

138 FERC ¶ 61,183  
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 No. ER11-3972-002

ORDER ACCEPTING COMPLIANCE FILING

(Issued March 15, 2012)

1. On November 29, 2011, PJM Interconnection, L.L.C. (PJM) submitted a filing in compliance with the Commission's September 15, 2011 order in the captioned docket.<sup>1</sup> The Initial Compliance Order accepted the revised tariff sheets subject to further compliance filing, to be effective October 1, 2011. PJM's proposed revisions in compliance with the Initial Compliance Order are accepted, effective December 13, 2011, as requested.

**I. Background**

2. In Order No. 741, the Commission adopted reforms to strengthen the credit policies used in organized wholesale electric power markets.<sup>2</sup> 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,<sup>3</sup> 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

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<sup>1</sup> *PJM Interconnection, L.L.C.*, 136 FERC ¶ 61,190 (2011) (Initial Compliance Order).

<sup>2</sup> *Credit Reforms in Organized Wholesale Electric Markets*, Order No. 741, FERC Stats. & Regs. ¶ 31,317 (2010), *order on reh'g*, Order No. 741-A, FERC Stats. & Regs. ¶ 31,320 (2011), *order denying reh'g*, Order No. 741-B, 135 FERC ¶ 61,242 (2011).

<sup>3</sup> 16 U.S.C. §§ 824d, 824e (2006).

equivalent markets, clarification of legal status to continue the netting and set-off of transactions in the event of bankruptcy,<sup>4</sup> 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.

3. In PJM's initial compliance filing, PJM filed proposed revisions to the PJM Open Access Transmission Tariff (Tariff) in response to the directives in Order Nos. 741 and 741-A.<sup>5</sup> The proposed revisions modified the 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. PJM also provided explanations of how its Tariff already satisfied the other requirements of Order No. 741 because it reflects (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)<sup>6</sup> are forms of unsecured credit, it excluded them from these requirements.

4. PJM's proposed minimum criteria for market participation were composed of both minimum capitalization requirements and risk management and verification

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<sup>4</sup> PJM Settlement, Inc. (PJMSettlement) was established to act as the counterparty to transactions occurring in PJM's markets. *See PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,207 (2010).

<sup>5</sup> June 30, 2011 Filing.

<sup>6</sup> PJM explained in its June 30, 2011 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 larger sell position would offset its default by virtue of the netting of the offsetting obligations. *See* Section II.C. of Attachment Q; Section IV.E. of Attachment Q.

requirements. Under the risk management and verification requirements, a market 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. The risk management and verification requirements were tiered such that an FTR Participant<sup>7</sup> 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,<sup>8</sup> but would be subject to more extensive requirements.

5. In the Initial 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. However, the Commission required PJM to develop a compliance verification process to independently verify that risk management policies and procedures are actually being implemented and that adequate capitalization is being maintained.<sup>9</sup> Further, the Commission directed PJM to clarify paragraph 3.a of the Certification Form,<sup>10</sup> amend its Tariff to include seller credit in the \$50 million cap on unsecured credit,<sup>11</sup> and eliminate the use of seller credit in the FTR markets.<sup>12</sup>

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<sup>7</sup> PJM proposed in the June 30, 2011 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.”

<sup>8</sup> Paragraph 3.b requires a Participant to represent, among other things, that it values its FTR positions and engages in a probabilistic assessment of the hypothetical risk of such positions on no less than a weekly basis, conducted by persons independent from those trading in PJM markets using industry-accepted valuation methodologies, and to provide PJMSettlement with its written FTR risk management policies and procedures.

<sup>9</sup> Initial Compliance Order, 136 FERC ¶ 61,190 at PP 112-113 (citing Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 131).

<sup>10</sup> *Id.* PP 118-119. The attestations in PJM’s Certification Form are set forth as Appendix 1 to Attachment Q.

<sup>11</sup> *Id.* P 22.

## **II. Notice of Filing and Responsive Pleadings**

6. Notice of PJM's Filing was published in the *Federal Register*, 76 Fed. Reg. 76,393 (2011), with interventions and protests due on or before December 20, 2011. Exelon Corporation filed a motion to intervene. Motions to intervene and protest were timely filed by Morgan Stanley Capital Group Inc., Macquarie Energy LLC and DB Energy Trading LLC (collectively, Indicated Participants); Financial Institutions Energy Group (FIEG); and American Electric Power Company, Inc., Dayton Power & Light Company, Exelon Corporation, PJM Industrial Customer Coalition, J.P. Morgan Ventures Energy Corporation, Shell Energy North America (US), L.P., and Vitol Inc. (collectively, AEP). On January 3, 2012, City Power Marketing LLC, Great Bay Energy LLC, Monterey MA LLC, SESCO Enterprises LLC, and XO Energy MA LP (Financial Marketers) filed an answer to AEP's protest. City Power Marketing LLC, Monterey MA LLC, and SESCO Enterprises LLC also moved to intervene out-of-time. On January 4, 2012, PJM filed an answer to the protests.

## **III. Discussion**

### **A. Procedural Matters**

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene serve to make those entities that filed them parties to this proceeding.

8. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,<sup>13</sup> the Commission will grant City Power Marketing LLC, Monterey MA LLC, and SESCO Enterprises LLC's late-filed motions to intervene given their interest in the proceeding, the early stage of this compliance proceeding, and the absence of undue prejudice or delay.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure<sup>14</sup> prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We will accept Financial Marketers' and PJM's answers because they have aided us in our decision-making.

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<sup>12</sup> *Id.* P 26.

<sup>13</sup> 18 C.F.R. § 385.214(d) (2011).

<sup>14</sup> 18 C.F.R. § 385.213(a)(2) (2011).

## **B. Substantive Matters**

### **1. Attachment Q: Risk Management and Verification**

10. In the Initial Compliance Order, the Commission directed PJM to establish periodic compliance verification to minimize risk to the market.<sup>15</sup> The Commission found that the annual execution by a market participant of the certification “is insufficient to ensure the protection of the markets from risks posed by under capitalized market participants or those who do not have adequate risk management procedures in place.”<sup>16</sup> The Commission explained that a “market participant officer-certified form that attests to the existence of risk management policies and procedures . . . does not by itself satisfy [this] criterion without independent verification that risk management policies and procedures are actually being implemented.” The Commission explained that it was not mandating a particular form of periodic verification, but that “such a periodic verification could include periodic review of risk management policies, practices, and procedures, and their implementation, conducted on a random basis or directed to certain market participants based on identified risk.”<sup>17</sup>

#### **a. Filing**

11. PJM proposes to revise section Ia.A (Risk Management and Verification) of Attachment Q to the Tariff to set forth a periodic compliance verification process in which PJMSettlement may select participants for review on a random basis and/or based on identified risk factors. If selected for review, PJMSettlement will review and verify the participant’s risk management policies, practices, and procedures pertaining to the participant’s activities in the PJM markets. Proposed section Ia.A provides that the review will include verification that (1) the risk management framework is documented in a risk policy addressing market, credit and liquidity risks; (2) the participant maintains an organizational structure with clearly defined roles and responsibilities that clearly segregates trading and risk management functions; (3) there is clarity of authority specifying the types of transactions into which traders are allowed to enter; (4) the participant has requirements that traders have adequate training relative to their authority in the systems and PJM markets in which they transact; (5) as appropriate, risk limits are in place to control risk exposures; (6) reporting is in place to ensure that risks and exceptions are adequately communicated throughout the organization; (7) processes are

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<sup>15</sup> Initial Compliance Order, 136 FERC ¶ 61,190 at P 113.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* P 113, n.98.

in place for qualified independent review of trading activities; and (8) as appropriate, there is periodic valuation or mark-to-market of risk positions. PJM explains that each item listed in section Ia.A has a corresponding element in the Certification Form.<sup>18</sup> Proposed section Ia.A further provides that, if a third-party industry association publishes principles or best practices relating to risk management in PJM-type markets, PJMSettlement may apply them in determining the sufficiency of the participant's risk controls, after stakeholder discussion and with no less than six months prior notice to stakeholders.

12. Proposed section Ia.A states that once PJMSettlement selects a participant for review, the participant has 14 calendar days to provide a copy of its current governing risk control policies, procedures, and controls applicable to its PJM market activities and further information or documentation regarding the participant's activities in the PJM markets as requested. The proposed provision states that PJMSettlement will annually randomly select for review no more than 20 percent of the participants in each member sector, and if PJMSettlement randomly selects a participant for the verification review process and verifies the participant satisfactorily, it will be excluded from random selection for the subsequent two years.

13. Proposed section Ia.A further states that each selected participant's continued eligibility to participate in the PJM markets is conditioned upon PJMSettlement notifying the participant of successful completion of the verification process. If PJMSettlement notifies the participant in writing that it could not successfully complete the verification process, the participant has 14 calendar days to provide sufficient evidence for the verification before PJMSettlement declares the participant to be ineligible to participate in the PJM markets. In such cases, the proposed provision explains that PJMSettlement will notify the participant in writing that it is ineligible to continue participating in the PJM markets, including an explanation why PJMSettlement could not complete the verification. However, if a participant demonstrates to PJMSettlement that it has filed with the Commission an appeal of PJMSettlement's verification determination, the participant will retain transaction rights pending the outcome of the participant's appeal.

#### **b. Protests**

14. FIEG and Indicated Participants argue that the Commission should exempt from verification requirements any market participant whose PJM market-related risk management practices are subject to the regulation, supervision, and audit of certain

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<sup>18</sup> Compliance Filing at 6-7.

banking regulators.<sup>19</sup> They argue that the regulation undertaken by such banking regulators is more sophisticated and comprehensive than that which PJMSettlement will conduct, and therefore should suffice for a determination by PJM/PJMSettlement that the necessary risk policies and procedures are implemented. FIEG adds that the Commission has granted regulated entities certain limited exemptions from Commission regulation because they are subject to oversight by the Federal Reserve Board and other banking regulators.<sup>20</sup> FIEG and Indicated Participants assert that the risk management processes proposed by PJM would be duplicative, result in unnecessary costs for both PJM and market participants that outweigh the benefits and create the possibility of conflicting regulation.

15. Indicated Participants generally support PJM's random verification approach as it will help eliminate unnecessary administrative burdens and costs resulting from multiple verifications of the same market participant during approximately the same time period.<sup>21</sup> However, Indicated Participants request that the Commission direct PJM to adopt the following approach as to the frequency of verification: (1) once verified, a market participant will be deemed to have satisfied any verification requirements on the condition that the market participant notify PJM of any material modifications to its risk management policies and procedures; and (2) PJM will consider successful verification by another RTO or ISO that applies substantively similar evaluation criteria as satisfying any applicable verification requirement by PJMSettlement. Indicated Participants argue that, other than the reasons listed, there is no cognizable reason to require additional verification of a market participant. Furthermore, Indicated Participants assert that the evaluation criteria set forth in Attachment Q are substantially similar so that PJM could reasonably rely on a verification determination by another RTO or ISO. They argue that any duplicative verification is counterproductive and unnecessary, and should be avoided.

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<sup>19</sup> FIEG refers to the Federal Reserve Board as well as the Office of the Comptroller of the Currency as examples of such banking regulators. FIEG Protest at 3 & n.7 (citing *UBS AG*, 105 FERC ¶ 61,078, at P 8 n.6 (2003)). Indicated Participants refer to the Federal Reserve Board, or similar foreign regulator, that complies with applicable Basel Standards and/or certain exchange risk requirements. Indicated Participants Protest at 3.

<sup>20</sup> *Id.* at 6 (citing *Transactions Subject to Section 203 of the Federal Power Act*, Order No. 669, FERC Stats. & Regs. ¶ 31,200 (2005), *order on reh'g*, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214, *order on reh'g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 (2006)).

<sup>21</sup> *Id.* at 5.

16. Indicated Participants also argue that the Commission should direct PJM to clarify that PJMSettlement will include a written explanation of why it is unable to complete the verification when it first notifies the market participants of a deficiency in verification and before the cure period begins.<sup>22</sup> They explain that, without a written explanation, a market participant will be unable to effectively respond with additional evidence or properly characterize the basis of any appeal to the Commission. In addition, Indicated Participants contend that PJM should revise Attachment Q to provide a market participant that receives a negative determination regarding verification with at least an additional 14 days from the date the relevant cure period expires to appeal the negative determination to the Commission. They explain that a market participant will have to file an appeal with the Commission as soon as it receives an initial negative determination notice, regardless of whether the market participant is confident that it can address the concerns identified and receive its verification prior to expiration of the cure period. To avoid unnecessary appeals and to provide market participants with certainty, Indicated Participants argue that the Commission should direct PJM to modify Attachment Q to allow for this additional time to file an appeal with the Commission.

17. AEP requests that the Commission require PJM to adopt alternative Attachment Q language<sup>23</sup> that was unanimously approved by the PJM Members Committee on November 22, 2011. AEP asserts that the Attachment Q language should unambiguously limit the scope of any risk management verification to PJM markets and products, and that there should not be references to private, non-transparent, fee-based groups such as the Committee of Chief Risk Officers or to any risk management criteria such groups develop.

**c. Answer**

18. In its answer, PJM contends that it would be inappropriate for PJM to be precluded from re-verifying a participant unless the participant notifies PJM of a material change in its policies and procedures, as Indicated Participants argue.<sup>24</sup> PJM states that relying on market participants to self-identify risks would defeat the purpose of verifying risk management and would be inconsistent with the Commission's requirement that PJM independently assess when to conduct verification. PJM also states that Indicated Participants' proposal would be inconsistent with the requirement that participants under

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<sup>22</sup> *Id.* at 6-7.

<sup>23</sup> Exhibit A to AEP Protest.

<sup>24</sup> PJM Answer at 8.



paragraph 3.b of the Certification Form resubmit their policies and procedures at least annually.

19. In response to Indicated Participants' assertion that PJM should provide, prior to the end of the 14-day cure period, a written explanation of why PJMSettlement is unable to complete a verification, PJM states that the initial written notification will explain the reasons that PJMSettlement could not successfully complete the verification process.<sup>25</sup> PJM also states that, as a practical matter, the affected market participant and PJM will no doubt engage in further communications during the cure period. Furthermore, PJM states that this discourse need not burden PJM's filed rates, and that the Commission can direct PJM to address this subject through its business rules, if necessary.

20. In response to Indicated Participants' request for an additional 14 days from the date the cure period expires to appeal a negative determination, PJM asserts that such a period is unnecessary because a participant will have received the reasons that PJMSettlement could not complete the verification process in the initial notice and can then determine whether to appeal PJM's determination.<sup>26</sup> To the extent that a participant cures and completes the verification during the 14-day cure period after having filed an appeal with the Commission, PJM states that the participant can always withdraw the filed appeal.

21. PJM asserts that, contrary to AEP's claim, its proposed risk management verification process relates only to PJM markets and products.<sup>27</sup> For example, PJM states that the Tariff language specifies that "PJMSettlement shall review and verify, as applicable, a Participant's risk management policies, practices, and procedures pertaining to the Participant's activities in the PJM markets."<sup>28</sup>

#### **d. Commission Determination**

22. In the Initial Compliance Order, the Commission directed PJM to develop a compliance verification process that will allow it to independently verify that risk management policies and procedures are actually being implemented and that adequate

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<sup>25</sup> *Id.* at 9.

<sup>26</sup> *Id.* at 10.

<sup>27</sup> *Id.* at 7.

<sup>28</sup> *Id.* (citing proposed Attachment Q, section Ia.A).

capitalization is being maintained. We find that PJM's proposed compliance verification process complies with the Initial Compliance Order and is just and reasonable and not unduly discriminatory or preferential and, therefore, we accept the proposal.

23. The Commission rejects FIEG's and Indicated Participants' request for an exemption for market participants that are regulated by banking regulators, such as the Federal Reserve Board, from PJM's compliance verification policies and procedures. In Order No. 741, the Commission directed all RTOs and ISOs to adopt minimum participation criteria, but explicitly left it to each RTO and ISO and its stakeholders to develop minimum participation criteria that are applicable to its markets.<sup>29</sup> In this filing, PJM did not propose to wholly exempt any particular class or group of market participants from the compliance verification process based on their being regulated by banking regulators, and we are not persuaded to require it to adopt such an exemption. As we explained in the Initial Compliance Order, RTOs and ISOs are responsible for administering and otherwise overseeing their markets, and we will not require them to delegate their responsibility to verify compliance with minimum participation criteria to another entity.

24. Similarly, we decline to require PJM to adopt Indicated Participants' proposal regarding when and how often PJM will verify a market participant's compliance with risk management practices and policies. PJM proposes a periodic compliance verification process that allows PJMSettlement to select participants for review on a random basis and/or based on identified risk factors. We find that PJM's proposal is reasonable, and believe that it strikes an appropriate balance between periodically verifying that participants are complying with risk management practices and policies without unduly burdening participants. In addition, Indicated Participants argue that the Commission should direct PJM to recognize successful verification by another RTO or ISO as satisfying its risk management policies. Although the compliance verification processes between RTOs and ISOs may be similar, each RTO and ISO has adopted risk management policies and procedures that are appropriate for its particular market. Thus, we will not require PJM to adopt Indicated Participants' proposal.

25. We will not require PJM to revise its proposal to include an additional 14 days from the date the cure period expires to appeal to the Commission a negative determination. If a market participant disagrees with the PJM's determination, it should have sufficient information to appeal to the Commission at that time. Further, we do expect PJM to explain any deficiencies in a market participant's risk management policies when it notifies the market participant that PJMSettlement is unable to complete

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<sup>29</sup> Order No. 741, FERC Stats. & Regs. ¶ 31,317 at PP 132-133; Order No. 741-A, FERC Stats. & Regs. ¶ 31,320 at P 33.

its verification; PJM represents in its answer that the initial written notification will include such an explanation, and therefore we do not find it necessary to require PJM to clarify this in the Tariff. Instead, we will direct PJM to address this explanation in its business rules.

26. Finally, we will not require PJM to adopt AEP's alternative Attachment Q language. As PJM states, proposed section Ia.A specifies that the periodic compliance verification process relates to "a Participant's risk management policies, practices, and procedures pertaining to the Participant's activities in the PJM markets." Thus, the Tariff already provides that the scope of risk management verification is limited to PJM markets and products. In addition, we are not persuaded that it is necessary to require PJM to remove any Tariff references to a third-party industry association such as the Committee of Chief Risk Officers. PJM's proposed Tariff language merely provides that, if principles or best practices relating to risk management in PJM-type markets are published by a third-party or industry association, PJMSettlement has the option of applying them in determining the sufficiency of a participant's risk controls, but only after stakeholder discussion and with no less than six months' prior notice to stakeholders.<sup>30</sup> While we accept PJM's approach of focusing on activities in PJM's markets as a reasonable approach, our doing so should not be construed as barring an RTO or ISO from proposing tariff provisions that expressly authorize the RTO or ISO to look to activities in other markets as well. As we have acknowledged in a concurrent order on ISO-NE's proposed tariff revisions, the activities of a market participant in equity, debt or commodity markets can affect the risk of a market participant in organized wholesale electric markets.

## **2. Paragraph 3.a of the Certification Form**

27. In the Initial Compliance Order, the Commission found that the tiered nature of PJM's risk management and verification requirements was consistent with Order No. 741 and was not unduly discriminatory. However, the Commission directed PJM to revise paragraph 3.a "to clarify the circumstances under which an entity qualifies for treatment under paragraph 3.a," specifically "to define more clearly what it means to transact 'solely to hedge the congestion risk related to the Participant's physical transactions,' and that FTR positions 'considering both the levels and pathways, are generally proportionate to and appropriate for the Participant's physical transactions as a load serving entity or generation provider.'"<sup>31</sup> The Commission also stated that "PJM should consider whether

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<sup>30</sup> Proposed Attachment Q, section Ia.A.

<sup>31</sup> Initial Compliance Order, 136 FERC ¶ 61,190 at P 118.

an FTR Participant could qualify for treatment under paragraph 3.a if their speculative FTR portfolios are of *de minimus* size relative to their overall exposure.”<sup>32</sup>

**a. Filing**

28. PJM proposes to revise paragraph 3.a of the Certification Form to clarify the circumstances under which a participant that transacts in PJM’s FTR markets would be subject to treatment under paragraph 3.a.<sup>33</sup> Under revised paragraph 3.a, an FTR Participant may make a paragraph 3.a representation if the “Participant transacts in PJM’s FTR markets with the sole intent to hedge congestion risk in connection with either obligations Participant has to serve load or rights Participant has to generate electricity in the PJM Region (“physical transactions”) and monitors all of the Participant’s FTR market activity to endeavor to ensure that its FTR positions, considering both the size and pathways of the positions, are either generally proportionate to or generally do not exceed the Participant’s physical transactions, and remain generally consistent with the Participant’s intention to hedge its physical transactions.” PJM states that the revised paragraph 3.a indicates more clearly that it applies to participants that are acting in a manner designed solely with the intent to hedge physical congestion risk associated with serving load or providing generation. Further, PJM states that these modifications allow a participant to hedge its physical positions while recognizing that hedges are difficult to achieve in an exact match to the physical position itself, and that a participant may choose not to hedge its entire physical position.

**b. Protests**

29. AEP requests that the Commission reject the paragraph 3.a language proposed by PJM and instead require PJM to adopt alternative language<sup>34</sup> proposed at a PJM Members

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<sup>32</sup> *Id.* P 119.

<sup>33</sup> Compliance Filing at 11-12.

<sup>34</sup> AEP proposes the following alternative paragraph 3.a language: “Participant transacts in PJM’s FTR markets predominantly to hedge congestion risk in connection with one or more of the following: (1) obligations to serve load; (2) sales of energy, capacity, and/or energy-related products to load-serving entities; (3) rights to generate electricity, and (4) the generation of electricity, in the PJM Region (“physical transactions”); provided, however that participant may from time to time engage in a limited number of FTR transactions for other purposes, which activity participant closely monitors to ensure that its entire FTR position, remains primarily for the purpose of hedging its physical transactions.”

Committee meeting held on November 22, 2011. AEP states that a substantial majority of those voting at the meeting supported adoption of the alternative language, and yet PJM officials rejected the consideration of a “sole intent” standard even though the Commission specifically required consideration of such an approach.<sup>35</sup> AEP argues that PJM’s proposed language “remains murky” and appears to exclude market participants that purchase a single FTR for other than hedging purposes from paragraph 3.a status. AEP asserts that companies that use FTRs predominantly for hedging should be able to engage in a *de minimus* amount of non-hedging FTRs without being subject to the requirements of section 3.b. AEP also asserts that PJM’s language is internally inconsistent in that it requires a “sole intent” to hedge but also states that market participants’ positions must only “remain generally consistent with” such sole intent.

30. FIEG supports the alternative paragraph 3.a language proposed by AEP and asserts that it is consistent with the Initial Compliance Order, reflects the sentiments of the PJM membership, and will result in regulatory clarity.

**c. Answers**

31. In its answer, PJM responds to AEP’s and FIEG’s protests by asserting that the paragraph 3.a revisions comply with the Initial Compliance Order by clarifying that the paragraph “applies to participants that are acting in a manner designed solely with the intent to hedge physical congestion risk associated with serving load or providing generation.”<sup>36</sup> PJM states that, while its revisions accommodate the reality that FTR positions may not result in exact hedges to physical positions, the test turns on a clear, bright line standard by requiring the participant to represent that the position, when taken, was designed or intended to serve as a hedge to that participant’s physical position.

32. PJM argues that, while protestors seek the ability to hold an undefined *de minimus* number of FTRs unrelated to their physical positions, the Commission did not require PJM to include a *de minimus* exception.<sup>37</sup> PJM asserts that intended speculation in the FTR markets, regardless of its extent, should not qualify for paragraph 3.a certification.<sup>38</sup>

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<sup>35</sup> AEP Protest at 9 (citing Initial Compliance Order, 136 FERC ¶ 61,190 at P 119).

<sup>36</sup> PJM Answer at 4 (citing Compliance Filing at 11).

<sup>37</sup> *Id.* at 5.

<sup>38</sup> *Id.* at 6.

PJM explains that it would be discriminatory to permit some FTR transactions that claim to be *de minimus* to avoid paragraph 3.b certification while requiring other speculation in the FTR markets to comply. PJM also explains that it would be unworkably subjective to apply a fair and consistent *de minimus* test to FTR portfolios. For example, PJM states that a large market participant may engage in a significant volume of FTR transactions that it may view as *de minimus* speculation relative to its total FTR activity, but such positions could still exceed the entire FTR portfolio of a small financial trader engaged in speculation.<sup>39</sup>

33. PJM also explains that it revised paragraph 3.a to address the underlying concern that might give rise to consideration of a *de minimus* exception (the concern that perfect hedges are difficult to execute). By designing the test as a representation relying on a good faith articulation of intent, PJM contends that the rule puts all speculators in the same position and avoids the discriminatory and unworkable *de minimus* notion advanced by AEP and FIEG. Finally, PJM argues that its proposed bright line distinction between those who intend only to hedge physical positions and those who intend to speculate is similar to other recognized distinctions between speculators and entities participating in markets for their own supply needs.<sup>40</sup>

34. In their answer, Financial Marketers urge the Commission to reject AEP's proposed alternative language. While Financial Marketers disagree generally with PJM's two-tiered approach, they state that PJM's proposed language is more defensible than AEP's proposed alternative language. Financial Marketers argue that AEP's language is impossible to quantify or enforce, vague, and is inconsistent with the Federal Power Act and the regulatory approaches taken by other federal agencies, including the Commodity Futures Trading Commission. Financial Marketers assert that AEP's language unnecessarily expands the circumstances under which an entity qualifies for exemption and favors one class of participants over another without providing justification. Finally, Financial Marketers assert that AEP's language was never considered by the PJM Credit Subcommittee or Market Reliability Committee and was only voted on after many interested participants had left the table.

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<sup>39</sup> *Id.* at 5-6.

<sup>40</sup> *Id.* at 6 (citing 7 U.S.C. § 2(h)(7)(A), as amended by section 723(a)(3) of the *Dodd-Frank Wall Street Reform and Consumer Protection Act*, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (Dodd-Frank Act)). PJM states that, under the end-user exception to swap clearing requirements in the Dodd-Frank Act, if one of the counterparties to a swap is not a financial entity and uses swaps to hedge or mitigate commercial risk, then mandatory clearing requirements do not apply.

### d. Commission Determination

35. In the Initial Compliance Order, the Commission directed PJM to clarify the circumstances under which an FTR Participant may qualify for paragraph 3.a treatment. We find that PJM's proposed revisions to paragraph 3.a of the Certification Form provide the clarifications directed by the Initial Compliance Order. In particular, the proposed revisions clarify that paragraph 3.a applies to participants that are acting in a manner designed solely with the intent to hedge physical congestion risk associated with serving load or providing generation. PJM's revisions also reflect that those qualifying for paragraph 3.a treatment must truly intend to engage only in hedging transactions, which thereby justify paragraph 3.a treatment. Further, PJM's revisions are objective, make a bright line distinction, and avoid subjective determinations. Therefore, we find that PJM's revisions comply with the Initial Compliance Order, and we do not find it necessary to adopt AEP's proposed alternative language.

36. Contrary to AEP's and FIEG's assertions, in the Initial Compliance Order the Commission did not require PJM to revise paragraph 3.a to include a *de minimus* exception. Rather, the Commission required that "PJM should *consider* whether an FTR Participant could qualify for treatment under paragraph 3.a if their speculative FTR portfolios are of *de minimus* size relative to their overall exposure."<sup>41</sup> PJM explains that it considered a *de minimus* exception but concluded that it would be discriminatory and unworkably subjective.<sup>42</sup> We find PJM's reasoning and approach to be reasonable.

### 3. Seller Credit

37. In the Initial Compliance Order, the Commission found that PJM's practices of excluding seller credit from the unsecured credit cap and allowing market participants to use seller credit to meet FTR credit requirements were inconsistent with Order No. 741.<sup>43</sup> Accordingly, the Commission directed PJM to amend its Tariff "to provide that seller credit will be 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."<sup>44</sup>

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<sup>41</sup> Initial Compliance Order, 136 FERC ¶ 61,190 at P 119 (emphasis added).

<sup>42</sup> PJM Answer at 5.

<sup>43</sup> Initial Compliance Order, 136 FERC ¶ 61,190 at PP 22, 26.

<sup>44</sup> *Id.*

**a. Filing**

38. PJM proposes several Tariff revisions to provide that seller credit is included in the \$50 million cap on unsecured credit. Proposed section II.C (Seller Credit) of Attachment Q provides that “Seller Credit shall be subject to the cap on available Unsecured Credit set forth in Section II.F.”<sup>45</sup> PJM also proposes to change several of the references to “Unsecured Credit Allowance” to “Unsecured Credit” in section II.F (Credit Limit Setting for Affiliates) in order to clarify that the aggregate amount of Unsecured Credit, which includes both the Unsecured Credit Allowance and Seller Credit, will not exceed \$50 million for affiliates.<sup>46</sup> PJM also revises Attachment Q by adding a new defined term for “RPM Seller Credit” as “an additional form of Unsecured Credit for RPM.”

39. PJM also proposes to revise Attachment Q to clarify that seller credit is not permitted for FTRs.<sup>47</sup> Specifically, PJM proposes to revise section V.A (FTR Credit Limit) to delete language providing that Seller Credit is available to be used in establishing FTR Credit Limits. PJM also proposes conforming revisions to the definition of “FTR Participant” and “Unsecured Credit Allowance.”

**b. Commission Determination**

40. We find that PJM’s proposed Tariff revisions regarding use of seller credit comply with the Initial Compliance Order and Order No. 741. The proposed revisions amend the Tariff to provide that seller credit will be included in the \$50 million cap on unsecured credit and remove provisions that permit the use of seller credit to meet FTR credit requirements. Therefore, we accept these revisions effective December 13, 2011, as requested.

**4. Certification Form Attestation**

41. In the Initial Compliance Order, the Commission found that paragraph 6 of the Certification Form, which contains the attestation of the signatory of the certificate, was reasonable.<sup>48</sup> In response to a protestor’s concern that the paragraph imposed personal

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<sup>45</sup> Compliance Filing at 12-13 (citing Attachment Q, section II.C).

<sup>46</sup> *Id.* (citing Attachment Q, section II.F).

<sup>47</sup> *Id.* at 13-14.

<sup>48</sup> Paragraph 6 read: “I acknowledge that I have read and understood the provisions of Attachment Q of the PJM Tariff applicable to Participant’s business in the



liability on the signatory, the Commission stated that it read paragraph 6 as “implicitly indicating 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.”<sup>49</sup>

**a. Filing**

42. PJM proposes a revision to the attestation in paragraph 6 of the Certificate Form to indicate that the signatory acknowledges that “the information provided herein is true and accurate to the best of my belief and knowledge after due investigation.”<sup>50</sup> PJM states that, while compliance filings typically may include only Commission-required revisions, to the extent the Commission has not yet acted on the request for clarification, PJM requests that the Commission permit the proposed revision in this compliance filing rather than awaiting a further compliance filing. PJM states that this will promote more efficient and timely processing of the proposed revision.

**b. Commission Determination**

43. We find that PJM’s proposed revision to the attestation in paragraph 6 of the Certification Form is consistent with our findings in the Initial Compliance Order and with Order No. 741. Additionally, it is consistent with our action (concurrent with this order) on Requesting Parties’<sup>51</sup> request for clarification, and our acceptance here without a further compliance filing will promote efficiency. Accordingly, we will accept the proposed revision.

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PJM markets, including those provisions describing PJM’s minimum participation requirements and the enforcement actions available to PJM Settlement of a Participant not satisfying those requirements. In addition, by signing this Certification, I acknowledge the potential consequences of making incomplete or false statements in this Certification.”

<sup>49</sup> Initial Compliance Order, 136 FERC ¶ 61,190 at P 126.

<sup>50</sup> Compliance Filing at 14-15.

<sup>51</sup> 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.; FIEG; Noble Americas Gas & Power Corp.; PJM Industrial Customer Coalition; Rockland Electric Company; Shell Energy North America (US), L.P.; and Vitol Inc.

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The Commission orders:

PJM's proposed tariff revisions are hereby accepted for filing effective, as requested, on December 13, 2011, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

Document Content(s)

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