UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Alliant Energy Corporate Services, Inc.	Docket No. EL05-143-000

MOTION TO INTERVENE AND COMMENTS OF THE ELECTRICITY CONSUMERS RESOURCE COUNCIL, THE AMERICAN IRON AND STEEL INSTITUTE, THE AMERICAN CHEMISTRY COUNCIL, THE ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY AND THE WISCONSIN INDUSTRIAL ENERGY GROUP

Pursuant to Rules 211 and 214 of the Federal Energy Regulatory Commission ("FERC"), the Electricity Consumers Resource Council ("ELCON"), the American Iron and Steel Institute ("AISI"), the American Chemistry Council ("ACC"), the Association of Businesses Advocating Tariff Equity ("ABATE"), and the Wisconsin Industrial Energy Group, Inc. ("WIEG") (collectively "Industrial Consumers") move to intervene in the above-captioned docket and comment on the petition for issuance of a declaratory order submitted by Alliant Energy Corporate Services, Inc. ("Alliant") on August 12, 2005, seeking relief from obligations under the Public Utilities Regulatory Policies Act of 1978 ("PURPA").[1] A description of Industrial Consumers will be found at Part IV of this intervention.

I. INTRODUCTION AND SUMMARY OF COMMENTS

Alliant has filed a petition for declaratory order requesting that Interstate Power & Light Co. and Wisconsin Power & Light Co. not be required to enter into a new contract or obligation to purchase energy from a qualifying cogeneration facility or qualifying small power production facility ("QF"). Alliant requests relief under §210(m) of PURPA, as amended by the Energy

[1] In addition to filing the instant comments, ELCON has participated in a joint filing with EPSA, AWEA, et al., being filed separately in this docket.

Policy Act of 2005, which allows FERC to terminate a utility's mandatory QF purchase obligation based on a finding that markets are competitive and that there is nondiscriminatory access to transmission.

Alliant argues that the Midwest ISO ("MISO") is a FERC-certified RTO which commenced "Day 2" day ahead and real-time LMP energy markets as of April 1, 2005. Alliant contends that MISO satisfies the criteria for termination of the mandatory QF purchase obligation because QFs have access to the ISO's non-discriminatory open access tariff and access to wholesale markets in MISO or in the adjoining PJM market.

Alliant's petition should be denied. Alliant fails to meet the statutory prerequisites for waiver of the mandatory purchase obligation. The MISO markets are nascent and it is too early to show that they are competitive. At a very minimum, it cannot yet be shown that markets for long-term power exist, a showing required by the statute. Industrial Consumers appreciate the Commission's commitment to restructuring in general and to RTOs in particular. Industrial Consumers urge that FERC not allow the sense of hope and accomplishment that accompany the RTO initiative to lead it prematurely to conclude that victory has been achieved. To the contrary, none of the organized markets is yet competitive, certainly not MISO. Industrial Consumers describe herein some of the conditions that will need to be met to enable FERC to certify that a market is competitive. We recommend that FERC initiate a Notice of Inquiry to establish a generic forum for eliciting comments on the criteria that would guide its determination under Section 210(m). Such a proceeding would not only help FERC achieve consistency in its implementation of the new statutory provision but provide guidance to help the organized markets mature. Additionally, it would help to ensure that the operations of highly

efficient and environmentally friendly cogeneration facilities are not inappropriately disadvantaged or otherwise impeded contrary to the Congressional intent underlying the statute.

Industrial Consumers offer the following specific comments:

- PURPA has not been repealed, but rather amended. In implementing the new statutory mandate, FERC must avoid rushing to judgment that markets are competitive and consider the importance of fostering QF generation as part of the existing PURPA mandate and to foster FERC's own regulatory objectives to encourage independent generation. (Part A)

- Alliant has not met the statutory criteria to enable FERC to determine that markets are competitive. The nascent real time and day ahead markets are far too new to enable FERC to make the determination that the MISO markets meet the criteria of section 210(m)(1)(A)(i). (Part B)

- Certainly FERC cannot conclude that long-term markets for power exist, a finding required by sections 210(m)(1)(A)(ii) and (B)(ii), when MISO is only beginning to plan resource adequacy. (Part C)

- The expert Federal Trade Commission has recently advised FERC that competition does not yet exist in the fledgling RTO and ISO markets. Its August 8, 2005 comments spell out the barriers to entry faced by independent generation. (Part D)

- Leading economists -- e.g., Professor Bill Hogan and Lester Lave -- have outlined the minimal conditions that must be present for organized markets to be competitive. MISO simply does not meet this test. Industrial Consumers have also weighed in on the problems that must be fixed before organized markets will be sufficiently competitive as to achieve their promise. (Part E)

- Specific aspects of the MISO market, including issues related to seams with PJM, belie the claim of Alliant that generators can reach PJM and other MISO-connected markets. (Part F)

- Industrial Consumers recommend that FERC determine the criteria for deeming markets competitive under §210(m) in a generic proceeding, for example, by Notice of Inquiry. This approach will allow all market participants from each region to provide FERC with their proposed approaches on criteria for competitive markets and observations on local market conditions.

II. COMMENTS OF INDUSTRIAL CONSUMERS

A. PURPA Has Not Been Repealed And Its Purposes Remain Vital

Under PURPA, utilities are required to purchase power from QFs and they are obligated to sell standby, back-up, and maintenance power to QFs on a non-discriminatory basis. Congress recognized when it enacted PURPA in 1978 that QF power could not develop unless QFs were assured of buyers for their excess power, an ability to purchase back-up power, and a right to interconnect. Enactment of PURPA served twin aims of encouraging environmentally-friendly generation and increasing the development of independent power generation.

PURPA has not been repealed. Rather, Congress has enacted statutory amendments (§210(m)) which authorize FERC to lift purchase obligations if and only if a competitive market remains.

Industrial Consumers submit that the need for independent generation is as great now as when PURPA was adopted. Competition will only become a reality -- and market power be reduced -- as adequate generation develops. Even in those regions like MISO that have an operating RTO, a few players dominate the market and competition remains a work in progress.

The solution is continued encouragement of QFs and assurance that QFs can "put" their power to utilities until markets are truly competitive.

Industrial Consumers urge that FERC interpret its mandate under the 2005 Act to continue to foster the development of badly needed QF generation and scrupulously to determine whether markets like MISO truly are competitive before relieving utilities from QF purchase obligations.

FERC's Order 2006 providing standardized interconnection procedures (Docket RM02-12) was intended to increase energy supply, preserve grid reliability, and lower wholesale electricity costs for customers by increasing the number and types of generators in the electric market, including development of non-polluting alternative energy resources.[2] Order 2006, the culmination of extensive proceedings, was a responsible action by FERC to increase the number and participation of generators in wholesale markets. Industrial Consumers fully supported this action. Order 2006 recognized the continued need for independent generation and the role that independent generation serves in assuring adequate power supply, reducing customer costs, and providing competition to vertically-integrated utilities.

Discrimination against QFs by utilities is not a historical artifact. As recently as June 6, 2005, FERC issued an enforcement order requiring an Iowa electric cooperative to provide simple net metering to an Iowa farmer with a small wind-energy system. Gregory Swecker, 111 FERC ¶61,365 (June 6, 2005) (FERC Docket No. EL05-92). "Requiring Midland to offer net metering to Mr. Swecker and other similarly situated QFs will ensure that a principal purpose of PURPA will be met, i.e., encouraging alternative sources of energy and reducing the nation's dependence on fossil fuels," FERC ruled. "Offering net metering to small wind-powered

[2] FERC Press Release May 12, 2005, "Commission Issues Standard Rule For Small Generator Interconnection; Action Will Facilitate Needed Infrastructure Development," available at http://www.ferc.gov/press-room/pr-current/05-12-05.aps (last visited Aug. 30, 2005).

facilities, moreover, is consistent with the provisions of PURPA that ensure that utilities do not pay more than the incremental cost of power, while ensuring that wind-powered facilities are paid an avoided-cost rate for electricity sold from their QFs… ." FERC observed: "We cannot help but note that Midland has used the legal process to thwart efforts to compel it to comply with PURPA for seven years, with a long history of using every means at its disposal to avoid its obligation to purchase from Mr. Swecker's small wind-powered QF."

B. Alliant's Request Is Premature When Auction Markets Have Only Recently Been Introduced

1. The Nascent State Of MISO Markets

MISO's Day 2 market has only been operating since April 1, 2005. In a compliance filing related to the impact of carved-out grandfathered agreements, MISO itself has noted that the market is still "evolving" and has cautioned FERC that data contained in its early filings is limited.[3]

Illustrating the issues posed by infant Day 2 markets, in early April, the MISO IMM notified the Commission that a number of market participants were making offers in excess of the 10 percent above reference levels threshold. Based upon the evidence gathered, the Commission's enforcement staff concluded that the offers above reference cost levels:

- Were mainly the result of a number of practical problems confronting participants in the new market, including difficulties establishing accurate reference levels and communications problems;
- Were not willful violations of the Midwest ISO tariff;
- Were not efforts to manipulate the market.[4]

[3] MISO Compliance Filing, FERC Docket No. ER04-691, August 1, 2005.

[4] Report on Generator Offers in the Midwest Independent Transmission System Operator Market Launch ("FERC Staff Report") June 30, 2005, FERC Docket No. AD05-12, report available at http://www.ferc.gov/press-room/rpess/release.asp (last visited Aug. 30, 2005).

The Commission's findings noted that the process of carrying out the planned cost-based offers during the first two months of the Midwest ISO market launch proved more complicated than was expected.[5] FERC found that MISO's IMM lacks resources necessary to carry out its market monitoring and mitigation responsibilities in an efficient and effective manner. In particular:

- "The IMM provided insufficient staff resources to address reference level calculation and supply offer issues for the number of market participants involved."
- "Insufficient IMM on-site staffing exacerbated communication difficulties and delayed resolution of data issues…."
- "[T]he IMM should have provided more resources on site during market launch."
- "[T]he IMM failed to provide timely notice to market participants when their offers exceeded reference levels plus ten percent, and the notices lacked details…."
- "[T]he IMM provided only sporadic notices of flagged offers…and relatively limited information regarding offers throughout the Day 2 period."
- "[T]he IMM made errors in certain reference level calculations… ."[6]

Commission staff recommends that the IMM develop "a more intelligent and flexible reporting system that would allow more accurate identification of possibly problematic offers," indicating that the system currently used is not reliable.

[5] See FERC Press Release: "Commission Closes Investigation of Supply Offers During Midwest ISO Electricity Market Start," July 21, 2005, available at http://www.ferc.gov/press-room/pr-current/07-21-05-A-3.asp (last visited Aug. 30, 2005).

[6] FERC Staff Report at 4, 9-10.

2. There Is Precedent For FERC To Adopt A Cautious Attitude When Market Reforms Are Initiated That Purport To Eliminate The Need And Justification For Purchase Obligations

In Cogen Lyondell, 95 FERC ¶61,243 (2001), the Commission sided with the Texas QFs when the Texas Public Utility Commission sought to terminate QF purchase obligations effective upon restructuring and introduction of retail competition:

> Our review of the Texas Commission's petition does not convince us that a sufficient market for QF power will exist after restructuring such that there is no longer a need to implement PURPA in Texas. The Texas Commission's proposed substitute for the PURPA purchase obligation for short-term sales is for the QFs to sell an ancillary service to an ISO. This market for potential sales is far smaller than the opportunities for sales under PURPA's purchase obligation. Moreover, the Texas Commission's proposal amounts to an opportunity for QFs to make sales, which is inferior to having an electric utility-purchaser with mandatory purchase obligation under PURPA.[7]

Here, too, FERC cannot be assured that a "sufficient market" for QF power yet exists in MISO. MISO itself has pointed out certain shortcomings in its own market, including the lack of a long-term resource adequacy plan for the Midwest ISO region and the fact that market design choices in other regions "present[] significant issues for market design" in MISO and at times distort incentives.[8]

3. A Blanket Waiver Is Inappropriate

However premature Alliant's proposal is with respect to QFs now up and running, the proposal is especially unwarranted to the extent that Alliant asks FERC to make a finding that MISO is competitive, and then seeks a blanket waiver from its obligation to carry out purchase obligations for QFs to be constructed in the future.

[7] Cogen Lyondell, 95 FERC ¶61,243 (2001).

[8] See Capacity Needs in Wholesale Energy Markets, presentation of the Supply Adequacy Working Group/OMS Resource Adequacy Working Group ("SAWG/OMS RAWG"), August 3, 2005, available at http://www.midwestmarket.org/publish/Document/2b8a32_103ef711180_-79520a48324a?rev=5 (last visited August 30, 2005).

C. Alliant Fails To Meet The Statutory Prerequisites For Termination Of Its QF Purchase Obligations Given The Absence Of A Long-Term Energy Market

The new energy law amends PURPA by adding Section 210(m)(3), which allows any utility to file an application for relief for mandatory QF purchase obligations if the utility can demonstrate that the QF has nondiscriminatory access to:

> (a) (i) independently administered, auction-based day ahead and real time wholesale markets for the sale of electric energy; and (ii) wholesale markets for long-term sales of capacity and electric energy; or
>
> (b) (i) transmission and interconnection services that are provided by a Commission-approved regional transmission entity and administered pursuant to an open access transmission tariff that affords nondiscriminatory treatment to all customers; and (ii) competitive wholesale markets that provide a meaningful opportunity to sell capacity, including long-term and short-term sales, and electric energy, including long-term, short-term and real-time sales, to buyers other than the utility to which the qualifying facility is interconnected. In determining whether a meaningful opportunity to sell exists, the Commission shall consider, among other factors, evidence of transactions within the relevant market; or
>
> (c) wholesale markets for the sale of capacity and electric energy that are, at a minimum, of comparable competitive quality as markets described in subparagraphs (A) and (B).

Section 210(m) is absolutely clear that for a market to be competitive, the QF needs to have non-discriminatory access to "wholesale markets for long-term sales of capacity and electric energy" (§210(m)(1)(A)(ii)). A showing of the existence of day-ahead and real-time markets (§210 (m)(1)(A)(i)) does not suffice. Similarly, §210(m)(B)(ii) requires that the QF has opportunity to make long-term as well as short-term sales. A showing that the market has an independent transmission operation (§210 (m)(1)(B)(i)) by itself does not suffice.

Utilities typically rely on rate-based generation supplemented by forward contracts with affiliates and independent power producers to address their long-term power needs. Virtually all state commissions increasingly expect utilities to enter into long-term forward contracts—as

opposed to reliance on spot markets. Such contracts constitute utilities "avoided costs." A liquid forward market is not available in the MISO region to allow QFs to compete with traditional utilities.[9] Currently, only the day-ahead and real time (spot) markets are up and running in the MISO region, and there is no long-term resource adequacy plan for the region.[10]

MISO's own documents show that it is only now developing a long-term power market. [11] For example, MISO is presently debating whether to develop an energy-only market with forward contracting for capacity cost recovery, or a capacity market such as LICAP or RPM that creates non-bypassable capacity charges. As MISO itself has noted, resource adequacy is "by definition … a long-term, or investment issue," and is one that raises certain structural problems within the market:

> Resource Adequacy is important for at least two reasons that are fundamental to the future of the industry. First, the financial consequences are significant. …Second, to date the primary focus of ISOs/RTOs has been on designing, implementing and operating short-term electricity markets. …
>
> Long-term markets such as those for capacity and financial transmission rights are … problematic because …in the absence of a proper market, i.e., one with both buyers (demand) and sellers (supply), the RTO has to serve as one side of the market. [12]

[9] A clearinghouse function has not yet been set up in MISO, for example by NYMEX, to provide price discovery in the bilateral markets.

[10] Capacity Needs, slide no. 4.

[11] See, e.g., documents from the August 24, 2005 meeting of the SAWG/OMS RAWG, available at http://www.midwestmarket.org/publish/Document/2b8a32_103ef711180_-77cd0a4832a?rev=2 (last visited August 31, 2005).

[12] Discussion Paper on Resource Adequacy for the Midwest ISO Energy Markets, SAWG/OMS RAWG meeting materials August 3, 2005, available at: http://www.midwestmarket.org/publish/Document/2b8a32_103ef711180_-79520a48324a?rev=5 (last visited August 31, 2005). See also OMS RAWG August 24, 2005 document reviewing the August 3 Discussion paper, which notes in the opening paragraph, "[I]t is clear that MISO -- unlike some ISOs/RTOs, is resisting taking on the role of a market principal who will correct flaws in spot market design or 'manage' price volatility through an organized separate capacity market." available at http://www.midwestmarket.org/publish/Document/2b8a32_103ef711180_-77cd0a4832a?rev=2 (last visited August 31, 2005).

Such a role for the ISO/RTO is particularly problematic, MISO states, because as service providers to the market, "as long as reliability is maintained, the dispatch function should remain indifferent to any specific outcome." FERC has recognized that this challenge to the new market will not be met overnight, and has given MISO until June 1, 2006 to address resource adequacy requirements in a way that takes account of unique characteristics of MISO's market participants, encourages long-term investment while supporting short-term reliability, and does not exacerbate seams with neighboring PJM.[13]

Even once MISO implements a long-term market for energy and capacity, it will be necessary to determine that this market indeed meets the statutory requirements, i.e., that it is competitive and that alternative energy suppliers do in fact have nondiscriminatory access to this market. To this end, Industrial Consumers would recommend a test period of a certain length of time during which compliance with the "long-term" market requirement may be evaluated.

D. The Federal Trade Commission Has Found That Barriers To Entry Remain Even Within RTOs

In comments filed as recently as August 8, 2005,[14] FTC addressed the entry risks faced by potential generation entrants even in markets which have the benefit of RTOs. While risk is even greater outside of RTOs because the issue of transmission discrimination is added to uncertainty about transmission congestion, even within RTOs there are significant concerns that new entrants face over transmission risk. "Just because a generator is located within an RTO does not mean that the generator is immune to the risk of transmission discrimination and transmission congestion in non-RTO areas." The FTC notes that while short-term FTRs "appear

[13] 108 FERC ¶61,163 (2004), order on reh'g 109 FERC ¶61,157 (2004), order on reh'g 111 FERC ¶61043 (2005).

[14] FERC Docket No. AD05-7, FTC Comment August 8, 2005, Long Term Transmission Rights in Markets Operated By Regional Transmission Organizations and Independent System Operators, available at http://www.ftc.gov/be/advofileother.htm (last visited August 31, 2005).

likely to improve the competitiveness of …markets and improve their efficiency, practicable means to address long-term transmission risk are limited."[15] The FTC advocates long-term FTRs plus efficient transmission investment policies to reduce the transmission risk that can deter new entrants.[16] FERC is only now in the initial stage of developing long-term FTRs that would apply in all organized markets.

The importance of entry as a mitigant to market power is well-recognized. The FTC observes in its comments that "[E]ntry generally improves market performance because, for example, it displaces higher-cost suppliers or undermines incumbent suppliers' efforts to exercise market power." "Market power to a seller is the ability profitably to maintain prices above competitive levels for a significant period of time." U.S. Dep't of Justice and Federal Trade Commission, *Horizontal Merger Guidelines* § 0.1 (revised Apr. 8, 1997) (Apr. 2, 1992). The FTC's August 8, 2005 comments clearly articulate the concern that FERC should address whether organized electricity markets allow entry or expose potential entrants to an unacceptable level of entry risk:

> Providing potential generation entrants and other market participants with means to manage long-term transmission risk is likely to help develop competitive wholesale electric power markets. In a market economy, entry is a critical factor that contributes to the development of competitive markets. Entry erodes existing market power, provides more customers with products that closely match their preferences, and brings innovations that reduce costs to market. However, efficient entry may be discouraged or delayed by high levels of risk (relative to expected returns) that cannot be managed through long-term supply contracts or other arrangements. Lack of efficient entry may harm consumers through higher prices, less customer choice, and inefficient production that wastes real resources.

[15] Id., at 2.

[16] FTC Staff similarly cautioned in comments filed in FERC Docket No. RM05-17-000 on August 22, 2005 that "behavioral rules such as the rules governing calculation of available transmission capacity, are unlikely to fully address transmission discrimination concerns" and recommended that "FERC continue to examine the costs and benefits of structural reforms to promote competitive wholesale electric power markets." FTC comments available at http://www.ftc.gov/be/advofileother.htm., last visited August 13, 2005.

Id. at 4, cit. omit.

The Commission noted that other potential risks can deter new entry:

> For a potential generation entrant, transmission price uncertainty is just one of several risks associated with entry. Generation investments are long-lived and many entry costs may not be readily recoverable if the entry fails due to higher-than-anticipated costs over the life of the generation assets. Unanticipated transmission price increases due to transmission congestion could be the cause of failed entry. A reduction in long-term risk through long-term contracts (or other means) allows the generator to reduce the likelihood that it will be forced into bankruptcy (with the attendant costs that it must bear) during the useful life of the generation assets. Risk reduction also increases the likelihood that the entrant will experience an orderly depreciation of its generation assets over their useful life. If longer-term risk cannot be addressed, a potential efficient entrant may be faced with an unacceptable level of risk. As a result, it may decide not to enter.[17]

E. Organized Markets Even Within Established RTOs Are Not Yet Competitive

It is not surprising that a fledgling market is not competitive. Even established RTO markets fall short. Even staunch advocate of organized markets Professor William Hogan has repeatedly enumerated shortcomings in the markets as they stand today. For example, in his recent address at the NARUC summer meetings, he listed nine key issues which have yet to be adequately developed or resolved for competitive energy markets to exist:

- Better demand response;
- Scarcity pricing in practice as well as in theory;
- Energy limited facilities;
- Seams across the integrated grid;
- Long-term financial transmission rights;
- Transmission investment;
- Market power mitigation;
- Resource adequacy;

[17] FTC Aug. 8, 2005 comments at 5 (cit omit.)

- Long-term incentives for RTOs.[18]

The problems of emerging restructured electricity markets are so well-documented that FERC cannot conclude that markets are competitive just because they have ISOs and RTOs. Lave, et al. point out that "thus far, the bulk power markets created by the 1990s restructuring have not been competitive; it has proved difficult to design a market where no generator or group of generators acting in concert, has market power."[19]

> Where competitive markets can be designed, getting to a competitive market structure often incurs large costs, which can erase efficiency gains from deregulation. If a competitive market cannot be achieved, prices are likely to be high and creating a free market is likely to result in higher prices than imperfect regulation. Even if markets can be made competitive at little cost, the SMD and other deregulation rules bring some inherent costs when they are implemented. Some of these costs are substantial.

Id. Lave et al. outline a number of improvements essential to creating competitive markets, including:

- Increasing generation capacity so that no supplier is pivotal;
- Increasing transmission capacity so that it is adequate in a world of competing suppliers rather than a single-utility supplier;
- Dilemma of paying market clearing prices for all generation. Under the current auction system, baseload generation is overpaid during peak periods while new investment is discouraged;
- Allowing customers to submit demand bids into the auction to reduce monopoly power.

Jay Apt has published a study on prices paid by industrial customers, reasoning that industrials are the consumers who have the incentive and resources to shop for the best price. Apt studied industrial rates in New England, as this region (except Vermont) has instituted

[18] Electricity Market Restructuring and Successful Market Design, presentation of July 26, 2005, NARUC Electricity Committee, available at: www.ksg.harvard.edu/hepg/Papers/hogan_naruc_072605.pdf (last visited August 31, 2005).

[19] Lave, Apt, and Blumsach, "Rethinking Electricity Deregulation," Electricity Journal (October 2004).

restructuring. His study shows no improvement in prices charged in electricity post-deregulation -- in contrast to the post-regulatory experience of airlines, trucking, railroads and natural gas.[20] Apt notes Dr. Lave's conclusion that costs of deregulation in electricity are so high due to high costs of creating ISOs and RTOs, free markets that are not competitive, incomplete markets for essential services, and paying market clearing prices for all generation. Id.

ELCON has recently issued a report, "Problems in the Organized Markets,"[21] which expresses its disappointment in the state of organized markets from the perspective of long-time proponents of competitive electricity markets. ELCON comments on the inadequacy of the existing transmission structure and the failure of the modal pricing model to address the imperative need to relieve transmission constraints. As preconditions to competitive wholesale markets, ELCON identifies:

- RTOs with non-discriminatory stakeholder processes;
- Energy-only commodity markets;
- Elimination of entry barriers to price-response load;
- Market monitoring and market power mitigation;
- Adequate transmission infrastructure;
- Federal-state regulatory partnership.

These preconditions do not exist even in the nascent MISO market. In a December 2004 paper, APPA reports numerous problems encountered by its members in RTO regions, including:

> …across-the-board problems with spiraling RTO costs, unaccountable RTO governance, and ever-increasing provision of RTO services through questionable market mechanisms. These APPA members are unable to obtain or even retain long-term firm transmission service at just and reasonable rates. This is impairing their ability to enter into the long-term generation resource arrangements they need to provide reliable and affordable electric service to their end-use customers.[22]

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[20] Apt, "Competition Has Not Lowered U.S. Industrial Prices," Electricity Journal (March 2005).

[21] April 2005, available at http://www.elcon.org.

[22] See Restructuring at the Crossroads: FERC Electric Policy Reconsidered, available at http://www.appanet.org (last visited September 4, 2005).

APPA calls on FERC to promote market efficiency through:

- Joint development of regional OASIS
- Regional provision of market monitoring
- Joint ownership of transmission facilities by LSEs in a region
- Elimination of residual discrimination in the provision of transmission services and more vigorous enforcement of Order 888.

F. MISO Markets Do Not Yet Offer Non-Discriminatory Open Access

1. MISO "Seams Issues" Belie Alliant's Claim That Generators Can Reach PJM And Other Markets

While it is premature even to tally complaints about the inchoate Day 2 market, already there are concerns about seams issues and SECA charges imposed as part of the plan to eliminate regional through-and-out rates between MISO and PJM, as well as disputes regarding the allocation of FTRs; concerns related to implementation of proposed procedures for provision of confidential information to state commissions or other state entities; and concerns about discriminatory treatment of certain market participants such as balancing charges.

a. Seams Issues Between PJM And MISO

Alliant cites the ability of QFs to access the PJM market as support for its petition. However, in fact there is concern about increasing transmission constraints at the seam between MISO and PJM. A recent decision addresses complaints that seams issues between the two RTOs may be aggravated as a result of AEP and ComEd's decisions to join PJM, which resulted in the creation of "islands" and "peninsulas" among the interconnections between the networks. FERC responded that it is premature to rule on the merits of the complaint:

> We find that all parties are in substantial agreement that additional study and more information is required before a decision can be made as to what specific adjustments, if any, to current practices are necessary to address the issues raised in [the] Complaint. We are pleased to see that the coordination processes in the JOA have provided a forum for exploring

> the Complainant's concerns and pursuing solutions. It is clear that the studies are already underway and that the preliminary assessment will inform subsequent developments. Therefore, it is premature at this time for us to rule on the merits of the Complaint and the counter-arguments, motion, and recommendations of the parties.

Northwestern Ind. Pub. Serv. Co., 111 FERC ¶61,474 (June 27, 2005).

In the course of this proceeding, MISO and PJM asserted that MISO's Day 2 market and LMP scheme are helping with coordination of loop flows, but power flow studies take 4-6 months to complete, so there is no real information available yet to verify if the Day 2 market has helped. Under the terms of the JOA between the two RTOs, status reports are required and a year-end report is expected detailing the findings of the transmission study.

b. SECA Charges

While the elimination of pancaked rates was intended to reduce costs to transmission customers, the interim SECA charges[23] presently in effect in the MISO region have resulted in some transmission customers bearing higher costs than under the previous system. According to various commentors, these charges often have no correlation with actual power flows, and the underlying costs to the SECA charge are largely unproven and unjustified.[24] Additionally, there have been numerous complaints that customers were given inadequate notice with respect to the effective date and potential surcharges to be applied to the SECA rates.[25] APPA, among others, have characterized these charges as "unlawful retroactive ratemaking" and argued that customers lack necessary data to audit the filed rates and charges.[26] In February 2005, FERC set the matter

[23] SECA charges are seams elimination cost adjustment charges.

[24] APPA June 11, 2005 filing in Docket No. EL02-111.

[25] See, e.g., rehearing requests of Multiple TDUs (July 18, 2005) and of Strategic Energy (July 11, 2005) in Docket Nos. ER05-6 et al.

[26] APPA June 11, 2005 filing, supra.

of SECA charges for hearing. 110 FERC ¶61,107 (Feb. 10, 2005), FERC Docket Nos. ER05-6 et. al. This process is still on-going and the issue has not yet been resolved.

2. MISO Membership Requirements Pose Obstacles To Some QFS

Non-discriminatory open access is not yet here. QFs are required to meet MISO membership requirements which include (i) a membership application fee, credit evaluation and potential credit support in the form of a credit agreement, a corporate guaranty, letter of credit or cash deposit, assumption of liability for costs or expenses related to operation, repair, maintenance or improvement of transmission facilities 'as provided in the Transmission Tariff." These requirements may be particularly burdensome for smaller cogenerators and small power producers that also operate as QFs.

G. A Notice Of Inquiry Should Be Initiated To Develop Criteria For Assessing When Markets Are Competitive

Industrial Consumers recommend that FERC issue a notice of inquiry to set up a generic proceeding to seek comment on and inform its decision-making with respect to implementation of PURPA Section 210(m). The notice of inquiry procedure would avoid a piecemeal, ad hoc approach inherent in case-specific adjudication. FERC is no stranger to this procedure and utilized it as recently as May 2005 when it published notices of inquiry in Docket RM05-16 with respect to generator run status information and another on available transmission capacity in Docket RM05-17. The NOI procedure has been utilized in other significant proceedings as well, e.g., notice of inquiry concerning access to critical infrastructure information, Docket RM02-4.

The goal of the NOI would be to assess the various market situations in different regions of the country so as to enable the Commission carefully to define the necessary and sufficient conditions for meaningful competition in each market consistent with the requirements of the

FPA and the new PURPA Section 210(m). This procedure should expedite implementation of the PURPA amendments, as well as allow for the processing of related utility filings on a consistent basis.

III. CONCLUSION

Alliant has not met the criteria for relief from mandatory purchase obligations and its petition should be denied.

IV. DESCRIPTION OF INTERVENOR GROUPS

The Electricity Consumers Resource Council ("ELCON") is an association of industrial consumers of electricity organized to promote the development of coordinated and rational federal and state policies that will assure an adequate, reliable, and efficient electricity supply for all users at competitive rates. ELCON member companies produce a wide range of products from virtually every segment of the manufacturing community and many ELCON members operate PURPA qualifying cogeneration facilities. The member companies of ELCON consume approximately five percent of all electricity in the United States. ELCON members have significant operations in the Midwest ISO that will be directly impacted by the Commission's resolution of this matter.

The American Iron and Steel Institute ("AISI") is the principal trade association of the North American steel industry. Its member companies account for about seventy percent of the new steel production in the United States. The steel industry is one of the most energy-intensive sectors in the United States; the cost of electricity may constitute as much as twenty percent of the manufacturing cost of a steel mill product.

The American Chemistry Council ("ACC") is a nonprofit trade association whose member companies represent more than ninety percent of the productive capacity of basic industrial chemicals in the United States. The manufacturing processes on many ACC member companies are highly energy-intensive. In addition, the chemical industry uses a substantial amount of self-generated electricity. Total electricity used by the industry (purchases plus self-generated) represents approximately eighteen percent of industrial electricity consumption in the United States and approximately six percent of national electricity consumption. A number of ACC member companies operate PURPA qualifying cogeneration facilities.

The Association of Businesses Advocating Tariff Equity ("ABATE") is a nonprofit business association formed to represent industrial and other large volume energy customers in gas and electric regulatory and legislative matters. Among ABATE's members are some of the largest industrials in Michigan, employing hundreds of thousands and paying nearly $500 million in state taxes each year. The most recent data shows that ABATE members collectively accounted for over 37% of all industrial electricity usage and over 21% of all industrial natural gas usage in Michigan, consuming nearly 11 million MWh and over 51 million Mcf.

The Wisconsin Industrial Energy Group, Inc. ("WIEG") is a member organization of large industrial customers in the state of Wisconsin. WIEG was organized to provide information to its members about energy matters and to form *ad hoc* groups for intervention and participation in electric and natural gas rate cases, generic proceedings, investigations, rulemaking proceedings and other dockets that affect members' energy supplies and costs. The organization promotes proactive energy policies that will assure affordable, efficient and reliable energy for Wisconsin. WIEG members collectively employ over 67,000 people in Wisconsin

and, at a cost of roughly $200 million, consume 4.4 billion kWh of electricity each year, representing 18% of Wisconsin's total industrial electricity consumption.

WIEG has an interest in this proceeding because all of its members have significant operations in the Midwest ISO. In addition, many of its members purchase energy from Wisconsin Power and Light Company, one of the applicant's public utility subsidiaries, and some own and operate Qualifying Facilities in Wisconsin. Thus, WIEG and its members' substantial interests may be affected by the Commission's action or inaction in this matter. Further, WIEG's participation is likely to promote the proper disposition of the issues to be determined and will not impede the timely completion of the docket.

V. NOTICES AND COMMUNICATIONS

Notices and communications with regard to these proceedings should be addressed to:

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Dated: September 12, 2005

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion to Intervene and Comments were today mailed to parties on the service lists of these proceedings via electronic mail, where available, otherwise by U.S. mail, postage prepaid.

Dated at Washington, D.C. this 12th day of September 2005.

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