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APPLICATION OF ENTERGY TEXAS,  
INC. FOR APPROVAL TO TRANSFER  
OPERATIONAL CONTROL OF ITS  
TRANSMISSION ASSETS TO THE  
MISO RTO

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PUBLIC UTILITY COMMISSION

OF TEXAS

### **MISO'S INITIAL BRIEF**

COMES NOW MISO and in support of the Non-Unanimous Stipulation and Settlement submits this Initial Brief. In accordance with the Administrative Law Judge's suggestion to avoid unnecessary duplication, MISO's Initial Brief focuses on two issues, in particular, included in the Commission's Preliminary Order.

#### **IV. Evaluation of NUS and Preliminary Order Issues**

**Preliminary Order Issue No. 2. Is there a better alternative than transferring operational control of Entergy's transmission assets to the MISO RTO?**

The advantages of ETI joining an RTO — versus not joining an RTO — are inarguable. Because membership in an RTO is voluntary and the only RTO ETI proposes to join is MISO, comparisons to a hypothetical membership in SPP are inapposite for purposes of determining whether ETI's proposed transfer of control should be approved.<sup>1</sup> Nonetheless, ETI's selection of

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<sup>1</sup> See ETI Ex. 17 at 6 (Hurstell Supplemental Direct) (no determination is requested of whether any other "hypothetical transaction" is in the public interest).

MISO, the very first RTO FERC approved,<sup>2</sup> stands out as a far superior alternative for a number of key reasons, based on a preponderance of the record evidence.<sup>3</sup>

**Mature, Competitive Markets.** MISO has mature, competitive markets in place today, the implementation cost of which will be nearly fully depreciated by the proposed date Entergy would join MISO.<sup>4</sup> In contrast, SPP still looks forward to completing the development, implementation, testing and roll out of a new Day-Ahead Market, centrally-dispatched Real-Time Market, ancillary services markets, and a congestion revenue rights market (collectively SPP's "Integrated Markets"), all of which already exist and are fully established in MISO.<sup>5</sup> The implementation of these complex markets is an inherently difficult task, involving stakeholder approval of all aspects of market design, development of market rules and procedures, regulatory approvals, market application software development and testing, determination of hardware requirements and configurations, customer training, participant registration, and full market testing. It is essential that all elements of this process are fully and successfully performed. Given the billions of ratepayer dollars at stake, there are no shortcuts.<sup>6</sup>

The difficulty of successfully navigating such a complex process and of anticipating and overcoming inevitable obstacles has led other currently operating RTO markets to experience

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<sup>2</sup> MISO Ex. 3 at 5 (Schug Direct) (FERC approved MISO as the nation's first RTO in 2001).

<sup>3</sup> See *City of El Paso v. Pub. Util. Comm'n of Tex.*, 883 S.W.2d 179, 183 (Tex. 1994) (standard is whether the terms of the non-unanimous stipulation are supported by a preponderance of the record evidence, otherwise consistent with applicable law, and are consistent with public interest).

<sup>4</sup> MISO Ex. 2 at 6 (Doying Direct). On April 1, 2005, MISO began operating its Real Time and Day Ahead energy markets and a market for Financial Transmission Rights, and on January 6, 2009, its Ancillary Services market began operations. MISO Ex. 3 at 5 (Schug Direct).

<sup>5</sup> MISO Ex. 2 at 6-7 (Doying Direct).

<sup>6</sup> *Id.* at 7.

launch delays and cost overruns.<sup>7</sup> The reality is that no one can predict with certainty the date on which SPP will complete its transition to the fully operational, tested and proven, mature markets that MISO already is experienced in operating.<sup>8</sup> Factoring in the risk of any delay or increased cost is critical, however, because estimated quantified benefits from an alternative “join SPP” option assume SPP will have implemented its planned Day 2 market by March 2014.<sup>9</sup>

In the meantime, MISO continues to improve its already well-functioning markets. For example, in April 2012, MISO implemented a new Look Ahead Commitment tool to be used in conjunction with its Security-Constrained Economic Dispatch (SCED) engine.<sup>10</sup> This new online tool allows for power grid operators to more efficiently plan near-term resource commitments in the Real-Time Market for improved operational efficiencies and reduced wholesale power costs. The tool could save the existing MISO region (11 states and Manitoba, Canada) upwards of \$2 million per year and that is a conservative estimate. Using this new Look Ahead Commitment tool, MISO will be able to better identify upcoming changes and more efficiently commit resources to meet those needs. The Commission’s support of ERCOT’s “Look Ahead” SCED development echoes the importance of this added capability.<sup>11</sup>

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<sup>7</sup> *Id.* The Commission’s receipt of the Navigant Consulting, LLC *Evaluation of ERCOT’s Texas Nodal Market Implementation Project* in P.U.C. Docket No. 31600, discussed at the Open Meeting on August 30, 2012, is a testament to the difficulty of delivering complex market design changes on time and within budget. The report examined the root causes of ERCOT’s two-year delay in implementation of the Texas Nodal Market.

<sup>8</sup> See SPP Ex. 3 (Monroe Cross-Rebuttal) at Exhibit CAM-3 (*Integrated Marketplace Recovery Approach*, July 6, 2012) (discussing plan to regain green status following program status change to yellow).

<sup>9</sup> MISO Ex. 2 at 7 (Doying Direct).

<sup>10</sup> *Id.* at 7-8.

<sup>11</sup> *Id.*

MISO's Day 2 energy and operating reserve markets provide transparent wholesale electricity prices set by efficient and tested mechanisms. These markets are administered by an entity independent of all generation (and other) economic interests, and are monitored by an external, independent market monitor.<sup>12</sup>

**Size and Scale.** MISO's larger scale creates greater efficiencies and delivers greater cost savings because expenses are more widely spread across a larger number of members.<sup>13</sup> Over 300 registered Market Participants serve over 40 million people making MISO one of the world's largest energy markets, clearing over \$25 billion in energy transactions annually.<sup>14</sup> MISO indisputably is larger than SPP in the size of its footprint, the number of its members, and the total load served.<sup>15</sup>

Upon Entergy's integration into MISO, Entergy's ratepayers will gain access to a transmission system that reaches from Canada to the Gulf Coast. Given its key role in regional transmission planning, MISO has developed models, tools and expertise in large-scale analysis to capture the benefits associated with planning over a larger region.<sup>16</sup> This experience, combined with Entergy's local expertise, will result in greater efficiency and productivity in the operations and planning processes for Entergy, its ratepayers and the entire region.<sup>17</sup>

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<sup>12</sup> *Id.* at 9-13.

<sup>13</sup> MISO Ex. 2 at 8 (Doying Direct); MISO Ex. 3 at 7-10 (Schug Direct).

<sup>14</sup> MISO Ex. 3 at 5 (Schug Direct).

<sup>15</sup> *Id.* at 10.

<sup>16</sup> *Id.* at 7. See MISO Ex. 1 at 5-11 (Curran Direct) (describing MISO's transmission planning); see also Cities Ex. 1 at 12-13 (Nalepa Direct) (MISO transmission cost allocations considers benefits received, in contrast to SPP methods that generally are based on the project's voltage level).

<sup>17</sup> MISO Ex. 3 at 7 (Schug Direct).

MISO provides increased reliability and better congestion management through the energy and operating reserve markets and regional planning process.<sup>18</sup> In addition, as a member of a larger, more efficient market, Entergy will benefit by deferring the need to build as many power plants in the future. MISO's markets will provide Entergy with the options to purchase energy or capacity from a diverse mix of resources that have a broad range of capacity and production costs. This provides Entergy with options to provide lower cost power to customers without investing in additional generation.<sup>19</sup>

For 2011, MISO estimated that MISO's operations provided between \$2.1 and \$2.7 billion in value to existing MISO members.<sup>20</sup> This value is expected to increase by over \$500 million in benefits if all the Entergy Operating Companies join MISO, with 80% of that increase going to the Entergy region.<sup>21</sup>

**Independent Market Monitor.** MISO's commitment to the engagement of an Independent Market Monitor ("IMM") is a key consideration distinguishing membership in MISO from membership in SPP.<sup>22</sup> MISO's IMM is Potomac Economics, the same entity that functions as ERCOT's IMM. Potomac Economics reports directly to the MISO Board of Directors. SPP's internal market monitoring unit ("MMU"), for administrative purposes, reports to SPP's Chief Compliance Officer, and otherwise reports to the Oversight Committee of the

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 8.

<sup>21</sup> *Id.*

<sup>22</sup> MISO Ex. 2 at 8 (Doying Direct).

SPP Board of Directors.<sup>23</sup> SPP is committed to relying on an internal organization even after its Integrated Markets are implemented.<sup>24</sup>

Potomac Economics is experienced in the investigation of market power abuse concerns, including price impacts from suspected unit withholding in ERCOT.<sup>25</sup> Moreover, physical withholding of capacity is far from the only type of potential market manipulation that must be monitored and mitigated. MISO's IMM continuously monitors the operation of the Real-Time Market and immediately mitigates any attempt to engage in market manipulation.<sup>26</sup> SPP may be satisfied with an internal market monitoring organization given the composition of its markets today, but the Commission rightly may conclude that the advantages of an external monitor are overwhelmingly obvious.<sup>27</sup> An independent external monitor, with its extensive experience in oversight of the industry's established and functioning energy markets such as the MISO and ERCOT markets and its reputation in the industry-at-large necessarily at stake, may be more committed to objective and critical reporting than an internal group of employees.<sup>28</sup>

While SPP's use of its internal organization may currently be less expensive from an administrative cost perspective, this is not an area in which corners can be cut. MISO is committed to the greater benefits offered by engagement of an IMM. MISO's historic reliance

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<sup>23</sup> *Id.*

<sup>24</sup>

<http://www.spp.org/section.asp?group=1986&pageID=27> (Frequently Asked Questions (10/18/11): Is Market Monitoring an outside entity or in-house to SPP? As in the current EIS market, the Market Monitoring group will be in-house to SPP.)

<sup>25</sup> MISO Ex. 2 at 8 (Doying Direct). The SPP MMU lacks that experience because the absence of concentration in the current SPP footprint makes it unlikely that a market participant today could be successful in exercising market power by withholding capacity. *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 9.

on an external monitor offers a clear advantage to state regulators and consumers alike.<sup>29</sup> The IMM has the authority to limit the maximum allowable offers to ensure market prices reflect competitive market outcomes.<sup>30</sup> The market monitoring and mitigation measures employed by MISO's IMM include constant monitoring and immediate mitigation, when warranted, thereby removing the ability to exercise market power and assuring that the market remains competitive.<sup>31</sup>

Further, MISO's tariff requires that the IMM not only monitor and mitigate, but also report to FERC instances of potential market power abuse. FERC may refer such conduct to its enforcement staff for further investigation and punitive action based either on the IMM's reports or upon complaints received from market participants. In addition, the IMM and MISO's analysts, in concert with stakeholder efforts, continually evaluate MISO's markets to identify opportunities to enhance performance or increase the efficiency of those markets.<sup>32</sup>

MISO's decision to use an IMM also is markedly more consistent with the Texas Legislature's preference as expressed in PURA § 39.1515, which requires that an independent organization's wholesale market monitoring activities be performed by an Independent Market Monitor.<sup>33</sup> PURA Section 39.152, likewise, "authorized the Commission to select an independent market monitor to detect and prevent market manipulation strategies, market rule

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 14.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 9.



violations, and market power abuses in the ERCOT wholesale electric market.”<sup>34</sup> While the Texas Legislature expresses a clear preference for an Independent Market Monitor, as discussed below, no comparable signal is sent as to the particular role the Commission or other state regulators should occupy in the governance structure of a FERC-approved RTO a utility may choose to join.

**Preliminary Order Issue No. 12. If Entergy’s move to the MISO RTO lessens the Commission’s authority over or regulatory oversight of Entergy, what conditions or terms, if any, should be adopted to ensure the public interest is adequately protected?**

The Commission’s role as a retail regulatory is left undisturbed by ETI’s membership in MISO.<sup>35</sup> Retail rate design and the recovery of costs for transmission upgrades and additions still fall within the Commission’s jurisdiction after ETI transfers functional control of its transmission assets to MISO.<sup>36</sup> While MISO develops a recommended planning reserve margin, it will remain the Commission’s decision whether to override the recommendation. To date, no state regulator has chosen to adopt a capacity planning reserve margin different than MISO’s recommendation.<sup>37</sup>

By virtue of the NUS, the regulatory authority the Commission will hold as a member of the E-RSC actually is extended beyond what was originally contemplated. Under the existing provisions of the Entergy tariff describing the E-RSC (Attachment X), that body’s authority (i) to direct Entergy to make a Section 205 filing at FERC with regard to cost allocation and (ii) to add projects to Entergy’s Construction Plan is intended to expire automatically once the Entergy

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<sup>34</sup> *Id.*

<sup>35</sup> MISO Ex. 3 at 22 (Schug Direct).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

operating companies join an RTO.<sup>38</sup> Accordingly, ETI's move to MISO would not lessen the Commission's authority over or regulatory oversight of Entergy under the existing terms of Attachment X. To the contrary, through the ETI proposal adopted in the NUS, the authority of the E-RSC actually is extended past the time ETI integrates into MISO,<sup>39</sup> thus enhancing the Commission's regulatory role as an E-RSC member beyond what is contemplated in the current terms of Attachment X.

The Preliminary Order includes no issue inquiring how the role of state regulators in MISO's Organization of MISO States (the OMS) compares with the role of state regulators in SPP's RSC, yet that issue is included in SPP's testimony opposing the NUS. SPP insists that joining MISO is not in the public interest because the SPP and the MISO governance models are not identical in terms of the role of state regulatory bodies. SPP's model, in fact, is different than the governance structure not just of MISO, but of every other RTO in the country. Each RTO is very much a product of its unique history, yet FERC has approved the governance principles of each of those organizations. Taking SPP's argument to its logical and unacceptable conclusion, the proposal of any utility to join any RTO other than SPP would not be in the public interest because no other RTO follows the SPP governance blue print.<sup>40</sup> That's an unreasonable and unacceptable position. Moreover, in contrast to its expression of a preference for an Independent Market Monitor, the Texas Legislature expresses no preference regarding the role the Commission should have in a FERC-approved RTO governance structure.

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<sup>38</sup> *Order Accepting Revised Tariff*, 133 FERC ¶ 61,211 P 9 (2010).

<sup>39</sup> ETI Ex. 17 -19 (Hurstell Supplemental Direct).

<sup>40</sup> *See* Tr. at 44-45 (Schnitzer Rebuttal) (Aug. 24, 2012) (opposing any suggestion that one particular form of governance proposal is a "litmus test" for meeting the public interest standard).

MISO's structure allows the Commission to participate directly and substantively in the MISO governance process.<sup>41</sup> Moreover, the OMS has recently proposed to enhance its governance structure with substantive, FERC-accepted, transmission planning and Section 205 transmission cost-allocation filing rights.<sup>42</sup> The OMS recently overwhelmingly approved, without exception, a proposal regarding transmission planning. The OMS transmission planning proposal, which has the support of the MISO Transmission Owners and MISO, codifies and strengthens up-front regulator involvement in the transmission planning process. In addition, MISO and a majority of its Transmission Owners have agreed to a proposal to provide enhanced Section 205 filing rights for the OMS.<sup>43</sup>

MISO's commitment to support an enhanced role for state regulators is embodied in the NUS.<sup>44</sup> If FERC does not approve MISO-proposed enhancements consistent with those provisions incorporated in the NUS, the Commission may revisit its approval of ETI's application.<sup>45</sup>

**CONCLUSION:  
ADDED BENEFITS ASSOCIATED WITH  
A RESOLUTION BASED ON THE NUS**

Only one docket participant opposes ETI's application. The significant alignment in support of ETI's application speaks volumes for the quality and acceptability of the settlement

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<sup>41</sup> MISO Ex. 3 at 16-19 (Schug Direct) and RWS-2.

<sup>42</sup> See MISO's Request for Administrative or Judicial Notice (attaching MISO's Motion for Finding of Compliance with Conditions and Approval of Application, Motion for Clarification, or in the Alternative for Rehearing, Arkansas PSC Docket No. 10-011-U, filed Aug. 31, 2012).

<sup>43</sup> *Id.*

<sup>44</sup> ETI Ex. 17 at 19-22 (Hurstall Supplemental Direct).

<sup>45</sup> *Id.* at 22.

terms. In the end, although comparisons between MISO and SPP have been made, only one application for transfer of control is pending approval and that application seeks approval of a transfer of control of ETI's transmission facilities to MISO. ETI has made its election and its integration into MISO is decidedly in the public interest; the NUS is in the public interest because it supports approval of an application the grant of which will deliver substantial and compelling benefits and will have no detrimental impact on the reliability, availability or cost of service.<sup>46</sup>

The Commission's approval of ETI's application based on the NUS delivers yet additional benefits. Significantly, the resolution of ETI's Application by a settlement in which ETI and other signatories agree to certain conditions of approval fully answers any concern that a Section 39.915 applicant might challenge a conditional order of approval as lacking the requisite finality. Additional benefits also are realized to the extent conditions agreed to in the NUS are beyond those the Commission may believe it would be authorized to impose absent consent.<sup>47</sup>

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<sup>46</sup> See PURA § 39.915 (b) ("[i]n making its [public interest] determination, the commission shall consider whether the transaction will adversely affect the reliability of service, availability of service, or cost of service of the electric utility.")

<sup>47</sup> See *Appalachian Power Co. v P.S.C. of West Virginia*, 812 F.2d 898 (4th Cir. 1987) (finding that the authority asserted by the West Virginia PSC was violative of the supremacy clause and was preempted by the Federal Power Act).

Respectfully submitted,



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**ATTORNEYS FOR MISO**

**CERTIFICATE OF SERVICE**

I certify that a copies of the foregoing Initial Brief have been sent by facsimile, overnight delivery, or U.S. Mail to all parties of record in this proceeding on this the 31<sup>st</sup> day of August, 2012.

