UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Ameren Services Company and Northern Indiana Public Service Company Complainant v. Midwest Independent System Operator, Inc., Respondent	Docket Nos.	EL07-86-003
Great Lakes Utilities, et al. Complainant v. Midwest Independent System Operator, Inc., Respondent		EL07-88-003
Wabash Valley Power Assoc., Inc. Complainant v. Midwest Independent System Operator, Inc., Respondent		EL07-92-003
E.ON. U.S. LLC Complainant v. Midwest Independent System Operator, Inc., Respondent		EL07-100-002

COMMENTS OF THE ORGANIZATION OF MISO STATES
AND NOTICE OF INTERVENTION

I. Introduction

On March 3, 2008, the Midwest Independent System Operator, Inc. ("Midwest ISO" or "MISO") filed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff reflecting an alternative mechanism for allocating real-time Revenue Sufficiency Guarantee ("RSG") charges and costs.

On March 10, 2008, the Commission issued a notice of the March 3 filing and set March 24, 2008, as the deadline for comment and protest.

As discussed in greater detail below, the Organization of MISO States ("OMS") respectfully offers the following comments for Commission consideration:

1. The proposed alternative RSG cost allocation methodology contains flaws that could send the wrong incentives.
2. As proposed, the alternative RSG cost allocation methodology is a work product that is unfinished and that will require too much time to implement to address immediate problems.
3. A less complex and less costly method for allocating RSG costs may be warranted initially and immediately, but the proposed methodology should continue to be developed with the stakeholders.
4. A definitive ordered timeframe on the long term RSG solutions that the Midwest ISO is currently studying is useful and necessary to communicate its commitment.

An underlying assumption of the OMS comments is that the RSG rate and charge volume mismatch will be rectified in conformity with the Commission's recent determinations, specifically, that the volumes used to determine the RSG rate be the same volumes that will be charged that RSG rate and that to the extent the Midwest ISO has been in error in its interpretation of the currently effective RSG charge and rate, refunds will be required.[1, 2]

II. Notice of Intervention

Pursuant to Rule 214(a)(2) of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(a)(2), the Organization of MISO States ("OMS")

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[1] *Midwest Independent Transmission System Operator, Inc*., 121 ¶ 61,132 (2007) at P 26, and *Ameren, et al. v. Midwest Independent Transmission System Operator, Inc*., 121 ¶ 61,205 (2007) at P 86.

[2] The North Dakota PSC and the Montana PSC do not support refunds or resettlements for periods prior to the potential refund effective date of August 10, 2007, established by the Commission in Docket Nos. EL07-86-000, EL07-88-000 and EL07-92-000.

files its Notice of Intervention in the above-captioned proceedings. Service of all pleadings, documents, and communications in this matter should be made on the following:

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III. 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 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.[3]

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.[4] (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 or 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.[5]

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.[6] 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.[7]

The Midwest ISO then proposed in its compliance filing 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.[8] 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

[3] Midwest ISO Transmission and Energy Markets Tariff, Module C, section 40.3.3.a.ii, Second Revised Sheet Nos. 577-578.

[4] *Midwest Independent Transmission System Operator, Inc*., 115 ¶ 61,108 (2006) (RSG Order) at P 3-4.

[5] RSG Order at P 48.

[6] *Midwest Independent Transmission System Operator, Inc*., 117 ¶ 61,113 (2006) (RSG Rehearing Order) at P 108.

[7] RSG Rehearing Order at P. 117.

[8] *Midwest Independent Transmission System Operator, Inc*., 118 ¶ 61,213 (2007) (Compliance Order) at P 43.

evidence to support its proposal.[9] Unable to determine that the proposal was based on cost causation and would not result in unjust and unreasonable rates, the Commission rejected the proposal and directed the Midwest ISO to submit a new compliance filing. [10]

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.[11]

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."[12] 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

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[9] Compliance Order at P. 84.
[10] Compliance Order at P. 88 and order point (B).
[11] *Midwest Independent Transmission System Operator, Inc*., 118 ¶ 61,212 (2007) (Order on Rehearing) at P 58.
[12] "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

would likely cross over to Revenue Neutrality Uplift and be collected from market participants based on load ratio share.[13] The estimated real-time RSG cost from market start through February 2007 totaled almost three quarters of a billion dollars.[14]

On August 10, 17 and 24, 2007, three Complaints were filed in Docket Nos. EL07-86-000, EL07-88-000, and EL07-92-000, respectively, requesting the Commission to find that Section 40.3.3.a.ii of the EMT is unjust and unreasonable to the extent it is construed to impose RSG charges only on Market Participants physically withdrawing energy from the Real-Time Energy Market. [15]

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.[16]

[13] "RSG AWE Resettlement Results.xls" at http://www.midwestiso.org/publish/Document/193f68_1118e81057f_-7c540a48324a?rev=1

[14] *Id.*

[15] The three RSG complaints were filed on: (1) August 10, 2007, by Ameren Services Company, on behalf of certain of its affiliates (Ameren Energy Marketing Company, Union Electric Company d/b/a AmerenUE, Central Illinois Public Service Company d/b/a AmerenCIPS, Central Illinois Light Company d/b/a AmerenCILCO, and Illinois Power Company d/b/a AmerenIP – collectively, "Ameren"), and Northern Indiana Public Service Company ("NIPSCo"); (2) August 17, 2007, by Great Lakes Utilities ("GLU"), Indiana Municipal Power Agency ("IMPA"), Missouri Joint Municipal Electric Utility Commission ("MJMEUC"), Missouri River Energy Services ("MRES"), Prairie Power, Inc. ("PPI"), Southern Minnesota Municipal Power Agency ("SMMPA"), and Wisconsin Public Power Inc. ("WPPI") (collectively, "Midwest TDUs"); and (3) August 24, 2007, by Wabash Valley Power Association, Inc. ("Wabash Valley").

[16] *Midwest Independent Transmission System Operator, Inc.*, 121 ¶ 61,132 (2007) at P 26.

The Commission directed the Midwest ISO to submit a compliance filing, pursuant to the requirements specified in the body of the order.[17]

On November 28, 2007, the Commission issued an Order on Complaints that consolidated the complaints of Ameren, et al, in Docket Nos. EL07-86-000, EL07-88-000, and EL07-92-000. In addition, the Commission:

1. Found that the Midwest ISO's existing RSG cost allocation methodology may be unjust, unreasonable, unduly discriminatory or preferential,
2. Instituted paper hearing procedures to review evidence regarding what would be a just and reasonable RSG cost allocation methodology, but held this paper hearing in abeyance pending the earlier of either the conclusion of the ongoing stakeholder proceeding, or February 1, 2008;
3. Directed the Midwest ISO to make an informational filing by February 1, 2008, reporting the results of the stakeholder discussion of an alternative RSG cost allocation methodology, and
4. Established a potential refund effective date of August 10, 2007. [18]

On February 1, 2008, the Midwest ISO submitted an Informational Filing describing the alternative real-time RSG cost allocation methodology that was being developed in the stakeholder proceedings.[19]

On March 3, 2008, the Midwest ISO filed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff reflecting the alternative mechanism for allocating real-time RSG charges and costs.

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[17] *Id.* at order point (B).
[18] *Ameren, et al. v. Midwest Independent Transmission System Operator, Inc*., 121 ¶ 61,205 (2007) at Order Points C, D, E, and G.
[19] Informational Filing at 7 - 12.

IV. Comments

1. The proposed alternative RSG cost allocation methodology contains flaws that could send the wrong incentives.

As the Midwest ISO states, one principle underlying an RSG cost allocation methodology should be incentives compatible with the day-ahead and real-time markets.[20] To the extent that an RSG cost allocation methodology does not have incentives compatible with the day-ahead and real-time markets it may result in individual actions taken to minimize individual costs that run counter to market actions that would otherwise optimize the market solution for the entire footprint.

The new proposal envisions, among other things, the creation of a notification and netting process. A notification deadline of four hours prior to the operating hour will be established, since that is the minimum advance time required by the Midwest ISO to take into account and reflect the schedule changes in the unit commitment process, also known as the RAC process. Notification to the Midwest ISO of a day-ahead schedule change prior to the notification deadline will allow a market participant to net such a schedule deviation with another eligible transaction involving an offsetting day-ahead schedule change.[21]

An appropriate RSG cost allocation methodology would be one that preserves the incentive for demand and supply to bid and offer into the day-ahead market. However, it is not apparent that the proposed alternative RSG cost allocation methodology preserves that incentive with respect to the day-ahead market. The proposed methodology imposes a one-directional RSG cost allocation methodology (to deviations that can cause the commitment of units in the RAC process) in combination with a notification and netting process.[22]

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[20] Alternative Mechanism Filing at 9.
[21] Informational Filing at 8 - 11.
[22] *Id.* at 9 and 19 - 20.

For example, assuming no constraints and day-ahead and real-time price convergence, it appears that with respect to the RSG Day-Ahead Schedule Deviations Charge an offer from an import not required to submit offers into the MISO energy markets has incentives to avoid the day-ahead market and instead submit its offer into the real-time market. If the offer from an import is put into the day-ahead market but ends up being curtailed or cut after the notification deadline, it appears that it will get charged RSG costs (a positive deviation since the import is being decreased from the day-ahead schedule which is akin to additional load in the RAC process).[23] Instead, if the offer from an import is put into the real-time market and is taken, it will not be charged RSG costs (as it can only be a non-positive deviation whether scheduled or not scheduled in the real-time market).[24]

Summarizing with respect to the import schedule, it appears that the proposed RSG cost allocation methodology implies that only a decrease in an import offer taken in the day-ahead market can cause RSG costs and that an increase in an import taken in the day-ahead market can never cause RSG costs.

However, deviations in both directions from day-ahead schedules, such as deviations that cause increased resource commitments and dispatch and deviations that cause decreased dispatch of committed resources, can cause RSG costs. The Midwest ISO recognized this in 2005 when it argued that imports are appropriately assessed RSG because imports, which could be scheduled 30 minutes prior to the hour, could displace generation that was previously committed in the RAC process.[25]

[23] *Id.* at Indicative RSG Tariff Languages, Sections 40.3.3.a.v.(c)(5), and 40.3.3.a.v.(d).
[24] *Id.* at Indicative RSG Tariff Languages, Sections 40.3.3.a.v.(c)(5), and 40.3.3.a.v.(d).
[25] Answer of Midwest ISO, Docket No. ER04-691-065, December 2, 2005, at 7.

Because it appears that the proposed alternative RSG cost allocation methodology has flaws due to the incentives it sends, the OMS urges the Commission to direct the Midwest ISO to address this as part of further work with stakeholders.

2. As proposed, the alternative RSG cost allocation methodology is a work product that is unfinished and that will require too much time to implement to address immediate problems.

In its February 1, 2008, Informational Filing, the Midwest ISO indicated that certain components of the proposal would require seven months following the issuance of a Commission Order before they could be implemented, but noted that timetable was based on the assumptions of no substantial changes by the Commission to the methodology as proposed or to the Ancillary Services Market ("ASM") proposal. The Midwest ISO noted that any significant directives to revise the ASM provisions could increase the time needed to implement the proposed alternative RSG cost allocation methodology.[26]

In its March 3, 2008, Filing proposing an alternative RSG cost allocation methodology, the Midwest ISO indicated that the suggested Tariff revisions were indicative in nature as they did not yet reflect the ASM proposal design elements. The Midwest ISO indicated it would require approximately two (2) months following the issuance of a Commission Order on the alternative RSG cost allocation methodology before ASM-conformed Tariff provisions would be filed.[27]

On February 25, 2008, the Commission issued an Order on the Midwest ISO's ASM filing, which among other things, required the Midwest ISO to file, within 30 days, revised cost

[26] Informational Filing at 12.
[27] Alternative Mechanism Filing at 2.

allocations related to the cost of reserves in the zone and to the carved-out grandfathered agreements.[28]

On March 13, 2008, the Midwest ISO announced that the ASM launch date would be moved back, to September 9, 2008.[29]

Based on the filings, it appears that the alternative RSG cost allocation methodology can only be implemented concurrently with, or later than, the launch of the Energy and Ancillary Services Market.[30] However, the alternative RSG cost allocation methodology filed with the Commission is based on the pre-ASM market design and does not reflect the design elements of the proposed ASM. Further, as a result of the Commission determinations, the ASM proposal will require design changes which may in turn have implications for the alternative RSG cost allocation methodology. The alternative RSG cost allocation methodology that the Commission is being asked to make a just and reasonable determination on is an unfinished work product for the Energy and Ancillary Services.

The timetables contained in the filings suggest that the earliest possible date that the alternative RSG cost allocation methodology could be implemented is sometime in December 2008.[31] The Commission directed ASM modifications and the Midwest ISO announcement that ASM launch will be moved back three (3) months suggest that the earliest likely date that it could be implemented is sometime in 2009.[32] Under both scenarios, the alternative RSG cost

[28] *Midwest Independent Transmission System Operator, Inc*., 122 ¶ 61,172 (2008) at P 421 and 440.
[29] Midwest ISO News Release at http://www.midwestiso.org/publish/Document/1e1401_118199304fa_-7ad00a48324a/2008-03-13%20ASM%20Launch%20Date%20Moved.pdf?action=download&_property=Attachment
[30] Alternative Mechanism Filing at 22.
[31] Assumes no modifications required by the Commission with respect to the filed alternative RSG cost allocation methodology or the yet-to-be filed revisions to reflect the ASM design and no delays from the Midwest ISO estimated development and implementation schedule.
[32] The OMS notes that the original timeline called for the alternative RSG cost allocation methodology to be filed in the fall of 2007.

allocation methodology, as conformed to the ASM, will require too much time to implement as the implementation date occurs subsequent to, and not concurrently with, the launch of the ASM.

While the OMS appreciates the Midwest ISO's hard work to date, fixing the RSG cost allocation issue sooner rather than later is required, especially given the Commission finding that the current RSG cost allocation may be unjust and unreasonable.

3. A less complex and less costly method for allocating RSG costs to deviations that can cause RSG costs may be warranted initially and immediately, but the proposed methodology should continue to be developed with the stakeholders.

In the March 3, 2008 Filing, the Midwest ISO included Data Analysis and Cost Allocations sections in support of the proposed alternative RSG cost allocation methodology.[33] It appears that this support is in the form of cost correlation rather than cost causation. The Midwest ISO believes the available RSG cost data remains insufficiently granular, and thus, incapable of supporting a conclusion that its RSG proposal matches cost causation and cost allocation with any degree of certainty.[34] However, according to the Midwest ISO, the cost data appropriately supports the alignment of the proposed tariff provisions with cost causation, as desired by the stakeholders.[35] For example, the Midwest ISO studies indicate that approximately 37% of RSG make whole payments needed are a result of constraint management.[36] So, while the OMS would encourage the Commission to immediately adopt a less complex allocation methodology that addresses the serious issue whereby millions of dollars are being shifted to the second pass uplift charge, the OMS strongly encourages the Commission to direct the Midwest ISO to continue to develop and provide support for its proposed four-bucket approach that better assigns the RSG costs to those activities driving the RSG costs, such as constraint management.

[33] Alternative Mechanism Filing, at end.
[34] Alternative Mechanism Filing at 15, footnote 28.
[35] Alternative Mechanism Filing at 14.
[36] Alternative Mechanism Filing at 12.

The OMS encourages the Commission to direct the Midwest ISO to implement, by year end 2008, an improved methodology, such as the four-bucket approach, to provide cost causation support, and to provide implementation cost analyses, as well as to address all questions and concerns the OMS has raised in its comments.

4. A definitive ordered timeframe on the long term RSG solutions that the Midwest ISO is currently studying is useful and necessary to communicate its commitment.

The Midwest ISO states that the alternative RSG cost allocation methodology is the result of numerous compromises and that it should be considered in the nature of a settlement proposal where modification could undermine the consensus achieved.[37] The Midwest ISO's statements regarding the compromises required in the development of the proposed methodology suggest that the alternative RSG cost allocation methodology might not be the optimal solution.

In the March 3, 2008, filing, the Midwest ISO discusses two compromises that were the result of time constraints. In that filing the Midwest ISO indicates two potential improvements for the RSG cost allocation issue that were not pursued at this time, (1) the possibility of reducing RSG costs by assuring that the LMP reflects the total cost of incremental energy and (2) the possibility of reducing RSG charges by redesigning the unit commitment process. These potential improvements, given the length of analysis and implementation time they required, were not incorporated into the proposal given the urgency for an alternative RSG cost allocation methodology. The Midwest ISO is studying them as "long-term" projects. The Midwest ISO does not explain when this will occur.[38]

The OMS strongly encourages the Commission to direct the Midwest ISO to study, develop and provide support for long-term RSG solutions. The development and communication

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[37] Informational Filing at 4 - 5.
[38] Alternative Mechanism Filing at 9, footnote 23.

of the timeframe with respect to the long-term RSG solutions are important to the extent that they reveal a commitment and plans to reduce RSG costs, and may be useful to the Commission and market participants. The OMS urges the Commission to direct the Midwest ISO to provide a timeline for providing the solutions.

VI. Conclusion

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:

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

The Indiana Office of Utility Consumer Counselor, the Iowa Office of Consumer Advocate and the Minnesota Office of Energy Security,[39] as associate members of the OMS, participated in these comments and generally support these comments.

Respectfully Submitted,
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Dated: March 24, 2008

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 24th day of March, 2008.

William H. Smith, Jr.

[39] The Minnesota Office of Energy Security now exercises the consumer advocacy functions previously performed by the Minnesota Department of Commerce.