

147 FERC ¶ 61,191
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

New York Independent System Operator, Inc.

Docket Nos. ER14-308-001
ER14-309-001

ORDER DENYING REHEARING

(Issued June 6, 2014)

1. PJM Interconnection, L.L.C. (PJM) submitted a request for clarification of the Commission's December 30, 2013 Order in the above-captioned proceeding, which we treat as a request for rehearing of that order.¹ In that order, the Commission accepted proposed revisions by the New York Independent System Operator, Inc. (NYISO) to the rules governing prohibited investments by its directors, employees, their spouses and their minor children (NYISO Employees) set forth in the NYISO Open Access Transmission Tariff (OATT) and the NYISO Independent System Operator Agreement (ISO Agreement). PJM requests that the Commission state that the methodology accepted by the Commission in the December 30, 2013 Order can be applied by other Regional Transmission Organizations (RTO) and Independent System Operators (ISO). In this order, the Commission denies PJM's request for rehearing.

I. Background

2. In Order No. 888,² the Commission set forth 11 principles for use in assessing proposals for the formation of ISOs to ensure that they are independent of market

¹ *N.Y. Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,294 (2013) (December 30, 2013 Order).

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 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order

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participants. Principle No. 2 states that “[a]n ISO and its employees should have no financial interest in the economic performance of any power market participant,” the ISO “should adopt and enforce strict conflict of interest standards,” and “[e]mployees of the ISO should also be financially independent of market participants.”³ Further, in Order No. 2000, the Commission established an independence standard for RTOs to ensure that these entities would provide transmission service and operate in a non-discriminatory manner and stated that an RTO “[m]ust be independent of any entity whose economic or commercial interests could be significantly affected by the RTO’s actions or decisions.”⁴

3. In authorizing the establishment of NYISO as an ISO in accordance with Order No. 888, the Commission accepted a Code of Conduct that includes a conflict of interest policy that prohibits NYISO directors, officers, and employees from owning securities of market participants or their affiliates. As set forth in Attachment F of the OATT, such securities must be divested within six months. In an order issued December 31, 2012, the Commission accepted NYISO-proposed tariff revisions that allow NYISO directors, officers, and employees to place qualified prohibited investments in a blind trust as an alternative to divestiture.⁵

4. On November 4, 2013 NYISO filed proposed revisions to rules governing prohibited investments by NYISO Employees. The revisions created a definition of “Prohibited Securities” that allows NYISO Employees to invest in companies that have only a *de minimis* relationship with NYISO and the electric sector, as determined by a three-prong test.⁶ If a NYISO Employee owns a Prohibited Security, he or she is

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. N.Y. v. FERC*, 535 U.S. 1 (2002).

³ *Id.* at 31,730-32.

⁴ *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at 31,061 (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, Wa. v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

⁵ *See N.Y. Indep. Sys. Operator, Inc.*, 141 FERC ¶ 61,277 (2012).

⁶ Prohibited Securities are the securities of a market participant that has been active in NYISO markets in the previous 12 months or the securities of its affiliates, if: (1) the market participant or affiliate is an electric sector company based on its North American Industry Classification System (NAICS) classification or otherwise determined by NYISO; or (2) the total activity in the NYISO markets (purchases and

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required to, within six months, either divest it or transfer it to a blind trust.⁷ In addition, the revisions required a director to disclose to the NYISO Board any financial interest he or she, or an immediate family member, has in a market participant or affiliate that is the subject of a matter before the NYISO Board, even if the securities held are not Prohibited Securities. The revisions further required the Chair of the ISO Governance Committee and NYISO legal counsel to consult with the director to determine whether the director should be recused from NYISO Board deliberations and decision-making regarding the matter. In the December 30, 2013 Order, the Commission accepted NYISO's revisions.

II. PJM's Request for Rehearing

5. In its January 29, 2014 pleading, PJM states that it supports the December 30, 2013 Order, but asks that the Commission clarify "that its acceptance of the Prohibited Securities methodology advanced by NYISO to address prohibited investments by employees and directors of NYISO applies to all RTOs and ISOs and their respective employees and directors who adopt the same methodology."⁸ PJM states that, with the requested clarification, PJM and other RTOs and ISOs could implement the exact same code of conduct rules as NYISO's and would make clear that Commission regulations, designed to apply universally across all RTOs and ISOs, in fact can be applied in this manner.⁹ Accordingly, PJM states that it request that the Commission grant its requested clarification to permit PJM and other RTOs and ISOs to implement additional revisions to implement the "Prohibited Securities" methodology accepted by the Commission in the December 30, 2013 Order.¹⁰

sales) for all market participants affiliated with the publicly traded company at issue during its most recently completed fiscal year is equal to or greater than 0.5 percent of its gross revenues for the same time period; or (3) the total activity in the NYISO markets (purchases and sales) for all market participants affiliated with the publicly traded company at issue during the prior calendar year is equal to or greater than 3.0 percent of the total NYISO market activity (purchases and sales) for the same time period. Under the first prong, NYISO reserves the right to designate a company as an electric sector company even if its NAICS code is other than that of an electric sector company.

⁷ See OATT, Attachment F § 12.7.

⁸ PJM Request for Rehearing at 1.

⁹ *Id.* at 2.

¹⁰ *Id.*

6. On February 14, 2014, the Midcontinent Independent System Operator, Inc., Southwest Power Pool, Inc., California Independent System Operator Corp., and New York Independent System Operator, Inc. (collectively, Joint RTO Commenters) filed a motion to intervene out-of-time and comments in support of PJM's request.

III. Commission Discussion

A. Procedural Matters

7. As noted above, the Joint RTO Commenters seek to intervene out-of-time in this proceeding for the purpose of supporting PJM's request for rehearing. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting late intervention may be substantial. Thus, the movant bears a higher burden to demonstrate good cause for granting such late intervention.¹¹ The Joint RTO Commenters did not explain why they did not intervene in a timely manner and have not met this higher burden here. As such, we will deny the Joint RTO Commenters' motions to intervene out-of-time.

8. Rule 713(d) of the Commission's Rules of Practice and Procedure¹² prohibits answers to requests for rehearing. Accordingly, we will reject the Joint RTO Commenters' comments.

9. Further, although PJM styles its request as seeking clarification of the December 30, 2013 Order, we find that, in substance, it is actually a request for rehearing of that order and we treat it as such.¹³

¹¹ See, e.g., *PPL Elec. Utilities Corp.*, 110 FERC ¶ 61,248, at P 7 (2005); *Midwest Indep. Transmission Sys. Operator, Inc.*, 102 FERC ¶ 61,250, at P 7 (2003).

¹² 18 C.F.R. § 385.713(d) (2013).

¹³ See *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services into Markets Operated by the California Indep. Sys. Operator*, 133 FERC ¶ 61,014, at P 15 (2010) (the Commission is "not obligated to accept a pleading solely on the basis of its party bestowed title and, instead, determines the substance of the pleading"). See also *id.* P 35 (rejecting requests for clarification and reconsideration as untimely requests for rehearing); *New York Indep. Sys. Operator, Inc.*, 115 FERC ¶ 61,206, at P 3 (2006) (rejecting request for clarification as essentially an untimely request for rehearing); *Friends of Keeseville, Inc.*, 39 FERC ¶ 61,269, at 61,880 (1987), *reh'g denied*, 41 FERC ¶ 61,071 (1987), *aff'd sub nom. Friends of Keeseville, Inc. v. FERC*, 859 F.2d 230 (D.C.

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B. Commission Determination

10. The Commission denies PJM's request for rehearing. The issue before the Commission in this proceeding was the justness and reasonableness of NYISO's filing, which was limited to proposed revisions to NYISO's OATT and ISO Agreement. The December 30, 2013 Order, therefore, only addressed and approved NYISO's proposed tariff revisions. If other RTOs or ISOs wish to propose changes to their respective conflict of interest standards consistent with NYISO's filing, the Commission will consider those filings in the respective proceedings.

The Commission orders:

PJM's request for rehearing of the December 30, 2013 Order is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Cir. 1988) (rejection of motion for reconsideration on finding the pleading was, in essence, an untimely request for rehearing).