

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

Midwest Independent System Operator, Inc.)

Docket No. ER08-394-008

COMMENTS OF THE ORGANIZATION OF MISO STATES

I. Background

On November 19, 2008 (“November 19 Filing”) the Internal Market Monitor (“IMM”) of the Midwest ISO made a compliance filing ordered by the Federal Energy Regulatory Commission (“Commission”) on October 20, 2008.

II. Discussion

A. The Midwest ISO and the Independent Market Monitor have still not provided an evaluation of “the potential for the exercise of market power in the capacity market”.

In the Commission’s October 20 Financial Settlement Order, the Commission referred to its previous March 26 Order which found that “the issue of market power needed further evaluation.”¹ In the March 26 Order, the Commission “directed the Midwest ISO and the Independent Market Monitor to evaluate the potential for the exercise of market power in the capacity market.”²

In its November 19 Order, the Midwest ISO did not provide the required evaluation. Rather, the Midwest ISO stated that, “The Midwest ISO understands that the IMM is submitting a separate response to the Commission to address the subject issue.”³

¹ *Midwest Independent Transmission System Operator, Inc.*, 125 FERC ¶ 61,060 (2008), at P 136 referring to the March 26 Order, 122 FERC ¶ 61,283 at P 390.

² *Midwest Independent Transmission System Operator, Inc.*, 125 FERC ¶ 61,060 (2008), at P 136 referring to the March 26 Order, 122 FERC ¶ 61,283 at P 390.

³ *Compliance Filing of the Midwest ISO*, November 19, 2008, Docket No. ER08-394-007 at p. 12.

However, although the Independent Market Monitor submitted a filing on November 19, that filing does not provide an evaluation of “the potential for the exercise of market power in the capacity market.”

Accordingly, the Organization of MISO States (“OMS”) requests that the Commission direct the Midwest ISO and the Independent Market Monitor provide an evaluation of “the potential for the exercise of market power in the capacity market.”

B. The Midwest ISO or the Independent Market Monitor must provide proposed tariff language regarding market power monitoring and market power mitigation and must revise Section 69.3.5.h.

In the October 20 2008 Financial Settlement Order, the Commission stated as follows:

In response to concerns that the Midwest ISO’s proposal does not adequately explain the role of the Independent Market Monitor with respect to market power monitoring and mitigation, we agree that proposed section 69.3.5.h does not adequately define the scope of the Independent Market Monitor’s role. We require the Independent Market Monitor to explain in general terms how it intends to monitor market power in the voluntary capacity auctions and describe – without disclosing specific triggers – under what conditions it would report to the Commission that further modifications are necessary. We also require the Independent Market Monitor to specify the methods it will use to determine whether market power is being exercised and whether additional mitigation measures are needed, and what additional mitigation measures might look like. We require the Independent Market Monitor to include this information in a compliance filing to be submitted within 30 days of the date of this order.⁴

On November 19, 2008, the Midwest ISO’s Independent Market Monitor submitted a compliance filing to comply with the Commission’s directive in this paragraph.⁵

The IMM’s November 19 filing fails to satisfactorily comply with the Commission’s intent.

The market power monitoring process and the market power mitigation measures need to be spelled out in the Midwest ISO tariff. The Commission’s Financial Settlement Order specifically required the IMM to “specify the methods it will use to determine whether market power is being exercised and whether additional mitigation measures are needed, and what

⁴ *Midwest Independent Transmission System Operator, Inc.*, 125 FERC ¶ 61,060 (2008), at P 155.

⁵ *Compliance Filing of the Midwest ISO’s Independent Market Monitor*, November 19, 2008, Docket No. ER08-394-008 at p. 1.

additional mitigation measures might look like.”⁶ The specification of market power monitoring methods and the specification of additional market power mitigation measures are matters significantly affecting rates, and so, must be included in the Midwest ISO’s tariff.

The Commission’s Financial Settlement Order specifically stated that “proposed section 69.3.5.h does not adequately define the scope of the Independent Market Monitor’s role.”⁷ This Commission statement clearly finds section 69.3.5.h of the Midwest ISO tariff to be inadequate and requires Section 69.3.5.h of the Midwest ISO tariff to be revised. However, neither the IMM nor the Midwest ISO proposed modifications to the inadequate tariff language in Section 69.3.5.h.⁸

As it stands, Section 69.3.5.h provides that the Midwest ISO, not the IMM, will be doing the market power monitoring. Section 69.3.5.h states, “The Transmission Provider will report any potential exercise of market power by LSEs or by Market Participants in the voluntary capacity auction procedures to the Independent Market Monitor.”⁹ This language is clearly inconsistent with the proposal in the IMM’s November 19 filing.

Consequently, we request, once again, that the Commission direct the Midwest ISO or the IMM to propose market monitoring methods and market power mitigation measures for inclusion in the tariff and to revise Section 69.3.5.h accordingly.

C. Several Existing Provisions of the Midwest ISO Tariff Must Be Modified to Accommodate the Market Monitoring Procedures Suggested by the IMM in the November 19 Filing.

Section 50.2 of the Midwest ISO’s existing Module D states:

The IMM will monitor the Markets and Services provided by the Transmission Provider, including the imbalance energy market, any congestion management market or system, any Ancillary Services market, any market for the purchase or sale of transmission rights, and any other market administered, coordinated or facilitated by the Transmission Provider. The IMM will not monitor bilateral Energy or Capacity markets, or private transmission rights not administered, coordinated or facilitated by the Transmission Provider, except to periodically

⁶ *Midwest Independent Transmission System Operator, Inc.*, 125 FERC ¶ 61,060 (2008), at P 155.

⁷ *Midwest Independent Transmission System Operator, Inc.*, 125 FERC ¶ 61,060 (2008), at P 155.

⁸ We note that Footnote 33 of the Commission’s Financial Settlement Order suggests that it is the Midwest ISO’s responsibility to “amend its OATT” to incorporate protocols associated with market monitoring and market power mitigation of the capacity market.

⁹ Proposed Module E Section 69.3.5.h.

assess the effect of these markets on the Energy Markets, or the effects of the Energy Markets on these markets.¹⁰

Under this provision of the existing tariff, the IMM is explicitly precluded from monitoring bilateral capacity markets. Nevertheless, in the November 19 filing, the IMM states,

we do not believe that section 50.2 of the Midwest ISO tariff, which prohibits monitoring of bilateral capacity market by the IMM, would preclude or otherwise encumber the market monitoring process discussed in this filing.¹¹

The IMM's statement regarding Section 50.2 is difficult to reconcile with the IMM's proposal to monitor and screen for both physical and economic withholding.

Accordingly, we recommend that Section 50.2 of the Midwest ISO's tariff Module D be modified to provide for the explicit monitoring of bilateral capacity markets. There are several other modifications to Module D that will be needed to accommodate the necessary capacity market power monitoring and mitigation measures.

D. The IMM's Market Monitoring and Market Power Mitigation Proposal Lacks Needed Detail.

1. The IMM must identify the universe of potential capacity resources.

The IMM states that he will have access to information regarding "all resources that have been designated to satisfy an LSE's capacity requirements, as well as the offers to sell capacity from all previously undesignated resources."¹² The IMM suggests that, from this data, withheld resources can be identified. However, the IMM does not explain how the universe of potential capacity resources will be determined. That is, the IMM does not describe how he will determine resources that have not entered into bilateral contracts with Midwest ISO LSEs, not entered into capacity arrangements with buyers outside the Midwest ISO market, or not offered into the Midwest ISO's voluntary auction.

¹⁰ Midwest ISO's Transmission and Energy Market Tariff, Module D, Section 50.2, Second Revised Sheet No. 705, underlining added.

¹¹ *Compliance Filing of the Midwest ISO's Independent Market Monitor*, November 19, 2008, Docket No. ER08-394-008 at p. 7.

¹² *Compliance Filing of the Midwest ISO's Independent Market Monitor*, November 19, 2008, Docket No. ER08-394-008 at p. 2.

2. The IMM must explain how “going forward costs” and “net going forward costs” will be calculated.

The mitigation measures proposed by the IMM require the calculation of “going forward costs” and “net going forward costs.” This calculation requires a numerical expectation of capacity revenues, energy revenues, and ancillary services revenues. The IMM did not explain how the projection of revenues for any of these services will be forecasted.

3. The IMM has not explained how the proposed “simulation” will work.

In order to determine if withholding a capacity resources has a significant affect on the market clearing price for capacity, the IMM proposes to “simulate the capacity auction market to estimate the prices that would have prevailed in the voluntary market had the withheld capacity been offered competitively.”¹³

First, the IMM has not explained how the hypothetical “competitive offer” for the potentially withheld resource will be determined. The “competitive offer” is needed as an input into the simulation. Second, the IMM has not explained whether the hypothetical “competitive offers” for the potentially withheld resource will be entered into the simulation individually or in combination (i.e., is the examination for singly pivotal units or jointly pivotal units?).

III. Conclusion

Wherefore, for the reasons explained above, we recommend that the Commission direct the Midwest ISO or the IMM to: (1) provide an evaluation of “the potential for the exercise of market power in the capacity market”; (2) provide proposed tariff language regarding market power monitoring and market power mitigation and revise Section 69.3.5.h; (3) revise Section 50.2 and other sections of the Midwest ISO’s Module D to accommodate capacity market power monitoring and mitigation and (4) provide the detail needed to conduct the market power monitoring and market power mitigation proposed by the IMM.

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

¹³ *Compliance Filing of the Midwest ISO’s Independent Market Monitor*, November 19, 2008, Docket No. ER08-394-008 at p. 4.

regarding the issues discussed in these comments. The following members generally support 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
South Dakota Public Utilities Commission
Wisconsin Public Service Commission

The, Indiana Utility Regulatory Commission, , North Dakota Public Service Commission 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 these comments and generally support these comments.

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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