

EPIC appreciates the opportunity to provide comments to ISONE and the FTR Credit Working Group on aspects of net worth, minimum capitalization and unsecured credit. EPIC is committed to continue working with ISONE to establish reasonable and sufficient credit and collateral policies.

EPIC believes that imposing net worth requirements on market participants would be an onerous and discriminatory practice that would not provide the protection the ISO seeks. ISONE's proposal is anticompetitive and a diversion from the truly important task of ensuring that ISONE's credit and collateral policies are fair and adequate. After all, ISONE does not pay for defaults, payment falls to EPIC and the other ISONE market participants.

### **Net Worth, Minimum Capitalization and Unsecured Credit**

In ISONE certain market participants are extended credit and are not required to post collateral. This unsecured credit provides a clear and discriminatory advantage for those participants. ISONE is now moving to extend this advantage by implementing an arbitrary net worth obligation, which would impose a requirement to demonstrate ten million dollars of tangible net worth. This requirement would essentially provide another 'get out of jail free' for large, asset-based companies, while saddling small marketing firms with another burdensome cost.

The net worth participation requirements are not related to creditworthiness and would add little to ensure that the ISONE market is adequately collateralized or to guarantee defaults will not take place in the ISONE markets. If ISONE's credit and collateral policies are adequate, then a net worth requirement would be superfluous and unnecessary.

While a net worth requirement would introduce a barrier to entry into the ISONE market, compliance with the requirement would not provide realistic protection from market defaults. The net worth requirement raises a number of concerns and problems:

- The net worth of a company provides little indication of its ability to prevent default.
  - Certainly Enron, Bear Stearns and presumably Power Edge, would have met these qualifications.
    - If the proposed ISONE net worth requirement was in place before the PJM defaults, it would not have limited or prevented those defaults. Also, the collection of monies related to the default would be problematic.
- Verifying the net worth of a company on a day-to-day much less a moment-to-moment basis is unrealistic and virtually impossible.
  - The net worth of any company varies over time.

- Is ISONE willing to spend the time, energy and money to certify and continuously monitor a company's net worth?
- It is difficult to lean on the net worth of a company during times of default.
- The net worth requirements are discriminatory and anticompetitive as they would only burden smaller companies or financial marketing firms - entities with fewer tangible assets.
  - According to ISONE's calculations the net worth requirement would fall to a very few FTR market participants (3 to 6 of the 47 total). While the new requirements may, or may not, cause these companies to withdraw from the ISONE market it would surely severely limit their bidding and affect their bidding strategies.
    - These firms are important to the ISONE market, as they provide liquidity, price certainty, price convergence and competition.
    - Implementing a net worth requirement would place a barrier to entry for many companies wishing to trade in NE.
    - Eliminating or limiting the bidding of smaller companies in ISONE's FTR market would further concentrate FTR ownership. ISONE's figures show that currently six participants own 80% of all FTRs.

ISONE's long standing policy allowing liberal unsecured credit creates an uneven playing field and should be abolished. When market participants are not affected by policies, it is human nature to make those policies as strenuous as possible. As long as ISONE favors one group of market participants over another, the market will continue to see proposals such as these on net worth.

In response to the defaults in the PJM market, ISONE's staff and stakeholders acted decisively to shore up ISONE's credit and collateral policies. So, is ISONE's market as secure as possible from defaults? The answer is a definitive no. The unsecured credit market is a risk that ISONE can ill afford to continue. Unsecured credit is a risky practice and puts ISONE's market participants in jeopardy:

- The idea that some market participants qualify for unsecured credit is an antiquated design concept, which does not bear any resemblance to contemporary commodity markets.
- Throughout history, many company's net worth has been extensive before they defaulted. Company's credit rating may be high before they default or go bankrupt. Collecting on these defaults was time consuming and usually settled for nothing or pennies on the dollar.
  - As recent history has shown in the banking, mortgage, energy and financial markets, the risk of default is real and growing for companies who were considered sound.
- According to PJM's calculations, their markets potentially allow 5.7 billion dollars of unsecured credit, which 2.2 billion is currently used. Surely it is fiscally irresponsible for PJM to allow this much unsecured credit. EPIC requests that ISONE provide figures on the total potential unsecured credit and total of unsecured credit currently being used in its markets.

- Marketers structure their transactions differently when they must post cash for credit, as opposed to being awarded unsecured credit. Marketers with unsecured credit have a financial advantage for each and every transaction they submit to ISONE.

A legal analysis of ISONE's net worth requirements for market participants is affixed as **Attachment A**.

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