

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

---

|  |   |                         |
|--|---|-------------------------|
| Midwest Independent Transmission System Operator, Inc. | ) | Docket No. ER04-691-089 |
|  | ) |                         |

---

**PROTEST OF THE ORGANIZATION OF MISO STATES, INC.**

Pursuant to the Commission’s Notice of Filing, issued December 14, 2007, the Organization of MISO States (“OMS”) protests the December 5, 2007, filing made by the Midwest Independent Transmission System Operator, Inc. (“Midwest ISO”) to comply with the Federal Energy Regulatory Commission’s (“Commission”) Order issued on November 5, 2007 in this docket<sup>1</sup>. As discussed in greater detail below, OMS respectfully requests that the Commission reject the Midwest ISO’s compliance filing as inconsistent with the Commission’s directive and require further tariff modifications.

**Background**

To ensure that adequate supply is available to meet real-time demand, resources that are made available as a result of the Reliability Assessment Commitment (RAC) process receive compensation at least equal to their start-up offers, no-load offers, and incremental energy costs, even if the resources are not dispatched. When real-time Locational Marginal Prices (LMP) are not sufficient to fully compensate resources to this minimum reimbursement level, they receive a real-time Revenue Sufficiency Guarantee (RSG) make whole payment for the shortfall.

The real-time RSG make whole payments are funded primarily by RSG charges for real-time deviations from day-ahead schedules. Section 40.3.3.a.ii of the Midwest ISO Transmission and Energy Markets Tariff (TEMT) describes the calculation of the RSG charges:

On any Day when a Market Participant actually withdraws any Energy the Market Participant shall be charged a Real-Time revenue sufficiency guarantee charge. The Market Participant’s Real-Time revenue sufficiency guarantee charge for that Hour shall equal the product of: (i) the Market Participant’s total Load purchased in the Real-Time Energy Market during the Operating Day (in MWh), all Virtual Supply for the Market Participant in the Day-Ahead Energy Market, and Resource Uninstructed Deviation

---

<sup>1</sup> *Midwest Independent Transmission System Operator, Inc.*, 121 FERC ¶ 61,132 (2007).

quantities (MWh), and (ii) the per unit Real-Time revenue sufficiency guarantee charge. The per unit Real-Time revenue sufficiency guarantee charge for any given Day shall equal:(i) the aggregate Real-Time revenue sufficiency guarantee charge in that Hour attributed to Resources committed in any RAC processes conducted in the Operating Day divided by (ii) the sum of the total uncovered Load withdrawn in the Operating Day (in MWh), all Virtual Supply for that Market Participant in the Day-Ahead Energy Market, and for deviations from Dispatch Instructions, of all Market Participants withdrawing during that Hour for the Operating Day.<sup>2</sup>

To the extent that the RSG make whole payments are not fully funded by RSG charges, they are uplifted to market participants based on load ratio share.

On October 27, 2005, the Midwest ISO submitted proposed revisions to the TEMT. One of the proposed revisions was to remove references to virtual supply from the provisions related to the calculation of RSG charges in section 40.3.3 of the TEMT.<sup>3</sup> (Virtual supply is an offer to sell energy in the day-ahead market that is not supported by a physical injection or reduction in withdrawals in commitment by a resource.) In the RSG Order issued on April 25, 2006, the Commission determined that virtual supply can cause RSG costs and rejected the Midwest ISO's proposal to eliminate entirely virtual supply transactions from real-time RSG charges.<sup>4</sup>

In the RSG Rehearing Order issued on October 26, 2006, the Commission reaffirmed its determination that virtual supply offers accepted in the day-ahead market can require the commitment of physical resources in the RAC process, which may cause RSG costs to be incurred.<sup>5</sup> To ensure that cost responsibility follows cost incurrence, the Commission required the Midwest ISO to propose a charge that assesses RSG costs to virtual supply offers based on the RSG costs they cause.<sup>6</sup>

The Midwest ISO then proposed to allocate RSG costs in each hour to two buckets; a net virtual bucket (netting virtual demand bids against virtual supply offers) and a net deviations bucket.<sup>7</sup> In the Compliance Order issued on March 15, 2007, the Commission noted that the Midwest ISO failed to provide the requested analysis and provided no evidence to support its proposal.<sup>8</sup> Unable to determine that the proposal was based on cost causation and would not

---

<sup>2</sup> Midwest ISO Transmission and Energy Markets Tariff, Module C, section 40.3.3.a.ii, Second Revised Sheet Nos. 577-578.

<sup>3</sup> *Midwest Independent Transmission System Operator, Inc.*, 115 ¶ 61,108 (2006) (RSG Order) at P 3-4.

<sup>4</sup> RSG Order at P 48.

<sup>5</sup> *Midwest Independent Transmission System Operator, Inc.*, 117 ¶ 61,113 (2006) (RSG Rehearing Order) at P 108.

<sup>6</sup> RSG Rehearing Order at P. 117.

<sup>7</sup> *Midwest Independent Transmission System Operator, Inc.*, 118 ¶ 61,213 (2007) (Compliance Order) at P 43.

<sup>8</sup> Compliance Order at P. 84.

result in unjust and unreasonable rates, the Commission rejected the proposal and directed the Midwest ISO to submit a compliance filing.<sup>9</sup>

In the Order on Rehearing, also issued on March 15, 2007, the Commission, in its discussion of the Section 40.3.3.a.ii TEMT phrase “actually withdraws any Energy” stated:

We do not find the calculation of the charge to be arbitrary or unduly discriminatory, since the end-result of the charge does not result in any harm. We agree that the charge is assessed only on market participants withdrawing energy in real-time and payment of the charge may result in less than full recovery of RSG costs since the divisor to the charge includes all virtual supply – not just virtual supply offered by market participants withdrawing energy -- and therefore may result in under-recovery of RSG costs. However, to the extent that RSG costs are not fully recovered in the RSG charge, the unrecovered costs are recovered through uplift charges assessed to all market participants. While the assignment of costs to all market participants differs from the assignment of costs to only those entities causing the costs, the Commission is not, here in this section 205 proceeding, determining which of several possible allocations to implement. Rather, the currently-effective tariff provision – which was not challenged by any parties when accepted – cannot be revised in this proceeding and remains in effect until a section 206 investigation determines the current provision is unjust and unreasonable.<sup>10</sup>

Based on paragraph 58 of the Order on Rehearing, the Midwest ISO determined that “the real-time RSG rate calculation includes all Virtual Supply Offers that clear in the Day-Ahead Energy Market in the divisor to the charge.”<sup>11</sup> On April 17, 2007, the Midwest ISO made its RSG compliance filing.

Subsequently, the Midwest ISO determined and published its estimate of the cost shift that would result from developing an RSG rate based on volumes that would not then be subject to the RSG charge. As a result of that volume mismatch, the Midwest ISO estimated that approximately 57 percent, and for some months more than 70 percent, of the real-time RSG cost would likely cross over to Revenue Neutrality Uplift and be collected from market participants based on load ratio share.<sup>12</sup> The estimated real-time RSG cost from market start through February 2007 totaled almost three quarters of a billion dollars.<sup>13</sup>

---

<sup>9</sup> Compliance Order at P. 88 and order point (B).

<sup>10</sup> *Midwest Independent Transmission System Operator, Inc.*, 118 ¶ 61,212 (2007) (Order on Rehearing) at P 58.

<sup>11</sup> “11a RSG Discussion Presentation - Final” presentation by the Midwest ISO to the Market Subcommittee on April 10, 2007, at [http://www.midwestiso.org/publish/Document/4ad10b\\_1114b6b848b\\_-7f7e0a48324a?rev=9](http://www.midwestiso.org/publish/Document/4ad10b_1114b6b848b_-7f7e0a48324a?rev=9)

<sup>12</sup> “RSG AWE Resettlement Results.xls” at [http://www.midwestiso.org/publish/Document/193f68\\_1118e81057f\\_-7c540a48324a?rev=1](http://www.midwestiso.org/publish/Document/193f68_1118e81057f_-7c540a48324a?rev=1)

<sup>13</sup> *Id.*

On November 5, 2007, the Commission issued an Order on Compliance Filing and provided clarification with respect to the RSG rate and charge calculations and stated:

Based on our review of the Midwest ISO RSG charge and rate tariff provision, we provide the following clarification on the meaning of these provisions, to address Ameren's concerns. Per the terms of the tariff in the April 17 Filing, the denominator in the RSG rate in section 40.3.3.a.iii is based on the sum of the absolute values of the amounts in section 40.3.3.a.ii(a) – (d). We interpret this formulation to mean that the RSG rate denominator is the aggregate of the amounts for market participants withdrawing energy on that day, since they are entities being assessed the RSG charge in section 40.3.3.a.ii. Therefore, the amounts in the individual RSG charges in section 40.3.3.a.ii should sum to the same summed and aggregate number in the denominator of section 40.3.3.a.iii, thereby eliminating the possibility of developing the RSG charge and RSG rate on different bases and resulting in a shortfall in recovery of RSG costs.<sup>14</sup>

The Commission directed the Midwest ISO to submit a compliance filing, pursuant to the requirements specified in the body of the order.<sup>15</sup>

On November 16, 2007, the Midwest ISO presented to the RSG Task Force its analysis of November 5, 2007 Order on Compliance Filing. The Midwest ISO concluded that the Commission's discussion of the denominator for calculation of the RSG rate contained in paragraph 26 of the November 5, 2007 Order on Compliance was inconsistent both with the preceding paragraph 23 and with paragraph 58 of the March 15, 2007 Order on Rehearing.<sup>16</sup> The Midwest ISO stated that the current settlement system rules, including the on-going resettlements, reflect an RSG rate calculation consistent with paragraph 58 of the March 15, 2007 Order on Rehearing and that no resettlements or settlement rule changes were required to comply with the November 5, 2007 Order on Compliance.<sup>17</sup>

On December 5, 2007, the Midwest ISO made a compliance filing that reflects the views it expressed at the November 5, 2007 RSG Task Force meeting.

### **Protest**

The OMS protest here is limited to a single issue and as such should not be construed as agreement with, or disagreement with, other aspects of the real-time RSG charge. The OMS submits that the Midwest ISO filing does not comply with the Commission's November 15, 2007 Order on Compliance with respect to real-time RSG rate and charge calculations.

---

<sup>14</sup> *Midwest Independent Transmission System Operator, Inc.*, 121 ¶ 61,132 (2007) at P 26.

<sup>15</sup> *Id.* at order point (B).

<sup>16</sup> "05 RSG Rehearing and Compliance Orders Nov 2007.pdf" at [http://www.midwestiso.org/publish/Document/66d196\\_115dc8fa4a2\\_-7f7f0a48324a?rev=17](http://www.midwestiso.org/publish/Document/66d196_115dc8fa4a2_-7f7f0a48324a?rev=17)

<sup>17</sup> *Id.*

In March 2007, the Commission indicated in paragraph 58 of the March 2007 Order that an approach of including all virtual supply offers in the denominator was not arbitrary or unduly discriminatory, since the end-result of the charge and the resulting uplift would not result in any harm. Subsequent information made available to the Commission indicated that the magnitude of the resulting cost shift from cost causers to uplift would result in significant harm. As a result, the Commission in paragraph 26 of the November 15, 2007 Order on Compliance stated that the volumes used to determine the RSG rate should be the same volumes that will be charged that RSG rate so that a shortfall in recovery of RSG costs does not result.

The Midwest ISO compliance filing permits an interpretation of the tariff provisions that result in different bases for the RSG rate and charge and in significant under-recovery of RSG costs from cost causers. The Midwest ISO has interpreted, and continues to interpret, its tariff provisions such that significant real-time RSG costs are not being assigned to cost causers but are instead being uplifted to load. Such an interpretation is at odds with paragraph 26 of the November 15, 2007 Order on Compliance and as a result the filing is not in compliance with the requirements specified in the order.

### **Conclusion**

The OMS respectfully requests that the Commission reject the Midwest ISO compliance filing and direct the Midwest ISO to modify its tariff provisions and resettle the market consistent with paragraph 26 of the November 15, 2007 Order on Compliance.

The OMS submits these comments because a majority of the members have agreed to generally support them. The following members generally support these comments. Individual OMS members reserve the right to file separate comments regarding the issues discussed in these comments:

Illinois Commerce Commission  
Iowa Utilities Board  
Kentucky Public Service Commission  
Michigan Public Service Commission  
Minnesota Public Utilities Commission  
Missouri Public Service Commission  
Montana Public Service Commission  
Nebraska Power Review Board  
Public Utilities Commission of Ohio  
Wisconsin Public Service Commission

The Indiana Utility Regulatory Commission, the North Dakota Public Service Commission, the Pennsylvania Public Utility Commission, and the South Dakota Public Utilities Commission abstained from this pleading. The Manitoba Public Utilities Board did not participate in this pleading.

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

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

Dated: December 19, 2007

**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 19th day of December, 2007.

William H. Smith, Jr.