

**RESOLUTION of THE OMS
TRANSMISSION PLANNING AND SITING WORK GROUP (TPSWG)**

March 24, 2005

WHEREAS Article IV, Section 8 of the Organization of MISO States (OMS) Bylaws states: "POSITIONS ON POLICY ISSUES. The Board of Directors will give direction to formation of issue statements, which will then be referred to member state and provincial regulatory authorities. A position approved by a majority of the Board of Directors may be issued as the Organization's position with identification of the participating and non-participating Member authorities. Individual Member authorities retain all rights to object to, support, or otherwise comment on, issues statements of the Organization, including the attachment of a minority report or dissenting opinion, provided it is submitted in a timely manner. The Board of Directors may authorize intervention in proceedings before federal regulatory agencies and in related judicial proceedings to express the Organization's positions, and may authorize the Executive Committee to retain legal counsel to represent the Organization in such proceedings."

And

WHEREAS Article IX of the OMS Bylaws states: "STATES NOT BOUND. No vote of, or resolution passed by, the Board of Directors has any binding effect upon any state or provincial regulatory authority, or any individual member thereof, in the exercise of the authority's powers."

And

WHEREAS On May 13, 2004, the OMS Board of Directors approved a motion that OMS not approve or endorse the Midwest ISO Transmission Expansion Plan for 2003 (MTEP-03).

And

WHEREAS The briefing memo from OMS President Susan Wefald on this May 13, 2004, agenda item stated:

This topic came up for discussion at the Michigan State DOE Transmission Siting Workshop. MISO would like the OMS to endorse or approve expansion plans such as the MTEP-03. The MTEP-03 came out last summer, and OMS has taken no action on the plan. I recommend that the OMS not endorse or approve the MTEP-03 or subsequent editions of the plan, since individual state commissions may have siting cases before them that result from the plan. Staff from OMS member states could and should ask questions as the MTEP's are developed, and OMS should be briefed in important issues and new developments in the MTEP's on a regular basis.

And

WHEREAS Members of the TPSWG participate in TPSWG activities and interactions with MISO, in part, to assist their states in gathering needed information; and it is desirable for MISO to inform the TPSWG of its activities, and in particular, of the development of the MTEP.

And

WHEREAS state commissioners, siting authorities, and administrative law judges may hear or decide contested cases regarding approval or rejection of particular transmission line projects; parties in contested cases before state agencies have a constitutional right to due process; due process includes, among other things, the right to an impartial unbiased decisionmaker who has not prejudged any issues in the case; and OMS States generally have rules or guidance about

state commissioners, siting authorities, and administrative law judges, and other advisory staff involvement in decision-making and they generally cannot be biased in favor of or against any party in these contested cases or have prejudged or had the appearance of prejudging issues that may arise in these contested cases.

And

THEREFORE the TPSWG adopts this resolution regarding our group's interaction with MISO:

- The TPSWG interprets the resolution passed by the OMS Board of Directors on May 13, 2004, to apply to the TPSWG. The TPSWG, as a group, will not approve or endorse the MTEP or specific projects contained within the MTEP. The TPSWG, as a group, will not recommend whether to include particular projects in the MTEP.
- The TPSWG may meet with MISO for any reason. If a TPSWG member has an ex parte concern with respect to information learned, the concern can be addressed by following that member's required state law procedures, such as making sure all relevant information is included in the record in the contested case in a timely manner or making required disclosures to parties.
- TPSWG members will ask questions of MISO. If the TPSWG thinks improvements may need to be made to the MISO planning process itself, so that the respective commissions have confidence in the process itself, the TPSWG will suggest the possible improvements to MISO or tell the OMS Board, depending on the significance of the needed improvements.
- Commissioners, siting authorities, and administrative law judges who serve as TPSWG members may have additional ethical and legal restrictions that require them to be even more circumspect in their interaction with MISO than other TPSWG members. TPSWG members who are commissioners, siting authorities, or administrative law judges will not give their opinion as to whether they think their commission or siting authority would or would not be likely to approve a project. TPSWG members who are commissioners, siting authorities, or administrative law judges will not prejudge specific projects in the MTEP that may become the subject of a contested case before a state commission or siting authority. When asking questions, TPSWG members who are commissioners, siting authorities, or administrative law judges will attempt to avoid conveying prejudgment of issues that may subsequently become part of a state contested case and will attempt to avoid conveying the message that MISO should or should not pursue some activity based on the question.