UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Midwest Independent Transmission System Operator, Inc.,	**)** **)**	**Docket Nos. ER06-731-000**

MOTION FOR LATE INTERVENTION AND PETITION FOR REHEARING OF THE ORGANIZATION OF MISO STATES

I. Introduction

On May 9, 2006, the Federal Energy Regulatory Commission ("FERC or Commission") issued an Order that rejected a request by the Midwest Independent Transmission System Operator ("MISO" or "Midwest ISO") for an extension of Broad Constrained Area ("BCA") mitigation.[1]

II. Motion for Late Intervention

Based on the belief that the Midwest ISO's filing would be approved on its substantial merits, the Organization of MISO States ("OMS") did not intervene. The OMS was surprised by FERC's unexpected rejection of the filing and believes the rejection is mistaken as a matter of policy. The OMS therefore requests leave for late intervention in this matter. The OMS believes that its intervention will not be detrimental to any other party.

III. Statement of Issues

1. The Commission's decision erred by rejecting BCA mitigation, which is a valuable tool to protect consumers against certain situations of market power.
2. The Commission's decision to revoke the Midwest ISO's BCA mitigation authority is contrary to the evidence submitted by the applicants and the comments submitted by market participants and leaves the Midwest market vulnerable to certain forms of market power.

[1] *Midwest Independent Transmission System Operator, Inc.*, 115 FERC ¶ 61,158 (2006) ("May 9 Order")

IV. Background and Discussion

According to the Commission's majority, its assessment of the data and reports did not warrant reauthorization of the use of BCA mitigation. As a result, effective April 1, 2006, the FERC ordered the Midwest ISO and its Independent Market Monitor ("IMM") to no longer invoke BCA mitigation.[2] The May 9 Order is internally inconsistent and ignores the evidence presented in this case. In particular, the OMS is concerned that the May 9 Order will effectively undermine stakeholder confidence in the markets, make the wholesale markets less competitive – to the detriment of retail customers and could result in unjust, unreasonable, and unduly discriminatory rates. The OMS notes the well-reasoned dissent of Commissioner Suedeen Kelly. The OMS shares Commissioner Kelly's concern that:

> *…[T]his order inappropriately rejects Midwest ISO's requested extension of the BCA mitigation. I would not have removed this useful tool for addressing exercises of market power from the IMM's toolbox.*[3]

The FERC erred in revoking BCA mitigation without making a finding that continuation of that form of mitigation is not just and reasonable. No party protested the filing. In fact, as the May 9 Order noted, market participants were generally supportive of the continuation of BCA mitigation. To the extent that concerns were raised, it was that the BCA mitigation did not go far enough.[4] Indeed, the OMS' review of comments failed to produce any evidence that the BCA mitigation had been excessive. Nor was there any evidence that BCA mitigation was not necessary for the fair, efficient, and reliable conduct of the competitive wholesale market.

Without a finding that BCA mitigation is contrary to the Federal Power Act, the Commission lacks a statutory basis for rejecting it. To the contrary, the application and the supporting comments provided several reasons to find that BCA continues to offer a

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[2] May 9 Order, at P. 25.
[3] Dissent of Commissioner Kelly at 2.
[4] May 9 Order, at P. 19 and 20.

positive remedy to certain kinds of market power.[5] The following paragraphs review the reasons the OMS urges the Commission to reconsider its May 9 Order and extend the availability of BCA mitigation.

A. The FERC stated in Paragraph 13 "*While we stated that we did not take lightly the potential for the exercise of market power in BCA areas, we also expressed concern that any mitigation be applied in an appropriate manner. We recognized our obligation to assure that monitoring and mitigation occur such that rates are just and reasonable for buyers and sellers.*" Yet the entire body of evidence in this matter indicates that there was no "inappropriate" application of the mitigation.

B. In Paragraph 14 the FERC said that "*if we found problems with the IMM's discretion in the application of mitigation with BCAs, we would take appropriate action, including consideration of terminating the BCA.* The OMS emphasizes that there was no evidence to support such a finding. In fact, all the evidence would support a contrary finding – continuation of BCA mitigation.

C. In Paragraph 14 of the May 9 Order, the Commission stated: "…*the Midwest ISO could file to extend the use of BCA mitigation beyond the original one-year period, based on whether the benefits of such mitigation exceed its costs, in terms of over-mitigating versus under-mitigating the market*." There is no evidence in the record supporting FERC's finding that the BCA mitigation exceeded the costs, "*in terms of over-mitigating versus under-mitigating the market.*"

D. There are significant logical inconsistencies contained in Paragraph 23 of the May 9 Order. First, the FERC asserts that "*The Midwest ISO has not shown that BCA mitigation addressed the exercise of market power.*" Then, the FERC asserts, that the BCA mitigation may have, "*alter[ed] legitimate price signals that reflect supply-demand imbalances and that would encourage market entry*." Then,

[5] May 9 Order, at P. 16-17 and 19-20..

contrary to the theme that the FERC is concerned about "over-mitigation" said that "*the three constraints in the third quarter of 2005, the BCA mitigation was fleeting at most.*" [6] The FERC then concludes that: "*Because BCA mitigation was applied so infrequently during 2005, the continued need for prospective BCA mitigation to address the exercise of market power has not been justified. Moreover, we disagree that such infrequent incidents reflect a lack of workable competition in the Midwest ISO region absent BCA mitigation.*" It seems that the FERC did not make a distinction between workable competition in the general case and the specific case.

The OMS would take this opportunity to elaborate on three points.

- Specifically, the May 9 Order did not seem to recognize that an otherwise workably competitive market might have instances where a market participant might have market power and the ability to exploit that market power to the detriment of the entire market. The potential detrimental effects on the market include, but are not limited to, increased RSG as well as the long term damage to confidence in the integrity of the markets.

- The May 9 Order implies that the FERC is willing to risk allowing more of what the BCA mitigation is designed to prevent – abuse of transitory market power created by transmission constraints. Exogenous factors may create or contribute to transmission constraints, but transmission constraints also may appear because of certain market activity that the BCA mitigation measures aim to prevent. Thus, the FERC is effectively willing to risk more market power abuse and allow market participants to game the market rules in order to constrain the transmission grid and create opportunities for the exertion of market power.

- The OMS does not believe that there is evidence that eliminating BCA mitigation will have any effect on decisions by market participants to

[6] May 9 Order, at P. 22.

build generation or transmission. The May 9 Order expressed the concern that "*Mitigation is counterproductive to the extent it penalizes suppliers trying to resolve constraints…and cause reliability problems to the extent that it keeps capacity out of the market…*"[7] Situations giving rise to BCA mitigation are simply too transitory to influence capacity investment decisions.

E. BCA mitigation is both a deterrent and remedy against market power and abusive conduct of market participants. The OMS believes that deterrence is a preferred option to after-the-fact imposition of a remedy as the May 9 Order seems to prefer. The market participants have agreed to accept this deterrent since they voluntarily joined the Midwest ISO and agreed to operate under its Tariff. The fact that the incidence of invoking mitigation was limited, may reasonably suggest evidence of the deterrent effect. In those rare instances where the deterrent was not sufficient and mitigation was required, the result of the mitigation was rates that were not unreasonable or unduly discriminatory.

F. Empirically, where a generator, or single company's generators, has the ability to exercise market power, the OMS is persuaded from the evidence that the BCA mitigation has proven useful in reducing the magnitude and incidence of the exercise of market power.[8]

G. Preventing the exercise of market power has, in turn, reduced the Revenue Sufficiency Guarantee ("RSG")[9] payments that have been a matter of intense

[7] May 9 Order, at P. 12.
[8] May 9 Order, at P. 16 and 20.
[9] This section requires that a market participant will be charged the RSG charge when it withdraws energy, and such charge shall equal the product of the market participant's load purchased in real-time, all virtual supply in the day-ahead markets and resource uninstructed deviation quantities times the per unit RSG charge. The per unit RSG charge for a day will equal the aggregate RSG charge in that hour attributed to resources committed in the Reliability Assessment Commitment (RAC) process in the operating day divided by the sum of load withdrawn in the operating day, all virtual supply and deviations from dispatch instructions of all market participants withdrawing during the hour for that operating day. TEMT, Module C, Second Revised Sheet Nos. 577 and 578.

concern since the April 1, 2005, start-up of the MISO's Day 2 Markets.[10] During discussions with the IMM, the IMM has informed the OMS that it has estimated that absent BCA mitigation, a market participant with market power could potentially charge upwards of $100 million that would be socialized – ultimately to be paid by all retail customers in the form of RSG payments.

H. The FERC is correct to make strong statements that the RTOs need to be more concerned about RTOs' operating and administrative costs, including RSG charges.[11] Moreover, the OMS strongly supports the multiple goals the FERC set for RTOs: "to promote efficiency in wholesale electricity markets and to ensure that electricity consumers pay the lowest price possible for reliable service."[12] The OMS is at a loss, then, to understand how the FERC could eliminate a tool designed to reduce costs, promote efficiency in wholesale electricity markets and to ensure that electricity consumers pay the lowest price possible for reliable service.[13]

I. Since the inception of the Midwest ISO, all of the OMS states, have strongly endorsed the independence of the Market Monitor. The May 9 Order has the potential to undercut the effectiveness of the IMM by ignoring the counsel of the

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[10] See generally Docket Numbers, ER04-691-065 et al., noting that the Midwest ISO, state commissions and stakeholders have formed an RSG Task Force to address the issue. *Many of these matters [involving RSG] are, or will be, the subject of ongoing discussions with the Midwest ISO's RSG Task Force. These issues include: consistency of RSG payments between the Midwest ISO and PJM Interconnection, LLC; and, whether RSG charges should be settled on a net or gross basis and daily basis or an hourly basis, as well as other issues discussed below. As noted in the RSG Filing, the Midwest ISO supports the formation and activities of this Task Force, and believes that additional, RSG-related filings will be required in the future as a result of such stakeholder discussions.* Midwest ISO, Motion for Leave to Answer and Answer of the Midwest Independent Transmission System Operator, at paragraph D, page 8.

[11] "The final rule responds to significant concerns about RTO costs…I believe RTOs have great potential benefits. I have voted to establish RTOs in New England and the Southwest Power Pool, and have voted for PJM expansion. While I believe RTOs have great potential benefits, I recognize it is not predestined that these potential benefits will be achieved. In my view, the key to continued expansion of RTOs is the performance of the existing RTOs. If they deliver the potential benefits and prove to be effective in managing costs, they will succeed." Docket Number RM04-12-000 Statement of Chairman Joseph T. Kelliher on RTO Accounting and Financial Reporting Final Rule December 15, 2005.

[12] Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs., ¶ 31,089(1999), P. 1.

[13] The IMM's Quarterly Reports, and comments filed in support of the requested extension indicate that BCA mitigation has been appropriately applied to address legitimate exercises of market power.

IMM and relying on the speculation that a market participant that has market power will not exercise that market power.

The IMM's independence allows the IMM to gather and analyze data that others cannot and, for market participants, should not have contemporaneously. Thus, among FERC, state commissions, and the IMM, the IMM is the best-informed non-market participant in this proceeding. The IMM possesses market information and knowledge that the IMM could not possibly entirely express in this proceeding.

Only MISO, possibly, as a non-market participant could possess information similar to what the IMM holds. MISO still would not possess a similar understanding of the BCA mitigation measures in practice. Regardless, MISO and the IMM take the same position in this case – that the MISO tariff should maintain the current BCA mitigation measures.

FERC's replacement of the IMM's judgment with its own judgment does not concern the OMS, *per se*, as much as the fact that FERC's decision is not adequately supported by evidence or rigorous analysis. The May 9 Order effectively substitutes baseless assertions in place of the IMM's well-informed and well-supported findings and arguments.

J. BCA mitigation is needed to enhance confidence in the markets. Revocation of the BCA mitigation authority has the potential to stymie market development and negatively impact state regulatory regimes that rely on wholesale markets to produce fair and reasonable rates. Because of the relative transparency of the Midwest ISO and the Independent Market Monitor absence of BCA mitigation may undermine the credibility that markets facilitated by the Midwest ISO may have with the states. In this regard, the OMS has always appreciated that the IMM serves both as the first line of defense against market abuse and as a supplement the authority of the FERC.

The risks of being wrong and not allowing BCA mitigation of market power outweigh the potential concerns about over-mitigation. A longer-term assessment may be useful to compare the May 9 Order's potential for reduced stakeholder comfort in the FERC's market monitoring and mitigation policies with the concerns mentioned in the Order. FERC could address both problems by instituting, with the help of the market monitors, market data collection and reporting programs that would collect and report, for some appropriately lagged unit of time, offer prices, marginal cost or appropriate competitive reference prices, and market-clearing energy prices. Simply maintaining such programs would provide relevant information for contested proceedings like the instant docket and give stakeholders greater confidence in the FERC's and market monitors' efforts to ensure just and reasonable wholesale rates.

K. The OMS and other market participants are considering various capacity market constructs. In particular, the Midwest ISO has suggested an "energy only market" that would necessitate making a distinction between legitimate "shortage pricing" and such things as "intentional withholding." The May 9 Order would eliminate this distinction and subject the market to potentially devastating price spikes resulting from the illegitimate exercise of market power. Such outcomes would most likely influence the consideration of the OMS and other market participants regarding capacity market constructs.

L. The May 9 Order is counter to good regulatory practice of considering the evidence rather than substituting the regulators' judgment. The OMS would also note that the wholesale and retail energy markets place a high premium on "consistency."[14] The May 9 Order unnecessarily introduces uncertainty and

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[14] Commissioner Kelly cited the August 2004 Midwest ISO TEMT II Order. "[T]he Commission approved the use of Broad Constrained Areas (BCAs) as a method to screen for the use of mitigation in the Midwest ISO for one year. The Commission stated that focusing mitigation on BCAs and Narrow Constrained Areas appropriately addresses market power where "well-defined structural barriers to competitive performance exists." The Commission later affirmed the use of mitigation in BCA areas, but

attendant risk that will have long-term adverse repercussions for the wholesale and retail markets.

M. The Midwest ISO and the IMM need to have the tools that will allow the IMM to prevent the exercise of market power, while still allowing market conditions to reflect scarcity pricing. In that regard, the May 9 Order's decision to eliminate BCA mitigation leaves the IMM ill-equipped to meet this objective. In particular, the remedies suggested Paragraph 23 of the May 9 Order are insufficient for the following reasons.

Using NCA mitigation in areas with substantial potential for the exercise of market power is problematic because by definition, an NCA is expected to have a binding constraint for in excess of 500 hours over a 12 month period and a BCA is expected to have a binding constraint of less than 500 hours. Accordingly, NCAs are more likely to be subject to the exercise of market power abuse and therefore, are subject to more stringent thresholds for mitigation. However, the Midwest ISO market monitoring and mitigation plan approved by the Commission requires the IMM to pre-determine NCAs on at least an annual basis.[15]

Requiring the IMM to determine in advance which normally competitive BCA will meet the NCA standards will require some extraordinary forecasting on the part of the IMM. Indeed, the very definition of a BCA - an area where sufficient

stated that the need for BCA mitigation would be re-evaluated to ensure that it does not result in excessive mitigation. [Footnote omitted].

[15] See the Midwest ISO's EMT, Section 1.207

competition usually exists, even when one or more transmission constraints are binding, or into which the transmission constraints bind infrequently, but within which a transmission constraint can result in substantial locational market power under certain market or operating conditions – warrants giving the IMM the latitude to mitigate energy prices when the situation requires it.

The May 9 Order also suggested that the IMM make a section 205 filing to request authority to apply mitigation in cases where it has identified the exercise of market power. Situations regarding the exertion of market power can develop quite quickly, the damage can be quite severe and the post-mortem can be long-lasting and quite difficult. Indeed, a 205 filing is essentially "after–the-fact mitigation" that is much more disruptive to the efficient conduct of markets than the deterrent effect of the BCA mitigation. Furthermore, any restitution might be viewed by appellate Courts as "retroactive ratemaking."

In this regard, the OMS believes that BCA mitigation serves as an effective deterrent, as well as a remedy against market power and abusive conduct. As such, granting the IMM BCA mitigation authority to "nip it in the bud" makes perfect sense. Indeed, preventing the exercise of market power in the first place is preferred to imposing an after-the-fact remedy as the May 9 Order seems to prefer.

Finally, the May 9 Order cites the $1,000 per megawatt-hour bid cap as one of its supporting reasons for eliminating the BCA provisions from the Midwest ISO's tariff.. However, the OMS notes that the $1,000 bid cap was never intended to be used as a tool to mitigate market power. Rather, its stated purpose was to: 1) to avoid harmful and unchecked price volatility on the upside and to 2) serve as a temporary proxy for demand response which is currently missing from MISO's markets in amounts sufficient to hold prices at reasonable levels. At best, the $1,000 per megawatt-hour bid cap is a crude tool. While it might prevent the exercise of market power when prices reach or exceed $1,000, it would also effectively mute legitimate price signals resulting from legitimate shortages, rather than the exercise of market power. In this regard, FERC's reliance on the bid cap seems to be misplaced, as one of the reasons the May 9 Order rejected BCA mitigation is that the FERC was concerned that it could mute legitimate price signals resulting from shortages rather than the exercise of market power. Moreover, the energy bid cap may not apply and is not the only relevant cap, since start-up and no-load offer prices are likely to rise if market participants with market power seek to maximize profits. The OMS wishes to reiterate that the primary focus should be on deterring this behavior rather than reliance on after the fact mitigation.

The OMS can appreciate that the FERC's primary concern, when approving the BCA mitigation in its initial Order, was striking an appropriate balance between over and under-mitigation.[16] The FERC noted that: "While under-mitigation may result in some exercise of market power that is not mitigated, over-mitigation means more frequent intervention in the market, and some competitive market results will be mitigated."[17] The OMS would point out that not mitigating "some exercise of market power" also mitigates

[16] *Midwest Independent Transmission System Operator, Inc., et al.*, 108 FERC ¶ 61,163 (2004) ("August 6 Order"), order on reh'g, 109 FERC ¶ 61,157 (2004) ("November 8 Order")
[17] May 9 Order, at P. 12.

"some competitive market results."

The OMS' reading of the FERC's August 6 Order is that the FERC had concerns that the balance would not be achieved. The August 6 Order expressed primary concerns for "over-mitigation" as a basis for its apprehension.[18] The FERC cautioned that evidence of over-mitigation would be a predicate for discontinuing the BCA mitigation beyond the first year and even before the end of the first year.[19] However, as stated in the May 9 Order, the concern of over-utilization was not realized.[20] Accordingly, the FERC should re-authorize continued use of the BCA mitigation tool.

Assuming that it was the express intent of the FERC to strike a balance between over and under-mitigation, the May 9 Order ignores that this balance had been achieved[21], [22] and instead seemed to rely on the FERC's concerns by stating: "We find

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[18] See generally Docket Numbers, ER04-691-065 et al., noting that the Midwest ISO, state commissions and stakeholders have formed an RSG Task Force to address the issue. *Many of these matters [involving RSG] are, or will be, the subject of ongoing discussions with the Midwest ISO's RSG Task Force. These issues include: consistency of RSG payments between the Midwest ISO and PJM Interconnection, LLC; and, whether RSG charges should be settled on a net or gross basis and daily basis or an hourly basis, as well as other issues discussed below. As noted in the RSG Filing, the Midwest ISO supports the formation and activities of this Task Force, and believes that additional, RSG-related filings will be required in the future as a result of such stakeholder discussions.* Midwest ISO, Motion for Leave to Answer and Answer of the Midwest Independent Transmission System Operator, at paragraph D, page 8.

[19] May 9 Order, at P. 12 -14.

[20] "Because BCA mitigation was applied so infrequently during 2005, the continued need for prospective BCA mitigation to address the exercise of market power has not been justified. Moreover, we disagree that such infrequent incidents reflect a lack of workable competition in the Midwest ISO region absent BCA mitigation." May 9 Order, at P. 24.

[21] "The Midwest ISO states that BCA mitigation was utilized on several occasions in the energy markets during 2005 when transmission constraints or local reliability requirements in certain areas created substantial market power. The Midwest ISO states that, in general, those conditions arose: (1) when important transmission lines and/or generation units were out of service and there was a corresponding "high value congestion" occurring that was not normally seen; (2) when market participants in an area bid their units inflexibly and the Midwest ISO had limited redispatch options for managing congestion; and (3) when the outage of baseload generation units caused unusual patterns of congestion or voltage support issues. <u>The Midwest ISO states that the market power that existed in these cases can manifest itself to allow a supplier to raise energy prices substantially in a specific area or to cause the Midwest ISO to make inflated Revenue Sufficiency Guarantee payments to the supplier to commit units in a certain area. The Midwest ISO states that, while BCA mitigation was infrequent in 2005</u>, <u>in certain situations it was the only tool available to prospectively limit market power abuses</u>." [emphasis added] May 9 Order, at P. 16.

[22] "AMP-Ohio and Midwest TDUs suggest that the Midwest ISO's proposal and the IMM quarterly reports indicate that <u>BCA mitigation has been appropriately applied</u> when sellers exhibit substantial market power. AMP-Ohio references Midwest ISO's assertion that BCA mitigation was the "only tool available to prospectively limit market power abuses" to suggest that BCA mitigation should be extended. <u>Midwest TDUs argue that the use of the conduct and impact thresholds and the GSF Cutoff in BCA</u>

that the Midwest ISO has not justified the continued appropriateness of prospective BCA mitigation in the Midwest ISO market."[23]

The Midwest ISO's filings should have allayed the FERC's initial reservations of over-utilization and raised important policy objectives that would be compromised by eliminating the BCA mitigation. The FERC correctly noted that Midwest ISO's market power mitigation plan would impose mitigation upon entities in constrained areas (areas in which a constraint is actively binding) and that fail both the conduct and impact tests such that their conduct is significantly inconsistent with competitive outcomes (as indicated by conduct threshold levels).[24] The OMS is not aware of any market participant filings that alleged over-mitigation on the part of the IMM. The Commission's Order failed to cite a single instance of a complaint from the mitigated market participants. Indeed Commissioner Kelly noted this in her dissent. Specifically,

> "Based on the infrequent application of BCA mitigation, the order concludes that Midwest ISO has not shown that BCA mitigation address the exercise of market power and that, instead it might have altered legitimate price signals that reflect supply-demand imbalances. I disagree. I see nothing in the record of this case contrary to the Midwest ISO's finding that substantial market power existed on several occasions last year or contrary to the IMM's statements regarding the need for BCA mitigation to maintain a competitive market. I do not share the view that the infrequent application of BCA mitigation means that it has been excessive or has distorted legitimate price signals. In fact, I believe that its infrequent

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mitigation have been sufficient to prevent over-mitigation. Because the IMM quarterly reports indicate that BCA mitigation was applied infrequently only to pivotal suppliers, Midwest TDUs contend that the Midwest ISO market has not been over-mitigated. Midwest TDUs also suggest that the GSF Cutoff has been sufficient to prevent the IMM from exercising undue discretion in applying BCA mitigation. While Midwest TDUs state that they strongly support continuation of BCA mitigation, they also suggest that the conduct and impact thresholds and the GSF Cutoff may be too high, allowing generation resources to exercise market power unrestrained by BCA mitigation… Midwest TDUs thus argue that the Commission must continue BCA mitigation, because the Midwest ISO proposal and IMM quarterly reports document the Midwest ISO market's vulnerability to substantial market power abuse absent BCA mitigation." [emphasis added] May 9 Order, at P. 19.

[23] May 9 Order, at P. 22.

[24] The FERC's definition and categories of the conduct test is accurate. That is, the conduct test determines whether the generation resource has exceeded the conduct thresholds set forth in section 64.1 of the TEMT. Categories of potentially problematic behavior include economic withholding, physical withholding, uneconomic production, and uneconomic market participant bids or virtual transactions. Finally, the FERC's definition of the impact test is accurate. Specifically, the impact test determines whether the generation resource has exceeded the pricing thresholds set forth in section 64.2 of the TEMT. Impact thresholds set limits on the acceptable impacts on prices or on Offer Revenue Sufficiency Guarantee Payments to market participants.

> application serves as an indication that BCA mitigation has not been applied excessively. Finally, no market participant has complained that mitigation has been excessive." [25]

In addition to the harms to the market, market participants, and to consumers from unrestrained abusive conduct, a specific manifestation of harm would be an increase – potentially a dramatic increase – in Revenue Sufficiency Guarantee ("RSG") Payments (uplift charges to cover start-up and no-load costs).

V. Technical Conference:

The facts in this case warrant reinstatement of the BCA mitigation authority of the Midwest ISO and the IMM. If the Commission is not persuaded by the OMS' arguments, the OMS would recommend that the Commission consider a Technical Conference focused on further exploration of the BCA mitigation issue. In particular, the OMS believes that all parties – the Commission, the Midwest ISO, the IMM, Market Participants and members of the OMS - would benefit from a detailed discussion of issues involved in this case. In particular, a Technical Conference would provide the Commission with a forum to discuss alternatives to BCA mitigation.

If, the Commission does decide to convene a Technical Conference, the OMS would urge the Commission to hold the May 9 Order in abeyance and allow the IMM to continue to exercise BCA mitigation.

VI. Conclusion:

The OMS strongly urges the FERC to reconsider its May 9 Order. In particular, the OMS believes that the infrequent application of BCA mitigation does not equate to its being unnecessary. To the contrary, the OMS believes that during the "test year" the IMM applied BCA mitigation as it should have been and that BCA mitigation would

[25] Dissent of Commissioner Kelly, at 2.

continue to provide a valuable option for the IMM when faced with locational market power under certain market operating conditions. Specifically, the IMM applied BCA mitigation when circumstances arose that created abnormally high congestion. The OMS concurs with the Midwest ISO's conclusion that "*while BCA mitigation may have been infrequent in 2005, in certain situations, it has been the only tool available to prospectively limit market power abuses and the Midwest ISO requires these tools to be available for the IMM's use through the EMT.*" [26]

The OMS submits this motion and petition because a majority of the members have agreed to support it. The following members support this request. Individual OMS members reserve the right to file separate comments regarding the issues discussed in this request:

Illinois Commerce Commission
Indiana Utility Regulatory Commission
Iowa Utilities Board
Kentucky Public Service Commission
Michigan Public Service Commission
Minnesota Public Utilities Commission
Missouri Public Service Commission
Montana Public Service Commission
North Dakota Public Service Commission
Public Utilities Commission of Ohio
Pennsylvania Public Utility Commission
South Dakota Public Utilities Commission
Wisconsin Public Service Commission

The Manitoba Public Utilities Board and Nebraska Power Review Board did not participate in this pleading.

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

[26] Midwest ISO filing, March 10, at page 2.

Organization of MISO States
100 Court Avenue, Suite 218
Des Moines, Iowa 50309
Tel: 515-243-0742

Dated: June 8, 2006

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 8th day of June, 2006.

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