

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

Preventing Undue Discrimination and)
Preference in Transmission Service)

Docket No. RM05-25-000

COMMENTS OF THE ORGANIZATION OF MISO STATES

I. Summary of Comments

A. Purpose of Comments: Applicability to the Midwest ISO

On September 16, 2005 the Federal Energy Regulatory Commission (“FERC” or “Commission”) issued a Notice of Inquiry (“NOI”) regarding possible reforms to Order No. 888 pro forma open access transmission tariff (“OATT”) to ensure that transmission services provided are “just, reasonable and not unduly discriminatory or preferential.” In section U of the NOI, the Commission seeks comments on whether matters discussed in the NOI “need not be applied to ISO and RTO tariffs” such as the tariff of the Midwest Independent System Operator (“Midwest ISO”). In these comments, the Organization of MISO States (“OMS”) addresses whether or not the issues raised in each section of the NOI should or should not be applied to the Midwest ISO tariff. In this regard, there are:

1. Issues related to undue discrimination that are clearly not applicable to the Midwest ISO tariff;
2. Issues not involving undue discrimination where application to the Midwest ISO tariff could be different than from the OATT of a Non-Independent Transmission Provider and would best be addressed by the Midwest ISO stakeholder process; and
3. Issues that are applicable to the Midwest ISO tariff, and should be addressed by the Commission as it also addresses the OATT of non-Independent Transmission Providers.

B. Overview: Presumption of Non-Discriminatory Transmission Service

Before addressing the specific issues raised in the NOI, the OMS would like to emphasize that as a general matter the issue of whether or not the transmission services provided by the Midwest ISO are not unduly discriminatory or preferential has already been answered by the Commission in its Final Rule in Order No. 2000. In Order No. 2000 the Commission concluded that regional transmission organizations (“RTOs”), approved by the Commission as having met the requirements of Order No. 2000, have in fact addressed undue discrimination in transmission services. Specifically, the functional operation of the transmission system is no longer under the control of a vertically integrated utility, but has instead been turned over to an RTO with an independent Board of Directors and the oversight of an Independent Market Monitor (“IMM”). In addition, an effective stakeholder process provides balanced input to tariff changes that may ultimately be proposed by the RTO. These elements help to provide a means for preventing undue discrimination and preferential treatment with respect to the Midwest ISO’s application of its tariff and provision of transmission services.

C. Applicability to the Midwest ISO: Summary

1. Issues related to undue discrimination that are not applicable to the Midwest ISO tariff include the following sections of the NOI:

- A. Undue Discrimination Generally
- B. Transmission Pricing
- E Remedies, Penalties and Enforcement
- G. Changes in receipt and Delivery Points (Redirects)
- H. Rollover Rights – Discriminatory Applications
- I. Rules, Standards and Practices Governing the Provision of Transmission Service
- J. Joint Transmission Planning
- M. Tariff Compliance Review
- N. Hoarding of Transmission Capacity
- O. Curtailments
- S. Ancillary Services – i) Energy Imbalances and ii) Generator Imbalances

2. Issues not involving undue discrimination where application to the Midwest ISO tariff could be different than from the OATT of a Non-Independent Transmission Provider and would best be addressed by the Midwest ISO stakeholder process, include the following sections of the NOI:

- C. Network and Point-to-Point Transmission Service
- D. Untimely Processing of Requests for Transmission Service
- F. Hourly Firm Transmission Service – Financial Transmission Rights
- H. Rollover Rights – Longer Minimum Term of Service to Qualify
- K. Obligation to Expand Capacity – Overcoming Disincentives to Build Transmission
- Q. Designation of Network Resources
- R. Queuing for Long-Term Transmission Service

3. Issues that are applicable to the Midwest ISO tariff, and should be addressed by the Commission as it also addresses the OATT of non-Independent Transmission Providers include the following sections of the NOI:

- F. Hourly Firm Transmission Service – Through and Out Service
- K. Obligation to Expand Capacity - Discrimination by Transmission Owners
- L. Joint Ownership
- P. Reservation Priority
- S. Ancillary Services - General
- T. Pro Forma OATT Definitions

II. Applicability of Possible Order 888 Reforms to the Midwest ISO: Details

A. Undue Discrimination Generally

The issues raised in this section deal with whether there are remedies other than structural separation of generation from transmission that would adequately address undue discrimination by non-Independent Transmission Providers. Because the focus is on non-Independent Transmission Providers, i.e., vertically integrated utilities that have not functionally separated transmission from generation, this section of the comments does not apply to vertically integrated utilities that have turned over the functional control of their transmission systems to the Midwest ISO.

B. Transmission Pricing

The issues raised in this section deal with increasing the efficient use of the grid where locational marginal pricing is not used. Because it uses locational marginal pricing, this section of the comments does not apply to the Midwest ISO.

C. Network and Point-to-Point Transmission Service

The issues raised in this section deal with whether or not to make changes to the requirement to offer network and point-to-point transmission services; specifically in the form of contract demand service or new transmission services (e.g., conditional firm, partial firm and seasonal firm). While such changes could be made by the Midwest ISO, that decision should be left to the stakeholder process within the Midwest ISO to determine and should not be a requirement of the Midwest ISO were the Commission to determine changes are needed for Non-Independent Transmission Providers.

D. Untimely Processing of Requests for Transmission Service

The issues raised in this section deal with delays in processing requests for transmission service that could result in discriminatory or preferential treatment of these requests. Any delays in processing requests for transmission service would apply equally to all transmission customers making such requests to the Midwest ISO, and are therefore not unduly discriminatory or preferential. The lack of undue discrimination or preferential treatment does not mean that Midwest ISO stakeholders cannot make proposals to see the practices used by the Midwest ISO to process transmission service requests be made more timely. To the extent that the timing of response to requests for transmission service is an issue, the OMS would encourage the Midwest ISO to provide a stakeholder process to address this issue.

E. Remedies, Penalties and Enforcement

The issues raised in this section deal with penalties placed on Transmission Providers for violating tariff provisions. Because the Midwest ISO is a not-for-profit organization and any penalties would ultimately be passed on to end-users, Transmission Provider monetary penalties for violating tariff provisions are not recommended. Moreover, if the purpose of such penalties is to discourage unduly discriminatory or preferential treatment, the Midwest ISO does not need such discouragement.

F. Hourly Firm Transmission Service

The issues raised in this section deal with whether or not to offer hourly transmission service on a firm basis. This could be an issue for the Midwest ISO regarding requests for through and out transmission service. Because of the day-ahead market and the associated settlements respecting Financial Transmission Rights (“FTRs”), for transmission within the Midwest ISO the comparable question is whether or not there are viable ways for market participants to trade FTRs on an hourly basis. This question can be effectively addressed by the Midwest ISO stakeholder process and need not be required for RTOs were the Commission to require Non-Independent Transmission Providers to offer hourly firm transmission service.

G. Changes in Receipt and Delivery Points (Redirects)

The issues raised in this section deal with the current OATT pro forma tariff requirement that modification of receipt and delivery points on a firm basis to be treated as a new request and that the non-Independent Transmission Provider might apply this in a discriminatory manner. Because the focus is on discriminatory treatment with respect to new requests for transmission service, this should not apply to the Midwest ISO.

H. Rollover Rights

The issues raised in this section deal with the right to continue to take transmission service when the contract expires, rolls over or is renewed, and whether or not this provision has been applied in a discriminatory manner (e.g., rollover rights given when the generation contract is with the vertically integrated utility, but not given when the generation contract is with an alternative supplier). Because the focus is on discriminatory treatment with respect to roll over rights, this should not apply to the Midwest ISO. In addition to discriminatory practices in granting rollover rights, the Commission raised the question of whether to extend the minimum term of service beyond one year to qualify for rollover rights. The Midwest ISO stakeholder process should consider whether or not extending the minimum term to qualify for rollover rights is an approach that would be of benefit with respect to creating incentives for transmission investment.

I. Rules, Standards and Practices Governing the Provision of Transmission Service

The issues raised in this section deal with the extent to which certain business practices should be included in the tariff. The Commission notes in this section that it has recently issued a Notice of Proposed Rulemaking (“NOPR”) proposing to require each electric utility to revise its OATT to include the North American Energy Standards Board’s (“NAESB’s”) Wholesale Electric Quadrant’s (“WEQ’s”) standards relating to OASIS business practices. If the Commission’s intent is to require standard business practices as a means for eliminating undue discrimination and preferential treatments, then the inclusion of business practices in the Midwest ISO’s tariff is not necessary. To the extent that there are other reasons for the Commission to require the WEQ standards to be include in the Midwest ISO tariff, those should

be addressed in the Commission's NOPR on Standards for Business Practices and Communication Protocols for Public Utilities.

J. Joint Transmission Planning

The issues raised in this section deal with whether the requirement that credits be given to the transmission customers constructing network transmission facilities discourages joint transmission planning. In the Midwest ISO, all are encouraged to provide transmission solutions, and because the ultimate decision is up to the Midwest ISO not Transmission Owners, giving credits to transmission customers for funding the construction of network transmission facilities is not an issue.

K. Obligation to Expand Capacity

The issues raised in this section deal with the question of whether or not Transmission Providers have fulfilled their obligation to build transmission needed by transmission customers or other stakeholders who are willing to compensate for these upgrades. As an RTO, the Midwest ISO develops regional transmission expansion plans – specifically the Midwest ISO Transmission Expansion Plan (“MTEP”), but the Midwest ISO is not the builder or owner of transmission. Thus, in the case of not-for-profit RTOs, the Commission needs to distinguish between planning for and construction of transmission. Where the Transmission Provider and regional planning functions are separated from the transmission construction and ownership functions, the Commission should carefully consider what its policy should be with respect to the obligation that Transmission Owners that turn functional control of transmission facilities over to an RTO should have with respect to building transmission facilities. Such a policy should include transmission facilities needed for reliability, as well as transmission facilities desired by

stakeholders that may not be needed for reliability, where those requesting the upgrades are willing to pay to have these facilities built.

In addition to issues regarding discriminatory practices, the Commission raised additional questions regarding whether disincentives to build transmission exist and either proposed changes to the pro forma OATT that might help overcome some of these disincentives (i.e., demand charges and lower charges for longer-term transmission service request requiring system upgrades) or asked for proposals (i.e., to mitigate the effects of lumpiness and best practice for interconnection procedures). Changes to overcome disincentives for transmission investment should be discussed within the Midwest ISO stakeholder process.

L. Joint Ownership

The issues raised in this section explore the possibility of requiring that existing transmission customers be allowed to participate in the joint ownership of new transmission facilities and network upgrades. This issue would apply to the Transmission Owners that are members of the Midwest ISO.

M. Tariff Compliance Reviews

The issues raised in this section deal with systematic tariff compliance reviews performed by the FERC Staff to identify OATT violations. In the case of the Midwest ISO, the IMM is charged with oversight to ensure that the Midwest ISO is carrying out its duties as an Independent Transmission Provider. If the primary purpose of a tariff compliance review is to determine whether or not the transmission provider is not being unduly discriminatory or preferential in its provision of transmission service, then adding reviews beyond those of the IMM seems to be unnecessary. However, there may be some role for audits of RTO operations to ensure that the RTO is actually operating consistent with its tariff and business rules.

N. Hoarding of Transmission Capacity

The issues raised in this section deal with whether or not non-Independent Transmission Providers are hoarding transmission capacity in an effort to limit competition in generation. As an Independent Transmission Provider, the Midwest ISO does not allow transmission service sold as a firm reservation but not scheduled to restrict the real-time use of the transmission system. First, with respect to internal flows, real-time use of the transmission system is determined by schedules and securitized economic dispatch. Second, with respect to through and out transactions, if a reservation is not scheduled by the applicable deadline, the Midwest ISO will make the unscheduled transmission capacity available for sale.

O. Curtailments

The issues raised in this section deal with the improper curtailment of transmission service by Transmission Providers. If the issue is the use of improper curtailments by the Transmission Provider in order to free service for the merchant function of the vertically integrated utility, then this issue does not apply to the Midwest ISO.

P. Reservation Priority

The issues raised in this section deal with the first-come, first-served approach to reservation priorities and the right of first refusal as a fair and equitable way to allocate transmission capacity when the transmission system is oversubscribed and whether this provides an unfair competitive advantage or an opportunity for abuse. The issue of a fair and equitable way to allocate transmission capacity when the transmission system is oversubscribed is applicable to the Midwest ISO particularly in the provision of through and out transmission service.

Q. Designation of Network Resources

A variety of issues were raised in this section dealing with the pro-forma OATT rules applicable to the designation of new or changed network resources. The issues discussed in the NOI might have some applicability to the Midwest ISO, as it requires network resources to be designated by load-serving entities. However, the concerns for an RTO that uses FTRs may be different than the concerns expressed in the NOI. For example, the NOI describes over-designation of network resources and asks if designation should be limited to some ratio of monthly peak load for the customer. In the Midwest ISO, FTR allocations are limited to designated network resources but are also limited by the amount of peak load for the customers. Also, any concerns about undue discrimination would not be applicable to the Midwest ISO.

R. Queuing for Long-Term Transmission Service

The issues raised in this section deal with requests for transmission service that cannot be immediately granted due to lack of ATC and whether to consider alternatives to the queuing process. In the Midwest ISO these issues would be applicable to requests for through and out transmission service. Reforms due simply to concerns about undue discrimination should not apply, but concerns over improving the efficiency of the process could apply.

S. Ancillary Services – General

The issues raised in this section deal with whether or not the correct ancillary services are included in the pro forma OATT. This issue is applicable to the Midwest ISO, as it must provide access to ancillary services, some of which are provided by market participants.

S. Ancillary Services – i) Energy Imbalances and ii) Generator Imbalances

Because the Midwest ISO provides energy imbalance service through its real-time energy market, the issues raised in these sections (e.g., band widths for load imbalances, pricing of

generator imbalances and penalty charges for imbalances that threaten reliability) are not applicable.

T. Pro Forma OATT Definitions

The issues raised in this section deal with having a common understanding of terms used throughout the pro forma OATT. With a goal of having a common understanding of terms that are used by both Independent and Non-Independent Transmission Providers, this section would apply to the Midwest ISO.

III. Conclusion

Because the OMS shares the Commission's confidence that the transmission services provided by the Midwest ISO are not unduly discriminatory or preferential, the OMS believes that changes to the Midwest ISO OATT are not needed to mitigate issues of discrimination or preference, but rather may or may not be desired as a matter of commercial efficiency or convenience for Midwest ISO members. The OMS shares the Commission's concern over RTO/ISO costs and also understands that some changes to RTO/ISO tariffs can require extensive software/hardware investments, including those of both the RTO/ISO and its members. As a result, the OMS believes the Commission needs to allow for flexibility by avoidance of prescribing one-size-fits-all OATT terms and conditions that lump Independent Transmission Providers together with non-Independent Transmission Providers. In this respect, the OMS has classified only six areas where it believes that issues discussed in this NOI could be applicable to the Midwest ISO. If the Commission follows up this NOI with a Notice of Proposed Rulemaking ("NOPR") regarding changes to be made to the pro forma OATT, the OMS would request that the Commission would clearly indicate in its NOPR what changes it is proposing to

apply to RTOs, and would take into consideration these OMS comments in making that determination.

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
- Iowa Utilities Board
- Kentucky Public Service Commission
- Michigan Public Service Commission
- Minnesota Public Utilities Commission
- Missouri Public Service Commission
- Montana Public Service Commission
- Nebraska Power Review Board
- North Dakota Public Service Commission
- Public Utilities Commission of Ohio
- South Dakota Public Utilities Commission
- Wisconsin Public Service Commission

The following OMS members did not participate in this comment:

- Indiana Utility Regulatory Commission
- Manitoba Public Utilities Board

The Pennsylvania Public Utility Commission abstained.

The Minnesota Department of Commerce and the Iowa Consumer Advocate, as associate members of the OMS, participated in these comments and generally support these comments.

Respectfully Submitted,

William H. Smith, Jr.

William H. Smith, Jr.
Executive Director
Organization of MISO States
100 Court Avenue, Suite 218
Des Moines, Iowa 50309
Tel: 515-243-0742

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