

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Midwest Independent Transmission System Operator, Inc. Docket Nos. ER06-321-000
ER06-321-001
ER06-321-002

(Issued May 16, 2006)

KELLY, Commissioner, *dissenting in part*:

This Agreement between the Midwest ISO, the Midwest ISO's Independent Market Monitor (IMM), and the Midwest ISO Balancing Authorities replaces certain Tariff provisions regarding the role of the IMM in monitoring the Balancing Authorities with extra-Tariff contract provisions. Among other things, this order accepts a provision imposing the higher *Mobile-Sierra* public interest standard for any changes to the Agreement, whether proposed by a party, a non-party or the Commission acting *sua sponte*. I dissent from this order's acceptance of such a provision, which limits the Commission's ability to protect the broader interests of third-party market participants and the effective operation of the Midwest ISO markets by subjecting review of any potential future changes to the *Mobile-Sierra* public interest standard.

In the TEMT II Order, the Commission found that the IMM should monitor for anti-competitive problems in control areas and affiliate favoritism by control area operators, and directed Midwest ISO to submit tariff revisions.¹ The Commission recognized that the control area operators retain a number of crucial functions that provide them with opportunities for anti-competitive behavior that must be monitored, including coordinating operating reserves and regulation, load forecasting, relieving constraints not recognized in the Midwest ISO model, and redispatching generation as needed to relieve those constraints.²

Through its monitoring activities, the IMM plays a vital role in assisting the Commission to assure that prices in Midwest ISO's evolving markets reflect competitive market conditions and are therefore just and

¹ See *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,163 (2004) at P 256, *order on reh'g*, 109 FERC ¶ 61,157 (2004).

² See *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,285 (2004) at P 140.

reasonable. Here, the Agreement sets forth detailed parameters within which the IMM will monitor the Balancing Authorities' actions, request and obtain data from them, and report to the Commission. I believe that the IMM's monitoring activities significantly affect the interests of third-party market participants and the operation of the Midwest ISO market as a whole. The Commission's ability to protect these broader interests would be limited because the Agreement could not be adjusted, even if market conditions warrant such an adjustment, unless the higher *Mobile-Sierra* public interest standard is met. Under similar circumstances, the Commission has rejected *Mobile-Sierra* public interest provisions as unjust and unreasonable.³

Accordingly, I dissent from this order's acceptance of the provision limiting the Commission's ability to review future changes to the Agreement to the *Mobile-Sierra* public interest standard.

Suede G. Kelly

³ See *ISO New England Inc., et al.*, 106 FERC ¶ 61,280 (2004) at P 128, *order on reh'g*, 109 FERC ¶ 61,147 (2004) at P 73.