

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

Midwest Independent Transmission System Operator, Inc.))	Docket No. ER09-1049-000
Midwest Independent Transmission System Operator, Inc.))	Docket No. ER11-4337-000

**Request for Clarification of the
Organization of MISO States**

Pursuant to the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure, the Organization of MISO States (“OMS”) submits this Request for Clarification of two orders issued by the Commission on December 15, 2011. The orders are related and contain similar language as to a single point that mischaracterizes the role and integrity of state commissions. The OMS respectfully requests this Commission to clarify its intent.

On December 15, 2011, the Commission acted on two compliance filings relating to the level of compensation for demand response paid by the Midwest Independent Transmission System Operator (“MISO”) in Dockets No. ER09-1049¹ and ER11-4337². In the ER09-1049 order, the Commission rejected the subtraction of the marginal foregone retail rate (“MFRR”), as set by a state commission or other retail regulatory authority, from the marginal locational price in establishing the level of compensation to be paid to a demand response provider. In the ER11—4337, the Commission rejected use of the MFRR in MISO’s proposal for allocation of the costs of compensation to demand response providers.

¹ Midwest Independent Transmission System Operator, Inc., 137 FERC ¶ 61,214 (2011)

² Midwest Independent Transmission System Operator, Inc., 137 FERC ¶ 61,212 (2011)

In the ER09-1049 order, the Commission said, at ¶176:

We will reject MISO’s proposed compensation for ARCs. As the Commission has emphasized, it may accept formula rates that are fixed and predictable in nature. Here, MISO’s proposal for ARC compensation fails to meet this requirement as the MFRR component of the formula for that compensation lacks the specificity required for ratemaking purposes and is not tied to any objectively identifiable criteria. Rather, as noted by MISO, the proposal permits relevant electric retail regulatory authorities to set (or revise if they do not set) the MFRR at/to any value they deem appropriate depending on the policy objectives of the relevant electric retail regulatory authority. Allowing such unfettered discretion in setting a critical rate component of the wholesale formula for ARC compensation is contrary to the Commission’s obligation to set FERC-jurisdictional rates. Accordingly, we direct MISO to submit a just and reasonable ARC compensation proposal that addresses these issues within 90 days from the date of this order. [Emphasis added; footnotes omitted].

Similarly, in the ER11-4337 order, the Commission said, at ¶99:

MISO proposes a bifurcated cost allocation methodology that allocates the costs of compensating cost-effective demand response resources in the real-time energy market through a direct cost allocation to load-serving entities and a zonal energy surcharge to energy buyers, with any remaining costs allocated to all market participants based on load ratio share. We will reject MISO’s cost allocation proposal. MISO’s proposal to rely on the MFRR to directly allocate costs to load-serving entities as part of the bifurcated rate is not sufficiently fixed and predictable, as the MFRR component of the formula lacks the specificity required for ratemaking purposes and is not tied to any objectively identifiable criteria. Rather, the proposal requires that the relevant electric retail regulatory authorities specify the MFRR during the registration of demand response resources, as MISO “prefers not to get involved in such determinations because retail ratemaking is the purview of the [relevant electric retail regulatory authorities] . . . and defers to it.” Allowing relevant electric retail authorities such unfettered discretion to set the MFRR is contrary to the Commission’s obligation to set jurisdictional rates. Accordingly, we will require MISO to submit, in the compliance filing directed below: 1) revisions to remove any proposed Tariff language associated with

the cost allocation proposal; and 2) a just and reasonable cost allocation proposal that addresses these issues. [footnotes omitted].

OMS urges the Commission to clarify the references to retail ratemaking in these statements to remove the implication that state commissions and other retail ratemaking authorities have unfettered discretion to set retail rates, that retail rates are not tied to objectively identifiable criteria, and are not sufficiently fixed and predictable. As the Commission well knows, state commissions operate under the same constitutional and administrative law frameworks that bind this Commission's ratemaking decisions. It is ironic for this Commission to dismiss state commission rate actions as subject to "unfettered discretion" when they are closely channeled by statutory requirements and subject to judicial scrutiny.

State regulatory statutes set "objectively identifiable criteria" to the same degree as the Power Act under which this Commission sets wholesale electric rates. Where necessary, these criteria are amplified by written decisions of the commissions and by judicial decisions reviewing them. This framework provides precisely the "objectively identifiable criteria" underlying any set of regulated retail rates, often using the very "just and reasonable" language that underlies this Commission's responsibility with respect to wholesale rates.

State retail tariffs are every bit as "fixed and predictable" as wholesale electric tariffs regulated by this Commission, which are routinely accepted by state commissions as passthroughs in retail rates. Indeed, to the extent that retail rates are not usually formula rates, retail rates are far more readily determined by reference to tariffs and other fixed documentation than are wholesale rates.

The OMS understands that the Commission has denied rehearing of OMS's substantive arguments. We ask for no other outcome here, though we see the Commission's decision as a setback for the growth of demand response in this region. We ask only that the Commission

revise its language to remove the phrases that disparage the integrity of the retail ratemaking process and state commissions that administer that process.

For the reasons discussed above, OMS respectfully requests that the Commission clarify the subject Orders.

Respectfully submitted,

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Dated January 12, 2012

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 12th day of January, 2012.

William H. Smith, Jr.