138 FERC ¶ 61,182
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.	Docket Nos.	ER11-3972-001
California Independent System Operator Corporation		ER11-3973-001
ISO New England Inc. and New England Power Pool		ER11-3953-001
Midwest Independent Transmission System Operator, Inc.		ER11-3970-001
New York Independent System Operator, Inc.		ER11-3949-002
Southwest Power Pool, Inc.		ER11-3958-001
		ER11-3967-001

ORDER DENYING REHEARING

(Issued March 15, 2012)

1. This order addresses a request for rehearing, clarification, and technical conference filed by Electric Power Supply Association (EPSA) with respect to the Credit Compliance Orders.[1] This order also addresses requests for rehearing and clarification of the PJM Compliance Order[2] filed by Exelon Corporation and Edison Mission Energy (collectively, Exelon) and a request for clarification, and in the alternative, rehearing,

[1] *PJM Interconnection, L.L.C.*, 136 FERC ¶ 61,190 (2011) (PJM Compliance Order); *California Independent System Operator Corporation*, 136 FERC ¶ 61,194 (2011) (CAISO Compliance Order); *ISO New England Inc. and New England Power Pool*, 136 FERC ¶ 61,191 (2011) (ISO-NE Compliance Order); *Midwest Independent Transmission System Operator, Inc.*, 136 FERC ¶ 61,188 (2011) (MISO Compliance Order); *New York Independent System Operator, Inc.*, 136 FERC ¶ 61,193 (2011) (NYISO Compliance Order); *Southwest Power Pool, Inc.*, 136 FERC ¶ 61,189 (2011) (SPP Compliance Order) (collectively, Credit Compliance Orders).

[2] PJM Compliance Order, 136 FERC ¶ 61,190.

filed by AEP.[3] For the reasons discussed below, the Commission denies the requests for rehearing.

I. Background

A. Credit Compliance Orders

2. In Order No. 741, the Commission adopted reforms to strengthen the credit policies used in organized wholesale electric power markets.[4] 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,[5] 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,[6] 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. The Commission directed each RTO and ISO to submit tariff changes by June 30, 2011, with an effective date of October 1, 2011.

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[3] "AEP" collectively refers to American Electric Power Company, Inc.; ArcelorMittal Steel USA, LLC; Consolidated Edison Energy, Inc.; Consolidated Edison Solutions, Inc.; Dominion Resources Services, Inc.; DTE Energy Trading, Inc.; Financial Institutions Energy Group (FIEG); Noble Americas Gas & Power Corp. (Noble Americas); PJM Industrial Customer Coalition (PJMICC); Rockland Electric Company; Shell Energy North America (US), L.P.; and Vitol Inc.

[4] *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, *order denying reh'g*, Order No. 741-B, 135 FERC ¶ 61,242 (2011).

[5] 16 U.S.C. §§ 824d, 824e (2006).

[6] The Commission has extended the deadline for complying with this requirement to April 30, 2012.

3. On June 30, 2011, each of the RTOs and ISOs submitted revisions to their tariffs in response to the directives in Order Nos. 741 and 741-A. Each submission included proposed minimum criteria for market participation, among other things. The Commission accepted each filing but required compliance filings.[7]

4. On October 17, 2011, EPSA filed a request for rehearing, clarification, and technical conference with respect to each of the Credit Compliance Orders.

B. PJM Compliance Order

5. In its initial compliance filing, PJM proposed revisions to the PJM Open Access Transmission Tariff (PJM Tariff) to (1) establish minimum criteria for market participation; (2) restrict the use of unsecured credit; (3) clarify PJM's ability to invoke "material adverse change" provisions to demand additional collateral; and (4) ensure general applicability of the standards.[8] PJM explained that its Tariff already satisfied the other requirements of Order No. 741 because it already reflected (1) weekly billing, with minimal exceptions; (2) elimination of unsecured credit in FTR markets, with minimal exceptions; (3) establishment of a counterparty to transactions with market participants; and (4) a two-day grace period to cure collateral calls. With respect to the requirements in Order No. 741 to place limits on unsecured credit and to eliminate the use of unsecured credit in FTR markets, PJM noted that, while "Seller Credit" and "RPM Seller Credit" (seller credit)[9] are forms of unsecured credit, it excluded seller credit from these requirements.

6. PJM's proposed minimum criteria for market participation were composed of both minimum capitalization requirements and risk management and verification requirements. Under the risk management and verification requirements, a market

[7] The Commission is issuing concurrent orders with respect to these compliance filings.

[8] PJM June 30, 2011 Compliance Filing.

[9] PJM explained in its initial compliance filing that seller credit is a type of unsecured credit but is based on the participant's transactions in the PJM markets and does not have the same risks as unsecured credit based on a participant's financial condition. PJM stated that seller credit is only available to participants that sell more in the PJM markets than they purchase, so that in the event of a default of a participant with seller credit, it would be expected that its sell position would offset the default by netting offsetting obligations. *See* Section II.C. of Attachment Q; Section IV.E. of Attachment Q.

participant was required to annually provide PJMSettlement with an executed copy of the certification in Appendix 1 to Attachment Q (Certification Form), which required an officer of the market participant to make a number of representations (which are described in the PJM Compliance Order). The risk management and verification requirements were tiered, such that an FTR Participant[10] would be subject to lesser requirements if it could make the representation in paragraph 3.a of the Certification Form that it transacts in the FTR market "solely to hedge the congestion risk related to the Participant's physical transactions as a load serving entity or generation provider and monitors all of the Participant's FTR market activity to ensure its FTR positions, considering both levels and pathways, are generally proportionate to and appropriate for the Participant's physical transactions as a load serving entity or generation provider." FTR Participants that could not make the paragraph 3.a representation could instead make the representations set forth in paragraph 3.b, but would be subject to more extensive requirements.

7. In the PJM Compliance Order, the Commission determined that PJM's proposal complied with the requirements set forth in Order Nos. 741 and 741-A, and conditionally accepted PJM's proposed tariff revisions. As relevant here, the Commission required PJM to amend its tariff to include seller credit in the $50 million cap on unsecured credit[11] and eliminate the use of seller credit in the FTR markets[12] and also to develop a compliance verification process to independently verify that risk management policies and procedures are actually being implemented.[13] Further, the Commission directed PJM to clarify paragraph 3.a of the Certification Form.[14]

8. On October 17, 2011, PJMICC, FIEG, and Noble Americas each filed a motion to intervene out-of-time in Docket No. ER11-3972.

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

[11] *Id*. P 22.

[12] *Id*. P 26.

[13] PJM Compliance Order, 136 FERC ¶ 61,190 at PP 112-113 (citing Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 131).

[14] *Id.* PP 118-119.

9. Exelon filed a request for rehearing and clarification of the PJM Compliance Order. In addition, AEP filed a request for clarification, and in the alternative, rehearing, of the PJM Compliance Order. On November 1, 2011, PJM filed an answer to AEP's request.

II. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[15] the Commission will deny PJMICC's, FIEG's, and Noble Americas' late-filed motions to intervene for failure to demonstrate good cause warranting late intervention. The Commission has found that parties seeking to intervene after issuance of a Commission determination in a case bear a heavy burden. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for the granting of such late intervention. PJMICC, FIEG, and Noble Americas have not met their burden of justifying late intervention.

11. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2011) prohibits an answer to a request for rehearing. We reject PJM's answer accordingly.

B. Substantive Matters

1. Credit Compliance Orders

a. Uniformity in Credit Practices

12. In the Credit Compliance Orders, the Commission stated that, in Order No. 741, it explicitly left it to each RTO and ISO and its stakeholders to develop minimum participation criteria that are applicable to its markets. Accordingly, the Commission declined to require RTOs and ISOs to adopt uniform minimum participation criteria. However, the Commission recognized that there may be merit in minimizing the differences in requirements for each RTO and ISO, and stated that it would be open to subsequent efforts by industry participants and the RTOs and ISOs to come up with uniform criteria.

[15] 18 C.F.R. § 385.214 (2011).

i. Request for Rehearing

13. EPSA requests that the Commission convene a technical conference in all of the ISO/RTO compliance proceedings to identify areas in which uniformity in credit practices can be achieved across the organized markets. EPSA asserts that a market participant will bear a significant burden in providing training, maintaining risk management procedures, and conducting audits with respect to each of the ISOs/RTOs. EPSA further asserts that lack of consistency may lead to ISOs/RTOs relying on each others' minimum standards instead of stronger, uniform practices. EPSA also requests, in its order convening the technical conference, that the Commission direct the parties and each ISO/RTO to identify credit practices for which greater uniformity is needed and, where possible, reach agreement on the appropriate uniform standards. EPSA states that, following the conclusion of the technical conference, the Commission should require each ISO/RTO to file revised tariff sheets that reflect the agreed upon uniform credit practices. [16]

ii. Commission Determination

14. We decline to convene a technical conference, and we affirm our determination in the Credit Compliance Orders not to require each ISO/RTO to file revised tariff sheets reflecting agreed upon uniform credit practices. We are not persuaded by EPSA that complying with each ISO/RTO's credit practices will be overly burdensome to market participants or that lack of uniformity will necessarily produce lesser standards. As we stated in the Credit Compliance Orders, in Order No. 741 the Commission explicitly left it to each RTO and ISO and its stakeholders to develop minimum participation criteria that are applicable to its markets.[17] This flexibility is designed to allow each RTO and ISO to adopt minimum participation criteria that address the unique concerns of its particular market. However, we continue to be open to efforts by RTOs and ISOs and market participants to minimize differences in requirements. We also take note of the efforts of the Committee of Chief Risk Officers (CCRO)[18] to develop uniform minimum

[16] EPSA urges the Commission to require increased consistency in various areas, including material adverse change provisions, annual certification practices, risk assessment methods, deadlines for minimum certifications verifications, frequency and timing for periodic verification of minimum certifications, and officer certifications.

[17] *See, e.g.*, PJM Compliance Order, 136 FERC ¶ 61,190 at P 81.

[18] The CCRO has described itself as a diverse, international coalition of energy companies developing voluntary best practices to strengthen and standardize risk management and disclosure practices in the physical and financial trading and marketing

(continued…)

risk management standards.[19] We urge the ISOs and RTOs and their stakeholders to consider such CCRO-developed standards for possible future adoption.

2. PJM Compliance Order

a. Seller Credit

15. In the PJM Compliance Order, the Commission concluded that PJM's practice of excluding seller credit from the $50 million limit on unsecured credit was inconsistent with Order No. 741.[20] The Commission recognized that, as PJM had acknowledged, seller credit is unsecured credit because it is potential value to the participant rather than actual secured value to PJM.[21] The Commission also found that the PJM Tariff was inconsistent with Order No. 741's requirement to eliminate the use of unsecured credit in the FTR markets because the PJM Tariff permitted market participants to use seller credit to meet FTR credit requirements.[22] Accordingly, the Commission directed PJM to amend its tariff to provide that seller credit is included in the $50 million cap on unsecured credit and to remove any provision that permits the use of seller credit to meet FTR credit requirements.[23]

i. Request for Rehearing

16. EPSA and Exelon assert that the Commission's treatment of seller credit as simply another form of unsecured credit constitutes an inexplicable reversal of prior practice. EPSA and Exelon state that, in previous decisions, the Commission recognized that seller credit does not have the risks typically associated with unsecured credit and lauded

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of electricity and natural gas for investors, regulators, financial institutions and other energy companies.

[19] CCRO, Update on CCRO Working Group on Minimum Risk Management Standards in ISO Markets, Docket No. RM10-13-000 (filed Dec. 5, 2011).

[20] PJM Compliance Order, 136 FERC ¶ 61,190 at P 22.

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

[22] *Id*. P 26.

[23] *Id*. PP 22, 26.

PJM's existing credit policies in the Credit Reform NOPR[24] and Order No. 741.[25] EPSA and Exelon assert that seller credit should not be viewed as either secured or unsecured credit, but as a form of netting or offsetting. EPSA and Exelon explain that, in the event of a default by a market participant with seller credit, PJM would net or offset the amount of the default against amounts owed by PJM to the market participant from its net sell position in the PJM markets. In addition, EPSA and Exelon state that seller credit is protected against bankruptcy-related risks just like other forms of netting or offsetting used by PJM.

17. EPSA and Exelon also assert that the Commission's actions with respect to seller credit are unjust and unreasonable because, by treating seller credit as a form of unsecured credit, the Commission has reduced liquidity in the PJM markets and harmed competition, without providing any additional protection against the risk of default.[26] Further, EPSA and Exelon assert that both PJM, by establishing PJMSettlement as counterparty, and NYISO, by requiring security agreements, have established mutuality with market participants in order to ensure netting or offsetting against any potential default if bankruptcy protection is sought.[27] Finally, EPSA and Exelon contend that the Commission's actions are unduly discriminatory and preferential because the Commission (1) treated similarly situated customers differently by permitting the New York Independent System Operator, Inc. (NYISO) to continue its practice of extending credit to a market participant based on its net sell position,[28] and (2) treated dissimilarly situated customers similarly by denying net sellers the use of seller credit to meet their credit obligations and thereby unduly preferring net buyers with respect to PJM's credit policies.

18. If the Commission denies EPSA's and Exelon's request for rehearing, EPSA and Exelon request that the Commission clarify that, if PJM was to require market

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[24] *Credit Reforms in Organized Wholesale Markets*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,651 (2010).

[25] EPSA Request for Rehearing at 3, 14; Exelon Request for Rehearing at 5, 16 (citing *PJM*, 123 FERC ¶ 61,323; *PJM Interconnection, L.L.C.*, 127 FERC ¶ 61,017 (2009) (*PJM*); Order No. 741, FERC Stats. & Regs. ¶ 31,317 at PP 50, 71).

[26] EPSA Request for Rehearing at 18; Exelon Request for Rehearing at 6, 16.

[27] EPSA Request for Rehearing at 19; Exelon Request for Rehearing at 16-17.

[28] EPSA Request for Rehearing at 20; Exelon Request for Rehearing at 16-17 (citing NYISO Compliance Order, 136 FERC ¶ 61,193 at PP 13, 15).

participants to enter into a security agreement with PJM in order to qualify for seller credit, PJM could exclude seller credit from the $50 million cap on unsecured credit and permit market participants to use seller credit to meet their FTR credit requirements.

ii. Commission Determination

19. We deny EPSA's and Exelon's requests for rehearing with respect to seller credit. As we found in the PJM Compliance Order, seller credit is unsecured credit because it is potential value to the participant rather than actual secured value to PJM.[29] Seller credit is extended to participants that have a long-term history of selling in PJM, under the assumption that, in the event of default, the participant's sell position would offset the default by netting offsetting obligations, but no security is actually provided. Consistent with this, and as EPSA and Exelon concede, the PJM Tariff defines Seller Credit and RPM Seller Credit each as "an additional form of Unsecured Credit."[30] In Order No. 741, the Commission directed each ISO and RTO "to eliminate the use of unsecured credit in its FTR, or FTR-equivalent, markets" and "to reduce the extension of unsecured credit to no more than $50 million per market participant."[31] The PJM Compliance Order merely carried out these directives. Accordingly, we affirm our directing PJM to include seller credit in the limit on unsecured credit and to disallow use of seller credit in the FTR markets.

20. We disagree with EPSA and Exelon that seller credit should be treated as a form of netting and offsetting, rather than unsecured credit. PJM's ability to net or offset net sell positions in the event of default by a market participant does not change the fact that seller credit is unsecured credit. The PJM Tariff defines Unsecured Credit as "any credit granted by PJMSettlement to a Participant that is not secured by a form of Financial Security."[32] And seller credit is not secured by a form of Financial Security and is therefore unsecured credit subject both to the $50 million limit on unsecured credit and to the prohibition on the use of unsecured credit in FTR markets set forth in Order No. 741--

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[29] PJM Compliance Order, 136 FERC ¶ 61,190 at P 22.

[30] Attachment Q to the PJM Tariff, Section VIII (Definitions) ("Participants that have maintained a Net Sell Position for each of the prior 12 months are eligible for Seller Credit, which is an additional form of Unsecured Credit. A Participant's Seller Credit will be equal to sixty percent of the Participant's thirteenth smallest weekly Net Sell Position invoiced in the past 52 weeks").

[31] Order No. 741, FERC Stats. & Regs. ¶ 31,317 at PP 49, 75.

[32] Attachment Q to the PJM Tariff, Section VIII (Definitions).

regardless of PJM's ability to net or offset net sell positions. We are not persuaded that the risk posed by seller credit is so insignificant that it should not be treated like other types of unsecured credit.

21. EPSA and Exelon argue that the requirement in the PJM Compliance Order to amend the PJM Tariff to provide that seller credit is included in the $50 million limit on unsecured credit and to remove any provision that permits the use of seller credit to meet FTR credit requirements constitutes a departure from prior practice.[33] While the two PJM cases cited by EPSA and Exelon--which, we note, both pre-date Order No. 741--reflected the Commission's acceptance at that time of tariff revisions establishing seller credit and eliminating the use of unsecured credit in the FTR markets (while excluding seller credit), the Commission did not determine in those orders that seller credit should not be included in a cap on unsecured credit or should be allowed to meet FTR credit requirements. It merely allowed this exception to the general exclusion of unsecured credit as agreed to by PJM's stakeholders. However, subsequently in Order No. 741, the Commission recognized that changes in the treatment of unsecured credit were necessary to protect market participants, and therefore directed all ISO/RTOs including PJM to establish a limit on unsecured credit of $50 million and to eliminate the use of unsecured credit in the FTR markets.[34] Therefore, in the PJM Compliance Order, the Commission acted consistently with its findings in Order No. 741 that there should be limits in the overall amount of unsecured credit extended to market participants and further, due to the unique risks that FTRs present, unsecured credit was not appropriate in FTR, or FTR-equivalent, markets.[35] Finally, the fact that the Commission cited PJM's recent credit filings in Order No. 741 as examples of revised credit practices did not and does not relieve PJM of the obligation to comply with the rulemaking.

22. EPSA and Exelon also argue that the Commission's actions with respect to seller credit in the PJM Compliance Order are unjust and unreasonable because, by treating seller credit as a form of unsecured credit, the Commission has reduced liquidity in the PJM markets and harmed competition, without providing any additional protection against the risk of default.[36] By requiring PJM to revise its Tariff to include seller credit

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[33] EPSA Request for Rehearing at 3, 14; Exelon Request for Rehearing at 5, 16 (citing *PJM*, 123 FERC ¶ 61,323; *PJM*, 127 FERC ¶ 61,017; Order No. 741, FERC Stats. & Regs. ¶ 31,317 at PP 50, 71).

[34] Order No. 741, FERC Stats. & Regs. ¶ 31,317 at PP 49, 70.

[35] *Id*. PP 50-52, 70-74.

[36] EPSA Request for Rehearing at 18; Exelon Request for Rehearing at 6, 16.

in the unsecured credit limit and eliminate provisions allowing the use of seller credit in the FTR markets, the Commission is simply applying the requirements of Order No. 741. The Commission recognized in Order No. 741 that unsecured credit may provide increased liquidity in the organized wholesale electric markets, but found that it must balance market liquidity against overall risk.[37] By arguing that the Commission should not require that seller credit, which as noted above is unsecured credit, be subject to a limit of $50 million and be eliminated from the FTR markets, EPSA and Exelon make an impermissible collateral attack on Order No. 741.

23. We disagree that the Commission's acceptance of NYISO's proposal in the NYISO Credit Order constitutes undue discrimination. NYISO proposed to allow a customer to treat its weekly net receivable amount as cash collateral for credit purposes conditioned on the customer entering into a security agreement with NYISO.[38] Thus, net receivables in NYISO are a form of secured credit. In contrast, seller credit is not a net receivable and is not secured credit. Instead, seller credit is unsecured credit that is extended to participants that have a long-term history of selling in PJM, without requiring any collateral or any other type of security. The fact that PJMSettlement acts as counterparty and NYISO will make a future filing regarding its ability to offset market obligations does not change that seller credit is unsecured credit. Thus, we find that a participant in PJM granted seller credit is not, in fact, similarly situated to a participant in NYISO. Further, because net sellers may continue to utilize seller credit albeit within the $50 million Unsecured Credit Allowance, we disagree with EPSA and Exelon that, even assuming for the sake of argument that net buyers are similarly situated to net sellers, net buyers are unduly preferred over net sellers with respect to PJM's credit policies.

24. Finally, we decline to clarify whether PJM should treat seller credit as a form of secured credit if PJM were to enter into a security agreement with a participant. That is a separate matter not appropriately addressed here on rehearing of the PJM Compliance Order.

b. Certification Form and Risk Management Policies

25. In the PJM Compliance Order, the Commission found that PJM's proposed risk management and verification requirements, as revised to clarify the language in paragraph 3.a of the Certification Form and to provide for periodic compliance verification, were just and reasonable, not unduly discriminatory, and consistent with the directives in Order No. 741. The Commission stated that requiring market participants to

[37] *Id*. PP 52, 70, 73.

[38] NYISO Compliance Order, 136 FERC ¶ 61,193 at P 15.

annually provide the Certification Form and comply with the requirements that correspond with each certification was reasonable.

i. Request for Rehearing

26. AEP requests that the Commission clarify that the purpose of the Certification Form and risk management policies is to better ensure that PJM market participants will be able to pay their PJM invoices when due, that the market and products for which the risk management policies are required are the PJM market and PJM products, and that the standard by which risk management policies will be evaluated is one that is based upon the risk management policies typically utilized in the power market for RTO transactions (including, if appropriate, any policies that exist related to FTRs). AEP contends that, without this clarification, the scope of the Certification Form is uncertain and could extend to non-PJM related practices, policies, and products while lacking an underlying standard of sufficiency for a compliant risk management program.

27. AEP also requests that the Commission require PJM to alter the Certification Form to reflect the finding made by the Commission in the PJM Compliance Order that the attestation "implicitly indicat[es] that the signatory is making any statements to the best of his or her knowledge, given that an individual is making the certification on behalf of a corporate entity."[39]

28. If the Commission does not grant its requested clarifications, AEP seeks rehearing of the PJM Compliance Order because the Commission did not substantively address certain concerns, including that: the standards for sufficiency of the risk management capabilities in paragraph 2 of the Certification Form are vague, overbroad, and lack criteria for their sufficiency;[40] PJM's initial filing does not support a determination that a market participant's risk management policies protect its counterparties and PJM for PJM products other than FTRs; there is no support for PJM's contention that PJM's proposed

[39] AEP Request for Clarification and, in the Alternative, Rehearing at 5 (citing PJM Compliance Order, 136 FERC ¶ 61,190 at P 126).

[40] Paragraph 2 of the Certification Form states: "Participant has written risk management policies, procedures, and controls, approved by Participant's risk management function and applicable to transactions in the PJM markets in which it participates and for which employees or agents transacting in markets or services provided pursuant to the PJM Tariff or PJM Operating Agreement have been trained, that provide an appropriate, comprehensive risk management framework that, at a minimum, clearly identifies and documents the range of risks to which Participant is exposed, including, but not limited to credit risks, liquidity risks and market risks."

risk management policies are equal or superior to PJM's margining and associated credit practices; and PJM's stakeholder process was deficient.

ii. Commission Determination

29. We will deny AEP's request for clarification and, in the alternative, rehearing, of the PJM Compliance Order, as discussed below.

30. With respect to AEP's first three assertions on rehearing, we deny rehearing on the basis that AEP has not presented these issues with sufficient specificity. The Federal Power Act requires that an application for rehearing "set forth specifically the ground or grounds upon which such application is based."[41] The Commission requires and the courts likewise have repeatedly found that rehearing arguments should be raised with specificity.[42] Requests for rehearing should present and fully explain all of a party's arguments, not serve merely as a placeholder for arguments to be explained for the first time on appeal.[43] AEP's arguments in this regard are essentially limited to a single sentence that lists a range of claims, without adequate citations to the relevant arguments in AEP's earlier protest. It is unclear from these shorthand arguments which issues in its protest AEP is referring to, and AEP fails to sufficiently explain the grounds upon which its rehearing request is based.

31. While AEP's argument on rehearing that the risk management standards in paragraph 2 of the Certification Form are vague, overbroad, and lack criteria for their

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[41] 16 U.S.C. § 825l (a) (2006).

[42] 18 C.F.R. § 385.713(c)(2) (2011); *see Revision of Rules of Practice and Procedure Regard Issue Identification*, Order No. 663, FERC Stats. & Regs. ¶ 31,193 (2005), *order on reh'g*, Order No. 663-A, FERC Stats. & Regs. ¶ 31,211 (2006); *Constellation Energy Commodities Group, Inc. v. FERC*, 457 F.3d 14, 20 (D.C. Cir. 2006) ("Parties are required to present their arguments to the Commission in such a way that the Commission knows 'specifically . . . the ground on which rehearing [i]s being sought'"); *cf.*, *e.g.*, *NSTAR Electric & Gas Corp. v. FERC*, No. 05-1362, slip op. at 10 (D.C. Cir. March 9, 2007) (single footnote in opening brief is not enough to raise an issue for the court of appeal's review); *California Dep't of Water Resources v. FERC*, 341 F.3d 906, 911 (9th Cir. 2003) (issue not preserved for review where petitioner "raised the issue in a single sentence at the end of an unrelated section of its request for rehearing, without citing the statutory language it now urges [the court of appeals] to consider.").

[43] *Cities of Anaheim v. California Independent System Operator Corp.*, 118 FERC ¶ 61,255 (2007).

sufficiency are insufficient, as just noted, we assume (but cannot say for certain) that AEP refers to its one-line assertion in its protest[44] that the Certification Form as a whole was "overbroad, vague, and unnecessarily burdensome," including paragraph 2, in particular, and its similarly broad statement that "PJM concedes that currently there are no applicable industry standards for it to use….[and i]n these circumstances, [AEP] fail[s] to see the value of PJMSettlement review of their risk management processes…."[45] AEP spent the vast majority of the section of its protest regarding paragraph 2 asserting that the requirements of paragraph 2 were overly burdensome. Accordingly, the Commission naturally focused on this claim, acknowledging that some protestors contend that this requirement is overly burdensome and unnecessary, but ultimately finding paragraph 2 to be reasonable.[46] The Commission explained that requiring risk management practices to be overseen by an independent risk management function helps to ensure that risk management controls are effective and not tainted by conflicts of interest by segregating risk oversight from trading functions, and disagreed with AEP that the independent risk management function requirement is unnecessary because the FTR markets are generally fully collateralized and without credit risk.[47]

32. AEP now focuses on its claim that paragraph 2 is vague and overbroad. Paragraph 2 plainly requires a market participant to have written risk management policies, procedures, and controls approved by its independent risk management function and applicable to transactions in the PJM markets for which employees or agents to have proper training. We do not find this provision to be vague or overbroad as it requires only that companies obtain certification either from their internal certified risk management function or from independent firms that provide these services to clients. We also do not find that an absence of a specific, codified standard for risk management policies renders paragraph 2 unjust and unreasonable. Paragraph 2 explains that the risk management policies should provide a comprehensive framework that clearly identifies and documents the risks to which the participant is exposed, including credit, liquidity,

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[44] The protest to the initial compliance filing was filed by a subset of the companies that filed the request for rehearing, including American Electric Power Company, Inc.; Dominion Resources Services, Inc.; DTE Energy Trading, Inc.; Exelon Corporation; Rockland Electric Company; and Shell Energy North America (US), L.P. We use "AEP" to refer to both the protesting parties and parties requesting rehearing.

[45] AEP Protest at 7, 11.

[46] PJM Compliance Order, 136 FERC ¶ 61,190 at P 124.

[47] *Id.*

and market risks. We find that the referenced language provides sufficient clarity and guidance.

33. AEP also appears to assert that the Commission did not address its concern (again, though, precisely what concerns AEP is uncertain) that PJM's initial filing does not support a determination that a market participant's risk management policies protect its counterparties and PJM for PJM products other than FTRs. In Order No. 741, the Commission required each ISO and RTO to include in its tariff language to specify minimum participation criteria, such as requirements related to risk management controls, and recognized that the criteria could include the capability to engage in risk management to make sure that each market participant has adequate risk management capabilities.[48] In the PJM Compliance Order, the Commission concluded that "the proposed risk management and verification requirements should help protect the markets from risks posed by market participants who do not have adequate risk management procedures in place."[49] Requiring parties to provide PJM their risk management policies should assist PJM in ensuring that market participants indeed have adequate risk management procedures in place. We are not persuaded that providing risk management policies would fail to provide any protection for PJM products, as AEP seems to suggest.

34. In addition, AEP appears to argue that the Commission failed to address its earlier argument that there is no support for PJM's contention that PJM's proposed risk management policies for FTRs are equal or superior to PJM's margining and associated credit practices. The Commission was not required to address such a contention, if made. PJM was obligated to comply with Order No. 741, in which the Commission determined that all RTOs/ISOs should include minimum participation criteria in their tariffs, and was not obligated to demonstrate that its proposal was superior to its existing policies.[50]

35. The fourth, and clearest, issue raised by AEP on rehearing is that the Commission did not adequately address its concern that the stakeholder process was deficient. The Commission addressed this concern in paragraph 44 of the PJM Compliance Order. As we stated in that order, while Order No. 741 contemplated the use of a stakeholder process to assist in developing minimum participation criteria, the responsibility to

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

[49] PJM Compliance Order, 136 FERC ¶ 61,190 at P 112.

[50] *E.g.*, *Petal Gas Storage v. FERC*, 496 F.3d 695, 703 (D.C. Cir. 2007).

propose just and reasonable Tariff provisions in response to Order No. 741 was ultimately PJM's.[51]

36. With respect to AEP's request that PJM amend the Certification Form, PJM has submitted changes to the attestation in the Certification Form in its compliance filing in Docket No. ER11-3972-002 to clarify that the signatory acknowledges that the information provided in the certificate is true and accurate to the best of the signatory's belief and knowledge after due investigation. The Commission addresses these proposed changes in a concurrent order.[52]

37. AEP requests clarification that the market and products for which the risk management policies are required are the PJM market and PJM products. As PJM explained in its answer in the compliance proceeding in Docket No. ER11-3972-002, the risk management verification process in its tariff relates only to PJM markets and products.[53]

The Commission orders:

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[51] *Id*. P 44.

[52] *PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,183 (2012).

[53] *Id*. P 21. *See* section Ia.A of Attachment Q.