

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

Wholesale Competition in Regions)	Docket Nos. RM07-19-000
with Organized Electric Markets)	AD07-7-000

**COMMENTS OF THE
ORGANIZATION OF MISO STATES**

Pursuant to the Federal Energy Regulatory Commission's (Commission) Rule 211 Rules of Practice and Procedure 18 C.F.R. 385.211, the Organization of MISO States (OMS) hereby submits the following comments concerning the Commission's Wholesale Competition in Regions with Organized Electric Markets Notice of Proposed Rulemaking (NOPR) issued on February 22, 2008 in the above captioned docket. The deadline for comment is April 21, 2007.

I. DISCUSSION

As a result of several technical conferences and the comments submitted to the Commission in response to its June 22, 2007, Advanced Notice of Proposed Rulemaking¹, the Commission's NOPR proposes to improve the operation of organized wholesale electric markets administered by regional transmission organizations (RTOs) in the areas of: (1) demand response and market pricing during periods of operating reserve shortage; (2) long-term power contracting; (3) market monitoring; and (4) the responsiveness of regional transmission organizations (RTOs) to stakeholders and customers. The NOPR also proposes to require that

¹ Wholesale Competition in Regions with Organized Electric Markets, 119 FERC ¶ 61,306 (2007)

each RTO either amend its tariff to comply with the proposed requirements in each area or demonstrate that its existing tariff and market design already satisfy the requirements.

A. Demand Response and Pricing during Periods of Operating Reserve Shortages in Organized Markets

1. Demand Participation

The NOPR proposes to obligate RTOs to accept bids from demand response (DR) resources, on a basis comparable to any other resources, for ancillary services that are competitively-bid, such as energy imbalance, spinning reserves, supplemental reserves, reactive supply and voltage control, and regulation and frequency response, if the demand response resources (1) are technically capable of providing the ancillary service and meet the necessary technical requirements, and (2) submit a bid under the generally-applicable bidding rules at or below the market-clearing price, unless the laws or regulations of the relevant electric retail regulatory authority do not permit a retail customer to participate.²

The NOPR also requests comment on proposed requirements for RTOs to allow DR resources to specify a maximum duration for dispatch, a maximum number of times per day that demand response resources could be called, or a maximum amount of energy per day or week, and on whether other bidding parameters should be considered. The NOPR proposes that any parameters must accommodate the characteristics of demand response resources but must not have the effect of creating an undue preference for demand response resources vis-à-vis other resources.³

The OMS generally supports the above NOPR proposals as they improve the level of

² NOPR, at P. 46

³ NOPR, at P. 62-64

comparability of DR resources relative to generation resources in RTO markets. The proposals will also help to remove obstacles that load serving entities and other DR providers face when attempting to bid load reduction increments into RTO energy markets. Both of these objectives are worthwhile, as they will help realize the important benefits that DR resources can provide.

2. Deviation Charge

The NOPR proposes to require RTOs to remove from their tariffs any deviation charges that are assessed to buyers in the energy market for taking less electric energy in the real-time market than was scheduled in the day-ahead market, during a real-time market period for which the RTO declares an operating reserve shortage or makes a generic request to reduce load to avoid an operating reserve shortage.⁴

The OMS supports the NOPR's proposal to remove deviation charges to a buyer during periods where operating reserve shortages exist or if the RTO is calling for load reductions, as it simply does not make sense to charge market participants for not taking delivery of energy as a result of an RTO's instructions. Indeed, it would be problematic for an RTO to call for demand reductions during a system emergency and then assess penalties for schedule deviations or general uplift charges to market participants that comply with the RTO's direction. The Commission should also direct RTOs to explore the development of programs that compensate market participants for demand reductions during such emergencies.

3. Aggregation of Retail Customers (ARC)

The NOPR proposes to require RTOs to amend their market rules as necessary to permit an ARC to bid demand response on behalf of retail customers directly into an RTO's organized

⁴ NOPR, at P. 72

markets, unless the laws or regulations of the relevant electric retail regulatory authority do not permit a retail customer to participate.⁵ In a nod to regional differences, the NOPR does not detail specific market rules for ARCs, but instead proposes requirements that an RTO's amendments will have to meet.⁶ Finally, the NOPR urges the RTOs to coordinate their efforts through either the RTO council or the North American Energy Standards Board to develop common business practices and measurement and verification protocols.⁷

The OMS supports the ability of third-party aggregators to bid demand response on behalf of retail customers directly into an RTO's organized markets as third-party aggregators because aggregation can provide an important option to direct end-user participation. Further, the development of best practices and consistency among RTOs is critical to improving both the comparability of DR resources relative to generation and the fungibility of DR resources. As such, they should be required of RTOs, rather than simply encouraged by the Commission.

4. Market Rules Governing Price Formation during Periods of Operating Reserve Shortage

The NOPR proposes to require each RTO to make a compliance filing within six months of a final rule in this proceeding, proposing any necessary reforms to ensure that the market price for energy accurately reflects the value of such energy during periods of scarcity (i.e., an operating reserve shortage). The NOPR does not mandate any one type of reform in this area and allows an RTO to demonstrate that its existing market rules already reflect the value of

⁵ NOPR, at P. 86

⁶ NOPR, at P. 90

⁷ NOPR, at P. 93

energy during periods of scarcity and therefore do not need to be reformed.⁸

The OMS is encouraged by the Commission's recognition of the need to implement measures that will allow the market price of energy to accurately reflect the value of energy during periods of scarcity. Allowing prices to rise when generation is scarce has a positive impact on both the level of demand side resources that are willing to make themselves available to the RTO during times of generation shortage and the infrastructure investment decisions of market participants. As such, the OMS believes that the Commission's proposed measures would constitute policy improvements.⁹

With regard to demand resources, better scarcity pricing will allow energy prices to more accurately reflect the true value of demand response participation. Indeed, allowing the price of energy to rise during shortage periods will help to recruit demand side participants when they are most valuable. It is important that the Commission take steps to ensure that during shortage periods, both generation and demand resources are treated comparably.¹⁰ This is due to the fact that at this point, both generation and demand resources are equally valuable. While allowing prices to increase in shortage periods will improve the ability of the RTO to recruit potential demand response participants, failing to treat them in a comparable manner as generation will only serve to discourage their participation when they are needed the most. Therefore, like generators, demand resources, if offered and accepted into the market during emergency periods,

⁸ NOPR, at P. 117

⁹ NOPR, at P. 119-120

¹⁰ The Ohio Commission takes the position that to balance the benefits of scarcity pricing and the protection of consumers from market power it would be reasonable to raise the cap on demand bids and not increase the cap on generation (NOPR at P. 124 "the second approach") until such time as sufficient demand response is present in the market to minimize the structural market power of generation during shortage periods.

should be assessed penalties if the RTO calls on them and they do not comply.

Allowing prices to rise during shortage periods will also improve the ability of market participants to respond to changing prices and the efficiency of such decisions. Specifically, rising prices during shortage periods provide incentives for market participants that already possess the necessary metering technology to follow energy prices more closely and to improve the efficiency in which they respond to changes in prices. Similarly, rising prices provide market participants without metering technology a strong incentive to acquire the technology so that they can take advantage of any demand response opportunities.

From a resource adequacy standpoint, scarcity pricing should improve the investment decisions of market participants concerning electricity infrastructure. In particular, prices that rise to accurately reflect the lack of available generation provide generators with both an incentive to provide output in times of shortage and the opportunity to collect additional revenues. These additional revenues ultimately contribute to the development of both the efficient quantity and mix of generation capacity. Conversely, if prices are not allowed to rise as generation becomes scarce, generators will ultimately be under-compensated and unwilling to make the necessary investment in new generation capacity. When this happens, regulators are left struggling to piece together inefficient efforts to provide incentives for generation investment and ensure reliability. Clearly, allowing prices to rise to reflect generation shortages is the most efficient way to ensure that potential generators receive appropriate price signals.

Improving the accuracy in which RTO markets reflect real-time prices of electric energy and ability of market participants to contract and hedge in anticipation of these prices will go a long way in improving the efficiency of RTO markets. Further, allowing the market to

determine the quantity and mix of generation resources will shift the responsibility of such decisions to the generators and decrease the likelihood of stranded costs subsequently being allocated to consumers.

Allowing prices to rise during shortage periods would still require a market monitor that is able to effectively mitigate the offers of generators attempting to exercise market power. The OMS therefore supports the Commission's requirement that any RTO proposing reform in this area address the adequacy of any mitigation measures that would be in place during periods of operating reserve shortage.¹¹

B. Long-Term Power Contracting in Organized Markets

In an effort to facilitate long-term contracting in RTO markets, the NOPR proposes to require each RTO to dedicate a portion of its web site for market participants to voluntarily post offers to buy or sell power on a long-term basis.¹² Clearly, long-term contracts enable buyers and sellers to manage risks, promote stability in pricing and serve as a basis for financing new generation. A properly configured bulletin board arrangement could have a positive impact on the level of information available to market participants concerning available capacity.

The implementation of a bulletin board should not keep the Commission from taking a sharper focus on improving and developing the basic framework of the RTO markets, including addressing fundamental issues such as "getting the prices right" in the spot energy and ancillary services markets and reducing regulatory uncertainty. Indeed, a reliable, competitive, well functioning spot market that reflects actual system operating conditions and provides the proper

¹¹ NOPR, at P. 121

¹² NOPR, at P. 156

operating and investment incentives will serve as the best foundation for hedging through long term bilateral contracting. In addition, the development of rules and market designs for least cost, efficient achievement and maintenance of long-term resource adequacy will go far toward establishing the proper framework for reasonable levels of long-term contracting.

C. Market Monitoring Policies

1. Application of Mitigation Policies

While the OMS generally supports the NOPR's proposed market monitoring policies, the OMS disagrees with the NOPR proposal that independent market monitors (IMMs) be removed from tariff administration, including mitigation.¹³ In particular, the OMS notes that the market monitoring arrangement in the Midwest ISO has worked successfully in the past and the OMS expects it to continue to work as well in the future. As such, absent a series of specific showings that an IMM is incapable of applying the mitigation measures appropriately, the Commission should respect the decision of the RTO and its stakeholders regarding the administration of mitigation measures. Accordingly, the Commission should allow the RTOs and their stakeholders to determine if the IMM or the RTO is to apply mitigation measures rather than require that it be applied by the RTO on a generic basis as proposed in the NOPR.

The OMS has several concerns with an RTO being left to administer mitigation measures. In particular, the RTO will be susceptible to influence of RTO members that may be critical to the RTO's survival. Indeed, it is the RTO that has the incentive not to mitigate a member that might be inclined to withdraw from the RTO as a result of being mitigated. This inclination may cause RTO management to look the other way to avoid the withdrawal of a

¹³ NOPR, at P. 210

member that could prove fatal to the continued existence of the RTO. The NOPR proposal to allow hybrid RTO boards also raises concerns with the ability of the RTO to administer mitigation on a consistent and impartial basis.

Conversely, such an incentive typically does not exist for the IMM. For example, the OMS notes that the Midwest ISO's IMM provides economic services to numerous other clients. While losing the Midwest ISO as a client would surely hurt Potomac Economics in the near term, it would likely not be a fatal blow to the firm. As such, the IMM would have little, if any incentive to not apply mitigation measures when required.

The Commission's counter-argument that the IMM will refer an RTO's failure to apply recommended mitigation measures to the FERC office of enforcement for investigation gives the OMS little comfort, as the Commission has made it clear that it will continue to keep such referrals non-public. Indeed, the existence, status and outcome of such referrals are essentially unknown to affected parties and RTO stakeholders. As such, this type of arrangement only serves to keep affected parties in the dark and does little to foster confidence in RTO markets.

2. Dissemination of Offer and Bid Data

The OMS respectfully disagrees with the NOPR's decision to retain the practice of masking the identity of market participants when releasing offer and bid data.¹⁴ If market participants are able to ascertain the identity of other market participants and to predict their competitors' cost structure and bidding strategies, then retaining a lagged disclosure policy and continuing the masking of market participants' identities would not eliminate the facilitation of tacit collusion practices, but rather it would only allow tacit collusive behavior to continue.

¹⁴ NOPR, at P. 230

Under such circumstances, the efficient solution is to require RTOs to publicly disclose bid and offer information without any identity masking.

While one may argue that the market monitor should be able to identify any implicit collusion among bidders, allowing third-party analysts to access data would allow additional scrutiny of offer and bid data to determine if collusive behavior exists. Indeed, if collusive behavior exists, the probability of it being identified should rise with an increase in the number of parties examining the data.

In sum, collusive behavior is destructive to RTO markets and has a corresponding negative effect on retail markets. Accordingly, the Commission should require the RTOs to disclose bid and offer data without any masking of the individual market participant's identity.

3. Commission Referrals

The NOPR proposes to retain the existing provisions regarding the confidentiality of IMM referrals to the Commission, as well as the confidentiality of the status and results of its own investigations.¹⁵ The NOPR states that commenters that argued for the release of referral and investigative information to such bodies as state commissions did not generally address the substantial legal and policy arguments against such release, other than to note that some state bodies have confidentiality procedures (which may or may not withstand FOIA-type requests).¹⁶ Further, the Commission argues that not only do Commission rules prohibit such release, but release could impede the willingness of market participants to self-report and otherwise cooperate in investigations, and could injure innocent persons who might be erroneously

¹⁵ NOPR, at P. 240

¹⁶ NOPR, at P. 240

implicated or adversely affected by simply being associated with an investigation.¹⁷

The OMS has consistently argued for informing affected state commissions about the actions or investigations that the Commission may or may not undertake pursuant to an IMM referral. In this circumstance, as with many others covered by the Commission's NOPR, state commissions could be effective allies with the Commission in the investigation and evaluation of the market participant behavior that led the IMM to make the referral. Even if the Commission chooses not to work with the state commissions, at a minimum, the affected state commissions should be served with a copy of the IMM's referral to the Commission.

The Commission's concern that informing state commissions of IMM referrals might somehow discourage market participants from self reporting objectionable behavior is not applicable to IMM referrals, as referrals happen only because a market participant has failed to self report. The Commission's arguments that some state commissions may be unable to withstand FOIA-type requests fails to give proper recognition to the fact that the state commissions have a proven track record illustrating the ability of state commissions to properly handle confidential information. The OMS also notes that like the members of the OMS, the Commission is subject to FOIA-type requests and the Commission's confidentiality procedures may or may not withstand these FOIA-type requests.¹⁸ Given that many states have statutes and procedures in place similar to the Commission for handling FOIA-type requests, the concerns that the Commission expresses and the protections that the Commission's no-notice policy purports to provide are misplaced.

¹⁷ NOPR, at P. 240

¹⁸ 18 C.F.R. § 388.107-8

4. State Regulator Access to Data and Information

The NOPR proposes that IMMs may entertain requests for information from state commissions, so long as such information pertains to general market trends and performance, is not designed to aid state enforcement or actions against individual companies and the MMU can accommodate such requests within its budgetary and time constraints without jeopardizing its ability to perform its core tariff defined functions.¹⁹ The NOPR also proposes to permit state commissions to petition the Commission on a case-by-case basis for information that does not fall within the proposed acceptable parameters. The Commission would examine such petitions in light of both state needs and the ability to fashion adequate confidentiality protections.²⁰

The OMS believes that state regulators and the Commission share responsibility for overall market oversight and regulation. Specifically, state responsibilities for retail markets parallel the Commission's responsibilities in wholesale markets. Furthermore, state commissions have a direct interest in the effectiveness of wholesale markets, because, in many cases, retail rates are based directly on the results flowing from those markets. State commissions need information from the RTO and the IMM to assist them in performing their regulatory functions, given the integral relationship between wholesale and retail rates. In the ANOPR, the Commission recognized that state commissions have an "interest in the performance of wholesale power markets."²¹ However, that recognition of state commission interests is largely absent from the NOPR.

¹⁹ NOPR, at P. 234

²⁰ NOPR, at P. 237

²¹ ANOPR, at P. 122

Accordingly, the OMS disagrees with the Commission's opinion that its proposed restrictions on information access by state commissions are reasonable.²² For example, the NOPR proposal limiting state commission requests to the IMM to "general market trends and performance" represents a significant reduction in what IMM information the Midwest ISO already makes available to the OMS states through its tariff. To date, such an arrangement has not negatively impacted the ability of the Midwest ISO's IMM to fulfill its IMM obligations. Accordingly, the Commission should respect the arrangement currently in place for the Midwest ISO, its IMM, and the members of the OMS, and permit that arrangement to be expanded, as necessary, to meet the needs of the OMS and its state commission members.

The Commission must distinguish between disclosure of information to the state commissions and disclosure of information to the public. State commissions have possessed and handled confidential data since the founding of state commission regulation. The state commissions' record in this regard is longstanding, speaks for itself and needs no further reiteration.

The state commissions should not be put into a position of merely having to trust the findings of the IMM, but rather, they should be provided with the data and information necessary to evaluate and verify the IMM's findings. In order to investigate the behavior and activities of particular individual market participants, the state commissions need to be able to receive specific data and information from the IMM.

Prior to restructuring and the attendant gravitation of authority from the states to the

²² NOPR, at P. 234

Commission, state commissions would have had ready access to data types analogous to these from their jurisdictional utilities. After restructuring--particularly the spin-off of generation plants out of the distribution utility--many states now have diminished access to the types of data necessary to assess the workings of the wholesale market. Furthermore, the wholesale market has expanded so as to encompass numerous market participants outside of any one state's boundaries. Nevertheless, each individual state's retail customers are directly affected by the workings of that regional wholesale market. Accordingly, state commissions need access to data regarding that regional wholesale market in order to reasonably fulfill their particular state-specific functions. The Commission's proposal to limit states' access to "general market trends and performance" is unreasonable.

The Commission's proposal to prohibit state commissions from seeking information from the IMM which would "aid state enforcement or actions against individual companies" is unreasonable. While the Commission is correct that state commissions may have "resources to carry out enforcement functions," many state commissions do not have access to the data and information necessary to initiate investigative actions that might eventually lead to enforcement actions, as explained above. The Commission should not erect additional barriers to state commission access to such necessary data and information.

Finally, the NOPR's proposal for state commissions to petition the Commission on a case-by-case basis for information that falls outside the parameters of "general market trends and performance" is unreasonable. As the Commission recognized in the ANOPR, state commissions are a "separate class" and should be accorded the treatment and the respect that

such a class warrants.²³ State commissions should not be required to petition the Commission for access to data and information that should be theirs in the first place. OMS strongly urges the Commission to reconsider its position in this regard.

D. Responsiveness of RTOs to Stakeholders and Customers

The OMS generally agrees with the NOPR's position that RTO management responsiveness to customers and stakeholders plays an important role in implementing the RTO policies and achieving its objectives in a manner that customers and other stakeholders perceive to be fair, balanced, and effective. As such, the OMS generally supports the proposed set of criteria intended to assess the process by which an RTO achieves board responsiveness to its members and customers.²⁴ However, the Commission's decision to allow RTOs to implement a hybrid board structure is of significant concern.²⁵

The most critical flaw, from the viewpoint of the OMS, is that allowing market participants to hold seats on an RTO board will jeopardize the RTO's independence. This is due to the simple fact that stakeholder board members can be expected to act in the interests of the companies with which they are affiliated. To expect them to do otherwise is unrealistic. Simply put, independence is the fundamental bedrock upon which a RTO stands, and even the appearance of an RTO's independence being compromised could prove to be a fatal blow to the credibility of the RTO board and RTO operations.

There is also a concern that the members of a hybrid board would create directors unable to fully and fairly exercise their business judgment consistent with general corporate governance

²³ ANOPR at P. 123

²⁴ NOPR, at P. 275

²⁵ NOPR, at P. 277

law, specifically the “business judgment rule.” In its simplest parts, “the rule requires that decisions be made: (i) in good faith and without a conflict of interest; (ii) on a reasonably informed basis; and (iii) with a rational belief (connoting broad discretion and wide latitude) that the business judgment is in the best interests of the corporation.”²⁶ In the case of nonprofit organizations, it has been observed that “[s]hielding nonprofit directors from liability using the business judgment rule requires the following: a conscious exercise of judgment, *good faith coupled with a lack of interest* and an informed decision.”²⁷ To expect stakeholder board members not to act in the interests of the companies with which they are affiliated is wholly unrealistic, especially if the RTO board member is a subordinate in the stakeholder’s higher levels of management. Furthermore, it would be virtually impossible to detect such conflicted conduct.

The Commission’s proposed option of hybrid boards may well pose substantial additional risks of litigation based upon failure to exercise disinterested judgment. Even if by objective standards a director uses good business judgment to choose a certain policy that also happens to favor his or her stakeholder, the director cannot fully escape the risk of criticism or suspicion of a conflict of interest. This situation is virtually untenable, as it corrodes comity, expectations of good faith and disinterested judgment among directors and in the relationship of directors to other stakeholders, which in the case of RTOs includes the scrutiny of government entities. This

²⁶ Harvey J. Goldschmid, *The Fiduciary Duties of Nonprofit Directors and Officers: Paradoxes, Problems, and Proposed Reforms*, *Journal of Corp. Law*, 632, 644 (Summer, 1998) (Goldschmid). The foregoing article relies substantially upon 1-2 *American Law Institute, Principles of Corporate Governance: Analysis and Recommendations* (1994) (ALI Principles), which “are consistent with the law in almost all jurisdictions, and would almost certainly be applicable to directors and officers of nonprofit corporations as they are to directors and officers of for-profit corporations.” Goldschmid, at 638 & n.40.

²⁷ Goldschmid, at 644-45 (emphasis added). Goldschmid observed further that ALI Principles’ over 200 pages on loyalty in the for-profit sector “provide important guidance for the nonprofit community.” Goldschmid, at 646.

problem can be wholly avoided by the continued insistence upon independent directors.²⁸

A hybrid board is not a “practice or procedure” within the ordinary meaning of those terms as used in proposed 18 C.F.R. § 35.22(5). A hybrid board is a *structural* requirement, not a method of operation as denoted by the terms “practice and procedure.” A Commission order authorizing a hybrid board would be highly problematic, given the text of the proposed rule and could create the risk of corporate governance litigation over ISO or RTO governance that would be injurious to the development of wholesale markets.

Given that the Midwest ISO has nine stakeholder sectors and eight board seats, and PJM has five sectors and twelve board seats, it is difficult to see how a hybrid board would be able to maintain its independence and, at the same time, practically allow adequate representation on the RTO board for each of the sectors. Indeed, even if a majority of the board seats were allocated to the sectors, it is unlikely that the sectors would be given adequate representation on a hybrid board. Increasing the size of the board to accommodate the sectors could well make the board more cumbersome in decision-making and increase costs without material benefit.

In contrast to a hybrid board, an advisory committee to the board – like that which exists in the Midwest ISO – would provide all stakeholders access to the RTO board, while preserving the RTO’s structural independence, disinterested board decision-making and the efficiency of board operations. An advisory committee offers an arrangement that would facilitate the active involvement of stakeholders in formulating policy advice to the board, without the hazards

²⁸ Goldschmid states, “Subtle conflicts or ‘taints’ to the process, which might be considered marginal in the for-profit context, should be resolved in favor of the duty of loyalty (not business judgment) treatment in the non-profit conversion [self-interested transaction] context. [footnote omitted] This approach to interested transactions—with respect to the standard for judicial review and the identification of conflicts—should apply in almost all duty of loyalty areas involving nonprofit directors and officers.” Goldschmid, at 649.

associated with a hybrid board structure.

The hybrid board concept has significant flaws, many of which are most likely to compromise an RTO's independence. As such, the Commission should not allow RTOs the option of implementing a hybrid board.

II. Conclusion

The OMS supports the Commission's efforts to improve the operation of organized RTO markets while not undoing or upsetting the significant efforts that have already been made in providing demonstrable benefits to electricity customers. To that end, the OMS respectfully requests that the Commission consider the above recommendations in determining any future steps concerning organized RTO markets.²⁹

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
Indiana Utility Regulatory Commission
Iowa Utilities Board
Kentucky Public Service Commission

²⁹ Wisconsin supports these OMS comments and would actually go further in making certain points. Placing market mitigation in the hands of RTO management is disturbing. OMS has not supported this move in the past. OMS has also opposed the use of a hybrid boards which have myriad problems. With these two proposed changes in the NOPR, any comfort level Wisconsin had or will now have with RTO markets setting competitive prices diminishes appreciably. For this reason, the new approach proposed in the NOPR requires a revisit in 12 months as to RTO management effectiveness in carrying out the mitigation function properly and whether after the new approach is in place energy markets are delivering prices that reflect competitive conditions. This is a matter of continued credibility in the RTO concept, plain and simple. An immediate improvement would be for the Commission to reconsider its past opposition to the OMS suggestion to have the market monitor report to a joint board of state and federal regulators.

Michigan Public Service Commission
Minnesota Public Utilities Commission
Montana Public Service Commission
Nebraska Power Review Board
Public Utilities Commission of Ohio
South Dakota Public Utilities Commission
Wisconsin Public Service Commission

The Manitoba Public Utilities Board and the Pennsylvania Public Utility Commission did not participate in this pleading. The Missouri Public Service Commission and the North Dakota Public Service Commission abstained on this pleading.

The Indiana Office of Utility Consumer Counselor, the Iowa Office of Consumer Advocate and the Minnesota Office of Energy Security,³⁰ as associate members of the OMS, participated in these comments and generally support these comments.

Respectfully Submitted,

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³⁰ The Minnesota Office of Energy Security now exercises the consumer advocacy functions previously performed by the Minnesota Department of Commerce.