OMS
Organization of MISO States

# ORGANIZATION OF MISO STATES, INC.
## Board of Directors Meeting
## Conference Call Minutes
## September 13, 2007

**Approved October 11, 2007**

John Norris, President of the Organization of MISO States, Inc. (OMS), called the September 13, 2007 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:

Robert Lieberman, Illinois
Greg Server, Indiana
John Norris, Iowa
Jeff Johnson, proxy for Mark David Goss, Kentucky
Bill Bokram, proxy for Monica Martinez, Michigan
Burl Haar, proxy for Tom Pugh, Minnesota
Steve Gaw, Missouri
Greg Jergeson, Montana
Tim Texel, proxy for Eugene Bade, Nebraska
Susan Wefald, North Dakota
Valerie Lemmie, Ohio
Shane Rooney, proxy for Kim Pizzingrilli, Pennsylvania
Dan Ebert, Wisconsin

Absent
Manitoba
South Dakota

Agency members participating
Randy Rismiller - Illinois
Cathy Brewster, Laura Cvengros, Bob Pauley – Indiana
Robb Mork - Indiana OUCC
Frank Bodine, Jeff Kaman - Iowa
Rick Bertelson, Jorge Valladares - Kentucky
Wanda Jones, Sally Talbert, Lisa Pappas – Michigan
Nancy Campbell - Minnesota DOC
Mike Proctor - Missouri
Bryan Baldwin - Montana
Jerry Lein - North Dakota
Greg Rislov - South Dakota
Randy Pilo - Wisconsin

Also Bill Smith, Julie Mitchell - OMS Staff

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

**Approval of Minutes of the August 9, 2007 Board Meetings**

- Dan Ebert moved for approval of the August 9, 2007 OMS Board of Directors Meeting minutes as distributed to board members. Bob Lieberman seconded the motion. The minutes were approved by a unanimous voice vote of the directors.

**Treasurer's Report**

Greg Jergeson presented the August OMS Treasurer's Report. (reports follow minutes)

- The beginning balance as of August 1 for the Wells Fargo Business Performance Savings Account was $57,638.52. Interest earned for this month was $154.41. The August 31, 2007 balance was $57,792.93.
- The beginning balance as of August 1 for the Chase Bank One Checking account was $67,246.79. The total disbursements from the checking account for August 2007 were $27,349.62. Deposits, interest and adjustments were $40,044.06. As of August 31, 2007, the checking account bank balance was $79,941.62 and the book balance was $85,132.03 (with 11 checks outstanding).
- The total savings and checking account balances as of August 31 2007 is **$137,734.16.**

**Greg Jergeson moved to accept the August Treasurer's report as presented. Valerie Lemmie seconded the motion. A voice vote of the directors unanimously accepted the report.**

Greg Jergeson also presented a corrected copy of the excel report of the July 2007 Treasurer's Report. The total savings and checking account balances as of July 31, 2007 was $124,885.31 as presented at the August 9 2007 Board meeting.

**Greg Jergeson moved to accept the corrected July Treasurer's report as presented. Susan Wefald seconded the motion. A voice vote of the directors unanimously accepted the report.**

**Review of the Executive Committee Meeting on August 23**

President Norris and Bill Smith highlighted the following items from the August 23rd Executive Committee meeting.

- Chairperson Dan Ebert of the Wisconsin Public Service Commission was appointed Vice president of the Organization of MISO States to fill the position left vacant by John Norris. This creates a vacancy for Secretary.
- The Executive Committee approved the OMS staff contracts and made salary recommendations. The contracts are to expire August 31.
- Bill Smith presented the draft budget with the one change requested from the last OMS Executive Committee meeting which included the cash carryover using the June figure, and including the additional OMS office parking space rental. The total budget expenses for 2008 are $652,000.

**Executive Director's Report:**

Bill Smith highlighted the following items that had come up since the OMS Executive Director's report, which follows the minutes, was distributed.

- MISO's Capital Budget 2008-2010 - A memo from the OMS Long-Term Development and Governance Work Group was distributed. Bill Smith indicated it could be presented to MISO as staff comments or the OMS directors could vote on it. MISO's requests a response by September 21.
- The MISO Board of Directors wants responses from OMS and other sectors in October on the following "hot topics":
    1. Energy efficiency - sector expectations

2. Day 1/ Day market issues
3. End-user assistance focus

- FERC has noticed a technical conference October 15 in Boston on transmission planning. OMS Board members who wish to attend this event need to register with FERC by September 28, 2007. President Norris asked Bill Smith to send another reminder to the OMS distribution list about this event.

- Steve Gaw has a suggestion for the OMS directors on Cross Border Allocation. (This was discussed later in the meeting.)

- A white paper on the interconnection backlog is being prepared by the Transmission Planning and Siting Work Group. Jerry Lein indicated that a draft of the comments would be ready by September 14.

- There will be a filing on September 14 on Ancillary Services Markets. Bill Smith is trying to put together an information session with David Hadley to review the filing in the first week of October.

## BUSINESS

1. **MISO Advisory committee Issues -** Dan Ebert

Dan Ebert reviewed the MISO Advisory Committee agenda and action items on the agenda, referencing the following:

- There is a proposal to move the MISO Informational Forum to the Tuesday before the Wednesday Advisory Committee meeting. It was suggested that Dan Ebert listen to the discussion and vote on what would make the most sense for OMS.
- Motion filed late yesterday concerning a recent MISO tariff filing that would require a vote by the Advisory Committee prior to filing with FERC. Dan Ebert recommended OMS support this motion. Dan indicated it doesn't apply to compliance filings. Bill Smith suggested MISO legal staff may advise against this. Greg Server and Greg Jergeson suggested OMS work with MISO to encourage voting by the AC on significant issues.

2. **MISO Planning Advisory Committee Issues** - Dan Ebert

The MISO PAC will be voting on a new leader for this group. At its September 18th meeting Julie Voeck appears to be the only person running for chair of this committee. Dan asked for feedback in support of her candidacy.

3. **ANOPR Comments -** Bill Smith

Bill Smith provided a summary of the comments being prepared by four OMS work groups on the FERC ANOPR and a brief history of how it came to be. On page 12, alternative positions on market monitor structure are presented.

- Susan Wefald requested North Dakota's name be listed on Page 12, Section 4, 1a with Wisconsin. Minnesota, Iowa and Montana did so as well.
- Indiana wished to join the Illinois position
- Kentucky, Michigan, Missouri, Nebraska, Ohio, Pennsylvania, South Dakota did not ask to join either position.

**Susan Wefald moved to adopt the ANOPR Comment as prepared by the OMS working groups and distributed to the OMS board prior to the meeting. Valerie Lemmie seconded the comment**.

Nancy Campbell requested that language be softened in spots where clichés were used. President Norris asked Bill Smith to make editing changes to tone down the language highlighted by Nancy Campbell.

**A roll call vote was taken: A Vote of Yes to approve comments:**

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

**Yes - 12**
**Abstain - 2**
**Absent - 1**

**By a majority vote of the states present, the comments were approved. Bill Smith was instructed to contact the members not available to vote at this time to determine if they wanted to join in the approval of the comments, with the above result.**

## 4. Resource Adequacy Plan - Jan Karlak

Bill Smith spoke on behalf of Jan Karlak the status of the OMS Resource Adequacy Straw Proposal.

- The RAWG has scheduled informational meetings for OMS Board members on the plan; the first meeting was on Monday, September 10.
- Discussion among board members ensued about the four dates proposed for informational meetings. Dan Ebert offered to talk to Jan Karlak about moving up the meeting date for discussion of the Enforcement section.

## 5. Post-Transition Pricing Filing - Randy Rismiller

Randy Rismiller spoke on behalf of the Pricing Issues Work Group. He presented a draft filing to generally support the MISO/ TO filing on Post-Transition Transmission Pricing filing in comments to FERC.
Discussion followed; some states wished to add footnotes to the comment.

**Bob Lieberman moved to approve the Post Transition Pricing Filing comments draft to the FERC as proposed by the Pricing Work Group with some states proposing footnotes. The draft was distributed to all OMS board members. Greg Server seconded the motion.**

**A roll call vote was taken: Vote yes to approve comments:**

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

**Yes - 10, Abstain - 4, Absent - 1**

**By a majority vote of the states present, the comments were approved. Bill Smith contacted the members not available to vote at this time on the comments to determine if they wanted to join in the approval of the comments.** (Approved document follows minutes.)

6. **OMS Budget 2008 -** Bill Smith

   Bill Smith presented the proposed OMS 2008 budget of $652,000 as approved by the OMS Executive Committee. (The budget follows minutes.) Susan Wefald commended Bill Smith for his thoughtful preparation of the budget.

   **Greg Jergeson moved to adopt the OMS 2008 Budget as drafted and distributed to OMS board members. Susan Wefald seconded the motion. A voice vote of the directors unanimously adopted the budget.**

7. **Comment to FERC on MISO's filing to create position of CEO -** Burl Haar

   Burl Haar, Long Term Development and Governance Work Group chair, discussed with OMS board members the comment to FERC his work group has developed. Susan Wefald thought FERC deserved to hear these carefully prepared OMS comments; and asked that OMS file them as a late filing. Greg Jergeson also asked that the comments be filed. President Norris asked that OMS not proceed with these comments until he could speak further with Graham Edwards.

   **Greg Jergeson moved to approve comments to the FERC on the bifurcation of MISO CEO/President. Tom Pugh seconded the motion.**

   **After more discussion, Greg Jergeson withdrew this motion so that President Norris could take the time to discuss with Graham Edwards what the ramifications are of this issue. Tom Pugh withdrew his second of the motion.**

   President Norris then suggested that after further talk with Graham Edwards, if need be, the OMS board could act either by email contact, or by a special meeting to consider these comments if waiting until the October OMS Board meeting was too long to wait.

8. **KEMA Project Status Report - Modeling Work Group -** Steve Gaw

   Steve Gaw reported that he'd provided the board of directors a Modeling Work Group report to correct misperceptions of the KEMA Tool.

   - For some time MISO has been working with KEMA to develop a modeling tool that would provide a "big picture" view of two general areas.
     1. An analysis of: Economic Efficiency Benefits made possible by RTOs including the following theoretical benefits: Centralized unit commitment and dispatch resulting in lower production costs; higher transmission operating limits resulting in lower production costs; Reductions in generation planning reserve requirements resulting in lower costs due to the need for fewer new power plants; regional planning that identifies targeted transmission investment to relieve congestion resulting in more efficient use of low cost generation and therefore lower production costs. The Midwest ISO retained KEMA to develop a tool to analyze and quantify all of the benefits listed above on a prospective basis over a ten to twenty year planning horizon.
     2. Analyzing and screening future benefits and costs related to various MISO programs under a variety of alternative futures. One such application would be the use as a screening tool for evaluating the costs and benefits related to economic upgrades. In this context, screening would be used to reduce the number of alternatives to which MISO would apply a cost benefit analysis using a more detailed production cost model.

3. A resource planning tool which would allow for the running of different scenarios such as implementation of RPS standards or carbon restrictions on LMPs. Such scenarios could potentially provide stakeholders including states with a new tool in forward looking decisions.

- There has been pushback from stakeholders on the first area, primarily because of the lack of transmission system detail in the KEMA model. The transmission system is modeled at a relatively coarse level to allow fast turn around when running an evaluation for large numbers of alternatives.
- MISO seeks input as to the desire of states for MISO to continue to develop this model as a tool for analyzing costs and benefits. There would also be some question as to how states value the process in its entirety. The Modeling Work Group is planning to inquire further on the value to states of having this tool available as a supplement aid in resource planning. We would appreciate feedback on the states' desire for MISO to continue to develop the KEMA tool for the purpose of the cost benefit application of the tool.

- At this time, Commissioner Gaw announced his departure from the Missouri Commission, effective Tuesday, September 18, 2007.

**9. ASM Benchmarks Status Report** - Jeff Kaman

Jeff Kaman reported the following:

- The ASM Readiness Benchmarks TF was formed to work with MISO's ASM Readiness Advisor, SAIC, developing the metrics or "Readiness Benchmarks" that will be used to report progress toward readiness in measurable areas. They currently have 12 "Benchmark" categories and 55 subordinate "Criteria" to be evaluated. Benchmarks include IT infrastructure, data exchange, staff, MP training, market monitoring, etc. These would each be discussed to see if they've captured everything, eliminate duplication and establish how each criterion will be measured and reported. The Readiness Benchmarks Task Force is meeting for about 6 weeks. Proposed Readiness Benchmarks will be presented at the October Advisory Committee meeting, then rolled out to other stakeholder groups for input "to ensure we're not missing anything." Once approved, there would be monthly updates on status of meeting those Readiness Benchmarks at the AC meetings until ASM market launch.

- Mike Holstein is leading the effort for MISO. "ASM Readiness Advisor" and this TF have a separate document tree on the MISO website with related materials. Jeff and Hisham, Bill Smith have been the only OMS members monitoring and feel that is not ideal but adequate.

**10. OMS Nominating Committee Report** - Tom Pugh

- The Nominating Committee plans to hold its next meeting September 17, 2007 by conference call. The committee's recommendations will be presented to the board at the November meeting.

**<u>NEW BUSINESS:</u>**

- **Cross Border Allocation Costs** - Steve Gaw
  Steve Gaw indicated he was raising the issue of cross border cost allocation at this time, in hopes that President Norris would begin a dialogue with SPP about it. President Norris indicated he would look further into the issue.

**ANNOUNCEMENTS:**

- The next regular OMS Board meeting will be held October 11, 2007 at 2:00 CDT
- The next regular OMS Executive Committee meeting will be held September 27, 2007 at 2:00 CDT
- September 14 – ANOPR comments due
- September 17 – Comment due on Post-Transition Pricing
- September 18 – Planning Advisory Committee meeting – Carmel
- September 19 - Advisory Committee meeting – Carmel
- September 28 - WG chairs and key staff – 9:30 - 11:00 – CDT (by phone)
- November 11 – OPSI – OMS lunch planned at NARUC
- December 13 – OMS Annual meeting – Carmel

**The meeting adjourned at 4:15 p.m. CDT**

Organization of MISO States

**ORGANIZATION OF MISO STATES, INC.**
**Board of Directors Meeting**
**Conference Call Minutes**
**August 9, 2007**

**Approved September 13, 2007**

John Norris, President of the Organization of MISO States, Inc. (OMS), called the August 9, 2007 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:

Robert Lieberman, Illinois
Greg Server, Indiana
John Norris, Iowa
Jorge Valladares, proxy for Mark David Goss, Kentucky
Monica Martinez, Michigan
Tom Pugh, Minnesota
Steve Gaw, Missouri
Greg Jergeson, Montana
Tim Texel, proxy for Eugene Bade, Nebraska
Susan Wefald, North Dakota
Valerie Lemmie, Ohio
Kimberly Hafner, proxy for Kim Pizzingrilli, Pennsylvania
Randel Pilo, proxy for Dan Ebert, Wisconsin

<u>Absent</u>
Manitoba
South Dakota

<u>Agency members participating</u>
Randy Rismiller - Illinois
Laura Cvengros – Indiana
Carol Crone - Indiana
Rick Bertelson - Kentucky
Angie Butcher – Michigan
Hisham Choueiki, Jan Karlak - Ohio

David Hadley - MISO
Also Bill Smith, Julie Mitchell - OMS Staff

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

**Approval of Minutes of the November 9, 2006 and July 12, 2007 Board Meetings**

- Susan Wefald moved for approval of the November 9, 2006 OMS Board of Directors Meeting minutes as distributed to board members. Randel Pilo seconded the motion. The minutes were approved by a unanimous voice vote of the directors.
- Susan Wefald moved for approval of the July 12, 2007 OMS Board of Directors Meeting minutes as distributed to board members. Randel Pilo seconded the motion. The minutes were approved by a unanimous voice vote of the directors.

**Treasurer's Report**

Greg Jergeson presented the July OMS Treasurer's Report. The beginning balance as of July 1 for the Wells Fargo Business Performance Savings Account was $57,484.53. Interest earned for this month was $153.99. The July 31, 2007 balance was $57,638.52.

The beginning balance as of July 1 for the Chase Bank One Checking account was $59,581.15. The total disbursements from the checking account for July 2007 were $33,577.51. Deposits, interest and adjustments were $41,243.19. As of July 31, 2007, the checking account bank balance was $67,246.79 and the book balance was $68,655.64 (with 5 checks outstanding).

The total savings and checking account balances as of July 31, 2007 is $124,885.31.

**Greg Jergeson moved to accept the Treasurer's report as presented. Susan Wefald seconded the motion. A voice vote of the directors unanimously accepted the report.**

**Review of the Executive Committee Meeting on July 26**

Bill Smith highlighted the following items from the July 26th Executive Committee meeting.

- Budget preparation was discussed and a schedule was established for approving the budget at the September 13 board meeting
- The Personnel Committee was asked to review staff contracts and make recommendations. The contracts expire August 31. The Executive Committee will need to act on these at the August Executive Committee meeting.
- The OMS Nominating Committee has started the process of selecting officers for next year.
- Work group plans were reviewed.
- The Executive Committee approved the rental of an additional parking place for the OMS office part-time staff and service people in the adjacent parking garage.
- Preliminary plans for the OPSI-OMS luncheon to be held at the NARUC meeting in November in Anaheim were discussed.

**Executive Director's Report:**

Bill Smith highlighted the following items from the OMS Executive Director's report, which follows the minutes.

- Post-transition pricing filings were made Wednesday, August 1. FERC noticed the comment and corrected the filing date to September 17.
- MWDRI process update:
    1. OMS is noticing calls for two conference calls to be held on the MWDRI surveys. (The first meeting will be held on August 10.)
    2. The MWDRI OMS work Group is in the process of scheduling a conference call to discuss the ANOPR at FERC.
    3. MWDRI Steering Committee is scheduled to meet September 7 in Chicago. A Principles document will be presented at that time for committee approval and then brought to the OMS Board at its September 13 meeting.

## BUSINESS

1. **MISO Advisory committee Issues -** John Norris
   President Norris reviewed the MISO Advisory Committee agenda. There were no formal action items on the agenda, but he referenced the following:
   - MISO AC is meeting August 15, 2007 in St. Paul.
   - Bill Smith noted the formation of an ASM readiness group to act as a liaison group between the stakeholders and MISO's readiness advisor. Approval for this group's formation will be requested at the MISO AC meeting.
   - MISO has made a filing at FERC to change the TO agreement to permit a change in the executive staff to separate the office of CEO and President. The OMS Long-term Development WG may have an interest in filing a comment on this.
   - Item on the agenda indicates MISO may announce a new junior membership for MidAmerican Energy, WAPA and Basin.

2. **ANOPR Comments -** Bill Smith
   Bill Smith provided a status report on comments being prepared by four OMS work groups on the FERC ANOPR.
   - Working Groups involved in drafting the comment include: The Market WG, Market Monitoring & Mitigation WG, the Demand Response WG, and Long-Term Development & Governance WG. Other OMS work groups are also making contributions. Comments are due September 14.
   - The work groups are working together to produce a combined draft to have ready for a vote at the September 13 board meeting. Hopefully the draft will be available two weeks before the meeting for member review.

3. **Resource Adequacy Plan -** Jan Karlak
   Jan Karlak provided the board a brief history of this resource adequacy issue and reviewed the four basic elements of the OMS Resource Adequacy Straw Proposal.
   - Jan also proposed straw voting electronically on the issue pieces with the first results to be available at the OMS September board meeting. Susan Wefald suggested final voting on the sections be done at OMS board meetings.
   - The RAWG has scheduled informational meetings for OMS Board members on the plan; the first meeting is to take place on Monday, September 10.
   - Attached is the RAWG report from August 6 with a summary of the comments they have prepared so far, and an additional presentation of the history of this resource adequacy issue. Also included is information about meeting dates.
   - President Norris encouraged board members to take part in the process. Randy Pilo pointed out how complicated this topic is, and the need for members to become informed through these RAWG sessions.

4. **Broad Constrained Areas Filing -** Market Monitoring & Market Power Mitigation Work Group
   Bill Smith spoke on behalf of Bob Pauley, chair of the Market Monitoring and Market Power Mitigation Work Group. He presented a draft filing to support MISO's request to extend indefinitely mitigation in Broad Constrained Areas. This filing was encouraged by the Market Monitor.

   **Randy Pilo moved to approve the Broad Constrained Areas comments draft to the FERC as proposed by the Market Monitoring and Mitigation Work Group and distributed to OMS board members. Bob Lieberman seconded the motion.**

**A roll call vote was taken:  Vote yes to approve comments:**

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

**Yes - 12**
**Abstain - 1**
**Absent - 2**

**By a majority vote of the states present, the comments were approved.  Bill Smith was instructed to contact the members not available to vote at this time on the comments to determine if they wanted to join in the approval of the comments.**

5. **Reconsideration of ASM Order -** Market Work Group

Randy Rismiller spoke on behalf of Bill Bokram, chair of the Markets Work Group. FERC issued an order in June on MISO's Ancillary Services filing.  FERC rejected that filing and provided guidance on several issues including cost allocation.  Cost Allocation was a major element of the OMS filing on MISO's Ancillary Services.

The attached draft is a request for clarification from FERC of meaning and intent of the words FERC used in this cost allocation issue, clarifying that MISO's matter of cost allocation is still open discussion by MISO and its stakeholders; and for alternatives to be considered.

**Susan Wefald moved passage of the Request for ASM Clarification Order draft to the FERC as proposed by the Market Work Group and distributed to OMS board members.  Greg Jergeson seconded the motion.**

**A roll call vote was taken:  Vote yes to approve comments:**

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

**Yes - 13**
**Abstain - 0**
**Absent - 2**

**By a majority vote of the states present, the comments were approved.**

6. **Comment to MISO Board on Free Rider Issue -** Pricing Issues Work Group
   Randy Rismiller, Pricing Work Group Co-Chair, presented information to OMS board members. He explained that the MISO board requested a position paper from the sectors on the "free rider" issue. Three states (Illinois, Michigan, Ohio) worked together to answer the questions posed by MISO to produce a compilation document presented for OMS board consideration.
   - FERC raised the issue of what is the appropriate financial arrangement for utilities that do not belong to MISO, but receive some advantages because of geographic proximity.
   - Attached is the white paper the OMS board approved for presentation to the MISO Advisory Committee at its August meeting.

   **Monica Martinez moved that OMS adopt the position in the draft Free Rider document summary, with attachments to be added to express the various state positions. Tom Pugh seconded the motion.**

   **The Illinois position was to be credited to the Illinois Federal Energy Policy Staff. Michigan Energy Markets concurred with Illinois' position.**

   **A voice vote was taken. Pennsylvania, Missouri and North Dakota abstained. The remaining directors voted Yes to support the comments.**

**<u>Announcements:</u>**

- August 3 – ASM regional workshop – Madison, WI - 9:00 am - 12:00 noon
- August 10 – WG chairs and key staff - 9:30 am - 11:00 am CDT - Note: DATE CHANGE
- August 14 – ASM regional workshop – St. Paul, MN - MISO Offices - 1125 Energy Park Dr. - 1:30 - 4:30 pm CDT
- August 15 – MISO Advisory Committee Meeting - St. Paul Hotel, St. Paul, MN
- August 16 – MISO Board of Directors Meeting - St. Paul Hotel, St. Paul, MN
- The next OMS Executive Committee meeting will be held August 23 at 2:00 CDT
- September 7 – MWDRI Steering Committee – Chicago (time and place TBA)
- The next regular OMS Board Meeting will be held September 13 at 2:00 CDT
- September 14 – ANOPR comments due
- September 17 ??? – Comment due on Post-Transition Pricing
- September 19 - Advisory Committee Meeting – Carmel
- September 19 - WG chairs and key staff – 4:00 – 6:00 – Carmel
- November 11 – OPSI – OMS lunch planned at NARUC

**The meeting adjourned at 3:45 p.m. CDT**

# MOTION TO APPROVE THE ENERGY AND ASM READINESS TASK FORCE CHARTER

Whereas the Energy and ASM Readiness Task Force (EARTF) was proposed to the Advisory Committee Steering Committee;
And whereas the EARTF has vetted the proposed charter through its stakeholders;
Therefore, the Advisory Committee accepts the charter of the Energy and ASM Readiness Task Force.

**SGWG Charter Approval Motion**
**Advisory Committee**
**September 19, 2007**

WHEREAS the Committee Restructuring Working Group has submitted a proposed new charter, including a name change to Stakeholder Governance Working Group, to the AC for approval.

IT IS THEREFORE RESOLVED by the Advisory Committee that the proposed charter submitted by the Committee Restructuring Working Group, and included in the materials for this September 19, 2007 meeting of the Advisory Committee, is approved.

**Automatic Voting Motion**
**Advisory Committee**
**September 19, 2007**

WHEREAS the Advisory Committee has reviewed the proposed changes to the Stakeholder Governance Guide, as it pertains to the process for voting on changes to the MISO Energy & Markets Tariff (EMT), as recommended by the Committee Restructuring Working Group based on a vote at its May 23, 2007 meeting.

IT IS THEREFORE RESOLVED by the Advisory Committee that the following changes to Section V.A.5 of the Stakeholder Governance Guide be included in a revised Stakeholder Governance Guide:

"c. The Advisory Committee shall automatically place on its agenda as voting items Filings that MISO intends to submit to FERC that would change the Energy Markets Tariff.

i. The Advisory Committee shall have reasonable opportunity to vote on such Filings before MISO submits the Filings to FERC.
ii. ii. This provision shall not apply to compliance filings."

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

| | | |
|---|---|---|
| Wholesale Competition in Regions with<br>Organized Electric Markets | )<br>) | Docket Nos. RM07-19-000<br>AD07-7-000 |

**COMMENTS OF THE ORGANIZATION OF MISO STATES**
**ON ADVANCE NOTICE OF PROPOSED RULEMAKING**

The Commission's Advance Notice of Proposed Rulemaking (ANOPR) in this docket invites discussion on four areas of organized market structure:

- The role of demand response in organized markets;
- Increasing opportunities for long-term power contracts;
- Strengthening market monitoring; and
- The responsiveness of Regional Transmission Organizations (RTO) and Independent System Operators (ISO) to customers and other stakeholders.

The Organization of MISO States (OMS) provides the following comments on each area.

**CONTENTS**

## I. DEMAND RESPONSE AND PRICING DURING POWER SHORTAGES IN ORGANIZED MARKETS

In this portion of the ANOPR, the Commission's focus is on exploring market rules that allow both wholesale and qualifying retail customers to offer demand response into the day-ahead energy, real-time energy and ancillary services markets. Market design and market rules are the linchpins enabling demand resources to compete on equal footing with generation resources.

The OMS supports a well-functioning competitive wholesale power market in the Midwest ISO region, and agrees that engagement by customers, on the demand side of the market, is vital to this objective. Without an active and dynamic demand side it will be difficult, if not impossible, to attain that objective. The OMS's working group, the Midwest Demand Resources Initiative, is tasked to promote progress toward an active demand side throughout the MISO footprint.

The aim of demand response programs is to lower costs to all customers. An active demand side can work in real time to signal that curtailment of some electric use is more valuable than dispatching more expensive supplies. The OMS agrees with the Commission that other values flow from an active demand side as well, including:

- customers who are more aware of the cost of electricity and what they can do about it, especially at times of peak and low reserves;
- efficient signals to long term investors in generation and transmission capacity[1];
- efficient maintenance of resource adequacy and system reliability;
- reduced volatility in power prices; and
- generator market power mitigation.

The OMS recognizes that the ***system*** value of demand response is enhanced for all participants if demand resources are developed and offered in all States. Fortunately, demand resources are everywhere. Demand resources represent a broad category of options potentially available to customers, including demand response, energy efficiency, distributed generation, storage, and efficient rate design options[2]. Unfortunately, many of these demand resources are currently only prospective resources because of barriers to their active participation in the market.

The OMS also agrees with the Commission that:

> "Effective demand response can be achieved by linking wholesale and retail markets. While the Commission can remove some obstacles to demand participation in organized markets, more effective demand response also requires the action of state commissions."[3]

However, the OMS points out that the Commission has been sensitive to state jurisdictional authority in matters related to electric service to retail customers.4 Some states within MISO have made demand resources available for the benefit of reducing demand for load serving entities (LSE) for a number of years. These demand resources were created at the state level

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[1] The efficient signals demand response provides is one of many factors that investors in new generation consider, but it is not the most significant factor. Typically, such investors place greater weight on the ability to obtain higher payments to cover their relatively high fuel costs or a longer term guaranteed revenue stream, e.g. longer-term contracts or guarantees from a state regulator for building.

[2] Efficient rate design options could include two-part real-time (or day-ahead) pricing or critical peak rebate programs that allow consumers to hedge the bill impacts of variable pricing while benefiting from being able to control marginal energy usage in response to changes in wholesale prices.

[3] ANOPR, at P 48.

through direct load control mechanisms, interruptible tariffs or by special contracts. These demand resources are often referred to as "legacy" demand response.

In responding to the Commission's questions, the OMS must consider these issues in the context of the recent (August 2006) FERC staff report "Assessment of Advanced Metering and Demand Response" that found very high levels of demand resources (at least by comparison) available in the region. The OMS acknowledges, as does the FERC report, that the bulk of those resources are "legacy" utility programs, largely designed, implemented, triggered and compensated in a pre-organized market framework, for a set of purposes defined by individual state policy makers and significantly distinct from those addressed in this ANOPR. Some states in the Midwest ISO with legacy demand response programs are concerned about the problems that may result for such programs if they are **required** to participate in wholesale markets in ways that are contrary to state rules and regulatory orders creating the original design of these retail programs. . Until new demand response resources are developed in the Midwest ISO footprint, the existence and availability of those "legacy" demand response programs is critical to the reliability of the system. Aligning these legacy demand response programs with the current market framework is difficult and the OMS's responses to this ANOPR need to be considered in light of that fact.

**1. Demand Response Participation**

The ANOPR proposes to obligate each RTO/ISO to purchase demand resources in its markets for energy imbalance, spinning reserves and supplemental reserves, as long as the demand resources, like all other generation resources, meet the necessary technical requirements and the resources submit an offer under the generally-applicable bidding rules at or below the

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[4] ANOPR, at P 35.

market-clearing price.[5] Provided that it is consistent with state laws and rules, the OMS supports the concept of demand resources if they are offered, at least as an equal with generation resources, for the provision of energy and ancillary services

**2. Removing Demand Response Disincentives**

The ANOPR seeks comment on whether to eliminate, during a system emergency, charges to buyers in the energy market for taking less electric energy in the real-time market than purchased in the day-ahead market.[6] The Commission describes these charges as "deviation charges" and includes uplift costs in that category.[7]

Clearly, it does not make sense to charge market participants for not taking delivery of energy during periods of system emergency shortages. Indeed, it would be problematic for an RTO/ISO to call for demand reductions during a system emergency and then assess penalties for schedule deviations or general uplift charges to parties that comply with the call for reduction. As such, the Commission should eliminate such charges and even consider developing programs that compensate parties that actually reduce their demand during such emergencies.[8]

Furthermore, the Commission requests comment as to whether the "deviation charge" should be eliminated for a day-ahead to a real-time load reduction when there is no system emergency. The OMS agrees with the Commission that eliminating the deviation charge beyond system emergencies would serve to develop greater levels of customer demand response. The OMS is mindful, however, of the Commission's legitimate concerns that making such market changes could result in unintended results, such as new gaming strategies and less accurate market scheduling practices. Customer-sided demand response is critical to ensuring a

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[5] ANOPR, at P 59.
[6] ANOPR, at P 62.
[7] *Id*.
[8] See, *Midwest Independent Transmission System Operator,* 120 FERC ¶ 61,029 (2007).

competitive energy market, however, and we believe that greater consideration of this issue is warranted, beyond initial comments. OMS suggests that the Commission direct the RTOs and ISOs to explore this issue further and to recommend whether such deviation charges could be reduced or eliminated for demand reduction from the day-ahead to the real-time markets, and to identify under what conditions and circumstances such changes might be appropriate, based on their experience with market operations.

**3. Co-Optimizing Energy and Operating Reserves**

The ANOPR proposes to modify RTO/ISO tariffs so that DR resources must be allowed to provide spinning and supplemental reserves without also being required to sell into the energy market.[9] This change to market rules is intended to address the disincentive for DR to be an operating reserve. The Commission states that without this modification, customers may hesitate to offer demand reductions as operating reserves due to concerns about disruptions to their businesses. The OMS urges the Commission to reconsider its proposal to prohibit RTO/ISO programs that co-optimize the offering of energy and ancillary services.[10] Such co-optimization programs can produce large efficiency improvements.[11]

To ameliorate the Commission's concern about the effect of co-optimization on DR providers, the better solution would be to allow DR providers to submit offers with features such as duration and frequency of permitted interruption. Such offer elements would be analogous to such features as ramp rates, run times, and start/stops that are allowed in generator offers

**4. Demand Response Aggregators**

The ANOPR proposes that each RTO/ISO include provisions in its tariff that allows DR

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[9] ANOPR, at P 60.
[10] The Midwest ISO has submitted such a co-optimization proposal in Docket No. ER07-550.
[11] See, for example, Midwest Independent Transmission System Operator, Inc revisions and amendments to its Open Access Transmission & Energy Markets Tariff etc under ER07-550 (February, 2007).

offers from third-parties who would aggregate the demand response of a number of retail customers that are not LSEs, "unless state retail electric laws or regulations do not permit this."[12] The OMS supports this proposal. Third-party aggregators can provide a convenient option to direct end-user participation. Furthermore, third-party aggregators could also be a significant source of innovation in the market – and under the right market rules – could assist in getting participation from all sectors. The OMS, however, recommends that the Commission be mindful of the potential impact third-party aggregators have on reliability, by carefully considering the relationship between the aggregator that participates in the market and the load serving entity that sheds load under maximum generation emergency operating procedures. If there are two different entities responsible for load shedding, this could have the unintended effect of both entities depending or relying on the same load reduction during an emergency event where load exceeds generation capacity. This dual responsibility would lead to a loss of reliability.

**5. Pricing under Scarcity Conditions**

The ANOPR seeks comment on ways to modify mitigation rules to allow the market price to better reflect the value of lost load in an emergency situation. The ANOPR describes four possible proposals: (1) allow RTO/ISOs to increase both the energy bid caps and market-wide price caps above the current levels; (2) allow RTO/ISOs to raise the bid caps only for demand bids; (3) require RTO/ISOs to implement an operating reserve demand curve; and (4) allow the market-clearing price to rise to the level of the payment made to participants in an emergency demand response program.[13] In addition to the four options discussed above, there is an option that could be implemented in regions that continue to cap offers and bids in energy markets. That alternative would permit end users who are willing to interrupt load at some price

[12] ANOPR, at P 70.

to participate in a voluntary demand response market in which participants could trade their uncalled priorities for being interrupted.[14]

Substantial market changes would be needed to implement the ANOPR's first proposal. The demand side of the market would need to be much more fully developed and sufficiently active to serve as the primary restraint on sellers' market power opportunities.[15] The OMS is concerned that the necessary precedents and market design prerequisites are not yet widely in place to support the generic approach of raising generator offer caps or modifying other market mitigation measures. Increasing offer caps would only serve to allow generators to exercise market power and under the current state of the markets could lead to higher, not lower, electric costs for consumers. The OMS agrees with Commissioner Kelly's statement that,

> Before the Commission considers whether to pursue such market rule modifications, I think it is important to address other barriers that may significantly restrict demand response participation. For example, the *FERC Staff Demand Response Assessment* concluded that the technologies needed to support significant deployment of demand resources, such as advanced metering, have little market penetration. [footnote omitted] Without the necessary technology already in place that would allow demand resources to respond to price signals in wholesale or retail markets, it is unclear how quickly they could develop the ability to respond after energy bid caps or market-wide caps are raised or eliminated. In other words, the technology and associated demand response capability must be in place before we consider raising or eliminating these price caps. Otherwise these higher energy prices may not elicit any demand reduction in a fashion capable of disciplining those prices and keeping them just and reasonable.[16]

The OMS believes qualified DR offers ought to be allowed to set the market-clearing price. Substantial market design changes may be needed to implement this provision.

Unlike caps on supply offers that can limit strategic behavior, capping demand bids by

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[13] ANOPR, at PP 76-80.
[14] P. Centolella, *Pricing Demand Response: Crossing the Chasm to Efficient Energy Markets*, at 15, San Diego, (Oct. 26, 2006) <www.sandiego.edu/EPIC/news/documents/Centolella.pdf>.
[15] This concern also applies to the need for improving technology on the demand side of the market, such as the use of advanced meters and improving communications.

consumers and independent aggregators restricts only genuine consumer responses to shortages and high prices. While parties may differ over policies for avoiding shortages and ensuring resource adequacy, in the event that shortages occur, raising caps on demand bids under emergency response procedures, without lifting caps on supply offers, deserves serious consideration. On the other hand, in markets where demand response capabilities are not in place, raising the cap on demand bids could increase prices without producing demand reductions.

While raising caps in an emergency could better allow each customer to act on its value of lost load, the Commission is correct that RTO/ISOs would have to establish procedures for vigorous oversight and monitoring for the exercise of market power during a system shortage. If the Commission is suggesting that market power mitigation that is needed to prevent market power abuse would be dispensed with to enable cap-raising, the OMS opposes the Commission's proposal. Allowing the exercise of market power can never be a correct solution to any identified market design problem. However, demand response can act as a significant restraint on generator market power by making it both more difficult for suppliers to benefit from exercising market power and providing a check on strategic behavior. [17]

Generally, lifting generator offer caps or modifying other market power mitigation rules, under current market conditions (wholesale as well as retail), would be bad public policy and result in negative outcomes for customers and for the system as a whole. The OMS is not, however, **absolutely** opposed to the relaxation of the price caps. Under certain future market conditions, the OMS can imagine that such an action would result in positive impacts on the

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[16] Kelly Dissent at 1-2.
[17] See, S. Rassenti, V. Smith, and B. Wilson, *Controlling Market Power and Price Spikes in Electricity Networks: Demand Side Bidding*, Proceedings of the National Academy of Sciences 100(5) 2998-3003 (March 4, 2003); see

function of the markets and reduce costs to consumers. Those future market conditions, expressed in somewhat general language, include, but are not limited to, the following:

1. The existence across the region of a well-functioning distributed generation market;
2. Increased region-wide penetration and adoption of energy efficiency technologies, either directly through price or cost induced changes in customer investment behavior and/or indirectly through incentives and other efficiency incentive programs;
3. Adoption of dynamic retail pricing for some substantial portion of the region-wide load and/or the establishment of extensive linkage between new and existing demand side resources and the wholesale markets;
4. Retail demand response tariffs that are designed to benefit the regional wholesale markets.

Regarding the remaining market design options suggested in the ANOPR, the OMS urges the Commission to remain flexible and open to considering various possible ISO/RTO proposals. ISO/RTO markets are developing at different paces. Scarcity pricing is complex with lots of unforeseen consequences. So while a detailed program for scarcity pricing is important for bringing about efficient levels of DR, a deliberate and thoughtful pace of reform in this area is warranted.

## II. LONG-TERM POWER CONTRACTING IN ORGANIZED MARKETS

The ANOPR seeks comments on any concrete steps the Commission can take to facilitate voluntary long-term power contracting in organized market regions. In particular, the ANOPR discusses ideas such as: (1) requiring RTO/ISOs to post information that could facilitate long-term contracts, such as by aggregating and posting information on long-term contract prices and quantities on a periodic basis; (2) requiring or encouraging efforts to develop new standardized forward products; and (3) having a dedicated portion of the RTO/ISO's website as a bulletin board for market participants to post offers to buy or sell power long-term.[18]

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also, S. Borenstein & J. Bushnell. *An Empirical Analysis of Market Power in a Deregulated California Electricity Market*, 47 Journal of Industrial Economics (September 1999).

[18] ANOPR, at P 93

While some of these suggestions may be useful, the OMS does not support imposing them on RTO/ISOs as requirements at this time. For example, the stakeholders of a particular RTO/ISO may want their RTO/ISO to provide a bulletin board service for bilateral contracts. The Midwest ISO, for instance, in response to participant interest, maintains two bulletin boards as a part of its market systems: one for secondary FTR market bids and offers, and one for bilateral capacity transactions. Both are accessible through the Midwest ISO market portal in the same way participants conduct business in other markets it administers. In such cases, it may be appropriate for the RTO/ISO to develop such service and for the Commission to facilitate it. On the other hand, stakeholders may wish to avoid incurring the cost for development of a new RTO/ISO service and may wish to look for third parties to provide such bulletin board service. Or, perhaps, market participants would find no value in such bulletin board services.

Similarly, the OMS does not believe that it is <u>necessarily</u> the RTO/ISOs' responsibility to develop new standardized pro forma contracts. However, if the stakeholders of an RTO/ISO desire their RTO/ISO to engage in such a project, the OMS would urge the Commission to facilitate the effort.

Finally, the OMS does not support the Commission's proposal to <u>require</u> RTO/ISOs to post information on long-term contract prices and quantities on a periodic basis. RTO/ISOs are not in the best position to provide such information because they may not collect it in the normal course of business. If it is determined that more data availability on existing long term contracts would be useful in promoting more new long term contracts, then the OMS encourages the Commission to revise its current Electric Quarterly Report ("EQR") posting requirements to provide such information.

Looking at the bigger picture, the OMS believes that there are more fundamental issues that the Commission can address that would be more likely to increase the amount of long-term contracts actually executed by market participants in the RTO/ISO regions. In particular, the OMS would urge the Commission to focus on "getting the prices right" in the spot energy and ancillary services markets and reducing regulatory uncertainty. A reliable, competitive, well-functioning spot market that reflects actual system operating conditions and that is operated in a stable, predictable regulatory environment will serve as the best foundation for hedging through long term bilateral contracting. In addition, development of rules and market designs for least-cost, efficient achievement and maintenance of long-term resource adequacy will go far toward establishing the proper framework for reasonable levels of long-term contracting.

## III. MARKET MONITORING POLICIES

The OMS agrees with the Commission that "market monitors have played an integral role in the organized electric markets" and that they provide "valuable reporting and analysis services not only to the Commission, but also to the RTOs and ISOs, to market participants, and to state commissions."[19] While some reform to current market monitoring policies and practices is clearly warranted, the OMS urges the Commission to avoid solutions that damage currently successful practices. The OMS also urges the Commission to review the comments submitted by the OMS in the Commission's technical conference regarding its Review of Market Monitoring Policies.[20]

### 1. Market Monitoring Unit ("MMU") Structure and Independence

Before addressing the specific structural issues identified in the ANOPR, the OMS offers an overall observation. The critical determinants of successful market monitoring are the

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[19] ANOPR, at P 95

[20] See, Comments following Technical Conference of Organization of MISO States, Inc. under AD07-8 (April 16, 2007)

MMU's access to RTO market information, its ability to observe and evaluate RTO operations, the adequacy of its personnel and computational resources, its ability to form and provide independent professional advice and the receptivity of RTO management to that advice. Some of the structural issues identified in the ANOPR are secondary to these factors. The OMS states hold somewhat differing views on these secondary factors that are explained below.

**a. Internal vs. External MMU**

Among OMS states, Illinois and Indiana[21] agree with the Commission that there is "no appreciable difference among the performance of the market monitors that can be attributed to whether they are external or internal to their RTO or ISO."[22] These OMS states agree that "the particular structural relationship between the MMU and the RTO or ISO [is] of secondary importance, provided that the RTO/ISO tariff contain[s] provisions ensuring independence on the part of the MMU."[23] Neither an external MMU, nor an internal MMU, will be effective if RTO/ISO management has the ability to control them or influence their actions. As shown by the recent events in PJM, a tariff that contains poor reporting arrangements and relationships that would allow management to influence the MMU's behavior and findings can lead to a disruption in the marketplace. In particular, Illinois believes that what happened in PJM had very little to do with the PJM MMU being an employee of PJM. The Organization of PJM States pointed out a long time ago that Attachment M left the door open for this type of behavior from PJM management. The success of other RTO/ISO MMUs with an external MMU is not so much the result of the MMU being an external consultant, but more a reflection of a properly structured tariff and the fact that management respects the MMU and allows the MMU to do its job.

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[21] The Indiana Office of Utility Consumer Counselor also concurs with this view.
[22] ANOPR, at P 110
[23] ANOPR, at P 109

Accordingly, the above OMS states urge the Commission not to impose a "one size fits all" approach to the structure of MMUs and instead focus on getting the tariff of the RTO/ISO right.

On the other hand, certain OMS states such as Wisconsin, North Dakota, Iowa, Minnesota, Montana, South Dakota, and Nebraska believe that a completely internal MMU model is seriously flawed. To them, events in PJM bear this out: assuming the best of behavior by all PJM parties, noting the ongoing investigation and that PJM itself is now abandoning the internal model (leaving no RTO/ISO with an internal MMU), and with still sizeable negative trade press coverage, the internal market monitoring model lacks forthright credibility. Yet market monitoring remains a key function for an RTO/ISO and its companion markets to operate competitively. Assuming any behavior less than above-board, these states believe the internal model has failed to provide convincing and trustworthy market monitoring, a frightening prospect when energy markets are still maturing. By comparison, the MISO model of using an external consultant looks impressive. For these reasons, these states believe the Commission should favor an external MMU presence.

Irrespective of the individual state's positions noted above, all OMS states believe that the Commission must endeavor to make sure that poor reporting arrangements and relationships that allow management to influence the MMU's behavior never become part of any respective RTO/ISO's market monitoring tariff.

**b. MMU Reporting Structure**

The ANOPR proposes that the MMU "report either directly to the RTO/ISO's board of directors or directly to a committee of independent board directors."[24] In the past, the OMS has recommended that the Commission explore a Market Monitoring Oversight Board made up of

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[24] ANOPR, at P 113

either the state commissions in the RTO/ISO footprint or a combination of federal and state regulators.[25] The OMS believes that an appropriate Joint Board could ultimately supplant the role of the RTO/ISO Board regarding the accountability of the MMU.

As an alternative to the Joint Board approach, the MMU could be required to report directly to the RTO/ISO Board or to a subcommittee of the RTO/ISO Board that does not include any member of the RTO/ISO management. While to date, the Midwest ISO Management and Board of Directors have respected the independent role of its MMU, a structure that has the MMU reporting to the RTO/ISO Board calls into question the ability of the MMU to act independently over the long run. Accordingly, such an approach would require explicit recognition that the MMU should not be required to seek the RTO/ISO's approval for activities such as conducting inquiries/investigations, submitting referrals to the Commission, submitting reports to the Commission or the state commissions, gaining access to the data that the <u>MMU believes</u> is necessary to complete an inquiry or to investigate any matter that the MMU reasonably believes would impair the efficient conduct of the RTO/ISO's facilitated markets.

The OMS urges the Commission to explore the possibility of developing Joint Boards for purposes of MMU reporting. The Joint Board proposal more thoroughly addresses the Commission's expressed concerns both for MMU independence and MMU accountability. Implementing the Joint Board approach would also eliminate any conflicts of interest that the RTO/ISO Board may have between RTO/ISO administration and MMU oversight.[26] Adoption of the Joint Board approach to MMU accountability may also address concerns expressed by some that the Commission not delegate any of its market oversight responsibility to an

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[25] See, Comments following Technical Conference of Organization of MISO States, Inc. under AD07-8, at P. 2

[26] While the OMS will comment elsewhere in this document on the Commission's proposal for stakeholder membership on RTO Boards, we will take the opportunity to point out here the inherent and obvious conflict of

unaccountable non-governmental MMU. If the Commission dismisses the Joint Board proposal and proceeds to implement its proposal for MMU reporting to an independent RTO/ISO Board, the Commission must also factor in provisions that require notice to the Commission and approval by the Commission with input from the states of such things as MMU budget allowances and MMU personnel evaluation.

### c. Focus on MMU Independence

Regardless of any decisions the Commission makes on MMU structure, the OMS urges the Commission to focus primarily on MMU independence. The OMS notes the following provision in the Midwest ISO tariff that the Commission would do well to require in all RTO/ISO tariffs. Specifically,

> The IMM [independent market monitor] shall be granted complete independence to perform those activities necessary to provide impartial and effective market monitoring within the scope of the Plan. No person, party or agent, including the Transmission Provider, State Regulatory Commissions, or any other administrative oversight group responsible for the administration of the IMM activities, shall be granted authority to screen, alter, delete, or delay IMM investigations or the preparation of findings, conclusions, and recommendations developed by the IMM that fall within the scope of market monitoring responsibilities contained in the Plan.[27]

The OMS also recommends that the Commission require each RTO/ISO tariff to include a provision authorizing the MMU to hire legal counsel separate from the RTO/ISO.

Because of the importance of *independent* market monitoring, the OMS believes that it would be beneficial for the Commission and states to have regularly scheduled conversations about monitoring issues to provide greater assurance that the market monitoring and mitigation policies are appropriate. Such conversations should also include the RTO/ISOs, the MMUs and relevant experts.

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interest that such an approach to RTO governance would have with regard to the RTO Board's MMU oversight.

### 2. MMU Tools

The OMS agrees with the Commission that MMUs must have "adequate tools with which to perform their job."[28] The OMS strongly supports the Commission's proposal to require "each RTO and ISO to include in its tariff a provision imposing upon itself the obligation to provide its MMU with access to market data, resources, and personnel sufficient to enable the MMU to carry out its functions."[29] However, as footnote 94 of the ANOPR notes, PJM's Attachment M contains Commission approved tariff language that details the provision of resources and access to market data for PJM's MMU. Yet, substantial controversy still exists over these very issues.[30]

The PJM example illustrates that having in place a tariff provision requiring an RTO/ISO to "provide its MMU with access to market data, resources, and personnel sufficient to enable the MMU to carry out its functions" will not, in an of itself, eliminate all RTO/ISO-MMU problems regarding these issues. Admittedly, the Commission's proposal to require each RTO/ISO to adopt a tariff provision "directing the MMU to report to the Commission any concerns it has with inadequate access to market data, resources, or personnel" will help the situation.[31] However, without sufficient independence of the MMU from the RTO/ISO, potential fears of retaliation and retribution could still constrain an MMU's enthusiasm to go public with such concerns. The Commission must not shrink from addressing this bigger independence issue and a Joint Board reporting structure would go far to address it.

The OMS also recommends that the Commission require that each RTO/ISO's MMU tariff contain a provision obligating market participants to respond to MMU data requests. "Access to market data" that the MMU deems necessary or important must be guaranteed and

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[27] Section 50.2 of the Midwest ISO's tariff.
[28] ANOPR, at P 111
[29] ANOPR, at P 111
[30] See, e.g., the pleadings of the Organization of PJM States, Inc. in Docket Nos. ER06-826 and EL07-58.

the provision of such data on the part of market participants cannot be voluntary. For example, Section 54.2.2a of Module D of the Midwest ISO tariff provides for the following in this regard:

> A party receiving an information request from the IMM shall furnish all information, in the requested form or format, that is: (i) included in the categories of data or information that it may request from a Market Participant to support an active investigation, as specified in Section 61; or (ii) reasonably necessary to achieve the purposes or objectives of this Plan, not readily available from some other source that is more convenient, less burdensome and less expensive, and not subject to a legal privilege.

Section 61 of Module D details the specific types of data that the MMU can seek from market participants, transmission owners and the RTO/ISO. These types include production costs, opportunity costs, generation logs, transmission logs and bidding agreements. The OMS notes that this obligation falls on market participants *and* transmission owners and the RTO/ISO.

Adoption of an across-the-board standard requiring market participants to respond to MMU data requests would minimize the Commission's burden in processing piecemeal MMU concerns about inadequate access to market data.

### 3. MMU Functions

#### a. MMU Advice on Rule and Tariff Changes

The OMS supports the Commission's proposal to require each MMU to continue to advise its RTO/ISO of "any recommendations for rule or tariff changes"[32] The OMS also supports the Commission's proposal to require the MMUs to "advise the Commission and other interested entities" of any recommendations for rule or tariff changes.[33] The MMU has critical expertise in identifying market design elements that will facilitate competitive market participant behavior and competitive markets. However, the Commission's proposed requirements for the MMU to advise are too general to be meaningfully implemented. The details associated with

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[31] ANOPR, at P 111
[32] ANOPR, at P 115

these requirements will need to be worked out - either by the Commission or by the state commissions and stakeholders of the individual RTO/ISOs and submitted to the Commission for review and approval.

**b. MMU Referrals**

The OMS supports the Commission's proposal to retain the requirement from its *Policy Statement on Market Monitoring Units* that the MMU "make a referral to the Commission in all instances where the MMU has reason to believe that a market violation may have occurred."[34] The OMS also supports the Commission's proposal to specifically require MMUs to refer suspected violations of the Commission's Anti-Manipulation Rules that were codified in the Commission's *Prohibition of Energy Market Manipulation* Order.[35] The OMS notes that the Midwest ISO's market monitoring plan already requires its MMU to monitor for violations of the Commission's Anti-Manipulation Rules and refer suspected violations to the Commission.[36]

The OMS notes the Commission's new proposal to require each MMU to "refer any suspected violations of other Commission-approved rules and regulations, such as Codes of Conduct and Standards of Conduct."[37] Section 53.3b of Module D in the Midwest ISO's tariff currently does not require, but rather provides the MMU with the option of reporting a "significant market problem or a potential violation of the Transmission Provider's Tariff, other FERC-approved Transmission Provider Market Rules, or the FERC Market Rules". The OMS is not opposed to the Commission's proposal to expand the MMU functions to require monitoring and reporting of suspected violations of any and all Commission-approved rules and regulations.

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33 ANOPR, at P 115

34 *Market Monitoring Units in Regional Transmission Organizations and Independent System Operators*, 111 FERC ¶ 61,267 Appendix A at P 4, underlining added.

35 ANOPR, at P 116, citing *Prohibition of Energy Market Manipulation*, FERC Stats. & Regs. ¶ 31,202 (2006).

36 See, Module D, Section 52.3b of the Midwest ISO's tariff.

However, this new proposal could be a significant expansion of functions and duties for an MMU and, should the Commission implement such an expansion of MMU functions, the Commission must also ensure that the MMUs receive all needed increases in budgets and resources to perform such new functions.

**c. MMU Analyses, Studies and Reports**

As discussed elsewhere in this document regarding state commission needs for MMU information, MMU tariffs should be revised as needed to clarify that the MMU will conduct analyses and provide studies/reports when reasonably requested by a state commission or regional state committee. For example, the Midwest ISO tariff has a reasonable provision that could serve as a model in this regard. The Midwest ISO tariff states,

> The IMM [independent market monitor] will also respond to requests from FERC or State Regulatory Commissions for additional analysis or data the IMM has in its possession, subject to its obligation to protect the confidentiality of the data.[38]

The Midwest ISO's tariff also establishes an obligation on the MMU to provide reports of such analyses to the state commissions.[39]

**d. MMU Reports on RTO/ISO Performance**

The OMS has argued that an MMU should be expected to provide critical evaluation of the RTO/ISO's management of energy markets and transmission operations.[40] In her separate statement concurring in part and dissenting in part, Commissioner Kelly states that she "would have proposed requiring the MMU to make recommendations related to its reports on RTO/ISO performance."[41] The OMS supports Commissioner Kelly's proposal on this point.

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[37] ANOPR, at P 116
[38] Midwest ISO tariff, Section 50.1
[39] See, e.g., Section 52.3.1 of the Midwest ISO tariff
[40] See, Comments following Technical Conference of Organization of MISO States, Inc. under AD07-8, at P. 1
[41] Kelly Dissent at 1.

### 4. Market Power Mitigation by the MMU

#### a. MMU Authority to Administer Market Power Mitigation

The Commission's ANOPR includes a discussion of market power mitigation that is confusing, unclear and troubling.[42] In particular, the ANOPR appears to make a proposal to prohibit MMUs from administering market power mitigation.[43] In the ANOPR, the Commission appears to believe that MMUs are improperly performing market power mitigation functions, conducting market power mitigation or administering the market power mitigation provisions of RTO/ISO tariffs. The ANOPR proposes to remove that function from the MMUs and transfer it to the RTO/ISOs. For example, the ANOPR states that "operational activities affecting the market, <u>including mitigation</u>, are more properly performed by the RTOs and ISOs themselves as part of their responsibility to administer their Commission-approved tariffs."[44]

However, there is confusion as to what exactly the Commission's policy is regarding who is responsible for implementing market power mitigation. For example, consider the Commission's November 17, 2003, Order, *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, where the Commission appears to have authorized <u>MMUs</u> to engage in market power mitigation. In particular, the Commission stated,

> We believe it is appropriate <u>to authorize MMUs</u> to enforce certain ISO/RTO tariff matters if those matters are: (i) expressly set forth in the tariff; (ii) involve objectively-identifiable behavior; and (iii) do not subject the seller to sanctions or other consequences other than those expressly approved by the Commission and set forth in the tariff.[45]

The Commission stated further that, to the degree its market behavior rules overlap with

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[42] ANOPR, at P 117-119
[43] ANOPR, at _ 119
[44] ANOPR, at P 119
[45] *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218, at P 182, underlining added

"a clearly stated tariff provision for which the Commission has assigned the first-line enforcement authority with associated sanctions to a MMU subject to appeal to the Commission, we will defer in the first instance to the MMU, subject to possible review."[46] These passages from the Commission's 2003 Order appear to have given MMUs market power mitigation authority when such authority for the MMU is set forth in the RTO/ISO's tariff and previously approved by the Commission.

However, the Commission's subsequent 2005 Policy Statement on Market Monitoring Units appears to prohibit MMUs from engaging in market power mitigation, and instead assigns that function to the RTO/ISO. For example, the Commission's MMU Policy Statement states that,

> ISOs/RTOs may administer compliance with tariff provisions only if they are expressly set forth in the tariff; involve objectively identifiable behavior; and do not subject the seller to sanctions or consequences other than those expressly approved by the Commission and set forth in the tariff, with the right of appeal to the Commission.[47]

Similarly, Paragraph 6 of the MMU Policy Statement refers to "Commission-approved tariff provisions that are administered by the ISO/RTO."[48]

In addition, Section 62 of the Midwest ISO's Module D suggests that it is the Midwest ISO, and not the MMU, that is primarily responsible for administering market power mitigation. Specifically, the Midwest ISO's Module D states,

> "These market power Mitigation Measures are intended to provide the means for the Transmission Provider to mitigate the market effects of any conduct that would substantially distort competitive outcomes in the Energy Markets or other markets

[46] *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations,* 105 FERC ¶ 61,218, at P 185, underlining added.
[47] *Market Monitoring Units in Regional Transmission Organizations and Independent System Operators*, 111 FERC ¶ 61,267 at P 5, underlining added.
[48] *Market Monitoring Units in Regional Transmission Organizations and Independent System Operators*, 111 FERC ¶ 61,267 at P 6, underlining added

> administered by the Transmission Provider, while avoiding unnecessary interference with competitive price signals".[49]

The OMS notes that the Midwest ISO's tariff defines the term "Transmission Provider" as the Midwest ISO, not the MMU. With respect to MMUs administering market power mitigation, and to the Midwest ISO's MMU in particular, it appears that the Commission is proposing a policy in the ANOPR that is exactly the same as the Commission's current policy as expressed in the 2005 Policy Statement on Market Monitoring Units. To the extent that the Commission intends to be proposing a new or different policy from that adopted in the 2005 Policy Statement, the OMS requests that the Commission clarify its position.

If the Commission is proposing to remove the MMU from all supporting aspects of market power mitigation, such as development, refinement, and retention of the cost-based reference prices for each market seller, then the OMS opposes the Commission's proposal. <u>The OMS strongly believes that the current approach to mitigation taken by the Midwest ISO works for the Midwest region and should not be changed.</u> Indeed, removing these types of market power mitigation support functions from the MMU and placing them in the RTO/ISO would create inherent conflicts of interest and duty that would threaten the integrity of market monitoring and market power mitigation. In particular, one can easily see a case in which management may be hesitant to perform a needed mitigation measure if it were to affect a market participant with a credible threat to leave the RTO/ISO. If the RTO/ISO were to cave to such a threat, the outcome in the wholesale marketplace would not be competitive. A hybrid board structure containing market participants would only compound these potential conflicts of interest and duty. Such an example shows that market power mitigation authority properly resides with the MMU and should not be left to the discretion of RTO/ISO management.

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[49] Section 65.1 of Module D

### b. Market Power Mitigation and MMU Independence

In the ANOPR, the Commission expresses a concern that "an MMU's performance of [market power] mitigation functions can compromise its independence in evaluating and reporting on market performance."[50] However, if the Commission is retaining the policy from its 2005 Policy Statement on Market Monitoring Units that places market power mitigation administration responsibilities primarily on RTO/ISOs, rather than MMUs, then the Commission's expressed concern about the administration of market power mitigation affecting MMU independence is misplaced The OMS requests that the Commission clarify its proposal concerning this aspect of MMU independence.

### c. Allegations of MMU Over-Mitigation

The Commission noted the arguments of certain unnamed commenters regarding possible over-mitigation by MMUs. The Commission stated, "Certain commenters were concerned that such mitigation is being conducted without an adequate theoretical or empirical basis and is having a deleterious effect on the electric power market."[51] The criticisms of the MMUs by these commenters –whatever they are - are curious and seem to be misplaced.

While the issue was not described in the ANOPR, over-mitigation could take two possible forms: (1) a market participant is mitigated when it is not exercising market power; and (2) market power mitigation blocks energy prices from rising to appropriate levels during periods of scarcity. In a July 20, 2007 filing submitted by the Midwest ISO regarding broad constrained areas, Dr. David B. Patton, who is the MMU for the Midwest ISO market, submitted an affidavit that explains why the conduct and impact tests that are applied to the Midwest ISO market are highly unlikely to have either of these effects.

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[50] ANOPR, at P 118

If the Commission is suggesting in its ANOPR that market power mitigation policies be relaxed so that generators are permitted to add to their revenue stream through the exercise of market power, the OMS strongly opposes the Commission's proposal. If the revenue streams available to generators and demand side response providers are not adequate to ensure reliability and long term resource adequacy in the market, the proper response is to examine the sufficiency of market design. The solution should never be to allow the exercise of market power. In any event, the OMS agrees with the Commission's position that this rulemaking is not "the appropriate forum to address issues of market power and mitigation."[52]

**d. The MMU and Tariff Administration**

The Commission closes out its ANOPR discussion of market power mitigation with a sentence that goes far beyond market power mitigation and the MMU's role in that regard. In particular, the Commission states,

> "Therefore, the Commission proposes requiring that MMUs refrain from assisting the RTO or ISO in tariff administration, from participating in ISO/RTO market operations, and from taking direct actions to influence the market, and instead concentrate on their role of providing market evaluation, reports, and advice."[53]

This Commission statement is broad-sweeping and does not follow from the discussion that precedes it. The Commission's statement also raises several red flags for the OMS. Therefore, the OMS seeks clarification of the Commission's intent with this statement.

First, it is not clear how the Commission interprets the phrase "assisting in tariff administration." In the ANOPR, the Commission seems to equate tariff administration with market power mitigation. For example, the Commission states, "The function in question is that of providing support to the RTO or ISO in the administration of its tariff, <u>which usually takes the</u>

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[51] ANOPR, at P 117
[52] ANOPR, at P 118

form of MMU-conducted market power mitigation."[54] However, the 2005 Policy Statement already largely removed the MMU from administering market power mitigation. Furthermore, in the 2005 Policy Statement on Market Monitoring Units, the Commission specifically required MMUs to "provide support to the ISO/RTO in the administration of Commission-approved tariff provisions related to markets administered by the ISO/RTO"[55] Read literally, the Commission's ANOPR is now proposing a one hundred and eighty degree change to prohibit the MMUs from providing tariff administration support. If the Commission intends to expand the range of "tariff administration" that it proposes to forbid the MMU to conduct, beyond administering market power mitigation and the other functions already largely forbidden to the MMU by the Commission's 2005 Policy Statement on Market Monitoring Units, then the Commission must more clearly explain its proposed change in policy in this regard so that it can be evaluated. The ANOPR fails to provide this explanation.

Second, it is not clear what the Commission has in mind with respect to its proposal to prohibit MMUs from "participating in ISO/RTO market operations." Moreover, the term "market operations" does not have a standard meaning. The OMS asks the Commission to clarify what it means by "market operations" in this regard and what it intends to prohibit MMUs from engaging in, with respect to "market operations".

Third, the Commission proposes to prohibit MMUs from "taking direct actions to influence the market." It is not clear what the Commission means by "direct actions to influence the market." Similarly, with respect to the Midwest ISO, it is not clear what current actions of the Midwest ISO MMU would be prohibited by the Commission's proposed prohibition on the

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[53] ANOPR, at P 119
[54] ANOPR, at P 117, underlining added
[55] 111 FERC ¶61,267 at P 2

MMU regarding "direct actions to influence the market."

Finally, as a general matter, the OMS is opposed to any Commission proposals that would have the effect of transferring key market monitoring functions out of the MMU or changes the mitigation approach presently practiced by the Midwest ISO management and the Midwest ISO's MMU.

**5. MMU Code of Ethics**

The OMS supports the Commission's proposal to develop a standardized MMU Code of Ethics that would impose certain minimum ethics standards on all MMUs. These minimum standards should, among other things, cover: (1) requiring the MMU to collectively have experience and expertise appropriate to perform the analysis of competitive conditions in RTO/ISO markets; (2) prohibiting all MMU personnel from having equity or other financial interests in any market participant or affiliate of any market participant affected by the market that is the responsibility of the particular MMU; (3) requiring the MMU to certify that it has no current engagements and will not undertake any new engagements during the period for which it is acting as MMU that present any conflict of interest with its MMU function; (4) prohibiting the MMU from using any non-public information that the MMU has access to in the course of its MMU function for any purposes other than performing the assigned responsibilities under its MMU function; and (5) prohibiting the MMU from undertaking any separate project or business that could benefit from the non-public information that the MMU has access to in the course of its MMU function.

The Midwest ISO's Tariff has a useful provision that the Commission may wish to take note of and expand upon for application to the other MMUs. In particular, the Midwest ISO's tariff states,

The Market Monitoring Liaison Officer shall adopt a policy on conflicts of

> interest for the IMM [independent market monitor] establishing appropriate standards for the professional and financial independence of the IMM. In addition, the IMM shall adopt ethics policies and standards for its employees and subcontractors. The IMM, including each member, employee, or subcontractor of the IMM, shall comply at all times with the conflicts of interest and ethics policies, and shall certify such compliance to the Market Monitoring Liaison Officer upon request.[56]

**6. MMU Information**

**a. Information Needs of State Commissions**

The OMS agrees with the Commission that there is a clear relationship between wholesale and retail markets.[57] The OMS appreciates the Commission's recognition that, because of that relationship, state commissions have an "interest in the performance of wholesale power markets."[58] The OMS agrees with the Commission that state commissions are not regular stakeholders, but are a separate class from market participants.[59] The OMS appreciates the Commission's recognition that state commissions need information from the MMU "to assist them in performing their regulatory functions, given the integral relationship between wholesale and retail rates."[60] However, as explained below, the Commission's current policies to address these legitimate state commission information needs are woefully inadequate and the Commission's ANOPR proposals are similarly insufficient and, in some cases, would reverse progress that has already been made.

The OMS is well aware of the argument that "Public disclosure of certain information, such as participant-specific offers or cost data, could harm market participants or could facilitate collusion under some circumstances."[61] However, the OMS strongly objects to the

[56] Section 52.2 of the Midwest ISO's tariff.
[57] ANOPR, at P 122
[58] ANOPR, at P 122
[59] ANOPR, at P 123
[60] ANOPR, at P 123
[61] ANOPR, at P 123

Commission's suggestion that access by state regulators to such data would result in "jeopardizing the need for confidentiality on the part of market participants."[62] The Commission must distinguish between disclosure of information to <u>the state commissions</u> and disclosure of information <u>to the public</u>. State commissions have possessed and handled confidential data since the founding of state Commission regulation. The state commissions' record in this regard is longstanding, speaks for itself and needs no further reiteration. Accordingly, the Commission's insinuation in the ANOPR that state commissions cannot be trusted to maintain data confidentiality is off the mark and without merit. In spite of the Commission's apparent belief, the reality is that state commissions are no less capable of protecting confidential data and information than is the Commission. Accordingly, the OMS recommends and requests that state commissions be granted access to MMU data and information on the same basis as such data and information access is made available to the Commission.

**b. MMU Conference Calls**

The OMS does not object to the Commission's proposal to impose on each MMU a requirement to hold quarterly conference calls to report comprehensively on aggregate market and RTO/ISO performance.[63] In the past, the Midwest ISO's MMU has provided the OMS with reports on market information and MMU market analysis. Accordingly, the Commission's proposal in this regard would not appear to add much to what the OMS is already receiving from the Midwest ISO's MMU.

However, the OMS is intrigued by the Commission's proposal that such informational conference calls be provided collectively to "the Commission staff, the staff of interested state

[62] ANOPR, at P 124
[63] ANOPR, at P 125

commissions, and the management and board of directors of the RTOs and ISOs."[64] The Commission envisions that such combined reporting and conference calls "would permit targeted requests for information and encourage a fuller exchange of relevant data."[65] The OMS sees potential value in having such combined conference calls where the MMU can discuss issues jointly with Commission personnel, state commission personnel, and RTO/ISO personnel. Accordingly, the Commission should explore making this ANOPR proposal a reality. However, such an arrangement should not preclude also retaining the current arrangement where the MMU makes presentations directly to the OMS, to subgroups of the OMS, or to individual state commissions.

**c. State Commission Requests for MMU Data**

The Commission proposes that "state commissions may make requests for additional information from the MMUs."[66] The Commission states that its proposal for allowing states to request such tailored information "should be for information regarding general market trends and performance, not information designed to aid state enforcement or related actions against individual companies."[67] The OMS believes that it would be useful for state commissions to continue to receive general market performance information and market trends from the MMU and supports the Commission's proposal to that extent.

The OMS also believes that state regulators and the Commission share responsibility for overall market oversight and regulation.[68] Specifically, state responsibilities for retail markets parallel the Commission's responsibilities in wholesale markets. Accordingly, state

[64] ANOPR, at P 125
[65] ANOPR, at P 125
[66] ANOPR, at P 128
[67] ANOPR, at P 129
[68] See, Comments following Technical Conference of Organization of MISO States, Inc. under AD07-8, at 2-3

commissions should not be put into a position of merely having to trust the findings of the MMU, but rather, they should be provided with the information necessary to verify the MMU's findings. Many state commissions also need to be able to receive from the MMU specific data and information about the behavior and activities of particular individual market participants. In many cases, the MMU is the only source of this needed data and information. For example, many state commissions need timely access to unmasked market participant offer, bid, and unit cost data. Prior to restructuring and the attendant gravitation of authority from the States to the Commission, state commissions would have had ready access to data types analogous to these from their jurisdictional utilities. Development of workable procedures to enable state commissions to access this MMU data and information would not unduly burden the MMU and would not jeopardize the confidentiality of the data and information.

The OMS notes that the Midwest ISO's tariff already contains Section 54.3which is ostensibly intended to enable state commissions to access confidential MMU data and information. However, many OMS states have found the procedures in Section 54.3 of the Midwest ISO's tariff to be unusable or unworkable because those provisions require state commissions to make declarations and demonstrations that are either not reasonable requirements, are unnecessary to protect data confidentiality or do not serve any reasonable purpose. Section 54.3 of the Midwest ISO's tariff is not just and reasonable. Therefore, the OMS recommends that the Commission open a docket to re-examine Section 54.3 of the Midwest ISO's tariff so that those provisions can be made just and reasonable, and workable for all of the OMS state commissions.

If the Commission truly wishes to develop an information access approach that will be "useful to the states, while at the same time respectful of the limited resources of the MMUs, and how to ensure confidentiality with respect to certain market data", the Commission should focus attention on fixing the existing Midwest ISO tariff provisions regarding state commission access to confidential Midwest ISO and MMU data and information.[69]

**d. Commission Pre-Screening of State Commission Information Requests**

The OMS strenuously objects to the Commission's ANOPR proposal which would have the Commission pre-screen data requests submitted to the MMU by state commissions. The Commission describes its proposal as follows:

> …a state commission would remain free, on a case-by-case basis, to request that the Commission authorize the release of otherwise proscribed data. The Commission would evaluate any such request to determine if it demonstrates a compelling need for the requested information, and decide whether adequate protections can be fashioned for commercially sensitive material.[70]

State Commissions cannot be dependent on the Commission's processes for information they need to meet their own responsibilities. The Commission should decline to put itself in the position of evaluating the information needs of state commissions or the legitimacy of particular state commission requests for information from the MMU. State commissions have universally demonstrated their capability to maintain the integrity of commercially sensitive material and provisions should be established, as described above, for state commissions to access such material in the possession of the MMU. The Commission's proposal to make state commission requests for, and access to, confidential MMU data and information subject to individual Commission pre-screening and approval is unworkable and the OMS urges the Commission to dismiss it .

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[69] ANOPR, at P 128
[70] ANOPR, at P 129

### e. State Commission Requests for the MMU to Conduct Inquiries and Analyses

Although it is not addressed in the ANOPR, the OMS recommends that each RTO/ISO tariff include appropriate provisions requiring the MMU to conduct specific inquiries and/or analyses at the request of a state commission or regional state committee. The OMS has argued in other forums that an MMU should be able to engage in activities such as providing information, recommendations, reports and market analyses to state commissions and the Commission and/or providing testimony as the MMU sees fit, in proceedings before the Commission and/or the States.[71] The tariff provisions to implement this arrangement should ensure that the requested inquiries/analyses be properly bounded so as to not burden the MMU.

As discussed elsewhere in these comments concerning MMU functions, the Midwest ISO tariff has a useful provision that the Commission might use as a model. The Midwest ISO tariff states,

> The IMM [independent market monitor] will also respond to requests from FERC or State Regulatory Commissions for additional analysis or data the IMM has in its possession, subject to its obligation to protect the confidentiality of the data.[72]

The Midwest ISO's tariff also establishes an obligation on the MMU to provide reports of such analyses to the state commissions.[73]

### f. MMU Notifications of State Commissions

Although it is not addressed in the ANOPR, the OMS recommends that each ISO/RTO tariff include appropriate provisions requiring the MMU to notify affected state commissions when the MMU identifies a significant market problem that may require state commission action. State commissions cannot be expected to help solve a market problem if they are not

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[71] See, Comments following Technical Conference of Organization of MISO States, Inc. under AD07-8, at P 2
[72] Midwest ISO tariff, Section 50.1

informed of the market problem by the very entity that has been specifically established to monitor and identify such problems.

The OMS notes that the policy it is proposing here seems to be consistent with Commission policy pronouncements of the recent past. For example, in a White Paper issued in 2003, the Commission stated,

> The Final Rule would identify the reporting process that would be used if the market monitor thinks the markets are not resulting in just and reasonable prices or providing appropriate incentives for investment in needed infrastructure. This would include notification of the Commission, <u>the regional state committee, and other appropriate state regulatory authorities</u> of the nature of the problem and recommended solutions.[74]

Also, the Midwest ISO tariff has language that could serve as a useful model for such a generic notification requirement. The Midwest ISO tariff requires its MMU to notify "the affected State Regulatory Commissions immediately in the event the IMM [independent market monitor] identifies a significant market problem" that may require action by "one or more State Regulatory Commissions."[75] The OMS urges the Commission to generically require such a provision in the RTOs' market monitoring tariffs.

**7. Release of Bid and Offer Data**

The Commission proposes to require, on a three month lagged basis, that "offer and bid data, without identification of the market participants, be posted on the RTO/ISO's website, where it will be available to the Commission, to interested state commissions and to stakeholders."[76]

First, the OMS does not strenuously oppose the Commission's proposal to require

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[73] See, e.g., Section 52.3.1 of the Midwest ISO tariff
[74] Docket No. RM01-12-000 White Paper Wholesale Power Market Platform Appendix A (April 28, 2003) at 13, underlining added.
[75] Midwest ISO tariff Section 52.3.b
[76] ANOPR, at P 127

RTO/ISOs to make bid and offer data available to the public on a three month lag.[77] However, the OMS suggests that a four month lag, with some additional features described below, would strike a better balance. Currently, the Midwest ISO posts bid and offer data on a six month lag. Reducing the lag from six months to four months would seem to strike a reasonable balance between the interests of public information availability and maintaining competitive integrity by market participants. For example, some have argued the importance of keeping the bid and offer data confidential at least through the current market season and a four month lag accomplishes that goal as well as a six month lag. On the other hand, a three month lag would allow some intra-season overlap which might provide competitors with opportunities for market abuse.

Second, as to the Commission's proposal to maintain the masking of market participant identities; the OMS recommends a more nuanced approach. The OMS urges the Commission to consider the detrimental effect of maintaining perpetual confidentiality of individual market participants' identities such that particular bids/offers can never be matched up with particular market participants with reasonable assurance by outside analysts. For example, masking market participants' identities obscures units' geographic location, which may be a critical part of certain analyses. Perpetually masked data dramatically reduces the certainty about which independent analysts can draw market conclusions. Consequently, masking of market participant identities should be lifted at some point and the OMS suggests that the masking be lifted at the same time the bid/offer data is made public—i.e., on a four-month lag.

The OMS agrees with the Commission that "Public disclosure of certain information, such as participant-specific offers <u>or cost data</u>, could harm market participants or could facilitate

[77] Throughout this discussion, the OMS urges the Commission to keep in mind the distinction between proper policies and procedures applicable to <u>public</u> access to MMU data and information and proper policies and procedures applicable to <u>state commission</u> access to MMU data and information. As explained elsewhere in these

collusion under some circumstances."[78] In particular, The OMS supports the current policy under which the generating unit specific cost data (i.e., reference price or unit estimated cost data) that is maintained by the MMU is never released in un-aggregated form to the general public.[79]

The OMS urges the Commission to evaluate the arguments made by some that market players participating in repeated single clearing price auctions already have the ability to implicitly signal and thereby develop collective offer strategies that damage ultimate electricity consumers. If the inherent "repeated game" nature of ISO/RTO markets has already enabled the market participants to reasonably predict their competitors' cost structure and bidding strategies, then retaining a lagged disclosure policy and continuing the masking of market participants' identities would permit those market participants to continue implicit collusion practices. If these circumstances reasonably describe the existing state of the world with respect to RTO/ISO energy markets, then the better solution would be for the Commission to require RTO/ISOs to publicly disclose bid and offer information without <u>any</u> lag and without <u>any</u> identity masking. Such an approach would empower independent third party analysts and break the current monopoly on market analyses currently possessed by the MMUs within the six month lag period. In such circumstances, universal public access would lead to "bad actors" being immediately discovered and thus deterred from further bad actions.

The OMS urges the Commission to carefully assess market participants' behavior in the current RTO/ISO markets before reaching final conclusions on the information lagging and market participant identity masking issues. If the RTO/ISO markets are working relatively well,

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Comments, different policies and procedures are in order for these two distinct sets.

[78] ANOPR, at P 123, underlining added.

[79] As explained in this document, some state commissions need access to some market participants' unit cost data

then requiring a four month lag in the public release of the unmasked bid and offer data would protect the competitive integrity of those markets while enabling timely public analyses of the data. However, if the RTO/ISO markets are not currently working well and are characterized by implicit collusion, then immediate release of unmasked bid and offer data would do no harm, and may do some good by immediately allowing third party analyses of the markets.

### 8. MMU Referrals to the Commission

#### a. Notifying State Commissions of MMU Referrals

The Commission proposes to maintain its current policy of not informing state commissions or any other entities when an MMU makes a referral to the Commission as provided in the Commission's Market Monitoring Policy Statement and Market Monitoring Protocols.[80] Similarly, the Commission proposes to retain its current policy of not providing information to any party about the actions or investigations that the Commission may or may not undertake pursuant to an MMU referral.[81] The Commission states, however, that Commission staff "does give MMUs generic feedback regarding enforcement issues, and we intend to continue this practice in order to provide guidance in matters relating to their referral function."[82]

The OMS urges the Commission to inform affected state commissions or to direct the MMU to inform affected state commissions whenever the MMU makes an official referral of market participant behavior to the Commission. Indeed, affected state commissions should be served with a copy of the MMU's referral under proper conditions of confidentiality. In this circumstance, as with many others covered by the Commission's ANOPR, state commissions could be effective allies with the Commission in considering the market participant behavior that

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that is kept by the MMU and they should be permitted to access this data under appropriate confidentiality terms.

[80] ANOPR, at P 130

[81] ANOPR, at P 130

led the MMU to make the referral.

The Commission's concern for the commercially sensitive nature of information involved with referrals is not relevant to providing state commissions with access to this information because state commissions have a demonstrated track record of protecting the confidentiality of commercially sensitive information. Similarly, the Commission's concern that informing state commissions of MMU referrals might somehow discourage market participants from self-reporting objectionable behavior is not applicable to MMU referrals which happen only because a market participant failed to self report. The Commission's concern for the reputations of potentially innocent parties that are the subject of an MMU referral is not applicable because state commissions have a demonstrated track record of protecting such confidential information. In sum, there are many good reasons for the Commission to inform affected state commissions of MMU referrals and no good reason not to.

The OMS also recommends that the Commission inform affected state commissions about the actions or investigations that the Commission may or may not undertake pursuant to an MMU referral. All of the above arguments with regard to initially informing affected state commissions of the MMU referral also apply to keeping the affected state commissions informed about the Commission's processing of the referral.

**b. Informing the MMU of Post-Referral Activity by the Commission**

The OMS has argued in the past that there should be more transparent reporting after an MMU referral to the Commission.[83] Similarly, FERC's response or non-response to an MMU referral should be communicated to the MMU, as the information would allow the MMU to do a better job of ongoing monitoring. The OMS also believes that informing the MMU and the state

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[82] ANOPR, at P 130

commissions regarding the Commission's investigations would be beneficial to the markets as a whole, as communicating the disposition or results of enforcement or investigative activities would provide a better way to communicate expectations to the MMU, market participants and stakeholders.

The OMS appreciates the Commission's current practice where Commission staff provides the MMU with generic feedback regarding enforcement issues. As the OMS has explained in other forums, the MMU needs feedback in order to improve market monitoring and make the referral process effective on a continuing basis. However, providing generic feedback regarding enforcement is not enough. The OMS urges the Commission to expand, standardize, and formalize the current limited and informal practice. The Commission should also impose a requirement on its staff to provide the MMU with specific, detailed post-referral information, rather than maintaining a voluntary policy of generic feedback.

The OMS notes that Commissioner Kelly and the GAO have supported the Commission's providing more timely information to the MMU, stakeholders and state commissions regarding the Commission's oversight efforts in both electric and natural gas markets. Further, Section 209(c) of the Federal Power Act (16 U.S.C. 824h(c)) supports the Commission's sharing of such information with state commissions. Specifically,

> (c) Availability of information and reports to State commissions; Commission experts
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> The Commission shall make available to the several State commissions such information and reports as may be of assistance in State regulation of public utilities. Whenever the Commission can do so without prejudice to the efficient and proper conduct of its affairs, it may upon request from a State make available to such State as witnesses any of its trained rate, valuation, or other experts, subject to reimbursement to the Commission by such State of the compensation and traveling expenses of such witnesses. All sums collected hereunder shall be credited to the appropriation from which the amounts were expended in carrying out the provisions of this subsection.

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[83] See, Comments following Technical Conference of Organization of MISO States, Inc. under AD07-8, at 3

**c. Policy on MMU Post-Referral Activity**

The OMS urges the Commission to revisit the provisions of its 2005 Market Monitor Policy Statement that require the MMU, after it has made a referral to the Commission, to: (1) "desist from independent action related to the alleged Market Violation[s]"; and (2) "not undertake any investigative steps regarding the referral except at the express direction of the Commission Staff."[84] These provisions are overly restrictive and prevent the MMU from engaging in proper monitoring of market participant conduct. The OMS urges the Commission to eliminate these restrictions on the MMU.

**9. MMU Tariff Provisions**

The OMS supports the Commission's proposal to centralize all of the market monitoring provisions applicable to each particular MMU in that particular RTO/ISO's tariff on file with FERC.[85] Placing all market monitoring provisions together into a single section of the RTO/ISO's tariff will aid review of those provisions and facilitate comparisons of the MMU provisions across RTO/ISOs. Such centralization will also facilitate identification of instances of overlap and inconsistency of market monitoring provisions within an individual RTO/ISO. However, the OMS is more concerned that all of the proper MMU tariff provisions are in the tariff and less concerned that they are all located in a single tariff section.

**10. Pro Forma MMU Tariff**

The Commission states that it intends to include in its subsequent Notice of Proposed Rulemaking a proposed pro forma MMU section for the OATTs of the RTO/ISOs.[86] The Commission states its expectation that each RTO/ISO "may wish to modify certain provisions, or

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[84] *Market Monitoring in Regional Transmission Organizations and Independent System Operators*, 111 FERC ¶ 61,267, Appendix A, at P 4 and P 8
[85] ANOPR, at P 121
[86] ANOPR, at P 131

add others, to such pro forma tariff to suit its particular needs."[87] The OMS supports this proposal. Establishment of some core market monitoring provisions that are standardized across the RTO/ISOs would be useful, provided that customization to suit particular needs is permitted.

## IV. RESPONSIVENESS OF RTOs AND ISOs

The OMS supports proposals to increase the responsiveness of RTO/ISOs. However, responsiveness cannot only mean how promptly and thoroughly an RTO/ISO addresses expressed stakeholder desires. In addition, there is an expectation that RTO/ISOs must be able to act independently in carrying out their duties. RTO *responsiveness* and RTO *independence* must be pursued and maintained simultaneously.

### 1. RTO/ISO Board Responsiveness

The OMS agrees with the Commission that, "A well-functioning and responsible board of directors is necessary for establishing the strategic direction of the RTO/ISO, including customer orientation."[88] The OMS also agrees that Board members must have "the expertise needed to set such direction and assess whether it is being followed successfully"[89] and that "representatives of customers and other stakeholders must have some form of effective direct access to the board of directors."[90] The OMS supports the Commission's proposal to require each RTO/ISO to develop and implement mechanisms for such direct access to the RTO/ISO board of directors, to allow flexibility and avoid being overly prescriptive in dictating the form that such mechanisms must take.[91]

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[87] ANOPR, at P 131
[88] ANOPR, at P 147
[89] ANOPR, at P 147
[90] ANOPR, at P 148
[91] ANOPR, at P 148

### a. Hybrid Boards

The OMS urges the Commission to reconsider its proposal to allow hybrid RTO/ISO Boards. A hybrid RTO/ISO Board has all of the flaws described by Commissioner Kelly in her separate opinion in this proceeding concurring in part and dissenting in part. As Commissioner Kelly stated, "a hybrid board would jeopardize the fundamental principle of independence upon which ISOs and RTOs are based."[92] The OMS further agrees that simply requiring board members "not to serve their own interests inappropriately" is unworkable.[93] It is simply unrealistic to expect stakeholder board members to not attempt to act in their company's best interests. Furthermore, it would be extremely difficult to detect conflicted conduct. These are fatal flaws in the stakeholder board member approach. The OMS urges the Commission to reject the hybrid board idea.

### b. Board Advisory Committee

The better approach to improving RTO/ISO board responsiveness is to employ a refined board advisory committee approach. As the Commission describes, this advisory committee must have authority to "make recommendations directly to the board on matters before the board and on matters it believes the board should address."[94] The board advisory committee must also be required to allow for minority views to be communicated to the board.[95] Membership on the board advisory committee must be limited to primary stakeholder groups. The OMS strongly recommends that state commissions and state consumer advocates be entitled to representation on any board advisory committee. The OMS also emphasizes the importance of a focused stakeholder process that enables and encourages the active involvement of stakeholders in

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[92] Kelly Dissent at 2.
[93] Kelly Dissent at 2.
[94] ANOPR, at P 153

formulating policy advice to the Board

### c. Open Board Meetings

The OMS strongly supports open RTO/ISO Board and Board committee meetings. When RTO/ISO Board meetings are routinely held in closed session for routine business, suspicions naturally arise about Board decisions. Open meetings provide a mechanism for stakeholders to assess whether the Board has understood the range of stakeholder positions and concerns on an issue and has made a fair and balanced decision. Open Board meetings will provide stakeholders with a useful opportunity to assess the nature and quality of the information being provided the Board and upon which they are asked to render decisions. The Midwest ISO largely follows an open Board meeting approach. The OMS recommends that if the Commission does not impose a general requirement for open Board meetings, that it at least express a preference that RTO/ISO Board meetings be held in public except for discussions of sensitive and confidential issues such as litigation and personnel.

### d. Board/Stakeholder Communication and Interaction

It is essential that the Commission expect RTO/ISO Boards to establish procedures for Board members to gather information directly from stakeholders (i.e., unfiltered by RTO/ISO management) and to directly interact with stakeholders. Two-way communication is a key to responsiveness in both reality and perception. Such interaction can be accomplished, for example, by Board member participation in major stakeholder meetings and by regular Board solicitation of stakeholder input (e.g., position papers) on relevant issues.[96] RTO/ISO Boards should also establish procedures by which any stakeholder can submit written correspondence to

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[95] ANOPR, at P 153

[96] All such stakeholder position papers should be publicly posted on the ISO/RTO web-site so that stakeholders with contrary views can respond.

the Board as well as directly address the Board as a whole. For example, providing an "open-mike" period at each open Board meeting and convening special stakeholder meetings periodically with the Board could serve this purpose. The Midwest ISO Board generally follows this approach. The OMS urges the Commission to formally express these kinds of expectations of RTO/ISO Boards.

### 2. RTO/ISO Executive Management Practices

The OMS agrees with the Commission that RTO/ISO managers "should be responsive to stakeholders but cannot be beholden to any particular stakeholder group."[97] The Commission seeks comment on whether any reforms are necessary to increase management responsiveness to stakeholder concerns. In particular, the Commission asks whether it should encourage or require RTOs or ISOs to:

- Publish a strategic plan that includes plans for assuring responsiveness to customers and other stakeholders.
- Measure or otherwise assess customer satisfaction periodically, through a survey or other means.
- Have a formal process for gathering and evaluating recommendations for improving services to customers.
- Set performance criteria for executive managers based in part on responsiveness to stakeholders.
- Relate executive compensation to a measure of responsiveness to stakeholders.[98]

The OMS believes the Commission should strongly encourage the use of such practices but not mandate them. Further, the Commission should express an intention to hold RTO/ISO Boards responsible for ensuring that management is properly responsive to stakeholder needs and concerns.

#### a. The Commission's Role in Assessing RTO/ISO Responsiveness

The Commission will be able to measure and assess the degree to which RTO/ISO

Boards are succeeding in ensuring their RTO/ISO management's stakeholder responsiveness by the volume and range of negative comments and complaints submitted to the Commission by stakeholders. If the Commission finds itself routinely over-turning or rejecting proposals that are advocated by RTO/ISO management and approved by the RTO/ISO Board and filed with the Commission for approval, then there may be a problem with that RTO/ISO's stakeholder responsiveness. The Commission itself informally uses this type of measure when it assesses its own statutory compliance performance by considering the percentage of its decisions that are appealed to the Courts or the percentage of appealed decisions that are overturned or remanded by the Courts. The OMS proposes that the Commission use its own rulings on RTO filings as an RTO responsiveness measure.

The OMS also urges the Commission to establish an annual opportunity for interested stakeholders to submit to the Commission assessments of the RTO/ISO's performance in that year and to express any other opinions or concerns that stakeholders may have about their RTO/ISO. The Commission should coordinate its solicitation of stakeholder comments with an RTO/ISO annual stakeholder meeting.[99] The Commission should send a Commissioner or senior staff member to each RTO/ISO annual stakeholder meeting in order to summarize the comments submitted to the Commission by stakeholders of that RTO/ISO for that year.

**b. Particular Attention Must Be Given to Load Interests**

The OMS is concerned that certain stakeholders not be treated by either the RTO/ISO or the Commission as "more equal than others" in the stakeholder process. In particular, the RTO/ISO may have organizational or structural incentives to hear and act on the advocacy of

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[97] ANOPR, at P 158
[98] ANOPR, at P 159
[99] The Commission should require each ISO/RTO to hold an annual stakeholder meeting.

some stakeholder groups and some members above others. For example, without transmission-owning members, the RTO/ISO would no longer exist. Also, generation-owning members of the RTO/ISO often have significant investments and sums of money affected by RTO/ISO decisions. These factors could drive RTO/ISO responsiveness to these sectors.

These transmission and generation owners are limited in numbers and have focused interests that are aggressively brought to the attention of the RTO. Load interests, by contrast, are diffuse and diluted. Although electricity customer numbers are very large, direct participation by individual electric customers in RTO/ISO stakeholder processes typically is limited, except for certain large electricity consumers. As a result, end-users must rely on surrogate representatives to protect their interests. Furthermore, some of those who presume to speak or act on behalf of load are really speaking or acting on behalf of other parts of their companies' business, perhaps generation, perhaps transmission, perhaps distribution, etc. As a consequence, the method of least resistance for an RTO/ISO is often to allocate costs and risks directly to load on a pro rata basis, rather than undertaking a more nuanced examination into cost causation or benefits distribution. Such a result runs counter to the purposes for which restructuring was undertaken in the first place, namely to lessen the risk and responsibility imposed on ratepayers (load) and redistribute it to those better situated to manage the risk.

The OMS urges the Commission to keep in mind that stakeholder participation in RTO/ISO processes is not uniform across sectors and that the RTO/ISO may have incentives to be more responsive to some sectors and some members above others. The interests of load can be easily overlooked in this environment. The process of Commission review of RTO/ISO proposals needs to take these factors into account.

**3. RTO/ISO Budget Processes**

The Commission discusses RTO/ISO budget processes and asks for feedback on how to improve the transparency of the budget process.[100] The Commission, in particular, discusses budget issues for RTO/ISOs that have formula rates.[101] The OMS urges the Commission to require regular budget forecast review. The OMS has found that a three year budget forecast has enhanced the transparency of the budgeting process for the Midwest ISO. Although these forecasts require regular updating, they give interested parties more incite into large capital projects on the horizon and foster a more thorough evaluation. Although budget information is often sensitive, warranting protective measures, it is also important to remember that RTOs are non-profit organizations and their budget review process should be open and timely.

## V. CONCLUSION

The OMS supports the Commission's efforts to improve the operation of organized markets while not undoing or upsetting the significant efforts that have already been made in providing demonstrable benefits to electricity customers. To that end, the OMS respectfully requests that the Commission consider these comments as it develops its proposals and takes future steps in this rulemaking proceeding.

The OMS submits these comments because a majority of the members have agreed to generally support them. The following members generally support these comments. Individual OMS members reserve the right to file separate comments regarding the issues discussed in these comments:

Illinois Commerce Commission
Indiana Utility Regulatory Commission
Iowa Utilities Board
Kentucky Public Service Commission
Michigan Public Service Commission
Minnesota Public Utilities Commission

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[100] ANOPR, at P 162-163
[101] ANOPR, at P 162

Missouri Public Service Commission
Montana Public Service Commission
Nebraska Power Review Board
North Dakota Public Service Commission
South Dakota Public Utilities Commission
Wisconsin Public Service Commission

The Manitoba Public Utilities Board did not participate in this pleading. The Public Utilities Commission of Ohio and the Pennsylvania Public Utility Commission abstained from these comments.

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

Respectfully Submitted,

William H. Smith, Jr.

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September 14, 2007

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

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| | | |
|---|---|---|
| Midwest Independent Transmission System Operator, Inc. | ) | Docket No. ER07-1233-000 |
| Midwest Stand-Alone Transmission Companies | ) | Docket No. ER07-1261-000 |
| Midwest Independent Transmission System Operator, Inc. | ) | Docket Nos. ER05-6-100, *et al*. |
| Midwest Independent Transmission System Operator, Inc. PJM Interconnection, L.L.C., et al. | ) | Docket No. EL04-135-103 |
| Midwest Independent Transmission System Operator, Inc. PJM Interconnection, L.L.C., et al. | ) | Docket Nos. EL02-111-120, *et al*. |
| Ameren Services Company, et al. | ) | Docket Nos. EL03-212-116, *et al*. |
| Informational Compliance Filing of the Midwest Independent Transmission System Operator, Inc. and Supporting Midwest ISO Transmission Owners | ) | Docket No. ER06-18-000 |
| Informational Compliance Filing of Indianapolis Power and Light Company | ) | Docket No. ER06-18-000 |
| | | (not consolidated) |

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

**CONTENTS**

Pursuant to Rule 214(a)(2) of the Federal Energy Regulatory Commission's ("FERC" or "Commission") Rules of Practice and Procedure, 18 C.F.R. § 385.214(a)(2), the Organization of MISO States ("OMS") files its Notice of Intervention in the above-captioned proceedings. 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
100 Court Avenue, Suite 218
Des Moines, Iowa 50309
(515) 243-0742

Pursuant to Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.21, the OMS respectfully submits the following comments for the Commission's consideration in these dockets.

The August 1, 2007, filings in the above-captioned dockets all address, in one manner or another, the post transition transmission pricing issue. The Commission issued Notice on August

7, 2007, in Docket No. ER07-1233-000 and August 17, 2007, in Docket No. ER07-1261-000, setting September 17, 2007, as the deadline for comments in those two dockets. The Commission issued Notice on August 9, 2007, in ER05-6-100, *et al.*, EL04-135-103, EL02-111-120, *et al.*, and EL03-212-116, *et al*. setting August 22, 2007, as the deadline for comments. To the extent necessary, the OMS hereby requests leave to file its comments late in those dockets. The Commission did not issue Notice of either of the informational filings in Docket No. ER06-18-000. To the extent necessary, the OMS hereby requests leave to file its comments in those dockets, despite the absence of Commission Notice.

## I. Summary of the Filings

### A. Midwest ISO/Certain Midwest ISO TOs' Filing (Docket No. ER07-1233-000)

On August 1, 2007, the Midwest Independent Transmission System Operator ("Midwest ISO" or "MISO") and certain Midwest ISO Transmission Owners (collectively, "Midwest ISO/Certain Midwest ISO TOs") submitted a filing in support of continuing zonal (or license plate) transmission rates for existing facilities in the Midwest ISO footprint under the Midwest ISO Open Access Transmission and Energy Markets Tariff ("Midwest ISO Tariff").

The Midwest ISO/Certain Midwest ISO TOs take the position that the use of license plate rates will continue to be a just and reasonable approach to recover the cost of existing transmission facilities after the six-year transition period ends on January 31, 2008.[1] The Midwest ISO/Certain Midwest ISO TOs state that use of license plate rates for existing facilities most closely preserves the intent of transmission owners in planning, constructing, and using

[1] Midwest ISO/Certain Midwest ISO TOs Filing at 2.

those facilities and thus is consistent with cost causation principles, and avoids inappropriate cost shifts.[2]

The Midwest ISO/Certain Midwest ISO TOs also address how employing license plate rates for existing transmission facilities and the Regional Expansion Criteria and Benefits ("RECB") methodologies for new transmission facilities relate to one another and together produce overall transmission rates that are just and reasonable.[3] The Midwest ISO/Certain Midwest ISO TOs propose to retain the RECB methodologies for new transmission facilities while continuing to analyze and look at enhancements for RECB or any successor methodologies.[4]

**B. MSATs/Wolverine Filing (Docket No. ER07-1261-000)**

On August 1, 2007, the Midwest Stand-Alone Transmission Companies ("MSATs") and Wolverine Power Supply Cooperative, Inc. ("Wolverine") (collectively, "MSATs/Wolverine") submitted a filing proposing revisions to the Midwest ISO Tariff ("TEMT") to implement a superseding transmission rate design as of February 1, 2008. Specifically, MSATs/Wolverine propose to increase the 20% regional postage stamp cost allocation component of the RECB methodology to 100% and to eliminate the formulaic eligibility criteria for new transmission projects rated at 500 kV or above in favor of the qualitative eligibility criteria in Appendix B of the Midwest ISO Transmission Owners Agreement[5] so that all such projects that are included in the Midwest Transmission Expansion Plan would automatically receive region-wide postage

[2] Midwest ISO/Certain Midwest ISO TOs Filing at 2.
[3] Midwest ISO/Certain Midwest ISO TOs Filing at 2.
[4] Affidavit of Clair Moeller, Exhibit 7 at 5.
[5] Transmission Owners Agreement, Appendix B (Sheet Nos. 103-116)

stamp cost allocation treatment.[6] MSATs/Wolverine does not propose to change the current license plate rate methodology for existing transmission facilities costs.[7]

### C. Midwest ISO/Certain Midwest ISO Transmission Owners/PJM/Certain PJM Transmission Owners (Docket Nos. ER05-6-100, *et al*., EL04-135-103, EL02-111-120, *et al*., and EL03-212-116, *et al*.)

On August 1, 2007, the Midwest ISO, Certain Midwest ISO Transmission Owners, PJM Interconnection, L.L.C., ("PJM"), and Certain PJM Transmission Owners (collectively, "IRPD Applicants") submitted a filing in support of a methodology for transmission pricing between PJM and the Midwest ISO that they refer to as "Independent RTO Pricing Design" ("IRPD"). The filing was submitted in accordance with Paragraph 62 of the Commission's November 18, 2004 Order in Docket Nos. ER05-6-000 ("November 2004 Order").[8] The IRPD does not propose a new border rate to replace the regional through and out rates ("RTORs") that were previously eliminated by the Commission. Under the IRPD, network and firm point-to-point transmission customers would continue to pay the applicable zonal charge in their sink zone whether their designated resources are located in their RTO or in the other RTO. The IRPD maintains the elimination of both rate pancaking and transaction-based pricing for transmission services sourcing in one RTO and sinking in the other.[9]

The IRPD Applicants propose that the costs of new "cross-border" transmission facilities (i.e., jointly planned facilities built entirely or partially in one RTO but providing benefits in the other RTO) be allocated between the Midwest ISO and PJM as finally determined in Docket No.

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[6] MSATs/Wolverine Filing at 58.
[7] MSATs/Wolverine Filing at 46.
[8] *Midwest Independent Transmission System Operator, Inc., et al.,* 109 FERC ¶ 61,168 (2004), *clarified, 109* FERC ¶ 61,243 (2004).
[9] IRPD Filing at 9-10.

ER05-6-000, *et al*.[10] The IRPD Applicants state that a filing has already been submitted to the Commission in that docket with respect to cross-border reliability projects and will be made with respect to cross-border economic projects.[11] The IRPD proposal would not disturb those processes.

On or around August 22, 2007, American Electric Power Service Corporation ("AEP"), International Transmission Company ("ITC") and Michigan Electric Transmission Company, LLC ("METC") (collectively, "ITC/METC"), and others filed protests of the IRPD filing.

**D. Midwest ISO/Supporting Midwest ISO TOs and Indianapolis Power and Light Informational Filings (Docket No. ER06-18-000)**

**i. Midwest ISO/Supporting Midwest ISO TOs**

On August 1, 2007, the Midwest ISO/Supporting Midwest ISO TOs submitted an informational filing in compliance with the Commission's March 15, 2007 Order Conditionally Accepting Tariff Revisions[12] and the March 15, 2007 Order on Rehearing.[13] In those Commission Orders, the Midwest ISO and Midwest ISO transmission owners were required to file annual reports, beginning August 1, 2007, to assist the Commission, OMS and stakeholders to evaluate the post-transition period pricing and cost recovery paradigm within the Midwest ISO Region and to assess the effectiveness of the RECB methodology. In particular, in the RECB II Order, the Commission directed the Midwest ISO and the Midwest ISO transmission owning members to include in the August 2007 report "a discussion of how the cost allocation

[10] IRPD Filing at 9.
[11] IRPD Filing at 9.
[12] *Midwest Independent Transmission System Operator, Inc.,* 118 FERC ¶ 61,209 (2007) ("RECB II Order").
[13] *Midwest Independent Transmission System Operator,* Inc., 117 FERC ¶ 61,241 (2006) ("November 29 Order"), *Order on Reh* 'g 118 FERC ¶ 61,208 ("March 15 Order on Rehearing").

methodology for Baseline Reliability Projects that was approved in the February 3 Order[[14]] and the November 29 Order along with the cost allocation methodology for Regionally Beneficial Projects approved [in the RECB II Order] relate to the methodology that the Midwest ISO is planning to submit for allocating the costs of existing projects" in the post-transition period.[15] In order to gauge the effectiveness of the RECB methodology, the Commission also directed the Midwest ISO and its transmission owning members to revisit the twenty percent (20%) postage-stamp cost allocation when they review the rate design for existing transmission facilities.[16]

The Midwest ISO concurs with the position of the majority of the Midwest ISO transmission owning members that continuation of license plate rate treatment for existing transmission facilities is appropriate.[17] Further, the Midwest ISO believes that license plate treatment of the costs of existing facilities is in no way incompatible with the separate RECB I and RECB II cost allocation and recovery principles applicable to new transmission expansions as provided for under Attachment FF to the Midwest ISO TEMT.[18] The Midwest ISO concludes that "License plate treatment for existing facilities should continue in the Midwest ISO and with the cost allocation for new facilities provided for under RECB I and RECB II produces overall transmission rates that are just and reasonable."[19]

**ii. Indianapolis Power and Light**

On August 1, 2007, Indianapolis Power and Light ("IPL") submitted an informational filing as a Midwest ISO transmission owner in compliance with the Commission's March 15,

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[14] *Midwest Independent Transmission System Operator,* Inc., 114 FERC ¶ 61,106 (2006) (February 3 Order).
[15] RECB II Order at 35.
[16] November 29 Order at P 66.
[17] Midwest ISO/Supporting Midwest ISO TOs Filing at 5.
[18] Midwest ISO/Supporting Midwest ISO TOs Filing at 5.
[19] Midwest ISO August 1 Filing at 6.

2007 Order Conditionally Accepting Tariff Revisions and the March 15, 2007 Order on Rehearing. IPL is not a signatory to the Midwest ISO/Supporting Midwest ISO TOs' filing described above.

IPL agrees with the position of the Midwest ISO/Supporting Midwest ISO TOs that the continuation of license plate rates for existing facilities is appropriate and will address cost-shifting issues.[20] IPL also agrees with the Midwest ISO/Supporting Midwest ISO TOs that the use of license plate rates for existing facilities is not inconsistent with the RECB I and RECB II methodologies.[21] While IPL believes that the use of the RECB I and RECB II cost allocation methodologies results in inequitable cost allocations, IPL nevertheless believes that the problems with RECB I and RECB II have nothing to do with the use of license plate rates for existing facilities.[22] IPL suggests that license plate rates should be considered for new facility additions as well as existing facilities.[23] IPL states that it receives no benefit from the proposed new transmission projects in the Midwest ISO and should not be assessed costs of those projects.[24] IPL recommends that the Commission re-open the RECB I and RECB II process to allow for a reconsideration of consumer protection measures that can be adopted to avoid the unintended consequences of unjust and unreasonable cost allocations.[25]

[20] IPL Filing at 5.
[21] IPL Filing at 5.
[22] IPL Filing at 5.
[23] IPL Filing at 5.
[24] IPL Filing at 6.
[25] IPL Filing at 6.

## II. Position and Recommendation of the OMS

### A. Position and Recommendation of the OMS on the Midwest ISO/Certain Midwest ISO TOs' filing

The OMS generally supports the position taken in the Midwest ISO/Certain Midwest ISO TOs' filing and recommends retention of the license plate rate design approach for existing transmission facilities at this time.[26,27,28] However, the OMS recommends re-examination of the continued appropriateness of intra-MISO license plate rates prior to the expiration of a new transition period of three or four years.[29] Such a transition period would provide time needed to further develop methods for quantifying and measuring cross-zonal benefits of existing transmission facilities.

The OMS also generally supports the Midwest ISO/Certain Midwest ISO TOs' rationale for retaining the current RECB methodology for new transmission facilities while continuing to analyze and look at enhancements for the RECB methodology. The OMS expects the Midwest

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[26] The choice here is between two imperfect tariff filings: the majority TO's position which continues license plate pricing and RECB, and the MSATs/Wolverine proposal which proposes a change in RECB postage stamping but with a project exclusion problem unresolved. These proposals present a Hobson's choice to the Public Service Commission of Wisconsin (PSCW) when, as the Commission is aware, Wisconsin is litigating the RECB exclusion issue elsewhere. With this background, Wisconsin's joining of these OMS comments should not be taken as a waiver of any of the PSCW's rights, arguments, claims, or defenses in that litigation. In the situation at hand, the PSCW prefers and supports an appropriate application of a postage stamp cost allocation of the costs for new and existing facilities within the Midwest ISO region more than its support of these OMS comments may indicate. The PSCW continues to believe that the 80% - 20% cost allocation approved by the Commission in the RECB orders should be thoroughly reexamined.

[27] The Illinois Commerce Commission did not support the adoption of the 20% Midwest ISO-wide postage stamp cost allocation component in the RECB II proceeding and does not support it now. A separate statement has been attached to these OMS Comments to explain our position on this issue.

[28] Kentucky does not support the proposal of the Midwest ISO/Certain Midwest ISO TOs to maintain license plate rate design for existing transmission facilities. Kentucky continues to support a beneficiary pays rate design, which would necessarily include a component for assigning costs for the use of existing bulk power transmission facilities to those who benefit from them. Kentucky does support OMS's recommendation for further examination of the continued reasonableness of using the zonal license plate rate methodology across the Midwest ISO and PJM.

[29] The Missouri Public Service Commission, the Indiana Utilities Regulatory Commission, and the Indiana Office of Utility Consumer Counselor do not support a transition period that would involve another evaluation of the allocation of the costs of existing transmission facilities. These facilities were built and funded to deliver power from the utilities' generation to their loads, and allocating the costs of these facilities to those ratepayers for whom the facilities were built satisfies the basic cost causation principle.

ISO to devote serious and substantial attention and resources to the requirements in the TEMT to "continue to evaluate and explore" any "additional transmission infrastructure drivers to ensure that projects which are effective in facilitating market efficiency" are "supported and pursued."[30] The OMS also expects the Midwest ISO to give serious attention to the reports that it is required to provide on RECB implementation and improvement including the annual report detailing the steps taken in its planning process to develop a portfolio of projects that spread benefits throughout each Midwest ISO sub-region.[31]

### B. Position and Recommendation of the OMS on the MSATs/Wolverine proposal

The OMS does not support much of the MSATs/Wolverine proposal.[32,33] However, the OMS supports the part of MSATs/Wolverine's proposal regarding rate design treatment for existing transmission facilities.

MSATs/Wolverine have not shown that the RECB methodology for new transmission facilities is unjust and unreasonable. Nor have MSATs/Wolverine demonstrated that their proposal to allocate new transmission project cost on a region-wide postage stamp basis would be just and reasonable. Even if MSATs/Wolverine had demonstrated their proposal for allocation of new transmission facility costs to be just and reasonable, they have not shown it to be superior to the RECB approach. Finally, MSATs/Wolverine have not shown why the regular,

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[30] MISO TEMT, Attachment FF Section II.B.2.

[31] RECB II Order at P 76.

[32]North Dakota and Wisconsin note that the following MSATs/Wolverine discussion uses a rhetorical style and tone that is stronger than these states would use to make many of the same points. These states under appropriate circumstances could support more of an application of a postage stamp cost allocation of the costs for new and existing facilities within the Midwest ISO region than their support of these OMS comments may indicate. These states urge the Commission to order the Midwest ISO Transmission Owners to work with the OMS and other Midwest ISO stakeholders to investigate and develop analytical methods which are supported by both economic theory and transmission system engineering which could be used to allocate transmission costs across multiple pricing zones or across the entire Midwest ISO region for new and existing transmission facilities.

[33] The Michigan PSC intends to file separate comments which specifically address the MSATs/Wolverine filing.

Commission-imposed RECB re-evaluation process is an inadequate forum to pursue on-going RECB improvements.

**C. Position and recommendation of the OMS on the IRPD proposal, AEP's protest of that proposal and ITC/METC's protest of that proposal**

The OMS supports the PJM/Midwest ISO IRPD proposal for transmission pricing between the RTOs and urges the Commission to accept it. However, AEP's comments raise some thought-provoking issues. OMS recommends that the Commission adopt a new transition period of three or four years before the end of which the Commission would require a new re-examination of the continued reasonableness of using the zonal license plate rate methodology across the Midwest ISO and PJM. [34] The OMS recommends that the Commission direct the RTOs and their stakeholders to work during the new transition period to develop and fine-tune benefits metrics for existing, as well as new, transmission facilities.

The OMS recommends that the Commission reject ITC/METC's protest of the IRPD filing. The OMS disagrees with ITC/METC's assessment of the IRPD filing as deficient. The OMS takes no position at this time on ITC/METC's "end-state" vision of a "single uniform rate design and cost allocation methodology applicable to all EHV transmission facilities constructed in the combined Midwest ISO/PJM footprint."[35] The OMS supports the regular continued re-evaluation of the effectiveness of whatever cost allocation policy is developed for new cross-border transmission facilities, but takes no position on intra-PJM cost allocation policy for new transmission facilities. With respect to existing transmission facilities, the OMS supports a re-

[34] It is unclear to the Indiana Utility Regulatory Commission (IURC) if the OMS intends the re-examination to apply to existing and/or new facilities. As previously noted in footnote 29, the IURC does not support a transition period that would involve another evaluation of the allocation of the costs of existing transmission facilities. In addition, the IURC does not support a re-examination of the allocation of the costs of facilities built or under construction during the OMS proposed transition period. However, the IURC would support a re-examination for new facilities that have not yet been constructed.
[35] ITC/METC Protest at 9.

examination of the continued reasonableness of inter-RTO license plate rate design prior to the expiration of a new Commission-imposed transition period.  The OMS disagrees with ITC/METC's position that "further evidentiary hearings will demonstrate that the existing license plate rate design is no longer just, reasonable, and not unduly discriminatory."[36]

### D. Position and recommendation of the OMS on the Midwest ISO/Supporting Midwest ISO TOs and Indianapolis Power and Light informational filings

With respect to the informational filings of the Midwest ISO/Supporting Midwest ISO TOs and Indianapolis Power and Light, the OMS agrees with the Supporting Midwest ISO TOs that it is simply too early to assess the effectiveness, justness, or reasonableness of the RECB 20% regional postage stamp cost allocation component.[37]  The OMS agrees with the informational report filers regarding zonal license plate rates for existing facilities and the compatibility between that method and the RECB cost allocation method for new facilities.  The OMS does not support IPL's suggestion that license plate rate design should be implemented for new facility additions as well as existing facilities.

## III. Discussion

### A. Discussion of the Midwest ISO/Certain Midwest ISO TOs proposal

#### i. The Midwest ISO/Certain Midwest ISO TOs provide reasonable support for their proposal.

Mr. John Procario, on behalf of the Certain Midwest ISO TOs, provided an Affidavit and several exhibits supporting the Midwest ISO/Certain Midwest ISO TOs' proposal to continue

[36] ITC/METC Protest at 8.  The OMS also notes the apparent contradiction in ITC/METC's statement and the position taken by ITC/METC in the MSATs/Wolverine filing which states, "The Petitioners do not propose to change the license plate rate structure applicable to existing transmission facilities within the Midwest ISO that pre-date RECB." (MSATs/Wolverine Filing at 46).

[37] The Illinois Commerce Commission did not support the adoption of the 20% Midwest ISO-wide postage stamp cost allocation component in the RECB II proceeding and does not support it now.  A separate statement has been attached to these OMS Comments to explain our position on this issue.

license plate pricing for existing transmission facilities within the Midwest ISO footprint and supporting the Midwest ISO/Certain Midwest ISO TOs' proposal for not modifying the RECB approach for new facilities in the instant proceeding. Mr. Procario testified that the rationale for this position is:

- Existing facilities were planned to serve local needs. They were not planned for regional purposes. The topography of the present system would be different if the system would have been planned on a regional basis.
- Cost shifts would result and may encourage high transmission cost utilities to join MISO and encourage those utilities that already believe that MISO provides marginal benefits to attempt to leave MISO.
- The MISO and its stakeholders should focus on the reliability improvements and energy price reductions of future transmission expansion. The focus on the cost allocation of existing facilities diverts stakeholder resources from initiatives related to future RTO benefits.
- Retaining license plate rates is supported by a large majority of the TOs.[38]

**a. The Midwest ISO system is not tightly interconnected.**

Mr. Procario testified that the present Midwest ISO system is not strongly connected electrically and that existing facilities within the Midwest ISO do not have substantial region-wide impact.[39] To illustrate that the present Midwest ISO system is not strongly connected electrically, power flow distribution factors were calculated for the outage of fourteen major transmission lines in various locations in the Midwest ISO footprint. Mr. Procario provided an Exhibit to his Affidavit that shows the outaged facility in the first column and the largest percent response on the transmission facilities of thirteen geographically dispersed transmission owners in the Midwest ISO in the other columns. The Exhibit shows, for example, that the outage of the Duke-Ohio Port Union-Zimmer 345 kV line in eastern Midwest ISO results in a maximum response of less than 1% on the transmission circuits in the other twelve transmission systems.

[38] Affidavit of John Procario, Exhibit 2 at 14-15.
[39] Affidavit of John Procario, Exhibit 1 at 12-13.

Similarly, the outage of the International Transmission Company ("ITC") Jewell-Lenox 345 kV circuit in Michigan results in a maximum response of less than 1% on the transmission facilities in the other twelve systems. The outage of the Otter Tail Power Company Center-Coyote 345 kV line in western Midwest ISO results in a maximum response of 42.95% in the Montana Dakota Utilities system, 29.75% in Great River Energy, and 3.19% in Minnesota Power (all in western Midwest ISO), while the response of systems in eastern Midwest ISO (Ameren, Duke Energy, FirstEnergy, and ITC/METC) is less than 1%. Also, the outage of the American Transmission Company LLC ("ATC") Oak Creek-Racine 345 kV circuit in Wisconsin causes a maximum response of 1.83% in the system of Northern States Power Company and Northern States Power Company (Wisconsin), subsidiaries of Xcel Energy Inc., and less than 1% response in the other eleven systems.[40] From this analysis of inter-connectedness, Mr. Procario concluded that, for the present system in the Midwest ISO "existing facilities do not have substantial region-wide impact."[41]

**b. Changing the license plate pricing approach would result in significant cost shifting.**

Mr. Alan C. Heintz testified about cost shifts that would result from a change from license plate pricing for existing facilities to various alternative pricing structures.[42] Mr. Procario explains that,

> The largest cost shifts are in the postage stamp design, with cost shifts ranging from a 394% increase to a 54% decrease. The shifts for the 100 kV plus highway/byway design range from a 340% increase to a 60% decrease. The shifts are generally smaller, but still significant, for the higher highway/byway voltage splits. For the 230 kV highway/byway split, the largest positive shift is 181%,

[40] Affidavit of John Procario, Exhibit 4.
[41] Affidavit of John Procario, Exhibit 1 at 13.
[42] Affidavit of Alan C. Heintz, Exhibits 5 and 6 .

> and the largest negative shift is 61%. For the 345 kV highway/byway split, the largest positive shift is 137% and the largest negative shift is 15%.[43]

**c. Upsetting the RECB approach at this time would not be helpful.**

Mr. Procario also testified regarding the consideration of new facilities in the post transition transmission pricing design review. He states,

> A major concern was the ramifications of initiating another effort to evaluate the pricing and cost allocation of new facilities on the heels of an identical effort which resulted in RECB I and II. A significant amount of time and effort was expended to deal with new facilities in the RECB effort by the TOs, MISO, and stakeholders. The TOs felt that another attempt to review outside the Commission established RECB reporting process and possibly change the MISO pricing design would not be helpful to transmission users attempting to predict transmission costs, and transmission owners attempting to estimate revenues and predict the need for retail rate cases.[44]

**ii. The Midwest ISO/Certain Midwest ISO TOs proposal is acceptable, but intense focus on improving cost allocation should continue and license plate rates should again be reviewed before the end of a new transition period.**[45]

The OMS' position is that the Midwest ISO/Certain Midwest ISO TOs have provided reasonable support for their proposal. The OMS concurs that license plate pricing for existing transmission facilities within the Midwest ISO footprint should be continued and that the RECB approach for treatment of new facilities should not be modified in the instant proceeding.

However, the OMS recommends re-examination of the continued appropriateness of license plate rates prior to the expiration of a new transition period of three or four years. The OMS recommends that the Commission adopt a new transition period of specified length and

[43] Affidavit of John Procario, Exhibit 1 at 13-14.
[44] Affidavit of John Procario, Exhibit 2 at 10-11.
[45] It is unclear to the Indiana Utility Regulatory Commission (IURC) if the OMS intends the re-examination to apply to existing and/or new facilities. As previously noted in footnote 29, the IURC does not support a transition period that would involve another evaluation of the allocation of the costs of existing transmission facilities. In addition, the IURC does not support a re-examination of the allocation of the costs of facilities built or under construction during the OMS proposed transition period. However, the IURC would support a re-examination for new facilities that have not yet been constructed.

direct both PJM, the Midwest ISO and their stakeholders to continue to investigate and analyze methods of measuring cross-zonal benefits of existing transmission facilities.

Furthermore, with respect to the RECB cost allocation policy, the OMS expects the Midwest ISO to devote serious and substantial attention and resources to the requirements in the TEMT to "continue to evaluate and explore" any "additional transmission infrastructure drivers to ensure that projects which are effective in facilitating market efficiency" are "supported and pursued."[46] The OMS also expects the Midwest ISO to give serious attention to the reports that it is required to provide on RECB implementation and improvement including the annual report detailing the steps taken in its planning process to develop a portfolio of projects that spread benefits throughout each Midwest ISO sub-region.[47]

### B. The Commission Should Not Adopt the MSATs/Wolverine Proposal for New Facilities.

#### i. MSATs/Wolverine's position on existing facilities is the same as that of the Midwest ISO/Certain Midwest ISO TOs.

The MSATs/Wolverine filing makes clear that they do not propose any change to the zonal license plate rate structure applicable to existing transmission facilities that pre-date RECB.[48] MSATs/Wolverine correctly point out that "changing the rate structure applicable to existing transmission facilities logically would do little to incentivize investment in new EHV regional backbone transmission facilities."[49]

#### ii. MSATs/Wolverine's position on new facilities would have major negative effects and implications if implemented.

The difference between the MSATs/Wolverine position and the Midwest ISO/Certain

[46] MISO TEMT, Attachment FF Section II.B.2.
[47] RECB II Order at P 76.
[48] MSATs/Wolverine filing at 5.
[49] MSATs/Wolverine filing at 47-48.

Midwest ISO TO position lies in the RECB treatment of new transmission facilities. The MSATs/Wolverine filing makes clear that they are proposing only two changes to the rate treatment of new transmission facilities currently covered by RECB policy. Namely, MSATs/Wolverine propose to: (1) increase the 20% regional postage stamp cost allocation component of the RECB methodology to 100%; and (2) eliminate the cost sharing eligibility criteria for transmission projects rated at 500 kV or above so that all such projects that are included in the Midwest Transmission Expansion Plan pursuant to the qualitative criteria in Appendix B of the Midwest ISO Transmission Owners Agreement[50] would automatically receive region-wide postage stamp cost allocation treatment.

MSATs/Wolverine assert that their proposed changes are "narrowly focused" and aimed at mitigating an alleged "disincentive to invest in regional EHV transmission infrastructure."[51] MSATs/Wolverine claim that they are "not proposing to eliminate the basic structure of RECB."[52] Nevertheless, adoption and implementation of the MSATs/Wolverine proposal would have major negative effects and implications as explained below.

**iii. MSATs/Wolverine fail to support their position that all EHV transmission projects provide broadly distributed benefits.**

MSATs/Wolverine repeatedly claim that: (1) the benefits of EHV transmission projects "are widely dispersed"[53]; (2) regional benefits are conferred by EHV transmission projects[54]; (3) "the need for a conservative test to identify and quantify regional benefits is less pronounced with respect to higher voltage projects than with respect to lower voltage projects"[55]; (4) "it is

[50] Transmission Owners Agreement, Appendix B (Sheet Nos. 103-116)
[51] MSATs/Wolverine filing at 3.
[52] MSATs/Wolverine filing at 3 and Direct Testimony of Dale A. Landgren, Exhibit No. MW-1 at 25.
[53] MSATs/Wolverine filing at 50.
[54] MSATs/Wolverine filing at 59.
[55] MSATs/Wolverine filing at 63.

virtually certain that, over time, projects rated 500 kV and above will perform regional functions"[56]; (5) "benefits provided by 500 kV and above transmission facilities are 'sufficiently broad that they support a postage stamp allocation'"[57]; (6) MISO's region-wide allocation of Schedule 10, 16, and 17 market costs "weighs in favor of a broad regional allocation of costs associated with the EHV transmission facilities needed to make regional operations possible in the future"[58]; (7) "the costs of EHV transmission facilities are not allocated in a manner that reflects the wide distribution of benefits provided by such transmission facilities"[59]; (8) "[t]he proposal merely recognizes that 500 kV and above projects are regional in nature"[60]; and (9) "[s]uch testimony [Mr. Terhune's] suggests that it is reasonable to allocate 100% of the costs of EHV facilities on a regional basis."[61] However, these claims are unsupported. Given the breadth of the claims, the Commission should expect quantitative analysis of the distribution of benefits of new transmission facilities. Stating a thing – even repeatedly stating it – does not necessarily make it so. MSATs/Wolverine have not provided compelling evidence that regional benefits are routinely conferred by EHV transmission projects – whether defined as 345 kV and above or 500 kV and above, or whether proposed or new. Nor have MSATs/Wolverine provided any evidence that such regional benefits, if they exist, are reasonably proportionally distributed with respect to zonal load so as to support the region-wide load ratio share postage stamp cost allocation approach proposed by MSATs/Wolverine. The OMS notes that MSATs/Wolverine concede that "the benefits provided by individual EHV transmission projects are unlikely to be

[56] MSATs/Wolverine filing at 63.
[57] MSATs/Wolverine filing at 63 citing Opinion No. 494 at PP 66, 76.
[58] Direct Testimony of Dale A. Landgren, Exhibit No. MW-1 at 15.
[59] Direct Testimony of Dale A. Landgren, Exhibit No. MW-1 at 19.
[60] Direct Testimony of Dale A. Landgren, Exhibit No. MW-1 at 34.
[61] Direct Testimony of Dale A. Landgren, Exhibit No. MW-1 at 39.

evenly dispersed throughout the Midwest ISO depending on how those benefits are defined and when those benefits are quantified."[62]

### iv. MSATs/Wolverine proposal for a unquantifiable "holistic" approach to transmission planning and cost allocation, rather than a formulaic approach should be rejected.

MSATs/Wolverine acknowledge that the Commission favors formulaic methodologies for evaluating project benefits and beneficiaries and that the Commission has specifically cited the Midwest ISO's RECB weighted gain-no loss ("WGNL") formula as a positive example of such a methodology.[63] Nevertheless, MSATs/Wolverine argue that their proposal to dispense with the RECB WGNL cost allocation methodology for projects of 345 kV and above would be a better approach.[64] MSATs/Wolverine argue that the existing RECB methodology "is highly complex and heavily dependent upon the modeling assumptions made by the Midwest ISO when projecting production cost and load LMP benefits associated with proposed projects."[65] MSATs/Wolverine even label efforts to "specifically evaluate regional benefits" as "hurdles" standing in the way of transmission projects becoming eligible for regional cost allocation.[66]

In response to these arguments, the OMS concedes that the RECB methodology is complex and dependent upon the modeling assumptions. However, the RECB methodology makes a concerted <u>attempt</u> to measure project benefits and determine likely beneficiaries. That process is not a hurdle, but rather, a necessary prerequisite to achieving equitable cost allocation. In contrast, the MSATs/Wolverine proposal would arbitrarily allocate transmission project costs on a load ratio share basis with no analytical analysis and merely on the assertion of broadly

[62] MSATs/Wolverine filing at 53.
[63] MSATs/Wolverine filing at 66.
[64] MSATs/Wolverine filing at 66.
[65] MSATs/Wolverine filing at 66.
[66] MSATs/Wolverine filing at 62.

dispersed benefits. The OMS suggests that a methodology such as RECB that has been designed to actually try to measure transmission project benefits and identify beneficiaries (as well as the distribution of those benefits), while not perfect, is much more likely to achieve that goal than an arbitrary voltage cut-off decision method such as that proposed by MSATs/Wolverine.

To borrow from Winston Churchill's famous "democracy quote," perhaps the formulaic RECB methodology is the worst benefits/beneficiaries identification methodology, except for all the others. And, like democracy, the RECB methodology will be subjected to regular ongoing re-assessment and will be modified as necessary in its evolution to a more perfect process. Indeed, the Midwest ISO is required by its tariff to "continue to evaluate and explore" any "additional transmission infrastructure drivers to ensure that projects which are effective in facilitating market efficiency" are "supported and pursued."[67] Furthermore, the Midwest ISO has committed in testimony to that ongoing evaluation stating, "[W]e continue to analyze and look at enhancements for RECB or any successor methodologies."[68] Accordingly, the MSATs/Wolverine criticism that RECB does not take into consideration "a large universe of factors"[69] is off the mark.

**v. MSATs/Wolverine's assertion of RECB bias was not supported and contradicts the conclusion of the Midwest ISO and all other Midwest ISO transmission owners.**

MSATs/Wolverine argue that the RECB methodology "may actually institutionalize [a] disincentive to invest in regional EHV transmission infrastructure."[70] MSATs/Wolverine argue that, "although the applicability of the RECB methodology is limited to cost allocation issues, its implementation is nevertheless undermining the ability to effectively evaluate the costs and

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67 MISO TEMT, Attachment FF Section II.B.2.
68 Affidavit of Clair Moeller, Exhibit 7 at 5 in Docket No. ER07-1233-000.
69 MSATs/Wolverine filing at 64.
70 MSATs/Wolverine filing at 3.

benefits of proposed transmission projects."[71] MSATs/Wolverine assert that this alleged "undermining" problem stems from: (1) RECB's distinction between economic and reliability benefits by classifying projects as either Baseline Reliability Projects or Regionally Beneficial Projects;[72] (2) the alleged failure of the RECB metrics to measure all of the economic benefits associated with transmission projects;[73] and (3) the RECB benefit-to-cost thresholds are allegedly unattainable in the vast majority of instances.[74] MSATs/Wolverine conclude that "the RECB methodology favors small, incremental expansions designed to address local needs, but does not provide a sufficient platform to evaluate the benefits of larger, backbone EHV transmission projects on a comprehensive, forward looking basis."[75] MSATs/Wolverine's assertion that the RECB method biases outcomes in favor of small, incremental transmission expansion projects does not have theoretical support as demonstrated below. Neither did MSATs/Wolverine provide actual practical support for the assertion that would outweigh the statements of the Midwest ISO/Supporting Midwest ISO TOs in Docket No. ER06-18-000 that, "With regard to whether the cost allocation percentages accepted by the Commission are appropriate and effective for Regionally Beneficial Projects or Baseline Reliability Projects, the Supporting Midwest ISO Transmission Owners submit that, as of the date of this *first* of the required annual reports, it simply is too early to assess their effectiveness."[76] Accordingly, MSATs/Wolverine's "biasing" argument should not be accepted.

[71] MSATs/Wolverine filing at 37.
[72] MSATs/Wolverine filing at 37.
[73] MSATs/Wolverine filing at 39.
[74] MSATs/Wolverine filing at 40.
[75] MSATs/Wolverine filing at 41.
[76] Midwest ISO/Supporting Midwest ISO TOs' filing at 8.

#### vi. MSATs/Wolverine criticism that the RECB approach makes facility siting more difficult is misplaced.

MSATs/Wolverine argue that the RECB methodology may institutionalize disincentive to site regional EHV transmission facilities. For example, MSATs/Wolverine's witness, Mr. Dale A. Landgren states,

> For projects to go forward, it is critical that siting authorities, regulators, and stakeholders be provided with a clear and accurate picture of the costs and benefits of proposed projects, and that the allocation of costs and benefits be appropriately aligned. To the extent that the RECB methodology does not accurately reflect the full benefit of proposed projects, and does not appropriately align the allocation of costs with those benefits, it adversely affects the way siting authorities, regulators, and stakeholders perceive the need for proposed projects. Thus, the principal concern is not so much that costs will be allocated to the wrong cost-payers (although that is clearly a concern), but that the allocation of costs to the wrong cost-payers and the criteria for doing so will hinder the ability to invest in beneficial EHV transmission projects.[77]

The OMS agrees with MSATs/Wolverine that it is critical that siting authorities, regulators, and stakeholders be provided with a clear and accurate picture of the costs and benefits of proposed projects, and that the allocation of costs and benefits be appropriately aligned. The OMS agrees with MSATs/Wolverine that to the extent that a cost allocation methodology does not accurately reflect the true benefit of proposed projects, and does not appropriately align the allocation of costs with those benefits, it may affect the way siting authorities, regulators, and stakeholders perceive the need for proposed projects. The OMS shares MSATs/Wolverine's concern that costs not be allocated to the wrong cost-payers, and that the allocation of costs to the wrong cost-payers can hinder investment in beneficial EHV transmission projects. However, unlike MSATs/Wolverine, the OMS believes that the RECB cost allocation methodology is less likely to lead to such negative outcomes than would the

[77] Direct Testimony of Dale A. Landgren, Exhibit No. MW-1 at 20.

MSATs/Wolverine proposal. Indeed, the RECB method arbitrarily allocates only 20% of project costs on a region-wide postage stamp basis, whereas the MSATs/Wolverine proposal would allocate 100% of project costs on such arbitrary basis. Rather than making the siting process easier, such increased region-wide cost allocation could create practically unlimited opponents to siting new transmission facilities. Indeed, any person that is allocated costs for transmission projects that provide no offsetting benefits would be a potential opponent of siting the transmission facility.

#### vii. MSATs/Wolverine's argument that the RECB method is based on an analysis of local costs and benefits is wrong.

MSATs/Wolverine argue that the RECB process evaluates project costs and benefits "on a purely or principally local basis" and that the RECB method is "based on an analysis of local costs and benefits."[78] MSATs/Wolverine further argue that the RECB methodology is flawed because it allocates 80% of new transmission project costs "on a primarily local basis."[79] However, these statements are inaccurate and incomplete. The RECB methodology allocates 80% of new project costs to zones or sub-regions based upon regional cost causation and benefits metrics using the LODF method for reliability projects and a weighted measure of production cost savings and load LMP savings for economic projects. The results of the application of these metrics may in some cases be that 80% of new transmission project costs are allocated on a primarily local basis. Such an outcome does not represent a flaw in the method, but rather shows its strength, as it constitutes the actual result of the regional cost causation/beneficiaries analysis.

MSATs/Wolverine state that its proposal to increase the 20% postage stamp to 100% "will better facilitate consideration of regional benefits in the context of transmission planning

[78] MSATs/Wolverine filing at 49.
[79] MSATs/Wolverine filing at 49.

and expansion."[80] However, this statement is simply wrong because the MSATs/Wolverine proposal will not even make an attempt to quantify project benefits or to evaluate their regional or sub-regional distribution.

**viii. MSATs/Wolverine's argument that the RECB cost allocation is based on a "snap-shot" is wrong.**

MSATs/Wolverine assert that the RECB method is inferior because it "is based on a snapshot of costs and benefits that exist at any particular time."[81] However, that snapshot assertion is simply not true. For example, the production cost savings and LMP savings metrics developed in RECB II are assessed over a ten-to-fifteen year forward-looking timeframe. While the analysis is conducted on a one-time basis, it is not based on a snapshot, but, rather, a comprehensive analysis of costs and benefits over a long forward time horizon.

**ix. MSATs/Wolverine's description of the Midwest ISO system as "fully integrated" is contradicted by the evidence.**

MSATs/Wolverine assert that "it is reasonable to view the Midwest ISO as a single system for the purposes of ratemaking."[82] MSATs/Wolverine assert that the Commission "has traditionally favored rolled-in pricing for transmission facilities" where the facilities are fully integrated into the transmission system.[83] MSATs/Wolverine conclude that such a principle supports the 100% postage stamp rate methodology that they propose.[84] However, MSATs/Wolverine fail to acknowledge the geographical and electrical expansiveness of the Midwest ISO region and do not acknowledge the weak interconnectedness of the Midwest ISO transmission system as testified to, for example, by Mr. Procario in Docket No. ER07-1233-

[80] MSATs/Wolverine filing at 49.
[81] MSATs/Wolverine filing at 51.
[82] MSATs/Wolverine filing at 54.
[83] MSATs/Wolverine filing at 53.
[84] MSATs/Wolverine filing at 54.

000.[85] The system realities across the Midwest ISO region do not support rolled-in rate treatment.

### x. MSATs/Wolverine's argument about the consistency of their proposal with the Commission's Opinion No. 494 is unconvincing and premature.

MSATs/Wolverine argue that their postage stamp rate proposal is consistent with the Commission's Opinion No. 494 concerning PJM and promotes consistency with PJM.[86] With respect to Opinion No. 494, the OMS points out that that decision is currently pending rehearing and that the Commission has issued an Order granting rehearing for the limited purpose of further consideration.[87] Furthermore, the postage stamp rate treatment adopted by the Commission in Opinion No. 494 is to apply to new PJM centrally-planned transmission facilities of 500 kV and above. MSATs/Wolverine's postage stamp rate proposal, on the other hand, would apply to any new transmission project of 345 kV and above that is in the Midwest ISO's transmission expansion plan, regardless of the way that it got included in that plan. Despite MSATs/Wolverine's argument about transmission facility functionality in the Midwest ISO vs. PJM to the contrary,[88] the postage stamp policy of Opinion No. 494 and MSATs/Wolverine's postage stamp proposal are not consistent.[89]

### xi. MSATs/Wolverine's argument about the benefits derived by consumers in exporting states from new transmission facilities is wrong.

MSATs/Wolverine state that, "The integration of new generation resources (or the better integration of existing resources) will provide states that are net importers with greater access to lower-cost energy sources, and states that are net exporters with the ability to maximize the

[85] Affidavit of John Procario, Exhibit 2 at 14-15.
[86] MSATs/Wolverine filing at 54-56.
[87] See, June 15, 2007 Order Granting Rehearing for Further Consideration in Docket No. EL05-121-003.
[88] MSATs/Wolverine filing at 55.
[89] The OMS notes, as an example, that Commonwealth Edison Company (a Midwestern utility that is part of PJM), like most of the companies in the Midwest ISO, currently has no 500 kV facilities on its system.

return on the sale of excess output."[90] The part of this argument about exporting states fails to acknowledge the reality that, in some retail restructured states that are net exporters and where generators are largely owned outside the regulated utility structure (e.g., Illinois), there is no mechanism to ensure that the customers who are forced to pay for socialized transmission costs in their regulated transmission rates also receive the benefits (if any) earned by generators whose off-system sales capability may be increased by the addition of new transmission infrastructure projects. Under these circumstances, the load that would be forced to pay the socialized costs of new transmission facilities would not necessarily receive the benefits, if any, and may suffer additional energy costs as LMPs in the exporting zone rise as a result of increased exporting opportunities by generators in the exporting zone. Under such circumstances, implementation of the MSATs/Wolverine proposal would be unduly discriminatory.

**xii. MSATs/Wolverine understate the rate impact of their proposal.**

MSATs/Wolverine downplay the discriminatory effect of their transmission cost allocation proposal. Specifically, they argue that, "the actual impact on the delivered price of energy is likely to be small due to the fact that transmission costs account for only a small percentage of the total delivered cost of energy, approximately 7%."[91] However, an unjust, unreasonable, and unduly discriminatory cost allocation is unjust, unreasonable, and unduly discriminatory regardless of its magnitude. Besides, despite the MSATs/Wolverine assertion, transmission cost allocations will run into the hundreds of millions to billions of dollars. For example, between May 21, 2007 and the date of this filing, PJM has allocated over $640 million in costs of new East Coast 500 kV and above transmission projects to the Commonwealth Edison Company

[90] MSATs/Wolverine filing at 32.
[91] MSATs/Wolverine filing at 69.

("ComEd") zone in Illinois.  Although PJM's own analyses shows that customers in the ComEd zone (which is situated on the western-most fringes of the PJM region) neither caused those costs to be incurred nor benefit from them, ComEd customers are, nevertheless, expected to shoulder a PJM-wide load ratio share proportion (16.11%) of those new eastern PJM transmission project costs.  Adoption of the MSATs/Wolverine proposal would result in the same kind of unjust, unreasonable, and unduly discriminatory outcome within the Midwest ISO.

### C. Discussion of the Midwest ISO/Certain Midwest ISO TOs/PJM/Certain PJM TOs' IRPD Proposal

#### i. The IRPD Proposal is Reasonable

The IRPD proposal is essentially a *status quo* proposal.  The IRPD proposal would retain the current zero regional through and out rate ("RTOR") between the Midwest ISO and PJM. Network and firm point-to-point transmission customers would continue to pay the applicable zonal charge in their sink zone whether their designated resources are located in their RTO or in the other RTO.  The IRPD eliminates both rate pancaking and transaction-based pricing for transmission services sourcing in one RTO and sinking in the other.  No new or replacement border rate is proposed.

The IRPD proponents propose that the costs of new "cross-border" transmission facilities (i.e., jointly planned facilities built entirely or partially in one RTO but providing benefits in the other RTO) be allocated between the Midwest ISO and PJM as finally determined in Docket No. ER05-6-000, *et al*.[92]  The IRPD proponents state that a filing has already been submitted to the

[92] IRPD Filing at 9.

Commission with respect to cross-border reliability projects and one will be made with respect to cross-border economic projects.[93] The IRPD proposal would not disturb those processes.

The IRPD proponents argue that their proposal is straightforward in concept and in practice.[94] They also assert that the proposal would achieve the Commission's principal objectives for pricing transactions across the PJM-Midwest ISO border in that IRPD: (1) would prevent rate pancaking; (2) is not transaction-based; (3) levels the playing field between remote and local suppliers; (4) avoids cost shifts,[95] (5) respects the transmission owners' rate change filing rights; (6) recognizes the pendency of other relevant dockets ad avoids prejudging those pending proceedings; (7) represents a broad consensus among affected parties; and (8) provides a measure of regulatory certainty and reduces litigation.[96]

The OMS finds the IRPD proposal to be a reasonable approach to the issue of transmission pricing for transmission transactions between the Midwest ISO and PJM markets. We urge the Commission to accept the IRPD proposal.

**ii. The AEP protest raises some thought-provoking issues.**

On August 22, 2007, the American Electric Power Service Corporation (AEP") filed a Motion to Intervene and Protest the IRPD filing.[97] AEP argues that "a new regional rate is needed to fairly allocate the costs of existing regional transmission facilities to those who benefit from them."[98] AEP argues that the Midwest ISO companies make substantial use of and benefit

[93] IRPD Filing at 9.
[94] IRPD Filing at 9.
[95] In the IRPD Filing at 3, the IRPD Applicants correctly recognize that no gains in efficiency would result from shifting the recovery of sunk costs between the RTOs.
[96] IRPD Filing at 9-11.
[97] On August 22, 2007, Buckeye Power also submitted a Protest taking a similar position to that of AEP.
[98] AEP Filing at 5-6.

from AEP's and certain other PJM companies' high voltage transmission facilities, but would not pay for such use under the IRPD proposal.[99]

Among other things, AEP argues that the cost shift analysis submitted by the IRPD proponents fails to start from the correct base point. AEP states that the Commission's previous elimination of through and out rates caused AEP's in-zone transmission rates to increase by more than fifty percent.[100] AEP states that the IRPD proponents' cost shift analysis is misleading and incomplete in that it ignores the cost shifts already incurred as a result of the previous elimination of the RTOR.[101] AEP argues that a complete cost shift analysis "would compare the costs resulting from a proposed regional rate design (e.g., a highway-byway or postage stamp) with a load-serving entity's license plate costs, *plus* the amounts it previously paid to use others' systems to import power, *minus* the amount it had received from third parties for use of its system."[102]

AEP urges the Commission to reject the IRPD filing and to "initiate a Section 206 investigation to develop a record from which the Commission could establish a new just and reasonable rate design for the Super Region."[103] AEP states that, in the event that the Commission does not on its own motion initiate an investigation, AEP is preparing a separate complaint to be filed that will address the justness and reasonableness of the current transmission rate designs within PJM and the Midwest ISO.[104]

[99] AEP Filing at 6.
[100] AEP Filing at 19.
[101] AEP Filing at 20.
[102] AEP Filing at 20.
[103] AEP Filing at 6 and 28.
[104] AEP Filing at 6.

OMS shares AEP's position that transmission cost allocation policy should "fairly allocate the costs of existing regional transmission facilities to those who benefit from them."[105] However, OMS does not believe the current state of the art for measuring and quantifying benefits as applied to existing transmission facilities is sufficiently developed to warrant a switch from using zonal license plate rate design at this time. OMS urges the Commission to adopt a new transition period of three or four years before the end of which the Commission would require a new re-examination of the continued reasonableness of using the zonal license plate rate methodology across the Midwest ISO and PJM. [106] The OMS recommends that the Commission direct the RTOs and their stakeholders to work during the new transition period to develop and fine-tune benefits metrics for existing, as well as new, transmission facilities.

**iii. The Commission should reject ITC/METC's Protest.**

On August 22, 2007, International Transmission Company ("ITC") and Michigan Electric Transmission Company, LLC ("METC") (collectively, "ITC/METC") submitted a protest of the IRPD filing. ITC/METC recommend that the Commission find the IRPD filing to be deficient.[107] ITC/METC recommend that the Commission initiate a Section 206 proceeding to develop a sufficient evidentiary record.[108] ITC/METC recommend that the focus of such a proceeding should be to determine whether the existing license plate rate design for transactions between the Midwest ISO and PJM continues to be just, reasonable, and not unduly

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[105] AEP Filing at 5-6.

[106] It is unclear to the Indiana Utility Regulatory Commission (IURC) if the OMS intends the re-examination to apply to existing and/or new facilities. As previously noted in footnote 29, the IURC does not support a transition period that would involve another evaluation of the allocation of the costs of existing transmission facilities. In addition, the IURC does not support a re-examination of the allocation of the costs of facilities built or under construction during the OMS proposed transition period. However, the IURC would support a re-examination for new facilities that have not yet been constructed.

[107] ITC/METC Filing at 1.

[108] ITC/METC Filing at 8.

discriminatory based on the regional cost allocation principles adopted by the Commission in Order No. 890.[109] ITC/METC believe that the desired "end-state" should be

> …a single uniform rate design and cost allocation methodology applicable to all EHV transmission facilities in the combined Midwest ISO/PJM footprint. This single, uniform rate design and cost allocation methodology should be based on the template and principles established by the Commission in Opinion No. 494.[110]

The OMS disagrees that the IRPD filing is deficient. The OMS takes no position at this time on ITC/METC's "end-state" vision. The OMS supports the regular continued re-evaluation of the effectiveness of whatever cost allocation policy is developed for new cross-border transmission facilities, but takes no position on intra-PJM cost allocation policy for new transmission facilities. With respect to existing transmission facilities, the OMS supports a re-examination of the continued reasonableness of inter-RTO license plate rate design prior to the expiration of a new Commission-imposed transition period. The OMS disagrees with ITC/METC's position that "further evidentiary hearings will demonstrate that the existing license plate rate design is no longer just, reasonable, and not unduly discriminatory."[111]

### D. The Commission should accept the Midwest ISO/Supporting Midwest ISO TOs informational filing and dismiss Indianapolis Power and Light's informational filing.

The informational filings separately submitted on August 1, 2007 by the Midwest ISO/Supporting Midwest ISO TOs and Indianapolis Power and Light agree on the continuation of license plate rates for existing facilities. Further, the Midwest ISO believes that license plate treatment of the costs of existing facilities is in no way incompatible with the separate RECB I and RECB II cost allocation and recovery principles applicable to new transmission expansions

[109] ITC/METC Filing at 8.
[110] ITC/METC Filing at 9-10.
[111] ITC/METC Protest at 8.

as provided for under Attachment FF to the Midwest ISO EMT.[112] IPL agrees with that position.[113]

Despite the areas of agreement, IPL and the Midwest ISO/Supporting Midwest ISO TOs come to diametrically opposed conclusions on the continued application of the RECB I and RECB II cost allocation methodologies.

The Midwest ISO takes the position that, "Cost allocation methods for new facilities were developed after long discussions with stakeholders as representative of the cause and benefits of the facilities, and at this time the Midwest ISO believes that these methods remain appropriate for these facilities."[114] The Midwest ISO states that,

> Given the positive experience of this last allocation of projects using the RECB I formulation for cost sharing of Baseline Reliability Projects, the Filing Parties do not have reason to propose any modifications at this time to the EMT regarding treatment of these projects.[115]

The Midwest ISO further states that,

> With respect to Regionally Beneficial Projects that are provided for under the recent RECB II Order, the Midwest ISO has not yet identified any Regionally Beneficial Projects under an MTEP as the detailed planning scenarios that will be used to identifying projects eligible for RECB II cost treatment continue to be developed by means of stakeholder workshops, and regular discussions at the Planning Advisory Committee. [116]

With regard to whether the 20% / 80% RECB cost allocation split accepted by the Commission is appropriate and effective for Regionally Beneficial Projects or Baseline Reliability Projects, the Supporting Midwest ISO Transmission Owners take a slightly more nuanced position on the continued effectiveness of the cost allocation percentages. They submit

[112] Midwest ISO August 1 Filing at 5.
[113] IPL Filing at 5.
[114] Midwest ISO/Supporting Midwest ISO TOs' filing at 5.
[115] Midwest ISO/Supporting Midwest ISO TOs' filing at 6.
[116] Midwest ISO/Supporting Midwest ISO TOs' filing at 6.

that, as of the date of the submission of the first of the required annual reports, "it simply is too early to assess their effectiveness" because the Midwest ISO has only just begun to implement RECB.[117] Nevertheless, the Supporting Midwest ISO Transmission Owners take the position that the 20% / 80% RECB cost allocation split remains just and reasonable because facts do not yet exist to demonstrate otherwise.[118]

IPL, on the other hand, recommends that the Commission re-open the RECB I and RECB II process to allow for a reconsideration of consumer protection measures that can be adopted to avoid the unintended consequences of unjust and unreasonable cost allocations.[119]

Some OMS States may submit separate positions on the Commission's previous adoption of a 20% regional postage stamp cost allocation component in RECB I and RECB II, but the OMS agrees with the Supporting Midwest ISO Transmission Owners that it is simply too early to assess the effectiveness, justness, or reasonableness of the RECB 20% regional postage stamp cost allocation component. The OMS agrees with the informational report filers regarding zonal license plate rates for existing facilities and the compatibility between that method and the RECB cost allocation method for new facilities. OMS does not support IPL's suggestion that license plate rate design should be implemented for new facility additions as well as existing facilities.

**IV. Conclusion**

Wherefore, for the reasons explained above, the OMS respectfully requests that the Commission take the actions recommended by the OMS herein.

The OMS submits these comments because a majority of the members have agreed to generally support them. The following members generally support these comments. Individual

[117] Midwest ISO/Supporting Midwest ISO TOs' filing at 8.
[118] Midwest ISO/Supporting Midwest ISO TOs' filing at 9.
[119] IPL Filing at 6.

OMS members reserve the right to file separate comments regarding the issues discussed in these comments:

Illinois Commerce Commission
Indiana Utility Regulatory Commission
Iowa Utilities Board
Michigan Public Service Commission
Minnesota Public Utilities Commission
Missouri Public Service Commission
Montana Public Service Commission
Nebraska Power Review Board
North Dakota Public Service Commission
Wisconsin Public Service Commission

The Manitoba Public Utilities Board did not participate in this pleading. The Kentucky Public Service Commission, the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, and the South Dakota Public Utilities Commission abstained from these comments.

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

Respectfully Submitted,

*William H. Smith, Jr.*
William H. Smith, Jr.
Executive Director
Organization of MISO States
100 Court Avenue, Suite 218
Des Moines, Iowa 50309
Tel: 515-243-0742

Dated: September 17, 2007

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 17th day of September, 2007.

*William H. Smith, Jr*

**Statement of the Illinois Commerce Commission on the Continued Unjustness and Unreasonableness of the Midwest ISO's RECB II 20% Region-Wide Cost Allocation Component**

## I. The Commission Should Remove the 20% Region-Wide Cost Allocation Component from the Midwest ISO's RECB II Methodology.

The Illinois Commerce Commission ("ICC") supports the continued use of license plate rates for existing transmission facilities at this time. The ICC also agrees with other parties that it is simply too early to judge the continued just and reasonableness of most of the components of the RECB policy for new transmission facilities. However, the ICC opposed the Midwest ISO's arbitrary RECB II 20% region-wide cost allocation component and does not support continuation of that component. Indeed, it continues to be unjust and unreasonable to base the allocation of any portion of the costs of so-called regionally beneficial transmission projects to all Midwest ISO pricing zones on a load ratio share basis, i.e., via an unsupported region-wide postage-stamp cost allocation. A more appropriate cost allocation method for prospective new transmission facilities would be based directly and measurably on cost causation and beneficiary pays principles. The ICC has made filings in the past in opposition to the 20% region-wide cost allocation component for so-called regionally beneficial projects and does so again here.[1] The ICC urges the Federal Energy Regulatory Commission ("Commission") to reconsider its current position with regards to that aspect of the RECB II policy when it rules on the Midwest ISO's post transition pricing filing.

## II. The Midwest ISO's 20% Region-Wide Cost Allocation Is Arbitrary and Has Not Been Supported With Evidence.

There has been little or no support provided to justify the continuation of a 20% region-wide cost allocation component for so-called regionally beneficial projects. Even the modicum

[1] See ICC Statement attached to OMS Comments in Docket No. ER06-18-004 (2006).

of support that the Midwest ISO offered in its original filing was contradictory. For example, in the Transmittal Letter of the Midwest ISO's 2006 RECB II filing in Docket No. ER06-18-004 where the 20% region-wide allocation was first proposed, the Midwest ISO stated:

> The region-wide postage stamp portion of project cost was set at 20%. This figure is consistent with the level of postage stamp applied to Baseline Reliability Projects of 345 kV and higher voltage in the initial RECB filing. [footnote omitted.] As described in that filing, the figure of 20% was arrived at with reliance on an analysis of the extent of the use of the Transmission System external to a designated pricing zone when the generation within that zone serves the load within that zone. These results demonstrated in rough terms that approximately 20% relative usage of the system of others by any given designated pricing zone is required for a utility to "self-serve" its load reliably. A similar analysis was presented at one of the RECB II Task Force meetings that showed that when the loads of a single zone are served by all market generators in aggregate (which is more descriptive of typical market operations and therefore more applicable to expansions that improve the efficiency of those market operations) the relative usage of the transmission system of others was at least as high as the 20% figure seen in the original evaluation for reliability purposes. These types of analyses were not intended to be applied as a definitive measure of grid benefits, but rather they serve as useful indicators of the general level of shared system usages and are reflective of an appropriate region-wide postage stamp level.[2]

The Midwest ISO's Mr. Webb stated in an affidavit attached to the Midwest ISO's 2006 RECB II filing that, "The proposed allocation policy generally provides for 20% of the costs of a qualified RBP to be allocated to all transmission customers within the Midwest ISO Region on a load ratio share basis."[3] Mr. Webb also stated that, "Load ratio allocations across the entire Midwest ISO cannot provide certainty, however, that all the customers that pay for a transmission facility will necessarily benefit from a specific Network Upgrade."[4] Mr. Webb argued, nevertheless, that, because of difficulty in conducting targeted analyses and predictions

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[2] Midwest ISO RECB II Transmittal Letter at 8.
[3] Webb Affidavit at 5.
[4] Webb Affidavit at 4.

of the distribution of beneficiaries over time, a more generalized cost allocation using a postage stamp rate process is in order.[5]

Notably, Mr. Webb did not attempt to argue that the analysis referred to in the Midwest ISO's RECB II Transmittal Letter concerning "the relative usage of the transmission system of others" when the loads of a single zone are modeled as being "served by all market generators in aggregate" represented some kind of proxy for identifying transmission project beneficiaries. Indeed, Mr. Webb's affidavit did not even mention the generalized analysis that was introduced in the Midwest ISO's Transmittal Letter. Similarly, the Midwest ISO did not attempt to argue that the 20% cost allocation component derives from "a definitive measure of grid benefits." Rather, the Midwest ISO's 2006 RECB II Filing urged that the analysis not be applied in such a manner. The Midwest ISO stated only that the type of analyses that it mentions might serve as "useful indicators of the general level of shared system usages." Neither the Midwest ISO's 2006 RECB II Filing, nor Mr. Webb's affidavit attempted to make a connection between a "general level of shared system usages" and the zonal distribution of beneficiaries of particular economic efficiency transmission projects. Furthermore, neither the Midwest ISO's 2006 Filing, nor Mr. Webb's affidavit attempted to draw a corollary between the reliability context in which the 20% component was included in the RECB I policy package and the economic efficiency context that the RECB II policy is intended to address.

In sum, the Midwest ISO's RECB II 20% region-wide cost allocation component was not supported by evidence and is arbitrary. No meaningful evidence has been provided in the post-transition transmission pricing filings to rebut this conclusion. The Midwest ISO's RECB II 20% region-wide cost allocation component remains unjust and unreasonable and the

[5] Webb Affidavit at 4 and 6.

Commission should address that situation in its Orders on the post-transition transmission pricing filings.

## III. The Midwest ISO's 20% Region-Wide Cost Allocation Component Is Not Benefit-Based, is Arbitrary, and Would Undercut the Midwest ISO's Stated Intention to Develop Additional and More Accurate Benefits Metrics.

When the 20% region-wide cost allocation component was being proposed, the Midwest ISO selected Adjusted Production Cost and Load LMP as "the best set of metrics that could, at the present time, be evaluated in a reasonably accurate and repeatable manner and that would measure economic benefits of the expansion."[6] However, the Midwest ISO recognized that there are other additional benefits metrics that may deserve to be part of any improved protocols for regional beneficial project cost allocation.[7] Indeed, in Section II.B.2 of Attachment FF, the Midwest ISO committed to exploring with stakeholders, and proposing to include in the tariff, additional benefit metrics that would be effective in facilitating market efficiency and meeting regulatory policy objectives.

The Midwest ISO's commitment to explore additional measurable benefits metrics and adopt them when they become mature should be applauded and supported. The Midwest ISO's commitment in this regard is consistent with objectives and principles of allocating costs pursuant to measurable benefits. Despite the Midwest ISO's commitment to explore and adopt additional benefits metrics in the future, the Midwest ISO is currently committed to allocating only 80% of regionally beneficial project costs using benefits metrics.

On the other hand, the Midwest ISO's 20% region-wide cost allocation component for economic efficiency projects is not supported by any benefits metric. The only support provided

[6] Transmittal Letter at 5.
[7] Webb Affidavit at 10.

by the Midwest ISO for the 20% region-wide cost allocation component is the vague notion that the distribution of beneficiaries of transmission projects may change over time. Even if an expectation about a changing distribution of beneficiaries over time is well-founded (and the Midwest ISO provided no evidence on the record by which the expectation can be judged), arbitrarily allocating transmission project costs to all Midwest ISO load is not a good solution to the problem.

Furthermore, the Midwest ISO's allocation of costs to aggregated sub-regions, rather than more granularly to pricing zones that show modeled benefits, already addresses the concern about potential future changes in the distribution of beneficiaries and the concern about difficulty in precisely identifying beneficiaries of long-lived assets. It was excessive and unreasonable for the Commission to impose an arbitrary region-wide allocation of costs on top of what may already be an arbitrary sub-regional allocation of costs just to address the single issue of possible future changes in the distribution of project beneficiaries. It is likewise unreasonable for the Commission to maintain such a policy.

In the context of economic efficiency projects, imposing a region-wide cost allocation component to account for alleged unpredictable changes in the distribution of beneficiaries over time is arbitrary. It is much more likely that the Midwest ISO will be able to identify the true distribution of beneficiaries of a particular economic efficiency transmission project (or get closer to identifying the true distribution of beneficiaries) by actually trying, prior to inclusion of the project in the regional expansion plan, to identify the distribution of benefits, rather than making an arbitrary allocation. Because transmission is a long-lived asset and the benefits of a new transmission project will flow over decades, it could well be unlikely that the Midwest ISO's modeling will perfectly identify the distribution of beneficiaries over time. However, it is more likely that the Midwest ISO will be able to develop benefits metrics in addition to Adjusted Production Cost and Load LMP to more accurately identify the future distribution of project beneficiaries if the Midwest ISO is required to strictly tie cost allocations to benefits metrics. If the Commission continues to adopt policies that include arbitrary allocations of economic efficiency project costs, the Midwest ISO's incentive to develop more, and more accurate, benefits metrics will be undercut and diluted.

In short, the Midwest ISO is more likely to get the cost allocation right (i.e., accurately predict the level of benefits and the distribution of beneficiaries) by being required to genuinely try to get it right than would be the case if the Commission continues to allow the Midwest ISO to employ an arbitrary cost allocation policy, like the RECB II 20% region-wide cost allocation component, that is almost guaranteed to be wrong (i.e., not match assigned cost responsibility with actual project beneficiaries) and to stay wrong. While the Midwest ISO may still not get the cost allocation right, even if it is ordered by the Commission to try to get it right, the result of that effort would not necessarily be arbitrary. On the other hand, a cost allocation approach that uses an unsupported 20% cost allocation component will likely never be right and will always be arbitrary. The first approach could be found to be just and reasonable, but the second approach can not be.

**IV. Conclusion.**

WHEREFORE, the Midwest ISO's RECB II 20% region-wide cost allocation component: (1) has not been supported by evidence; (2) is arbitrary; (3) is not benefit-based; (4) would undercut the Midwest ISO's stated intention to develop additional and more accurate benefits metrics; and (5) is aimed at a problem—uncertainty about the future distribution of project beneficiaries—that that Midwest ISO's sub-regional cost allocation proposal is already aimed at addressing.

For these reasons, the ICC urges the Commission to reject the continued use by the Midwest ISO of the RECB II 20% region-wide postage stamp cost allocation component. The costs of new transmission projects should be allocated solely on the basis of quantitative benefits and beneficiaries metrics.

# Organization of MISO States, Inc.

## 2008 Budget adopted September 13, 2007

| | | Budget 2005 | Actual 2005 | Budget 2006 | Actual 2006 | Budget 2007 | Actual Thru June 2007 | Budget 2008 |
|---|---|---|---|---|---|---|---|---|
| 1 | Ordinary Income/Expense | | | | | | | |
| 2 | Income | | | | | | | |
| 3 | MISO Grant | 600,000 | 200,000 | 525,000 | 320,000 | 480,000 | 120,000 | 480,000 |
| 4 | Interest - Checking Acct and Savings | 1,000 | 5,568 | 2,000 | 618 | 2,000 | 1,157 | |
| 5 | Miscellaneous revenue | | 62 | | 31 | 0 | 502 | |
| 6 | Total Income | 601,000 | 205,630 | 527,000 | 320,649 | 482,000 | 121,659 | 480,000 |
| | Cash carried forward from prior year | 373,237 | 373,237 | 133,802 | 235,608 | 150,000 | 201,904 | 201,904 |
| | Total funds available | 974,237 | 578,867 | 660,802 | 556,257 | 632,000 | 323,563 | 681,904 |
| 7 | Expense | | | | | | | |
| 8 | Personnel Compensation and Benefits | | | | | | | |
| 9 | Compensation - Exec Director | 125,000 | 120,559 | 130,000 | 115,819 | 135,000 | 60,902 | 135,000 |
| 10 | Compensation - Admin Asst | 60,000 | 56,345 | 66,000 | 55,552 | 71,000 | 29,675 | 71,000 |
| 11 | Compensation - additional personnel | 75,000 | | 35,000 | 485 | 35,000 | 3,222 | 35,000 |
| 12 | Other Personnel Expenses | | | | | | | |
| 13 | Staff Training | 3,500 | | 3,000 | | 2,000 | 40 | 2,000 |
| 14 | Paychex Accounting Fees | 400 | 1,237 | 1,000 | 1,322 | 1,500 | 660 | 1,500 |
| 15 | Total Personnel Expenses | 263,900 | 178,141 | 235,000 | 173,178 | 244,500 | 94,499 | 244,500 |
| 16 | Office Expenses (non-personnel) | | | | | | | |
| 17 | Computers | 4,000 | 85 | 6,500 | 4,229 | 5,000 | 524 | 6,000 |
| 18 | Furniture/Office Equipment | 1,000 | | 2,000 | 432 | 1,500 | 933 | 1,500 |
| 19 | Rent, parking, other occupancy | 8,000 | 10,491 | 14,000 | 10,490 | 10,500 | 5,245 | 11,500 |
| 20 | Books, subscriptions, reference | 6,000 | 2,825 | 4,000 | 2,195 | 3,000 | 1,940 | 3,000 |
| 21 | Equip rental & maintenance | | | | | | | |
| 22 | Computer support | 2,600 | 4,871 | 4,000 | 4,521 | 6,000 | 2,665 | 6,000 |
| 23 | Web Site Hosting | 1,000 | 455 | 1,000 | 445 | 600 | 210 | 600 |
| 24 | Printer/Copier/Fax Rental | 3,000 | 2,060 | 3,000 | 2,068 | 2,500 | 993 | 2,000 |

Approved by OMS Board of Directors September 13, 2007

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 25 | Postage, shipping, delivery | 500 | 698 | 800 | 1,001 | 1,200 | 372 | 1,000 |
| 26 | Printing & copying | 500 | 2,403 | 400 | 285 | 600 | 0 | 600 |
| 27 | Supplies | 5,000 | 1,190 | 3,000 | 1,343 | 1,800 | 1,077 | 2,000 |
| 28 | Phone, Fax, DSL | 3,500 | 2,717 | 3,500 | 3,011 | 3,000 | 1,300 | 3,000 |
| 29 | Miscellaneous Operating Expense | 1,500 | 2 | | 2 | 0 | 60 | 0 |
| 30 | Total Office Expenses (non-personnel) | 36,600 | 27,796 | 42,200 | 30,022 | 35,700 | 15,319 | 37,200 |
| | | | | | | | | |
| 31 | Organizational (corp) and Insurance Expenses | | | | | | | |
| 32 | Professional, Audit, Other | 2,500 | 2,967 | 2,500 | 2,987 | 3,200 | 1,187 | 3,200 |
| 35 | General Office Insurance | 2,800 | 2,510 | 2,800 | 2,530 | 2,800 | 0 | 2600 |
| 36 | Workers' Comp | 1,200 | 1,591 | 1,300 | -646 | 1,300 | 356 | 600 |
| 37 | Directors & Officers Insurance | 3,500 | 3,500 | 3,500 | 3,500 | 3,500 | 3500 | 3,500 |
| 38 | Total Organization and Insurance Expense | 10,000 | 10,568 | 10,100 | 8,371 | 10,800 | 5,043 | 9,900 |
| | | | | | | | | |
| 39 | Consultants / DC Counsel | 200,000 | 15,663 | 60,000 | | 60,000 | 0 | 60,000 |
| | | | | | | | | |
| 40 | OMS - meetings and training | | | | | | | |
| 41 | Officers | 3,000 | 2,098 | 3,000 | 1,522 | 3,000 | 1,135 | 3,000 |
| 42 | Exec Dir | 12,000 | 10,054 | 10,000 | 12,153 | 10,000 | 5,461 | 11,000 |
| 43 | Other Staff | 3,500 | | 3,500 | 803 | 3,500 | 177 | 2,000 |
| 44 | Total OMS Officer and Staff Expenses | 18,500 | 12,152 | 16,500 | 14,478 | 16,500 | 6,773 | 16,000 |
| | | | | | | | | |
| 45 | MISO Meeting Expenses | | | | | | | |
| 46 | MISO work groups and committees | 18,000 | 26,871 | 26,400 | 42,434 | 36,000 | 20,486 | 45,000 |
| 47 | MISO BOD,AC - Lead States | 15,000 | 19,875 | 20,000 | 6,691 | 20,000 | 8,243 | 20,000 |
| 48 | Consumer Advocate Travel | | | | | 30,000 | 2,969 | 30,000 |
| 49 | Exec Dir (MISO AC,BOD) | 6,000 | 7,133 | 8,000 | 7,092 | 8,000 | 3,885 | 9,000 |
| 50 | Total MISO Meeting Expenses | 33,000 | 46,747 | 46,400 | 49,125 | 94,000 | 35,583 | 104,000 |
| | | | | | | | | |
| 51 | OMS Meetings | | | | | | | |
| 52 | OMS Annual Meeting (2006 meeting) | | | | | | | |
| 53 | Director attendance expense | 10,000 | 11,514 | 12,000 | 9,319 | 12,000 | 12,265 | 14,000 |
| 54 | Annual Meeting Location Costs | 1,200 | 1,964 | 1,200 | 720 | 2,000 | 2,544 | 2,500 |
| 55 | Total OMS Annual Meeting | 11,200 | 13,477 | 13,200 | 10,039 | 14,000 | 14,809 | 16,500 |
| | | | | | | | | |
| 56 | Regular OMS BOD Meeting | | | | | | | |

Approved by OMS Board of Directors September 13, 2007

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 57 | **Regular BOD Mtg Location Costs** | 1,200 | 1,380 | 1,500 | 1,256 | 1,500 | 400 | 1,500 |
| 58 | **Regular BOD Meeting attendance expense** | 10,000 | 1,748 | 10,000 | 3,171 | 10,000 | 1,494 | 10,000 |
| 59 | **Total Regular OMS BOD Meeting** | 11,200 | 3,128 | 11,500 | 4,427 | 11,500 | 1,894 | 11,500 |
| 60 | **OMS Executive Committee Meeting** | | | | | | | |
| 61 | **OMS Exec Com Mtg attendance expense** | 3,000 | | 3,000 | | 3,000 | 0 | 3,000 |
| 62 | **OMS Exec Comm - Meeting Location** | 500 | | 500 | | 500 | 23 | 500 |
| 63 | **Total OMS Executive Committee Meeting** | 3,500 | 0 | 3,500 | 0 | 3,500 | 23 | 3,500 |
| 64 | **Conference Calls** | 12,000 | 15,400 | 16,000 | 16,089 | 16,000 | 12,705 | 24,000 |
| 65 | **OMS Work Group Meetings - attendance expense** | 6,000 | 9,460 | 6,000 | 11,231 | 12,000 | 972 | 12,000 |
| 66 | **OMS Work Group meeting - location costs** | | 257 | | 205 | | 0 | |
| 67 | **MWDRI meetings - attendance exp** | 0 | 0 | 0 | 0 | 55,000 | 11,069 | 55,000 |
| 68 | **MWDRI meetings - location/call costs** | 0 | 0 | 0 | 0 | 0 | 3,120 | 0 |
| 69 | **FERC/DOE Tech Conference - attendance exp** | 5,000 | 4,600 | 37,400 | 4,379 | 5,000 | 3,317 | 8,000 |
| 70 | **OMS Technical Training** | 6,000 | -135 | 6,000 | 24,692 | 50,000 | 797 | 50,000 |
| 71 | **Technical training location costs** | | 161 | | 729 | | 59 | |
| 72 | **Total OMS Meeting and Training Expenses** | 54,900 | 46,347 | 93,600 | 71,792 | 167,000 | 48,765 | 180,500 |
| 73 | **Total Expenses** | 616,900 | 337,414 | 503,800 | 361,433 | 628,500 | 205,983 | 652,100 |
| 74 | **Operating surplus of funds available over expenses** | 357,337 | 241,453 | 157,002 | 194,824 | 3,500 | 117,580 | 29,804 |
| 75 | **Depreciation allowance** | -135 | 3,488 | | | 0 | 0 | |
| | **Net Surplus of available funds over expenses** | **357,472** | **237,965** | **157,002** | **194,824** | **3,500** | **117,580** | **29,804** |

Approved by OMS Board of Directors September 13, 2007

OMS

# Organization of MISO States
# Report of the Treasurer
# Greg Jergeson, Montana Public Service Commission to the
# Board of Directors
# September 13, 2007
# Report for August 2007

## CASH ON HAND

The beginning balance as of August 1 for the Wells Fargo Business Performance Savings Account was $57,638.52. Interest earned for this month was $154.41. The August 31, 2007 balance was $57,792.93.

The beginning balance as of August 1 for the Chase Bank One Checking account was $67,246.79. The total disbursements from the checking account for August 2007 were $27,349.62. Deposits, interest and adjustments were $40,044.06. As of August 31, 2007, the checking account bank balance was $79,941.62 and the book balance was $85,132.03 (with 11 checks outstanding).

The total savings and checking account balances as of August 31 2007 is **$137,734.16.**

*OMS*

**TREASURER'S REPORT**
**Organization of MISO States**
**August 31, 2007**

## Wells Fargo Business Performance Savings Account

| | | | | | |
|---|---|---|---|---|---|
| Balance as of 8/1/07 | | | $ | 57,638.52 | |
| 8/31/07 | DEP | Interest on Savings | $ | 154.41 | |
| Business Performance Savings Account Balance at 7/31/07 | | | | | $ 57,792.93 |

## Chase Bank One Commercial Checking with Interest

| | | | | |
|---|---|---|---|---|
| Balance as of 8/1/07 | | | | 67,246.79 |
| 8/13/2007 | DEP | MISO Remittance | $ | 40,000.00 |
| 8/31/07 | DEP | Interest on Checking | | 44.06 |
| | | Total Deposits | $ | 40,044.06 |

## Checks and Charges

| Date | Check # | Descriptions | | |
|---|---|---|---|---|
| 8/10/2007 | W/D | Paychex Fee | $ | 111.10 |
| 8/16/2007 | 2411 | 100 Court Investors | $ | 959.21 |
| 8/16/2007 | 2412 | Combined System Technologies | $ | 2,226.00 |
| 8/16/2007 | 2413 | DWX Internet | $ | 35.00 |
| 8/16/2007 | 2414 | Infomax Office Systems | $ | 172.31 |
| 8/16/2007 | 2415 | Intercall | $ | 1,179.85 |
| 8/16/2007 | 2416 | Qwest | $ | 241.49 |
| 8/16/2007 | 2417 | Chase Credit Card Services | $ | 905.94 |
| 8/16/07 | 2418 | IL Travel to ASM Workshop--Madison | $ | 277.60 |
| 8/16/2007 | 2419 | IL Travel to ASM Workshop--Madison | $ | 97.00 |
| 8/27/07 | 2420 | ND Travel to ASM Workshop--MSP | $ | 704.54 |
| 8/27/07 | 2421 | IA Travel to ASM Workshop--MSP | $ | 404.25 |
| 8/27/07 | 2422 | IL Travel to MISO A/C and BoD | $ | 1,073.21 |
| 8/27/07 | 2423 | IA Travel to MISO A/C and BoD | $ | 148.26 |
| 8/27/07 | 2424 | MI Travel to ASM Workshop--MSP | $ | 258.33 |
| 8/27/07 | 2425 | IA Travel to ASM Workshop--MSP | $ | 224.97 |
| 8/27/07 | 2426 | IA Travel to ASM Workshop--MSP | $ | 704.84 |
| 8/27/07 | 2427 | IA Travel to ASM Workshop--MSP | $ | 283.67 |
| 8/27/07 | 2428 | MT Travel to ASM Workshop--MSP | $ | 1,132.60 |
| 8/27/07 | 2429 | IL Travel to DRWG | $ | 154.23 |
| 8/27/07 | 2430 | IL Travel to ASM Workshop--Madison | $ | 115.00 |

| | | | | | |
|---|---|---|---|---|---|
| 8/27/07 | 2431 | ED Travel to ASM Workshop--MSP | $ 270.57 | | |
| 8/30/07 | W/D | Paychex, Payroll | $ 8,157.11 | | |
| 8/31/07 | W/D | Paychex, Taxes | $ 4,545.87 | | |
| 8/31/07 | W/D | Oppenheimer Funds--ED | $ 2,166.67 | | |
| 8/31/07 | W/D | Oppenheimer Funds--OM | $ 800.00 | | |
| Total Checks and Charges | | | | $ 27,349.62 | |
| CHECKING ACCOUNT BALANCE 8/31/07 | | | | | $ 79,941.23 |

**CERTIFICATES OF DEPOSIT, SAVINGS AND CHECKING ACCOUNT BALANCES AS OF 8/31/07** $ 137,734.16

## CHASE CHECKING ACCOUNT RECONCILIATION

| | Check # | Amount |
|---|---|---|
| Bank Balance 8/31/07 | | $ 85,132.03 |
| Less: Checks O/S | 2420 | $ 704.54 |
| | 2421 | $ 404.25 |
| | 4222 | $ 1,073.21 |
| | 2423 | $ 148.26 |
| | 2424 | $ 258.33 |
| | 2425 | $ 224.97 |
| | 2426 | $ 704.84 |
| | 2428 | $ 1,132.60 |
| | 2429 | $ 154.23 |
| | 2430 | $ 115.00 |
| | 2431 | $ 270.57 |
| | | $ 79,941.23 |
| Book Balance 8/31/07 | | |

## CHASE OMS VISA PURCHASES

| | | | |
|---|---|---|---|
| ED | NARUC Summer Meeting | | 905.94 |
| | | Total Charges | $ 905.94 |

At the OMS September 13, 2007 Board Meeting, the July OMS Treasurer's Report was corrected. This is the revised report.

# *OMS*

**TREASURER'S REPORT**
**Organization of MISO States**
**July 31, 2007**

## Wells Fargo Business Performance Savings Account

| | | | | | |
|---|---|---|---|---|---|
| **Balance as of 7/1/07** | | | | $ 57,484.53 | |
| | 7/31/07 | DEP | Interest on Savings | $ 153.99 | |
| **Business Performance Savings Account Balance at 7/31/07** | | | | | $ 57,638.52 |

## Chase Bank One Commercial Checking with Interest

| | | | | |
|---|---|---|---|---|
| **Balance as of 7/1/07** | | | | $ 59,581.15 |
| | 7/2/2007 | DEP | Deposit | $ 1,191.00 |
| | 7/9/2007 | DEP | MISO Remittance | $ 40,000.00 |
| | 7/16/2007 | DEP | Deposit | $ 8.11 |
| | 7/31/07 | DEP | Interest on Checking | 44.08 |
| | | | **Total Deposits** | $ 41,243.19 |

## Checks and Charges

| Date | Check # | Descriptions | |
|---|---|---|---|
| 7/3/2007 | 2383 | IL Travel to OMS Board Meeting | $ 82.00 |
| 7/3/2007 | 2384 | MI Travel to OMS Planning Meetings | $ 501.44 |
| 7/3/2007 | 2385 | KY Travel to ASM Presentation, Columbus | $ 363.10 |
| 7/3/2007 | 2386 | Ryun, Givens, and Waith | $ 2,660.00 |
| 7/3/2007 | 2387 | Minneapolis Marriot City Center | $ 1,689.51 |
| 7/10/2007 | W/D | Paychex Fee | $ 99.60 |
| 7/10/2007 | 2388 | Triplett Office Essentials | $ 62.09 |
| 7/10/07 | 2389 | ND Travel to OMS Board Meeting | $ 364.38 |
| 7/10/2007 | 2390 | MO Travel to OMS Board Meeting | $ 824.19 |
| 7/10/07 | 2391 | MO Travel to OMS Board Meeting | $ 449.31 |
| 7/10/07 | 2392 | KY Travel to MISO RECB Meeting | $ 349.77 |
| 7/10/07 | 2393 | MI Travel to MISO AC and MTEP Meetings | $ 246.86 |
| 7/10/07 | 2394 | MT Travel to OMS Board Meeting | $ 645.65 |
| 7/10/07 | 2395 | WI Travel to MISO AC Meeting | $ 636.87 |
| 7/10/07 | 2396 | ED Travel to FERC TC in Pittsburgh | $ 38.99 |
| 7/16/07 | 2397 | OH Travel to OMS Board Meeting | $ 624.48 |
| 7/16/07 | 2398 | OMS Chase VISA | $ 1,330.72 |
| 7/16/07 | 2399 | Triplett Office Essentials | $ 958.24 |
| 7/16/07 | 2400 | 100 Court Investors | $ 874.21 |

At the OMS September 13, 2007 Board Meeting, the July OMS Treasurer's Report was corrected. This is the revised report.

| | | | | | |
|---|---|---|---|---|---|
| 7/16/07 | 2401 | Intercall | $ 2,711.23 | | |
| 7/16/07 | 2402 | Infomax Office Systems | $ 172.31 | | |
| 7/20/07 | 2403 | DWX Internet | $ 35.00 | | |
| 7/20/07 | 2404 | Qwest | $ 241.00 | | |
| 7/20/07 | 2405 | IA Travel to DRWG and MWDRI | $ 732.20 | | |
| 7/20/07 | 2406 | ED Travel to NARUC Summer Meeting | $ 188.34 | | |
| 7/30/07 | 2407 | Combined Systems Technologies | $ 41.34 | | |
| 7/30/07 | 2408 | IA Travel to DRWG, MWDRI, and MSC | $ 733.86 | | |
| 7/30/07 | 2409 | 100 Court Investors | $ 85.00 | | |
| 7/30/07 | 2410 | MWDRI Conference Call Expense | $ 184.27 | | |
| 6/30/07 | W/D | Paychex, Payroll | $ 8,137.98 | | |
| 6/30/07 | W/D | Paychex, Taxes | $ 4,546.94 | | |
| 6/30/07 | W/D | Oppenheimer Funds--ED | $ 2,166.67 | | |
| 6/30/07 | W/D | Oppenheimer Funds--OM | $ 800.00 | | |
| | | Total Checks and Charges | | 33577.55 | |
| CHECKING ACCOUNT BALANCE 7/31/07 | | | | | $ 67,246.79 |

**CERTIFICATES OF DEPOSIT, SAVINGS AND CHECKING ACCOUNT BALANCES AS OF 7/31/07** $ 124,885.31

## CHASE CHECKING ACCOUNT RECONCILIATION

| | Check # | Amount |
|---|---|---|
| Bank Balance 7/31/07 | | $ 68,655.64 |
| Less: Checks O/S | 2389 | $ 364.38 |
| | 2407 | $ 41.34 |
| | 2408 | $ 733.86 |
| | 2409 | $ 85.00 |
| | 2410 | $ 184.27 |
| | | $ 67,246.79 |
| Book Balance 7/31/07 | | |

## S VISA PURCHASES

| | | |
|---|---|---|
| ED | Indiana Secretary of State | 7.14 |
| OM | Office Max | 44.77 |
| ED | Travel to New York | 403.59 |
| OM | Office Max | 137.94 |
| OM | Office Depot | 36.65 |
| ED | Marriot--MSP | 618.69 |
| ED | Parking | 8.00 |
| ED | Cab Fare | 35.64 |
| ED | Cab Fare | 9 |

At the OMS September 13, 2007 Board Meeting, the July OMS Treasurer's Report was corrected.  This is the revised report.

| | | | |
|---|---|---|---|
| **ED** | **Caribou Café** | | **8.11** |
| **OM** | **Office Max** | | **21.19** |
| | | **Total Charges** | **$ 1,330.72** |

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**
**September 7, 2007**

## FERC and DOE Activity

1. On August 10, the OMS filed comments supporting the MISO filing to extend Broad Constrained Area mitigation measures in Docket No. ER07-1182.
2. On August 10, the OMS filed a request for clarification of the FERC's ASM order in Docket No. ER07-550 with respect to the need for continuing discussion of cost allocation methods. That discussion has gone forward in the MISO Market Subcommittee.
3. The FERC has set a comment date of September 17 for the August 1 filings relating to post-transition pricing in Dockets ER07-1233 and ER07-1261. The OMS Pricing WG has prepared a draft comment for consideration by the OMS Board on September 13.
4. Several OMS work groups have cooperated in preparing a draft comment on the FERC Advance Notice of Proposed Rulemaking, Docket RM07-19, for consideration by the OMS Board on September 13 and filing on September 14.

## OMS-MISO Activity:

1. The next meeting of the MWDRI Steering Committee is scheduled for September 24 in Chicago.
2. The Modeling work group met with Midwest ISO staff on September 6 to clarify the scope of the work of the KEMA Consulting Group. It is planning an in-person meeting in October to discuss the possible applications of this work.
3. The OMS Long-Term Development and Governance Work Group has monitored the development of the Midwest ISO capital budget for 2008 and will present a recommendation to the OMS Board meeting

on September 13. It also considered comments on MISO's filing to permit separation of the duties of President and CEO.

4. The OMS Resource Adequacy Work Group is presenting its recommendations piecemeal for Board members' information, beginning with Metrics on September 10. Other topics will be covered in October and November, aiming at a full recommendation to MISO before December.
5. The Markets Work Group members have engaged in stakeholder discussions of revenue sufficiency guarantees and have drafted portions of the OMS ANOPR comments and contributed to the OMS comments on post-transition pricing.
6. Pricing Work Group Chair Randy Rismiller presented the OMS comments on the "free rider" issue at the August Advisory Committee meeting. The Work Group prepared draft OMS comments on post-transition pricing and contributed several sections to the ANOPR comments.
7. The Transmission Planning and Siting Work Group has participated in sessions on the Interconnection Study Queue, the implementation of MTEP-07, and the formulation of criteria for MTEP-08.
8. The Market Monitoring Work Group contributed a section of the ANOPR draft. Members have begun participating in FERC's monthly Midwest Market Snapshot calls.
9. The final ASM regional workshop was held in St. Paul on August 14. Some additional state presentations are scheduled.
10. RTO 101 was presented in Iowa on August 29-30. Some other states have contacted Mr. Chandley to schedule a session. Interested states should contact the OMS office for more information.

**Public Relations**

1. Presentations:
   - None
2. Pending speaking/meeting invitations:
   - None

## Upcoming MISO Filing of Regional Interest

| Filing Date | Docket No. | Description | Pursuant to Commission Order |
|---|---|---|---|
| 9/14/2007 | ER07-550-000 | The Midwest ISO to re-file proposed revisions to the EMT regarding the implementation of its Ancillary Services Market. | 119 FERC ¶ 61,311 (2007) |
| 10/11/2007 | OA08-____ | The Midwest ISO to submit its § 206 compliance filing pursuant to Order No. 890 containing non-rate terms and conditions (or a demonstration that previously approved variations continue to be "consistent with or superior to" the revised pro forma OATT). | Order No. 890 at ¶¶ 157, 161 |
| December 2007 | ER07-550 | The Midwest ISO to submit a permanent Resource Adequacy plan. | 119 FERC ¶ 61,311 (2007) |
| Mid-December 2007 | ER08-____ | The Midwest ISO to submit proposed revisions to the EMT pursuant to Section 205 concerning the redesign of the Midwest ISO's cost recovery adders. | N/A |

## Other upcoming dates:

- September 10 – MISO Informational Forum
- September 10 – OMS Board Special Informational Meeting on Enforceable Planning Reserve Margin Metrics
- September 13 – OMS Board of Directors meeting
- September 14 – ANOPR comments due
- September 14 – MISO will refile ASM at FERC
- September 17 – Post-transmission pricing comments due
- September 19 – Advisory Committee
- September 24 – MWDRI Steering Committee
- September 24 – SAWG/RAWG meeting
- September 27 – OMS Executive Committee
- September 27 – Open season white paper comments due
- December 13 – OMS Annual Meeting

**Midwest ISO Advisory Committee Meeting** **Item A2**

**Carmel, Indiana**
**September 19, 2007**
**10:00 A.M. to 2:00 P.M. EDT**
**DIAL IN NUMBER: (800) 216-0480**

## Meeting Agenda

| | | Starting |
|---|---|---|
| A. Standing Items | | |
| 1. Call to Order, Representative Roll Call (Peggy Ladd) | 5 min | 10:00 |
| 2. Review of Agenda (Peggy Ladd) | 5 min | 10:05 |
| 3. Approval of June Meeting Minutes (Peggy Ladd) √ | 5 min | 10:10 |
| 4. Action Items from Previous AC Meetings (Todd Hillman) | 5 min | 10:15 |
| B. Discussion Items | | |
| 1. MAPP Seams Discussion (Clair Moeller) | 60 min | 10:20 |
| 2. Grandfather Agreement (GFA) Update (Richard Doying) | 20 min | 11:20 |
| 3. Strategic Planning Update (Wayne Schug) | 5 min | 11:40 |
| **LUNCH** | **45 min** | **11:45** |
| 4. Sector Representation for 2008 Advisory Committee | 5 min | 12:30 |
| 5. Transmission Project Flowchart (Jennifer Curran) | 10 min | 12:35 |
| C. Standing Committee/Other Stakeholder Committee Reports | | |
| 1. Steering Committee (Patty Harrell) | 30 min | 12:45 |
| • Informational Forum – Motion (Bill Bourbonnais) √ | | |
| • Ancillary Services Market Readiness Task Force √ | | |
| • Tariff & Business Practices Subcommittee Charter √ | | |
| • Stakeholder Governance Working Group Charter √ | | |
| 2. Transmission Owners' (Paul Jett/Greg Ioanidis) * | 5 min | 1:30 |
| 3. Organization of Midwest ISO States (John Norris) | 5 min | 1:35 |
| 4. Stakeholder Governance Working Group (Bill Schofield) √ | 10 min | 1:40 |
| D. New Business | | |
| 1. October Advisory Committee Business (Peggy Ladd) | 5 min | 1:50 |
| E. Recap | | |
| 1. Issues/Assignments & Pending Votes (Todd Hillman) | 5 min | 1:55 |

Rotating Agenda Team for October 2007 Agenda: Chris Hajovsky
Paul Jett
John Norris

√ Denotes potential motion for voting
* Report will be oral

**September 19, 2007 Midwest ISO Advisory Committee Meeting**
**Draft Steering Committee Motion**
**Midwest ISO Information Forum Schedule**

Since January 8, 2007 the Midwest ISO Information Forum has been held on the Monday during the week prior to the Midwest ISO Advisory Committee meeting week.

This Information Forum schedule has resulted in the most recent month reliability and market data being unavailable for the Information Forum presentations and discussions.

This Information Forum Schedule has also prevented some stakeholders from attending this Forum in person due to the extra travel time and expense.

Based on stakeholder comments, the Steering Committee is recommending and is moving that the Information Forum be scheduled in the afternoon of the Tuesday immediately preceding the Wednesday Advisory Committee meeting starting on October 16, 2007.

Motion Offered By: ___________________________

Motion Seconded By: __________________________

# MOTION TO APPROVE TARIFF AND BUSINESS PRACTICES SUBCOMMITTEE CHARTER

Whereas the Tariff and Business Practices Subcommittee (TBPSC) was formed from the merger of the Market Practices Subcommittee and the Tariff Working Group;
And whereas the TBPSC has vetted the proposed charter through its stakeholders;
Therefore, the Advisory Committee accepts the charter of the Tariff and Business Practices Subcommittee.

**Voting by Proxy Motion**
**Advisory Committee**
**September 19, 2007**

WHEREAS the Advisory Committee has reviewed the proposed changes to the Stakeholder Governance Guide, as it pertains to the process for voting by proxy, as recommended by the Committee Restructuring Working Group based on a vote at its May 23, 2007 meeting.

IT IS THEREFORE RESOLVED by the Advisory Committee that the proposed changes as presented at this September 19, 2007 meeting of the Advisory Committee, be included in a revised Stakeholder Governance Guide.