

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

Midcontinent Independent
System Operator, Inc.

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Docket Nos. ER14-1970-000
ER14-1970-001

**MOTION TO INTERVENE AND FILE COMMENTS OUT OF TIME AND
COMMENTS OF THE ORGANIZATION OF MISO STATES**

Pursuant to Rule 211 and 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.211 and 385.212, the Organization of MISO States (“OMS”) respectfully submits the following motion to file comments out of time and comments in the above-captioned docket in response to the Prohibited Investments filing submitted to the Commission by the Midcontinent Independent System Operator, Inc. (“MISO”) on May 15, 2014 (“Prohibited Investments Filing”), as amended on May 23, 2014. The Secretary of the Commission issued notices regarding the Prohibited Investments Filing and the amended filing, setting June 6, 2014, as the deadline for comments and protests.

I. MOTION TO INTERVENE AND FILE COMMENTS OUT OF TIME

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Commission, 18 C.F.R. §385.212, the OMS submits this motion to intervene and to file comments out of time in the above- captioned docket. The members of the OMS are the state utility regulatory commissions in the MISO footprint. Because the outcome of this proceeding will have an impact on ratepayers in the MISO footprint, the OMS’s intervention and its comments are in the public interest. The filing deadline established by the Commission in this case fell in between

regularly scheduled meetings of the OMS Board of Directors. The OMS Board took up this issue at the earliest possible regularly scheduled Board meeting following the Prohibited Investments Filing.

With these comments, the OMS does not wish to disrupt or delay the proceeding and accepts the record to date. Because no other party can adequately represent the interests of the OMS's members, and because the OMS Board acted as timely as possible given its meeting schedule, good cause exists to grant this motion.¹ As such, the OMS respectfully requests that the Commission grant the OMS intervenor status in this docket and grant this motion to file comments out of time.

II. BACKGROUND AND SUMMARY OF THE OMS'S POSITION AND RECOMMENDATIONS

Independence of Regional Transmission Organizations ("RTOs") and Independent System Operators ("ISOs") from market participants has been a hallmark of the Commission's regulatory policy from its early rulings on open access transmission service and RTO/ISO formation.²³ The OMS fully supports that policy and believes it is crucial to address potential conflicts of interest in the operation and decision-making of RTOs and ISOs.

Since its founding, MISO has assured its independence by an absolute prohibition on its Directors, Officers, and staff from holding any financial interests in firms participating in its markets with limited exceptions in which an employee had no ability to control buying or selling

¹ See, *Trans Alaska Pipeline System, et al.*, 104 FERC ¶ 61,201, at 61,706 (2003) and *Natural Gas Pipeline Company of America*, 66 FERC ¶ 61,310 (1994) (motion granted for good cause shown).

² Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. ¶ 31,036 at pgs. 31,730-32 (1996), order on reh'g, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), aff'd in relevant part sub nom. *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), aff'd sub nom. *New York v. FERC*, 535 U.S. 1 (2002).

³ *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), order on reh'g, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), aff'd sub nom. *Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

decisions related to those securities.⁴ Specifically, securities held in mutual funds,⁵ defined benefit pension plans,⁶ and blind trusts⁷ were allowed under certain circumstances.

With the growth of MISOs footprint and expansion of participants in its markets, the number of firms that are subject to investment prohibition has also grown. MISO states that the increase in prohibited securities has made it difficult to recruit and retain qualified Directors, Officer, and employees.⁸ As such, MISO proposes to loosen the absolute prohibition of any such holdings to a prohibition of significant holdings, referencing approval of a similar approach for the New York Independent System Operator (“NYISO”).⁹

In reviewing this filing, the OMS is concerned that the devil may lie in the details of its implementation. The OMS has discussed its concerns with MISO, and understands that many of the implementation details will not be available until near or after the proposed effective date of the filing. The OMS therefore proposes a procedure that will provide an opportunity to review these details when they become available while allowing compliance by MISO Directors, Officers, and staff to be deferred until the new requirements can be ascertained to avoid forced sales of investments that may not be required by the final outcome of this filing.

Therefore the OMS recommends that the Commission suspend this filing for a nominal period, allow it to become effective July 1 as requested by MISO, and set a technical conference to be held when certain implementation information becomes available. Because that information is not now available, the filing cannot be found to be just and reasonable.

IV. COMMENTS AND RECOMMENDATION

⁴ See Midwest Independent Transmission System Operator, Inc., 84 FERC ¶ 61,231 (1998), order on reh’g, 85 FERC ¶ 61,372 (1998).

⁵ *Id.* At pgs. 62, 151-53.

⁶ See Midwest Independent Transmission System Operator, Inc., et al., 85 FERC ¶ 61,250 (1998).

⁷ See Midwest Independent Transmission System Operator, Inc., et al., 115 FERC ¶ 61,255 (2006).

⁸ MISO Filing, May 15 at 3.

⁹ *Id.* At 3-4.

The OMS has identified several inquiries with respect to the filing that need to be addressed before an informed position on the proposal will be possible.

1. The actual “no-hold” list is not yet available. The actual list will indicate whether the application of various screens yields a list of prohibited investments that protects an appropriate level of independence.
2. One purpose of the filing is to maintain parity with other RTOs. Any variations between the MISO filing and other RTO filings should be identified and considered.
3. Effective implementation of the new screens may indicate the usefulness of disclosure of the “no-hold” list and reporting of potential non-conforming investments.
4. The screens may not fully screen market participants that have significant impact in particular MISO market areas.
5. Other intervenors in this docket have raised matters that have not been resolved.

The OMS appreciates that these matters cannot be fully addressed at this time, and that some will be more efficiently addressed based on the Commission’s action on this filing. Yet the ability of the OMS and other parties to comment on the filing is limited by the lack of such information. The OMS therefore recommends a technical conference to discuss and resolve these matters after MISO has completed its implementation of the filing, and suggests scheduling that conference 60 to 90 days after the July 1 implementation.

The Commission should decline to make a finding that the filing is just and reasonable until these matters are better understood. Therefore it should suspend the filing. But to avoid premature compliance by the affected individuals, that suspension period should be for a

minimum period, allowing the filing to become effective on July 1 for the reasons outlined in the filing.

V. CONCLUSION

The OMS submits this pleading because a majority of the members have agreed to generally support it. Individual OMS members reserve the right to file separate comments regarding the issues discussed in this pleading.

Respectfully Submitted,

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Dated: June 13, 2014

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Tbilisi, Georgia, this 13th day of June, 2014.

William H. Smith, Jr.