



**ORGANIZATION OF MISO STATES, INC.  
Board of Directors Meeting  
Conference Call Minutes  
December 1, 2008**

Approved January 8, 2008

John Norris, President of the Organization of MISO States, Inc. (OMS), called the December 1, 2008 meeting of the OMS Board of Directors to order via conference call at approximately 1:00 p.m. (CST). The following board members or their proxies participated in the meeting:

Randy Rismiller, proxy for Bob Lieberman, Illinois  
Greg Server, Indiana  
Parveen Baig, proxy for John Norris, Iowa  
Bill Bowker, proxy for David Armstrong, Kentucky  
Monica Martinez, Michigan  
Burl Haar, proxy for Tom Pugh, Minnesota  
Mike Proctor, proxy for Jeff Davis, Missouri  
Greg Jergeson, Montana  
Tim Texel, proxy for Eugene Bade, Nebraska  
Susan Wefald, North Dakota  
Valerie Lemmie, Ohio  
Jim Melia, proxy for Kim Pizzingrilli, Pennsylvania  
Gary Hanson, South Dakota  
Lauren Azar, Wisconsin

Absent  
Manitoba

Agency members participating

Bob Pauley – Indiana  
Bill Bokram, Angie Butcher – Michigan  
Nancy Campbell – Minnesota  
Brian Dekiep – Montana  
Jerry Lein – North Dakota  
Greg Rislov – South Dakota  
Randel Pilo – Wisconsin

Others on the call

Bill Smith, Julie Mitchell – OMS Staff  
Graham Edwards – MISO

The directors and proxies listed above established the necessary quorum for the meeting of at least eight directors being present.

## **MISO Report**

Graham Edwards spoke to the Board briefly, stating that he received Bill Smith's letter regarding ASM issues and MISO will be responding accordingly. He also gave the Board an ASM update and requested time for a full briefing at a later date. He also addressed MISO's position on the Pioneer Project, which he said must go through the MTEP process.

## **Approval of Minutes from October 14 and November 13, 2008 Board of Directors meetings**

Valerie Lemmie moved approval of the October 14<sup>th</sup> minutes. Susan Wefald seconded. The minutes were approved by unanimous voice vote.

Valerie Lemmie moved to approve the November 13 minutes. Monica Martinez seconded. Tim Texel requested clarification on page 3. He asked that the sentence be changed to "the Board would prefer to table the issue until after the initial cost allocation meeting in January." The motion was approved by unanimous voice vote with the correction.

## **Treasurer's Report**

There is no Treasurer's report due to the date. The bank statement was received this morning.

## **Review of the Executive Committee Meeting – Bill Smith**

There was no Executive Committee meeting this month.

## **Administrative Report from Executive Director – Bill Smith**

There following items were highlighted from the Executive Director's Report:

- No FERC activity to report, nor OMS, nor MISO activity.
- Upcoming dates at the bottom of the agenda.
- Monday, December 8th is a MWDRI workshop in Chicago on responsive pricing. The agenda for the meeting should be sent out today.
- Bill Smith will send out Commissioner Lemmie's documents on price responsive demand. These documents should be reviewed before the upcoming workshop.

## **BUSINESS**

### **1. MISO Advisory Committee Issues/December Hot Topic – Lauren Azar**

- Lauren Azar discussed the way MISO was planning to deal with FERC Order 719. MISO will give the Board a presentation on the MISO compliance filing on Order 719.
- The December hot topic is on Cost Allocation. OMS did not file a response and remains open to all ideas at this time.
- There is one nominee for chair of the Advisory Committee – Gary Mathis of Madison Gas and Electric. Two nominees for vice chair – David Hastings (current vice-chair) and Kevin Logura.

**Valerie Lemmie moved that the AC reps cast their votes for David Hastings for vice-chair of the AC. Susan Wefald seconded. The motion passed by unanimous voice vote.**

**Susan Wefald moved that the AC reps cast their votes for both the nominees for the ADR committee. Greg Server seconded. The motion passed by unanimous voice vote.**

### **2. MISO Planning Advisory Committee – Lauren Azar**

There will be no PAC meeting this month– therefore there is no report. Lauren Azar wishes to give up the PAC role for 2009. Valerie Lemmie said she would talk with Lauren after the call to see if it's something she's able to assume, if not, a volunteer will be solicited at the next OMS Board meeting.

**3. Final Adoption of the OMS Goal Statements for 2009.**

Burl Haar summarized the document. Valerie Lemmie moved to accept the recommendations of the committee. Greg Server seconded. The motion passed by unanimous voice vote.

**4. OMS Comments on MISO's Module E Compliance Filing, FERC Docket No. ER08-394.**

Don Neumeyer reviewed the document, ER08-394-004, OMS Motion for Reconsideration on Demand Resources.

Susan Wefald moved to accept document ER08-394-004. Mike Proctor seconded. The Board discussed the document.

**There was a roll call vote:**

Illinois – abstain  
Indiana – yes  
Iowa – yes  
Kentucky – yes  
Manitoba – absent  
Michigan – abstain  
Minnesota – abstain  
Missouri – yes  
Montana – abstain  
Nebraska – yes  
North Dakota – yes  
Ohio – yes  
Pennsylvania – abstain  
South Dakota – yes  
Wisconsin – yes

**Yes – 9, No – 0, Abstain – 5, Absent – 1**

**The vote will be held open until December 5 at noon so commissioners states abstaining can confer with their commissions.**

Document ER08-394-005, the OMS comment on MISO's Compliance Filing, went through the work group process and was approved. Don Neumeyer presented the document. Bill Bokram explained the Michigan changes to the document. There was debate about which draft to use. The Michigan edited document was withdrawn. Randy Rismiller suggested adding the words "retail choice states such as" on alternative retail suppliers.

Approval of the document was moved and seconded.

**There was a roll call vote:**

Illinois – abstain  
Indiana – yes  
Iowa – yes  
Kentucky – abstain  
Manitoba – absent  
Michigan – yes  
Minnesota – yes  
Missouri – yes  
Montana – abstain  
Nebraska – yes  
North Dakota – yes  
Ohio – abstain  
Pennsylvania – abstain  
South Dakota – yes  
Wisconsin – yes

Yes – 9, No – 0, Abstain – 5, Absent – 1

The vote will be held open until December 5 at noon so that states abstaining can confer with their commissions.

Consideration of the OMS Comment on IMM Compliance Filing, Document ER08-394-008, began with a review of the document by Don Neumeyer.

Burl Haar moved to approve the document. Greg Jergeson seconded the motion.

There was a roll call vote.

Illinois – abstain  
Indiana – absent/no proxy  
Iowa – yes  
Kentucky – yes  
Manitoba – absent  
Michigan – yes  
Minnesota – yes  
Missouri – yes  
Montana – abstain  
Nebraska – yes  
North Dakota – abstain  
Ohio – abstain  
Pennsylvania – abstain  
South Dakota – yes  
Wisconsin – yes

Yes – 9, No – 0, Abstain – 5, Absent – 2

The vote will be held open until December 5 at noon so states abstaining can confer with their commissions and change their votes.

**5. OMS Intervention in Pioneer Transmission LLC, FERC Docket No. ER09-75**

Bob Pauley gave the Board an overview on the project. The Board discussed whether OMS was interested in intervening in this issue. Burl Haar moved that OMS petition FERC for intervention on this issue without taking a specific position. Greg Server seconded. The motion passed by unanimous voice vote.

**6. Plans for January Meeting Relating to Cost Allocation/Regional Planning**

There is no time set yet for the meeting. It will probably be a day and a half. A meeting wizard will be sent out to determine which dates are most feasible. Lauren Azar requested that all surveys be returned today.

**ANNOUNCEMENTS**

- Next OMS regular Board of Directors meeting, **January 8, 2009** at 1:00pm CST
- Next OMS Executive Committee meeting, **December 18, 2008** at 1:00pm CST
- Commissioner Workshop on Price Responsive Demand, **December 16, 2008**, 9:30 - 11 am CST.

**ADJOURNMENT**

The OMS Board of Directors meeting adjourned at 2:30 pm CST.

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

**Midwest Independent Transmission  
System Operator, Inc.**

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**Docket No. ER08-394-004**

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**MOTION FOR RECONSIDERATION  
BY THE ORGANIZATION OF MISO STATES, INC., IN SUPPORT OF THE REQUEST  
FOR REHEARING AND/OR CLARIFICATION BY  
THE MIDWEST INDEPENDENT TRANSMISSION SYSTEM OPERATOR, INC.**

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Under Section 313(a) of the Federal Power Act (“FPA”), 16 U.S.C. § 8251(a), and pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. § 385.212, the Organization of MISO States (OMS) supports the request of the Midwest Independent Transmission System Operator, Inc. (“Midwest ISO”) for rehearing and/or clarification of certain aspects of the Order Granting in Part and Denying in Part Rehearing, issued by the Commission on October 20, 2008.<sup>1</sup>

**I. INTRODUCTION**

On October 20, 2008, the Commission issued an order granting in part and denying in part rehearing regarding a March 26, 2008, Order in which the Commission had conditionally accepted Phase II of the Midwest ISO’s permanent resource adequacy program.<sup>2</sup> On November 19, 2008 the Midwest ISO respectfully requested that the Commission reconsider one aspect of the subject Rehearing Order and modify this element on rehearing, or, at the very least, further clarify this important aspect of the Rehearing Order.<sup>3</sup> OMS had previously intervened in this docket without opposition. OMS believes that the Commission must expeditiously seek to correct the described problem, and, notwithstanding the expiration of the 30-day period for rehearing petitions, accordingly moves the Commission to reconsider its Rehearing Order by

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<sup>1</sup> *Midwest Independent Transmission System Operator, Inc.*, 125 FERC ¶ 61,061 (2008) (“Rehearing Order”).

<sup>2</sup> *Midwest Independent Transmission System Operator, Inc.*, 122 FERC ¶ 61,283 (2008).

<sup>3</sup> November 20, 2008, Filing by MISO, Request for Rehearing and or Clarification of the Midwest Independent Transmission System Operator, Inc.; FERC Docket No. 08-394-001.

granting the Midwest ISO's request for such rehearing and/or clarification, as set forth below. In support thereof, the OMS states the following:

## **II. STATEMENT OF ISSUES AND SPECIFICATIONS OF ERROR/ CLARIFICATION**

The OMS strongly concurs with the Midwest ISO's description of the issues and specification of error or clarification, as set forth below:

1. The Commission erred in failing to distinguish between Demand Resources and Behind the Meter Generation in rejecting the Midwest ISO's forecast Load netting proposal.
  
2. In addition, the Commission erred in failing to permit verifiable Demand Resources from being netted against a Load Serving Entity's forecast load requirements.

## **III. ARGUMENT**

### **The Commission Erred In Failing to Distinguish Between Demand Resources and Behind-the-Meter Generation.**

In its request, the MISO indicates that:

“In the Rehearing Order, the Commission recognized that Load Modifying Resources (“LMRs”) consist of two types of resources, Demand Resources (“DRs”) and Behind the Meter Generation (“BTMG”), which serve to reduce a Load Serving Entity's (“LSE's”) peak load in different ways. DRs, as defined in the Midwest ISO's Energy and Operating Reserves Tariff consist of ‘Interruptible Load or Direct Load Management and other resources that can reduce Demand during Emergencies’.”<sup>4</sup>

The OMS concurs with these definitions. Paragraph 64 of the Rehearing Order, FERC docket ER08-394-001, indicates that both LMRs and behind-the-meter generation resources should carry planning reserves. The OMS believes that paragraph contains a drafting mistake, and that FERC did not intend all LMRs to be included, just utility behind-the-meter generation. Under the predecessor Mid-American Interconnected Network (MAIN) and Mid-Continent Area Power Pool (MAPP) reliability guidelines, LMRs, which are non-firm load, could be netted against load. If left in place, Paragraph 64 of the Rehearing Order would be interpreted to mean

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<sup>4</sup> *Id.* at 2.

utilities would need to carry additional planning reserves. This is in error and would in practice create inappropriate incentives against LMR programs.

#### IV. CONCLUSION

**WHEREFORE**, for the foregoing reasons, the OMS respectfully requests that the Commission grant rehearing and/or clarification of the Rehearing Order, as set forth herein.

The OMS submits these comments because a majority of the members have agreed to generally support them. Individual OMS members reserve the right to file separate comments regarding the issues discussed in these comments. The following members generally support these comments.

Iowa Utilities Board  
Indiana Utility Regulatory Commission  
Kentucky Public Service Commission  
Missouri Public Service Commission  
Montana Public Service Commission  
Nebraska Power Review Board  
North Dakota Public Service Commission  
Public Utilities Commission of Ohio  
South Dakota Public Utilities Commission  
Wisconsin Public Service Commission

The Illinois Commerce Commission, Michigan Public Service Commission, Minnesota Public Utilities Commission, and the Pennsylvania Public Utility Commission abstained from the vote on this pleading.

The Manitoba Public Utilities Board did not participate in this pleading.

The Indiana Office of Utility Consumer Counselor and the Iowa Office of Consumer Advocate, as associate members of the OMS, participated in this pleading and generally support it.

Respectfully Submitted,  
William H. Smith, Jr.  
William H. Smith, Jr.  
Executive Director  
Organization of MISO States  
100 Court Avenue, Suite 218  
Des Moines, Iowa 50309  
Tel: 515-243-0742

Dated: December 5, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Des Moines, Iowa, this 5th day of December 2008.

William H. Smith, Jr.

William H. Smith, Jr.

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

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Midwest Independent Transmission System Operator, Inc.	)	Docket No. ER08-394-005
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**COMMENTS OF THE ORGANIZATION OF MISO STATES**

Pursuant to Rule 212 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, 18 C.F.R. 385.212, as well as the Notice issued on November 24, 2008, the Organization of MISO States ("OMS") hereby submits these comments in response to the November 19, 2008 compliance filing submitted by the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO") in the above captioned docket.

**I. BACKGROUND**

In response to prior Commission direction, on June 6, 2006, the Midwest ISO filed with the Commission a two-phased approach to permanent resource adequacy.<sup>1</sup> On September 26, 2006, the Commission accepted the Midwest ISO's proposed phased approach.<sup>2</sup> On February 15, 2007, the Midwest ISO filed Phase I of its resource adequacy plan. On December 28, 2007, the Midwest ISO filed Phase II of its resource adequacy plan.

On March 26, 2008, the Commission issued an order that conditionally accepted the Midwest ISO's Phase II resource adequacy filing.<sup>3</sup> In particular, the Commission's March 26 Order directed the Midwest ISO to submit two compliance filings. One compliance filing was to be made within 60 days of the March Order and another one was to be made within 180 days of the March Order. The Midwest ISO made its 60 day compliance filing on May 27, 2008 and its 180 day compliance filing on June 25, 2008.

Numerous parties filed Requests for Rehearing regarding the Commission's March 26

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<sup>1</sup> *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶61,163, *order on reh'g*, 109 FERC ¶61,157 (2004), *order on reh'g*, 111 FERC ¶61,043, *reh'g denied*, 112 FERC ¶61,086 (2005). *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶61,285 (2004), *order on reh'g*, 111 FERC ¶61,043 (2005).

<sup>2</sup> *Midwest Independent Transmission System Operator, Inc.*, 116 FERC ¶ 61,292 (2006).

<sup>3</sup> *Midwest Independent System Operator, Inc.*, 122 FERC ¶ 61,283 (2008) (March 26 Order).

order and on October 20, 2008, the Commission issued an Order on Rehearing that effectively granted in part and denied in part the requests for rehearing.<sup>4</sup> The compliance issues discussed in the Midwest ISO's November 19 filing reflect those directives in the October 20 Rehearing order which the Commission required the Midwest ISO to address in a 30-day compliance filing.

## **II. DISCUSSION**

In the Commission's Rehearing Order, the Commission addressed a provision of the Midwest ISO's proposed Module E tariff (Section 69) that would require the Midwest ISO to "validate that LSEs have arranged for sufficient Planning Resources to meet its RAR" and to provide resource adequacy information, upon request, to applicable states.<sup>5</sup> The Commission was responding to a request from Hoosier Energy Rural Electric Cooperative, Inc. and Southern Illinois Power Cooperative ("Hoosier and Southern Illinois") to clarify that, because Hoosier and Southern Illinois are apparently not subject to state rate regulation, their resource adequacy information would not be reported by the Midwest ISO to their respective state regulatory commissions.

The Commission granted the request from Hoosier and Southern Illinois and directed the Midwest ISO to make changes to Section 69.<sup>6</sup>

In its November 19, 2008 compliance filing, the Midwest ISO submitted proposed changes to Section 69. However, the Midwest ISO's proposed changes may have substantially more widespread effect than that intended by the Commission. As recommended by the Commission, the Midwest ISO's proposed changes to Section 69 would exclude Hoosier and Southern Illinois, and other similarly situated municipal and cooperative utilities, from having their resource adequacy information submitted to their states' public utility commissions.

However, the Midwest ISO's proposed changes to Section 69 could also be interpreted to exclude alternative retail electric suppliers in retail open access states from having their resource adequacy information reported to relevant retail regulators. The OMS suggests that such a result goes far beyond that intended by Paragraph 121 of the Commission's October 20, 2008 Order.

The problem with the Midwest ISO's proposed compliance language is that it refers only

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<sup>4</sup> *Midwest Independent Transmission System Operator, Inc.*, 125 FERC ¶ 61,061 (2008), (Rehearing Order)

<sup>5</sup> Rehearing Order, at P 121.

<sup>6</sup> Rehearing Order, at P 121.

to “an LSE subject to rate regulation by such state regulatory authority.”<sup>7</sup> Because it refers only to “rate regulation,” some might interpret that phrase to exclude alternative retail electric suppliers in retail open access states. A review of the Rehearing Order will show such an interpretation would not reflect the Commission’s intention:

“We grant the rehearing request of Hoosier and Southern Illinois and clarify that the Midwest ISO should not submit resource adequacy information to the state for entities not subject to state jurisdiction. We find that the language suggested by Hoosier and Southern Illinois will add appropriate clarity to the tariff regarding disclosure of information. “<sup>8</sup>

The Commission’s intention in the first sentence appears to be to remove those entities not subject to state jurisdiction from the reporting requirement. However, alternative electric suppliers in retail choice states such as Illinois, for example are certainly subject to state jurisdiction. Sections 16-115, 16-115A, and 16-115B of the Illinois Public Utilities Act lay out the jurisdictional authority of the ICC over alternative retail suppliers. The OMS is concerned that the term “rate regulation” does not add the clarity sought by the Commission in its Order, but may actually serve to create confusion for the Midwest ISO and other parties with respect to their obligations to state commissions.

State commissions must have access to resource adequacy information about alternative retail electric suppliers operating in our states. Such information is necessary to allow state commissions to fulfill their obligations of ensuring system reliability and reliable customer service. The resource adequacy of alternative retail electric suppliers also directly affects state commissions’ responsibilities with respect to provider of last resort service to retail electric customers.

Therefore, the OMS recommends that the Commission direct the Midwest ISO to submit a further compliance filing to delete the word “rate” and insert the words “or using delivery services rates, terms or conditions established” between the words “regulation” and “by such state” in Section 69. Accordingly, we recommend that the parenthetical phrase in Section 69 read as follows:

(in the case of an LSE subject to ~~rate~~ regulation or using delivery services rates, terms or conditions established by such state regulatory authority).

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<sup>7</sup> Proposed Section 69, First Revised Sheet No. 1449.

<sup>8</sup> Rehearing Order, at P 121

### III. CONCLUSION

For the reasons explained above, the OMS requests that the Commission direct the Midwest ISO to submit a further compliance filing with additional changes to Section 69, such as those proposed above, to achieve the intent of Paragraph 121 of the Commission's Rehearing Order without being inadvertently and unintentionally over-sweeping.

The OMS submits these comments because a majority of the members have agreed to generally support them. Individual OMS members reserve the right to file separate comments regarding the issues discussed in these comments. The following members generally support these comments.

Illinois Commerce Commission  
Iowa Utilities Board  
Indiana Utility Regulatory Commission  
Michigan Public Service Commission  
Minnesota Public Utilities Commission  
Missouri Public Service Commission  
Montana Public Service Commission  
Nebraska Power Review Board  
North Dakota Public Service Commission  
South Dakota Public Utilities Commission  
Wisconsin Public Service Commission

The Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Pennsylvania Public Utility Commission abstained from the vote on this pleading.

The Manitoba Public Utilities Board did not participate in this pleading.

The Indiana Office of Utility Consumer Counselor, the Iowa Office of Consumer Advocate and the Minnesota Office of Energy Security, as associate members of the OMS, participated in this pleading and generally support it.

Respectfully Submitted,  
William H. Smith, Jr.  
William H. Smith, Jr.  
Executive Director  
Organization of MISO States  
100 Court Avenue, Suite 218  
Des Moines, Iowa 50309  
Tel: 515-243-0742

Dated: December 5, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Des Moines, Iowa, this 5th day of December 2008.

William H. Smith, Jr.  
William H. Smith, Jr.

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

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Midwest Independent System Operator, Inc. )

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Docket No. ER08-394-008

**COMMENTS OF THE ORGANIZATION OF MISO STATES**

**I. Background**

On November 19, 2008 (“November 19 Filing”) the Internal Market Monitor (“IMM”) of the Midwest ISO made a compliance filing ordered by the Federal Energy Regulatory Commission (“Commission”) on October 20, 2008.

**II. Discussion**

**A. The Midwest ISO and the Independent Market Monitor have still not provided an evaluation of “the potential for the exercise of market power in the capacity market”.**

In the Commission’s October 20 Financial Settlement Order, the Commission referred to its previous March 26 Order which found that “the issue of market power needed further evaluation.”<sup>1</sup> In the March 26 Order, the Commission “directed the Midwest ISO and the Independent Market Monitor to evaluate the potential for the exercise of market power in the capacity market.”<sup>2</sup>

In its November 19 Order, the Midwest ISO did not provide the required evaluation. Rather, the Midwest ISO stated that, “The Midwest ISO understands that the IMM is submitting a separate response to the Commission to address the subject issue.”<sup>3</sup>

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<sup>1</sup> *Midwest Independent Transmission System Operator, Inc.*, 125 FERC ¶ 61,060 (2008), at P 136 referring to the March 26 Order, 122 FERC ¶ 61,283 at P 390.

<sup>2</sup> *Midwest Independent Transmission System Operator, Inc.*, 125 FERC ¶ 61,060 (2008), at P 136 referring to the March 26 Order, 122 FERC ¶ 61,283 at P 390.

<sup>3</sup> *Compliance Filing of the Midwest ISO*, November 19, 2008, Docket No. ER08-394-007 at p. 12.

However, although the Independent Market Monitor submitted a filing on November 19, that filing does not provide an evaluation of “the potential for the exercise of market power in the capacity market.”

Accordingly, the Organization of MISO States (“OMS”) requests that the Commission direct the Midwest ISO and the Independent Market Monitor provide an evaluation of “the potential for the exercise of market power in the capacity market.”

**B. The Midwest ISO or the Independent Market Monitor must provide proposed tariff language regarding market power monitoring and market power mitigation and must revise Section 69.3.5.h.**

In the October 20 2008 Financial Settlement Order, the Commission stated as follows:

In response to concerns that the Midwest ISO’s proposal does not adequately explain the role of the Independent Market Monitor with respect to market power monitoring and mitigation, we agree that proposed section 69.3.5.h does not adequately define the scope of the Independent Market Monitor’s role. We require the Independent Market Monitor to explain in general terms how it intends to monitor market power in the voluntary capacity auctions and describe – without disclosing specific triggers – under what conditions it would report to the Commission that further modifications are necessary. We also require the Independent Market Monitor to specify the methods it will use to determine whether market power is being exercised and whether additional mitigation measures are needed, and what additional mitigation measures might look like. We require the Independent Market Monitor to include this information in a compliance filing to be submitted within 30 days of the date of this order.<sup>4</sup>

On November 19, 2008, the Midwest ISO’s Independent Market Monitor submitted a compliance filing to comply with the Commission’s directive in this paragraph.<sup>5</sup>

The IMM’s November 19 filing fails to satisfactorily comply with the Commission’s intent.

The market power monitoring process and the market power mitigation measures need to be spelled out in the Midwest ISO tariff. The Commission’s Financial Settlement Order specifically required the IMM to “specify the methods it will use to determine whether market power is being exercised and whether additional mitigation measures are needed, and what

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<sup>4</sup> *Midwest Independent Transmission System Operator, Inc.*, 125 FERC ¶ 61,060 (2008), at P 155.

<sup>5</sup> *Compliance Filing of the Midwest ISO’s Independent Market Monitor*, November 19, 2008, Docket No. ER08-394-008 at p. 1.

additional mitigation measures might look like.”<sup>6</sup> The specification of market power monitoring methods and the specification of additional market power mitigation measures are matters significantly affecting rates, and so, must be included in the Midwest ISO’s tariff.

The Commission’s Financial Settlement Order specifically stated that “proposed section 69.3.5.h does not adequately define the scope of the Independent Market Monitor’s role.”<sup>7</sup> This Commission statement clearly finds section 69.3.5.h of the Midwest ISO tariff to be inadequate and requires Section 69.3.5.h of the Midwest ISO tariff to be revised. However, neither the IMM nor the Midwest ISO proposed modifications to the inadequate tariff language in Section 69.3.5.h.<sup>8</sup>

As it stands, Section 69.3.5.h provides that the Midwest ISO, not the IMM, will be doing the market power monitoring. Section 69.3.5.h states, “The Transmission Provider will report any potential exercise of market power by LSEs or by Market Participants in the voluntary capacity auction procedures to the Independent Market Monitor.”<sup>9</sup> This language is clearly inconsistent with the proposal in the IMM’s November 19 filing.

Consequently, we request, once again, that the Commission direct the Midwest ISO or the IMM to propose market monitoring methods and market power mitigation measures for inclusion in the tariff and to revise Section 69.3.5.h accordingly.

**C. Several Existing Provisions of the Midwest ISO Tariff Must Be Modified to Accommodate the Market Monitoring Procedures Suggested by the IMM in the November 19 Filing.**

Section 50.2 of the Midwest ISO’s existing Module D states:

The IMM will monitor the Markets and Services provided by the Transmission Provider, including the imbalance energy market, any congestion management market or system, any Ancillary Services market, any market for the purchase or sale of transmission rights, and any other market administered, coordinated or facilitated by the Transmission Provider. The IMM will not monitor bilateral Energy or Capacity markets, or private transmission rights not administered, coordinated or facilitated by the Transmission Provider, except to periodically

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<sup>6</sup> *Midwest Independent Transmission System Operator, Inc.*, 125 FERC ¶ 61,060 (2008), at P 155.

<sup>7</sup> *Midwest Independent Transmission System Operator, Inc.*, 125 FERC ¶ 61,060 (2008), at P 155.

<sup>8</sup> We note that Footnote 33 of the Commission’s Financial Settlement Order suggests that it is the Midwest ISO’s responsibility to “amend its OATT” to incorporate protocols associated with market monitoring and market power mitigation of the capacity market.

<sup>9</sup> Proposed Module E Section 69.3.5.h.

assess the effect of these markets on the Energy Markets, or the effects of the Energy Markets on these markets.<sup>10</sup>

Under this provision of the existing tariff, the IMM is explicitly precluded from monitoring bilateral capacity markets. Nevertheless, in the November 19 filing, the IMM states,

we do not believe that section 50.2 of the Midwest ISO tariff, which prohibits monitoring of bilateral capacity market by the IMM, would preclude or otherwise encumber the market monitoring process discussed in this filing.<sup>11</sup>

The IMM's statement regarding Section 50.2 is difficult to reconcile with the IMM's proposal to monitor and screen for both physical and economic withholding.

Accordingly, we recommend that Section 50.2 of the Midwest ISO's tariff Module D be modified to provide for the explicit monitoring of bilateral capacity markets. There are several other modifications to Module D that will be needed to accommodate the necessary capacity market power monitoring and mitigation measures.

**D. The IMM's Market Monitoring and Market Power Mitigation Proposal Lacks Needed Detail.**

**1. The IMM must identify the universe of potential capacity resources.**

The IMM states that he will have access to information regarding "all resources that have been designated to satisfy an LSE's capacity requirements, as well as the offers to sell capacity from all previously undesignated resources."<sup>12</sup> The IMM suggests that, from this data, withheld resources can be identified. However, the IMM does not explain how the universe of potential capacity resources will be determined. That is, the IMM does not describe how he will determine resources that have not entered into bilateral contracts with Midwest ISO LSEs, not entered into capacity arrangements with buyers outside the Midwest ISO market, or not offered into the Midwest ISO's voluntary auction.

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<sup>10</sup> Midwest ISO's Transmission and Energy Market Tariff, Module D, Section 50.2, Second Revised Sheet No. 705, underlining added.

<sup>11</sup> *Compliance Filing of the Midwest ISO's Independent Market Monitor*, November 19, 2008, Docket No. ER08-394-008 at p. 7.

<sup>12</sup> *Compliance Filing of the Midwest ISO's Independent Market Monitor*, November 19, 2008, Docket No. ER08-394-008 at p. 2.

**2. The IMM must explain how “going forward costs” and “net going forward costs” will be calculated.**

The mitigation measures proposed by the IMM require the calculation of “going forward costs” and “net going forward costs.” This calculation requires a numerical expectation of capacity revenues, energy revenues, and ancillary services revenues. The IMM did not explain how the projection of revenues for any of these services will be forecasted.

**3. The IMM has not explained how the proposed “simulation” will work.**

In order to determine if withholding a capacity resources has a significant affect on the market clearing price for capacity, the IMM proposes to “simulate the capacity auction market to estimate the prices that would have prevailed in the voluntary market had the withheld capacity been offered competitively.”<sup>13</sup>

First, the IMM has not explained how the hypothetical “competitive offer” for the potentially withheld resource will be determined. The “competitive offer” is needed as an input into the simulation. Second, the IMM has not explained whether the hypothetical “competitive offers” for the potentially withheld resource will be entered into the simulation individually or in combination (i.e., is the examination for singly pivotal units or jointly pivotal units?).

### **III. Conclusion**

Wherefore, for the reasons explained above, we recommend that the Commission direct the Midwest ISO or the IMM to: (1) provide an evaluation of “the potential for the exercise of market power in the capacity market”; (2) provide proposed tariff language regarding market power monitoring and market power mitigation and revise Section 69.3.5.h; (3) revise Section 50.2 and other sections of the Midwest ISO’s Module D to accommodate capacity market power monitoring and mitigation and (4) provide the detail needed to conduct the market power monitoring and market power mitigation proposed by the IMM.

The OMS submits these comments because a majority of the members have agreed to generally support them. Individual OMS members reserve the right to file separate comments

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<sup>13</sup> *Compliance Filing of the Midwest ISO’s Independent Market Monitor*, November 19, 2008, Docket No. ER08-394-008 at p. 4.

regarding the issues discussed in these comments. The following members generally support these comments.

Illinois Commerce Commission  
Iowa Utilities Board  
Kentucky Public Service Commission  
Michigan Public Service Commission  
Minnesota Public Utilities Commission  
Missouri Public Service Commission  
Montana Public Service Commission  
Nebraska Power Review Board  
South Dakota Public Utilities Commission  
Wisconsin Public Service Commission

The, Indiana Utility Regulatory Commission, , North Dakota Public Service Commission Public Utilities Commission of Ohio and the Pennsylvania Public Utility Commission abstained from the vote on this pleading.

The Manitoba Public Utilities Board did not participate in this pleading.

The Indiana Office of Utility Consumer Counselor, the Iowa Office of Consumer Advocate and the Minnesota Office of Energy Security, as associate members of the OMS, participated in these comments and generally support these comments.

Respectfully Submitted,  
William H. Smith, Jr.  
William H. Smith, Jr.  
Executive Director  
Organization of MISO States  
100 Court Avenue, Suite 218  
Des Moines, Iowa 50309  
Tel: 515-243-0742

Dated: December 5, 2008

#### CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Des Moines, Iowa, this 5th day of December 2008.

William H. Smith, Jr.  
William H. Smith, Jr.

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

Pioneer Transmission LLC

Docket No. ER09-75

**MOTION OF THE ORGANIZATION OF MISO STATES  
FOR INTERVENTION OUT-OF-TIME**

Pursuant to Rule 214(a) of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(a), the Organization of MISO States (OMS) files its Motion for Intervention in the above-captioned proceeding. In support thereof, the OMS states as follows:

**I. Communications**

1. Service of all pleadings, documents, and communications in this matter should be made on the following:

William H. Smith, Jr.  
Executive Director  
Organization of MISO States  
100 Court Avenue, Suite 218  
Des Moines, Iowa 50309  
(515) 243-0742

**II. Description of Proceeding**

2. On October 15, 2008, Pioneer Transmission LLC submitted a request for a formula rate and rate incentives for its investment in a major 765 kV transmission project that it intends to build in Indiana.

**III. Basis for Intervention**

3. The OMS is a non-profit, self-governing organization of representatives from each state with regulatory jurisdiction over entities participating in the MISO, a regional transmission organization as defined by the FERC. The purpose of the OMS is to coordinate regulatory oversight among its state members, make recommendations to MISO, the MISO Board of Directors, the FERC, other relevant government entities, and

state commissions as appropriate, and intervene in proceedings before the FERC and in related judicial proceedings to express the positions of the OMS.

4. The OMS files this Motion to Intervene pursuant to the authorization of its Board of Directors.

5. The Pioneer project has not yet been studied as a part of the Midwest Transmission Expansion Plan or any other regional planning process. Such a regional planning process would scrutinize the projects benefits and costs on a comparable basis with other transmission projects, and would tend to disclose the costs and benefits to OMS member states. The OMS therefore has an interest in this filing, although it takes no position at this time with respect to the rate treatments requested for the Pioneer project.

6. Based on the foregoing, the OMS respectfully submits that OMS and its members have a direct and substantial interest in these proceedings, that no other party can adequately represent the interests of the OMS or its member states in this proceeding, and that its intervention is appropriate at this stage of the proceeding.

WHEREFORE, the OMS respectfully requests intervention in this proceeding.

Respectfully Submitted,  
William H. Smith, Jr.  
William H. Smith, Jr.  
Executive Director  
Organization of MISO States  
100 Court Avenue, Suite 218  
Des Moines, Iowa 50309  
Tel: 515-243-0742

Dated: December 5, 2008

#### CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Des Moines, Iowa, this 5th day of December 2008.

William H. Smith, Jr.  
William H. Smith, Jr.

## Organization of MISO States Strategic Goals for 2008 - 2009

The following strategic goals for OMS were adopted at the OMS Annual Meeting October 14, 2008.

### 1. Three proactive issue goal areas

- Cost Allocation
  - Internal MISO allocation
  - Leadership role in review of RECB
  - Cross-border allocations between MISO and PJM
- Regional planning / infrastructure
  - Covers MTEP, RGOS, JCSP, EWIGS, DOE corridors, Governors Associations
  - Closely related to cost allocation
- Market design and value
  - Lowering cost to customers
  - Evaluation of market competitiveness

### 2. Education

- Provide educational resources for commissioners and staff
  - Is RTO 101 still available?
  - Assist in understanding importance and content of MISO filings
- Provide materials and expertise to assist commissions in informing state legislatures on regional electricity issues
- Maintain OMS presence at FERC
  - Consider pre-filing conferences with FERC staff
  - Briefing to FERC staff on OMS process for developing comments

### 3. MISO Governance

The OMS member states are specifically charged with acting in the public interest. The state commissions' public interest responsibility makes them a distinct and paramount presence among Midwest ISO stakeholders. As such, we shall:

- Take a "first among equals" role in speaking for the public interest
- Accept leadership roles within the MISO stakeholder process
- Work with MISO and stakeholders to enhance data transparency, specifically to keep as much data as possible unrestricted and facilitate state access to confidential data.
- Maintain open communication with MISO leadership

### 4. Resolve retail distinctions

- Renew our understanding that an OMS position may represent a majority of OMS states; assure clear expression and indication of other viewpoints
- FERC's understanding of positions should be clear
- OMS must recognize interests of rate payers in all states
- Re-engage Manitoba