

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

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

Docket No. ER04-691-000

**NOTICE OF INTERVENTION AND COMMENTS
OF THE ORGANIZATION OF MISO STATES**

I. INTERVENTION

1. Pursuant to Rule 214(a)(2) of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(a)(2), the Organization of MISO States ("OMS") files its Notice of Intervention in the above-captioned proceeding. In support thereof, the OMS states as follows:

II. COMMUNICATIONS

2. 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

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 Midwest Independent Transmission System Operator, Inc. ("MISO"), a regional transmission organization as defined by the

Commission. The state regulatory agencies that are members of the OMS are the Illinois Commerce Commission, the Indiana Utility Regulatory Commission, the Iowa Utilities Board, the Kentucky Public Service Commission, the Michigan Public Service Commission, the Minnesota Public Utilities Commission, the Missouri Public Service Commission, the Montana Public Service Commission, the Nebraska Power Review Board, North Dakota Public Service Commission, the Ohio Public Utilities Commission, the Pennsylvania Public Utility Commission, the South Dakota Public Utilities Commission, and the Wisconsin Public Service Commission. The Manitoba Public Utilities Board is also a member of the OMS.

4. The purpose of the OMS is to coordinate regulatory oversight among the states; making recommendations to MISO, the MISO Board of Directors, the Commission, other relevant government entities, and state commissions as appropriate; and intervening in proceedings before the Commission and in related judicial proceedings to express the positions of the OMS. The OMS files this timely Notice of Intervention pursuant to the authority conferred by its bylaws and the authorization of its Board of Directors.

5. As more fully explained in section V below, the Transmission and Energy Markets Tariff forms the basis for the wholesale electricity market in the areas served by MISO. These markets strongly affect the retail markets in which members of the OMS have regulatory responsibilities.

6. Based on the foregoing, the OMS respectfully submits that it has a direct and substantial interest in these proceedings and that no other party can adequately represent the interests of the OMS.

IV. COMMENTS ON TARIFF

7. Pursuant to the Federal Energy Regulatory Commission's ("Commission") Notice of Filing ("Commission") Rules of Practice and Procedure, 18 C.F.R. 385.211, the OMS submits

these comments in response to the filing submitted by MISO on March 31, 2004, in the above captioned docket.

V. BACKGROUND

8. On December 17, 2002, MISO filed with the Commission a petition for declaratory order seeking the Commission's approval of preliminary market rules regarding MISO's energy markets.¹ On February 24, 2003, the Commission issued an Order that reacted favorably to the energy markets proposed in MISO's December 17 Petition.² On July 25, 2003, MISO submitted to the Commission the Third Revised, First Volume of MISO's Open Access Transmission and Energy Markets Tariff ("July 25 TEMT"). The purpose of the July 25 TEMT filing was to comply with the Commission's February 24, 2003 declaratory order and to submit for filing with the Commission those terms and conditions necessary for the implementation of MISO's day-ahead, real-time energy markets and financial transmission rights ("FTR") markets on March 31, 2004. The July 25 TEMT also contained certain revisions to the existing provisions of the MISO OATT that would be necessary for the implementation of the Energy Markets and the continued provision of transmission service within the MISO footprint.

9. On September 25, 2003, the OMS filed comments with the Commission regarding the July 25 TEMT. In short, the OMS stated that the July 25 TEMT was "headed in the right direction", but that certain key elements needed to be addressed if a properly functioning, competitive wholesale market was to be established in MISO's footprint. The OMS comments provided 12 recommendations that addressed the areas of concerns with the July 25 TEMT.³

¹ *Petition for Declaratory Order of the Midwest Independent Transmission System Operator, Inc.*, Docket No. EL03-35, (December, 2002).

² See, *Midwest Independent Transmission System Operator, Inc.*, 102 FERC ¶ 61, 279 (2003)

³ OMS Comments, at 23-24

10. On October 17, 2003, at the urging of its Advisory Committee, MISO withdrew the July 25 TEMT without prejudice, to provide MISO and its stakeholders additional time to ensure that effective reliability tools were in place and being operated correctly and to allow a more complete transmission and energy markets tariff to be refiled on March 31, 2004.

11. On October 29, 2003 the Commission issued an Order that granted MISO's request that the Commission both approve the withdrawal of the July 25 TEMT without prejudice and provided guidance on numerous key issues such as grandfathered agreements ("GFAs"), security-constrained unit commitment in the day-ahead market and access to confidential data by state commissions.⁴ On December 5, 2003, the Commission issued an Order dismissing requests for rehearing of the October 29, 2003 Order.⁵

12. On February 11, 2004, MISO submitted to its stakeholders for review and comment a draft copy of certain portions of the transmission and energy markets tariff ("TEMT"). On February 25, 2004, the MISO submitted to its stakeholders an updated copy of its February 11, 2004 draft TEMT, with additional tariff Modules for stakeholder review. On March 15, 2004, the OMS submitted its comments on the draft TEMT to MISO. In short, the OMS comments identified numerous areas of the TEMT that merited further MISO attention and provided recommendations to MISO that would resolve those concerns.

13. Consistent with earlier Commission orders, MISO submitted its revised Open Access Transmission and Energy Markets Tariff on March 31, 2004.⁶ On April 2, 2004, the Commission issued a notice establishing May 7, 2004, as the comment deadline for the MISO filing.

⁴ *Midwest Independent Transmission System Operator, Inc.*, 105 FERC ¶61,145, (2003)

⁵ *Midwest Independent Transmission System Operator, Inc.*, 105 FERC ¶61,272, (2003).

⁶ *Midwest Independent Transmission System Operator*, 102 FERC ¶ 61,196 (2003); order on reh'g, 103 FERC ¶ 61,120 (2003) and *Midwest Independent Transmission System Operator* 105 FERC ¶ 61,145 (2003), reh'g denied,

VI. SUMMARY OF MISO's TEMT

14. The TEMT includes the following provisions: (1) Module A - Common Tariff Provisions, the definitions used in the TEMT; (2) Module B - Transmission Service; (3) Module C - Transmission Provider Energy Markets, Scheduling and Congestion Management; (4) Module D - Independent Market Monitoring and Mitigation Measures; and (5) Module E - Resource Adequacy. In addition to these Modules, MISO's TEMT also includes proposed revisions to the numerous attachments and schedules necessary to implement the proposed markets tariff.

15. MISO's filing also includes a requested effective date for the TEMT of no later than December 1, 2004. Further, in an attempt to accommodate the resolution of issues associated with GFAs and the FTR allocation process in a timeframe consistent with market implementation, MISO requested that the Commission issue an accelerated decision regarding the provisions associated with the FTR allocation methodology and that the provisions be made effective no later than June 7, 2004.⁷

VII. OMS' POSITIONS AND RECOMMENDATIONS

16. The TEMT will likely prove to be a cornerstone in the establishment of a competitive wholesale electricity market in the Midwest. Due to the importance of properly designed markets in this region, the OMS has taken a keen interest in the development of the TEMT. Though the OMS does not share MISO's point of view on all issues, the OMS both acknowledges and appreciates the amount of consultation and discussion that has occurred between MISO and its stakeholders to develop the revised TEMT filing.

105 FERC ¶ 61,272 (2003).

⁷ Transmittal Letter, at 25

17. The OMS is encouraged by the direction that the TEMT is headed. However, as discussed below, key issues need to be addressed for a properly functioning, competitive wholesale market to be established in MISO's footprint. MISO's continued effort to take a cooperative approach regarding the development, implementation and fine-tuning of the terms contained in the TEMT encourages the members of the OMS. Accordingly, the OMS stands ready to assist both the Commission and MISO in putting the finishing touches on MISO's market design and moving to the market implementation stage. To that end, the OMS recommends that the Commission implement the following recommendations, which are discussed in greater detail in Section VIII of these comments.

A. Issues Related to FTR Allocations

18. With regards to FTR allocation decisions, the Commission should direct MISO to:

- 1) Make its currently planned FTR allocations applicable for the period of December 1, 2004 through May 31, 2005.
- 2) To the extent there are discrepancies between MISO's allocation and market participant expectations that are caused by errors in Midwest ISO's model or errors in data, MISO will correct the problems/discrepancies in the model.
- 3) After the FTR allocation model and data are corrected, hold a new FTR nomination process and determine a new set of FTR allocations for the period from June 1, 2005 to May 31, 2006.
- 4) Set its annual FTR allocation period from June 1 through May 31 of each year after June 1, 2005.

19. The Commission should direct MISO to add three elements to its proposed tariff in order to have a "safety net" that is sufficient to meet the Commission's requirement to keep existing transmission customers whole. Specifically,

- 1) Set out ex ante criteria in its tariff by which to determine if the FTR Allocation process results in harm to a transmission customer that addresses:
 - How harm will be measured and over what period of time; and
 - The existing level of congestion costs that should be included.

- 2) Include a process for FTR restoration that eliminates the harm without resulting in harm to others; and
- 3) Include a tariff provision for uplifting the possible revenue inadequacy resulting from the FTR restorations required to eliminate the harm.

20. The Commission should direct MISO to consider the following remedies for dealing with prorated FTR allocations that would result in harm to entities holding firm transmission rights:

- 1) Take into account diversity of use through monthly nominations of on-peak and off-peak candidate FTRs (“CFTRs”) in tiers 2, 3 and 4 as soon as is feasible.
- 2) Take into account the infeasibility caused by loop flows assumed within its footprint, by issuing counter-flow FGRs that correspond to the megawatt capacities of these assumed loop flows.
- 3) In cases where the prorating of FTRs from base-load generation cannot be restored by issuing counter flow FTRs from base-load generation sources, and this prorating of FTRs results in harm to the transmission customer, MISO should consider whether or not restoring the full point-to-point FTRs and issuing counter-flow FGRs to the transmission customer will reduce the harm to the transmission customer. If harm is reduced, then MISO should implement this alternative.

21. The Commission should direct MISO to delete Section 43.7.3 of Module C and clarify MISO’s filing obligations under Section 43.2.6 and add it to the TEMT.

22. The Commission should direct MISO to make the re-allocation of auction revenue rights (“ARRs”) and ARR funding obligations to load serving entities (“LSEs”) that gain load in states with retail choice on a daily basis, rather than a monthly basis, as proposed in the TEMT.

B. Issues Related to Treatment of Grandfathered Agreements

23. The Commission should direct that MISO’s nomination of FTRs for retained grandfathered agreements (GFAs) not exceed the corresponding tier limits for transmission customers retaining any portion of their GFAs.

24. The Commission should open an investigation to determine the impact of the special treatment of GFAs on 1) other market participants; and 2) on the efficiency of the operation of

MISO energy markets. This investigation would determine whether or not the special treatment of GFAs past the February 1, 2008, transition period is just and reasonable.

C. Seams Issues

25. The Commission should encourage MISO to avidly pursue the recommendations made in the Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations regarding strengthening MISO's role as reliability coordinator. The Commission should also encourage MISO to meet the target date of September 1, 2004 for draft agreements for the Western Seams to prepare for the market opening on December 1, 2004.

D. State Commission Access to Confidential Information

26. The general consensus view of the OMS was that State Commissions' access to confidential information ought to be comparable to the FERC's because of the scope of the State Commissions' activities with the MISO as well as each State's statutory obligations. The OMS believes that the MISO Tariff satisfies the OMS' objective and we commend the MISO and the Independent Market Monitor for their efforts in this regard.

27. The MISO, in order to achieve a balance between the need for State Commissions to have broad access to confidential information and the legitimate needs of market participants to protect confidential information, vetted this proposal for State Commissions and the FERC to have comparable access through the Stakeholder Process. The OMS believes that the Tariff provisions for maintaining confidential information, combined with recourse opportunities, provides the necessary and appropriate safeguards.

E. Common Market with PJM

28. The Commission should, 1) direct both MISO and PJM to renew their efforts to implement a common market, as described above, over their combined footprints; 2) establish a

new deadline for implementing the common market; 3) require MISO and PJM to file a concrete plan and a valid timeline with mileposts to establish a true common market over the combined footprint of both PJM and MISO; and 4) commit itself to scrutinizing any MISO or PJM market design modification or tariff proposal with an eye to how that market design modification or tariff proposal affects the path to development of the common market.

F. Purpose and Objective of the Market Monitoring Plan

29. The OMS has noted and appreciated the meaningful cooperation from the MISO and the Independent Market Monitor to craft Tariff language that categorically satisfies the consensus concerns of the OMS. The OMS believes that the Tariff provides State Commissions and the OMS with the requisite access to information needed to perform our State jurisdictional responsibilities as well as our responsibilities to the markets operated by or facilitated by the Midwest ISO. The OMS believes, subject to a few clarifications, that the Tariff provides general authority for the IMM to monitor all relevant markets. The Tariff also vests the IMM with sufficient authority to protect the integrity of the markets, market participants, and consumers. The OMS anticipates that the provisions for State Commission participation with the Independent Market Monitor will assist State Commissions in the discharge of their statutory duties and to maintain the integrity of the wholesale markets. Finally, the Tariff assures the independence of the IMM.

30. In addition to State Commission and OMS access to the IMM that is not restricted by the MISO, the OMS will work with the MISO and the FERC to better ensure that the IMM will have the requisite resources and tools to effectively monitor the all relevant markets, prevent abuse, and, where necessary, mitigate disruptive and abusive behavior. (There is no tariff language that would effect this recommendation)

G. Control Area Responsibilities and Multiple Entities in one Control Area

31. The Commission should entertain later comments on operations in the Otter Tail Power Company's ("Otter Tail") control area.

H. Security-Constrained Unit Commitment and Security-Constrained Economic Dispatch in the Day-Ahead Market

32. The OMS supports use of Security-Constrained Unit Commitment ("SCUC") and Security-Constrained Economic Dispatch ("SCED") for optimum dispatch. The OMS supports later bidding deadlines consistent with satisfactory resolution of day-ahead schedules.

I. Readiness and Performance Metrics

33. The Commission should remain attentive to MISO's state of readiness to undertake market operations with adequate opportunity for stakeholder participation. To achieve full confidence of stakeholders, measurements should include the current list of metrics and allow for the development of additional metrics as needed to assure full readiness in terms of operational, commercial, and financial capabilities.

J. Resource Adequacy and Capacity Markets

34. The OMS and MISO have worked cooperatively to develop long-term resource adequacy requirements for the MISO footprint. While the resource adequacy provisions of Module E of the tariff are interim and temporary provisions pending completion of that work, the tariff language should be made more specific in several places to prevent financial or other harm to customers.

K. Business Practice Manuals

35. The OMS is concerned that critical elements may be contained in business practices manuals that are not on file with the Commission that may result in the tariff being unclear by not being reflected in the TEMT. While the OMS will attempt to review this issue further, the

OMS encourages the Commission or other parties to address any concern they may note in their review of the TEMT regarding this issue.

L. State Authority Regarding Low Cost Generation Resources

36. Consistent with state authority over dispatch of low cost generation, the OMS recognizes the need for MISO to be able to monitor power flows, including generation, transmission, and load served. The OMS will not raise the issue of jurisdictional authority regarding generation, until such time as circumstances make it necessary.

M. Other Module D Provisions

37. The Commission should direct MISO to adopt the miscellaneous changes detailed in Section VIII M of these comments.

N. Relationship of Schedule 16 and 17 with Other Dockets

38. The issue of assigning costs on a cost-causative basis is an important concept that the OMS believes should be considered on an on-going basis. Addressing such cost assignment in the future is essential to ensuring an efficient market.

O. System Support Resources

39. The proposed System Support Resources program should be added to the list of subjects being worked through by the MISO SAWG and the OMS RAWG in their joint discussions and negotiations to develop permanent and comprehensive resource adequacy requirements.

VIII. DISCUSSION

A. Issues related to FTR Allocations regarding FTRs and Grandfathered Agreements

1. Potential Errors in the FTR Allocations Model and Timing of the FTR Allocations

40. When MISO updates its FTR allocation model to the topology of the May, 2004, state estimator, there is a concern that errors will occur in the conversion process that could result in

the initial FTR allocations not being accurate, and this could result in harm to market participants. Several modeling errors were discovered through the mock allocation process that has taken place during the past few months. In part, many of those errors were due to MISO using a September 2003 version of the state estimator as the basis for the generation shift factors for the FTR allocation model. Other errors occurred simply due to the volume of data that must be synchronized between the physical and commercial components in the model. MISO has stated that there will not be sufficient time to do another mock allocation subsequent to the update of the FTR allocations model, and this has raised concerns about not having a check against the FTR allocations model prior to the “official” FTR allocations in July.

41. FTR allocation decisions should be made based on accurate and up-to-date data.

However, the OMS does not intend to indicate support for further delay of market start-up.⁸ As a compromise between having another mock allocation with the potential delay of market start up and going forward for an entire year without a check, OMS recommends that MISO meet all published milestones relevant to FTRs, including but not limited to, the functioning of the state estimator system and LMP validation. The OMS also recommends that MISO adopt the following procedures.

- 1) MISO makes its currently planned FTR allocations (based on data updated to the start of nomination process) to be applicable for the period from December 1, 2004 through May 31, 2005. The FTR allocations would be performed for an entire year, but the application would be valid for only the first six months, prior to the summer of 2005.
- 2) Market participants discuss their allocations with MISO and determine the reasons for any discrepancies between their expectations and MISO’s initial allocation. To the extent there are discrepancies between MISO’s allocation and market participant expectations that are caused by errors in MISO’s model or errors in data, MISO will correct the problems/discrepancies in the model as quickly as possible prior to December 1, 2004.

⁸ Wisconsin does not concur in this sentence.

- 3) Upon correcting the model and the data, MISO will hold a new nomination process and determine a new set of FTR allocations for the period from June 1, 2005 through May 31, 2006 based on the most recently available information.
- 4) From June 1, 2005 on, MISO's annual FTR allocation period would be from June 1 through May 31 of each subsequent year.

42. This proposal has several benefits over having another mock allocation that could delay market start-up to allow time for an additional trial run. These include: 1) The market start-up is not delayed. 2) The initial six-month period is the off-peak period since it doesn't have any summer months in it, therefore, to the extent there are discrepancies between expected and realized allocations, financial consequences of any allocation errors would likely be minimized. 3) Moving the permanent annual allocation period to June 1 through May 31 insures that FTR requests, and allocation calculations, for a whole year are made with the most current information prior to the critical summer months. Given that the summer months are the most important ones in terms of exposure to congestion costs, it is beneficial for market participants to make FTR request decisions based on the most recent information possible. 4) Moving the allocation period to June 1 through May 31 has the added benefit of synchronizing the annual FTR allocation periods of MISO and PJM, as PJM's allocation period is also June 1 through May 31. Since some market participants have to do business with both entities, being able to make FTR request decisions for both entities simultaneously would be beneficial for them and it would be an additional step on the path to a common market.

2. Safety Net Provisions for Market Participants Harmed by FTR Allocations

a. Broad Policy Objectives for FTR Allocations

43. The starting point to understand the policy objectives related to FTR Allocations is the Commission's February 24, 2003, *Midwest Independent Transmission System Operator, Inc.*, order. In that Order, the Commission stated,

The Midwest ISO states that its initial FTR allocation has several important objectives: 1) **to hold existing transmission customers whole with respect to congestion-related charges under MISO Day-2 operation to the extent possible given the objective of simultaneous feasibility**; 2) to provide an allocation of FTRs that is simultaneously feasible in a security constrained power flow; and 3) to provide an allocation that is fair and consistent with how the underlying costs of the system are recovered. We recognize that the Midwest ISO has the difficult task of trying to protect parties' existing rights while ensuring that FTRs are simultaneously feasible. While we believe it is important to balance all three stated objectives, **we give more weight to the first objective**. We continue to believe that customers under existing contracts, both real and implicit, should continue to receive the same level and quality of service under a standard market design. We remain concerned that the outcome of the initial allocation, especially the application of a pro rata mechanism, will not meet Midwest ISO's first objective of keeping customers whole.⁹

44. In *Midwest ISO Inc.*, the Commission clarified that it was not directing MISO to abandon its proposed simultaneous feasibility test "at this time."¹⁰ Approximately two months later, the Commission issued its White Paper on Wholesale Market Platform on April 28, 2003.¹¹ The White Paper states:

Under the Wholesale Power Market Platform, customers in RTOs that use locational pricing along with network transmission service would have firm physical transmission service, and customers with FTRs would be protected from congestion costs.

... FTRs allow customers to schedule service according to the paths specified in their rights, with no risk of congestion charges. There would also be no risk of curtailment, absent a force majeure event such as the loss of a transmission line.

... In the Final Rule, for RTOs or ISOs that have not already addressed this issue, these rights would be allocated according to existing contracts and existing service arrangements in order to hold customers harmless.¹²

⁹ *Midwest Independent Transmission System Operator, Inc.*, 102 FERC ¶61,196 (2003), at P. 64, emphasis added. (Herein referred to as, "*Midwest ISO, Inc.*").

¹⁰ *Id.* at P 68.

¹¹ *Wholesale Power Market Platform White Paper*, Docket No. RM01-12-000 (April, 2003).

¹² White Paper, at 10, emphasis added.

45. The White Paper's Appendix similarly provides specific assurance that existing firm transmission rights would be provided the opportunity for full protection from congestion costs through allocation of FTRs. Specifically,

If an RTO or ISO uses location pricing, it *must* ensure that each existing firm customer (including transmission owners with a service obligation for native load) has **the opportunity to obtain FTRs equivalent to that customer's existing firm rights**. We will ensure not only that existing customers retain their existing rights but also that they have the ability to **obtain rights for future load growth**. Customers who paid for Transmission for load growth can retain the FTRs for that capacity. The FTRs that are offered by the RTO or ISO must, in the aggregate be consistent with the physical limitations of the transmission system.¹³

46. The OMS' objective, as stated above, is to ensure that this opportunity for customers to receive protection equivalent to their existing firm rights occurs, and to address how to share possible uplifts when there is a revenue inadequacy resulting from the FTR allocation process.

Appendix A of the Commission's White Paper states that the OMS is to:

... ensure that each existing firm customer receives FTRs or ARRs, based on the regional choice, equivalent to the customer's existing firm rights. This includes whether **any revenue shortfalls would be recovered through an uplift charge that applies to all customers in the region or over narrower class of customers**, e.g., only to customers in certain zones within the region.¹⁴

47. The Commission's policy statements on FTR allocation indicate that FTRs must first be allocated to protect customers from the cost of congestion they do not incur today under existing contracts and arrangements for firm transmission service.

48. Given this broad policy objective, the Commission left to the OMS the policy issue of the extent to which an allocation of FTRs could result in revenue shortfalls, and if so, how to allocate the recovery of these shortfalls through uplift charges; e.g., over the entire MISO footprint or from a more narrowly defined group.

¹³ Appendix A, at 7-8 & n. 8, emphasis added; footnotes 6 and 7 omitted.

b. Principles and Issues Related to Prorated FTRs

49. In tiers 1 and 2, where FTRs for base-load generation source are likely to be nominated, MISO had initially proposed giving all transmission customers a full allocation of FTRs and uplifting any possible revenue inadequacies that might result from not meeting the simultaneous feasibility condition. However, the Market Subcommittee voted instead to prorate any FTR allocations that did not meet the simultaneous feasibility requirement in tiers 1 and 2. MISO had subsequently proposed to restore any prorated FTRs for base-load generation sources by requiring counter flow FTRs that were not nominated in tiers 1 and 2 to be taken under the following conditions:

- 1) Only counter flow FTRs from base-load generation sources would be used as candidates for restoring prorated FTRs from base-load generation sources;
- 2) Only counter flow FTRs that contribute to the restoration of a prorated FTR from base-load generation would be used;
- 3) A counter flow FTR would not be required to be taken during periods that the base-load generation source is scheduled to be down for maintenance or forced out for an extended period of time; and
- 4) The counter flow FTR megawatts used for restoration must be simultaneously feasible.

50. To address the issue of the extent to which an FTR Allocation might result in customers incurring congestion costs they do not incur today because of prorating, the OMS Board of Directors adopted the following principles related to restoration of nominated FTRs that were prorated in MISO's FTR allocation process.¹⁵ Specifically,

- 1) Hold Harmless - The initial FTR allocation, restoration and uplift processes should ensure that an existing transmission customer does not have to pay for additional congestion costs compared to what it would have paid if the market structure had not been changed.

¹⁴ Appendix A, at 17 (emphasis added).

¹⁵ The OMS Board adopted these principles at its February 25 meeting.

- 2) Enforceability - There must be an enforcement mechanism to ensure that the initial FTR allocation, restoration and uplift processes hold harmless existing transmission customers.
- 3) Eligibility - If prorating of nominated FTRs results in an existing transmission customer being harmed, the prorated FTRs would be eligible for restoration.
- 4) Restoration Process – to the extent that present-day financial outcomes for holders of existing firm transmission service do not reflect enduring costs caused by others, the restoration of pro-rated FTRs should, to the maximum extent possible, reflect those present-day financial outcomes.
- 5) Transition – any requirement for customers to take counter flow FTRs should be limited to the first three years of FTR Allocations.
- 6) Safety Net – Only in cases of significant financial harm to an existing transmission customer, where either base FTR restoration cannot be achieved without violating simultaneous feasibility or where base FTR restoration is not sufficient, should forms of uplifting the cost of the FTR restoration be used.

51. The MISO proposal for FTR restoration in tiers 1 and 2 meets the OMS principles numbers 3, 4 and 5 for FTR restoration. However, the MISO proposal does not clearly address the other three principles for hold harmless, enforceability and providing a “safety net” when the FTR restoration process does not result in sufficient FTRs to prevent significant financial harm to an existing transmission customer.

52. The OMS requested that MISO present a “safety net” to cover a situation in which one or more transmission customers would be significantly harmed by its proposed FTR allocation procedure. The safety net proposed by MISO is that harm to transmission customers be taken up on a state-by-state basis, in which the states could request that prorated FTRs be restored, but such requests will only be granted “if accompanied by instructions as to how the required

Counter Flow FTRs, or their costs, are to be allocated among Market Participants falling under the jurisdiction of that state.¹⁶

53. There are two drawbacks to the MISO proposal. First, most states' regulatory authorities do not have jurisdiction over all load-serving entities within their state. Second, redistribution among state jurisdictional utilities is not a sufficient condition for meeting the Commission's requirement to keep existing transmission customers whole. For example, if all of the load-serving entities within a particular state are harmed by the MISO FTR allocation, redistribution within the state could not eliminate the harm.

54. The OMS recommends that MISO add three elements to its proposed TEMT in order to have a "safety net" that is sufficient to meet the Commission's requirement to keep existing transmission customers whole:

- 1) Set out ex ante criteria in its TEMT by which to determine if the FTR Allocation process results in harm to a transmission customer that addresses:
 - How harm will be measured and over what period of time; and
 - The existing level of congestion costs that should be included.
- 2) Include a process for FTR restoration that eliminates the harm without resulting in harm to others; and 3) Include a TEMT provision for uplifting the possible revenue inadequacy resulting from the FTR restorations required to eliminate the harm.

55. In addition or as an alternative, MISO could propose an ex post procedure to determine after the fact if a transmission customer did not have an opportunity to receive an FTR allocation that reflects risk equivalent to its existing firm rights. The OMS realizes the difficulty in developing a safety net that applies to all and does not simply shift harm from one individual to another group of individuals. The OMS will work with the Midwest ISO in developing additional approaches to a safety net. In much the same procedure that is being used for supply

¹⁶ Module C, at 43.2.6. This portion, as well as Module C at Section 43.7.3, is addressed in a subsequent section of

adequacy, the OMS proposes that MISO establish a working group to develop the details required for the additions of the above elements to the tariff and that these details be submitted to the Commission for approval, prior to the initial allocation of FTRs scheduled for July 2004. In this working group, the OMS has some technical items that it would propose to MISO as possible remedies for dealing with prorated FTR allocations that result in harm to entities holding firm transmission rights. Specifically,

- 1) MISO should consider taking into account diversity of use through monthly nominations of on-peak and off-peak CFTRs in tiers 2, 3 and 4 as soon as is feasible;
- 2) MISO should consider taking into account the infeasibility caused by loop flows assumed within its footprint, by issuing counter-flow flowgate rights (“FGRs”) that correspond to the megawatt capacities of these assumed loop flows; and
- 3) In cases where the prorating of FTRs from base-load generation cannot be restored by issuing counter flow FTRs from base-load generation sources, and this prorating of FTRs results in harm to the transmission customer, the Midwest ISO should consider whether or not restoring the full point-to-point FTRs and issuing counter-flow FGRs to the transmission customer will reduce the harm to the transmission customer. If harm is reduced, then MISO should implement this alternative.

3. The Role of State Commissions in Restoring Curtailed FTRs

56. Section 43.2.6 of Module C contains tariff provisions regarding alternative processes for restoration of curtailed FTRs. In particular, Section 43.2.6 would allow state commissions to institute remedial procedures to restore curtailed FTRs. Under this proposal, MISO shall grant such requests if accompanied by instructions from the state commission regarding how the required counter-flow FTRs necessary to restore the curtailed FTRs, or their costs, are allocated among market participants falling under the jurisdiction of that state. This alternative process would be available at the discretion of each state and would be subject to Commission approval.

these comments.

57. Similarly, Section 43.7.3 of Module C discusses “Remedial State Actions” regarding FTR allocations. Under Section 43.7.3, any market participant that is unsatisfied with its FTR allocation may contact any state regulatory commission to seek remedial actions and the state regulatory commission may institute remedial procedures designed to address the FTR concerns. If a state regulatory commission proposes a remedy to the Transmission Provider, the Transmission Provider shall file such proposal with the Commission for approval.

58. The OMS also has several concerns regarding the language in Sections 43.2.6 and 43.7.3. In particular, there is a statement made in Section 43.2.6 that, "This alternative process will be available at the discretion of each state and is subject to Commission approval". It is unclear what exactly would be subject to Commission approval. It is also unclear if MISO will seek Commission approval each time a state commission invokes this section to request the remedial procedures mentioned in this section. It is recommended that the language be modified to make that point clear. It is also recommended that the available remedial measures not necessarily be limited to counter-flow. To accomplish this recommendation, the words, “required Counter Flow FTRs, or their costs, are” should be deleted and replaced with the words, “restoration will be implemented or costs of the restoration will be allocated.”

59. With regards to Section 43.7.3, it is unclear whether MISO is committing to filing any state commission's proposed remedial procedures with the Commission under Section 205 of the FPA. If so, is MISO obligating itself to treat and defend the state commission’s remedial action as its own proposal? Given that it is not improbable for two state commissions with contradictory positions to invoke section 43.7.3, the potential exists for MISO to be put in a self-contradictory position. In short, Section 43.7.3 is unclear, conflicts with Section 43.2.6 and may

be unworkable as written. Accordingly, Section 43.7.3 should be clarified, and MISO's filing obligations under Section 43.2.6 should also be clarified and added to the TEMT.

4. FTR Re-Allocation in Retail Choice States

60. Section 43.7.2 of Module C contains provisions regarding the re-allocation of FTRs to reflect the switching of load under state retail choice programs. Specifically, Section 43.7.2 states, "On a monthly basis, the Transmission Provider will allocate ARR and ARR funding obligations based on Load reported to have shifted between Market Participants under State Retail Choice Programs during the month."

61. MISO's proposal to transfer the allocation of ARRs and ARR funding obligations on a monthly basis potentially exposes alternative electricity suppliers to congestion costs while withholding their ARRs until the end of the month. For example, in states where retail choice customers switch suppliers on their billing date, instead of the first or last day of the month, exposing LSEs to congestion costs while withholding the ARRs that are designed to protect them from these costs will have a negative effect on the efforts of those states to develop retail competition. Furthermore, there appears to be no clear reason why MISO would not be able to assign ARRs and ARR funding obligations on a daily basis instead of a monthly basis. For example, Section 7.4.2(c) of PJM's OATT states, "On a daily basis within the annual Financial Transmission Rights auction period, a proportionate share of Network Service User's Auction Revenue Rights for each Zone are reallocated as Network Load changes from one Network Service User to another within that Zone." Accordingly, the OMS recommends that the Commission direct MISO to make the re-allocation of ARRs and ARR funding obligations to LSEs that gain load in states with retail choice, on a daily basis, rather than a monthly basis as proposed in the TEMT.

B. Issues Related to Treatment of Grandfathered Agreements

1. MISO's Nominations of FTRs for Option B Grandfathered Agreements

62. The proposal by MISO is to include in the first tier all FTRs for retained GFA transmission service that transmission customers elect not to convert to FTRs (called Option B GFAs in the draft tariff).¹⁷ In section 42.2.4.a of Module C, the TEMT reads, "CFTRs equal to one hundred percent (100%) of the Option B Grandfathered Agreements are automatically included in Tier I."

63. If FTRs for all retained GFAs are nominated in the first tier, this would likely result in a greater level of FTR prorating of nominated FTRs in both the first and second tiers. This may occur when the megawatts associated with Option B GFAs exceed the 35% limit set for the first tier. MISO may have heard the argument that including FTRs for all retained GFAs in the first tier will provide it with a level of revenues needed to minimize the amount of uplift associated with providing GFAs with the option to schedule at zero congestion costs in the Day-Ahead market. However, if the level of prorating to FTRs from including FTRs associated with all retained GFAs in the first tier is significant, it is not clear that requiring counter flow FTRs from base-load sources will be sufficient to provide those holding existing firm transmission rights with sufficient FTRs to keep their congestion costs at current levels.

64. As an alternative to the MISO proposal to include FTRs for 100% of Option B GFAs in the first tier, the OMS recommends that MISO's nomination of FTRs for retained GFAs not exceed the corresponding tier limits for transmission customers retaining any portion of their GFAs. In regard to this recommendation, the OMS Board of Directors has adopted principles for uplifting possible revenue inadequacies that could result from the FTR Allocation process:

¹⁷ Midwest ISO TEMT, at Module C, Section 38.8.3 Optional Treatment of Transactions Pursuant to Grandfathered Agreements.

a) Uplifts of FTR revenue inadequacies should satisfy FERC's *Midwest ISO* order.¹⁸

*"... to hold existing transmission customers whole with respect to congestion-related charges under MISO Day-2 operation to the extent possible given the objective of simultaneous feasibility."*¹⁹

Further,

*"... these rights would be allocated according to existing contracts and existing service arrangements in order to hold customers harmless."*²⁰

and

*"... ensure that each existing firm customer receives FTRs or ARRs, based on the regional choice, equivalent to the customer's existing firm rights. This includes whether any revenue shortfalls would be recovered through an uplift charge that applies to all customers in the region or over narrower class of customers, e.g., only to customers in certain zones within the region."*²¹

b) Uplifts of FTR revenue inadequacies should not be applied when costs can be allocated to and recovered from cost causers.

c) Uplifts of FTR revenue inadequacies should not provide incentives to discourage or delay the implementation of congestion mitigation measures.

65. With the OMS recommendation regarding not exceeding the tier limits for MISO's nominations of FTRs for GFAs choosing Option B, the MISO proposed FTR nominations procedure for retained GFAs more fairly uplifts the potential cost of allowing transmission customers to retain GFAs rather than imposing those costs on specific transmission customers who did not cause them (OMS Uplift Principle 1 holding existing transmission customers whole).

¹⁸ *Midwest ISO*, at P 64

¹⁹ FERC's White Paper, at 10.

²⁰ *Id.*

²¹ Appendix A, at 17.

66. Transmission customers whose FTR nominations are prorated because of the choice of other transmission customers to retain GFAs are not the cost causers and should not have to bear the entire burden of the costs (OMS Uplift Principle 2 – there are no cost causers). Such a result would violate the Commission related OMS principles by elevating simultaneous feasibility (revenue adequacy) above keeping existing customers whole (OMS Uplift Principle 1 - to hold existing transmission customers whole).

2. Proposed Period for Special Treatment of Grandfathered Agreements

67. Section 38.8.4 of the proposed TEMT states that the special treatment afforded GFAs “shall terminate no earlier than February 1, 2008, and thereafter upon acceptance by the Commission of new provisions governing treatment of GFAs.” MISO also proposed to make an evaluation of the impact of the special treatment of GFAs to begin no later than February 1, 2006, and to file a new proposal for treatment of GFAs no later than February 1, 2007. This three-year transition period corresponds to the transition period for Grandfathered Agreements in the Commission approved Midwest ISO Transmission Owner’s Agreement.

68. While treating GFAs the same as other network transmission service and point-to-point transmission service contracts would be the best alternative, the OMS acknowledges that some compromises must be made during the transition to a competitive wholesale market. Regarding what might occur respecting the treatment of GFAs past the proposed transition period, the OMS recommends that the Commission open an investigation to determine the impact of the special treatment of GFAs on 1) other market participants; and 2) on the efficiency of the operation of

the MISO energy markets. This investigation would determine whether the special treatment of GFAs past the February 1, 2008, transition period is just and reasonable.²²

C. Seams Issues

69. In the transmittal letter attached to the TEMT filing, MISO discusses seams issues.²³ In particular, MISO states that it is aware of its stakeholders' concerns regarding seams issues between MISO and neighboring entities, but that MISO does not view the lack of joint operating agreements as a barrier to beginning market operations.²⁴ MISO further states that it is currently discussing seams issues with MISO members and non-members in the western MAPP region.²⁵ Finally, in its Proposed MAPP/MISO Seams Agreement Work Plan, MISO states that it has set September 1, 2004 as the target date for draft agreements of in order to be ready for the market opening on December 1, 2004.

70. The OMS is supportive of MISO's efforts to develop seams agreements with all entities that have a seam with MISO and would also encourage MISO to meet the target date of September 1, 2004. However, the OMS acknowledges the difficulty in putting an exact date on the process of developing and finalizing reasonable and effective agreements. MISO has assured OMS that it will have made "arrangements" with all critical parties prior to the start up of the market. In light of that assurance, OMS agrees with MISO that the market can begin without the final joint operating agreements in place for all parties.

71. Section III.C of the transmittal letter also states that MISO indicates that it is the reliability coordinator for the MAPP region. While MISO's role as the reliability coordinator

²² North Dakota, Wisconsin, Iowa, Minnesota, and Montana do not concur with paragraphs 24 and 68 because they believe a Commission investigation of the GFAs treatment beyond February 1, 2008 is premature and should first work through the MISO stakeholder process.

²³ Transmittal Letter, Section III.C, at 27

²⁴ *Id.*

²⁵ *Id.*

does secure a relationship between MISO and the MAPP region members, the OMS notes that the DOE Final Report on the August 14, 2003 Blackout expressed concern regarding the reliability coordinators and control areas. Accordingly, the OMS recommends that MISO avidly pursue the recommendations made in the Final Report for strengthening MISO's role as reliability coordinator.²⁶

²⁶ Wisconsin, Montana, and Minnesota would add the following additional views on this subject:

The MISO footprint has the most complex arrangement of seams of any existing LMP-based energy market and congestion management system. The MISO region encompasses three regional reliability councils; dozens of control areas; a fully embedded member of another RTO, fully embedded non-MISO members and non-jurisdictional participants. In addition, some of the states in the MISO region are retail access states, while others are not.

MISO and PJM have developed a Joint Operating Agreement that governs the MISO/PJM seam. However, the details of how other seams will be treated and accounted for financially and operationally, particularly the seams between the MISO market participants and non-MISO entities, have not been fully resolved. Given the rate of progress on these seams issues during the last year, currently it is not clear that resolution will be reached in time for the scheduled December 1, 2004 market start up. The OMS encourages the Commission not to allow the reliability of the electric system in the Midwest to be placed at risk in order to implement the market before these seams issues are resolved.

MISO's proposed market must reliably accommodate commercial activities that involve MISO members and non-members in MAPP and in other areas that border MISO. The OMS does not believe that mere "arrangements" relating to these seams will be adequate. The OMS believes that MISO and non-MISO parties must be allowed to negotiate formal seams agreements. Further, before MISO implements its proposed energy markets, these agreements must be evaluated and approved by the Commission and NERC. MISO's proposed energy markets should not start until MISO assures its market participants and non-MISO utilities that the seams issues are fully resolved.

In particular, splitting the MAPP region should not ignore the physical realities of the grid in the MAPP region and existing energy markets. For instance, MAPP is a natural trading area and less than half (only 47%) of the MAPP load is in MISO. Most non-jurisdictional entities are not MISO members. Generation to load creates unique stability and technical issues for reliable operations and planning. Single transactions routinely impact multiple flow gates within the region. Thus, local and regional knowledge and experience is crucial for making the right reliability decisions. Moreover, hydroelectric generation accounts for nearly 25% of generation in the MAPP region. As the Commission is well aware, hydroelectric generation is dispatched differently than fossil-fuel generation and requires special treatment.

Many assumptions and realities about MISO do not coincide with the realities of the MAPP region. The consequences of splitting the MAPP region are tremendous and MISO does not have any agreements in place to manage the myriad complex MISO-MAPP seams. MAPP can monitor the transmission system at the bus level, whereas MISO can monitor the transmission system only at the control area level. Moving from more to less granularity is counterintuitive, especially when complex seams exist. Since MISO's data pertains to control areas rather than to more detailed information that could distinguish MISO members from non-MISO members, it is not

D. State Commission Access to Confidential MISO and Independent Market Monitor Data

72. The OMS sincerely appreciates the constructive engagement of the MISO and the Independent Market Monitor in drafting this component of the Tariff. The Tariff provides State Commissions with comparable access to that of the FERC in recognition of the statutory obligations of individual State Commissions as well as the responsibilities of each State Commission through the OMS to assist the FERC and the MISO with effective oversight of the wholesale markets as well as assisting in the development of the wholesale markets. The OMS believes that the Tariff provides general authority for the IMM to monitor all relevant markets. The OMS anticipates that the provisions for an active role for State Commissions with the Independent Market Monitor will assist State Commissions in the discharge of their statutory duties as well as helping to foster and maintain the integrity of the wholesale markets. Finally, the Tariff assures the independence of the IMM. In sum, the consensus view is that the Tariff categorically satisfies the Principles articulated by the OMS and as summarized below.

clear how MISO would be able to implement the market under those circumstances.*

* In fact, of the thirteen control areas in the MAPP region, five have both jurisdictional and non-jurisdictional load within its control area: MidAmerican Energy, Minnesota Power, Otter Tail Power, Western Area Power Administration, and Xcel Energy. The remaining eight control areas all serve non-jurisdictional load: Dairyland Power Cooperative, Great River Energy, Lincoln Electric System, Manitoba Hydro, Muscatine Power and Water, Nebraska Public Power, Omaha Public Power, and Southern Minnesota Municipal Power Agency.

The Commission must avoid regional fragmentation that creates an unmanageable market in the MAPP region that threatens reliability and efficiency. The August 14, 2003, blackout has amplified concerns over the feasibility of centralized control of the entire MISO footprint. Many stakeholders are concerned that MISO's central control does not properly recognize the differences in the multiple control areas in its footprint. In fact, NERC's January 20, 2004 draft blackout report raises this issue. Although MISO is making progress with its state estimator and other monitoring tools, the OMS remains concerned that MISO's monitoring tools are less accurate than those previously used in the MAPP region, for example. A recent rise in the number of high-level transmission load relief occurrences in several areas of MISO's footprint lends support to these concerns.

The OMS Should Have Comparable Access To Information As The FERC: As a matter of principle and because of the extraordinary responsibilities that the OMS is assuming in furtherance of our individual statutory obligations and at the request of the FERC, the OMS and individual State Commissions ought to have comparable access to information from the MISO and the Independent Market Monitor as the FERC.

The MISO's Tariff embraces comprehensive access, by State Commissions, to information that is available to the MISO, the Independent Market Monitor, and the FERC. This access, combined with each State Commission's own authorities to obtain information from their jurisdictional utilities, is expected to provide the individual States and the OMS with the requisite access to information. We believe that the proposed Tariff is sufficiently flexible to adjust to future needs.

- 73. [Intentionally omitted]
- 74. [Intentionally omitted]
- 75. [Intentionally omitted]
- 76. [Intentionally omitted]
- 77. [Intentionally omitted]
- 78. [Intentionally omitted]
- 79. [Intentionally omitted]
- 80. [Intentionally omitted]
- 81. [Intentionally omitted]
- 82. [Intentionally omitted]
- 83. [Intentionally omitted]
- 84. [Intentionally omitted]
- 85. [Intentionally omitted]
- 86. [Intentionally omitted]

E. Common Market with PJM

87. On July 31, 2002, the Commission issued *Alliance Companies*,²⁷ wherein the Commission conditionally accepted the compliance filings of the former Alliance Companies under which they proposed to join either MISO or the PJM Interconnection, as consistent with Order No. 2000. The Commission stated that a large part of its conditional acceptance of the Alliance Companies' proposed arrangement was based upon the implementation of a joint and common market ("JCM") between MISO and PJM to minimize the negative effects of RTO seams.²⁸ The Commission also stressed that the transition period associated with the development of a joint and common market "must be as short as absolutely possible."²⁹ Accordingly, in an effort to ensure as short a transition period as possible, the Commission set October 1, 2004, as the deadline for MISO and PJM to form a functional common market across the two organizations and reminded both RTOs that the Commission has a wide range of remedies that it could employ if it appears that this deadline may not be met.³⁰ As events unfolded the Commission subsequently acknowledged that the October 1, 2004 date would not be met, but the Commission, notably, did not backtrack from its common market directive.³¹

88. In his testimony, MISO witness Mr. Ronald McNamara discusses the compatibility of the MISO and PJM markets. In particular, Mr. McNamara cites the joint operating agreement between MISO and PJM that was conditionally approved by the Commission on March 18, 2004, and that the energy markets proposed by MISO are "generally compatible with the PJM energy market".³² While the OMS is generally encouraged by the efforts between MISO and

²⁷ *Alliance Companies, et al.*, 106 FERC ¶ 61,137 (2002) (hereinafter, "July 31st 2002 Order").

²⁸ *Id.*, at P. 40.

²⁹ *Id.*

³⁰ *Id.*, at P.40-41.

³¹ *PJM Interconnection, LLC.*, 106 FERC ¶ 61,327 (2004), at P. 35.

³² See, *Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C* 106 FERC ¶

PJM to develop compatible energy markets, the OMS is concerned that the Commission may be enabling two distinctly different market designs to develop that may prove difficult to consolidate into a common market in the near future. A true single common market would have, at a minimum, a single market dispatch and common provisions regarding the allocation and auction of FTRs for the combined MISO and PJM footprint.

89. The OMS' concerns are rooted in the absence of a concrete plan and a valid timeline complete with mileposts to establish a true common market over the combined footprint of both PJM and MISO. Examination of the eight status reports filed by PJM and MISO regarding their compliance with the Alliance Companies Order fails to produce any evidence that the two RTOs have any real plans regarding the establishment of a true common market over their combined footprint. For example, on August 15, 2002, PJM and MISO filed separate statements wherein, they indicated that they could conform the markets in MISO and PJM to the final requirements of the Commission's standard market design (SMD) rulemaking and implement an "enhanced market portal" to provide single access and one-stop shopping across the combined MISO and PJM regions producing a functional common market.³³ Footnote number three of the MISO statement states, "Following the establishment of this functional common market during 2005, the parties plan to pursue the establishment of a single unit commitment process and a single dispatch across the markets." In short, PJM and MISO committed themselves to establishing by October 1, 2004, two separate markets using common market rules and a common user interface providing one-stop shopping. However, the TEMT filed by MISO does not demonstrate compliance with MISO's own commitment for common market rules or a common user

61,251 (2004) and McNamara Testimony, Exhibit MISO-4, Page 88, at line 11.

³³ Statement of PJM Interconnection, L.L.C. Regarding Conditions, Docket No. EL02-65-000, et al., (2002), at 1-2; and Statement of the Midwest Independent Transmission System Operator, Inc. Regarding Conditions, Docket No. EL02-65-000, et al., (2002) at 2-3.

interface. Furthermore, a true single common market, which is what the Commission actually required in its Alliance Order, would only begin to be planned in 2005.

90. Examination of the September 17, 2002 report filed by PJM and MISO provides evidence that their commitment to implement a true single market had already started to fade. In particular, the schedule starts to include references to common market development as “planning additional JCM activities” and “implement additional JCM activities” in the PJM and MISO’s Functional Common Market Plan.³⁴ Indeed, by the time PJM and MISO filed their November 18, 2002, report, the “Additional JCM Activities” had disappeared from the status reports. By the time the March 18, 2003, and May 19, 2003 reports were filed, the status of the development of common market rules- or even a market portal - were completely removed from the status reports.

91. The July 24, 2003 report contained some information regarding the efforts of PJM and MISO to develop a common market. Therein, PJM and MISO indicated that they then planned to deploy by October 1, 2004, a prototype single market portal for testing and use by market participants.³⁵ However, in the letter, MISO and PJM concluded that they did not have to establish a single common market as required in the July 31, 2002 Alliance Order and that it would be enough to establish a “common” market - which would be two separate markets with a common customer interface - and to study the economic benefits of a true single common market.³⁶ PJM and MISO also indicated they were “now developing the detailed milestones for this effort and plan to include those in the next update to the Commission.”³⁷ However, these milestones are not in the October 1, 2003, report. In fact, the status reports submitted from

³⁴ See Docket No. EL02-65-010, Midwest ISO/PJM Implementation Plan, September 17, 2002, Section 3, lines 73 and 74.

³⁵ *Alliance Companies, et al.*, Docket Nos. EL02-65-011, et al., Letter From PJM and MISO, July 24, 2003 at 1-2

³⁶ *Id.*, at 2.

October 1, 2003 through April 1, 2004, only addresses the JOA and the implementation of PJM and MISO's separate markets.

92. It is becoming increasingly clear that PJM and MISO, despite their one-time stated intentions, are not acting and devising market design elements in such a way as to lead to the implementation of a single common market for the PJM and MISO footprint any time soon and maybe not any time.

93. Accordingly, the OMS urges the Commission to direct both MISO and PJM to renew its efforts to implement a common market over their combined footprints. The Commission should establish a new deadline for implementing the common market, and require MISO and PJM to file a concrete plan and a valid timeline with mileposts to establish a true common market over the combined footprint of both PJM and MISO. Furthermore, the Commission should commit itself to scrutinizing any MISO or PJM market design modification or tariff proposal with an eye to how that market design modification or tariff proposal affects the path to development of the common market. This recommendation does not detract from MISO's efforts to pursue MISO Day-2.³⁸

F. Purpose and Objective of the Market Monitoring Plan

94. The OMS is gratified that the Tariff provides general authority for the IMM to monitor all relevant markets and the flexibility to address circumstances as they arise. The Tariff also vests the IMM with sufficient authority to safeguard the integrity of the markets, protect market participants from unfair or abusive practices, and protect consumers. The OMS anticipates that the provisions for State Commission participation with the Independent Market Monitor will assist State Commissions in the discharge of their statutory duties and to maintain the integrity of

³⁷ *Id.*

³⁸ Missouri does not concur with the last sentence.

the wholesale markets. Finally, the Tariff assures the independence of the IMM. In these regards, the OMS believes that the Tariff satisfies the Principles articulated by the OMS.

1) Market Monitoring Should Be Comprehensive: As a matter of principle, the Independent Market Monitor ought to have comprehensive authority to monitor all relevant markets. Consistent with this principle, the IMM should be able to monitor and report on any aspect of the market structure, operations, rules, participant conduct, and etc. that the IMM deems to be potentially or factually disruptive to the efficiency of the market, anticompetitive, or harmful to consumers. The Tariff at 53.1(7) provides for such broad authority:

To the extent practicable, conditions or events outside the Midwest ISO's control areas affecting the supply and demand for, and the quantity and price of, products or services sold or to be sold in any of the markets administered, coordinated, or facilitated by the Midwest ISO.

2) Market Mitigation Should Be Sufficient To Protect The Public Interest And The Integrity Of The Markets: The Market Monitor ought to have sufficient authority to: (a) recommend changes in market design, (b) suggest changes to operational protocols, (c) prevent conduct that is disruptive, abusive, and harmful to consumers. In the event that precautions prove to be insufficient, the Market Monitor ought to be vested with sufficient authority to mitigate behavior that is likely to be injurious to the efficiency of the markets and consumers.

The OMS believes that the Tariff is correct to emphasize prevention of conduct that is injurious to the market and consumers. The OMS also believes that the Tariff correctly recognizes that it is imperative that when such conduct affects the operations of the market, injures market participants, or harms consumers that the Market Monitor be vested with sufficient authority to mitigate the behavior -especially in the real-time markets. Such authority is necessary, as a practical matter, because the time constraints for effective mitigation would not permit prior approval of the FERC.

Because the "science" of market monitoring is in its infancy, combined with the incipient nature of the markets the MISO is developing, the "triggers" for mitigation and the methods of mitigation ought to be reviewed as necessary to permit an efficient and timely evolution. The OMS believes that the MISO Tariff

recognizes that the State Commissions need to be involved in this process.

3) State Commission and OMS Access To The IMM Should Be Comprehensive: Because of the breadth and depth of the OMS' work and the needs of State Commissions, State Commissions ought to have access to the Independent Market Monitor that is not restricted by the Midwest ISO. The OMS endorses with appreciation the Market Monitor's proposal to have annual reports, to engage in periodic meetings, to participate in meetings as required to address specific matters, to permit State Commissions to bring issues to the attention of the Market Monitor, and for the Market Monitor to bring issues to States Commissions. The Tariff provides the comprehensive access that the OMS and State Commissions have sought from the IMM without interference by an RTO.

4) The Independence of the Market Monitor Should be Certain: In addition to State Commission and OMS access to the IMM that is not restricted by the MISO, the IMM should also have the resources and tools to effectively monitor the all relevant markets and, where necessary, mitigate disruptive and abusive behavior. The OMS believes that the Tariff is clear that the Market Monitor will be independent. To this end, the OMS will work with the FERC, the MISO, the MISO's Board, stakeholders, and the IMM to better ensure that the IMM has the requisite resources.

95. With regard to the purposes and objectives of the market monitoring plan, Section 50 of Module D sets forth the “purpose and objectives” of the independent market-monitoring plan: Section 50.1 is titled “Purposes and Objectives”; Section 50.2 is titled “Markets to be Monitored”; and Section 50.3 is titled “Persons and Entities Subject to the Plan.” Consistent with the OMS belief that the Independent Market Monitor should have the broadest latitude to monitor all relevant markets, the following three subsections should be clarified.

50.1 Purposes and Objectives

This Plan is intended to provide for the independent, impartial and effective monitoring of and reporting on: (1) the competitive performance and efficiency of the Transmission Provider's ~~Energy~~ **Markets and Services**, including identification of opportunities for efficiency improvements; (2) the conduct of Market Participants, Transmission Owners, and the Transmission Provider, including

but not limited, to any exercise of or attempt to exercise, market power in any **Energy Markets or Services provided by the Transmission Provider**, or to inefficiently reduce the quantity or quality of Transmission Service in the region; (3) the operation, use, and congestion of the Transmission System as such system affects competitive conditions in the region; and (4) the adequacy and effectiveness of any market rule, procedure, or action that affects the competitiveness or economic efficiency of the Markets and Services.

50.2 Markets to be Monitored

The IMM will monitor the Markets and Services provided by the Transmission Provider, including the imbalance energy market, **any capacity market or mandatory capacity construct**, any congestion management market or system, any Ancillary Services market **or procedures for ancillary services provision**, any market for the purchase or sale of transmission rights, and any other market **or services** administered, coordinated or facilitated by the Transmission Provider. The IMM will not monitor bilateral Energy markets, or private transmission rights not administered, coordinated or facilitated by the Transmission Provider, except to periodically assess the effect of these markets on the **Energy Markets and Services provided by the Transmission Provider**, or the effects of the **Energy Markets and Services provided by the Transmission Provider** on these markets.

50.3 Persons and Entities Subject to the Plan

The Transmission Provider, the IMM, and any person or entity participating in any of the **Transmission Provider's Energy Markets** or that takes service under or is a party to any tariff or agreement administered by the Transmission Provider, shall be subject to the terms, conditions and obligations of this Plan.

G. Control Area Responsibilities and Multiple Entities in one Control Area

96. The OMS recognizes the significant level of work by MISO, the North American Electric Reliability Council (NERC) and others in clarifying control area functions between the control area operator and MISO. However, there are control areas within the MISO footprint that are operated by multiple jurisdictional and nonjurisdictional entities. Historically, a control area operator has been assigned the operational responsibilities for forecasting, balancing, congestion

and losses - including those related to Grandfathered Agreements. In cases where there are multiple entities in one control area and not all entities are MISO members, it is not appropriate to assign all of the operating and financial responsibility associated with a market to just the entities that are MISO members – as proposed by the TEMT.³⁹

97. The OMS cites the example of the control area of OtterTail Power as a concrete example where the simple assignment of all control area responsibilities to one entity, in the context of a market, places an unfair burden on one utility. Although OtterTail is the control area operator, its load comprises only 31% of the control area, with the remaining 69% being distributed between seven other entities. Further, a significant portion of the entities that share the control area with OtterTail are not MISO members and are, therefore will not participate in the proposed MISO markets.

98. The OMS is encouraged to hear that MISO staff and OtterTail have been meeting to discuss more equitable solutions to these control area issues. However, the affected State Commissions, such as Minnesota, North Dakota and South Dakota, reserve an opportunity to file comments in response to any comments that OtterTail Power may file on this issue

H. Security-Constrained Unit Commitment and Security Constrained Economic Dispatch in the Day-Ahead Market

99. Section 39.2.9 of Module C provides the specific language for the method in which the Transmission Provider/MISO will clear the Day-Ahead Energy Market using both the Security-Constrained Unit Commitment (“SCUC”) and Security Constrained Economic Dispatch (“SCED”). The SCUC and the SCED will simultaneously:

- 1) Clear offers and bids for each Hour of the next operating day to yield day-ahead schedules;
- 2) Efficiently allocate transmission capacity to day-ahead schedules by resolving transmission constraints; and

³⁹ See Section 38.6 of the MISO TEMT.

- 3) Commit available resources at least-cost to meet the energy and congestion management requirements throughout the day-ahead energy market.

100. The OMS supports MISO's use of both the SCUC and SCED which will allow for the lowest cost resources (including start-up costs) to be scheduled while considering the operational ability of generating units available and any transmission constraints. It appears to be the best optimization of cost and operations, based on generation that schedules in the day-ahead market.

101. For purposes of clearing the day-ahead energy market, MISO continues to require each control area operator to provide MISO with an hourly forecast of its load requirements by 9 am EST on the day before the operating day consistent with the provisions of Section 38.5.5. The OMS notes that MISO was encouraged by the Commission's October 29, 2003, Order to move the bidding deadline to 11 am EST as soon as possible.⁴⁰ OMS supports moving to a later deadline, if doing so is feasible. MISO should show that day-ahead schedules can be solved using the SCUC and SCED by the scheduled deadline. OMS does consider the MISO footprint to be of a size that may require a more significant amount of time than other markets, at least in the short term.

I. Readiness and Performance Metrics⁴¹

⁴⁰ *Midwest Independent Transmission System Operator, Inc.*, 105 FERC ¶61,145, (2003), at P. 20.

⁴¹ Michigan and Indiana do not concur with this section, paragraphs 102 – 119. They do not agree with many of the conclusions in that section, and are specifically concerned that this is not directly in response to the MISO TEMT. (The performance metrics are not part of the TEMT). MISO is conducting the performance metrics process as part of its stakeholder review, which these states feel is appropriate. MISO has spent considerable time on the performance metrics, including seeking stakeholder input, hiring a consultant to analyze the metrics and, most recently, forming a task force to specifically address the performance metrics. They agree with the concept of performance metrics and believe that the performance metrics are an important part of MISO's readiness. They do not agree with the OMS comments that would request FERC to order MISO to address issues relating to performance metrics to the complete satisfaction of OMS, stakeholders and FERC before the Day 2 market starts. This requirement is not clearly defined in the OMS comments and would be difficult to implement. MISO has made a commitment to complete the performance metrics. The two states support this effort and are satisfied with the assurances of MISO and the steps that MISO is taking. They supported alternative language that would have expressed similar comments as have been made in Michigan's separate filing. Several other states also supported this alternative language. They express confidence that the measures that MISO has already instituted with respect to performance metrics are fully adequate to achieve its goal of an efficient Day 2 market by December 1, 2004 and encourage MISO to continue its efforts to resolve the performance metrics through the stakeholder process.

1. Modeling Problems

102. Although modeling problems are not included within the category of “tariff issues”, the OMS considers modeling problems to be a significant issue that could impact the currently scheduled December 1, 2004 start-up date of the MISO Day-2 market. The modeling problems issue was raised by parties in the April 14, 2004 MISO Advisory Meeting. The main modeling concerns appear to be related to the FTR allocations. MISO did explain the reason for occurrences of certain modeling problems; for example, executing a correction to one model does not automatically result in updates to all the models.

103. The OMS is aware of concerns raised regarding the state estimator model and the need for greater emphasis on accuracy, particularly in:

- A) The model reduction and equivalency assumptions on the underlying 69kV system for market participation segregation;
 - FTR allocations; and
 - Congestion management.

104. OMS has also heard frustration expressed at the slow pace of market registration of load. Lastly, concerns have been raised regarding generation reserve sharing, specifically ensuring that the generation reserve sharing is coordinated and included into the operations and settlements of the MISO Day-2 market.

105. OMS understands that modeling problems are being addressed and should be resolved by MISO. OMS expects that MISO’s technical readiness performance metrics will be met prior to the Day 2 market start-up. OMS is aware that the performance metrics are still be being clarified and reviewed to ensure adequate standards to ensure market readiness.

2. Readiness

106. MISO's Progress Report on the Midwest Market Initiative ("Report"), which was filed with the Commission for informational purposes on January 23, 2004, provides the following "Readiness Progress Review":

1. Progress since Last Report

MISO has published on its website Metric Interpretive Guidance documents for many of the metrics. These documents give the stakeholders a reference regarding how MISO plans on meeting each metric. PA Consulting introduced their firm to the Advisory Committee in November. A high-level plan related to the metrics was presented to the Advisory Committee by PA Consulting at the January Advisory Committee meeting. PA Consulting will begin providing the Board of Directors and Advisory Committee status reports on the performance metrics beginning in January.

2. Progress Expected in Next 120 Days

MISO will continue the implementation process to meet each metric. As each metric is achieved, MISO will forward to PA Consulting the information associated with that metric so that PA can start its independent verification process. As metrics are independently verified, PA will report the status to the Board of Directors each month. MISO will forward these reports to the Advisory Committee.⁴²

107. PA Consulting, in its Update on Activities to Date ("January Update") that was presented to the MISO Advisory Committee on January 14, 2004, states,

Based on our experience with other market start-ups, we are familiar with several different processes for verifying the completion of specific Readiness Metrics.

The process for PA's verification of the completion of each Metric will be specified in a **Verification Plan**.

Although the Verification Plan describes the approach that we will apply to give our independent assurance that each and every Readiness Metric has been completed, the Verification Plan will build on the MISO's own metrics-related process, including Metric Interpretive Guidance and Completion Review Documents.

The Verification Plan is currently in ongoing development and is expected to be completed by the end of January 2004.

⁴² Report, at 17.

Once complete, the Verification Plan will be relatively static, but changes may be made, if appropriate, and a revised Verification Plan would be issued.⁴³

108. PA's January Update also states:

For some metrics, more than one verification process may be possible.

In such circumstances, a choice must be made taking into account a number of considerations, including

- The nature and technical content of the Readiness Metric in question;
- The level of assurance that should be provided to the constituents of the readiness review; and
- Budget implications of choosing a more thorough or detailed verification process.

For some metrics, it may be appropriate to combine elements of the alternative possible approaches.

These choices among alternative verification approaches are being made as the Verification Plan is developed.⁴⁴

109. In its February 18, 2004 presentation to the MISO Advisory Committee regarding Readiness Advisor's Verification Plan Release No. 1 ("February Update"), PA Consulting states:

About Release No. 1:

Verification approach for each metric depends on the MIG and many of these are still in discussion and finalization

Accordingly, Release No. 1 indicates that the verification approach for many individual metrics is still to be determined (TBD)

To conserve scarce resources – at least until a more complete picture of the overall need for verification activities comes into clearer focus – the RA has been instructed by the MISO to include only the minimal set of activities that could reasonably establish that the metric has been met

– Deeper review possible, as warranted, after consultation with the MISO⁴⁵

⁴³ January Update, page 13.

⁴⁴ January Update, page 15.

⁴⁵ February Update, at 4.

110. PA Consulting's Monthly Formal Status Report – February 2004 states that zero (0) performance metrics have been “completed and verified”; zero (0) performance metrics are “currently being verified”; and that 123 performance metrics are “not yet completed”.

111. As noted above, PA Consulting's January Update states that the Verification plan “is expected to be completed by the end of January 2004.” MISO's January 23, 2004 Report indicates that PA Consulting will follow an independent verification process. PA Consulting's February Update, however, states that MISO is instructing PA Consulting “to include only the minimal set of activities that could reasonably establish that the metric has been met.”

112. With regards to the Readiness Advisor's Verification Plan, the OMS recommends that MISO seek stakeholder input and finalize its Verification Plan well before Day 2 start-up in order to enable PA Consulting to provide both the Commission and stakeholders, such as the OMS, with thorough and accurate measures of MISO's readiness to properly implement Day 2 markets. MISO should also clarify who is accountable for the provisions of the Verification Plan that PA Consulting will use to assess whether or not MISO has met each performance metric.

3. Performance Metrics

113. With respect to MISO's performance metrics, the OMS encourages the Commission to share the OMS's commitment to ensuring MISO's market readiness. MISO has committed not to begin its Day 2 market operations until all readiness metrics have been satisfied. The current set of metrics focuses mainly on reliability issues. The current set of reliability-related metrics may require revisions after additional stakeholder review. Moreover, upon further stakeholder review, MISO may need to add performance metrics related to MISO's commercial operational readiness. The OMS is encouraged by the creation of a new MISO stakeholder task force (the

Metric Interpretive Guidance Task Force) to review and suggest performance metrics related to market implementation.

114. The OMS notes that MISO and its Readiness Advisor continue to assess market readiness even without a finalized Verification Plan and the associated finalized set of performance metrics. By moving forward with readiness assessments based on draft performance metrics, MISO runs the risk of getting ahead of itself and creating the need for potentially costly re-verifications. The Commission should not allow MISO's unilateral decision to move forward without finalized performance standards to provide MISO with a "moving target" excuse for ignoring or avoiding revised or additional performance metrics developed by stakeholders subsequent to MISO's readiness assessment efforts. Instead, the Commission should encourage MISO to give its stakeholders ample discretion to design appropriate performance metrics to ensure MISO's and the market participants' market readiness

115. To illustrate some of the OMS's concerns about MISO's readiness, the OMS proffers the following general comments and suggestions regarding MISO's "Milestones and Related Performance Evaluation Criteria, Version: Draft Final," dated April 13, 2004.

116. With respect to FTR-related performance metrics, if the input data to the FTR allocation is not valid, MISO cannot reasonably ensure that LSEs will be allocated FTRs that provide a sufficient financial hedge against congestion costs. Many of the FTR-related performance metrics focus on the accuracy of the model(s) used for the FTR allocation. While model accuracy is important, so are other aspects of the initial FTR allocation for which MISO has not developed sufficient performance metrics. For example, the current set of performance metrics ignore the validation of CFTR source and sink data as well as load settlement zones for purposes of the initial FTR allocation. In addition, MISO has no standard interface or process to be used

as part of the initial FTR allocation process for sending and confirming Candidate FTR nomination data. These are serious omissions in the current set of performance metrics.

117. Another general observation is that MISO's current set of performance metrics pays scant attention to generation reserve sharing. The performance metrics must include details about MISO's testing plan. MISO's performance metrics also must establish the performance expectations and methods of incorporating the participation of the non-MISO participants in regional generation reserve sharing. These non-MISO arrangements, operations, and settlements must be coordinated with MISO's Day 2 market design. Therefore, MISO should improve its performance metrics to ensure that MISO is able to perform such coordination.

118. Furthermore, MISO's current set of performance metrics will not ensure settlements preparedness prior to start of the Day 2 market. For example, the load zone definition data used in settlements must be accurate from the time of the initial FTR allocation through the time of market settlements. The degree of error in load zone definitions in MISO's recent illustrative FTR allocation demonstrates MISO's lack of readiness with respect to settlements. In addition, MISO's current set of performance metrics do not provide sufficient assurance that its Day 2 market start-up will not occur prior to MISO having sufficient access to the meter data required to perform valid settlements. For example, MISO currently requires only 75 percent of market participants to provide meter data.

119. These general concerns are illustrative and by no means an exhaustive list of issues that MISO must address – to the satisfaction of the OMS, other stakeholders, and the Commission – before Day 2 market start-up. Improving MISO's performance metrics should be a collaborative effort by the OMS and other stakeholders. Assessing MISO's readiness according to improved metrics also should be a collaborative effort that involves the OMS and other stakeholders.

J. Resource Adequacy and Capacity Markets

120. Detailed resource adequacy requirements were not included in MISO's July 25 filing. The current MISO TEMT proposal includes Module E, which is an interim effort to provide a solution to resource adequacy concerns in the MISO region. Module E provides that: 1) Market Participants must continue to comply with all applicable Regional Reliability Organization (RRO) requirements for load served in the MISO region; 2) Market Participants must also comply with all state authority regarding resource adequacy or reliability; 3) MISO will monitor resource adequacy compliance by Market Participants, including determinations as to whether a resource qualifies as satisfying RRO and state reliability requirements; 4) if MISO determines that no resource adequacy standard exists within a state, it will require an annual reserve margin of 12% to load served in that state; and 5) all resources identified by Market Participants as available to meet resource adequacy requirements must comply with the requirements for specification as Designated Network Resources.⁴⁶

121. The OMS, through the OMS Resource Adequacy Working Group ("RAWG") has taken a leadership role in developing long-term resource adequacy requirements for the MISO footprint. The OMS RAWG understands that the resource adequacy provisions of the MISO TEMT filed March 31, 2004 are interim, temporary provisions. The OMS RAWG has worked with the MISO Supply Adequacy Working Group ("SAWG") to develop the "Resource Adequacy and Capacity Market Principles" ("OMS Principles") and "Joint MISO Supply Adequacy Working Group/ OMS Resource Adequacy Working Group Resource Adequacy Work Plan" ("Joint Work Plan") for developing and implementing resource adequacy requirements and a MISO capacity

⁴⁶ Testimony of Ronald McNamara, MISO-4, at 57.

market. These documents were filed with the TEMT as Exhibits MISO-1, MISO-2, and MISO-3.

122. The OMS Principles continue to be considered by the MISO SAWG and the OMS RAWG in their joint discussions and negotiations to develop permanent and comprehensive resource adequacy requirements. The purpose of the resource requirements is to ensure that adequate electric generation, transmission and demand response infrastructures are available in the region to serve load requirements at all times. Due to the high cost of developing and building new generation resources and typical development time horizons, it is unlikely that short-term supply/demand imbalances will encourage long-term infrastructure investment or generation-related fuel diversity. Comprehensive resource requirements are intended to encourage development of resources to meet the current load as well as options to address any anticipated load growth in the region. The OMS recognizes that comprehensive resource requirements should be effective throughout the MISO footprint and should provide adequate incentives with sufficient enforcement to solve regional generation and transmission constraints.

123. In light of the adopted OMS Principles, the OMS offers the following comments regarding Module E:

- 1) The resource adequacy tariff language lacks sufficient detail to determine that no financial or other harm befall native load or other customers;
- 2) The Module E language fails to recognize either the potential market-to-market seams with PJM in portions of MISO in the East or the market-to-non-market seams in the MAPP portions of MISO in the West. For example, the language fails to indicate whether existing operating agreements for managing North Dakota export limits during contingencies will be honored. In the ECAR portions of MISO in the East, the language fails to explain how or if reserve requirements that are assessed by state will be able to rely on resources that are within ECAR, but outside of the MISO footprint.
- 3) The language in ¶ 69.2, “Network Resource Must Offer Requirement” appears to be in conflict with ¶ 68.1.1 “Compliance with Regional Reliability Organizations.” The tariff appears to require utilities to bid more resources than

necessary during periods of light load. Paragraph 69.2 should be clarified to require that designated resources be scheduled in the Day Ahead Market sufficient only to meet system requirements for the following day.

4) The tariff language in ¶ 68.2.1 discusses that compliance will be evaluated but it does not discuss whether there are any consequences for non-compliance with the standards discussed in Module E. Penalties triggered by emergency alerts and extreme real-time market conditions do not by themselves send the correct signals for long-term resource commitments adequately. It is recommended that a new section 68.2.1.c be added as follows to discuss non-compliance and penalties.

68.2.1.c.

When Transmission Provider reviews compliance in accordance with ¶ 68.2.1.a and ¶ 68.2.1.b, and finds non-compliance, the Transmission Provider shall impose penalties, where state regulatory agencies or RROs do not have authority to do so. The Transmission Provider shall develop enforcement mechanisms and associated criteria. Penalty criteria should take into account existing state and RRO resource adequacy requirements and enforcement mechanisms.

5) It is not clear whether Module E contains any reporting requirements relating to long-term forward-looking system requirements. A short-term approach and no reporting requirements would likely eliminate many types of base load generation from inclusion in the resource plans. Fuel diversity is in the public interest. A longer planning horizon would keep various generation technologies open as an option for the future. It is recommended that a new ¶ 68.2.3 be added as follows on reporting requirements:

68.2.3 Reporting Requirements

The Transmission Provider shall develop guidelines for reporting long-term load forecasting (as described in ¶ 71 demand on the Transmission System) and resource forecasting consistent with NERC standards and criteria in place for long-term reporting in other RROs and states within the Transmission Provider Region.

6) Resource adequacy includes generation planning as well as current and anticipated load, including all load growth, in the region. Module E discusses generation but does not discuss demand. It is recommended a new section be added to Module E that describes what is meant by the “demand on the Transmission System” as discussed in the very first paragraph of Module E. The demand discussion should include load forecasts that consider uncertainty for both demand and energy. The forecast should document the methodology and major assumptions used and how these are impacted by economic, demographic, and

customer trends (including customer switching to alternate suppliers); weather effects; efficiency improvements; and non-MISO loads. Forecasts should also clearly document how the effects of demand-side management programs (e.g. conservation, direct load control, etc.) and other factors are considered. It is recommended that a new ¶ 71. be added as follows:

71. Demand on the Transmission System.

The Transmission Provider shall develop criteria for demand on the Transmission System, including long-term forecasts consistent with RRO and state reporting requirements. Load forecasts shall be developed to consider forecast uncertainty for both demand and energy. The forecast should document the methodology and major assumptions used.

7) Paragraph 68.2.2 discusses the qualification of resources. The language requires that the Transmission Provider determine criteria for resources to qualify as satisfying RRO and state reliability requirements. The language does not include any verification or tests for certifying generation capacity ratings. It is recommended that the tariff be revised to include a new ¶ 68.2.2.d as follows:

68.2.2.d. The Transmission Provider shall require verifications and tests consistent with RRO requirements for certifying capacity ratings for generating units.

K. Business Practice Manuals

124. MISO has indicated that it will not be filing its Business Practices Manuals with the Commission. The OMS is comfortable with MISO's decision as long as the information necessary to determine rates and to facilitate resolution of disputed issues before the Commission is properly included in the TEMT. MISO indicated that this was their intent and encouraged OMS to inform them of any areas referenced to the Business Practices Manuals that may cause a concern. Due to the short time frame for commenting the OMS has not had the opportunity to review the entire TEMT to ensure all references are appropriate. OMS will attempt to review this issue further and encourages the Commission or other parties to address any concern they may note in their review of the TEMT regarding this issue.

L. State Authority Regarding Low Cost Generation Resources

125. Sections 38.2, 38.3 and 38.8 of the TEMT require that all Load Serving Entities (“LSEs”) must participate in the market by submitting schedules and being responsible for full costs even if the LSE is self-scheduling or only using bilateral contracts. There are also emergency situations that may require LSEs to change their generation dispatching as a result of a MISO transmission operator order. The OMS recognizes the need for MISO to be able to monitor all flows on the system, including generation, transmission and the load being served, and to change dispatch in emergency conditions. The OMS recognizes that there are some services that are provided by the MISO transmission operator to self-scheduled and bilateral contracts.

126. The OMS is reassured by the testimony of MISO witness Ronald R. McNamara that MISO market mechanisms will not undermine the ability of states and/or utilities to serve their own customers at the lowest cost. He also provides that MISO market mechanisms will enhance the ability of states and local utilities to serve their customers at the lowest costs, consistent with reliable operations. Mr. McNamara states that “by coordinating a regional economic dispatch MISO will be able to arrange a more efficient (i.e. lower cost) dispatch for the region as a whole than can be achieved by the individual dispatches of separate control areas. This more efficient regional dispatch can then serve loads that are relying on the regional dispatch at the lowest cost, given the dispatch offers and bids.”⁴⁷

127. Mr. McNamara also states:

Areas currently served by low-cost resources will be able to continue to serve local loads at low cost, but any surplus low-cost resources can be offered to the MISO regional dispatch and thus help to lower dispatch costs for other areas within MISO yet return revenues for the entities owning the surplus low-cost resources. To the extent that any area relies on imports to serve local loads, the MISO’s regional markets will facilitate that area’s ability to be serve customers at lowest cost, either through purchases from the MISO-coordinated Day-Ahead Energy Market and real-time spot markets or through efficient scheduling of bilateral

⁴⁷ Testimony of Ronald McNamara, MISO-4, at 43-44.

transactions between suppliers and load-serving entities. The MISO's LMP-based markets will then support these transactions with effective and efficiently priced redispatch, and with open access to the MISO spot markets to cover uncontracted amounts and imbalances in real time.⁴⁸

128. Based upon the statements of Mr. McNamara, the OMS will not, at this time, address the question of whether the Commission and MISO have the statutory authority to impact generation resources that serve native load customers in states that continue to have obligations to serve native load customers using low cost resources.

M. Other Module D Provisions

129. Section 51.2(a)(i)—Delete the parenthetical phrase, “(Attachment S-1 of this Tariff.” This parenthetical phrase is a hold-over from previous drafts of the TEMT and is no longer relevant.

130. Section 52.3(a)(i)—Insert reference to state regulatory commissions to effect state commissions getting the IMM's reports. Insertion of such a reference is appropriate and makes Section 52.3(a)(i) consistent with Section 50.1.

131. Section 52.3(b) requires the IMM to notify the Commission immediately in the event that the IMM identifies a significant market problem. This subsection should be modified to also require the IMM to notify an affected state regulatory commission in those circumstances.

132. Section 54.3(c)—The reference to “Section 38.8.4” should be changed to “Section 38.9.4.”

133. Section 56.2 provides that the IMM may conduct analyses at the request of a market participant. This section should be modified to provide that, if the IMM conducts the requested analysis, the IMM shall report the results of these investigations to the Transmission Provider, to the Commission and to other Interested Government Agencies.

⁴⁸ *Id.*

134. Section 63.4.1(f) requires the IMM to seek comment from the Transmission Provider's Market Participants before altering or removing the designations of any area as a Narrow Constrained Area. This section should be modified to require the IMM to also seek comment from interested state regulatory agencies.

N. Relationship between Schedule 16 and 17

135. MISO Schedules 16 and 17 are currently the subject of a paper hearing ordered by the Commission in Docket ER02-2595-000 and any decisions concerning these schedules will ultimately be incorporated into the TEMT. The OMS appreciates these comments and the acknowledgement by the MISO on pages 14 and 15 of 27 of its transmittal letter of the TEMT. The issue of assigning costs on a cost-causative basis (i.e. assigning costs where possible to the user(s) of the services) is an important concept that the OMS believes should be considered on an on-going basis. Addressing such cost assignment in the future is essential to ensuring an efficient market.

O. System Support Resources

136. Section 38.2.7 of Module C contains MISO's proposal regarding System Support Resources ("SSR"). The SSR Program details procedures intended to maintain system reliability by providing a mechanism for MISO to enter into agreements with market participants that own or operate Generation Resources or Synchronous Condenser Units ("SCU"s) which are required by MISO to maintain system reliability, if such resources are uneconomic to remain in service and otherwise would be decommissioned, placed into extended reserve shutdown or disconnected from MISO's system.

137. The OMS understands why an SSR program may be an important feature in the TEMT. However, there are several reasons why the OMS is opposed to the inclusion of an SSR program in the TEMT at this time. First, reliability has traditionally been provided by utilities, which

have an obligation, and the ability to carry out that obligation, in order to serve customers. Reliability has also been the responsibility of the regional reliability organizations and the state commissions. Module E recognizes this relationship when it states, “The resource adequacy requirements established in this Module E are based upon the pre-existing reliability mechanisms of the states within the Transmission Provider Region and within the Regional Reliability Organization (RRO).” The OMS sees no practical difference in intent between the description of the SSR Program’s purpose in Module C, “System Support Resource ... procedures maintain system reliability by providing a mechanism for the ... Transmission Provider to maintain system reliability” and the wording of the introduction of Module E, “This Module E provides requirements and standards to be met by the Transmission Provider and Market Participants to ensure access to adequate Generation Resources to meet demand on the Transmission System.”

138. Second, MISO has failed to thoroughly vet the concept of an SSR through its stakeholders. For example, the testimony of MISO witness Mr. Doying states,

On December 3, 2003, the Midwest ISO presented an updated version of the SSR program based on stakeholder comments. On December 18, 2003, the Midwest ISO presented and the MSC discussed a white paper on the topic. A motion related to the proposal was considered, but tabled at the December 18, 2003 meeting. The Midwest ISO continued to work with stakeholders to resolve substantive issues that were raised as the proposal was developed and refined. On January 6, 2004, a new white paper was put forth by the Midwest ISO with further refinements and modifications to the program. A motion to not include the SSR program in the March 31, 2004 Tariff filing was passed by a vote of 13 to 9.⁴⁹

139. On December 3, 2003, the Midwest ISO presented an updated version of the SSR program based on stakeholder comments. On December 18, 2003, the Midwest ISO presented and the MSC discussed a white paper on the topic. A motion related to the proposal was considered, but tabled at the December 18, 2003 meeting. The Midwest ISO continued to work with stakeholders to resolve substantive issues that were raised as the proposal was developed

and refined. On January 6, 2004, a new white paper was put forth by the Midwest ISO, with further refinements and modifications to the program. A motion to not include the SSR program in the March 31, 2004 Tariff filing was passed by a vote of 13 to 9. The OMS objects to the SSR proposal as it is currently filed.

140. The 13 to 9 vote represented a 59/41 percent split. If MISO had followed the MISO Governance Guide and had the Advisory Committee review the motion, the issue would have been on the OMS radar screen.⁵⁰ The OMS' three representatives to the Advisory Committee were present at its January meeting and the subject did not come up."⁵¹ A careful review of the minutes of the MISO Advisory Committee's meeting shows no mention of the SSR Program.

141. Further, Mr. Doying's response to the question, "Did the SSR Program continue to receive further opposition after the tariff language was released?" was "No. Stakeholders provided comments on the SSR Tariff provisions at the March 10 and 11, 2004, pre-filing conference. For the most part, however, comments focused on implementation details. No overall objection to the SSR program or the inclusion of the program in the March 31, 2003, Tariff filing was raised." Mr. Doying's testimony is incorrect. In fact, at the pre-filing conference held on March 10-11, OMS participants raised numerous objections.⁵²

142. The OMS believes the SSR program may be an important feature in the TEMT. However, the OMS believes that including it in the TEMT, is premature. Accordingly, the OMS recommends that the SSR program be added to the list of subjects being worked through by the

⁴⁹ Testimony of Richard Doying, MISO-8, P. 15, at 11-19.

⁵⁰ Section A.5(ii) Advisory Committee Review of Issues of the MISO Governance Guide provides that the Advisory Committee shall automatically review issues decided at lower group levels if they were resolved by a vote closer than 60/40 percent.

⁵¹ Testimony of Richard Doying, MISO-8, P. 17, at 1-2.

⁵² *Id.*

MISO SAWG and the OMS RAWG in their joint discussions and negotiations to develop permanent and comprehensive resource adequacy requirements.

IX. CONCLUSION

143. The TEMT will likely prove to be a cornerstone in the establishment of a competitive wholesale electricity market in the Midwest. The OMS is encouraged by the direction that the TEMT is headed, but as the OMS illustrated above, key issues remain that must be addressed in order for this objective to be achieved. Accordingly, the OMS urges the Commission to implement the recommendations contained in Section VII of these comments. To that end, the OMS stands ready to assist both the Commission and MISO in its efforts to fine-tune the TEMT and ultimately establish a competitive Midwest electricity market.

144. The Organization of MISO States submits these comments because a majority of the members have agreed to generally support them. Differing views of individual OMS members on certain issues are indicated in the text. The following members generally support these comments, with the exceptions noted herein. Individual OMS members reserve the right to file clarifying comments or minority reports on their own regarding the issues discussed in these comments.

Missouri Public Service Commission
Wisconsin Public Service Commission
Iowa Utilities Board
Indiana Utilities Regulatory Commission
North Dakota Public Service Commission
Minnesota Public Service Commission
Montana Public Service Commission
Michigan Public Service Commission
South Dakota Public Service Commission

145. For procedural reasons, these members are not able to express a formal position at this time:

Illinois Commerce Commission
Public Utilities Commission of Ohio

Kentucky Public Service Commission

146. Members not participating in these comments are:

Nebraska Power Review Board
Pennsylvania Public Utility Commission
Manitoba Public Utilities Board

147. The Minnesota Department of Commerce, as an associate member of the OMS, participated in these comments and generally supports these comments, other than the issues specifically identified in the minority reports.

Respectfully Submitted,

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Dated: May 7, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Notice of Intervention on all parties on the official service list compiled by the Secretary in this proceeding.

Dated at Des Moines, Iowa, this 7th day of May, 2004.

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