

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Electric Creditworthiness Standards

Docket No. AD04-8-000

NOTICE OF TECHNICAL CONFERENCE AND REQUEST FOR WRITTEN
COMMENTS ON CREDIT-RELATED ISSUES FOR ELECTRIC TRANSMISSION
PROVIDERS, INDEPENDENT SYSTEM OPERATORS, AND REGIONAL
TRANSMISSION ORGANIZATIONS

(May 28, 2004)

The Federal Energy Regulatory Commission (Commission) will hold a technical conference to consider, among other things, whether the Commission should institute a generic rulemaking to consider credit-related issues for service provided by jurisdictional Transmission Providers,¹ Independent System Operators (ISO), and Regional Transmission Organizations (RTO). The conference will take place on July 13, 2004 at 9:30 a.m. (EST) in the Commission Meeting Room at the Commission's headquarters, 888 First Street, N.E., Washington, D.C. The conference will be conducted by the Commission's staff but may be attended by members of the Commission. In preparation for the technical conference, the Commission invites all interested parties to submit written comments, addressing the subjects and questions discussed below, on or before June 25, 2004.

Background

While credit policies of regulated utilities have always been a component of the Commission's regulatory agenda, changes in the industry (especially changes in the types of participants in the market) have caused credit-related issues to become increasingly significant. In particular, due to market conditions and price volatility experienced recently within the industry, many participants in competitive energy markets have been subject to downgrades (often below investment grade levels) by credit rating agencies. In fact, some of these market participants have been forced to seek bankruptcy protection from creditors. As a result, credit downgrades have raised the level of concern regarding credit-related risks to Transmission Providers and ISOs/RTOs.² At the same time, certain

¹ For the purposes of this notice, a Transmission Provider is defined as an entity that provides electric transmission service that is neither an ISO nor an RTO.

² Although the Commission recognizes that there is some overlap, credit concerns facing Transmission Providers and ISOs/RTOs differ in important ways. The

(continued)

market participants have alleged that Transmission Providers and ISOs/RTOs have sought excessive levels of credit support from customers and thereby have effectively foreclosed full market participation by competitive entities. In this regard, higher than necessary credit requirements may exacerbate the financial strain on market participants, reducing the amount of participation and liquidity in the market; lower liquidity, in turn, reduces choices for customers and reduces the transparency and competitiveness of the market.

We note that the Commission issued recently the Gas Credit NOPR³ to standardize the creditworthiness provisions in the natural gas industry. In that NOPR, the Commission stated that standardized creditworthiness provisions in the gas industry will promote consistent practices across markets and utilities and provide customers with an objective and transparent creditworthiness evaluation.⁴

With respect to credit-related policy concerns for Transmission Providers in the electric industry, the Commission believes that there may be a lack of transparency in the creditworthiness requirements in the pro forma Open Access Transmission Tariff (OATT);⁵ that is, it does not provide specific credit standards and processes but instead

Commission has noted that the differences between ISOs/RTOs and Transmission Providers warrants different approaches to creditworthiness requirements for these entities. See *Duquesne Light Co.*, 103 FERC ¶ 61,227 P 17 (2003). Recognizing these unique differences and the disparate problems that these entities pose, in this notice, the Commission often treats separately credit concerns regarding Transmission Providers and ISOs/RTOs.

³ See *Creditworthiness Standards for Interstate Natural Gas Pipelines*, 69 Fed. Reg. 8,587 (Feb. 25, 2004), FERC Stats. & Regs., Notice of Proposed Regulations ¶ 32,573 (2004) (Gas Credit NOPR).

⁴ Id.

⁵ *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs. & 31,036 (1996), order on reh'g, Order No. 888-A, 62 Fed. Reg. 12,274 (March 14, 1997), FERC Stats. & Regs. & 31,048 (1997), 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, remanded in part on other grounds sub nom. Transmission Access Policy Study Group, et al. v. FERC, 225 F.3d 667 (D.C. Cir. 2000), aff'd sub nom. New York v. FERC, 535 U.S. 1 (2002).

only requires that Transmission Providers utilize “reasonable credit review procedures” and that such “review shall be made in accordance with standard commercial practices.” As a result, the Commission believes that the credit policies of Transmission Providers may contain differing or unclear credit requirements for customers. Therefore, we seek comment (as discussed further in the questions below) on whether the Commission should consider a similar course for the electric industry as the one it took in relation to the gas industry in the Gas Credit NOPR (*i.e.*, implement standardized and comprehensive tariff-based creditworthiness procedures).

As for credit-related policy issues in the context of ISOs/RTOs, the Commission believes that there are ways to reduce credit/default exposure in those markets.⁶ We note that ISOs/RTOs are typically non-profit entities that administer the market on behalf of market participants. As such, in ISO/RTO markets credit is collectively extended by market participants to each individual market participant. Therefore, if one market participant defaults, it falls upon the remaining participants to make up the shortfall (*i.e.*, the default risk is mutualized). Although we recognize that some ISO/RTO markets use instruments such as insurance to reduce this risk, such instruments are expensive and the ultimate responsibility still lies with market participants. Accordingly, the Commission seeks comment on (as discussed further in the questions below) ways to reduce credit exposure and minimize mutualized default risk in ISO/RTO markets.

Although up to this point the Commission has treated various credit-related issues in this notice as only being applicable to either Transmission Providers or ISOs/RTOs, the Commission believes, as discussed further below, that there may be credit-related solutions that are potentially applicable to both Transmission Providers and ISOs/RTOs.

To address the concerns discussed above, the Commission is holding a technical conference, and information gathered from that conference will be of material use to the Commission in understanding the range of issues regarding credit requirements in the electric industry. In addition, in order to assist the Commission in its preparation for that conference, the Commission invites all interested persons to submit written comments on any of the subjects discussed above, the specific questions posed below, or other issues

⁶ For example, the Commission recently approved a New England Power Pool (NEPOOL) filing that revises its existing financial assurance and billing policies to implement a weekly billing and payment system for charges in NEPOOL’s hourly markets, which by significantly decreasing the billing and settlement period reduces the amount of collateral required from market participants and the exposure of NEPOOL to a default by market participants. See New England Power Pool, Docket No. ER04-697-000.

related to credit requirements in the electric industry.

Questions For Comment

The Commission seeks comments on the following questions:

A. Questions Regarding Transmission Providers:

1. Should credit requirements for wholesale electric transmission services be standardized?
2. Do the existing OATTs and/or credit policies of Transmission Providers contain either unreasonable or unclear requirements for customers?
3. Does the pro forma OATT provide sufficient transparency with regard to credit requirements? If not, what problems are caused from that lack of transparency? What changes to the pro forma OATT would be appropriate to consider as a remedy to better facilitate access to markets and therefore market participation?
4. Should the Commission establish creditworthiness standards for the electric industry similar to those that it proposed in the Gas Credit NOPR? What are the relevant differences between the gas and electric industries that need to be taken into account?
5. For the purpose of credit standards, does it matter who the market participant is (e.g., are there different standards for financial institutions as opposed to municipal entities)?

B. Questions Regarding ISOs/RTOs:

6. Are credit requirements and costs related to creditworthiness negatively impacting market participation in ISO/RTO markets and liquidity levels?
7. What cost-effective steps can be taken to minimize exposure to risk among market participants (e.g., shortening settlement periods, or evaluating credit on a net obligation basis)?
8. Are there elements of existing market rules that can be improved to reduce unnecessary credit requirements?

9. How can the mutualized default risk in ISOs/RTOs be reduced?
10. How can barriers to entry, if there any, be minimized, while preserving adequate collateral to protect markets?
11. For the purpose of credit standards, does it matter who the market participant is (e.g., are there different credit standards for investor owned participants with physical assets, financial institutions, and municipal entities)?
12. How should a load serving entity that is the provider of last resort be treated in the event of a default?
13. Is there a need to allow for regional variations among RTOs/ISOs with regard to credit policies? If so, what level of standardization may be achieved?

C. Questions regarding credit-related solutions with potential applicability to Transmission Providers and/or ISO/RTO markets:

14. Can clearing be applied to the electricity industry with respect to Transmission Providers and/or non-ISO/RTO markets, as it has been in other sectors (for instance, equity and fixed income clearing is performed by the Depository Trust Clearing Corporation for trading on the New York Stock Exchange, American Stock Exchange, and NASDAQ)? If so, what type of new or existing entity would provide the clearing services and does it need to be granted a franchise monopoly for any or all of its services?
15. What options are available to either insure or otherwise outsource risks currently self-insured or mutualized by market participants (e.g., insurance, credit default swaps)?
16. What are the benefits and costs of the preceding credit-related solutions (i.e., clearing and insurance) or other such solutions? Are they cost-effective? How would the benefits and costs of these solutions be allocated?

Public Comment Information

As discussed, in preparation for the technical conference, the Commission invites interested persons to submit written comments on the matters and issues raised in this notice, including any related matters or alternative proposals that commenters may wish to discuss. All written comments should be submitted on or before June 25, 2004. We are hereby establishing a proceeding, Docket No. AD04-8-000, to provide an opportunity for all interested persons to submit comments, and all future actions with respect to the technical conference will also be taken under that docket.

All comments should include an executive summary; the summary should not exceed two pages and the comments should not exceed fifteen pages. In addition, if answering a specific question in paragraph eight of this notice, please identify the number of that question. To conserve time and avoid unnecessary expense, persons with common interests or views are encouraged to submit joint comments. Comments related to this proceeding may be filed in paper format or electronically. However, the Commission strongly encourages electronic filings. Those filing electronically do not need to make a paper filing.

Documents filed electronically via the Internet can be prepared in a variety of formats, including MS Word, Portable Document Format, Real Text Format, or ASCII format, as listed on the Commission's web site at <http://www.ferc.gov>, under the e-Filing link. The e-Filing link provides instructions for how to Login and complete an electronic filing. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of comments.

For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426.

All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, N.E., Washington D.C. 20426, during regular business hours. In addition, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the eLibrary link.

Conference Information

As noted, upon evaluation of the comments requested herein, the Commission will hold a technical conference open to all interested persons. The technical conference will be held on July 13, 2004 at 9:30 a.m. (EST) in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C.

There is no charge to attend the conference and no requirement to register in advance for the conference. The conference will be transcribed. Those interested in acquiring the transcript should contact Ace Reporters at 202-347-3700 or 800-336-6646. Transcripts will be placed in the public record ten days after the Commission receives them.

Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, by phone or via satellite. Persons interested in receiving the broadcast or who need information on making arrangements should contact David Reininger or Julia Morelli at Capitol Connection (703-993-3100) as soon as possible or visit the Capitol Connection website at <http://www.capitolconnection.org> and click on "FERC."

Interested parties are urged to watch for further notices providing more information on the conference. You may register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new issuances and filings related to this docket. For additional information please contact Eugene Grace, 202-502-8543 or by email at eugene.grace@ferc.gov.

Magalie R. Salas
Secretary