

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

Long-Term Firm Transmission Rights in Organized Electricity Markets)	Docket No. RM06-8-000
Long-Term Transmission Rights in Markets Operated by Regional Transmission Organizations and Independent System Operators)	Docket No. AD05-7-000

COMMENTS OF THE ORGANIZATION OF MISO STATES

I. INTRODUCTION

In its February 2, 2006, Notice of Proposed Rulemaking (“NOPR”), the Federal Energy Regulatory Commission (“Commission”) proposes to amend its regulations in order to implement section 1233(b) of the Energy Policy Act of 2005. Specifically, the Commission would require that “long-term firm transmission rights must be made available with terms or renewal rights that are sufficient to meet the needs of load-serving entities to hedge long-term power supply arrangements made or planned to satisfy a service obligation.”¹ The Commission also states it “seeks to provide increased certainty regarding the congestion cost risks of long-term transmission service in organized electricity markets that will help load-serving entities and other market participants make new investments and other long-term power supply arrangements.”²

The Organization of MISO States (“OMS”) is a regional state committee formed by the state regulatory agencies in states served by the Midwest Independent

¹ Federal Energy Regulatory Commission; 18 CFR Part 40, Docket Nos. RM06-8-000 and AD05-7-000: Long-Term Firm Transmission Rights in Organized Electricity Markets; Long-Term Transmission Rights in Markets Operated by Regional Transmission Organizations and Independent System Operators; February 2, 2006; (“Long-Term Firm Transmission Rights NOPR”); ¶3.

² Long-Term Firm Transmission Rights NOPR: ¶ 4.

Transmission System Operator, Inc. (“Midwest ISO” or “MISO”). The OMS’s comments, based on experience within the Midwest ISO market, point out that moving from short-term to long-term transmission rights will realign risk and costs among load-serving entities. To do so in ways that can be accepted as just and reasonable is a complex task that will require changes in RTOs’ modeling and planning processes, shrinkage of the amount of rights, reallocation of rights, and stakeholder input on each point. Done right, this task will take more than six months.

II. STATEMENT OF ISSUES³

1. Should the Commission adopt the proposed guidelines to implement section 1233(b)? If the Commission decides to proceed with the proposed guidelines, it should address the issues below.

2. Should the Commission modify Guideline 2 to only include the assurance that the holder of a long-term firm transmission right is assured of receiving that same firm transmission right over the contract life of the generation source, and exclude from

³ The Public Service Commission of Wisconsin (“PSCW”) supports these comments because they draw attention to several issues that the Commission should consider in this rulemaking. The PSCW does not share all of the interpretations of the NOPR expressed or implied by these comments, however. Nor does the PSCW share all of the concerns based on certain interpretations of the NOPR expressed or implied by these comments.

In particular, the PSCW interprets paragraph 48 of the NOPR to be considering long-term rights that provide a higher degree of certainty than a holder would when subject to uncertainty over the possibility of a significant magnitude of pro-rationing in the event of revenue adequacy. At this point, the PSCW seeks to understand what magnitude of pro-rationing would constitute “significant pro-rationing” in terms of satisfying Guideline 2. At this point, the PSCW encourages the Commission to adopt rules that ultimately provide a just and reasonable definition of “significant pro-rationing.” Accordingly, at this time, the PSCW does not share concerns about Guideline 2 based on extreme assumptions about the ultimate meaning of “significant pro-rationing.”

Further, the PSCW interprets paragraph 49 of the NOPR to be considering a requirement for transmission organizations to ensure that the long-term right is “fully funded” to some just and reasonable level. At this time, the PSCW encourages the Commission to adopt rules that ultimately provide a just and reasonable definition of “fully funded.” Accordingly, at this time, the PSCW does not share concerns about Guideline 2 based on extreme assumptions about the ultimate meaning of “fully funded.”

Guideline 2 the apparent assurance that payments from the RTO/ISO to the holders of the long-term firm transmission rights will never be prorated?

3. When insufficient transmission capacity is available to grant a request for a long-term firm transmission right, should requestors of such long-term firm transmission rights pay an appropriate share for the incremental transmission upgrades needed to completely hedge congestion from generation sources to their loads?

4. Should the Commission allow sufficient time for the RTOs and their respective stakeholders to work through the issues involving the reassignment of firm transmission rights, the cost allocation of upgrades needed to support long-term firm transmission rights, and other “equity” issues raised by Guideline 8?

III. UNDERLYING COMMENTS

A. Grid Expansion is the Primary Vehicle for Providing Long-Term Hedges for Congestion Costs.

At the outset of these comments, the OMS would like to reiterate one of the major points it previously has made in Docket No. AD05-7-000:

“To guarantee long-term transmission rights absent grid expansion is likely to mean shifting the congestion costs among market participants without lowering the overall level, and therefore risks, of these congestion costs.”⁴

Implementing the overall objectives of long-term transmission rights (“to provide increased certainty regarding the congestion cost risks of long-term transmission service in organized electricity markets that will help load-serving entities and other market

⁴ Comments Of The Organization Of MISO States On Establishing Long Term Transmission Rights In Markets With Locational Pricing, Docket No. AD05-7-000; June 30, 2005; p. 3.

participants make new investments and other long-term power supply arrangements”⁵) likely will require a significant expansion in the transmission system, and this expansion will not happen overnight. The OMS would note that this is consistent with the requirements of new Section 217(b)(4) of the FPA where it states:

“The Commission shall exercise the authority of the Commission under this Act in a manner that **facilitates the planning and expansion of transmission facilities** to meet the reasonable needs of load-serving entities to satisfy the service obligations of the load-serving entities, and enables load-serving entities to secure firm transmission rights (or equivalent tradable or financial rights) on a long-term basis for long-term power supply arrangements made, or planned, to meet such needs.”⁶ (Emphasis added)

B. Proposed Long-Term Firm Transmission Guidelines Should Not Be Interpreted to Mean That a Transmission Provider Is Required to Provide Transmission Service with No Consequences Related to Either Congestion or a Requirement for the Transmission User to Pay for Upgrades Required to Hedge Such Congestion.

One of the themes in the NOPR is a comparison of physical firm transmission rights to financial firm transmission rights. For example, in the NOPR the Commission states:

“... although the load serving entity must pay the demand charge whether or not it uses its full reservation, it does not have to pay additional costs associated with transmission congestion for point-to-point transmission service even when the transmission provider must redispatch its generators to honor the firm service commitment.”⁷

Clearly, in regions without organized electricity markets, the point-to-point transactions (whether firm or non-firm) are subject to curtailment under transmission loading relief (TLR) orders. Upon curtailment, parties to point-to-point transactions would need to provide energy from alternative sources, commonly at costs that are significantly higher

⁵ Long-Term Firm Transmission Rights NOPR, ¶ 4.

⁶ Long-Term Firm Transmission Rights NOPR, ¶2.

⁷ Long-Term Firm Transmission Rights NOPR, ¶ 20.

than those of the curtailed transaction. While costs from these alternative sources may be more certain than costs charged through an LMP-driven congestion management system, the greater certainty of non-market region congestion costs may result in congestion cost levels that are higher, or lower. Moreover, without paying for required transmission upgrades, a party should not develop an expectation that it should bear no congestion-related costs.⁸ Similarly, no Commission guideline should infer that a transmission provider is required to provide transmission service with no consequences related to either congestion or a requirement for the transmission user to pay for upgrades required to hedge such congestion.

Finally, it is important that the concept of making congestion costs transparent be kept distinct from the experience of higher congestion costs. Prior to the beginning of the Midwest ISO's Midwest Market Initiative (MMI), the Midwest ISO region was experiencing levels of TLRs that were both unprecedented and increasing. Clearly, though the congestion costs related to those TLRs were not fully transparent, they were significant. The OMS is concerned that the institution of LMP markets may have been assumed to have caused congestion costs when, in fact, the LMP market simply revealed these costs and made them transparent.⁹

⁸ Through its participation in the MISO stakeholder process, the OMS is aware that the efficiency of transmission systems' use in the MISO footprint seems to have improved, reflected by lesser amounts of congestion, not more.

⁹ Additionally, the overlap of increases in natural gas and coal costs with the MMI's implementation has made it difficult to see the efficiency gains from MISO's organized energy market.

C. Moving to an Allocation System that Requires Long-Term Firm Transmission Rights with Congestion Cost Payments that Cannot Be Prorated Will Result in Cost Shifts that Are Likely to Be Unjust and Unreasonable.

The OMS cautions the Commission and transmission system users as to expectations of outcomes from adopting the long-term firm transmission rights guidelines proposed in this proceeding. Such outcomes will result in cost shifts among transmission system users, and such shifts could be unjust and unreasonable unless extreme care is taken.

One of the greatest concerns of the OMS regarding the Commission's proposed guidelines is the requirement that congestion cost payments to holders of long-term firm transmission rights not be subject to prorated payments when the RTO/ISO has insufficient congestion revenues to fully fund all firm transmission rights.¹⁰ In its earlier comments the OMS warned,

“Longer-term transmission rights that are not subject to prorating require a higher risk premium (potentially much higher) than shorter-term transmission rights that are subject to prorating. This is because the longer the term for which risks are to be mitigated, the greater the amount of uncertainty and the higher the cost of mitigating that risk. Given that the OMS is not aware of any proposals or practical ways to set a higher risk premium on long-term transmission rights or exemption from pro-ration, further stakeholder input and discussion of this issue is needed at the RTO level.”¹¹

Unfortunately, the proposed guidelines provide no insights as to how to set a higher risk premium on long-term firm transmission rights that are not subject to prorating. This requirement, along with the priority given to long-term firm transmission rights, will have

¹⁰ In part, proposed Guideline 2 requires “once allocated, the financial coverage provided by the right should not be modified during its term except in the case of extraordinary circumstances or through voluntary agreement of both the holder of the right and the transmission organization.”

¹¹ Comments Of The Organization Of MISO States On Establishing Long Term Transmission Rights In Markets With Locational Pricing, Docket No. AD05-7-000; June 30, 2005; p. 3.

at least two likely consequences.¹² First, RTOs/ISOs will be extremely conservative in the level of long-term firm transmission rights that they are willing to allocate. Second, there will be a significant reduction in firm transmission rights that remain for annual allocation. Holding other factors constant, this will further result in significant cost shifts, giving holders of long-term firm transmission rights greater revenue streams from congestion payments and holders of short-term firm transmission rights lesser revenue streams from congestion payments. In this regard, new section 217(b)(4) of the Federal Power Act provides:

“The Commission shall exercise the authority of the Commission under this Act in a manner that facilitates the planning and expansion of transmission facilities to meet the **reasonable needs** of load-serving entities to satisfy the service obligations of the load-serving entities, and enables load-serving entities to secure firm transmission rights (or equivalent tradable or financial rights) on a long-term basis for long-term power supply arrangements made, or planned, to meet such needs.”¹³ (Emphasis added.)

Moreover, this does not require the full funding of long-term firm transmission rights as implied by the Commission’s proposed guidelines. Therefore, the OMS asks that the Commission reconsider its proposed guidelines by allowing stakeholders in each RTO/ISO the flexibility to make a regional determination regarding how to allocate under-funded firm transmission rights, and to give the stakeholder process sufficient time to work out this extremely difficult issue.¹⁴

¹² Proposed Guideline 5 requires “load-serving entities with long-term power supply arrangements to meet a service obligation must have priority to existing transmission capacity that supports long-term firm transmission rights requested to hedge such arrangements.”

¹³ Long-Term Firm Transmission Rights NOPR, ¶ 2.

¹⁴ The proposed rule only allows 180 days for RTOs/ISOs to file tariffs at the Commission for the implementation of long-term firm transmission rights.

The OMS urges the Commission to keep these summary comments in mind when reviewing the following specific comments regarding the Commission's proposed guidelines.

IV. AN OVERVIEW OF THE IMPLICATIONS OF THE PROPOSED GUIDELINES FOR LONG-TERM FIRM TRANSMISSION RIGHTS

A. The Proposed Guidelines Imply a Fundamental Change in Direction for RTOs/ISOs from Allocating Short-Term to Allocating Long-Term Firm Transmission Rights.

The guidelines proposed in the Commission's NOPR require that RTOs/ISOs provide long-term firm transmission rights (to the extent available) that are requested by load-serving entities that have long-term power supply arrangements to meet a service obligation.¹⁵ In part because of the priority given to long-term firm transmission rights,¹⁶ it is clear that long-term firm transmission rights would be a superior product to short-term firm transmission rights, and it follows that all those who qualify for long-term transmission rights will likely request this long-term form of firm transmission rights. This makes the provision of long-term firm transmission rights a fundamental change in processes for all RTOs/ISOs that have in place mechanisms for providing these firm transmission rights on an annual (i.e., "short-term") basis. This NOPR is not an incremental change to what is taking place today.

One implication is that the allocation process for all firm transmission rights must begin with an allocation of long-term firm transmission rights. The RTO/ISO has some

¹⁵ Proposed Guideline 4 requires "long-term firm transmission rights **must be made available** with term lengths (and/or rights to renewal) that are sufficient to meet the needs of load-serving entities to hedge long-term power supply arrangements made or planned to satisfy a service obligation." (Emphasis added.)

¹⁶ Proposed Guideline 5 requires "load-serving entities with long-term power supply arrangements to meet a service obligation **must have priority to existing transmission capacity** that supports long-term firm transmission rights requested to hedge such arrangements." (Emphasis/ added.)

latitude to reserve some of the transmission capacity for allocation for short-term firm transmission rights,¹⁷ but in order to provide priority to long-term firm transmission rights, the allocation of short-term firm transmission rights would have to follow after the allocation of long-term firm transmission rights.

B. The Proposed Guidelines Imply a Changed Modeling Process that Will Be Required for Allocating Long-Term Firm Transmission Rights.

In addition to the implication of the guidelines with respect to the priority order of allocations between long-run and short-run firm transmission rights, having an allocation process for long-term firm transmission rights implies a different modeling process than what is currently used, where the topology of the transmission system and external loop flows are forecasted only on a year-ahead basis. Moreover, the provision of long-term firm transmission rights will likely require transmission rights allocation models to incorporate long-term transmission planning. This longer-term modeling introduces additional uncertainty with respect to both the topology of the transmission system (what exactly will be built – transmission and generation - and when and where), but also with respect to forecasts of more operational aspects of the transmission system, such as loop flows.

C. The Proposed Guidelines Imply a Fundamental Change in Approach to RTO/ISO Transmission Planning.

To the extent that requests for long-term firm transmission rights cannot be fulfilled, the RTO/ISO will need to determine what transmission upgrades would be required to meet the unfulfilled requests for long-term firm transmission rights. The

¹⁷ Proposed Guideline 8 requires the RTO/ISO to “balance any adverse economic impact between participants receiving and not receiving the right.”

guidelines require the RTO/ISO to provide long-term transmission rights for those market participants that are willing to fund such transmission upgrades.¹⁸ Thus, requests for long-term firm transmission rights would lead to additional long-term transmission planning analysis on the part of RTOs/ISOs and a needed connection between long-term transmission rights and the transmission plans of the RTOs/ISOs.¹⁹

D. The Proposed Guidelines Imply that Fewer Firm Transmission Rights Are Likely to Be Allocated and This Could Result in a Major Redistribution of These Rights.

The proposed guidelines require that holders of long-term firm transmission rights be given a guarantee of full payment of congestion costs.²⁰ This requirement will result in very conservative levels of transmission capacity allowed by the RTOs/ISOs to be made available for allocation to long-term firm transmission rights. This requirement also places a higher value on long-term firm transmission rights as compared to annual firm transmission rights. Thus, the Commission should expect that all load-serving entities qualifying for allocations of long-term firm transmission rights to request that their firm transmission rights be long-term rather than annual, and that the RTO/ISO will not be able to meet all these requests. The result will be fewer firm transmission rights being allocated, and a likely redistribution of firm transmission rights from what is

¹⁸ Proposed Guideline 3 requires “long-term firm transmission rights made feasible by transmission upgrades or expansions must be available upon request to any party that pays for such upgrades or expansions in accordance with the transmission organization’s prevailing cost allocation methods for upgrades or expansions.”

¹⁹ Currently, MISO’s transmission planning focuses on reliability upgrades, upgrades related to reducing congestion and upgrades required for generation interconnections. Any generator that is a network resource and is designated by a load-serving entity is eligible to be nominated in the annual financial transmission right (“FTR”) allocation.

²⁰ Proposed Guideline 2 states: “long-term firm transmission rights must provide a hedge against locational marginal pricing congestion charges (or other direct assignment of congestion costs) for the period covered and quantity specified. Once allocated, the financial coverage provided by the right should not be modified during its term except in the case of extraordinary circumstances or through voluntary agreement of both the holder of the right and the transmission organization.”

currently being allocated on an annual basis. The extent of this redistribution will be determined by the amount of transmission capacity that the RTO/ISO reserves for annual firm transmission rights.²¹

The OMS is also concerned about how RTOs/ISOs will balance the need for long-term congestion hedges of regulated states with the need for shorter-term congestion hedges of retail access states. In general, long-term FTRs would most likely conflict with the market design elements of many of the retail access states that typically are structured around shorter term contracts to minimize load-shift risk faced by potential alternative suppliers. The adoption of a proposal that gives greater preference in the long-term FTR allocation to load serving entities (LSEs) that have longer contract terms may well be inconsistent with the business models of retail access states that generally rely on shorter-term contracts. Any redistribution of firm transmission rights should not unduly favor one state's business model over another. In addition, the Commission's proposed definitions of "load serving entity" and "service obligation" may conflict with certain states' plans for procuring supply for retail load that does not switch to alternative providers.²²

²¹ Proposed Guideline 8 requires "allocation of long-term firm transmission rights should balance any adverse economic impact between participants receiving and not receiving the right."

²² For example, Illinois plans to use an auction as a means for utilities to procure supply to meet the load obligations using three-year purchase contracts. In order to allow auction winners the ability to seek financial transmission rights (FTRs), the Illinois auction process has been designed so that the auction winners will be able to participate directly in the FTR allocation process of both PJM and MISO, beginning in the spring of 2007. However, the NOPR proposes to limit long term FTRs to "load serving entities" with a "service obligation." FERC proposes to define "load serving entity" and "service obligation." in such a way that it would not encompass Illinois' procurement auction winners (see NOPR at P 7). Therefore, under the NOPR's proposed definitions, none of Illinois' auction load could be provided under contracts hedged with long term FTRs. That presents a major conflict between Illinois' auction design and FERC's long term firm transmission rights proposal. To cure this definitional problem, the definition of "load serving entity" should be modified to replace the reference to "utility" with a reference to "entity" as follows: "~~a distribution utility or electric utility~~ **an entity** that has a service obligation." Similarly, the definition of "service obligation" should be modified as follows: "a requirement applicable to, or the

E. The Proposed Guidelines Imply a Lengthy and Contentious Stakeholder Process to Arrive at a Tariff Proposal for Allocating Long-Term Firm Transmission Rights.

When all of the above implications of the proposed guidelines are taken together, (i.e., new direction in allocations, new models required for allocations, new planning requirements and possible significant changes in the distribution of firm transmission rights), the Commission should expect that a lengthy and contentious stakeholder process will be required to develop the details necessary to meet the proposed guidelines. The OMS also notes that there will most likely be a need for RTOs and their stakeholders to address seams-related issues regarding the allocation of long-term firm transmission rights that will have a cross-border impact. In sum, the OMS is concerned as to whether or not 180 days after the publication of the new rule will be sufficient to work through all of the issues that will need to be addressed, and would request that the Commission allow RTOs/ISOs to report back as to the status of stakeholder processes in 180 days, and based on that report set a filing date for tariff changes.

V. SPECIFIC COMMENTS TO THE PROPOSED GUIDELINES

Guideline (1): The long-term firm transmission right should be a point-to-point right that specifies a source (injection node or nodes) and sink (withdrawal node or nodes), and a quantity (MW).

Comments: This guideline appears to be straightforward – it requires that the long-term firm transmission right be matched to a specific generation source (or set of specific generation sources where the contract is “system participation”). However, there is an additional requirement that should be included in this guideline. In order to obtain a

exercise of authority granted to, an ~~electric utility~~ **entity** under Federal, State or local law or under long-term contracts to provide electric service to end-users or to a distribution utility.”

long-term firm transmission right, the transmission customer should be required to show proof of a long-term commitment to the generation resource or set of resources in the case of a system participation agreement.

There are several issues regarding the provision of long-term firm transmission rights that will factor into the design used by an RTO to provide these instruments. However, the suggestion that the RTO should extend its current one-year process to include multiple years is worth serious consideration.

As indicated previously in these comments, in order to comply with the proposed guidelines, RTOs may be required to primarily implement a system of long-term firm transmission rights. In order to accomplish this, several things will need to be done, including:

- 1) Setting up auctions/markets for long-term firm transmission rights so that those wanting to hold firm transmission rights for shorter time periods will have that option— including safeguards to prevent initial long-term firm transmission rights holders from using the auction to extract monopoly rents from those wanting shorter period firm transmission rights;
- 2) Making determinations of transmission expansions needed to provide long-term firm transmission rights that have been prorated in the allocation process – along with a method for allocating the costs of these upgrades; and
- 3) Possibly reserving transmission capacity for short-term firm transmission rights for those who do not have a service obligation.

Guideline (2): The long-term firm transmission right must provide a hedge against locational marginal pricing congestion charges (or other direct assignment of congestion costs) for the period covered and quantity specified. Once allocated, the financial coverage provided by the right should not be modified during its term except in the case of extraordinary circumstances or through voluntary agreement of both the holder of the right and the transmission organization.

Comments: As noted in our introductory comments, OMS understands there is no transmission construct under which a transmission customer has no responsibility to deal with congestion. Such responsibility may not be subject to LMP pricing, but there are

always congestion consequences and related costs. So, the OMS is concerned when it sees a Commission suggested guideline, as developed by the Commission's discussion, where it appears as if absolute certainty is to be provided: "long-term firm transmission right must provide a hedge against locational marginal pricing congestion charges (or other direct assignment of congestion costs) for the period covered and quantity specified." OMS suggests that the Commission not adopt this guideline as developed by the Commission's discussion²³ but rather provide RTOs/ISOs an opportunity to explore and discuss constructs that provide more, but not absolute, certainty through their respective stakeholder processes.

This guideline defines the primary difference between what the FERC is calling a "long-term" firm transmission right and the firm transmission rights that have been allocated thus far in the MISO allocation process. Year-to-year allocations do not assure transmission customers that they will be able to have a firm transmission right to hedge their use from a generation source over the life (could be contract life) of that generation source. The purpose of a long-term firm transmission right is to provide that assurance.

The more difficult aspect of this guideline is that it apparently imposes a condition that the firm transmission right will never be prorated in terms of payments.²⁴

²³ At paragraph 48, the NOPR states, "In proposing that the financial coverage offered by the long-term rights, once awarded, not be modified, we seek to establish rights that provide a high degree of stability in terms of payments from year to year, rather than subject to uncertainty over the possibility of significant pro-rationing in the event of revenue inadequacy". What is not clear from the NOPR is what the Commission intends by its use of the words "significant pro-rating." Does this mean "no prorating" or would the amount of prorating be left to the determination of the RTO and its stakeholders?

²⁴ At paragraph 49, the NOPR states, "When conditions arise that cause the transmission organization to receive congestion revenues that are not sufficient to meet payment obligations to FTR holders, the transmission organization must have in place a mechanism to fully fund the rights by collecting the needed revenues from a set of market participants. We will not specify here how that funding should be allocated among market participants, which is a subject for stakeholder discussion, but note that ideally the rules for funding of the rights should be designed to create and improve incentives for the maintenance and expansion of the transmission system that is needed to ensure the feasibility of the long-term rights that are

Thus, holders of long-term firm transmission rights are being given a different financial instrument from non-long-term firm transmission rights, one in which the holder has one-hundred percent assurance of payments either from, or to,²⁵ the RTO.

While assurance of receiving a firm transmission right is one thing, it is quite another to assure the holder of a firm transmission right that it will be fully funded. Full funding of a firm transmission right for non-base loaded generation sources goes beyond the requirements of providing transmission customers with the assurance of being hedged against congestion costs. Consider the following scenarios.

1. The generation source in question is bid into the energy market but does not fully run because the LMP at the generation source is lower than the incremental bid. The firm transmission right from that generation source to the load ensures the load-serving entity that it will in fact be able to serve its load at the LMP from the generation source. There may be congestion cost included in the generation source LMP, but there is no congestion included from that generation source to the load. Comparing this scenario to physical transmission rights, there is no assurance to a load-serving entity that it will be able to purchase off-system at a cheaper price than from its own generation. Moreover, a load-serving entity taking network service from an RTO can request on a short-term basis for a change in source to serve its load, but is only provided this service if it is available.

allocated." In this paragraph, the words "fully fund the right" are used, which implies that payments to FTR holders should not be prorated. What is not clear however, is whether or not holders of long-term transmission rights could be included in the group of market participants that would be allocated the congestion revenue shortage, and in effect have their long-term firm transmission rights not be fully funded.

²⁵ If a generation source is likely to provide counterflow for significant enough periods that the net payments are negative, it is highly unlikely that the transmission customer would request a long-term firm transmission right for that generator.

2. The generation source in question is bid into the energy market and does fully run, but the full amount of generation from that source is not needed to serve the load. In essence, the generator is selling incremental energy into the market. In addition to receiving payments for the LMP at the generation source, the load-serving entity is also receiving an additional payment for firm transmission rights from that generation source to its load for the incremental energy being sold into the market. In comparing this scenario to what physical transmission rights would give to a load-serving entity, the ability to sell energy to another entity is not assured, let alone an additional payment for congestion between the generator making the sale and the load.

According to the NOPR, the FERC wants comments on who should pay for potentially up to one-hundred percent assurance of payments. It appears that most of the time the lack of adequate congestion revenues to fully fund firm transmission right payments are in part the result of loop flows – flows of power over the MISO system from entities outside of the MISO footprint.²⁶ In the case of loop flows and absent some new form of a seams agreement, the shortfall in firm transmission right revenues cannot be attributed to the cost causer.

It appears that the assurance of fully funded firm transmission right payments goes well beyond the scope of the assurances given to transmission customers with physical transmission rights. While “price stability” is a proper goal, this goal should not be interpreted to mean going beyond an assurance that the load-serving entity can supply its load from its own generation sources. To the extent that long-term firm transmission rights must be fully funded, the proposed guidelines do in fact provide additional

²⁶ This is not to say that other causes such as planned transmission outages don’t contribute to the lack of adequate congestion revenues to fully fund firm transmission right payments.

assurance to load-serving entities with respect to both purchases and sales of energy into the spot energy markets.

- * **The FERC should consider modifying Guideline 2 to only include the assurance that the holder of a long-term firm transmission rights is assured of receiving that same firm transmission right over the contract life of the generation source.**

Guideline (3): Long-term firm transmission rights made feasible by transmission upgrades or expansions must be available upon request to any party that pays for such upgrades or expansions in accordance with the transmission organization's prevailing cost allocation methods for upgrades or expansions. The term of the rights should be equal to the life of the facility (or facilities) or a lesser term requested by the party paying for the upgrade or expansion.

Comments: The issue in this guideline is where a load-serving entity requests a new or changed designated network resource and as a result of that request MISO requires that a transmission upgrade be made. However, it is important to note that such transmission upgrades only require that the new or changed network resource be deliverable to the MISO market. The upgrade requirement is not currently linked to the ability of MISO to grant the transmission customer a financial transmission right ("FTR"). Moreover, MISO's current policy is to grant the transmission customer a candidate FTR ("CFTR") and allow the transmission customer to submit its CFTR in the annual FTR nomination process. It should be noted that if the generation source is distant from the load sink(s) of the load-serving entity, it is more likely to have significant congestion. The load-serving entity would therefore have a strong incentive to submit the CFTR in the first tier, and may have a good chance of receiving the FTR. This "distant" FTR would use significant transmission capacity and would likely mean that CFTRs submitted in later tiers would be infeasible. Thus, the current MISO policy of granting CFTRs to those who fund

transmission upgrades based upon only the deliverability of generation to the MISO has the unintended consequence of restricting FTR availability to others.

Whenever FTRs or CFTRs are given with transmission upgrades, the MISO needs to carefully consider what upgrades are required. For example, if the CFTR is allowed to be put into the first tier or if a long-term FTR is being granted, upgrades beyond those needed for deliverability into the MISO market might be needed to assure that no harm is done to other load-serving entities.

- * **In order assure no harm to other participants from the RTO/ISO granting their requests for a long-term firm transmission rights, requestors of long-term firm transmission rights should pay an appropriate share for the incremental transmission upgrades needed to completely hedge congestion from generation sources to their loads.**

Guideline (4): Long-term firm transmission rights must be made available with term lengths (and/or rights to renewal) that are sufficient to meet the needs of load-serving entities to hedge long-term power supply arrangements made or planned to satisfy a service obligation. The length of term of renewals may be different from the original term.

Comments: The proposed guideline lays out the principle being sought without prescribing a set length for “long-term.” The proposal is to allow an RTO to make this determination through its stakeholder process. However, the NOPR holds out the possibility of setting a specific length for “long-term,” and requests comments on this. Moreover, it appears that the argument that long-term should not exceed the RTO’s planning horizon carries some weight.

Currently, the manner in which the regional planning process occurs is that over the planning horizon if there is a reliability problem then the RTO would include a recommendation for how to fix such a problem as a part of its transmission expansion plan. In MISO, the cost of baseline reliability upgrades will be allocated through a cost

allocation method. However, baseline reliability upgrades do not ensure that firm transmission rights will be fully allocated to market participants. Thus, it appears that if the concern is with ensuring that firm transmission rights can be fully allocated to load-serving entities requesting such assurance, then MISO will need to revise its criteria for inclusion of transmission upgrades in its transmission plan. Thus, it is very important to leave the specification of the length of long-term firm transmission rights up to each RTO in order that it can be properly linked to the RTO's planning process.

This will be a difficult task. The issue here is what firm transmission rights should be allowed long-term status. If all generation sources are allowed eligibility for long-term firm transmission rights status, this will mean significant levels of transmission upgrades, and such upgrades will also involve projecting loop flows from other systems in order to have simultaneous feasibility. The NOPR appears to be silent on this question. For example, should long-term firm transmission rights only be available for base-load generation sources? If this is the case, then following a tiered approach as is used in MISO could almost ensure that long-term firm transmission rights would be simultaneously feasible; i.e., this would mean that only base load generation sources would be included in the first tier. Even in this instance, MISO would have to determine what transmission upgrades are necessary to ensure simultaneous feasibility of first tier firm transmission rights.

The greater the amount of generation for which long-term firm transmission rights are granted, the greater will be the transmission upgrades required to ensure that those firm transmission rights are simultaneously feasible. However, if the condition for making such upgrades is that those who initially have their long-term firm transmission

rights prorated must pay for these upgrades, this would place an economic limit on the amount of long-term firm transmission rights ultimately being granted. Again, this is a difficult issue that should be addressed in the stakeholder process of each RTO.

- * **The FERC needs to keep in mind the complexity associated with cost allocation and allow sufficient time for the RTOs and their respective stakeholders to work through the process that will involve the cost allocation of upgrades needed to support long-term firm transmission rights.**

Guideline (5): Load-serving entities with long-term power supply arrangements to meet a service obligation must have priority to existing transmission capacity that supports long-term firm transmission rights requested to hedge such arrangements.

Comments: If the initial requests for long-term firm transmission rights are not simultaneously feasible, the RTO must go through some form of allocation or prorating of what is available. This guideline could be interpreted to initially restrict requests for long-term firm transmission rights to “load-serving entities with long-term power supply arrangements to meet a service obligation,” and only after that take requests from others for long-term firm transmission rights.

What is most likely to be the case is that the RTO will not be able to meet all the requests for long-term firm transmission rights coming from “load-serving entities with long-term power supply arrangements to meet service obligations,” and will need to determine a method for prorating its initial allocation of long-term firm transmission rights. One such method is the tiered approach that MISO currently is using for the allocation of firm transmission rights for an upcoming year. MISO would likely have to run this same tiered process for a multi-year case in order to have some assurance that the long-term firm transmission rights allocated would be simultaneously feasible for more than a single year. The point is that through a tiered process, load-serving entities would

be asked to prioritize the generation sources for which they want to request long-term firm transmission rights. The result of such a process would be that not all requests for long-term firm transmission rights would be simultaneously feasible, and the initial allocation of long-term firm transmission rights would be prorated.

Next, the MISO would need to determine transmission upgrades needed to remove the prorated amounts of the long-term firm transmission right requests, and some method for allocating the costs of these transmission upgrades would be needed. Moreover, if the cost of the upgrades outweigh the benefits from receiving the long-term firm transmission right, it is difficult to imagine that the need of the load-serving entity in such a case could or should be determined to be “reasonable” by the Commission.

Guideline (6): A long-term transmission right held by a load-serving entity to support a service obligation should be re-assignable to another entity that acquires that service obligation.

Comments: The issue of being able to reassign rights is a part of the current discussions taking place at MISO concerning a historical test period for determining what generation capacity would be associated with specific loads. Generally, the concept is that the firm transmission rights are assignable to loads. Where the load-serving entity changes, the firm transmission right would stay with the load by going to the new load-serving entity. The crucial issue is if the load-serving entity is allowed to sell the firm transmission right because it anticipates that the sales value is higher than the revenues it would receive from congestion payments (a form of arbitrage), how does this protect the load?

In the context of traditional state regulation, states would have the ability to determine the circumstances under which it would be deemed prudent for a load-serving

entity to sell a long-term firm transmission right. Moreover, it would generally be expected that a regulated utility would hold a long-term firm transmission right for the life of the generation source or generation contract. However, this does not mean that there are no circumstances under which prudent management would not sell a firm transmission right.

Regarding retail choice, whether or not a load-serving entity holds or sells a firm transmission right might not be subject to state regulation. However, one way to protect load is that when the load-serving entity is no longer serving the load for which the long-term firm transmission right was acquired, it must reimburse the new load-serving entity at the auction value of the long-term firm transmission right. It is also important to note that a new load-serving entity may not be serving the same load from the same resource used by the previous load-serving entity that acquired the long-term firm transmission right. In this case, the new load-serving entity may prefer to purchase a firm transmission right (long-term or perhaps short-term) that provides a better hedge.

When generation sources to serve load are constantly changing (e.g., retail choice or wholesale sales to municipal utilities), does having long-term firm transmission rights provide a good fit in all instances? Even if it is not always a good fit and because long-term firm transmission rights are of greater value than short-term firm transmission rights, it is clear that load-serving entities that change generation sources more frequently will want to be included in the initial process for allocating long-term firm transmission rights. Thus, it is up to the RTO to make long-term firm transmission rights work in the context of constantly changing generation sources. In order to do so, it appears that the RTO will have to set up auctions or markets for long-term firm transmission rights.

Since long-term firm transmission rights have a different value than short-term firm transmission rights, these auctions/markets must be separate from the auctions/markets for short-term firm transmission rights. As noted in the discussion of Guideline 1 above, an auction process presents initial holders of long-term firm transmission rights with an opportunity to extract unwarranted benefits from participants seeking shorter-term financial transmission rights. This is one, of many issues, that will need to be addressed by RTOs and their stakeholders.

- * **The issues raised by re-assignment of long-term firm transmission rights are extremely complex and will require significant time for RTOs and their respective stakeholders to work out.**

Guideline (7): The initial allocation of the long-term firm transmission rights shall not require recipients to participate in an auction.

Comments: The requirement that an ARR be able to be directly converted to an FTR is consistent with PJM's approach, and appears to be the approach that could be taken by MISO if it moves to a similar ARR approach.

Guideline (8): Allocation of long-term firm transmission rights should balance any adverse economic impact between participants receiving and not receiving the right.

Comments: Some of the issues addressed with respect to this guideline were addressed in the comments related to Guideline 6. However, the way to achieve a balance between short-term and long-term firm transmission rights has not previously been addressed.

It appears that by having a separate market for long-term firm transmission rights or ARRs this guideline can be met. However, because of Guideline 5 (priority for load-serving entities having to meet a service obligation), it appears that Guideline 8 needs to balance the possible impact on those who currently receive short-term firm transmission rights for long-term, point-to-point transmission reservations when those reservations are

not directly associated with meeting a service obligation. It appears that the only way to do this is to reserve some level of firm transmission rights for this type of transmission service. However, if this is done, it must be clear that Guideline 5 is being satisfied within the context of certain trade-offs with Guideline 8. Entities not directly serving load that hold firm transmission rights today will want to maximize the amount held in reserve for them, while those wanting to hold long-term firm transmission rights will want to maximize the amount the RTO will allow to be allocated for long-term firm transmission rights.

- * **Determination of how much to reserve or the opposite – how much to allow for long-term firm transmission rights – will not be an easy task, and could take up significant time and debate within the stakeholder process.**

At the heart of this problem is the fact that firm transmission rights appear to be more valuable than the price that is being paid for long-term, point-to-point transmission service. The Commission needs to keep this in mind with respect to its overall policy regarding protecting the holders of long-term, point-to-point transmission rights that are not directly serving load. Moreover, some of these long-term, point-to-point transmission rights are for through and out transactions and may well be used to meet a service obligation outside of the RTO's footprint. Other long-term, point-to-point transmission rights may be for sources and sinks within the RTO, but are being held for speculative purposes, and not being used to meet a service obligation.

- * **If the Commission determines that it wants to protect holders of long-term, point-to-point transmission rights that are being held for speculative purposes, then it needs to more directly say that this is its intention. If not, then holders of these long-term, point-to-point transmission rights should be allowed to relinquish these rights.**

With respect to firm transmission right options, the NOPR's recommendation appears to be appropriate – i.e., those wanting long-term firm transmission right options should be willing to pay for the additional cost of providing such an instrument. One possible way of doing this is to first allocate long-term firm transmission right obligations, and then allow those receiving long-term firm transmission right obligations the option of converting the firm transmission right obligation to a firm transmission right option. In order for such a conversion to take place, the RTO would determine the additional transmission capacity required for these conversions.

- * **If, based on the long-term firm transmission right obligations allocated, the transmission capacity to provide requests for long-term firm transmission right options is not available, the RTO should make a determination of the cost necessary to provide the additional transmission capacity, and those requesting long-term firm transmission right options would be allocated those costs on the basis of their use of the additional capacity being added to provide hedging certainty for congestion costs.**

With respect to long-term firm transmission rights that over time have turned into an obligation to pay congestion costs rather than to receive congestion revenues, such changes can occur when generation upstream of the generator associated with the long-term firm transmission right has economically displaced generation downstream from that same generator resulting in significant flows of power in the opposite direction from the direction specified in the long-term firm transmission right. The economic incentive for the entity holding such a long-term firm transmission right is to take actions to abandon the obligation to pay these congestion charges.

- * **To protect others from the actions of long-term firm transmission right holders whose obligation have turned into a requirement to pay congestion rather than receive congestion payments, the RTO should require any entity receiving a long-term firm transmission right to contract to make such payments for the life of the firm transmission right, or until it has been able to sell that long-term firm transmission right to another entity, whichever come first.**

VI. CONCLUSION

The Organization of MISO States submits these comments because a majority of the members have agreed to support them. The following members generally support these comments. Individual OMS members reserve the right to file individual 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
Missouri Public Service Commission
North Dakota Public Service Commission
Public Service Commission of Wisconsin ** Pending commission review

The Montana Public Service Commission,²⁷ the Public Utilities Commission of Ohio, and the Pennsylvania Public Utility Commission abstained from the vote on these comments.

Members not participating in these comments are:

Kentucky Public Service Commission
Manitoba Public Utilities Board
Nebraska Power Review Board
South Dakota Public Service Commission

²⁷ While the Montana Commission abstains from participating in these comments, the Montana Commission does support the general tenor of these comments; that the FERC proceed cautiously in this arena. Rather, due to scarce resources and time, the Montana Commission is not able to ascertain its complete understanding and agreement with all of the details of these very technical comments.

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

Respectfully Submitted,

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Dated: March 13, 2006