

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

Midwest Independent Transmission System Operator, Inc.))	Docket No. ER08-394-005
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COMMENTS OF THE ORGANIZATION OF MISO STATES

Pursuant to Rule 212 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure, 18 C.F.R. 385.212, as well as the Notice issued on November 24, 2008, the Organization of MISO States (“OMS”) hereby submits these comments in response to the November 19, 2008 compliance filing submitted by the Midwest Independent Transmission System Operator, Inc. (“Midwest ISO”) in the above captioned docket.

I. BACKGROUND

In response to prior Commission direction, on June 6, 2006, the Midwest ISO filed with the Commission a two-phased approach to permanent resource adequacy.¹ On September 26, 2006, the Commission accepted the Midwest ISO’s proposed phased approach.² On February 15, 2007, the Midwest ISO filed Phase I of its resource adequacy plan. On December 28, 2007, the Midwest ISO filed Phase II of its resource adequacy plan.

On March 26, 2008, the Commission issued an order that conditionally accepted the Midwest ISO’s Phase II resource adequacy filing.³ In particular, the Commission’s March 26 Order directed the Midwest ISO to submit two compliance filings. One compliance filing was to be made within 60 days of the March Order and another one was to be made within 180 days of the March Order. The Midwest ISO made its 60 day compliance filing on May 27, 2008 and its 180 day compliance filing on June 25, 2008.

Numerous parties filed Requests for Rehearing regarding the Commission’s March 26

¹ *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶61,163, *order on reh'g*, 109 FERC ¶61,157 (2004), *order on reh'g*, 111 FERC ¶61,043, *reh'g denied*, 112 FERC ¶61,086 (2005). *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶61,285 (2004), *order on reh'g*, 111 FERC ¶61,043 (2005).

² *Midwest Independent Transmission System Operator, Inc.*, 116 FERC ¶ 61,292 (2006).

³ *Midwest Independent System Operator, Inc.*, 122 FERC ¶ 61,283 (2008) (March 26 Order).

order and on October 20, 2008, the Commission issued an Order on Rehearing that effectively granted in part and denied in part the requests for rehearing.⁴ The compliance issues discussed in the Midwest ISO's November 19 filing reflect those directives in the October 20 Rehearing order which the Commission required the Midwest ISO to address in a 30-day compliance filing.

II. DISCUSSION

In the Commission's Rehearing Order, the Commission addressed a provision of the Midwest ISO's proposed Module E tariff (Section 69) that would require the Midwest ISO to "validate that LSEs have arranged for sufficient Planning Resources to meet its RAR" and to provide resource adequacy information, upon request, to applicable states.⁵ The Commission was responding to a request from Hoosier Energy Rural Electric Cooperative, Inc. and Southern Illinois Power Cooperative ("Hoosier and Southern Illinois") to clarify that, because Hoosier and Southern Illinois are apparently not subject to state rate regulation, their resource adequacy information would not be reported by the Midwest ISO to their respective state regulatory commissions.

The Commission granted the request from Hoosier and Southern Illinois and directed the Midwest ISO to make changes to Section 69.⁶

In its November 19, 2008 compliance filing, the Midwest ISO submitted proposed changes to Section 69. However, the Midwest ISO's proposed changes may have substantially more widespread effect than that intended by the Commission. As recommended by the Commission, the Midwest ISO's proposed changes to Section 69 would exclude Hoosier and Southern Illinois, and other similarly situated municipal and cooperative utilities, from having their resource adequacy information submitted to their states' public utility commissions.

However, the Midwest ISO's proposed changes to Section 69 could also be interpreted to exclude alternative retail electric suppliers in retail open access states from having their resource adequacy information reported to relevant retail regulators. The OMS suggests that such a result goes far beyond that intended by Paragraph 121 of the Commission's October 20, 2008 Order.

The problem with the Midwest ISO's proposed compliance language is that it refers only

⁴ *Midwest Independent Transmission System Operator, Inc.*, 125 FERC ¶ 61,061 (2008), (Rehearing Order)

⁵ Rehearing Order, at P 121.

⁶ Rehearing Order, at P 121.

to “an LSE subject to rate regulation by such state regulatory authority.”⁷ Because it refers only to “rate regulation,” some might interpret that phrase to exclude alternative retail electric suppliers in retail open access states. A review of the Rehearing Order will show such an interpretation would not reflect the Commission’s intention:

“We grant the rehearing request of Hoosier and Southern Illinois and clarify that the Midwest ISO should not submit resource adequacy information to the state for entities not subject to state jurisdiction. We find that the language suggested by Hoosier and Southern Illinois will add appropriate clarity to the tariff regarding disclosure of information. “⁸

The Commission’s intention in the first sentence appears to be to remove those entities not subject to state jurisdiction from the reporting requirement. However, alternative electric suppliers in retail choice states such as Illinois, for example are certainly subject to state jurisdiction. Sections 16-115, 16-115A, and 16-115B of the Illinois Public Utilities Act lay out the jurisdictional authority of the ICC over alternative retail suppliers. The OMS is concerned that the term “rate regulation” does not add the clarity sought by the Commission in its Order, but may actually serve to create confusion for the Midwest ISO and other parties with respect to their obligations to state commissions.

State commissions must have access to resource adequacy information about alternative retail electric suppliers operating in our states. Such information is necessary to allow state commissions to fulfill their obligations of ensuring system reliability and reliable customer service. The resource adequacy of alternative retail electric suppliers also directly affects state commissions’ responsibilities with respect to provider of last resort service to retail electric customers.

Therefore, the OMS recommends that the Commission direct the Midwest ISO to submit a further compliance filing to delete the word “rate” and insert the words “or using delivery services rates, terms or conditions established” between the words “regulation” and “by such state” in Section 69. Accordingly, we recommend that the parenthetical phrase in Section 69 read as follows:

(in the case of an LSE subject to ~~rate~~ regulation or using delivery services rates, terms or conditions established by such state regulatory authority).

⁷ Proposed Section 69, First Revised Sheet No. 1449.

⁸ Rehearing Order, at P 121

III. CONCLUSION

For the reasons explained above, the OMS requests that the Commission direct the Midwest ISO to submit a further compliance filing with additional changes to Section 69, such as those proposed above, to achieve the intent of Paragraph 121 of the Commission's Rehearing Order without being inadvertently and unintentionally over-sweeping.

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

Illinois Commerce Commission
Iowa Utilities Board
Indiana Utility Regulatory 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
South Dakota Public Utilities Commission
Wisconsin Public Service Commission

The Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Pennsylvania Public Utility Commission abstained from the vote on this pleading.

The Manitoba Public Utilities Board did not participate in this pleading.

The Indiana Office of Utility Consumer Counselor, the Iowa Office of Consumer Advocate and the Minnesota Office of Energy Security, as associate members of the OMS, participated in this pleading and generally support it.

Respectfully Submitted,
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Dated: December 5, 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 5th day of December 2008.

William H. Smith, Jr.
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