

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Review of Market Monitoring Policies

Docket No. AD07-8-000

ADDITIONAL COMMENTS OF DESIGNATED STATE COMMISSIONS¹

Six state commission members of the Organization of MISO States (OMS) appreciate the opportunity to file supplemental comments on FERC's review of market monitoring principles. We believe the development of comprehensive market monitoring policies reflecting the unique co-regulator roles states and FERC have with regard to the implementation of energy markets is critical for building and maintaining public confidence in these markets.

1) FERC and the state commissions are co-regulators with respect to market monitoring. While we believe that MISO has faithfully implemented the monitoring function in the Midwest, these efforts have not fully recognized the dual roles monitoring must play within the current market construct. Both FERC and the state commissions are required by statute to assure that rates are just and reasonable. The results of RTO markets directly impact the rates paid by retail customers. A truly independent market monitor is critical for states to ensure that these markets are competitive and well functioning.

States must have confidence in the role of the market monitor and that begins with independence. We believe our goal of strengthening the independence of the market monitor could be accomplished with an active role for states in the selection and oversight of the market monitor as well as the overall governance of the monitoring function.

¹ These state commissions are the Iowa Utilities Board, the Kentucky Public Service Commission, the Michigan Public Service Commission, the Minnesota Public Utilities Commission, the Missouri Public Service Commission, and the Wisconsin Public Service Commission.

We offer one alternative to strengthen the independence of RTO monitoring for your consideration – the creation of an independent Market Monitoring Oversight Board consisting of all or a number of State Commissioners in the RTO footprint or a combination of Federal and State regulators. Funding for the Market Monitor would continue to be provided through the RTO.

Finally, we take this opportunity to strongly disagree with assertions that market monitoring can or should be the exclusive domain of the FERC. FERC should revise its Policy Statement to reflect the parallel interest of the states.

2) Current procedures for sharing data are inadequate and unduly burdensome. State Commissions require access to market oversight data to properly perform their functions in the area of retail regulation. Given the integral relationship between wholesale and retail markets, access to market oversight data is just as critical for State Commissions to reach just and reasonable determinations as it is for FERC to reach the same. Most states are precluded from retroactive ratemaking. Refunds are not available. Thus it is necessary that states are able to have information about problems in the wholesale market as soon as possible so that retail rates can be adjusted quickly and consumers protected. The current policy of keeping important information about the wholesale marketplace that has a direct bearing on the appropriate level of retail rates unreasonably interferes with the states' responsibility to retail ratepayers.

And we believe that states would benefit from the ability to call upon independent market monitors to provide information, make recommendations, and draft reports or market analyses to support our regulatory oversight role.

The states request improved access to market oversight information for the purpose of assessing their retail markets, as well as developing informed observations of market activities and market operations. It is not the states' intent to engage in wholesale market mitigation nor interfere with FERC's regulation of an RTO or its markets.

3) State Commissions have an outstanding track record of working in cooperation with FERC regarding the treatment of confidential data. The states recognize the critical

importance and imperative of keeping appropriately confidential information protected from public disclosure.²

Indeed, state commissions and FERC have cooperated successfully with issues of data confidentiality for many years. Existing procedures can be used as building blocks for regulatory access to confidential information: non-public information is regularly made available to FERC and state commissions in gas pipeline and electric rate cases and in merger cases.

The procedures for such data sharing should not be unduly cumbersome. It is also critical that the FERC provide timely information to the MISO Market Monitor, Stakeholders and State Commissions regarding FERC's enforcement efforts in both electric and natural gas markets. Section 209(c) of the Federal Power Act (16 U.S.C. 824h(c)) provides an appropriate basis for the Commission to share such information with State Commissions.

The above issues are of critical interest to the states, and the undersigned appreciate the dialogue that the FERC has initiated on market monitoring.

Respectfully Submitted,

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On behalf of:

Iowa Utilities Board
Kentucky Public Service Commission
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Minnesota Public Utilities Commission
Missouri Public Service Commission
Wisconsin Public Service Commission

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² The state statutory authorities for treatment of confidential information were provided in an Appendix to Offers of Proof filed on February 11, 2005 in Docket No. ER04-691-004.