

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

Midwest Independent Transmission)
System Operator, Inc.) Docket No. ER11-2798-000

**COMMENT AND RESPONSE OF THE
ORGANIZATION OF MISO STATES, INC.**

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 213, the Organization of MISO States ("OMS") respectfully requests leave to file this Comment and Response to the Supplementary Filing and the Answer made by the Midwest Independent Transmission System Operator, Inc. (Midwest ISO") on March 9, 2011, in the above-captioned proceedings.

Response

A. Commission Guidance Is Needed

The OMS understands that the Midwest ISO found ambiguity in the Commission's Rules that led it to mask its identity when it made the January 28 filing. The Rules relating to penalty violations, specifically 18 CFR §39.7(b)(4), could be read to conflict with the requirements of section 205 of the Power Act and the Commission's filing rules in 18 CFR §35 that require notice of rate filings. We agree with the Midwest ISO that the Commission should provide guidance to avoid conflict between these different sets of rules. That guidance should allow details of violation reports and investigations to remain non-public, but it should provide open and efficient notice of rate filings, including the identity of the filing entity.

The OMS is also sensitive of the need for not-for-profit RTOs to develop methods of financing penalty payments. We are willing to participate in discussions of alternative ways to handle such situations.

B. Notice of the January 28 Filing Was Not Adequate

The Midwest ISO's Answer argues that the redacted version of the filing gave customers sufficient notice of the identity of the filing entity. The OMS disagrees. It required considerable research to identify that the filing was in fact made by the Midwest ISO. The filing was not initially listed in the list of "Upcoming Filings" regularly circulated by the Midwest ISO to stakeholders. It was not included in the daily filing list e-mailed to stakeholders. There was a lag of two days or more before the filing was included on the Midwest ISO website. The filing was made by a law firm not previously identified with Midwest ISO rate filings. References to tariff sections were redacted from the public version of the filing. By extensive detective work, stakeholders were ultimately able to identify the Midwest ISO as the filing party. But the Commission's filing practices should not defeat the statutory intent of useful and timely notice.

The Midwest ISO's argument that stakeholders really were aware of its identity at the time of the filing invites the question why a redacted filing was necessary at all, and its willingness to make the unredacted filing public mere weeks afterwards suggests that the anonymity and secrecy were not necessary in the first place.

Given these considerations, the OMS continues its procedural protest to the January 28 filing.

C. Treatment of the Supplementary Filing

The OMS does not protest the March 9 supplementary filing of the unredacted version of the request to recover the nominal penalty amount. The OMS concurs with the sense of other parties that the rate consequences of the filing are not significant and that further analysis or proceedings with respect to this filing would not be cost-effective, provided that the treatment of this filing is not seen as precedential for possible future filings. Other penalty situations could occur in the future, presenting issues for which the methodology in this filing might not be appropriate. Thus if the Commission accepts the March 9 supplementary filing, it should avoid giving it any precedential value.

Conclusion

The OMS therefore urges the Commission to reject the January 28 filing, to reject the March 9 Answer, to accept the March 9 supplemental filing without precedential value, and to provide guidance in accordance with this Comment and Response.

Respectfully Submitted,
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Dated: March 30, 2011

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 Pierre, South Dakota, this 30th day of March, 2011.

William H. Smith, Jr