ORGANIZATION OF MISO STATES, INC.
Board of Directors Meeting
Conference Call
June 8, 2006

Approved July 13, 2006

Steve Gaw, President of the Organization of MISO States, Inc. (OMS), called the June 8, 2006 Meeting of the OMS Board of Directors to order via conference call at approximately 2:00 p.m. (CDT). The following board members or their proxies participated in the meeting:

Kevin Wright, Illinois
David Hadley, Indiana
John Norris, Iowa
Jorge Valladares, proxy for Mark David Goss, Kentucky
Laura Chappelle, Michigan
Ken Nickolai, Minnesota
Steve Gaw, Missouri
Greg Jergeson, Montana
Annette Bendish, proxy for Susan Wefald, North Dakota
Kim Wissman, proxy for Judy Jones, Ohio
Andy Tubbs, proxy for Kim Pizzingrilli, Pennsylvania
Gary Hanson, South Dakota
David Sapper, proxy for Dan Ebert, Wisconsin

Absent
Manitoba, Nebraska

State Agency members participating
Randy Rismiller, Bill VanderLaan - Illinois
Bob Pauley, - Indiana
Candace Beery, Montana
Bill Bokram, Angie Butcher, Ron Radke - Michigan
Nancy Campbell - Minnesota Dept. of Commerce
Jan Karlak - Ohio
Bob Young - Pennsylvania
Greg Rislov - South Dakota
Jack Dwyer - Iowa Consumer Advocate

Others
Graham Edwards - MISO
Dennis Buckley - OPSI

OMS Staff participating - Bill Smith, Julie Mitchell

The directors and proxies listed above established the necessary quorum for the meeting of at least eight directors being present.

Recognition of Graham Edwards as MISO CEO and Dennis Buckley as OPSI Executive Director

- President Gaw congratulated Graham Edwards on his appointment to the position of MISO President and CEO. Mr. Edwards thanked President Gaw for his support and apologized to the OMS directors for the Advisory Committee motions that were attached to the May AC agenda. He promised the OMS board that in the future the AC agenda motions would be available for consideration at OMS meetings.

- President Gaw introduced Dennis Buckley as the new OPSI Executive Director, with an office in Harrisburg, Pennsylvania.

Treasurer's Report - May 2006

Andy Tubbs, proxy for OMS Treasurer Kim Pizzingrilli, presented the May 2006 Treasurer's report.

Cash On Hand

The beginning balance as of May 1 for the Wells Fargo Business Performance Savings Account was $55,356.12. Interest earned for this month was $24.49 and a cash reimbursement was made for $48.00. The May 31, 2006 balance was $55,491.55.

The beginning balance as of May 1 for the Chase Bank One Checking account was $71,996.76. The total disbursements from the checking account for May 2006 were $57,714.58, deposits totaled $40,162.00 and interest earned was $36.65. As of May 31, 2006, the checking account bank balance of $66,795.31 and a Book balance of $54,714.58 (with 31 checks outstanding).

The total certificates of deposit, savings and checking account balances as of May 31, 2006 was **$110,206.13.**

It was noted in this report that MISO resumed its monthly payments ($40,000) on May 30. Kevin Wright moved to accept the Treasurer's report as presented. David Hadley seconded the motion. A unanimous voice vote of the directors accepted the report as distributed.

Review of Actions of the Executive Committee on May 30

Bill Smith highlighted business items of the May Executive Committee meeting:

- The Executive Committee appointed Gary Hanson, South Dakota to replace Ken Nickolai, Minnesota as its member at large.
- Reviewed agendas for upcoming meetings, and made adjustments.
- Reviewed upcoming work calendars re: Ancillary Services issues, the 888 NOPR filing, RECB issues, Cross Border issue
- Designated the June 21 OMS Special Board of Directors meeting in Columbus as a meeting for which travel expenses could be reimbursed for those members wishing to attend (but not already present for the MARC conference.)

Business Items

1. MISO Advisory Committee Issues

Bill Smith presented the MISO Advisory Committee Agenda on behalf of Judy Jones.

- Bill indicated the AC agenda was distributed by the OMS office early the morning of board meeting. The agenda indicates there will be a presentation of the white papers on cost accountability issues with an opportunity for discussion with the MISO BOD.
- Dr. Patton's "State of the Market" report was also available
- Candidates for MISO directors for the next calendar year are to be determined.

2. OMS Adoption of Petition for Rehearing of FERC's May 9 Order on Broad Constrained Area Mitigation - David Hadley, Indiana

- President Gaw began discussion of the draft comment as distributed by the OMS office.
- Jerry Lein of North Dakota offered three minor comment changes.
- Bill Smith indicated he could add citations to the document.

- After some discussion, a motion was offered by Indiana and a roll call vote was taken on the motion.

David Hadley moved to approve the comments as distributed, with changes offered at the meeting, and file with FERC. Ken Nickolai seconded approval of the draft.

President Gaw asked for a roll call vote to be taken concerning the motion to adopt the comments and file with FERC:

Illinois -	**Yes**
Indiana -	**Yes**
Iowa -	**Yes**
Kentucky -	**Yes**
Manitoba -	**ABSENT**
Michigan -	**Yes**
Minnesota -	**Yes**
Missouri -	**Yes**
Montana -	**Yes**
Nebraska -	**ABSENT**
North Dakota -	**Yes**
Ohio -	**Yes**
Pennsylvania -	**Yes**
South Dakota -	**Yes**
Wisconsin -	**Yes**

Yes, file comment= 13
No, do not file = 0
Abstain = 0
Absent = 2

The result of the director's roll call vote was to approve filing the Request for Rehearing of FERC Order of May 9, 2006 (with corrections approved at this meeting.)

Jack Dwyer of the Iowa Office of Consumer Advocacy and Nancy Campbell of the Minnesota Department of Commerce, associate members of OMS, joined in approval of the comment to FERC. Their approval shall be noted in the filing.

3. **OMS Adoption of White Paper on MISO Cost Recovery and Stated Rate -** David Sapper
   - President Gaw asked for questions about or changes to the white paper as distributed by the OMS office. After some discussion, President Gaw called for a motion on OMS adoption of the white paper on MISO cost recovery and stated rate as prepared by the OMS Long Term Development and Governance Work Group.

Ken Nickolai moved to adopt the white paper as distributed. Kevin Wright seconded adoption of the draft white paper.

The "White Paper on MISO Cost Recovery and Stated Rate" was adopted unanimously by a voice vote of the OMS directors present.

4. **Discussion of FERC NOPR #888 - "Preventing Undue Discrimination and Preference in Transmission Service" -** Bill Smith
   - Bill Smith offered an explanation of this issue to the OMS directors. After a brief summary, Bill indicated the OMS Executive Committee would like the OMS Board of Directors to decide whether or not OMS or each individual OMS state should address the issue.
   - Comments are due August 7.
   - Kim Wissman indicated Ohio may work with NARUC on the issue. But due to potential differences of opinion, she isn't sure it is worth the effort for OMS to do as a group.

- Randy Rismiller feels it is tied to RTOs and therefore might be considered by OMS. David Hadley concurred.
- Nancy Campbell felt Minnesota is interested in the rollover issues referred to in the NOPR.
- Jan Karlak requested that Bill Smith forward the final copy of the OMS NOI filed in November, 2005 to all those on the extended OMS email list for review.
- Although the OMS Pricing Work Group is currently focused on RECB, Mike Proctor suggested that the Pricing WG is probably still the right group to handle this issue.

5. OMS Agenda for June 21 Special Board Meeting - Jan Karlak

Jan Karlak presented an update to the June 21 OMS Special Board meeting agenda.

- RAWG has scheduled presentations for the Special BOD meeting in Columbus, as a follow up to the Resource Adequacy conference held in Chicago May 8-9.
- Clair Moeller responded favorably to the request from OMS to answer questions on the forecast of reserve margins. In addition, he'll bring others along to help in answering related questions.
- Ron McNamara will explain the relationship between operating reserves, the ancillary service market and reliability through markets concept, as well as demand response.
- Commissioners will have as much time for questions and answers as the time the speakers take to present.
- Jan offered kudos to the RAWG for their efforts in working in advance on these issues with Clair Moeller.

Executive Director's Report - Bill Smith

This report was not presented at the meeting, but was distributed to all directors. It follows the minutes.

Announcements:

- Kevin Holtsberry announced June 10 as the deadline for registrations to the MARC conference in Columbus.
- Midwest Region Small Generator Interconnection Collaborative informational meeting June 15, 2006 at Carmel. Webcast, phone dial-in and RSVP details will be distributed by the OMS office on June 8.
- OMS Special Board meeting, Columbus, Ohio, Wednesday June 21 at 12:00 noon EDT
- The next OMS Executive Committee Meeting will be held Tuesday, June 27 at 2:00 pm (CDT).
- The next regular OMS Board Meeting will be held Thursday, July 13 at 2:00 pm (CDT).

Meeting adjourned at 3:07 pm CDT

OMS

Organization of MISO States
Report of the Treasurer
Kim Pizzingrilli, Pennsylvania PUC
to the
Board of Directors
June 8, 2006
Report for May 2006

CASH ON HAND

The beginning balance as of May 1 for the Wells Fargo Business Performance Savings Account was $55,356.12. Interest earned for this month was $24.49 and a cash reimbursement was made for $48.00. The May 31, 2006 balance was $55,491.55.

The beginning balance as of May 1 for the Chase Bank One Checking account was $71,996.76. The total disbursements from the checking account for May 2006 were $57,714.58, deposits totaled $40,162.00 and interest earned was $36.65. As of May 31, 2006, the checking account bank balance of $66,795.31 and a Book balance of $54,714.58 (with 31 checks outstanding).

The total certificates of deposit, savings and checking account balances as of May 31, 2006 is **$110,206.13.**

OMS

TREASURER'S REPORT
Organization of MISO States
May 31, 2006

Certificates of Deposit

						TOTALS
Balance as of 5/1/06					$ -	
Certificates of Deposit Balance as of 5/31/06						$ -

Wells Fargo Business Performance Savings Account

Balance as of 5/1/06				$ 55,356.12	
	5/18/06	DEP	Interest on Savings	24.49	
	5/24/06	DEP	Cash reimbursements for lunches offered at the OMS Resource Adequacy Conference on May 8 - 9, 2006 in Chicago.	$ 48.00	
	5/31/06	DEP	Interest on Savings	$ 62.94	
Business Performance Savings Account Balance at 5/31/06					$ 55,491.55

Chase Bank One Commercial Checking with Interest

Balance as of 5/1/06					$ 71,996.76
	5/26/06	DEP	Checks received for reimbursements for lunches offered at the OMS Resource Adequacy Conference on May 8 - 9, 2006 in Chicago ($151.00) and FedEx refund for over charge ($11.00).	$ 162.00	
	5/30/06	DEP	ACH from Midwest ISO	$ 40,000.00	
	5/31/06	DEP	Interest on Checking	$ 36.65	
			Total Deposits		$ 40,198.65

Checks and Charges

Date	Check #	Descriptions	
5/9/06	1969	IL travel reimbursement for MISO Stakeholder meeting on April 18 - 20, 2006 and FERC Tech Conference on April 20 -22, 2006 in Washington, DC.	$ 1,180.89
5/9/06	1970	IA travel reimbursement for OMS TP&SWG NW Subgroup meeting on April 5 - 7, 2006 in St. Paul.	$ 57.40
5/10/06	W/D	PayChex fee for April 2006.	$ 102.50
5/9/06	1971	KY travel reimbursement for MISO Stakeholder Meeting and OMS Working Group Chairs Meeting on April 18 - 20, 2006 in Carmel.	$ 122.82
5/9/06	1972	ND travel reimbursement for MISO Stakeholder Meeting and OMS Working Group Chairs Meeting on April 18 - 20, 2006 in Carmel.	$ 654.25

5/9/06	1973	IA travel reimbursement for MISO Stakeholder Meeting on April 18 - 20, 2006 in Carmel.	$	269.48
5/9/06	1974	Crowne Plaza Chicago O'Hare for OMS Conference on Resource Adequacy in the Midwest on May 8 - 9, 2006 in Chicago. (See below for details)	$	12,152.28
5/25/06	1975	OM travel reimbursement for OMS Conference on Resource Adequacy in the Midwest on May 7 - 9, 2006 in Chicago.	$	895.92
5/25/06	1976	OM for office supplies purchased on 4/21/06 and 5/1/06.	$	166.06
5/24/06	1977	IA for travel reimbursement for travel to MISO Stakeholders meeting on April 18 -19, 2006 in Carmel.	$	144.10
5/24/06	1978	IA travel reimbursement for MISO AC and OMS Work Group Chairs meeting on March 14 - 15, 2006 in Carmel.	$	195.04
5/24/06	1979	PA travel reimbursement for MISO Stakeholders meeting on April 18 - 20, 2006 in Carmel.	$	259.26
5/24/06	1980	MI travel reimbursement for MISO Ancillary Services Round Table and RECB WG meeting on April 26 - 27, 2006 in Carmel.	$	515.19
5/24/06	1981	MI travel reimbursement for MISO Stakeholders meeting on April 18 - 19, 2006 in Carmel.	$	58.70
5/24/06	1982	ED travel reimbursement for DOE Technical Conference on March 28 - 29, 2006 in Des Plaines.	$	248.90
5/24/06	1983	IA travel reimbursement for MISO MSC meeting on May 1 - 2, 2006 in Carmel.	$	418.22
5/24/06	1984	WI travel reimbursement for OMS Resource Adequacy Conference on May 8 - 9, 2006 in Chicago.	$	88.48
5/24/06	1985	DWX for OMS website hosting for June 2006.	$	35.00
5/24/06	1986	Infomax for copier, fax and printer lease for June 2006.	$	172.31
5/24/06	1987	Intercell for conference calls for OMS BOD, EX COM and WG meetings in April 2006.	$	1,095.05
5/24/06	1988	OH travel reimbursement for MISO Stakeholders and OMS Work Group Chairs meetings on April 18 - 19, 2006 in Carmel.	$	382.54
5/24/06	1989	OH travel reimbursement for OMS Resource Adequacy Conference on May 8 - 9, 2006 in Chicago.	$	272.55
5/24/06	1990	IA travel reimbursement for MISO Ancillary Services meeting on April 11, 2006 in Carmel.	$	228.33
5/24/06	1991	IA travel advance for MISO meetings on June 13 - 15 in Carmel.	$	300.00
5/24/06	1992	IA travel advance for OMS BOD and Work Group Chairs meetings on June 20 - 21, 2006 in Columbus.	$	300.00

5/24/06	1993	IA travel reimbursement for OMS Resource Adequacy Conference on May 8 - 9, 2006 in Chicago.	$	18.00
5/24/06	1994	KY travel reimbursement for OMS Resource Adequacy Conference on May 8 - 9, 2006 in Chicago.	$	33.40
5/24/06	1995	Qwest for April 2006 telephone, fax, DSL charges.	$	222.93
5/24/06	1996	IL travel reimbursement for OMS Resource Adequacy Conference on May 8 - 9, 2006 in Chicago.	$	171.39
5/24/06	1997	MO travel reimbursement for MISO Stakeholders meeting on April 18 - 19, 2006 in Carmel and FERC Technical Conference on April 20 - 21, 2006 in Washington, DC.	$	768.41
5/24/06	1998	MO travel reimbursement for MISO Ancillary Services Round Table on April 25 - 27, 2006 in Carmel.	$	241.92
5/24/06	1999	MO travel reimbursement for OMS Resource Adequacy Conference on May 8 - 9, 2006 in Chicago.	$	262.85
5/24/06	2000	MO travel reimbursement for MISO Stakeholders meeting on April 18 - 19, 2006 in Carmel.	$	321.79
5/24/06	2001	The Travel Center for flights and service fees for 10 OMS staff or Commission members to travel to the OMS Resource Adequacy Conference on May 8 - 9, 2006 in Chicago.	$	4,324.62
5/24/06	2002	Triplett Office Essentials for folders for OMS Resource Adequacy Conference on May 8 - 9, 2006 in Chicago.	$	39.62
5/24/06	2003	MI travel reimbursement for MISO Ancillary Services Round Table on April 25 - 27, 2006 in Carmel.	$	265.62
5/24/06	2004	WI travel reimbursement for MISO Stakeholders meeting on April 18 - 19, 2006 in Carmel and FERC Technical Conference on April 20 - 22, 2006 in Washington, DC.	$	987.74
5/24/06	2005	WI travel reimbursement for DOE Conference on March 28 - 29, 2006 in Des Plaines.	$	204.39
5/24/06	2006	WI travel reimbursement for OMS TPSWG NW Subgroup meeting on April 5 - 7, 2006 in St. Paul.	$	173.30
5/25/06	2007	MN travel reimbursement for OMS Resource Adequacy Conference on May 8 - 9, 2006 in Chicago.	$	229.06
5/25/06	2008	PA travel reimbursement for OMS Resource Adequacy Conference on May 8 - 9, 2006 in Chicago.	$	14.00
5/25/06	2009	KY travel reimbursement for MISO Stakeholders meeting on April 18 - 19, 2006 in Carmel.	$	240.66
5/25/06	2010	MO travel reimbursement for MISO Stakeholders and OMS WG Chairs meetings on April 18 - 19, 2006 in Carmel.	$	131.62

5/25/06	2011	MO travel reimbursement for MISO Ancillary Services Conference on April 25 - 27, 2006 in Carmel.	$	234.14	
5/25/06	2012	MO travel reimbursement for OMS Resource	$	187.29	
5/25/06	2013	MN travel reimbursement for MISO Stakeholders meeting on April 18 - 19, 2006 in Carmel.	$	357.51	
5/25/06	2014	MO travel reimbursement for MISO Ancillary Services Round Table on April 25 - 27, 2006 in Carmel.	$	93.75	
5/25/06	2015	MT travel reimbursement for MISO Market Subcommittee meeting on May 1 - 2, 2006 in Carmel.	$	1,058.21	
5/25/06	2016	Platts for Electric Week basic Service from June 28, 2006 to July 27, 2006.	$	1,865.00	
5/25/06	2017	Chase Bank One Visa for April 2006 charges. (See below for details).	$	7,430.43	
5/25/06	2018	IA travel reimbursement for MISO Market Subcommittee and Transmission Rights TF on May 2 - 3, 2006 in Carmel.	$	408.91	
5/25/06	2019	IA travel reimbursement for MISO Transmission Rights TF and MSC meeting on April 4 - 5, 2006 in Carmel.	$	394.55	
5/25/06	2020	100 Court Investors, LLC for OMS office rent and parking for June 2006.	$	874.21	
5/25/06	2021	IA travel reimbursement for OMS TPSWG NW Subgroup meeting on April 5 - 7, 2006 in St. Paul.	$	143.53	
5/24/06	2022	PA travel reimbursement for OMS Resource Adequacy Conference on May 8 - 9, 2006 in Chicago.	$	10.00	
5/31/06	W/D	ED - Deferred Compensation Deposit (Including Employee W/H and Employer Match).	$	1,916.67	
5/31/06	W/D	OM - Deferred Compensation Deposit (Including Employee W/H and Employer Match).	$	750.00	
5/31/06	W/D	April Payroll (Including Employer & Employee taxes).	$	12,790.04	
		Total Checks and Charges		$ 57,480.83	
CHECKING ACCOUNT BALANCE 5/31/06					$ 54,714.58

CERTIFICATES OF DEPOSIT, SAVINGS AND CHECKING ACCOUNT BALANCES AS OF 5/31/06 $ 110,206.13

CHASE CHECKING ACCOUNT RECONCILIATION

	Check #		Amount
Bank Balance 5/31/06		$	66,795.31
Less: Checks O/S	W/D	$	1,916.67
	W/D	$	750.00
	1970	$	57.40
	1972	$	654.25
	1979	$	259.26
	1983	$	418.22
	1984	$	88.48
	1986	$	172.31
	1987	$	1,095.05
	1988	$	382.54
	1989	$	272.55
	1993	$	18.00
	1994	$	33.40
	1995	$	222.93
	1996	$	171.39
	1997	$	768.41
	1998	$	241.92
	1999	$	262.85
	2000	$	321.79
	2003	$	265.62
	2004	$	987.74
	2005	$	204.39
	2006	$	173.30
	2007	$	229.06
	2008	$	14.00
	2009	$	240.66
	2010	$	131.62
	2011	$	234.14
	2012	$	187.29
	2014	$	93.75
	2015	$	1,058.21
	2021	$	143.53
	2022	$	10.00
Book Balance 5/31/06		$	54,714.58

CHASE OMS VISA CARD PURCHASES

ED	Embassy Suites for hotel room charges for the members of the OMS TP&SWG NW Subgroup attending meetings in St. Paul and Elk River on April 4 - 6,2006.	$	3,666.85
ED	Embassy Suites for parking charges for ED for OMS TP&SWG NW Subgroup meetings in St. Paul and Elk River on April 5 - 6,2006.	$	16.00
ED	Wooley's Restaurant for dinner on April 5, 2006 for NW Subgroup attendees.	$	102.12
ED	Wooley's Restaurant for dinner on April 6, 2006 for NW Subgroup attendees.	$	118.47
ED	Booking fee for Lowes l'enfant Plaza Hotel for FERC Technical Conference on April 20 - 21, 2006 in Washington, DC.	$	5.99
ED	Internet access charge for Lowes l'enfant Plaza Hotel for FERC Technical Conference on April 20 - 21, 2006 in Washington, DC.	$	9.95
ED	Hotel room charge for Lowes l'enfant Plaza Hotel for FERC Technical Conference on April 20 - 21, 2006 in Washington, DC.	$	250.76
ED	Hotel room charges for the Marriott Indianapolis for Commissioners, staff members, and Work Group Chairs attending the MISO Stakeholder meeting and OMS Work Group Chairs meeting on April 18 - 20, 2006 in Carmel.	$	3,048.35
ED	PF Chang's for dinner for attendee of the MISO Stakeholder Meeting on April 18 - 21, 2006 in Carmel.	$	97.43
ED	Dollar Car Rental for car rental for ED for MISO Stakeholder meeting on April 18 - 21, 2006 in Carmel.	$	67.28
ED	Des Moines Airport for parking for ED for MISO Stakeholder meeting on April 18 - 21, 2006 in Carmel.	$	20.00
ED	Fed Ex on April 19, 2006 for travel reimbursement sent to ED at CECA in Washington, DC.	$	6.53
ED	Fed Ex on April 26, 2006 for deposit to OMS checking sent to JPMorgan Chase Bank.	$	12.23
ED	OMS VISA Finance Charges.	$	8.47
	Total Chase Card Purchases for April 2006	$	7,430.43

Crowne Plaza Chicago O'Hare Charges

Room Charges for 27 individuals.	$	5,872.84
Lunch Buffet for 40 on May 8, 2006.	$	950.40
Audio/Visual on May 8, 2006.	$	1,380.00
Dinner Buffet for 40 on May 8, 2006.	$	1,636.80
Continental Breakfast for 40 on May 9, 2006.	$	633.60
Audio/Visual on May 9, 2006.	$	1,380.00
Boxed Lunches for 40 on May 9, 2006.	$	950.40
Less: Credit for Audio/Video Services.	$	(480.00)
Less: Amount charged to OMS Visa.	$	(171.76)
Total Crowne Plaza Chicago O'Hare Charges paid from OMS checking account.	$	12,152.28

Organization of MISO States

100 Court Avenue, Suite 218
Des Moines, Iowa 50309

Phone: 515-243-0742
Fax: 515-243-0746
www.misostates.org

OMS Executive Director Report
June 7, 2006

FERC Activity

1. On May 9, the FERC rejected the Midwest ISO's application to extend mitigation in Broad Constrained Areas. The OMS Market Monitoring and Mitigation Work Group held a conference call with Market Monitor to assess the impact of the Order. Based on that discussion, the Work Group will recommend a rehearing pleading to the OMS Board's June 8 meeting.

2. On May 18, 2006, the FERC issued a Notice of Proposed Rulemaking requesting comments on changes to open-access rules to improve clarity and transparency for transmission use and planning, in Dockets RM05-25-000 & RM05-17-000. Comments are due August 7, 2006; reply comments are due September 5, 2006.

3. On May 18, 2006, the FERC Commissioners met with the market monitors of RTOs and ISOs to discuss their role in their respective regional markets. FERC's webcast system includes an archive capability that allows you to listen to that discussion. Go to http://www.capitolconnection.gmu.edu/ferc/ferc.htm and scroll down the dates to May 18.

4. On May 25, the Midwest ISO sought rehearing and clarification of the FERC's April 25 order in Docket No. ER04-691-065, related to revenue sufficiency guarantee issues. The pleading, which raised nine specific points, can be found on the Midwest ISO website at: http://www.midwestmarket.org/publish/Document/469a41_10a26fa6c1e_-6a4a0a48324a?rev=1.

EPACT Scorecard

The following summary lists selected items with regional impact. For a more complete list, see FERC's EPACT section at: http://www.ferc.gov/legal/maj-ord-reg/fed-sta/ene-pol-act.asp.

The Department of Energy's Office of Electricity Delivery and Energy Reliability (OE) has again improved its EPACT website. See: http://www.oe.energy.gov/energy_policy_act.htm

1. Ellen Lutz, of OE met with the OMS Board on May 8 to review the congestion study and the process for designation of national interest transmission corridors. The OE's new websites show congestion study and corridor activities at http://www.oe.energy.gov/energy_policy/epa_sec1221.htm. Early designation requests can be viewed at http://www.oe.energy.gov/energy_policy/epa_1221_NIETC.htm

2. The report of the Midwest-PJM Regional Joint Board on Economic Dispatch, convened pursuant to Section 1298 of the EPACT, was filed with the FERC on May 25.

3. On June 5, 2006, the five-member inter-agency task force (the Electric Energy Market Competition Task Force), released a draft report on competition within wholesale and retail markets for electric energy in the U.S. pursuant to section 1815 of EPACT. Comments on the draft are due June 26.

OMS-MISO Activity:

1. The Midwest ISO on May 31, 2006, designated Graham Edwards as President and CEO on a permanent basis. OMS President Gaw was informed of the decision before announcement and invited to comment on it in the MISO press release.

2. OMS held a conference on Resource Adequacy issues in Chicago on May 8-9, with informative sessions on various aspects of assuring future capacity supply. The discussion among Commissioners will continue after the MARC meetings on June 21 in Columbus, Ohio.

3. An Informational Workshop will be conducted by Department of Energy consultants on June 15 to outline a potential Midwest Region Small Generator Interconnection Collaborative. The goal of the collaborative would be to establish common small generator interconnection technical requirements based on IEEE 1547 and consistent state interconnection rules in the MISO footprint. Following the meeting, state commissions will decide if they want to participate in the proposed collaborative project.

4. The Kentucky PSC order authorizing two utilities to withdraw voluntarily from MISO was issued May 31, 2006. The order can be found on the PSC website at http://psc.ky.gov/agencies/psc/orders/052006/200300266_31.pdf.

5. The Organization of PJM States Executive Director, Dennis Buckley, began his position on June 5, 2006.

Public Relations

1. Pending speaking/meeting invitations:
   - July 18 – President Gaw will speak on transmission siting best practices at a forum in Washington sponsored by the National Commission on Energy Policy and co-sponsored by EEI, NARUC, APPA, and NRECA.

Potential Upcoming MISO Filings of Regional Interest

Filing Date	Docket No.	Description	Pursuant to Commission Order
6/6/06	ER06-1099	The Midwest ISO to file its Resource Adequacy filing.	Pursuant to Stakeholder discussions at the Ancillary Services Roundtable and other stakeholder forums.
6/16/06	ER04-691-023, EL04-104-022 and ER04-960-002, et al.	The Midwest ISO and MAPP to submit their 90-day informational filing regarding the Seams Operating Agreement.	110 FERC ¶ 61,290 at P 35 (2005)
9/1/06	ER06-18-001	The Midwest ISO to submit a compliance filing concerning a proposal for cost allocation of Regionally Beneficial Projects (economic projects within one RTO that benefit the other).	114 FERC ¶ 61,106 at P 90 (2005) and 5/18/06 Midwest ISO request for Extension of Time
12/1/06	ER05-6-023, EL04-135-025, EL02-111-043 and EL03-212-039	The Midwest ISO to submit its compliance filing concerning the cross-border economic planning cost allocation proposal.	113 FERC ¶ 61,194 at P 24 (2005) and Midwest ISO/PJM Extension of Time filed May 17, 2006

The Midwest ISO does not guarantee the accuracy of the information on this list, nor does it guarantee the complete listing of all Midwest ISO regulatory activities ongoing at this time.

Comments of the Organization of MISO States

On

MISO's Method of Cost Recovery and MISO's Budgeting Process

Executive Summary

The Organization of MISO States (OMS) appreciates this opportunity to comment on two related topics: 1) ways the Midwest Independent Transmission System Operator, Inc. (MISO) could improve budgeting and cost accountability, and 2) MISO's white paper listing alternative methods by which MISO could recover costs.

The OMS has repeatedly emphasized the importance of controlling the costs of MISO. For example, the OMS expressed such sentiments at the inaugural (2005) and 2006 annual stakeholder meetings.

The OMS strongly supports the multi-pronged goal for Regional Transmission Organizations (RTOs) like MISO that the Federal Energy Regulatory Commission (FERC) adopted in Order No. 2000: "to promote efficiency in wholesale electricity markets and to ensure that electricity consumers pay the lowest price possible for reliable service."[1] Thus, the OMS expects MISO's costs to reflect prudent means of achieving the goals that FERC set for MISO in Order 2000. In addition, the OMS recognizes that, in order to avoid perverse and unintended consequences, great care will have to be exercised to not unduly emphasize short-term costs and benefits without due consideration of longer-term costs and benefits.

MISO's white paper highlights, directly and indirectly, some important implications of four alternatives methods by which MISO could recover costs. The white paper puts forth only rudimentary descriptions of four alternative methods of cost recovery, however, and the white paper's discussion of some implications of those alternatives is similarly undeveloped. For example, the OMS needs more detailed

---

[1] Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs., ¶ 31,089 (1999), p. 1.

assessments of MISO's expected regulatory costs and borrowing risks under various alternatives. Thus, MISO's white paper does not provide enough information for the OMS to rank, in specific terms, the four cost recovery alternatives.

In these comments, the OMS offers general guidance on MISO cost recovery and cost control. With regard to cost recovery, the OMS recommends that MISO adopt a new method of cost recovery that better promotes prudence as well as accountability for over- and under-recovery of costs. For example, if placing a cap on MISO's current formula rate would require MISO's Board of Directors to identify the causes of significant true-ups and take steps necessary to address those causes while maintaining prudent expenditure, then such an approach could promote prudence and cost accountability.

With respect to cost control, notwithstanding which method of cost recovery MISO chooses, MISO could improve its budgeting process in terms of transparency and stakeholder inclusiveness. The current review process does not provide enough information and time for an adequate stakeholder review of MISO's budget.

In addition, the OMS recognizes the FERC is ultimately responsible for ensuring that MISO's rates are just and reasonable. The OMS thus recognizes the logic of seeking more involvement from the FERC in MISO's cost recovery and budgeting processes. Further, if the FERC is willing and able to review budgets and true-ups in proceedings that afford parties reasonable due process and sufficient access to information, then MISO might improve its budgeting and cost recovery processes by filing, for example, its budgets and true-up requests for FERC approval.

As a matter of law and policy, FERC appears to have carved out a significant role in the process for the MISO's Board of Directors.[2] Thus, improvements in MISO's cost recovery and budgeting processes need not increase the FERC's involvement in these

[2] The FERC's November 22, 2002 Order in Docket No.ER02-2595 (at ¶ 3) states:

> "We … recognize that RTO development costs must be carefully contained in order to maximize the net benefits of RTO formation and the creation of a common market to customers. Therefore, while we recognize the importance of RTOs recovering their costs associated with the services they provide, we also recognize the importance of cost control measures in system development." Consequently, we expect Midwest ISO's Board of Directors to be proactive in this area. The Midwest ISO Agreement provides that the management of all property, business and affairs of Midwest ISO shall be vested in the Board of Directors. Thus, we expect the Board of Directors to guard against any unreasonable costs being incurred. (¶3, footnote deleted)

processes – especially if the costs exceed the benefits from increased involvement by the FERC. For example, MISO's Board of Directors could formally certify to the FERC that MISO's budgets and true-up requests are just and reasonable, based on careful forecasts and other analyses. The MISO Board of Directors also could issue written reports periodically that explain and justify budgets and deviations from budgets.

I. MISO's Method of Cost Recovery

The OMS lacks enough information to rank alternatives to MISO's current method of cost recovery. The white paper makes several important assertions that raise a number of questions. For example, the OMS needs more information about MISO's expected regulatory costs (including labor and administrative costs) under various alternatives. In addition, given MISO's current credit rating, the OMS would be interested in analyses of the potential effects of the various options on MISO borrowing risks and future credit ratings.

The OMS also notes that at the end of its white paper – almost as an afterthought – MISO directs stakeholders to "assume that all of the options provide for full cost recovery using some form of true up to address any costs over or under collected." Given that assumption, it is difficult to assess the absolute and relative magnitudes of cost recovery risks implied by alternatives.[3]

Notwithstanding these criticisms of the white paper, the OMS recommends that MISO adopt a new method of cost recovery that better promotes prudence as well as accountability for over- and under-recovery of costs. In general, the keys to improving MISO's method of cost recovery are 1) to create stakeholder review processes that ensure the budgeted costs, and thus the corresponding rates, are appropriate; and 2) to create means by which MISO can credibly and practically commit to operating within its

[3] Based on MISO's directions, these comments will use the term "true-up" in the general sense (i.e., "some form of true-up"). Thus, these comments consider the stated rate approach discussed in the white paper to include a true-up because it allows MISO to raise its rates – albeit only with the FERC's approval – in order to cover cost over-runs. At the same time, the OMS recognizes that the FERC's administrative discretion could largely determine the level of similarity between proceedings for approval of annual true-ups and proceedings for approval of changes to stated rates.

budgets; and 3) to create requirements for MISO to thoroughly justify budget deviations before seeking true-ups.

For example, if placing a cap on MISO's current formula rate would require MISO's Board of Directors to identify the causes of significant true-ups and take steps necessary to address those causes while maintaining prudent expenditure, then such an approach could better promote prudence and cost accountability. Thus, "Option #1 – formula rate with cap" could prove to be an improvement over the status quo.

The relative merits of "Option #2 – file budget at FERC (formula rate with annual true-up)" depend on the costs and benefits of increasing the level of the FERC's involvement in MISO's budgeting and true-ups. If the FERC is willing and able to review budgets and true-ups in proceedings that afford parties reasonable due process and sufficient access to information, then MISO might improve its budgeting and cost recovery processes by filing, for example, its budgets and true-up requests for FERC approval.

Option #2 and Option #3 (i.e., stated rate) would increase the FERC's involvement in MISO's budgeting and cost recovery processes. By virtue of the fact that MISO's rates would be fixed for some extended period (i.e., under Option #2, annually, and under Option #3, until FERC approves changes in the rates), this approach also could compel MISO and stakeholders to thoroughly review budgets. Increasing the FERC's involvement in MISO's budgeting and cost recovery processes also could compel MISO to increase the transparency of its budget process in order to garner stakeholder support for its proposed rates. Further, to the extent that MISO, possibly as a matter of operating within its budget, would seek the FERC's approval of rate increases, including "true-ups," only in extraordinary circumstances, Options #2 and #3 could improve MISO's motivation to operate within its budgets.

The OMS recognizes that under a stated rate approach, a profit motive likely would induce the company operating under stated rates to strive to control costs wherever possible.[4] Therefore, a stated rate approach might first appear better designed to work

[4] A profit motive also could motivate MISO to enhance cost control to the point of *inappropriate* cost reductions. On the other hand, a profit motive, in conjunction with a stated rate and other factors, could motivate MISO to increase or over-state expenditures inappropriately in order to justify its stated rate.

well in a for-profit, regulated company context. However, using a stated rate approach in the not-for-profit RTO context could have the salutary effect of focusing stakeholder involvement on the front end of the process in which the level of the stated rate is set.

MISO's non-profit status and guaranteed cost recovery eliminates cost-control motivations based on maximizing the organization's profit. MISO's management and other employees nonetheless can be motivated to control costs appropriately if their compensation depends on it or there are other properly designed incentives. The OMS expects MISO's Board of Directors to continue to examine ways of appropriately harnessing and focusing motives to control costs appropriately using MISO's incentive pay plans. In addition, given that RTO membership is voluntary, MISO should have sufficient incentives to control costs appropriately, as well as improve its cost recovery and budgeting processes in order to maintain and increase membership.

II. MISO's Budgeting Process

Notwithstanding any method of cost recovery MISO chooses, MISO could improve its budgeting process. The current review process, which relies heavily on the

---

In general, the OMS does not support MISO, as an RTO, becoming a for-profit organization. In comments filed in FERC's Inquiry into RTO costs (Docket No. RM04-12-000), the OMS proffered reasons why an RTO's non-profit status is appropriate and not a barrier to cost control. The OMS observed, "With proper incentives and governance, non-profit RTOs can contain costs effectively and appropriately." The OMS elaborated as follows:

> The profit motive is most effective for controlling costs and benefiting society in competitive or workably competitive markets. RTOs have natural monopoly characteristics, including significant economies of scale that do not easily lend themselves to socially beneficial competition characterized by free entry and exit by rival RTOs.
>
> Moreover, a profit motive in conjunction with the contractual and regulatory difficulties of changes in RTO membership could exacerbate the natural monopoly problem and may require heavier regulation. Further, RTOs' functions and services create public goods (e.g., non-exclusive consumption of reactive power or capacity) and externalities (e.g., loop flow) that should be provided by monopoly RTOs who, with their members, can most efficiently internalize these benefits and costs. A profit motive could induce social inefficiencies from RTOs providing too many services characterized by externalities and not enough services with public good characteristics.
>
> In addition, RTOs must cooperate and coordinate with each other in a number of areas (e.g., seams agreements, planning). A profit motive could produce socially inefficient outcomes from such cooperative activities. (f.n. 13 at 7)

Finance Subcommittee, does not provide enough information and time for adequate stakeholder reviews of MISO's budgets. OMS is concerned that the current budget review process at MISO, which is currently effectively the *only* budget review process, may be insufficient for assessing the justness and reasonableness of MISO's budgets and resulting rates.

At the same time, the OMS appreciates one of the advantages of the status quo noted in the white paper: the current budget review process is "[e]asy to administer." The general improvements OMS suggests need not complicate budget review processes, especially as they mature over time. In fact, stakeholder reviews may run more smoothly if stakeholders have the information they need and reasonable time to review that information.

The OMS is pleased with Mr. Graham Edward's announcement at the May 18 Board of Directors meeting that MISO is moving to multi-year advance budgeting. Expanding the budgeting horizon should provide stakeholders with more information and more opportunity to better understand MISO's development.

Given MISO's non-profit status and guaranteed cost recovery, MISO should be transparent to stakeholders. Transparency in MISO's budgeting process, for on-going operational costs as well as new service development, contributes to the efficiencies of using RTOs to provide open access to transmission service. Moreover, information that MISO compiles to justify its costs could help improve MISO's plans for new or upgraded functions and services, giving stakeholders a better understanding of MISO's operations and costs.

III. Role of the Federal Energy Regulatory Commission in MISO Budgeting and Cost Recovery

The OMS recognizes the FERC is ultimately responsible for ensuring that MISO's rates are just and reasonable.[5] The OMS thus recognizes the logic of seeking

[5] In comments filed in FERC Docket No. RM04-12-000, the OMS stated, "[S]ince RTOs are under the jurisdiction of the Commission, the Commission must conduct any regulatory prudence reviews." (p. 7)

more involvement from the FERC in MISO's cost recovery and budgeting processes.[6] Further, if the FERC is willing and able to review budgets and true-ups in proceedings that afford parties reasonable due process and sufficient access to information, then MISO might improve its budgeting and cost recovery processes by filing, for example, its budgets and true-up requests for FERC approval.

As a matter of law and policy, FERC appears to have carved out a significant role in MISO's budgeting and cost recovery processes for the MISO's Board of Directors.[7] Thus, continued reliance on the Board tempers the level of involvement by the FERC needed for these processes. For example, MISO's Board of Directors could formally certify to the FERC that MISO's budgets and true-up requests are just and reasonable, based on careful forecasts and other analyses. The MISO Board of Directors also could issue written reports periodically that explain and justify budgets and deviations from budgets.

IV. Conclusion

The OMS appreciates MISO's consideration of these comments and recommendations. The OMS stands ready to continue to discuss ways in which MISO can improve its cost recovery and budgeting processes.

---

[6] Under MISO's current method of cost recovery, ensuring that MISO's rates are just and reasonable requires thorough prospective (i.e., budget review) and retrospective (i.e., true-up) examinations of MISO's costs.

[7] The FERC's November 22, 2002 Order in Docket No.ER02-2595 (at ¶ 3) states:

> "We … recognize that RTO development costs must be carefully contained in order to maximize the net benefits of RTO formation and the creation of a common market to customers. Therefore, while we recognize the importance of RTOs recovering their costs associated with the services they provide, we also recognize the importance of cost control measures in system development." Consequently, we expect Midwest ISO's Board of Directors to be proactive in this area. The Midwest ISO Agreement provides that the management of all property, business and affairs of Midwest ISO shall be vested in the Board of Directors. Thus, we expect the Board of Directors to guard against any unreasonable costs being incurred. (¶3, footnote deleted)

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Midwest Independent Transmission System Operator, Inc.,	**)** **)**	**Docket Nos. ER06-731-000**

MOTION FOR LATE INTERVENTION AND PETITION FOR REHEARING OF THE ORGANIZATION OF MISO STATES

I. Introduction

On May 9, 2006, the Federal Energy Regulatory Commission ("FERC or Commission") issued an Order that rejected a request by the Midwest Independent Transmission System Operator ("MISO" or "Midwest ISO") for an extension of Broad Constrained Area ("BCA") mitigation.[1]

II. Motion for Late Intervention

Based on the belief that the Midwest ISO's filing would be approved on its substantial merits, the Organization of MISO States ("OMS") did not intervene. The OMS was surprised by FERC's unexpected rejection of the filing and believes the rejection is mistaken as a matter of policy. The OMS therefore requests leave for late intervention in this matter. The OMS believes that its intervention will not be detrimental to any other party.

III. Statement of Issues

1. The Commission's decision erred by rejecting BCA mitigation, which is a valuable tool to protect consumers against certain situations of market power.
2. The Commission's decision to revoke the Midwest ISO's BCA mitigation authority is contrary to the evidence submitted by the applicants and the comments submitted by market participants and leaves the Midwest market vulnerable to certain forms of market power.

[1] *Midwest Independent Transmission System Operator, Inc.*, 115 FERC ¶ 61,158 (2006) ("May 9 Order")

IV. Background and Discussion

According to the Commission's majority, its assessment of the data and reports did not warrant reauthorization of the use of BCA mitigation. As a result, effective April 1, 2006, the FERC ordered the Midwest ISO and its Independent Market Monitor ("IMM") to no longer invoke BCA mitigation.[2] The May 9 Order is internally inconsistent and ignores the evidence presented in this case. In particular, the OMS is concerned that the May 9 Order will effectively undermine stakeholder confidence in the markets, make the wholesale markets less competitive – to the detriment of retail customers and could result in unjust, unreasonable, and unduly discriminatory rates. The OMS notes the well-reasoned dissent of Commissioner Suedeen Kelly. The OMS shares Commissioner Kelly's concern that:

> *…[T]his order inappropriately rejects Midwest ISO's requested extension of the BCA mitigation. I would not have removed this useful tool for addressing exercises of market power from the IMM's toolbox.*[3]

The FERC erred in revoking BCA mitigation without making a finding that continuation of that form of mitigation is not just and reasonable. No party protested the filing. In fact, as the May 9 Order noted, market participants were generally supportive of the continuation of BCA mitigation. To the extent that concerns were raised, it was that the BCA mitigation did not go far enough.[4] Indeed, the OMS' review of comments failed to produce any evidence that the BCA mitigation had been excessive. Nor was there any evidence that BCA mitigation was not necessary for the fair, efficient, and reliable conduct of the competitive wholesale market.

Without a finding that BCA mitigation is contrary to the Federal Power Act, the Commission lacks a statutory basis for rejecting it. To the contrary, the application and the supporting comments provided several reasons to find that BCA continues to offer a

---

[2] May 9 Order, at P. 25.
[3] Dissent of Commissioner Kelly at 2.
[4] May 9 Order, at P. 19 and 20.

positive remedy to certain kinds of market power.[5] The following paragraphs review the reasons the OMS urges the Commission to reconsider its May 9 Order and extend the availability of BCA mitigation.

A. The FERC stated in Paragraph 13 "*While we stated that we did not take lightly the potential for the exercise of market power in BCA areas, we also expressed concern that any mitigation be applied in an appropriate manner. We recognized our obligation to assure that monitoring and mitigation occur such that rates are just and reasonable for buyers and sellers.*" Yet the entire body of evidence in this matter indicates that there was no "inappropriate" application of the mitigation.

B. In Paragraph 14 the FERC said that "*if we found problems with the IMM's discretion in the application of mitigation with BCAs, we would take appropriate action, including consideration of terminating the BCA.* The OMS emphasizes that there was no evidence to support such a finding. In fact, all the evidence would support a contrary finding – continuation of BCA mitigation.

C. In Paragraph 14 of the May 9 Order, the Commission stated: "…*the Midwest ISO could file to extend the use of BCA mitigation beyond the original one-year period, based on whether the benefits of such mitigation exceed its costs, in terms of over-mitigating versus under-mitigating the market*." There is no evidence in the record supporting FERC's finding that the BCA mitigation exceeded the costs, "*in terms of over-mitigating versus under-mitigating the market."*

D. There are significant logical inconsistencies contained in Paragraph 23 of the May 9 Order. First, the FERC asserts that "*The Midwest ISO has not shown that BCA mitigation addressed the exercise of market power.*" Then, the FERC asserts, that the BCA mitigation may have, "*alter[ed] legitimate price signals that reflect supply-demand imbalances and that would encourage market entry*." Then,

[5] May 9 Order, at P. 16-17 and 19-20..

contrary to the theme that the FERC is concerned about "over-mitigation" said that "*the three constraints in the third quarter of 2005, the BCA mitigation was fleeting at most.*" [6] The FERC then concludes that: "*Because BCA mitigation was applied so infrequently during 2005, the continued need for prospective BCA mitigation to address the exercise of market power has not been justified. Moreover, we disagree that such infrequent incidents reflect a lack of workable competition in the Midwest ISO region absent BCA mitigation.*" It seems that the FERC did not make a distinction between workable competition in the general case and the specific case.

The OMS would take this opportunity to elaborate on three points.

- Specifically, the May 9 Order did not seem to recognize that an otherwise workably competitive market might have instances where a market participant might have market power and the ability to exploit that market power to the detriment of the entire market. The potential detrimental effects on the market include, but are not limited to, increased RSG as well as the long term damage to confidence in the integrity of the markets.

- The May 9 Order implies that the FERC is willing to risk allowing more of what the BCA mitigation is designed to prevent – abuse of transitory market power created by transmission constraints. Exogenous factors may create or contribute to transmission constraints, but transmission constraints also may appear because of certain market activity that the BCA mitigation measures aim to prevent. Thus, the FERC is effectively willing to risk more market power abuse and allow market participants to game the market rules in order to constrain the transmission grid and create opportunities for the exertion of market power.

- The OMS does not believe that there is evidence that eliminating BCA mitigation will have any effect on decisions by market participants to

[6] May 9 Order, at P. 22.

build generation or transmission. The May 9 Order expressed the concern that "*Mitigation is counterproductive to the extent it penalizes suppliers trying to resolve constraints…and cause reliability problems to the extent that it keeps capacity out of the market…*"[7] Situations giving rise to BCA mitigation are simply too transitory to influence capacity investment decisions.

E. BCA mitigation is both a deterrent and remedy against market power and abusive conduct of market participants. The OMS believes that deterrence is a preferred option to after-the-fact imposition of a remedy as the May 9 Order seems to prefer. The market participants have agreed to accept this deterrent since they voluntarily joined the Midwest ISO and agreed to operate under its Tariff. The fact that the incidence of invoking mitigation was limited, may reasonably suggest evidence of the deterrent effect. In those rare instances where the deterrent was not sufficient and mitigation was required, the result of the mitigation was rates that were not unreasonable or unduly discriminatory.

F. Empirically, where a generator, or single company's generators, has the ability to exercise market power, the OMS is persuaded from the evidence that the BCA mitigation has proven useful in reducing the magnitude and incidence of the exercise of market power.[8]

G. Preventing the exercise of market power has, in turn, reduced the Revenue Sufficiency Guarantee ("RSG")[9] payments that have been a matter of intense

[7] May 9 Order, at P. 12.
[8] May 9 Order, at P. 16 and 20.
[9] This section requires that a market participant will be charged the RSG charge when it withdraws energy, and such charge shall equal the product of the market participant's load purchased in real-time, all virtual supply in the day-ahead markets and resource uninstructed deviation quantities times the per unit RSG charge. The per unit RSG charge for a day will equal the aggregate RSG charge in that hour attributed to resources committed in the Reliability Assessment Commitment (RAC) process in the operating day divided by the sum of load withdrawn in the operating day, all virtual supply and deviations from dispatch instructions of all market participants withdrawing during the hour for that operating day. TEMT, Module C, Second Revised Sheet Nos. 577 and 578.

concern since the April 1, 2005, start-up of the MISO's Day 2 Markets.[10] During discussions with the IMM, the IMM has informed the OMS that it has estimated that absent BCA mitigation, a market participant with market power could potentially charge upwards of $100 million that would be socialized – ultimately to be paid by all retail customers in the form of RSG payments.

H. The FERC is correct to make strong statements that the RTOs need to be more concerned about RTOs' operating and administrative costs, including RSG charges.[11] Moreover, the OMS strongly supports the multiple goals the FERC set for RTOs: "to promote efficiency in wholesale electricity markets and to ensure that electricity consumers pay the lowest price possible for reliable service."[12] The OMS is at a loss, then, to understand how the FERC could eliminate a tool designed to reduce costs, promote efficiency in wholesale electricity markets and to ensure that electricity consumers pay the lowest price possible for reliable service.[13]

I. Since the inception of the Midwest ISO, all of the OMS states, have strongly endorsed the independence of the Market Monitor. The May 9 Order has the potential to undercut the effectiveness of the IMM by ignoring the counsel of the

[10] See generally Docket Numbers, ER04-691-065 et al., noting that the Midwest ISO, state commissions and stakeholders have formed an RSG Task Force to address the issue. *Many of these matters [involving RSG] are, or will be, the subject of ongoing discussions with the Midwest ISO's RSG Task Force. These issues include: consistency of RSG payments between the Midwest ISO and PJM Interconnection, LLC; and, whether RSG charges should be settled on a net or gross basis and daily basis or an hourly basis, as well as other issues discussed below. As noted in the RSG Filing, the Midwest ISO supports the formation and activities of this Task Force, and believes that additional, RSG-related filings will be required in the future as a result of such stakeholder discussions.* Midwest ISO, Motion for Leave to Answer and Answer of the Midwest Independent Transmission System Operator, at paragraph D, page 8.
[11] "The final rule responds to significant concerns about RTO costs…I believe RTOs have great potential benefits. I have voted to establish RTOs in New England and the Southwest Power Pool, and have voted for PJM expansion. While I believe RTOs have great potential benefits, I recognize it is not predestined that these potential benefits will be achieved. In my view, the key to continued expansion of RTOs is the performance of the existing RTOs. If they deliver the potential benefits and prove to be effective in managing costs, they will succeed." Docket Number RM04-12-000 Statement of Chairman Joseph T. Kelliher on RTO Accounting and Financial Reporting Final Rule December 15, 2005.
[12] Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs., ¶ 31,089(1999), P. 1.
[13] The IMM's Quarterly Reports, and comments filed in support of the requested extension indicate that BCA mitigation has been appropriately applied to address legitimate exercises of market power.

IMM and relying on the speculation that a market participant that has market power will not exercise that market power.

The IMM's independence allows the IMM to gather and analyze data that others cannot and, for market participants, should not have contemporaneously. Thus, among FERC, state commissions, and the IMM, the IMM is the best-informed non-market participant in this proceeding. The IMM possesses market information and knowledge that the IMM could not possibly entirely express in this proceeding.

Only MISO, possibly, as a non-market participant could possess information similar to what the IMM holds. MISO still would not possess a similar understanding of the BCA mitigation measures in practice. Regardless, MISO and the IMM take the same position in this case – that the MISO tariff should maintain the current BCA mitigation measures.

FERC's replacement of the IMM's judgment with its own judgment does not concern the OMS, *per se*, as much as the fact that FERC's decision is not adequately supported by evidence or rigorous analysis. The May 9 Order effectively substitutes baseless assertions in place of the IMM's well-informed and well-supported findings and arguments.

J. BCA mitigation is needed to enhance confidence in the markets. Revocation of the BCA mitigation authority has the potential to stymie market development and negatively impact state regulatory regimes that rely on wholesale markets to produce fair and reasonable rates. Because of the relative transparency of the Midwest ISO and the Independent Market Monitor absence of BCA mitigation may undermine the credibility that markets facilitated by the Midwest ISO may have with the states. In this regard, the OMS has always appreciated that the IMM serves both as the first line of defense against market abuse and as a supplement the authority of the FERC.

The risks of being wrong and not allowing BCA mitigation of market power outweigh the potential concerns about over-mitigation. A longer-term assessment may be useful to compare the May 9 Order's potential for reduced stakeholder comfort in the FERC's market monitoring and mitigation policies with the concerns mentioned in the Order. FERC could address both problems by instituting, with the help of the market monitors, market data collection and reporting programs that would collect and report, for some appropriately lagged unit of time, offer prices, marginal cost or appropriate competitive reference prices, and market-clearing energy prices. Simply maintaining such programs would provide relevant information for contested proceedings like the instant docket and give stakeholders greater confidence in the FERC's and market monitors' efforts to ensure just and reasonable wholesale rates.

K. The OMS and other market participants are considering various capacity market constructs. In particular, the Midwest ISO has suggested an "energy only market" that would necessitate making a distinction between legitimate "shortage pricing" and such things as "intentional withholding." The May 9 Order would eliminate this distinction and subject the market to potentially devastating price spikes resulting from the illegitimate exercise of market power. Such outcomes would most likely influence the consideration of the OMS and other market participants regarding capacity market constructs.

L. The May 9 Order is counter to good regulatory practice of considering the evidence rather than substituting the regulators' judgment. The OMS would also note that the wholesale and retail energy markets place a high premium on "consistency."[14] The May 9 Order unnecessarily introduces uncertainty and

[14] Commissioner Kelly cited the August 2004 Midwest ISO TEMT II Order. "[T]he Commission approved the use of Broad Constrained Areas (BCAs) as a method to screen for the use of mitigation in the Midwest ISO for one year. The Commission stated that focusing mitigation on BCAs and Narrow Constrained Areas appropriately addresses market power where "well-defined structural barriers to competitive performance exists." The Commission later affirmed the use of mitigation in BCA areas, but

attendant risk that will have long-term adverse repercussions for the wholesale and retail markets.

M. The Midwest ISO and the IMM need to have the tools that will allow the IMM to prevent the exercise of market power, while still allowing market conditions to reflect scarcity pricing. In that regard, the May 9 Order's decision to eliminate BCA mitigation leaves the IMM ill-equipped to meet this objective. In particular, the remedies suggested Paragraph 23 of the May 9 Order are insufficient for the following reasons.

Using NCA mitigation in areas with substantial potential for the exercise of market power is problematic because by definition, an NCA is expected to have a binding constraint for in excess of 500 hours over a 12 month period and a BCA is expected to have a binding constraint of less than 500 hours. Accordingly, NCAs are more likely to be subject to the exercise of market power abuse and therefore, are subject to more stringent thresholds for mitigation. However, the Midwest ISO market monitoring and mitigation plan approved by the Commission requires the IMM to pre-determine NCAs on at least an annual basis.[15]

Requiring the IMM to determine in advance which normally competitive BCA will meet the NCA standards will require some extraordinary forecasting on the part of the IMM. Indeed, the very definition of a BCA - an area where sufficient

stated that the need for BCA mitigation would be re-evaluated to ensure that it does not result in excessive mitigation. [Footnote omitted].

[15] See the Midwest ISO's EMT, Section 1.207

competition <u>usually</u> exists, even when one or more transmission constraints are binding, or into which the transmission constraints bind infrequently, but within which a transmission constraint can result in <u>substantial</u> locational market power under certain market or operating conditions – warrants giving the IMM the latitude to mitigate energy prices when the situation requires it.

The May 9 Order also suggested that the IMM make a section 205 filing to request authority to apply mitigation in cases where it has identified the exercise of market power. Situations regarding the exertion of market power can develop quite quickly, the damage can be quite severe and the post-mortem can be long-lasting and quite difficult. Indeed, a 205 filing is essentially "after–the-fact mitigation" that is much more disruptive to the efficient conduct of markets than the deterrent effect of the BCA mitigation. Furthermore, any restitution might be viewed by appellate Courts as "retroactive ratemaking."

In this regard, the OMS believes that BCA mitigation serves as an effective deterrent, as well as a remedy against market power and abusive conduct. As such, granting the IMM BCA mitigation authority to "nip it in the bud" makes perfect sense. Indeed, preventing the exercise of market power in the first place is preferred to imposing an after-the-fact remedy as the May 9 Order seems to prefer.

Finally, the May 9 Order cites the $1,000 per megawatt-hour bid cap as one of its supporting reasons for eliminating the BCA provisions from the Midwest ISO's tariff.. However, the OMS notes that the $1,000 bid cap was never intended to be used as a tool to mitigate market power. Rather, its stated purpose was to: 1) to avoid harmful and unchecked price volatility on the upside and to 2) serve as a temporary proxy for demand response which is currently missing from MISO's markets in amounts sufficient to hold prices at reasonable levels. At best, the $1,000 per megawatt-hour bid cap is a crude tool. While it might prevent the exercise of market power when prices reach or exceed $1,000, it would also effectively mute legitimate price signals resulting from legitimate shortages, rather than the exercise of market power. In this regard, FERC's reliance on the bid cap seems to be misplaced, as one of the reasons the May 9 Order rejected BCA mitigation is that the FERC was concerned that it could mute legitimate price signals resulting from shortages rather than the exercise of market power. Moreover, the energy bid cap may not apply and is not the only relevant cap, since start-up and no-load offer prices are likely to rise if market participants with market power seek to maximize profits. The OMS wishes to reiterate that the primary focus should be on deterring this behavior rather than reliance on after the fact mitigation.

The OMS can appreciate that the FERC's primary concern, when approving the BCA mitigation in its initial Order, was striking an appropriate balance between over and under-mitigation.[16] The FERC noted that: "While under-mitigation may result in some exercise of market power that is not mitigated, over-mitigation means more frequent intervention in the market, and some competitive market results will be mitigated."[17] The OMS would point out that not mitigating "some exercise of market power" also mitigates

[16] *Midwest Independent Transmission System Operator, Inc., et al.*, 108 FERC ¶ 61,163 (2004) ("August 6 Order"), order on reh'g, 109 FERC ¶ 61,157 (2004) ("November 8 Order")
[17] May 9 Order, at P. 12.

"some competitive market results."

The OMS' reading of the FERC's August 6 Order is that the FERC had concerns that the balance would not be achieved. The August 6 Order expressed primary concerns for "over-mitigation" as a basis for its apprehension.[18] The FERC cautioned that evidence of over-mitigation would be a predicate for discontinuing the BCA mitigation beyond the first year and even before the end of the first year.[19] However, as stated in the May 9 Order, the concern of over-utilization was not realized.[20] Accordingly, the FERC should re-authorize continued use of the BCA mitigation tool.

Assuming that it was the express intent of the FERC to strike a balance between over and under-mitigation, the May 9 Order ignores that this balance had been achieved[21], [22] and instead seemed to rely on the FERC's concerns by stating: "We find

[18] See generally Docket Numbers, ER04-691-065 et al., noting that the Midwest ISO, state commissions and stakeholders have formed an RSG Task Force to address the issue. *Many of these matters [involving RSG] are, or will be, the subject of ongoing discussions with the Midwest ISO's RSG Task Force. These issues include: consistency of RSG payments between the Midwest ISO and PJM Interconnection, LLC; and, whether RSG charges should be settled on a net or gross basis and daily basis or an hourly basis, as well as other issues discussed below. As noted in the RSG Filing, the Midwest ISO supports the formation and activities of this Task Force, and believes that additional, RSG-related filings will be required in the future as a result of such stakeholder discussions.* Midwest ISO, Motion for Leave to Answer and Answer of the Midwest Independent Transmission System Operator, at paragraph D, page 8.

[19] May 9 Order, at P. 12 -14.

[20] "Because BCA mitigation was applied so infrequently during 2005, the continued need for prospective BCA mitigation to address the exercise of market power has not been justified. Moreover, we disagree that such infrequent incidents reflect a lack of workable competition in the Midwest ISO region absent BCA mitigation." May 9 Order, at P. 24.

[21] "The Midwest ISO states that BCA mitigation was utilized on several occasions in the energy markets during 2005 when transmission constraints or local reliability requirements in certain areas created substantial market power. The Midwest ISO states that, in general, those conditions arose: (1) when important transmission lines and/or generation units were out of service and there was a corresponding "high value congestion" occurring that was not normally seen; (2) when market participants in an area bid their units inflexibly and the Midwest ISO had limited redispatch options for managing congestion; and (3) when the outage of baseload generation units caused unusual patterns of congestion or voltage support issues. <u>The Midwest ISO states that the market power that existed in these cases can manifest itself to allow a supplier to raise energy prices substantially in a specific area or to cause the Midwest ISO to make inflated Revenue Sufficiency Guarantee payments to the supplier to commit units in a certain area. The Midwest ISO states that, while BCA mitigation was infrequent in 2005</u>, <u>in certain situations it was the only tool available to prospectively limit market power abuses</u>." [emphasis added] May 9 Order, at P. 16.

[22] "AMP-Ohio and Midwest TDUs suggest that the Midwest ISO's proposal and the IMM quarterly reports indicate that <u>BCA mitigation has been appropriately applied</u> when sellers exhibit substantial market power. AMP-Ohio references Midwest ISO's assertion that BCA mitigation was the "only tool available to prospectively limit market power abuses" to suggest that BCA mitigation should be extended. <u>Midwest TDUs argue that the use of the conduct and impact thresholds and the GSF Cutoff in BCA</u>

that the Midwest ISO has not justified the continued appropriateness of prospective BCA mitigation in the Midwest ISO market."[23]

The Midwest ISO's filings should have allayed the FERC's initial reservations of over-utilization and raised important policy objectives that would be compromised by eliminating the BCA mitigation. The FERC correctly noted that Midwest ISO's market power mitigation plan would impose mitigation upon entities in constrained areas (areas in which a constraint is actively binding) and that fail both the conduct and impact tests such that their conduct is significantly inconsistent with competitive outcomes (as indicated by conduct threshold levels).[24] The OMS is not aware of any market participant filings that alleged over-mitigation on the part of the IMM. The Commission's Order failed to cite a single instance of a complaint from the mitigated market participants. Indeed Commissioner Kelly noted this in her dissent. Specifically,

> "Based on the infrequent application of BCA mitigation, the order concludes that Midwest ISO has not shown that BCA mitigation address the exercise of market power and that, instead it might have altered legitimate price signals that reflect supply-demand imbalances. I disagree. I see nothing in the record of this case contrary to the Midwest ISO's finding that substantial market power existed on several occasions last year or contrary to the IMM's statements regarding the need for BCA mitigation to maintain a competitive market. I do not share the view that the infrequent application of BCA mitigation means that it has been excessive or has distorted legitimate price signals. In fact, I believe that its infrequent

---

mitigation have been sufficient to prevent over-mitigation. Because the IMM quarterly reports indicate that BCA mitigation was applied infrequently only to pivotal suppliers, Midwest TDUs contend that the Midwest ISO market has not been over-mitigated. Midwest TDUs also suggest that the GSF Cutoff has been sufficient to prevent the IMM from exercising undue discretion in applying BCA mitigation. While Midwest TDUs state that they strongly support continuation of BCA mitigation, they also suggest that the conduct and impact thresholds and the GSF Cutoff may be too high, allowing generation resources to exercise market power unrestrained by BCA mitigation… Midwest TDUs thus argue that the Commission must continue BCA mitigation, because the Midwest ISO proposal and IMM quarterly reports document the Midwest ISO market's vulnerability to substantial market power abuse absent BCA mitigation." [emphasis added] May 9 Order, at P. 19.

[23] May 9 Order, at P. 22.

[24] The FERC's definition and categories of the conduct test is accurate. That is, the conduct test determines whether the generation resource has exceeded the conduct thresholds set forth in section 64.1 of the TEMT. Categories of potentially problematic behavior include economic withholding, physical withholding, uneconomic production, and uneconomic market participant bids or virtual transactions. Finally, the FERC's definition of the impact test is accurate. Specifically, the impact test determines whether the generation resource has exceeded the pricing thresholds set forth in section 64.2 of the TEMT. Impact thresholds set limits on the acceptable impacts on prices or on Offer Revenue Sufficiency Guarantee Payments to market participants.

application serves as an indication that BCA mitigation has not been applied excessively. Finally, no market participant has complained that mitigation has been excessive." [25]

In addition to the harms to the market, market participants, and to consumers from unrestrained abusive conduct, a specific manifestation of harm would be an increase – potentially a dramatic increase – in Revenue Sufficiency Guarantee ("RSG") Payments (uplift charges to cover start-up and no-load costs).

V. Technical Conference:

The facts in this case warrant reinstatement of the BCA mitigation authority of the Midwest ISO and the IMM. If the Commission is not persuaded by the OMS' arguments, the OMS would recommend that the Commission consider a Technical Conference focused on further exploration of the BCA mitigation issue. In particular, the OMS believes that all parties – the Commission, the Midwest ISO, the IMM, Market Participants and members of the OMS - would benefit from a detailed discussion of issues involved in this case. In particular, a Technical Conference would provide the Commission with a forum to discuss alternatives to BCA mitigation.

If, the Commission does decide to convene a Technical Conference, the OMS would urge the Commission to hold the May 9 Order in abeyance and allow the IMM to continue to exercise BCA mitigation.

VI. Conclusion:

The OMS strongly urges the FERC to reconsider its May 9 Order. In particular, the OMS believes that the infrequent application of BCA mitigation does not equate to its being unnecessary. To the contrary, the OMS believes that during the "test year" the IMM applied BCA mitigation as it should have been and that BCA mitigation would

[25] Dissent of Commissioner Kelly, at 2.

continue to provide a valuable option for the IMM when faced with locational market power under certain market operating conditions. Specifically, the IMM applied BCA mitigation when circumstances arose that created abnormally high congestion. The OMS concurs with the Midwest ISO's conclusion that "*while BCA mitigation may have been infrequent in 2005, in certain situations, it has been the only tool available to prospectively limit market power abuses and the Midwest ISO requires these tools to be available for the IMM's use through the EMT.*" [26]

The OMS submits this motion and petition because a majority of the members have agreed to support it. The following members support this request. Individual OMS members reserve the right to file separate comments regarding the issues discussed in this request:

Illinois Commerce Commission
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
North Dakota Public Service Commission
Public Utilities Commission of Ohio
Pennsylvania Public Utility Commission
South Dakota Public Utilities Commission
Wisconsin Public Service Commission

The Manitoba Public Utilities Board and Nebraska Power Review Board did not participate in this pleading.

The Minnesota Department of Commerce and the Iowa Consumer Advocate, as associate members of the OMS, participated in these comments and generally support these comments.

Respectfully Submitted,

William H. Smith, Jr.
William H. Smith, Jr.
Executive Director

[26] Midwest ISO filing, March 10, at page 2.

Organization of MISO States
100 Court Avenue, Suite 218
Des Moines, Iowa 50309
Tel: 515-243-0742

Dated: June 8, 2006

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 8th day of June, 2006.

William H. Smith, Jr.

William H. Smith, Jr.

Midwest ISO Advisory Committee Meeting
Lakeside Corporate Center - Carmel, IN
June 14, 2006
10:00 A.M. to 4:00 PM EDT
DIAL IN NUMBER: (800) 216-0480

Meeting Agenda

				Starting
A.		Call to Order, Representative Roll Call (Doug Collins)	5 min.	10:00
B.		Review of Agenda (Doug Collins)	5 min.	10:05
C.		Standing Reports and Discussion Items		
	1.	Action Items from Previous Advisory Committee Meetings (April Paronish)	5 min.	10:10
	2.	Approval of Consent Agenda Items (Patty Harrell) √	5 min.	10:15
		▪ Item 3		
	3.	Approval of May 17, 2006 Minutes (Patty Harrell)√	5 min.	10:20
	4.	President's Report (Graham Edwards)	10 min.	10:25
	5.	Operations Report (John Bear)	10 min.	10:35
	6.	Cost Accountability Discussion with the BOD (Advisory Committee)	45 min.	10:45
	7.	Board of Directors Feedback on Annual Stakeholder Meeting	15 min.	11:30
Lunch Break			**45 min.**	**11:45**
	8.	State of the Market Report (Dr. David Patton)	90 min.	12:30
	9.	Cost/Benefit Studies Update and Next Steps (Ron McNamara)	10 min.	2:00
	10.	Overview of Resource Adequacy Filing (Ron McNamara)	15 min.	2:10
	11.	Board of Directors Nominating Committee (April Paronish) √	5 min.	2:25
	12.	Advisory Committee Project Ranking & Recommendations (Jennifer Curran)	15 min.	2:30
	13.	Midwest ISO Commercial Network Model (Roy Jones)	15 min.	2:45
	14.	Legal Report (Steve Kozey)	10 min.	3:00
		▪ RSG Order		
	15.	Finance Report (Mike Holstein)	10 min.	3:10
	16.	Transmission Owners' Committee Report (Doug Collins/Greg Ioanidis)*	10 min.	3:20
	17	Post Transition Transmission Pricing (Doug Collins)	10 min.	3:30
	18.	OMS Report (Judy Jones)	5 min.	3:40
	19.	Subcommittee, Working Group and Task Force Reports	10 min.	3:45
D.		New Business	10 min.	3:55
	1.	July Advisory Committee Business (Patty Harrell)	5 min.	4:05
		▪ Top 5 Issues for Discussion with Midwest ISO BOD 1. Cost Accountability 2. BA Functions to Transfer to Midwest ISO & Ancillary Services Market 3. Midwest ISO's Role regarding Resource Adequacy 4. Transmission Rate Design 5. Joint and Common Market Development		
E.		Recap		
	1.	Issues/Assignments & Pending Votes for July (April Paronish)	5 min.	4:10

√ **Denotes potential motion for voting**

* **Report will be oral due to unavailability of written report prior to Advisory Committee meeting**

Meeting Agenda

F. Selected List of Upcoming Meetings:

1. Advisory Committee July 19, 2006 10:00 A.M. EDT

   June Rotating Agenda Team:
   - Ron Bauer
   - John Moore
   - Kevin Murray
2. Board of Directors July 20, 2006 8:30 A.M. EDT