

## **Comments and Concerns on MISO Becoming a Central Counterparty:**

- 1) What is the potential financial impact on MISO for becoming a Central Counterparty?
  - a. How much liquidity would need to be obtained?
    - i. How will this be calculated?
- 2) What will be the basis and determining factors or methodology for cost allocation?
- 3) Has MISO considered establishing a separate subsidiary for “housing” a Central Counterparty, similar to that of PJM Settlements, Inc.?
  - a. Unlike MISO, PJM is for-profit and this was a primary driver for developing a separate entity under PJM.
  - b. Would creation of a subsidiary offer a mechanism that could provide potential protections and minimize exposures to risk?
- 4) We agree with MISO in that no additional action should be necessary regarding changes to insurance, however, would encourage re-exploration of this if the above (#3) were established.
- 5) We approached MISO with the question about filing a request with the IRS to confirm Tax Exemption Status and asked if it would also be done with each state.
  - a. MISO has not made these requests, however, plans to do so with state requests following confirmation from the Federal Government.
- 6) The transcripts from the May 2010 conference imply that short-pay would need to be discontinued and according to the Counterparty Issues List from the February 7<sup>th</sup> CPWG Meeting, “MISO believes it is not necessary to remove the short pay provision from the Tariff, but is further investigating the issue.”
  - a. If the short pay provision remains in place, what is the reason for liquidity?
  - b. Will inclusion of the short pay provision create risk?
  - c. What is the basis for MISO’s change in position regarding discontinuance of short-pay?
- 7) While it varies by ISO, the FERC proceedings indicated that the difference between gross and net obligations could be substantial.
  - a. Would MISO discontinue all security interests or treat them as a second line of defense if parties are willing and able to provide them?
- 8) Some entities will benefit more by the Central Counterparty option, presumably because they cannot provide a security interest and letter of credit on gross exposure would be expensive.
  - a. Will becoming a Central Counterparty create barriers to entrance/participation in the market for smaller entities such as coops and muni’s?
- 9) Will MISO allow a Market Participant to elect to utilize a security interest agreement in order to net across service categories?
  - a. Will netting be permitted across service categories for Category “A” Tariff Customers?

- b. Is there a liability in a case of bankruptcy, if netting has occurred across service categories?
- 10) MISO does not believe that there should be any changes required to the way Market Participants transact through MISO.
- a. Rather than a blanket confirmation, we would request MISO indicate they have reviewed each service category and identify why no changes are needed or identify where changes could be applied.
- 11) Under the Central Counterparty Option, will Virtuals or FTRs increase the likelihood of MISO needing to access its liquidity or create additional risk to MISO?
- a. Is there a potential impact to MISO if the Market Participant does not provide additional collateral and defaults?
  - b. Should Market Participants using Virtuals and FTRs pay more for the costs of the Central Counterparty option or could they enter into a security interest agreement?
  - c. Will netting be used for Non-FTR services only, for both Non-FTR and FTR but netting done separately, or for both Non-FTR and FTR with aggregate netting?
- 12) Will becoming a Central Counterparty expose MISO to additional risks that could ultimately lead to declaration of bankruptcy?
- a. Identify the risks.
  - b. Quantify the magnitude of risks.
  - c. Identify the risk protection to be used.

There is some concern that it could be interpreted as anticompetitive for MISO to take over the function of a Central Counterparty, when there is a market which could provide the service through a 3<sup>rd</sup> party clearinghouse. While most ISO's have chosen to be the Central Counterparty, the willingness of NASDAQ OMX to be the Central Counterparty in MISO and their apparent willingness to argue in favor of NASDAQ OMX at the December 21, 2011 teleconference, indicates that there could be a market for being a Central Counterparty. While the strong majority of stakeholders voted for MISO to become the Central Counterparty, the concern does exist that after implementation, could there be an anti-trust issue raised?

- 13) Is MISO creating an anti-competitive environment by becoming a Central Counterparty, after introducing an independent third party option who has the same capability of transacting as a Central Counterparty?
- a. MISO introduced NASDAQ OMX Commodities as "A Central Counter Party Solution".
  - b. NASDAQ OMX proposed its Central Counter Party solution to mirror the PJM Settlements shared tariff structure.
  - c. By using MISO instead of another brokerage firm, the TOs and MPs may be engaging in collusive, monopsony behavior "not to buy."

*[In economics, a **monopsony** is a market form in which only one buyer faces many sellers. It is an example of imperfect competition, similar to a monopoly, in which only one seller faces many buyers. As the only or majority purchaser of a good or service, the "monopsonist" may dictate terms to its suppliers in the same manner that a monopolist controls the market for its buyers.]*

Making MISO a counterparty to provide temporary liquidity may be anticompetitive and also inconsistent with FERC's promotion of competitive markets. Order 741 does not specify a method for an RTO to go about ensuring adequate collateral to back up the transactions of market participants.

Having left the method of compliance open, FERC's decision arguably places the conduct of MISO and its TOs in an area where their conduct is unregulated and subject to antitrust laws enforced by the FTC and DOJ.

MISO should be certain the conduct in question either does not violate the antitrust laws or is otherwise immunized by exceptions (perhaps government compelled action) to the antitrust laws.

- d. Apart from any conclusion as to antitrust law application, the policy question remains.

Even if the conduct of making MISO the counterparty is immunized under antitrust law, the choice of MISO could be interpreted as collusion and an anticompetitive result. Where FERC has left procurement of the needed functionality open to market-oriented purchasing decisions, forcing MISO to self-provision counterparty services represents the market participants' (TOs and Virtuals) resort to a regulated solution for a particular task when a market solution is possible.

Maximized competition by procurement of counterparty functions from third-parties (similar to Potomac Research for the IMM role) is more consistent with the FERC use of markets to enhance the "just and reasonable" character of the rates charged.