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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM22-13-000; Order No. 895]

Tariff Provisions

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: Pursuant to section 206 of the Federal Power Act, the Federal Energy Regulatory Commission amends its regulations to require that regional transmission organizations and independent system operators have tariff provisions that permit credit-related information sharing in organized wholesale electric markets to ensure that credit practices in those markets result in jurisdictional rates that are just and reasonable.

DATES: This rule is effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**

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SUPPLEMENTARY INFORMATION:

ORDER NO. 895

FINAL RULE

(Issued June 15, 2023)

I. Introduction

1. Pursuant to section 206 of the Federal Power Act (FPA),¹ the Commission is revising § 35.47 of Title 18 of the Code of Federal Regulations to require that regional transmission organizations (RTO) and independent system operators (ISO) have tariff provisions that permit them to share among themselves credit-related information regarding market participants in organized wholesale electric markets.²

2. The ability of RTOs/ISOs to share credit-related information among themselves will improve their ability to accurately assess market participants' credit exposure and risks related to their activities across organized wholesale electric markets. The ability to share such information should also enable RTOs/ISOs to respond to credit events more quickly and effectively, minimizing the overall credit-related risks of unexpected defaults by market participants in organized wholesale electric markets.

¹ 16 U.S.C. 824e.

² See *Credit Reforms in Organized Wholesale Elec. Mkts.*, Order No. 741, 75 FR 65942 (Oct. 21, 2010), 133 FERC ¶ 61,060, at P 1 n.1 (2010) (“[O]rganized wholesale electric markets include energy, transmission and ancillary service markets operated by” RTOs/ISOs that are “responsible for administering electric energy and financial transmission rights markets.”), *order on reh’g*, Order No. 741-A, 76 FR 10492 (Feb. 25, 2011), 134 FERC ¶ 61,126, *reh’g denied*, Order No. 741-B, 135 FERC ¶ 61,242 (2011).

II. Background

A. Previous Commission Action

3. Credit policies of regulated utilities have long been a component of the Commission's regulatory agenda. For example, when the Commission issued its *pro forma* Open Access Transmission Tariff (OATT) in Order No. 888, the Commission required each transmission provider's tariff to include reasonable creditworthiness standards.³

4. In light of major distress in financial markets during the 2008 financial crisis, the Commission explored the role of credit in the organized wholesale electric markets and the potential for policy reforms to strengthen credit practices and mitigate credit-related risks.⁴ Subsequently, the Commission issued Order No. 741, which promulgated regulations establishing minimum standards for several aspects of credit policy in organized wholesale electric markets, collectively aimed at reducing mutualized default risk, i.e., the risk that a default by one market participant is unsupported by collateral and

³ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Servs. by Pub. Utils.; Recovery of Stranded Costs by Pub. Utils. & Transmitting Utils.*, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036, at 31,937 (1996) (cross-referenced at 75 FERC ¶ 61,080) (setting forth section 11 (Creditworthiness) of the *pro forma* OATT), *order on reh'g*, Order No. 888-A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (cross-referenced at 78 FERC ¶ 61,220), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Pol'y Study Grp. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. N. Y. v. FERC*, 535 U.S. 1 (2002).

⁴ *Credit Reforms in Organized Wholesale Elec. Mkts.*, Notice of Proposed Rulemaking, 75 FR 4310 (Jan. 27, 2010), FERC Stats. & Regs. ¶ 32,651 (2010).

therefore must be socialized among all market participants.⁵ The Commission explained that risk management and creditworthiness practices are important to the organized wholesale electric markets because of this mutualized default risk.⁶

B. Current Practices

5. RTOs/ISOs assess a market participant's financial condition using credit-related information provided by market participants and prospective market participants. RTOs/ISOs generally receive this credit-related information at specified intervals or upon specific milestone events, including from: (1) interconnection customers during the generator interconnection process;⁷ (2) prospective market participants during the assessment of applications for market participant status;⁸ (3) market participants during annual or periodic credit reviews;⁹ and (4) market participants in response to periodic requests from RTO/ISO credit departments.¹⁰

⁵ Order No. 741, 133 FERC ¶ 61,060 at PP 4, 12; *see also* 18 CFR 35.47 (setting forth tariff provisions related to credit practices in organized wholesale electric markets).

⁶ Order No. 741, 133 FERC ¶ 61,060 at P 7.

⁷ *See, e.g.*, PJM, Intra-PJM Tariffs, OATT, section 222 (0.0.0) (requiring PJM to keep confidential any information provided by interconnection customers).

⁸ *See, e.g.*, SPP OATT, Sixth Revised Volume No. 1, attach. AE (MPL), section 3.7 (0.0.0) (requiring SPP to validate that prospective market participants meet SPP's credit requirements).

⁹ *See, e.g.*, NYISO, NYISO Tariffs, NYISO MST, 26.1 MST attach. K (Minimum Participation Criteria) (4.0.0), section 26.1.2 (requiring customers to demonstrate ongoing compliance with minimum participation requirements in section 26.1.1).

¹⁰ *See, e.g.*, PJM, Intra-PJM Tariffs, OATT, attach. Q (45.0.0), section II.E (requiring market participants to provide information on an ongoing basis).

6. Generally, market participants and prospective market participants do not make the credit-related information provided to RTOs/ISOs publicly available. For their part, 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, limiting the ability of RTOs/ISOs to share this information with other parties, including other RTOs/ISOs.¹¹

7. If a market participant defaults and its collateral is insufficient to cover the amount of its outstanding obligations, the remaining cost of those obligations is spread across the organized wholesale electric market's market participants (i.e., the default is "mutualized").¹² An RTO's/ISO's ability to reduce mutualized default risk can help to prevent defaults and, when defaults do occur, minimize the costs resulting from such defaults.

C. Technical Conference

8. In February 2021, Commission staff convened a technical conference to discuss principles and best practices for credit risk management in organized wholesale electric markets. Panelists at the technical conference included credit risk experts, market participants with experience in RTO/ISO credit policy compliance, and RTO/ISO risk officers. Among other topics, the technical conference addressed whether RTOs/ISOs

¹¹ See, e.g., ISO-NE, Transmission, Markets, and Services Tariff, attach. D (ISO-NE Information Policy) (22.0.0), section 2.0 (requiring ISO-NE entities to use Confidential Information "solely to perform their obligations under the NEPOOL Agreement and the Participants Agreement").

¹² See, e.g., PJM, Intra-PJM Tariffs, OA, section 15.2 (7.0.0), section 15.2.2; SPP, OATT, Sixth Revised Volume No. 1, attach. L, section V (1.0.0).

could share market participants' credit-related information with one another, whether market participants had expressed concern about RTOs/ISOs sharing such information, whether there were rules or other barriers that prevented RTOs/ISOs from sharing such information, and how the Commission could address concerns regarding the confidential treatment of such information.¹³

9. As relevant here, panelists at the technical conference stated that there could be risk management benefits from sharing market participants' credit-related information among RTO/ISO credit departments.¹⁴ Additionally, the ISO/RTO Council (IRC)¹⁵ stated in its post-technical conference comments that credit-related information sharing among RTOs/ISOs would improve the RTOs'/ISOs' ability to anticipate and respond to

¹³ See Supplemental Notice of Technical Conference, *RTO/ISO Credit Principles and Practices*, Docket No. AD21-6-000, et al. (Feb. 10, 2021).

¹⁴ See *RTO/ISO Credit Principles and Practices*, Technical Conference, Docket No. AD21-6-000, et al., Tr. 100:24-102:20, 106:1-24 (Bloczynski) (Feb. 25, 2021); *id.* at Tr. 102:25-104:5 (Brown); *id.* at Tr. 104:7-105:9 (Prevratil); *id.* at Tr. 105:12-24 (Seghesio). For example, one panelist explained that it would be helpful for an RTO/ISO credit department to know that a market participant is experiencing financial distress in another organized wholesale market in which it transacts because the RTO/ISO credit department could then focus its attention on whether the market participant's financial distress in another market could impact its own markets. *Id.* at Tr. 104:21-105:6 (Prevratil). Further, one panelist stated that credit-related information sharing would bring additional transparency to organized wholesale electric markets, which would build confidence in those markets to the benefit of market participants and consumers. *See id.* at Tr. 30:15-23, 58:1-9 (Heinle).

¹⁵ The IRC is composed of Commission-jurisdictional RTOs/ISOs, including PJM Interconnection, L.L.C. (PJM), ISO New England Inc. (ISO-NE), California Independent System Operator Corporation (CAISO), New York Independent System Operator, Inc. (NYISO), Midcontinent Independent System Operator, Inc. (MISO), and Southwest Power Pool, Inc. (SPP), as well as three transmission system operators that are not Commission-jurisdictional for purposes of this final rule, including Electric Reliability Council of Texas, Inc. (ERCOT), the Alberta Electric System Operator (AESO), and the Independent Electricity System Operator (IESO).

credit risks or prevent the occurrence of negative credit events.¹⁶ The IRC explained that the primary obstacles to RTOs/ISOs sharing credit-related information are: (1) the confidentiality provisions included in RTO/ISO OATTs; and (2) the lack of specific Commission authorization or policy favoring credit-related information sharing among RTOs/ISOs.¹⁷ The IRC therefore recommended, among other things, that the Commission require RTOs/ISOs to adopt tariff revisions permitting RTOs/ISOs to share credit-related information with other RTOs/ISOs and proposed certain tariff language.¹⁸

D. Notice of Proposed Rulemaking

10. On July 28, 2022, the Commission issued a notice of proposed rulemaking pursuant to the Commission's authority under FPA section 206.¹⁹ The Commission preliminarily found that it is unjust and unreasonable for RTOs/ISOs to be unable to share with each other credit-related information about their market participants, and that tariff provisions that prohibit or otherwise limit an RTO/ISO from sharing credit-related information are unjust and unreasonable. The Commission reasoned that such tariff provisions can hinder an RTO's/ISO's ability to evaluate a market participant's creditworthiness and respond to credit events, and thus, in turn, can hinder its ability to prevent or mitigate default by market participants. The Commission further reasoned

¹⁶ Comments of the ISO/RTO Council, *RTO/ISO Credit Principles and Practices*, Docket No. AD21-6-000, et al., at 2, 5-6 (filed June 7, 2021).

¹⁷ *Id.* at 5.

¹⁸ *Id.* at 6-8.

¹⁹ *Credit-Related Info. Sharing in Organized Wholesale Elec. Mkts.*, Notice of Proposed Rulemaking, 87 FR 48118 (Aug. 8, 2022), 180 FERC ¶ 61,048 (2022) (NOPR).

that, because the costs of such defaults typically are borne by non-defaulting market participants, an RTO's/ISO's lack of access to credit-related information may lead to unjust and unreasonable rates for its market participants.²⁰

11. To address RTOs'/ISOs' access to credit-related information, the Commission proposed in the NOPR to amend its regulations to require RTOs/ISOs to include in their OATTs provisions that permit them to share market participants' credit-related information with other RTOs/ISOs for the purpose of credit risk management and mitigation. The Commission also proposed in the NOPR to permit the receiving RTO/ISO to use market participant credit-related information received from another RTO/ISO to the same extent and for the same purposes that the receiving RTO/ISO may use credit related information from its own market participants.²¹

12. Initial comments were due on or before October 7, 2022; reply comments were due on or before November 7, 2022.²²

13. In general, commenters support the NOPR proposal to permit RTOs/ISOs to share credit-related information among themselves. For example, IRC states that, because market participants operate in multiple organized wholesale electric markets, the NOPR

²⁰ *Id.* P 14.

²¹ *Id.* P 21.

²² The following parties submitted initial comments: Dominion Energy Services, Inc., on behalf of Virginia Electric and Power Company and Dominion Energy South Carolina, Inc. (Dominion); Edison Electric Institute (EEI); Electric Power Supply Association (EPSA); the Energy Trading Institute (ETI); FirstEnergy Utility Companies and East Kentucky Power Cooperative, Inc. (Indicated PJM Utilities); IRC; Market Monitoring Unit of the Southwest Power Pool, Inc. (SPP MMU); and New England Power Pool Participants Committee (NEPOOL). The following parties submitted reply comments: IRC and Kiera Howard.

proposal would enhance RTOs'/ISOs' ability to accurately assess market participants' credit exposure. IRC also argues that the NOPR proposal would assist RTOs/ISOs in their efforts to respond more quickly to credit events and thereby minimize overall credit-related risks of unexpected defaults by market participants in organized wholesale electric markets.²³ EEI states that the NOPR proposal would enhance RTOs'/ISOs' ability to evaluate market participants' creditworthiness and respond to credit events, which will prevent or mitigate defaults and limit unnecessary costs incurred by non-defaulting market participants.²⁴

14. Indicated PJM Utilities and ETI each offers qualified support for the NOPR proposal. Indicated PJM Utilities generally agrees with the NOPR proposal to allow RTOs/ISOs to share credit-related information among themselves and commends the Commission for proposing solutions consistent with stakeholder feedback at the technical conference.²⁵ ETI states that, with certain guiding principles in place, credit-related information sharing among RTOs/ISOs will enhance credit risk assessment efforts.²⁶ EPSA argues that credit-related information sharing should not be conducted on a routine basis, though it concedes that there may be some instances in which it would be appropriate.²⁷

²³ IRC Initial Comments at 2.

²⁴ EEI Comments at 3.

²⁵ Indicated PJM Utilities Comments at 2.

²⁶ ETI Comments at 2.

²⁷ EPSA Comments at 5.

III. Need for Reform

15. We find that it is unjust and unreasonable for RTOs/ISOs to be unable to share with each other credit-related information about their market participants, and that tariff provisions that prohibit or otherwise limit an RTO/ISO from sharing credit-related information are unjust and unreasonable. Such tariff provisions can hinder an RTO's/ISO's ability to evaluate a market participant's creditworthiness and to respond to credit events, and thus, in turn, can hinder its ability to prevent or mitigate default by market participants.²⁸ Because the costs of such defaults typically are borne by non-defaulting market participants, an RTO's/ISO's lack of access to credit-related information may lead to unjust and unreasonable rates for its market participants. Therefore, we find that removing such tariff provisions will help minimize the costs of mutualized defaults and ensure just and reasonable rates.

16. RTOs/ISOs are responsible for credit risk management as the entities responsible for administering organized wholesale electric markets, and perform this responsibility by instituting, maintaining, and enforcing policies that balance the need for robust market participation and liquidity while seeking to minimize mutual default risk.²⁹ In order to manage credit risk in the organized wholesale electric markets, RTOs/ISOs must have adequate information about their market participants' financial standing and their business and operational activities in other organized wholesale electric markets. Having this information will allow each RTO/ISO to assess those market participants' default

²⁸ NOPR, 180 FERC ¶ 61,048 P 14.

²⁹ *Id.* P 15.

risk more effectively. Generally speaking, however, each RTO/ISO currently has access only to publicly available information and to the credit-related information provided by its own market participants. Therefore, we conclude that RTOs/ISOs may have limited visibility, if any, into their market participants' activities in other organized wholesale electric markets.

17. Additionally, market participants increasingly operate in multiple organized wholesale electric markets, whether directly or through affiliated entities, and their trading activities have become more complex and sophisticated.³⁰ These developments have complicated the ability of any individual RTO/ISO credit department to develop a complete, accurate, and up-to-date picture of a market participant's overall financial condition due to real or perceived barriers to information sharing among RTOs/ISOs. Negative credit events affecting a market participant's credit standing in one organized wholesale electric market may impact its credit standing in other markets. Therefore, an RTO/ISO that cannot obtain market participants' credit-related information arising from their activities in other organized wholesale electric markets may not be able to effectively protect its organized wholesale electric market from mutualized default risk.

18. Currently, RTO/ISO OATTs generally contain provisions that treat a market participant's credit-related information as confidential information and, in most instances, prohibit an RTO/ISO from sharing that credit-related information with other RTOs/ISOs without the consent of the market participant.³¹ The Commission finds that such tariff

³⁰ *RTO/ISO Credit Principles and Practices*, Technical Conference, Docket No. AD21-6-000, et al., Tr. 30:12-14 (Heinle) (Feb. 25, 2021).

³¹ See, e.g., ISO-NE, Transmission, Markets, and Services Tariff, attach. D (ISO-NE Information Policy) (22.0.0), section 2.1(e) (designating information disclosed

provisions effectively allow a market participant to limit the amount and quality of information that an RTO/ISO may access and use to assess that market participant's financial standing, and that these provisions therefore pose an unjust and unreasonable barrier to credit risk management and mitigation by the RTOs/ISOs.³²

IV. Discussion

19. Therefore, to address limitations to RTOs'/ISO' access to potentially relevant credit-related information, we amend Commission regulations to require that each RTO/ISO have tariff provisions that permit RTOs/ISOs to share market participants' credit-related information with other RTOs/ISOs for the purpose of credit risk management and mitigation.

20. Specifically, we adopt the proposed regulations to: (1) permit RTOs/ISOs to share with each other credit-related information; (2) permit RTOs/ISOs to use market participant credit-related information received from other RTOs/ISOs to the same extent and for the same purpose as information received from its own market participants; and (3) require that an RTO/ISO that receives credit-related information from another RTO/ISO keep that information confidential as it would any other credit-related information received directly from one of its own market participants.

by a market participant to satisfy ISO-NE's minimum criteria for market participation as Confidential Information in certain circumstances); PJM, Intra-PJM Tariffs, OATT, attach. Q (45.0.0), section III.C (same).

³² See, e.g., *RTO/ISO Credit Principles and Practices*, Technical Conference, Docket No. AD21-6-000, et al., Tr. 116:6-10 (Brown) (Feb. 25, 2021) (suggesting that MISO's OATT prohibits disclosure of a MISO market participant's financial distress even if that market participant is on the verge of default).

21. The regulations we adopt will allow the RTOs/ISOs to share credit-related information among themselves as necessary, helping them to better monitor the ongoing risks in their markets that may change quickly, but without creating uncertainty among the RTOs/ISOs about what information is permissible to share. In addition, credit-related information sharing will help RTOs/ISOs to carry out their credit risk management responsibilities, which, in turn, will benefit all market participants and their customers that ultimately bear the cost of mutualized default risk.

22. We respond to objections to or requests for clarification on the NOPR proposal to allow credit-related information sharing in organized wholesale electric markets below.

A. Shareable Credit-Related Information

1. NOPR

23. The Commission explained that its proposal would allow RTOs/ISOs to share credit-related information, including: (1) lists of market participants with positions in that market; (2) reports and metrics around risk and credit exposures; (3) disclosure that a market participant or affiliate has defaulted on any of its financial or contractual obligations, failed to pay invoices on a timely basis, or failed to meet a collateral call; (4) information regarding a market participant's or its affiliate's unresolved credit/collateral issues; (5) information indicating that a market participant or its affiliate has an increased risk of default, such as instances where a market participant or its affiliate has experienced a material adverse condition or material adverse change under an RTO/ISO OATT or related agreement; and (6) any other information on a market participant or its affiliate that indicates a possible material adverse change in

creditworthiness or financial status or an unreasonable credit risk.³³ The Commission sought comment on whether it should impose restrictions on the types of credit-related information that RTOs/ISOs may share with one another.³⁴

2. Comments

24. EEI and Indicated PJM Utilities request that the Commission define “credit-related information” more precisely than in the NOPR proposal. EEI states that RTOs/ISOs otherwise may interpret “credit-related information” differently,³⁵ while Indicated PJM Utilities requests that the Commission establish a “standardized list of documentation” that RTOs/ISOs could collect from market participants.³⁶ By contrast, IRC requests that the Commission decline to define credit-related information,³⁷ while SPP MMU argues that it would be nearly impossible to create a distinct set of all-encompassing, currently applicable circumstances in which credit-related information sharing would be appropriate.³⁸

25. EPSA states that phrases such as “unresolved credit/collateral issues” and “an increased risk of default, such as a material adverse change or change in creditworthiness” are too vague, and that the former may encompass billing disputes

³³ NOPR, 180 FERC ¶ 61,048 P 22.

³⁴ *Id.* PP 22, 30.

³⁵ EEI Comments at 3

³⁶ Indicated PJM Utilities Comments at 13-14.

³⁷ IRC Reply Comments at 3.

³⁸ SPP MMU Comments at 4.

between the market participant and RTO/ISO and not necessarily an increased credit risk.³⁹ Dominion likewise states that the Commission should not allow RTOs/ISOs to share such information unless it represents a material adverse change that is confirmed and no longer subject to dispute.⁴⁰

26. Dominion expresses concern that RTOs/ISOs might abuse their discretion and share credit-related information that might wrongfully prevent a market participant from participating in the market, particularly with respect to the Commission's proposal to allow RTOs/ISOs to share with other RTOs/ISOs "any other information on a market participant or its affiliate that indicates a possible material adverse change in creditworthiness or financial status or an unreasonable credit risk."⁴¹ Dominion argues that RTOs/ISOs should only be able to share "bankruptcy filings, confirmed undisputed material financial defaults in their wholesale energy markets or bilateral arrangements, disciplinary actions taken for market activity not in keeping with [Commission] regulations or the RTO/ISO/market operator's rules, findings of material defalcation, market manipulation or fraud, and findings of violations of federal and state regulations regarding energy commodities, [or Commodity Futures Trading Commission] or [Commission] regulations."⁴²

³⁹ EPSA Comments at 6-7.

⁴⁰ Dominion Comments at 4.

⁴¹ *Id.* at 5.

⁴² *Id.* at 6.

27. Indicated PJM Utilities requests that the Commission adopt an “active participation” requirement, according to which an RTO/ISO should not receive credit-related information unless it demonstrates that the relevant entity is a market participant, or a prospective or former market participant. Indicated PJM Utilities reasons that to preserve confidentiality to the greatest extent possible, RTOs/ISOs should only share credit-related information when it is relevant to evaluating a credit-related risk, and that other RTOs/ISOs have no need of the information if the entity is not a former, current, or prospective market participant.⁴³

28. Dominion and Indicated PJM Utilities each also requests clarification as to what credit-related information RTOs/ISOs should be allowed to share among themselves. Dominion states that, with respect to the Commission’s proposal to allow RTOs/ISOs to disclose to other RTOs/ISOs that a market participant or affiliate has defaulted on any of its financial or contractual obligations, failed to pay invoices on a timely basis, or failed to meet a collateral call, it is not clear whether an RTO/ISO may only share credit-related information related to obligations owed to the RTO/ISO or whether an RTO/ISO might also share credit-related information related to obligations owed by the market participant to unrelated third parties.⁴⁴ Indicated PJM Utilities argues that RTOs/ISOs should only share credit-related information received directly from a market participant, and should not share information received from another RTO/ISO.⁴⁵

⁴³ Indicated PJM Utilities Comments at 2-5.

⁴⁴ Dominion Comments at 4-5.

⁴⁵ Indicated PJM Utilities Comments at 13-14.

29. Finally, EPSA expresses concern that the NOPR's definition of credit-related information encompasses information about a market participant's affiliates, and states that this could be inappropriate because some such affiliates are fully distinct, standalone companies with separate debt and equity structures.⁴⁶

3. Commission Determination

30. We set forth a list of examples of the types of credit-related information that an RTO/ISO may share, as proposed in the NOPR, but this list is illustrative and we decline to adopt a restrictive or exclusive list. We find that RTOs/ISOs should be allowed to share credit-related information, including: (1) lists of market participants with positions in that market; (2) reports and metrics around risk and credit exposures; (3) disclosure that a market participant or affiliate has defaulted on any of its financial or contractual obligations, failed to pay invoices on a timely basis, or failed to meet a collateral call; (4) information regarding a market participant's or its affiliate's unresolved credit/collateral issues; (5) information indicating that a market participant or its affiliate has an increased risk of default, such as instances where a market participant or its affiliate has experienced a material adverse condition or material adverse change under an RTO/ISO OATT or related agreement; and (6) any other information on a market participant or its affiliate that indicates a possible material adverse change in creditworthiness or financial status or an unreasonable credit risk.

⁴⁶ EPSA Comments at 6.

31. This list is illustrative and not exhaustive. We believe that the list provides sufficient examples of the types of credit-related information that may help RTOs/ISOs carry out their credit risk management responsibilities.

32. We recognize that EPSA believes that the list above is vague and that several commenters (including Dominion and Indicated PJM Utilities) request limitations on or clarifications to the kinds of credit-related information that RTOs/ISOs may share among themselves. Because we cannot reasonably foresee every circumstance in which RTOs/ISOs may seek to share credit-related information, nor determine every type of credit-related information that may be useful to share, we decline to adopt an exclusive list restricting the type of credit-related information that may be shared. We find it reasonable to allow RTOs/ISOs, as independent entities, to exercise their discretion in determining the kinds of credit-related information to share with each other. This approach is consistent with the Commission's approach in creditworthiness matters. In Order No. 741, the Commission declined to adopt a list of events that qualified as a "material adverse change," because it would limit the market administrator, i.e., the RTO/ISO. The Commission reasoned: "Experience has demonstrated that unforeseen circumstances can arise, which will require action to protect the markets from ongoing disruption."⁴⁷

33. We decline to define credit-related information more specifically as requested by EEI and Indicated PJM Utilities.⁴⁸ We find that a specific, restrictive definition would

⁴⁷ Order No. 741, 133 FERC ¶ 61,060 at P 150.

⁴⁸ EEI Comments at 3; Indicated PJM Utilities Comments at 13-14.

unnecessarily narrow the information that RTOs/ISOs could share and would unnecessarily limit RTOs'/ISOs' discretion in an area that is well within their responsibility and expertise.

34. We decline to preclude RTOs/ISOs from sharing credit-related information that is subject to dispute, as requested by EPSA and Dominion. We find that imposing such a limitation could prevent RTOs/ISOs from timely sharing credit-related information and lessen the RTOs'/ISOs' ability to prevent or mitigate defaults. Allowing only undisputed information to be shared may also incent market participants to pursue disputes as a means of precluding other RTOs/ISOs from receiving information about their credit-related activities in another RTO/ISO. We expect that RTOs/ISOs sharing credit-related information will provide relevant details necessary for the receiving RTO/ISO to assess potential credit risk effects, including, as appropriate, that the information is subject to dispute. We clarify that RTOs/ISOs receiving credit-related information are permitted to seek clarifying information from the sending RTO/ISO, if necessary. Further, we believe that as independent entities, the RTO/ISO credit departments are capable of impartially assessing credit-related information they receive and responding effectively, as appropriate.

35. We decline to require that credit-related information-sharing be subject to an active participation requirement as requested by Indicated PJM Utilities. Indicated PJM Utilities have not shown what interest or incentive an RTO/ISO would have to use credit-related information received from another RTO/ISO related to an entity that is not among the RTO/ISO's former, current, or prospective market participants. Further, as to concerns about the confidentiality of information that an RTO/ISO might obtain

regarding an entity that is not among its market participants, we note that RTOs/ISOs handle substantial amounts of their market participants' commercially sensitive information and have established practices for protecting its confidentiality. As such, while this final rule will allow RTOs/ISOs to share credit-related information among themselves, we are not persuaded that the sharing of such information among other RTOs/ISOs materially increases the risk of its disclosure beyond the RTOs/ISOs.

36. Further, we see practical issues with limiting the scope of market participant credit-related information as requested by Indicated PJM Utilities. For example, it may be valuable in some instances for RTOs/ISOs to share with one another certain kinds of credit-related information on a routine basis, such as lists of market participants with positions in that market (category (1) above). For such documents that include information about a large number of market participants, it may not be feasible to verify each market participant's "active" status in the markets operated by the recipient RTO/ISO, or produce multiple customized reports for each RTO/ISO including only the recipient RTO's/ISOs' former, current, and prospective market participants. In other situations, an RTO/ISO might share reports including credit-related information related to multiple market participants (category (2) above), raising similar concerns. But as explained below, RTOs/ISOs must treat credit-related information they receive from another RTO/ISO under this final rule as they would credit-related information they received from their own market participants.

37. With respect to our proposal to allow RTOs/ISOs to disclose that a market participant or affiliate has defaulted on any of its financial or contractual obligations, failed to pay invoices on a timely basis, or failed to meet a collateral call (category (3)

above), we decline Dominion’s request that we limit such disclosures to obligations owed to the RTO/ISO and not also to unrelated third parties. We find that information about a market participant’s credit activity outside of the RTO/ISO markets may be relevant to its creditworthiness within the RTO/ISO markets. RTOs/ISOs often collect from their market participants credit-related information about a market participant’s obligations owed to third parties. Thus, an RTO/ISO may find such information relevant as it assesses credit risks.⁴⁹ For similar reasons, we also decline Indicated PJM Utilities’ request that we limit the credit-related information that an RTO/ISO may share to information collected directly from its own market participants. Further, we believe that adopting Indicated PJM Utilities’ recommendation could prove counterproductive by causing uncertainty in RTO/ISO credit departments on which types of information are permissible to share during fast-moving credit events that results in RTOs/ISOs not timely sharing credit-related information.

38. Finally, in response to EPSA’s concern with the inclusion of credit-related information relating to a market participant’s affiliate, we clarify that the definition of affiliates in this context is to be governed by the definition of affiliate provided in the RTO’s/ISO’s OATT for purposes of determining market participants’ creditworthiness.⁵⁰ If an affiliate’s financial standing changes in a way that requires a market participant to

⁴⁹ See, e.g., Indicated PJM Utilities Comments at 8-9 (indicating that NYISO requires market participants to submit information related to any “material defaults or bankruptcies by the [market participant] or its predecessors, subsidiaries, or affiliates within the last five years” or “material changes in financial status”).

⁵⁰ See, e.g., SPP, OATT, Sixth Revised Volume No. 1, attach. X, section 2.1 (defining “Affiliate” and “Affiliated Credit Customers”); *id.* section 4.3.4.1 (requiring SPP to determine creditworthiness of Affiliated Credit Customers collectively).

post additional collateral, for example, that information may be relevant in another RTO's/ISO's credit risk assessment. To the extent that the definitions of affiliate vary materially from one RTO/ISO to another, we reiterate our belief that RTO/ISO credit departments that receive credit-related information are capable of impartially assessing it and responding effectively and appropriately.

B. Discretion for RTOs/ISOs

1. NOPR

39. The Commission proposed to allow an RTO/ISO to use credit-related information received from another RTO/ISO to the same extent and for the same purposes as that RTO/ISO may use credit-related information collected from its own market participants.⁵¹ The Commission explained that this would allow RTOs/ISOs the discretion to determine what credit-related information it would share with other RTOs/ISOs, as well as under what circumstances and on what timeline it would do so.⁵²

40. The Commission stated that it believed the NOPR proposal would allow RTOs/ISOs to gain additional visibility into their market participants' financial condition and to administer organized wholesale electric markets more effectively both as part of ongoing "business-as-usual" credit risk management practices and during market or credit events.⁵³ The Commission preliminarily found that RTOs/ISOs would benefit from the ability to discuss the creditworthiness of specific market participants, and that

⁵¹ NOPR, 180 FERC ¶ 61,048 P 21.

⁵² *Id.* P 27.

⁵³ *Id.* P 24.

permitting RTOs/ISOs to share credit-related information with other RTOs/ISOs would allow these discussions to take place and better inform RTOs/ISOs in the management of credit risk in the organized wholesale electric markets on an ongoing basis.⁵⁴ The Commission also preliminarily found that credit-related information sharing would help RTOs/ISOs prevent or mitigate losses in the event that a market participant experiences financial distress, and potentially help RTOs/ISOs prevent default in one organized wholesale electric market from triggering default in another.⁵⁵

41. Finally, the Commission also stated that the NOPR would not change the existing discretion an RTO/ISO has to act on credit-related information, regardless of its source.⁵⁶

2. Comments

42. IRC argues that RTOs/ISOs should be able to use credit-related information to the same extent and for the same purposes as other credit-related information. IRC contends that a final rule should allow RTO/ISO credit risk personnel to focus on activities that help achieve the objectives set forth in the NOPR, i.e., to identify and manage credit risks and protect non-defaulting market participants from the consequences of credit defaults.⁵⁷ SPP MMU also argues that RTOs/ISOs should have discretion on how to use credit-related information received from another RTO/ISO.⁵⁸ By contrast, Dominion

⁵⁴ *Id.* P 25.

⁵⁵ *Id.* P 26.

⁵⁶ *Id.* P 28.

⁵⁷ IRC Initial Comments at 3-5.

⁵⁸ SPP MMU Comments at 4.

opposes what it calls “unfettered discretion” for RTOs/ISOs, arguing that the Commission instead should afford RTOs/ISOs only “reasonable discretion.”⁵⁹

43. NEPOOL contends that the Commission should require each RTO/ISO to specify in compliance filings to a potential final rule what criteria the RTO/ISO will use to determine when it will share credit-related information and what types of information it will share.⁶⁰ ETI likewise states that RTOs/ISOs should only share credit-related information when triggered by certain universally-applied metrics, e.g., percentage of exposure/collateral posted, material changes in know-your-customer or risk management policies.⁶¹ In reply, IRC disagrees and requests that the Commission not specify circumstances in which RTOs/ISOs may or may not share credit-related information, arguing that each RTO/ISO has the responsibility to manage credit risks and should be granted the flexibility to do so.⁶²

44. ETI argues that RTOs/ISOs should be careful about sharing credit-related information during system stress events, because losses in one organized wholesale electric market could lead to collateral calls in other markets that might exacerbate the situation. ETI therefore states that RTOs/ISOs should not share information related to margin or collateral calls issued to market participants.⁶³

⁵⁹ Dominion Comments at 5-6.

⁶⁰ NEPOOL Comments at 5-6.

⁶¹ ETI Comments at 4.

⁶² IRC Reply Comments at 3.

⁶³ ETI Comments at 3-5.

45. EPISA argues that an RTO/ISO that receives credit-related information from another RTO/ISO may misunderstand that information and take action erroneously in response. EPISA therefore argues that market participants should have a minimum window of time during which to resolve billing disputes before an RTO/ISO may share information related to that dispute.⁶⁴

46. Finally, ETI argues that a potential final rule should encourage collaboration and coordination within each RTO/ISO between its operations, planning, and credit departments. ETI cites the example of a default that it claims was caused by construction taking place during a critical outage, and claims that the outage could have been delayed had more robust communication occurred within the RTO/ISO.⁶⁵

3. Commission Determination

47. We adopt the proposal set forth in the NOPR that, in sharing credit-related information under the adopted regulations, an RTO/ISO has discretion as to what credit-related information it chooses to provide to other RTOs/ISOs, as well as under what circumstances and on what timeline it chooses to do so. Similarly, as noted above, an RTO/ISO that receives credit-related information pursuant to the regulations adopted in this final rule may use that information as it would credit-related information from any other source. We find that, as the independent entities with the most insight into and knowledge of what credit-related information would be useful to share, RTOs/ISOs should have flexibility to best accomplish the intended purpose of the rule, which aims to

⁶⁴ EPISA Comments at 5-7.

⁶⁵ ETI Comments at 3, 6-7.

remove unjust and unreasonable barriers that restrict communication of credit-related information between the RTOs/ISOs.⁶⁶ We find that providing RTOs/ISOs flexibility about what credit information to share and how to use credit-related information it receives will improve the RTOs'/ISOs' ability to mitigate credit risks without creating uncertainty for RTOs/ISOs as to the manner in which they are sharing credit-related information.

48. This approach will provide an RTO/ISO the discretion to determine what credit-related information it would share with other RTOs/ISOs, as well as under what circumstances and on what timeline it would do so. Gaining additional visibility into their market participants' financial condition will help RTOs/ISOs to administer organized wholesale electric markets more effectively both as part of ongoing "business-as-usual" credit risk management practices and during market or credit events. RTOs/ISOs will be able to discuss with each other the creditworthiness of specific market participants, and nothing in this final rule precludes these discussions as a means to better inform RTOs/ISOs in the management of credit risk on an ongoing basis.

49. We reject Dominion's characterization of the discretion we afford the RTOs/ISOs as "unfettered." As an initial matter, RTOs/ISOs may share credit-related information only for the purpose of credit risk management and mitigation. An RTO's/ISO's discretion is further constrained by its OATT, because RTOs/ISOs may only use the

⁶⁶ Moreover, granting RTOs/ISOs this level of discretion is consistent with our precedent. *See, e.g., N.Y. Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,054, at P 30 (2020) ("We agree with NYISO that the proposed tariff language will allow NYISO the reasonable discretion to evaluate individual facts and circumstances, as necessary, to protect the NYISO-administered markets without limiting NYISO to act only in specific scenarios of increased credit risk enumerated in the tariff.").

credit-related information shared under this final rule to the same extent and for the same purposes as that RTO/ISO may use credit-related information collected from its own market participants. Therefore, an RTO/ISO sharing a market participant's credit-related information does not necessarily entail negative consequences for a market participant, let alone automatic consequences. The RTO/ISO must follow rules and procedures set forth in its Commission-approved OATT, and market participants are therefore provided the safeguards set forth in the OATT. If the RTO/ISO takes action that violates its OATT, the entity whose information was shared may turn to dispute resolution mechanisms available to it⁶⁷ or submit a complaint under FPA section 206. The Commission has the authority to ensure that RTOs/ISOs act in a manner consistent with their OATTs. For the same reasons, we also reject NEPOOL and ETI's requests for written criteria and metrics, respectively, which we believe would unreasonably constrain the RTOs'/ISOs' discretion.

50. We also reject EPSA's argument that an RTO/ISO might misinterpret credit-related information it receives and take erroneous action as a consequence. EPSA's concerns are at best speculative and granting their requests would unreasonably constrain RTOs'/ISOs' discretion as information on margin or collateral calls may be useful in understanding a market participant's market losses that require additional collateral and on which market participants could have potential liquidity problems due to margin calls. We again reiterate that RTO/ISO credit departments that receive

⁶⁷ See, e.g., SPP OATT, Sixth Revised Volume No. 1, attach. X, section 1.6 (subjecting disputes regarding SPP's Credit Policy to the dispute resolution mechanism in the SPP OATT).

credit-related information are capable of impartially assessing it and responding effectively and appropriately. We decline to preclude RTOs/ISOs from sharing information about margin or collateral calls during system stress events as suggested by ETI. A market participant's failure to make a margin or collateral call is highly relevant to its creditworthiness, particularly during stress events.

51. Finally, we reject ETI's request that the Commission encourage collaboration and coordination within each RTO/ISO because it is outside the scope of this proceeding, which is focused on credit-related information sharing among RTOs/ISOs and not on internal communications within each RTO/ISO.

C. Consent of or Notice to Market Participants

1. NOPR

52. The Commission preliminarily found an RTO's/ISO's sharing of a market participant's credit-related information must not be conditioned on the consent of the market participant.⁶⁸ The Commission stated that existing OATT provisions implicitly impose a barrier to credit-related information sharing, as the OATT provisions treat market participants' credit-related information as confidential information and, in most instances, prohibit an RTO/ISO from sharing credit-related information with other RTOs/ISOs without the consent of the market participant. The Commission further observed that these provisions effectively allow a market participant to limit the amount

⁶⁸ NOPR, 180 FERC ¶ 61,048 P 23.

and quality of information that an RTO/ISO may access and use to assess that market participant's financial standing.⁶⁹

53. The Commission also proposed that an RTO/ISO would not be required to notify its own market participants before sharing their credit-related information because an RTO's/ISO's OATT, as revised, would provide notice that credit-related information could be shared on a confidential basis with other RTOs/ISOs for the purpose of credit risk management and mitigation.⁷⁰ The Commission stated that permitting RTOs/ISOs to share credit-related information without their having to obtain a market participant's consent or to provide notice would facilitate expeditious information sharing and would thus allow for improved risk mitigation.

2. Comments

54. IRC and Indicated PJM Utilities express support for the NOPR proposal not to condition an RTO's/ISO's ability to share credit-related information on the RTO's/ISO's obtaining prior consent from or providing notice to market participants.⁷¹

55. While no party requests that the Commission require RTOs/ISOs to obtain market participants' prior consent, EPSA and NEPOOL each argue that the Commission should require an RTO/ISO to provide notice when the RTO/ISO shares the market participants' credit-related information. According to EPSA, RTOs/ISOs should notify market

⁶⁹ *Id.* P 19.

⁷⁰ *Id.* P 23.

⁷¹ IRC Initial Comments at 3, 4 n.9; Indicated PJM Utilities Comments at 2.

participants immediately upon sharing their credit-related information.⁷² NEPOOL contends that timely notice would suffice, e.g., within 30 days of sharing, and argues that this would not burden RTOs/ISOs because they could use electronic means to provide such notice.⁷³

56. Finally, Indicated PJM Utilities argues that the Commission should require RTOs/ISOs to establish recordkeeping requirements in accordance with which the RTO/ISO that shares credit-related information with another RTO/ISO would be required to document: (1) what credit-related information it shared; (2) the date on which it was shared; and (3) the recipient RTO/ISO. Indicated PJM Utilities contends that the inclusion of such requirements would create an auditable record that would provide additional security to market participants.⁷⁴

3. Commission Determination

57. We adopt the findings, set forth in the NOPR, that an RTO/ISO must be allowed to share credit-related information without either obtaining the prior consent of market participants or providing specific notice to market participants.

58. We do not require consent for the sharing of credit-related information because a consent requirement would hinder information sharing. A market participant would have little incentive to provide consent and indeed could effectively limit RTOs'/ISOs' access to credit-related information by withholding its consent – a particular concern if a market

⁷² EPSA Comments at 5.

⁷³ NEPOOL Comments at 7-8.

⁷⁴ Indicated PJM Utilities Comments at 14-15.

participant faces a pending credit event. Further, obtaining consent would impose an administrative burden on the RTO/ISO.

59. We find that the revised OATTs – as well as this final rule – put market participants on notice that their credit-related information may be shared with another RTO/ISO for the purpose of credit risk management and mitigation. We reject EPSA and NEPOOL’s requests that we require RTOs/ISOs to provide notice to market participants that is concurrent with the credit-related information sharing or within 30 days thereof, respectively. Market participants experiencing credit events should expect that credit-related information will be shared among the RTOs/ISOs that they participate in. Requiring that RTOs/ISOs provide specific notice to market participants each time credit-related information is shared will provide little benefit to market participants while unnecessarily burdening RTO/ISO credit departments that are responsible for minimizing credit default risk and mitigating the effects of credit defaults that do occur.

60. We further consider the practical burden of a notice requirement in the event RTOs/ISOs share certain kinds of credit-related information. For example, credit-related information in categories (1) and (2) above may contain the credit-related information of multiple market participants.⁷⁵ We disagree with NEPOOL that providing notice will not impose a burden on RTOs/ISOs and find that such a requirement might create a barrier that dissuades RTOs/ISOs from sharing this type of credit-related information.

61. We decline to impose a record-keeping requirement on RTOs/ISOs for any credit-related information sharing, as requested by Indicated PJM Utilities. As further

⁷⁵ See *supra* P 30 (setting forth categories of credit-related information).

explained below, an RTO/ISO that receives credit-related information from another RTO/ISO is required to treat that information confidential as it would any other credit-related information. Under the final rule, shared credit-related information will be safeguarded by the receiving RTO/ISO in accordance with its OATT. We are not convinced that additional record keeping requirements are necessary to protect the credit information of market participants.

D. Confidentiality

1. NOPR

62. The Commission proposed to require that an RTO/ISO that receives credit-related information from another RTO/ISO keep that information confidential as it would any other credit-related information received directly from one of its own market participants.⁷⁶ The Commission preliminarily found that this would ensure that all credit-related information would continue to be safeguarded by RTOs/ISOs in accordance with the receiving RTO's/ISO's OATT.⁷⁷ The Commission sought comment on any additional restrictions that it should impose on RTOs/ISOs in their management and use of credit-related information.⁷⁸

2. Comments

63. IRC and Dominion each supports the NOPR proposal to require that RTOs/ISOs that receive credit-related information protect its confidentiality under existing OATT

⁷⁶ NOPR, 180 FERC ¶ 61,048 P 29.

⁷⁷ *Id.* P 29.

⁷⁸ *Id.* P 30.

confidentiality protections in the same manner as they would any other information received directly from their own market participants.⁷⁹

64. Several parties argue that existing OATT confidentiality provisions are not sufficiently uniform to provide consistent protection to market participants' credit-related information. Indicated PJM Utilities and EEI each argue that the Commission therefore should adopt a uniform confidentiality provision applicable to market participants' credit-related information across the organized wholesale electric markets.⁸⁰ NEPOOL requests that the Commission clarify that a market participant may enforce its confidentiality rights as against the RTO/ISO that receives its credit-related information even where that market participant is not a signatory to the receiving RTO's/ISO's OATT.⁸¹

65. Indicated PJM Utilities provides sample confidentiality provisions and argues that differences among these provisions and among the kinds of credit-related information collected by different RTOs/ISOs increase the risk of unintended disclosure, particularly given the involvement in credit reviews by third party contractors retained by CAISO, PJM, and SPP.⁸² Indicated PJM Utilities further argues that there is a risk of disclosure of confidential information to a market participant's competitor in ISO-NE, where the

⁷⁹ IRC Initial Comments at 3.

⁸⁰ Indicated PJM Utilities Comments at 13; EEI Comments at 4.

⁸¹ NEPOOL Comments at 7-8.

⁸² Indicated PJM Utilities Comments at 5-13.

RTO/ISO may in some circumstances provide credit-related information to ISO-NE's Participants Committee, which is comprised of other market participants.⁸³

66. Finally, EPSA requests that the Commission confirm that credit-related information shared by an RTO/ISO with another RTO/ISO will not be subject to disclosure under the Freedom of Information Act (FOIA).⁸⁴

3. Commission Determination

67. We adopt the regulations proposed in the NOPR to require that an RTO/ISO that receives credit-related information from another RTO/ISO treat that information as it would any other credit-related information received directly from one of its own market participants. We find that this requirement will ensure that all credit-related information shared under this final rule will be safeguarded by the receiving RTO/ISO in accordance with its OATT.

68. We acknowledge that allowing RTOs/ISOs to share market participants' credit-related information among themselves may pose some incremental risk that such information will be disclosed outside of the RTOs/ISOs. We note, however, that the RTOs/ISOs already are stewards of large amounts of credit-related information, and they protect that information in accordance with confidentiality policies included in their OATTs.⁸⁵ Further, we find that this incremental risk of disclosure is outweighed by the

⁸³ *Id.* at 13.

⁸⁴ EPSA Comments at 7.

⁸⁵ *See, e.g.*, ISO-NE, Transmission, Markets, and Services Tariff, attach. D (ISO-NE Information Policy) (22.0.0), section 2.0 (requiring ISO-NE entities to use Confidential Information “solely to perform their obligations under the NEPOOL Agreement and the Participants Agreement”).

transparency and credit risk management benefits that credit-related information sharing will provide.

69. The Commission confronted a similar issue in Order No. 787, in which it permitted the disclosure of non-public information between electric transmission operators and interstate natural gas pipelines. There, the Commission acknowledged that the disclosure of non-public information poses some incremental risk but noted that these risks are outweighed by the benefits of additional transparency and information exchange:

While any exchange of non-public information may pose some disclosure risks, we find that, on balance, the regulations adopted here . . . appropriately balance the significant benefits to be gained by robust information exchange among interdependent transmission operators against the potential risks from disclosure of non-public information.⁸⁶

Similarly, this final rule facilitates the RTOs'/ISOs' ability to accurately assess market participants' credit exposure and strengthen the tools available to RTOs/ISOs in fulfilling their obligations to minimize credit default risk and mitigate the effects of credit defaults that do occur.

70. We acknowledge that there are differences between the kinds of credit-related information that RTOs/ISOs collect, as EEI and Indicated PJM Utilities each argues, as well as differences between the kinds of confidentiality protections afforded market participants under the different RTO/ISO OATTs. We acknowledge that under this final rule credit-related information in some circumstances will be protected from disclosure

⁸⁶ *Comm'n of Operational Info. Between Nat. Gas Pipelines & Elec. Transmission Operators*, Order No. 787, 78 FR 70164 (Nov. 22, 2013) 145 FERC ¶ 61,134, at P 32 (2013), *on reh'g*, Order No. 787-A, 147 FERC ¶ 61,228 (2014).

by the receiving RTO's/ISO's confidentiality protections rather than the sending RTO/ISO's confidentiality protections. We find that any such incremental risk is minimal and is outweighed by the benefit of credit-related information sharing permitted in this final rule. Therefore, we decline to require RTOs/ISOs to adopt uniform confidentiality provisions governing the sharing of market participants' credit-related information.⁸⁷ In addition, the Commission has already concluded that any such confidentiality provision in an RTO/ISO OATT is just and reasonable.

71. In response to NEPOOL's request for clarification, we find that an RTO/ISO must protect credit-related information received from another RTO/ISO under this final rule in accordance with confidentiality protections in the receiving RTO's/ISO's OATT. In accordance with this requirement, the entity whose information was shared may turn to dispute resolution mechanisms available under the receiving RTO's/ISO's OATT or submit a complaint under FPA section 206 notwithstanding the fact that such entity may not be a market participant under the receiving RTO's/ISO's OATT.

72. Finally, EPSA's request that we clarify that credit-related information that is shared among RTOs/ISOs would not be subject to requests under FOIA sent to the receiving RTO/ISO is misplaced. FOIA governs information held by federal agencies, and the Commission will not have custody or control of credit-related information that is shared. Credit-related information in the custody or control of RTOs/ISOs would not be subject to FOIA. We expect each RTO/ISO to respond to other types of information requests in accordance with its OATT, and that shared credit-related information will be

⁸⁷ Further, we note that RTOs/ISOs cannot evade their responsibility to safeguard credit-related information by hiring third party contractors to help conduct credit reviews.

treated just as would any other credit-related information held by the RTO/ISO. We decline to create a different standard for handling credit-related information received from another RTO/ISO differently than how the receiving RTO/ISO would treat credit-related information received from its own market participants.

E. Prescriptive Approach

1. NOPR

73. The Commission acknowledged that there could be benefits to adopting requirements that RTOs/ISOs share credit-related information with other RTOs/ISOs, such as establishing a baseline sharing of credit-related information prior to a credit event that could reduce the financial losses to non-defaulting market participants during that event.⁸⁸ The Commission also acknowledged that a prescriptive approach could impose burdens on RTOs/ISOs, such as raising costs or straining RTO/ISO resources.⁸⁹ The Commission therefore sought comment on whether it should modify the NOPR proposal to require that RTOs/ISOs share credit-related information on a routine basis, in certain circumstances, or upon request by another RTO/ISO.⁹⁰

2. Comments

74. SPP MMU argues that the Commission should require an RTO/ISO to provide credit-related information to another RTO/ISO upon the reasonable request of the

⁸⁸ NOPR, 180 FERC ¶ 61,048 P 33.

⁸⁹ *Id.*

⁹⁰ *Id.*

receiving RTO/ISO.⁹¹ Dominion contends instead that the Commission should require RTOs/ISOs to share certain credit-related information on a routine basis, or should condition an RTO's/ISO's ability to receive credit-related information on its willingness to share such information with other RTOs/ISOs.⁹²

75. IRC disagrees, arguing that RTOs/ISOs should be permitted rather than required to share credit-related information. IRC contends that defining the circumstances in which an RTO/ISO would be required to share credit-related information would burden RTO/ISO credit departments.⁹³ IRC further argues that a prescriptive approach would introduce the specter of potential rule violations, which would distract RTO/ISO credit departments from their efforts to identify and manage credit risks and to protect non-defaulting market participants from the consequences of credit defaults.⁹⁴

3. Commission Determination

76. We decline to adopt a prescriptive approach that would dictate circumstances in which RTOs/ISOs must share credit-related information with other RTOs/ISOs. As noted above, discretion regarding credit-related information sharing ensures that RTOs/ISOs gain additional visibility into their market participants' financial condition and are able to administer organized wholesale electric markets more effectively both as

⁹¹ SPP MMU Comments at 4.

⁹² Dominion Comments at 6-7.

⁹³ IRC Initial Comments at 4-5.

⁹⁴ *Id.*

part of ongoing “business-as-usual” credit risk management practices and during market or credit events.

77. By contrast, we find that a prescriptive approach to sharing credit-related information would unnecessarily constrain the RTOs’/ISOs’ discretion, limiting the effectiveness of this final rule. A discretionary rather than a prescriptive approach will allow RTOs/ISOs to determine what information may help another RTO/ISO carry out its credit risk management responsibilities and to share such information in a timely manner to limit negative credit events without the fear of running afoul of their tariffs or market participants when unique circumstances arise.

78. Although we do not adopt a prescriptive approach, we reiterate our expectation that RTOs/ISOs will use reasonable efforts to respond expeditiously to reasonable requests for credit-related information from other RTOs/ISOs. We believe the record in this proceeding demonstrates that RTOs/ISOs want to share credit-related information with one another for the purposes of credit risk management and mitigation.

F. Non-Jurisdictional Markets

1. NOPR

79. The Commission acknowledged that market participants in organized wholesale electric markets also transact in electric markets that are not Commission-jurisdictional, such as ERCOT, AESO, and IESO, as well as in commodities and derivatives markets subject to the jurisdiction of other regulators.⁹⁵ The Commission did not propose to require the adoption of tariff provisions that would allow RTOs/ISOs to share

⁹⁵ NOPR, 180 FERC ¶ 61,048 P 35.

credit-related information with these other market operators because of unresolved issues with such a proposal, including how the Commission could ensure the protection of market participants' confidential information in the absence of authority to take remedial action.⁹⁶

80. The Commission sought comment on possible frameworks that would account for jurisdictional limitations while still enabling RTOs/ISOs to share and receive credit-related information with and from other non-jurisdictional market operators.⁹⁷

2. Comments

81. EPSA and Dominion agree that the Commission should not permit RTOs/ISOs to share credit-related information with non-jurisdictional market operators in the absence of an ability to take remedial action to protect market participants' confidential credit-related information.⁹⁸

82. IRC requests that the Commission require RTOs/ISOs to amend their OATTs to allow credit-related information sharing not only with each other but also with market operators ERCOT, AESO, and IESO. IRC argues that excluding these market operators, which are not Commission-jurisdictional for these purposes, will limit awareness of credit risks that could impact RTOs/ISOs, and points to the example of the 2021 winter energy crisis in the ERCOT market.⁹⁹ IRC contends that sharing credit-related

⁹⁶ *Id.* P 36.

⁹⁷ *Id.*

⁹⁸ EPSA Comments at 7-8; Dominion Comments at 8-9.

⁹⁹ IRC Initial Comments at 5.

information with these market operators could be achieved through reciprocity arrangements, including a Memorandum of Understanding among the RTOs/ISOs, ERCOT, AESO, and IESO that would address the relevant mechanics and allow any signatory to cease credit-related information sharing in the event it has concerns with another signatory's potential or actual disclosure of confidential credit-related information.¹⁰⁰ IRC acknowledges that the Commission would lack direct enforcement authority over ERCOT, AESO, or IESO, but argues that these market operators would be incented sufficiently to protect market participants' confidential credit-related information by the possibility that one or more RTOs/ISOs would unilaterally cease sharing that information with them.¹⁰¹

3. Commission Determination

83. We decline to adopt IRC's request to require RTOs/ISOs to propose OATT revisions that would also allow RTOs/ISOs to share credit-related information with ERCOT, AESO, and IESO. We acknowledge IRC's concerns, and that RTOs/ISOs could benefit from credit-related information provided by ERCOT, AESO, and IESO. Nevertheless, we must balance IRC's request and the effectiveness of credit-related information sharing against the interest of market participants in protecting confidential credit-related information. ERCOT, AESO, and IESO are not subject to the Commission's jurisdiction in this area and we cannot direct them to share, or dictate how to handle, credit-related information under this final rule. In addition, we are not

¹⁰⁰ *Id.* at 5-6.

¹⁰¹ *Id.* at 6.

convinced by IRC's suggestion that sharing credit-related information with these non-jurisdictional entities would incent ERCOT, AESO, and IESO to protect market participants' confidential credit-related information. Although this general incentive may exist, these entities do not have confidentiality provisions that the Commission has determined to be just and reasonable. For these reasons, this final rule only permits RTOs/ISOs to share credit-related information with other RTOs/ISOs.

G. Miscellaneous

1. Comments

84. ETI and SPP MMU each request that the Commission consider consolidating certain RTO/ISO credit functions in a central credit entity. ETI argues that the Commission should consider requiring such an entity to monitor credit activity across the RTOs/ISOs, and proposes that it would be an independent third party entity overseen by the Commission and governed by the RTOs/ISOs. ETI contends that this entity would analyze the creditworthiness of any RTO/ISO market participant and produce a credit report for that RTO/ISO, saving the RTOs/ISOs and their market participants both resources and time.¹⁰² SPP MMU points to the Commission's routine collection of data from RTOs/ISOs under Order No. 760, and argues that a similar approach here could eliminate ambiguity it claims arise from the discretion we afford RTOs/ISOs.¹⁰³

¹⁰² ETI Comments at 7-8.

¹⁰³ SPP MMU Comments at 4-5.

2. Commission Determination

85. We decline ETI's and SPP MMU's requests for the consolidation of certain RTO/ISO credit functions in a central credit entity as outside the scope of this proceeding, which relates to the sharing of credit-related information among RTOs/ISOs.

H. Implementation

1. NOPR

86. The Commission proposed that it would require each RTO/ISO to submit a compliance filing consistent with a final rule in this proceeding in which the RTO/ISO would propose tariff revisions to permit credit-related information sharing.¹⁰⁴ The Commission sought comment on whether 60 days after the effective date of any final rule would be sufficient time to develop this new tariff language.

2. Comments

87. NEPOOL requests that the Commission allow up to 120 days for RTOs/ISOs to develop revisions to their OATTs if requested by an RTO/ISO. NEPOOL explains that this additional time would provide an opportunity for market participants to understand, discuss, and vote on any changes to ISO-NE financial assurance policies required to implement a potential final rule.¹⁰⁵

¹⁰⁴ NOPR, 180 FERC ¶ 61,048 P 31.

¹⁰⁵ NEPOOL Comments at 9-10.

3. Commission Determination

88. We adopt the NOPR proposal requiring RTOs/ISOs each to submit a compliance filing consistent with the regulations adopted herein and consistent with this final rule no later than 60 days after the effective date hereof.

89. As it pertains to NEPOOL's request, we clarify that RTOs/ISOs may ask to extend the 60-day deadline, as necessary, to ensure that RTOs/ISOs and their stakeholders have the time to work together to review the RTO/ISO OATT and other governing documents and discuss revisions thereto.

V. Information Collection Statement

90. The Office of Management and Budget's (OMB) regulations require approval of certain information collection requirements imposed by agency rules. Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

91. This final rulemaking will amend the Commission's regulations pursuant to section 206 of the FPA, to permit RTOs/ISOs to share among themselves credit-related information about market participants in organized wholesale electric markets. To accomplish this, the Commission will require RTOs/ISOs to adopt tariff revisions reflecting this reform. Such filings would be made under Part 35 of the Commission's regulations. Furthermore, in relation to this new FERC collection (FERC 1005), filers will be required to submit a one-time compliance filing showing that they have updated their tariff provisions.

92. Title: FERC 1005: Credit-Related Information Sharing in Organized Wholesale Electric Markets
93. Action: Collection of information in accordance with RM22-13-000.
94. OMB Control No.: 1902-[0325]
95. Respondents for this Rulemaking: RTOs/ISOs
96. Frequency of Information Collection: One-time compliance filing and ongoing information sharing (the latter information would not be submitted to the Commission)
97. Necessity of Information: The proposed rule will require that RTOs/ISOs submit to the Commission a one-time compliance filing proposing tariff revisions. Additionally, RTOs/ISOs will be permitted to share credit related information among themselves to improve their ability to accurately assess market participants' credit exposure and risks related to their activities across organized wholesale electric markets.
98. Internal Review: The Commission has reviewed the changes and has determined that such changes are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry in support of the Commission's ensuring just and reasonable rates. The Commission has specific, objective support for the burden estimates associated with the information collection requirements.
99. The Commission's estimate contains two estimates regarding burden and cost. One estimate is for the one-time compliance filing that will be submitted to the Commission by RTOs/ISOs for the purpose of revising or amending their tariffs to allow credit-related information sharing, as outlined in this proposal. The second estimate is of

the ongoing costs associated with RTOs/ISOs sharing credit-related information with each other.¹⁰⁶

100. The Commission estimates burden¹⁰⁷ and cost¹⁰⁸ as follows:

A. Collection	B. Number of Respondents	C. Annual Number of Responses per Respondent	D. Total Number of Responses (Column B x Column C)	E. Average Burden Hrs. & Cost per Response	F. Total Annual Hr. Burdens & Total Annual Cost (Column D x Column E)	G. Cost per Respondent (Column F ÷ Column B)
RTO/ISOs (one-time compliance filing) ¹⁰⁹	6	1	6	25 hrs.; \$2,175	150 hrs.; \$13,050	\$2,175
RTO/ISOs (ongoing information sharing) ¹¹⁰	6	2	12	4 hrs.; \$348	48 hrs.; \$4,176	\$696

¹⁰⁶ Note: The information sharing between RTOs/ISOs will not be submitted to the Commission; the estimate reflects the time and resources required for individual RTOs/ISOs to share information with one another.

¹⁰⁷ “Burden” is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the estimated burden, refer to 5 CFR 1320.3.

¹⁰⁸ Commission staff estimates that the respondents’ skill set (and wages and benefits) for Docket No. RM22-13-000 are comparable to those of Commission employees. Based on the Commission’s Fiscal Year 2022 average cost of \$188,922/year (for wages plus benefits, for one full-time employee), \$91.00/hour is used.

¹⁰⁹ The Commission’s hourly and cost estimates for the one-time compliance filing assumes that each RTO/ISO would need to develop and file tariff revisions with the Commission. The one-time cost associated with the compliance filing will be incurred in the first year, but we will annualize the burden and cost over three years to account for OMB’s three year approval period. The annualized burden and cost of the one-time filing is 50 hours (150/3 = 50) and \$4,350 (13,050/3 = 4,350).

¹¹⁰ The Commission does not know the extent of information sharing that would occur in this proposed rule but estimates that information sharing may occur roughly twice per year on average, per RTO/ISO.

A. Collection	B. Number of Respondents	C. Annual Number of Responses per Respondent	D. Total Number of Responses (Column B x Column C)	E. Average Burden Hrs. & Cost per Response	F. Total Annual Hr. Burdens & Total Annual Cost (Column D x Column E)	G. Cost per Respondent (Column F ÷ Column B)
Totals		—		—	198 hrs.; \$17,226	—

VI. Environmental Analysis

101. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.¹¹¹ We conclude that neither an Environmental Assessment nor an Environmental Impact Statement is required for this final rule under § 380.4(a)(15) of the Commission’s regulations, which provides a categorical exemption for approvals of actions under sections 205 and 206 of the FPA relating to the filing of schedules containing all rates and charges for the transmission or sale of electric energy subject to the Commission’s jurisdiction, plus the classification, practices, contracts, and regulations that affect rates, charges, classifications, and services.¹¹²

VII. Regulatory Flexibility Act

102. The Regulatory Flexibility Act of 1980 (RFA)¹¹³ generally requires a description and analysis of final rules that will have significant economic impact on a substantial

¹¹¹ *Reguls. Implementing the Nat’l Evt’l Pol’y Act*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986-1990 ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

¹¹² 18 CFR 380.4(a)(15).

¹¹³ 5 U.S.C. 601-612.

number of small entities. The Small Business Administration (SBA) sets the threshold for what constitutes a small business. Under SBA’s size standards,¹¹⁴ RTOs/ISOs fall under the category of Electric Bulk Power Transmission and Control (NAICS code 221121) with a size threshold of 950 employees (including the entity and its associates).¹¹⁵

103. The RTOs/ISOs (i.e., SPP, MISO, PJM, ISO-NE, NYISO, and CAISO) each employ more than 950 employees and are not considered small.

104. According to SBA guidance, the determination of significance of impact “should be seen as relative to the size of the business, the size of the competitor’s business, and the impact the regulation has on larger competitors.”¹¹⁶ The Commission does not consider the estimated cost to be a significant economic impact, nor does it effect a significant amount of small entities. As a result, we certify that the reforms in this final rule would not have a significant economic impact on a substantial number of small entities.

¹¹⁴ 13 CFR 121.201.

¹¹⁵ The RFA definition of “small entity” refers to the definition provided in the Small Business Act, which defines a “small business concern” as a business that is independently owned and operated and that is not dominant in its field of operation. The SBA’s regulations at 13 CFR 121.201 define the threshold for a small Electric Bulk Power Transmission and Control entity (NAICS code 221121) to be 500 employees. *See* 5 U.S.C. 601(3) (citing section 3 of the Small Business Act, 15 U.S.C. 632).

¹¹⁶ U.S. Small Business Administration, “A Guide for Government Agencies How to Comply with the Regulatory Flexibility Act,” at 18 (May 2012), https://www.sba.gov/sites/default/files/advocacy/rfaguide_0512_0.pdf.

VIII. Document Availability

105. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (<http://www.ferc.gov>). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the President's March 13, 2020 proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19).

106. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

107. User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

IX. Effective Date and Congressional Notification

108. These regulations are effective [insert date 60 days from publication in Federal Register]. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major

rule” as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements
By the Commission.

Issued: June 15, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

In consideration of the foregoing, the Commission amends part 35, subpart J, title 18, Code of Federal Regulations, as follows:

PART 35 – FILING OF RATE SCHEDULES AND TARIFFS.

1, The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a-825r, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352.

2. Amend § 35.47 by adding paragraph (h) to read as follows:

§ 35.47 Tariff provisions regarding credit practices in organized wholesale electric markets.

* * * * *

(h)(1) Subject to paragraph (h)(2) of this section:

(i) Permit organized wholesale electric markets to share market participant credit-related information with, and receive market participant credit-related information from, other organized wholesale electric markets for the purpose of credit risk management and mitigation; and

(ii) Permit the receiving organized wholesale electric market to use credit-related information received from another organized wholesale electric market to the same extent and for the same purposes that the receiving organized wholesale electric market may use credit-related information collected from its own market participants.

(2) Require the receiving organized wholesale electric market to treat credit-related information an organized wholesale electric market receives from another organized wholesale electric market as confidential under the terms set forth in the tariff or other governing document of the receiving organized wholesale electric market.

[FR Doc. 2023-13287 Filed: 6/21/2023 8:45 am; Publication Date: 6/22/2023]