UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

RTO/ISO Credit Principles and Practices	**)** **)** **)**	**Docket No. AD21-6-000**
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")[1] respectfully submits these comments in response to the Notice Inviting Post-Technical Conference Comments ("Notice")[2] issued on April 21, 2021, by the Federal Energy Regulatory Commission ("FERC" or "Commission") in the above-referenced dockets. The Notice invites comments on the topics discussed at the staff-led technical conference the Commission convened on February 25 and 26, 2021, to discuss principles and best practices for credit risk management by independent system operators ("ISOs") and regional transmission operators ("RTOs")(collectively, "ISOs/RTOs"), including the questions listed in the Supplemental Notice of Technical Conference issued February 24, 2021,[3] and on the questions listed in the Notice.

[1] 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.

[2] Notice Inviting Post-Technical Conference Comments, *RTO/ISO Credit Principles and Practices; and, Credit Reforms in Organized Wholesale Electric Markets,* Docket Nos. AD21-6-000 and AD20-6-000 (April 21, 2021) ("Notice" or "Notice Inviting Comments").

[3] Supplemental Notice of Technical Conference, *RTO/ISO Credit Principles and Practices; and, Credit Reforms in Organized Wholesale Electric Markets,* Docket Nos. AD21-6-000 and AD20-6-000 (February 24, 2021) ("Supplemental Notice").

I. INTRODUCTION

EPSA appreciates the Commission's efforts in establishing this proceeding and holding this staff-led technical conference, which provided an in-depth exploration of current credit and risk management practices across the ISOs/RTOs and raised important issues for further consideration as discussed below related to, among other things, ISO/RTO coordination and information sharing, Know Your Customer Protocols, and collateral requirements, including whether credit models account for extreme stress events, such as extreme weather or impacts of other extreme system or pricing events. The conference included an ISO/RTO panel comparing risk management structure, credit enhancements and lessons learned, and other panels included an array of market participants and credit experts, including from the CFTC, Federal Reserve, several exchanges, and financial traders, among others.

The technical conference follows the Energy Trading Institute's ("ETI") request that the Commission hold such a conference.[4] The ETI Request pointed to the 2018 GreenHat Energy default in the PJM Financial Transmission Rights ("FTR") market[5] 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,

[4] 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").

[5] *See* GreenHat Energy, LLC, et al., *Order To Show Cause And Notice Of Proposed Penalty*, Docket No. IN18-9-000, (issued May 20, 2021) *available here* https://www.ferc.gov/media/e-7-in18-9-000-052021. (The Commission's show cause order directs GreenHat Energy LLC and its owners to explain why they should not pay a total of $229 million in civil penalties and disgorge nearly $13.1 million in profits for alleged electric market manipulation of the PJM FTR market.)

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 acknowledged 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.

EPSA supported the ETI Request to commence a broader dialogue on credit and risk management issues to allow for input from an array of interested parties and to share best practices across the ISOs/RTOs on these critical issues.[6]

II. COMMENTS

It should be highlighted that many technical conference participants referenced the efforts by the ISOs/RTOs to address credit policy and risk management issues, as well as FTR and other market rules, in a range of tariff filings in recent years in response to changing market and other trends. EPSA commends the ISOs/RTOs and stakeholders for their respective efforts – many of which are ongoing – to address the evolution of these critical issues underpinning the markets.

Of further note, the technical conference was scheduled on the heels of the extreme weather event impacting ERCOT and other regions of the country, so the impacts these types of extreme events have on credit and risk in wholesale electric markets was referenced throughout the panel discussions. In general, the ISO/RTO panelists seemed to agree that normal operations are covered within respective tariff and credit structures, while extreme events have to be evaluated in and of themselves. Therefore, the ISO/RTO representatives pointed to the importance of flexibility and

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[6] Comments of the Electric Power Supply Association, *Credit Reforms in Organized Wholesale Electric Markets*, Docket No. AD20-6-000 (filed March 12, 2020), *available here* https://epsa.org/wp-content/uploads/2020/05/FINAL-EPSA-Comments-on-ETI-Request_3.12.20.pdf.

ability to exercise discretion regarding creditworthiness requirements in responding to these extreme events to mitigate risk, including the ability to seek limited waivers from the Commission. EPSA agrees this ISO/RTO flexibility and ability to exercise discretion is important in response to unique weather, market, or operational events particularly as these unpredicted and unpredictable events may occur more frequently.[7] This type of flexibility and exercise of discretion is consistent with the Commission's prior findings in Order 741 with respect to the requirement that ISOs/RTOs establish a Material Adverse Change clause within their respective tariffs.[8] Similar to current requirements, the ISO/RTO could provide a written explanation explaining invocation of the Material Adverse Change clause to the market participant in response to an extreme event. As the Commission emphasized in directing the ISOs/RTOs to develop their own Material Adverse Change clauses, "[e]xperience has demonstrated that unforeseen circumstances can arise, which will require action to protect the markets from ongoing disruption."[9]

However, in light of expectations that "unusual events" may occur more often in the years ahead, EPSA also supports the recommendations and discussion occurring during the conference that ISOs/RTOs should consider more dynamic forward modeling or stress testing to better assess risk outside of normal events or based on historic

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[7] *See generally* FERC Technical Conference on Climate Change, Extreme Weather, and Electric System Reliability, Docket No. AD21-13-000 (held June 1-2, 2021), https://www.ferc.gov/news-events/events/technical-conference-discuss-climate-change-extreme-weather-electric-system.

[8] Order No. 741 at P 147, 133 FERC ¶ 61,060, Docket No. RM10-13-000 (issued October 21, 2010). ("We adopt the NOPR proposal to require ISOs and RTOs to specify in their tariffs the conditions under which they will request additional collateral due to a material adverse change. However, we are persuaded by commenters that this list should not be exhaustive and the tariff provisions should allow the ISOs and RTOs to use their discretion to request additional collateral in response to unusual or unforeseen circumstances. We are also persuaded that a market participant should receive a written explanation explaining the invocation of the material adverse change clause.")

[9] *Id*. at P 150.

data.[10] While EPSA recognizes there are challenges in assessing these types of outlier events, the Commission should consider this further transparency and risk assessment as a measure to enhance system reliability, as well as protect against significant market uncertainty and potential catastrophic personal loss and impacts at the consumer/customer level.

A. ISO/RTO Coordination And Information Sharing

Another critical topic debated was the inability of ISOs/RTOs to share credit-related information on individual market participants due to current confidentiality prohibitions in tariffs, even if the market participant may pose a credit risk across multiple markets. PJM's Chief Risk Officer Nigeria Bloczynski noted this was an issue that would require guidance from the Commission and action across the ISOs/RTOs. She further noted that PJM "does recognize the need to both ensure strict confidentiality and balance the need to protect the Market Participant's market-sensitive information with our obligation to address any increased credit risk occurring from a Market Participant's position in multiple RTO/ISO markets."[11] Discussion among the ISO/RTO panelists indicated they are open to this additional coordination, although details around how to share and aggregate the data across the ISO/RTO credit departments would need to be considered. Melissa Brown, MISO's Senior Vice President and Chief Financial Officer, stated that if information sharing does occur, "it would make sense for there to be a single, central depository of that information, with limited access and

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[10] *See e.g.,* W. Scott Miller, III, Principal, Whitehall Bay Energy Services, LLC, Comments on Credit Reforms in ISOs and RTO Markets at 3-4, Panel 1, Docket No. AD21-6-000, et al. (February 25, 2021).

[11] Statement of Nigeria Bloczynski, Chief Risk Officer, PJM Interconnection at 5, LLC, Panel 2, Docket No. AD21-6-000, et al. (February 25, 2021).

distribution."[12] She suggested that FERC could be one candidate for this sort of information sharing, similar to Order 760 data.[13] ISO/RTO panel representatives, as well as other conference panelists, highlighted that the protection of individuals' sensitive information would also need to be addressed.

EPSA supports the concept of increased credit-related information sharing across the ISOs/RTOs credit departments, and believes these measures would provide additional protection to market participants, in particular from bad actors, who may be operating (or attempting to operate) across the regions. EPSA urges the Commission to provide further guidance and support to ISOs/RTOs to facilitate development of credit-related information sharing protocols. EPSA believes this is an area that requires further consideration and discussion through a targeted technical conference on this topic prior to or following issuance of a rulemaking.

B. Know Your Customer (KYC) Protocols

There was also discussion across several panels regarding the concept of utilizing a third-party (or even housing this function within one ISO/RTO) to manage the ongoing Know Your Customer ("KYC") protocols and review. Additionally, it was suggested that standardized forms be developed for the initial market participant application and annual recertification for market participants that must be submitted to

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12 Prepared Remarks of Melissa Brown, Senior Vice President and Chief Financial Officer, on behalf of the Midcontinent ISO at 4, Panel 2, Docket No. AD21-6-000 (February 25, 2021).

13 *Id.*; also see, Order No. 760, Enhancement of Electricity Market Surveillance and Analysis through Ongoing Electronic Delivery of Data from RTOs and ISOs, Docket No. RM11-17-000 (issued April 19, 2012).

each ISO/RTO. Specifically, Noha Sidhom, CEO, Viribus Fund LP and Executive Director, ETI, recommended:

> One way to streamline this process is to have one vendor conduct KYC for all the RTOs and ISOs. An RFP could be issued by the ISO/RTO Council to address this critical need. The entity selected through that RFP process could conduct continuous KYC, manage changes to risk policies and intake annual officer certification and information disclosure forms. This could significantly streamline the process for the ISOs/RTOs and market participants. If we had to choose a single, low-hanging-fruit item for improvement, the mere simplifying of the annual certification and information disclosure forms to create a single set of forms that apply to all of the ISO/RTO markets would be a welcome cost-saving change for market participants that wouldn't sacrifice any KYC capabilities or needs.[14]

EPSA has advocated that consistency in credit rules across the ISOs is important. Especially, the KYC protocols that include some degree of reporting will be harder to manage for market participants if there are differences across the ISOs/RTOs. Given that, EPSA supports both the concept of a centralized KYC function for the ISOs/RTOs and standardizing the KYC forms utilized across the regions, including the initial application and annual recertification forms. Individual EPSA members are participating across most, if not all, the organized markets and developing this more streamlined process would provide resource, compliance and cost efficiencies for market participants. This is a concept that could be a significant measure to guard against defaults, and is a means by which ISOs/RTOs could facilitate information sharing and coordination.

C. ISO/RTO Credit Principles For Margin And Collateral

Vistra's Sam Siegel, Vice President, Regulatory Compliance, Trading and Generation, and Associate General Counsel, participated on behalf of EPSA on Panel 6

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[14] Opening Statement of Noha Sidhom, CEO, Viribus Energy Fund, On Behalf of the Energy Trading Institute at 2, Panel 5, Docket No. AD21-6-000, et al. (February 26, 2021).

addressing margin and collateral requirements for FTR and non-FTR positions. During his opening statement and panel discussion, he outlined a set of principles competitive power suppliers believe should govern the development and implementation of ISO/RTO credit policy rules. EPSA offers these principles for further consideration below:

(1) The goals of margin and collateral are to optimize the amount of capital in reserve, prevent a large cascading event, and permit robust liquidity and activity. The types of margining are secondary to ongoing optimization such that the market is protected, and participants are not putting costly capital on sidelines unnecessarily.

(2) Credit policy should be agnostic of broader policy considerations but reflective of the underlying risk. For example, generators with physical assets located in ISOs at high capital values should be treated differently than those whose risk profile is greater. That said, the risk of default should drive ISO/RTO credit policy, and this risk of default should be inclusive of a multitude of factors.

(3) ISO/RTO credit policies have a good foundation, and while improvements may make sense, complete revision or going to an exchange model are unnecessary, expensive, and would have little impact on risk. While moving to an exchange is not needed, ISOs/RTOs should leverage the SEC and CFTC regulated markets extensive experience in managing significant and complex credit risk. Principles should be assessed from those markets and applied to power markets while recognizing the fundamental nuances of a power and congestion market.

(4) Mark to Auction methodology is reasonable but may be supplemented by material changes that would have a significant unexpected swing in value. For instance, while it’s possible to Mark-to-Model between auctions, we think that such margining should be done sparingly and only for material model changes, as it would create additional credit costs for what seems like very little benefit. This would ensure there is no incentive for counterparties who see a significant loss from shielding their credit and creating a bigger default. Increased frequency of auctions would mean better price discovery and more liquidity, but that needs to be tailored to demand within each ISO/RTO.

(5) Collateral requirements should reflect fundamental faith in each type of credit. ISOs/RTOs should have confidence in the types of collateral (e.g., cash, Letter of Credit, surety bonds, etc.), but ISOs/RTOs should be flexible enough to allow increasing amounts of a type of collateral based on fair and open standards and as experience, and hence confidence, is gained with new collateral types, such

as surety bonds. Use of haircuts or pilot/experimental use of new collateral types, versus complete prohibitions is consistent with exchange policy and makes sense.

(6) ISOs/RTOS should consider methodologies to periodically stress test liquidity needs in order to ensure that adequate resources are in place. These stress tests should be based on reasonably plausible scenarios and not all encompassing events. Stress testing could include both extreme weather events (e.g., polar vortex) and reasonable low probability, high impact disruptions in the financial system (e.g., 2008/09 financial crisis).

III. CONCLUSION

WHEREFORE, EPSA respectfully requests that the Commission consider these comments in determining any next steps in the proceeding.

Respectfully submitted,

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Dated: June 7, 2021