

136 FERC ¶ 61,189
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.

Southwest Power Pool, Inc.

Docket No. ER11-3967-000

ORDER ON COMPLIANCE FILING

(Issued September 15, 2011)

1. On June 30, 2011, Southwest Power Pool, Inc. (SPP) filed proposed revisions to its Open Access Transmission Tariff (Tariff) to comply with the Commission's requirements established in Order Nos. 741 and 741-A.¹ As discussed below, the Commission conditionally accepts SPP's compliance filing, subject to a further compliance filing.

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 financial transmission rights (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

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 (June 16, 2011).

² 16 U.S.C. §§ 824d, 824e (2006).

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 Accordingly, the Commission will not address compliance with this requirement in this order.

II. Notice of Filing and Responsive Pleadings

4. Notice of SPP’s compliance filing was published in the *Federal Register*, 76 Fed. Reg. 41,774 (2011), with interventions and protests due on or before July 21, 2011. Timely motions to intervene were filed by Calpine Corporation; Constellation Energy Commodities Group, Inc., together with Constellation NewEnergy, Inc. (collectively, Constellation); DC Energy, LLC (DC Energy) (with comments and a request for clarification); East Texas Electric Cooperative, Inc., North Texas Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc. (collectively, East Texas Cooperatives) (with comments); the Electric Power Supply Association (EPSA); Exelon Corporation, Morgan Stanley Capital Group, Inc., Macquarie Energy, LLC, and DB Energy Trading, LLC (collectively, Indicated Participants); Lincoln Electric System; Missouri Joint Municipal Electric Utility Commission (Missouri JMEUC) (with a limited protest); Shell Energy North America (US), L.P.; and Western Farmers Electric Cooperative (Western Farmers). In addition, late-filed comments were submitted by EPSA and Xcel Energy Services, Inc. (Xcel) filed motion to intervene out-of-time. SPP filed an answer addressing several of the comments, and Western Farmers filed an answer in response to SPP’s answer.

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

III. Discussion

A. Procedural Matters

5. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

6. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2011), the Commission will grant the late-filed motions to intervene of Xcel and EPSA given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

7. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We will accept SPP's and Western Farmers' answers because they aided us in our decision-making.

B. Substantive Matters

1. Shortening the Settlement Cycle

8. 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.⁴

a. Filing

9. SPP states that, with respect to its Energy Imbalance Services Market (EIS Market), SPP currently has in place procedures for weekly billing with payment due the Wednesday after the invoice is issued. Thus, SPP claims that its current billing and settlement practices are consistent with Order No. 741 and it is not proposing any changes. No protests were filed on this issue.

b. Commission Determination

10. The Commission finds that SPP's current EIS Market billing and settlement practices are consistent with the Order No. 741 directive to shorten billing and payment cycles to seven days or less to reduce the risk of default, socialization of default costs, and market disruptions.

⁴ Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 32.

2. Use of Unsecured Credit

11. 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.⁵

12. 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.⁶

a. Filing

13. SPP states that its current provisions limiting unsecured credit to no more than \$25 million and limiting the unsecured credit of multiple, affiliated market participants to an aggregate total of \$25 million comply with the requirements of Order No. 741. Therefore, SPP is not proposing any modifications. No protests were filed on this issue.

b. Commission Determination

14. The Commission finds that SPP's current unsecured credit limit complies with the directives of Order No. 741.

⁵ 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.

⁶ Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 55-56.

3. Elimination of Unsecured Credit in Financial Transmission Rights Markets

15. 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.⁷

16. Because SPP currently does not administer an FTR market, these directives are not applicable to SPP.

4. Minimum Criteria for Market Participation

17. In Order No. 741, the Commission directed each RTO and ISO to revise its tariff to establish minimum criteria for market participation.⁸ The Commission further directed each RTO and ISO to develop these criteria through its stakeholder processes.⁹ While Order No. 741 did not provide specific criteria, the Commission offered examples 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 ensure 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.¹⁰ Moreover, the Commission stated that any minimum participation criteria apply to all market participants rather than only certain participants.¹¹ 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.¹²

⁷ Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 75.

⁸ Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 131.

⁹ *Id.* P 132.

¹⁰ *Id.* P 131.

¹¹ *Id.* P 133. There need to be minimum criteria for all market participants; however, as we explained in Order No. 741-A, not all market participants need be held to the same minimum criteria. Order No. 741-A, FERC Stats. & Regs. ¶ 31,320 at P 33 & n.43.

¹² Order No. 741-A, FERC Stats. & Regs. ¶ 31,320 at P 33 & n.43.

a. Filing

18. SPP proposes to revise Attachment X (SPP Credit Policy) of its Tariff to include a new section 3.1.1.6, which requires an attestation of risk management capabilities from market participants. The attestation must include a notarized statement by an authorized officer of the market participant describing its risk management capabilities and procedures (including whether the market participant is engaged in hedging), identifying market participant employees who perform risk management activities, and defining the special training, skills, experience, and industry tenure of such employees. The attestation must be renewed and updated each year. According to the proposed section, if SPP determines that the market participant's risk management capabilities are insufficient for the type of service that will be undertaken, SPP will decline the market participant's application for participation in all SPP markets.

19. SPP also proposes a new section 3.1.1.8, which governs minimum capitalization criteria. Specifically, the criteria require that a market participant must satisfy one of the following without assistance of a corporate parent: (1) a minimum tangible net worth of \$1 million as of the most recent fiscal year; (2) a minimum \$10 million in assets in the most recent fiscal year; (3) a credit rating of or equivalent to BBB-; or (4) a deposit of either \$200,000 in financial security or twice the market participant's potential exposure (if the market participant's anticipated market activity is expected to exceed \$100,000) to be segregated and unavailable for the purpose of securing any market or transmission services.

b. Protests and Comments

20. 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 the 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 RTOs/ISOs to coordinate their certification statements and verification processes both in terms of substance and dates for submission.

21. Indicated Participants state that 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 Commodity Futures Trading Commission (CFTC) under the Commodity Exchange Act.¹³ However, Indicated Participants assert that they are not privy to the discussions between RTOs and ISOs and the CFTC, and are not certain what changes are necessary to obtain an exemption. Given that RTOs and

¹³ Indicated Participants July 21, 2011 Comments at 8; *See* 7 U.S.C. § 1 (2006).

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 creating a necessary 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 RTOs and ISOs to tailor their revisions to satisfy only those requirements.

22. EPISA 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. Specific to SPP, EPISA states that section 3.1.1.1 (Audited Financial Statements and Related Information) of SPP's existing credit policy does not specify which corporate entity is permitted to submit the required financial statements on behalf of the credit customer. EPISA contends that because many companies that trade in the SPP market name a subsidiary that does not have audited financial statements as the company's market participant, SPP must be willing to accept financial statements of a parent company to satisfy this requirement. Similarly, DC Energy states that it understands that SPP will accept the audited financial statements of a corporate parent as the market participant's guarantor to demonstrate that the market participant has met the minimum participation criteria as it pertains to minimum tangible net worth or total assets. In this vein, DC Energy requests that the Commission require SPP to clarify the required "granularity" of audited financial statements.¹⁴

23. Indicated Participants argue that RTOs and ISOs should uniformly be required to accept both domestic and foreign guarantees (including capped) from creditworthy guarantors for satisfaction of minimum capitalization, and that flexibility should be allowed with respect to the form of guarantee (e.g., choice of governing law, termination and assignment, waiver of surety defense). In addition, 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, Indicated Participants support the creation of an exemption from the minimum capitalization requirements (and from 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).

24. Specific to SPP's filing, East Texas Cooperatives and Western Farmers request that SPP provide more detail regarding the criteria and standards SPP will use in

¹⁴ DC Energy Comments at 3.

evaluating a market participant's risk management capabilities. EPSA suggests that the Commission direct SPP to develop a standard attestation or certificate form similar to those proposed by other ISOs/RTOs. East Texas Cooperatives and Western Farmers contend that SPP's proposed language provides no indication of what SPP is looking for, making it difficult for a market participant to comply with the attestation requirements. East Texas Cooperatives and Western Farmers emphasize the importance of this information, as a market participant's participation in the SPP markets may be declined if SPP determines its risk management capabilities are insufficient.

25. East Texas Cooperatives, Missouri JMEUC, and EPSA contend that SPP's proposal to deny a market participant participation in all SPP markets if the market participant's risk management capabilities are deemed insufficient for one type of service could have unfair consequences. Missouri JMEUC contends that for generator and load-serving entities, participation in the EIS Market is essential, as it is the only means by which they can obtain imbalance energy service.¹⁵ Missouri JMEUC asserts that summarily excluding these entities from the EIS Market solely for failure to satisfy SPP's unstated standards for risk-management is disproportionate to the problem. Thus, Missouri JMEUC suggests applying the risk-management requirements only to those market participants that utilize the EIS Market for reasons other than hedging or meeting imbalance obligations associated with transmission service. East Texas Cooperatives recommend that the Commission require SPP to revise its Tariff language so that a market participant would only be declined service in the market for which SPP determines the market participant's risk management capabilities are insufficient. Western Farmers, East Texas Cooperatives, and EPSA assert that, at the very least, the Commission should require SPP to provide an opportunity for market participants to cure attestation deficiencies before SPP declines market participation.

26. EPSA contends that the clause "without assistance from a parent or affiliate" in proposed section 3.1.1.8¹⁶ is extraneous and it does not appear that Order No. 741 allows market participants to bring in credit support from an affiliate on behalf of the credit customer.¹⁷ In addition, EPSA contends that the Commission should direct SPP to refine revised section 3.2.2 (Procedures for Posting Additional Financial Security) because it

¹⁵ Missouri JMEUC Protest at 5.

¹⁶ The protested part of proposed section 3.1.1.8 (Minimum Criteria for Market Participation) provides that "if the applying market participant, without assistance from a parent or affiliate is unable to meet the minimum criteria for market participation," then the application will be denied.

¹⁷ EPSA Protest at 10.

does not specify whether there is a limit or cap on the additional financial security that SPP can request under its procedures.

27. In addition, EPSA takes issue with certain existing SPP credit policy provisions, claiming that the requirements of Order No. 741, along with the mandatory certification process required by the ISOs/RTOs, now dictate that these provisions be considered anew in light of the changes brought about with Order No. 741.¹⁸ Specifically, EPSA asserts that SPP should be directed to amend its current section 3.1.1.3 (Loss Contingencies), which requires a credit customer to report all material liabilities¹⁹ to SPP. EPSA contends that material liabilities against a publically traded company must be reported to the SEC, and SEC filings are publicly available. Thus, EPSA asserts that SPP simply needs to monitor SEC filings by credit customers, and therefore, SPP should be directed to amend its provision to require reporting to the SEC instead of to SPP.

28. EPSA states that existing section 3.1.1.5 (Total Potential Exposure Information) indicates that filing entities “shall provide an estimate of its current or anticipated transaction activity for all services under the Tariff.”²⁰ EPSA argues that it may be impossible to determine an “anticipated” level of transaction activity, and requests that the Commission direct SPP to remove the word anticipated.²¹ Lastly, EPSA asserts that existing section 3.2.3 (Rating Agency Information) requires market participants to give SPP notices of any changes to credit ratings, and SPP should clarify that mandatory notification only applies to downgrades.²²

c. Answers

29. SPP notes that, while it believes its proposed Tariff revisions fully comply with the Order No. 741 requirement to adopt minimum criteria for market participation, it is willing to adopt certain revisions to Attachment X to address commenters’ concerns, if so directed by the Commission. Specifically, SPP states that it is amenable to developing

¹⁸ *Id.* at 9.

¹⁹ SPP specifies material liabilities to be pending, existing or potential court actions, investigations or liabilities of the credit customer, ongoing investigations by a governmental entity that could be material to the credit customer, prior bankruptcy filings, or defalcations or fraud involving the credit customer. *See* SPP Tariff, Attachment X, section 3.1.1.3.

²⁰ EPSA Protest at 9, citing SPP Tariff, Attachment X, section 3.1.1.5

²¹ *Id.* at 9-10.

²² *Id.* at 10.

and adopting a standard risk management attestation form. In addition, SPP proposes to adopt language providing a two-day cure period for a market participant to correct its insufficient attestation, if so directed. SPP contends that a two-day cure period is consistent with other cure periods SPP has proposed in its billing practices and credit policy, as well as with the cure period other RTOs have proposed.²³ Lastly, in response to comments that section 3.1.1.6 lacks sufficient detail, SPP clarifies that its review of a market participant's attestation will be limited to determining whether the market participant has provided all of the required information described on the attestation. SPP notes that, if the market participant provides all of the required information, SPP will accept the attestation as sufficient.

30. SPP contends that Missouri JMEUC's suggestion to exempt load-serving entities from SPP's risk management attestation is misplaced, as neither Order No. 741 nor subsequent orders authorize RTOs to exempt certain classes of market participants from minimum requirements for participation.²⁴

31. SPP contends that the Commission should reject EPSA's concerns regarding SPP's existing credit policy as outside the scope of the proceeding, as they are neither required by Order No. 741 nor implicated in SPP's compliance filing. In addition, SPP asserts that Order No. 741 does not mandate that SPP make any of the revisions to address EPSA's concerns with the policy provisions SPP proposes to modify in the filing and should be rejected.

32. Similarly, SPP argues that the Commission should reject DC Energy's requests for clarification. SPP argues that, in Order No. 741, the Commission did not address the submission of financial statements or the level of granularity that RTOs must require. In addition, SPP states that it will not accept the audited financial statements of a corporate parent as the market participant's guarantor, as Order No. 741 does not require an RTO to accept a corporate parent's credit information to satisfy the minimum participation criteria on behalf of a subsidiary.

33. In response to SPP's answer, Western Farmers notes that SPP's willingness to adopt a standardized risk management attestation form will clarify the type of information and documentation required to demonstrate a market participant's risk management capabilities and suggests the Commission hold SPP to its commitment.

²³ SPP Answer at 11, citing e.g., Revisions to the ISO New England Inc. Transmission, Markets, and Services Tariff in compliance with Order No. 741 and 741-A, Docket No. ER11-3953-000, at 17 (June 30, 2011) (proposing a two-day cure period to correct deficiencies in market participant risk management certifications).

²⁴ SPP Answer at 12.

However, Western Farmers contends that, despite the proposed modifications, SPP continues to provide insufficient guidance regarding the criteria that SPP will use in evaluating whether a market participant's risk management capabilities will be deemed insufficient. Thus, Western Farmers asserts that the Commission should require SPP to specify what constitutes a "necessary description" and whether SPP will evaluate the merits of the risk management program and/or the skills, training and experience of the individuals engaged in risk management activities.²⁵

34. Finally, Western Farmers requests that the Commission require SPP to adopt a two-day cure period to fix deficiencies in a market participant's risk management attestation, as SPP proposes in its answer. Western Farmers states that, although the proposed cure period is a welcome addition, it may be difficult for a market participant to cure substantive deficiencies in two days, which it states further supports the request of Western Farmers and other commenters for additional guidance on the substantive review criteria SPP will use to evaluate a market participant's attestation. Western Farmers contends that such guidance will reduce the occurrence of substantive deficiencies in submitted attestation for which a two-day cure period may prove ineffectual.

d. Commission Determination

35. 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.²⁶ 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 doing so, we review the proposal before us and understand that there may be more than one just and reasonable set of minimum participation criteria

36. While we expect each RTO and ISO will comply with applicable rules and requirements of all federal agencies, the Commission is 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.

37. 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

²⁵ Western Farmers Answer at 3.

²⁶ Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 131.

develop minimum participation criteria that are applicable to its markets.²⁷ The Commission thus declines to require RTOs and ISOs to adopt uniform minimum criteria, including uniform certification statements, at this time. The Commission will not require SPP to revise its proposal to reflect certain uniform changes proposed by EPSA and Indicated Participants, such as allowing a corporate parent to submit a certification on behalf of a market participant and exempting market participants that are already subject to capitalization requirements required by other regulators or entities. Accordingly, we will not require SPP to modify its existing section 3.1.1.1 as requested by EPSA and note that, despite DC Energy's understanding, SPP will not accept the audited financial statements of a corporate parent as the market participant's guarantor to demonstrate that the market participant has met the minimum participation criteria. 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.

38. As discussed below, the minimum participation criteria submitted by SPP, as revised, are consistent with the Commission's directives, just and reasonable and not unduly discriminatory or preferential, and therefore the Commission accepts the proposed revisions.

39. SPP is willing to make revisions addressing commenters' concerns, and we direct SPP to submit a compliance filing to revise its Tariff as described in its answer. Specifically, we direct SPP to adopt a standard risk management attestation for SPP market participants, as it will provide greater certainty regarding the criteria and standards SPP will use in evaluating a market participant's risk management capabilities. In addition, we direct SPP to allow a two-day cure period for risk management attestations that it deems insufficient. Such a cure period is consistent with the requirements of Order No. 741, and it assures market participants that an insufficient attestation does not necessarily result in a market participant's indefinite exclusion from all SPP markets. We find that these modifications sufficiently address commenters' concerns, and we will not, at this time, require SPP to provide further guidance regarding the criteria SPP will use to evaluate a market participant's risk management capabilities, as requested by Western Farmers.

40. We reject Missouri JMEUC's suggestion to direct SPP to exempt load-serving entities from SPP's risk management attestation. Although the Commission noted in Order No. 741-A that it "did not mandate a single set of criteria for all participants in a

²⁷ Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 132-133, *order on reh'g*, Order No. 741-A, FERC Stats. & Regs. ¶ 31,320 at P 33.

market,”²⁸ it did not require an RTO/ISO to adopt different minimum requirements criteria for certain classes of market participants, i.e., load-serving entities. Furthermore, we find that SPP’s clarification of its attestation evaluation and the Tariff revisions directed above helps satisfy Missouri JMEUC’s concerns.

41. We decline to direct SPP to make any of the other revisions to Attachment X suggested by EPSA. Sections 3.1.1.5 and 3.2.3 have not been modified by SPP in response to Order No. 741, nor are they directly related to the requirements of Order No. 741. Thus, we find EPSA’s concerns to be outside the scope of the proceeding. In addition, we reject EPSA’s requests to direct SPP to modify sections 3.1.1.8 and 3.2.2. We find that EPSA has not provided sufficient justification for requiring any modifications, which are not required by Order No. 741. EPSA contends that the clause “without assistance from a parent or Affiliate” in section 3.1.1.8 “seems extraneous” and that “it does not appear that Order No. 741 allows market participants to bring in credit support from an affiliate to buttress the Credit Customer anyway.”²⁹ In regard to section 3.2.2, EPSA merely states that the procedures for posting additional financial security do not specify whether there is a limit or cap on the additional financial security that SPP can request.³⁰ However, EPSA provides no other arguments how any revisions would relate to the directives of Order No. 741 or why any revisions are necessary for the just and reasonable application of SPP’s credit policy.

42. SPP proposes to require a notarized statement by an authorized officer of the market participant attesting to the existence of risk management policies and procedures that is to be renewed and updated annually. 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. A market participant officer-certified statement that attests to the existence of risk management policies and procedures, as SPP 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 SPP to engage in periodic compliance verification to minimize risk to the market.³¹ We therefore direct

²⁸ Order No. 741-A at P 33.

²⁹ EPSA Protest at 10.

³⁰ *Id.*

³¹ 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.

SPP 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.

5. Use of “Material Adverse Change”

43. 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.³² 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.³³

44. 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.³⁴ 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.

a. Filing

45. SPP proposes to revise its current illustrative list of "material changes" (Attachment X section 3.2.7) to indicate that material adverse changes include "but [are] not limited to" the items listed. SPP also proposes to add the following items to the list: (1) the merger, acquisition, or any other form of business combination involving the market participant; and (2) failure of the market participant to continue to satisfy the minimum criteria in new section 3.1.1.8. SPP has removed from the list: (1) the filing or threatened filing of a voluntary or involuntary bankruptcy petition or state insolvency

³² Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 149.

³³ *Id.* P 149-50.

³⁴ *Id.* P 151.

proceeding; and (2) insolvency.³⁵ SPP proposes to modify section 3.2.2 to specify, that if a market participant experiences a material adverse change, "SPP may invoke its right to require the market participant to post additional financial security, cease one or more transactions, or take other measures to restore confidence" in market participant's ability to transact. SPP has also added language specifying that SPP will notify the market participant prior to invoking the clause and outlines the procedures SPP will take in doing so.

b. Protests and Comments

46. 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.³⁶ 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, in order to remain in compliance with RTO/ISO requirements.

47. Specific to SPP's compliance filing, EPSA contends that certain material adverse conditions SPP proposes to add to its current list are speculative or not truly material changes. For instance, EPSA asserts that "a change in outlook" or a "negative implication with a rating agency" is speculative.³⁷ Likewise, EPSA states that it is difficult to predict adverse changes at the outset of any lawsuit or merger, and

³⁵ Bankruptcy and insolvency are already defined in Article 8 of Attachment X of SPP's Tariff as events of default. In order to eliminate confusion as to SPP's potential response to such events, SPP stakeholders decided that SPP should only consider such events as defaults under Article 8.

³⁶ Indicated Participants Comments at 18 (citing Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 148-49).

³⁷ EPSA Comments at 13, citing SPP Tariff, Attachment X, proposed section 3.2.7.

consolidations or acquisitions do not necessarily have an adverse effect on credit. EPSA states that the Commission should direct SPP to revise its language to require notification only for events that would have an adverse effect on the credit customer's credit.

48. In addition, DC Energy asserts that the Commission should direct SPP to use the stakeholder process to develop a transparent material adverse change determination process that will ensure SPP is invoking the material adverse change clause in an equitable manner for all similarly-situated market participants.

c. Commission Determination

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

50. 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 administering and otherwise overseeing their 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. Accordingly, we find that SPP's proposal is just and reasonable and in compliance with the directives noted above.

51. 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, SPP will ultimately 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 a material adverse change has occurred. Because they are likely among the first to know of such changed circumstances, they are also likely to be in the best position to know if there has been a material adverse change. 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. However, we impose no requirement on market participants to themselves monitor the market, and there is nothing in SPP's proposal which requires market participants to purchase additional software review packages or proprietary tools to conduct monitoring. Therefore, the Commission declines the Indicated Participants' and EPSA's requested clarification on this matter.

52. The Commission rejects EPSA's request to require SPP to modify its material adverse change provisions. EPSA contends that SPP's proposal to include "a change in outlook" or a "negative implication with a rating agency" in its list would represent an abnormally low hurdle for creating a material adverse change. In addition, EPSA asserts that SPP's inclusion of mergers, consolidations, or acquisitions do not necessarily have a material adverse effect on credit and should be rejected. We find EPSA's arguments to be misplaced. Nothing in Order No. 741 or SPP's material adverse change provisions require SPP to automatically invoke material adverse change when such events occur. Order No. 741 affords an RTO the flexibility to determine when a change in circumstance is indeed material.³⁸ Therefore, the events in the material adverse change list merely initiate an examination to determine if invocation of material adverse change is appropriate. In addition, the Commission indicated that these events should be "forward looking."³⁹ We find that knowledge of a change in outlook, a negative implication with a rating agency, and mergers, consolidations, or acquisitions may provide insight as to if and when a material adverse change will occur. Accordingly, we also find that SPP has met the requirements of Order No. 741 by providing an illustrative and reasonable list of the types of events that may trigger SPP's material adverse change option.

53. The Commission also rejects DC Energy's request to direct SPP to use the stakeholder process to develop a transparent material adverse change determination process. Order No. 741 only requires RTOs to adopt an illustrative list of events that may cause an RTO to invoke its material adverse change clause.⁴⁰ However, Order No. 741 does not require RTOs to develop a process for determining if the RTO will ultimately invoke material adverse change in response to such events. SPP has not included such a process in its proposed provisions, and we will not require them to do so at this time. We

³⁸ Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 149-50.

³⁹ *Id.* P 149.

⁴⁰ Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 149-50.

note, however, that SPP developed its proposed material adverse change provisions through its stakeholder process.⁴¹

6. Grace Period to “Cure” Collateral Posting

54. 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.⁴²

a. Filing

55. SPP proposes to modify section 3.2.2 to indicate that, if SPP has increased a market participant's required amount of security, the market participant will have two days from receipt of the notice to provide the required security. SPP proposes to remove existing language from the section providing an option for not-for-profit market participants to request additional time. SPP proposes to revise section 5.3.2 to require market participants to cure a "Total Potential Exposure Violation" within two days of receipt of notice from SPP to cure the violation.

b. Protests and Comments

56. Western Farmers contends that SPP’s proposal to remove existing language that provides not-for-profit market participants the option to request additional time to post requested additional collateral should be rejected. Western Farmers notes that Order No. 741 does not require the removal of such a provision, and it asserts that not-for-profit participants in SPP are generally small, lack substantial presence in the market and are highly unlikely to cause “significant market disruptions” in the event of a default.⁴³

c. Answers

57. SPP claims that contrary to Western Farmer’s claims, the language of Order No. 741 directs all RTOs to adopt a standard two-day cure period for collateral calls.⁴⁴ SPP argues that, in Order No. 741, the Commission rejected arguments that public power entities should not be subject to the same cure period for collateral calls as other entities and directed all RTOs and ISOs to adopt a standard two-day cure period for collateral

⁴¹ See SPP Order No. 741 Compliance Filing at 3.

⁴² Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 160.

⁴³ Western Famers Comments at 6.

⁴⁴ Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 160.

calls.⁴⁵ Furthermore, SPP states that, in Order No. 741-A, the Commission rejected a request that the Commission provide a longer cure period for non-for-profit entities.⁴⁶ SPP also notes that the revision to remove the cure period exception for not-for-profit entities was developed through the SPP stakeholder process and Western Farmers should have raised this concern then but failed to do so.

58. In its answer, Western Farmers claims that SPP has mischaracterized its position, stating that it has no objection to the two-day cure period, but requested that the Commission reject SPP's proposal to remove existing language allowing not-for-profit market participants to seek an extension of up to two weeks in which to cure a collateral call. Thus, according to Western Farmers, all not-for-profit market participants would still be subject to the two-day cure period, but such entities would retain the ability to request an extension of up to two weeks. Western Farmers states that there are no directives in Order No. 741 or 741-A that would preclude RTOs and ISOs from having an extension provision or from leaving existing extension provisions in place.

d. Commission Determination

59. The Commission accepts SPP's proposal to remove the existing language regarding not-for-profit market participants as consistent with Order Nos. 741 and 741-A. Indeed the goal was to have a short cure period for market participants in order to protect the market and other market participants in the event of default,⁴⁷ and an extension provision would be inconsistent with this goal. Accordingly, we accept SPP's proposal to remove its existing provisions permitting a not-for-profit market participant to seek an extension to cure a collateral call.

The Commission orders:

(A) The Commission hereby conditionally accepts for filing SPP's revised OATT, to become effective October 1, 2011, as discussed in the body of this order.

⁴⁵ *Id.* P 155, 160.

⁴⁶ Order No. 741-A, FERC Stats. & Regs. ¶ 31,320 at P 34.

⁴⁷ *Id.* P 35 (addressing a similar argument by another SPP cooperative).

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.