

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

**Credit Reforms in Organized )  
Wholesale Electric Markets )**

**Docket No. AD20-6-000**

**COMMENTS OF THE ELECTRIC POWER SUPPLY ASSOCIATION**

The Electric Power Supply Association (“EPSA”)<sup>1</sup> respectfully submits these comments in response to the *Request for Technical Conference and Petition for Rulemaking to Update Credit and Risk Management Rules and Procedures in Organized Markets* in the above-referenced docket filed on December 16, 2019, by the Energy Trading Institute (“ETI”).<sup>2</sup> Specifically, ETI requests that the Federal Energy Regulatory Commission (“FERC” or Commission”) hold a technical conference and conduct a rulemaking to update the requirements adopted in Order No. 741<sup>3</sup> and Section 35.47 of the Commission’s regulations<sup>4</sup> addressing credit and risk management in the markets operated by the Independent System Operators and Regional Transmission Organizations (the “ISOs/RTOs”). EPSA supports the ETI Request to commence a broader dialogue on credit and risk management issues to allow for input

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<sup>1</sup> EPSA is the national trade association representing competitive power suppliers in the U.S. EPSA members provide reliable and competitively priced electricity from environmentally responsible facilities using a diverse mix of fuels and technologies. EPSA seeks to bring the benefits of competition to all power customers. This pleading represents the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

<sup>2</sup> Energy Trading Institute Request for Technical Conference and Petition for Rulemaking to Update Credit and Risk Management Rules and Procedures in the Organized Markets, Docket No. AD20-6-000 (filed December 16, 2019) (“ETI Request”).

<sup>3</sup> *Credit Reforms in Organized Wholesale Electric Markets*, Order No. 741, 133 FERC ¶ 61,060 (2010) (Order No. 741), order on reh’g, Order No. 741-A, 134 FERC ¶ 61,126 (2011), reh’g denied, Order No. 741-B, 135 FERC ¶ 61,242 (2011).

<sup>4</sup> 18 CFR 35.47 (2019).

from an array of interested parties and to share best practices across the ISOs/RTOs on these critical issues.

## **I. COMMENTS**

The ETI Request points to the recent GreenHat default in the PJM Financial Transmission Rights (“FTR”) market and evolution of the ISO/RTO markets over the last decade since issuance of Order No. 741 as a basis for undertaking this dialogue between the Commission and industry to ensure that credit and risk management practices and procedures in the ISOs/RTOs are robust, do not create barriers to entry or compliance burdens on market participants, and to ensure the organized markets are secure in order to meet the Commission’s goals of open access, competition and transparency. The ETI Request acknowledges the various ISO/RTO filings that have been submitted or initiatives that are underway at several of the ISOs/RTOs related to their credit policies.

The ETI Request focuses on three areas for improvement and provides a list of questions that could be addressed at a technical conference:<sup>5</sup> (1) credit risk management; (2) counterparty risk management; and, (3) ISO/RTO internal risk management infrastructure and expertise. Further, ETI asks whether Section 35.47 should be better enforced or further amended to promote just and reasonable credit and risk practices in the ISOs/RTOs; for example, ETI states that Section 35.47(c) eliminated unsecured credit for FTRs and equivalent products, yet several ISOs/RTOs currently allow market participants to hold positions without posting any collateral for

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<sup>5</sup> ETI Request at Appendix A.

these positions – a practice which ETI asserts is in conflict with this FERC regulation and therefore should be stopped.

On January 20, 2020, the ISO/RTO Council (“IRC”) filed a response to the ETI Request stating it “supports efforts to ensure effective credit policies are in place in organized electricity markets, but does not support the relief ETI is seeking.” The IRC urged the Commission to allow ISOs/RTOs “to implement credit practices that meet their respective needs, for their respective markets” and outlined action that is underway across the regions. The IRC says the ISOs/RTOs should have time to gain experience with any changes to rules in their respective markets before the Commission facilitates a dialogue of best practices or takes further steps to enhance credit policies and practices. ETI answered the IRC in a motion filed February 10, 2020, and among other things asserts that these current efforts underway at the ISOs/RTOs do not go far enough or are not exploring the necessary corrective measures to address market participant exposure in today’s market dynamics.

EPSA agrees with the ETI request to commence a broader dialogue now on current credit and risk management practices in ISO/RTO markets. EPSA is concerned the request by the IRC to delay commencement of any such *discussion* until pending stakeholder processes or ISO/RTO filings with credit or risk management changes have been submitted, approved, and implemented across their respective markets is too late to incorporate recommendations or improve proposed revisions. While EPSA appreciates the IRC’s interest in allowing for regional differences and each ISO/RTO process to play out, it should be noted that Order No. 741 was predicated on the need for uniformity concerning credit among the ISOs/RTOs. Order No. 741 stated:

Because the activity of market participants is not confined to any one region/market and because the credit rules differ, a default in one market could weaken that participant and have ripple effects in another market. In this way, the credit practices in all ISOs and RTOs may be only as strong as the weakest credit practice.<sup>6</sup>

Importantly, EPSA supports ETI's request that a dialogue over these issues take place, not that the Commission make broad policy calls at this stage. However, these issues do need to be aired expeditiously to allow for consideration and action where necessary.

EPSA has previously commented that credit policies should be sufficiently uniform to ensure compliance and clarity for entities that operate across multiple markets. EPSA has urged the Commission to require harmonization of its credit and risk management policies and regulations to the extent possible for the health of long-term investment in the ISO/RTO markets, which requires regulatory certainty – EPSA renews that request here.<sup>7</sup> Further, and importantly, it is market participants who bear the brunt of any costs of default in ISO/RTO markets. EPSA has frequently supported or, in some instances, been a lead voice in urging FERC to undertake a review of its policies and regulations as it is critical for the Commission to consider whether regulatory reforms or updates are necessary from time to time across the scope of its statutory authority as market conditions evolve, the resource mix changes, or other possible industry or non-

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<sup>6</sup> Order No. 741 at P 3.

<sup>7</sup> See e.g., Limited Protest and Request for Clarification of the Electric Power Supply Association, California Independent System Operator Inc., et al., Docket Nos. ER11-3973-000, et al. (filed July 25, 2011) (“EPSA Limited Protest on ISO/RTO Order 741 Compliance Tariff Filings”); Post-Technical Conference Comments of the Electric Power Supply Association, *Credit Reforms in Organized Wholesale Electric Markets*, Docket No. RM10-13-000 (filed June 8, 2010); Comments of the Electric Power Supply Association, *Credit Reforms in Organized Wholesale Electric Markets*, Docket No. RM10-13-000 (filed March 29, 2010) (“EPSA Comments on Credit Reform NOPR”); Post-Technical Conference Comments of the Electric Power Supply Association, *Credit and Capital Issues Affecting the Electric Power Industry*, Docket No. AD09-2-000 (filed January 30, 2009).

industry events develop that may potentially impact the wholesale competitive electric markets.<sup>8</sup>

In its request, ETI provides suggestions on issues that could be explored or discussed at a technical conference. Additional issues for consideration include:

- Discussion of the difference between ISO/RTO spot power markets and the commodity markets regulated by the Commodity Futures Trading Commission (“CFTC”) and exchanges.
- Concerns that baseline requirements not be overly prescriptive or impose unreasonable compliance burdens.
- Acknowledgement that different market constructs across the ISO/RTO markets have varying rules and exposures, which should inform policy across those markets.
- Consideration that the market participant pool across ISOs/RTOs is not uniform nor are all market participants as sophisticated as firms transacting on exchanges, and yet they all need to have reasonable access to energy, ancillary services, and capacity markets to serve customers.
- There should be a focus on the markets, such as long-term FTR markets, which while they provide a valuable function also pose the most risk.
- Any additional costs introduced by proposals should be defined.

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<sup>8</sup> See e.g., Energy Associations Whitepaper (EPSA, Edison Electric Institute, American Gas Association, Interstate Natural Gas Association of America, and the Natural Gas Supply Association), *“Enhancing the Transparency, Efficiency, and Fairness of the FERC’s Enforcement Program,”* prepared by Akin Gump Strauss Hauer & Feld LLP, (filed June 19, 2019) (“More than thirteen years have passed since Congress enacted the Energy Policy Act of 2005, and more than a decade since the [FERC] issued key enforcement policy statements. Now, with the benefit of time and experience, the Commission should revisit its enforcement policies and practices to determine whether there are improvements that can help achieve greater transparency, efficiency and fairness without undercutting the mission of fostering compliance.”); also, see, Post-Technical Workshop Comments of the Electric Power Supply Association, at p 2, *Price Formation in Energy and Ancillary Services Markets Operated by ISOs/RTOs*, Docket No. AD14-14-000 (filed March 6, 2015) (“[T]here is now an overwhelmingly persuasive record to justify EPSA’s request that soon this year the Commission direct the ISOs and RTOs within its jurisdiction to promptly address the price formation issues and improvements that have been identified. EPSA is far from alone in its strongly held views in this regard...”); EPSA Presentation, at p 2, *“Organized Wholesale Markets Require Meaningful Reforms in Light of Serious Challenges,”* (January 2014) (“Given structural changes, not merely cyclical fluctuations, FERC should focus on long term reliability and therefore should pursue timely RTO market reforms in (1) energy and ancillary services markets and (2) capacity markets...”), available at [www.epsa.org](http://www.epsa.org).

- At what level could additional costs to participate in the core markets become a barrier to entry or reduce liquidity in the market.
- Prior to any technical conference, the ISOs/RTOs should publish a summary of defaults in recent history broken down by market to inform and focus the discussion overall.

Accordingly, EPSA believes that given the experience over the past decade with Order No. 741 and changes in the industry since that time, it would be beneficial to commence a dialogue in this proceeding to gather interested stakeholders, including market participants, ISOs/RTOs, and other experts to discuss tools and best practices that may be available to consider whether necessary credit and risk management refinements are needed to protect the ISO/RTO markets and to facilitate electric market open access, competition and transparency.

## II. CONCLUSION

**WHEREFORE**, EPSA respectfully requests that the Commission consider these comments in acting on the ETI Request. EPSA supports the ETI Request to commence a broader dialogue on credit and risk management issues to allow for feedback from an array of interested parties and to share best practices across the ISOs/RTOs on these critical issues, and urges the Commission to move forward expeditiously on this matter.

Respectfully submitted,

***/s/Nancy Bagot***

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Dated: March 12, 2020

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the comments via email upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., March 12, 2020.

***/n/Nancy Bagot***

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Nancy Bagot, Senior Vice President