

that separating control room functions is needed.

Additionally, this issue was renewed by the power marketers, in the discussion of non-consensus issues in the What Report and in separate comments, where they argued that a lack of organizational separation and the absence of formal standards of conduct similar to those the Commission imposed on natural gas pipelines undermines their confidence in functional unbundling and the RIN. In the absence of such standards, the marketers request that voluminous supplemental information about transactions be posted on the RINs.

To help ensure non-discriminatory access to information, the Commission believes it is appropriate to impose standards of conduct for Transmission Providers. Therefore, we are proposing standards that would require Transmission Providers to separate their wholesale merchant functions (*i.e.*, purchases or sales for resale of electric energy in interstate commerce) from their wholesale transmission system operations and reliability functions, and that would further require employees performing merchant functions to obtain access to information on wholesale transmission services through the RIN, on the same basis available to all other RIN users.

In deciding this issue, we have been influenced by the differing views expressed by interested persons as to what conduct should be deemed proper or improper, our experience in the gas industry, and the generic nature of these issues. We have concluded that the industry needs explicit guidelines on separating transmission and power trading functions. In formulating proposed standards of conduct, our goal is to prevent employees of the Transmission Provider that perform *preferential* functions from having *preferential* access to any relevant information about the Transmission Provider's wholesale transmission availability and costs. In other words, those employees should not have access to any relevant information that is not also available to all wholesale transmission customers and potential wholesale transmission customers, regardless of whether this information is obtained through access to the control center, access to other locations or files, or through informal communications.

Question 41. Are the standards of conduct proposed herein sufficient? Should they be modified in any way?

Question 42. In particular, if the Commission in its final rule requires functional unbundling of all transmission from generation, how would these standards

of conduct need to be modified? Would any other organizational changes need to be made? Would any modifications be needed with regard to ancillary services?

We note that, although formal rules prescribing standards of conduct were deemed necessary in the natural gas industry, the potential for improper communications between transmission and trading personnel is even more of a concern for electric utilities than for gas pipelines. Absent divestiture, transmission and power trading jobs will be performed by individuals working for the same company (or corporate group). These tasks have traditionally been done in the same control room and, in some cases, are now being performed by the same person.

We believe that explicit guidance would be helpful to all concerned. Transmission Providers will have a better idea of what conduct is permissible and what is impermissible. Customer complaints on preferential access should be minimized. Enforcement efforts by the Commission will be easier when specific guidelines are available. Additionally, to the extent this standard of conduct allays concerns about improper conduct, it could reduce what information needs to be posted on the RIN.

In the event that Transmission Providers are concerned that this proposal somehow will impede system reliability, we invite them to articulate their concerns in their comments by addressing the question below.

Question 43. Would the Commission's proposed separation of functions jeopardize system reliability? If so, what other mechanism would provide wholesale transmission customers and potential customers with assurance that they would be obtaining access to the same information, at the same time, as that used by transmission providers in making their own wholesale transmission purchasing decisions?

F. Applicability

1. Non-Public Utility Transmission Providers

As with the requirements in the Open Access NOPR, the RINs requirement applies only to public utilities. Issues relating to potential gaps in the provision of comparable open access to wholesale transmission services or access to transmission information due to the fact that the requirements do not apply to non-public utilities will be addressed in the Open Access rulemaking proceeding. Although the RINs requirements would not apply to non-public utilities, the Commission expects non-public utilities to provide comparable access to wholesale

transmission information under the reciprocity provision in the Open Access rule *pro forma* tariffs.

In this regard, we also note our general authority under section 311 of the Federal Power Act, 16 USC § 825j (1994), to secure information (and conduct appropriate investigations) concerning, among other things, the transmission of electric energy throughout the United States, regardless of whether such transmission is otherwise subject to our jurisdiction.

Question 45. The Commission requests comments on whether and to what extent the Commission should exercise this statutory authority to extend the RINs requirements to non-public utilities that own and/or control facilities used for the transmission of electric energy in interstate commerce.

Question 46. Should reciprocity require that a non-public utility (such as a co-op or publicly-owned utility) have a RIN?

2. Public Utilities Having No Transmission Facilities With Commercial Value

Some public utilities claim that none of their transmission facilities that could be used to provide wholesale service has commercial value that would justify the burden and expense of developing and maintaining a RIN. Although the Commission would still require same-time access to wholesale transmission and ancillary service information, simpler means of satisfying this requirement may be considered for utilities with wholesale transmission of little commercial value.

Question 47. In light of the proposal in the How Report to use a low cost Internet-based approach, the Commission requests specific comments on circumstances in which the RINs requirements are believed to be an unnecessary burden. Are there less burdensome ways to meet the same-time access requirement in circumstances where the utility's wholesale transmission facilities have little commercial value? What criteria should the Commission use in determining whether and when to relax the RINs requirements?

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA),⁶⁰ requires the Commission to describe the impact a proposed rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. The entities that would have to comply with the proposed rule are public utilities and transmitting utilities that do not fall within RFA's definition of

⁶⁰ 5 U.S.C. 601-612.