

Order No. 888-A, the Commission addressed requests for rehearing that questioned this certification and that the final rule would not impose a significant economic impact on a substantial number of small entities. No rehearing requests of Order No. 888-A were filed on this issue and the Commission finds no reason to alter its previous findings on this issue.

VII. Information Collection Statement

Order No. 888 contained an information collection statement for which the Commission obtained approval from the Office of Management and Budget (OMB).²⁶³ Given that this order on rehearing makes only minor revisions to Order Nos. 888 and 888-A, 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 Nos. 888 and 888-A. 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 tariff change to Order Nos. 888 and 888-A made in this order on rehearing (see footnote 1) will become effective on February 9, 1998. The current requirements of Order Nos. 888 and 888-A will remain in effect until this order becomes effective.

By the Commission.

Lois D. Cashell,
Secretary.

Note: The following Appendices will not appear in the Code of Federal Regulations.

Appendix A—Order No. 888-B: List of Petitioners

1. American Public Power Association, Colorado Association of Municipal Utilities, Municipal Electric Systems of Oklahoma, and Utah Associated Municipal Power Systems (APPA)¹
2. Bonneville Power Administration (BPA)

3. Arizona Public Service Company (Arizona)
4. Boston Edison Company, Central Vermont Public Service Corporation, Florida Power Corporation, Montaup Electric Company, and Wisconsin Public Service Corporation (Boston Edison)
5. Coalition for a Competitive Electric Market (CCEM)²
6. Central Maine Power Company (Central Maine)
7. Coalition for Economic Competition (Coalition for Economic Competition)³
8. Colorado Association of Municipal Utilities (CAMU)
9. Dairyland Power Cooperative (Dairyland)
10. Edison Electric Institute (EEI)⁴
11. Illinois Commerce Commission (IL Com)
12. Kansas City Power & Light Company (KCPL)
13. Metropolitan Edison Company (Met Ed)
14. National Association of Regulatory Utility Commissioners (NARUC)
15. National Rural Electric Cooperative Association (NRECA)
16. New England Power Pool Executive Committee (NEPOOL)
17. Public Service Commission of the State of New York (NY Com)⁵
18. Niagara Mohawk Power Corporation and PURPA Reform Group (NIMO)⁶
19. Otter Tail Power Company (Otter Tail)
20. Puget Sound Energy, Inc. (Puget)⁷
21. Rural Utilities Service, USDA (RUS)
22. Port of Seattle (Port of Seattle)
23. Soyland Power Cooperative, Inc. (Soyland)
24. Transmission Access Policy Study Group and certain of its Members (TAPS)⁸
25. Transmission Dependent Utility Systems (TDU Systems)⁹

² CNG Energy Services Corp., Coastal Electric Services Company, Destec Power Services, Inc., Enron Power Marketing, Inc., Koch Energy Trading, Inc., NorAm Energy Services, Inc., and Vitol Gas & Electric Services, Inc.

³ General Public Utilities Corp., Illinois Power Co., Long Island Lighting Co., and New York State Electric & Gas Corp.

⁴ EEI filed its request for rehearing out-of-time on April 4, 1997. As discussed in Order No. 888-B, the Commission is accepting this pleading as a motion for reconsideration.

⁵ Independent Power Producers of New York, Inc. (NY IPPs) filed an answer on April 11, 1997.

⁶ Granite State Hydropower Association filed an answer on April 21, 1997.

⁷ Formerly Puget Sound Power & Light Company.

⁸ American Municipal Power-Ohio, Inc., Illinois Municipal Electric Agency, Indiana Municipal Power Agency, Littleton Electric Light Department, Massachusetts Municipal Wholesale Electric Company, Michigan Public Power Agency, Municipal Energy Agency of Mississippi, Municipal Energy Agency of Nebraska, New Hampshire Electric Cooperative, Inc., Northern California Power Agency, Virginia Municipal Electric Association No. 1, on behalf of itself and its members (City of Franklin, City of Manassas, Harrisonburg Electric Commission, Town of Blackstone, Town of Culpepper, Town of Elkton, and Town of Wakefield), and Wisconsin Public Power, Inc. The operating companies of the American Electric Power System (AEP) filed an answer on April 17, 1997.

⁹ Arkansas Electric Cooperative Corporation, Golden Spread Electric Cooperative, Inc., Holy Cross Electric Association, Kansas Electric Power Cooperative, Inc., Magic Valley Electric

(Name of Transmission Provider) Open Access Transmission Tariff Original Sheet No.

Revision to Pro Forma Open Access Transmission Tariff Pursuant to Order No. 888-B

Appendix B

29.1 Condition Precedent for Receiving Service: Subject to the terms and conditions of Part III of the Tariff, the Transmission Provider will provide Network Integration Transmission Service to any Eligible Customer, provided that: (i) The Eligible Customer completes an Application for service as provided under Part III of the Tariff, (ii) the Eligible Customer and the Transmission Provider complete the technical arrangements set forth in Sections 29.3 and 29.4, (iii) the Eligible Customer executes a Service Agreement pursuant to Attachment F for service under Part III of the Tariff or requests in writing that the Transmission Provider file a proposed unexecuted Service Agreement with the Commission, and (iv) the Eligible Customer executes a Network Operating Agreement with the Transmission Provider pursuant to Attachment G, *or requests in writing that the Transmission Provider file a proposed unexecuted Network Operating Agreement.*

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM95-9-002; Order No. 889-B]

Open Access Same-Time Information System and Standards of Conduct

Issued November 25, 1997.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final order; order denying rehearing.

SUMMARY: The Federal Energy Regulatory Commission is denying the requests for rehearing of its order on rehearing of the final rule in this proceeding. The final rule required 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) in conformance with Commission regulations. The final rule also required

²⁶³ The OMB control number for this collection of information is 1902-0096.

¹ APPA filed its request for rehearing out-of-time on April 4, 1997. As discussed in Order No. 888-B, the Commission is accepting this pleading as a motion for reconsideration.

Cooperative, Inc., Mid-Tex Generation and Transmission Electric Cooperative, Inc., North Carolina Electric Membership Corporation, Oklahoma Municipal Power Authority, Old Dominion Electric Membership Corporation, and Seminole Electric Cooperative, Inc.

those public utilities to implement standards of conduct to functionally separate transmission and wholesale merchant functions. The order on rehearing made minor revisions to the final rule and implemented a revised transmission discounting policy. This order denies the requests for rehearing filed by six interested persons in response to the order on rehearing of the final rule.

EFFECTIVE DATE: November 25, 1997.

FOR FURTHER INFORMATION CONTACT:

Marvin Rosenberg (Technical Information), Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208-1283.

William C. Booth (Technical Information), Office of Electric Power Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208-0849.

Gary D. Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208-0321.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user. CIPS can be accessed over the Internet by pointing your browser to the URL address: <http://www.ferc.fed.us>. Select the link to CIPS. The full text of this document can be viewed, and saved, in ASCII format and an entire day's documents can be downloaded in WordPerfect 6.1 format by searching the miscellaneous file for the last seven days. CIPS also may be accessed using a personal computer with a modem by dialing 202-208-1397, if dialing locally, or 1-800-856-3920, if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS user assistance is available at 202-208-2474.

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 located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, and William L. Massey.

Order Denying Rehearing of Order No. 889-A

Issued November 25, 1997.

I. Introduction

In this order, we deny the requests for rehearing of Order No. 889-A, our order on rehearing of Order No. 889.¹

II. Background

In Order No. 889-A, the Commission addressed over 40 requests for rehearing of Order No. 889 and affirmed the major findings made therein. We did, however, make certain minor revisions to fine-tune the regulations at 18 CFR Part 37 and to implement a revised transmission discounting policy that we adopted and described in detail in Order No. 888-A, our order on rehearing of Order No. 888.²

The revised transmission discounting policy necessitated a number of changes to the Standards of Conduct and to the Open Access Same-Time Information (OASIS) posting requirements in 18 CFR Part 37. These were:

- (1) Deleting §§ 37.4(b)(5)(v) and 37.4(b)(5)(vi);
- (2) Adding a provision at § 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) Revising § 37.6(c)(4) to no longer treat the posting of transmission service transactions involving the Transmission Provider's (or any affiliate's) generation 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;

¹ Open Access Same-Time Information System and Standards of Conduct, *Final Rule*, Order No. 889, FERC Stats. & Regs. ¶ 31,035, 61 FR 21737 (May 10, 1996), *Order on Reh'g*, Order No. 889-A, FERC Stats. & Regs. ¶ 31,049, 62 FR 12484 (March 14, 1997).

² Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, *Final Rule*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, 61 FR 21540 (May 10, 1996), *Order on Reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, 62 FR 12274 (March 14, 1997).

(4) Adding a provision at § 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) Revising § 37.6(d)(3) on ancillary services to be consistent with our revision to § 37.6(c)(4);

(6) 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) Adding a provision, at § 37.6(e)(1)(ii), that during Phase I, while requests for next-hour service need to be posted on the OASIS as soon as possible and in any event within one hour of receiving the request, they need not be posted on the OASIS prior to being acted on;

(8) 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 a request need not be posted on the OASIS;

(9) Expanding, in § 37.6(e)(1)(iv), the information required to be posted on the status of requests for transmission and ancillary service; and

(10) Deleting the provision, formerly found in § 37.6(e)(1)(iii) and the revised § 37.6(e)(3)(I), to disallow masking the identity of parties to transactions.

We also made nine minor revisions in Order No. 889-A to the regulations in 18 CFR Part 37 that were unrelated to our revised transmission discounting policy. These were:

- (1) Amending the definition of "wholesale merchant function" in § 37.3(e);
- (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 were 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 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) Deleting § 37.8, because the compliance date for Part 37 had already passed.

In response to the issuance of Order No. 889-A, requests for rehearing were filed by six interested persons.³

III. Public Reporting Burden

This order on rehearing makes no changes to Order No. 889-A or the regulations found at 18 CFR Part 37. Consequently, the public reporting burden associated with issuance of this order is unchanged from what we estimated when we issued Order Nos. 889 and 889-A. 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 Order Nos. 889 and 889-A, as clarified 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. 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

The rehearing requests collectively raise four major issues. We will deny rehearing on each of these issues as discussed below.

A. Section 37.1—Applicability

The Commission's Waiver Policy

In Order Nos. 888 and 889, the Commission determined that requests for waiver would be better decided on a case-by-case basis so that the Commission could evaluate them based on individual circumstances, rather than as part of a generic rulemaking.⁴ In Order No. 889, we stated that the Commission would develop, in the context of individual adjudications, a mechanism that would allow small public utilities to seek a waiver of some or all of the Open Access requirements, including the requirements to establish and/or participate in an OASIS and to develop Standards of Conduct. This same waiver mechanism was made applicable to small non-public utilities seeking waiver from all or part of the reciprocity condition.

Consistent with this approach, the Commission, in Order Nos. 888-A and 889-A, recounted the waiver standards enunciated by the Commission in a series of orders dealing with companies' specific requests for waiver of all or some of the requirements of Order Nos. 888 and 889, and declined to revise the standards established in those case-by-case determinations.⁵

⁴ See Order No. 888, FERC Stats. & Regs. at 31,854, Order No. 889, FERC Stats. & Regs. at 31,596.

⁵ See Order No. 888-A, FERC Stats. & Regs. at 30,293 and 30,332-34, Order No. 889-A, FERC Stats. & Regs. at 30,554-55. We did, however, in Order No. 888-A, provide some clarification of the

Additionally, in Order No. 889-A, the Commission recited the arguments raised in the requests for rehearing of the Commission's waiver policy as it related to the Commission's OASIS and Standard of Conduct requirements under Order No. 889. The Commission explained that, in a series of orders, it had developed waiver criteria that took into account potential burdens on small entities and at the same time balanced the need to prevent undue discrimination and affiliate abuse in interstate power markets, and that this flexible waiver approach adequately addressed the concerns raised on rehearing. The Commission concluded that an order on rehearing of a final rulemaking was not the proper vehicle for a company to request a company-specific waiver or to challenge the Commission's waiver policy. It further explained that 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.⁶

Rehearing Requests. On rehearing, NRECA argues that the Commission should modify its waiver policy so that waivers terminate upon issuance of a Commission order, and not upon the filing of a complaint or request for service.⁷ NRECA argues that a waiver should be terminated not when an entity files a complaint, but when the Commission issues an order finding that the complaint has merit.⁸

This same basic argument is also made by TDU Systems.⁹ TDU Systems argues that the Commission's current waiver policy makes a waiver a “mirage”, terminable by a baseless complaint made solely to drive up a competitor's costs by triggering

Commission's waiver policy. See FERC Stats. & Regs. at 30,334.

⁶ See Order No. 889-A, FERC Stats. & Regs. at 30,555.

⁷ At the time of NRECA's rehearing, the Commission's policy on the expiration of waivers provided that

[w]aiver 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.

Order No. 889-A, FERC Stats. & Regs. at 30,555 and Black Creek Hydro, Inc., *et al.*, Order on Rehg and Granting Waivers of Order No. 889, 77 FERC ¶ 61,232 at 61,941 (1996).

⁸ NRECA Rehearing Request at p. 11.

⁹ TDU Systems Rehearing Request at pp. 10-12.

³ Requests for rehearing of Order No. 889-A were filed by Coalition for a Competitive Electric Market (CCEM), National Rural Electric Cooperative Association (NRECA), Transmission Access Policy Study Group (TAPS), and Transmission Dependent Utility Systems (TDU Systems). In addition, requests for rehearing of Order No. 889-A nominally were filed by Puget Sound Energy, Inc. (Puget Sound) and by the United States Department of Agriculture (USDA), although these rehearing requests raise no specific issues related to Order No. 889-A.

unnecessary compliance with the OASIS and Standards of Conduct requirements.¹⁰ Moreover, TDU Systems argues that such a complaint, terminating a waiver of Order No. 889 requirements, should be based on a "good faith" request for transmission service and a prima facie case that adequate information about a respondent's transmission service is unavailable, or that preferential treatment is being given to the respondent's wholesale merchant function.¹¹

Commission Conclusion. In a company-specific order issued subsequent to the date of NRECA's and TDU Systems' rehearing requests, the Commission modified its waiver policy in the manner requested by the two parties.¹² Specifically, the Commission has reconsidered its policy of automatically revoking waivers of the requirements of Order No. 889 on the filing of a complaint and has determined that, henceforth, waivers will remain effective until the Commission takes action in response to a complaint.

B. Sections 37.3 (Definitions) and 37.4 (Standards of Conduct)

Definition of "Wholesale Merchant Function" and Employees Engaged in Wholesale Purchases for Bundled Retail Customers

In Order No. 889, in § 37.6(e), the Commission defined the "wholesale merchant function" as the "sale for resale, or purchase for resale, of electric energy in interstate commerce." [Emphasis added]. On rehearing of Order No. 889, Consolidated Edison Company of New York, Inc. (ConEd) argued that the Commission had 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)." ¹³ ConEd asserted 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.

In Order No. 889-A, we considered ConEd's argument and stated as follows:

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.¹⁴ We explained that when a utility purchases power for its retail native load customers, this is not a sale for resale. We further explained that,

[i]n 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.¹⁵

In Order No. 889-A, the Commission also explained that the Standards of Conduct do not mandate that Transmission Providers assign employees making purchases on behalf of bundled retail customers to the group performing wholesale merchant functions. Specifically, we stated:

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 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.

Rehearing Requests. On rehearing, CCEM argues that the Commission erred by modifying the definition of "wholesale merchant function" and by revising provisions of the Standards of Conduct to exempt transmission service provided in conjunction with a Transmission Provider's wholesale purchases for bundled retail sales.¹⁶ CCEM also argues that the Commission erred when it found that it lacks jurisdiction over transmission service that is bundled with the sale of power to a utility's retail native load.¹⁷ It

argues that artificial distinctions between wholesale and retail transactions should be avoided. CCEM further argues that the Commission should insist that all transmission providers and customers face the same unbundled market.

Similarly, TAPS argues that the Commission's change in the definition of "wholesale merchant function" unwisely narrows the scope of the Standards of Conduct rules.¹⁸ TAPS further argues that a Transmission Provider's use of its own transmission system to make wholesale purchases for bundled retail load should not be exempted from functional unbundling and functional separation requirements.¹⁹ TAPS argues that the Commission erred by watering down the functional unbundling requirements in the Standards of Conduct by excluding wholesale purchases for bundled retail customers from the requirement to functionally unbundle.

Commission Conclusion. Nothing in the rehearings convinces us to modify the definition of "wholesale merchant function" or to otherwise modify our decision on this issue reached in Order No. 889-A. However, we will repeat here certain clarifications we have made in response to similar arguments made in requests for rehearing of Order No. 888-A.

Although we reiterate our view that the Commission does not have jurisdiction over the rates, terms and conditions of *bundled* retail service, as a practical matter, we do not believe that it is possible to divide a *single* power purchase made on behalf of both wholesale and retail native load such that the transmission provider takes service under the open access non-rate terms and conditions for the part of the purchase that goes to wholesale native load, but takes service under different terms and conditions for the part of the purchase that goes to retail native load. Because the power purchase transaction (including the delivery across the transmission provider's system to both wholesale and retail customers) is indivisible, and because the transmission of the purchased power to the wholesale native load customer must be done pursuant to the open access tariff, this means that the entire transaction *de facto* must be pursuant to the non-rate terms and conditions of the tariff.

Concerning the Standards of Conduct requirement that public utilities separate their *wholesale* power marketing functions from their

¹⁰ TDU Systems Rehearing Request at p. 11.

¹¹ TDU Systems Rehearing Request at p. 12.

¹² Central Minnesota Municipal Power Agency, *et al.*, Order on Requests for Disclaimer of Jurisdiction and for Waiver of Order Nos. 888 and 889, 79 FERC ¶ 61,260 at 62,127 (1997).

¹³ ConEd Rehearing Request of Order No. 889 at p. 2.

¹⁴ FERC Stats. & Regs. at 30,552.

¹⁵ *Id.*

¹⁶ CCEM Rehearing Request at pp. 5-6.

¹⁷ CCEM Rehearing Request at p. 5.

¹⁸ TAPS Rehearing Request at pp. 3-5.

¹⁹ TAPS Rehearing Request at pp. 3-5.

transmission operations, the Commission did not require separation of the *retail* power marketing function because the state has jurisdiction over retail power marketing and over bundled retail transmission. However, here too we believe further clarification is necessary. First, the public utility has no choice pursuant to Order Nos. 888 and 888-A but to separate its wholesale power marketing function (including power purchase transactions made by the marketing function on behalf of wholesale native load) from the transmission operations function. This means that those persons in the company that are involved in wholesale power purchases as well as wholesale sales cannot interact with the transmission personnel other than through the OASIS. Thus, to the extent they are making purchases on behalf of wholesale as well as bundled retail native load as part of a single purchase, they will have to abide by the separation of function requirement. As discussed above, such a purchase is not divisible. Additionally, it is conceivable that there could be a separate retail marketing function for native load and a separate wholesale marketing function for native load. If a challenge is made to the way a utility organizes its functions, then the utility bears the burden of demonstrating that it is maintaining a separate staff to perform retail marketing functions. Furthermore, in such cases, it would clearly be inappropriate for the retail staff to share transmission information with the wholesale marketing staff.

C. Section 37.6—Information To Be Posted on an Oasis

Transmission Discounting Policy

In Order No. 889-A, we explained that the Commission was adopting a revised discounting policy in Order No. 888-A that necessitated changes to the OASIS and Standards of Conduct regulations found in 18 CFR Part 37. These changes entailed three principal requirements.

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.

Second, any customer-initiated requests for discounts of transmission and/or ancillary services must 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.

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

Rehearing Request. On rehearing, TAPS argues that the Commission's policy on transmission discounting should be modified to minimize the potential for self dealing and other abuses.²⁰ Specifically, TAPS argues that the Commission's revised discounting policy in Order No. 888-A, by allowing delivery point-specific discounts, offers a means for transmission providing utilities to offer each other reciprocal discounts, while requiring transmission dependent utilities to pay full freight. TAPS argues that if a transmission provider offers a discount to itself or any other transmission user, the transmission provider should be required to offer the discount either on all unconstrained paths, or, at a minimum, to all delivery points in the same unconstrained portion of the transmission provider's transmission system and to other similarly situated customers. TAPS argues that there is no justification for a transmission provider to refuse to offer a discount to delivery points located along the same electrical path as the discounted transaction.²¹

Commission Conclusion. In Order No. 888-B, being issued concurrently with this order, the Commission has considered various requests for rehearing of the discounting policy announced in Order Nos. 888-A and 889-A. Among these requests for rehearing is that submitted by TAPS, wherein TAPS raises the same discounting issue as that raised in its request for rehearing of Order No. 889-A.²² As we are denying rehearing of this issue in Order No. 888-B, for the reasons discussed therein, we similarly deny rehearing of this issue in this order.

As we explain in Order No. 888-B, the revised discounting policy announced in Order No. 888-A is the result of a careful balancing of incentives to operate the transmission grid efficiently while ensuring that the grid is not operated in an unduly discriminatory manner. After a review of the requests for rehearing, the Commission concludes, in Order No. 888-B, that it

properly balanced these concerns in Order No. 888-A. For this reason, the Commission denies the requests for rehearing of this issue in Order No. 888-B, and we do the same here.

D. Section 37.6—Information to Be Posted on an Oasis

Deletion of Masking Provision

In Order No. 889-A, the Commission deleted § 37.6(e)(1)(iii) and revised § 37.6(e)(3)(I) to remove provisions that directed Transmission Providers posting transmission service requests on the OASIS to honor requests from parties to transactions to mask their identities during the negotiating period and for 30 days from the date when the request for service was accepted, denied, or withdrawn. The Commission deleted the masking provision in response to certain arguments raised on rehearing of Order No. 889 and to implement the discounting policy announced in Order No. 888-A.

Rehearing Request. CCEM argues that the Commission erred by eliminating the customer identity/transaction masking provision.²³ CCEM contends that this revision was not based on reasoned decision-making. CCEM argues that by revealing a transmission requester's identity, competitors—particularly public utilities with captive native loads—can learn commercially sensitive information that will allow them to misappropriate the service requester's marketing efforts and transactions. CCEM argues that this is a larger problem than it was previously because the Commission has now expanded the information to be posted on the status of requests for transmission and ancillary services to include information about: (1) points of delivery and receipt; (2) length and type of service; and (3) identification of ancillary service transactions associated with a transmission service transaction.

CCEM also argues that eliminating the 30-day masking provision allows the Standards of Conduct to be undercut by allowing wholesale merchant employees to obtain market information in a manner giving them an advantage over unaffiliated marketers. CCEM does not agree that masking inhibits market participants from making informed choices and notes that all relevant information except a requester's identity already would be available. CCEM argues that a requester's identity is neither critical nor important to a competitor pursuing "its own interests".

Commission Conclusion. We find CCEM's arguments unpersuasive. While

²⁰ TAPS Rehearing Request at pp. 5–6.

²¹ TAPS Rehearing Request at p. 6.

²² TAPS Rehearing Request of Order No. 888-A at pp. 17–20.

²³ CCEM Rehearing Request at pp. 2–5.

CCEM makes much of the so-called "uneven playing field" that it allegedly will endure without the masking provision, we find this concern to be unfounded. The Order No. 889 version of §§ 37.6(e)(1)(iii) and 37.6(e)(3)(I) treated all market participants making a request for transmission service (or whose transactions were curtailed or interrupted) equally, by allowing parties to such transactions to mask their identities for thirty days, upon request. The current (Order No. 889-A) version treats all market participants making a request for transmission service (or whose transactions are curtailed or interrupted) equally, by requiring the identity of parties to such transactions to be posted. Although the Commission has revised its policy on masking, all market participants making a request for transmission service, whether affiliated or non-affiliated with the Transmission Provider are treated equally in both instances. Thus, under the revised rule, the playing field is just as level as before.

Moreover, we are not persuaded that eliminating the masking provision will have the dire anticompetitive consequences that CCEM predicts. To the contrary, we continue to believe that fuller disclosure of customer and transaction information is necessary to implement the discounting provisions added by Order Nos. 888-A and 889-A and to ensure that customers (actual or potential) are able to detect any affiliate abuse or undue discrimination.

If actual experience proves different, CCEM or other interested persons may bring these facts to our attention and we will consider taking appropriate remedial action.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA)²⁴ 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 section 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.²⁵

Given that Order No. 889-A made only minor revisions to Order No. 889,

none of which was substantive, that this order makes no revisions to Order No. 889-A, and that we are granting waivers from the requirements of the OASIS Final Rule to small entities where appropriate, we reaffirm our earlier certification in Order Nos. 889 and 889-A that the requirements in 18 CFR Part 37, to establish and participate in an OASIS and to comply with the Standards of Conduct, will not have a significant economic impact on a substantial number of small entities and that no regulatory flexibility analysis is required pursuant to section 603 of the RFA.

VI. Environmental Statement

As explained in Order Nos. 888-A and 889-A, 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 no revisions to Order No. 889-A, no separate environmental assessment or environmental impact statement has been prepared in this proceeding.

VII. Information Collection Statement

As explained in Order Nos. 889-A, Order No. 889 contained an information collection statement for which the Commission obtained approval from the Office of Management and Budget (OMB).²⁶ Given that Order No. 889-A made only minor revisions to Order No. 889, none of which was substantive, and given that this order makes no revisions to Order No. 889-A, 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 unchanged from those contained in Order No. 889-A. 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].

The Commission Orders

As discussed in the body of this order, the requests for rehearing are hereby denied.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 97-31856 Filed 12-8-97; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 500

Foreign Assets Control Regulations: Reporting of Claims of U.S. Nationals Against the Government of North Korea

AGENCY: Office of Foreign Assets Control

ACTION: Final rule; amendment.

SUMMARY: The Office of Foreign Assets Control is amending the Foreign Assets Control Regulations to require the reporting, no later than March 9, 1998, of all outstanding claims held by U.S. nationals against the Government of North Korea or any North Korean government entity. The reports are needed to obtain information, on a one-time basis, for planning and administrative purposes in contemplation of future claims settlement negotiations. The control number assigned by the Office of Management and Budget to this information collection requirement is also included.

EFFECTIVE DATE: December 9, 1997.

FOR FURTHER INFORMATION CONTACT: Loren L. Dohm, Chief, Blocked Assets Division, tel.: 202/622-2440, or William B. Hoffman, Chief Counsel, tel.: 202/622-2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

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²⁴ 5 U.S.C. 601-612.

²⁵ See Order No. 889, FERC Stats. & Regs. at 31,628.

²⁶ OMB Control No. 1902-0173.