

Deference in this context is a slippery proposition for other reasons, too. Naturally, states may perceive equity considerations, cost causation principles,¹ and market risk factors² differently than the Commission, and consequently they may not share the Commission's view that utilities are entitled to full recovery of stranded costs here. Because of this potential difference of opinion, I suspect that the amount of deference that the Commission provides to the states may be directly proportional to the level of stranded cost recovery that states grant the utilities.

In sum, the majority's ingenious attempt to federalize stranded cost claims arising from municipalization, while admirable in terms of the need to resolve transition cost issues expeditiously, is more likely to cause greater uncertainty and more argument about the appropriate standard to apply than it is to promote settlement of the matter.

I therefore respectfully dissent in small part to Order No. 888-A.

James J. Hoecker,
Commissioner.

Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities. Docket No. RM95-8-001.

Recovery of Stranded Costs by Public Utilities and Transmitting Utilities. Docket No. RM94-7-002.

Order No. 888-A

(Issued March 4, 1997)

MASSEY, Commissioner, *dissenting in part*:

I dissent in part, from this otherwise excellent rule, on a single issue. I continue to believe, as I stated in my dissent to Order No. 888, that the Commission should treat stranded costs arising from retail competition and municipalizations similarly.

Municipalization occurs under state rather than federal law. The majority's decision in Order No. 888 that FERC should be the primary forum for addressing the recovery of stranded costs caused by municipalization boldly and unnecessarily preempts legitimate state authority. Today's order perpetuates and compounds this error by extending federal preemption to stranded costs arising from municipal annexations as well.

Many state commissions have express legislative authority to address these issues and should not be prohibited from doing so by federal regulators. It is only when a state commission does not have the authority, or has the authority and fails to use it, that the Commission should be available as a stranded cost recovery forum of last resort.

On this one issue, I respectfully dissent.

William L. Massey,
Commissioner.

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¹ Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol. Order No. 636-C, 78 FERC ¶ 61,186 (1997).

² Mechanisms for Passthrough of Pipeline Take-or-Pay Buyout and Buydown Costs. Order No. 528-A, 54 FERC ¶ 61,095 (1991).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM95-9-001; Order No. 889-A]

Open Access Same-Time Information System and Standards of Conduct

Issued March 4, 1997.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final Rule; order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission is revising its policy on posting discounts to be consistent with changes in the discount policy that we simultaneously are implementing in Order No. 888-A. Additionally, we are making other minor revisions to 18 CFR Part 37—which contains rules establishing and governing transmission information networks and standards of conduct—to be responsive to arguments made on rehearing and to make the regulations operate more smoothly.

In addition, the Commission requests that the How Working Group propose the necessary changes in the Standards and Protocols document and the Data Dictionary by June 2, 1997 to address four issues.

EFFECTIVE DATE: This rule is effective on May 13, 1997.

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Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, La Dorn Systems Corporation. La Dorn Systems Corporation is also located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

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I. Introduction

In this order, the Commission addresses the requests for rehearing of Order No. 889, our final rule requiring public utilities that own, control, or operate facilities used for the transmission of electric energy in interstate commerce to create or participate in an Open Access Same-Time Information System (OASIS) site in conformance with the requirements set out in 18 CFR Part 37.¹ Those requirements also obligate public utilities subject to the rule to implement

¹ Open Access Same-Time Information System and Standards of Conduct, Final Rule, Order No. 889, FERC Stats. & Regs. ¶ 31,037, 61 FR 21,737 (1996). Since issuance of Order No. 889, we have issued two additional orders. These orders: (1) revise the standards and communication protocols for OASIS nodes; and (2) extend the date for commencing Phase I OASIS operations and complying with the standards of conduct. See *infra* notes 4, 6, respectively.

standards of conduct to functionally separate transmission and wholesale merchant functions.

For the reasons stated, we will grant rehearing, in part, and adopt several suggested revisions to the OASIS final rule, but will, in main part, deny rehearing and retain the OASIS final rule as promulgated in Order No. 889. In addition, we request that the How Working Group propose changes to the Standards and Protocols document and the Data Dictionary by June 2, 1997 to address four issues described below.

II. Background

In Order No. 889, the Commission promulgated a final rule (OASIS Final Rule) requiring Transmission Providers² to implement the legal and policy determinations made concurrently in Order No. 888, the final rule on open access transmission (Open Access Final Rule).³ Under Order No. 889, the OASIS Final Rule applies to any transmission service offered under the Open Access Final Rule *pro forma* tariff, including service both to wholesale Transmission Customers and to retail Transmission Customers that are able to receive unbundled retail transmission service and to any entity required to provide such service.

Under the OASIS Final Rule, Transmission Providers are required to establish or participate in an OASIS that meets certain requirements and must comply with prescribed standards of conduct. The standards of conduct are designed to prevent employees of a public utility (or any employees of its affiliates) engaged in wholesale merchant functions (wholesale sales of electricity for resale in interstate commerce) from obtaining preferential access to pertinent transmission-related information.

To this end, the standards of conduct, set out in the Commission's regulations at 18 CFR 37.4, require companies to separate their transmission operations/reliability functions from their wholesale marketing/merchant functions. They are intended to prevent transmission system operators from providing wholesale merchant employees or wholesale merchant

² Order No. 889 and the OASIS regulations at 18 CFR 37.3 define a "Transmission Provider" as any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce. This same definition applies to our use of this term in this order.

³ Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, Final Rule, FERC Stats. & Regs. ¶ 31,632, 61 FR 21,540 (1996), *order on reh'g*, Order No. 888-A,—FERC ¶ —,—(1997).

employees of affiliates with transmission-related information not available to all customers at the same time (through public posting on the OASIS).

The OASIS Final Rule describes what information must be posted on an OASIS, what procedures must be followed in responding to requests for transmission service, and references the Commission's accompanying Standards and Protocols document adopted by the Commission to ensure that information is to be posted on an OASIS in a uniform manner.⁴ Transmission Providers are required to provide on an OASIS, in a uniform manner, certain types of information concerning the status of their transmission systems. The provisions of the OASIS Final Rule are intended to work together to ensure that Transmission Customers⁵ have access to transmission information, through electronic means, that will enable them to obtain comparable, open access transmission service on a non-discriminatory basis.

Order No. 889 established Phase I OASIS rules that required the creation of a basic OASIS by November 1, 1996 (subsequently extended until January 3, 1997).⁶ We are appreciative of the ongoing efforts of the How Working Group and the What Working Group in helping to develop the OASIS Standards and Protocols and in helping to resolve numerous difficult OASIS implementation issues.⁷ We also, despite setbacks encountered by some public utilities, are appreciative of the hard work of the entire electric industry in meeting the ambitious schedule for OASIS implementation prescribed in Order No. 889.

Order No. 889 also explained that Phase I implementation would be followed by Phase II procedures

⁴ See Open Access Same-Time Information System and Standards of Conduct, Order Issuing Revised OASIS Standards and Protocols Document, 76 FERC ¶ 61,243, 61 FR 50,116 (1996), where the Commission revised the Standards and Protocols document that accompanied Order No. 889.

⁵ Order No. 889 and the OASIS regulations at 18 CFR 37.3 define a "Transmission Customer" as any eligible customer (or its designated agent) that can or does execute a transmission service agreement or can or does receive transmission service. This same definition applies to our use of this term in this order.

⁶ See Open Access Same-Time Information System and Standards of Conduct, Order Granting Request for Extension of Time, 76 FERC ¶ 61,305 (1996).

⁷ The How Working Group and its companion working group, the What Working Group, are industry-led groups, with diverse industry and customer representatives, working to reach consensus on OASIS-related issues. See OASIS Final Rule, 61 FR at 21,740, n.13, for a fuller description of both working groups and their activities.

whereby the Commission, with ongoing industry participation, will continue to refine and further develop the requirements for a fully functional OASIS.⁸

Requests for rehearing relating to Order No. 889 were filed by over 40 interested persons. These include 37 requests for rehearing that collectively list both Order Nos. 888 and 889 in their captions and ten requests for rehearing that are aimed exclusively at Order No. 889.⁹ Several of the issues raised on rehearing that implicate both Order Nos. 888 and 889 are addressed more fully in Order No. 888-A, which is being issued contemporaneously with this order.¹⁰

III. Public Reporting Burden

This order on rehearing adopts a number of small changes, more fully elaborated in Section IV.E.8 below, to be consistent with the Commission's revised discount policy being announced in Order No. 888-A. In addition, we also are making nine minor revisions to the OASIS Final Rule and direct the How Working Group to propose changes to the Standards and Protocols document addressing four additional issues. We find, after reviewing these revisions, that they do not, on balance, increase the public reporting burden.

The OASIS Final Rule contained an estimated annual public reporting burden based on the requirements of the Final Rule and consideration of comments from interested persons.¹¹ Using the burden estimate contained in the OASIS Final Rule as a starting point, we evaluated the public burden estimate contained in the OASIS Final Rule in light of the revisions contained in this order and assessed whether this estimate needed revision. We have concluded, given the minor nature of

the revisions, and their offsetting nature, that our estimate of the public reporting burden of this order on rehearing remains unchanged from our original estimate of the public reporting burden contained in the OASIS Final Rule. The Commission has conducted an internal review of this conclusion and has assured itself, by means of its internal review, that there is specific, objective support for this information burden estimate. Moreover, the Commission has reviewed the collection of information required by the OASIS Final Rule as revised by this order on rehearing and has determined that the collection of information is necessary and conforms to the Commission's plan, as described in this order, for the collection, efficient management, and use of the required information.

Persons wishing to comment on the collections of information required by this order on rehearing should direct their comments to the Desk Officer for FERC, Office of Management and Budget, Room 3019 NEOB, Washington, D.C. 20503, phone 202-395-3087, facsimile: 202-395-7285 or via the Internet at hillier_t@a1.eop.gov. Comments must be filed with the Office of Management and Budget within 30 days of publication of this document in the Federal Register. Three copies of any comments filed with the Office of Management and Budget also should be sent to the following address: Ms. Lois Cashell, Secretary, Federal Energy Regulatory Commission, Room 1A, 888 First Street, N.E., Washington, D.C. 20426. For further information, contact Michael Miller, 202-208-1415.

IV. Discussion

A. Overview of Revisions made in this Order

In this order on rehearing of Order No. 889, the Commission has implemented a new discounting policy, adopted and described in detail in Order No. 888-A. This new discount policy necessitates a number of changes to the Standards of Conduct and OASIS posting requirements:

(1) We are deleting §§ 37.4(b)(5)(v) and 37.4(b)(5)(vi).

(2) We are adding a provision now designated as § 37.6(c)(3) to require, among other things, that any offer of a discount for basic transmission service must be announced to all potential customers solely by posting on the OASIS.

(3) We are revising § 37.6(c)(4) to no longer treat the posting of transmission service transactions involving the Transmission Provider's (or any affiliate's) merchant function any differently from the posting of transactions involving non-affiliates except that transactions involving the Transmission

Provider's wholesale merchant function or affiliates must be identified.

(4) We are adding a provision now designated as § 37.6(d)(2) to require, among other things, that any offer of a discount for ancillary service provided by the Transmission Provider in support of its provision of basic transmission service must be announced to all potential customers solely by posting on the OASIS.

(5) We are revising § 37.6(d)(3) on ancillary services consistent with item 3 above.

(6) We are revising § 37.6(e)(1)(i) to require that, except for next-hour service, requests for transmission and ancillary service must be posted prior to the Transmission Provider responding to these requests.

(7) We are adding a provision, now designated as § 37.6(e)(1)(ii), that during Phase I, while requests for next-hour service need to be posted as soon as possible and in any event within one hour of receiving the request, they need not be posted prior to being acted on.

(8) We are adding a provision, at § 37.6(e)(1)(iii), that provides that in the event that a discount is being requested for ancillary services that are not in support of the Transmission Provider's provision of basic transmission service, such request need not be posted on the OASIS.

(9) We are renumbering § 37.6(e)(1)(ii) as § 37.6(e)(1)(iv) and are expanding the information required to be posted on the status of requests for transmission and ancillary service.

(10) We are deleting the provision formerly found in § 37.6(e)(1)(iii) and are revising § 37.6(e)(3)(i) because we no longer will allow the identity of parties to transactions to be masked.

Additionally, we believe that any "negotiation"¹² between a Transmission Provider and a potential customer should take place on the OASIS, and should be visible to all market participants, and we will revise our regulations to accomplish this as soon as practicable. To this end, we direct the How Working Group, by no later than June 2, 1997, to propose: (1) any changes that might be necessitated to the Standards and Protocols document; and (2) the earliest date when the industry can meet such a requirement during Phase I.

We also are making nine minor revisions to 18 CFR Part 37. These include: (1) amending the definition of wholesale merchant function in § 37.3; (2) amending §§ 37.4(b)(5)(iii) and 37.6(g)(4) to require Transmission Providers to post on the OASIS the information that they already are required to keep, detailing the circumstances and manner in which they exercise their discretion under any terms of the tariff; (3) substituting the phrase "sales made to any person for

⁸In the OASIS Final Rule, 61 FR at 21,762, we requested that the industry prepare a report on Phase II issues due on or before August 4, 1997 (seven months from January 3, 1997, the revised compliance date for Phase I implementation).

⁹The requests for rehearing for AK Cities, AL EC, AL MEA, Basin EC, Cajun, Central P&L, Central Montana EC, Cooperative Power, FPL, Florida Power Corp, Hoosier EC, NWRTA, Santa Clara, and SWRTA raised no direct 889 issues. The names and abbreviations of all interested persons who filed requests for rehearing of Order No. 889 (or a combined request for rehearing of Order Nos. 888 and 889) are listed in Attachment 1.

We also note that, in various places in this order, we identify issues that were raised in requests for rehearing of Order No. 889, or that were identified as pertaining to Order No. 889, that, in our judgment, really seek rehearing of matters relating to Order No. 888. They are therefore decided in Order No. 888-A.

¹⁰See Order No. 888-A.

¹¹No comments were filed in objection to the public burden estimate contained in the OASIS Final Rule.

¹²"Negotiation" would only take place if the Transmission Provider or potential customer seeks prices below the ceiling prices set forth in the tariff.

resale made by the wholesale merchant function or any affiliate” for the phrase “wholesale purchases or sales made on behalf of its own power customers, or those of an affiliate” in § 37.4(b)(5)(iv), to be consistent with the revised definition of “wholesale merchant function”; (4) amending § 37.6(b)(1) to clarify the meaning of the term “interconnection” as used in the definition of posted path; (5) amending § 37.6(b)(3)(ii) to clarify that firm available transmission capability (ATC) and nonfirm ATC for unconstrained posted paths must be separately posted; (6) amending § 37.6(e) to clarify that the provision applies to requests for ancillary service and that requests for service must be posted before the Transmission Provider responds to the request; (7) amending § 37.6(g)(3) to require that notices of transfers of personnel posted on the OASIS as described in § 37.4(b)(2) remain available for the same time period as audit information in § 37.7(b); (8) amending § 37.7(b) to shorten, from 90 days to 20 days, the time during which ATC/total transmission capability (TTC) postings must remain available for download on the OASIS (the data will, however, remain available upon request for three years from the date when they are first posted); and (9) removing § 37.8, because the compliance date for Part 37 has already passed.

In addition, we are requesting that the How Working Group propose changes in the Standards and Protocols document and the Data Dictionary by June 2, 1997 necessitated by the Commission’s revised discount policy and by our findings on various requests for rehearing.

We will retain the provisions of Order No. 889 and 18 CFR Part 37 in all other respects. Below, we address the provisions of 18 CFR Part 37 in light of the issues raised in the requests for rehearing.

B. Section 37.1—Applicability

1. Extent of the Commission’s Authority to Impose Standards of Conduct

In the OASIS Final Rule, the Commission determined that the rules in Part 37—including the obligation to adopt standards of conduct—would apply to any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce. Among other things, we concluded that we would not directly assert jurisdiction over non-public utilities under § 311 of the Federal Power Act (FPA) to ensure compliance with OASIS requirements, including the requirement to comply

with the standards of conduct. Instead, we are relying on the reciprocity provision of the Open Access *pro forma* tariff that requires a non-public utility to offer comparable transmission service to the Transmission Provider as a condition of obtaining open access service.¹³

Rehearing Request

ConEd argues that the Commission lacks authority to issue the standards of conduct requiring functional unbundling.¹⁴ Specifically, ConEd argues that the Commission has exceeded its authority by requiring “transmission providers to functionally separate interstate electricity transmission and wholesale merchant functions (wholesale sales and purchases of electricity in interstate commerce).”¹⁵ ConEd asserts that wholesale purchases of electricity in interstate commerce on behalf of native load customers are bundled retail electric service transactions that are local distribution and not subject to the Commission’s authority.

Commission Conclusion

We agree with ConEd to the extent that when a utility uses its own transmission system to transmit purchased power to retail load customers we have no jurisdiction over the transmission that is included in the bundled sale of power to the retail native load. Upon further consideration, we conclude that our definition of “wholesale merchant function” (in § 37.3(e)) should be modified to delete the phrase, “* * * or purchase for resale, * * *.” because this clause creates confusion and is not necessary. When a utility purchases power for its retail native load customers, this is not a sale for resale. In contrast, when a utility purchases power for its wholesale native load, the transmission of purchased power to the wholesale customer is really part of a transaction that includes a wholesale sale of power to a third party. Our authority to require functional unbundling of interstate electricity transmission and the wholesale merchant function, as newly defined, is fully supported in Order No. 888.

¹³ We discuss below, in the next section of this order, issues raised on rehearing that implicate the Commission’s authority to condition the use of public utility Open Access *pro forma* tariffs on the provision of reciprocal transmission services, including compliance with the standards of conduct and OASIS requirements.

¹⁴ ConEd Rehearing Request at pp. 2–6.

¹⁵ ConEd Rehearing Request at p. 2.

2. The Commission’s Authority to Impose Reciprocity Provision

In the OASIS Final Rule, we concluded that we will not directly assert jurisdiction over non-public utilities under § 311 of the FPA¹⁶ to ensure compliance with OASIS requirements. We concluded that we would, instead, rely on the reciprocity provision of the Open Access *pro forma* tariff that requires a non-public utility to offer comparable transmission service to the Transmission Provider as a condition of obtaining open access service. We found that if a non-public utility chooses to take open access service, and therefore is subject to the Open Access *pro forma* reciprocity provision, it also is subject to the OASIS and standards of conduct requirements in 18 CFR Part 37, unless the Commission grants a waiver of the reciprocity provision. The reciprocity provision announced in the Open Access Final Rule does not require non-public utilities to provide transmission access, but, instead, conditions the use of public utilities’ open access services on an agreement to offer open access services in return.

Rehearing Requests

A number of non-public utilities have raised arguments on rehearing challenging the reciprocity provision. First, some argue that, notwithstanding the Commission’s discussion of this issue in Order Nos. 888 and 889, the reciprocity provision is not voluntary.¹⁷ Second, some argue that the Commission lacks the authority to impose the reciprocity provision and that the Commission is trying to accomplish indirectly what it lacks the authority to do directly.¹⁸ Third, CAMU argues that the Commission should defer imposing the reciprocity provision until such time as the IRS clarifies the status of private use limitations within the context of transmission access.¹⁹ NE Public Power District objects that Order No. 889 contained scant discussion of the Commission’s authority to impose functional unbundling and other requirements based on the reciprocity provision.²⁰

¹⁶ 16 U.S.C. § 825j.

¹⁷ See Requests for Rehearing of AL EC, NE Public Power District, NRECA, and TDU Systems.

¹⁸ See Requests for Rehearing of Redding, NE Public Power District, NRECA, and TDU Systems.

¹⁹ CAMU Rehearing Request at pp. 3–4.

²⁰ This issue was fully considered and addressed in Order No. 888. NE Public Power District also raises a related issue, now moot, concerning possible conflicts between the standards of conduct and state freedom of information laws. Given that this issue concerns the confidentiality provisions of

Other entities seeking rehearing argue that the Commission did not go far enough in adopting and relying upon the reciprocity provision for purposes of attaining compliance with the OASIS and standards of conduct requirements. CCEM argues that the Commission erred by failing to require nonjurisdictional entities providing reciprocal service to comply with the OASIS requirements.²¹

EEI argues that the reciprocity provision requires all non-public utilities to functionally unbundle their transmission systems, establish an OASIS, and fully comply with the OASIS standards of conduct. Additionally, EEI advances a number of proposals that would expand the reciprocity provision contained in the Open Access Final Rule.²²

Montana-Dakota argues that the reciprocity provision should be expanded for non-public utilities. It argues that cooperatives should not be able to construct barriers minimizing their obligations under the reciprocity provision.²³

Commission Conclusion

After consideration of the arguments made on rehearing, both in this rulemaking proceeding and on rehearing of the Open Access Final Rule, we continue to believe that it is appropriate to condition the use of public utility open access tariffs on the agreement of the tariff user to provide reciprocal access to the Transmission Provider. Any eligible customer, including a non-public utility, that takes advantage of open access transmission tariff services should not be allowed to deny service or otherwise discriminate against the open access provider. Moreover, we continue to believe that, absent a waiver, the obligation to provide reciprocal, non-discriminatory services necessarily commits the customer of open access service, even if not a public utility, to abide by the OASIS and standards of conduct requirements.

Contrary to arguments raised on rehearing, we are not *requiring* non-public utilities to provide transmission access. Instead, we are conditioning the use of public utility open access tariffs, by all customers including non-public utilities, on an agreement to offer comparable (not unduly discriminatory) services in return. It would not be in the public interest to allow a non-public utility to take non-discriminatory transmission service from a public

utility at the same time that it refuses to provide comparable service to the public utility. Such a disparity would restrict the operation of robust competitive markets and would harm the very ratepayers that Congress has charged us to protect.

Similarly, it would not serve the public interest to compel public utilities to have OASIS nodes and to functionally unbundle their wholesale merchant functions from their transmission operations and reliability functions, while allowing non-public utilities that seek open access transmission from a public utility to evade these responsibilities.²⁴

Moreover, we have provided a mechanism, equally applicable both to small public utilities and to small non-public utilities, for them to obtain waivers of the OASIS and separation of function requirements and the other reciprocity requirements.²⁵

Turning to arguments that assert that the reciprocity condition does not go far enough, we are unpersuaded that we should further expand the reciprocity condition. In our view, the reciprocity condition, as written, suffices to ensure comparability and to avoid undue discrimination. We discuss this matter more fully in Order No. 888-A.

3. Waiver Policy

The Open Access Final Rule provides that public utilities may seek waivers for some or all of the requirements of the Open Access Final Rule, including waiver of the standards of conduct and OASIS requirements. Similarly, the Open Access Final Rule provides that non-public utilities may seek waivers of the tariff reciprocity provision as applied to them.

Rehearing Requests

APPA argues that the Commission should revise the waiver standard for non-public utilities (the reciprocity provision) to allow waivers when a non-public utility lacks market power or where the cost of compliance exceeds the annual net revenues expected to be received from transmission and ancillary services under a reciprocity tariff. APPA further argues that, in such circumstances, compliance with the requirements of the Open Access and

OASIS Final Rules would be anti-competitive.²⁶ Similarly, CAMU argues that only dominant utilities are capable of subverting the transmission market and that, therefore, only such larger utilities should be burdened with the costs of compliance.²⁷

Blue Ridge argues that the Commission should clarify that a waiver from compliance with the requirements of Order No. 888 also gives a waiver from compliance with the requirements of Order No. 889.²⁸

Indianapolis P&L argues that the Commission's criteria for evaluating waiver requests are too rigid and that it probably will be denied waiver even though it is a small system that lacks transmission market power.²⁹

Michigan Systems argue that small systems that lack market power in transmission should be granted a blanket exemption from compliance with the separation of functions requirement in the OASIS standards of conduct, without the necessity for applying for waivers on a case-by-case basis.³⁰

Ohio Valley argues that the criteria in the Open Access Final Rule for obtaining waivers from compliance with Order Nos. 888 and 889 are too stringent and should be revised to accommodate waivers whenever justified.³¹ It argues that control area operators should not be excluded from obtaining a waiver of the Commission's Open Access requirements. Ohio Valley adds that the waiver process is uncertain and that its 1953 agreement to supply power to the United States Department of Energy should be "grandfathered" and exempted from compliance with the requirements of Order Nos. 888 and 889.

TAPS argues that in areas of the country where a major transmission owner elects to set up its own OASIS, in lieu of participation in a regional OASIS, or refuses to allow smaller utilities to participate in an OASIS, waivers should be granted to the smaller utilities so that they are not forced to set up their own OASIS sites, the costs of which would be unwarranted. TAPS further argues that larger utilities that do

²⁶ APPA Rehearing Request at pp. 9–11.

²⁷ CAMU Rehearing Request at pp. 2–3.

²⁸ Blue Ridge Rehearing Request at p. 39. We note that the Commission only granted waiver of Order No. 889 requirements to those public utilities that made a specific request for waiver of those requirements. See *infra* n.33, First Waiver Order, 76 FERC at 62,296–97.

²⁹ Indianapolis P&L's request for waiver was denied in the First Waiver Order, *infra* n.33, see 76 FERC at 62,295. Indianapolis P&L's request for rehearing in Docket No. OA96–81–001 currently is pending.

³⁰ Michigan Systems Rehearing Request *passim*.

³¹ Ohio Valley Rehearing Request at p. 12.

§ 37.6(e), we will address this issue below in section IV.G.8 of this order.

²¹ CCEM Rehearing Request at p. 10.

²² EEI Rehearing Request at n.10 and pp. 2, 7–15.

²³ Montana-Dakota Rehearing Request at pp. 2–4.

²⁴ See South Carolina Public Service Authority (*Santee Cooper*), 75 FERC ¶ 61,209 (1996); Central Electric Cooperative, Inc., 77 FERC ¶ 61,076 (1996).

²⁵ Moreover, as we discuss further below, see *supra* sections IV.B.3 and V., the Commission has granted waivers to a number of small non-public utilities from the requirements to establish and maintain an OASIS and the requirement in the standards of conduct to separate the wholesale merchant function from the transmission operation and reliability function.

not allow smaller utilities to participate with them in a joint OASIS should not be able to deny service to those smaller utilities on that basis.³²

Commission Conclusion

Since issuance of the Open Access and OASIS Final Rules, the Commission has issued a series of orders addressing specific requests for waiver of all or some of the requirements of the Open Access and OASIS Final Rules, including the requirements under Order No. 889 to: (1) establish and maintain an OASIS; and (2) comply with the standards of conduct (including the requirement to separate the activities of, and restrict communications between, employees performing wholesale merchant functions and employees performing system operations and reliability functions).³³ The waiver standards enunciated by the Commission apply to public utilities subject to the rules, as well as to non-public utilities that seek waiver of the reciprocity provision.

In *Black Creek*, the Commission announced modified standards used to determine whether to grant waiver of Order Nos. 888 and 889.³⁴ Under these modified standards, waiver of Order No. 889 would be appropriate: (1) if the applicant owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) if the applicant is a small public utility³⁵ that owns, operates, or controls an integrated transmission grid. With respect to the

second category, a waiver would not be available if the utility is a member of a tight power pool, or other circumstances are present which indicate that a waiver would not be justified.³⁶ The Commission, in addressing situations where waiver is granted, further stated that:

Waiver of the requirement to establish and maintain an information system (*i.e.*, an OASIS) will be granted unless and until an entity evaluating its transmission needs complains that it could not get information necessary to complete its evaluation. Waiver of the standards of conduct will be granted unless and until an entity complains that a public utility has used its access to information about transmission to unfairly benefit the public utility's own or the public utility's affiliates' sales. Compliance must be made within 60 days of the complaint.³⁷

Thus, the Commission has developed waiver criteria that take into account potential burdens on small entities and at the same time balance the need to prevent undue discrimination and affiliate abuse in interstate power markets. We believe that this flexible waiver approach adequately addresses the concerns raised on rehearing.

In response to the requests for rehearing of Indianapolis P&L and Ohio Valley, this order on rehearing is not the proper vehicle for a company to request a company-specific waiver. Waivers are appropriately addressed on a case-by-case basis, which permits the Commission to review the specific facts of each waiver application and permits affected parties to intervene and make their views known to the Commission.³⁸

TAPS expresses a concern that larger utilities may not allow smaller utilities to participate with them in a joint OASIS. We do not believe that any revisions to the OASIS Final Rule are necessary at this time to address TAPS' concern, because: (1) if the OASIS for its particular geographic area is unavailable, a utility may always choose to participate in an OASIS for a different region;³⁹ (2) smaller utilities should be able to meet their OASIS obligations

cost-effectively by joining with other small entities to hire the services of private vendors collectively; and (3) as mentioned above, the Commission will grant waivers of the OASIS requirements to small utilities under proper circumstances.

Moreover, we do not currently have any evidence that larger utilities will, in fact, attempt to exclude smaller utilities from participating in their OASIS sites. In fact, all indications are to the contrary.

Thus, while we are not taking any steps based on TAPS' concerns, at this time, we will revisit this issue if it appears that Commission action is appropriate. We would also entertain a company-specific complaint that a larger utility is misusing the reciprocity provision to improperly withhold transmission service.

C. Section 37.2—Purpose

The requests for rehearing did not specifically address this provision nor seek revision of this portion of the OASIS Final Rule.

D. Section 37.3—Definitions

The OASIS Final Rule contains definitions of "Transmission Provider", "Transmission Customer", "Responsible Party", "Reseller", "Wholesale Merchant Function", and "Affiliate".⁴⁰ The requests for rehearing did not specifically address these definitions nor seek revision of this portion of the OASIS Final Rule. However, as discussed above, we are modifying the definition of "wholesale merchant function" in response to ConEd's request for rehearing or clarification.

E. Section 37.4—Standards of Conduct

In the OASIS Final Rule, we adopted standards of conduct intended to accomplish four main objectives. First, we prohibited Transmission Providers from giving preferential access to information related to transmission prices and availability to employees of the public utility, or any affiliate, engaged in wholesale merchant functions. We accomplished this by: (a) Requiring that transmission-related information be made available to all customers (including employees of the public utility, and any affiliate, engaged in wholesale merchant functions) through OASIS postings available at the same time and on an equal basis; and (b)

³² See related issue, discussed in section IV.F below, concerning the argument that Transmission Providers must create regional OASIS nodes.

³³ See, e.g., Northern States Power Company (MI), *et al.*, Order on Requests by Public Utilities for Waivers of Order No. 888 and 889, 76 FERC ¶ 61,250 (1996) (*First Waiver Order*); *order on reh'g*, Black Creek Hydro, Inc., *et al.*, Order on Rehearing and Granting Waivers of Order No. 889, 77 FERC ¶ 61,232 (1996) (*Black Creek*); Midwest Energy, Inc., *et al.*, 77 FERC ¶ 61,208 (1996) (*Midwest*); Soyland Power Cooperative Association, *et al.*, 78 FERC ¶ 61,095 (1997) (*Soyland*); Dakota Electric Ass'n, *et al.*, 78 FERC ¶ 61,117 (1997) (*Dakota*). In addition, the Commission, in Central Electric Cooperative, Inc., *et al.*, 77 FERC ¶ 61,076 (1996), *reh'g pending* (*Central Electric*); Dakota; and Niobrara Valley Electric Membership Corporation, Docket Nos. OA96-146-001 and ER97-1412-000 (*Niobrara*), addressed various requests for rulings on exemptions from and waivers of Order Nos. 888 and 889, on the basis that applicants are not public utilities subject to the requirements of the Final Rules.

³⁴ To avoid confusion, we will discuss the waiver standards as set out in *Black Creek* rather than in the First Waiver Order, because *Black Creek* modified the First Waiver Order's standards for waiver.

³⁵ To qualify as a small public utility, the applicant must meet the Small Business Administration definition of a small electric utility, *i.e.*, one that is independently owned and disposes of no more than 4 million MWh annually.

³⁶ *Black Creek*, 77 FERC at 61,941; see also *Midwest*, 77 FERC at 61,854 (elaborating on the exception where the applicant is a member of a tight power pool).

³⁷ *Black Creek*, 77 FERC at 61,941 (citation to First Waiver Order omitted).

³⁸ As noted above, *supra* n.29, Indianapolis P&L's specific waiver request was addressed in the First Waiver Order and is pending rehearing. To date, Ohio Valley has not filed a specific request for waiver.

³⁹ We note that even though a majority of the OASIS nodes are joint nodes, these nodes nevertheless report data on a company-specific basis that is accessed using each company's individual Internet World Wide Web (WWW) address. Thus, the geographic location of the Transmission Provider is irrelevant to locating data about that company's operations on the Internet.

⁴⁰ Additionally, § 37.6(b)(1) provides definitions of "Posted Path", "Constrained Posted Path", and "Unconstrained Posted Path" as used in § 37.6. As these additional terms were defined in § 37.6 of the OASIS Final Rule, we will discuss suggestions to clarify these terms in sections IV.G.1 and IV.G.2 below.

prohibiting the employees of Transmission Providers and any affiliates from disclosing or obtaining non-public transmission-related information through communications not posted on the OASIS. Thus, employees engaged in wholesale merchant functions may only obtain information about transmission prices and availability from postings on the OASIS or from public sources equally available to all other customers.

Second, we mandated that employees engaged in system operations and reliability functions must treat all customers in a fair and impartial manner and may not give any preferential treatment to the company's (or its affiliates') employees conducting wholesale merchant functions. This requirement includes not disclosing market information about a customer and its activities to other customers in the course of responding to requests for transmission service.

Third, we required the functional unbundling of the transmission operations and wholesale merchant functions of public utilities and their affiliates so that those employees charged with system operations and reliability would be free to operate the system impartially for the benefit of all customers, including the Transmission Provider itself.⁴¹

Fourth, to ensure that the OASIS Final Rule would not compromise reliability, we created an exemption, in emergency circumstances affecting system reliability, that allows system operators to take whatever steps are necessary to keep the system in operation.

Finally, we warned that the standards of conduct are to be interpreted consistent with common sense, prudence, and caution, and that the burden is on entities subject to the rules to design procedures and safeguards and to take all necessary actions to ensure compliance. Those who have questions on these issues may contact the Enforcement Task Force Hotline at 202-208-1390 to obtain informal advice on implementing the standards of conduct.

⁴¹ As explained in the OASIS Final Rule, functional unbundling seeks to ensure that the same employee is not responsible for performing both wholesale merchant functions and system operation functions at the same time. See OASIS Final Rule, 61 FR at 21,744-48. These functions are to be performed by separate employees and the standards of conduct provide that they are prohibited from communicating with each other about transmission-related matters unless they do so through the OASIS. See §§ 37.4(a) and 37.4(b).

1. Contacts Between Employees Providing Ancillary Services and System Operators

The OASIS Final Rule defines the "wholesale merchant function" at § 37.3(e). The definition contains no specific reference to, or exclusion of, ancillary services. In the Open Access Final Rule, the Commission concluded that six ancillary services must be included in an open access transmission tariff.⁴²

Rehearing Request

Allegheny argues that an employee of the Transmission Provider who is responsible for providing customers with ancillary services mandated by the Open Access Final Rule should not, for that reason, be deemed to be a "merchant employee" excluded from contact with system operators under Order No. 889.⁴³

Commission Conclusion

We disagree with Allegheny's interpretation of the OASIS standards of conduct. Under the standards of conduct, employees who are responsible for providing ancillary services are not (without regard to their actual job functions) uniformly deemed to be, or not to be, wholesale merchant employees. To the contrary, whether these employees are deemed to be wholesale merchant employees, or not, depends on the nature of their job functions.

The Transmission Provider's sale of ancillary services in support of its provision of basic transmission service is not a wholesale power merchant function for purposes of Order No. 889. This is because the provision of ancillary services is essential for providing basic transmission service. However, the sale of ancillary service not in support of the Transmission Provider's provision of basic transmission service is a wholesale merchant function for purposes of Order No. 889. Thus, if an employee is marketing an ancillary service independent of the Transmission

⁴² These are: (1) Scheduling, system control and dispatch service; (2) reactive supply and voltage control from generation sources service; (3) regulation and frequency response service; (4) energy imbalance service; (5) operating reserve—spinning reserve service; and (6) operating reserve—supplemental reserve service.

In the Open Access Final Rule, the Commission has determined that the Transmission Provider must provide and the Transmission Customer must purchase from the Transmission Provider the first two services listed above, subject to conditions set out in Order No. 888. The Transmission Provider must offer the remaining four services to the Transmission Customers upon request.

⁴³ Allegheny Rehearing Request at pp. 9-10.

Provider's obligations to provide basic transmission service, then that employee would be providing a wholesale merchant function and would be subject to the applicable requirements pertaining to wholesale merchant employees under the standards of conduct.

Therefore, we reject Allegheny's suggestion that our current regulations *categorically* deem *any* employees involved in the provision of ancillary services as not being wholesale merchant employees, without regard to their actual job responsibilities.

2. Contacts Between Generation Control Employees and Transmission Operations and Wholesale Merchant Employees

Among other matters, the OASIS standards of conduct preclude employees engaged in wholesale merchant functions from improperly communicating with employees engaged in transmission system operations or reliability functions. However, we did not extend Order No. 888 or the OASIS Final Rule to require the corporate unbundling of transmission and generation control functions or to mandate the divestiture by Transmission Providers of their generation assets.

Rehearing Request

CCEM argues that the Commission erred by not drafting the standards of conduct to preclude generation control employees from being a conduit for improper communications between transmission operations personnel and wholesale merchant personnel.⁴⁴

Commission Conclusion

As we stated above, in our discussion of whether employees responsible for providing ancillary services are to be deemed wholesale merchant employees, what limitations are placed on an employee's conduct under the standards of conduct depends on that employee's actual job functions and activities, rather than that employee's job title.⁴⁵ In the same way, whom a generation control employee may or may not communicate with depends on the respective job functions of that generation control employee and the employee(s) with whom he or she intends to communicate. Generation control employees whose job responsibilities involve wholesale merchant functions would be precluded from having pertinent off-the-OASIS communications with employees

⁴⁴ CCEM Rehearing Request at pp. 10-11.

⁴⁵ See *supra* discussion in section IV.E.1 above.

performing system operations and reliability functions.

Additionally, notwithstanding CCEM's concerns, the standards of conduct *already* preclude *any* employee from acting as a conduit for improper communications between transmission operations employees and wholesale merchant employees. Furthermore, if these activities were carried out by a non-employee (e.g., an outside attorney or consultant), they nevertheless would constitute a violation of the standards of conduct by the involved transmission operations employee(s), the involved wholesale merchant employee(s), and their employer. This being the case, we reject CCEM's proposal as unnecessary.

3. Monitoring the Standards of Conduct

The preamble's discussion of the standards of conduct and the regulations at § 37.4 are intentionally directed at the responsibilities of the Transmission Providers subject to these rules rather than the Commission's plans to monitor compliance and pursue enforcement strategies.

Rehearing Requests

APPA and Blue Ridge argue that monitoring of the standards of conduct is essential and that the Commission must establish and publicize a plan to do so.⁴⁶ APPA argues that reliance on utility self monitoring is not sufficient.

Commission Conclusion

We agree with APPA and Blue Ridge that it is important for the Commission to monitor compliance with the standards of conduct carefully and that self monitoring may not be fully sufficient to accomplish this. Accordingly, we are amending §§ 37.4(b)(5)(iii) and 37.6(g)(4) to require the posting on the OASIS of information from a Transmission Provider that details the circumstances when it exercises its discretion in applying any terms of the tariff (and which Transmission Providers already are required to maintain pursuant to § 37.4(b)(5)(iii)). This will assist the Commission in monitoring whether the standards of conduct are being met. Consistent with § 37.7(b), which governs the retention period for audit data, this information must remain available for download on the OASIS for a specified period, and must remain available upon request for three years from the date when such information is first posted.⁴⁷

⁴⁶ APPA Rehearing Request at pp. 11–19, Blue Ridge Rehearing Request at p. 39.

⁴⁷ Under § 37.7(b), all audit data currently must remain available for download for 90 days. Later in this order, we shorten the retention period for making ATC/TTC postings available for download

We request that the How Working Group propose the necessary template to be included in the Standards and Protocols document.

As to APPA's and Blue Ridge's specific suggestions that we should modify the OASIS Final Rule to address the Commission's oversight plans and functions, we do not believe that this would be appropriate. Although the Commission is well aware of the importance of its enforcement responsibilities, and will remain vigilant in reviewing the operation of OASIS sites and compliance with the standards of conduct, the purpose of the OASIS Final Rule is to detail the responsibilities of the regulated community and not those of the Commission.

4. Adequacy of Emergency Exception

As explained above, the OASIS standards of conduct include an exception, in emergency circumstances affecting system reliability, that allows system operators to take whatever steps are necessary to keep the system in operation.

Rehearing Request

El Paso argues that the standards of conduct's emergency exception is inadequate; contingencies may arise daily that require a system operator to react promptly to unanticipated losses of generation units. Therefore, operators should be allowed to buy and sell current hour and next hour power (to preserve system reliability). El Paso does not oppose the separation of functions as applied to longer-term transactions (i.e., transactions involving transmission service beyond the current hour and next hour).⁴⁸

Commission Conclusion

We reject the proposal to allow operators to buy for resale at wholesale and sell at wholesale next hour power on a routine basis, without regard for the separation of functions required by the standards of conduct. We find this proposal too broad and find that it has too much potential for abuse. However, as explained more fully below, the regulations do not dictate what group of employees is to have responsibility for making purchases on behalf of bundled retail customers. For example, the transmission operations and reliability function may be assigned responsibility for making purchases on behalf of bundled retail customers.

to 20 days, with the data to be made available upon request for three years. See discussion in section IV.H below.

⁴⁸ El Paso Rehearing Request at pp. 1–4.

5. Short-Term Economy Energy Purchases

FIT Utilities do not object generally to functional unbundling; however, they argue that the system operator should be allowed to make short-term economy energy purchases in order to maintain system reliability.⁴⁹ FIT Utilities further argue that, while the OASIS Final Rule does not require the physical separation of transmission and generation dispatchers, it does effectively rewrite generation dispatchers' jobs to exclude the purchase for resale and sale at wholesale of energy in hourly interchange markets. FIT Utilities argue that a generation dispatcher needs to know loads on transmission lines on an instantaneous basis to assess whether to increase or decrease outputs from particular generation facilities. FIT Utilities argue that generators are often run, not for energy, but for voltage support or to otherwise stabilize the transmission system.

They argue that, in addition to reliability concerns, system operators also worry about keeping transactions economical. They argue that separating the functions relating to short-term energy purchases (for resale) makes this task harder, at a substantial cost to consumers. They continue that allowing a dispatcher to *buy* power would not hurt competition, as long as the dispatcher cannot also *sell* power.⁵⁰ They add that if a dispatcher buys power that offsets higher cost utility generated power, this helps everyone.

For these reasons, FIT Utilities argue that the OASIS Final Rule should be revised to retain a prohibition against a dispatcher selling power while allowing the dispatcher to buy power. FIT Utilities argue that, at a minimum, the dispatcher should be able to buy power in hourly economic energy markets to serve load.⁵¹ They argue that if the Commission has a concern that this would somehow be anti-competitive, then a utility should be allowed to set up a computer system to make such purchases automatically. They argue that the Commission should be concerned with both reliability and price and should aim for the lowest cost supply possible.

Commission Conclusion

The standards of conduct's separation of functions currently prohibit a Transmission Provider's employees engaged in transmission system operations and reliability functions from giving preference to wholesale

⁴⁹ FIT Utilities Rehearing Request at pp. 39–40.

⁵⁰ FIT Utilities Rehearing Request at p. 42.

⁵¹ FIT Utilities Rehearing Request at p. 43.

purchases or sales made on behalf of its own wholesale customers or those of affiliates. The standards of conduct do not, however, dictate whether bundled retail merchant functions are to be grouped with the wholesale merchant function or with the transmission operations and reliability function.

Thus, FIT Utilities' request to allow dispatchers to buy power to serve retail load is consistent with the regulations. As discussed above, the regulations do not prohibit Transmission Providers from assigning the responsibility for making purchases to serve bundled retail customers to the transmission operations and reliability function.

To avoid any confusion, we are modifying § 37.4(b)(5)(iv) to substitute the phrase "sales for resale made by the wholesale merchant function or any affiliate" for the phrase "wholesale purchases or sales made on behalf of its own power customers, or those of an affiliate" in § 37.4(b)(5)(iv).

Moreover, nothing in the standards of conduct prohibits a public utility subject to the rule from arranging to have the same data about the company's generation sources and load simultaneously fed to both transmission system operators and merchant employees. Thus, if the company elects to have wholesale merchant employees perform the function of making purchases to serve bundled retail native load, this can be done without necessitating any change in the standards of conduct. Data received by system operators about the activities of third parties may not be conveyed to wholesale merchant employees except through postings on the OASIS equally available to all OASIS users.

6. Tight Pools

NY MU argues that the Commission erred in not requiring operational unbundling, at least for tight pools, which NY MU asserts includes requiring that the transmission component of retail rates be treated as if the rates were based on the use of the pool-wide *pro forma* tariff of the Open Access Final Rule.⁵²

Commission Conclusion

As further discussed in Order No. 888-A,⁵³ the Commission stands by its decision in the Open Access Final Rule that functional unbundling, along with the flexible safeguards contained in the Final Rule, is a reasonable and workable means of assuring non-discriminatory open access transmission. The

⁵² NY MU Rehearing Request at pp. 5, 7. See Open Access *pro forma* tariff at p. 5.

⁵³ See Order No. 888-A at section IV.A.

Commission has not found it necessary to adopt a more intrusive and potentially more costly approach at this time based on speculative allegations that functional unbundling may not work and that more severe measures may be needed.

7. Clarification of § 37.4(b)(5)(iv)

As modified above, § 37.4(b)(5)(iv) requires that a Transmission Provider not, through its tariffs or otherwise, give preference to sales made to any person for resale made by the wholesale merchant function or by any affiliate, over the interests of any other wholesale customer in matters relating to the sale of wholesale transmission service.

Rehearing Request

SoCal Edison asks the Commission to clarify that the OASIS rule (§ 37.4(b)(5)(iv)) was not intended to require the Transmission Provider or network customer to charge itself for transmission for its economy energy purchases or to assign to those purchases the same curtailment priority assigned to other non-network, non-firm point-to-point transactions.⁵⁴

Commission Conclusion

Turning first to the narrow issue raised by SoCal Edison's request for rehearing, we clarify that § 37.4(b)(5)(iv) was intended to be consistent with the Open Access *pro forma* tariff provisions of Order No. 888. Moreover, we intended that the question raised by SoCal Edison would be answered by reference to the provisions of the Open Access *pro forma* tariff. Thus, § 37.4(b)(5)(iv) does not require the Transmission Provider or network customer to charge itself for transmission for its economy energy purchases. Nor does it require that they assign to those purchases the same

⁵⁴ SoCal Edison Rehearing Request at p. 24. On July 18, 1996, SoCalGas filed a request for clarification responsive to SoCal Edison's rehearing request, which argues that § 37.4(b)(5)(iv), together with the Open Access Final Rule, provide for comparability and that: "a Transmission Provider is not entitled to accord itself special priority, special services, or special prices, *merely* because it owns the transmission facilities, and the Transmission Provider is not permitted to import wholesale power 'for free'; however, the Transmission Provider may enjoy any priorities or advantages provided to it and similarly situated customers by the express terms of its transmission tariff."

SoCalGas' arguments overlook that SoCal Edison itself concedes that if § 37.4(b)(5)(iv) is interpreted in harmony with Commission precedent, it would: "operate to ensure that the Transmission Provider would not give preference to its own purchases and sales over that of other similarly situated customers (e.g., by assigning a higher curtailment priority to its own economy energy purchases than it would assign to an identical economy energy purchase by a network customer)." Thus, the issues raised in SoCalGas' request for clarification are not before us.

curtailment priority assigned to other non-network, non-firm point-to-point transactions. Under the Open Access *pro forma* tariff, if purchases are for bundled retail sales, then the Transmission Provider is not required to charge itself for its economy energy purchases. By contrast, if the purchases are for wholesale sales, then the Transmission Provider must charge itself for the transmission. The same delineation would also apply to curtailment priority.

Moreover, we clarify that § 37.4(b)(5)(iv) was not intended to rewrite the rules regarding utilities' purchases and priorities for bundled retail customers, nor to set aside the rules prescribed in section 1.11 of the Open Access *pro forma* tariff.⁵⁵

8. Discounts

The issue of what discounts must be provided by a Transmission Provider who offers a discount to its affiliates or its own wholesale merchant function was addressed in the Open Access Final Rule. The matter also was discussed in the OASIS Final Rule, but only to the extent that it related to what information must be posted on the OASIS.⁵⁶ In § 37.4(b)(5)(v), we mandated that when a Transmission Provider offers a discount to its wholesale merchant function or any affiliate, then it must, at the same time, post on the OASIS an offer to provide the same discount to all Transmission Customers on the same path and on all unconstrained transmission paths.⁵⁷ The posting requirement corresponding to this obligation to offer discounts was contained in § 37.6(c)(3). We also found, in § 37.6(c)(3), that discounts offered to non-affiliates must be posted within 24 hours of when available transmission capability (ATC) is adjusted in response to the transaction.

The requests for rehearing address both: (1) what discounts must be offered; and (2) what postings must accompany discount offers. As

⁵⁵ Section 1.11 of the Open Access *pro forma* tariff is also the subject of a number of requests for rehearing that are addressed in Order No. 888-A at section IV.C.1.

⁵⁶ In Order No. 889, we found that if a Transmission Provider offers a discount to an affiliate, or attributes a discounted transmission service rate to its own wholesale transactions, then the Transmission Provider must, at the same time, post on the OASIS an offer to provide the same discount to all eligible customers. If a Transmission Provider offers discounts to non-affiliates, it must offer to do so on a basis that is not unduly discriminatory.

⁵⁷ In Order No. 888-A, we are addressing arguments that we should revise the requirement to offer the same discount to all Transmission Customers on the same path and on all unconstrained transmission paths.

explained in Order No. 888-A, we have decided to revise our policy on discounts of transmission services, and to apply this same policy, with the exception concerning paths, to ancillary services provided by the Transmission Provider in support of its provision of basic transmission service. To implement this revised policy, we are making changes to the standards of conduct and to the posting of discounts under § 37.6. We address changes to the standards of conduct here, and changes to § 37.6 in section IV.G.6 below.

Under our revised discount policy, three principal requirements are appropriate. First, any offer of a discount for transmission and/or ancillary services made by the Transmission Provider must be announced to all potential customers solely by posting on the OASIS. This requirement, which will ensure that all potential Transmission Customers under the Open Access *pro forma* tariff will have equal access to discount information, will guard against the Transmission Provider's wholesale merchant function or an affiliate gaining an unfair timing advantage concerning the availability of discounts.

Second, we will require that any customer-initiated requests for discounts of transmission and/or ancillary services occur solely by posting on the OASIS, regardless of whether the customer is the Transmission Provider's wholesale merchant function, an affiliate, or a non-affiliate. We will permit customer-initiated requests for discounts but will require that such requests be visible (via posting on the OASIS) to all market participants.

Third, we will require that, once the Transmission Provider and customer agree to a discounted transaction for transmission and/or ancillary services, the details be immediately posted on the OASIS. This requirement will be equally applicable regardless of whether the customer is the Transmission Provider's wholesale merchant function, an affiliate, or a non-affiliate.

Additionally, we believe that any "negotiation" between a Transmission Provider and a potential customer should take place on the OASIS, and should be visible to all market participants, and we will revise our regulations to accomplish this as soon as practicable. To this end, we direct the How Working Group, by no later than June 2, 1997, to propose: (1) Whatever changes are needed to the Standards and Protocols document; and (2) the earliest date when the industry can meet such a requirement during Phase I.

In §§ 37.4(b)(5)(v) and 37.4(b)(5)(vi), we required Transmission Providers to post on the OASIS any offers they made to their wholesale merchant function or to their affiliates of a discounted price for transmission services or ancillary services. We are now deleting these provisions because under our revised discount policy, the distinction between discounts to affiliates and discounts to non-affiliates has been abandoned.

As discussed above, we are addressing the modifications to the posting requirements in § 37.6 in Section IV.G.6 below.

F. Section 37.5—Obligations of Transmission Providers and Responsible Parties

In the OASIS regulations, the Commission requires Transmission Providers to operate an OASIS, either individually or jointly with other Transmission Providers. The Transmission Provider may delegate this responsibility to a Responsible Party such as another Transmission Provider, an Independent System Operator, a Regional Transmission Group, a Regional Reliability Council, or a third-party operator. Nevertheless, each Transmission Provider remains responsible for compliance, regardless of whether it establishes its own OASIS or participates in a joint OASIS.

Rehearing Requests

TAPS and TDU Systems argue that the Commission should require Transmission Providers to establish a regional OASIS because individual utility OASIS sites are inefficient. They contend that, as the number of OASIS sites increases, OASIS postings become less meaningful and the accomplishments of the OASIS Final Rule lessen.⁵⁸

Commission Conclusion

At this juncture, the Commission continues to believe it appropriate to encourage, but not require, regional OASIS sites. It is the Commission's understanding that most utilities are participating in regional OASIS sites. This issue can be revisited in Phase II of OASIS, if a significant number of utilities fail to join a regional OASIS and this results in significant inefficiency in bulk power markets.

G. Section 37.6—Information to be Posted on an Oasis

1. Definition of "Posted Path"

Section 37.6(b)(1)(i) defines a posted path as: (1) any control area to control

area interconnection; (2) any path for which service is denied, curtailed or interrupted for more than 24 hours in the past 12 months; and (3) any path for which a customer requests the posting of ATC or total transmission capability (TTC). For posted paths requested by customers, the paths must be posted for 180 days and the posting must continue after that until 180 days elapse from the most recent request for service over the path.

Rehearing Requests

CCEM argues that the Commission erred by requiring posting of ATC solely at interfaces between control areas. CCEM further argues that the Commission should require the posting of paths across control areas.⁵⁹

MAPP argues that the Commission should reconsider the requirement to post ATC between control areas or, in the alternative, should grant it a waiver of this requirement. MAPP suggests that posted paths should be defined as paths between zones determined by transmission constraints. MAPP argues that defining posted paths in this manner would be more consistent with the MAPP regional flow-based transmission arrangement.⁶⁰

EEL asks the Commission to revise the criteria for a customer-requested posted path. EEL argues that customers should have to make a service request over the path within 180 days of asking that the path be a posted path or face a penalty.⁶¹

Commission Conclusion

The Commission will not require the posting of all paths across control areas, since customers can request to have ATC and TTC posted for any path. Given that customers can request to have ATC and TTC posted for any path, adopting CCEM's proposal would burden OASIS sites with a very large number of posted paths that may have little commercial value.

As to MAPP's request to drop the requirement for posting ATC for paths between control areas, MAPP's concern appears to relate to business relationships particular to the MAPP agreement. MAPP's request for a waiver is not based on a lack of traffic over its system. It is based on the fact that MAPP's control areas do not correspond to the service territories of its members (MAPP has 26 utilities and 14 control areas). Some of its control areas cover the generation of more than one utility. Other control areas overlap the same

⁵⁹ /CCEM Rehearing Request at pp. 7-8.

⁶⁰ /MAPP Rehearing Request at pp. 4-10.

⁶¹ /EEL Rehearing Request at p. 53.

⁵⁸ TAPS Rehearing Request at pp. 8-9 and TDU Systems Rehearing Request at p. 85.

geographic area, with each control area covering the generation of a separate utility.

Under MAPP's proposal, it will provide pool-wide transmission service based on a MW mile methodology. It proposes to determine the transmission availability for known constrained interfaces or paths and assess the impact on its member systems of each transaction based on the POD and POR for each transaction. MAPP argues that the Open Access Final Rule was intended to accommodate flow based pricing methods and that, under the circumstances, it makes sense for its member systems to make postings for area to area interfaces rather than control area to control area interfaces. MAPP argues that we should either change our rules for posting between control areas or grant it a waiver.

After reviewing MAPP's arguments, we do not believe that it would be appropriate to modify the ATC posting requirements to address a MAPP-specific issue. However, the Commission will grant MAPP a limited waiver of the control area to control area ATC/TTC posting requirement (in § 37.6(b)(1)(i)) based on the particular circumstances presented by the MAPP system. This waiver should not harm Transmission Customers because MAPP provides pool wide transmission service using a flow based (single MW-mile) pricing methodology for the entire system and proposes to determine transmission availability for all known constrained interfaces or paths. Moreover, this waiver only applies to postings for intra-MAPP interfaces. MAPP will still be required to post ATC and TTC for control area to control area paths that connect its member systems with neighboring transmission systems. Finally, MAPP customers can always request that ATC/TTC be posted for a specific path including a control area to control area path (in which case MAPP would be required to post the information for the path on its OASIS node).

Turning to EEI's suggested limitations on customers requesting that paths be posted, we find that requiring a customer to request service over any path that it asks to be posted places too heavy a burden on customers. However, the Commission may reconsider this requirement if we find that customers abuse the system by requesting postings for too many paths over which no requests for service are made.

2. Definition of "interconnection"

"Posted path" is defined in § 37.6, in part, as "any control area to control area interconnection." However, the

regulation does not provide a definition of "interconnection".

Rehearing Request

EEI and Public Service Co of CO ask the Commission to clarify that the term "interconnection", in the definition of "posted path" in § 37.6, includes lines connecting two systems or control areas rather than just one line.⁶²

Commission Conclusion

To avoid any confusion, we clarify that the term "interconnection" in the definition of posted path means all facilities connecting two adjacent control areas and we are amending § 37.6 accordingly. This is consistent with the definition of "interconnection" in NERC's Glossary of Terms: "the facilities that connect two systems or Control Areas."⁶³

3. ATC Supporting Information

The OASIS regulations require that the Responsible Party make all data used to calculate ATC and TTC for any constrained path publicly available within one week of the ATC/TTC posting.

a. Disclosure of Data Supporting Calculations of ATC and TTC

Rehearing Request

EEI argues that the requirement in § 37.6(b)(2)(ii) to disclose data supporting calculations of ATC and TTC provides competitors with backdoor access to sensitive proprietary information. It claims that the Commission intended to allow companies to keep confidential information such as generation run status and the maintenance schedules for generation and transmission.⁶⁴

Commission Conclusion

EEI is correct that the Commission declined in the OASIS Final Rule to require the posting of information about the run status of generation and transmission facilities. However, EEI incorrectly attributes the Commission's decision to a finding on the claimed proprietary nature of this information. The Commission did not require the same-time posting of facility status information because the Commission did not believe this information was needed for Phase I implementation. The OASIS Final Rule states that the Commission may reconsider the issue in Phase II.

⁶² EEI Rehearing Request at p. 48 and Public Service Co of CO Rehearing Request at pp. 1-2.

⁶³ NERC's Glossary of Terms, August 1996.

⁶⁴ EEI Rehearing Request at pp. 49-52.

On rehearing, EEI argues that the same considerations about commercial sensitivity that led the Commission to decline to order the same-time posting of facility status also dictate that this information should not be divulged as part of the data supporting ATC calculations. We reject this argument for three reasons. First, as shown above, EEI's argument is based on a false premise as to why the Commission declined to order the same-time posting of information on facility run status.

Second, even if, *arguendo*, we accepted EEI's contention that the same-time posting of facility run status is commercially sensitive, this still would not suffice to show that making ATC supporting information available on request and after seven days would have any adverse competitive impact. Whatever commercial sensitivity the information might have would be greatly diminished by the fact that seven days need to elapse before a request for the information can be made. In our view, this delay ensures that no realistic concern remains about the competitive consequences of releasing this information.

Finally, the purpose of ATC supporting information is to ensure that Transmission Customers have confidence in ATC/TTC postings. The OASIS and the Commission's functional unbundling policy depend on customers being able to rely upon the accuracy of ATC postings. The availability of ATC supporting information is essential for building and maintaining this confidence. Thus, the concerns raised by EEI about commercial sensitivity are, in our judgment, outweighed by the public interest served by making this information available, upon request, after seven days. The Commission will not further restrict the availability of information needed to support ATC/TTC calculations and this information will continue to be available to customers upon request after seven days.

b. Disclosure of Data on Nonfirm ATC

Rehearing Request

EEI also argues against disclosing supporting data on nonfirm ATC because it would not exist but for the collection of data to calculate firm ATC and TTC.⁶⁵

Commission Conclusion

If, as EEI claims, data supporting the calculation of nonfirm ATC does not exist in an independent form and is a residual of calculating firm ATC, then

⁶⁵ EEI Rehearing Request at p. 52.

requiring a Transmission Provider to document how it calculates nonfirm ATC should be relatively simple and should not require much additional information. Therefore, the Commission requires that supporting information for firm and nonfirm information be available as required in § 37.6(b)(2)(ii).

c. Time Limits for Disclosure of Utility Generation Data

In the OASIS Final Rule, the Commission rejected arguments by NUCOR that the Commission should require data on generation costs to be posted on OASIS on a same-time basis.⁶⁶

Rehearing Request

On rehearing, NUCOR argues again that the Commission should require same-time disclosure of utility generation data used for economic dispatch.⁶⁷

Commission Conclusion

In the OASIS Final Rule, we rejected the argument that we should require the same-time disclosure of utility generation data used for economic dispatch based on a balancing of the need for the information, the claimed commercial sensitivity of the information, and the desire to avoid, to the extent possible, having public utilities reporting generation data that their competitors may not be required to report. We concluded that the information was not necessary and that during Phase I we would limit OASIS postings to essentials.

On rehearing, NUCOR attempts to buttress its argument by pointing out that utilities will face financial pressure to maintain or enhance their market share in electric generation and that the Commission's enforcement of the standards of conduct could be enhanced by requiring the same-time disclosure of generation data. NUCOR expresses the concern that after-the-fact complaints, unearthed based on a review of audit files, may be neither feasible nor practical.

NUCOR's arguments about discriminatory treatment are not new. They highlight the need for the Commission and other OASIS users to review this information to ensure that system operators have not conducted system operations in violation of the

OASIS standards of conduct. NUCOR argues that only by requiring the same-time disclosure of utility generation data used for economic dispatch can we be sure that unduly preferential treatment by means of a Transmission Provider's own generation will not occur. We do not quarrel with the possibility of affiliate abuse raised by NUCOR. However, NUCOR still has not persuaded us that it is necessary to post these data. If experience shows that the concerns raised by NUCOR are a significant problem, we can consider further actions in the future.⁶⁸

d. Reporting of Network Service Usage

Rehearing Request

CCEM argues that the Commission erred by not requiring Transmission Providers to report network service usage monthly.⁶⁹

Commission Conclusion

CCEM does not state what it means by monthly network service usage or explain why the Transmission Provider should be required to report the data. In any event, we note that the current measure of network usage is load (*i.e.*, billing is based on load-ratio usage). To the extent that utilities use the monthly load data of network customers in calculating ATC, utilities will include load data in the ATC/TTC supporting information required in § 37.6(b)(2)(ii).

4. Posting Firm and Nonfirm ATC Separately

Section 37.6(b)(3) of the OASIS regulations addresses the posting of ATC and TTC for constrained and unconstrained posted paths. For constrained posted paths, the regulations contain separate posting requirements for firm and nonfirm ATC. For unconstrained posted paths, the posting requirements for firm and nonfirm ATC are the same. Section 37.6(b)(3)(ii) does not specifically mention firm and nonfirm ATC.

Rehearing Requests

CCEM and the EPRI/NERC Working Group argue that the Commission erred by failing to require the separate posting of firm ATC and nonfirm ATC for unconstrained posted paths.⁷⁰

⁶⁸ As to NUCOR's contention that after-the-fact review of utility generation data would be ineffectual, we note that if we required the contemporaneous posting of such information on the OASIS (as proposed by NUCOR), our review of any complaint filed as a result of such information would still be conducted after-the-fact.

⁶⁹ CCEM Rehearing Request at p. 10.

⁷⁰ CCEM Rehearing Request at p. 5 and EPRI/NERC Working Group Rehearing Request at p. 9. For purposes of submitting their request for

Commission Conclusion

The regulations inadvertently left out a reference to firm and nonfirm ATC in the posting requirements for unconstrained posted paths. The regulations at § 37.6(b)(3)(ii) will be modified to correct this and to clarify that firm and nonfirm ATC for unconstrained paths, like firm and nonfirm ATC for constrained paths, must be posted separately.

5. Minimum Term of Firm Point-to-Point Transmission Service

Section 13.1 of the Open Access Final Rule's *pro forma* tariff specifies that the minimum required term for Firm Point-to-Point Transmission Service is one day.⁷¹ By contrast, § 37.6(b)(3)(i) of the OASIS regulations requires the posting of firm and nonfirm ATC on constrained paths for the next hour and for the next 168 hours (*i.e.*, for the next week).

Rehearing Requests

CCEM argues that the Commission erred by not requiring Transmission Providers to offer hourly firm transmission service.⁷² CCEM argues that, if the Commission agrees to change the Open Access *pro forma* tariff to allow for hourly firm transmission service, then the requirement to post hourly transmission service requests on the OASIS should be deferred until the reliability of OASIS sites is established.

EPRI/NERC Working Group argues that the posting of ATC and other information should be consistent with a utility's Open Access *pro forma* tariff. They argue that, as the minimum term for firm ATC is one day under the Open Access *pro forma* tariff, firm ATC should only be required to be posted daily instead of hourly. Hourly firm ATC would be posted only if it is offered under a revised Open Access tariff.⁷³

Commission Conclusion

The OASIS regulations currently require the posting of hourly firm ATC even though the shortest mandated term for firm transmission service under the Open Access *pro forma* tariff is one day. The Commission believes hourly posting provides useful information to

rehearing, the How Working Group and the What Working Group combined their efforts and submitted a joint request for rehearing on behalf of "the Industry Management Process on How to Implement Transmission Services Information Networks" (EPRI/NERC Working Group).

⁷¹ In Order No. 888-A, the Commission addresses the issue of reducing the minimum term for firm point-to-point transmission service from one day to one hour.

⁷² CCEM Rehearing Request at pp. 3-4.

⁷³ EPRI/NERC Working Group Rehearing Request at p. 9.

⁶⁶ See OASIS Final Rule, 61 FR at 21,746. See also OASIS Final Rule, 61 FR at 21,754-55, where we decided not to require the posting of generator run status. Although the OASIS Final Rule does not require the posting of utility generation data, *per se*, this data may be required to be reported, after-the-fact, as part of the Transmission Provider's supporting data for ATC calculations.

⁶⁷ NUCOR Rehearing Request at pp. 15-18.

customers about the availability of daily service and the likelihood of curtailment during particular hours during the day.

If a Transmission Provider voluntarily offers hourly firm service in its Open Access *pro forma* tariff, it must offer the service through postings on its OASIS. Section 37.6(c)(1) requires Transmission Providers to "post prices and a summary of the terms and conditions associated with *all* transmission products offered to Transmission Customers." [Emphasis added]. The OASIS regulations do not, however, control what services must be provided by Transmission Providers. This is covered by the Open Access Final Rule.

6. Posting of Discounts

Under the OASIS Final Rule, § 37.6(c)(3) of the OASIS regulations requires a Transmission Provider to post (within 24 hours of its adjustment of its ATC calculation) any discounts on transmission service given to non-affiliated customers. This posting was required to remain on the OASIS for 30 days.

Rehearing Requests

EPRI/NERC Working Group asks the Commission to clarify that the purpose of the requirement in § 37.6(c)(3) to post discount information for 30 days is to record the discount and does not constitute a continuing offer of a discount. They suggest dropping this requirement since, under § 37.7, audit data (including data on discounts) must be recorded and retained.⁷⁴

Commission Conclusion

As discussed above in Section IV.E.8, the Commission has adopted a new discounting policy, which is more fully elaborated in Order No. 888-A. This new discounting policy necessitates a number of changes to the OASIS posting requirements.

We have revised and moved the text of § 37.6(c)(3) to § 37.6(c)(4) and have substituted a new § 37.6(c)(3) that requires that any offer of a discount by the Transmission Provider for transmission service must be announced to all potential customers solely by posting on the OASIS.

We have revised the section now designated as § 37.6(c)(4) to no longer treat the posting of transmission service transactions involving the Transmission Provider's wholesale merchant function or affiliates differently from the posting of transactions involving non-affiliates. However, we will require that

transactions involving the Transmission Provider's wholesale merchant function or affiliates be identified. The 24-hour delay in posting non-affiliate discounts has been dropped. All transactions for transmission service, agreed to between a Transmission Provider and a customer, regardless of whether they involve a discount or not, must be posted at the time when ATC must be adjusted in response to the transaction. We also have expanded the list of information about the transaction required to be posted.

We have revised and moved the text of § 37.6(d)(2) to § 37.6(d)(3) and have substituted a new § 37.6(d)(2) that requires that any offer of a discount by the Transmission Provider for ancillary service in support of the Transmission Provider's provision of transmission service must be announced to all potential customers solely by posting on the OASIS.

We have revised the section now designated as § 37.6(d)(3) to no longer treat the posting of ancillary service transactions involving the Transmission Provider's wholesale merchant function or affiliates differently from the posting of transactions involving non-affiliates. However, we will require that transactions involving Transmission Provider's wholesale merchant function or affiliates be identified. The 24-hour delay in posting non-affiliate discounts has been dropped. All transactions for ancillary service, agreed to between a Transmission Provider and a customer, regardless of whether they involve a discount or not, must be posted on the OASIS at the time when ATC must be adjusted in response to an associated transmission service transaction, if any. We also have expanded the list of information about the transaction required to be posted.

We have revised § 37.6(e)(1)(i) to require that, with the exception of next-hour service, requests for transmission and ancillary service must be posted prior to the Transmission Provider responding to these requests. This will ensure that other customers can observe any discounts being requested before they are acted on. We also are requiring that all postings of requests be made comparably. We are making this revision to prevent discriminatory practices.

We are revising § 37.6(e)(1)(ii) to expand the information required to be posted on the status of requests for transmission and ancillary service to include the information required in § 37.6(c)(4) and § 37.6(d)(3).

We are deleting the provision formerly found at § 37.6(e)(1)(iii) and are revising § 37.6(e)(3)(i) because,

under the Commission's new discounting policy, we no longer will allow the identity of parties to be masked.

We are adding a new provision, at § 37.6(e)(1)(iii), that provides that in the event that a discount is being requested for ancillary services that are not in support of a basic transmission service being provided by the Transmission Provider, such request need not be posted on the OASIS. We add this provision because we are limiting our revisions relating to the posting of discounts for ancillary services to those ancillary services that are in support of basic transmission service provided by a Transmission Provider.

The Phase I OASIS is a passive communication system. A customer sends a request for a discount directly to the Transmission Provider. But the passive nature of the Phase I OASIS prevents the Transmission Provider from sending a reply directly to the customer. Instead, the Transmission Provider posts the reply on the OASIS and the customer must periodically check the node for the reply. A more active communication system would permit the Transmission Provider to send replies directly to customers, as well as to anyone else who is interested. Offers and replies could be exchanged quickly, and the unnecessary delays caused by the cumbersomeness of the passive system would be eliminated. We, therefore, request the How Working Group to consider adding more active capabilities to the OASIS in Phase II.⁷⁵

The Commission's revised discount policy necessitates certain changes to the Standards and Protocols document. The OASIS regulations require that prices offered by a Transmission Provider be posted and that discounts requested by customers be posted. However, under the current Standards and Protocols document, the templates for posting of offered and requested prices do not identify whether these prices constitute a discount and how much of a discount these prices represent. We believe that this information is vitally important to prevent discrimination.

Accordingly, we are requiring that the templates in the Standards and Protocols document dealing with posted offerings (§ 4.3.2), status of transmission service requests (§ 4.3.7), and status of

⁷⁵ Other benefits of an active system include:

- Making the market more efficient by notifying customers immediately of changes in ATC on specified paths and sending system-wide notices directly to customers as soon as they are issued.
- Making OASIS nodes more responsive by reducing the load on the servers caused by customers periodically checking for messages.

⁷⁴ EPRI/NERC Working Group Rehearing Request at p. 10.

ancillary service requests (§ 4.3.9), be revised to include: (1) The Transmission Provider's filed (ceiling) transmission and ancillary services rates; (2) the Transmission Provider's offering price; (3) the price requested by the customer; and (4) the details of the negotiated transaction. We request that the How Working Group propose the necessary changes in the Standards and Protocols document and the Data Dictionary by June 2, 1997.

Turning to EPRI/NERC Working Group's request that we clarify that the purpose of the requirement in § 37.6(c)(4) (formerly found at § 37.6(c)(3)) to post discount information for 30 days is to record the discount and does not constitute a continuing offer of a discount, we agree that this posting requirement does not constitute an offer of a discount. The purpose of this requirement is to document discounting that might be considered unduly preferential or discriminatory. To serve this purpose, it is important that Transmission Customers have ready access to this information. Posting of discounts provides ready access, while the audit information does not.

7. Secondary Markets

In the OASIS Final Rule, the Commission directed, in § 37.6(c)(4), that customers choosing to use the OASIS to offer transmission capacity (that they have purchased) for resale must post relevant information on the same OASIS used by that customer in purchasing the transmission capacity. This information must be posted on the same display page, using the same tables, as similar capability being sold by the Transmission Provider, and the information must be contained in the same downloadable files as the Transmission Provider's own available capability. A customer reselling transmission capacity without the use of an OASIS must, nevertheless, inform the original Transmission Provider of the transaction within the time limits prescribed by § 23.1 ("Procedures for Assignment of Transmission Service") of the Open Access *pro forma* tariff.

Rehearing Requests

CCEM makes three arguments regarding secondary markets. First, CCEM argues that the Commission erred by not allowing the assignee of transmission capacity, or its agent, to schedule the transmission service obtained in the secondary market. Second, CCEM argues that the Commission should clarify that it will not impose onerous regulations on secondary market participants. Third,

CCEM argues that the Commission erred by not excluding customers receiving service under pre-Open Access tariffs from participation in the secondary market until they agree to comply with the Open Access *pro forma* tariff.⁷⁶

Commission Conclusion

CCEM's arguments relate more to our findings in Order No. 888 than to the OASIS Final Rule. Accordingly, we incorporate here our findings that we explain in greater detail in Order No. 888-A. First, the Open Access *pro forma* tariff does not prohibit the assignee of transmission capacity from scheduling transmission service with the Transmission Provider. Second, the issues raised by CCEM with respect to the regulation of resellers into the secondary market are fact specific and we will decide them on a case-by-case basis. Third, we reject CCEM's argument that customers receiving service under pre-Open Access tariffs should be excluded from participation in the secondary market until they agree to comply with the Open Access *pro forma* tariff.

8. Masking of Service Request Information

Section 37.6(e)(1)(ii) of the OASIS Final Rule requires the Responsible Party to post certain information about the status of the request. In § 37.6(e)(1)(iii) of the OASIS Final Rule, the Commission allowed the parties to mask the identity of the requester during the negotiation period and for 30 days after the request is accepted, denied or withdrawn.

Under § 37.6(e)(1) and § 37.6(e)(3), all requests for transmission service and all transmission service curtailments or interruptions must be posted on the Transmission Provider's OASIS in accordance with the terms of the Transmission Provider's tariff.⁷⁷ Under the OASIS Final Rule, parties to these transactions were allowed to request that their identities be masked for 30 days. See §§ 37.6(e)(1)(iii) and 37.6(e)(3)(i).

Rehearing Requests

APPA argues that the Commission erred in permitting Transmission Providers to withhold critical market information about requests for transmission and ancillary services. APPA and Blue Ridge believe that the 30-day masking period for the identity of the requester is inappropriate. They

claim that the Commission failed to require posting of the price, quantity, and any other relevant terms or conditions associated with a request for service at the time when the provider accepts the request. They argue that withholding the precise terms of a proposed transaction and the identity of parties denies other market participants the opportunity to make informed decisions, is potentially discriminatory, and inefficient. They argue that data provided 30 days later are of little use to market participants.⁷⁸

CCEM identifies an apparent conflict between the OASIS regulations and OASIS Final Rule preamble on the posting of denials. It asks the Commission to clarify that Transmission Providers need not post, for reasons other than those related to ATC, the reason for any denial of transmission service on an OASIS. A requester can, however, request a fuller explanation.⁷⁹

EI argues that masking the identities of requesters should not apply to system operators. EI argues that system operators need to know all the parties to a transaction to ensure reliability and to ensure equity in the treatment of customers.⁸⁰

NE Public Power District argues that certain provisions in the Final Rule dealing with confidentiality (*i.e.*, §§ 37.6(e)(1)(iii) and 37.6(e)(3)(i)) are in conflict with Nebraska state law. NE Public Power District explains that it is subject to state freedom of information laws and must disclose commercially sensitive information such as the identity of a customer seeking transmission service, unless the information constitutes an exempt trade secret.⁸¹ NE Public Power District maintains that utilities subject to local freedom of information laws should be given the option to conform their conduct to those laws.

Commission Conclusion

We agree with APPA that the masking provision should be dropped and we are amending our regulations accordingly. We are making this decision as part of our new discounting policy, that we explain more fully above and in Order No. 888-A. Consistent with this finding, we request that the How Working Group eliminate any references in the Standards and Protocols document to masking the identities of parties (*e.g.*, § 4.3.7(b)). This should be done in concert with the report to be submitted

⁷⁸ APPA Rehearing Request at pp. 19-21 and Blue Ridge Rehearing Request at p. 39.

⁷⁹ CCEM Rehearing Request at pp. 11-12.

⁸⁰ EI Rehearing Request at p. 49.

⁸¹ NE Public Power District Rehearing Request at p. 14.

⁷⁶ CCEM Rehearing Request at pp. 6-7.

⁷⁷ The issue of the timing of when requests for transmission service, responses thereto, curtailments, and interruptions must be posted on the OASIS is discussed in section IV.G.9 below.

no later than June 2, 1997. Moreover, EET's concern that the masking of parties' identities would apply to system operators is now moot. NE Public Power District's concerns are also moot.

We agree with CCEM that language in the preamble of the OASIS Final Rule can be interpreted as being inconsistent with the requirement in § 37.6(e)(2)(i) to provide the reasons why requests for service are denied. However, consistent with the Commission's new discounting policy, we will interpret § 37.6(e)(2)(i) to require Transmission Providers to post the reasons for a denial of a request for service on the OASIS for review by all OASIS users.

We will also take this opportunity to clarify that § 37.6(e) applies not only to requests for transmission service, but also to requests for ancillary service. Although this was the intent of the OASIS Final Rule, it was not clearly stated. We will make the necessary revisions to make this clear.

9. Requests for Service Made on the OASIS During Phase I

On December 23, 1996, the How Working Group filed a letter requesting clarification of whether the Commission intended, in the OASIS Final Rule, to require that the OASIS serve as a "next hour" reservation tool during Phase 1 of OASIS implementation. The letter stated:

It was the interpretation of the How Working Group that a Provider would accept reservation requests after 2 p.m. of the preceding day, only if practical. Otherwise, these requests would be accepted off-line and posted after-the-fact. It was our view that "next hour" functionality was not feasible in Phase 1.

In response, the Commission issued an order explaining that the OASIS Final Rule makes a clear distinction between reserving transmission service and scheduling transmission service.⁸² The Commission further explained that the Phase 1 OASIS regulations create a mechanism for making reservations of transmission service, while the inclusion of energy scheduling as part of the OASIS requirements was left as a Phase 2 OASIS issue. Nevertheless, the Commission acknowledged that "for near-term transactions, the distinction between scheduling and reservations tends to blur." This left the problem raised by the How Working Group's letter. To wit,

[t]he OASIS regulations provide, at 18 C.F.R. § 37.6(e)(1), that "[a]ll requests for

transmission services offered by Transmission Providers under the *pro forma* tariff must be made on the OASIS." Notwithstanding the clear language of this regulation, the How Working Group would like to accommodate requests for service, made after 2:00 p.m. of the day preceding the commencement of such service, off the OASIS and states that it is not feasible to handle such requests on the OASIS during Phase 1. [⁸³]

To resolve this difficulty, the Commission clarified in a recent order that,

during Phase I, a request for transmission service made after 2:00 p.m. of the day preceding the commencement of such service, will be "made on the OASIS" if it is made directly on the OASIS, or, if it is made by facsimile or telephone *and* promptly (within one hour) posted on the OASIS by the Transmission Provider. In all other circumstances, requests for transmission service must be made exclusively on the OASIS. [⁸⁴]

As part of the Commission's revised discount policy, see discussion in Section IV.G.6 and Order No. 888-A, we have required Transmission Providers to post requests for transmission and ancillary services, including requests for discounts, on the OASIS prior to taking action on those requests.⁸⁵ This policy applies to all requests for discounts for transmission and/or ancillary service with the exception of requests for next-hour service during Phase I.⁸⁶

For next-hour service requests, the Transmission Provider, during Phase I, must post the request for discounted service on the OASIS, as soon as possible, but in no event later than one hour after the request for a discount is received.

In the event that a discount is being requested for ancillary services that are not in support of a basic transmission service being offered by the Transmission Provider, this need not be posted on the OASIS.⁸⁷

10. Delay in Posting Requests for Hourly Transmission Service and Schedule Information

Section 37.6(e) requires a Transmission Provider to post on the

⁸³ Letter dated December 23, 1996 from the How Working Group. The 2:00 p.m. deadline is consistent with § 14.6 of the Open Access *pro forma* tariff, which provides: "Schedules for Non-Firm Point-to-Point Transmission Service must be submitted to the Transmission Provider no later than 2:00 p.m. . . . of the day prior to commencement of such service. Schedules submitted after 2:00 p.m. will be accommodated, if practicable." See Clarifying Order, 77 FERC at 62,492, n.4.

⁸⁴ *Id.* (Emphasis in original).

⁸⁵ See § 37.6(e)(1)(i).

⁸⁶ See § 37.6(e)(1)(ii).

⁸⁷ See § 37.6(e)(1)(iii).

OASIS requests for transmission service that is offered by that Transmission Provider under its Open Access *pro forma* tariff, in accordance with its tariff, the FPA, and Commission regulations. Section 37.6(f) requires information about transmission service schedules to be recorded and available for download from the OASIS. This information must be available within seven calendar days of when the service is scheduled.

Rehearing Requests

CCEM requests that the Commission clarify that Responsible Parties must post requests for hourly firm and nonfirm transmission within the next hour following the request.⁸⁸

APPA and Blue Ridge argue that the seven-day delay in posting transmission schedule data is potentially discriminatory and makes the data meaningless for hourly or daily transactions. They ask that Responsible Parties post schedule information when they update postings of ATC or, at latest, when service begins.⁸⁹

Commission Conclusion

The OASIS regulations currently do not specify how soon the Responsible Party must post a request for service after it is received. However, under our new discounting policy we are requiring such postings to be made prior to the Transmission Provider responding to the request. Moreover, although we are not adopting a specific time period for such postings, as requested by CCEM, we are adding a requirement that all such postings be made on a comparable basis, to prevent discriminatory practices.

The Phase I OASIS is a transmission information and service application system. The Commission accepts the industry's position that including scheduling of transmission service in the Phase I OASIS is not possible. The Commission strongly encourages the industry to consider including transmission service scheduling in Phase II of the OASIS.

The reporting of schedule information serves the same purpose as the audit information (*i.e.*, to document discriminatory practices). The Commission does not intend schedule information to supplement ATC

⁸⁸ CCEM Rehearing Request at pp. 4-5. We note that CCEM's rehearing request regarding hourly firm transmission service is misplaced. The Commission has rejected hourly firm point-to-point transmission service as a mandatory service to be provided under the Open Access *pro forma* tariff. See Order No. 888, FERC Stats & Regs. at 31,752.

⁸⁹ APPA Rehearing Request at p. 23 and Blue Ridge Rehearing Request at p. 40.

⁸² See Open Access Same-time Information System and Standards of Conduct, 77 FERC ¶ 61,335 at 62,491 (1996) (Clarifying Order).

postings on a same-time basis during Phase I.

11. Liability for Accuracy of ATC/TTC Estimates

In the OASIS Final Rule, the Commission found that the responsibility for assuring the reliability and accuracy of data supplied by third parties rests with those third parties and not with the public utility that posts this information on the OASIS as an accommodation.⁹⁰ As to the accuracy of a Transmission Provider's own estimates of its ATC and TTC, the OASIS Final Rule provides that Transmission Providers are required to post the amounts "expected to be available" (§ 37.6(b)) but does not directly address whether (and to what extent) Transmission Providers are liable for the accuracy of good faith estimates made in accordance with prescribed procedures.

Rehearing Request

CSW argues that Transmission Providers should not be liable for the accuracy of ATC & TTC estimates made in good faith and in accordance with the company's published procedures.⁹¹

Commission Conclusion

As further discussed in Order No. 888-A, the Commission will not revise the Open Access *pro forma* tariff, as requested by CSW, to provide that a Transmission Provider will not be liable for errors in an estimate made in good faith or in accordance with its published procedure, because we believe that a utility should have the same liability standard for operating an OASIS as it has for its other operations.⁹²

H. Section 37.7—Auditing Transmission Service Information

The OASIS regulations require that all OASIS database transactions, except "want ads" and "other communications", are to be stored and remain available for download for 90 days. After 90 days, the audit data are available on request for three years.

Rehearing Requests

EEL argues that the retention period for audit data retained under § 37.7(b) is excessive and should be reduced from 90 days to 7 days. EEL argues that, beyond 7 days, the data could be provided off-line, upon request.⁹³

⁹⁰ See 18 CFR § 37.6(g)(2) and OASIS Final Rule, 61 FR at 21,755.

⁹¹ CSW Rehearing Request at pp. 2-6.

⁹² See, e.g., Texas Eastern Transmission Corporation, 62 FERC ¶ 61,015 at 61,107 (1993).

⁹³ EEL Rehearing Request at p. 52.

Similarly, EPRI/NERC Working Group (with APPA dissenting) argues that the Commission should reduce the on-line availability of the ATC/TTC data in the audit file from 90 to 10 days. They claim that the longer time limit is burdensome and unfeasible and suggest making the data available off-line.⁹⁴

Commission Conclusion

The Commission agrees with the proposal of the EPRI/NERC Working Group majority that we should reduce the amount of time that the audit file remains on-line. However, we believe that ten days may not be long enough to provide OASIS users with sufficient time to evaluate these data. In our judgment, 20 calendar days is a period that will allow OASIS users who wish to do so adequate time to find and download these data (even allowing for weekends or holidays) without unduly burdening Transmission Providers. Therefore, we will modify the regulations at § 37.7(b) to shorten—from 90 to 20 days—the time during which ATC/TTC postings must remain available on the OASIS for download. The data will, however, remain available (upon request) for three years from the date on which they are first posted.

We will take this opportunity to correct an omission in § 37.6(g)(3). As written, this provision currently does not specify the retention period for notices of employee transfers. We will correct this omission by specifying that the posting requirements for notices of employee transfers are the same as those provided in § 37.7 for audit data postings. We request that the How Working Group propose the necessary template (for notices of employee transfers) to be included in the Standards and Protocols document.

We also will take this opportunity to clarify that the audit data required to be made available for three years under § 37.7(b) are to be made available upon request for download in the same electronic form as used when they originally were posted on the OASIS.

I. Standards and Communication Protocols

1. CCEM's Suggested Changes to the Standards and Protocols Document

The OASIS Final Rule was accompanied by a Standards and Protocols document, revised on September 10, 1996, to help ensure that each OASIS will provide information in a uniform manner.⁹⁵ The publication

⁹⁴ EPRI/NERC Working Group Rehearing Request at pp. 9-10.

⁹⁵ See *supra* note 4.

details the Phase I requirements for technical issues related to the implementation and use of an OASIS (*i.e.*, a compilation of OASIS standards and communication protocols).

Rehearing Request

CCEM argues that the Commission should clarify certain technical aspects of the templates in the OASIS Standards and Protocols document. We will discuss these various suggested revisions separately.

a. Service Request Priorities

The Open Access *pro forma* tariff requires Transmission Providers to respond to customer requests for point-to-point service within a certain time limit depending on the type of service requested.⁹⁶ The OASIS Standards and Protocols document states that "[i]f a purchase request is approved by the Seller, then it must be again confirmed by the Customer. Once the customer confirms an approved purchase, a reservation for those services is considered to exist, unless later the reservation is reassigned or displaced."⁹⁷

Rehearing Request

CCEM asks the Commission to clarify priorities between competing requests for service. They also ask that Transmission Customers be allowed to confirm a purchase request before it has been approved by the Transmission Provider.⁹⁸

EPRI/NERC Working Group requests that the Commission: (1) specify a time limit for customer confirmation of accepted requests for service; (2) eliminate the confirmation step; or (3) handle confirmation limits in umbrella service agreements.⁹⁹

Commission Conclusion

The requirement that a customer confirm its request for service appears in the OASIS Standards and Protocols document (and not in the Open Access *pro forma* tariff or 18 CFR Part 37). Although the easiest approach might be to eliminate the confirmation step, the Commission is reluctant to modify the OASIS Standards and Protocols document at this late date. The Commission is also reluctant to specify confirmation time limits without first soliciting the views of representative industry segments. Accordingly, the

⁹⁶ See Open Access *pro forma* tariff at §§ 17.5 and 18.4.

⁹⁷ See Standards and Protocols document at § 3.6(b).

⁹⁸ CCEM Rehearing Request at p. 7.

⁹⁹ EPRI/NERC Working Group letter dated July 3, 1996 at pp. 1-2.

Commission requests that the industry address this issue as part of the Phase II report due on or before August 4, 1997.

As to EPRI/NERC Working Group's suggestion of handling confirmation limits in umbrella service agreements, we find this acceptable, for the time being, as long as Transmission Providers treat all customers, including their own wholesale merchant employees, comparably.

b. Clarification of the Requirement to Post, Upload, and Download Information

In the OASIS Final Rule, the Commission discussed the necessity for Hypertext Mark-up Language (HTML) screen displays and stated that this information also needed to be made available for downloading.¹⁰⁰ The Commission also required OASIS sites to be set up in a manner that will allow customers to upload certain information to OASIS nodes.

Rehearing Request

CCEM requests that the Commission clarify that when the OASIS Final Rule makes an individual reference to "uploading", "downloading", or "posting" requirements (without expressly making a reference to all three of these requirements), the Commission, nevertheless, intended to require, as appropriate, a collective requirement to upload, download, and post the information at issue. CCEM points out that uploading and downloading are computer to computer transactions, while posting is an on-line function. CCEM argues that, in order for the OASIS system to function effectively in providing open access Transmission Customers with information through electronic means, uploading and downloading should always be required as an alternative to comparable on-line services.¹⁰¹

Commission Conclusion

Section 4.3.1 of the revised Standards and Protocols document, issued subsequent to CCEM's request, specifies what type of information may be uploaded to, or downloaded from, OASIS nodes. Thus, CCEM's goal of clarifying the requirements for uploading, downloading, and posting has been met. We, therefore, find that it is not necessary to broadly reinterpret the terms used in the OASIS Final Rule, as urged by CCEM.

c. Sequence of Data Elements Appearing in Templates

Section 4.2.4.2 of the revised Standards and Protocol document discusses the format of downloadable files. The narrative in § 4.2.4.2 2.d states:

The DATA—ROWS record contains the number of data records following the COLUMN—HEADERS. The COLUMN—HEADERS record contains the template element name for each field that is required in the Template, in the exact order as listed in the Template. * * *

The Template information then follows as records which correspond one-to-one with the column headings.

Rehearing Request

CCEM requests clarification that the data elements that make up the templates in the Standards and Protocols document are fixed in sequence and in number. CCEM argues that because computer systems will be established on the basis of the templates outlined in the Standards and Protocols document, including the sequence of templates and the number of data elements, it is important that the order of the data provided in the templates not be shuffled. Otherwise, problems may occur in the transfer and receipt of information between computer systems.¹⁰²

Commission Conclusion

To avoid any possible confusion, we hereby clarify that the Standards and Protocols document requires that the data elements in the templates are fixed in sequence and number, and are not to differ from OASIS node to OASIS node. However, the Commission will continue to order revisions to the Standards and Protocols document periodically (thus implementing across-the-board changes to the templates for all OASIS nodes), as necessary.

2. Standardized Format for Electronic Tariff Filings

In the OASIS Final Rule, the Commission found that utilities must provide tariff downloads from their OASIS sites in the same format that they use to file their tariffs with the Commission. Order No. 888 permitted tariff filings to be in any word processor format.

Rehearing Request

APPA argues that the standardized electronic format for tariffs needs to be specified and recommends the use of either ASCII or HTML.¹⁰³

Commission Conclusion

The Commission's order clarifying Order Nos. 888 and 889 compliance matters resolved the issue raised by APPA by requiring that tariffs be filed in either Wordperfect 5.1/5.2 or ASCII format.¹⁰⁴ However, in the near future, the Commission expects to adopt another standard word processor for its own uses (*i.e.*, Wordperfect 6.1). The Commission will, therefore, modify the finding in the *Clarifying Order* to accept postings of tariff filings on the OASIS in the ASCII format or in whatever standard word processor format is currently authorized by the Commission for its own uses.¹⁰⁵ Once posted, a tariff posting will remain available for download in its original format.

3. Company Codes and Identification Displays

In the OASIS Final Rule, the Commission required the use of "DUNS numbers" to identify transmission owning utilities and customers on OASIS nodes.¹⁰⁶

Rehearing Requests

APPA argues that, notwithstanding claims to the contrary, the use of DUNS numbers could result in costs being incurred by OASIS users. APPA also argues that, because Dun & Bradstreet also owns Moody's Investors Services, DUNS numbers may somehow allow Dun & Bradstreet/Moody's customers to obtain access to confidential information about APPA members. Accordingly, APPA requests that the Commission use the EIA (Energy Information Agency) UCode in lieu of DUNS numbers to identify transmission owning utilities and OASIS customers.¹⁰⁷

CCEM requests that the Commission clarify that when information is uploaded and downloaded, the DUNS number identification of the parties be the only field required to identify a company. CCEM also requests clarification that the Commission require that for purposes of the HTML displays, the minimum data element to

¹⁰⁴ Promoting Wholesale Competition Through Open-Access Non-Discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Open Access Same-Time Information System and Standards of Conduct, Order Clarifying Order Nos. 888 and 889, 76 FERC ¶ 61,009 at 61,026 (1996) (*Clarifying Order*).

¹⁰⁵ A review of CIPS, or any successor, will show what standard word processor is currently authorized by the Commission for its own uses.

¹⁰⁶ "DUNS numbers" refer to the Data Universal Numbering System, maintained by Dun and Bradstreet.

¹⁰⁷ APPA Rehearing Request at p. 25.

¹⁰⁰ See OASIS Final Rule, 61 FR at 21,756.

¹⁰¹ CCEM Rehearing Request at p. 12.

¹⁰² *Id.*

¹⁰³ APPA Rehearing Request at p. 25.

be displayed should be the company's alias/initials.¹⁰⁸

In addition, CCEM requests that Transmission Providers be required to maintain an additional display containing a cross-reference of DUNS number, full company name, and alias/initials. CCEM argues that the cross-reference will reduce confusion on the OASIS.¹⁰⁹

Commission Conclusion

The industry-wide Internet site on the WWW (<http://www.tsin.com>) reports that Dun & Bradstreet will issue DUNS numbers at no charge and provides instructions and procedures for applying for a DUNS number at no cost. This representation is consistent with our experience in issuing DUNS numbers for natural gas pipelines and their customers. We, therefore, find APPA's concerns about the costs of DUNS numbers to be unwarranted.

As to APPA's concern about DUNS numbers somehow giving Moody's customers unrestricted access to otherwise restricted information, we do not find this concern convincing. The Commission has several years' experience with requiring the use of DUNS numbers for similar identification purposes in the natural gas pipeline industry and has not received any complaints along these lines.

We decline to adopt CCEM's proposal concerning identification fields and a data element displays. The industry is in the midst of implementing OASIS standards and we are reluctant to modify the Standards and Protocols document at this time unless there is a serious need for the modification. CCEM's proposal is one that may somewhat improve the efficiency of OASIS operations, but an OASIS can operate without it, and, with experience, other solutions may prove preferable. We request that the industry consider CCEM's proposal when developing standards for OASIS Phase II implementation.

We agree with CCEM that an additional display, such as a cross-reference of possible business partners and their various identification codes and symbols, would greatly enhance the industry's ability to transact business. Subsequent to CCEM's request, the "TSIN" WWW site began providing such a cross-reference. As long as this Internet site continues to provide this information for the entire industry, there is no need for individual Transmission Providers to do so.

4. Common Location Codes

In the preamble to the OASIS Final Rule, we stated that we were abandoning the proposal in the RIN NOPR to require that the OASIS incorporate a system for location codes. We requested that the industry continue its efforts to develop a common naming convention to be implemented as soon as practicable.

Rehearing Request

CCEM argues that the Commission should modify the OASIS Final Rule to include a requirement that Transmission Providers provide a downloadable on-line listing of all PORs and PODs that includes point name, point alias, and point code. CCEM also requests that when downloading this information, the customer should have the ability to download only those aspects of the listing that have changed over a user-defined time period.¹¹⁰

Commission Conclusion

After CCEM filed its rehearing request, the Standards and Protocols document was revised to require that this information be provided.¹¹¹

5. Time by Which Hourly Postings Must be Made Available

The OASIS Final Rule requires that updates of hourly postings under § 37.6(b)(3)(i)(C)(2) are to be made on the hour.

Rehearing Request

CCEM requests that the Commission clarify that all hourly postings will be available no later than "on the hour." CCEM argues that these requirements will be critical if computer-to-computer interfaces are to be accomplished with reliability and comparability.¹¹²

Commission Conclusion

Subsequent to CCEM's request, the Commission issued a revised Standards and Protocol document that defines permissible deviations from the hourly posting requirement.¹¹³ The Transmission Provider's most recent transmission services information must be available on the OASIS node within five minutes of its required posting time at least 98 percent of the time. The remaining two percent of the time, the transmission services information must be available within ten minutes of its scheduled posting time.¹¹⁴ We are

¹¹⁰ *Id.*

¹¹¹ See Standards and Protocols document at § 4.3.5.

¹¹² CCEM Rehearing Request at p. 13.

¹¹³ See *supra* note 4.

¹¹⁴ See Standards and Protocols document at § 5.7.

satisfied with the resolution of this issue in the revised Standards and Protocols document, at least for the time being. However, the industry may want to address this issue again, in Phase II, after it has more experience transacting business on the OASIS.

J. Mechanism for Recovering Oasis Expenses

In the preamble to the OASIS Final Rule, the Commission concluded that it is appropriate that all wholesale Transmission Customers and all unbundled retail Transmission Customers pay a share of OASIS development costs in their rates. The costs of developing an OASIS are to be included in unbundled transmission rates with variable costs of operating an OASIS to be recovered, to the extent possible, in usage fees. Recovery of OASIS costs is left to individual rate proceedings.¹¹⁵

Rehearing Requests

EEl argues that the costs of operating an OASIS should be recoverable in supplements that the Transmission Providers file to their rate schedules on a company-specific basis. They ask that Transmission Providers not be required to amend their approved tariffs to seek recovery of OASIS expenses. They argue that refiling would be a problem because it would entail unnecessary expenses, because the level of such expenses is subject to change, and because the OASIS requirements are still evolving and the systems are not yet complete.¹¹⁶

Commission Conclusion

EEl is asking the Commission to allow utilities to automatically adjust their transmission rates to recover their OASIS costs without filing for a change in rates. The Commission has allowed this sort of automatic rate adjustment for fuel costs through fuel adjustment clauses, but only because fuel costs are a significant portion of total costs and can be volatile. OASIS costs are neither. We deny EEl's request.

K. Section 37.8—Implementation Schedule; Phases

Order No. 889 provided that all of the requirements prescribed in the standards of conduct were to be complied with and Phase I OASIS sites meeting all the requirements of the OASIS Final Rule were to be in operation by November 1, 1996.¹¹⁷ This compliance schedule later was modified

¹¹⁵ See OASIS Final Rule, 61 FR at 21,760–61.

¹¹⁶ EEl Rehearing Request at pp. 54–55.

¹¹⁷ See OASIS Final Rule, 61 FR at 21,764.

¹⁰⁸ CCEM Rehearing Request at p. 13.

¹⁰⁹ *Id.*

(in response to a request from the How Working Group for a two-step time extension) with full compliance required by January 3, 1997.¹¹⁸ Thus, the date for compliance with Phase I OASIS implementation and for compliance with the standards of conduct has elapsed and the language in § 37.8 is no longer accurate, even as a record of past events. We, therefore, will revise 18 CFR Part 37 to delete this provision.

Rehearing Request

Union argues that it has been given insufficient time to comply and objects to the requirement that OASIS systems must be in place by November 1, 1996. Union argues that compliance by such an early date will require the company to incur a considerable effort and expense and will involve the development of intricate electronic information functions, even though the operational requirements for OASIS sites have not yet been completed.¹¹⁹

Commission Conclusion

We find Union's arguments to be moot. As noted above, after Union filed its request for rehearing, the Commission issued a revised Standards and Protocols document that more fully describes the operational requirements of OASIS sites, and granted the request from the How Working Group for a 2-month time extension for compliance with the requirements of Order No. 889. Moreover, the Commission invited comments from interested persons prior to issuing the revised Standards and Protocols document.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA)¹²⁰ requires any proposed or final rule issued by the Commission to contain a description and analysis of the impact that the proposed or final rule would have on small entities or to contain a certification that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Order No. 889 contained a certification under § 605(b) of the RFA that the OASIS Final Rule would not impose a significant economic impact on a substantial number of small entities within the meaning of the RFA.¹²¹

¹¹⁸ See *supra* note 6.

¹¹⁹ Union Rehearing Request at pp. 53–54, 56–57. We also note that as of the issuance of this order, Union's OASIS site is in operation.

¹²⁰ 5 U.S.C. §§ 601–612.

¹²¹ See OASIS Final Rule, 61 FR at 21,762–63.

NRECA challenges this certification.¹²² NRECA recognizes that OASIS requirements do not apply unless a non-public utility offers reciprocal transmission service.¹²³ However, NRECA maintains that business necessity will force non-public utilities to file open access tariffs, and thus subject themselves to OASIS requirements, since, if they do not, "they will not retain access over the long-term to the nation's bulk power transmission grid—access they must have if they wish to stay in business."¹²⁴

In the OASIS Final Rule, we noted that the entities that would have to comply with the Final Rule are public utilities. However, the Commission under appropriate circumstances will grant waiver of the Final Rule requirements to small public utilities. Similarly, it will grant waiver of the reciprocity condition to small non-public utilities. As discussed earlier, in section IV.B.3, the Commission's waiver policy follows the SBA definition of small electric utility.¹²⁵

We disagree with NRECA that non-public utilities must publish open access tariffs or forego access to the nation's bulk power transmission grid. As we noted in the Open Access Final Rule, non-public utilities do not have to offer open access tariffs in order to comply with the open access reciprocity condition; rather, they must offer reciprocal transmission access to those public utility Transmission Providers from whom they receive open access service. Additionally, reciprocal service is voluntary. If non-public utilities do not want to offer reciprocal service, they may continue to seek voluntary,

¹²² NRECA Rehearing Request at pp. 42–48. On November 1, 1996, NRECA filed a supplement to its request for rehearing and clarifications. We will accept NRECA's pleading as a request for clarification and/or a motion for reconsideration, and not as a request for rehearing, because it was not filed within the 30-day statutory time limit for rehearing requests. See 16 U.S.C. § 8251(a).

¹²³ OASIS Final Rule, 61 FR at 21,742.

¹²⁴ NRECA Rehearing Request at pp. 42–43.

¹²⁵ See 5 U.S.C. §§ 601(3) and 601(6) and 15 U.S.C. § 632(a). The RFA defines a small entity as one that is independently owned and not dominant in its field of operation. See 15 U.S.C. § 632(a). The Small Business Administration defines a small electric utility as one that disposes of 4 million MWh or less of electric energy in a given year. See 13 CFR 121.601 (Major Group 49—Electric, Gas and Sanitary Services) (1995).

In the Open Access Final Rule, we concluded that, under these definitions, the Open Access Final Rule would not have a significant economic impact on a substantial number of small entities. We reaffirm that conclusion in Order No. 888–A, which is being issued contemporaneously with this order on rehearing. This same conclusion is warranted here, because Order No. 889 and this order on rehearing only implement the OASIS requirements of the Open Access Final Rule.

bilateral transmission services from public utilities.¹²⁶ We note that since NRECA filed its rehearing comments, the Commission has issued several orders addressing its waiver policy and specific waiver requests. We have granted waivers of the reciprocity provision in the Open Access *pro forma* tariffs and waivers of the requirements of the OASIS Final Rule: approximately 17 small entities have received waivers of the Open Access Final Rule;¹²⁷ approximately 36 small entities have received waivers of the requirement to establish and maintain an OASIS and/or the requirement to comply with the standards of conduct requirements of the OASIS Final Rule.¹²⁸ We also have granted waiver of the open access tariff reciprocity provision that would apply to ten small non-public utility applicants if they chose to receive open access transmission service, and have determined that 19 small non-public electric utilities that requested exemption from all or part of the Open Access Rule are not public utilities subject to the requirement to file an open access tariff.¹²⁹

Although NRECA speculates that it may be burdensome for small non-public utilities to file for waiver of our Open Access and OASIS Final Rules, many small public and non-public utilities have found little or no problem in obtaining waivers when they are properly justified under our waiver standards. As the Commission's decisions show, the Commission is carefully evaluating the effect of the OASIS Final Rule on small electric utilities and is granting waivers where appropriate, thus mitigating the effect of that rule on small public and non-public utilities.

Given that this order makes only minor revisions to Order No. 889, none of which are substantive, and that we are granting waivers from the requirements of the OASIS Final Rule to small entities where appropriate, we reaffirm our earlier certification that the OASIS Final Rule will not have a significant economic impact on a substantial number of small entities and that no regulatory flexibility analysis is required pursuant to § 603 of the RFA.

¹²⁶ Open Access Final Rule, 61 FR at 21,540 and 21,691.

¹²⁷ See Order No. 888–A at Section VI.

¹²⁸ See *Central Electric*, 77 FERC at 61,311, 61,313–317 (3 waivers, including 2 for entities later found non-jurisdictional); *Northern States* (21 waivers); *Black Creek* (3 waivers); *Midwest* (5 waivers); *UtiliCorp, et al.*, 77 FERC 61,027 (1997) (2 waivers); *Soyland* (6 waivers); and *Dakota* (3 waivers). Of the entities granted waivers by these orders, at least 36 involve small public utilities.

¹²⁹ See *Central Electric*; *Niabrara*; and *Dakota*.

VI. Environmental Statement

Order Nos. 888 and 889 were the joint subjects of the Final Environmental Impact Statement issued in the Open Access NOPR proceeding in Docket Nos. RM95-8-000 and RM94-7-001 on April 12, 1996. Given that this order makes only minor revisions to Order No. 889, none of which is substantive, no separate environmental assessment or environmental impact statement has been prepared in this proceeding.

VII. Information Collection Statement

Order No. 889 contained an information collection statement for which the Commission obtained approval from the Office of Management and Budget (OMB). Given that this order makes only minor revisions to Order No. 889, none of which is substantive, OMB approval for this order will not be necessary. However, the Commission will send a copy of this order to OMB, for informational purposes only.

The information reporting requirements under this order are virtually unchanged from those contained in Order No. 889.¹³⁰ Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 [Attention Michael Miller, Information Services Division, (202) 208-1415], and the Office of Management and Budget [Attention: Desk Officer for the Federal Energy Regulatory Commission, (202) 395-3087].

VIII. Effective Date

The changes ordered in this order on rehearing will become effective on May 13, 1997. By issuing this order, we are not further delaying the requirement to comply with Order No. 889 by January 3, 1997. The current requirements of Part 37 will remain in full effect until the changes required by this order become effective.

¹³⁰ As discussed in section IV.E.3 above, to aid in our monitoring efforts, we are modifying §§ 37.4 and 37.6 to require the posting of the Transmission Provider logs already required (by the OASIS Final Rule) to be maintained. We also are revising the Standards and Protocols document to specify the templates for posting discounts to be consistent with our revised discount policy. However, given that this information was already required to be assembled and available for audit, these additional posting requirements will have only a negligible effect on the information collection requirement. Moreover, these effects are more than offset by the revision to § 37.7(b) that reduces, from 90 days to 20 days, the time during which ATC/TTC postings must remain available for download on the OASIS.

List of Subjects in 18 CFR Part 37

Electric power plants, Electric utilities.

By the Commission.
Lois D. Cashell,
Secretary.

In consideration of the foregoing, the Commission amends Part 37 in Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

PART 37—OPEN ACCESS SAME-TIME INFORMATION SYSTEMS AND STANDARDS OF CONDUCT FOR PUBLIC UTILITIES

1. The authority citation for Part 37 continues to read as follows:

Authority. 16 U.S.C. §§ 791-825r, 2601-2645; 31 U.S.C. § 9701; 42 U.S.C. § 7101-7352.

2. Section 37.3 is amended by revising paragraph (e) to read as follows:

§ 37.3 Definitions.

* * * * *

(e) *Wholesale merchant function* means the sale for resale of electric energy in interstate commerce.

* * * * *

3. Section 37.4 is amended by removing paragraphs (b)(5)(v) and (b)(5)(vi), and by revising paragraphs (b)(5)(iii) and (b)(5)(iv) to read as follows:

§ 37.4 Standards of conduct.

* * * * *

(b) * * *

(5) * * *

(iii) The Transmission Provider must keep a log, available for Commission audit, detailing the circumstances and manner in which it exercised its discretion under any terms of the tariff. The information contained in this log is to be posted on the OASIS as provided in § 37.6(g)(4).

(iv) The Transmission Provider may not, through its tariffs or otherwise, give preference to sales for resale by the wholesale merchant function or by any affiliate, over the interests of any other wholesale customer in matters relating to the sale or purchase of transmission service (including issues of price, curtailments, scheduling, priority, ancillary services, etc.).

* * * * *

4. Section 37.6 is amended by revising paragraphs (b)(3)(ii)(A), (c)(3), (c)(4), (d)(2), (d)(3), (d)(4), (e)(1)(i), (e)(1)(ii), (e)(1)(iii), (e)(3)(i), and (g)(3) and by adding paragraphs (b)(1)(iv), (c)(5), (d)(5), (e)(1)(iv), and (g)(4) to read as follows:

§ 37.6 Information to be posted on an OASIS.

* * * * *

(b) * * *

(1) * * *

(iv) The word “*interconnection*”, as used in the definition of “posted path”, means all facilities connecting two adjacent systems or control areas.

* * * * *

(3) * * *

(ii) *Unconstrained posted paths.* (A) Postings of firm and nonfirm ATC and TTC shall be posted separately by the day, showing for the current day and the next six days following and thereafter, by the month for the 12 months next following. If the Transmission Provider charges separately for on-peak and off-peak periods in its tariff, ATC and TTC will be posted separately for the current day and the next six days following for each period. These postings are to be updated whenever the ATC changes by more than 20 percent of the Path’s TTC.

* * * * *

(c) *Posting transmission service products and prices.*

* * * * *

(3) Any offer of a discount for any transmission service made by the Transmission Provider must be announced to all potential customers solely by posting on the OASIS.

(4) For any transaction for transmission service agreed to by the Transmission Provider and a customer, the Transmission Provider (at the time when ATC must be adjusted in response to the transaction), must post on the OASIS (and make available for download) information describing the transaction (including: price; quantity; points of receipt and delivery; length and type of service; identification of whether the transaction involves the Transmission Provider’s wholesale merchant function or any affiliate; identification of what, if any, ancillary service transactions are associated with this transmission service transaction; and any other relevant terms and conditions) and shall keep such information posted on the OASIS for at least 30 days. A record of the transaction must be retained and kept available as part of the audit log required in § 37.7.

(5) Customers choosing to use the OASIS to offer for resale transmission capacity they have purchased must post relevant information to the same OASIS as used by the one from whom the Reseller purchased the transmission capacity. This information must be posted on the same display page, using the same tables, as similar capability

being sold by the Transmission Provider, and the information must be contained in the same downloadable files as the Transmission Provider's own available capability. A customer reselling transmission capacity without the use of an OASIS must, nevertheless, inform the original Transmission Provider of the transaction within any time limits prescribed by the Transmission Provider's tariff or in a contract or service agreement between the Transmission Provider and a customer.

(d) Posting ancillary service offerings and prices.

* * * * *

(2) Any offer of a discount for any ancillary service made by the Transmission Provider must be announced to all potential customers solely by posting on the OASIS.

(3) For any transaction for ancillary service agreed to by the Transmission Provider and a customer, the Transmission Provider (at the time when ATC must be adjusted in response to an associated transmission service transaction, if any), must post on the OASIS (and make available for download) information describing the transaction (including: date and time when the agreement was entered into; price; quantity; length and type of service; identification of whether the transaction involves the Transmission Provider's wholesale merchant function or any affiliate; identification of what, if any, transmission service transactions are associated with this ancillary service transaction; and any other relevant terms and conditions) and shall keep such information posted on the OASIS for at least 30 days. A record of the transaction must be retained and kept available as part of the audit log required in § 37.7.

(4) Any other interconnected operations service offered by the Transmission Provider may be posted, with the price for that service.

(5) Any entity offering an ancillary service shall have the right to post the offering of that service on the OASIS if the service is one required to be offered by the Transmission Provider under the *pro forma* tariff prescribed by part 35 of this chapter. Any entity may also post any other interconnected operations service voluntarily offered by the Transmission Provider. Postings by customers and third parties must be on the same page, and in the same format, as postings of the Transmission Provider.

(e) Posting specific transmission and ancillary service requests and responses.

(1) *General rules.* (i) All requests for transmission and ancillary service offered by Transmission Providers under the *pro forma* tariff, including requests for discounts, must be made on the OASIS, and posted prior to the Transmission Provider responding to the request, except as discussed in paragraphs (e)(1) (ii) and (iii). The Transmission Provider must post all requests for transmission service and for ancillary service comparably. Requests for transmission and ancillary service, and the responses to such requests, must be conducted in accordance with the Transmission Provider's tariff, the Federal Power Act, and Commission regulations.

(ii) The requirement in paragraph (e)(1)(i) of this section, to post requests for transmission and ancillary service offered by Transmission Providers under the *pro forma* tariff, including requests for discounts, prior to the Transmission Provider responding to the request, does not apply to requests for next-hour service made during Phase I.

(iii) In the event that a discount is being requested for ancillary services that are not in support of basic transmission service provided by the Transmission Provider, such request need not be posted on the OASIS.

(iv) In processing a request for transmission or ancillary service, the Responsible Party shall post the same information as required in § 37.6(c)(4), § 37.6(d)(3), and the following information: the date and time when the request is made, its place in any queue, the status of that request, and the result (accepted, denied, withdrawn).

* * * * *

(3) *Posting when a transaction is curtailed or interrupted.*

(i) When any transaction is curtailed or interrupted, the Transmission Provider must post notice of the curtailment or interruption on the OASIS, and the Transmission Provider must state on the OASIS the reason why the transaction could not be continued or completed.

* * * * *

(g) Notices of transfers of personnel shall be posted as described in § 37.4(b)(2). The posting requirements are the same as those provided in § 37.7 for audit data postings.

(4) Logs detailing the circumstances and manner in which a Transmission Provider or Responsible Party exercised its discretion under any terms of the tariff shall be posted as described in

§ 37.4(b)(5)(iii). The posting requirements are the same as those provided in § 37.7 for audit data postings.

5. Section 37.7 is amended by revising paragraph (b) to read as follows:

§ 37.7 Auditing transmission service information.

* * * * *

(b) Audit data must remain available for download on the OASIS for 90 days, except ATC/TTC postings that must remain available for download on the OASIS for 20 days. The audit data are to be retained and made available upon request for download for three years from the date when they are first posted in the same electronic form as used when they originally were posted on the OASIS.

§ 37.8 [Removed]

6. Section 37.8 is removed.

[Note: This attachment will not appear in the Code of Federal Regulations.]

Attachment 1

List of Requests for Rehearing of Order No. 889

(This list includes all requests for rehearing that made a reference to Order No. 889 in their text and/or caption)

Company Name (Abbreviation)

1. Alabama Municipal Electric Authority (AL MEA)*
2. Alabama Electric Cooperative, Inc. and South Mississippi Electric Power Association (AL EC)*
3. Operating Companies of American Electric Power System (AEP)
4. American Public Power Association (APPA)
5. Basin Electric Power Cooperative (Basin EC)*
6. Blue Ridge Power Agency, Northeast Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc. (Blue Ridge)
7. Ralph R. Mabey, Trustee for Cajun Electric Power Cooperative, Inc. (Cajun)*
8. Carolina Power & Light Company (Carolina P&L)
9. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company (Central P&L)*
10. Central Montana Electric Power Cooperative, Inc. (Central Montana EC)*
11. Cities of Benton, Conway, North Little Rock, Osceola, Prescott, West Memphis, Arkansas and the Farmers Electric Cooperative Corporation (AK Cities)*
12. City of Redding, CA (Redding)
13. City of Santa Clara, CA (Santa Clara)*
14. Coalition for a Competitive Electric Market (CCEM)
15. Colorado Association of Municipal Utilities (CAMU)

16. Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric & Gas Corporation, and Rochester Gas and Electric Corporation (ConEd)
17. Cooperative Power (Cooperative Power)*
18. Edison Electric Institute (EEI)
19. El Paso Electric Company (El Paso)
20. Electric Power Research Institute (EPRI) and North American Electric Reliability Council (NERC), on behalf of Industry Management Process on "how" to implement Transmission Services Information Networks (EPRI/NERC Working Group)
21. Florida Power & Light Company (FPL)*
22. Florida Power Corporation (Florida Power Corp)*
23. Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier EC)*
24. Illinois Power Company (Illinois Power)
25. Indianapolis Power & Light Company (Indianapolis P&L)
26. Michigan Systems (Michigan Public Power Agency, Michigan South Central Power Agency, and Wolverine Power Supply Cooperative, Inc.) on behalf of themselves, Florida Municipal Power Agency, and Central Minnesota Municipal Power Agency (Michigan Systems)
27. Mid-Continent Area Power Pool (MAPP)
28. Montana-Dakota Utilities Company (Montana-Dakota Utilities)
29. Municipal Electric Utilities Association of New York State (NY MU)
30. National Rural Electric Cooperative Association (NRECA)
31. Nebraska Public Power District (NE Public Power District)
32. New York Power Pool (NYPP)
33. Northwest Regional Transmission Association (NWRTA)*
34. Nuclear Energy Institute (Nuclear Energy Institute)
35. Nucor Corporation (Nucor)
36. Ohio Valley Electric Corporation and Indiana-Kentucky Electric Corporation (Ohio Valley)
37. Pennsylvania Rural Electric Association and Allegheny Electric Cooperative, Inc. (PA Coops)
38. Public Service Company of Colorado (Public Service Co of CO)
39. Southern California Edison Company (SoCal Edison)
40. Southern California Gas Company (SoCal Gas) ""
41. Southwest Regional Transmission Association (SWRTA)*
42. Transmission Access Policy Study Group (TAPS)
43. Transmission Dependent Utility Systems (TDU Systems)
44. Union Electric Company (Union Electric)
45. Utilities for an Improved Transition (FIT Utilities)
46. Virginia Electric and Power Company (VEPCO)

* Request for rehearing raises no direct Order No. 889 issues.

** Request for clarification.

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