

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

Ameren Services Company  
Northern Indiana Public Service Company

Docket No. EL07-86-000

v.

Midwest Independent Transmission System Operator,  
Inc.

Great Lakes Utilities, et al.

Docket No. EL07-88-000

v.

Midwest Independent Transmission System Operator,  
Inc.

Wabash Valley Power Association, Inc.

Docket No. EL07-92-000

v.

Midwest Independent Transmission System Operator,  
Inc.

**REPLY BRIEF OF THE ORGANIZATION OF MISO STATES**

Pursuant to the Commission’s Order Commencing Paper Hearing, issued August 21, 2008, the Organization of MISO States (“OMS”) files this Reply to the Initial Briefs filed by complainants<sup>1</sup> and to the Initial Brief of Wisconsin Electric Power Company filed in this docket. The OMS filed a notice of intervention and comments in this docket on March 24, 2008, so it is a party to these dockets. As discussed in greater detail below, the OMS respectfully requests that the Commission remove the reference to “actually withdraws Energy” from the tariff and require refunds back to August 10, 2007.<sup>2</sup> The OMS respectfully wishes to remind and encourage the Commission to address the period prior to August 10, 2007, and direct the Midwest ISO to

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<sup>1</sup> Ameren Services Company and Northern Indiana Public Service Company, the Midwest Transmission-Dependent Utilities and Indianapolis Power and Light Company and Wabash Valley Power Association, Inc,

<sup>2</sup> The Montana Public Service Commission, the North Dakota Public Service Commission, and the South Dakota Public Utilities Commission do not support refunds or resettlements for periods prior to the potential refund effective date of August 10, 2007, established by the Commission in Docket Nos. EL07-86-000, EL07-88-000 and EL07-92-000.

resettle the market for the period prior to August 10, 2007, consistent with paragraph 26 of the November 5, 2007, Order on Compliance.<sup>3</sup>

## **Background**

In August 2007, Ameren Services Company and Northern Indiana Public Service Company; Great Lakes Utilities, Indiana Municipal Power Agency, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, Prairie Power, Inc., Southern Minnesota Municipal Power Agency, and Wisconsin Public Power Inc.; and Wabash Valley Power Association, Inc. (collectively Complainants) filed three complaints pursuant to section 206 of the Federal Power Act against the Midwest Independent Transmission System Operator, Inc. (Midwest ISO). The Complainants alleged that the Revenue Sufficiency Guarantee (RSG) rate is unjust and unreasonable and asked that the Commission set for hearing the issue of the revisions to the Midwest ISO's Open Access Transmission and Energy Markets Tariff (TEMT) necessary to remedy this alleged discrimination.<sup>4</sup>

On November 28, 2007, in the Order on RSG Complaints, the Commission found that the Midwest ISO's existing RSG cost allocation methodology may not be just and reasonable. The Order on RSG Complaints established a refund effective date of August 10, 2007, and set the Complaints for paper hearing and investigation to review evidence and to establish a just and reasonable RSG cost allocation methodology. The paper hearing was held in abeyance pending the earlier of the stakeholder proceeding outcome or February 1, 2008.<sup>5</sup>

On August 21, 2008, the Commission ordered the commencement of the paper hearing and provided clarification on the scope of the paper hearing.<sup>6</sup> Complainants have the responsibility to demonstrate, on the basis of substantial evidence, both that the rate in effect is unjust and unreasonable and that their proposed alternative rate is just and reasonable.<sup>7</sup> September 22, 2008, was set as the date for the filing of Briefs by Complainants.<sup>8</sup>

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<sup>3</sup> Midwest Independent Transmission System Operator, Inc., 121 FERC ¶ 61,132 (2007) (Order on Compliance Filing)

<sup>4</sup> Ameren Servs. Co., et al. v. Midwest Indep. Transmission Sys. Operator, Inc., 124 FERC ¶ 61,173 at P 2 (2008). ("Order Commencing Paper Hearing").

<sup>5</sup> Ameren Servs. Co. v. Midwest Indep. Transmission Sys. Operator, Inc., 121 FERC ¶ 61,205 at P 4 (2007). (Order on RSG Complaints).

<sup>6</sup> Order Commencing Paper Hearing at P 1.

<sup>7</sup> Order Commencing Paper Hearing at P 9.

<sup>8</sup> Order Commencing Paper Hearing at P 11.

On September 22, 2008, Briefs were filed by (1) Ameren Services Company and Northern Indiana Public Service Company (Ameren Brief), (2) the Midwest Transmission-Dependent Utilities and Indianapolis Power and Light Company (Midwest TDUs Brief), and (3) Wabash Valley Power Association, Inc. (Wabash Brief). Wisconsin Electric Power Company filed a Brief in Support of Complainants (WEPCO Brief).

## **Argument**

### **A. The Commission Should Remove the Reference to “Actually Withdraws Energy” from the Tariff and Require Refunds.**

The Complainants present evidence and argue that the Midwest ISO’s existing RSG cost allocation methodology is not just and reasonable in that virtual supply offers and generator deviations cause RSG costs to be incurred regardless of whether the market participant involved in such transactions physically withdraws energy in real time, but the currently-effective TEMT provisions assign RSG charges only to market participants physically withdrawing energy.<sup>9</sup>

The Commission already has found that virtual supply offers and generator deviations from schedule cause the Midwest ISO to commit units after the close of the Day-Ahead Market and therefore cause RSG costs to be incurred.<sup>10</sup> The Commission has further concluded that virtual supply offers and generator deviations from schedule cause RSG cost incurrence regardless of whether the market participants involved also engage in physical activity in the following day’s real-time market.<sup>11</sup>

The Order on RSG Complaints affirmed these cost causation findings, stating that a cost allocation was appropriate and parties would not be allowed to re-argue this issue in the paper hearings.<sup>12</sup> The issue at hand in this docket is whether sufficient cost causation analysis now exists to support a refined cost allocation of RSG costs proposed by a Complainant.<sup>13</sup> Complainants present and argue cost analysis as just and reasonable support for the proposed methodologies for RSG cost allocation for Commission determination.<sup>14</sup>

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<sup>9</sup> Ameren Brief, p. 21; Midwest TDUs Brief, p. 16 - 19; Wabash Brief, p.14.

<sup>10</sup> Ameren Brief, p.14; Order on RSG Complaints at P 81.

<sup>11</sup> Ameren Brief, p.14.

<sup>12</sup> Order on RSG Complaints, at P 84 – 85.

<sup>13</sup> Order on RSG Complaints, at P 83 – 85.

<sup>14</sup> Ameren Brief, p. 26 – 26, p. 39 – 41; Midwest TDUs Brief, p. 24 - 27; Wabash Brief, p.18 – 25.

Though Complainants do not have a uniform position as to what the optimal just and reasonable RSG cost allocation methodology should be going forward, it appears there is a solution that all Complainants agree is just and reasonable now and back to August 10, 2007. The Complainants all agree that removing the “actually withdraws Energy” language from section 40.3.3.a.ii of the TEMT would serve as a just and reasonable methodology for RSG cost allocation and for providing refunds from August 10, 2007, going forward.<sup>15</sup>

The OMS does not repeat the arguments but agrees with the Complainants that removing the “actually withdraws Energy” language from section 40.3.3.a.ii of the TEMT would serve as a just and reasonable methodology for RSG cost allocation and for providing refunds from August 10, 2007, going forward.

The OMS respectfully requests that the Commission remove the reference to “actually withdraws Energy” from the tariff and require refunds back to August 10, 2007.

**B. Resettlement of the Market for the Period Prior to August 10, 2007, Consistent with Paragraph 26 of the November 5, 2007, Order on Compliance, Still Needs to Occur.**

The WEPCO Brief argues that the Midwest ISO’s methodology results in two periods of RSG charges for which the Commission must reconcile costs with cost causation.<sup>16</sup> The period beginning with August 10, 2007, the refund date established by the Order on RSG Complaints, and going forward is but one of two periods that require refunds.

The MISO resettlements under the existing RSG cost allocation methodology have many market participants whose actions cause RSG being shielded from RSG charges by virtue of the “actually withdraws Energy” requirement.<sup>17</sup> Since the “actually withdraws Energy” exemption is only applied after the calculation of the rate it results in the development of an RSG rate based on volumes that would not then be subject to the RSG charge.<sup>18</sup> As a result, for the period of April 2005 to August 2008, MISO has only collected roughly 43% of its RSG costs through the real-time RSG charge.<sup>19</sup> Approximately 57%, or \$585 million, in unrecovered RSG costs for that period were recovered via the Revenue Neutrality Uplift charge from Load Serving Entities, whether or not they had deviations that cause RSG costs.<sup>20</sup>

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<sup>15</sup> Ameren Brief p. 39 -41; Midwest TDUs Brief, p. 5; Wabash Brief, p.18.

<sup>16</sup> WEPCO Brief, p. 6.

<sup>17</sup> Midwest TDUs Brief, p. 11.

<sup>18</sup> WEPCO Brief, p. 7.

<sup>19</sup> Midwest TDUs Brief, p. 11 - 12.

<sup>20</sup> Midwest TDUs Brief, p. 12.

On November 5, 2007, the Commission had issued an Order on Compliance Filing<sup>21</sup> and provided clarification with respect to the RSG rate and charge calculations and stated:

Based on our review of the Midwest ISO RSG charge and rate tariff provision, we provide the following clarification on the meaning of these provisions, to address Ameren's concerns. Per the terms of the tariff in the April 17 Filing, the denominator in the RSG rate in section 40.3.3.a.iii is based on the sum of the absolute values of the amounts in section 40.3.3.a.ii(a) – (d). We interpret this formulation to mean that the RSG rate denominator is the aggregate of the amounts for market participants withdrawing energy on that day, since they are entities being assessed the RSG charge in section 40.3.3.a.ii. Therefore, the amounts in the individual RSG charges in section 40.3.3.a.ii should sum to the same summed and aggregate number in the denominator of section 40.3.3.a.iii, thereby eliminating the possibility of developing the RSG charge and RSG rate on different bases and resulting in a shortfall in recovery of RSG costs.<sup>22</sup>

The Commission directed the Midwest ISO to submit a compliance filing, pursuant to the requirements specified in the body of the order.

On December 5, 2007, the Midwest ISO, unsure of the Commission's intent, made a Compliance Filing that continued the cost shift resulting from developing an RSG rate based on volumes that would not then be subject to the RSG charge. The OMS requested that the Commission reject that Midwest ISO compliance filing and direct the Midwest ISO to modify its tariff provisions and resettle the market consistent with paragraph 26 of the Order on Compliance.<sup>23</sup>

In the Order on RSG Complaints, the Commission stated that there should be no mismatch between the RSG charge and the RSG rate and that if the Midwest ISO has been in error in its interpretation of the RSG charge and rate, refunds will be required.<sup>24</sup> However, the Commission has not yet taken action with respect to that December 5, 2007, Compliance Filing.

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<sup>21</sup> Midwest Independent Transmission System Operator, Inc., 121 FERC ¶ 61,132 (2007) (Order on Compliance Filing)

<sup>22</sup> Order on Compliance Filing at P 26.

<sup>23</sup> Protest of the Organization of MISO States, Docket No. ER04-691-089, December 19, 2007, p. 5.

<sup>24</sup> Order on RSG Complaints at P 86.

The WEPCO Brief therefore argues that failure to address the refunds that are required going from August 10, 2007, back to the start of the Midwest ISO market leaves in place rates that have been unjust and unreasonable.<sup>25</sup>

The OMS respectfully wishes to remind and encourage the Commission to address the period prior to August 10, 2007, and direct the Midwest ISO to resettle the market for the period prior to August 10, 2007, consistent with paragraph 26 of the November 5, 2007, Order on Compliance.<sup>26</sup>

### **Conclusion**

The OMS respectfully requests that the Commission remove the reference to “actually withdraws Energy” from the tariff and require refunds back to August 10, 2007. The OMS respectfully wishes to remind and encourage the Commission to address the period prior to August 10, 2007, and direct the Midwest ISO to resettle the market for the period prior to August 10, 2007, consistent with paragraph 26 of the November 5, 2007, Order on Compliance.

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

Iowa Utilities Board  
Michigan Public Service Commission  
Minnesota Public Utilities Commission  
Montana Public Service Commission  
North Dakota Public Service Commission  
Public Utilities Commission of Ohio  
South Dakota Public Utilities Commission  
Wisconsin Public Service Commission

The Illinois Commerce Commission, the Kentucky Public Service Commission, and the Nebraska Power Review Board abstained from the vote on this pleading.

The Indiana Utility Regulatory Commission, the Manitoba Public Utilities Board, the Missouri Public Service Commission and the Pennsylvania Public Utility Commission did not participate in this pleading.

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<sup>25</sup> WEPCO Brief, p. 8.

<sup>26</sup> As noted at footnote 2, the Montana Public Service Commission, the North Dakota Public Service Commission, and the South Dakota Public Utilities Commission do not support refunds or resettlements for periods prior to the potential refund effective date of August 10, 2007.

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

Respectfully Submitted,  
*William H. Smith, Jr.*  
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Dated: October 10, 2008

#### CERTIFICATE OF SERVICE

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

Dated at Des Moines, Iowa, this 10th day of October 2008.

*William H. Smith, Jr.*

William H. Smith, Jr.