

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

**Annual Charges Assessments For)
Public Utilities)**

Docket No. AD08-7-000

**COMMENTS OF THE ORGANIZATION OF MISO STATES
AND MOTION TO ACCEPT FILING OUT OF TIME**

Pursuant to the Federal Energy Regulatory Commission's (Commission) Rule 211 Rules of Practice and Procedure 18 C.F.R. 385.211, the Organization of MISO States (OMS) hereby submits the following comments concerning the Commission's April 21, 2008, Notice of Inquiry (NOI) in the above captioned docket concerning the fairness of the current methodology used to assess its annual regulatory charges.

I. DISCUSSION

In Order No. 641, the Commission established its current methodology for recovering its electric regulatory program costs.¹ In particular, the methodology was designed to account for expected changes foreseen by the Commission in its role, such as increased focus on open access transmission, functional unbundling, increases in market-based rate sales of electric power and broader retail unbundling at the state level. In addition, expectations of increased RTO/ISO participation levels were included in assessment design.

However, several events have occurred since the adoption of Order No. 641 that are

¹ *Revision of Annual Charges Assessed to Public Utilities*, Order No. 641, FERC Stats. & Regs. ¶ 31,109 (2000), *order on reh'g*, Order No. 641-A, 94 FERC ¶ 61,290 (2001).

contrary to the Commission's predictions. In particular, legal decisions determining that RTO membership is strictly voluntary have effectively stalled the drive to join RTOs and the number of states that have unbundled their retail sales is limited. The Commission's increased responsibility for reliability, market oversight and planning were not fully anticipated and thus not emphasized in the design of the current assessment methodology; further skewing the effects of its application. This flaw, along with the exemption for bundled retail load operating outside of RTOs/ISOs results in utilities operating within RTOs and ISOs bearing an unreasonably inequitable share of Commission regulatory program costs. Furthermore, all members of the electric grid benefit from Commission's efforts to implement the reliability provisions of EPAct 2005,² yet not all members of the grid pay a proportionate share of the Commission's annual charge.

The OMS notes, and generally supports, the comments in this docket filed by the ISO/RTO Council (IRC). In particular, the OMS notes that the IRC comments discuss specific recommendations concerning alternative approaches that could address the fairness and equity of the Commission's annual charge assessment. The IRC also urges the Commission to eliminate the disparate assessments to RTOs by (i) eliminating the bundled retail load exemption applicable to utilities operating outside of RTOs; and (ii) exempting all non-jurisdictional load from general regulatory program cost assessments. The IRC urges the Commission to identify and assess to all users, owners and operators of the bulk-power system, including non-jurisdictional entities, costs incurred by the Commission in connection with the implementation of mandatory reliability standards under Section 215 of EPAct.

² Power Act, Section 215.

In addition to the IRC recommendations, the OMS would suggest that the Commission also consider the idea of increasing the Commission's filing fees and expanding the types of filings to which filing fees apply. In simple terms, the Commission could determine the level of Commission resources required for each particular type of Commission filing and then adjust filing fees accordingly. Parties making the filings are doing so for either their benefit directly, or on the behalf of their customers. As such, the approach would align the costs of Commission review with parties that receive the benefit. This approach could be used alone, or in tandem with other approaches, to help more equitably allocate the costs of the Commission's annual charges.

II. MOTION TO ACCEPT FILING OUT OF TIME

The OMS asks the Commission to accept this pleading out of time. The OMS submits that these comments will assist the Commission's inquiry into its annual charge structure. The OMS regrets that its meeting schedule did not permit consideration of this pleading before the published filing deadline. In a Notice of Inquiry proceeding, acceptance of a late filing would cause no harm to other entities. The OMS accepts the current state of the record.

III. CONCLUSION

The current methodology used by the Commission to assess its annual regulatory charge is becoming increasingly unfair and discriminatory against load-serving entities and end users of electricity that participate in RTOs. Accordingly, the OMS supports the Commission's efforts to review and reform its current annual charge assessment methodology. In doing so, the OMS respectfully urges the Commission to adopt a methodology that more evenly distributes the charges across the electric industry, based on the level of costs caused by each segment of the

electric industry.

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

Illinois Commerce Commission
Indiana Utility Regulatory Commission
Iowa Utilities Board
Michigan Public Service Commission
Minnesota Public Utilities Commission
North Dakota Public Service Commission
Pennsylvania Public Utility Commission
South Dakota Public Utilities Commission
Wisconsin Public Service Commission

The Manitoba Public Utilities Board and the Missouri Public Service Commission did not participate in this pleading. The Kentucky Public Service Commission, the Montana Public Service Commission, the Nebraska Power Review Board, and the Public Utilities Commission of Ohio abstained from this pleading.

The Iowa Office of Consumer Advocate, an associate member of the OMS, participated in these comments and generally supports these comments.

Respectfully Submitted,
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