

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

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**Midwest Independent Transmission  
System Operator, Inc.**

**Docket No. ER11-4081-000**

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**NOTICE OF INTERVENTION AND PROTEST OF  
THE ORGANIZATION OF MISO STATES, INC.**

**I. Background**

On July 20, 2011, the Midwest Independent Transmission System Operator, Inc. (“MISO”) proposed modifications to the Module E portion of its Open Access Transmission, Energy and Operating Reserve Markets Tariff (“Tariff”). These modifications concern the Resource Adequacy Requirements (“RAR”) provisions of its Tariff and, according to MISO, are intended to ensure the deliverability of Load Modifying Resources in MISO’s voluntary capacity auction and to address congestion that limits aggregate deliverability in compliance with certain orders of the Commission.

MISO states that its July 20 filing (“MISO Filing”) is made in compliance with two orders of the Commission. The April 21, 2010, Compliance Order directs MISO “to file a permanent solution to ensure the deliverability of load modifying resources in the monthly voluntary capacity market.” The June 8, 2010, Compliance Order requires that MISO “develop a permanent approach to address congestion that limits aggregate deliverability and examine whether a locational capacity requirement is needed to ensure reliability.”

The Organization of MISO States (“OMS”) submits that the MISO Filing goes far beyond what the Commission directed in its two Compliance Orders and that the filing negatively impacts state jurisdictional responsibilities, lacks clear net benefits, and should not be found just and reasonable. The OMS also suggests ways in which the filing can be reshaped to remove its most negative features. Last, the OMS cautions that if the Commission is unwilling to order modifications in the filing, it should retain intact certain key design elements and assure a degree of permanence to the new RAR structure.

## **II. Intervention**

Pursuant to Rules 211 and 214(a)(2) of the Federal Energy Regulatory Commission's ("FERC" or "Commission") Rules of Practice and Procedure, 18 C.F.R. § 385.211 and § 385.214(a)(2), the Organization of MISO States, Inc. ("OMS") files its Notice of Intervention and Protest of the July 20, 2011 MISO filing. Service of all pleadings, documents, and communications in this matter should be made on the following:

William H. Smith, Jr.  
Executive Director  
Organization of MISO States  
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## **III. Overview**

In developing its response to the Compliance Orders, the MISO began with the presumption of a mandatory forward capacity auction, and then developed deliverability rules under the mandatory forward auction pretext. The OMS protests the MISO Filing as the OMS does not agree that MISO's proposal of a forward capacity auction is necessary in order to comply with either of these orders. The MISO Filing provides no argument or evidence that its current Module E construct is unjust and unreasonable. The OMS urges the Commission to reexamine the current Module E construct as being sufficient, and just and reasonable, to meet both reliability and resource adequacy needs in the Midwest. The OMS opposes a centralized mandatory<sup>1</sup> forward auction, as it sees no need for such a construct, given the unique circumstances of the Midwest and the ability of the states within the MISO geographic footprint to assure both reliability and resource adequacy.

In the transmittal letter in the MISO Filing, MISO writes of the "extensive" stakeholder process and its working relationship with the OMS. However, the OMS considers MISO's process of compliance in this instance to be unreasonable, and certainly not as stated in the MISO Filing. From September 2010 until late May 2011, even though stakeholder votes consistently and strongly rejected these concepts, MISO insisted on a longer term forward

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<sup>1</sup> While acknowledging self-supply and opt out provisions, all LSEs and resources must be accounted for in the process of calculating local clearing requirements.

mandatory capacity auction with no opt out provision or other consideration of state jurisdictional authority. In March 2011, MISO was still studying the different styles of capacity auctions. It was not until April and May that its proposed resource adequacy construct started to be more complete (although still relatively bare bones, considering the complexity of the issue) and was explained to the MISO Supply Adequacy Work Group (“SAWG”). The opt-out and other key provisions were not included in the proposal until the third week of May, when, in the face of almost universal stakeholder opposition to its proposal, MISO finally started to consider some of the stakeholder positions. MISO did offer many opportunities for comments from late May until mid-July, but did so with such short lead times that it was practically impossible for the OMS to analyze, much less provide comments on, a proposal that was significantly changing every two weeks. Considering that under the MISO Filing the first planning year is not until June 2013-May 2014 with first data process exchange starting in November 2012, such haste was not necessary. The filing timeline followed by MISO has hindered sufficient understanding and analysis of the proposal and prevented stakeholders the opportunity to see a complete proposal before the filing. The OMS requested a relatively minimal one month delay of the filing in order to reconcile with MISO major areas of concern in the Tariff for the OMS and to carefully review the final draft of the Tariff before it was filed. MISO’s refusal to grant this simple request in full counters its statements of working with the states.

#### **IV. The MISO Filing, as Presented, Is Not Just and Reasonable Nor in the Public Interest.**

The OMS believes the MISO Filing is not just and reasonable nor in the public interest for the following reasons.

##### **A. MISO has failed to show that a MISO run capacity auction is necessary to address congestion that limits aggregate deliverability.**

Capacity auctions were promoted in the eastern United States to address the “missing money” problem--the fact that it is difficult for peak generators to raise sufficient revenue to cover their costs. This occurs in the Eastern markets because generation owners and developers are commonly unregulated entities, so there is no mechanism for states or commissions to order them to build needed generation. This is not a problem in the Midwestern grid. Load Serving Entities (LSEs) that are retail electric utilities have a legal obligation to ensure reliable, safe and

reasonably priced electric service. State statutes establish these requirements, consumer advocates and other interested parties monitor utility compliance with these requirements, and state utility commissions review or approve utility resource plans and investigate utility performance to assure that utilities meet their reliability and resource adequacy obligations.

From the viewpoint of state commissions MISO's mandatory auction is unnecessary for states to ensure resource adequacy within their jurisdictions. Under state resource adequacy planning and more recently MISO's transmission planning, there have never been inadequate planned resources nor is there any indication that there will be in the future. The MISO footprint continues to have capacity well in excess of the required reserve margin and that condition is projected to extend for at least seven more years. MISO's proposal could be read to suggest that the state regulatory authorities (and also MISO) will not continue our long history of appropriate resource and transmission planning over the coming years.

MISO filed its RAR proposal to comply with the Commission's April 21, 2010, and June 8, 2010, Orders. The latter requires the development of "a plan that details the steps that will be taken to incorporate these market mechanisms into the Resource Adequacy Plan."<sup>2</sup> The Commission stated that it intends for MISO "to complement the Midwest ISO's traditional resource planning with market mechanisms, such as locational capacity requirements, which would allow the Midwest ISO to take advantage of the incentives that can be provided via price signals and market rules."<sup>3</sup> The MISO Transmission Expansion Plan is an important component of MISO's resource planning process. For example, on August 16, 2011, MISO presented its Robust Business Case for its Proposed Multi Value Project Portfolio where MISO evaluates projects by calculating economic benefits to each of the planning zones developed in the RAR construct.<sup>4</sup>

MISO's own analysis has shown that there is no congestion problem to be corrected. It is the OMS' understanding that, as part of its proposal, MISO anticipates establishing seven Local Resource Zones ("LRZs") and a methodology to calculate import and export limits between

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<sup>2</sup> 131 FERC ¶ 61,228 (June 8, 2010) at P 24

<sup>3</sup> 131 FERC ¶ 61,228 (June 8, 2010) at P 26

<sup>4</sup> "Proposed Multi Value Project Portfolio," presentation by MISO at the meeting of MISO System Planning Committee of the Board of Directors, August 16, 2011, p. 13.

these zones. MISO conducted a preliminary indicative analysis of import and export limitations for each of the seven LRZs. In the June 8, 2011, Loss of Load Expectation (“LOLE”) Working Group and the June 9, 2011, SAWG meetings, MISO presented indicative information for the 2015 planning year. None of the candidate zones showed a binding constraint with their respective import limits and their associated Local Clearing Requirement. MISO’s Planning Year 2011/12 LOLE Report included an assessment of forward years ranging from 2012 through 2020. The analysis checked for import and export limits using marginal congestion analysis from a multi-area production cost program. The MISO footprint was modeled down to a 2,000 MW zone resolution. The analysis showed no potential zones (large or small) failing to meet a load deliverability check for the years of 2015 and 2020. In short MISO’s own analysis going out for almost a decade shows no deliverability problems between zones.

Conducting this calculation for forward years on an annual basis will provide the necessary locational signal and this information can be incorporated into state and MISO planning processes for transmission, generation, or demand side management programs to be completed by the forward planning year. Furthermore, the FERC Compliance Order did not require MISO to consider a capacity auction in addressing locational resource adequacy.<sup>5</sup> Consequently, the adoption of a mandatory forward capacity auction is neither a compliance issue nor a requirement of the June 8, 2010, Order.

Therefore the incorporation of a mandatory forward capacity auction into the resource adequacy construct is unnecessary and should be rejected.

**B. The price signals produced by capacity auctions are not sufficient to incent the proper amount of capacity in the right location.**

MISO’s proposal relies on the establishment of LRZs to reflect the need for an adequate amount of planning resources to be located in the right physical location within the region to meet demand and LOLE requirements. MISO indicates that it will use its LOLE analysis in designating LRZs. Eastern capacity markets also have zones. In 2007 PJM’s Reliability Pricing Model (RPM) replaced the voluntary Capacity Credit Market (CCM). Recognizing the locational value of capacity, PJM has identified each transmission owner zone and aggregates of those zones as Locational Deliverability Areas (LDAs). A subset of the total number of

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<sup>5</sup> Order on Compliance Filing (Issued June 8, 2010), Docket No. ER08-394-024, p. 8.

constrained or potentially constrained LDAs is identified with separately defined variable resource requirement curves. However, there is a persistent lack of capacity in particular zones. Eastern style capacity auctions have failed to incentivize generation where it is needed most, despite high prices in these regions.

The recent FERC technical conference on PJM Minimum Offer Price Rules (MOPR) confirmed this point with strong statements from New Jersey and Maryland.<sup>6</sup> These eastern style auctions fundamentally separate generation capacity from its physical attributes such as: the generator's fuel source, fuel transportation, combustion process, emissions, cooling requirements, load following capability, electrical characteristics, and transmission system characteristics. These auctions do not incorporate load forecast uncertainty due to weather and other drivers. The singular element of a capacity only auction compromises the transmission network's electrical dynamic and steady-state stability characteristics, as well as the NERC reliability operating and planning standards. Capacity is not a homogeneous, single-attribute commodity. The simple capacity auction is further complicated by the fact that capacity is an asset that has a 3 to 8 year design-build time and a 40 year-plus life time of productive energy production. Resource adequacy is a long term planning process that cannot be split into separate, unrelated, commodities on the electrical network. A short term capacity auction will not achieve efficient resource adequacy in the long run.

**C. Attempts to preserve the “market integrity” of capacity auctions can unreasonably impinge on states’ jurisdiction over resource adequacy.**

As part of resource adequacy planning, state commissions make decisions on resources that will affect retail rates of the utilities under their jurisdiction for decades into the future, and do not rely on or even need additional locational capacity price signals beyond the current residual auction. State and regional planners plan for a significantly longer term using criteria that are significantly broader than price alone.

MISO states that its RAR proposal preserves the authority of and is not intended to undermine or diminish the authority of State Commissions and Relevant Electric Retail

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<sup>6</sup> Comments by Douglas R. M. Nazarian, Chairman, Maryland Public Service Commission and Lee A. Solomon, President, New Jersey Board of Public Utilities, FERC Technical Conference on Self Supply and PJM's Minimum Offer Price rule, July 28, 2011.

Regulatory Authorities<sup>7</sup> and that “acknowledgement of the jurisdiction of state regulatory commissions to establish planning reserve margins for their state”<sup>8</sup> is a key element. However, MISO’s statement that its proposal will be “more efficient” and “more effective” suggests knowledge and judgment of states’ resource planning that is undeserved and incorrect. In the MISO footprint, the decision of what is efficient or effective in the long term lies within state jurisdiction. Relying on short-run price signals from a one year forward auction will not achieve long-term efficiency, although it may be an additional tool that states can use within their planning processes and approval of resources.

Retail electric utilities own or control (via contract) the resources and planning reserves for the load that they serve. The remaining load is served by LSEs that also own or contract for load via the bilateral wholesale market in and near MISO. MISO’s stated need for transparent prices for the bilateral market is therefore only applicable to incremental capacity that is currently purchased and sold via MISO’s voluntary capacity market for short run compliance purposes and not for long-run planning purposes.

LSEs that are retail electric utilities have a legal obligation to ensure reliable, safe and reasonably priced electric service. State statutes establish these requirements, consumer advocates and other interested parties monitor utility compliance, and state utility commissions review or approve utility resource plans and investigate utility performance to assure reliability and resource adequacy, as well as just and reasonable rates. Section 201 of the Federal Power Act denies the Commission authority over retail sales of electric energy, as well as distribution and generation facilities. When utilities joined MISO, many states in the OMS required a regulatory approval process for utilities under their jurisdiction to participate in MISO Day 1 (transmission operation), MISO Day 2 (energy operations), and more recently Ancillary Service Markets (ASM). These approval processes were necessary under state commissions’ authority to ensure that retail customers continue to receive reliable, safe and reasonably priced electric service. In some states, similar approval processes were also required to transfer functional operation of transmission assets, certain control area operations and balancing authority functions.

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<sup>7</sup> MISO transmittal letter at page 9.

<sup>8</sup> Todd Hillman affidavit at P8.

As noted by the courts and the Commission, MISO and other ISOs are organizations with voluntary membership, and therefore, utilities clearly have the ability to leave, or state commissions can issue orders to show cause why membership in MISO by utilities under their jurisdiction continues to be in the interest of retail ratepayers. To date, MISO has not provided any clear benefits for its Resource Adequacy Proposal. In the past, under MISO's efforts including the MISO Day 1 and 2 in the Energy Markets and the Ancillary Service Markets, states and the Commission have been able to work out concerns and issues regarding the costs and benefits of the states' utilities participating in these markets. Being able to work out this concern is a significant matter since there will be clear costs associated with MISO's Filing but MISO has been unable to show any clear benefits.

**D. MISO has not clearly explained the benefits to stakeholders of this RAR proposal.**

MISO has not demonstrated tangible benefits for its RAR proposal (excluding the zonal deliverability issue that is also being addressed in this filing). Demonstration of tangible benefits with a high degree of certainty is a significant matter since there will be clear costs of the MISO's RAR proposal. Unfortunately, a clear cost-benefit analysis needed to evaluate a major change in operations has not been forthcoming from MISO. While the protections MISO has added to the RAR proposal may have reduced some state concerns as discussed below, there is no guarantee that these protections will provide tangible benefits, will be approved by the Commission or will remain intact over time. In addition there are remaining issues that will need to be resolved. As a result, the MISO Filing presents significant risks of present and future impingement on state jurisdictional authority, particularly in light of recent FERC orders regarding the capacity auctions of PJM and of the New England ISO, without any showing of benefits to stakeholders or to the ratepayers who will bear the ultimate burden of paying for MISO's capacity auction proposal and its resulting prices.

As far as possible benefits, MISO has given some indication, but has failed to give sufficient information. For example:

- In a January 6, 2011, SAWG Meeting, MISO included a discussion about how its RAR proposal addressed under-forecasting issues. However, there is no mention of this benefit in the MISO Filing. OMS seeks clarification on whether elimination of Free Rider continues to be a possible benefit.

- In a June 24, 2011, SAWG Meeting, MISO provided a presentation entitled “Overview of Costs and Benefits” that on page 4 cited the following benefits: augments state planning process, retail choice tracking and settlements, incorporate energy efficiency resources and enhanced market transparency and efficiency. Unfortunately, specifics on how these items are benefits and how they are provided by MISO’s RAR proposal are not provided or supported in the MISO Filing. Benefits are not quantified and remain unsupported.
- On page 3 of the MISO Filing, MISO indicates the RAR proposal is the next step in preserving an appropriate level of RAR by establishing appropriate locational capacity market mechanisms to encourage a proper mixture of Planning Resources (e.g. Capacity Resources, Demand Resources, Behind the Meter Generation, Energy Efficiency Resources) to be available in the right locations in the MISO Region during the right times, in the most economic and efficient manner. MISO is suggesting this, too, is a benefit. However, MISO has not explained and it is not clear how MISO’s RAR proposal “encourages a proper mixture of Planning Resources”.

Based on OMS’s overall review of the MISO Filing, there do not appear to be any clear benefits of this proposal beyond the initial FERC compliance requirements. An operational change of this large magnitude will impose unnecessary costs on market participants, not to mention capital and administrative costs to MISO. But for the protections MISO acquiesced to late in the stakeholder process (discussed below) OMS states would have very significant concerns due to negative impact on state jurisdiction, lack of overall benefits, and uncertainty about the permanence of the aforementioned protections.

**E. There is no evidence that the proposed capacity auctions will provide adequate incentive for the development of new, cleaner generation that meets consumer needs.**

Mandatory capacity auctions are not like other markets. Capacity is not a homogeneous one-dimensional product that is easily understood or well-defined by market participants. Some buyers and sellers are not willing participants. The demand curve is administratively determined and does not necessarily represent willingness to pay. Supply is manipulated by market rules such as Minimum Offer Price Rules (“MOPRs”). In a footprint like MISO’s with predominantly vertically integrated and state-regulated utilities, a capacity auction is likely to lead to results not consistent with desirable outcomes. Inclusion of a MOPR provision in the tariff for such an RTO, if not subjected to very specific limitations, implies state commission prudence decisions

regarding resource investments by their jurisdictional utilities cannot be relied on to be in the public interest. There is no basis for that premise. And, as discussed in Section B above, price signals are inadequate and therefore capacity auctions are unable to achieve long-run efficiency. Capacity auctions and their resulting price signals will not, in and of themselves, achieve States' policy goals. The OMS is not advocating for a more forward capacity requirement. Prices in a residual capacity auction are not primary determinative factors.<sup>9</sup> In our region, states have assured resource adequacy for a long time, and will continue to do so in the future.

Eastern style capacity auctions have failed to incentivize generation where it is needed most, despite high prices in these regions. Billion dollar investments in generating resources that can serve load in the MISO footprint for decades are better left to state resource planning processes. Very little new generation has been built since these auctions have been implemented. Instead they have perpetuated the life of inefficient, less clean older generation.<sup>10</sup>

Capacity auctions have resulted in a substantial transfer of wealth from electricity consumers to generators. Prior to the introduction of the PJM capacity auction, capacity costs made up less than one percent of the wholesale price of electricity, including a low of 0.04 percent in 2005. In 2010 capacity costs accounted for 18.1 percent of the total wholesale price.<sup>11</sup>

There has been constant litigation and mitigation since the implementation of capacity auctions, both signs of a flawed and controversial mechanism.

Achieving the lowest cost for long term resource adequacy is a concept that is difficult to quantify or judge. However, in our region, each utility and state has been ensuring resource adequacy on their own for decades, well before the existence of a capacity market price signal. Typically, a utility would bring forth a proposal to its commission for approval, denial, or modification. The proposal could include the results of a request for proposal (RFP) for resources, as well as the results of integrated resource planning performed by the utility. When the state commission made its decision, it based it on a variety of factors, most of which are simply not captured by a capacity auction. These characteristics include, but are not limited to: economic development considerations (an incentive to build within a state or utility service

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<sup>9</sup> This statement is not meant to imply that Commissions support a longer term auction.

<sup>10</sup> Wittenstien and Hausman, Synapse Energy Economic, Inc. "Incenting the Old, Preventing the New."

<sup>11</sup> PJM 2010 State of the Market Report, Volume 2 ("Detailed Analysis"), Table 1-9, page 22.

territory), the use of a local fuel such as coal or natural gas, the need for the resource, the type of resource needed (base load, peaking, or intermediate), state and/or federal tax incentives and other policies favoring a certain technology type, the potential resource site's cost and location, its proximity to water and other transportation systems, its proximity to the electric transmission system, and its proximity to load. All of these factors, along with the simple project cost, are considerations for the state commission as it makes a decision. Lowest cost is not an exclusive goal.

There is no evidence that a short-term capacity market will achieve the desired long-term mix of resources that each state prefers as it oversees long-term resource adequacy. Whether the mix of resources available to any state over the long-term will be "efficient," or the lowest cost, lies in the judgment of the state. Moreover, what constitutes "regional resources" is uncertain, as the definition of the "region" can change substantially in a short period of time as members exit and join particular RTOs.

The recent EPA Cross State Air Pollution Rule is another example of how electric power generation must be carefully planned, for fuel and siting at a multiple RTO level in the Eastern Interconnection. Local resource zone auctions, such as proposed by MISO, will not provide the right "signal." In fact, emission issues such as seasonal ozone limits suggest that electric generation should be located away from dense load centers and instead focus on transportation vehicles and fuels. The solution is a much more complex set of energy planning issues overseen by state regulatory authorities. Short-term or even longer-term multi-year auction signals can be counterproductive to long term electrical resource adequacy.

In contrast to how the stock of capacity resources are developed over time in the Midwest region, optimizing the use of those resources on a daily basis is a legitimate and very beneficial activity of the RTO. While the OMS strongly believes in the benefits that MISO brings in the optimization of the day ahead and real time energy and ancillary services markets, procuring lumpy capacity is an entirely different enterprise. Capacity construction and procurement tends to be lumpy (i.e., constructed or procured in large amounts at a time) because of the economies of scale and cost savings of building fewer larger generation units. On the capacity side, each project has unique attributes. Capacity does not lend itself to a commoditization through capacity auctions since each resource type meets different needs and has different operating characteristics. In our region each state has retained its jurisdiction to

decide upon the resource mix and the relevant physical attributes of the capacity that affect the public interest (location, environmental, and long-term needs) that it believes meets the short and long-run needs of its retail customers in the best way. The OMS states will continue to rely on our long term planning processes as they always have, and will incorporate new information such as the results of the analysis of import/export constraints as part of their decision-making for new resources.

Therefore the incorporation of a mandatory forward capacity auction into the resource adequacy construct is unnecessary and should be rejected.

**V. The Commission may accept certain reasonable elements of the MISO Filing and if it retains the capacity auction, should retain all related key design elements.**

**A. An alternative approach to addressing aggregate deliverability is available.**

The MISO Filing states that no party presented comprehensive tariff language reflecting an alternative proposal; however, the MISO Filing fails to mention that alternative proposals were presented (just not in “comprehensive tariff language”, something MISO did not achieve until its actual filing). In addition, MISO did not evaluate any alternatives, including simply doing what FERC had ordered it to do.

It is important to note that the MISO Filing does not state that its current Module E construct is unjust and unreasonable. As a result, OMS urges the Commission to reexamine the current Module E resource adequacy provisions. OMS see no need for a mandatory forward auction. The OMS is in favor of adding locational elements to the resource adequacy process to check for capacity deliverability problems and then utilize this information in the state and MISO planning processes. The OMS can accept the use of a residual auction as an additional tool for LSEs to meet their MISO resource adequacy requirement.

In order to address deliverability and the locational aspect of resource adequacy required by the Commission, MISO anticipates developing seven LRZs. Transfer capability across zones will be analyzed and import and export limits will be established for each zone prior to the proposed mandatory auction. This process must be completed each year prior to the auction. The proposed auction clearing process will observe these import and export limitations in allocating capacity resources offered in the auction across the zones.

Since these zonal limitations will be analyzed each year prior to the auction and MISO has indicated that there are no binding import and export constraints across the LRZs at this time,<sup>12</sup> the OMS proposes that instead of forcing LSEs into a mandatory locational auction, the results of this zonal deliverability analysis be incorporated into and addressed through the planning process. A one year forward residual capacity auction can be used by LSEs to obtain any residual capacity needed to meet their planning reserve margin requirement not provided through self-supply or bilateral contracts.

MISO has a good set of Committees, Subcommittees, Work Groups, Task Forces, and meeting schedules to complete an alternative resource adequacy process for 2013. These regular RTO processes will guide the development of rules for transmission, generation, and demand side programs while balancing the financial and reliability attributes for the electric customers of each state separately and collectively.

The OMS looks forward to being a significant stakeholder in this planning process at MISO, especially given that FERC Order 1000 and new EPA rules puts long range, interregional transmission planning at the forefront of ISO concerns. The completion of the alternative approach proposed by the OMS can be accomplished within the timeframes outlined by MISO and through the MISO stakeholder process, of which the OMS, its member states and staff, are an integral part.

**B. If the Commission declines to consider the alternative approach, then OMS urges the Commission to retain intact specific key design elements of the capacity auction.**

Late in the RAR stakeholder process MISO agreed to five critical protections in its RAR proposal: i.e., a one-year forward Product, the “Opt Out” Provision, Self Scheduling, Vertical Demand Curve and MOPR exemptions and special conditions. Weakening or removing these protections would upset the fragile balance of the MISO Filing and would be a very serious error. Although OMS does not believe the MISO RAR proposal is just and reasonable because it negatively impacts state rights and it lacks clear net benefits, these added protections do afford a greater measure of balance to the proposal. MISO acknowledges this somewhat fragile structure when it states on the top of page 23 of its filing that, “MISO encourages the proposal to be

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<sup>12</sup> “Application of Transfer Limits in New Resource Adequacy Construct,” presentation by MISO at the SAWG, June 9, 2011.

viewed as a whole and not a series of elements that can be interchanged without upsetting the balance of interests.” *The OMS believes modifications by the Commission to the necessary protections of a one-year forward product, the self-scheduling and opt out provisions, as well as the vertical demand curve and MOPR restrictions, would upset this fragile balance and would be a very serious error.* Indeed, these protections must be preserved now and into the future to avoid harm to retail customers who may have to pay unreasonably high costs for capacity.

Unfortunately, MISO’s commitment to preserving these protections into the future is called into question when, on page 21 of its filing, MISO states that, “Although MISO has initially committed to a single year auction, MISO plans to continue discussions with stakeholders regarding possibly extending the forward term . . .” OMS is concerned that a planning resource requirement beyond one year would add costs and uncertainty with no corresponding benefits, as a result of future changes in forecasts and less accuracy in forecasting beyond one year that would also lead to higher costs for utilities and their ratepayers. If the MISO Filing is accepted, it should remain intact. OMS believes the Opt Out procedures are essential to ensuring that utilities and their ratepayers will not have to pay higher costs for capacity when a utility already has sufficient generation and demand resources to meet its load. According to MISO on page 13 of its filing, “Load Serving Entities (LSEs) will be able to submit a Fixed Resource Adequacy Plan to MISO to demonstrate that the LSE has sufficient Zonal Resource Credits to meet all or a portion of its Planning Reserve Margin Requirement for Local Resource Zone.” OMS believes this is a critical provision in MISO’s Resource Adequacy proposal.

OMS also considers Self-Scheduling an important protection to ensure that utilities and their ratepayers do not pay unnecessary higher costs. MISO discussed on page 14 of its filing that:

Under the Self Scheduling procedures, which are different than the Opt Out Procedures, an LSE will be able to avoid the financial consequences of the Planning Resource Auction to the extent that its Zonal Resource Credits are equal to or greater than its Planning Reserve Margin Requirements. If an LSE elects to offer its Zonal Resource Credits into the Planning Resource Auction price at zero, then the Zonal Resource Credits will clear and the LSE’s Planning Resources will be paid the applicable Auction Clearing Price. Because the LSE’s obligations under the Planning Resource Auction will be at least equal to payments that it receives for its Zonal Resources Credits, MISO will be able to financially “net” the two amounts in the MISO’s settlement process, so that the

LSE will be exempt for the financial consequences of the Planning Resource Auction – see Section 69A.7.8.

Though similar to Opt Out, Self-Scheduling involves different mechanisms and is a critical design element that must be retained.

OMS considers the Vertical Demand Curve as an important protection to ensure utilities and their ratepayers do not pay unnecessary higher costs. In the OMS Hot Topic Comments dated February 10, 2011 to the MISO Board, OMS provided the following discussion for why the OMS supports the vertical demand curve:

The current auction construct reflects a vertical demand curve located at the planning resource requirement. The OMS supports a vertical demand curve rather than a sloped demand curve. With a vertical demand curve, the resource requirement equals the amount necessary to meet reliability. However, with a downward sloping demand curve, the procured level of capacity could be less or more than the amount necessary for a specified level of reliability. . . . [T]he states in OMS where LSEs own generation (LSEGOs) are more concerned about procuring a specified level of capacity for a specified level of reliability than avoiding the consequences of price volatility associated with a vertical demand curve. This is because the prices, for the most part, are irrelevant, after the fact, and have little bearing on the states planning processes that typically look farther forward than the Midwest ISO construct. The overwhelming majority of OMS states regulate all segments of vertically integrated utilities, and therefore, load serving entities (LSEs) in coordination with their regulatory authority have greater control over the consequence of changes in price than they do over the consequences of changes in quantity.

The state regulatory authority can reallocate all funds regardless of auction price for the planned quantity, but payments to resources beyond that quantity, assuming that those resources are not under the state's regulatory control, represent financial outflows that cannot be reallocated by a state authority. An auction with a vertical demand curve clears the exact quantity of resources that a state commission understands it must plan for based on the Midwest ISO's planning reserve margin. An auction with a sloped demand curve has the potential to undermine a state's right to determine resource adequacy because it could obligate LSEs to purchase capacity beyond the planning reserve margin and make capacity payments to resources not under the states' regulatory control. An auction with a vertical demand clears the exact quantity that a state commission with LSEGOs must plan for based on the Midwest ISO's established planning reserve margin.

A vertical demand curve ensures that the equilibrium amount of capacity determined in the auction equals the planning reserve margin that meets the reliability standard. This is the target that the LSEGO states plan for, whereas a variable requirement from a sloped

demand curve creates an unpredictable quantity that could result in an unnecessary increase in cost to ratepayers.

Under the proposed tariff, the Independent Market Monitor (IMM) will have authority to request the Commission to direct MISO to impose MOPR for new capacity resources that are not otherwise deemed exempt by the tariff but only after a required Commission filing where the IMM bears the burden of proof. As noted above, utilization of a MOPR in the MISO footprint, which is predominantly vertically integrated and state-regulated, if permitted at all, must be done in a very measured fashion, otherwise it is likely to lead to capacity not clearing a capacity market or raising the overall clearing price, neither of which are good for ratepayers. Inclusion of a MOPR provision in the MISO tariff, if not subjected to very specific limitations, implies state commission prudence decisions regarding resource investments by their jurisdictional utilities cannot be relied on to be in the public interest. There is no basis for that premise.

The OMS is very concerned about the application of a MOPR for the utilities in their jurisdictions. Given the states' abilities to provide capacity resources, and their demonstrated track record in doing so, the OMS can see no public interest rationale supporting the use of a MOPR in the MISO construct. MISO's proposed exemptions and special conditions for use of a MOPR under the RAR filing appear to be an effort by MISO to craft a MOPR that recognizes MISO's singular industry structure and will minimize the likelihood of unintended consequences given those industry conditions that set it apart from other RTOs.

## **VI. Conclusion**

MISO's filing relies on an assemblage of countervailing components to strike a balance, albeit very delicate, apparently intended to address repeatedly expressed misgivings by stakeholders about the need for such a centralized capacity market. Stakeholder reservations stem from the absence of demonstrable, prospective benefits that warrant a major change in the provisioning of planning reserves at this time. As indicated in the preceding comments, the OMS shares that concern about MISO's proposal, as well as the negative impact on state authority. Consequently, the MISO Filing, as presented, is not just and reasonable nor in the public interest, and it should not be accepted by the Commission.

The Commission has the alternative of accepting those elements of the MISO Filing dealing with zonal deliverability and locational pricing that would achieve compliance with the

Commission's two orders. However, if the Commission does not reject MISO Filing in its entirety and concludes the public interest would be served by changes beyond those dealing with zonal deliverability and locational pricing, then the OMS strongly urges the Commission to keep intact the key provisions that afford the proposal a measure of balance; i.e., limiting the planning horizon to one year, the self-scheduling and opt out provisions, the vertical demand curve and the MOPR exemptions. Without assurance of these provisions on a permanent, going-forward basis, OMS must be on record as opposing the proposal. In addition, the OMS requests that the tariff be modified to address the three concerns presented in the attached Appendix.

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 those comments:

Indiana Utility Regulatory Commission  
Kentucky Public Service Commission  
Michigan Public Service Commission  
Minnesota Public Utilities Commission  
Missouri Public Service Commission  
Montana Public Service Commission  
North Dakota Public Service Commission  
South Dakota Public Utilities Commission  
Wisconsin Public Service Commission

The Public Utilities Commission of Ohio did not participate in this pleading. The Illinois Commerce Commission and the Manitoba Public Utilities Board take no position on this pleading. The Iowa Utilities Board opposes the pleading except that it agrees that that the Commission needs to retain the "five critical protections" described at pages 13-16 of this filing.

The Indiana Office of Utility Consumer Counselor, the Iowa Office of Consumer Advocate, the Minnesota Department of Commerce, and the Missouri Office of the Public Counsel, as associate members of the OMS, participated in these comments and generally support these comments.

Respectfully Submitted,

*William H. Smith, Jr.*

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Dated: September 15, 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 Des Moines, Iowa, this 15th day of September, 2011.

William H. Smith, Jr

## APPENDIX

### A. State Regulator Access to Resource Adequacy Information

In several locations of the proposed tariff, MISO states that it will provide relevant resource adequacy data to state regulators only upon request pursuant to Section 38.9 of the tariff. For example, Section 69A states,

The Transmission Provider shall provide states, upon request, **with relevant resource adequacy information** as available, subject to the data confidentiality provisions in Section 38.9 of the Tariff.

Similarly, Section 69A.6.1 states,

The Transmission Provider will assist states in meeting any state resource adequacy standards **by providing relevant MECT information** as available and as may be requested by states, subject to the data confidentiality provisions in Section 38.9 of this Tariff.

Finally, Section 69A.6.4 states,

The Transmission Provider shall, upon request, submit **RAR information** to the applicable RE, Electric Reliability Organization, state (in the case of an LSE subject to regulation or using delivery services rates, terms or conditions established by such state regulatory authority) or to the Commission, subject to the provisions of Section 38.9 of this Tariff.

These three sections of MISO's proposed resource adequacy tariff do not identify the information at issue as confidential, but, nevertheless, require that states request such information under the confidentiality provisions of Section 38.9.

This is unacceptable. MISO itself recognizes that States have authority over resource adequacy and confirms that fact in its resource adequacy tariff, which states,

These requirements recognize and are complimentary [sic] to the reliability mechanisms of the states and the Regional Entities (RE) within the Transmission Provider Region. Nothing in this Module E-1 affects existing state jurisdiction over the construction of additional capacity or **the authority of states to set and enforce compliance with standards for adequacy**. The Resource Adequacy Requirements (RAR) in this Module E-1 are not intended to and shall not in any way affect state actions over entities under the states' jurisdiction.<sup>13</sup>

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<sup>13</sup> Section 68A, emphasis added.

When resource adequacy information is not confidential, the Commission should require MISO to provide that information to states, either as a matter of course, or, at least, upon request. Sections Section 69A, 69A.6.1, 69A.6.4, and any other provision of MISO's proposed resource adequacy tariff dealing with non-confidential data should be revised accordingly.

## **B. Under-Forecasting and Over-Forecasting**

It appears that MISO proposes to recover the costs incurred to commit cleared capacity in the auction from all LSEs that participate in the auction in proportion to their load forecast for coincident peak demand compared to the sum of all LSE's load forecast for coincident peak demand.<sup>14</sup> Specifically, MISO's proposed tariff states,

These procedures will allow the Transmission Provider to initially allocate an appropriate portion of the total forecasted Coincident Peak Demand to each LSE, and to re-assign ZRC-related charges caused by customer switching between suppliers to the appropriate LSE.<sup>15</sup>

The apportionment is not based on each LSE's actual peak demand during the applicable planning year or some proxy for that figure.

If MISO is proposing to allocate the total cost of the commitments it incurs in the PRA to LSEs based on their demand forecasts, then this design provides a powerful incentive for LSEs to manipulate their load forecasts. MISO's proposed Module E tariff does not attempt to address these perverse incentives in any meaningful way.

Section 69.6.6 of the current Module E tariff contains a section where MISO monitors for LSE under-forecasting and reports LSE under-forecasts to the relevant state commissions. This kind of provision modified to also monitor for over-forecasting) is needed in the proposed Module E because LSEs will still have incentives to under- or over-forecast their demand (depending on their circumstances). It is critical to monitor the accuracy of forecasting, as significant under-forecasting can threaten the achievement of regional resource adequacy and significant over-forecasting will unnecessarily raise total market costs of resource adequacy. Since the states are responsible for resource adequacy, the proper remedy is for MISO to report both under- and over-forecasting to the appropriate state authority - as it is done under the current version of Module E. Accordingly, the Commission should direct the Midwest ISO to incorporate such a feature in its proposed tariff. The OMS recommends the following language:

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<sup>14</sup> July 20 Filing, at Tab A, section 69A.1.b

<sup>15</sup> July 20 Filing, at Tab A, section 69A.1.b

## Review of Under-Forecasting and Over-Forecasting

On an annual basis, following the conclusion of each Planning Year, the Transmission Provider shall review data submitted by an LSE for the prior Planning year to evaluate the accuracy of the forecasted demand submitted by each LSE for such Planning Year. If the Transmission Provider determines that an LSE under or over-forecasted its demand, then the Transmission Provider will notify the LSE of the under- or over-forecast and will request a written response detailing the reasons for the under- or over-forecast. If an under- or over-forecast is statistically significant (which shall mean rejection of the null hypothesis that the actual Load falls within the forecasted Demand plus or minus one (1) standard deviation), with respect to the LSE's forecasted Demand, then the Transmission Provider will address the LSE's under- or over-forecast by informing state authorities charged with establishing resource adequacy standards with respect to a Load Serving Entity subject to its jurisdiction.

### C. An Additional Exemption is Needed for the Minimum Offer Price Rule (“MOPR”).

Section 65.7.1.a lists seven conditions under which ZRC offers will be exempt from the MOPR. The OMS supports those seven exemptions. However, an additional exemption is needed to exempt ZRC Offers from resources located in unconstrained zones. Inclusion of such an exemption would be consistent with Commission precedent. For example, PJM's MOPR tariff applies only to Planned Generation Capacity Resources in local deliverability areas (“LDA”) **“for which a separate VRR Curve [variable resource requirement] has been established.”**<sup>16</sup>

This exemption was approved by the Commission in an Order issued on December 22, 2006<sup>17</sup> and has remained basically unchanged under the Commission's Order issued on April 12, 2011, in which the Commission accepted PJM's proposed revisions to other aspects of the MOPR.<sup>18</sup> In the PJM capacity construct, establishment of a VRR curve effectively defines a capacity constrained zone or a zone that is potentially capacity constrained.

In MISO's proposed capacity construct, a capacity constrained zone is generally defined by the way its planning reserve margin requirement (“PRMR”) is determined. Section 68A.7.a of MISO's proposed tariff sets forth the formula for establishing each LRZ's PRMR and the formula employs a multiplier which is the higher of two values. When the higher of the two values for the multiplier is  $1 + \text{PRM}_{\text{Unforced Capacity}}$  (rather than  $\text{LCR}_{\text{LRZ}} \div \text{forecasted Coincident Peak Demand}_{\text{LRZ}}$ ), then the zone is effectively defined as unconstrained for capacity.

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<sup>16</sup> PJM Open Access Transmission Tariff, Attachment DD, Section 5.14(h)(2).

<sup>17</sup> *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331, (2007), at P 104.

<sup>18</sup> *PJM Interconnection, L.L.C. et al.*, 135 FERC ¶ 61,022, (2011), at P 3.

Therefore, in order to make MISO's MOPR exemption parallel the MOPR exemption in the PJM tariff, the OMS recommends that the following exemption language be added to Section 65.7.1.a of MISO's tariff:

(viii) ZRC Offers from resources located in an LRZ that is unconstrained for capacity (i.e., an LRZ for which the PRMR has been determined pursuant to Section 68A.7.a using the  $\text{Multiplier}_{\text{LRZ}}$  equal to  $1 + \text{PRM}_{\text{Unforced Capacity}}$ ·