

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

**Credit-Related Information Sharing) Docket No. RM22-13-000
in Organized Wholesale Electric)
Markets)**

COMMENTS OF THE ELECTRIC POWER SUPPLY ASSOCIATION

The Electric Power Supply Association (“EPSA”)¹ respectfully submits these comments in response to the Notice of Proposed Rulemaking (“NOPR”)² issued on July 28, 2022, by the Federal Energy Regulatory Commission (“FERC” or “Commission”) in the above-referenced docket. To ensure that ISOs/RTOs’ credit policies remain just and reasonable, the Commission proposes, pursuant to section 206 of the Federal Power Act (“FPA”), to revise its regulations to require each independent system operator (“ISO”) and regional transmission operator (“RTO”)(collectively, “ISO/RTO”) to adopt tariff provisions that permit the sharing of its market participants’ credit-related information with other ISOs/RTOs to enhance credit risk assessment efforts. The NOPR states that the ability to share such information could also enable ISOs/RTOs to respond to credit events more quickly and effectively, minimizing the overall credit-related risks of unexpected defaults by market participants in ISOs/RTOs.

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 of Proposed Rulemaking, *Credit-Related Information Sharing in Organized Wholesale Electric Markets*, Docket No. RM22-13-000 (July 28, 2022) (“NOPR”).

EPSA urges the Commission to provide certain clarifications and incorporate the recommendations discussed herein to ensure a final rule on credit-related information sharing is narrowly tailored and clear for both ISOs/RTOs and market participants.

I. OVERVIEW

EPSA appreciates the Commission establishing this proceeding and has been very engaged on the critical issue of ISO/RTO credit risk mitigation and best practices, having supported reasonable credit rules to limit the potential for a mutualized default. The NOPR follows the Commission staff-led technical conference held on February 25 and 26, 2021, regarding ISO/RTO credit principles and practices (“ISO/RTO Credit Risk Conference”).³ The technical conference provided an in-depth exploration of current credit and risk management practices across the ISOs/RTOs and raised important issues for further consideration including, among other things, ISO/RTO coordination and information sharing. EPSA filed post-conference comments addressing a range of issues discussed at the conference and generally supporting the *concept* of increased credit-related information sharing across the ISOs/RTOs’ credit departments to provide additional protection to market participants, in particular from bad actors, who may be operating (or attempting to operate) across the regions.⁴ EPSA requested that the Commission provide further guidance to ISOs/RTOs to facilitate development of credit-related information sharing protocols, but emphasized that further consideration and

³ See 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”). Vistra’s Sam Siegel, Vice President, Regulatory Compliance, Trading and Generation, and Associate General Counsel, participated on behalf of EPSA on Panel 6, addressing margin and collateral requirements for FTR and non-FTR positions.

⁴ Comments of the Electric Power Supply Association, *RTO/ISO Credit Principles and Practices*, Docket Nos. AD21-6-000 and AD20-6-000 (filed June 7, 2021), available here https://epsa.org/wp-content/uploads/2021/06/FINAL-EPSA-Post-RTO-Credit-Conf-Comments_06.07.21.pdf (“EPSA Post-Conference Comments”).

discussion should occur through a targeted technical conference on this topic prior to or following issuance of a rulemaking. In order to ensure there is clarity regarding the application, limitations, and purposes of a final rule, EPSA believes a targeted technical conference or workshop is still a valuable next step.

The Commission staff-led technical conference followed the Energy Trading Institute's ("ETI") request that the Commission hold such a conference.⁵ The ETI Request pointed to the 2018 GreenHat Energy default in the PJM Financial Transmission Rights ("FTR") market⁶ 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. 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.⁷

⁵ 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").

⁶ 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 directed 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.); also see GreenHat Energy, LLC, Luan Troxel in her capacity as Executor for the Estate of Andrew Kittell, John Bartholomew, and Kevin Ziegenhorn, Docket No. IN18-9-000, *Order Approving Stipulation and Consent Agreement* (GreenHat and Kittell Estate), [180 FERC ¶ 61,109](#) (issued August 19, 2022), *Order Approving Stipulation and Consent Agreement* (Bartholomew & Ziegenhorn), [180 FERC ¶ 61,108](#) (issued August 19, 2022).

⁷ 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-EP-SA-Comments-on-ETI-Request_3.12.20.pdf.

II. COMMENTS

As an initial matter, EPSA commends the ISOs/RTOs and stakeholders for their respective efforts – many of which are ongoing – 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.⁸ Many of EPSA’s members are operating across multiple markets, so consistency in credit rules across ISOs/RTOs is important. The best way to protect markets from the risk of default is to strengthen each ISOs/RTOs’ rules, and most concerns about market participant qualification to participate can be addressed through establishing appropriate credit requirements that reflect the risk exposure of each market participant’s position, such as collateral and margin requirements and establishing uniform Know Your Customer (“KYC”) protocols.

As discussed at the ISO/RTO Credit Risk Conference, ISO/RTO tariffs generally contain provisions that treat a market participant’s credit-related information as confidential information and, in most instances, prohibit an ISO/RTO from sharing that credit-related information with other ISOs/RTOs without the consent of the market participant.⁹ The NOPR is based on the ISO/RTO Council’s (“IRC”) post-conference comments that argue the primary barriers preventing credit-related information sharing among ISOs/RTOs are the absence of a specific Commission policy authorizing inter-RTO credit-related information sharing and the lack of uniformity of language among the

⁸ As another post-conference response and concurrent with issuance of the instant NOPR, the Commission issued an Order to Show Cause for California ISO, ISO New England, New York ISO, and Southwest Power Pool with respect to collateral requirements for FTR market participants, Docket Nos. EL22-62-000, et al. (issued July 28, 2022).

⁹ NOPR at P 19.

ISO/RTO tariffs on information sharing. The IRC thus offered a specific proposal and uniform language for adoption in ISO/RTO tariffs to facilitate credit information sharing.¹⁰

While there may be instances when sharing credit information is appropriate, those instances should be specifically and narrowly defined, and should not be conducted on a routine basis.¹¹ EPSA urges consideration of the following, as the nature of how information will be shared and what it could be used for is critical to specify in any final rule.

First, with respect to disclosure of positions, risk reports, and credit exposures,¹² a market participant should be informed immediately or concurrent with the disclosure of its information to another ISO/RTO. A market participant should be informed with respect to the data provided, and there should be a consistent format for release of the credit data as there is concern regarding how information could be interpreted and the potential for misapplication of data from one ISO to another. For example, when volatility is up in a particular ISO, it may show large exposures to a company's retail group but a credit in the affiliated generator account. If another ISO/RTO were to receive such information and does not understand the information or the context of the information received, they could react erroneously and create an unintentional credit "crunch." Particularly in times of stress, such as Winter Storm Uri and ERCOT, other ISOs could have reacted by increasing credit requirements on market participants. This

¹⁰ Comments of the ISO/RTO Council, *RTO/ISO Credit Principles and Practices*, Docket Nos. AD21-6-000 and AD20-6-000 (filed June 7, 2021) ("IRC post-conference comments").

¹¹ NOPR at P 33. (The Commission asks whether requirements should be adopted that ISOs/RTOs share credit-related information with other ISOs/RTOs on a routine basis, e.g., monthly sharing of a list of market participants, in certain circumstances, or upon the request of another ISO/RTO.)

¹² NOPR at P 22.

would not have been necessary and could place additional burden on a market participant while it is dealing with an emergency.

Second, and given the example above, EPISA also has concerns with the proposed sharing of a market participant's affiliate(s) information.¹³ Specifically, the affiliate provisions as outlined in the NOPR could be inappropriate as they apply to certain classes of affiliates. Competitive power suppliers may be in ownership arrangements with entities that are fully distinct and stand-alone companies with separate debt and equity structures. This relationship does not impute financial or credit issues between "affiliates" and this NOPR should not erroneously impute a misleading financial relationship between such entities. Rather, there is a class of internal business units which are affiliated based on their corporate parent and shared debt and equity structures, and thus are appropriately included in the information sharing practices outlined in the NOPR.

Third, with respect to possible information sharing related to disclosure of defaults, including failure to pay invoices in a timely manner and "unresolved credit/collateral issues,"¹⁴ EPISA is concerned that "unresolved/credit issues" is too vague a term. If there is a legitimate billing dispute with an ISO/RTO and that information is shared, EPISA would have significant concerns if the receiving ISO raised collateral requirements because of a disputed invoice with another ISO. Specifically, if any data disclosed from one ISO to another triggers action against a market participant, a market participant should have a minimum number of days to resolve the dispute before action is taken (i.e., billing dispute).

¹³ *Id.*

¹⁴ *Id.*

Fourth, regarding proposed disclosure of information indicating “an increased risk of default, such as a material adverse change or change in creditworthiness,”¹⁵ this is also too vague. There is a potential risk of one ISO determining that a market participant’s creditworthiness has changed, which then triggers other ISOs to require additional collateral. The Commission should remove anything subjective, such as “change in creditworthiness,” unless there is further specificity provided.

Fifth, in terms of additional restrictions that should be placed on ISOs/RTOs in their management of use of credit-related information obtained through sharing, such information should not be subject to Freedom of Information Act (“FOIA”) requests sent to the receiving ISO/RTO. Often, the States in particular, as well as other entities, will submit requests for information to an ISO/RTO and such an information release requires a non-disclosure agreement (“NDA”) to address utilization of and prohibit release of the confidential information. There is no discussion of such provisions in the NOPR. Accordingly, the Commission should confirm that credit-related information on a market participant(s) from another ISO/RTO will not be included as part of a FOIA information disclosure.

Finally, with respect to the question of credit information sharing with non-jurisdictional market operators (such as ERCOT and the Canadian ISOs), EPSCA believes this poses concerns given the lack of jurisdictional oversight and should not be allowed.¹⁶ To the extent this is included in a final rule, the Commission should include additional requirements, such as agreement from such entities to be subject to FERC jurisdiction on credit risk matters only, or explicit adaptation of some type of code of

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Id.

¹⁶ NOPR at P 36.

conduct in terms of confidentiality, notification, and information sharing that aligns with the FERC-jurisdictional ISOs/RTOs.

III. CONCLUSION

WHEREFORE, EPSA urges the Commission to provide certain clarifications and incorporate the recommendations discussed in these comments to ensure a final rule on credit-related information sharing is narrowly tailored, clear, and consistent to provide the intended benefits for both ISOs/RTOs and market participants.

Respectfully submitted,

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