

margin for uncleared swaps entered into by the nonbank swap dealer. The CFTC requires an aggregate of common equity tier 1 capital, additional tier 1 capital and tier 2 capital equal to or greater than 8 percent of the nonbank swap dealer's uncleared swap margin amount. I look forward to commenters' response on the question as to whether Japan's capital requirement in an amount equal to 25% of operating expenses is comparable in purpose and effect to the CFTC's capital requirement equal to 8% of the uncleared swap margin amount.

It is a priority for me to ensure that the CFTC guards against complacency with post-crisis reforms, particularly after market stresses from the pandemic and geopolitical events. We should remember that our capital rules serve as critical pillars of Dodd-Frank reforms to help ensure the safety and soundness of financial institutions, and to protect the market from serious risks and contagion. The CFTC has a duty to ensure that our comparability assessment is sound, and that the foreign regulator is like-minded in not only rules but in their approach, supervision and enforcement. Substituted compliance must leave U.S. markets and our economy at no greater risk than full compliance with our rules.

Appendix 5—Concurring Statement of Commissioner Caroline D. Pham

I respectfully concur with the notice of proposed order and request for comment on an application for a capital comparability determination submitted by the Financial Services Agency (FSA) of Japan.

First, I want to recognize the staff's work as each of my fellow Commissioners has done because this is not easy—not only for this rulemaking, but also, generally speaking, swap dealer oversight is an incredibly complex regulatory regime. I also appreciate your commitment to providing substituted compliance.

In addition, in my past work in Japan and with their financial sector, I have enjoyed working with the FSA for many years, and I appreciate their thoughtful and robust oversight of their regulated firms. I also want to say that my thoughts and heart are with the people of Japan regarding the tragic loss of Prime Minister Shinzo Abe.

As I mentioned in my opening statement, the CFTC should take an outcomes-based approach to substituted compliance that appropriately balances and recognizes the nature of cross-border regulation of global markets and firms, and that preserves access for U.S. persons to other markets.¹ I appreciate the Chairman's remarks and I welcome comments, particularly on operational issues with additional reporting requirements given the time difference, language translation, conversion to USD, local governance and regulatory requirements, and differences in financial reporting.

I urge a pragmatic approach with sufficient time to implement conditions before any

¹ See Statement of Dissent by Commissioner Scott D. O'Malia on Comparability Determinations for Australia, Canada, the European Union, Hong Kong, Japan, and Switzerland: Certain Entity and Transaction-Level Requirements (Dec. 20, 2013).

compliance date, and I appreciate the thought that the staff have been putting into that. I speak from my past experience as a global head of swap dealer compliance who had to implement global regulatory reforms. I'll also note that in a crisis, such as during the early days of the COVID-19 pandemic, there was timely and effective engagement between and amongst CFTC registrants and U.S. regulators. I have been on many calls and spoken to many regulators all over the world, not only during COVID-19, but also during times of market disruption or potentially material events.

There is a difference between a phone call and a formal written notice, and that's just one example of the conditions in this proposal. So, I appreciate receiving comments on this and any other operational issues and the careful consideration by the staff and the Commission of how to take a practical approach to achieving appropriate oversight and mitigation of risk to the United States and to our markets.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM22-13-000]

Credit-Related Information Sharing in Organized Wholesale Electric Markets

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing, pursuant to section 206 of the Federal Power Act, to amend its regulations to permit credit-related information sharing in organized wholesale electric markets to ensure that credit practices in those markets result in jurisdictional rates that are just and reasonable. The Commission seeks public comment on the proposed regulations.

DATES: Comments are due October 7, 2022. Reply comments are due November 7, 2022.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways. Electronic filing through <http://www.ferc.gov>, is preferred.

- **Electronic Filing:** Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.

○ **Mail via U.S. Postal Service Only:** Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ **Hand (including courier) Delivery:** Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

The Comment Procedures Section of this document contains more detailed filing procedures.

FOR FURTHER INFORMATION CONTACT:

David Bowers (Technical Information), Office of Energy Policy and Innovation, 888 First Street NE, Washington, DC 20426, 202-502-8594, David.Bowers@ferc.gov
Patrick Metz (Legal Information), Office of the General Counsel, 888 First Street NE, Washington, DC 20426, 202-502-8197, Patrick.Metz@ferc.gov

SUPPLEMENTARY INFORMATION:

I. Introduction

1. Pursuant to section 206 of the Federal Power Act (FPA),¹ the Commission is proposing to revise § 35.47 of title 18 of the Code of Federal Regulations to permit regional transmission organizations (RTO) and independent system operators (ISOs) to share among themselves credit-related information regarding market participants in organized wholesale electric markets.² The ability of RTOs/ISOs to share credit-related information among themselves could improve their ability to accurately assess market participants' credit exposure and risks related to their activities across organized wholesale electric markets. The ability to share such information could also enable RTOs/ISOs to respond to credit events more quickly and effectively, minimizing the overall credit-related risks of unexpected defaults by market participants in organized wholesale electric markets.

2. To ensure that RTOs'/ISOs' credit policies remain just and reasonable, the Commission proposes to revise its regulations to require each RTO/ISO to adopt tariff provisions that permit the sharing of its market participants' credit-related information with other RTOs/ISOs to enhance credit risk

¹ 16 U.S.C. 824e.

² See *Credit Reforms in Organized Wholesale Elec. Mkts.*, Order No. 741, 75 FR 65942 (Oct. 21, 2010), 133 FERC ¶ 61,060, at P 1 n.1 (2010) (“[O]rganized wholesale electric markets include energy, transmission and ancillary service markets operated by independent system operators . . . and regional transmission organizations” which are “responsible for administering electric energy and financial transmission rights markets.”), *order on reh'g*, Order No. 741-A, 134 FERC ¶ 61,126, *reh'g denied*, Order No. 741-B, 135 FERC ¶ 61,242 (2011).

assessment efforts. The Commission seeks public comment on this proposed reform.

II. Background

A. Previous Commission Action

3. Credit policies of regulated utilities have long been a component of the Commission's regulatory agenda. For example, when the Commission issued its pro forma Open Access Transmission Tariff (OATT) in Order No. 888, the Commission required each transmission provider's tariff to include reasonable creditworthiness standards.³ The Commission did not prescribe specific credit standards and processes, however, and thus left substantial discretion to transmission providers in assessing and managing credit risks.

4. In light of major distress in financial markets during the 2008 financial crisis, the Commission explored the role of credit in the organized wholesale electric markets and the potential for policy reforms to strengthen credit practices and mitigate credit-related risks.⁴ Subsequently, the Commission issued Order No. 741, which promulgated regulations establishing minimum standards for several aspects of credit policy in organized wholesale electric markets, collectively aimed at reducing mutualized default risk, *i.e.*, the risk that a default by one market participant is unsupported by collateral and therefore must be socialized among all market participants.⁵ As the Commission explained, risk management and creditworthiness practices are important to the organized wholesale electric markets because of this mutualized default risk.⁶

³ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Servs. by Pub. Utils.; Recovery of Stranded Costs by Pub. Utils. & Transmitting Utils.*, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036, at 31,937 (1996) (cross-referenced at 75 FERC ¶ 61,080) (setting forth section 11 (Creditworthiness) of the pro forma OATT), *order on reh'g*, Order No. 888-A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (cross-referenced at 78 FERC ¶ 61,220), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Pol'y Study Grp. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. N. Y. v. FERC*, 535 U.S. 1 (2002).

⁴ *Credit Reforms in Organized Wholesale Electric Mkts.*, Notice of Proposed Rulemaking, 75 FR 4310 (Jan. 27, 2010), FERC Stats. & Regs. ¶ 32,651 (2010).

⁵ Order No. 741, 133 FERC ¶ 61,060 at PP 4, 12; *see also* 18 CFR 35.47 (setting forth tariff provisions related to credit practices in organized wholesale electric markets).

⁶ Order No. 741, 133 FERC ¶ 61,060 at P 7.

B. Current Practices

5. RTOs/ISOs assess a market participant's financial condition using credit-related information provided by market participants and prospective market participants. RTOs/ISOs generally receive this credit-related information at specified intervals or upon specific milestone events, including from: (1) interconnection customers during the generator interconnection process;⁷ (2) prospective market participants during the assessment of applications for market participant status;⁸ (3) market participants during annual or periodic credit reviews;⁹ and (4) market participants in response to periodic requests by RTO/ISO credit departments.¹⁰

6. Market participants and prospective market participants generally do not make the credit-related information they provide to RTOs/ISOs publicly available, and RTOs/ISOs treat market participants' credit-related information as confidential information subject to tariff provisions that limit the use of this information to specific purposes and limit the ability of RTOs/ISOs to share this information with other parties.¹¹

7. Generally, in each Commission-jurisdictional organized wholesale electric market, if a market participant defaults and its collateral is insufficient to cover the amount of its outstanding obligations, the remaining cost of those obligations is spread across the organized wholesale electric market's market participants (*i.e.*, the default is "mutualized").¹² An RTO's/ISO's ability to reduce mutualized default risk can

⁷ *See, e.g.*, PJM, Intra-PJM Tariffs, OATT, section 222 (0.0.0) (requiring PJM to keep confidential any information provided by interconnection customers).

⁸ *See, e.g.*, SPP Open Access Transmission Tariff, Sixth Revised Volume No. 1, attach. AE, section 3.7 (0.0.0) (requiring SPP to validate that prospective market participants meet SPP's credit requirements).

⁹ *See, e.g.*, NYISO MST, 26.1 MST attach. K (Minimum Participation Criteria) (4.0.0), section 26.1.2 (requiring customers to demonstrate ongoing compliance with the minimum participation requirements in section 26.1.1).

¹⁰ PJM, Intra-PJM Tariffs, OATT, attach. Q (45.0.0), section I.IE (requiring market participants to provide information on an ongoing basis).

¹¹ *See, e.g.*, ISO-NE, Transmission, Markets, and Services Tariff, attach. D (ISO-NE Information Policy) (22.0.0), section 2.0 (requiring ISO-NE entities to use Confidential Information "solely to perform their obligations under the NEPOOL Agreement and the Participants Agreement").

¹² *See, e.g.*, PJM, Intra-PJM Tariffs, OA, section 15.2.2 (7.0.0); SPP, Open Access Transmission Tariff, Sixth Revised Volume No. 1, attach. L, section V (1.0.0).

help to prevent defaults and minimize the costs resulting from such defaults.

C. Technical Conference

8. In 2019, Energy Trading Institute (ETI) submitted a petition requesting that the Commission convene a technical conference and consider a potential rulemaking to improve RTO/ISO credit practices.¹³ In response to ETI's petition, the Commission received comments suggesting that the industry would benefit from a discussion about best practices and the differences among RTO/ISO credit policies.¹⁴

9. On February 25 and 26, 2021, Commission staff convened a technical conference to discuss principles and best practices for credit risk management in organized wholesale electric markets. Panelists at the technical conference included credit risk experts, market participants with experience in RTO/ISO credit policy compliance, and RTO/ISO risk officers. Among other topics, the technical conference addressed whether RTOs/ISOs could share market participants' credit-related information with one another, whether market participants had expressed concern about RTOs/ISOs sharing such information, whether there were rules or other barriers that prevented RTOs/ISOs from sharing such information, and how the Commission could address concerns regarding the confidential treatment of such information.¹⁵

10. Panelists at the technical conference stated that there could be risk management benefits from sharing market participants' credit-related information among RTO/ISO credit departments.¹⁶ For example, one panelist explained that it would be helpful for an RTO/ISO credit

¹³ Energy Trading Institute Request for Technical Conference and Petition for Rulemaking to Update Credit and Risk Management Rules and Procedures in the Organized Markets, *Credit Reforms in Organized Wholesale Electric Markets*, Docket No. AD20-6-000 (Dec. 16, 2019).

¹⁴ Comments of the Indicated PJM Transmission Owners at 1-2, 4; Comments of Edison Electric Institute at 3-4; Comments of International Energy Credit Association at 9-10; Notice of Request for Technical Conference and Petition for Rulemaking, Docket No. AD20-6-000 (Feb. 11, 2020).

¹⁵ *See* Supplemental Notice of Technical Conference, *RTO/ISO Credit Principles and Practices*, Docket No. AD21-6-000, et al. (Feb. 10, 2021).

¹⁶ *See RTO/ISO Credit Principles and Practices*, Technical Conference, Docket No. AD21-6-000, et al., Tr. 100:24-102:20, 106:1-24 (Błoczynski) (Feb. 25, 2021); *id.* at Tr. 102:25-104:5 (Brown); *id.* at Tr. 104:7-105:9 (Prevratil); *id.* at Tr. 105:12-24 (Seghesio). Further, one panelist stated that credit-related information sharing would bring additional transparency to organized wholesale electric markets, which would build confidence in those markets to the benefit of market participants and consumers. *See id.* at Tr. 30:15-23, 58:1-9 (Heinle).

department to know that a market participant is experiencing financial distress in another organized wholesale electric market in which it transacts because the RTO/ISO credit department could then focus its attention on whether the market participant's financial distress in another market could impact its own markets.¹⁷

11. In its post-technical conference comments, the ISO/RTO Council (IRC)¹⁸ stated that credit-related information sharing among RTOs/ISOs would improve the RTOs'/ISOs' ability to anticipate and respond to credit risks or prevent the occurrence of negative credit events.¹⁹ The IRC explained that the primary obstacles to RTOs/ISOs sharing credit-related information are: (1) the confidentiality provisions included in RTO/ISO OATTs; and (2) the lack of specific Commission authorization or policy favoring credit-related information sharing among RTOs/ISOs.²⁰

12. The IRC therefore recommended that the Commission require RTOs/ISOs to adopt tariff revisions permitting RTOs/ISOs to share credit-related information with other RTOs/ISOs. The IRC recommended that the Commission afford RTOs/ISOs the flexibility to manage and mitigate credit risks, and to allow each RTO/ISO to take any action permitted under its OATT that the RTO/ISO deems necessary in response to the receipt of credit-related information.²¹ The IRC further explained that each RTO/ISO that receives credit-related information from another RTO/ISO should be required to protect that information in accordance with the receiving RTO's/ISO's existing confidentiality provisions.²² The IRC also recommended that the Commission state explicitly that RTOs/ISOs need not obtain consent of market participants before sharing credit-related information, and argued that market participants would be on notice that

RTOs/ISOs may share their credit-related information by virtue of language included in the RTOs'/ISOs' OATTs.²³

13. The IRC argued that sharing market participants' credit-related information would be most effective with uniform rules across all of the RTOs/ISOs.²⁴ The IRC provided the following tariff language that each RTO/ISO could include in its OATT in order to implement IRC's credit-related information sharing approach:

[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.²⁵

III. Need for Reform

14. We preliminarily find that it is unjust and unreasonable for RTOs/ISOs to be unable to share with each other credit-related information about their market participants. Further, we preliminarily find that tariff provisions that prohibit or otherwise limit an RTO/ISO from sharing credit-related information are unjust and unreasonable. Tariff provisions that prohibit or limit sharing of credit-related information can hinder an RTO's/ISO's ability to evaluate a market participant's creditworthiness and respond to credit events, and, thus, in turn, can hinder its ability to prevent or mitigate default by market participants. Because the costs of such defaults are typically borne by non-defaulting market participants, an RTO's/ISO's lack of access to credit-related information may lead to unjust and unreasonable rates for its market participants.

15. As the entities responsible for administering the organized wholesale electric markets, RTOs/ISOs are responsible for credit risk management.

RTOs/ISOs perform this responsibility in the organized wholesale electric markets by instituting, maintaining, and enforcing policies that balance the need for robust market participation and liquidity while seeking to minimize mutualized default risk.

16. We believe that, in order to manage credit risk in the organized wholesale electric markets, RTOs/ISOs must have adequate information on their market participants' financial standing and on their business and operational activities, including credit-related information on their activities in other organized wholesale electric markets. This information allows for a more effective assessment of those market participants' default risk. Currently, however, each RTO/ISO only has access to publicly available information and to the credit-related information provided by its own market participants. Each RTO/ISO thus may have limited visibility, if any, into their market participants' activities in other organized wholesale electric markets.

17. Market participants increasingly operate in multiple organized wholesale electric markets, whether directly or through affiliated entities, and their trading activities have become more complex and sophisticated.²⁶ These developments have complicated the ability of an individual RTO/ISO credit department to develop a complete, accurate, and up-to-date picture of a market participant's current financial condition due to real or perceived barriers to information sharing among RTOs/ISOs.²⁷

18. Negative credit events affecting a market participant's credit standing in one market may impact its credit standing in other markets.²⁸ An RTO/ISO that cannot obtain market participants' credit-related information arising from their activities in other organized wholesale electric markets may not be able to fully protect its organized wholesale electric market from mutualized default risk. Therefore, in order to ensure just and reasonable rates in the organized wholesale electric markets by minimizing mutualized default risk, we propose to permit each RTO/ISO to share with other RTOs/ISOs market participants' credit-related information.

²⁶ See *RTO/ISO Credit Principles and Practices*, Technical Conference, Docket No. AD21-6-000, et al., Tr. 30:12-14 (Heinle) (Feb. 25, 2021).

²⁷ IRC Comments at 2.

²⁸ Order No. 741, 133 FERC ¶ 61,060 at P 3; see also *RTO/ISO Credit Principles and Practices*, Technical Conference, Docket No. AD21-6-000, et al., Tr. 44:15-23 (Wasserman) (Feb. 25, 2021); *id.* at Tr. 105:1-6 (Prevratil).

¹⁷ *Id.* at Tr. 104:21-105:6 (Prevratil).

¹⁸ The IRC is composed of Commission-jurisdictional RTOs/ISOs, including PJM Interconnection, L.L.C. (PJM), ISO New England Inc. (ISO-NE), California Independent System Operator Corporation (CAISO), New York Independent System Operator, Inc. (NYISO), Midcontinent Independent System Operator, Inc. (MISO), and Southwest Power Pool, Inc. (SPP), as well as three transmission system operators that are not Commission-jurisdictional, including Electric Reliability Council of Texas, Inc. (ERCOT), the Alberta Electric System Operator (AESO), and the Independent Electricity System Operator (IESO).

¹⁹ Comments of the ISO/RTO Council, *RTO/ISO Credit Principles and Practices*, Docket No. AD21-6-000, et al., at 2, 5-6 (filed June 7, 2021) (IRC Comments).

²⁰ *Id.* at 5.

²¹ *Id.* at 7-8.

²² *Id.* at 3.

²³ *Id.* at 7.

²⁴ *Id.*

²⁵ *Id.* at 6. IRC also proposed language related to sharing market participants' credit-related information with ERCOT, AESO, and IESO that is omitted here.

19. Currently, RTO/ISO OATTs generally contain provisions that treat a market participant's credit-related information as confidential information and, in most instances, prohibit an RTO/ISO from sharing that credit-related information with other RTOs/ISOs without the consent of the market participant.²⁹ Effectively, such tariff provisions allow a market participant to limit the amount and quality of information that an RTO/ISO may access and use to assess that market participant's financial standing, and these provisions therefore may pose an unreasonable barrier to credit risk management and mitigation by the RTOs/ISOs.³⁰

20. To minimize the costs of mutualized defaults and ensure just and reasonable rates, we preliminarily find that tariff provisions that limit sharing credit-related information among other RTOs/ISOs limits the ability of an RTO/ISO to perform accurate credit assessments to limit the likelihood of defaults in its marketplace and to mitigate such defaults. Limits on sharing this information may cause unnecessary costs to be incurred by non-defaulting market participants resulting in rates that are unjust and unreasonable. Given the role RTOs/ISOs play in protecting organized wholesale electric markets from the risks of mutualized default, we preliminarily find that these tariff provisions are unjust or unreasonable.

IV. Proposal

21. To address RTOs'/ISOs' access to credit-related information, we propose to amend the Commission's regulations to require RTOs/ISOs to include in their OATTs provisions that permit them to share market participants' credit-related information with other RTOs/ISOs for the purpose of credit risk management and mitigation. We also propose to permit the receiving RTO/ISO to use market participant credit-related information received from another RTO/ISO to the same extent and for the same purposes that the receiving RTO/ISO may use credit-related information

collected from its own market participants.

22. These tariff provisions would allow RTOs/ISOs to share a range of credit-related information, such as the following: (1) lists of market participants with positions in that market; (2) reports and metrics around risk and credit exposures; (3) disclosure that a market participant or affiliate has defaulted on any of its financial or contractual obligations, failed to pay invoices on a timely basis, or failed to meet a collateral call; (4) information regarding a market participant's or its affiliate's unresolved credit/collateral issues; (5) information indicating that a market participant or its affiliate has an increased risk of default, such as instances where a market participant or its affiliate has experienced a material adverse condition or material adverse change under an RTO/ISO OATT or related agreement; and (6) any other information on a market participant or its affiliate that indicates a possible material adverse change in creditworthiness or financial status or an unreasonable credit risk. We seek comment on what restrictions, if any, there should be on the types of credit-related information that may be shared between RTOs/ISOs.

23. We also preliminarily find that an RTO's/ISO's sharing of a market participant's credit-related information with another RTO/ISO must not be conditioned on the consent of the market participant. As discussed above, current tariff provisions implicitly impose this barrier to credit-related information sharing, and we believe that this barrier is unjust and unreasonable. As IRC argues, a market participant facing financial difficulty would have little incentive to consent to credit-related information sharing.³¹ Under our proposal, RTOs/ISOs would not be required to notify market participants before sharing credit-related information with another RTO/ISO. Instead, under our proposal, the RTOs'/ISOs' OATTs as revised would provide notice that credit-related information could be shared on a confidential basis with other RTOs/ISOs for the purpose of credit risk management and mitigation. We agree with IRC that permitting RTOs/ISOs to share credit-related information without their having to obtain a market participant's consent or to provide notice would facilitate expeditious information sharing and would thus allow for improved risk mitigation.³²

24. To properly manage credit risk, reduce the likelihood of credit defaults, protect non-defaulting market participants, and minimize mutualized default risk, RTOs/ISOs currently (1) monitor and analyze credit-related information on an ongoing basis, and (2) use available credit-related information to respond effectively to negative credit events. We believe that the reform proposed herein would allow RTOs/ISOs to gain additional visibility into their market participants' financial condition and to administer organized wholesale electric markets more effectively both as part of ongoing "business-as-usual" credit risk management practices and during market or credit events.

25. The RTO/ISO credit departments regularly meet with each other to discuss policies that could reduce credit risks, but they currently do not disclose or discuss issues related to the activities of specific market participants that operate in multiple organized wholesale electric markets.³³ Technical conference panelists stated that an RTO/ISO may benefit simply from the ability to request that another RTO/ISO verify that a market participant has participated appropriately in another organized wholesale electric market.³⁴ We preliminarily find that RTOs/ISOs would benefit from the ability to discuss the creditworthiness of specific market participants, and permitting RTOs/ISOs to share credit-related information with other RTOs/ISOs will allow these discussions to take place and better inform RTOs/ISOs in the management of credit risk in the organized wholesale electric markets on an ongoing basis.

26. Further, we believe that credit-related information sharing would prove especially useful before, during, and after a credit event.³⁵ The sharing of market participant-specific credit-related information could help RTOs/ISOs prevent or mitigate losses in the event that a market participant experiences financial distress, and potentially prevent default in one organized wholesale electric market from triggering default in another.³⁶ Credit-related information sharing would give RTOs/ISOs better visibility into a market participant's credit standing in other organized wholesale electric markets. This visibility could

²⁹ See, e.g., ISO-NE, Transmission, Markets, and Services Tariff, attach. D (ISO-NE Information Policy) (22.0.0), section 2.1(e) (designating information disclosed by a market participant to satisfy ISO-NE minimum criteria for market participation as Confidential Information in certain circumstances); PJM, Intra-PJM Tariffs, OATT, attach. Q (45.0.0), section III.C (same).

³⁰ At the technical conference, MISO's Chief Financial Officer stated that the MISO OATT prohibits the disclosure of a MISO market participant's financial distress even if that market participant is on the verge of default. See *RTO/ISO Credit Principles and Practices*, Technical Conference, Docket No. AD21-6-000, et al., Tr. 116:6-10 (Brown) (Feb. 25, 2021).

³¹ IRC Comments at 7.

³² *Id.*

³³ *RTO/ISO Credit Principles and Practices*, Technical Conference, Docket No. AD21-6-000, et al., Tr. 106:3-24 (Bloczynski) (Feb. 25, 2021).

³⁴ *Id.* at Tr. 110:12-22 (Prevratil); *id.* at Tr. 111:19-23 (Bloczynski).

³⁵ See *id.* at Tr. 117:5-13 (Brown) (emphasizing the potential value in sharing credit-related information during credit events).

³⁶ *Id.* at Tr. 106:21-24 (Bloczynski).

allow RTOs/ISOs to take action to protect non-defaulting market participants in their own markets from costs associated with potential and actual defaults, such as restricting market activity in response to negative credit events in other markets.

27. Because credit events can develop rapidly³⁷ and we cannot anticipate every potential credit event³⁸ or factor that may call for the sharing of credit-related information, we propose to provide each RTO/ISO with the discretion to share credit-related information as it sees fit. An RTO/ISO would have discretion as to what credit-related information it chooses to provide to other RTOs/ISOs and under what circumstances and on what timeline it chooses to do so. However, we expect that RTOs/ISOs would use reasonable efforts to respond expeditiously to reasonable requests for credit-related information from other RTOs/ISOs. We seek comment on whether RTOs'/ISOs' discretion in sharing market participant credit-related information with each other should be limited in any specific ways or to any specific circumstances.

28. The proposal would not change the existing discretion an RTO/ISO has to act on credit-related information, regardless of the source of that information. This approach is consistent with the Commission's past precedent to provide RTOs/ISOs discretion in matters of creditworthiness.³⁹ The discretion provided to RTOs/ISOs in managing negative credit events is not unfettered, and the regulation we propose would clarify that the receiving RTO/ISO can use market participant credit-related information received from another RTO/ISO to the same extent and for the same purposes that the receiving RTO/ISO may use credit-related information collected from its own market participants. We seek comment on whether RTOs'/ISOs' discretion in acting on market participant credit-related information it receives from another RTO/ISO be limited in any specific ways or under any specific circumstances.

29. Further our proposed regulation would require that an RTO/ISO that

receives credit-related information from another RTO/ISO keep confidential that credit-related information as it would any other credit-related information received directly from one of its own market participants. We preliminarily find that this would ensure that all market participants' credit-related information would continue to be safeguarded by an RTO/ISO in accordance with the confidentiality protections of the receiving RTO's/ISO's OATT.

30. At the technical conference, panelists expressed concerns about the confidentiality protections of shared credit-related information.⁴⁰ Additionally, a commenter expressed concern about using market-related events as the triggering factor for information sharing as it could exacerbate the event by burdening the market participants and RTO/ISO staff.⁴¹ To address such concerns, we seek comment on any additional restrictions that should be placed on RTOs/ISOs in their management and use of credit-related information obtained through sharing or the types of credit-related information that could be shared.

31. We clarify that we are not proposing that RTOs/ISOs be required to adopt IRC's proposed tariff language. Instead, we propose that each RTO/ISO would submit a compliance filing that would be consistent with a final rule in this proceeding. In that filing, the RTO/ISO would propose revisions to their OATTs or other governing documents that would permit credit-related information sharing as provided in the final rule. We also seek comment on whether 60 days after the effective date of any final rule is sufficient time to develop new tariff language in response to a potential final rule on credit-related information sharing.

32. We clarify that our proposal here would permit but not require RTOs/ISOs to share credit-related information with other RTOs/ISOs. As discussed above, an RTO/ISO would retain the discretion on whether to share credit-related information. This approach addresses the problem identified at the technical conference and in post-conference comments: that RTOs/ISOs may be constrained by the

confidentiality provisions of each RTO's/ISO's OATT from sharing credit-related information with each other. By relying on the discretion of RTOs/ISOs, this proposal would allow RTO/ISO credit departments to share credit-related information without the potential burden of reporting requirements.

33. While we believe the structure proposed herein is a just and reasonable approach, we acknowledge the potential benefits of adopting requirements that RTOs/ISOs share credit-related information with other RTOs/ISOs. Adopting requirements that RTOs/ISOs share credit-related information with other RTOs/ISOs could potentially ensure a baseline sharing of credit-related information, which may reduce the financial losses to non-defaulting market participants during credit events. In particular, RTOs/ISOs may be able to mitigate or even prevent credit events if they obtain more complete credit-related information about market participants prior to any credit event, and mandatory credit-related information sharing could increase the likelihood that RTOs/ISOs have that more complete information available. Accordingly, we seek comment on whether the Commission should adopt requirements that RTOs/ISOs share credit-related information with other RTOs/ISOs on a routine basis (*e.g.*, monthly sharing of a list of market participants), in certain circumstances (*e.g.*, when a market participant misses a collateral call), or upon the request of another RTO/ISO, as well as any proposals on the frequency or timeliness of such sharing. We seek comment on the types or categories of credit-related information that might be included in any sharing requirement. In particular, we seek comment on whether and, if so, how to require sharing of the categories of information discussed above.⁴²

34. While we recognize the potential benefits of requiring RTOs/ISOs to share credit-related information, we also acknowledge the potential burdens that may accompany such an approach. For example, some rules could diminish the flexibility an RTO/ISO has to respond to a dynamic credit-related event. Other rules may require RTOs/ISOs to expend additional resources on credit risk management, which could raise costs or impose additional burdens on both RTOs/ISOs and market participants.⁴³ Accordingly, we also seek comment on the benefits and burdens (if any) of any

³⁷ *Id.* at Tr. 105:14–16 (Seghesio).

³⁸ For purposes of this notice of proposed rulemaking (NOPR), "credit event" means any type of event that could affect a market participants' credit standing.

³⁹ See, *e.g.*, *N.Y. Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,054, at P 30 (2020) ("We agree with NYISO that the proposed tariff language will allow NYISO the reasonable discretion to evaluate individual facts and circumstances, as necessary, to protect the NYISO-administered markets without limiting NYISO to act only in specific scenarios of increased credit risk enumerated in the tariff").

⁴⁰ See *RTO/ISO Credit Principles and Practices*, Technical Conference, Docket No. AD21–6–000, et al., Tr. 103:7–12 (Brown) (Feb. 25, 2021).

⁴¹ ETI Comments at 13 ("If extreme events are the only trigger, the Commission risks burdening market participants and RTO/ISO staff as they manage through those events as well as making the extreme events worse by taking actions that exacerbate the event, such as demanding additional collateral that would halt beneficial market activity.")

⁴² See *supra* P 22.

⁴³ See *RTO/ISO Credit Principles and Practices*, Technical Conference, Docket No. AD21–6–000, et al., Tr. 103:13–17 (Brown) (Feb. 25, 2021).

potential requirements to share credit-related information on RTOs/ISOs and market participants.

35. Finally, we note that the IRC requested that the Commission allow RTOs/ISOs to share credit-related information not only with other RTOs/ISOs, but also with other market operators, such as ERCOT, AESO, and IESO. We recognize that market participants in Commission-jurisdictional organized wholesale electric markets also transact in markets that are not Commission-jurisdictional,⁴⁴ and also commodities and derivative markets that are subject to the jurisdiction of other regulators, including the Commodity Futures Trading Commission.

36. We do not propose herein to require tariff provisions that would allow for credit-related information sharing with markets that are not Commission-jurisdictional, however, because we believe that there are unresolved issues with such a proposal, including how the Commission could ensure the protection of market participants' confidential information in the absence of authority to take remedial action. We seek comment on possible frameworks that would account for jurisdictional limitations while still enabling Commission-jurisdictional RTOs/ISOs to share and receive credit-related information with and from other non-jurisdictional market operators.

V. Information Collection Statement

37. The Office of Management and Budget's (OMB) regulations require approval of certain information collection requirements imposed by agency rules. Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

38. This notice of proposed rulemaking proposes to amend the Commission's regulations pursuant to

section 206 of the Federal Power Act, to permit RTOs/ISOs to share among themselves credit-related information about market participants in organized wholesale electric markets. To accomplish this, the Commission proposes to require RTOs/ISOs to adopt tariff revisions reflecting this reform. Such filings would be made under Part 35 of the Commission's regulations.

39. The Commission is submitting these reporting requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act. Comments are solicited on whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques.

40. Please send comments concerning the collection of information and the associated burden estimates to: Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Federal Energy Regulatory Commission. Due to security concerns, comments should be sent electronically to the following email address: oir_submission@omb.eop.gov. Comments submitted to OMB should refer to OMB Control No. 1902-[TBD].

41. Please submit a copy of your comments on the information collection to the Commission via the eFiling link on the Commission's website at <http://www.ferc.gov>. If you are not able to file comments electronically, please send a copy of your comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426. Comments on the information collection that are sent to FERC should refer to Docket No. RM22-13-000.

42. *Title:* Credit-Related Information Sharing in Organized Wholesale Electric Markets.

43. *Action:* Proposed collection of information in accordance with RM22-13-000.

44. *OMB Control No.:* 1902-[TBD].

45. *Respondents for this Rulemaking:* RTOs/ISOs.

46. *Frequency of Information Collection:* One-time compliance filing and ongoing information sharing (the latter information would not be submitted to the Commission).

47. *Necessity of Information:* The proposed rule will require that RTOs/ISOs submit to the Commission a one-time compliance filing proposing tariff revisions. Additionally, RTOs/ISOs will be permitted to share credit related information among themselves to improve their ability to accurately assess market participants' credit exposure and risks related to their activities across organized wholesale electric markets.

48. *Internal Review:* The Commission has reviewed the changes and has determined that such changes are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry in support of the Commission's ensuring just and reasonable rates. The Commission has specific, objective support for the burden estimates associated with the information collection requirements.

49. The Commission's estimate contains two sub-estimates regarding burden and cost. One estimate is for the one-time compliance filing that will be submitted to the Commission by RTOs/ISOs for the purpose of revising or amending their tariffs to allow credit-related information sharing, as outlined in this proposal. The second estimate is of the ongoing costs associated with RTOs/ISOs sharing credit-related information with each other.⁴⁵

50. The Commission estimates burden⁴⁶ and cost⁴⁷ as follows:

⁴⁵ **Note:** The information sharing between RTOs/ISOs will not be submitted to the Commission; the estimate reflects the time and resources required for individual RTOs/ISOs to share information with one another.

⁴⁶ "Burden" is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the estimated burden, refer to 5 CFR 1320.3.

⁴⁷ Commission staff estimates that the respondents' skill set (and wages and benefits) for Docket No. RM22-13-000 are comparable to those of Commission employees. Based on the Commission's Fiscal Year 2021 average cost of \$180,703/year (for wages plus benefits, for one full-time employee), \$87.00/hour is used.

⁴⁴ For example, the default and bankruptcy of the Brazos Electric Power Cooperative in ERCOT after Winter Storm Uri resulted in claimed losses of \$9,757,536 by MISO in February 2021. *Brazos Elec. Power Coop. Inc.*, No. 4:21-BK-30725 (Bankr. S.D. Tex.).

A. Collection	B. Number of respondents	C. Annual number of responses per respondent	D. Total number of responses (Column B × Column C)	E. Average burden hrs. & cost per response	F. Total annual hr. burdens & total annual cost (Column D × Column E)	G. Cost per respondent (Column F ÷ Column B)
RTO/ISOs (one-time compliance filing) ⁴⁸ .	6	1	6	25 hrs.; \$2,175	150 hrs.; \$13,050.	\$2,175
RTO/ISOs (ongoing information sharing) ⁴⁹ .	6	2	12	4 hrs.; \$348	48 hrs.; \$4,176	\$696
Totals	—	198 hrs.; \$17,226.	—

VI. Environmental Analysis

51. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.⁵⁰ We conclude that neither an Environmental Assessment nor an Environmental Impact Statement is required for this NOPR under section 380.4(a)(15) of the Commission’s regulations, which provides a categorical exemption for approval of actions under sections 205 and 206 of the FPA relating to the filing of schedules containing all rates and charges for the transmission or sale of electric energy subject to the Commission’s jurisdiction, plus the classification, practices, contracts and regulations that affect rates, charges, classifications, and services.⁵¹

VII. Regulatory Flexibility Act Analysis

52. The Regulatory Flexibility Act of 1980 (RFA)⁵² generally requires a description and analysis of proposed and final rules that will have significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) sets the threshold for what constitutes a small business. Under SBA’s size standards,⁵³ RTOs/ISOs fall under the category of Electric Bulk Power Transmission and Control (North American Industry Classification System (NAICS) code

221121), with a size threshold of 500 employees (including the entity and its associates).⁵⁴

53. The six RTOs/ISOs (SPP, MISO, PJM, ISO-NE, NYISO, and CAISO) each employ more than 500 employees and are not considered small.

54. According to SBA guidance, the determination of significance of impact “should be seen as relative to the size of the business, the size of the competitor’s business, and the impact the regulation has on larger competitors.”⁵⁵ We do not consider the estimated costs of the proposals in this NOPR to be a significant economic impact. As a result, we certify that the proposals in this NOPR will not have a significant economic impact on a substantial number of small entities.

VIII. Comment Procedures

55. The Commission invites interested persons to submit comments on the matters and issues addressed and the regulation proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due October 7, 2022; reply comments are due November 7, 2022. Comments must refer to Docket No. RM22–13–000, and must include the commenter’s name, the organization they represent, if applicable, and their address in their comments. All comments will be placed in the Commission’s public files and may be viewed, printed, or downloaded

remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

56. The Commission encourages comments to be filed electronically via the eFiling link on the Commission’s website at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word processing software must be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

57. Commenters that are not able to file comments electronically may file an original of their comment by USPS mail or by courier-or other delivery services. For submission sent via USPS only, filings should be mailed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426. Submission of filings other than by USPS should be delivered to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

IX. Document Availability

58. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission’s Home Page (<http://www.ferc.gov>). At this time, the Commission has suspended access to the Commission’s Public Reference Room due to the President’s March 13, 2020 proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19).

59. From the Commission’s Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary,

⁴⁸The Commission’s hourly and cost estimates for the one-time compliance filing assumes that each RTO/ISO would need to develop and file tariff revisions with the Commission.

⁴⁹The Commission does not know the extent of information sharing that would occur in this proposed rule but estimates that information sharing may occur roughly twice per year on average, per RTO/ISO. The Commission invites comment by affected entities if they believe the estimate is unreasonable.

⁵⁰ *Reguls. Implementing the Nat’l Envnt’l Pol’y Act*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

⁵¹ 18 CFR 380.4(a)(15).

⁵² 5 U.S.C. 601–612.

⁵³ 13 CFR 121.201.

⁵⁴ The RFA definition of “small entity” refers to the definition provided in the Small Business Act, which defines a “small business concern” as a business that is independently owned and operated and that is not dominant in its field of operation. The Small Business Administrations’ regulations at 13 CFR 121.201 define the threshold for a small Electric Bulk Power Transmission and Control entity (NAICS code 221121) to be 500 employees. See 5 U.S.C. 601(3) (citing section 3 of the Small Business Act, 15 U.S.C. 632).

⁵⁵ U.S. Small Business Administration, “A Guide for Government Agencies How to Comply with the Regulatory Flexibility Act,” at 18 (May 2012), https://www.sba.gov/sites/default/files/advocacy/rfaqguide_0512_0.pdf.

type the docket number excluding the last three digits of this document in the docket number field.

60. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission.

Issued: July 28, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

In consideration of the foregoing, the Commission proposes to amend part 35, subpart J, title 18, Code of Federal Regulations, as follows:

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

■ 1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. Amend § 35.47 by adding paragraph (h) to read as follows:

§ 35.47 Tariff provisions regarding credit practices in organized wholesale electric markets.

* * * * *

(h) Permit the sharing of market participant credit-related information with, and receipt of market participant credit-related information from, other organized wholesale electric markets for the purpose of credit risk management and mitigation, provided such market participant credit-related information is treated upon receipt as confidential under the terms for the confidential treatment of market participant information set forth in the tariff or other governing document of the receiving organized wholesale electric market; and permit the receiving organized wholesale electric market to use market participant credit-related information received from another organized wholesale electric market to the same extent and for the same purposes that the receiving organized wholesale electric market may use credit-related information collected from its own market participants.

[FR Doc. 2022-16609 Filed 8-5-22; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0652]

RIN 1625-AA00

Safety Zone; Ohio River, Louisville, KY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for all navigable waters of the Ohio River from mile marker (MM) 602.5 to MM 603.5 from 7 p.m. to 1 a.m. on October 24 and 25, 2022. This action is necessary to provide for the safety of life on these navigable waters near Louisville, KY during a film stunt. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Ohio Valley or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before September 7, 2022.

ADDRESSES: You may submit comments identified by docket number USCG–2022–0652 using the Federal Decision Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email MST2 Christopher Roble, U.S. Coast Guard; telephone 502-779-5336, email Christopher.J.Roble@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
MM Mile marker
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On July 22, 2022, Messiah's Star LLC notified the Coast Guard that it will be conducting a film stunt from 7 p.m. on October 24, 2022 to 1 a.m. on October 25, 2022, as part of filming for a film titled “Just One Life.” The stunt is a

controlled fall and is to take place from the Big Four Pedestrian Bridge to the Ohio River below at MM 603. The event will include 3 swimmers, a deck boat, and a houseboat.

The purpose of this rulemaking is to ensure the safety of vessels, stunt crew personnel, and the navigable waters before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone from 7 p.m. on October 24, 2022 to 1 a.m. on October 25, 2022. The safety zone would cover all navigable waters of the Ohio River between MM 602.5 and MM 603.5. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 7 p.m. to 1 a.m. film stunt. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. This safety zone would restrict transit on a one-mile stretch of the Ohio River for 6 hours on one night. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The