



the impacts of the proposed credit reforms on the nascent retail electric market and its stakeholders.

NEM's recommendations herein are intended to aid the Commission in developing and implementing credit policies that support well-functioning organized wholesale electric markets as well as the continued development of retail electric markets. Briefly stated, as to the credit reform proposals set forth by the Commission, NEM supports:

- **The proposed requirement for a seven day settlement cycle, if and as applied equally to all market participants. NEM opposes the proposal to later move to mandatory daily settlement. NEM suggests that an optional daily settlement/margining process and an efficient e-scheduling capability be added to the NYISO market and preserved in other RTO/ISO markets so that market participants have the right to bilaterally obtain alternate settlements that might better fit their situation. This range of settlement/margining options allows market participants to optimize their particular capital situation and thereby make more capital available for investment in clean demand side negawatts (e.g., demand response, energy efficiency, and on-site renewable generation).**
- **The proposed \$50 million cap on unsecured credit as applied per market participant, with the clarification that “market participant” be defined such that the \$50 million cap applies to the individual retail marketer and is not applied in aggregate to the financing companies that back multiple retail**

**marketers in the marketplace. NEM also supports the concept of an aggregate cap applied to corporate families.**

- **The elimination of unsecured credit in financial transmission rights markets if applied evenly to all market participants.**
- **The clarification of the RTO/ISO status in netting transactions, in order to support this valuable market function.**
- **The implementation of minimum participation criteria that reflect the unique position of retail energy marketers and their contribution to well-functioning organized wholesale electric markets.**
- **Increased certainty for market participants as to what constitutes a “material adverse change” that will require posting of additional collateral.**

## **II. Proposed Credit Reforms**

### **A. Shortening the Settlement Cycle**

The Commission proposes to require RTOs/ISOs to implement a settlement cycle of no more than seven calendar days with no more than an additional seven calendar days for final payment. (NOPR para. 15). Additionally, the Commission is seeking comment on the practicality of requiring daily settlement periods within one year of implementation of weekly settlement periods. (Id.). **NEM supports the proposed requirement for a seven day settlement cycle, if and as applied equally to all market participants. However, NEM opposes the proposal to later move to mandatory daily settlement.**

**NEM recommends that an optional daily settlement/margining process be made available for those market participants that wish to utilize it for cash flow management purposes.**

NEM agrees with the Commission that moving to a shortened seven day settlement cycle would be beneficial. Indeed, from a retail marketer perspective, the reduced settlement cycle would avoid the major capital requirements of longer settlement periods and increase liquidity. However, NEM submits that there is an inflection point that is reached in reducing the settlement process shorter than seven days. This is seen as a tradeoff between credit capacity and the amount of working capital that will be required to participate in the market under daily settlement. Indeed, the working capital requirements faced by small retail marketers would be problematic and force some out of the market. Requiring small entities to put cash up front and wait thirty days to get paid by their customers is a significant cost and risk of doing business. Moreover, if the settlement cycle is reduced too far it merely shifts exposure from the wholesale market onto the retail market, transferring the problem to a different market sector without solving it.

The above point notwithstanding, there are some smaller market participants for whom the option to daily settle or daily post cash margin to cover their exposure may indeed reduce their total capital requirements. Preserving the option to daily post collateral could help such market participants.

At the other end of the spectrum, other retail marketers are able to provide collateral support to bilateral market suppliers in such a way that monthly settlements can actually

increase their total working capital available. Thus, we encourage FERC to continue to support easy bilateral scheduling capability (e.g., e-schedule in PJM or ISTs in CAISO) which allows retail marketers to contract with a variety of bilateral suppliers and the option to obtain bilateral settlement cycles that optimize the working capital situation for the retail marketer. Generally, with the exception of NYISO, we find that most ISOs provide some type of easy bilateral scheduling capability. We request that NYISO accelerate its efforts for such e-schedule capability to support its protocols that are otherwise largely friendly to retail marketers. We also request that any other changes in market structure not remove this e-schedule capability.

In summary, most retail marketers have found the FERC proposed weekly settlement processes to hit the right inflection point in generally minimizing capital requirements for procurement through RTOs/ISOs. We request that FERC preserve the option for daily settlements/margining or bilateral scheduling to achieve alternate bilateral settlement cycles. Providing such a range of settlement options will maximize the working capital that retail marketers collectively have available to invest in demand side negawatts (ie, demand response, energy efficiency, on-site clean generation) in moving toward a lower carbon future.

## **B. Use of Unsecured Credit**

The Commission proposes to require that each RTO/ISO reduce the extension of unsecured credit to no more than \$50 million per market participant. (NOPR para. 19). The Commission further proposes that an aggregate cap on unsecured credit be applied to entire corporate families. (Id.). **NEM supports the proposed \$50 million cap on**

**unsecured credit as applied per market participant, with the clarification that market participant be defined such that the \$50 million cap applies to the individual retail marketer and is not applied in aggregate to the financing companies that back multiple retail marketers in the marketplace.** Financing companies post collateral and provide credit support for small retail marketers, and in so doing, provide a valuable function in the marketplace. However, if the \$50 million cap were construed as having been reached by the financing company, instead of each individual retail marketer, it would by definition increase the cost of capital for these entities.

NEM also supports the \$50 million cap on unsecured credit because it should have the effect of rectifying a significant competitive advantage the regulated utilities currently enjoy in the marketplace. Regulated utilities that can trade largely on the strength of their balance sheets have had a competitive advantage vis a vis retail marketers that compete in their service territories in this regard. **NEM supports the concept of an aggregate cap applied to corporate families** because, relatedly, it should serve to better equalize the playing field amongst different market participants.

### **C. Financial Transmission Rights**

The Commission proposes that RTOs/ISOs **eliminate unsecured credit in financial transmission rights markets.** (NOPR para. 23). NEM generally supports this position as long as it is **applied evenly to all market participants.** This should help reduce risk in such markets.

#### **D. Ability to Offset Market Obligations**

It is proposed that RTOs/ISOs clarify in their tariffs their status as a party to each transaction to address potential ambiguity as to their ability to manage defaults and to offset market obligations as they arrange for settlement and netting transactions entered into between market participants. (NOPR para. 25).

NEM supports solutions for decreasing upfront collateral requirements on market participants that do not increase the RTOs/ISOs overall risk. Netting all transactions with the RTOs/ISOs to one net position more efficiently aligns collateral requirements, eliminates unnecessary duplication and over collateralization. Moreover, any action that can allow a retail marketer's ISO/RTO transactions to be netted with bilateral transactions can even further minimize the overall costs of credit for the market generally, and lower the cost of delivered energy to the ultimate consumer. NEM members participate in retail markets and support continued development of those markets. **To the extent that the clarification of the RTO/ISO status in netting transactions will serve to support this valuable market function, NEM supports FERC's proposal in this regard.**

#### **E. Minimum Criteria for Market Participation**

By the terms of the proposed rulemaking, RTOs/ISOs would be required to provide minimum participation criteria for market participants to be eligible to receive credit from the organized wholesale electric market. (NOPR para. 27). Such criteria are meant to ensure, "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." (Id.). We support FERC's proposal to increase

standardization across markets, rather than have market participants comply with inconsistent, member-driven requirements in the different RTOs/ISOs. We are concerned, however, that minimum participation criteria not be defined so as to unnecessarily restrict and/or prevent the participation of small retail marketers in the marketplace. Importantly, FERC clearly stated that, “Minimum criteria should not be onerous . . . and should allow most traditional market participants . . . to participate.” (NOPR para. 26). **Minimum participation criteria should be devised that reflect the unique position of retail energy marketers and their contribution to well-functioning organized wholesale electric markets.** Retail energy marketers should be included in any RTO/ISO process to develop minimum participation criteria.

#### **F. “Material Adverse Change”**

FERC proposes that RTOs/ISOs specify what constitutes a “material adverse change” that could be used as justification for requiring additional collateral from a market participant. (NOPR para. 29). NEM supports the Commission proposal. By clearly defining this term it should contribute to its clearer, more consistent application by RTOs/ISOs. Likewise, this will give market participants increased certainty as to when it could potentially be applied to them, thereby allowing them to better control their costs and risks.

### **III. Conclusion**

NEM agrees with the Commission that sound credit practices are essential to well-functioning organized wholesale electric markets. Our comments herein are intended to highlight the impact of the credit reform proposals on the retail energy marketers that do

business across multiple RTOs/ISOs as they serve all manner of consumers in multiple utility service territories. With the clarifications suggested herein, we support FERC's credit reform proposals.

Respectfully submitted,

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