

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

RTO/ISO Credit Principles and Practices)	Docket Nos. AD21-6-000
)	
Credit Reforms in Organized Wholesale Electric Markets)	AD20-6-000
)	

COMMENTS OF THE ISO/RTO COUNCIL

The ISO/RTO Council (“IRC”)¹ respectfully submits these comments in response to the April 21, 2021 Notice Inviting Post-Technical Conference Comments,² and the February 24, 2021 Supplemental Notice of Technical Conference³ of the Federal Energy Regulatory Commission (“Commission” or “FERC”). The IRC and its members appreciate the Commission’s inquiry into the credit principles and practices of regional transmission organizations (“RTOs”) and independent system operators (“ISOs,” and together with RTOs, “RTOs/ISOs”). The IRC submits these joint comments to address the Commission’s questions from Section 1 (Coordination and Information Sharing) of the April Notice. Individual RTOs/ISOs may also submit separate comments addressing these and other questions from the February and April Notices.

¹ The IRC is composed of the Alberta Electric System Operator (“AESO”), the California Independent System Operator Corporation (“CAISO”), the Electric Reliability Council of Texas, Inc. (“ERCOT”), the Independent Electricity System Operator (“IESO”), ISO New England Inc. (“ISO-NE”), the Midcontinent Independent System Operator, Inc. (“MISO”), the New York Independent System Operator, Inc. (“NYISO”), PJM Interconnection, L.L.C. (“PJM”), and the Southwest Power Pool, Inc. (“SPP”). AESO and IESO are not subject to the Commission’s jurisdiction and ERCOT is not subject to the Commission’s jurisdiction as it relates to the issues raised in this proceeding. Only the Commission-jurisdictional members of the IRC specifically join these comments.

² *RTO/ISO Credit Principles and Practices*, Notice Inviting Post-Technical Conference Comments, Docket Nos. AD21-6-000, et al. (Apr. 21, 2021) (“April Notice”).

³ *RTO/ISO Credit Principles and Practices*, Supplemental Notice of Technical Conference, Docket Nos. AD21-6-000, et al. (Feb. 24, 2021) (“February Notice”).

I. OVERVIEW OF COMMENTS

At the Technical Conference, discussion ensued about how communication among RTOs/ISOs, including potentially those that are not subject to the regulation of the Commission, could be enhanced consistent with their prudent risk mitigation activities for credit risk management. Given that market participants often operate in more than one RTO/ISO market, discussion focused on allowing targeted communications among RTOs/ISOs to enhance existing “know your customer” protocols and risk mitigation efforts. Such communication would not be in lieu of direct dialogues between each RTO/ISO and its market participants, but would allow for additional fact-based information to be shared between RTOs/ISOs so as to support their individual risk management processes.

The chief impediments to such communication today are the confidentiality provisions of each RTO’s/ISO’s tariff that prevent any such communication. While protecting information deemed confidential under each respective tariff is an important responsibility of each RTO/ISO, these rules were developed in an environment where each market participant was principally if not exclusively operating in a single market. As many market participants grow in size and sophistication and operate in multiple markets, the task of obtaining a complete picture of a market participant’s financial condition under the RTOs’/ISOs’ risk management protocols has grown more complex. The evaluation of a market participant’s financial condition and creditworthiness would therefore benefit from allowing a degree of communication of otherwise protected information between RTOs/ISOs.

This information sharing could be undertaken in two ways. Without FERC guidance, individual RTOs/ISOs could each approach their stakeholders for modifications

to their governing documents to authorize the RTO/ISO to share market participant information with (and in turn, receive market participant information from) other RTOs/ISOs for the purpose of credit risk management and mitigation. Such an approach would be extremely time consuming and, perhaps more importantly, this ad hoc approach could lead to inconsistencies in approaches that would make cross-communication efforts less efficient or less effective in achieving the goal of successful credit risk management.

The more workable alternative, and the one proposed by the IRC, is for the Commission to indicate, as an outcome of this Technical Conference and through a subsequent rulemaking, that such inter-RTO/ISO communications are in the public interest, and authorize each jurisdictional RTO/ISO to amend their tariffs with a simple statement permitting such communication between and among RTOs/ISOs under the RTOs'/ISOs' existing, Commission-accepted confidentiality provisions. This approach would obviate the need for an RTO/ISO to navigate a patchwork of compliance mechanisms that could undermine beneficial communications between regions. A rulemaking would put market participants on notice that otherwise protected information may be shared with other RTOs/ISOs but would, as requested by the IRC, also make clear that the information would: (1) be kept confidential pursuant to each RTO's/ISO's existing, Commission-accepted confidentiality protections; and (2) could only be utilized by receiving RTOs/ISOs consistent with such RTO's/ISO's tariff requirements.

The Commission has long recognized the need to permit information sharing in other contexts. For example, the Commission permits information sharing for reliability or operational planning purposes between interstate pipelines, between public utilities, or

between interstate pipelines and public utilities.⁴ The North American Energy Standards Board (“NAESB”) has similarly adopted business practice standards, incorporated by reference into the Commission’s regulations that require RTOs and ISOs to have written operational communication procedures with relevant and appropriate interstate natural gas pipelines to be implemented if and when certain extreme conditions occur.⁵ The Commission has also approved the adoption by the North American Electric Reliability Corporation (“NERC”) of reliability standards that require reliability coordinators to provide for the exchange of planned and unplanned outage information to support operational planning analyses and real-time assessments in their operating procedures, processes, and plans for activities that require coordination with adjacent reliability coordinators.⁶ In this same vein, the Commission should now ensure that RTOs/ISOs can share with one another customer credit information to support the management and mitigation of credit risk.

The IRC has jointly discussed how such communications would work. The IRC believes that an authorizing order from the Commission would constitute a first step. A second step would be to work with ERCOT as well as the Canadian entities to explore whether, through reciprocity arrangements, similar sharing could occur among the FERC-jurisdictional RTOs/ISOs and our Texan and Canadian counterparts.

⁴ See 18 C.F.R. § 38.2(a); 18 C.F.R. § 284.12(b)(4); *Communication of Operational Information Between Natural Gas Pipelines and Electric Transmission Operators*, Order No. 787, 145 FERC ¶ 61,134 (2013), *order on reh’g*, Order No. 787-A, 147 FERC ¶ 61,228 (2014), *order dismissing request for clarification*, 152 FERC ¶ 61,051 (2015).

⁵ See 18 CFR § 38.1; Order No. 787 at P 10.

⁶ See *Transmission Operations Reliability Standards and Interconnection Reliability Operations and Coordination Reliability Standards*, Order No. 817, 153 FERC ¶ 61,178, at P 19 (2015).

For these reasons, FERC authorization of such communications is appropriate to ensure that risk mitigation and know your customer obligations of RTOs/ISOs can be undertaken with access to relevant and beneficial credit information about market participants' actions, positions, and risks in other RTO/ISO markets.

II. RESPONSE TO QUESTIONS ON INFORMATION SHARING

Question 1.a.: What are the current barriers to credit-related information sharing among RTOs/ISOs and how could they be addressed? What could the Commission do to help facilitate increased coordination and information sharing among RTO/ISO credit departments?

A. The Commission Can and Should Authorize RTO/ISO Sharing of Customer Credit Information for the Purpose of Managing or Mitigating Credit Risk.

The main barriers to efficient and effective credit-related information sharing among RTOs/ISOs are:

- (1) the absence of a specific Commission authorization or policy in favor of inter-RTO credit-related information sharing; and
- (2) a lack of uniformity of language among the RTO/ISO tariffs on the issue of information sharing.

Both of these barriers could be overcome by the Commission adopting a final rule authorizing RTOs/ISOs to amend their tariffs to include a short statement authorizing sharing market participant-related information with other RTOs/ISOs for the purpose of credit risk management or mitigation, provided such information sharing is done subject to confidentiality provisions in the receiving RTOs'/ISOs' tariffs.

The IRC recommends the Commission direct each RTO/ISO to include the following language in its tariff to permit and facilitate information sharing between the RTOs/ISOs, modified as necessary to incorporate appropriate defined terms from each RTO's/ISO's tariff:

[Transmission Provider] is permitted to share [Market Participant and Applicant] credit information with and receive [Market Participant and Applicant] credit information from other Commission-authorized Regional Transmission Organizations and Independent System Operators, for the purpose of credit risk management and mitigation, provided those entities agree to treat [Market Participant and Applicant] information as confidential under the terms for confidential treatment of [Market Participant and Applicant] information under their own tariffs or other governing documents. [Transmission Provider] is permitted to use [Market Participant and Applicant] information received from the entities listed above to the same extent it may use similar information from other [Market Participants and Applicants] under the terms of this Tariff.

[Transmission Provider] is authorized to provide such information to the Electric Reliability Council of Texas, Inc., the Alberta Electric System Operator, or the Independent Electricity System Operator, provided such entity has adopted market rules that allow for the equivalent level of information sharing authorized by this Commission action, and provided those entities agree to treat [Market Participant and Applicant] information as confidential under the terms for confidential treatment of [Market Participant and Applicant] information under their own tariffs or other governing documents.

Each RTO/ISO that adopts the uniform tariff language should be permitted to use the information shared under the provision, once received, as provided and permitted under its own individual tariff for review of similar information from its market participants and applicants. Adopting this proposal will allow improvements in communication and coordination among RTOs/ISOs that will enhance RTOs'/ISOs' ability to anticipate future threats and their implications and respond to and mitigate credit risks, often before material negative events occur from those threats, implications, and risks.

The IRC seeks a clear authorizing order from the Commission, undertaken through a rulemaking, rather than merely a permissive order or policy statement encouraging information sharing. The IRC prefers a clear authorizing order because of the need for uniformity and consistency of language among the RTOs/ISOs regarding what information

may be shared. The rules for information sharing should be uniform across RTOs/ISOs, as the risk of inconsistencies and inefficiencies could undermine effectiveness if the authorizations are different.

Any such order authorizing this information sharing should facilitate expeditious sharing of information between RTOs/ISOs to allow for improved risk mitigation. One key aspect of a Commission order that would facilitate expeditious information sharing would be for the Commission to state explicitly that RTOs/ISOs are permitted to share market participant information with other RTOs/ISOs without the sending RTO/ISO having to seek consent from market participants. Once an RTO/ISO receives such information, it will protect the market participant information from the sending RTO/ISO consistent with the confidentiality provisions of the receiving RTO's/ISO's tariff. Market participants, of course, would be on notice through language in the sending RTO's/ISO's tariff that protected information could be shared on a confidential basis with other RTOs/ISOs for the purpose of credit risk management and mitigation.

On a practical level, market participant consent should not be a prerequisite to inter-RTO/ISO sharing of information as this could lead to a market participant blocking an RTO's/ISO's ability to provide another RTO/ISO with negative financial information about the market participant.

B. The Commission's Authorization of Information Sharing for Credit Risk Management and Mitigation Should Allow for RTO/ISO Sharing of Customer Information and Should Not Be Prescriptive.

At the same time that a broad authorization is appropriate, any such authorization should not be prescriptive (other than requiring each RTO/ISO to treat confidential market participant information received from another RTO/ISO as confidential under its own tariff) because RTOs/ISOs need flexibility to share and use the information in order to

manage and mitigate credit risk in their markets. Specifically, information about market participants (and applicants/aspiring participants in an RTO/ISO market) that can be shared should be allowed to include, but should not be limited to: (1) information regarding unresolved credit/collateral issues; (2) information indicating an entity is on the verge of a default, such as that a market participant has experienced a material adverse condition or material adverse change under an RTO/ISO tariff or related agreement; (3) disclosure that a market participant or affiliate has defaulted in the RTO/ISO market or defaulted on a market-related agreement; (4) other information that could be relevant to a determination of whether a material adverse change in creditworthiness or financial status may occur; (5) other information that could be relevant to a determination of action that constitutes an unreasonable credit risk; and (6) other information related to late or insufficient payment of charges.

The IRC envisions an order from the Commission that authorizes information sharing as described above but does not prescribe what, if any, action an RTO/ISO must take based on information received from another RTO/ISO. Such actions in response to information received would instead be governed by each RTO's/ISO's credit policies as they are then in effect. In other words, just because information is shared, it does not mean an RTO/ISO must act except as provided by the parameters of its own relevant tariff, manuals, and stakeholder processes. Moreover, market participants will still have protections available to them under the relevant RTOs'/ISOs' tariffs regarding adverse action.

Question 1.b.: What are the benefits of increased credit-related information sharing between the RTOs/ISOs? Are there specific market events that should trigger credit-related information sharing between the RTOs/ISOs? What types of credit-related information would be useful for RTOs/ISOs to share with other RTOs/ISOs?

See response to Question 1.a.

Question 1.c.: What are the potential risks of, or concerns about, increased credit-related information sharing between RTOs/ISOs? What protocols or best practices could be established to mitigate these concerns?

See response to Question 1.a., in particular the discussion of confidential treatment of market participant information received from other RTOs/ISOs.

III. CONCLUSION

The IRC requests the Commission consider its comments and issue an order authorizing or encouraging the adoption of the tariff language described above to permit RTOs/ISOs to share market participant information with each other in order to enhance their ability to manage and mitigate credit risk.

Respectfully submitted,

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