

147 FERC ¶ 61,265
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System
Operator, Inc.

Docket No. ER14-1970-001

ORDER CONDITIONALLY ACCEPTING REVISIONS
TO TRANSMISSION OWNERS' AGREEMENT

(Issued June 30, 2014)

1. On May 15, 2014, pursuant to section 205 of the Federal Power Act (FPA),¹ Midcontinent Independent System Operator, Inc. (MISO) submitted for filing proposed changes to the Agreement of Transmission Facilities Owners to Organize the MISO (Transmission Owners' Agreement)² to revise the rules restricting investments by MISO directors, officers, employees, and agents, as well as investments by their immediate family members.³ On May 23, 2014, MISO amended these proposed changes in certain respects, as described below. As discussed below, the Commission conditionally accepts MISO's proposed revisions, effective July 1, 2014, as requested, subject to a compliance filing due within 30 days of the date of this order.

¹ 16 U.S.C. § 824d (2012).

² MISO, FERC Electric Tariff, MISO Rate Schedules, MISO Transmission Owner Agreement, art. 1, § I.A-1, Affiliate (32.0.0); art. 1, § I.P-1, Prohibited Securities (32.0.0); art. 2, § III.A-2, Qualifications (30.0.0); app. A, Standards of Conduct (32.0.0); app. F, Bylaws (31.0.0), <http://etariff.ferc.gov/TariffBrowser.aspx?tid=1229> (MISO Tariff).

³ MISO's proposed revisions in Docket No. ER14-1970-000 were further revised by MISO's amendment in Docket No. ER14-1970-001. While this order refers to the transmittal letter in Docket No. ER14-1970-000, the revisions proposed in that subdocket are not being acted upon in this order.

I. Background

2. In Order No. 888,⁴ the Commission set forth 11 Principles for use in assessing proposals for the formation of Independent System Operators (ISO) to ensure that they are independent of market 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.”⁵ Further, in Order No. 2000, the Commission established an independence standard for Regional Transmission Organizations (RTO) 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.”⁶

II. Details of the Filings

3. On May 15, 2014, MISO filed proposed revisions to its rules on prohibited investments by MISO directors, officers, employees and agents and correlated these revisions with a proposal made by the New York Independent System Operator, Inc. (NYISO) that the Commission recently approved.⁷ MISO indicates that, similar to the concerns discussed by NYISO in its filing, MISO faces challenges regarding recruitment and retention of directors, officers, employees, and agents and seeks to amend its prohibited investments rules in a manner that addresses those concerns, while

⁴ *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 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).

⁵ *Id.* FERC Stats. & Regs. ¶ 31,036 at 31,730-32.

⁶ *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, v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

⁷ MISO May 15 Filing at 1, 3-4 (citing *New York Independent System Operator, Inc.*, 145 FERC ¶ 61,294 (2013), *reh’g denied*, 147 FERC ¶ 61,191 (2014)).

maintaining the restriction on ownership of securities necessary to avoid conflicts of interest.⁸

4. MISO states that, since its inception, it has had broad prohibitions on investments in owners, members, and users of the MISO transmission system to ensure full compliance with the Commission's RTO conflict of interest requirements. MISO explains that at the outset of its operations, the Transmission Owners' Agreement prohibited MISO directors, officers, employees, and agents from holding directly any securities of an owner, member, or user. MISO further states that if a director, officer, employee, or agent owned such securities, the Transmission Owners' Agreement required that the securities be disposed of within six months of the commencement of a person's employment with MISO, within six months of the addition of a new owner, member or user, or within six months of the acquisition of such securities (in cases where an employee acquired them through inheritance).⁹

5. MISO states that the Commission has approved several adjustments to MISO's prohibited investments rules. MISO explains that the Commission permitted employee participation in defined benefits pension plans of MISO owners, members, and users, as long as such plans did not allow for employees to buy and sell the relevant entity's securities at their discretion.¹⁰ MISO further states that in 2006, the Commission approved MISO's proposal to allow directors, officers, employees, and agents to transfer prohibited securities to a blind trust in lieu of disposing of them.¹¹ MISO notes that under this approach, MISO directors, officers, employees, and agents must deposit otherwise prohibited securities in a blind trust within the six-month deadline.¹²

⁸ *Id.* at 1.

⁹ *Id.* at 2-3 (citing *Midwest Independent Transmission System Operator, Inc.*, 84 FERC ¶ 61,231 (1998), *order on reh'g*, 85 FERC ¶ 61,372 (1998)).

¹⁰ *Id.* at 3 (citing *Midwest Independent Transmission System Operator, Inc.*, 85 FERC ¶ 61,250 (1998)).

¹¹ *Id.* (citing *Midwest Independent Transmission System Operator, Inc.*, 115 FERC ¶ 61,255 (2006)).

¹² *Id.* MISO defines a "blind trust" as "a legally binding arrangement in which a fiduciary third party has full management discretion over the assets of the trust, and the trust beneficiary has no knowledge of the holdings or assets of the trust." *Id.*

6. MISO states that the absolute prohibition on direct ownership of securities of owners, members, and users outside of a blind trust has had a significant impact on MISO's employee, officer, and director recruitment and retention efforts, given that the number of MISO owners, members, and users has expanded dramatically as MISO's footprint and membership has grown. Specifically, MISO explains that its expansion has increased the number of securities that are subject to MISO's investment prohibitions, including securities of many companies that have little or nothing to do with MISO's markets, and has made it more difficult for MISO to attract qualified directors, officers, and employees.¹³

7. Accordingly, in its May 15, 2014 filing, MISO proposes to add two defined terms to the Transmission Owners' Agreement, "Prohibited Securities" and "Affiliate," and to revise the requirements in Article Two, Section III.A.2 (Qualifications) and Appendices A (Standards of Conduct) and F (Bylaws) regarding ownership of securities of an owner, member, or user of the MISO transmission system. MISO states that, currently, the above-mentioned provisions require that a MISO director, officer, employee, or agent divest or place in a blind trust all securities of entities that are owners, members, or users of the MISO transmission system. MISO proposes to limit this requirement only to Prohibited Securities, which will be determined by applying three criteria included in the proposed definition and described below.¹⁴

8. MISO explains that the first criterion used in the proposed definition of Prohibited Securities prohibits MISO directors, officers, employees, and agents from directly owning, outside of a blind trust, securities of any company that is identified as a traditional "electric utility sector" entity, as per the North American Industry Classification System (NAICS). MISO states that the second criterion (set forth in proposed Section 2.a. of the Prohibited Securities definition) prohibits ownership of securities of any entity for which participation in or qualification for participation in transactions or activities pursuant to the MISO Tariff accounts for more than 0.5 percent of the entity's calendar year gross revenues. MISO explains that in circumstances where an entity's participation in the MISO markets accounts for revenues in excess of this threshold, a MISO director, officer, employee, or agent will be prohibited from directly owning, outside of a blind trust, securities of that entity. MISO asserts that these two criteria together eliminate the most serious conflict of interest risks associated with securities ownership by MISO directors, officers, employees, and agents.¹⁵

¹³ *Id.*

¹⁴ *Id.* at 4-5.

¹⁵ *Id.* at 6.

9. MISO explains that the third criterion (set forth in proposed Section 2.b. of the Prohibited Securities definition) prohibits direct ownership of, outside of a blind trust, securities of any entity whose overall activity in the MISO-administered markets during the most recent calendar year is 3 percent or more of the aggregate purchases and sales in the MISO-administered markets during that calendar year.¹⁶ MISO states that the proposed 3 percent threshold for market activity is consistent with the Commission's independence principle and protects against potential conflicts of interest. MISO further states that the Commission has recognized that having less than 3 percent of the revenues of the overall MISO-administered markets leaves an entity unable to affect the outcomes or operations of those markets.¹⁷ MISO also notes that its internal governance rules prohibit both actual and potential conflicts of interest and require that any actual or potential conflicts be reported.¹⁸

10. On May 23, 2014, MISO submitted an amendment to its May 15, 2014 filing proposing revisions to proposed Section 2.b. of the Prohibited Securities definition to allow the use of partial year market data for the analysis in determining Prohibited Securities during the calendar year 2014.¹⁹ Specifically, MISO proposes to add a sentence to Section 2.b. that states:

For purposes of applying this calculation to securities held during calendar year 2014, a security will be deemed to be a Prohibited Security if the total activity in the MISO-administered markets (purchases and sales) for the company during the period from December 19, 2013 through June 19, 2014 is equal to or greater than 3% of the total MISO-administered market activity (purchases and sales) for the same time period.

11. MISO states that the Prohibited Securities definition proposed in its May 15, 2014 filing uses the prior calendar year to measure the percentage of market activity, which will likely produce misleading results because the MISO market expanded dramatically in late December 2013, when Entergy Corporation and Cleco Corporation became MISO members. MISO states that under the revised definition in its May 23, 2014 filing, the

¹⁶ *Id.* at 7.

¹⁷ *Id.* (citing *New York Independent System Operator, Inc.*, 145 FERC ¶ 61,294 (2013)). MISO also contrasts the proposed 3 percent threshold to the “substantially higher” thresholds the Commission uses in the market power context and in the Commission's affiliate and merger rules.

¹⁸ *Id.* at 8.

¹⁹ MISO May 23 Filing at 2, 4.

evaluation of market share for calendar year 2014 will be conducted using the updated MISO market footprint and data, which will ensure that the 3 percent threshold will apply to data reflecting the current, expanded MISO market. MISO states that this approach will avoid the “anomalous and unfair” result of forcing MISO personnel to divest of securities holdings that will ultimately pass the screen.²⁰

12. Second, MISO proposes to revise the requested effective date for the proposed investment rules from July 15, 2014 to July 1, 2014. MISO requests that the Commission grant a waiver of its prior notice requirements to allow for the July 1, 2014 effective date. MISO explains that there were a number of securities that were newly listed on its “do not buy” list as of the end of January 2014 that would either have to be disposed of or placed in a blind trust by the end of June 2014 (i.e., the six-month deadline). However, MISO states that once the proposed rules become effective, a number of these securities will no longer be prohibited because they would pose no conflict of interest concerns, based on the screens described above. Therefore, MISO states that unless the proposed rules go into effect by July 1, 2014, MISO personnel owning such securities would face a two-week period during which ownership of such securities would be prohibited and would be forced to divest these securities.²¹

III. Notices of Filings and Responsive Pleadings

13. Notices of MISO’s filings were published in the *Federal Register*,²² with interventions and protest due on or before June 6, 2014. On June 6, 2014, the ITC Companies²³ and the MISO Transmission Owners²⁴ filed timely motions to intervene and

²⁰ *Id.* at 4.

²¹ *Id.* at 1, 5.

²² 79 Fed. Reg. 30,116 (2014); 79 Fed. Reg. 32,268 (2014).

²³ The ITC Companies for purposes of this filing consist of: International Transmission Company d/b/a ITC*Transmission*; Michigan Electric Transmission Company, LLC; and ITC Midwest LLC.

²⁴ MISO Transmission Owners for purposes of this filing consist of: Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois; American Transmission Company LLC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Cleco Power LLC; Dairyland Power Cooperative; Duke Energy Business Services, LLC for Duke Energy Indiana, Inc.; East Texas Electric Cooperative; Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Gulf States Louisiana, L.L.C.; Entergy

(continued...)

comments, and the Wisconsin Electric Power Company filed a timely motion to intervene.²⁵ On June 13, 2014, the Organization of MISO States²⁶ filed a motion to intervene out-of-time and comments. On June 23, 2014, MISO filed a motion for leave to answer and answer.

14. In their comments, the MISO Transmission Owners state that they support the goal of attracting qualified individuals to serve as MISO directors and staff and do not oppose the concept of allowing such individuals to own investments in an entity whose relationship to MISO markets and services is *de minimis*, compared to the entity's overall business and overall value of transactions in the MISO markets.²⁷

15. The MISO Transmission Owners state, however, that the revisions to the Transmission Owners' Agreement proposed in the instant filings could be interpreted to omit Qualified Transmission Developers,²⁸ which have significant financial interests in

Mississippi, Inc.; Entergy New Orleans, Inc.; Entergy Texas, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

²⁵ Although Wisconsin Electric Power Company filed a motion to intervene out-of-time, its motion was, in fact, timely.

²⁶ The members of the Organization of MISO States are the state regulatory commissions in the MISO footprint.

²⁷ MISO Transmission Owners Comments at 4.

²⁸ A Qualified Transmission Developer is defined as "A Transmission Owner, [Independent Transmission Company], or Non-owner Member that submits a Transmission Developer Application and is subsequently found by [MISO] to meet the minimum requirements for a Qualified Transmission Developer as outlined in Section VIII.B of Attachment FF of the Tariff." MISO, FERC Electric Tariff, Attachment FF, Transmission Expansion Planning Protocol (31.0.0), <http://etariff.ferc.gov/TariffBrowser.aspx?tid=1162>.

MISO director and staff decisions, making any investment in such entities by MISO directors and staff a clear conflict of interest.²⁹

16. The MISO Transmission Owners explain that under MISO's Order No. 1000-compliant competitive transmission developer selection process, all Qualified Transmission Developers will have a significant financial interest in the outcome of MISO decision making because MISO will evaluate new transmission proposals from Qualified Transmission Developers and select a Qualified Transmission Developer to build potentially lucrative open transmission projects approved in MISO's transmission expansion planning process. They further state that a Qualified Transmission Developer that has met MISO's qualification requirements, but has not been selected by MISO to construct an open transmission project, and does not otherwise engage in transactions in the MISO markets, would not appear to fall within MISO's proposed definition of Prohibited Securities.³⁰ The MISO Transmission Owners state that MISO's proposed revisions could be interpreted to allow MISO directors and staff to hold securities of Qualified Transmission Developers that have not yet been selected by MISO to construct a transmission facility. Accordingly, the MISO Transmission Owners state that members of the MISO board, as well as MISO staff and agents, should be prohibited from holding investments in any Qualified Transmission Developer, regardless of its present NAICS industry classification or current activity in the MISO markets.³¹

²⁹ MISO Transmission Owners Comments at 5 (citing *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012)).

³⁰ The MISO Transmission Owners provide the following example: A stand-alone entity that was created expressly to bid on open transmission projects that has not previously engaged in transmission ownership may not be classified by the NAICS as an "electric utility sector" entity, nor would MISO be required to classify such an entity as being engaged "in the electric, power, generation, transmission, or distribution business" because it has not yet been selected to construct, own, and operate transmission facilities. Likewise, a stand-alone Qualified Transmission Developer that has not previously constructed or owned transmission facilities under the MISO Tariff would not satisfy the 0.5 percent or 3 percent thresholds to be considered "Prohibited Securities." *Id.* at 6.

³¹ *Id.* at 5-6.

17. The MISO Transmission Owners recommend that the Commission direct MISO to submit a compliance filing revising the definition of Prohibited Securities to state that a security cannot be owned by MISO directors or staff if “the Owner, Member, User, or the Affiliate of the Owner, Member, or User has been determined by MISO to be a Qualified Transmission Developer as that term is defined in the Tariff.”³²

18. The MISO Transmission Owners state that the proposed revision to MISO’s proposed definition of Prohibited Securities will clarify that securities issued by Qualified Transmission Developers will be included as Prohibited Securities and guard against conflicts of interest. The MISO Transmission Owners continue that, based on conversations with MISO staff, it has confirmed that this potential gap in MISO’s proposed revisions was inadvertent and that MISO: (1) intended for Qualified Transmission Developers to be included as prohibited investments from the time of their qualification; and (2) is willing to submit revisions to the Transmission Owners’ Agreement to ensure the intended inclusion of Qualified Transmission Developers as Prohibited Securities. Therefore, the MISO Transmission Owners state that the Commission should conditionally accept the proposed revisions in the instant filings, subject to MISO making the revisions recommended by the MISO Transmission Owners above.³³

19. In their comments, the ITC Companies state that they have concerns that MISO’s proposed revisions to the Transmission Owners’ Agreement will increase the risk of conflicts of interest. The ITC Companies state that they have similar restrictions on directors, officers, and employees on owning securities of market participants and have been able to attract and retain directors, officers, and employees. The ITC Companies state that, as the Commission noted in Principle No. 2 of Order No. 888, “[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.”³⁴ The ITC Companies continue that, in Order No. 2000, the Commission established an independence standard to ensure that RTOs would provide transmission service and operate in a non-discriminatory manner and stated that an RTO “[m]ust be

³² *Id.* at 7.

³³ *Id.* at 7-8.

³⁴ ITC Companies Comments at 5 (citing Order No. 888, FERC Stats. & Regs. ¶ 31,036).

independent of any entity whose economic or commercial interests could be significantly affected by the RTO's actions or decisions.”³⁵

20. The ITC Companies state that the restrictions on ownership of certain securities by MISO directors, officers, and employees is critical to ensuring its independence, which becomes even more important as MISO's footprint, membership, and the number of markets MISO administers continue to grow. Further, the ITC Companies reiterate the MISO Transmission Owners' concern that MISO must also be independent during its significant role in the selection of transmission developers in compliance with Order No. 1000.³⁶

21. The ITC Companies state that MISO's filing lacks important information to determine whether the proposed revisions properly preserve MISO's independence and request that the Commission require MISO to provide information regarding which entities would be captured by the prohibited investment screens. The ITC Companies suggest that MISO run the 2013 data and post the results, so that all stakeholders are aware of which entities are currently on the prohibited securities list. The ITC Companies state that this additional transparency will allow the Commission and stakeholders to monitor MISO and ensure its continued independence.³⁷

22. Additionally, the ITC Companies state that MISO should clarify the definition of “MISO-administered markets” included in its proposed definition of Prohibited Securities because MISO operates multiple markets, including the Financial Transmission Rights, Day Ahead Energy and Operating Reserves, and Real Time Energy and Operating Reserves Markets. The ITC Companies also request that MISO clarify whether it intends to aggregate all of its markets when applying the 0.5 percent and 3 percent thresholds, or if it will apply the thresholds to each market. The ITC Companies explain that the manner in which these thresholds are applied may make a significant difference in the entities that would fall under the Prohibited Securities list. The ITC Companies further express that entities that have significant influence in a particular market may not be properly identified as Prohibited Securities.³⁸

³⁵ *Id.* (citing Order No. 2000, FERC Stats. & Regs. ¶ 31,089).

³⁶ *Id.* at 5-6.

³⁷ *Id.* at 6.

³⁸ *Id.* at 6-7. As an example, the ITC Companies state that an entity may be 10 percent of the “activity” in one specific MISO market, but if the MISO markets are aggregated, that entity may not meet the 3 percent threshold to be included as a Prohibited Security.

23. The ITC Companies state that while MISO points to the NYISO revisions recently approved by the Commission as support for its proposed revisions in the instant filings, the Commission should consider the substantial differences between the NYISO and MISO. The ITC Companies state that MISO is substantially larger than NYISO, in both geographic reach and size of its markets, and argue that the 3 percent threshold for total activity in the MISO-administered markets may be too high because the MISO markets are so large that even a 3 percent interest could be significant. The ITC Companies state that MISO's 2013 Value Proposition cites \$20.3 billion in energy transactions in 2013, as compared to the NYISO markets' average of \$7.5 billion in transactions annually.³⁹ The ITC Companies provide an example showing that if MISO aggregates its market activity, as discussed above, an entity with over \$600 million in financial activity in MISO may not meet the proposed criteria and be included as a Prohibited Security. The ITC Companies state that the significant amount of money at stake could compromise MISO's independence in its decision making. Therefore, ITC Companies request that the Commission require MISO to provide additional support for the appropriateness of the 3 percent screen for activity in the MISO markets.⁴⁰

24. In its comments, the Organization of MISO States states the implementation details of MISO's proposed revisions will not be available until near or after the proposed effective date. Accordingly, it proposes a procedure that will provide an opportunity to review the details of the proposed revisions, while allowing for deferred compliance by MISO directors, officers, and employees.⁴¹ Specifically, the Organization of MISO States identifies several inquiries with respect to the instant filings that must be addressed before an "informed position" on the proposals will be possible, noting that: (1) the actual "no hold" list is not yet available; (2) any variations between the instant MISO filings and other RTO filings should be identified and considered; (3) effective implementation of the proposed screens may indicate the usefulness of disclosing the "no hold" list and reporting non-conforming investments; (4) the proposed screens may not fully screen market participants that have significant impact in particular market areas; and (5) other intervenors in the instant filings have raised matters that have not yet been resolved. To allow time for consideration of these matters and to avoid forced sales of

³⁹ *Id.* at 7 (citing <https://www.misoenergy.org/Library/Repository/Communication%20Material/Value%20Proposition/2013VP/2013VPBrochure.pdf> and http://www.nyiso.com/public/webdocs/media_room/publications_presentations/Fact_Sheets/NYISO_Fact_Sheets/markets_factsheet%20apr7.pdf).

⁴⁰ *Id.*

⁴¹ Organization of MISO States Comments at 3.

investments that may not be required by the final outcome of MISO's filings, the Organization of MISO States recommends that the Commission suspend the instant filings for a nominal period, allow MISO's proposal to become effective July 1, 2014, as requested, and set a technical conference to be held within 60 to 90 days after the July 1, 2014 implementation.⁴²

25. In its answer, MISO asks that the Commission deny the clarifications that the ITC Companies seek, as well as the ITC Companies' and Organization of MISO States' requests that MISO produce a sample Prohibited Securities list. MISO states that it does not oppose modifications requested by the MISO Transmission Owners, as discussed below.⁴³

26. MISO reiterates that it seeks to amend its prohibited investments rules to address concerns related to the challenges regarding recruitment and retention of directors, officers, employees, and agents. It maintains that the proposed Prohibited Securities criteria are substantially similar to the recent NYISO proposal accepted by the Commission as just and reasonable.⁴⁴ MISO further states that it added criteria to ensure against any potential conflicts of interest, especially as related to its Order No. 1000 obligations. Additionally, MISO states that its business conduct rules set forth additional obligations for MISO employees and directors to eliminate conflicts of interest and maintain MISO's independence.⁴⁵

27. In response to the ITC Companies' concern related to the preservation of MISO's independence, MISO states that the proposed criteria for Prohibited Securities set forth an absolute prohibition for MISO directors, officers, employees, and agents regarding securities of traditional electric transmission and generation entities and any entities engaged in, or qualified to engage in, activities or transactions under the MISO Tariff. Specifically, MISO states that the only criteria that would allow a MISO director, officer, employee, or agent to hold a security is where an entity is a market participant that does

⁴² *Id.* at 3, 4.

⁴³ MISO Answer at 2.

⁴⁴ *Id.* at 4 (citing *New York Independent System Operator, Inc.*, 145 FERC ¶ 61,294 (2013), *reh'g denied*, 147 FERC ¶ 61,191 (2014)).

⁴⁵ *Id.* at 4-5.

not meet either of the previous criteria set forth and does not meet either of the defined criteria regarding its participation in the MISO markets.⁴⁶

28. Furthermore, as to the ITC Companies' request to require MISO to produce a list of Prohibited Securities based on 2013 data, MISO responds that production of such a list would not accurately reflect the current conditions in MISO and would not determine whether the proposed criteria are appropriate to ensure MISO's independence and prohibit conflicts of interest. MISO reiterates that as a result of the substantially expanded MISO market and footprint at the end of 2013, the current (2014) data better reflects the current and going-forward MISO market conditions and revenues. It further states that a screen using 2013 data may result in a Prohibited Securities list that does not recognize entities that became engaged in activities and transactions under the MISO Tariff with the addition of its new transmission owners and members. MISO also argues that any list of Prohibited Securities produced by the criteria is a "snapshot" at a given time and such sample results should not be determinative of whether the screening methodology is just and reasonable.⁴⁷

29. MISO also notes that, in addition to the Prohibited Securities obligations for which it maintains and updates an internal "do not buy" list, MISO also maintains and updates an overarching code of business ethics that sets forth MISO's expectations of its employees and directors regarding conflicts of interest.⁴⁸ MISO states that its code of business ethics offers its employees and directors methods and opportunities to seek guidance regarding any questions they may have. Thus, according to MISO, any list of Prohibited Securities is not indicative of its overall conflicts of interest expectations.⁴⁹

30. In response to the ITC Companies' request that MISO clarify that the term "MISO-administered markets," as used in the proposed definition of Prohibited Securities, would require MISO to aggregate its markets in applying the 0.5 percent and 3 percent thresholds, MISO reiterates that its filing is patterned after the NYISO filing

⁴⁶ *Id.* at 6 (demonstrating that for a MISO employee or director to own a security, the entity issuing the security must not be a traditional electric transmission or generation entity and must not be engaged in, or qualified to engage in, activities or transactions

under the MISO Tariff, except where such entity is only a market participant with market activity levels below the defined thresholds).

⁴⁷ *Id.* at 7.

⁴⁸ *Id.* at 8 (citing to Section 5.1 of its Code of Business Ethics).

⁴⁹ *Id.*

in Docket Nos. ER14-308 and ER14-309, which used the phrase “ISO Administered Markets (purchases and sales).”⁵⁰ MISO explains that, while it did not define the term “MISO-administered markets (purchases and sales)” in its proposed revisions, it intended the phrase to parallel the phrase used by NYISO. Thus, MISO states that the text of MISO’s proposed revisions to apply the screens to “MISO-administered markets” accurately reflects MISO’s intent to analyze activity across all of its markets. Therefore, MISO states that its filing clearly indicates that it would apply the screens to aggregate activities of all markets administered by MISO.⁵¹

31. Regarding the ITC Companies’ concerns that the thresholds set forth in the proposed Prohibited Securities definition are too high, MISO reiterates that the 3 percent threshold used in MISO’s proposal would prohibit ownership of the securities of entities that have a smaller percentage impact than the 20 percent threshold the Commission uses for determining market power. MISO explains that this would eliminate the potential that the securities of an entity with substantial market activity could be owned by a MISO employee or director. MISO also states that applying this screen to total market activity more appropriately aligns with MISO’s stakeholder process regarding its markets.⁵²

32. In response to the MISO Transmission Owners’ suggested revision to include the securities of Qualified Transmission Developers as Prohibited Securities under MISO’s proposed definition, MISO states that it does not object to their proposal and would include the suggested wording in its revisions, if so directed by the Commission.⁵³

33. MISO asks that the Commission deny the Organization of MISO States’ various requests. Regarding the Organization of MISO States’ requests for MISO to provide a sample list of prohibited securities based on the proposed criteria, MISO reiterates its point that producing a sample list of prohibited securities would not bear on the ultimate question of whether the criteria will prohibit conflicts of interest, and that it is the justness and reasonableness of the criteria, not the sample results, that should be evaluated. MISO further maintains that its proposed criteria are clear, succinct, and measurable, and that these characteristics should facilitate consistent, repeatable implementation.⁵⁴

⁵⁰ *Id.* at 9 (citing *New York Independent System Operator, Inc.*, 145 FERC ¶ 61,294 (2013), *reh’g denied*, 147 FERC ¶ 61,191 (2014)).

⁵¹ *Id.* at 10.

⁵² *Id.* at 10-11.

⁵³ *Id.* at 11-12.

⁵⁴ *Id.* at 12-13.

34. Additionally, in response to the Organization of MISO States' request for MISO to identify any variations between its criteria and those of other RTO/ISOs, MISO states that the only difference identified at this time is MISO's addition of strict criteria to prohibit its employees, directors, and others from owning the securities of entities engaged in, or qualified to engage in, transactions or activities under the MISO Tariff.⁵⁵

35. Finally, MISO urges that it is unnecessary to delay acceptance of its filing or require a technical conference, as suggested by the Organization of MISO States. MISO reiterates that any given list of Prohibited Securities will change over time and should not be determinative of whether MISO's proposed rules are just and reasonable. MISO further states that its code of business ethics sets forth additional obligations for its employees and directors regarding potential conflicts of interest. MISO also points out that the MISO stakeholder process will provide a forum for the Organization of MISO States to raise any details regarding the implementation of MISO's proposal and for other interested stakeholders to clarify their concerns with the outcome of the methodology, as approved by the Commission and as applied to MISO's market participants and customers. MISO further states that it will continue to solicit comments and feedback from its stakeholder community, and consider any comments related to the proposals that are raised in the stakeholder process.⁵⁶

IV. Discussion

A. Procedural Matters

36. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motions to intervene serve to make the parties that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice Procedure, 18 C.F.R. § 385.214(d) (2013), the Commission will grant the late-filed motion to intervene of the Organization of MISO States, given its interests in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

37. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept MISO's answer because it provided information that assisted us in our decision-making process.

⁵⁵ *Id.* at 13.

⁵⁶ *Id.* at 14.

B. Commission Determination

38. We conditionally accept MISO's proposed revisions to the Transmission Owners' Agreement, effective July 1, 2014, as requested, subject to a compliance filing due within 30 days of the date of this order. We find that the proposed revisions to the Transmission Owners' Agreement, which are substantially the same as those we accepted in *New York Independent System Operator, Inc.*, are just and reasonable.⁵⁷ We find that the criteria proposed in the Prohibited Securities definition is an appropriate methodology for the MISO market and addresses any conflict of interest concerns. Concerning ITC Companies' suggestion that the 3 percent threshold may be too high given MISO's much larger footprint, we note that, regardless of any disparity in market size of the two RTOs, the 0.5 percent threshold would prohibit investments in any entity whose MISO transactions and activities account for 0.5 percent of the entity's calendar year gross revenues. Thus, the 3 percent threshold is not solely determinative of whether a particular entity will be on the Prohibited Securities list. We find that MISO's proposal should continue to safeguard MISO's independence by prohibiting MISO directors, officers, employees, and agents from holding securities of market participants that are active in the MISO market, specifically, any entity identified within the "electric utility sector," any entity whose MISO market activity accounts for a significant part of the entity's revenues, or any entity whose MISO market activity is significant to MISO.⁵⁸ Furthermore, no intervenor presented specific evidence or information to support why MISO's proposal is inappropriate.

39. We grant MISO's request for a waiver to allow an effective date of July 1, 2014. We are persuaded that a later effective date could result in anomalous results. As MISO states, unless the proposed revisions go into effect by July 1, 2014, MISO personnel owning securities on the "do not buy" list will be forced to divest those securities, even though such securities will no longer be prohibited once the revised rules become effective.

⁵⁷ *New York Independent System Operator, Inc.*, 145 FERC ¶ 61,294 at P 10 (finding that NYISO's proposed revisions "are a just and reasonable approach to addressing the challenge of recruiting and retaining directors and employees in light of both our concern with protecting NYISO's independence and our recognition that the rules restricting investments were developed prior to the expansion of market participation beyond traditional, electric sector companies.").

⁵⁸ MISO May 15 Filing at 5.

40. We agree with the MISO Transmission Owners that MISO's proposed revisions could be interpreted to omit Qualified Transmission Developers from the definition of Prohibited Securities. These entities have significant financial interests in MISO director and staff decisions because, pursuant to Order No. 1000, MISO will evaluate new transmission proposals from Qualified Transmission Developers and select a Qualified Transmission Developer to build potentially lucrative open transmission projects approved in MISO's transmission expansion plan process. Therefore, we direct MISO to submit a compliance filing, revising the definition of Prohibited Securities to include the securities of Qualified Transmission Developers as Prohibited Securities.

41. We accept MISO's clarification that the phrase "MISO-administered markets (purchases and sales)" used in the proposed definition of Prohibited Securities would require MISO to aggregate activities of all markets administered by MISO for purposes applying the percentage screens. We also note MISO's commitment that it will continue to solicit comments and feedback from its stakeholder community, and consider any comments related to the proposals that are raised in the stakeholder process.

42. We deny the Organization of MISO States' recommendation that the Commission hold a technical conference to discuss the implementation details of MISO's proposed revisions. As previously mentioned, we find the proposed revisions just and reasonable and MISO's request for an effective date of July 1, 2014 necessary to avoid anomalous results.

The Commission orders:

(A) The proposed revisions to the MISO Transmission Owners' Agreement are hereby conditionally accepted, effective July 1, 2014, as requested, as discussed in the body of this order.

(B) MISO is hereby directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.