UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Midwest Independent Transmission System Operator, Inc.	))	Docket No. ER08-394-000

COMMENTS OF THE ORGANIZATION OF MISO STATES

Pursuant to the Federal Energy Regulatory Commission's (Commission) Rule 211 *Rules of Practice and Procedure* 18 C.F.R. 385.211, the Organization of MISO States (OMS) hereby submits these Comments.

I. Background

On December 28, 2007, the Midwest Independent Transmission System Operator, Inc., (Midwest ISO) filed proposed revisions to its Open Access Transmission and Energy Markets Tariff to revise Module E to address long-term Resource Adequacy Requirements. By Notice issued January 9, 2008, the Commission established a comment date of January 28, 2008, for Comments on the revised Module E.

II. Purpose and Objective

The OMS appreciates the opportunity to comment on the Midwest ISO's filing of proposed revisions to Module E to comprehensively address long-term Resource Adequacy Requirements. The OMS understands that the Midwest ISO's effort to revise Module E recognizes the States' primary role for resource adequacy, without compromising its own independence.[1] The OMS further understands that the desired

[1] A States Saving Clause in Section 215 (i)(1-2) of the Federal Power Act provides that "(1) [t]he ERO shall have authority to develop and enforce compliance with reliability standards for the bulk power system," but (2) [t]his section does not authorize the ERO or the Commission to order the construction of additional generation or transmission capacity or to set and enforce compliance with standard for adequacy or safety of electric facilities or services." The OMS, while recognizing overlapping jurisdiction with the Commission in many facets of electricity service, interprets Section 215 (2)(i)(2) to mean that a unique role where resource adequacy and enforcement are concerned has been left to the States.

effects of the revised Module E cannot be accomplished without effective coordination among the Commission, the Midwest ISO, the NERC Regional Entities, the Organization of MISO States, and other stakeholders. The OMS seeks in these comments to recognize what the Midwest ISO has done and not re-debate nor recreate issues.

The OMS will continue to exercise its opportunities to incorporate suggestions for changes to the resource adequacy and enforcement provisions of the Midwest ISO Energy and Markets Tariff, to the extent those changes are not inconsistent with the Federal Power Act. However, as this Module E takes the Midwest ISO and the OMS states into uncharted waters of EPAct 2005 interpretation, OMS seeks an accommodation as to procedure that is intended to better coordinate between the state and federal jurisdictions and ultimately expedite the FERC's administrative task. Specifically, the OMS seeks an accommodation with the Midwest ISO to afford OMS the opportunity to endorse changes to Module E prior to any filing of future amendments, or to allow OMS to offer amendments of its own for separate filing to the Commission by the Midwest ISO. The OMS values the independence of the Midwest ISO and nothing in this recommended arrangement is intended to preclude the Midwest ISO from making separate proposals.

The proposal for an opportunity for OMS to endorse Module E changes prior to filing of a Midwest ISO future amendment is to articulate state jurisdictional concerns and to safeguard those state understandings agreed to with the Midwest ISO. An opportunity for endorsement encourages early and detailed reconciliation of jurisdictional questions between the Midwest ISO and OMS states, thereby better focusing the administrative task before the FERC on market development issues. Where reconciliation via prior endorsement does not happen, separate filing by OMS of its alternative view or proposal, with any needed assistance from the Midwest ISO, facilitates creation of a more complete record before FERC in its initial consideration. Commenters can respond more comprehensively in a single docket reviewing concurrently both OMS and Midwest ISO proposals, thus materially expediting and enhancing the FERC's substantive decision-making. This companion filing opportunity is similar to that approved by the FERC in 2004 in the bylaws of the Southwest Power Pool, Inc.[2]

Turning to the filing at hand, there are areas in the December 28, 2007, filing that merit particular Commission attention. In that light, the OMS offers comments on the following issues:

A. 180-DAY EXTENSION DISCUSSION

B. UNIFORM AND CONSISTENT APPROACH TO LOSS-OF-LOAD EXPECTATION (LOLE)

C. DEMAND RESOURCE QUALIFICATIONS

D. PENALTIES FOR LOAD MODIFYING RESOURCES

E. INCOMPLETE FILING

III. Comments

A. 180-DAY EXTENSION DISCUSSION

The Midwest ISO proposes a 180-day extension to develop tariff provisions regarding financial settlement under Section 69.3.5 of the revised Module E.[3] The OMS supports this 180-day extension to address financial settlement issues and is committed to use this time and the stakeholder process to develop provisions that recognize state authority and apply any financial settlements fairly to all load-serving market participants who must meet planning reserve requirements. To that end, the OMS supports the Midwest ISO's definition of the term "LSE," as it would apply to all market participants that serve load.[4]

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[2] See Order, FERC Dockets RT04-1-002 and ER04-48-002, issued July 2, 2004, 108 FERC ¶ 61,003, that approved, effective May 1, 2004, Sections 7.2 and 7.3, Original Sheets 37-38 of the Bylaws, Original Vol. 4, Southwest Power Pool, Inc. (SPP). The SPP bylaws provide that a regional state committee has primary responsibility for regional supply adequacy proposals advanced to the FERC by the SPP, with the SPP assisting in the filings, but subject to the SPP's reserved right to file its own proposal.

[3] Steven G. Kozey to Honorable Kimberly D. Bose (December 28, 2007) ("Midwest ISO Cover Letter") at 14; Affidavit of Michael Robinson ("Robinson Affidavit") at 49-51.

[4] The Michigan Public Service Commission encourages the Commission to direct the Midwest ISO to use its stakeholder process during the extension of time to further develop and refine other Module E tariff provisions, such as those that affect penalties or financial settlements. For example, criteria for establishing reserve zones, criteria for determining each LSE's share of an established Planning Reserve Margin, and tariff provisions to coordinate with Balancing Authorities on load forecasts to account for retail choice load shifts need to be addressed, preferably in the Midwest ISO's EMT rather than its Business Practices Manuals. Also, the different and potentially conflicting tariff provisions concerning LMR (load management resource) eligibility and penalties for non performance that are in both the Midwest ISO's

In approaching the 180-day extension, the OMS will take into account the revised Module E Sections 69.3.3, Facilitation of a Voluntary Capacity Exchange, to help provide further transparency for capacity prices; 69.3.4, Load and Planning Resource Assessment, for both load forecasting as well as supply resource designation; and 69.3, Reporting, information to states to help with state enforcement and reporting; as well as the special circumstances facing LSEs in retail choice states such as their ability to forecast and report data given any anticipated shifts in load created by retail auctions, customer switching, provider of last resort responsibility, increasing demand response mechanisms or economic downturn.

B. UNIFORM AND CONSISTENT APPROACH TO LOSS-OF-LOAD EXPECTATION (LOLE)

The OMS acknowledges the variety of effects resulting from using a uniform and consistent approach to loss-of load expectation probabilistic studies throughout the Midwest ISO region.[5] It is important to understand that promising to recognize individual state planning reserves where mandated, as well as individual LSE or planning reserve sharing group requirements, can produce a variety of numerical results, some higher and some possibly even lower than a region-wide planning reserve margin. These effects are made even more complex when deliverability of capacity resources to serve load is included in the calculation methodology. While resulting planning and reserve margin requirements may vary across individual states or zones, it is important that the assumptions and the methodology for calculating LOLE be consistent.[6] Therefore, we recommend the following additional language be inserted in the introduction section of the proposed Module E:

Module E filing and its proposed Schedule 30 (Emergency Demand Response filing ER08-404-000) need to be addressed and clarified.

[5] Robinson Affidavit at 18, 21; Doying Affidavit at 31.

[6] Planning reserve margins have historically been calculated in the traditional MAPP and MAIN regional reliability councils with the assumption of complete deliverability. Risk sharing was limited. The reserve margin was a derived calculation of the ratio of peak season capacity to the peak season load after loss of load expectation (LOLE) of 1 in 10 was determined for the planning year. Today the methodology and algorithms are much more comprehensive. The LOLE is influenced by several input assumptions: generation size, equivalent force outage rates, load duration curves, demand response programs, behind the meter generation, firm capacity contracts, load forecast uncertainty and transmission transfer capability between sub-regions.

> "If higher, or lower PRMs *consistent with Module E section 68.1 LOLE requirements*, are mandated by states then the Transmission Provider will recognize and incorporate such PRMs for any affected LSEs…"[7]

While some states or zones may have different reserve margin requirements, the resources – not the states – are competing in the marketplace. The larger market context in which these resources compete more closely resembles a pool that should be allowed to merge the effects of the individual resources and create reserve sharing in the best tradition of resource adequacy.

C. DEMAND RESOURCE QUALIFICATIONS

Revised Module E Section 69.2.2.1.a proposes requirements for demand resources to qualify for meeting planning reserve requirements. Although the Midwest ISO Markets Subcommittee, comprised of Midwest ISO stakeholders, unanimously voted on December 4, 2007, by a vote of 37 to 0 to change the 12-hour advisory notice in section 69.2.2.1.a.ii to a 24-hour advisory notice, the Midwest ISO's filing contains the language calling for a maximum of a 12-hour advisory notice. During the OMS Board meeting on January 24 a majority of OMS states voted to support the 12-hour advisory notice period as filed by the Midwest ISO. One state recommends a 24-hour notice.[8]

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[7] The Public Utilities Commission of Ohio (PUCO) cannot agree with this additional language in the OMS Comments regarding Module E section 68.1 that is intended to be inserted in the introduction section of the proposed Module E. The PUCO, concerned this language may potentially preempt state action, prefers to protect the right of states to invest in and facilitate the development of price responsive demand and other innovative methods to attract resource investment where needed. Neither the Midwest ISO Module E nor the FERC should attempt to dictate the terms and conditions of state regulatory policy, decisions or tariffs.

[8] The Michigan Public Service Commission respectfully disagrees that a twelve-hour advisory notice is adequate, and instead recommends a 24-hour advisory notice. The proposed Module E should be revised accordingly to encourage flexibility to LSEs to offer retail demand response resources into the markets, and obtain capacity credit for planning reserves in a way that preserves both state and regional interests.
At the December 4, 2007, Market Subcommittee, two companies proposed increasing the length of the advisory notice from 12 to 24 hours, and that proposal passed unanimously. The reason for this proposed modification to a 24-hour advisory notice is to continue to allow industrial customers (whose existing state interruptible tariff arrangements require more notice, or a one-day notice to cancel an entire shift consistent with union contract notice requirements) to add strength to the amount and diversity of load modifying resources available to the transmission provider in emergency events.
A longer advisory notice is more in line with what is typically given for generation. For example, stakeholders advised that combustion turbines that are down but need to be started up unexpectedly may need as much as 2 - 3 days notice due to scheduling and staffing requirements. This longer advisory notice for demand response resources would in no way change the response time of those resources required under Section 69.2.2.1.a.iii.

Another state recommends a reasonable, but unspecified, notice period.[9]

D. PENALTIES FOR LOAD MODIFYING RESOURCES

Revised Module E Section 69.2.2.3 proposes a penalty for Load Modifying Resources.[10] The OMS notes that both the revised Module E and the proposed Midwest ISO Schedule 30 assess penalties for failure to perform.[11] Moreover, the timing of the penalty provisions in revised Module E Section 69.2.2.3 cross the line between the Midwest ISO Planning Year and Real Time operating activity. The OMS recommends that the Commission defer the revised Module E 69.2.2.3 penalty provisions for Load Modifying Resources for the purposes of clarification and consistency with the payment provisions of Schedule 30 in Docket ER08-404-000. Delaying this provision of the revised Module E would provide more time to determine whether penalties for nonperformance of demand response resources in real time belong in Module C or Schedule 30 and to ensure consistency with the non-performance penalties of other resources.

E. INCOMPLETE FILING

In its September 18, 2007, Order Granting Extension for the Midwest ISO Informational Filing Regarding Broad Constrained Area Mitigation,[12] the Commission stated what it expected in a Midwest ISO Resource Adequacy filing:

> *We expect that Midwest ISO's long-term resource adequacy plan will be filed by the end of 2007, that it will support the region's short-term reliability needs, and*

A longer advisory notice is also more consistent with the November 8, 2007 OMS-approved Principles for Demand Resources which state that "Market rules and tariffs should maximize cost-effective demand response enrollment and participation."
(http://www.misostates.org/DRPrinciplesApproved8November2007.pdf Principle number 5)
The Michigan Public Service Commission strongly recommends adopting the longer, 24-hour advisory notice period in the revised Module E Section 69.2.2.1 a. ii to enhance the value and number of load modifying resources available to the Midwest ISO, especially during periods of extended emergencies such as may happen during periods of extended extreme heat.

[9] In Ohio, a significant number of industrial interruptible customers are given notice the previous day by Close of Business (e.g. 3:00 – 5:00 p.m.) in order to prepare to shut down operations for the next day to accommodate a curtailment period. In some instances, this notice will exceed the Midwest ISO proposed advisory notice of 12 hours rendering many of these resources for the Midwest ISO unavailable.

[10] Midwest ISO Cover Letter; Robinson Affidavit at 38.

[11] Midwest ISO, Electric Filing Regarding Emergency Demand Response, ER08-404-000 (December 31, 2007) at Original Sheet 1050.40-.50.

[12] Midwest Independent Transmission System Operator, Inc., 120 FERC ¶ 61,250.

> *that it will encourage long-term planning and infrastructural investments…. We recognize that Midwest ISO's market will likely undergo significant changes, including the anticipated implementation of its long-term resource adequacy plan and development of demand resources, that may necessitate adjustments to the market monitoring and mitigation plan in Module D of the TEMT. Indeed, as Dynegy, EPSA, and Reliant suggest, an appropriate combination of mitigation measures, resource adequacy provisions, demand response programs and any scarcity pricing measures are needed to ensure that prices are just and reasonable and allow for the recovery of needed and prudent investment costs* [13]

In addition, Commission's June 22, 2007 Order on Ancillary Services Filing and Providing Guidance[14] stated,

> *…The long-term resource adequacy plan due to be filed as Phase II should address providing the proper financial incentives such that new generation entry is economically feasible based on all revenues received from the Midwest ISO's markets, including scarcity payments. We also note that in prior orders the Commission has not mandated a particular method of providing the proper investment incentives to ensure long-term resource adequacy, but has instead endorsed the idea that an energy-only market may be one such reasonable method.*[15]

The Midwest ISO revised Module E filing, while targeting resource adequacy provisions and demand response programs, does not on its face present any linkages to infrastructural investments, measures to allow for recovery of needed and prudent investment costs, scarcity pricing, or market monitoring and mitigation measures where long-term resource adequacy planning and development are concerned. Accordingly, the OMS recommends that the Commission order the Midwest ISO, in its compliance filing at the end of the 180-day extension for the development of enforcement provisions, to provide the required demonstration that all the Phase II elements, when taken together with the Phase I operating elements of the Ancillary Services market, result in a process that provides just and reasonable prices as well as the proper financial incentives for new resource entry into the market.

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[13] Midwest Independent Transmission System Operator, Inc., 120 FERC ¶61,250, (2007), at 35-37.
[14] Midwest Independent Transmission System Operator, Inc., 119 FERC ¶ 61,311, (2007).
[15] Midwest Independent Transmission System Operator, Inc., 119 FERC ¶ 61,311, (2007) at 137.

IV. Conclusion

In conclusion, the Organization of MISO States respectfully requests the Commission take these comments into account when deciding the merits of the filing in this case. 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
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
South Dakota Public Utilities Commission
Wisconsin Public Service Commission

The Manitoba Public Utilities Board did not participate in this pleading. The Illinois Commerce Commission and the Pennsylvania Public Utility Commission abstained from this pleading.

The Indiana Office of Utility Consumer Counselor, 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,

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Dated: January 28, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on all parties on the official service list compiled by the Secretary in this proceeding.

Dated at Des Moines, Iowa, this 28th day of January 2008.

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**PARTIAL DISSENT OF THE
INDIANA UTILITY REGULATORY COMMISSION
AND
THE INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR
REGARDING
THE POTENTIAL FOR DIMINISHED RELIABILITY AND UNDUE DISCRIMINATION THAT COULD RESULT FROM INDIVIDUAL STATE COMMISSIONS ESTABLISHING LOWER PLANNING RESERVE MARGINS THAN THOSE ASSIGNED TO UTILITIES AND LOAD SERVING ENTITIES IN ORDER TO ACHIEVE A UNIFIED REGIONAL PLANNING RESERVE STANDARD**

There is no disagreement within the OMS that the fundamental purpose of Module E is to provide greater assurance that the region will have adequate resources to meet the long term power needs of citizens within the Midwest ISO. To achieve this objective the IURC and OUCC believe that the Federal Energy Regulatory Commission should not approve a provision allowing an individual state to establish lower reserve margins as requested by the OMS.[16]

IMPRACTICALITY OF STATES SETTING LOWER PLANNING RESERVE STANDARDS

As a practical matter, states can not set standards that are lower than the regional standards since a large number of utilities / load serving entities in the Midwest ISO operate in more than one state. The unilateral imposition of a lower planning reserve margin by one state, that is inconsistent with the actions of other state(s) that are served by the same utility / load serving entity, seems certain to result in undue discrimination. At the extreme, allowing individual states to set lower planning reserve margins could result in a race to the bottom that would imperil regional reliability and result in undue discrimination.

The authority of FERC to regulate the terms under which utilities may participate in regional markets has long been recognized, and the IURC and OUCC further contend that states would be preempted to the extent that they set a lower reserve margin that was in conflict with a federal reliability rule. That is, RTOs are obligated to comply with the Regional Reliability Organization(s) and the North American Electric Reliability Corporation standards that are approved by the FERC. Individual LSEs are, then, obligated by contract and FERC tariff to comply with RRO and ERO standards by virtue of their participation in the Midwest ISO's facilitated markets. An assertion that a state has the authority to set standards that are lower than the regional standard may have resulted from a misunderstanding of EPAct 05.

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[16] "If higher, or lower PRMs consistent with Module E section 68.1 LOLE requirements, are mandated by states then the Transmission Provider will recognize and incorporate such PRMs for any affected LSEs…"

MISUNDERSTANDING OF EPACT 05

The IURC and the OUCC believe that footnote 1 (below) regarding the "Savings Clause" in EPAct 05 may have been misinterpreted by some of our OMS colleagues to the extent that the emphasis is on item (2) of the Clause to the exclusion of item (1).

> A States Saving Clause in Section 215 (i)(1-2) of the Federal Power Act provides that "(1) [t]he ERO shall have authority to develop and enforce compliance with reliability standards for the bulk power system," but (2) [t]his section does not authorize the ERO or the Commission to order the construction of additional generation or transmission capacity or to set and enforce compliance with standard for adequacy or safety of electric facilities or services." The OMS, while recognizing overlapping jurisdiction with the Commission in many facets of electricity service, interprets Section 215 (2)(i)(2) to mean that a unique role where resource adequacy and enforcement are concerned has been left to the States.

The subsequent assertion that states can unilaterally establish planning reserve margins that are lower than would be required by application of the regional standard (e.g., an LOLE objective of 1 day in 10 years) seems to result from taking elements of the Clause out of context, the resulting interpretation is incorrect and could result in preemption by the FERC. To the extent that a state action to implement a lower planning reserve margin compromises regional reliability or results in a situation where utilities or load serving entities in one state "lean on" or are subsidized by those of other states, it is likely to not only violate regional reliability standards but also constitute undue discrimination.

THE REGIONAL PLANNING RESERVE MARGINS ARE ESTABLISHED FOR INDIVIDUAL UTILITIES / LOAD SERVING ENTITIES RATHER THAN STATES

It seems clear that the majority, if not all of the OMS, recognize the need for a consistent regional planning reserve standard for the sake of a reliable system. There may, however, be a misunderstanding of the implications of how a regional planning reserve standard would be applied to individual utilities / load serving entities. Specifically, once a regional standard is calculated, each individual utility / load serving entity would be allocated a share of that regional responsibility based on their load and resource characteristics. The requirements are *not* assigned to specific states but, rather, individual utilities and load serving entities. As a result of the application of a single regional planning reserve margin, most, if not all, utilities will have lower reserve margins than the regional standard due to diversity of its load and resources in relation to the region.

THE BENEFITS OF A SINGLE REGIONAL PLANNING RESERVE STANDARD

While it is true that the vast majority of utilities (if not all) would be required to have lower planning reserve margins than would be required of them absent the regional coordination by the Midwest ISO, lower reserve margins are a function of the application of the region-wide standard and should not be the result of a state action to establish a lower standard. The ability of individual utilities to have lower reserve margins – perhaps significantly lower reserve margins – would result in substantial economic benefits to utilities and their customers by reducing the long-term capital requirements of utilities. This is one of the most significant economic benefits resulting from collective action by utilities that fully participate in Regional Transmission Organizations.

FERC APPROVAL OF MODULE E DOES NOT CHANGE STATE JURISDICTION

The IURC and OUCC do not believe that FERC's approval of Module E infringes on state jurisdiction over resource adequacy. States will still have whatever authorities they had prior to EPAct 05 to approve generation, demand response, and transmission. As provided for by state law, those authorities may include: approval of the timing, size, operational characteristics, fuel use, siting, and cost recovery. A Commission's authority derives from its legislature and can not be enlarged or diminished by the FERC's approval of Module E. [17]

The IURC and OUCC believe that any concerns about jurisdiction are misplaced and distract from the overarching importance of reliability. In this regard, we are pleased that the OMS – in repeated references – recognizes that states need to work with the FERC, the Midwest ISO, and stakeholders in a transparent and robust regional planning effort in order to achieve the reliability and economic benefits that we all desire.

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[17] Moreover, it should be noted that Module E provides clear advantages for state commissions over the prior regime of resource adequacy. States having jurisdictional entities in the Mid-Continent Area Power Pool (MAPP) relied on the Reliability Council to establish reliability requirements that were enforceable by contract. State commissions in the East Central Area Reliability Council (ECAR) and the Mid-America Interconnected Network (MAIN) relied on ECAR and MAIN to establish guidelines that state commissions could use in assessing whether their jurisdictional utilities made provisions for adequate resources. States should take comfort in knowing that their relationship with the Midwest ISO provides greater opportunity for meaningful input on power supply issues than was afforded them by regional reliability councils prior to EPAct 05. The reformation of the NERC and Regional Reliability Organizations that occurred because of EPAct 05, among other things, provides for greater transparency, greater involvement by the FERC and state commissions, and less influence exerted by utilities on resource adequacy issues.