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DESCRIPTION

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Date

Yvonne J. Lee

10-16-03

2003 SENATE NATURAL RESOURCES

SB 2115

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10-16-03
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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2115

Senate Natural Resources Committee

☐ Conference Committee

Hearing Date 1-10-03

Tape Number	Side A	Side B	Meter #
1	X		0.6-18.3
Committee Clerk Signature <i>Janet James</i>			

Minutes:

Senator Thomas Fischer, Chairman brought the Senate Natural Resources Committee to order.

Attendance was taken indicating all the members of the committee were present.

Senator Fischer opened the hearing on SB 2115, a bill relating to the confidentiality of market monitoring information received from the federal energy regulatory commission.

Illona A. Jeffcoat-Sacco, Director of the Public Utilities Division of the Public Service

Commission testified in favor of SB 2115 which was introduced at the request of the

Commission. (See attached testimony).

Senator Tollefson asked how this relates to MAPP (Mid-Continent Area Power Pool).

Illona A. Jeffcoat-Sacco responded that MAPP has been converted into solely a reliability organization since FERC has developed the regional organization concept. MAPP continues to perform the MISO type functions but performs them differently because they was not

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Page 2
Senate Natural Resources Committee
Bill/Resolution Number SB 2115
Hearing Date 1-10-03

restructuring or competition in supply. These organizations are highly coordinated and work with each other. The functions of MAPP and MISO are not final as this has and will take time.

Our state will have a distinctive advantage in having input by a state MISO as sort of an advisor group, but we will have at a big disadvantage if we as a state cannot receive the information.

That is why it is important to stop that information deficit so that we can have the input that we should have.

Senator Heltkamp questioned that we can't be the only state that has a tough open records policy or law. He asked what the other states are doing.

Illona A. Jeffcoat-Sacco answered that other states she has dealt with have something similar to the federal requirements which is that a company simply files a case and claim a trade secret protection. With the Feds, it is confidential without any commission action until someone undoes that. So companies just file with the confidentiality on up and all is done. That is not how it works in North Dakota. It has to be a real case, protection has to be requested, staff response is then needed and then a commission order when something is filed. She then offered to research and make a list of MISO states and how they operate. Based on her information from Commissioner Wefald who has done a lot of work with the state role, North Dakota is the only state who has this problem with MISO.

Senator Traynor questioned if North Dakota is a member of MISO.

Illona A. Jeffcoat-Sacco, informed the committee it is not North Dakota who is a member, but the utilities that are regulated by the PSC who are members although she does not know the rates paid. The PSC has given the Utilities approval to transfer operational control of the transmission assets to be under control of MISO.

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Senate Natural Resources Committee
Bill/Resolution Number SB 2115
Hearing Date 1-10-03

Senator Traynor asked what the investment has been by the state in these wholesale electric transmission projects.

Illona A. Jeffcoat-Sacco assured the committee that only time and energy has been spent as to how the state could have some input into what was decided without conflict of interest.

Senator Traynor asked why MISO wants to maintain the privacy of this information and not be public.

Illona A. Jeffcoat-Sacco assured the committee that MISO does not and that it is like a non profit with no interest in the transmission except to operate them. The companies want it private because the information will be things like contract information and want it to be kept private. The independent market monitor is the one who is watching out and making reports so action can be taken if needed.

Senator Fischer asked for testimony in opposition of SB 2115.

Jack McDonald representing the ND Newspaper Association and the ND Broadcasters Associations testified that his organizations were not really opposed to SB 2115, because looking at the bill there were two reasons. First, generally speaking the ND Supreme Court has ruled that if it is a federal law makes a document confidential that qualifies it as a state law unless provided by law. Secondly, they feel it is important that this bill makes these records exempt so that the PSC can release these records at their discretion.

Senator Fischer asked for neutral testimony.

Senator Fischer closed the hearing on SB 2115.

This bill will be held over until further requested information becomes available.

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10-16-03
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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2115

Senate Natural Resources Committee

☐ Conference Committee

Hearing Date 1-17-03 Discussion

Tape Number	Side A	Side B	Meter #
1	X		9.5-11.8
Committee Clerk Signature <i>Janet James</i>			

Minutes:

Senator Thomas Fischer, Chairman brought the Senate Natural Resources Committee to order.

Attendance was taken indicating all members of the committee present except **Senator Joel Heitkamp**.

Senator Fischer opened the meeting for discussion of SB 2115.

Information that had been requested of Ilona A. Jeffcoat-Sacco (Director of Public Utilities Division of the PSC) was given to the members of the committee (See attached). Because it was Senator Heitkamp who requested the information it was decided to wait with further discussion of SB 2115 until he was present.

Senator John Traynor had noted that Jack McDonald told the committee that Federal law says that these are confidential and if this was true was it needed at all. He requested a copy and the intern will get it for the committee.

Senator Fischer closed the discussion on SB 2115.

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10-16-03
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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2115

Senate Natural Resources Committee

☐ Conference Committee

Hearing Date 1-30-03 Discussion and Action

Tape Number	Side A	Side B	Meter #
1		X	2.2 - 7.7
Committee Clerk Signature <i>Janet James</i>			

Minutes:

Senator Thomas Fischer, Chairman of the Senate Natural Resources Committee opened discussion on SB 2115.

All members of the Committee were present.

Senator John Traynor stated that the statement made by Jack McDonald in his testimony about this issue already being in federal law was looked into. As a result an amendment was written up by the Legislative Council and is agreeable with the Public Service Commission. This more definitively describes the identity of the firm that will provide the information that the PSC needs to acquire otherwise the federal agency will not give it.

Senator Traynor made a motion to accept the amendment.

Senator Joel Heltkamp second the motion.

Roll call vote #1 was taken indicating 7 YAYS, 0 NAYS AND 0 ABSENT AOR NOT

VOTING.

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10-16-03
Date

Page 2

Senate Natural Resources Committee

Bill/Resolution Number SB 2115

Hearing Date 1-3-03

Senator Traynor made a motion for a DO PASS as Amended of SB 2115.

Senator Ben Tollefson second the motion.

Roll call vote #2 was taken indicating 7YAYS , 0 NAYS AND 0 ABSENT OR NOT VOTING.

Senator Traynor will carry SB 2115.

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10-16-03
Date

38128.0101
Title.0200

Prepared by the Legislative Council staff for
Senator Traynor
January 27, 2003

JB
1-30-03

PROPOSED AMENDMENTS TO SENATE BILL NO. 2115

Page 1, line 2, remove "confidentiality of"

Page 1, line 3, replace "federal energy regulatory commission" with "market monitor of the midwest independent system operator, incorporated"

Page 1, line 13, replace "federal energy regulatory" with "market monitor of the midwest independent system operator, incorporated,"

Page 1, remove line 14

Page 1, line 15, remove "energy regulatory commission" and remove "the provisions of"

Renumber accordingly

Page No. 1

38128.0101

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10-16-03
Date

Date: 1-30-03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2115

Senate Senate Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Amendment

Motion Made By Tag Seconded By Heit

Senators	Yes	No	Senators	Yes	No
Senator Thomas Fischer	✓		Senator Michael A. Every		
Senator Ben Tollefson	✓		Senator Joel C. Heitkamp	✓	
Senator Layton Freborg	✓				
Senator Stanley W. Lyson	✓				
Senator John T. Traynor	✓				

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

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Operator's Signature

10-16-03
Date

Date: 1-30-03
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2115

Senate	Senate Natural Resources	Committee
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☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amer

Motion Made By T. Mason Seconded By Tall

[illegible]

Total (Yes) 7 No 0

Absent 10

Floor Assignment Sen. Trautman

If the vote is on an amendment, briefly indicate intent:

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Date _____

REPORT OF STANDING COMMITTEE (410)
January 30, 2003 2:39 p.m.

Module No: SR-15-1398
Carrier: Traynor
Insert LC: 38128.0101 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2115: Natural Resources Committee (Sen. Fischer, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2115 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "confidentiality of"

Page 1, line 3, replace "federal energy regulatory commission" with "market monitor of the midwest independent system operator, incorporated"

Page 1, line 13, replace "federal energy regulatory" with "market monitor of the midwest independent system operator, incorporated."

Page 1, remove line 14

Page 1, line 15, remove "energy regulatory commission" and remove "the provisions of"

Renumber accordingly

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10-16-03
Date

2003 HOUSE NATURAL RESOURCES

SB 2115

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10-16-03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2115

House Natural Resources Committee

☐ Conference Committee

Hearing Date February 28, 2003

Tape Number	Side A	Side B	Meter #
1	xx		0-1708
Committee Clerk Signature <i>Eui Myer</i>			

Minutes:

Chair Nelson called the hearing on relating to market monitoring information received from the market monitor of the Midwest independent system operator, incorporated to order.

Illona Jeffcoat-Saco: Introduced SB 2115. (See Attached Testimony)

Rep. Solberg: Define commercially sensitive.

Illona Jeffcoat-Saco: When they tell us it is commercially sensitive. We have enough administrative ways to challenge it should the need arise.

Rep. Kelsh: Is this strictly voluntary for generational utilities to join?

Illona Jeffcoat-Saco: Yes, It is voluntary.

Rep. Kelsh: MISO is independent yet they hire a watchdog. Why out source it?

Illona Jeffcoat-Saco: In order to make this an comprehensive market monitoring. We need this to be as independent as possible. The bill will be paid by MISO.

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Operator's Signature

10-16-03
Date

Page 2

House Natural Resources Committee

Bill/Resolution Number 2115

Hearing Date February, 28, 2003

Chair Nelson: Are our laws in line with other member states.

Illona Jeffcoat-Saco: There are many states in our situation. Many other states are more consistent with the federal model. Confidentiality by federal law cannot be guaranteed to be confidential by state law. It is safer and easier to put it in our statute.

Chair Nelson: Does the North Dakota rules of evidence provision is that specific.

Illona Jeffcoat-Saco: That is the only way we hold things confidential today. We need to have evidence. The supreme court has a case on this. It related to transportation contracts. The trade secrets were found to be unavailable because it was filed as part of litigation. We need to get this in on a more informational basis.

Chair Nelson closes the hearing on SB 2115.

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10-16-03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2115

House Natural Resources Committee

☐ Conference Committee

Hearing Date February 28, 2003

Tape Number	Side A	Side B	Meter #
1			2533-2800
Committee Clerk Signature <i>Emi Ngon</i>			

Minutes:

Chair Nelson called the meeting on SB 2115 to order.

Rep. Keiser moves an amendment introduced by the Public Service Commission. Seconded by

Rep. DeKrey. Motion carried by voice vote.

Rep. DeKrey moves a **Do Pass as Amended**. Seconded by **Rep. Keiser**.

Motion carried by a vote of 14-0-0.

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10-16-03
Date

38128.0201
Title.0300

Adopted by the Natural Resources
Committee
February 28, 2003

VR
2/28/03

HOUSE

AMENDMENTS TO ENGROSSED SENATE BILL NO. 2115

Page 1, line 14, after the second underscored comma insert "or its successor."

Renumber accordingly

Page No. 1

38128.0201

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10-16-03
Date

Date: 2/28/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2/15

House House Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By DeKrey Seconded By Keiser

Representatives	Yes	No	Representatives	Yes	No
Chairman Jon O. Nelson	✓				
Vice-Chairman Todd Porter	✓				
Rep. Byron Clark	✓				
Rep. Duane DeKrey	✓				
Rep. David Drovdal	✓				
Rep. Lyle Hanson	✓				
Rep. Bob Hunsakor	✓				
Rep. Dennis Johnson	✓				
Rep. George Keiser	✓				
Rep. Scott Kelsh	✓				
Rep. Frank Klein	✓				
Rep. Mike Norland	✓				
Rep. Darrell Nottestad	✓				
Rep. Dorvan Solberg	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Kelsh

If the vote is on an amendment, briefly indicate intent:

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10-16-03
Date

REPORT OF STANDING COMMITTEE (410)
February 28, 2003 4:46 p.m.

Module No: HR-36-3698
Carrier: S. Kesh
Insert LC: 38128.0201 Title: .0300

REPORT OF STANDING COMMITTEE

SB 2115, as engrossed: Natural Resources Committee (Rep. Nelson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2115 was placed on the Sixth order on the calendar.

Page 1, line 14, after the second underscored comma insert "or its successor."

Renumber accordingly

(2) DESK, (3) COMM

Page No. 1

HR-36-3698

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2003 TESTIMONY

SB 2115

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Operator's Signature

10-16-03
Date



Public Service Commission
State of North Dakota

COMMISSIONERS

Susan E. Wefald, President
Leo M. Reinbold
Anthony T. Clark

Executive Secretary
Jon H. Mielke

MEMORANDUM

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Bismarck, North Dakota 58505-0480
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e-mail: sab@oracle.psc.state.nd.us
TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

To: Senate Committee on Natural Resources
Honorable Tom Fischer, Chairman

From: Illona A. Jeffcoat-Sacco
Director, Public Utilities Division

Re: SB 2115 - other states' open records provisions

Date: 16 January 2003

At the hearing on SB 2115 Senator Heitkamp asked about other states' situations regarding the confidentiality of commercially sensitive market monitoring information. Following is an update on this question for your consideration.

Commissioner Wefald was attending a meeting of regulatory commissioners from other Midwest states when this bill was heard in committee. At that meeting she learned that Ohio also has a problem similar to ours regarding their ability to keep the required information confidential. Staff contacted Ohio for more information and learned that Ohio restructuring legislation gives some authority to the Commission to protect some competitively sensitive information, but perhaps not information received from the market monitor. Ohio is now working to have a more clear and definite exemption enacted to protect the market monitoring information and other sensitive information.

In addition, I sent an e-mail query about this matter to the 21 states involved with or impacted by MISO (the 21 states on the map attached to my testimony). I have now received responses from the following 6 states:

Illinois
Michigan

Indiana
Texas

Iowa
Virginia

Virginia stated that their utility regulatory commission is exempt from the states' open records requirement because it performs judicial functions like a court does.

Several of these states indicated that their utility commissions have discretion to order protection for trade secret information even if the information is not filed in a

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contested proceeding. In Michigan, a public body has discretion under Michigan's Freedom of Information Act (FOIA) to exempt trade secret information from disclosure. In Illinois, the FOIA has an exemption for trade secret information and the Commission also has discretion to grant protection for the information it determines is trade secret. Iowa law protects trade secrets and reports to government agencies that might give a competitor an advantage if disclosed. In Texas trade secrets are exempt from disclosure.

North Dakota also has a trade secret exemption to the open records law, N.D.C.C. section 44-04-18.4. Although one might argue that this exception covers our request, we are not certain if the exception is sufficiently broad to cover the information at issue in SB 2115. Given the narrow definitions in our current statute and the narrow interpretation of open records exceptions generally, we are not comfortable relying on the existing exception to guarantee protection of the commercially sensitive market monitoring information we will need to review.

Thank you for the opportunity to provide additional information on this bill. Please call or e-mail if you have additional questions. I can also provide copies of the specific responses received from the states if you wish.

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S.B. 2115

Presented by: Illona A. Jeffcoat-Sacco
Director, Public Utilities Division
Public Service Commission

Before: Senate Committee on Natural Resources
Honorable Tom Fischer, Chairman

Date: 10 January 2003

TESTIMONY

Chairman Fischer and committee members, my name is Illona Joffcoat-Sacco. I am the director of the Public Service Commission's Public Utilities Division. The commission asked me to appear here today to testify in favor of Senate Bill 2115, introduced at our request.

Senate Bill 2115 would provide an exception to the North Dakota open records requirement for commercially sensitive transmission market monitoring information received by the Public Service Commission.

The transmission of electricity is an area of major concern to North Dakota and the nation. The Federal Energy Regulatory Commission (FERC) is restructuring wholesale transmission service, which affects all of the electric utilities that operate in North Dakota, all electric customers in the state, and the state's power generating facilities. There is considerable effort underway to restructure federal regulation of wholesale electricity markets. A major focus of this effort has been the establishment of independent entities to operate electric transmission systems that were previously operated by local electric utilities. The Public Service Commission has been heavily involved in regional and national discussions concerning this restructuring. We have held monthly meetings on these issues with interested North Dakota parties since May, 2001, and have been filing comments on many of the issues under consideration by the FERC.

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Illona A. Jeffcoat-Sacco
Operator's Signature

10-16-03
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At the same time as the national restructuring of wholesale transmission service is taking place, a restructuring of wholesale transmission service is taking place in the Midwest. Many Midwestern electric utilities, including all three of the electric utilities regulated by the North Dakota PSC, have entered into agreements assigning operational control of their transmission systems to the Midwest Independent System Operator, Inc. (MISO). MISO is a relatively new organization now in startup phases of operation under the regulatory oversight of the FERC. However, MISO impacts a large geographic area stretching from Kentucky to Montana, and into Canada. Utilities in more than 20 states have joined or are considering joining MISO.

One of the important issues that both the FERC and other stakeholders recognize as crucial to successful restructuring is the issue of monitoring wholesale electric transmission markets. This issue gained a lot of attention at the time of the "crisis" in the California electric market two years ago. It gained more attention during the Enron scandal. Other related problems have occurred in other parts of the country since that time. Now, it is accepted knowledge that in the transition to a competitive wholesale electric market, companies have ways of manipulating the market. It is in everyone's interest, including honest companies' interest, to have government oversight of these emerging competitive markets. This oversight should include sufficient monitoring to detect and eliminate unfair practices.

One of the requirements of FERC when authorizing MISO operations was that MISO file a market monitoring plan that would provide oversight of wholesale electric markets to ensure against abuses of market power and other market malfunctions. The MISO's market monitoring plan is available for review on the MISO web site at www.midwestiso.org where it is included as Attachment S to MISO's FERC approved operating tariff. (A copy of this tariff attachment is included as an attachment to this testimony.)

Under the plan, MISO has contracted with an independent entity to perform market monitoring functions and report its findings to the MISO as well as the FERC and state regulatory commissions. The market monitor will also

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10-16-03
Date

conduct investigations of market participants' conduct and report results to appropriate state and federal agencies when further action may be warranted. The market monitor will respond to requests from FERC or state regulatory agencies for additional analysis or data in its possession, subject to its obligation to protect the confidentiality of the data. Section 6.4 of the plan sets forth confidentiality requirements.

In North Dakota, the Constitutional and statutory open records requirements mandate that information we receive from the market monitor be open to public review. In order for the market monitor to function properly, however, it must have the protection of confidentiality. The only vehicle currently available to the Public Service Commission to protect information from disclosure is the ability to protect trade secret information under the North Dakota Rules of Evidence. This might provide the needed protection in formal investigations and contested cases, but the market monitoring information we expect will not necessarily be provided to us under formal case circumstances. Consequently, we request a statutory exemption from the open records requirement.

At the present time the FERC receives market monitoring information from MISO, and from other ISO's in the country. It is very important that states also receive this market monitoring information. Today North Dakota can not receive this information, because we do not have the ability to keep this information private. We are the only state in the MISO region which has this problem. We are proposing this bill as a solution to enable our state to receive this information and to work on our own, with other states, and with the FERC to solve wholesale market problems.

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ATTACHMENT S

INDEPENDENT MARKET MONITORING PLAN

1. PURPOSE AND OBJECTIVES OF THE PLAN

1.1 Purposes and Objectives

This Plan is intended to provide for the independent, impartial and effective monitoring of and reporting on: (1) the competitive performance and efficiency of the Cooperating RTOs' Markets and Services, including identification of opportunities for efficiency improvements; (2) the conduct of Market Participants, Transmission Owners, and the RTOs including but not limited to any exercise or attempt to exercise market power in any RTO Market or inefficiently reduce the quantity or quality of transmission service in the region; (3) the operation, use, and congestion of the transmission system as such system affects competitive conditions in the region; and (4) the adequacy and effectiveness of any market rule, procedure, or action that affects the competitiveness or economic efficiency of the Cooperating RTOs' markets or services. The Cooperating RTOs are the Alliance RTO, the Midwest ISO and the Southwest Power Pool.

The market monitoring plan will be implemented by an Independent Market Monitor ("IMM") that shall report its findings to the FERC, State Regulatory Agencies, and the Cooperating RTOs. The IMM will provide annual reports to FERC and State Regulatory Agencies that will provide relevant market data and the results of analyses of that data undertaken by the IMM. In addition, the IMM will conduct preliminary investigations of market participants' conduct as specified in this Plan, the results of which will be reported to appropriate State and Federal agencies when further action may be warranted. The IMM will also respond to requests from FERC or State Regulatory Agencies for additional analysis or data the IMM has in its possession, subject to its obligation to protect the confidentiality of the data. The IMM would also respond to complaints by customers of the Cooperating RTOs or requests for public data that is not readily available.

The Plan is intended to protect and foster competition, while minimizing interference with open and competitive markets. The IMM will recognize that conduct that might under some circumstances suggest an attempt to exercise market power is, under other circumstances, pro-competitive and efficient. In making this distinction, the IMM will generally focus on an analysis of the identified conduct and associated market impacts, rather than seeking to determine the intent of the participant (e.g., conducting profitability analyses that would require comprehensive information on all the physical and financial positions of a participant). The IMM will work to ensure that all monitoring and reporting activities are implemented fairly and consistently in accordance with the Plan.

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1.2 Markets to be Monitored

The IMM will monitor the markets that are operated by or services provided by the Cooperating RTOs, including the imbalance energy market, any congestion management market or system, any ancillary services market, any market for the purchase or sale of transmission rights, and any other market administered, coordinated or facilitated by the Cooperating RTOs. The IMM will not monitor bilateral energy or capacity markets, or private transmission rights not administered, coordinated or facilitated by the RTO, except to periodically assess the effect of these markets on the Cooperating RTOs' Markets and Services, or the effects of the Cooperating RTOs' Markets and Services on these markets.

1.3 Persons and Entities Subject to the Plan

The Cooperating RTOs, the IMM, and any person or entity participating in any of the Cooperating RTOs' markets or that takes service under or is a party to any tariff or agreement administered by the Cooperating RTOs, shall be subject to the terms, conditions and obligations of this Plan.

1.4 Independence of Market Monitoring

The IMM 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 Market Monitoring Committee, Cooperating RTOs, or State Regulatory Agencies, 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.

2. DEFINITIONS

For purposes of this Plan, capitalized terms shall have the meanings specified below:

2.1 Interested Government Agencies

"Interested Government Agencies" shall mean the FERC and the State Regulatory Commissions.

2.2 Market Participant

"Market Participant" shall mean any entity that, either directly or through an affiliate, sells, brokers, or purchases electric energy, or provides ancillary services to the Regional Transmission Organization.

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2.3 Cooperating RTOs

"Cooperating RTOs" shall mean the Alliance RTO, the Midwest ISO, and the Southwest Power Pool.

2.4 Cooperating RTOs' Markets and Services

The markets that are operated by or OATT services provided by the Cooperating RTOs, including the imbalance energy market, any congestion management market or system, or any other spot energy market, any ancillary services market, any market for the purchase or sale of transmission rights, and any other market administered, coordinated or facilitated by the Cooperating RTOs. This shall include any additional services that may be offered by the Cooperating RTOs that would have the effect of facilitating or improving competitive conditions in the region.

2.5 Independent Market Monitor

"Independent Market Monitor" shall mean the person or persons, or consulting firm or other entity, retained by the Cooperating RTOs to carry out this Plan.

2.6 Plan

"Plan" shall mean the Cooperating RTOs' Market Monitoring Plan set forth in this document.

3. MARKET MONITORING COMMITTEE

3.1 Establishment

The Cooperating RTOs shall establish a Market Monitoring Committee, consisting of one representative appointed by each Cooperating RTO, to carry out the functions described in this Plan. The MMC shall be accountable to the Cooperating RTOs' Boards of Directors.

3.2 Responsibilities of the Market Monitoring Committee

The Market Monitoring Committee shall:

- (1) Be responsible for administrative oversight of the contractual agreement with the IMM;
- (2) Serve as a liaison between the IMM and the RTO Boards of Directors;
- (3) Support efforts of the IMM to collect necessary data and information from the RTOs;
- (4) Coordinate the evaluation of the need for corrective measures, including but not limited to rule or tariff changes;

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- (5) Provide comments as appropriate on issues investigated or analyzed by the IMM related to the factual accuracy of the IMM's reports;

The Market Monitoring Committee shall not:

- (1) Have authority to impose penalties, sanctions, or fines;
- (2) Screen, alter, delete, or delay IMM investigations or the preparation of findings, conclusions, and recommendations developed by the IMM; or
- (3) Share or discuss confidential data, information, or analysis related to any one of the Cooperating RTOs' Markets or Services.

4. INDEPENDENT MARKET MONITOR

4.1 Retention of the Independent Market Monitor

The Cooperating RTOs shall retain a firm to be known as the Independent Market Monitor. The IMM shall have experience and expertise appropriate to the analysis of competitive conditions in markets for energy, ancillary services, and transmission rights, and to such other responsibilities as are assigned to the IMM under this Plan. The IMM shall interface with the Market Monitoring Committee.

4.2 Conflicts of Interest

The Market Monitoring Committee shall adopt a policy on conflicts of interest for the IMM 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's firm, shall comply at all times with the conflicts of interest and ethics policies, and shall certify such compliance to the MMC upon request.

4.3 Responsibilities of the IMM

The IMM shall:

- (1) Advise the Cooperating RTOs, and shall prepare and submit to FERC the reports specified herein, on the nature and extent of, and any impediments to, competition in and the economic efficiency of the Cooperating RTOs' Markets and Services;
- (2) Assist in the development of this Plan, including the screens and indices described in Section 7 of the Plan;
- (3) Recommend to the Cooperating RTOs modifications to market rules, tariffs, or other corrective actions to improve the competitiveness or efficiency of the Cooperating RTOs' Markets and Services;

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- (4) Recommend to the Cooperating RTOs modifications to market rules or tariffs to improve the compatibility of the Cooperating RTOs' Markets and Services or improve the efficiency of trading between the Cooperating RTOs' areas; and
- (5) Shall have such other duties and responsibilities as specified in this Plan, as it may be amended from time to time.

The IMM may at any time bring any matter to the attention of the Market Monitoring Committee or Interested Government Agencies as the IMM may deem necessary or appropriate for achieving the purposes, objectives and effective implementation of this Plan. The IMM shall not have the authority to impose sanctions, penalties or fines.

5. MONITORING IMPLEMENTATION AND RESPONSIBILITIES

5.1 Conditions, Functions or Actions Monitored

The IMM will achieve the purposes and objectives of this Plan through review and analysis of conditions, functions or actions affecting the competitiveness, economic efficiency and proper operation of the Cooperating RTOs' Markets and Services, including but not limited to the following to the extent each may be deemed relevant to the purposes and objectives of this Plan by the IMM:

- (1) The schedules and bids submitted for, and actual dispatch of generating units in or affecting any of the Cooperating RTOs' Markets and Services.
- (2) The provision of transmission services and rights by the Cooperating RTOs, including but not limited to estimating and posting of Available Transfer Capability ("ATC"), administration of the tariff, the operation and maintenance of the transmission system, the auctions and other markets for transmission rights, and the reservation and scheduling of transmission service;
- (3) Other information relating to collusive or other anticompetitive or inefficient behavior in or affecting any of the Cooperating RTOs' Markets;
- (4) Competitive or other market impacts of tariffs and agreements, or other rules, standards or procedures, or any other RTO actions governing or affecting any of the Cooperating RTOs' Markets or Services;
- (5) The nature and extent, causes of, and costs of and charges for transmission congestion in the region or, to the extent practicable, transmission congestion on any other system that affects any of the Cooperating RTOs' Markets or Services;

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- (6) The need for and efficacy of appropriate sanctions or other corrective actions to be submitted to and approved by FERC to address: a) competitive problems, b) violations or failures to comply with any tariff or services agreement that has material effects on the Cooperating RTOs' Markets and Services, or c) market flaws; and
- (7) To the extent practicable, conditions or events outside the Cooperating RTOs' control areas affecting the supply and demand for, and the quantity and price of, products or services sold or to be sold in any of the markets administered, coordinated, or facilitated by the Cooperating RTOs;

5.2 Legal Advice

The IMM may consult legal counsel for advice on antitrust, regulatory or other legal issues pertinent to this Plan.

6. DATA COLLECTION AND DISCLOSURE

6.1 Access to Cooperating RTOs' Data and Information

For purposes of carrying out its responsibilities under this Plan, the IMM shall have access to data or other information gathered or generated by the Cooperating RTOs in the course of their operations. This data and information shall include, but not be limited to,

- Hourly schedules, bids, and actual output for the generating units within the Cooperating RTOs (including designated network resources outside the RTOs) and external imports to exports from the Cooperating RTOs areas;
- Reserved and scheduled transmission service into, out of, or through the Cooperating RTOs;
- Transmission limits (including temporary deratings) on each of the monitored flowgates or other relevant transmission facilities;
- Hourly flow over each of the monitored flowgates or other relevant transmission facilities;
- Dispatch of generation for energy, regulation, and frequency or other operational orders, including RTO or control area operating logs or other information pertaining to such dispatch;
- Redispatch of generation or other actions taken to manage transmission congestion;

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- Logs of transmission requests, including the disposition of the request and the explanation for any refused, retracted or annulled requests;
- Logs of generator interconnection requests, including the disposition of the request and the explanation of any refused requests;
- Generation and transmission facility outage data;
- Records of complaints by customers of the Cooperating RTOs; and
- Other information required to be provided to the Cooperating RTOs under the Cooperating RTOs' Tariffs, operating agreements, reliability organization requirements, or government agency orders.

6.2 Data from Market Participants

6.2.1 Data Requests

If the IMM determines that additional data or other information is required to accomplish the objectives of the Plan, the IMM may request the persons or entities possessing, having access to, or having the ability to generate or produce such data or other information to furnish it to the IMM. Any such request shall be accompanied by an explanation of the need for such data or other information, a specification of the form or format in which the data is to be produced, and an acknowledgment of the obligation of the IMM to maintain the confidentiality of the data.

6.2.2 Enforcement of Data Requests

(a) A party receiving an information request from the IMM shall furnish all information, in the requested form or format, that is: (i) specified on a list maintained by the IMM, attached to the Plan as Addendum A, of categories of data or information that it may request from a Market Participant to support an active investigation; 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 an attorney client privilege.

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(b) The list provided in Addendum A of categories of data or information that may be routinely requested shall be limited to data or information the routine provision of which would not be unduly burdensome or unduly expensive, and which has been reasonably determined by the IMM, to be relevant to the purposes and objectives of this Plan. No party that is the subject of a data request shall be required to produce any summaries, analyses, or reports of the data that do not exist at the time of the data request. The IMM shall notify the Market Participants and other interested parties, and provide an opportunity for comment, prior to creating such list or to adding or deleting any categories of data or information to or from the list. The list shall be attached as an addendum to this Plan.

(c) A party receiving a request for data or information specified on the foregoing list, attached as Addendum A, shall promptly provide it to the IMM, and may not contest the right of the IMM to obtain such data or information except to the extent that the party has a good faith basis to assert that the data or information is not included in any of the categories on the list. If the IMM determines that the requested information has not or will not be provided within a reasonable time, the IMM may invoke the dispute resolution provisions of Cooperating RTOs.

(d) The party from whom the information has been requested may invoke the dispute resolution provisions of the Cooperating RTOs, if applicable, to determine the IMM's right to obtain requested information not contained on the foregoing list. The parties may submit any such determination to binding arbitration, or other form of binding resolution, and shall seek expedited resolution, in accordance with the applicable dispute resolution procedures. Alternatively, any such party may contest the request with the FERC. If the entity from whom the data or other information has been requested is not subject to either of the foregoing dispute resolution procedures and does not voluntarily agree to the use of either or a comparable dispute resolution procedure, or has not contested the request with the FERC, the Cooperating RTOs or the IMM may initiate such judicial or regulatory proceedings to compel the production of the requested information as may be available and deemed appropriate by the IMM.

6.3 Access to Data by Interested Government Agencies

The IMM shall provide data and information upon request to the FERC. Upon request for data or information that the IMM received from a Cooperating RTO by a State regulatory agency, the IMM shall provide the data or information consistent with the information policy of the Cooperating RTO that had provided the data to the IMM. Upon request from a State regulatory agency for confidential data or information that the IMM received from a market participant, the IMM shall promptly notify the participant provided that the data and shall not release the confidential data or information without prior written consent from the participant.

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6.4 Confidentiality

The IMM shall use all reasonable procedures necessary to protect and preserve the confidentiality of all information obtained in connection with the implementation of this Plan. Confidential information shall include data or information that is proprietary, commercially valuable or competitively sensitive, or is a trade secret and that has been designated as confidential by a participant, provided that such information is not available from public sources, is not otherwise subject to disclosure under any tariff or agreement administered by the Cooperating RTOs. Except as may be required by subpoena or other compulsory process, the IMM shall not disclose confidential information to any person or entity without prior written consent. Upon receipt of a subpoena or other compulsory process for the disclosure of confidential information, the IMM shall promptly notify the party that provided the data and shall provide all reasonable assistance requested by the party to prevent disclosure, and shall not release the data until the party provides written consent or until the party's legal avenues are exhausted. The confidentiality of data and information provided to Interested Government Agencies will be maintained with a protective order or other procedures of the agency for protecting confidential data.

6.5 Collection and Retention of Information

a) The IMM shall regularly collect and maintain the information necessary for implementing this Plan. The IMM, in conformity with the Cooperating RTOs' applicable data retention policies, shall adopt schedules for the periodic destruction of information in the possession of the IMM the retention of which is no longer reasonably necessary for purposes of this Plan. The IMM or Cooperating RTOs shall ensure that data and information necessary for the subsequent IMM shall be retained in usable form.

b) The IMM shall adopt policies and requirements for the retention of information by Market Participants, and submission of such information to the IMM as necessary for the implementation of this Plan, after providing an opportunity for interested parties and the Market Monitoring Committee to review and comment on such procedures.

7. PERFORMANCE INDICES AND SCREENS

7.1 Development of Indices and Screens

The IMM, with due consideration of the proposals and comments of Market Participants and other interested parties submitted as specified below, and subject to review and comment by the Market Monitoring Committee, shall develop and adopt such indices or other screens for reviewing the data or other information as the IMM deems appropriate.

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7.2 Consultation with Market Participants

In connection with the development of indices and screens as specified above, Market Participants, Interested Government Agencies, or other interested parties may submit proposed indices or screens for review of the data or other information collected in connection with the implementation of this Plan, along with any justification for the adoption thereof, to the IMM for consideration and adoption if and to the extent appropriate. The IMM shall provide Market Participants and other interested parties the opportunity to comment on any new indices and screens prior to their adoption.

7.3 Use of Indices and Screens

As much as practicable, the IMM shall review data or other information collected in connection with implementation of this Plan in accordance with the indices or screens adopted as specified above; provided, however, that nothing herein shall be deemed to prevent the IMM from conducting such further or different review or evaluation of such data or information as appropriate for the effective implementation of this Plan.

8. COMPLAINTS AND REQUESTS FOR INVESTIGATIONS

8.1 Requests from Interested Government Agencies

Any Interested Government Agency may at any time submit information to the IMM concerning any matter relevant to the responsibilities of the IMM under the Plan, or may submit a request to the IMM for it to conduct an investigation. Such submissions or requests may be made on a confidential basis. Acting in a timely manner, the IMM shall carry out the requested investigation to the extent deemed reasonably necessary by the IMM. Subject to redaction or other measures necessary for the protection of confidential information, the IMM shall report the results of these investigations to the MMC, the Agency requesting the investigation, and as appropriate to the FERC and other Interested Government Agencies.

8.2 Requests from Others

Any Market Participant or other interested person or entity may at any time submit information to the IMM concerning any matter relevant to the responsibilities of the IMM under the Plan, or may submit a request to the IMM for it to conduct an investigation. Such submissions or requests may be made on a confidential basis. The IMM may request further relevant information available from such Market Participant or other person or entity as a condition of undertaking any further investigation. Acting in a timely manner, the IMM shall decline to take further action or shall carry out such investigation as it deems appropriate, or as may be requested by the Market Monitoring Committee acting on its own initiative or at the request of a Market Participant or other interested party.

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8.3 Reporting of Complaints and Requests

The IMM shall include a summary of its actions or decisions not to act in its annual report as well as in any other periodic or other reports on any matters within its purview as may be requested by the Market Monitoring Committee or any of the Interested Government Agencies.

9. REPORTS

9.1 Periodic Reports

The IMM shall prepare and submit to the Market Monitoring Committee at least an annual report on the competitive performance and efficiency of the Cooperating RTOs markets and services. Such report shall include any recommendations of the IMM for the improvement of the Cooperating RTOs' markets or services, or of the monitoring, reporting and other functions undertaken pursuant to this Plan. The report shall also include a description of all requests for investigation/complaints and the resolution or disposition thereof. A copy of the report shall be forwarded by the IMM to each of the Interested Government Agencies. The Market Monitoring Committee shall be permitted to include comments or other remarks with the report, but shall not alter the IMM's report. Copies of the report shall be made publicly available by the Cooperating RTOs, subject to redaction or other measures necessary for the protection of Protected Information.

9.2 Other Reports or Filings

The IMM shall prepare such other periodic or other reports on any matters within its purview as may be requested by the Market Monitoring Committee or any of the Interested Government Agencies. The IMM shall also prepare other reports that it deems necessary. Unless the Market Monitoring Committee or the Interested Government Agency requesting such report specifies to the contrary, copies of such reports shall be made publicly available by the Cooperating RTOs, subject to redaction or other measures necessary for the protection of confidential information. All reasonable fees and expenses for the preparation of reports or other filings relating to the Cooperating RTOs' Markets and Services that are requested by an Interested Government Agency from the incumbent IMM, or from a former IMM with respect to conditions or conduct occurring in the period during which the entity receiving the request served as the IMM, shall be borne by the Cooperating RTOs.

10. LIABILITY

The liability of the Cooperating RTOs, and its directors, officers, employees and agents, and of the IMM, for any matter arising under or relating to this Plan shall be governed by this section. The Cooperating RTOs, and its directors, officers, employees and agents, and the IMM, shall not be liable to any person or entity for any matter, act or omission described in or contemplated by this Plan, as the same may be amended or supplemented from time to time, including but not limited to liability for any financial loss, loss of economic advantage, opportunity cost, or actual, direct, indirect or consequential damages of any kind resulting from or attributable to any act or omission of the Cooperating RTOs or the IMM under this Plan unless the foregoing persons or organizations

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are found to have engaged in gross negligence or willful misconduct by a court of competent jurisdiction.. The Cooperating RTOs shall indemnify and hold harmless its directors, officers, employees and agents and the IMM of and from any and all actions, claims, demands, costs (including any form of damages or other economic loss and all court costs and reasonable attorneys' fees) and liabilities to third parties, arising from or in any way connected with, the implementation or a failure to implement this Plan, except to the extent that such action, claim, demand, cost or liability results from the gross negligence or willful misconduct of any of the foregoing persons.

11. RIGHTS AND REMEDIES

a) With the exception of the limitation of liability specified in this Plan, nothing herein shall prevent the Cooperating RTOs or any other person or entity from asserting any rights it may have under the Federal Power Act or any other applicable law, statute, or regulation, including the filing of a petition with or otherwise initiating a proceeding before the FERC regarding any matter which is the subject of this Plan.

b) Except as and to the extent otherwise specified in this Plan, disputes as to the implementation of or compliance with this Plan shall be subject to the dispute resolution procedures of the individual Cooperating RTOs.

12. EFFECTIVE DATE

This Plan shall be effective as of the date it is accepted for filing by the FERC.

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INDEPENDENT MARKET MONITORING PLAN

ADDENDUM A

LIST OF DATA THE IMM MAY REQUEST FROM MARKET PARTICIPANTS

OCTOBER 15, 2001

The following data or information may be obtained by the IMM from Market Participants, transmission owners, or the Cooperating RTOs in accordance with § 6.2.2 of the Market Monitoring Plan. Market Participants, transmission owners, or the Cooperating RTOs shall retain the following categories of data or information for at least two years, beginning with the date of initial operation..

1. Production costs - Data or information relating to the costs of operating a specified Electric Facility (for generating units such data or information shall include, heat rates, start-up fuel requirements, fuel purchase costs, environmental costs, and operating and maintenance expenses).
2. Opportunity costs - Data or information relating to regulatory, environmental, technical, or other restrictions that limit the run-time or other operating characteristics of a generating unit.
3. Generating Logs - Data or information relating to the operating status of a generating facility, including generator logs showing the generating status of a specified unit. Such data or information shall include any information relating to a forced outage or derating of a generating unit.
4. Transmission Logs - Data or information relating to the operating status of a transmission facility, a contingency, or other operating consideration. This shall include data or information related to any generating units called out-of-merit or dispatched under any other operating order from the RTO or a control area operator.

Issued by: James P. Torgerson, Issuing Officer
Issued on: March 29, 2002

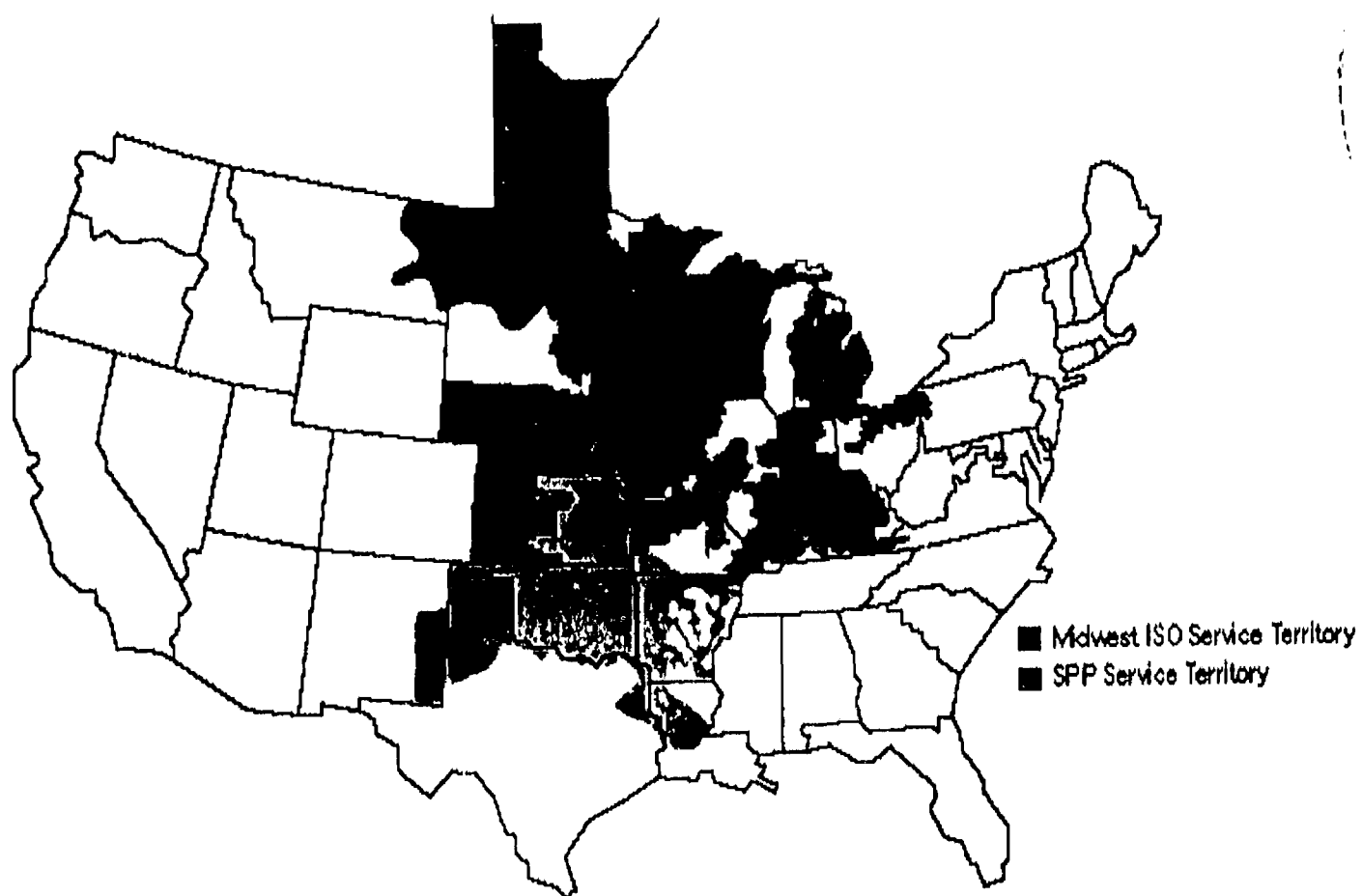
Effective: April 1, 2002

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Y. Herrera J. Doe
Operator's Signature

10-16-03
Date

http://www.midwestiso.org/about_signatories.shtml



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Yuberead d. Lee

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10-16-03

S.B. 2115

Presented by: Illona A. Jeffcoat-Sacco
Director, Public Utilities Division
Public Service Commission

Before: House Committee on Natural Resources
Honorable Jon O. Nelson, Chairman

Date: 28 February 2003

TESTIMONY

Mr. Chairman and committee members, my name is Illona Jeffcoat-Sacco. I am the director of the Public Service Commission's Public Utilities Division. The Public Utilities Division administers the Commission's jurisdiction over telephone, gas and electric public utilities in North Dakota. The commission asked me to appear here today to testify in favor of Senate Bill 2115, introduced at our request.

Senate Bill 2115 would provide an exception to the North Dakota open records requirement for commercially sensitive transmission market monitoring information received by the Public Service Commission.

The transmission of electricity is an area of major concern to North Dakota and the nation. The Federal Energy Regulatory Commission (FERC) is restructuring wholesale transmission service, which affects all of the electric utilities that operate in North Dakota, all electric customers in the state, and the state's power generating facilities. There is considerable effort underway to restructure federal regulation of wholesale electricity markets. A major focus of this effort has been the establishment of independent entities to operate electric transmission systems that were

previously operated by local electric utilities. The Public Service Commission has been heavily involved in regional and national discussions concerning this restructuring. We have held many meetings on these issues with interested North Dakota parties since and have been filing comments on many of the issues under consideration by the FERC.

At the same time as the national restructuring of wholesale transmission service is taking place, a restructuring of wholesale transmission service is taking place in the Midwest. Many Midwestern electric utilities, including all three of the electric utilities regulated by the North Dakota PSC, have entered into agreements assigning operational control of their transmission systems to the Midwest Independent System Operator, Inc. (MISO). MISO is a relatively new organization now in startup phases of operation under the regulatory oversight of the FERC. However, MISO impacts a large geographic area stretching from Kentucky to Montana, and into Canada. Utilities in more than 20 states have joined or are considering joining MISO.

One of the important issues that both the FERC and other stakeholders recognize as crucial to successful restructuring is the issue of monitoring wholesale electric transmission markets. This issue gained a lot of attention at the time of the "crisis" in the California electric market two years ago. It gained more attention during the Enron scandal. Other related problems have occurred in other parts of the country since that time. Now, it is accepted knowledge that in the transition to a competitive wholesale electric market, companies have ways of manipulating the market. It is in everyone's interest, including honest companies' interest, to have government oversight of these emerging competitive markets. This

oversight should include sufficient monitoring to detect and eliminate unfair practices.

One of the requirements of FERC when authorizing MISO operations was that MISO file a market monitoring plan that would provide oversight of wholesale electric markets to ensure against abuses of market power and other market malfunctions. The MISO's market monitoring plan is available for review on the MISO web site at www.midwestiso.org where it is included as Attachment S to MISO's FERC approved operating tariff. (A copy of this tariff attachment is included as an attachment to this testimony.)

Under the plan, MISO has contracted with an independent entity to perform market monitoring functions and report its findings to the MISO as well as the FERC and state regulatory commissions. The market monitor will also conduct investigations of market participants' conduct and report results to appropriate state and federal agencies when further action may be warranted. The market monitor will respond to requests from FERC or state regulatory agencies for additional analysis or data in its possession, subject to its obligation to protect the confidentiality of the data. Section 6.4 of the plan sets forth confidentiality requirements.

In North Dakota, the Constitutional and statutory open records requirements mandate that information we receive from the market monitor be open to public review. In order for the market monitor to function properly, however, it must have the protection of confidentiality. The only vehicle currently available to the Public Service Commission to protect information from disclosure is the ability to protect trade secret information under the North Dakota Rules of Evidence. This might provide the needed protection in formal investigations and contested cases, but the market

monitoring information we expect will not necessarily be provided to us under formal case circumstances. Consequently, we request a statutory exemption from the open records requirement.

At the present time the FERC receives market monitoring information from MISO, and from other ISO's in the country. It is very important that states also receive this market monitoring information. Today North Dakota would probably not receive this information, because we cannot guarantee that we can keep this information private. We are proposing this bill as a solution to enable our state to receive this information and to work on our own, with other states, and with the FERC to solve wholesale market problems.

We have proposed one housekeeping amendment that we hope you will favorably consider. When this bill was amended in the Senate, we should have requested the inclusion of language which would continue this provision in the event MISO changes its name or is succeeded by another regional transmission organization. Consequently, we request the insertion of the language "or its successor" on line 14, page 1, and have prepared a draft amendment to accomplish this.

Thank you. This completes my testimony. I will be happy to answer any questions you may have.

Yvonne J. Lee
Operator's Signature

10-16-03
Date

Prepared by Public Service Commission

PROPOSED AMENDMENT TO ENGROSSED SENATE BILL NO. 2115

Page 1, line 14, after "incorporated," insert "or its successor,"

Renumber accordingly

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