

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

Midwest Independent Transmission System Operator, Inc.))))	Docket No. ER09-1049-000
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**MOTION FOR LEAVE TO INTERVENE AND COMMENT
OF THE ELECTRIC POWER SUPPLY ASSOCIATION**

Pursuant to Rules 211 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (FERC or Commission), 18 C.F.R. §§ 385.211 and 385.214 (2006), the Electric Power Supply Association (EPSA) respectfully files for leave to intervene and comment in the above-captioned proceeding. On April 28, 2009, the Midwest Independent Transmission System Operator (MISO) submitted a filing to the Commission in compliance with Order No. 719.¹ MISO's filing examines the four areas identified by Order No. 719 – demand response/price formation, long-term contracts, market monitoring units, and RTO responsiveness – and proposes tariff changes where necessary. In many instances, MISO's filing references already existing tariff language, noting that change is unnecessary to comply with the Commission's directives. EPSA supports the majority of MISO's filing, noting that the EPSA members that participate in MISO's market and stakeholder process appreciate the progress and the value that MISO's services provide. However, in the interest of making incremental changes to improve the MISO markets, the Commission should direct MISO to make certain changes to its April 28 compliance filing.

¹ *Order No. 719: Wholesale Competition in Regions with Organized Electricity Markets*, 18 CFR Part 35, 125 FERC ¶ 61, 071, Docket Nos. RM07-19-000 and AD07-7-000 (October 17, 2008).

EPSA's comments focus on three areas: (1) MISO's stakeholder process; (2) MISO's proposed tariff language on tailored requests from states to the Independent Market Monitor; and, (3) MISO's market rules governing price formation during periods of operating reserve shortages. In each of these cases, EPSA is not recommending a complete overhaul of MISO's existing tariff requirements, but rather asking that MISO be directed to re-examine its existing structure and make small changes to comply with the directives and goals of Order 719.

I. MOTION TO INTERVENE & COMMUNICATIONS

EPSA is the national trade association representing competitive power suppliers, including generators and marketers. These suppliers, who account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities serving power markets. EPSA seeks to bring the benefits of competition to all power customers.²

Many of EPSA's members are interconnected with and/or are pursuing interconnection to the grid in MISO, and as such represent a significant portion of the supply capacity in that region. EPSA members have been active participants in MISO's stakeholder processes and EPSA has participated in many of the Commission's proceedings on MISO issues. As a result, EPSA has a direct and substantial interest in the instant proceeding that cannot be adequately represented by any other party, and allowing EPSA to actively

²The comments contained in this filing represent the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

participate in this proceeding would be in the public interest. Accordingly, EPSA respectfully requests that the Commission grant this timely motion to intervene.

All pleadings, correspondence and other communications concerning this proceeding should be directed to:

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II. COMMENTS

A. MISO'S STAKEHOLDER GOVERNANCE PROCESS

EPSA's membership recognizes the value of MISO's interaction with and dedication to its stakeholders. In the spirit of Order No. 719, EPSA proposes not to radically change the MISO stakeholder process, but rather to propose incremental improvements to a process that has been providing responsive service to stakeholders since its inception. The reforms proposed here seek to further refine a process that is fairly well-developed and seeks to be balanced. In Order No. 719, the Commission directed MISO to demonstrate that its stakeholder process is inclusive, fairly balances diverse interests, represents minority positions, and is dedicated to ongoing responsiveness. In its compliance filing, MISO addresses each of these areas and explains how its stakeholder process complies. EPSA's comments here focus on improving both the structural integrity of MISO's stakeholder process and transparency between MISO stakeholders and the MISO board of directors.

In the interest of demonstrating to the Commission that MISO's stakeholder process is fair and balances diverse interests, the compliance filing highlights the structure of its Advisory Committee. EPSA agrees with MISO's assessment that "the Advisory Committee currently employs a carefully-crafted weighted sector voting scheme that prevents domination by any single stakeholder or stakeholder category." The Advisory Committee is well positioned to make decisions on tariff changes and other important MISO governance procedures, as it has carefully weighted sectors with proportionate voting rights. However, EPSA is concerned with a recent trend at MISO to propose and approve tariff changes at lower-level working groups, then bypassing the Advisory Committee and submitting the proposed changes directly to FERC for approval. This is counterintuitive to Order No 719's directive regarding fairness in balancing diverse interests because many of the lower-level working groups are not weighted by sector as is the Advisory Committee. Alternatively, several issues that originate in lower level working groups are escalated too quickly to allow ample time for Advisory Committee members to consider the issue and its implications to particular sectors before a vote. Thus, important tariff changes are often decided outside of a clear, formal process to work through the Advisory Committee.

When approached about this issue, MISO management responded that to pass all tariff changes by the Advisory Committee may present a timing issue, as the Advisory Committee meets too infrequently. This is not a concern that should thwart the Commission's directive of fairness in the stakeholder process. The

Commission should direct MISO to resolve this issue and to build a timeline and process by which tariff changes can be deliberated and proposed by un-weighted, lower-level committees to the Advisory Committee. All proposed tariff changes should go through the Advisory Committee. This would serve to strengthen the structural integrity of the stakeholder process by ensuring that all market participants get a vote on tariff changes at an equally weighted level. Further, an organization that relies heavily on stakeholder input should ensure that the stakeholder process functions as designed.

Finally, EPSA would like to comment on the responsiveness of MISO's board. EPSA is generally pleased with the level of interaction afforded between the board and stakeholders. However, in some instances, EPSA members desire a greater level of transparency on the board's reasoning. For example, each month, the MISO board hears from stakeholders on "hot topics" that are affecting the markets. While market participants may spend a great deal of time and effort in preparing for a hot topic discussion, the board does not always offer feedback or indicate any possible resulting actions or changes based on that discussion. In other words, the board may hear a disproportionate amount from stakeholders on a particular issue without closing the discussion loop by offering feedback from its perspective. EPSA contends that this is a limited and discrete point to make, as MISO has an otherwise very responsive board. However, the MISO board should make more of an effort to close the loop through greater transparency in its thinking and voting strategies, especially in response to issues for which it has received extensive presentations from stakeholders.

B. STATE ACCESS TO CONFIDENTIAL INFORMATION THROUGH TAILORED REQUESTS FOR INFORMATION FROM THE IMM

Order No. 719 concluded that states within an RTO's footprint may make tailored requests for information from the Independent Market Monitor (IMM).³ In that Order, the Commission laid out a number of guidelines and restrictions to the types of requests states may make. First, the Commission noted that requests from states should not be unduly burdensome to the IMM, stating that "if this limitation were not imposed, the [market monitoring unit (MMU)] could rapidly become an unpaid consultant for the states, and would be unable to perform its core functions."⁴ Next, the Commission found that states may only request information from the IMM if the information is not requested to aid state enforcement actions and if appropriate non-disclosure agreements are executed.⁵ According to Order No. 719, that data also must be "appropriately redacted to meet confidentiality concerns."⁶ Finally, Order No. 719 allows affected market participants the opportunity to contest a request or to provide context to the data that the states have requested.⁷

To that end, MISO has proposed the following tariff amendment:

Tailored Requests for Information from Authorized Agencies:
The IMM will entertain tailored requests for information from Authorized Agencies regarding general market trends and the performance of the Markets, excluding any information designed to aid state enforcement actions. Granting or refusing such requests shall be at the IMM's discretion based on time and resource availability. The IMM shall

³ Order No. 719, P. 446-458.

⁴ Order No. 719, P. 446.

⁵ Id, P. 448-449.

⁶ Id, P. 450.

⁷ Id, P. 455.

entertain requests from Authorized Agencies in accordance with Section 38.9.4 and Attachment EE of the Tariff.⁸

The proposed language speaks directly to two of the five requirements set forth in Order No. 719 – that the request is not unduly burdensome for the IMM and that it is not designed to aid state enforcement actions. The section the proposed language points to – Section 38.9.4 – lays out the confidentiality rules that a transmission provider or the IMM should use in disclosing information about market participants. Section 38.9.4 is extensive and includes requirements for non-disclosure agreements and procedures for market participants to contest a request. However, MISO’s proposed language does not speak to allowing affected market participants to review an information request after it has been processed by the IMM to have the opportunity to provide further contextual information, as Order No. 719 directed. Further, while other sections of the tariff specify information subjectivity to redaction, neither the new proposed tariff language nor the existing referenced tariff language discusses redaction.

Affected market participants should play a large role in responding to tailored requests for information from states. EPSA appreciates that Order No. 719 not only gave market participants the opportunity to contest such a request, but also the opportunity to supplement IMM data with contextual explanation. MISO’s proposal in this area does not match Commission directives. Section 38.9.4.5(e) sets forth administrative procedures by which an affected market participant can object to a request, but there is no allowance to provide contextual information. EPSA suggests that MISO look to ISO New England

⁸ Module D, Section 54.3.b

tariff language as a model, as it allows market participants full review of an IMM's answer to such a request in order to either contest or contextualize the information to be sent to the requesting state. Section 3.3(b)(iii) of ISO New England's Information Policy provides an excellent template for other RTOs seeking to comply with Order No. 719's directives. ISO New England explains the importance of "providing a level of negotiation that goes beyond merely permitting a market participant to contest the information."⁹ As such, Section 3.3(b)(iii) allows,

[T]he Market Participant whose data is the subject of the request to provide input on the terms and conditions under which that data may be released and afford the Market Participant a forum before the Commission should it feel that those protections are not adequate.¹⁰

MISO should develop provisions similar to those found in ISO New England's, to allow for a level of participation from affected market participants.

It is equally important that the proposed tariff language include a reference to the redaction of confidential information. Sections 56 and 57 of Module D specify that requests for information from the IMM are subject to redaction or other measures necessary for the protection of Confidential Information.¹¹ The instant tariff amendment is proposed to be included in Section 54 of Module D, which does not discuss redaction. Either a clause should be added to the proposed tariff language that notes all tailored requests from states are subject to

⁹ Filing of ISO New England Inc. and New England Power Pool in Response to Order No. 719, Docket No. ER09-1051-000 (April 28, 2009), p. 95.

¹⁰ Ibid.

¹¹ These sections of Module D address requests to the IMM for investigation and general reports that the IMM may produce. The proposed language is in Section 54 of Module D, which speaks to data collection and disclosure.

redaction, or a reference should be made to Sections 56 and 57, where subjectivity to redaction is already discussed.

The Commission should not accept MISO's proposed tariff section 54.3.b of Module D, but direct MISO to further refine it to include provisions for allowing affected market participants to contextualize tailored requests for information from the IMM and to include a direct reference that all information is subject to redaction of commercially sensitive information.

C. MISO'S ASM SCARCITY PRICING MECHANISM

Order No. 719 found that”

[R]ules that do not allow for prices to rise sufficiently during an operating reserve shortage to allow supply to meet demand ... may not produce prices that accurately reflect the value of energy, and by failing to do so, may harm reliability, inhibit demand response, deter entry of demand response and generation resources and thwart innovation.¹²

Thus, the Commission directed each RTO to “reform or demonstrate the adequacy of its existing market rules to ensure that the market price for energy reflects the value of energy during an operating reserve shortage.”¹³ As the Commission found that inaccurate price formation is a barrier to functional demand response, Order No. 719 required each RTO to produce a factual record that its shortage pricing proposal/existing mechanism meets six specific criteria.¹⁴ MISO's compliance filing takes the latter approach, explaining that the

¹² Order No. 719, P. 192.

¹³ Order No. 719, P. 194.

¹⁴ Those criteria include: (1) improve reliability by reducing demand and increasing generation during periods of operating reserve shortage; (2) make it more worthwhile for customers to invest in demand response technologies; (3) encourage existing generation and demand resources to

newly-sanctioned Ancillary Services Market (ASM) rules satisfy the Commission's regarding operating reserve shortage pricing directives and offering no new proposal.

MISO explains that the ASM market incorporates a demand curve for operating reserves, and that when sufficient capacity is unavailable, scarcity pricing is applied. However, MISO also explains that "because the ASM market is less than four months old, there is a less complete factual record" than the Commission requires under Order No. 719.¹⁵ Thus, it is not possible to meet all of the six criteria laid out by the Commission.¹⁶

EPSA members note that MISO includes no record in its compliance filing of analyzing the ASM rules regarding whether and how they comply with Order 719 specifically. MISO simply states that the ASM market design satisfies the Commission's directives. More work is necessary to fulfill Order No. 719's directives. While the current ASM does have a mechanism for pricing operating reserves during periods of shortage, many administrative and out of market actions take place that mute any ability for the market participants to see and potentially respond to market incentives. MISO fails to directly address whether that mechanism is sufficient to meet the six criteria FERC has laid out for such pricing reform. In fact, the ASM concept for scarcity pricing was created well

continue to be relied upon during an operating reserve shortage; (4) encourage entry of new generation and demand resources; (5) ensure that the principle of comparability in treatment of and compensation to all resources is not discarded during periods of operating reserve shortage; and (6) ensure market power is mitigated and gaming behavior is deterred during periods of operating reserve shortages including, but not limited to, showing how demand resources discipline bidding behavior to competitive levels. Order No. 719, P. 247.

¹⁵ MISO Filing, p. 24.

¹⁶ For example, sufficient time has not yet passed to show whether MISO has made it more worthwhile for customers to invest in DR technologies.

before FERC's issuance of Order No. 719 and therefore may fall short of meeting the goals of that Order.

As the tariff is written now, the ASM only put scarcity pricing into effect after the imposition of several emergency provisions, which does not adequately provide market signals reflecting scarcity or shortage conditions to properly or fully incent market responses. Such an approach is not sufficient to accurately reflect the value of energy or to incent proper demand participation; therefore, it is still a barrier in providing appropriate price signals and a barrier to demand resources. In a recent report on demand response for the New York ISO, MISO's market monitor David Patton highlighted the necessity for setting efficient shortage pricing and studying its relationship to emergency actions and demand response.¹⁷ MISO's scarcity pricing mechanism should be modified to ensure that market signals occur within the market before emergency actions take place. The Commission should direct MISO to work with stakeholders to more fully examine reforms to fulfill Order No. 719's vision of demand participation.

¹⁷ *Report on Shortage Pricing of Potomac Economics, LTD, Independent Market Monitor for the New York ISO*, Docket No. ER09-1142-000 (May 15, 2009), pp. 16-17.

III. CONCLUSION

Wherefore, EPSA respectfully requests that the Commission grant its motion for leave to intervene in this proceeding and consider the comments herein.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "N. Bagot", is written above a horizontal line.


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May 26, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the comments by via email or postal mail upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., May 26, 2009.



Nancy Bagot, VP Regulatory Affairs