

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

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| ISO New England Inc. |) | Docket No. | ER12-1651-000 |
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| Midwest Independent Transmission System Operator, Inc. |) | Docket No. | ER12-1663-000 |
| |) | | |
| New York Independent System Operator, Inc. |) | Docket Nos. | ER11-3949-005 |
| |) | | ER11-3951-001 |

**JOINT MOTION FOR LEAVE TO FILE ANSWER
AND ANSWER OF ISO NEW ENGLAND INC., MIDWEST INDEPENDENT
TRANSMISSION SYSTEM OPERATOR, INC., AND NEW YORK
INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”),¹ ISO New England Inc. (“ISO-NE”), Midwest Independent Transmission System Operator, Inc., (“MISO”), and New York Independent System Operator, Inc. (“NYISO”) (together, “Joint ISOs/RTOs”) hereby submit this Motion for Leave to File Answer and Answer (“Answer”) to address the comments filed on May 21, 2012 by Exelon Corporation (“Exelon”). Exelon’s comments were submitted in response to the April 30, 2012 filings by each of the Joint ISOs/RTOs of revisions to their respective tariffs in compliance with FERC Order No. 741² under which the Joint ISOs/RTOs propose to become the central

¹ 18 C.F.R. §§ 385.212 and 385.213 (2011).

² *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).

counterparties to market participant transactions (the “CCP Compliance Filings”). As explained in this Answer, the Commission should reject the proposals made by Exelon in its pleading and accept the CCP Compliance Filings without modification.

I. MOTION FOR LEAVE TO FILE ANSWER

The Joint ISOs/RTOs move for leave to file an answer to the comments filed by Exelon in the above-captioned proceedings pursuant to Rule 212 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.212 (2011). The Commission has discretion to permit answers when the answer would assure a complete record in the proceeding,³ provide information helpful to the disposition of an issue,⁴ permit the issues to be narrowed or clarified,⁵ or aid the Commission in understanding and resolving issues.⁶ The Joint ISOs/RTOs believe that this Answer will clarify the issues raised by Exelon, will assure a more complete record in these proceedings, and will otherwise assist the Commission in understanding and addressing these issues. For the foregoing reasons, the Joint ISOs/RTOs respectfully request that the Commission grant this Motion and accept the following Answer.

³ See, e.g., *Pacific Interstate Transmission Co.*, 85 FERC ¶ 61,378 at 62,444 (1998), *reh’g denied*, 89 FERC ¶ 61,246 (1999).

⁴ See, e.g., *CNG Transmission Corp.*, 89 FERC ¶ 61,100 at 61,287 n.11 (1999).

⁵ See, e.g., *PJM Interconnection, L.L.C.*, 84 FERC ¶ 61,224 at 62,078 (1998); *New Energy Ventures, Inc. v. Southern California Edison Co.*, 82 FERC ¶ 61,335 at 62,323 n.1 (1998).

⁶ See, e.g., *New York Independent System Operator, Inc.*, 108 FERC ¶ 61,188 at P 7 (2004) (accepting the NYISO’s answer to protests because it provided information that aided the Commission in better understanding the matters at issue in the proceeding); *Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.*, 93 FERC ¶ 61,017 at 61,036 (2000) (accepting an answer that was “helpful in the development of the record ”); *Tennessee Gas Pipeline Co.*, 92 FERC ¶ 61,009 at 61,016 (2000).

II. ANSWER

A. Exelon's Comments Are Untimely Attacks On Order No. 741 That Are Beyond The Scope Of The CCP Compliance Filings

Exelon challenges various aspects of the CCP Compliance Filings. Protests to compliance filings are limited to whether the filing meets the Commission's compliance directive and cannot properly function as late rehearings of the Commission's order, relitigating matters that are now final and non-appealable.⁷ The only question presented to the Commission with respect to the CCP Compliance Filings is whether those filings comply with the Order No. 741 central counterparty directive, codified in Section 35.47(d) of the Commission's regulations. The tariff revisions requested by Exelon do not pertain to clarifying the legal status of the ISO/RTO as the single counterparty to market participant transactions and, therefore, are beyond the scope of the compliance requirements set forth in Section 35.47(d) of the Commission's regulations. If Exelon opposed the Commission's directives in Order No. 741, Exelon should have filed a timely request for rehearing of that order. Exelon cannot now raise issues in protest to the CCP Compliance Filings that it should have raised in a rehearing request.

B. No Additional Protocols Or Reporting Requirements Are Needed To Address Exelon's Inaccurate Assertions Or Speculative Concerns

Exelon attempts to tie its request for the Commission to impose new credit practices on the Joint ISOs/RTOs to the CCP Compliance Filings by differentiating between the central counterparty structures proposed by the Joint ISOs/RTOs and the structure implemented by PJM Interconnection, L.L.C. ("PJM"). Exelon asserts that the Joint ISOs/RTOs, unlike PJM, are exposing their market participants to additional risks

⁷ See, e.g., *PJM Interconnection, L.L.C.*, 133 FERC ¶ 61,277, at P 34 (2010); *Cal. Indep. Sys. Operator*, 120 FERC ¶ 61,147, at P 15 (2007).

that warrant additional protections by not creating an affiliate to serve as the central counterparty.⁸ However, Exelon's assertion is factually wrong.

First, while PJM created an affiliate, PJM Settlement, to serve as its central counterparty, PJM and PJM Settlement mutually guarantee the responsibilities, activities, assets and liabilities of the other.⁹ Accordingly, to the extent PJM Settlement's role as a central counterparty exposes it, like Exelon asserts with respect to the Joint ISOs/RTOs, "to a failure to pay that could call into question the ISO's solvency,"¹⁰ this solvency risk is equally borne by PJM as guarantor.

Second, each of the Joint ISOs/RTOs, like PJM and PJM Settlement, protect themselves against any such insolvency risk by explicitly limiting, in their tariffs, their obligation to make payments to market participants to the amount of money received from market participants through charges, drawdowns, and other recovery mechanisms.¹¹ In other words, the Joint ISOs/RTOs are not required to pay out more than they take in. The risk of insolvency is further minimized because each of the Joint ISOs/RTOs has the explicit right under its tariff to recover any market participant payment default/bad debt loss and related costs from its other market participants.¹² This is the case today, and will

⁸ See Exelon Comments at 2.

⁹ See *PJM Interconnection, L.L.C.*, 133 FERC ¶ 61,277, at P 10 (2010).

¹⁰ Exelon Comments at 2-3.

¹¹ See revised Section 1.1 of the ISO-NE Billing Policy (Exhibit 1D to Section I of the ISO-NE Transmission, Markets and Services Tariff (the "ISO-NE Tariff")) filed as part of ISO-NE's central counterparty compliance filing; see also new Section 2.7.1.4 of NYISO's Open Access Transmission Tariff ("NYISO OATT") and new Section 7.1.4 of NYISO's Market Administration and Control Area Services Tariff ("NYISO Services Tariff") filed as part of NYISO's central counterparty compliance filing; see also Section 7 of MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (the "MISO Tariff").

continue to be the case when the Joint ISOs/RTOs become the central counterparties.

In addition, and significantly, an order by the Commission directing the Joint ISOs/RTOs to establish an affiliate to function as the central counterparty would not only fail to provide any greater protection against insolvency, it would impose unnecessary accounting, legal, regulatory and administrative costs and burdens on the Joint ISOs/RTOs. Such a requirement would also delay the ability of the Joint ISOs/RTOs to comply with the Commission's central counterparty directive.

In any event, the alleged protections that Exelon seeks are redundant. Exelon states that the Joint ISOs/RTOs should be required to explain "how they will evaluate members' creditworthiness."¹³ The tariffs of the Joint ISOs/RTOs set forth at length and in detail the methods used by the Joint ISOs/RTOs to assess and model the creditworthiness of their market participants and the collateral requirements imposed on market participants before they can participate in the markets.¹⁴ These standards, filed with and approved by the Commission and enforced by the Joint ISOs/RTOs, are designed to ensure that market participants are properly collateralized and to minimize risks to the markets.

Exelon also requests that the Commission require the Joint ISOs/RTOs to publish models and the inputs thereto and to require detailed quarterly reporting, but Exelon does not even suggest what it would do with such information or how it would safeguard the

¹² See Sections 3.3 and 3.4 of the ISO-NE Billing Policy; *see also* NYISO OATT Section 27; *see also* Section 7 of the MISO Tariff.

¹³ Exelon Comments at 3.

¹⁴ See Sections II and III of the ISO-NE Financial Assurance Policy (Exhibit 1A to Section I of the ISO-NE Tariff); *see also* NYISO Services Tariff Sections 26.4-26.5; *see also* Attachment L of the MISO Tariff.

markets, except to merely assert that publication of the information would “further the Commission’s goal of better insulating markets from credit-related perturbations.”¹⁵

If Exelon does not believe the credit standards of the Joint ISOs/RTOs are sufficiently rigorous, it may raise its concerns directly with the Joint ISOs/RTOs. However, despite the numerous meetings each of the Joint ISOs/RTOs held with market participants to discuss compliance with the Commission’s Order No. 741 directive, Exelon never raised the concerns expressed in its comments to the Joint ISOs/RTOs compliance filings. Accordingly, Exelon’s recommendations must be rejected as unsupported, unvetted, and unnecessary.

¹⁵ Exelon Comments at 3.

III. CONCLUSION

For the foregoing reasons, the Joint ISOs/RTOs respectfully request that the Commission grant this Motion for Leave to File Answer and Answer, reject the proposals made by Exelon, and accept the CCP Compliance Filings without modification.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the parties designated on the official service list for the above-captioned dockets in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.2010 (2011).

Dated at Holyoke, MA on this the 29th day of May, 2012.

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