

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Review of Market Monitoring Policies

Docket No. AD07-8-000

COMMENTS OF THE ORGANIZATION OF MISO STATES

- 1) **Well functioning competitive wholesale markets demand the presence of a sophisticated, well defined and independent market monitor for each RTO region. In these comments, we propose to address the appropriate scope, authorities, and requisite measures of independence for regional market monitoring. The OMS also believes that closer FERC and state cooperation in this matter will provide additional opportunities for FERC – state dialogue that will be beneficial in matters of mutual interest.**

Because of the importance of *independent* market monitoring, the OMS believes that the FERC and states should have more routine conversations about this matter to provide greater assurance that the market monitoring and mitigation policies are appropriate. Such conversations should also include the RTOs, the Market Monitors and experts in these matters.

- Analyzing and assessing market operations and the behavior of market participants requires direct and unfettered access to any and all requested data.
- Analyzing and assessing market operations and the behavior of market participants requires sophisticated quantitative analysis on a continuous basis. This requires human and data support resources that may not be available for governmental entities as well as a continuous focus.
- Regional market monitors are needed so that governmental entities can better conduct their regulatory and market oversight functions. While FERC's internal market assessment Staff team continues to be very useful, retention and increased support for the regional market monitors essential.
- Market monitoring and market power mitigation policies must strike an appropriate balance between the protection of consumers and the market while providing fair treatment for energy suppliers. To accomplish this, the IMM needs to have sufficient authority both to prevent and, where necessary, to trigger mitigation measures in the real-time markets, to prevent market manipulation and other abusive behavior. Over reliance on after-the-fact investigations and penalties may not be able to undo the damage done.

- 2) **The IMM must be independent of RTO management as well as the market participants.**

- The Market Monitor should be expected to provide critical evaluation of the RTO's management of energy markets and transmission operations. Accordingly, the Market Monitor should be afforded adequate assurances that it will be able to make

necessary critical recommendations of RTO management without any fear of retribution.

- Activities such as the selection of an IMM, the IMM's budget and the terms of the IMM's contract should not be decided by RTO management.
- The OMS recommends that such matters be put under the control of an independent Market Monitoring Oversight Board made up of either the State Commissions in the RTO footprint or a combination of Federal and State regulators. Funding for the Market Monitor should continue to be provided through the RTO.
- The OMS notes that to date, the Midwest ISO Management and Board of Directors have respected the independent role of its IMM. However, a structure that has the Market Monitor reporting to the RTO Board calls into question the ability of the Market Monitor to act independently over the long run.
- The OMS also believes that the Midwest ISO should be commended for not imposing prior restraints on the work of the Market Monitor. However, the OMS believes that structural independence should require explicit recognition that the Independent Market Monitor should not be required to seek the RTOs approval for conducting inquiries / investigations, submitting referrals to the FERC, submitting reports to the FERC or the state commissions, for access to the data that the IMM believes is necessary to complete an inquiry, or to investigate any matter that the IMM reasonably believes would impair the efficient conduct of the RTO's facilitated markets.

3) Access to information and its transparency is essential for states to perform their functions in the area of retail regulation and market oversight.

State regulators and FERC share responsibility for overall market oversight and regulation. Specifically, State responsibilities for retail markets parallel FERC's responsibilities in wholesale markets. The OMS recognizes, and we know that the FERC also appreciates, that the efficient operations of the wholesale and retail markets are connected and both jurisdictions must coordinate their efforts to achieve the desired outcomes.

- State commission should not be put into a position of merely having to trust the findings of the Market Monitor—rather, they must be provided with the opportunity to verify as well. Access to information is necessary for state commissions to verify for themselves that RTO-administered wholesale markets are competitive.
- Given the inextricable relationship between wholesale and retail markets, the States must have an "elevated role" in market monitoring.
- States with multi-state RTOs should have equivalent access to market data as states with single state RTOs.
- IMM's should be able to engage freely in activities such as providing information, recommendations, reports and market analyses to State Commissions and the Commission and/or providing testimony as the IMM sees fit, in proceedings before the Commission and/or the States.
- The current arrangements for defining confidential information and for FERC to have access to confidential information in the possession of states and for states to have access to confidential information in the possession of the RTOs and the Market Monitor should not be cumbersome and /or unworkable. Some OMS states and many

PJM states have not been able to sign agreements to take possession of confidential data.

- A codification of joint federal/state oversight of the IMM can include better assurances of access to, and protection of, confidential information.
- It is not the State Commissions' intent to attempt to use access to confidential information for wholesale market mitigation purposes or to attempt to interfere with the Commission's regulation of an RTO or its markets. Rather, the State Commissions can use the information to help them assess the state of their retail markets, as well as develop independent and informed observations of market activities and market operations.
- The OMS believes that the Midwest ISO's Market Monitor, in his monthly reports during the open Board meetings, the annual reports, and his willingness to have regular calls with the OMS has demonstrated a high degree of openness. There is, however, a need for structural safeguards to ensure that the Market Monitors of all RTOs work together and keep the state commissions informed about their application of market power mitigation measures.

4) There should be more transparent reporting after an IMM referral to the Commission.

- FERC's response or non-response to an IMM referral should be communicated to affected state regulators and to the Market Monitor. The state regulators need such information to conduct their retail responsibilities and the IMM needs the information to do a better job of ongoing monitoring.
- Informing the IMM and the State Commissions regarding the Commission's investigations would be beneficial to the markets as a whole, as communicating the disposition or results of enforcement or investigative activities would provide a better way to communicate expectations to the IMM, market participants and stakeholders.
- The OMS notes that Commissioner Kelly and the GAO have supported the Commission's providing more timely information to the IMM, Stakeholders and State Commissions regarding the Commission's oversight efforts in both electric and natural gas markets. Further, Section 209(c) of the Federal Power Act (16 U.S.C. 824h(c)) supports the Commission's sharing of such information with State Commissions.

These comments were adopted by the OMS Board of Directors on March 29, 2007, by voice vote. The Illinois Commerce Commission noted an abstention.

Respectfully Submitted,

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