136 FERC ¶ 61,190
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.

PJM Interconnection, L.L.C. Docket No. ER11-3972-000

ORDER ON COMPLIANCE FILING

(Issued September 15, 2011)

1. On June 30, 2011, PJM Interconnection, L.L.C. (PJM) filed proposed revisions to the PJM Open Access Transmission Tariff (Tariff) in response to the directives in Order Nos. 741 and 741-A.[1] The proposed revisions modify the Tariff to (1) establish minimum criteria for market participation; (2) restrict the use of unsecured credit; (3) clarify PJM's ability to invoke "material adverse change" provisions to demand additional collateral; and (4) ensure general applicability of the standards. PJM also provides explanations of how its Tariff already satisfies the other requirements of Order No. 741 because it reflects (1) weekly billing, with minimal exceptions; (2) elimination of unsecured credit in financial transmission rights (FTR) markets, with minimal exceptions; (3) establishment of a counterparty to transactions with market participants; and (4) a two-day grace period to cure collateral calls. As discussed below, the Commission finds that the compliance filing complies with the requirements set forth in Order No. 741 and that PJM's proposed minimum participation criteria are just and reasonable. Therefore, the Commission conditionally accepts PJM's proposed tariff revisions effective October 1, 2011, as requested. However, the Commission directs PJM to submit a compliance filing within 90 days of the date of this order to clarify a provision of PJM's proposed officer certification form, amend its tariff provisions regarding the cap on unsecured credit and elimination of unsecured credit in the FTR markets, and provide for compliance verification concerning minimum criteria for market participation.

---

[1] *Credit Reforms in Organized Wholesale Electric Markets*, Order No. 741, FERC Stats. & Regs. ¶ 31,317 (2010), *order on reh'g*, Order No. 741-A, FERC Stats. & Regs. ¶ 31,320 (2011), *order denying reh'g*, Order No. 741-B, 135 FERC ¶ 61,242 (2011).

I. Background

2. In Order No. 741, the Commission adopted reforms to strengthen the credit policies used in organized wholesale electric power markets. Citing its statutory responsibility to ensure that all rates charged for the transmission or sale of electric energy in interstate commerce are just, reasonable, and not unduly discriminatory or preferential,[2] the Commission directed regional transmission organizations (RTO) and independent system operators (ISO) 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 FTR or equivalent markets, clarification of legal status to continue the netting and set-off of transactions in the event of bankruptcy, establishment of minimum criteria for market participation, clarification regarding the organized markets' administrators' ability to invoke "material adverse change" clauses to demand additional collateral from market participants, and adoption of a two-day grace period for "curing" collateral calls.

3. The Commission applied these reforms to all RTO and ISO markets, explaining that the activity of market participants is not confined to any one region or market. The Commission stated that the credit practices in all RTOs and ISOs are only as strong as the weakest credit practice because a default in one market could have ripple effects in another market. In order to implement these reforms, the Commission directed each RTO and ISO to submit tariff changes by June 30, 2011, with an effective date of October 1, 2011. In Order No. 741-A, the Commission extended the deadline for complying with the requirement regarding the ability to offset market obligations to September 30, 2011, with the relevant tariff revisions to take effect January 1, 2012.[3]

4. In the compliance filing, PJM explains that, consistent with the guidance the Commission earlier provided to ISOs and RTOs in its policy statement on electric creditworthiness,[4] PJM initiated and actively pursued a comprehensive credit risk management reform to improve its risk management practices, in order both to reduce credit exposure to PJM members and to enable PJM to better manage those exposures.

---

[2] 16 U.S.C. §§ 824d, 824e (2006).

[3] Order No. 741-A, FERC Stats. & Regs. ¶ 31,320 at P 25.

[4] *Policy Statement on Electric Creditworthiness*, 109 FERC ¶ 61,186 (2004).

With advice from PJM's Credit Risk Management Steering Committee and other PJM committees, PJM notes that in 2008 it made several modifications to its credit policies.[5]

5. As part of these ongoing efforts, PJM states that in 2009 it further revised its credit policies to implement (1) weekly billing and payment for most invoice line items; (2) a corresponding reduction in the per-member unsecured credit allowance; (3) elimination of the unsecured credit allowance for FTR trading; and (4) procedures authorizing PJM, upon the occurrence of a default, to close out and liquidate a defaulting participant's forward FTR positions.[6] PJM also states that it added a new entity, PJMSettlement,[7] as the counterparty to market participants and customers regarding transmission services, ancillary services transactions, purchases and sales in PJM's energy markets, purchases and sales of capacity in the Reliability Pricing Model (RPM) auctions, purchases and sales of FTRs in FTR auctions, and the contractual rights and obligations of holders of FTRs and Auction Revenue Rights (ARRs).[8]

6. PJM states that PJM and its stakeholders have conferred extensively about tariff changes to comply with Order No. 741.[9] In December 2010, PJM introduced the tariff revisions to the Credit Subcommittee and subsequently held a dozen more stakeholder meetings as part of a seven-month process. PJM asserts that only the establishment of minimum participation requirements raised significant debate among the PJM membership. PJM states that, despite the fact that it was not required to obtain

---

[5] *See, e.g.*, *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,323 (2008); *PJM Interconnection, L.L.C.*, Docket No. ER08-570-000 (Apr. 3, 2008) (unpublished letter order); *PJM Interconnection, L.L.C.*, 122 FERC ¶ 61,279 (2008), *order on compliance*, Docket Nos. ER08-376-001, ER08-455-001, ER08-520-001 (Apr. 10, 2008) (unpublished letter order).

[6] Compliance Filing at 5 (citing *PJM Interconnection, L.L.C.*, 127 FERC ¶ 61,017 (2009), *order on reh'g and compliance*, 131 FERC ¶ 61,017, *order on reh'g*, 132 FERC ¶ 61,180 (2010)).

[7] PJM states that PJMSettlement is a nonprofit member organization formed on a nonstock basis under the Pennsylvania Nonprofit Corporation Law of 1988, with PJM serving as the Executive Member with all voting rights. *See* 15 Pa. Cons. Stat. § 5101 *et seq*. (2010). Members of PJM also are associate members of PJMSettlement.

[8] Compliance Filing at 5.

[9] *Id*. at 6.

stakeholder approval to submit the compliance tariff revisions, it sought an indicative vote of the stakeholders to guide its compliance proposal. According to PJM, at the June 14, 2011 Members Committee meeting, the PJM members endorsed the substance of the final PJM compliance filing by more than a 70 percent sector vote and that other proposals received less than two-thirds sector support.

II. Notice of Filing and Responsive Pleadings

7. Notice of PJM's filing was published in the *Federal Register*, 76 Fed. Reg. 41,776 (2011), with interventions and protests due on or before July 21, 2011. Numerous parties filed timely motions to intervene, motions to intervene with comments and/or protests, or comments. A full listing of those parties is set forth in Appendix A.

8. On July 20, 2011, CCES LLC (CCES) filed a motion to intervene and protest of the compliance filing, but inadvertently filed it in Docket No. RM10-13-000. We will consider CCES' protest as filed within this docket. In addition, CCES subsequently filed a motion to intervene out-of-time and protest in this docket.

9. On August 5, 2011, AMP filed an answer to Financial Marketers' and DC Energy's protests. On August 8, 2011, PJM filed an answer to the protests. On August 16, 2011, AEP filed an answer to PJM's answer. On August 23, 2011, Indicated Participants filed an answer to PJM's answer.

III. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[10] the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

11. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,[11] the Commission will grant North America Power Partners, LLC's late-filed motion to intervene and CCES' late-filed motion and protest given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

---

[10] 18 C.F.R. § 385.214 (2011).

[11] 18 C.F.R. § 385.214(d) (2011).

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[12] prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We will accept AMP's, PJM's, AEP's, and Indicated Participants' answers because they have aided us in our decision-making.

B. Substantive Matters

1. Shortening the Settlement Cycle

13. Order No. 741 directed each RTO and ISO to submit a compliance filing that includes tariff revisions to establish shorter billing and settlement periods that are, at most, weekly.[13]

a. Filing

14. PJM states that its existing billing and payment Tariff provisions comply with Order No. 741. PJM explains that section 7.1 of the Tariff provides for weekly billing with a month-end bill for products and services that are difficult to measure on a weekly basis.[14] PJM lists the charges and credits that may be included in monthly billing statements.[15] PJM states that the Commission approved this arrangement when PJM initiated weekly billing,[16] and argues that the amounts at issue for month-end bills are small and do not present the same risks of default as those subject to weekly bills. To the extent necessary, PJM requests confirmation that its existing billing and payment provisions comply with Order No. 741 directives.

---

[12] 18 C.F.R. § 385.213(a)(2) (2011).

[13] Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 32.

[14] PJM estimates that approximately 95 percent of transaction activity represented in monetary terms will be subject to weekly billing and payment. Compliance Filing at 51.

[15] Compliance Filing at 52, n. 120.

[16] PJM states that it proposed to implement weekly billing in Docket No. ER09-650-000, and the Commission accepted the revisions, effective June 1, 2009, in *PJM Interconnection, L.L.C.*, 127 FERC ¶ 61,017 (2009).

b. Protests and Comments

15. No protests were filed regarding this issue.

c. Commission Determination

16. We find that PJM's existing Tariff provisions regarding billing and payment comply with Order No. 741. These existing Tariff provisions already establish billing periods of no more than seven days and settlement periods of no more than seven days after issuance of bills. The vast majority of PJM's transaction activity will be subject to weekly billing, and we find that PJM's limited use of month-end billing for products and services that are difficult to measure on a weekly basis is reasonable under the circumstances.

2. Use of Unsecured Credit

17. Order No. 741, as revised by Order No. 741-A, required each RTO and ISO to revise its tariff provisions to establish a limit on unsecured credit of no more than $50 million per market participant, including the corporate family to which a market participant belongs.[17]

18. The Commission emphasized that the $50 million limit on unsecured credit is a ceiling, and that an organized wholesale electric market may establish a lower ceiling, either for individual market participants or, for example, based on the relative market size, the price of energy, the number of megawatt (MW) hours, and the size and number of members. The Commission also directed that RTOs and ISOs not take parent guarantees into account when establishing the appropriate level of unsecured credit for a market participant.[18]

---

[17] Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 49, *order on reh'g*, Order No. 741-A, FERC Stats. & Regs. ¶ 31,320 at P 9. In Order No. 741-A, the Commission stated that "a corporate family may choose to have a single member company participate in an RTO/ISO's market, or instead opt to have more than one do so, [but] in either case, the single entity or multiple entities together will have a cap of no more than $50 million." Order No. 741-A, FERC Stats. & Regs. ¶ 31,320 at P 9 & n.15.

[18] Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 55-56.

a. Filing

19. PJM states that section II.B(2) of Attachment Q to the Tariff already provides that the maximum unsecured credit allowance for a market participant, based on its tangible net worth and credit evaluation, is $50 million. PJM states that, to further comply with the Commission's directives, it is proposing to revise section II.F to Attachment Q to clarify that the aggregate Unsecured Credit Allowance for a participant shall not exceed $50 million, and reduce the limit for the aggregate Unsecured Credit Allowance for a group of Affiliates from $150 million to $50 million.

20. PJM explains that it does not include within the unsecured credit cap either "Seller Credit" or "RPM seller credit,"[19] and explains that, while Seller Credit and RPM seller credit are identified as types of unsecured credit, they are based on the participant's transactions in the PJM markets and do not have the same risks as unsecured credit based on a participant's financial condition. PJM states that Seller Credit is only available to participants that sell more in the PJM markets than they purchase, so that in the event of a default of a participant with seller credit, it would be expected that its sell position would offset the default by netting offsetting obligations, and the risk to other market participants of defaults would be small. PJM argues that its exclusion of Seller Credit and RPM seller credit from the unsecured credit cap is consistent with Order No. 741 given their nominal risk and limited availability.

b. Protests and Comments

21. No protests were filed regarding this issue.

c. Commission Determination

22. We find that PJM's proposed Tariff provisions regarding use of unsecured credit comply with Order No. 741. PJM's proposed Tariff provisions establish a limit on unsecured credit of no more than $50 million per market participant, including the

---

[19] Section II.C of Attachment Q, relating to Seller Credit for all markets other than RPM, provides: "Participants that have maintained a Net Sell Position for each of the prior 12 months are eligible for Seller Credit, which is an additional form of Unsecured Credit." Section IV.E. of Attachment Q contains RPM seller credit provisions, which state that "[i]f a supplier has a history of being a net seller into PJM markets, on average, over the last 12 months, then PJMSettlement will count as available Unsecured Credit twice the average of that participant's total net monthly PJMSettlement bills over the past 12 months."

corporate family to which a market participant belongs. However, we find PJM's practice of excluding seller credit from the unsecured credit cap to be inconsistent with Order No. 741. In Order No. 741, the Commission required each ISO and RTO to cap all unsecured credit at no more than $50 million per market participant. As PJM has acknowledged, seller credit is unsecured credit because it is potential value to the participant rather than actual secured value to PJM.[20] Therefore, consistent with Order No. 741, any seller credit must be counted in the $50 million cap on unsecured credit. Accordingly, we direct PJM to revise its tariff within 90 days of the date of this order to provide that seller credit will be included in the $50 million cap on unsecured credit.

3. Elimination of Unsecured Credit for Financial Transmission Rights Markets

23. Order No. 741 directed each RTO and ISO to submit a compliance filing that includes tariff revisions to eliminate the use of unsecured credit in its FTR, or FTR-equivalent, markets.[21]

a. Filing

24. PJM states that section V.A of Attachment Q already reflects PJM's elimination of the use of the unsecured credit allowance in PJM's FTR markets. PJM states that the Commission accepted PJM's proposal to eliminate the unsecured credit allowance for future FTR trading, effective April 6, 2009, in Docket No. ER09-650-000.[22] PJM explains that, while the change eliminated the use of the unsecured credit allowance, it permitted the use of Seller Credit to meet the FTR credit requirements. PJM also explains that the change did not apply to FTRs, including long term FTRs, that were acquired prior to the June 1, 2009 FTR auctions for the 2009-2010 planning period, which provided a transition from the prior provisions to the elimination of unsecured credit. PJM states that the previously acquired FTRs that may still utilize an unsecured credit allowance will remain effective through May 2012, but after that date the transaction will be complete and all FTRs will be subject to the current FTR credit limit provisions and will not be able to use an unsecured credit allowance. To the extent

---

[20] *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,323, at P 5 (2008).

[21] Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 75.

[22] Compliance Filing at 56 (citing *PJM Interconnection, L.L.C.*, 127 FERC ¶ 61,017 at P 2, 36 & ordering para. (A), *order on reh'g and compliance*, 131 FERC ¶ 61,017, *order on reh'g*, 132 FERC ¶ 61,180 at P 17-18).

necessary, PJM requests confirmation that the continued availability of Seller Credit and the continued utilization of an unsecured credit allowance for FTRs that were acquired prior to the June 2009 auction for use in the FTR credit limit are consistent with Order No. 741. PJM states that, if the Commission believes that PJM is not in compliance with Order No. 741, then PJM requests a limited waiver of the requirements.

b. Protests and Comments

25. No protests were filed regarding this issue.

c. Commission Determination

26. We find that PJM's existing Tariff provisions do not fully comply with Order No. 741. While PJM previously eliminated the use of an unsecured credit allowance for FTR trading, PJM's tariff still permits market participants to use seller credit to meet FTR credit requirements. As discussed above, seller credit is a form of unsecured credit. Therefore, the provisions of PJM's tariff that permit the use of seller credit to meet the FTR credit requirements are contrary to Order No. 741's requirement to eliminate the use of unsecured credit in the FTR markets. Accordingly, we direct PJM to amend its tariff within 90 days of the date of this order to remove any provision that permits the use of seller credit to meet FTR credit requirements.

27. We find that PJM's use of an unsecured credit allowance for FTRs acquired prior to the June 2009 auction to be reasonable. The elimination of the use of an unsecured credit allowance will be complete after May 2012, when the Commission-accepted exception to PJM's proposal that allows for the continued use of an unsecured credit allowance for FTRs acquired prior to the June 2009 auction will cease to apply to any transactions. PJM also states that, as of the proposed effective date of October 1, 2011, only 20 percent ($13.2 million) of the original $66 million will remain in use.[23]

4. Ability to Offset Market Obligations

28. In Order No. 741, the Commission expressed its support for netting of transactions, but determined that netting must be established in a way that ensures that a market participant cannot successfully challenge setting-off amounts owed to the market participant against amounts to be paid to an RTO or ISO in a bankruptcy proceeding. Therefore, the Commission required each RTO and ISO to revise its tariff to include one of the following options: establish a central counterparty; require market participants to provide a security interest in their transactions in order to establish collateral

[23] *Id.* at 56, n.134.

requirements based on net exposure; or propose another alternative, which provides the same degree of protection as the two above-mentioned methods.[24] If an RTO or ISO chooses none of the three alternatives described above, then an RTO or ISO could instead establish credit requirements for market participants based on their gross obligations rather than net obligations.[25]

a. Filing

29. PJM states that it already complies with the Commission's directive in Order No. 741 to implement one of several options for addressing the risks associated with netting market participant obligations. PJM explains that it established PJMSettlement, which as of January 1, 2011, became the counterparty to all transactions in the markets and auctions administered by PJM.[26]

b. Protests and Comments

30. No protests were filed regarding this issue.

c. Commission Determination

31. We find that PJM already complies with the Commission's directive in Order No. 741 through its adoption of the first option—establishment of PJMSettlement as the counterparty to all transactions in PJM.

5. Minimum Criteria for Market Participation

32. In Order No. 741, the Commission directed each RTO and ISO to revise its tariff to establish minimum criteria for market participation.[27] The Commission further directed each RTO and ISO to develop these criteria through its stakeholder processes.[28] While Order No. 741 did not provide specific criteria, the Commission offered examples

---

[24] Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 116-17.

[25] *Id*. P 117, 121.

[26] *PJM Interconnection, L.L.C. and PJMSettlement, Inc.*, 132 FERC ¶ 61,207 (2010).

[27] Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 131.

[28] *Id.* P 132.

of acceptable criteria, and stated that it would evaluate each RTO and ISO proposal to ensure that it is just and reasonable and not unduly discriminatory. For example, the Commission explained that minimum criteria for market participation could include the market participant having the capability to engage in risk management or hedging or to out-source this capability with periodic compliance verification. The Commission stated that the minimum criteria for market participation would make sure that each market participant has adequate risk management capabilities and adequate capital to engage in trading with minimal risk, and related costs, to the market as a whole.[29] Moreover, the Commission stated that any minimum participation criteria apply to all market participants rather than only certain participants.[30] The Commission later clarified in Order No. 741-A that some criteria may be tiered or calibrated based on, for example, the size of a market participant's positions.[31]

a. Minimum Participation Requirements -- Generally

i. Filing

33. PJM proposes new section Ia of Attachment Q to the Tariff to establish minimum criteria that entities must meet to be eligible to participate in the PJM markets. PJM states that, although Order No. 741's directives drive PJM's proposal, approval of the proposed minimum participation requirements will also better enable PJM to obtain an exemption for its products and services from the Commodities Exchange Act (CEA), as amended by the Dodd Frank Wall Street Reform and Consumer Protection Act.[32] PJM's proposal requires participants to satisfy two categories of requirements: (1) capitalization; and (2) risk management and verification.[33]

---

[29] *Id.* P 131.

[30] *Id.* P 133. While there needs to be minimum criteria for all market participants, as we explained in Order No. 741-A, not all market participants need necessarily be held to the same minimum criteria. Order No. 741-A, FERC Stats. & Regs. ¶ 31,320 at P 33 & n.43.

[31] Order No. 741-A, FERC Stats. & Regs. ¶ 31,320 at P 33 & n.43.

[32] Compliance Filing at 72 (citing Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010)).

[33] The minimum participation requirements only apply to the entities actually participating in the PJM markets. If an entity cannot satisfy the requirements, it has the option of transacting in the markets through a third party, so long as that party transacting

(continued…)

ii. Protests

34. EPSA urges the Commission to require that processes across RTOs and ISOs be sufficiently uniform to ensure compliance and clarity. In that vein, EPSA suggests that the Commission hold a compliance workshop so that RTOs, ISOs, and industry can discuss both the necessary differences in compliance across the regions as well as areas that can be standardized. Indicated Participants similarly ask the Commission to direct the RTOs/ISOs to coordinate their certification statements and verification processes both in terms of substance and dates for submission.

35. Indicated Participants state that the RTOs and ISOs have proposed revisions to their Commission-jurisdictional tariffs to enable them to obtain an exemption from regulation of RTO and ISO products and services by the CFTC under the Commodity Exchange Act.[34] However, Indicated Participants assert that they are not privy to the discussions between the RTOs and ISOs and the CFTC, and are not certain what changes are necessary to obtain an exemption. Given that RTOs and ISOs have not proposed uniform changes to their tariffs, Indicated Participants argue that individual RTOs and ISOs may fall short of, or exceed, whatever requirements are being set forth by the CFTC as a basis for exemption, particularly the proposed certification statements. Thus, Indicated Participants request that the Commission solicit input from the CFTC explaining what that agency requires and require the RTOs and ISOs to tailor their revisions to satisfy only those requirements.

36. Financial Marketers assert that the stakeholder process leading up to the PJM Order No. 741 tariff filing was unfair, biased and aimed at advocating PJM's own agenda, and request that the Commission reject the compliance filing and require PJM to reevaluate its proposed credit policies. AEP claims that stakeholders were given inadequate time to consider the draft certification and were minimally consulted during the stakeholder process, and urges the Commission to require PJM to convene a bona fide stakeholder process.

iii. Comments

37. ODEC notes that PJM conducted an extensive stakeholder process to share its proposals and take into account stakeholder response, even though it was not required to receive stakeholder approval. ODEC emphasizes that PJM's efforts resulted in a supportive indicative vote on the substance of the compliance filing, by more than

---

in the markets meets the requirements.

[34] Indicated Participants Comments at 8; *see* 7 U.S.C. § 1 (2006).

70 percent of sectors, and urges the Commission to take PJM's ability to achieve such an endorsement into account.

iv. Answers

38. Indicated Participants reiterate in their answer that RTOs and ISOs should coordinate to make their certification statements uniform in substance and dates for submission.

39. In its answer, PJM responds to protestors' criticisms of the stakeholder process and request for a further process by reiterating that the stakeholder process for the compliance filing was extensive and inclusive.

40. AEP asserts, in its answer, that PJM does not contest the facts presented by AEP concerning the deficient stakeholder process.

v. Commission Determination

41. In Order No. 741, the Commission directed all RTOs and ISOs to adopt minimum participation criteria, but explicitly left it to each RTO and ISO and its stakeholders to develop minimum participation criteria that are applicable to its markets.[35] The Commission thus declines to require RTOs and ISOs to adopt uniform minimum participation criteria, including uniform certification statements, at this time. Although we decline to require uniform minimum participation criteria, we recognize that there may be merit in minimizing the differences in requirements for each ISO and RTO, and we are open to subsequent efforts by industry participants and the RTOs and ISOs to come up with uniform criteria.

42. In Order No. 741, the Commission required RTOs and ISOs to develop minimum participation criteria to ensure that markets are protected from risks posed by under-capitalized participants or those who do not have adequate risk management procedures in place.[36] In evaluating whether the proposed tariff revisions comply with Order No. 741, the Commission is concerned with whether the proposed minimum participation criteria accomplish this goal, and are just and reasonable and not unduly discriminatory or preferential. In so doing, we review the proposal before us, and understand that there may be more than one just and reasonable set of minimum participation criteria.

---

[35] Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 132-33; Order No. 741-A, FERC Stats. & Regs. ¶ 31,320 at P 33.

[36] Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 131.

43. While we expect each RTO and ISO will comply with applicable rules and requirements of all federal agencies, we are presently concerned with compliance with Order No. 741 and with the reasonableness of the proposed tariff changes now before us. Any issues related to a potential CFTC exemption is outside the scope of this proceeding. The Commission, however, remains open to subsequent tariff revisions offered by the RTOs and ISOs in light of future events.

44. We find no basis for holding PJM's filing in abeyance pending additional stakeholder processes, as some protestors request. Although Order No. 741 contemplated the use of a stakeholder process to assist in developing minimum participation criteria, the Commission recognized "that stakeholder groups with competing interests may disagree."[37] Ultimately, the responsibility to propose just and reasonable Tariff provisions in response to Order No. 741 was PJM's and we find that what PJM proposed here is just and reasonable.

b. Minimum Capitalization Requirements

i. Filing

45. PJM states that the proposed minimum capitalization requirements can be satisfied either by (1) meeting specified, minimum capitalization requirements, based either on tangible net worth or tangible assets, or (2) providing certain additional collateral above the amount of collateral otherwise required for trading. PJM explains that its minimum capitalization requirements are tiered depending on the activities of the participant. To meet the minimum capitalization requirement based on tangible net worth or tangible assets, FTR Participants[38] must demonstrate a tangible net worth in excess of $1 million or tangible assets in excess of $10 million.[39] All other participants must demonstrate a tangible net worth in excess of $500,000 or tangible assets in excess of $5 million.[40] Participants are required to present their tangible net worth or tangible asset levels in the form of audited financial statements for the most recent fiscal year.

---

[37] *Id*. P 133.

[38] PJM proposes to define "FTR Participant" in section VIII of Attachment Q as "any Market Participant that is required to provide Financial Security or to utilize Seller Credit in order to participate in PJM's FTR auctions."

[39] PJM Tariff, Attachment Q, proposed section Ia.B.1.

[40] *Id*.

46. Proposed section Ia.B.1.b of Attachment Q to the Tariff provides that demonstration of tangible assets and net worth may be satisfied through presentation of an acceptable corporate guaranty, provided that the guarantor is an affiliate company that satisfies the tangible assets or net worth requirements and the guaranty is either unlimited or at least $500,000. If a participant uses a corporate guaranty, PJM proposes to reduce the participant's available Unsecured Credit. Specifically, if the corporate guaranty is limited in value, the participant's Unsecured Credit Allowance[41] "shall be the lesser of (1) the applicable Unsecured Credit Allowance available to the Participant by the Corporate Guaranty pursuant to the creditworthiness provisions of this Credit Policy, or (2) the face value of the Corporate Guaranty, reduced by $500,000 and further reduced by 10 %"[42] If a participant provides collateral in addition to a limited guaranty to increase its Unsecured Credit Allowance, proposed section Ia.B.1.b provides that its value is reduced by 10 percent and this reduced value is considered Financial Security available to satisfy the requirements of the Credit Policy.

47. Proposed section Ia.B.2 provides that, as an alternative to demonstrating qualifying tangible assets or net worth, a participant may provide additional collateral to meet the capitalization requirement.[43] This section states that any collateral provided by a participant otherwise unable to satisfy the capitalization requirements will be restricted in the following manner: (1) collateral provided by FTR Participants shall be reduced by $500,000 and then further reduced by 10 percent, (2) collateral provided by other participants that engage in virtual bidding shall be reduced by $200,000 and then further reduced by 10 percent, and (3) collateral provided by other participants that are not FTR Participants and do not engage in virtual bidding shall be reduced by 10 percent. The

---

[41] The Unsecured Credit Allowance is defined as the amount of credit that a Participant qualifies for based on the strength of its own financial condition without having to provide Financial Security, except that only the Seller Credit form of Unsecured Credit may be utilized to establish a Participant's FTR Credit Limit. PJM Tariff, Attachment Q, section VIII.

[42] PJM Tariff, Attachment Q, proposed section Ia.B.1. For example, a $10.5 million corporate guaranty would be reduced first by $500,000 to $10 million and then further reduced 10 percent to $9 million. The resulting $9 million would be the participant's Unsecured Credit Allowance available through the corporate guaranty. In any event, no entity will be extended more than $50 million in unsecured credit.

[43] This collateral requirement would be in addition to existing collateral requirements under Attachment Q.

section provides that the reduced values shall be considered Financial Security available to satisfy the requirements of the Credit Policy. If a participant that satisfies the minimum participation requirements through the provision of additional collateral also provides a corporate guaranty to increase its available credit for market activities, the amount of the Unsecured Credit Allowance conveyed through such guaranty will be the lesser of (1) the Unsecured Credit Allowance available to the participant by the guaranty pursuant to the creditworthiness provisions of the credit policy, or (2) the face value of the guaranty, reduced by 10 percent.[44]

48. PJM explains that its proposal is predicated on the idea that both the Commission and PJM are seeking additional financial wherewithal on the part of participants, which is provided by demonstration of the inherent financial strength of the participant or the use of an unlimited guaranty. PJM states that this financial wherewithal is limited when it is provided through collateral or a limited guaranty. Accordingly, PJM states that its proposal is structured to require a fixed dollar amount of such wherewithal as a baseline, plus an additional 10 percent of the remainder of calculated credit to provide a volumetric measure of additional strength.[45] PJM states that the additional 10 percent is not a "haircut" based on uncertainty in the value of the collateral, but serves as a credit buffer where the minimum capitalization requirement is not met by inherent financial strength or unlimited corporate guaranty.

49. PJM asserts that its tiered capitalization requirements are consistent with the Commission's acknowledgement that tiering is appropriate to address the different risks associated with different entities and different activities.[46] PJM further asserts that the tiers it is proposing are commensurate with the levels of risks that FTR Participants, virtual bidders, and other participants present to the market.[47] PJM argues that its

---

[44] PJM Tariff, Attachment Q, proposed section Ia.B.2.

[45] Compliance Filing at 13.

[46] PJM notes that other regulatory schemes similarly differentiate market participants; for example, under the end-user exception to swap clearing requirements, if one of the counterparties to a swap is not a financial entity and uses swaps to hedge or mitigate commercial risk, then the mandatory clearing requirement does not apply. Compliance Filing at 35, n.80 (citing 7 U.S.C. § 2(h)(7)(A), as amended by section 723(a)(3) of the Dodd-Frank Act).

[47] *Id*. at 35.

proposed capitalization requirements are supported by those utilized in other commodity markets.[48]

50. PJM argues that concerns that the minimum participation criteria will cause some smaller trading firms to exit the markets are overstated.[49] PJM argues that many of these smaller trading firms could meet the modest minimum participation requirements if their principals elected to capitalize their limited liability companies more adequately. PJM also cautions that, while there is some value in the speculative trading engaged in by a number of smaller trading companies, it is important to not overstate the value of speculation, particularly in organized wholesale electricity markets, as well as not overstate the "right" of inadequately capitalized entities without adequately documented and certified risk management policies to participate in the organized wholesale electric markets.

51. PJM also asserts that its proposed tiered minimum participation criteria do not unduly discriminate against smaller firms.[50] Instead, PJM explains that the higher level of capitalization that applies to all entities engaged in FTR trading is necessary to address risks uniquely associated with FTRs. PJM explains that FTRs present special risks arising from their extended terms[51] and, while FTRs often are used to hedge congestion risk associated with physical transactions, many participants use them to speculate or arbitrage price differences. PJM states that, in the case of counterflow FTRs, or prevailing flow FTRs that suddenly become counterflow FTRs by an unexpected event, an FTR holder can instantaneously become obligated to PJM in amounts far exceeding the credit that has been posted.[52] Furthermore, PJM states that there is no limit to the

---

[48] PJM states that commodity futures and options markets generally require that a person qualify as an "eligible commercial entity" or "eligible contract participant" before trading, which requires a participant to have (1) total assets exceeding $10 million, if the entity is speculating, or (2) net worth exceeding $1 million, if the entity is hedging. *Id*. at 33 (citing CEA, 7 U.S.C. § 1a(12)(A)(v) & (xi)).

[49] *Id*. at 23-26.

[50] *Id*. at 27-30.

[51] FTR terms typically run for one year, although they can run for up to three years.

[52] Compliance Filing at 29.

exposure that an FTR holder can have if unexpected events occur and it cannot meet collateral calls.

ii. Protests

52. Financial Marketers and CCES assert that PJM's proposal is unnecessary, unduly burdensome, inconsistent with Order Nos. 741 and 741-A, and fails to meet the requirements of section 205 of the FPA. Financial Marketers assert that PJM fails to show that its existing credit policies are inadequate to protect the market from default risks and that its proposal is unnecessary. Financial Marketers argue that PJM should have "demonstrate[d] that its existing tariff already satisfies the regulations," as required by Order No. 741, and that PJM's proposal is inconsistent with prior findings regarding the necessity of minimum participation criteria.[53]

53. Financial Marketers and CCES contend that PJM's proposal would have severe, adverse effects on small to mid-sized companies currently trading in PJM or seeking to enter the PJM markets. Specifically, Financial Marketers argue that the minimum tangible net worth and total asset requirements and collateral requirements are onerous and could exclude more than 10 percent of current market participants from trading in PJM. Financial Marketers assert that PJM's proposed minimum participation requirements are unduly discriminatory against small entities because they are not calibrated based on the size of participants' positions, and Twin Cities assert that there should be a credit exposure minimum under which the minimum participation requirements would not apply. CCES argues that PJM's proposed minimum capitalization requirements unduly discriminate against entities that hedge congestion risk related to physical transactions rather than for any other purpose, and that the collateral option should recognize the distinction between risks associated with physical transactions and with purely financial transactions.

54. Financial Marketers, CCES, and Indicated Participants oppose the reduction of cash collateral by 10 percent. Indicated Participants argue that requiring a market participant to suffer a 10 percent reduction of all financial assurance that it has posted simply because its guaranty is not "unlimited" is unduly discriminatory and has no reasonable justification. In addition, Financial Marketers, CCES, and Twin Cities argue that requiring the submission of audited financial statements is needlessly burdensome. Financial Marketers contend that, if approved, PJM's tariff would constitute an unlawful taking of private property because it would disqualify entities from participating in the PJM market after investing resources to participate in the market.

---

[53] Financial Marketers' Protest at 10.

55. If the Commission approves any portion of the compliance filing, Financial Marketers request that the Commission delay implementation of the collateral and capitalization requirements for at least 90 days, or until December 30, 2011, in order to give smaller companies time to meet PJM's minimum participation standards. Similarly, CCES requests that the Commission clarify that a market participant may phase in compliance with minimum participation requirements over a reasonable period of time.

56. Indicated Participants support a net worth requirement, consistent with the definition of Eligible Contract Participant as administered by the CFTC, instead of the tangible net worth requirement proposed by RTOs and ISOs. Indicated Participants argue that no demonstrable benefit arises from using a standard more burdensome than the CFTC's Eligible Contract Participant definition. Finally, the Indicated Participants support the creation of an exemption from the minimum capitalization requirements (and for certain risk management and training requirements) for entities that are already subject to other stringent capitalization requirements (e.g., Federal Reserve (or similar foreign regulator) following Basel III Standards for banks and/or the exchange capitalization requirements of the ICE, the CME Group, and the Green Exchange).

iii. Comments

57. Various commenters argue that PJM's proposed minimum capitalization requirements are just and reasonable and not unduly discriminatory. PPANJ asserts that PJM's tiered proposal is not unduly discriminatory because different treatment for different classes of customers does not amount to undue discrimination, and emphasizes that the tiered minimum capitalization requirements reflect similar differentiations in the CFTC regulatory schema among end users that pose different risks.[54]

58. Pepco Holding Companies argue that independent auditing is necessary because otherwise participants would have less certainty that other participants' risk management controls were effective or adequate.

iv. Answers

59. In its answer, PJM asserts that Financial Marketers' and CCES' contentions that minimum participation criteria are unnecessary are a collateral attack on the Commission's findings in Order No. 741, and the question is not whether minimum participation requirements are needed but whether PJM's proposed requirements comply with Order No. 741. PJM also asserts that Financial Marketers' contentions that PJM failed to meet section 205 filing standards are meritless because this is a section 206

[54] PPANJ Comments at 3 (citing Compliance Filing at 35, n. 80).

compliance proceeding. PJM further asserts that Financial Marketers mischaracterize PJM's past decisions and, in any case, PJM's past decisions do not obviate PJM's obligation to comply with Order No. 741.

60. PJM reiterates that the tangible net worth and tangible assets criteria are consistent with the capitalization requirements in other markets, and that the amounts required under the additional collateral option are reasonable and modest. PJM clarifies that a participant has to satisfy the requirements related to its activity that has the highest minimum collateral requirement.[55]

61. PJM asserts that audited financial statements are reasonable and necessary to ensure that the information provided is accurate and trustworthy. PJM also notes that, if an entity does not wish to or cannot provide audited financial statements, the participant can meet the minimum participation criteria through the additional collateral option.

62. PJM contends that protestors overstate the impact of the minimum capitalization requirements on small market participants, and it would be inappropriate to provide exemptions from the minimum participation criteria based on the size of the participant. PJM argues that the level of risk of default to the market does not correlate to the size of a market participant or its other collateral requirements, but is more closely tied to the types of market activities a participant engages in. PJM argues that protestors' claim that participants will withdraw from the market due to the proposed minimum participation criteria is speculative.

63. PJM explains that the additional 10 percent collateral requirement provides a volumetric component to the additional collateral required of participants that do not meet the tangible net worth or assets tests, which corresponds to the level of activity of the participant. PJM states that this is consistent with the Commission's suggestion that RTOs consider "tiered" requirements depending on the participant's level of activity. PJM further explains that there is no existing discount on collateral, and the provision cited by protestors simply provides that PJM may make an additional collateral call during a billing cycle when a participant has already used 75 percent of its collateral.[56]

---

[55] PJM states that, for example, an FTR Participant that is also a virtual bidder only has to satisfy the requirements for FTR Participants. Thus, under the collateral option, it would need to provide $500,000 additional collateral, not an additional $200,000 in collateral in order to also participate in virtual trading. Compliance Filing at 17.

[56] PJM Answer at 20-21 (citing PJM Tariff, Attachment Q, section II.E).

64. PJM contends that CCES and Indicated Participants misunderstand the conditions imposed on limited guarantees provided by parent companies to meet the minimum participation requirements.[57] PJM explains that, if a participant uses a "limited" corporate guaranty to demonstrate that it satisfies the tangible assets and tangible net worth minimum participation criteria, that portion of the guaranty is not available to the participant as support for its Unsecured Credit Allowance. PJM argues that the use of a limited corporate guaranty to satisfy both the minimum participation criteria and the unsecured credit allowance without such a reserve would not protect the market because it would be meaningless support for meeting the minimum participation criteria if it were also being used in its entirety to support the unsecured credit allowance.

65. In their answer, Indicated Participants argue that PJM fails to explain the disparate treatment between limited and unlimited guarantees. Indicated Participants argue that a more rational and precise mechanism is necessary to determine exactly what amount must be reserved in the case of a limited guaranty.

v. Commission Determination

66. Order No. 741 required each ISO and RTO to "specify minimum participation criteria to be eligible to participate in the organized wholesale electric market, such as requirements related to adequate capitalization and risk management controls."[58] The Commission envisioned that the new minimum participation criteria would "help protect the markets from risk posed by under-capitalized participants or those who do not have adequate risk management procedures in place."[59]

67. As further discussed below, we find that PJM's proposed minimum capitalization criteria are just and reasonable, not unduly discriminatory, and consistent with the directives in Order No. 741. We also find them to be not unduly burdensome. The amounts required under the minimum capitalization requirements will help to provide assurance that entities participating in the market are sufficiently capitalized. PJM provides evidence showing that the vast majority of 2011 FTR auction participants would already meet the minimum tangible net worth or assets requirement.[60] PJM's proposal

---

[57] *Id*. at 22.

[58] Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 131.

[59] *Id*.

[60] Compliance Filing at 18-19. For example, PJM states that, in the most recent annual FTR auction, on a megawatt basis, 94 percent of members' bids and 95 percent of

(continued…)

also allows an entity the alternative of satisfying the minimum capitalization requirement by providing additional collateral if it is unable to meet the minimum tangible net worth or assets requirement. This flexibility reduces any burden on market participants. In addition, as PJM states, some small entities may be able to meet the tangible net worth and assets requirement by choosing to adjust their capitalization level.[61] Overall, we find that the proposed minimum capitalization criteria, as revised as directed below, should help protect the markets from risks posed by under-capitalized participants while not erecting unnecessary barriers to market participants.

68. Furthermore, the tiered nature of the criteria is consistent with Order No. 741 and is not unduly discriminatory. In Order No. 741-A, the Commission acknowledged that a tiered approach would allow for differentiation based on a market participant's characteristics, but still reduce the market's exposure to the risk of a default.[62] Consistent with Order No. 741-A, PJM's proposed tiered minimum capitalization criteria are consistent with the differing levels of risk that FTR Participants and non-FTR Participants present to the market. PJM explains that its proposed minimum capitalization requirements place the highest requirements on FTR Participants, consistent with the higher level of risk presented by these participants. PJM explains in its filing, and we agree, that FTRs present special risks to the market. Compared to other PJM market products, FTRs present greater risks because of their extended terms, lack of liquidity, dependence on unpredictable future system conditions, and unlimited exposure. Prevailing flow FTRs can suddenly become counterflow FTRs and obligate the FTR holder to substantial amounts including amounts exceeding the credit that has been posted. There is also risk when an FTR portfolio is mathematically "diversified" and does not require collateral, but is comprised of prevailing flow FTR and counterflow FTR positions in different geographic areas.[63] Accordingly, PJM's proposed minimum capitalization requirements are higher for FTR Participants because they pose more risk

---

cleared bids were submitted by entities who have demonstrated to PJM that they already satisfy at least one of the options for capitalization for an FTR Participant, and only 5 percent of the 2011 FTR auction activity relates to members for which PJM does not have sufficient information to determine whether they would meet the proposed minimum participation criteria.

[61] *Id*. at 24.

[62] Order No. 741-A, FERC Stats. & Regs. ¶ 61,313 at P 33.

[63] PJM Answer at 10.

to the markets than non-FTR Participants. PJM's tiered minimum capitalization criteria reflect this differing degree of risk associated with different participants in the PJM markets based on a market participant's characteristics, and thereby reduce the market's exposure to the risk of default.

69. We reject Financial Marketers' and CCES' contentions that the minimum participation criteria are unnecessary and inconsistent with PJM's past actions rejecting minimum participation criteria. At the time Order No. 741 was issued, no RTOs or ISOs had minimum participation criteria in their existing tariffs. In Order No. 741, the Commission found that existing practices and tariffs required change to further protect the market from risks posed by under-capitalized participants and those without adequate risk management procedures in place. The Commission required that each RTO and ISO include in its tariff language specifying minimum participation criteria to be eligible to participate in the organized wholesale electric market, such as requirements related to adequate capitalization: "the Commission directs each ISO and RTO to submit a compliance filing that includes tariff revisions to establish minimum criteria for market participation."[64] Therefore, PJM, like the other RTOs/ISOs, was required to propose new tariff language setting forth minimum participation criteria, and we find that the criteria PJM proposes are reasonable.[65] In any event, even if a change to minimum participation criteria was not required, Order No. 741 provided PJM with the ability to reassess whether such criteria were needed, and as discussed above, we find PJM's determination reasonable.

70. In arguing that the minimum participation criteria are unnecessary, Financial Marketers cite to the Federal Register "summary" paragraph of Order No. 741 for the proposition that PJM should have first analyzed whether its existing policies were sufficient before proposing tariff language and could have determined that its existing requirements were sufficient. The cited paragraph states that each RTO or ISO will be required to "submit a compliance filing including tariff revisions to comply with the amended regulations *or* to demonstrate that its existing tariff already satisfies the regulations" (emphasis added). Therefore, RTOs and ISOs were not required to make a

---

[64] Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 132.

[65] In contrast to the issue in *National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006), cited by Financial Marketers (Financial Marketers' Protest, at 12-13), the Commission in Order No. 741 made appropriate findings to support the need for minimum participation criteria. Moreover, unlike *National Fuel*, Financial Marketers are raising this issue in a compliance filing, not through an objection on rehearing to the final rule itself.

showing of whether existing tariff provisions were sufficient before proposing tariff revisions to comply with the amended regulations. PJM's submission of a compliance filing proposing minimum participation criteria is consistent with this paragraph.

71. We also reject Financial Marketers' and CCES' argument that PJM has not met its section 205 filing burden. As PJM states in its answer, Order No. 741 required PJM to submit a compliance filing pursuant to FPA section 206, not section 205. Moreover, under section 206, the Commission must find that an existing tariff is unjust and unreasonable, and then must find that a proposed tariff is just and reasonable.[66] As discussed above, the Commission did so in Order No. 741 and does so for PJM here.[67]

72. We disagree with protestors' argument that the proposed minimum capitalization requirements are unduly discriminatory against small entities because they are not tiered to the size of a participant's market positions. We also disagree with Twin Cities' position that there must be a credit exposure minimum under which the minimum participation requirements would not apply, and CCES' position that PJM's proposed minimum capitalization requirements unduly discriminate against entities that hedge congestion risk related to physical transactions. Financial Marketers argue that because PJM failed to calibrate the capital requirements based on portfolio size, the Tariff will likely reduce the participation of small companies.

73. We find PJM's proposed minimum capitalization requirements to be reasonable to meet the Order No. 741 requirement to protect against the risk of undercapitalized companies. We find it reasonable for PJM to conclude that an undercapitalized company with a small portfolio in PJM still poses a risk of default. PJM convincingly argues that its requirements appropriately treat similar risks similarly, irrespective of the size of the entity that engages in the activity. Because an FTR has potentially unlimited risk, all FTR Participants are subject to heightened credit requirements to protect the market from default. PJM shows that the size of an entity does not mean that its positions are small or that its market activity is less risky.[68] For example, PJM states that Power Edge, LLC, a small company with only a few employees, ended up with the largest default ever ($51.7 million of obligations) in the PJM FTR market.[69] Financial Marketers, Twin

---

[66] Order No. 741, FERC Stats. & Regs. ¶ 31,317 at 133.

[67] *Id*. P 2; *accord* Order No. 741-A, FERC Stats. & Regs. ¶ 31,320 at P 2-4.

[68] *Id*.

[69] *Id*. at 16.

Cities, and CCES have not shown that small companies, participants with smaller portfolios, or entities that hedge congestion risk related to physical transactions present so little risk to the market compared to other participants, such that requiring them to comply with PJM's minimum capitalization requirements would be unreasonable.[70] In contrast, PJM has demonstrated that it is reasonable to distinguish its minimum capitalization requirements by FTR Participants and non-FTR Participants given the greater risks that FTRs present to the market. We therefore do not find it necessary to require PJM to amend its proposal to base credit requirements on the size of the market participant or to distinguish between FTR Participants for purposes of the minimum capitalization requirements. This finding does not mean that other methods of tiering the minimum participation requirements would necessarily be unreasonable. For example, we find, as discussed below, that PJM's proposal to distinguish between FTR Participants that transact solely to hedge congestion risk related to physical transactions and other FTR Participants, for purposes of risk management and verification requirements, is reasonable.

74. We also are not convinced that PJM's proposal will have as much of an impact on small companies as Financial Marketers assert. As noted above, PJM provides evidence showing that the vast majority of 2011 FTR auction participants would meet the minimum tangible net worth or assets requirement.[71] Additionally, if an entity is unable to meet the minimum tangible net worth or assets requirement, it has the opportunity to satisfy the minimum capitalization requirement through a corporate guarantee or by providing additional collateral, and these requirements are tiered in some degree to the size of a company's portfolio size as measured by its collateral requirement.

75. We also disagree with protestors' arguments that requiring audited financial statements is unduly burdensome and discriminatory against small companies. These protestors assert that audited financial statements are a significant expense for small businesses and are not required for other business operations. Twin Cities proposes that PJM instead require that tangible net worth and assets levels be demonstrated by internally-prepared and corporate officer-verified financial statements.

76. While PJM's requirement may cause market participants to incur additional costs, we agree with PJM that merely requiring officer-verified financial statements may not

---

[70] *See* Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 165 (rejecting blanket exemptions); *accord* Order No. 741-A, FERC Stats. & Regs. ¶ 31,320 at P 15 (rejecting blanket exemptions in FTR markets for load-serving entities).

[71] PJM Answer at 18.

provide sufficient assurance that information provided by market participants is accurate and trustworthy. Using officer-verified financial statements are not as accurate or verifiable as audited statements. Ensuring the accuracy and thus the adequacy of a market participant's capitalization through audited financial statements is a reasonable requirement. Furthermore, audited financial statements are only required to support an entity's showing that it meets the minimum capitalization requirements. An entity with limited resources has the option of satisfying the minimum participation criteria through the additional collateral option if it does not wish to provide audited financial statements. We therefore find PJM's requiring audited financial statements to be just and reasonable.[72]

77. Financial Marketers request that the Commission delay implementation of the collateral and capitalization requirements for at least 90 days in order to give smaller companies time to meet PJM's minimum participation standards. CCES also requests that the Commission clarify that a market participant may phase in compliance with minimum participation requirements over a reasonable period of time. We do not find either action to be necessary. As discussed above, we do not find that PJM's proposal is unduly burdensome. It is in the interests of all market participants and of consumers to proceed with implementation of the minimum participation criteria without delay, as directed almost a year ago in Order No. 741, and so protect the markets from risks posed by under-capitalized participants or those that do not have adequate risk management procedures in place.

78. Financial Marketers also argue that the 10 percent discount is arbitrary and would equal a total discount of cash collateral equal to 25 percent when combined with an existing 15 percent discount under PJM's credit policies. CCES also argues that it is not required by the CFTC. We do not find PJM's proposed additional 10 percent collateral requirement to be unreasonable, as some protestors claim. PJM's proposal is premised on the fact that those market participants who cannot meet the minimum capitalization requirement by demonstrating sufficient tangible net worth or assets present more risk than those market participants with sufficient capitalization. Therefore, PJM's proposal requires market participants without sufficient tangible net worth or assets to meet an alternative collateral requirement that is composed of (1) a fixed component and (2) a variable component, which accounts for the participant's level of activity in the market (and corresponding risk to the market). Rather than imposing a higher fixed collateral requirement on all participants, PJM reasonably imposed a fixed component

---

[72] *Cf.* 18 C.F.R. §§ 41.10, 41.11, Part 101 General Instruction No. 1 (2011) (providing for independent audits of financial records of both small and large public utilities).

supplemented by a component tied to the participant's market activity. This requirement is consistent with the Commission's suggestion in Order No. 741-A that RTO's consider whether some criteria should be tiered or calibrated based on, for example, the size of a market participant's positions.[73] This is the very tiering that the Financial Marketers urged PJM to use with respect to the minimum capitalization requirement. It is reasonable for PJM to impose different requirements on market participants depending on the different levels of risk they present to the market. Finally, we are not persuaded that we should reject this requirement as unjust and unreasonable merely because another regulator did not require it.

79. Similarly, we do not find PJM's proposed $500,000 and 10 percent reduction of the face value of the corporate guaranty and additional collateral when using a limited guaranty to be unreasonable or unduly discriminatory. As discussed above, PJM's proposal reasonably distinguishes between market participants who can meet the minimum capitalization requirements by demonstrating that they have sufficient tangible net worth or assets and those who cannot, because they present different levels of risk to the market. PJM's proposal similarly distinguishes between those market participants who use an unlimited guaranty to meet the minimum participation requirements and those who use a limited guaranty. PJM's proposal is based on the fact that a market participant who meets the minimum participation requirements through use of an unlimited guaranty, which is from an affiliate company that satisfies the tangible net worth or assets requirements itself and supports participation at exposure levels exceeding calculated credit requirements, presents less risk than a market participant who only provides a limited guaranty. A guaranty limited to a specific dollar amount is similar to the provision of collateral, and PJM treats limited guarantees and collateral requirements similarly, requiring that both satisfy the fixed and tiered components. As discussed above, it is reasonable and consistent with Order No. 741 for PJM to tier its minimum participation requirements according to the differing levels of risk between market participants.

80. We reject Financial Marketers' allegation that, if approved, the Tariff would constitute an unlawful taking of private property under the Fifth Amendment because the regulatory action disqualifies entities from participating in the PJM market after investing resources to participate in the market.[74] All participants in Commission-regulated

---

[73] Order No. 741-A, FERC Stats. & Regs. ¶ 31,320 at P 33.

[74] *See Southern Company Services, Inc.*, 65 FERC ¶ 61,239, at 62,178-79 (1993).

markets are subject to just and reasonable changes in rates and market rules.[75] Going forward, Financial Marketers may choose whether to participate in the PJM markets and whether to make any further investments necessary to meet the proposed minimum participation requirements. As for past investments, Financial Marketers have received the benefits of their past participation in the PJM markets. Moreover, this is not the proper forum for resolving a takings claim. The remedy for an alleged taking by the federal government lies in a suit brought in the United States Court of Federal Claims pursuant to the Tucker Act.[76]

81. We decline to require PJM to revise its proposal to reflect certain uniform changes proposed by Indicated Participants, such as requiring PJM to use a net worth requirement rather than tangible net worth as it proposed. We did not specify that RTOs and ISOs use particular criteria in establishing minimum capitalization requirements and are not convinced that we should now. We also reject Indicated Participants' suggestion that RTOs and ISOs create an exemption from the minimum capitalization requirements for market participants that are subject to other capitalizations requirements established by other regulators or entities. In Order No. 741, the Commission required RTOs and ISOs to establish minimum participation criteria that "apply to all market participants, rather than only certain participants."[77] We are not persuaded that we should now exempt a certain group of market participants from minimum participation criteria.

c. Risk Management and Verification Requirements

i. Filing

82. PJM proposes risk management and verification requirements that must be met in addition to the minimum capitalization requirements. Proposed section Ia.A of Attachment Q requires all participants to provide PJMSettlement with an executed copy of the certification in Appendix 1 to Attachment Q, initially with the participant's credit

---

[75] *See* PJM Tariff, section 9 Regulatory Filings, 0.0.0 (providing that PJM can make changes to its tariff pursuant to section 205 of the Federal Power Act).

[76] 28 U.S.C. § 1346(a)(2) (2006); *see Wisconsin Valley Improvement Co. v. FERC*, 236 F.3d 738, 743 (D.C. Cir. 2001) (citing *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667, 690 (D.C. Cir. 2000); *Railway Labor Executives' Ass'n v. United States*, 987 F.2d 806, 815-16 (D.C. Cir. 1993) (citing *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 195 (1985)).

[77] Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 133; *accord supra* note 69.

application, and each calendar year during a period beginning on January 1 and ending April 30.[78] If a participant fails to provide its annual certification by April 30 of a given year, it will be ineligible to transact in the PJM markets until PJMSettlement receives the participant's certification.[79]

83. The Certification Form set forth in Appendix 1 to Attachment Q requires an officer of a participant to make six representations on behalf of the participant: (1) that all employees or agents have received appropriate training[80] and are authorized to transact on behalf of the participant; (2) that the participant has written risk management policies, procedures, and controls (i) approved by the participant's independent risk management function,[81] (ii) applicable to the markets in which it participates and for which employees and agents have been trained, and (iii) providing an appropriate, comprehensive risk management framework that identifies and documents the range of risk to which the participant is exposed; (3) for an FTR Participant, that it either (i) participates in the FTR markets solely to hedge congestion risk related to its physical transactions as a load serving entity or generation provider and monitors all of its FTR market activity to ensure its FTR positions are generally proportionate to and appropriate for hedging its physical transactions (paragraph 3.a), or, if not, (ii) values its FTR positions and engages in a probabilistic assessment of the hypothetical risk of such positions using analytically based methodologies, predicated on the use of industry accepted valuation methodologies, on at least a weekly basis, and such functions are performed by persons within the participant's organization independent from those

---

[78] PJM Tariff, Attachment Q, Section Ia.A. Entities that first become eligible to participate in the PJM markets during the period January through April are not required to resubmit the certification during April of that calendar year. *Id*.

[79] Proposed section Ia.A.

[80] "Appropriate training" is defined in the Certification Form as "training that is (i) comparable to generally accepted practices in the energy trading industry, and (ii) commensurate and proportional in sophistication, scope and frequency in the volume of transactions and the nature and extent of the risk taken by the participant."

[81] The Certification Form specifies that a participant's "independent risk management function" can include "appropriate corporate persons or bodies that are independent of the participant's trading functions, such as a risk management committee, a risk officer, a participant's board or board committee, or a board or committee of the participant's parent company."

trading in PJM's FTR markets or by a qualified outside firm, and the participant has provided PJMSettlement a copy of its current governing risk management policies, procedures, and controls[82] (paragraph 3.b); (4) that the participant has appropriate personnel resources, operating procedures, and technical abilities to promptly and effectively respond to PJM communications and directives; (5) that the participant has demonstrated compliance with the minimum capitalization criteria and is not aware of any change having occurred or being imminent that would invalidate such compliance; and (6) that the officer has read and understood the provisions of Attachment Q applicable to the participant's business, and acknowledges the potential consequences of making incomplete or false statements.

84. Proposed section Ia.A states that PJMSettlement may at any time request that an FTR Participant that made the representation in paragraph 3.a of the Certification Form provide additional information supporting its representation. If the additional information is not provided or does not demonstrate eligibility to make this representation, PJMSettlement will require the FTR Participant to instead make the representations in paragraph 3.b. If the FTR Participant cannot or does not make those representations as required by paragraph 3.b, then PJM will terminate the FTR Participants' rights to purchase FTRs in the FTR market and may terminate the FTR Participant's rights to sell FTRs in the FTR market.

85. Proposed section Ia.A also states that FTR Participants that provide representations found in paragraph 3.b of the Certification Form are additionally required to submit to PJMSettlement, at the time they make their annual certification, a copy of their current governing risk control policies, procedures and controls applicable to their FTR trading activities. PJMSettlement will review such documentation to verify that it appears generally to conform to prudent risk management practices for entities trading in FTR-type markets, and FTR Participants subject to this provision shall make a one-time payment of $1,000.00 to PJMSettlement to cover costs associated with review and verification.[83] The FTR Participant's eligibility to participate in the FTR markets is conditioned on PJMSettlement notifying the FTR Participant that its annual certification,

---

[82] Paragraph 3.b also requires the officer to represent that exceptions to the risk policies, procedures, and controls are documented and explain a reasoned basis for the granting of any exception.

[83] The section states that PJMSettlement may retain outside expertise to perform the review and verification, but PJMSettlement and any third-party it may retain will treat as confidential the documentation provided by an FTR Participant, consistent with the applicable provisions of PJM's Operating Agreement.

including submission of risk policies, procedures, and controls, has been accepted by PJMSettlement.

86. PJM explains that the different requirements for FTR Participants that participate in the markets solely to hedge congestion risk and for other FTR Participants provide further protections to PJM markets and members. PJM states that FTR Participants that participate in the FTR markets solely to hedge congestion risk related to the participant's physical transaction as a load serving entity or generation provider are "naturally hedged," and thus pose less risk of default than FTR Participants that are financially speculating.[84] PJM explains that if an FTR Participant is naturally hedged, its transactions by design offset its physical positions, which naturally reduces risk, thereby limiting both the likelihood and the extent of any default. PJM states that, in contrast, a trader that is not bounded by the goals of hedging physical transactions has much more discretion with respect to its FTR market activities and greater risks of default, and therefore additional requirements to address the increased risks are appropriate.

87. PJM asserts that the risk management and verification elements of its proposed minimum participation criteria are consistent with the directives of Order No. 741. PJM argues that the training requirement (paragraph 1 of the Certification Form) ensures that the persons trading have been trained in a manner comparable to generally accepted practices in the energy trading business, and the requirement to certify that the participant has appropriate personnel resources, operating procedures, and technical abilities to respond to PJM communications (paragraph 4 of the Certification Form) ensures that the participant can appropriately address issues raised by PJM.[85]

88. PJM contends that requiring risk management practices to be approved by an independent risk management function (paragraph 2 of the Certification Form)

---

[84] Compliance Filing at 39-40. PJM further states that hedging reduces risk as compared to speculation is axiomatic and a basic tenet of financial management.

[85] *Id*. at 39.

recognizes the need to segregate risk oversight from trading functions.[86] PJM further contends that this requirement is no less applicable to small speculators, since a closely-held entity's owner may be willing to forego appropriate risk controls for the possibility of large profits from risky positions and would have a conflict of interest if he or she provided the certification without being independent from trading activities. PJM notes that, to the extent small entities do not have the staff to perform the function, it can and should be outsourced.

89. PJM states that it will engage the Committee of Chief Risk Officers (CCRO) to consider developing industry-accepted standards applicable to risk control in FTR markets, against which PJM would review certifications. PJM states that, until then, it will examine certifications and accompanying procedures and controls simply to ensure they meet the more generally stated requirements in the Certification Form.[87]

ii. <u>Protests</u>

90. AEP argues that the Certification Form is unjust and unreasonable because it is overbroad, unnecessarily burdensome, and exceeds the scope needed to assure that PJM markets will not be exposed to undue credit risk. AEP requests that the Commission reject the overbroad and overreaching components of the Certification Form and require PJM to adopt alternative language that was supported by 66.4 percent of the PJM members.[88]

---

[86] *Id*. at 41. PJM also notes that requiring certification of independently-approved risk management practices is consistent with practices in other markets. PJM states that, for example, the CFTC is proposing to require that, for risk management processes for swap dealers and major swap participants, "to ensure the independence of the risk management process, the unit at the firm responsible for monitoring risk must be independent from the business trading unit whose activities create the risk." *Id*. at 42 (citing *Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants*, Proposed Rule, 75 Fed. Reg. 71,397, 71,399 (Nov. 23, 2010)).

[87] Compliance Filing at 42.

[88] AEP proposes the following language: "Participant maintains current, written risk management policies and procedures that address those risks that could materially affect Participant's ability to pay its PJM invoices when due, including, but not limited to, credit risks, liquidity risks and market risks."

91. AEP and Financial Marketers argue that the Certification Form should not require each PJM Participant to have an "independent risk management function." CCES asserts that small companies should be exempt from the requirement or entitled to comply in a manner commensurate with the entity's size or transaction volume. AEP contends that the next-day and real-time power purchases and sales transactions that occur in PJM do not create the type of forward risk for which robust risk management is required. AEP argues that the FTR markets are fully collateralized and without credit risk, except for the limited "accounts receivable" type of risk associated with PJMSettlement. CCES and Financial Marketers also argue that small companies do not have the financial ability to hire an independent risk officer. CCES contends that such an officer is unnecessary because transactions are often small, and that PJM's proposal fails to exempt smaller vendors whose trading is done by the principals.

92. Financial Marketers assert that the Certification Form is unduly discriminatory because it imposes excessive risk assessment and reporting requirements on non-traditional traders while not reviewing risk management policies of load serving entities and generators. Financial Marketers argue that there is no evidence that participants that do not physically transfer power present any more risk of a default than participants that do, and the idea that distribution companies hedging physical positions pose a smaller risk to the market than companies taking similar positions is only theoretically true when perfect (or very good) hedges are available and no other factors, such as liquidity, come into play. Similarly, DC Energy argues that all FTRs present risk, as they cannot provide a complete hedge for dynamic physical positions. DC Energy urges that the exemption be revised to be based on FTR portfolio size, such that all market participants above a certain defined FTR portfolio size would be required to comply with the risk management and verification requirements.

93. DC Energy also contends that it is not clear how a market participant determines if it is actually "hedged," and AEP states that they do not know whether they qualify for the hedger exemption because they use FTRs for more than a single purpose. ConEd argues that the definition in paragraph 3.a is too restrictive and would exclude market participants if they purchased a single FTR for other than hedging purposes or if their FTR positions failed to remain proportionate to their load and generation. AEP similarly asserts that paragraph 3 is unreasonable because there is no materiality component. ConEd proposes, as an alternative to eliminating paragraph 3, amending it to more clearly exempt firms that use FTRs for hedging purposes.[89]

---

[89] ConEd proposes the following alternative language for section (a) of paragraph 3: "Participant transacts in the FTR markets to hedge the congestion risk related to the Participant's physical transactions as a load serving entity or generation

(continued…)

94. ConEd urges the Commission to direct PJM to eliminate paragraph 3 of the Certification Form because there would be little value for PJM to review a market participant's risk management policies and procedures, as it would be inappropriate for PJM to recommend changes to such policies and procedures. Financial Marketers assert that PJM does not have the authority or expertise to judge the strength of a company's internal risk policies, and its proposal to review risk management policies of its participants and to require weekly evaluation of FTR positions is overreaching and burdensome.

95. DC Energy proposes to revise section 3.b. of the Certification Form to delete "predicated on the use of industry accepted valuation methodologies" because it asserts that it is inappropriate to qualify the FTR risk assessment requirement in this manner because such an industry standard does not exist. Similarly, AEP argues that section 3.b. is vague, and there is no value in PJM reviewing companies' risk management processes against nonexistent standards. AEP also opposes PJM's plan to develop such standards in a non-transparent process.

96. EPSA argues that PJM has obscured the definition of "appropriate training" in paragraph 1 of the Certification Form by referring to "generally accepted practices" in the industry that do not exist. EPSA urges the Commission to direct PJM to delete the "generally accepted practices" language. EPSA requests that the Commission direct PJM to clarify that Rule 18 of its Tariff concerning the protection of confidentially sensitive information extends to the Certification Form.

97. EPSA also argues that the Commission should direct RTOs and ISOs to amend their proposed certification forms to allow a corporate parent to make the certification on behalf of the market participant. AEP urges the Commission to reject paragraph 6 of the Certification Form because it appears to subject the signatory to personal liability.

iii. Comments

98. Various commenters argue that PJM's tiered minimum participation criteria appropriately recognize the differences between entities that use FTRs to hedge their physical obligations in the PJM markets and entities that participate in the PJM markets

---

provider and monitors all of the Participant's FTR market activity to ensure its FTR positions, considering both the level and pathways, are appropriate for and generally do not exceed the Participant's physical transactions as a load serving entity or generation provider."

purely for financial speculation.[90] These commenters explain that FTRs present special risks arising from their extended terms and the absence of a limit on the exposure that an FTR holder can have, and that entities that participate in the FTR markets solely to hedge congestion risk related to the participant's physical transaction are "naturally hedged" and necessarily pose less risk to market stability and risk of default than purely financial FTR Participants. NRECA and APPA also argue that, given the reduced risk posed by non-financial market participants backed by physical assets, it would be unreasonable and counterproductive to force upon them more burdensome risk management and verification requirements.

99. NRECA and APPA assert that arguments for uniform requirements ignore the material differences between financial and non-financial participants and are contrary to the Commission's express encouragement in Order No. 741 for tiered requirements as well as the Commission's recognition that the directive to establish minimum criteria does not necessarily require that all market participants be held to the same criteria.[91] Similarly, ODEC asserts that the compliance filing follows the Commission's encouragement in Order No. 741-A to consider credit policies that reflect the differences in the types and activities of market participants, and the corresponding differences in credit and default risk.[92] PPANJ asserts that the differentiation between FTR Participants that use the FTR market for physical hedging and those that use it for speculation is appropriate and consistent with the Commission's mandate to protect the markets from costly defaults and to ensure that barriers to entry are not prohibitive.[93]

100. PPANJ explains that the compliance filing does not constitute unlawful discrimination in violation of the FPA because it is not an "unreasonable difference in rates, charges…between classes of service," but rather, the differentiation in minimum participation criteria is justified by the significantly different risk characteristics

---

[90] PJM Industrial Coalition Comments at 4-7; PPANJ Comments at 3; The Pepco Holding Companies Comments at 7, 9; Chambersburg Comments at 2-3; PSEG Companies Comments at 5; AMP Comments at 4-5; Allegheny Comments at 3-4.

[91] NRECA and APPA Comments at 5 (citing Order No. 741-A, FERC Stats. & Regs. ¶ 31,320 at P 33, n. 43).

[92] ODEC Comments at 6.

[93] PPANJ Comments at 4 (citing Order No. 741-A, FERC Stats. & Regs. ¶ 31,320 at P 2).

presented by purely financial FTR Participants and entities that participate in the FTR markets solely to hedge congestion risk.[94] PPANJ and ODEC argue that, according to ample precedent, different treatment for different classes of customers does not amount to undue discrimination if the classes are not similarly situated. Multiple commenters also agree with PJM that it would in fact be discriminatory to apply the same minimum participation criteria to market participants that present very different levels of risk.[95]

101. Pepco Holding Companies support the proposed independent risk management requirement, as they believe that participants in the FTR markets should segregate the risk oversight function from the trading function. Pepco Holding Companies state that the risk management certification requirements will serve to reduce overall market risk and benefit customers by reducing associated costs.

102. CCRO agrees with PJM that CCRO can provide an important role in developing industry-accepted risk management standards. CCRO states that, for the past three years, it has been engaged with ISOs/RTOs to examine prevailing practices and identify best practices for many of the business processes that are addressed in Order No. 741, and believes that this foundation could be used to propose uniform best practices among all the ISOs/RTOs.

iv. Answers

103. In its answer, PJM reiterates that the Certification Form is just and reasonable and not overly broad and unnecessarily burdensome. PJM contends that the requirements regarding training and use of analytically based methodologies are reasonable and no more uncertain or burdensome than other standards for performance in the electric industry, such as requirements to conform to "good utility practice." PJM states that it does not intend to require a specific approach. PJM responds to concerns about the requirement to assess the value of FTR positions on at least a weekly basis by arguing that prudent risk management monitors changing position values and, if values do not change, then a weekly assessment will simply note the lack of change.

---

[94] *Id*. (citing 16 U.S.C. § 824d(b) (2006)).

[95] PJM Industrial Coalition Comments at 7; PPANJ Comments at 6-7 (citing *Alabama Electric Coop v. FERC*, 684 F.2d 20 (D.C. Cir. 1982) ("While the typical complaint of unlawful rate discrimination is leveled at a rate design which assigns different rates to customer classes which are similarly situated, a single rate design may also be unlawfully discriminatory…")); Pepco Holding Companies Comments at 7.

104. PJM contends that requiring participants to have an independent risk management function is reasonable and not overly burdensome. PJM argues that this requirement prudently separates risk oversight from trading functions, providing greater certainty that risk management controls are effective and not tainted by conflicts of interest. PJM notes that the fact that principals or owners are often also traders does not reduce the need for independent risk management, and adds that entities have the option of outsourcing the function. PJM asserts that existing credit policies do not fully protect the market, and AEP underestimates the risks associated with the FTR markets. PJM explains that, while unsecured credit is not permitted for FTRs and collateral is required for all FTR positions, there is still a risk of defaults associated with FTRs and actual individual transactions are not fully collateralized.

105. PJM responds to arguments that applying different risk assessment and reporting requirements to financial traders versus load serving entities and generators is discriminatory by arguing that different types of participants create different risks to the market. PJM asserts that it would in fact be discriminatory to apply the same criteria to dissimilarly situated participants that present very different levels of risk to the market. PJM reiterates that load serving entities and generation providers that participate in the FTR markets solely to hedge congestion risk related to their physical transactions present less risk of default than FTR Participants that are financially speculating.

106. PJM responds to arguments that there should be a materiality component to the determination of whether an FTR participant meets paragraph 3(a) (i.e., is a “hedger”), that paragraph 3(a) should be broadened to exempt FTR Participants that “generally” use FTRs for hedging purposes, and that it is difficult to determine how a market participant is actually hedging, by clarifying that the tariff language only requires that the FTR activity be “generally proportionate” to the participant’s physical activity. PJM states that it would not oppose revising the language in paragraph 3(a) to add “or generally do not exceed” after “generally proportionate to” in order to clarify that the use of FTRs as hedges in amounts less than the full value of physical transactions, e.g. under-hedging, would be in the same category.

107. PJM responds to AEP’s argument that paragraph 6 inappropriately imposes personal liability by arguing that the acknowledgment in paragraph 6 does not create new or additional risks to individuals and is merely an acknowledgement that the officer understands the participant’s business and participation requirements and the consequence of making false and misleading statements.

108. PJM responds to EPSA’s contention that a corporate parent of a market participant should be able to make the certification by asserting that this would not respect the corporate separateness of the entity actually participating in the market and otherwise makes no sense since the minimum participation requirements apply to market participants, not their corporate affiliates.

109. PJM states that section Ia.A of Attachment Q already requires confidential treatment of risk management materials, so no modifications to the Tariff are necessary to address EPSA's request for clarification.

110. In its answer, AMP responds to protestors' arguments that PJM's paragraph 3.a "exemption" is unduly discriminatory by arguing that entities that qualify for paragraph 3.a treatment are not completely exempt from PJM's risk management and verification requirements. AMP argues that PJM does not propose to treat non-speculating FTR Participants as if they present zero risk, but instead appropriately adopts a lower risk verification bar that takes into account their lesser risk of default and cabined impact of any default that does occur.

111. In its answer, AEP asserts that PJM's answer fails to shed light on and further confuses the purpose of complying with the Certification Form and with PJM's review of risk management processes. AEP argues that PJM does not explain how or why a market participant's internal risk management program would be a useful tool to control for unanticipated events or reduce default exposure. AEP asserts that paragraph 3 of the Certification Form should be deleted because it is redundant to paragraph 2, is overbroad and ambiguous, and requires FTR Participants to be subject to paragraph 3.b requirements even if they hold a single FTR that is not hedging a physical position. AEP argues that, given PJM's response that paragraph 6 does not impose any new liability, this paragraph should be deleted. Finally, AEP reiterates its request for use of its proposed alternative Certification Form.

v. Commission Determination

112. As discussed below, we find that PJM's proposed risk management and verification requirements, as revised as directed below, are just and reasonable, not unduly discriminatory, and consistent with the directives in Order No. 741. In Order No. 741, the Commission stated that minimum participation criteria could include the capability to engage in risk management to make sure that each market participant has adequate risk management capabilities to engage in trading with minimal risk to the market.[96] The proposed risk management and verification requirements should help protect the markets from risks posed by market participants who do not have adequate risk management procedures in place. We find that requiring market participants to annually provide the Certification Form and comply with the requirements that correspond with each certification, is reasonable. However, as discussed below, we direct PJM to submit a compliance filing to clarify the language in paragraph 3.a.

[96] Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 131.

113. PJM proposes a certification that an officer of each market participant must execute on an annual basis. We find this is insufficient to ensure the protection of the markets from risks posed by under-capitalized participants or those who do not have adequate risk management procedures in place.[97] A market participant officer-certified form that attests to the existence of risk management policies and procedures, as PJM proposes, does not by itself satisfy the above criterion without independent verification that risk management policies and procedures are actually being implemented. We believe minimum participation criteria require PJM to engage in periodic compliance verification to minimize risk to the market.[98] We therefore direct PJM to make a compliance filing, within 90 days from the date of this order, to establish such verification as part of its minimum participation criteria.

(a) Tiered Requirements for Hedgers and Non-Hedgers (Paragraphs 3(a) and 3(b))

114. PJM's proposed Certification Form provides that a FTR Participant must make either the representation in paragraph 3(a) or the representations in paragraph 3(b) of the Certification Form. A FTR Participant may make the representation in paragraph 3(a) if it transacts in the FTR market "solely to hedge the congestion risk related to the Participant's physical transactions as a load serving entity or generation provider and monitors all of the Participant's FTR market activity to ensure its FTR positions, considering both the level and pathways, are generally proportionate to and appropriate for the Participant's physical transactions as a load serving entity or generation provider." If the FTR Participant cannot make the paragraph 3(a) representation, then it must make the paragraph 3(b) representations, which include, *inter alia*, that an independent entity values its FTR positions using analytically based methodologies on no less than a weekly basis and that the Participant has provided to PJMSettlement a copy of its risk management policies.

115. We find that the tiered nature of the risk management and verification requirements is consistent with Order No. 741 and is not unduly discriminatory. In Order No. 741-A, the Commission acknowledged that a tiered approach to the minimum

---

[97] *Id*.

[98] The Commission will not mandate a particular form of periodic verification of attestations concerning minimum risk management policies, practices, and procedures. However, such a periodic verification could include periodic review of risk management policies, practices, and procedures, and their implementation, conducted on a random basis or directed to certain market participants based on identified risk.

participation criteria would allow for differentiation based on a market participant's characteristics, but still reduce the market's exposure to the risk of a default.[99] As with its proposed minimum capitalization requirements, PJM's proposed tiered risk management and verification requirements are consistent with the differing levels of risk that different market participants present to the market. As discussed above, FTRs present special risks to the market. Accordingly, PJM's proposed risk management and verification requirements place lesser requirements on non-FTR Participants because they pose less risk to the markets than FTR Participants, which is consistent with PJM's proposal to impose lower minimum capitalization requirements on non-FTR Participants.

116. PJM's proposed requirements permit an FTR Participant to certify under paragraph 3.a of the Certification Form that it "transacts in the FTR markets solely to hedge the congestion risk related to the Participant's physical transactions as a load serving entity or generation provider…" and accordingly be subject to less stringent risk management and verification requirements. PJM explains that FTR Participants who transact in the FTR markets solely to hedge the congestion risk related to the participants' physical transactions as load serving entities or generation providers are subject to lesser requirements than other FTR Participants because they pose less risk of default than FTR Participants that are financially speculating. Hedges of physical transactions are likely to be less risky than speculative investments. For example, the risk associated with a counterflow FTR may be offset by energy credits earned by a physical resource owned or controlled by the FTR holder. When an FTR Participant like a load serving entity or generation provider is hedged, its transactions offset its physical positions, thereby limiting the likelihood of default. Thus, PJM's proposed tiered risk management and verification requirements, which distinguish between hedged and non-hedged transactions, are consistent with the differing levels of risk that different market participants present to the market. Financial Marketers even admit that distribution companies hedging physical positions pose a smaller risk to the market than other companies taking similar positions when very good hedges are available.[100] While we acknowledge Financial Marketers' point that there is no guarantee that an FTR position will be a perfect hedge, we do not find that protestors have demonstrated that the possibility of some under or over-hedging would render PJM's distinction unreasonable. DC Energy asserts that all FTRs present risk. PJM's distinction does not eliminate collateral requirements for FTR participants, but only recognizes that the level of verification for companies that engage only in hedged transactions can be less stringent than for those engaging in speculation.

---

[99] Order No. 741-A, FERC Stats. & Regs. ¶ 61,313 at P 33.

[100] Financial Marketers Protest at 21.

117. While we find generally reasonable the distinction in risk between hedged and non-hedged transactions, we agree with various protestors who raise concerns regarding what it means to transact "solely to hedge the congestion risk related to the Participant's physical transactions" in the context of paragraph 3.a. For example, DC Energy argues that it is not clear how a market participant determines how it is actually "hedged," and AEP states that they do not know whether they qualify for paragraph 3.a treatment because they use FTRs for more than a single purpose, and therefore will likely be forced to assume they are covered by paragraph 3.b. ConEd argues that paragraph 3.a should be amended to exempt FTR Participants that "generally" use FTRs for hedging purposes, since the current formulation appears to exclude market participants that purchase a single FTR for other than hedging purposes.

118. In response to ConEd's proposed clarifying language, PJM in its answer states that it would not oppose revising the language in paragraph 3(a) to add "or generally do not exceed" after "generally proportionate to" to clarify that the use of FTRs as hedges in amounts less than the full value of physical transactions, e.g., under-hedging, would be still qualify for paragraph 3.a treatment.[101] Given the concerns of protestors and PJM's willingness to make clarifying changes, we accept the filing conditioned on, in addition to a compliance verification process, PJM submitting a compliance filing within 90 days to revise the proposed language of paragraph 3.a of the Certification Form to clarify the circumstances under which an entity qualifies for treatment under paragraph 3.a. In particular, PJM is required to define more clearly what it means to transact "solely to hedge the congestion risk related to the Participant's physical transactions," and that FTR positions, "considering both the levels and pathways, are generally proportionate to and appropriate for the Participant's physical transactions as a load serving entity or generation provider." [102] In any case, PJMSettlement will require a Participant to make the certifications under paragraph 3.b if it finds that the Participant does not qualify to make the certifications in 3.a.[103]

119. AEP and DC Energy argue that paragraph 3 is unreasonable because it lacks a materiality component that takes into account the size and nature of a participant's FTR

---

[101] PJM Answer at 32.

[102] *See, e.g., PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,180 (2010) (rejecting a filing by PJM to exempt certain customers from collateral requirements, but acknowledging that a proposal limited to hedges offset by energy credits earned by physical resources might be appropriate).

[103] PJM Tariff, Attachment Q, proposed section Ia.A.

portfolio. As discussed above with regard to PJM's proposed minimum capitalization requirements, we do not find that the verification requirements must be based on portfolio size. These requirements are related to the differing requirements that need to be in place for those who hedge and those who speculate. However, PJM has indicated that the definition of hedging may need to be further defined because hedges may not always be perfect. As part of this review, PJM should consider whether an FTR Participant could qualify for treatment under paragraph 3.a if their speculative FTR portfolios are of *de minimis* size relative to their overall exposure.

(b) Paragraph 3 Requirements

(1) Paragraph 3--Generally

120. Some protestors also argue that paragraph 3 should be deleted because it is unduly discriminatory to require non-traditional traders, such as those without physical assets, to comply with the additional requirements under paragraph 3(b), when load serving entities and generators who attest their FTR positions are "solely to hedge congestion risk to [their] physical transactions" need not do so. The Commission has repeatedly held that different treatment for different classes of market participants does not amount to undue discrimination if the classes have distinguishing characteristics that justify the disparate treatment.[104] As discussed above, hedges of physical transactions are likely to be less risky than speculative investments, and accordingly, PJM's risk management and verification requirements are consistent with differing levels of risk associated with different market participants. We therefore disagree with protestors' assertions that it is unduly discriminatory for PJM to require the additional risk management and verification requirements for certain FTR Participants under paragraph 3(b).

(2) Paragraph 3(b) Requirements

121. Some protestors argue that PJM and PJMSettlement are not qualified to evaluate the risk management policies of FTR Participants and therefore the requirement under paragraph 3.b of the certification form to provide risk management policies should be eliminated. We disagree. In Order No. 741, the Commission required ISOs and RTOs to

---

[104] *See, e.g.*, *Ark. Elec. Energy Consumers v. FERC*, 290 F.3d 362, 367 (D.C. Cir. 2002) ("A rate is not 'unduly' preferential or 'unreasonably' discriminatory if the utility can justify the disparate effect."); *Cities of Newark, New Castle & Seaford v. FERC*, 763 F.2d 533, 546 (D.C. Cir. 1985) ("It is well settled, however, that differences in rates are justified where they are predicated upon factual differences between customers."); *accord Sacramento Mun. Util. Dist. v. FERC*, 474 F.3d 797 (D.C. Cir. 2007).

propose minimum participation criteria to "help protect the markets from risks posed by…those who do not have adequate risk management procedures in place."[105] Requiring certain market participants to provide their risk management policies would help to ensure that they have adequate risk management procedures in place, consistent with Order No. 741. Protestors have not shown that PJMSettlement lacks the ability to review these risk management policies. PJM explains that PJMSettlement will review the risk management policies to verify that they generally conform to prudent risk management practices for entities trading in FTR-type markets, not to make a finding on the efficacy of the procedures or the correctness of the procedures. Further, PJM has stated that to the extent special expertise is required to make this determination, it will either acquire or outsource it given the need to best protect the market.

122. We disagree with Indicated Participants' and Financial Marketers' argument that PJM's proposal to require weekly valuations of FTR positions in paragraph 3.b of the Certification Form is unreasonable. As PJM states, this requirement allows prudent regular monitoring of position values, which can change frequently. That some FTR positions may not vary weekly is beside the point; if position values do not change during a certain week, then the weekly assessment will simply note the lack of change.

123. DC Energy argues that the requirement that weekly valuations be conducted using analytically based methodologies "predicated on the use of industry accepted valuation methodologies" should be deleted because no such standard exists. AEP argues that this provision of section 3.b. is particularly vague. We disagree. PJM's proposed language does not require the existence of a specific, codified standard. As PJM explains in its answer, this merely requires an approach that would be commonly accepted in the industry. The proposed language sets forth the requirement while intentionally imposing a flexible standard in order to reflect current industry norms. If more specific standards develop, then PJM may review certifications against such standards. For example, CCRO agrees with PJM that it can provide an important role in developing industry-accepted standards applicable to risk control in the FTR markets.[106] However, the referenced language provides sufficient guidance even without a codified standard developed by CCRO or a similar organization. Furthermore, in response to AEP's expressed opposition to use of the CCRO to establish such standards, we note that we are not directing reliance on CCRO in this order.

---

[105] Order No. 741, Stats. & Regs. ¶ 31,317 at P 131.

[106] CCRO Comments at 1.

(c) Paragraph 2 Requirements

124. We find reasonable PJM's proposal to require that market participants certify in paragraph 2 of the Certification Form that risk management policies have been approved by an independent risk management function. Some protestors contend that this requirement is overly burdensome and unnecessary. We agree with PJM that requiring risk management practices to be overseen by an independent risk management function helps to ensure that risk management controls are effective and not tainted by conflicts of interest by segregating risk oversight from trading functions. While there will be some cost associated with complying with the requirement, entities that do not have the staff to perform the function internally have the option to outsource it to an independent third party, which minimizes the burden on smaller entities.[107] We also find that independence of oversight is no less important for small companies or owners or principals who are also traders, as these individuals often isolate their trading capital in limited liability companies. We disagree with AEP that the independent risk management function requirement is unnecessary because the FTR markets are generally fully collateralized and without credit risk. As PJM explains, collateral requirements do not fully protect the market against defaults, and FTRs present special risks. Additionally, individual transactions are not fully collateralized, such that a participant can design a portfolio that does not require financial security.

(d) Miscellaneous

125. We do not find it necessary to require PJM to amend its proposed training provisions. EPSA contends that the Commission should require PJM to delete the "generally accepted practices" language from the definition of "appropriate training" in the Certification Form because this obscures the definition instead of clarifies it. As PJM states, the proposed provision is intended to allow a range of prudent practices prevailing in the industry and to avoid specifically defining these acceptable practices. We find PJM's proposed language to be reasonable and sufficiently clear for each entity to certify the training of its employees.

126. We find paragraph 6 of the Certification Form to be reasonable. AEP argues that the acknowledgement in paragraph 6 of the Certification Form should be eliminated or

---

[107] We also disagree with AEP that paragraph 3 should be deleted because its independence requirement is redundant to paragraph 2. While both paragraphs refer to the role of an independent risk management function, specific provisions differ. Paragraph 3 adds the explicit requirement that the weekly valuation of FTR positions required in paragraph 3.b must be performed by an independent function.

amended because it imposes personal liability on the signatory. We read paragraph 6 as implicitly indicating that the signatory is making any statements to the best of his or her knowledge, given that an individual is making the certification on behalf of a corporate entity.

127. Further, we do not find it necessary to require PJM to amend the Certification Form to allow a corporate parent to make the certification on behalf of the market participant. It is reasonable to require market participants to make their own certifications, as they are the entities to which the minimum participation requirements apply. Also, as PJM notes, the proposed tariff revisions already require confidential treatment of risk management materials, and so we do not find it necessary to require PJM to clarify that protection of confidential information extends to such materials, as EPSA requests.

6. Use of "Material Adverse Change"

128. In Order No. 741, the Commission directed each RTO and ISO to submit a compliance filing that includes tariff revisions to establish and clarify when a market administrator may invoke a "material adverse change" clause to compel a market participant to post additional collateral, cease one or more transactions, or take other measures to restore confidence in the market participant's ability to safely transact.[108] The Commission, however, declined to adopt a *pro forma* list of circumstances that may trigger a "material adverse change" clause. Instead, the Commission directed each RTO and ISO to develop its own tariff provisions identifying circumstances when each market administrator may invoke a "material adverse change" clause in the form of a list that is illustrative, rather than exhaustive. Furthermore, the Commission explained that the tools used to determine a "material adverse change" should be sufficiently forward-looking to allow the market administrator to take action prior to any adverse effect on the market.[109]

129. The Commission also directed each RTO and ISO to provide reasonable advance notice to a market participant, when feasible, when the RTO or ISO is compelled to invoke a "material adverse change" clause.[110] The Commission noted that the notification should be in writing, contain the reasoning behind invocation of the "material adverse change" clause, and be signed by a person with authority to represent the respective RTO or ISO in such action.

---

[108] Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 149.

[109] *Id.* P 149-50.

[110] *Id.* P 151.

a. Filing

130. Existing section I.B.3 of Attachment Q of the Tariff requires participants to immediately inform PJMSettlement of any material change in their financial condition, and sets forth a non-exhaustive list of what may be a material change in financial condition. PJM proposes to amend section I.B.3 to provide that PJMSettlement may independently establish from available information that a participant has experienced a material change in its financial condition. PJM also proposes to add three examples to the list of what may constitute a material change in financial condition: (1) a financial default in another organized wholesale electric market, futures exchange, or clearing house; (2) revocation of a license or other authority by any Federal or State regulatory agency, where the license or authority is required or important to the participant's continued business; and (3) a significant change in credit default spreads, market capitalization, or other market-based risk measurement criteria. Finally, PJM proposes to amend section I.B.3 to provide that, if PJMSettlement determines that a participant is required to provide financial security because of a material change in financial condition, PJMSettlement will provide the participant with a written explanation of why such determination was made.

b. Protests and Comments

131. Indicated Participants argue that the Commission should direct RTOs and ISOs to modify their proposals to clarify that RTOs and ISOs will consider the totality of circumstances to determine whether a material adverse change has occurred. Indicated Participants also argue that RTOs and ISOs should clarify that they, rather than market participants, will monitor conditions associated with a material adverse change. Indicated Participants argue that the Commission did not require that each market participant itself monitor and report on each such circumstance, and that during stakeholder conferences, RTOs and ISOs indicated that they would be responsible for monitoring these additional criteria.[111] To the extent that market participants will be responsible for monitoring any additional items, Indicated Participants and EPSA argue that market participants should not be required to purchase additional software review packages, such as Moody's KMV Expected Default Frequency,[112] in order to remain in

[111] Indicated Participants July 21, 2011 Comments at 18 (citing Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 148-49).

[112] The Moody's KMV Expected Default Frequency is proprietary, market-based credit measure or probability that a firm will default within a given time horizon, typically one year.

compliance with RTO/ISO requirements. Finally, EPSA contends that it is not clear what constitutes a "significant change" in PJM's proposed material adverse change provisions.

c. Answers

132. PJM clarifies in its answer that it does not expect or require participants to subscribe to vendor services such as Moody's KMV Expected Default Frequency to comply with the material adverse change provisions. PJM responds to EPSA's request for clarification of what "significant change" means by asserting that the proposed Tariff language sufficiently describes the meaning of this term in the context of credit default spreads, market capitalization, or other market-based risk measurement criteria and explains that it is an increase noticeably greater than the increase in its peers rates or a collateral default swap premium normally associated with an entity rated lower than investment grade. PJM states that whether a change is significant depends on the change in the context of other entities' credit default spread, market capitalization, or other market-based risk measurement criteria.

133. In their answer, Indicated Participants state that they appreciate PJM's clarification that it does not expect or require participants to subscribe to vendor services such as Moody's KMV Expected Default Frequency, but remain concerned that PJM's credit policy could still be read as requiring participants to notify PJM if any of the items listed in section 1.B.3(k) occur. Indicated Participants therefore request that the section be revised to clarify that the list is illustrative in nature or to specify exactly which items participants are expected to monitor and report to PJM.

d. Commission Determination

134. We have reviewed the RTO's proposal and its compliance with Order No. 741, and we find it to be just and reasonable as discussed further below.

135. The Commission intended in Order No. 741 to reduce ambiguity as to when a market administrator may request additional collateral due to a material adverse change, by requiring each RTO and ISO to list in its tariff events that could trigger a collateral call. However, the Commission also required that this list be merely illustrative, rather than exhaustive, allowing each RTO and ISO reasonable discretion to independently determine whether a material adverse change that would warrant seeking additional collateral has occurred. In this regard, RTOs and ISOs are responsible for administrating and otherwise overseeing its markets, and as such, we expect them to exercise their reasonable discretion in deciding in what circumstances to seek additional collateral, and when they need not do so. The Commission declines to limit an RTO's or ISO's exercise of such discretion and so we will not require each RTO and ISO to modify its proposed tariff revisions to expressly require that it must consider the totality of the circumstances in determining whether a material adverse change has occurred. Furthermore, we anticipate that every market participant has, or will have, sufficient resources for the

participant to be aware of and report those events and circumstances identified by the ISO/RTO's illustrative list of material adverse changes. Accordingly, we find that PJM's proposal is just and reasonable and in compliance with the directives noted above.

136. We disagree with EPSA that PJM's reference to "significant change" is unclear in the context of its material adverse change provisions.[113] The Tariff language describes the meaning of this term in the context of credit default spreads, market capitalization, or other market-based risk measurement criteria. PJM's proposed Tariff language also includes an example of one such significant change: a recent increase in Moody's KMV Expected Default Frequency that is noticeably greater than the increase in its peers' Expected Default Frequency rates or a collateral default swap premium normally associated with an entity rated lower than investment grade.

137. The Commission does not see a need to require that RTOs and ISOs clarify that they, rather than market participants, have the sole responsibility to monitor conditions associated with a material adverse change, as Indicated Participants request. In Order No. 741, the Commission required only that each RTO and ISO revise its tariff to establish and clarify when a market administrator may invoke a "material adverse change clause." Under the tariff revisions submitted here, which we find to be in compliance with that directive, PJM ultimately will be responsible for determining, based on information obtained as part of its monitoring efforts, whether a material adverse change under its tariff has occurred and will be responsible for taking appropriate actions. Order No. 741 did not address responsibility for monitoring conditions associated with material adverse changes. Certainly, market participants would likely be among the first to know when sanctions or changes in market capitalization have occurred and whether they result in a material adverse change. They would therefore be in a better position than PJM to act timely to protect the market. However, we impose no requirement on market participants to themselves monitor the market. Therefore, the Commission declines the Indicated Participants' requested clarification on this matter.

138. Indicated Participants and EPSA argue that market participants should not be required to purchase additional software review packages, in order to remain in compliance with material adverse change provisions. As PJM clarifies in its answer,

---

[113] PJM proposes that a material change in financial condition include "a significant change in credit default spreads, market capitalization, or other market-based risk measurement criteria, such as a recent increase in Moody's KMV Expected Default Frequency that is noticeably greater than the increase in its peers' Expected Default Frequency rates, or a collateral default swap (CDS) premium normally associated with an entity rated lower than investment grade."

PJM does not expect or require participants to subscribe to such vendor services to comply with the material adverse change provisions. Additionally, we disagree with Indicated Participants that the provision needs further clarification that the list is illustrative in nature. The existing Tariff provision states that a material change in financial position "may include, but not be limited to, any of the following." PJM has not proposed to change this language, and the list is thus clearly intended to be an illustrative, rather than exhaustive, list.

7. Grace Period to "Cure" Collateral Posting

139. In Order No. 741, the Commission directed each RTO and ISO to revise its tariff to allow no more than two days to post additional collateral due to invocation of a "material adverse change" clause or other provision of its tariff.[114]

a. Filing

140. PJM states that its existing Tariff provisions regarding the grace period to cure collateral posting already complies with Order No. 741. Section VII of Attachment Q provides that a participant has two business days from notification of a breach or a collateral call to remedy the breach or satisfy the collateral call in a manner deemed acceptable by PJMSettlement.

b. Protests and Comments

141. No protests were filed regarding this issue.

c. Commission Determination

142. We find that PJM's existing Tariff provisions regarding the grace period to cure collateral posting comply with Order No. 741. The existing Tariff reflects a two-day limit to cure a collateral call.

The Commission orders:

(A) PJM's proposed tariff revisions are hereby conditionally accepted for filing effective, as requested, on October 1, 2011, as discussed in the body of this order.

---

[114] Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 160.

(B) PJM is hereby directed to make a compliance filing within 90 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix A – Parties and Abbreviations

Motions to intervene or motions to intervene with comments and/or protests were filed by:

Allegheny Electric Cooperative, Inc.+
American Electric Power Company, Inc., Dominion Resources Services, Inc., DTE Energy Trading, Inc., Exelon Corporation, Rockland Electric Company, and Shell Energy North America (US), L.P. (collectively, AEP)++
American Municipal Power, Inc. (AMP)+
Borough of Chambersburg, Pennsylvania (Chambersburg)+
BP Energy Company
Brookfield Energy Marketing LP
Calpine Corporation
CCES LLC (CCES)++*
Consolidated Edison Solutions, Inc. and Consolidated Edison Energy, Inc. (collectively, ConEd)++
Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.
Dayton Power and Light Company
DC Energy, LLC (DC Energy)++
Duke Energy Corporation
Edison Mission Energy
Electric Power Supply Association (EPSA)++
Elliott Bay Energy Trading, LLC
GenOn Parties
HQ Energy Services (US) Inc.
Illinois Industrial Energy Consumers
JPMorgan Ventures Energy Corporation
MET MA, LLC
Monitoring Analytics, LLC
Morgan Stanley Capital Group Inc., Macquarie Energy LLC, and DB Energy Trading LLC (collectively, Indicated Participants)++
National Rural Electric Cooperative Association (NRECA) and American Public Power Association (APPA)+
North American Power Partners, LLC*
Old Dominion Electric Cooperative, the Delaware Municipal Electric Corporation, Inc., and North Carolina Electric Membership Corporation, Inc. (collectively, ODEC)+
Pepco Holdings, Inc., Potomac Electric Power Company, Atlantic City Electric Company, and Delmarva Power & Light Company (collectively, Pepco Holding Companies)+
PSEG Companies+
Public Power Association of New Jersey (PPANJ)+

Pure Energy Inc., Great Bay Energy, LLC, XO Energy MA LP, The Highlands Group LLC, JPTC, LLC, and Hexis Energy Trading, LLC (collectively, Financial Marketers)++
Shell Energy North America (US), L.P.
Twin Cities Power, LLC, Twin Cities Energy, LLC, TC Energy Trading, LLC, Cynus Energy Futures, LLC, and Summit Energy, LLC (collectively, Twin Cities)++
Vitol Inc.

+ Comment filed
++ Protest filed
* Out-of-time intervention

Comments (without motions to intervene) were filed by:

Committee of Chief Risk Officers
PJM Industrial Customer Coalition