

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

Credit-Related Information Sharing in)
Organized Wholesale Electric Markets)

Docket No. RM22-13-000

INITIAL COMMENTS OF THE ISO/RTO COUNCIL

The ISO/RTO Council (“IRC”)¹ respectfully submits these initial comments regarding the Notice of Proposed Rulemaking (“NOPR”) issued in the above-captioned proceeding on July 28, 2022.²

I. INITIAL COMMENTS

In the NOPR, the Commission proposes, pursuant to section 206 of the Federal Power Act,³ to revise § 35.47 of Title 18 of the Code of Federal Regulations to permit RTOs and ISOs to share among themselves credit-related information regarding market participants in organized wholesale electric markets. The revised regulations would require each RTO/ISO to adopt tariff provisions that permit the sharing of its market participants’ credit-related information with other RTOs/ISOs to enhance credit risk assessment efforts.

¹ The IRC comprises the following independent system operators (“ISOs”) and regional transmission organization (“RTOs”): Alberta Electric System Operator (“AESO”); California Independent System Operator (“CAISO”); Electric Reliability Council of Texas, Inc. (“ERCOT”); the Independent Electricity System Operator of Ontario, Inc. (“IESO”); ISO New England Inc. (“ISO-NE”); Midcontinent Independent System Operator, Inc. (“MISO”); New York Independent System Operator, Inc. (“NYISO”); PJM Interconnection, L.L.C. (“PJM”); and Southwest Power Pool, Inc. (“SPP”). AESO and IESO are not subject to the Commission’s jurisdiction and therefore do not join this filing. While ERCOT is not subject to the Commission’s jurisdiction for the purposes of this proceeding, ERCOT joins these comments to express support for the NOPR, which would benefit jurisdictional and non-jurisdictional entities alike.

² *Credit-Related Information Sharing in Organized Wholesale Energy Markets*, Notice of Proposed Rulemaking, 180 FERC ¶ 61,048 (2022) (“NOPR”).

³ 16 U.S.C. 824e.

A. The IRC Supports the Proposed Rule Allowing the Sharing of Credit-Related Information among RTOs/ISOs.

The IRC strongly supports a rule which would permit the RTOs/ISOs to allow the voluntary sharing of credit-related information among themselves. Given that many market participants operate in multiple RTO/ISO markets, the Commission's proposal will enhance RTOs'/ISOs' ability to accurately assess market participants' credit exposure and common risks that could impact a number of the organized wholesale electric markets. In addition, the Commission rule will assist RTOs/ISOs in their efforts to respond to credit events more quickly and effectively, thereby minimizing the overall credit-related risks of unexpected defaults by market participants in organized wholesale electric markets.

As the Commission has noted, market participants and prospective market participants generally do not make the credit-related information that they provide to RTOs/ISOs or other energy market operators publicly available. Therefore, RTOs/ISOs treat market participants' credit-related information as confidential information subject to tariff provisions that limit the use of this information to specific purposes and, more relevant to this docket, limit the ability of RTOs/ISOs to share this information with other RTO/ISOs, even in situations where the market participant operates in and poses a potential risk to multiple markets. This current state of affairs can impede the RTOs/ISOs in their efforts to protect their respective market participants from adverse credit events and mutualized default risk.

In 2021, the Commission convened a technical conference to discuss principles and best practices for credit risk management in organized wholesale electric markets. Testimony during the technical conference by credit risk officers of the RTOs/ISOs,⁴ as well as the post-technical

⁴ See *RTO/ISO Credit Principles and Practices, Technical Conference*, Docket No. AD21-6-000, *et al.*, Tr. 100:24-102:20, 106:1-24 (Feb. 25, 2021) (Bloczynski); *id.* at Tr. 102:25-104:5 (Brown); *id.* at Tr. 104:7-105:9 (Prevratil).

conference comments filed by the IRC,⁵ highlighted how the sharing of credit-related information among the RTOs/ISOs would bolster their efforts to mitigate credit risks across their respective organized wholesale electricity markets. The IRC made several recommendations which appear to be reflected in the proposed rulemaking: (1) the Commission should require RTOs/ISOs to adopt tariff revisions permitting RTOs/ISOs to share credit-related information with other RTOs/ISOs; (2) the Commission should allow RTOs/ISOs discretion to manage and mitigate credit risks, and to allow each RTO/ISO to take any action permitted under its Open Access Transmission Tariff (“OATT”) that the RTO/ISO deems necessary in response to the receipt of credit-related information;⁶ (3) each RTO/ISO that receives credit-related information from another RTO/ISO should be required to protect that information in accordance with the receiving RTO’s/ISO’s existing confidentiality provisions;⁷ and (4) the Commission should state explicitly that RTOs/ISOs need not obtain consent of market participants before sharing credit-related information for the purpose of credit risk management and mitigation.⁸

The IRC appreciates the Commission’s reflection of these recommendations in the proposed rulemaking. The IRC supports the Commission’s proposal to require RTOs/ISOs to include in their tariffs provisions that permit them to share market participants’ credit-related information with other RTOs/ISOs for the purpose of credit risk management and mitigation, and to allow RTOs/ISOs to use this information to the same extent and for the purposes they may use

⁵ *RTO/ISO Credit Principles and Practices*, Comments of the ISO/RTO Council, Docket No. AD21-6-000, *et al.*, at 2, 5-6 (June 7, 2021) (“IRC Post-Technical Conference Comments”).

⁶ *Id.* at 7-8.

⁷ *Id.* at 3.

⁸ *Id.* at 7.

other credit-related information.⁹ Such sharing will enhance existing “know your customer” protocols and risk mitigation efforts, and thus bolster RTOs’/ISOs’ efforts to protect their respective market participants from bearing the cost of other participants’ credit defaults.

B. Sharing of Credit-Related Information among RTOs/ISOs Should be Voluntary, not Compulsory.

In the NOPR, the Commission invited comments as to whether RTOs/ISOs should be required, rather than simply permitted to share credit-related information. The IRC respectfully submits that attempting to define the exact circumstances that could require an RTO/ISO to share credit-related information and making the sharing of credit-related information mandatory would defeat the intended purpose of the rulemaking. The credit departments of the RTOs/ISOs should not be burdened with the task of determining what constitutes “credit-related information” which must be shared, under duress of a potential rule violation based on such determination. Further, the credit departments of the RTOs/ISOs should not be prevented from sharing credit-related information in response to unanticipated events. While the examples of credit-related information cited by the Commission in paragraph 22 of the NOPR are helpful, the list is not exhaustive, and there would be uncertainty as to what information may be required to be shared within the scope of a mandatory sharing rule.

In addition, in any given situation the need to share credit-related information may depend on the unique circumstances presented. The credit risk personnel of the RTOs/ISOs should be afforded the discretion to share credit-related information with other RTOs/ISOs as and when they deem appropriate, rather than be compelled to expend efforts grappling with whether a failure to share certain information will violate a mandatory sharing rule. The focus

⁹ As the NOPR observes, the required tariff provisions for each RTO/ISO would provide notice to market participants that credit-related information could be shared on a confidential basis with other RTOs/ISOs for the purpose of credit risk management and mitigation. *See* NOPR at 13.

and efforts of the RTO/ISO credit risk personnel should be reserved for activities which contribute to the ultimate objective of the proposed rule, which is to identify and manage credit risks and protect market participants from the consequences of credit defaults. A prescriptive rule on credit-information sharing could have a chilling effect on the behavior it is intended to promote. Given that each RTO/ISO has a duty to take reasonable steps to mitigate credit risks in their RTO markets, RTOs/ISOs are already motivated to share credible information without the Commission mandating information sharing and adding a compliance specter to this issue.

C. Including ERCOT, AESO and IESO in the Sharing of Credit-Related Information is Important to Credit Risk Management and Mitigation in the FERC-Jurisdictional Markets.

The IRC submits that the required tariff revisions should also allow for sharing of credit-related information with market operators that are not FERC-jurisdictional. Excluding ERCOT, AESO and IESO from the sharing of information will limit awareness of credit risks that may extend into FERC-jurisdictional markets. For example, during the winter energy crisis in Texas in 2021, the RTOs/ISOs of other regions would have benefited from insight into the credit issues ERCOT was experiencing, given the overlapping participation in ERCOT and FERC-jurisdictional markets. The FERC-jurisdictional RTOs/ISOs of the IRC are prepared to work with ERCOT, AESO and IESO to develop reciprocity arrangements through which similar sharing could occur among the FERC-jurisdictional RTOs/ISOs and counterparts in Texas and Canada. The IRC believes that mutual credit-sharing can be accomplished with these non-jurisdictional entities by employing two tools:

- Including in the Final Rule language that authorizes jurisdictional RTOs to share credit information with these non-jurisdictional entities on a reciprocal basis on

the condition that the information received by the non-jurisdictional entity is kept confidential except as permitted by the entity's tariff or governing document; and

- The IRC jurisdictional members entering into a Memorandum of Understanding with the non-jurisdictional members that would address the mechanics of such information sharing and recognize the right of any member to cease sharing due to concerns about another member's potential or actual disclosure of credit information.

While the IRC acknowledges that the Commission would lack direct enforcement authority over the non-jurisdictional entities for any improper disclosure, this framework should still provide sufficient assurance of confidentiality. If a jurisdictional RTO/ISO (or the Commission) determines that a non-jurisdictional RTO/ISO could share, or has shared, confidential credit information improperly, the jurisdictional entity could unilaterally stop sharing information with the non-jurisdictional entity. Recognizing this risk, non-jurisdictional RTOs/ISOs would have an incentive to avoid improper disclosures of such information (setting aside whatever repercussions those entities might face from their own regulators for such a disclosure). In this way, the reciprocal nature of this arrangement would reasonably ensure non-jurisdictional entities observe the confidentiality of such information.

Accordingly, the IRC therefore renews the proposal made in its post-technical conference comments for the following language that each RTO/ISO could include in its tariff, modified as necessary to incorporate appropriate defined terms for each RTO's/ISO's tariff:

[Transmission Provider] is permitted to share [Market Participant and Applicant] credit information with and receive [Market Participant and Applicant] credit information from other Commission-authorized Regional Transmission Organizations and Independent System Operators, for the purpose of credit risk management and mitigation, provided those entities agree to treat [Market Participant and Applicant] information as confidential under the terms for confidential treatment of [Market Participant and

Applicant] information under their own tariffs or other governing documents. [Transmission Provider] is permitted to use [Market Participant and Applicant] information received from the entities listed above to the same extent it may use similar information from other [Market Participants and Applicants] under the terms of this Tariff.

[Transmission Provider] is authorized to provide such information to the Electric Reliability Council of Texas, Inc., the Alberta Electric System Operator, or the Independent Electricity System Operator, provided such entity has adopted market rules that allow for the equivalent level of information sharing authorized by this Commission action, and provided those entities agree to treat [Market Participant and Applicant] information as confidential under the terms for confidential treatment of [Market Participant and Applicant] information under their own tariffs or other governing documents.¹⁰

II. CONCLUSION

For the foregoing reasons, the IRC respectfully requests that the Commission accept these comments for consideration in this proceeding.

Respectfully submitted,

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¹⁰ IRC Post-Technical Conference Comments at 6.

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Dated: October 7, 2022

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on those parties on the official Service List compiled by the Secretary in these proceedings.

Dated at Audubon, Pennsylvania this 7th day of October, 2022.

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