

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

Midwest Independent Transmission System) Docket Nos. ER07-1182-000
Operator, Inc. Informational Filing Regarding)
Broad Constrained Area Mitigation)

COMMENTS OF THE ORGANIZATION OF MISO STATES

Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (FERC or Commission), 18 CFR 385.211, the Organization of MISO States (OMS) offers these comments in support of the Midwest Independent Transmission System Operator's (the Midwest ISO) July 20, 2007, filing seeking a permanent extension of the Broad Constrained Area (BCA) mitigation measures provided under the Midwest ISO's Open Access Transmission and Energy Markets Tariff (EMT or Tariff). By Notice issued July 25, 2007, the Commission established August 10 as the deadline for timely comments.

I. BACKGROUND

On August 6, 2004 and November 8, 2004, the Commission issued orders that, among other things, established market monitoring and market power mitigation for the Midwest ISO.¹ In the November 8 Order, the Commission approved the use of BCAs as a screen for the use of mitigation in the Midwest ISO Region for a one-year period.² The November 8 Order required the Independent Market Monitor (IMM) to submit quarterly reports to the Commission to allow the IMM to assess the use of BCAs and mitigation within those areas.³ The November 8 Order also stated that, if the Midwest ISO determines that BCA mitigation is required beyond the one-

¹ *Midwest Independent Transmission System Operator, Inc., et al.*, 108 FERC ¶ 61,163 (2004) (EMT II Order), *order on reh'g*, 109 FERC ¶ 61,157 (2004) (November 8 Order).

² November 8 Order, at P 227

³ *Id.*

year period, the Midwest ISO may file to extend such measures.⁴

On March 10, 2005, the Midwest ISO made a filing requesting an extension of the BCA mitigation provisions (March 10 Filing) in accordance with the November 8, 2004 Order. In the March 10 Filing, the Midwest ISO requested that the Commission extend the application of its BCA mitigation authority for an additional one year period. No protests were filed opposing the extension of the BCA mitigation authority.

On May 9, 2006, the Commission issued an Order rejecting the Midwest ISO's request and directing the Midwest ISO to remove the BCA mitigation provisions from the Tariff.⁵ Numerous parties, including the OMS, filed Requests for Rehearing of the Commission's May 9 Order. On July 20, 2007, the Commission issued an order on rehearing granting the Midwest ISO's request for the extension of BCA mitigation authority for an additional year.⁶ The July 20 Order stated that if the Midwest ISO was going to seek further extension of BCA mitigation authority at the end of the current year, it would be required to demonstrate that the benefits of such mitigation exceed its costs, in terms of over-mitigating versus under-mitigating the market.⁷

II. DISCUSSION

The Midwest ISO's July 20 filing seeks a permanent extension of BCA mitigation authority. In support of that request, the Midwest ISO provides an affidavit from Dr. David Patton, the Midwest ISO's IMM, that provides persuasive evidence that continuation of the BCA mitigation authority is not only necessary for a competitive market, but that the benefits of such mitigation well exceed the likely costs.

Dr. Patton's affidavit explains that while BCA mitigation is rarely used, it is necessary, as

⁴ November 8 Order, at P 231

⁵ *Midwest Independent Transmission System Operator, Inc.*, 115 FERC ¶ 61,158 (2006)

⁶ *Midwest Independent Transmission System Operator, Inc.*, 116 FERC ¶ 61,068 (2006) (July 20 Order)

⁷ July 20 Order, at P 22

the factors that create local market power in the BCAs are not transitory and will not naturally dissipate over time.⁸ Dr. Patton also explains that BCA mitigation addresses market power that may be difficult or impossible to remedy by other means.⁹ Dr. Patton's affidavit also provides analysis showing that when the Midwest ISO applies BCA mitigation, the mitigated supplier is almost always found to be pivotal for resolving the constraint, which means that the supplier did not face competition.¹⁰

With regards to the benefits and costs of BCA mitigation, Dr. Patton provides evidence that BCA mitigation was effective in significantly reducing potential revenue sufficiency guarantee (RSG) costs during periods of 2006 and 2007 when reliability issues required the commitment of units owned by a single supplier.¹¹ As Dr. Patton notes, RSG costs in that time period were \$396 million and without BCA mitigation, could have been as high as \$4 billion.¹² With regards to the costs of BCA mitigation, Dr. Patton explains that the conduct and impact framework employed by the IMM ensures that the mitigation measures will not hinder appropriate pricing during shortages, nor result in mitigation of a supplier that does not have market power.¹³

III. CONCLUSION

The OMS has supported the Midwest ISO's use of BCA mitigation in the past and does so again here.¹⁴ Dr. Patton's affidavit provides significant evidence that there is a need for the Commission to extend the Midwest ISO's BCA mitigation authority. Dr. Patton's affidavit also provides evidence that the use of BCA mitigation by the Midwest ISO provides significant

⁸ Patton Affidavit, at P 13 and P 51

⁹ Patton Affidavit, at P 15

¹⁰ Patton Affidavit, at P 27

¹¹ Patton Affidavit, at P 36

¹² Patton Affidavit, at P 36

¹³ Patton Affidavit, at P 22 and 25

¹⁴ See, Motion for Late Intervention and Petition for Rehearing of the Organization of MISO States, in Docket No. ER06-731, (June, 2006)

benefits to market participants and is highly unlikely to result in over-mitigation. Accordingly, the OMS urges the Commission to grant the Midwest ISO's request for permanent BCA mitigation authority.

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
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
Nebraska Power Review Board
North Dakota Public Service Commission
Public Utilities Commission of Ohio
Wisconsin Public Service Commission

The Manitoba Public Utilities Board and the South Dakota Public Utilities Commission did not participate in this pleading. The Pennsylvania Public Utility Commission abstained from these comments.

The Indiana Office of Utility Consumer Counselor and the Iowa Office of Consumer Advocate, as associate members of the OMS, participated in these comments and generally support these comments.

Respectfully Submitted,

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Dated: August 10, 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 10th day of August, 2007.

William H. Smith, Jr.