BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Midwest Independent Transmission System Operator, Inc.	Docket No. ER08-394-02

COMMENTS OF
THE PUBLIC UTILITIES COMMISSION OF OHIO

BACKGROUND AND INTRODUCTION

On March 26, 2008, the Federal Energy Regulatory Commission ("FERC") issued its decision in the above-captioned investigation conditionally accepting Phase II of the Midwest Independent Transmission System Operator's ("MISO's") permanent resource adequacy program. [1] The Phase II compliance filing (*i.e.*, MISO's Resource Adequacy Requirements ["RAR"] proposal) contains mandatory requirements for any market participant serving load in MISO's region to have and maintain sufficient capacity and planning reserves to meet a regional loss of load expectation ("LOLE") requirement. FERC observes that capacity and planning reserves may include both generation capacity and at least certain types of demand response. Among other things, FERC's March 26 order directed MISO to assess alternative approaches to defining the load forecast requirement which "is integral" to the setting of Planning Reserve Margins

[1] Midwest Independent Transmission System Operator, Inc., 122 FERC ¶ 61,283 (2008).

(PRM)[2] and describe as clearly as possible in the tariff the method for establishing PRM.[3] FERC recognized that a load modifying resource ("LMR") may be used to meet capacity requirements. And, FERC also instructed the Midwest ISO to clarify that load serving entities ("LSE") do not need to designate additional capacity resources to cover a PRM associated with demand reductions achieved by LMR.[4]

FERC's March 26, 2008 decision also required MISO to make two amended compliance filings (the first 60-days from the date of the order and the second on June25, 2008). MISO's first set of amendments to its compliance filing involve Module E "state reliability and standards" and "state reliability requirements."

On June 2, 2008, FERC issued a combined notice of filing ("notice") inviting comments regarding MISO's amended compliance filing and corresponding proposed tariffs ("amended tariffs") concerning resource adequacy requirements, which were docketed at FERC on May 27, 2008. FERC's June 2, 2008 notice reflects that any comments responding to the updated compliance filing are to be docketed at FERC by 5:00 P.M. on Tuesday, June 17, 2008. The Public Utilities Commission of Ohio ("Ohio

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[2] Midwest Independent Transmission System Operator, Inc., 122 FERC ¶ 61,283 (2008) at paragraphs 137 – 140.

[3] Midwest Independent Transmission System Operator, Inc., 122 FERC ¶ 61,283 (2008) at paragraph 95.

[4] Midwest Independent Transmission System Operator, Inc., 122 FERC ¶ 61,283 (2008) at paragraph 96.

Commission") hereby provides its response to FERC's June 2, 2008 notice and MISO's amended tariff.

In response to FERC's directives and guidance, MISO's amended tariff: (1) revised the definition of Forecast LSE Requirement in section 1.103a of Module A;[5] (2) added a condition that the Forecast LSE Requirement shall be validated by the Transmission Provider;[6] (3) amended section 69.1.1 to exclude the impact of Load Modifying Resources from the forecast demand;[7] (4) deleted section 68.2 where the Forecast LSE Requirement had previously been defined;[8] and (5) clarified that the forecasted demand provided by each LSE is used to calculate PRM.[9]

In its transmittal letter MISO "agrees in principle" with a proposal of the Organization of MISO States that "an LSE would not be required to hold planning reserves with respect to demand that will predictably respond to prices" and states that

[5] Sixth revised sheet No. 77, Midwest Independent Transmission System Operator, Inc., Compliance Filing FERC Docket No. ER08-394-002.

[6] Substitute Fourth Revised Sheet No. 812, Midwest Independent Transmission System Operator, Inc., Compliance Filing FERC Docket No. ER08-394-002.

[7] Substitute Third Revised Sheet No. 813, Midwest Independent Transmission System Operator, Inc., Compliance Filing FERC Docket No. ER08-394-002.

[8] Substitute Original Sheet No. 810B, Midwest Independent Transmission System Operator, Inc., Compliance Filing FERC Docket No. ER08-394-002.

[9] Substitute Fourth Revised Sheet No. 812, Midwest Independent Transmission System Operator, Inc., Compliance Filing FERC Docket No. ER08-394-002.

it "believes that Demand forecasts should reflect price-responsive demand."[10]

In these comments, the Ohio Commission recommends that specific direction be given to MISO regarding tariff modifications and development of business practice manuals to appropriately consider price responsive demand.

SUMMARY OF THE OHIO COMMISSION'S POSITION

The Ohio Commission believes MISO's amended tariff is inconsistent with federal law, FERC policy, and the cost-effective achievement of long-term resource adequacy in that it fails to give full consideration to price responsive demand. Under MISO's amended tariff, price responsive demand does not reduce Forecast LSE Requirements; and, once a Forecast LSE Requirement has been set, demand response will count toward the achievement of that requirement only if it is a specifically dispatchable resource.

DISCUSSION

MISO's tariff should ensure that price responsive demand is on a level playing field with load modifying resources and generation. Price responsive demand refers to

[10] *Compliance Filing of Midwest Independent Transmission System Operator, Inc., regarding Resource Adequacy Requirements FERC Docket No. ER08-394-00*, at p. 18, fn. 100.

usage which naturally declines as real time wholesale and retail prices increase. With advanced metering and retail pricing that is linked to the wholesale market, loads will decline in a predictable manner as prices increase without MISO sending dispatch signals to millions of air conditioners, homes, and businesses.

LSEs should not have to hold capacity and planning reserves for demand that predictably will not occur at prices that are higher than those that might be assumed in the development of a point load forecast, yet are equal to or below applicable price ceilings. Most of the economic benefits of investing in advanced metering to support time differentiated prices are from avoiding the need for new generation. If LSEs are required to hold additional capacity and planning reserves for demand that would not occur at higher prices, the business case for investing in advanced metering and the ability of restructured states, such as Ohio, to cost-effectively achieve long-term resource adequacy will be compromised.

New legislation in Ohio makes it state policy to encourage time-differentiated pricing and implementation of advanced metering infrastructure.[11] Utility applications to approve recovery for significant investments in advanced metering and implementation of time-differentiated pricing are expected to come before the Ohio Commission within the next few months. The Ohio Commission needs to be confident

[11] Ohio S.B. 221, signed into law May 1, 2008. Ohio Revised Code, 4928.02.

that Ohio utilities and consumers will be able to capture the full value of undertaking these investments and enabling price responsive demand.

If MISO's tariff is implemented as currently drafted, demand resources would be counted towards meeting capacity requirements only to the extent demand response can be dispatched. LMRs are defined to include behind-the-meter generation and "demand resources."[12] A "demand resource" is defined as, "Interruptible Load or Direct Load Management and other resources that can reduce Demand during Emergencies."[13] And, a "resource" is defined as, "Either a Generation Resource or a Demand Response Resource that can reliably adjust its electricity output and/or usage by some specified range and rate at a specific Commercial Node in response to Dispatch instructions."[14] Even with implementation of advanced metering by local distribution companies, MISO will not be in a position to communicate dispatch signals to the millions of consumers and end-use devices which would respond to real-time price signals.

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[12] Module E, Section 1.169a, Midwest Independent Transmission System Operator, Inc. December 28, 2007 RAR Proposal (2007), Third Revised Sheet No. 91.

[13] Module E, Section 1.65a, Midwest Independent Transmission System Operator, Inc. December 28, 2007 RAR Proposal (2007), Third Revised Sheet No. 65.

[14] Module E, Section 1.273, Midwest Independent Transmission System Operator, Inc. December 28, 2007 RAR Proposal (2007), Fourth Revised Sheet No. 20.

Failure to consider price responsive demand in MISO's resource adequacy requirements would be inconsistent with federal law and FERC policy. Section 1252(f) of the 2005 Energy Policy Act states[15]:

> "It is the policy of the United States that time-based pricing and other forms of demand response, whereby electricity customers are provided with electricity price signals and the ability to benefit by responding to them, shall be encouraged, the deployment of such technology and devices that enable electricity customers to participate in such pricing and demand response systems shall be facilitated, and unnecessary barriers to demand response participation in energy, capacity and ancillary service markets shall be eliminated."

In its Notice of Proposed Rulemaking on Wholesale Competition in Regions with Organized Markets, recognizing the importance of both retail and wholesale demand response, FERC said:

> "Enabling demand-side responses, as well as supply-side resources, improves the economic operation of electric power markets by aligning prices more closely with the value customers place on electric power."[16]

FERC has emphasized repeatedly the importance of facilitating price responsive demand. In 2001, the Commission approved a Load Response Program in PJM, finding that "the current lack of meaningful demand side response is a flaw in the markets

[15] 16 United States Code, Section 2642(f)

[16] *Wholesale Competition in Regions with Organized Electric Markets*, Docket Nos. RM07-19-000 and AD07-7-000, Notice of Proposed Rulemaking, February 22, 2008, at ¶ 28, 122 FERC at ¶61.617.

operated by PJM which, if not corrected, could lead to dysfunction in those markets…."[17] With respect to price responsive demand, the Commission explained:

> "Price-responsive demand is a key part of a well-functioning market that would mitigate price volatility and enhance reliability in the face of supply shortages. In a well-functioning, competitive electricity market, high prices are a signal for buyers to conserve and for sellers to expand output. The market would thus allocate scarce energy and capacity to those who valued it most and assure that the load was served at least cost."[18]

With respect to the markets operated by the California ISO, FERC has said that:

> "The Commission continues to believe that establishing a demand response mechanism is crucial to establishing a robust market. . . . A working demand response program puts downward pressure on price, because suppliers have additional incentives to keep bids close to their marginal production costs and high supply bids are more likely to reduce the bidder's energy sales . . . . Demand-side price-responsive bids will also help to allocate scarce supplies efficiently. Indeed, without demand-side price responsiveness, there can be no market mechanism for ensuring that scarce supplies are allocated to the highest valued uses during shortages."[19]

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[17] *PJM Interconnection, L.L.C.*, 95 F.E.R.C. ¶ 61,306, at p. 62,043 (2001).

[18] *Id.* at 62,042-62,043.

[19] *San Diego Gas and Elec. Co. v. Sellers of Energy and Ancillary Serv.*, 95 F.E.R.C. ¶ 61,418, at p. 62,555 (2001).

And, in a New England case in December 2002, FERC found that "measures that facilitate a robust demand response are essential to the success of competitive wholesale markets."[20]

FERC has approved demand response programs in wholesale markets. However, without further clarification, MISO's resource adequacy tariff will be a barrier to development of retail price responsive demand. Such retail demand response will occur naturally in response to time-differentiated pricing, not necessarily as a result of wholesale demand response programs. If LSEs are required to hold capacity and planning reserves with respect to demand that predictably would not be present at higher energy and ancillary service prices, prices will rarely, if ever, reach the levels at which retail consumers would reduce their usage below forecasted levels. And, if generation requirements cannot be avoided through retail price responses, the business case for investing in the metering needed to enable mass market price responsive demand will be negatively impacted.

In response to MISO's amended tariff, the Ohio Commission recommends that the definition of "Forecast LSE Requirement" be clarified further by adding the

[20] *New England Power Pool*, 101 F.E.R.C. ¶ 61,344, at PP 46-47 (2002).

following sentence to Section 1.103a of Module A[21]: "An LSE, consistent with any State regulatory requirements, may specify its Forecast LSE Requirement as a curve describing the relationship between anticipated integrated hourly peak MWs and price."

FERC also encouraged the Midwest ISO to continue to work with stakeholders to develop and make publically available the Business Practice Manuals ("BPMs") as part of its 180-day compliance filing of financial settlement/enforcement provisions.[22] MISO's amended application reflects that it will commit to publish the BPMs no latter than June 25, 2008.[23]

The Ohio Commission recommends that, for LSE's submitting a Forecast LSE Requirement Curve, MISO's tariff or BPM should be amended to describe how to select the price/MW point on the LSE's Forecast Requirement Curve used to calculate the LSE's Planning Reserve Margin.[24] Specifically, the Ohio Commission recommends that the tariff or BPM should be amended to include the following additional three points:

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[21] Sixth revised sheet No. 77, Midwest Independent Transmission System Operator, Inc., Compliance Filing FERC Docket No. ER08-394-002

[22] Midwest Independent Transmission System Operator, Inc., 122 FERC ¶ 61,283 (2008) at paragraph 400.

[23] Midwest Independent Transmission System Operator, Inc., Compliance Filing FERC Docket No. ER08-394-002, p. 7.

[24] Midwest Independent Transmission System Operator, Inc., Compliance Filing FERC Docket No. ER08-394-002, ¶ 69.3 and section 1.242b. Fifth Revised Sheet No. 113.

a. The state regulatory authority with jurisdiction over the LSE may select a point on the Forecast LSE Requirement Curve to be used in setting the Planning Reserve Margin.

b. In the event the applicable state regulatory authority has not done so, the Transmission Provider shall use the point on the LSE's Forecast Requirement Curve which minimizes the LSE's total resource requirement.

c. The highest price point on a Forecast Requirement Curve that may be used to calculate the Planning Reserve Margin would be the price/MW point that reflects the expected energy price during a Level 2(d) Maximum Generation Emergency Event, *i.e.,* when interruptible demand and Demand Response Resources would be curtailed.

The Ohio Commission further recommends that MISO's BPM for Module E at ¶69.3.4 should provide that MISO's after-the-fact review of the accuracy of LSE's forecasts for the preceding month be performed in a consistent manner for LSEs submitting point forecasts and LSEs that provide a Forecast Requirement Curve. For example, consistent treatment would imply that an LSE's Forecast Requirement Curve would not be considered an under forecast, if the LSE's normalized peak hour demand (after accounting for actual weather conditions) is less than or equal to the MW demand at the price point on its Forecast Requirement Curve equal to the real time energy price experienced in the peak hour.

In addition, the Ohio Commission maintains that MISO should be directed to initiate a stakeholder process to define financial consequences for under forecasting LSE requirements and the circumstances upon which financial consequences will apply. Charges or penalties associated with under forecasting requirements should be applied consistently to LSEs that submit point- and curve-based forecast requirements.[25]

CONCLUSION

The Ohio Commission submits that FERC should be cautious not to assert jurisdiction through Module E resource adequacy requirements in a manner that interferes with state resource adequacy policies or requirements. A failure of the amended MISO tariff to provide appropriate recognition for the role of price responsive demand has the potential to undermine state policies that would promote retail demand response, create more efficient markets, and contribute to long-term resource adequacy.

The Ohio Commission wishes to thank FERC for the opportunity to respond in this investigation.

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[25] Additionally, as advanced metering and time-differentiated retail pricing develop, the Ohio Commission maintains that FERC should ensure that price responsive demand – a sloping demand curve reflecting the preferences of millions of individual consumers – is incorporated in near real time RTO forecasts, integrated into security constrained economic dispatch, and permitted to set energy and ancillary service prices.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing have been served in accordance with 18 C.FR. Sec. 385.2010 upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Werner L. Margard
Werner L. Margard
Assistant Attorney General

Dated at Columbus, Ohio this June 16, 2008.

Summary: Comments Comments submitted on behalf of the Public Utilities Commission of Ohio in FERC Docket No. ER08-394-02 electronically filed by Kimberly L Keeton on behalf of Public Utilities Commission of Ohio