

136 FERC ¶ 61,188
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.

Midwest Independent Transmission System Operator, Inc. Docket No. ER11-3970-000

ORDER ON COMPLIANCE FILING

(Issued September 15, 2011)

1. On June 30, 2011, Midwest Independent Transmission System Operator, Inc. (MISO) submitted revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to comply with the credit reform requirements directed by the Commission in Order No. 741.¹ In this order, we conditionally accept the proposed Tariff revisions, to become effective October 1, 2011, and direct MISO to submit a compliance filing within 90 days of the issuance of this order, as discussed below.

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

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).

² 16 U.S.C. §§ 824d, 824e (2006).

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

II. Notice of Filing and Responsive Pleadings

4. Notice of MISO's filing was published in the *Federal Register*, 76 Fed. Reg. 41,774 (2011), with interventions and protests due on or before July 21, 2011.

5. Numerous parties filed timely motions to intervene: American Municipal Power, Inc.; BP Energy Company; Brookfield Energy Marketing LP; Calpine Corporation; Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.; Detroit Edison Company; Edison Mission Energy; Electric Power Supply Association (EPSA); Exelon Corporation; H.Q. Energy Services (U.S.) Inc.; Hoosier Energy Rural Electric Cooperative, Inc.; Illinois Industrial Energy Consumers; JPMorgan Ventures Energy Corporation; Shell Energy North America (U.S.), L.P.; Vitol Inc.; and Wisconsin Electric Power Company. In addition, several parties filed timely motions to intervene and comments: DC Energy, LLC (DC Energy); Illinois Industrial Energy Consumers (Industrial Consumers); and Morgan Stanley Capital Group Inc., Macquarie Energy LLC and DB Energy Trading LLC (collectively, Indicated Participants).

6. On July 22, 2011, Twin Cities Power, LLC, Twin Cities Energy, LLC, TC Energy Trading, LLC, Cygnus Energy Futures, LLC, and Summit Energy, LLC (collectively, Twin Cities) submitted a motion to intervene and protest out-of-time. On July 25, 2011,

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

EPSA submitted a limited protest and request for clarification. Consumers Energy Company and Xcel Energy Services Inc. (Xcel)⁴ filed motions to intervene out-of-time.

III. Discussion

A. Procedural Matters

7. 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. 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 given the entities' interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

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.⁵

a. Filing

9. MISO proposes to reduce the components of the "settlement cycle" that affect the size of credit exposure. Specifically, MISO proposes to reduce the time period between the provision of service and the billing for service to seven days, as opposed to its current policy of issuing invoices fourteen days after the provision of service. In addition, MISO proposes to maintain its current seven-day settlement period so that issued market invoices will continue to be due within seven days.⁶ No protests were filed on this matter.

⁴ Xcel submitted the filing on behalf of its affiliates Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation.

⁵ Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 32.

⁶ Transmittal Letter at 2.

b. Commission Determination

10. MISO states that it has proposed Tariff revisions that provide it will issue invoices based on a seven-day market settlement cycle shortening the time period between the provision of service and the billing for service to seven days.⁷ However, MISO made no revisions to its Tariff as part of its compliance filing. MISO's market settlement cycle and applicable billing is currently detailed in its Business Practice Manuals rather than in the Tariff. Order No. 741 required each RTO and ISO to propose tariff revisions to establish billing periods that are, at most, weekly.⁸ MISO's proposal must be included in its Tariff. Therefore, we direct MISO to file a compliance filing to include language in the Tariff detailing its proposal to issue invoices based on a seven-day market settlement cycle.

11. MISO's currently effective Tariff provides that payments are due within seven days;⁹ therefore, we find that MISO's currently effective Tariff complies with the directive of Order No. 741 to establish settlement periods of no more than seven days.

2. Use of Unsecured Credit

12. 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.¹⁰

13. 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

⁷ *Id.*

⁸ Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 32.

⁹ See MISO, FERC Electric Tariff, § 11.7.6 (0.0.0).

¹⁰ 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.

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.¹¹

a. Filing

14. MISO proposes to revise the applicable sections of its Tariff to reduce the individual market participant limit on unsecured credit from \$75 million to a maximum of \$50 million. In addition, MISO proposes to revise its Tariff to reduce the aggregate corporate family limit on unsecured credit to a maximum of \$50 million.¹² No protests were filed on this matter.

b. Commission Determination

15. We find that MISO's proposed revisions comply with the directives of Order Nos. 741 and 741-A to limit the use of unsecured credit. Therefore, we accept MISO's proposed tariff revisions to become effective October 1, 2011.

3. Elimination of Unsecured Credit for Financial Transmission Rights Markets

16. 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.¹³

a. Filings

17. MISO previously submitted a compliance filing on February 3, 2011, in advance of the Commission's deadline due to the timing of the annual FTR auction, that addressed this issue (FTR Compliance Filing), which the Commission accepted on April 6, 2011.¹⁴ In the FTR Compliance Filing, MISO separated its Total Potential Exposure calculation into two distinct pieces: (a) FTR Potential Exposure; and (b) Non-FTR Potential Exposure. Included in the FTR Potential Exposure calculation, and therefore required to

¹¹ Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 55-56.

¹² Transmittal Letter at 3.

¹³ Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 75.

¹⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, ER11-2831-000 (Apr. 6, 2011) (unpublished letter order).

be collateralized by financial security, were the following credit exposures: (1) FTR Auction Settlement Transaction Exposure; (2) Auction Revenue Rights (ARR)¹⁵ Settled Exposure; (3) FTR and ARR Transactions Cleared but Not Yet Settled Exposure; and (4) FTR Portfolio Potential Exposure.

18. However, since the effective date of the FTR Compliance Filing, MISO has determined that there is a unique occurrence in which a market participant may own only ARRs without owning any FTRs.¹⁶ Midwest ISO explains that ARRs are allocated and must be self-scheduled to acquire an FTR using the ARR. In the event a market participant does not self-schedule an ARR, the obligation associated is the financial value that is derived from the clearing price of the path associated with the ARR. MISO states that the market participant's ARR obligations are fully established at the time of auction clearing and do not change over the lifetime of the obligation, unlike FTRs.¹⁷ Therefore, MISO believes that it is appropriate to allow the allocation of unsecured credit to cover the credit exposure when a market participant only has ARRs and has no FTRs.¹⁸ As part of the Non-FTR Potential Exposure calculation, a Tariff Customer is able to utilize its unsecured credit, if applicable. In the instant filing, MISO has added new language to its Tariff that allows "Auction Revenue Rights Settled Exposure" and/or "FTR and ARR Transaction Cleared But Not Yet Settled Exposure" to be included in the Non-FTR Potential Exposure calculations, provided that only ARRs are owned and no FTRs are owned.¹⁹ No protests were filed on this matter.

b. Commission Determination

19. We find that MISO's currently effective Tariff, and proposed Tariff revisions, comply with the directive of Order No. 741 to eliminate the use of unsecured credit in FTR markets. The currently effective Tariff prohibits the use of unsecured credit in MISO's FTR market and, therefore, is compliant. However, in the instant compliance filing MISO proposes Tariff revisions to allow market participants that own only ARRs and no FTRs to use unsecured credit to cover potential exposure associated with ARRs.

¹⁵ An ARR is a market participant's entitlement to share of the revenues generated in the annual FTR Auction. *See* MISO, FERC Electric Tariff, § 1.30 (0.0.0).

¹⁶ Transmittal Letter at 7-8.

¹⁷ *Id.* at n.7.

¹⁸ *Id.* at 8.

¹⁹ *See* MISO, FERC Electric Tariff, Attachment L (3.0.0), §§ V.A, V.B.

MISO states that it discussed this issue with its stakeholder and received support for this proposal.²⁰ We agree with MISO that an ARR may be distinguished from an FTR and, therefore, we accept MISO's proposal.

20. In Order No. 741, the Commission noted that FTRs can vary widely over short periods of time, are obligations that are normally active over a long period of time, and the potential change in value over this time frame is quite large.²¹ An ARR is unlike an FTR because an ARR obligation is established at the annual FTR auction and the value of that obligation does not change over the lifetime of the obligation.²² We note that MISO's proposal is consistent with MISO's calculation of a market participant's Total Potential Exposure. That is, the ARR obligation value that MISO uses to calculate a market participant's Total Potential Exposure is the value established at the annual FTR auction, reflecting the lack of volatility.²³ In contrast, MISO must estimate the potential exposure of non-payment associated with an FTR registered to a market participant.²⁴ Therefore, we find that the use of unsecured credit to cover ARR obligations is consistent with the directive of Order No. 741 so long as the market participant owns only an ARR and no FTR. Further, we note that the unsecured credit available to cover an ARR obligation, when a market participant does not own an FTR, is part of the unsecured credit subject to the \$50 million limit discussed above.²⁵

4. Minimum Criteria for Market Participation

21. In Order No. 741, the Commission directed each RTO and ISO to revise its tariff to establish minimum criteria for market participation.²⁶ The Commission further directed each RTO and ISO to develop these criteria through its stakeholder processes.²⁷

²⁰ See Transmittal Letter at 8.

²¹ See Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 58.

²² The ARR value is negative (and is an obligation to the ARR holder) if the auction clearing price at the receipt point of the ARR is greater than the auction clearing price at the delivery point. See MISO, FERC Electric Tariff, § 42.4 (0.0.0).

²³ See MISO, FERC Electric Tariff, Attachment L (3.0.0), §§ V.B.2, V.B.3.

²⁴ *Id.* § V.B.4.

²⁵ See MISO, FERC Electric Tariff, Attachment L (3.0.0), §§ II.B, II.D.

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

²⁷ *Id.* P 132.

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 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.²⁸ Moreover, the Commission stated that any minimum participation criteria apply to all market participants rather than only certain participants.²⁹ 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.³⁰

a. Filing

22. MISO states that it worked closely with its stakeholders and other RTOs and ISOs to develop common provisions and deadlines in an effort to establish a process that is suitable for participants transacting in multiple RTOs and ISOs. Similar to other RTOs and ISOs, MISO has developed minimum capitalization requirements and an officer certification that each market participant must execute on an annual basis. The annual certification form includes declarations on four matters:

1. Training. Employees or agents transacting, or planning to transact, in markets or services provided pursuant to the MISO Tariff on behalf of the Tariff Customer or Applicant have received or will receive applicable training with regards to their participation under the MISO Tariff as a condition of being authorized to transact on behalf of Tariff Customer.

2. Risk Management. The Tariff Customer or its agency maintains current written risk management policies and procedures that address those risks that could materially affect the Tariff Customer's ability to pay its MISO

²⁸ *Id.* P 131.

²⁹ *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.

³⁰ *Id.*

invoices when due, including, but not limited to, credit risks, liquidity risks and market risks.

3. Operational Capabilities. The Tariff Customer has appropriate personnel resources, operating procedures and technical abilities to promptly and effectively respond to MISO communications and directions related to, but not limited to, settlements, billing, credit requirements, and other financial matters.

4. Capitalization. The Tariff Customer will satisfy and maintain the minimum capitalization or alternative capitalization requirements applicable to the level of service the Tariff Customer transacts or plans to transact as detailed in section III of Attachment L to the Tariff. Minimum capitalization may be satisfied by either: (a) submitting audited financial statements for the most recent fiscal year that demonstrate a minimum tangible net worth or minimum total assets relative to the services transacting; or (b) providing alternative capitalization in the form of Financial Security.³¹

23. MISO also proposes providing an ability to request verification of the attestations provided in the executed annual officer certification form. Because there is a wide range in the level of participation in its markets, MISO believes that it is appropriate to use its stakeholder process to develop criteria for “triggering” a request for such verification, and states that discussions to date relating to such “triggers” have been relatively broad but have referenced criteria based on risk.³²

24. In addition, MISO proposes a new Tariff section that details the minimum criteria for participation.³³ Market participants seeking authorization to participate in any or all service categories must demonstrate a minimum tangible net worth of \$1 million or minimum total assets of \$10 million. Market participants seeking authorization to participate in any or all service categories, with the exception of monthly and/or annual FTR markets, must demonstrate a minimum tangible net worth of \$500,000 or minimum

³¹ See MISO, FERC Electric Tariff, Attachment L (3.0.0), Ex. VI.

³² Transmittal Letter at 3-4.

³³ See MISO, FERC Electric Tariff, Attachment L (3.0.0), § III.

total assets of \$5 million. Verification of such minimums must be demonstrated using audited financial statements provided by the market participant.³⁴

25. As an alternative, if a market participant does not desire to qualify for minimum capitalization using audited financial statements, or if the minimum tangible net worth or total asset values are not satisfied, MISO proposes that the market participant may provide alternative capitalization in the form of cash collateral or a letter of credit. The levels of financial security required are specific to the level of participation desired. If a market participant seeks authorization to participate in any or all service categories the minimum financial security required is \$500,000; for those seeking authorization to participate in any or all service categories, except for monthly and annual FTR markets, the minimum financial security required is \$200,000 or \$50,000, respectively.³⁵

26. MISO proposes that financial security provided by the market participant to satisfy the alternative capitalization requirement must be provided and maintained until all obligations associated with such level of participation have expired and in advance of entering into any additional obligations. Fifty percent of the applicable financial security related to alternative capitalization shall be set aside and unavailable for the market participant to use for participation in any service category, while the remaining fifty percent will be available for the market participant to use in the service categories in which the market participant is authorized to participate. MISO states that providing the required levels of financial security demonstrates that the market participant has available liquidity appropriate to the service categories in which it is participating. Further, MISO maintains that, by restricting the use of half of the financial security provided for the alternative capitalization, MISO will have available a reserve of funds to cover unforeseen events that may cause larger than normal charges as a result of congestion or movement in flows.³⁶

b. Protests and Comments

27. 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. The Indicated Participants similarly ask the Commission to

³⁴ Transmittal Letter at 5.

³⁵ *Id.*

³⁶ *Id.* at 5-6.

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

28. For instance, EPSA 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. In addition, the Indicated Participants support a net worth requirement, consistent with the definition of Eligible Contract Participant as administered by the Commodity Futures Trading Commission (CFTC), instead of the tangible net worth requirement proposed by RTOs and ISOs. The Indicated Participants argue that no demonstrable benefit arises from using a standard more burdensome than the CFTC's Eligible Contract Participant definition. Further, the 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).

29. The Indicated Participants also 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 CFTC under the Commodity Exchange Act.³⁷ However, the 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 ISOs have not proposed uniform changes to their tariffs, the 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, the 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.

30. According to Twin Cities, two MISO proposals are unacceptable and drastically increase the cost of doing business and unreasonably limit their ability to continue to participate in multiple RTOs. Twin Cities argue that MISO should allow tangible net worth or total assets to be demonstrated by internally-prepared and corporate officer-verified financial statements, rather than requiring audited financial statements. Specifically, Twin Cities state that audited financials have not been required to establish tangible net worth and/or total asset levels for CFTC-regulated markets; rather Twin Cities have only needed to provide internally-prepared, unaudited financial statements to

³⁷ Indicated Participants July 21, 2011 Comments at 8; *see* 7 U.S.C. § 1 (2006).

establish these levels. As such, Twin Cities maintain that officer-certified financial statements should provide MISO with sufficient comfort, balancing the need of the wholesale markets while protecting customers and market participants.³⁸ In regards to the minimum capitalization criteria, Twin Cities state that MISO has failed to include a minimum total potential exposure level below which the capitalization criteria will not apply. Twin Cities propose that, if a market participant has a credit exposure less than \$100,000, then that participant would not need to meet the capitalization requirements and requests that the Commission require MISO to incorporate this total potential exposure minimum similar to ISO-NE.³⁹

31. Industrial Consumers argue that market participants that utilize their ARRs and FTRs to hedge the transmission congestion cost risk associated with their physical delivery of electric energy to their loads should be exempt from the additional minimum capitalization and minimum market participation requirements proposed by MISO. Industrial Consumers maintain that these entities are not speculating in the FTR markets and, as a result, pose little risk of defaulting on their MISO invoices as a result of their ARR and/or FTR activity. Industrial Consumers conclude that MISO's proposal will act as a barrier to entry for new third-party retail electric suppliers.⁴⁰ Therefore, Industrial Consumers request that the Commission require MISO to exempt market participants who are load serving entities and either only hold an allocation of ARRs or only hold FTRs obtained by self-scheduling allocated ARRs into MISO's annual FTR action – and are not speculating in the FTR markets – from the additional minimum capitalization and minimum market participation requirements that MISO proposes to apply to market participants who participate in MISO's monthly and/or annual FTR markets.

32. With regard to training, EPSA describes MISO's proposed employee training requirements in the certification forms as ambiguous. Accordingly, EPSA requests that the Commission direct MISO to: (1) specify what training is necessary or change its certification form to refer to "adequate" or "relevant" training and allow the market participant to decide what training is needed to meet this requirement; (2) specifically explain how a company should predict if employees or agents are "planning to transact" in the MISO market; and (3) provide greater specificity as to the type of employees that are subject such certification.⁴¹ The Indicated Participants state that MISO, PJM and

³⁸ Twin Cities July 22, 2011 Protest at 6-7.

³⁹ *Id.* at 7.

⁴⁰ Industrial Consumers July 21, 2011 Comments at 2-4.

⁴¹ EPSA July 25, 2011 Protest and Request for Clarification at 7.

ISO-NE correctly leave the determination of what constitutes “appropriate” training to the market participant’s discretion.⁴²

c. Commission Determination

33. The proposed minimum participation criteria submitted by MISO, as revised as discussed below, are consistent with the Commission’s directives, just and reasonable and not unduly discriminatory or preferential and therefore we conditionally accept MISO’s proposed Tariff revisions.

34. 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.⁴³ We thus decline to require RTOs and ISOs to adopt uniform minimum participation criteria, including uniform certification statements, at this time. The Commission will not require MISO 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. Although we decline to require uniform minimum participation criteria, we recognize that there may be merit in minimizing the differences in requirements for each RTO and ISO, and we are open to subsequent efforts by industry participants and the RTOs and ISOs to come up with uniform criteria.

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.⁴⁴ In evaluating whether the proposed tariff revisions comply with Order No. 741, we are 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.

⁴² Indicated Participants July 21, 2011 Comments at 17-18.

⁴³ 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.

⁴⁴ Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 131.

36. 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. We, however, remain open to subsequent tariff revisions offered by the RTOs and ISOs in light of future events.

37. We find that MISO's proposal to verify tangible net worth and/or total assets with audited financial statements is just and reasonable and ensures that minimum criteria are met. We disagree with Twin Cities' protest that internally-prepared and corporate officer-verified financial statements are sufficient to determine a market participant's tangible net worth or total assets. As the Commission stated in Order No. 741, the purpose of the minimum criteria for market participation is to help minimize the dangers of defaults posed by inadequately prepared or under-capitalized participants.⁴⁵ Thus, we find that it is appropriate and reasonable for MISO to verify tangible net worth and/or total assets through audited financial statements.⁴⁶

38. We disagree with Twin Cities that we should direct MISO to incorporate a Tariff exemption because the Commission has accepted a similar revision proposed by ISO New England Inc. (ISO-NE).⁴⁷ The fact that ISO-NE and its stakeholders have opted to exempt smaller market participants from its capitalization requirements does not render MISO's proposed Tariff unjust, unreasonable, or unduly discriminatory. Moreover, we reiterate that Order Nos. 741 and 741-A did not require each RTO or ISO to implement standardized minimum participation criteria, because the Commission recognized that each RTO and ISO must retain the flexibility to work with its stakeholders to determine tariff language based on its specific regional needs.⁴⁸ MISO has worked with its stakeholders and has proposed criteria to help protect its markets from risks posed by under-capitalized participants or those who do not have adequate risk management

⁴⁵ *Id.* P 123.

⁴⁶ *Cf.*, e.g., 1B C.F.R. §§ 41.10, 41.11, Part 101 General Introduction No. 1 (2011) (providing for independent audits of financial records of class A and B, i.e., major, public utilities).

⁴⁷ *See ISO New England Inc. and New England Power Pool*, 136 FERC ¶ 61,191 (2011).

⁴⁸ *See supra* note 43.

procedures in place, as required by Order No. 741.⁴⁹ Therefore, in this regard, we will accept MISO's minimum participation criteria as proposed.

39. The Commission finds Industrial Consumers' comments requesting that the Commission require MISO to exempt entities utilizing their ARRs and FTRs to hedge transmission congestion risk associated with delivering electric energy to loads contrary to Order No. 741. The Commission directed that minimum criteria apply to all market participants, rather than only certain participants,⁵⁰ and we are not persuaded to draw the distinction sought here; the "purpose" underlying the hedge (i.e., to hedge congestion risk associated with serving load) does not make the hedge sufficiently risk free as to warrant the blanket exemption sought here.⁵¹ Accordingly, we will not require MISO to exempt certain market participants as Industrial Consumers request.

40. We also disagree with EPSA's protest related to employee training. MISO's proposed training and certification requirements comply with the requirements of Order No. 741. MISO's proposal is clear, while still providing flexibility for market participants to meet the training and certification requirements. Specifically, MISO has included a footnote within the certification stating that "[a]s used in this representation, training is deemed 'applicable' where it is commensurate and proportional in sophistication, scope and frequency to the volume of transactions and the nature and extent of the risk taken by the participant." Accordingly, we find additional clarification or specificity unnecessary and will accept MISO's proposal as just and reasonable. Finally, we note that MISO's fall 2011 training program made available for its member's employees includes, among other things, market training.⁵²

41. MISO proposes a certification that an officer of each market participant must execute on an annual basis and proposes providing MISO an ability to request

⁴⁹ See Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 131.

⁵⁰ *Id.* P 133; *accord* Order No. 741-A, FERC Stats. & Regs. ¶ 31,320 at P 33 n. 43.

⁵¹ 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 exemption in FTR markets for load-serving entities, as such FTR hedges are not risk free and, in fact, the risks are no less applicable when the market participant is hedging serving load than when it is not).

⁵² See 2011 Midwest ISO Course Catalog
<https://www.midwestiso.org/Library/Repository/Meeting%20Material/Stakeholder/Training%20Materials/Final%202011%20Course%20Catalog.pdf>.

verification of the attestations provided in the executed annual officer certification form. 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.⁵³ A market participant officer-certified form that attests to the existence of risk management policies and procedures, as MISO 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 MISO to engage in periodic compliance verification to minimize risk to the market.⁵⁴ We therefore direct MISO 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”

42. 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.⁵⁵ 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.⁵⁶

43. 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

⁵³ See Order No. 741, FERC Stats & Regs. ¶ 31,317 at P 131.

⁵⁴ 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.

⁵⁵ *Id.* P 149.

⁵⁶ *Id.* P 149-150.

invoke a “material adverse change” clause.⁵⁷ 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

44. MISO’s currently effective Tariff includes a detailed, non-exhaustive list of circumstances when MISO may request additional collateral while still allowing MISO discretion for unforeseen circumstances. However, its currently effective Tariff language does not specifically address forward-looking metrics that may be applied. In order to address measures that are deemed to be forward-looking, MISO has added two new criteria. They are “a significant increase in credit default swap spread” and “a significant decrease in market capitalization.”⁵⁸ MISO states that, while it did not explicitly propose the tools with which it will measure these two new factors in the instant filing, it is reasonable for an affected market participant to have the appropriate tools and be prepared to notify MISO of such an event per the terms detailed in section I.B.3 of Attachment L.⁵⁹

b. Protests and Comments

45. The 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. The 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. The 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.⁶⁰ To the extent that market participants will be responsible for monitoring any additional items, the Indicated Participants argue that market participants should not be required to purchase additional software review

⁵⁷ *Id.* P 151.

⁵⁸ *See* MISO, FERC Electric Tariff, Attachment L (3.0.0), § I.B.3.

⁵⁹ Transmittal Letter at 6.

⁶⁰ Indicated Participants July 21, 2011 Comments at 18 (citing Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 148-149).

packages, such as Moody's KMV Expected Default Frequency, in order to remain in compliance with RTO and ISO requirements.

46. DC Energy is concerned that the use of the qualifier "significant" in the two new criteria does not add any clarity as to when these metrics will be used to invoke the material adverse change provisions in MISO's Tariff. EPSA also requests greater specificity regarding when a market participant will be required to notify MISO if either of these new events have occurred. Accordingly, DC Energy and EPSA request that the Commission require MISO to clarify what constitutes a "significant" change.⁶¹ In addition, DC Energy requests that the Commission clarify that MISO should use the stakeholder process to develop a transparent material adverse change determination process that will ensure MISO is invoking this clause in an equitable manner for all similarly situated market participants.⁶²

47. EPSA supports MISO's policy permitting market participants to rely on their SEC filings as adequate notice to MISO of material adverse changes. EPSA sees this as a reasonable approach to notification.

c. Commission Determination

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

49. 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 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. We decline 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

⁶¹ DC Energy July 21, 2011 Comments at 3-4; EPSA July 25, 2011 Protest and Request for Clarification at 12.

⁶² DC Energy July 21, 2011 Comments at 3.

MISO's proposal is just and reasonable and in compliance with the directives noted above.

50. While protestors express concern regarding which party faces the burden of monitoring the conditions that may adversely affect a market participant's financial condition, we note that this element of MISO's Tariff remains unchanged. The current Tariff states that market participants must notify MISO in writing of a material change in financial condition within five business days, and has already been determined by the Commission to be just and reasonable. Thus, we will not require further revision because MISO has not proposed new tariff language that changes the burden on market participants. Finally, we anticipate that every MISO market participant has, or will have, sufficient resources for the participant to be aware of and report those events and circumstances identified in MISO's illustrative list of material adverse changes.

51. MISO has proposed two additional criteria for identifying a material adverse change, which are forward-looking and allow it to take action prior to an adverse effect on its market. MISO's actions are consistent with the Commission's directive in Order No. 741 requiring each RTO and ISO to include tariff revisions that specify circumstances when they will request additional collateral. We disagree with DC Energy and EPSA that the Commission should require MISO to clarify what constitutes a "significant" change for the two additional criteria MISO has proposed. As mentioned above, Order No. 741 required MISO to provide "illustrative, rather than exhaustive" examples of when MISO may invoke the "material adverse change" clause, but MISO has flexibility to utilize its discretion during unforeseen circumstances.⁶³ We find that MISO has satisfied this requirement. Furthermore, MISO's proposal provides for a written explanation of the invocation of the material adverse change clause, as the Commission directed in Order No. 741, which will explain the basis for invocation of the material adverse change clause. Accordingly, MISO's proposal satisfies the Commission's directives.

52. The Commission also rejects DC Energy's request to direct MISO to use its stakeholder process to develop a transparent material adverse change determination process. DC Energy's request is not required by Order No. 741, and we note that MISO, as discussed above, developed its material adverse change provisions at issue here through its stakeholder process.

⁶³ See Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 149.

6. Grace Period to “Cure” Collateral Posting

53. 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.⁶⁴

a. Filing

54. Under MISO’s currently effective Tariff, the time period to post additional collateral is two days in most circumstances. This time period is extended to three days in the rare event that notice is provided to the Tariff Customer after noon on a given day. As directed by the Commission, MISO has updated its Tariff to exclude this exception and now the time for posting additional collateral has been reduced to two days.⁶⁵ No protests were filed on this matter.

b. Commission Determination

55. We find that MISO’s proposed revisions comply with the directive of Order No. 741 on the allowable grace period to “cure” collateral postings. Therefore, we accept MISO’s revisions to become effective October 1, 2011.

The Commission orders:

(A) MISO’s compliance filing is hereby conditionally accepted, subject to the compliance filing ordered below, to become effective October 1, 2011, as discussed in the body of this order.

⁶⁴ *Id.* P 160.

⁶⁵ Transmittal Letter at 6.

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.