

locked out of the transmission market if they could rarely get timely access to the queue for purchasing transmission access.

These customers felt that the Commission should monitor and possibly regulate the prices charged for the services to ensure that they were non-discriminatory.

ii. Transmission Services Information Timing Requirements

The How Group proposes several timing requirements for posting transmission service information and suggests that the requirements be reviewed for reasonableness, possibly during Phase I. The Commission believes that some timing requirements should be operative during Phase I.

Question 37. The Commission requests comments on whether the following How Group Proposals are adequate:

(1) Transmission Service Information Availability: The most recent Provider transmission service information, including updates reflecting power system changes, shall be available to all Customers within 5 minutes of its scheduled posting time at least 98 percent of the time. The remaining 2 percent of the time the transmission service information shall be available within 10 minutes of its scheduled posting time;

(2) Notification of Posted or Changed Transmission Service Information: Notification of transmission service information posted or changed by a Provider shall be made available within 60 seconds to all subscribed Customers who are currently connected; and

(3) Acknowledgment by the Transmission Service Information Provider: Acknowledgment by the transmission service information provider of the receipt of Customer purchase request/response requests shall occur within 1 minute for Phase I. The actual negotiations and agreements on purchase request/response requests do not have time constraints. For Phase II, acknowledgment shall occur within 30 seconds.

iii. The Posting of Capacity Available for Resale

The How Report also raises issues concerning posting of capacity to be resold.⁵⁷ The report requires the reseller to post the relevant information on the Node of the facility owner.⁵⁸

The Commission is concerned that unless primary capacity and secondary capacity appear in the same location on the Node and require the same forms to be filled out and the same procedures followed, the capacity for sale by the facility owner will be easier to find and purchase, thereby giving the facility owner a competitive advantage. Therefore, the Commission proposes

that secondary capacity be posted on the same page, using the same tables as similar capacity being sold by the facility owner.

Question 38. The Commission requests comments on how to redesign the download templates in Appendix C so that primary and secondary capacity can be offered through downloadable files that have the same format. The Commission also requests comments on how primary and secondary capacity can be displayed in the same tables on a RIN Node.

Question 39. What is the best way to handle the purchase request and response process when primary and secondary capacity appear in the same RIN displays and files?

The Commission proposes that resellers pay the costs associated with posting this information on the RIN.

Question 40. The Commission requests comments on how to determine the costs associated with posting resales on the RIN?

E. Standards of Conduct

The What Group and the How Group both focused on the specific issues that the participants at the Technical Conference agreed that they should address. Nevertheless, other important RINS-related issues must also be decided. One such issue is whether the Commission needs to promulgate generic standards of conduct for jurisdictional utilities in the electric industry akin to the ones that we promulgated for the natural gas industry,⁵⁹ or whether this issue should be decided on a case-by-case basis. For the reasons explained below, we propose to address this issue on a generic basis by issuing Standards of Conduct patterned on those we promulgated for the natural gas industry.

As we stated in the RIN Notice,

Any requirement we establish must have safeguards to ensure that public utilities owning and/or controlling transmission facilities use the same procedures and meet the same substantive requirements when they arrange transmission to support their wholesale sales and purchases as are required for third parties. Further, we expect that each public utility (or a control area operator acting as its agent) that provides

transmission service must, at a minimum, give its customers electronic access in real time to information on transmission capacity availability, ancillary services, scheduling of power transfers, economic dispatch, current operating and economic conditions, system reliability, and responses to system conditions * * *

This means that public utilities or their agents must give competitors and other users of the transmission system access to the same information available to the public utility personnel who trade (sell or purchase) power in the wholesale market, and at the same time. Moreover, this information cannot be declared privileged (and kept from competitors) if it is available to the company's own employees who trade wholesale power. Thus, if a utility wishes to keep this information confidential, it must assign control over this information to employees whose duties do not involve trading in wholesale power, and it must implement procedures to ensure that the traders do not get access to the information unless and until that information becomes public. The Commission invites parties to comment on the best way to implement these requirements * * *

In response to this discussion and the accompanying request for comments, the comments (in preparation for the technical conference) debated how the control room could be functionally unbundled. Currently, marketing and transmission functions are performed in the same control room and sometimes these functions are performed by the same people. However, same-time access to transmission information means that, somehow, these functions must be separated. A related matter that we are concerned about is the potential for informal communication among colleagues if utility traders have preferred access to limited access control rooms and buildings.

In discussing this issue, the commenters asked—how much separation is enough? They wondered whether the Commission would set requirements for separating marketing and transmission functions and, if so, what those requirements would be. Commenters came down on both sides of this issue. The East Texas Cooperatives and the Ohio PUC believe that separation is essential. American Electric Power points out that requiring the transmitting utility's marketing personnel to use only that transmission information posted on a RIN would be a powerful incentive for utilities to provide adequate disclosure on the RINs (or else the marketing employees couldn't properly do their jobs). El Paso Electric and Houston L&P are concerned about the reliability consequences of separating control room functions. NYSEG and Sierra Pacific do not believe

⁵⁷ How Report at § 6.6.

⁵⁸ How Report at § 3.2.4.

⁵⁹ See 18 CFR Part 161. See also the primary Commission orders addressing natural gas pipeline marketing affiliate regulation, and the other cases cited therein: Order No. 497, 53 FR 22,139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497-A, *order on rehearing*, 54 FR 52,781 (December 22, 1989), III FERC Stats. & Regs. ¶ 30,868 (1989); Order Nos. 566, 59 FR 32,885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (1994); Order No. 566-A, *order on rehearing*, 59 FR 52,896 (October 20, 1994), 69 FERC ¶ 61,044 (1994); Order No. 566-B, *order on rehearing*, 59 FR 65,707 (December 21, 1994), 69 FERC ¶ 61,334 (1994); *appeal docketed*, Conoco, Inc. v. FERC, D.C. Cir. No. 94-1745 (December 13, 1994).