, dark and depressed. Without

socialization of such costs through the instrumentalities of the REA, utility cost-causation principles would not have justified the cost of running electric power lines in thinly populated regions with limited loads. The benefits of such socialization, however, are apparent and well recognized.

So, too, the Commission and reviewing courts have recognized the benefits of socialization of electric power system reliability costs as an exception to more generally applicable cost-causation principles which provide the basic framework for most just and reasonable rates under the FPA. In the case of integrated systems such as that of WEPCO, courts have presumed that system enhancements, which preserve the electricity grid's reliability, benefit the entire system. *See, e.g., Entergy Services, Inc. v. FERC*, 319 F.3d 536, 543 (D.C. Cir. 2003); *Me. Pub. Serv. Co. v. FERC*, 964 F.2d 5, 8-9 (D.C. Cir. 1992) (approving FERC's policy that system maintenance costs for an integrated system can be socialized because of the assumption that all system participants benefit). In *Western Mass. Elec. Co. v. FERC*, 165 F.3d 922 (D.C. Cir. 1999), the Western Massachusetts Electric Company sought to require a new generator to pay all of the costs associated with connecting to the grid. 165 F.3d at 924-25. The Commission rejected this cost allocation, finding that the additional generation made possible by the upgrade to the system would improve overall grid reliability, not simply provide the power generator access to the grid. *Western Mass. Elec. Co.*, 77 FERC ¶ 61,268, at 62,119-20 (1996), *reh'g denied*, 81 FERC ¶ 61,152 (1997). As is typically the case with reliability-related matters, it was impossible to calculate which customers were taking advantage of these reliability upgrades given the physical nature of power flows. 165 F.3d at 927. The D.C. Circuit upheld the Commission's order. *Id.* at 927-28.

In *Entergy Services, Inc. v. FERC*, 319 F.3d 536 (D.C. Cir. 2003), the D.C. Circuit reached the same result. Entergy Services operated a transmission system and had executed agreements with two area generators under which the generators were required to bear the costs of the transmission upgrades necessary to maintain grid stability in light of the additional power being added to the grid. The Commission rejected the agreements, concluding that the costs of network upgrades needed to accommodate new generation while maintaining grid stability ought to be socialized. *Entergy Services, Inc.*, 95 FERC ¶ 61,437, at 62,611, *reh'g denied*, 96 FERC ¶ 61,311 (2001). The D.C. Circuit accepted the Commission's rationale that these costs should be socialized so as to avoid excessive industry reliability upgrades and less favorable price signals. 319 F.3d at 543-44 (“upgrades designed to ‘preserve the grid’s reliability’ constitute ‘system enhancements [that] are presumed to benefit the entire system’” (alteration in original) (quoting *Western Mass. Elec. Co. v. FERC*, 165 F.3d at 923, 927)).

2. The Commission’s Exclusive Jurisdiction Under the FPA

Section 205(a) of the FPA provides that “all rules affecting or pertaining to” rates and charges demanded or received by any public utility “for or in connection with the transmission and sale of electric energy subject to the jurisdiction of the Commission” shall be “just and reasonable.” The Commission has exclusive and preemptive jurisdiction with respect to all matters “affecting” rates and charges in connection with the interstate transmission or interstate wholesale sale of electric energy. *See Miss. Power & Light v. Miss. ex rel. Moore*, 487 U.S. 354, 371, 374 (1988) (“FERC has exclusive authority to determine the reasonableness of wholesale rates . . . Congress has drawn a bright line between state and federal authority in the setting of wholesale rates and in the regulation of agreements that affect wholesale rates. States may not regulate in areas where FERC has properly exercised its jurisdiction to determine just and

reasonable wholesale rates or to insure that agreements affecting wholesale rates are reasonable"); *see also Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953, 956 (1986) (FERC "has exclusive jurisdiction over interstate wholesale power rates") (citing 16 U.S.C. §§ 824(b), 824d, 824e); (*Energyplus, LLC v. Solomon*, --- F.3d ----, 2014 WL 4454999, at *2 (3rd Cir. 2014) ("FERC has exclusive authority over interstate capacity sales and transmissions").

The establishment of the MIUP LBA proposed by WEPCO and to be implemented by MISO is clearly a "rule" affecting the Presque Isle SSR rates (given the demonstrated impact on the allocation of Presque Isle SSR costs if the new LBA is formed) and as such is subject to the exclusive jurisdiction of Commission.

If, as WEPCO and MISO both assert, no regulatory filings were required to be made with the Commission by either entity before the new LBA is implemented, the exclusive regulatory jurisdiction of the Commission would be circumvented, to the detriment of the public interest that the Commission alone is charged with protecting. This Complaint raises the question whether the Commission's jurisdiction may be so easily circumvented, and whether the Commission will require MISO and/or WEPCO to make a filing with the Commission in order that the Commission may review the justness and reasonableness of the rate-related consequences of the new LBA.

IV. COMPLAINT

A. BACKGROUND

1. The SSR Proceedings

1. On January 31, 2014, in Docket No. ER14-1242-000, MISO submitted a proposed SSR Agreement between WEPCO and MISO (the "Presque Isle SSR Agreement") under MISO's Tariff. On January 31, 2014, in Docket No. ER14-1243-000, MISO also

submitted proposed Rate Schedule 43G (Allocation of SSR Costs Associated with the Presque Isle SSR Units) under its Tariff. On April 1, 2014, the Commission issued an order accepting the Presque Isle SSR Agreement and associated Rate Schedule 43G and suspending them for a nominal period, subject to refund and further Commission order.⁷

2. In response to the Commission’s April 1 Order, on April 3, 2014, in Docket No. EL14-34-000, the WPSC filed a complaint (“WPSC Complaint”) against MISO alleging that the SSR cost allocation provision in section 38.2.7.k of MISO’s Tariff, and the provision’s implementation in Rate Schedule 43G with respect to the Presque Isle SSR Agreement, is unjust, unreasonable, and unduly discriminatory.⁸ Specifically, the WPSC Complaint alleged that an ATC-specific exception in section 38.2.7.k of MISO’s Tariff, which allocated SSR costs related to generation units in the ATC footprint on a *pro rata* basis to all load serving entities (“LSEs”) in the ATC footprint, was unjust and unreasonable, and unduly discriminatory.
3. On July 29, 2014, in Docket Nos. ER14-1242-001 and ER14-1243-001, the Commission denied rehearing of its April 1 Order.⁹ In the July 29 Order, the Commission also granted the WPSC Complaint, finding the Tariff to be unjust, unreasonable, unduly discriminatory, or preferential because the application of the Tariff, resulting in the allocation of SSR costs under Rate Schedule 43G on a *pro rata* basis among all LSEs in the ATC footprint, does not follow cost-causation principles. The Commission found that the assignment of SSR costs to all LSEs within the ATC footprint based on their load

⁷ *Midcontinent Indep. Sys. Operator, Inc.*, 147 FERC ¶ 61,004 (2014) (“April 1 Order”).

⁸ *Supra* note 6.

⁹ *Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,071, at P 4 (2014) (“July 29 Order”). Notwithstanding the Commission’s denial of rehearing in Docket Nos. ER14-1242-001 and ER14-1243-001, the July 22 Order established hearing procedures in Docket No. ER14-1242-000 on the issue of SSR compensation under the Presque Isle SSR Agreement. *Id.* P 2.

share ratio was “contrary to the Commission’s previously stated support for a nexus between the reliability benefits of SSR Units and the allocation of those SSR costs.”¹⁰

4. The July 29 Order directed MISO to submit a final load-shed study and revised Tariff sheets removing the *pro rata* allocation of SSR costs in the ATC footprint from section 38.2.7.k of MISO’s Tariff and amending Rate Schedule 43G so that the Presque Isle SSR Unit costs are allocated according to the percentages in MISO’s final load-shed study. MISO submitted the required compliance filing on August 11, 2014.¹¹ According to the last page of MISO’s filing, MISO determined that, based on its load-shed methodology, the allocation of SSR costs associated with the Presque Isle SSR Units is: 5.66% to the UPPC LBA, 93.79% to the present WEC LBA, and 0.55% to the WPS LBA.¹²

2. WEPCO’s Proposal to Split the WEC LBA

5. As discussed above, WEPCO currently operates a single LBA known as the “WEC LBA”.
6. In February 2014, in anticipation of the rate consequences of the allocation of SSR costs pursuant to MISO’s filings in Docket Nos. ER14-1242-000 and ER14-1243-000, WEPCO proposed to split the WEC LBA into two LBAs: the MIUP LBA, consisting of the UP of Michigan and a very small area of far northern Wisconsin, and a second local balancing authority (“new WEC LBA”) in the Fox Valley Area (northeast Wisconsin, including the watershed of the Fox River) and southeastern Wisconsin.¹³

¹⁰ *Id.* P 62.

¹¹ MISO, Aug 11, 2014 Presque Isle Power Plant-Related SSR Compliance Filing, *Midcontinent Indep. Sys. Operator, Inc.*, Docket No. ER14-1243-004, Accession No. 20140811-5185.

¹² *Id.*

¹³ E.g., We Energies, MIUP Balancing Authority Overview, at 2, 5-7 (May 13, 2014), attached hereto as Exhibit A.

3. The Role of NERC

7. NERC is a not-for-profit international regulatory authority whose mission is to ensure the reliability of the bulk power system in North America.¹⁴
8. In 2006, FERC certified NERC as an Electric Reliability Organization (“ERO”).¹⁵
9. Section 215 of the FPA defines an ERO as “the organization certified by the Commission under subsection (c) the purpose of which is to establish and enforce reliability standards for the bulk-power system, subject to Commission review.”¹⁶
10. NERC is limited by statute to consideration of matters related to the “reliability” of the electric transmission system in North America.
11. On February 14, 2014, WEPCO submitted its proposal to split the WEC LBA to the ReliabilityFirst Corporation (“RF”), a NERC Regional Entity.
12. Following this request, a Certification Team (“CT”) was formed, consisting of members from NERC, RF, MISO, and ATC.¹⁷
13. On April 3, 2014, RF’s Reliability Committee approved a revised MISO Reliability Plan that split the WEC LBA and created the new MIUP and the new WEC LBA.¹⁸
14. A number of affected parties, including the Governor of Michigan,¹⁹ the Michigan Public Service Commission (“MPSC”),²⁰ the Michigan Public Power Agency (“MPPA”),²¹

¹⁴ E.g., <http://www.nerc.com/Pages/default.aspx>.

¹⁵ See *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh’g and compliance*, 117 FERC ¶ 61,126 (2006), *aff’d sub nom. Alcoa Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009).

¹⁶ 16 USC § 824o.

¹⁷ NERC, NERC Balancing Authority Certification Final Report: Michigan Upper Peninsula (MIUP), NCR-TBD, at 2, 10 (Aug. 28, 2014), attached as Exhibit B.

¹⁸ See MISO, Regional Transmission Organization (RTO) Reliability Plan at 4, 26 (June 1, 2014), attached as Exhibit C (listing MIUP among the “Balancing Areas within the MISO Reliability Coordination Area”); RF, Conference Call Minutes, April 3, 2014, attached as Exhibit D (approving MISO plan “splitting the We Energies LBA along the Michigan and Wisconsin boundaries . . . [b]y unanimous voice vote”).

¹⁹ Governor Rick Snyder Aug. 18, 2014 Letter to NERC, attached as Exhibit E.

Verso Paper Corp. (“Verso”),²² Integrys Energy Services, Inc. (“Integrys”),²³ and the Mines objected to WEPCO’s proposal to split the WEC LBA.

15. On August 29, 2014, NERC informed WEPCO that, *inter alia*, based on the recommendation of the CT and RF’s approval, NERC had approved and confirmed the certification of the MIUP as an LBA effective December 1, 2014.²⁴

4. There Is No Reliability-Based Justification for the Proposed Split of the WEC LBA

16. There was no substantial evidence that the split of the WEC LBA and formation of the MIUP LBA was *required*, or even prudent, from an engineering viewpoint in order to address reliability deficiencies or concerns in the existing WEC LBA.
 - (a) The WEC LBA has existed for decades and has experienced no serious reliability violations during that time.
 - (b) The WEC LBA has been a part of the Coordinated Functional Registration (“CFR”) process required by NERC/MISO and has consistently passed the “at least annually” reviews for compliance.
17. Even WEPCO has conceded, “[C]reating metering boundaries of the MIUP Balancing Authority Area will not itself directly improve the physical reliability challenges”²⁵.

²⁰ MPSC Aug. 15, 2014 Letter to NERC, attached as Exhibit F.

²¹ MPPA Aug. 18, 2014 Letter to NERC and MPPA Aug. 18, 2014 Letter to WEPCO; attached as Exhibits G and H, respectively.

²² See Verso August 28, 2014 Request for Rehearing and Motion to Lodge, *Midcontinent Indep. Sys. Operator, Inc.*, Docket No. ER12-1242, *et al.*, at 17, Accession No. 20140828-5243.

²³ MISO June 23, 2014 Letter to Integrys, attached as Exhibit I.

²⁴ NERC Aug. 29, 2014 Letter to WEPCO at 1, attached as Exhibit J.

²⁵ We Energies, MIUP Balancing Authority Overview (May 13, 2014) at 3.

18. Equally important, there was no substantial evidence that the split of the WEC LBA and formation of the MIUP LBA will enhance or improve reliability in the proposed MIUP LBA.
 - (a) WEPCO admits that “[WEPCO’s] current BA operations will also operate the new BA (“MIUP”) utilizing **existing** personnel, infrastructure, tools and processes”.²⁶
 - (b) Thus, no new personnel are being hired by WEPCO.
 - (c) WEPCO’s existing EMS system will continue to be utilized. WEPCO’s existing processes and procedures are merely being modified to reflect the split of the existing WEC LBA, with no substantive change.
 - (d) The split of the WEC LBA and the formation of the MIUP LBA does not contemplate any new generation facilities, transmission facilities, switching or metering facilities, or any other infrastructure modifications, additions or improvements that could contribute to enhanced reliability or eliminate existing reliability deficiencies or concerns.
19. Under such circumstances, there exists no reliability basis for the proposed split of the WEC LBA and the formation of the MIUP LBA.
20. As a cost-shifting mechanism “rather than a reliability enhancement,” the “cost allocation” consequences of the split of the WEC LBA and formation of the MIUP LBA fall outside NERC’s purview.
21. NERC itself has recognized its limited jurisdictional role with respect to the MIUP LBA:
NERC has no authority to address the cost allocation issues raised in response to the proposal to form the MIUP BA.²⁷

²⁶ *Id.* at 9 (emphasis added).

5. The Proposed Split of the WEC LBA Yields Unjust and Unreasonable SSR Rates

22. The split of the WEC LBA will have significant impacts on the allocation of Presque Isle SSR costs and, therefore, on SSR rates charged to customers in the UP.
23. The creation of the MIUP LBA will result in significant shifting of SSR costs from Wisconsin ratepayers to the ratepayers in the UP generally, and to the Mines in particular.
24. Under MISO's August 11, 2014 Compliance filing required by the July 29 Order in Docket No. ER14-34-000, the allocation of Presque Isle SSR costs to LSEs in the WEC LBA pursuant to MISO's Tariff is:

WEC LBA		
LSEs in UP	8.65%	
LSEs in Wisc.	<u>85.14%</u>	
WEC LBA Total		93.79%
Other		
Michigan	5.66%	
Wisconsin	<u>0.55%</u>	
Total Other		<u>6.21%</u>
Total		100.00%

25. In other words, the total Michigan share of Presque Isle SSR costs is 14.31%; Wisconsin's share of the Presque Isle SSR costs is 85.69%.
26. If the WEC LBA is split and the MIUP LBA is created as proposed by WEPCO, the comparable allocation of Presque Isle SSR costs to LSEs in the two BAs which formerly comprised the WEC LBA will be:

²⁷ NERC Aug. 29, 2014 Letter to MPSC, attached as Exhibit K; NERC Aug. 29, 2014 Letter to W. Demarest (undersigned counsel), attached as Exhibit L.

MIUP LBA		
LSEs in UP		93.57%
New WEC LBA		
LSEs in Wisc.		0.22%
Other		
Michigan	5.66%	
Wisconsin	<u>0.55%</u>	
Total Other		<u>6.21%</u>
Total		<u>100.00%</u> ²⁸

27. Following the split of the WEC LBA and formation of the MIUP LBA, the total Michigan share of Presque Isle SSR costs is increased to 99.23%; Wisconsin's share of the Presque Isle SSR costs is reduced to a negligible 0.77%.
28. The change in allocation of SSR costs, between customers served by LSEs in the UP and customers served by LSEs in Wisconsin, before and after the split of the WEC LBA and formation of the MIUP LBA is as follows:

	UP LSEs	Wisc. LSEs
Before split of WEC LBA:	14.31%	85.69%
After split of WEC LBA:	99.23%	0.77% ²⁹

29. The cost shift resulting from the split of the WEC LBA and formation of the MIUP LBA is as dramatic as the allocation of Presque Isle SSR costs about which the WPSC complained in Docket No. ER14-34-000, and on the basis of which the July 29 Order found the MISO Tariff to be unjust, unreasonable and unduly discriminatory.
30. Because the Presque Isle SSR fixed costs are approximately \$52 million annually, the cost shift resulting from the split of the WEC LBA and formation of the MIUP LBA is approximately \$44.16 million.³⁰

²⁸ MISO, West Technical Study Task, Force Presque Isle SSR Cost Allocation – Updated Results, at 6-7 (Aug. 11, 2014), attached as Exhibit M.

²⁹ *Id.*

³⁰ (99.23% - 14.31%) x \$52 million.

31. Assuming 3,000,000 MWh of load in the UP, the shifting of \$44.16 million in Presque Isle SSR costs to UP ratepayers would yield an approximately \$14.72/MWh increase in UP SSR rates.
32. Such a shift in the allocation of SSR costs yields SSR rates which are unjust and unreasonable, and unduly discriminatory.

B. COUNT I – COMPLAINT VS. MISO

33. The Mines incorporate by reference as if set forth in their entirety, the foregoing paragraphs 1-32.
34. MISO denies any role in the approval of the split of the WEC LBA or approval of the MIUP LBA.³¹
35. MISO asserts that registration and certification processes for formation of a new LBA are administered by NERC and that the split of the WEC LBA or approval of the MIUP LBA was “not subject to [MISO’s] review and approval.”
36. MISO submitted the revisions to MISO’s “Regional Transmission Organization Reliability Plan” to NERC for NERC’s review.
37. The proposed revisions included the formation of the new MIUP LBA proposed by WEPCO.³²
38. For its part, however, NERC denied any “authority to address the cost allocation issues” raised by WEPCO’s proposal to form the MIUP LBA.³³

³¹ Exhibit I.

³² ORS Meeting Minutes, May 6, 2014, attached as Exhibit N.

³³ Exhibit K.

1. The Resulting Changes in Rates Are Unjust and Unreasonable.

39. The split of the WEC LBA will have significant impacts on the allocation of Presque Isle SSR costs and, therefore, on SSR rates charged to customers in the UP.
40. As noted above, the creation of the MIUP LBA will result in significant shifting of SSR costs from Wisconsin ratepayers to the ratepayers in the UP generally, and to the Mines in particular.
41. If the WEC LBA is split and the MIUP LBA is created as proposed by WEPCO, the total Michigan share of Presque Isle SSR costs will increase from 14.31% to 99.23%, while the Wisconsin share of those costs will decrease from 85.69% to 0.77%.
42. The cost shift resulting from the split of the WEC LBA and formation of the MIUP LBA is as dramatic as the allocation of Presque Isle SSR costs about which the WPSC complained in Docket No. ER14-34-000, and on the basis of which the July 29 Order found the MISO Tariff to be unjust, unreasonable and unduly discriminatory.
43. Such an increase in allocation of SSR costs yields SSR rates which are unjust and unreasonable, and unduly discriminatory.
44. The effect of the proposed split of the WEC LBA and the formation of the MIUP LBA on the allocation of SSR costs and the SSR rates in the UP is unjust, unreasonable, and unduly discriminatory, in violation of the FPA.
45. The proposed split of the WEC LBA and formation of the MIUP LBA may not be implemented by MISO without Commission approval due to the effect of the actions on the allocation of SSR costs to, and the level of SSR rates in, the UP.
46. MISO's implementation of the MIUP LBA without Commission approval is unlawful and in violation of Section 205 of the FPA giving FERC exclusive jurisdiction over rates

and terms and conditions of service, and requiring that any change in rates, as well as changes in terms and conditions of service affecting rates (such as the formation of the MIUP LBA), must be just and reasonable, and may not be unduly discriminatory or unduly preferential.

2. MISO's Tariff Is Unjust and Unreasonable.

47. MISO's Tariff does not require MISO to submit for approval by the Commission proposed changes in MISO's Regional Transmission Organization Reliability Plan that result due to formation of a new LBA, the consequence of which is to have substantial effects on rates charged to consumers.
48. This failure renders MISO's Tariff unjust and unreasonable.

3. The Lack of Adequate Procedures in MISO's Tariff Renders the Tariff Unjust and Unreasonable.

49. The provisions of MISO's Tariff are deficient, unjust, and unreasonable under the FPA because they:
 - (a) do not provide adequate transparency to the process by which MISO implements proposals to form a new LBA having significant impacts on SSR rates;
 - (b) do not provide interested parties adequate notice of proposals to form new LBAs having significant impacts on SSR rates in general, and did not provide adequate notice of the proposed formation of the MIUP LBA;
 - (c) do not afford interested parties an opportunity to be heard in opposition to proposals to form new LBAs having significant impacts on SSR rates in general, and did not afford interested parties an opportunity to be heard in opposition to the proposed formation of the MIUP LBA;

- (d) do not provide for access by interested parties to the information submitted in support of proposals to form new LBAs having significant impacts on SSR rates in general, and did not provide for access by interested parties to the information submitted in support of the proposed formation of the MIUP LBA;
- (e) do not require substantial evidence of the justness and reasonableness of the rate consequences of any proposal to form new LBAs having significant impacts on SSR rates in general, and did not require substantial evidence of the rate consequences of proposed formation of the MIUP LBA;
- (f) do not require MISO to provide a reasoned explanation for, and disclosure of the basis of, MISO's acceptance or implementation of any proposal to form new LBAs having significant impacts on SSR rates in general, and did not require MISO to provide a reasoned explanation for, and disclosure of the basis of, MISO's acceptance or implementation of the proposed formation of the MIUP LBA;
- (g) do not require submission of MISO's acceptance or implementation of proposals to form new LBAs having significant impacts on SSR rates to FERC for approval, taking into account the rate implications of such proposals, and did not require submission of MISO's acceptance or implementation of the formation of the MIUP LBA to FERC for approval, taking into account the rate implications of the proposed formation of the MIUP LBA.

D. COUNT II – COMPLAINT VS. WEPCO

50. The Mines incorporate by reference as if set forth in their entirety, the foregoing paragraphs 1-49.

51. WEPCO currently operates the WEC LBA.
52. In February 2014, in anticipation of the rate consequences of the allocation of SSR costs pursuant to MISO's filings in Docket Nos. ER14-1242-000 and ER14-1243-000, WEPCO proposed to split the WEC LBA into the MIUP LBA and the new WEC LBA.³⁴
53. The split of the WEC LBA will have significant impacts on the allocation of Presque Isle SSR costs and, therefore, on SSR rates charged to customers in the UP.
54. The creation of the MIUP LBA would result in significant shifting of SSR costs from Wisconsin ratepayers to the ratepayers in the UP generally, and to the Mines in particular.
55. WEPCO has presented no substantial evidence that the split of the WEC LBA and formation of the MIUP LBA was *required*, or even prudent, from an engineering viewpoint in order to address reliability deficiencies or concerns in the existing WEC LBA.
56. WEPCO has presented no substantial evidence that the split of the WEC LBA and formation of the MIUP LBA will enhance or improve reliability in the proposed MIUP LBA.
57. On information and belief, WEPCO's proposal to split the WEC LBA and form the MIUP LBA is intended and designed to shift the burden of the Presque Isle SSR costs from ratepayers in Wisconsin to ratepayers in Michigan.
58. On information and belief, WEPCO hoped that by justifying the proposed split of the WEC LBA and formation of the MIUP LBA in a cloak of reliability-based contentions WEPCO could legitimatize its economically motivated cost-shifting scheme.

³⁴ E.g., Exhibit A. at 2, 5-7.

59. WEPCO has conceded, however, that “creating metering boundaries of the MIUP Balancing Authority Area will not itself directly improve the physical reliability challenges”.³⁵
60. The proposed split of the WEC LBA and formation of the MIUP LBA may not be implemented by WEPCO without approval of the FERC due to the effect of those actions on the allocation of SSR costs to, and the level of SSR rates in, the UP.
61. WEPCO’s implementation of the MIUP LBA without Commission approval is unlawful and violates Section 205 of the FPA.

E. RELIEF REQUESTED

62. Based on the foregoing, the Mines request the Commission to:
 - (a) Prohibit WEPCO from implementing the MIUP LBA absent approval from FERC;
 - (b) Prohibit MISO from accepting and implementing the proposed split of the WEC LBA and formation of the MIUP LBA, absent a FERC-approved rate filing;
 - (c) Find MISO in violation of its Tariff by implementing a new LBA which has substantial impacts on rates without a Commission-approved rate or tariff filing, or in the alternative, find MISO’s Tariff to be unjust and unreasonable, and unduly discriminatory or preferential if it allows MISO to implement a new LBA, which may have a substantial impact on rates, without Commission approval;
 - (d) Clarify that under Sections 205 and 206 of the FPA, neither MISO nor WEPCO may implement a change in LBA boundaries or formation of a new LBA without the prior approval of the Commission if the proposed change in LBA boundaries

³⁵ *Id.* at 3.

or formation of a new LBA has significant impacts on the allocation of costs, including SSR costs, which may have a substantial effect on SSR rates, because such rates may be unjust, unreasonable, and unduly discriminatory or preferential, in contravention of the FPA.

63. In addition, the Mines request that the Commission make the following rulings regarding the applicability of FPA Sections 205 and 206 when a proposed split of an existing LBA and formation of a new LBA have significant rate consequences:
- (a) Where a proposed split of an LBA and formation of a new LBA has significant potential rate consequences, an RTO may not implement the proposed split of the LBA and the formation of a new LBA without filing with FERC for approval of the split and/or formation of the new LBA in light of the potential consequences on rates from such actions.
 - (b) Where a proposed split of an LBA and formation of a new LBA has significant rate consequences, FERC has jurisdiction under the FPA to review the proposed LBA split and the formation of the new LBA.
 - (c) Where a proposed split of an LBA and formation of a new LBA has significant rate consequences, FERC has authority under the FPA to reject the LBA split and/or formation of the new LBA if such actions would have unjust and unreasonable or unduly discriminatory consequences on rates.

V. COMPLIANCE WITH RULE 206(b)

In accordance with the Commission's regulations, 18 C.F.R. § 385.206, the Mines state as follows:

1. 18 C.F.R. § 385.206(b)(6). The issues presented are not pending in any existing Commission proceeding or a proceeding in any other forum in which the Mines are parties.

2. 18 C.F.R. § 385.206(b)(8). Attached as Exhibits A-O are all documents that support the facts in the complaint in possession of, or otherwise attainable by, the Mines.

3. 18 C.F.R. § 385.206(b)(9). The Enforcement Hotline, Dispute Resolution Service, tariff-based dispute resolution mechanisms, and other informal dispute resolution procedures were not used because the positions of the parties are well established based upon pleadings in FERC Docket Nos. ER14-1242, ER14-1243, and EL14-34. In addition, the undersigned counsel for the Mines sent a letter to MISO regarding the matters which are the subject of this Complaint, and MISO's Sept. 5, 2014 response thereto is set forth as Exhibit O. This correspondence strongly suggests that alternative dispute resolution under the Commission's supervision would not successfully resolve the Complaint.

4. 18 C.F.R. § 385.206(b)(10). A form of notice of the Complaint suitable for publication in the Federal Register on electronic media is provided with this filing.

5. 18 C.F.R. § 385.206(b)(11). Fast Track procedures have not been requested.

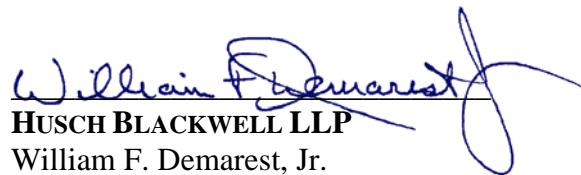
VI. CONCLUSION

WHEREFORE, for the foregoing reasons, the Mines respectfully request that the Commission accept this Complaint, rule expeditiously on the merits, and grant the relief requested.

Respectfully submitted,

**TILDEN MINING COMPANY L.C. AND
EMPIRE IRON MINING PARTNERSHIP**

Dated: September 19, 2014


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GLOSSARY OF ACRONYMS AND ABBREVIATIONS

April 1 Order	<i>Midcontinent Indep. Sys. Operator, Inc.</i> , 147 FERC ¶ 61,004 (2014)
ATC	American Transmission Company
CFR	Coordinated Functional Registration
CT	Certification Team
ERO	Electric Reliability Organization
FERC or Commission	Federal Energy Regulatory Commission
FPA	Federal Power Act
Integrys	Integrys Energy Services, Inc.
July 29 Order	<i>Midcontinent Indep. Sys. Operator, Inc.</i> , 148 FERC ¶ 61,071, (2014)
LBA	Local Balancing Authority
LSE	Load Serving Entity
MISO	Midcontinent Independent System Operator, Inc., an RTO
MIUP LBA	A proposed new LBA consisting of the Upper Peninsula of Michigan and a very small area of far northern Wisconsin
MPPA	Michigan Public Power Agency
MPSC	Michigan Public Service Commission
MRO	Midcontinent Reliability Organization, a NERC Regional Reliability Entity
NERC	North American Electric Reliability Corporation
New WEC LBA	A proposed new local balancing authority in Wisconsin
OC	Operating Committee of NERC
ORS	Operating Reliability Subcommittee of NERC
REA	Rural Electrification Act
RF	ReliabilityFirst Corporation, a NERC Regional Reliability Entity

RTO	Regional Transmission Organization
SSR	System Support Resource
Tariff	MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff
The Mines	Tilden Mining Company L.C. and Empire Iron Mining Partnership
UP	Upper Peninsula
Verso	Verso Paper Corp.
WEC LBA	WEPCO's current Local Balancing Authority
WEPCO	Wisconsin Electric Power Company
WPSC	Public Service Commission of Wisconsin
WPSC Complaint	Public Service Commission of Wisconsin Complaint, <i>Pub. Serv. Comm'n of Wis. v. Midcontinent Indep. Transmission Sys. Operator</i> , Docket No. EL14-34-000, Accession No. 20140403-5147

LIST OF EXHIBITS

- Exhibit A** We Energies, MIUP Balancing Authority Overview (May 13, 2014)
- Exhibit B** NERC, NERC Balancing Authority Certification Final Report: Michigan Upper Peninsula (MIUP), NCR-TBD (Aug. 28, 2014)
- Exhibit C** Regional Transmission Organization (RTO) Reliability Plan (June 1, 2014)
- Exhibit D** RF Conference Call Minutes (April 3, 2014)
- Exhibit E** Governor Rick Snyder Aug. 18, 2014 Letter to NERC
- Exhibit F** MPSC Aug. 15, 2014 Letter to NERC
- Exhibit G** MPPA Aug. 18, 2014 Letter to NERC
- Exhibit H** MPPA Aug. 18, 2014 Letter to WEPCO
- Exhibit I** MISO June 23, 2014 Letter to Integrys
- Exhibit J** NERC Aug. 29, 2014 Letter to WEPCO
- Exhibit K** NERC Aug. 29, 2014 Letter to MPSC
- Exhibit L** NERC Aug. 29, 2014 Letter to W. Demarest
- Exhibit M** MISO, West Technical Study Task, Force Presque Isle SSR Cost Allocation (Aug. 11, 2014)
- Exhibit N** ORS Meeting Minutes (May 6, 2014)
- Exhibit O** MISO Sept 5, 2014 Response to W. Demarest

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person named as a Respondent in the foregoing Complaint.

Dated at Washington, D.C., this 19th day of September 2014.

Anne Fazzini
Anne Fazzini