

135 FERC ¶ 61,242  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

Credit Reforms in Organized  
Wholesale Electric Markets

Docket No. RM10-13-002

ORDER NO. 741-B

ORDER DENYING REHEARING

(Issued June 16, 2011)

1. In Order No. 741, the Commission adopted reforms to credit policies used in organized wholesale electric power markets, including caps on unsecured credit.<sup>1</sup> Subsequently, in Order No. 741-A, the Commission granted rehearing as to, as relevant here, its establishment in Order No. 741 of a separate cap on unsecured credit for corporate families. In the instant order, the Commission denies requests for rehearing of its decision in Order No. 741-A to eliminate the separate cap on unsecured credit for corporate families.

**Background**

2. In Order No. 741, the Commission directed regional transmission organizations (RTOs) and independent system operators (ISOs) to revise their tariffs to reflect the following reforms: implementation of shortened settlement timeframes, restrictions on the use of unsecured credit, elimination of unsecured credit in all financial transmission rights (FTR) or equivalent markets, adoption of steps to provide legal support for netting and set-off of transactions in the event of bankruptcy, establishment of minimum criteria for market participation, clarification regarding the organized markets' administrators'

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<sup>1</sup> *Credit Reforms in Organized Wholesale Electric Markets*, Order No. 741, 75 FR 65942 (Oct. 21, 2010), FERC Stats. & Regs. ¶ 31,317 (2010), *order on reh'g*, Order No. 741-A, 76 FR 10492 (Feb. 25, 2011), FERC Stats. & Regs. ¶ 31,320 (2011).

ability to invoke “material adverse change” clauses to demand additional collateral from participants, and adoption of a two-day grace period for “curing” collateral calls.

3. In Order No. 741-A, the Commission denied most requests for rehearing, but, as relevant here, the Commission granted requests for rehearing as to its establishment of a \$100 million corporate family cap on unsecured credit. The Commission was persuaded that an entity could reconfigure its corporate structure to avoid the Commission-ordered \$50 million single-entity cap to take advantage of the higher \$100 million corporate family cap, posing an unacceptable risk to the organized wholesale markets. The Commission further explained that the default of a single market participant could result in a significant cumulative unsecured exposure if the Commission allowed the higher corporate family cap, and that socializing such losses to other market participants could result in an even more significant market disruption than if the default were by a single market participant. Thus, the Commission found that the limit on the use of unsecured credit should be no more than \$50 million per entity, including the corporate family to which an entity belongs.<sup>2</sup>

4. Requests for rehearing were filed by the Designated PJM Transmission Owners (PJM TOs),<sup>3</sup> Duke Energy Corporation (Duke), and Edison Electric Institute (EEI) (collectively, Petitioners).

## **Discussion**

### **A. Requests for Rehearing**

5. Petitioners all request rehearing solely on the issue of the Commission’s decision to reduce the cap for corporate families from \$100 million to \$50 million. They argue that the Commission’s decision was arbitrary and capricious, and based on speculative concerns not supported by evidence. Both EEI and PJM TOs argue that there is no evidence that a market participant would create special entities to qualify for the \$100 million cap and that it is unlikely that an entity would restructure to take advantage of the \$100 million cap. EEI states that there are significant regulatory requirements placed on corporate restructuring, especially for investor-owned utilities. EEI also argues that there is no evidence that a market participant and its affiliates would operate in every

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<sup>2</sup> Order No. 741-A, FERC Stats. & Regs. ¶ 31,320 at P 9.

<sup>3</sup> PJM TOs, which are owners or affiliates of owners of transmission in PJM Interconnection, L.L.C. (PJM), include: American Electric Power Service Corporation; Exelon Corporation; FirstEnergy Service Company; Public Service Electric and Gas Company; and Virginia Electric and Power Company.

RTO or ISO market and thus could aggregate unsecured credit allowances up to \$600 million.

6. EEI further argues that there are already RTO and ISO credit policies and procedures in place to manage any risks associated with unsecured credit. EEI contends that RTO and ISO credit policies have been developed through stakeholder processes and thus meet the needs of market participants and consumers and can be re-evaluated as needed. EEI further contends that the Commission's decision fails to take into account the fact that different entities place different risks on the markets. EEI argues that utilities that are affiliated with large holding companies are not likely to have created the market risks that the Commission is correcting, but will incur increased costs that will be passed on to customers.

7. PJM TOs similarly argue that the increased costs of liquidity to large utility companies with multiple operating affiliates participating in the markets will be substantial. By way of example, PJM TOs note that each of Exelon's three corporate entities has a \$33 million unsecured credit limit. If these three companies post collateral for credit over a \$50 million cap, then PJM TOs state that the costs of maintaining the necessary level of liquidity to do business would increase by over \$1 million.<sup>4</sup> It argues that these additional costs are not justified, given that Exelon's current risk profile supports the current amount of unsecured credit for its three affiliates. It also argues that the Commission failed to give sufficient consideration to the safeguards currently afforded to market participants by RTOs and ISOs.

#### **B. Commission Determination**

8. The Commission denies rehearing. The Commission is not persuaded that the establishment of a single cap on unsecured credit for all entities of no more than \$50 million is arbitrary or based on speculative concerns. We note that organized commodity markets, both here and abroad, do not use *any* unsecured credit, and the fact that the Commission is allowing the RTOs and ISOs to provide up to \$50 million of unsecured credit per entity recognizes the differences between the markets. Moreover, allowing this level of unsecured credit in the organized wholesale electric markets reflects the Commission's efforts to reasonably manage credit risk while not unreasonably raising costs for market participants.

9. Petitioners argue that it is unlikely that an entity would restructure to take advantage of the \$100 million cap. We are not persuaded that the need to obtain regulatory approvals is a sufficient deterrent to an entity that wants to take advantage of a

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<sup>4</sup> PJM TOs May 21, 2011 Request for Rehearing at n.18.

\$100 million corporate family cap, particularly in light of the greater risk that such an entity imposes on the organized wholesale markets. Thus, we believe that a risk remains, as articulated in Order No. 741-A, that market participants will reconfigure their corporate structure to avoid the \$50 million single entity cap on unsecured credit.

10. While it is uncommon for an entity to participate in all jurisdictional markets, participation across multiple markets is becoming a more common practice<sup>5</sup> and may become an even more common practice in the future, especially as organized wholesale markets continue to evolve. This development argues for measures to prevent one large entity from causing large cumulative disruptions due to a default where there is a \$100 million corporate family cap in each market.

11. The Commission also is not persuaded by Petitioners' arguments that the potential increased costs of doing business are not justified. While the Commission recognizes that reducing the use of unsecured credit may increase costs for some market participants, it believes that eliminating a separate \$100 million corporate family cap in favor of a single \$50 million cap will help to prevent the even greater costs and market disruptions that could result from unsecured credit defaults. As the Commission has stated on numerous occasions, managing risk and credit necessarily involves balance. While the Commission seeks to assure liquidity, and therefore competition, in the organized wholesale markets, it also must take into account the need to mitigate potentially large disruptions in these markets through sound credit policy.

12. Finally, we are not persuaded by Petitioners' arguments that RTO and ISO credit policies and procedures regarding the use of unsecured credit are sufficient to manage any risks associated with a higher cap on unsecured credit for a corporate family. In Order No. 741, while the Commission recognized that unsecured credit is extended after an RTO/ISO has performed a credit analysis, it further noted that the assumptions upon which any credit analysis is made can change rapidly.<sup>6</sup> We are not persuaded otherwise.

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<sup>5</sup> According to data submitted in the 2010 fourth quarter Electric Quarterly Reports, at least 37 companies trade in four or more RTO/ISO markets. Indeed, 14 companies trade in five or more RTO/ISO markets.

<sup>6</sup> Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 50.

The Commission orders:

The requests for rehearing are denied as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.