rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Sikorsky Aircraft Corporation: Docket No. FAA–2010–0060; Directorate Identifier 2010–SW–06–AD.

Applicability: Model S–92A helicopters, with main gearbox (MGB) filter bowl assembly, part number (P/N) 92351–15802–101, installed, certificated in any category.

Compliance: Required as indicated, unless done previously.

To prevent failure of the MGB filter bowl assembly due to failure of the mounting studs or the filter bowl, loss of oil from the MGB, failure of the MGB, and subsequent loss of control of the helicopter, do the following:

(a) Within 60 days:

(1) Remove the MGB filter bowl assembly by following the Accomplishment Instructions, paragraphs 3.A.(1) through 3.A.(5), of Sikorsky Alert Service Bulletin No. 92–63–022A, dated December 18, 2009 (ASB).

(2) Remove the primary filter element, P/N 70351–38801–102, from the MGB lube system filter and visually inspect it for damage as depicted in Figures 1, 2, and 3 of the ASB. If the primary filter element has "wavy" pleats, internal buckling, or indented dimples, before further flight, replace it with an airworthy filter element.

(3) Visually inspect the secondary filter element, P/N 70351–38801–103, for damage as depicted in Figures 4 and 5 of the ASB. If the secondary filter element has "wavy" pleats or an elongated cup, before further flight, replace it with an airworthy filter element.

(4) Replace the MGB lube system filter assembly mounting studs:

(i) Remove the studs by following the Accomplishment Instructions, paragraphs 3.B.(1) through 3.B.(4) of the ASB. Visually inspect the tapped holes for any damage to the threads. Serrations on the entire counter bore (360 degrees) are acceptable. Serrations in the housing must be intact, and mating serrations on the lock ring must line up with serrations on the housing. Visually inspect the housing to determine that the housing threads are free from damage and corrosion. Visually inspect housing lockring counterbore to determine if the housing is airworthy.

(ii) If you find damage or corrosion to the housing threads, the housing, or the lockring counterbore, stop work and contact Kirk Gustafson, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine and Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7190, fax (781) 238–7170.

(iii) If you do not find damage to the housing threads, the housing, or the lockring counterbore that requires repair, replace the mounting studs by following the Accomplishment Instructions, paragraphs 3.B.(7) through 3.B.(15) of the ASB.

(5) Install an airworthy, two-piece MGB filter bowl assembly modification kit, P/N 92070–35005–011, as depicted in Figures 8 and 9 of the ASB and by following the Accomplishment Instructions, paragraphs 3.C.(1) through 3.C.(20), of the ASB.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Boston Aircraft Certification Office, ATTN: Kirk Gustafson, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine and Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7190, fax (781) 238–7170, for information about previously approved alternative methods of compliance.

(c) The Joint Aircraft System/Component (JASC) Code is 6320: Main Rotor Gearbox.

Issued in Fort Worth, Texas, on January 20, 2010.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2010–1521 Filed 1–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM10–13–000]

Credit Reforms in Organized Wholesale Electric Markets

Issued January 21, 2010.

AGENCY: Federal Energy Regulatory Commission.

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 reform credit practices in organized wholesale electric markets to ensure that credit practices result in jurisdictional rates that are just and reasonable. The Commission seeks public comment on the proposed regulations.

DATES: Comments are due March 29, 2010.

ADDRESSES: You may submit comments identified in Docket No. RM10–13–000, by one of the following methods:

Agency Web Site: http://www.ferc.gov. Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures section of the preamble.

Mail: Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. Please refer to the Comment Procedures section of the preamble for additional information on how to file paper comments.

FOR FURTHER INFORMATION CONTACT:

Christina Hayes (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6194.

Lawrence Greenfield (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6415.

Scott Miller (Technical Information), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8456.

SUPPLEMENTARY INFORMATION:

I. Introduction

1. Pursuant to section 206 of the Federal Power Act (FPA),[1] the Commission is proposing to revise Part 35 of Title 18 of the Code of Federal Regulations (CFR) to reform credit practices in organized wholesale electric markets.[2] While this matter has been one of ongoing Commission interest, the recent turmoil in financial markets has emphasized the importance of sound credit practices that provide competitive markets with adequate access to capital without excessive risk and without excessive cost. Credit policies are particularly important in the organized energy markets, in which regional transmission organizations (RTOs) and independent system operators (ISOs) must balance the need for market liquidity against corresponding risk. In order to ensure that credit policies result in jurisdictional rates that are just and reasonable, the Commission proposes to require RTOs and ISOs to adopt tariff revisions reflecting these proposed credit reforms. The Commission seeks public comment on these proposed reforms.

II. Background

2. The Commission has long been interested in credit policies in wholesale electric markets. The Commission considered issues related to credit practices in 1996 in crafting the *pro forma* Open Access Transmission Tariff (OATT) in Order No. 888,[3] where it directed that each transmission provider's tariff include reasonable creditworthiness provisions, and again in 2004 in a subsequent policy statement that provided additional guidance regarding creditworthiness.[4] Since then, the individual organized wholesale electric markets have developed credit practices on a case-by-case basis, in response to individual concerns and issues and with varying levels of stakeholder support. More recently, some in the industry have expressed concern that these credit practices may no longer be adequate to protect the integrity of these markets and, in turn, to protect consumers from the high costs that would flow from excessive defaults and associated risks in the markets.

3. Credit practices and related risk management tools within organized wholesale electric markets have developed incrementally. Until the 1980s, electricity was generally produced and consumed within a single utility system, or bought from neighboring traditional utility suppliers. Because the risk of non-performance was deemed minimal, collateral requirements and other credit practices were not rigidly managed. Credit practices began to evolve with the development of independent generators and then with increased bulk trading between traditional utilities and independent generators and marketers in the 1990s. Credit practices further progressed in this decade, as power trading with multiple counterparties became a recognized multi-billion dollar industry.

4. Today, parties operating outside the organized wholesale electricity markets typically use bilateral contracts such as the Western Systems Power Pool (WSPP) standard contract and the Edison Electric Institute (EEI) standard contract to sell power, managing credit risk within the terms of those agreements. However, the majority of transactions based on quantity and volume is in the organized wholesale electric markets.[5] Individual RTOs and ISOs developed their own individual processes for assessing risk, extending unsecured credit, and settling accounts.

5. To a large degree, early credit policies in the organized wholesale electric markets were based on the practices of their transmission owning members. In Order No. 888, the Commission required each transmission provider to have "reasonable credit review procedures * * * in accordance with standard commercial practices,"[6] but otherwise allowed the transmission provider to develop its own individual credit practices.[7] As the organized markets were being formed, they tended to use practices based on those of their transmission-owning members.

6. Over time, the credit policies in each RTO and ISO have evolved and, in November 2004, the Commission issued its *Policy Statement on Electric Creditworthiness* to encourage consideration of specific reforms.[8] In particular, the Commission recommended that transmission providers establish qualitative and quantitative measures to assess credit risk and post those measures on their Open Access Same-Time Information System (OASIS) Web sites or in their tariffs. Further, the Commission recommended that organized wholesale electric markets seek to minimize the risk of default by shortening the settlement period, netting obligations owed by and to market participants wherever possible, and adopting other measures.

7. Subsequent to the *Policy Statement,* various proposals to amend credit policies have been filed by RTOs and ISOs and accepted by the Commission. PJM Interconnection, LLC (PJM), for example, has made several filings revising its tariff to modify its credit practices. The Commission recently accepted PJM's proposal to revise its tariff to reduce its settlement cycle from 30 days to seven days, reduce the amount of unsecured credit allowed to $50 million for a member company and $150 million for an affiliated group, and eliminate unsecured credit in the financial transmission rights market.[9] Earlier, the Commission accepted a shortened period to cure defaults and other tariff revisions intended to improve credit practices.[10]

8. Likewise, the Commission has accepted recent tariff revisions filed by California Independent System Operator Corporation (CAISO), reducing the level of unsecured credit that may be obtained by a market participant from $250 million to $150 million,[11] and eventually to $50 million.[12] The Commission has also accepted CAISO's proposal to shorten its "settlement and

[1] 16 U.S.C. 824e. *Accord* 16 U.S.C. 824d (providing that rates must be just and reasonable).

[2] For purposes of this Notice of Proposed Rulemaking, organized wholesale electric markets include energy, transmission and ancillary service markets operated by independent system operators and regional transmission organizations. These entities are responsible for administering electric energy and financial transmission rights markets. As public utilities, they have on file as jurisdictional tariffs the rules governing such markets.

[3] Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036, at 31,937 (1996) (pro forma OATT, section 11 (Creditworthiness)), order on reh'g, Order No. 888–A, 62 FR 12,274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048, 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 Policy Study Group v. FERC, 225 F.3d 667 (DC Cir. 2000), aff'd sub nom. New York v. FERC, 535 U.S. 1 (2002).

[4] Policy Statement on Electric Creditworthiness, 109 FERC ¶ 61,186 (2004) (Policy Statement).

[5] FERC Staff, 2008 State of the Markets Report, 51 (Sept. 2009).

[6] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,937.

[7] While the OATT applies to transmission providers, since 1996 a number of transmission providers have developed RTOs and ISOs.

[8] *See supra* note 4.

[9] *PJM Interconnection, LLC,* 127 FERC ¶ 61,017, at P 4 (2009).

[10] *PJM Interconnection, LLC,* 126 FERC ¶ 61,084 (2009).

[11] California Independent System Operator Corp., 126 FERC ¶ 61,285 (2009).

[12] California Independent System Operator Corp., 129 FERC ¶ 61,142 (2009).

payment period" from more than 80 days to approximately 25 days.[13]

9. Notwithstanding the progress that has been made in some of the organized wholesale electric markets in reforming credit practices, the Commission is concerned that more needs to be done to ensure that rates for service in those markets are just and reasonable. Past experience in the markets has highlighted aspects of the credit management tools that require modification,[14] as was emphasized at a technical conference on credit and capital issues held by the Commission in January 2009.[15] Concerns of default, especially large defaults that have not been minimized by market safeguards, are troubling in the organized wholesale electric markets, in which losses due to default are borne among all market participants.[16] As part of our continuing oversight and assessment of these markets, the Commission is acting today to ensure that the credit policies in place in those markets are sufficient to reasonably protect consumers against the adverse effects of default.

III. Discussion

10. Given a decade or more of experience and evolution by the markets with credit practices, the Commission believes that it is appropriate to now consider adoption of specific requirements regarding credit practices for organized wholesale electric markets, to be set forth in the Commission's regulations. To promote confidence in the markets, the Commission proposes reforming credit practices of the organized wholesale electric markets to limit potential future market disruptions and to dampen the possible ripple effect of such disruptions. These reforms include shortening settlement periods and reducing the amount of unsecured credit, as described below. The Commission believes that these reforms, if adopted, will enhance certainty and stability in the markets and, in turn, ensure that costs associated with market participant defaults do not result in unjust or unreasonable rates.

11. The Commission also notes that some market participants may pose different credit risks than others. For instance, Mr. Robert Levin stated that, in his experience, "[in] discussing it with a number of the ISOs and RTOs, and it was certainly brought to our attention, that [municipalities] are pretty good credit risks."[17] Thus, the Commission requests comment on whether the credit practices discussed below should be applied in the same way to all market participants or whether they should be applied differently to certain market participants depending on their characteristics.

12. While the Commission proposes that the tariff changes be submitted no later than June 30, 2011, to go into effect no later than 60 days after filing, the Commission also requests comment on whether the changes proposed should be put in place earlier. In proposing this deadline, the Commission seeks to balance the needs of the organized wholesale electric markets to modify their practices to comply with the proposed reforms against the benefits to the markets and consumers of having the reforms in place before the winter peak season in 2011–2012. In addition, the Commission specifically requests the views of the ISO's and RTO's managements, as the entities responsible for administering these markets, on each of the proposals set forth below.[18]

A. Shortening the Settlement Cycle

13. The length of the settlement (i.e., billing) period raises both cash management and risk issues. As discussed in our *Policy Statement,* the size of credit risk exposure is, in large part, a function of the length of time between completion of the various parts of electricity transactions, i.e., the provision of service, the billing for service, and the payment for service. Since the risk of default begins at the time the product or service is committed for delivery and continues until the account payable is ultimately extinguished, reductions in settlement periods would serve to: (1) lower the level of financial assurances required (i.e., collateral requirement provided by individual participants); (2) reduce the quantity of the aggregate level of payables outstanding at any point in time, thereby reducing the potential exposure of a defaulting entity; (3) enable updated transaction prices and charges to be utilized in a timely manner in determining credit risk exposure; and (4) provide earlier identification of default situations by lessening the opportunity for an unrecognized default and its severity. Accordingly, the Commission believes that ISOs/RTOs can minimize the exposure period and significantly reduce the credit risk to all market participants by reducing the time between when a cost is incurred and when payment is ultimately received by an ISO/RTO (i.e., shortening the settlement period).[19]

14. PJM has since commissioned a study that concluded, among other things, that shorter settlement periods would reduce default exposures. Based on this analysis, PJM estimated when it filed for weekly billing that the total credit risk exposure would be reduced by $2.1 billion (68 percent) and the necessary financial security provided by members would be reduced by $700 million (73 percent).[20]

15. The Commission proposes to revise its regulations to require that each RTO and ISO include in the credit provisions of its tariff revisions to implement a settlement cycle of no more than seven calendar days with no more than an additional seven calendar days for final payment. The Commission recognizes that software system adjustments may be necessary and is also aware that similar system changes have resulted in significant delays of other market changes.[21] The Commission further requests comment on the practicality of organized wholesale electric markets implementing daily settlement periods within one year of implementation of weekly settlement periods.

16. We recognize that net wholesale buyers in organized wholesale electric markets may incur cash management costs by paying within the shortened timeframe, given that they receive

[13] California Independent System Operator Corp., 128 FERC ¶ 61,265, at P 4 (2009).

[14] *See New England Power Pool,* 97 FERC ¶ 61,387 (2001) (accepting alternative payment and financial assurance arrangements filed by NEPOOL in response to defaults associated with the bankruptcy of Enron).

[15] Testimony in Technical Conference on Credit and Capital Issues, Docket No. AD09–2–000, Tr. 91:23–25 (Mr. Robert Ludlow, Vice President and Chief Financial Officer, ISO–NE) (Jan. 13, 2009); Testimony in Technical Conference on Credit and Capital Issues, Docket No. AD09–2–000, Tr. 101:3–5 (Mr. Philip Leiber, Chief Financial Officer and Treasurer, CAISO) (Jan. 13, 2009).

[16] *Policy Statement,* 109 FERC ¶ 61,186 at P 17 ("If collateral posted by a defaulting party is not sufficient to cover the amount of its default, the remaining credit risk exposure and costs are socialized across an ISO's/RTO's members.").

[17] Testimony in Technical Conference on Credit and Capital Issues, Docket No. AD09–2–000, Tr. 133:12–14 (Mr. Robert Levin, Managing Director, Energy Research, Chicago Mercantile Exchange) (Jan. 13, 2009).

[18] The views of management may be expressed through the ISO–RTO Council (IRC).

[19] *Policy Statement,* 109 FERC ¶ 61,186 at P 21.

[20] PJM Credit & Clearing Analysis Project: Findings & Recommendations (June 2008) (found on Dec. 31, 2009 at: *http://www.pjm.com/~/media/committees-groups/committees/mc/20080626-item-03d-crmsc-market-reform-credit-recommendations.ashx*).

[21] To the extent possible, the Commission encourages use of software already used in markets that are currently operating on a seven-day settlement timeframe. For example, PJM and ISO–NE already use a seven day settlement timeframe. *PJM Interconnection, LLC,* 127 FERC ¶ 61,017 at P 4; *New England Power Pool,* 107 FERC ¶ 61,201, at P 10–12 (2004).

revenues from their own retail buyers on a 30-day basis.[22] To reconcile the discrepancy in cash flow, a market participant may need to arrange cash management facilities to manage the more frequent payments. The Commission invites comments on this proposal, and whether it would involve a one-time cost to establish such a facility or ongoing costs that could significantly affect liquidity and rates.

B. Use of Unsecured Credit

17. As suggested above, as the timeframe of settlement shrinks, so does the amount of unsecured credit that a participant may need. This is because the number of outstanding transactions and the size of the amounts outstanding become smaller, thus minimizing the credit exposure to any market participant.[23]

18. While RTOs and ISOs have tightened risk and credit standards over the years, the vestiges of the practices historically used for unsecured credit are still substantial in some markets. Following those practices, RTOs and ISOs, after credit analysis, generally allow significant amounts of unsecured credit. The Commission understands that the level of unsecured credit allowed has also varied widely among the organized wholesale electric markets (during the financial crisis in fall 2008, ranging from 50 to 80 percent).

19. The Commission proposes to revise its regulations to require that each RTO and ISO include in the credit provisions of its tariff revisions to reduce the extension of unsecured credit to no more than $50 million per market participant. The Commission seeks comment on whether there should be a further aggregate cap to cover an entire corporate family (e.g., holding company, subsidiaries, associates, and affiliates) and also whether the cap should be different for markets of different sizes. Reducing the level of unsecured credit combined with shortening the settlement timeframe should reduce the risk of default and consequently reduce the cost of default that is shared among market participants.

20. The Commission further requests comment on the practicality of eliminating unsecured credit in connection with adopting daily settlement within one year of implementation of weekly settlement periods.

C. Financial Transmission Rights Markets

21. The above-proposed reforms are not directly applicable to markets for financial transmission rights, because financial transmission rights have a longer-dated obligation to perform which can run from a month to a year or more. The Commission has also noted that financial transmission rights markets have unique risks that distinguish them from other wholesale electric markets, and that the value of a financial transmission right depends on unforeseeable events, including unplanned outages and unanticipated weather conditions.[24] Moreover, financial transmission rights are relatively illiquid, adding to the inherent risk in their valuation.[25]

22. For example, PJM suffered a significant default in December 2007 in its financial transmission rights market[26] and moved to eliminate the use of unsecured credit in that market due to its risk.[27] That default illustrates the unique risk of financial transmission rights. Given a change in market conditions, a set of financial transmission rights positions became highly unprofitable. Because financial transmission rights obligations cannot be terminated prior to the expiration of the contract, from one month to several years, losses can mount to the point that the financial transmission right holder goes bankrupt.

23. Given the unique characteristics of and risks inherent in financial transmission rights markets, the Commission therefore proposes to revise its regulations to require that each RTO and ISO include in the credit provisions of its tariff provisions that eliminate unsecured credit in financial transmission rights markets.

D. Ability To Offset Market Obligations

24. Organized wholesale electric markets typically arrange for settlement and netting of transactions entered into between market participants and the market administrator, but do not take title to the underlying contract position of a participant at the time of settlement. This practice became an issue during the Mirant bankruptcy and its resulting default in the CAISO market. Because CAISO had not "taken title" of the transactions, CAISO could not net payments owed to Mirant against payments owed by Mirant.[28] As a result, all of Mirant's creditors had a claim to revenues owed to Mirant by CAISO market participants, but CAISO market participants bore the loss for money owed and not paid by Mirant.

25. The Commission therefore proposes to revise its regulations to require that each RTO and ISO include in the credit provisions of its tariff revisions to clarify their status as a party to each transaction so as to eliminate any ambiguity or question as to their ability to manage defaults and to offset market obligations. The Commission seeks comment on whether this clarification of status would have ramifications beyond addressing the risk highlighted here.

E. Minimum Criteria for Market Participation

26. The Commission recognizes that trading helps provide market liquidity, but trading by undercapitalized entities without adequate risk management procedures in place poses an unwarranted risk to organized wholesale electric markets and to their market participants. Minimum criteria for market participation, such as the capability to engage in risk management or hedging or to out-source this capability with periodic compliance verification, are intended to make sure that each market participant has at its disposal adequate risk management capabilities and adequate capital to engage in trading with minimal risk, and related costs, to the market as a whole. Minimum criteria should not be onerous, however, and should allow most traditional market participants—including small load-serving entities, municipalities, cooperatives, and other similar participants in organized wholesale electric markets—to participate.

27. The Commission therefore proposes to revise its regulations to require that each RTO and ISO include in the credit provisions of its tariff language to specify minimum participation criteria for all market

[22] *See* Testimony in Technical Conference on Credit and Capital Issues, Docket No. AD09–2–000, Tr. 146:3–9 (Mr. Daniel Sarti, Credit Risk Manager, Arizona Public Service Company) (Jan. 13, 2009).

[23] *See California Independent System Operator Corp.,* 129 FERC ¶ 61,142 at P 14 (adopting limit of $50 million of unsecured credit per market participant); *PJM Interconnection, LLC,* 127 FERC ¶ 61,017 at P 5 (adopting limit of $50 million for a member company and $150 million for an affiliated group).

[24] For a financial transmission right, an unexpected outage can cause unforeseen congestion or movement in flows and the resulting charges or credits can swing very substantially either way.

[25] *PJM Interconnection, LLC,* 127 FERC ¶ 61,017 at P 36.

[26] *PJM Interconnection, LLC,* 122 FERC ¶ 61,279, at P 26 n.10 (2008) (citing defaults by Exel and Power Edge in PJM's financial transmission rights market).

[27] *PJM Interconnection, LLC,* 127 FERC ¶ 61,017 at P 8, 36.

[28] Memorandum by Wachtell, Lipton, Rosen & Katz to PJM regarding Setoffs and Credit Risk of PJM in Member Bankruptcies at 7, 10–11 (Mar. 17, 2008) (found on Dec. 31, 2009 at *http://www.pjm.com/~/media/committees-groups/committees/crmsc/20080423/20080423-wachtell-netting-memo.ashx*).

participants. The Commission requests comment on what the minimum criteria should be, as well as the process by which the organized wholesale electric markets adopt such criteria.

F. "Material Adverse Change"

28. Many wholesale market tariffs allow a market administrator to require additional collateral if there is a "material adverse change" in the market participant's credit status. However, this phrase is ambiguous and could lead to uncertainty as to when a market administrator can require the posting of additional collateral, at potentially great cost to the market participant. Additionally, this ambiguity may have the practical effect of delaying a market administrator's request for additional collateral until the last minute, by which time the market participant may find it difficult or impossible to obtain and provide such collateral. The mere request for collateral at such a late date could even lead to reactions from other market participants that result in defaults.

29. The Commission therefore proposes to revise its regulations to require that each RTO and ISO include in the credit provisions of its tariff language to specify under what circumstances a market administrator may invoke a "material adverse change" as a justification for requiring additional collateral. The Commission requests comment as to specific language regarding the circumstances under which a market administrator may invoke the "material adverse change" provision and the process by which the organized wholesale electric markets would adopt such language.

G. Grace Period to "Cure" Collateral Posting

30. RTOs and ISOs have also adopted timeframes in which a party may "cure" its changed credit position by posting additional collateral. The standardized timeframe helps eliminate uncertainty for other market participants during periods of credit stress. PJM, for example, has adopted a period of two business days to cure.[29] The Commission understands that demanding additional collateral from a participant can complicate that participant's financial position and that the participant may need time to "cure," including consulting with potential lenders and others. On the other hand, the Commission is also aware that the time period to "cure" the position of the participant must be short enough to minimize uncertainty for other market participants and to stem accumulation of debt and potentially erratic market behavior.

31. For these reasons, the Commission proposes to revise its regulations to require that each RTO and ISO include in the credit provisions of its tariff language to limit the time period allowed to post additional collateral when additional collateral is requested by the organized wholesale electric market. The Commission requests comment on the appropriate time period to post additional collateral, e.g., two business days, as PJM has adopted, and whether the time period should be standardized among organized wholesale electric markets.

IV. Environmental Analysis

32. 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.[30] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[31] The proposed regulations are categorically excluded as they address rate filings submitted under section 206 of the FPA and the establishment of just and reasonable rates, terms and conditions of jurisdictional service under this section of the FPA.[32] Accordingly, no environmental assessment is necessary and none has been prepared for this NOPR.

V. Information Collection Statement

33. 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.

34. This NOPR proposes to amend the Commission's regulations pursuant to section 206 of the Federal Power Act, to reform credit practices of organized wholesale electric markets to limit potential future market disruptions. To accomplish this, the Commission proposes to require RTOs and ISOs to adopt tariff revisions reflecting these credit reforms. Such filings would be made under Part 35 of the Commission's regulations. The information provided for under Part 35 is identified as FERC–516.

35. 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 the Commission's need for this information, 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.

Burden Estimate: The Public Reporting burden for the requirements contained in the NOPR is as follows:

Data collection	Number of respondents	No. of responses	Hours per response	Total annual hours
FERC–516:				
Transmission Organizations with Organized Electricity Markets	6	1	60	360

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. The Commission has projected the average annualized cost of all respondents to be the following: 360 hours @ $300 per hour = $108,000 for respondents. No capital costs are estimated to be incurred by respondents.

Title: FERC–516 "Electric Rate Schedule Tariff Filings"

Action: Proposed Collections

OMB Control No: 1902–0096

[29] *PJM Interconnection, LLC,* 126 FERC ¶ 61,084 at P 12.

[30] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990, ¶ 30,783 (1987).

[31] 18 CFR 380.4.

[32] *See* 18 CFR 380.4(a)(15).

Respondents: Business or other for profit, and/or not for profit institutions.

Frequency of Responses: One time to initially comply with the rule, and then on occasion as needed to revise or modify.

36. *Necessity of the Information:* The information from FERC–516 enables the Commission to exercise its wholesale electric power and transmission oversight responsibilities in accordance with the Federal Power Act. The Commission needs sufficient detail to make an informed and reasonable decision concerning the appropriate level of rates, and the appropriateness of non-rate terms and conditions, and to aid customers and other parties who may wish to challenge the rates, terms, and conditions proposed by the utility.

37. This proposed rule, if adopted, would amend the Commission's regulations to ensure that credit practices currently in place in markets reasonably protect consumers against the adverse effects of default. To promote confidence in the markets, the Commission believes it is appropriate to consider adoption of specific requirements regarding credit practices for organized wholesale electric markets. These requirements include shortening of settlement periods and reducing the amount of unsecured credit. The Commission believes these actions, if they are adopted, will enhance certainty and stability in the markets, and in turn, ensure that costs associated with market participant defaults do not result in unjust or unreasonable rates.

38. *Internal review:* The Commission has reviewed the requirements pertaining to organized wholesale electric markets and determined the proposed requirements are necessary to its responsibilities under section 206 of the Federal Power Act.

39. These requirements conform to the Commission's plan for efficient information collection, communication and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

40. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, Phone: (202) 502–8415, fax: (202) 273–0873, e-mail: *michael.miller@ferc.gov*]. Comments on the requirements of the proposed rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission], e-mail: *oira_submission@omb.eop.gov.*

VI. Regulatory Flexibility Act Certification

41. The Regulatory Flexibility Act of 1980 (RFA)[33] requires agencies to prepare certain statements, descriptions, and analyses of proposed rules that will have significant economic impact on a substantial number of small entities.[34] Agencies are not required to make such an analysis if a rule would not have such an effect.

42. The RTOs and ISOs regulated by the Commission do not fall within the RFA's definition of small entity.[35] In addition, the vast majority of market participants in RTOs and ISOs are, either alone or as part of larger corporate families, not small entities. And the protections proposed here will protect all market participants, including small market participants, by reducing the likelihood of defaults and minimizing the impact of any defaults.

43. California Independent Service Operator Corp. is a nonprofit organization comprised of more than 90 electric transmission companies and generators operating in its markets and serving more than 30 million customers.

44. New York Independent System Operator, Inc. (NYISO) is a nonprofit organization that oversees wholesale electricity markets serving 19.2 million customers. NYISO manages a 10,775-mile network of high-voltage lines.

45. PJM Interconnection, LLC is comprised of more than 450 members including power generators, transmission owners, electricity distributors, power marketers and large industrial customers and serving 13 states and the District of Columbia.

46. Southwest Power Pool, Inc. is comprised of 50 members serving 4.5 million customers in eight states and has 52,301 miles of transmission lines.

47. Midwest Independent Transmission System Operator, Inc. (Midwest ISO) is a non-profit organization with over 131,000 megawatts of installed generation. Midwest ISO has 93,600 miles of transmission lines and serves 15 states and one Canadian province.

48. ISO New England Inc. (ISO–NE) is a regional transmission organization serving six states in New England. The system is comprised of more than 8,000 miles of high voltage transmission lines and several hundred generating facilities of which more than 350 are under ISO–NE's direct control.

49. Therefore, the Commission certifies the proposed rule will not have a significant economic impact on a substantial number of small entities. As a result, no regulatory flexibility analysis is required.

VII. Comment Procedures

50. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due March 29, 2010. Comments must refer to Docket No. RM10–13–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. Comments may be filed either in electronic or paper format.

51. Comments may be filed electronically via the eFiling link on the Commission's web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats, but requests commenters to submit comments in a text-searchable format rather than a scanned image format. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC, 20426.

52. 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.

VIII. Document Availability

53. 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

[33] 5 U.S.C. 601–12.

[34] 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. 15 U.S.C. 632. The Small Business Size Standards component of the North American Industry Classification System defines a small electric utility as one that, including its affiliates, is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal year did not exceed 4 million MWh. 13 CFR 121.201.

[35] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation.

document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

54. From the Commission's Home Page on the Internet, this information is available in the Commission's document management system, 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, type the docket number (excluding the last three digits of the docket number), in the docket number field.

55. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance, please contact FERC Online Support at (202) 502–6652 (toll-free at 1–866–208–3676) or e-mail at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail 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. Commissioner Norris voting present.

Kimberly D. Bose,

Secretary.

In consideration of the foregoing, the Commission proposes to amend part 35, Chapter 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. Subpart J is added to read as follows:

Subpart J—Credit Practices In Organized Wholesale Electric Markets

Sec.
35.45 Applicability.
35.46 Definitions.
35.47 Tariff provisions governing credit practices in organized wholesale electric markets.

Subpart J—Credit Practices In Organized Wholesale Electric Markets

§ 35.45 Applicability.

This part establishes credit practices for organized wholesale electric markets for the purpose of minimizing risk to market participants.

§ 35.46 Definitions.

(a) *Market Participant* means an entity that qualifies as a Market Participant under 18 CFR 35.34.

(b) *Organized Wholesale Electric Market* includes an independent system operator and a regional transmission organization.

(c) *Regional Transmission Organization* means an entity that qualifies as a Regional Transmission Organization under 18 CFR 35.34.

(d) *Independent System Operator* means an entity operating a transmission system and found by the Commission to be an Independent System Operator.

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

Each organized wholesale electric market must have tariff provisions that:

(a) Limit the amount of unsecured credit extended to any market participant to no more than $50 million.

(b) Adopt a settlement period of no more than seven days and allow no more than an additional seven days to receive payment.

(c) Eliminate unsecured credit in the financial transmission rights market.

(d) Allow it to offset market obligations owed to market participants against market obligations owed by market participants.

(e) Limit to no more than two days the time period provided to post additional collateral when additional collateral is requested by the organized wholesale electric market.

(f) Provide minimum participation criteria required of market participants to be eligible to receive credit from the organized wholesale electric market.

(g) Specify when a market administrator may invoke the "material adverse change" as a justification for requiring additional collateral.

[FR Doc. 2010–1537 Filed 1–26–10; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Chapter I

[Docket No. RM10–11–000]

Integration of Variable Energy Resources

Issued January 21, 2010.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Inquiry.

SUMMARY: In this Notice of Inquiry, the Federal Energy Regulatory Commission (Commission) seeks comment on the extent to which barriers may exist that impede the reliable and efficient integration of variable energy resources (VERs) into the electric grid, and whether reforms are needed to eliminate those barriers. In order to meet the challenges posed by the integration of increasing numbers of VERs, ensure that jurisdictional rates are just and reasonable, eliminate impediments to open access transmission service for all resources, facilitate the efficient development of infrastructure, and ensure that the reliability of the grid is maintained, the Commission seeks to explore whether reforms are necessary to ensure that wholesale electricity tariffs are just, reasonable and not unduly discriminatory. This Notice will enable the Commission to determine whether wholesale electricity tariff reforms are necessary.

DATES: Comments are due March 29, 2010.

ADDRESSES: You may submit comments, identified by docket number by any of the following methods:

- *Agency Web site: http://ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Mk Shean (Technical Information), Office of Energy Policy and Innovations, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6792, *Mk.Shean@ferc.gov.*

Timothy Duggan (Legal Information), Office of General Counsel—Energy Markets, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8326, *Timothy.Duggan@ferc.gov.*

SUPPLEMENTARY INFORMATION:

1. In this Notice of Inquiry, the Federal Energy Regulatory Commission (Commission) seeks comment on the extent to which barriers exist that may impede the reliable and efficient integration of variable energy resources (VERs) [1] into the electric grid and

[1] For purposes of this proceeding, the term variable energy resource (VER) refers to renewable