tend to effectuate the declared policy of the Act.

This rule invites comments on suspension of the handling regulations and establishment of reporting requirements under the Oregon-California potato marketing order. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule suspends the current handling and related regulations and establishes reporting requirements for Oregon-California potatoes for the 1999–2000 marketing year which begins July 1, 1999; (2) this rule was unanimously recommended by the Committee at open public meetings and all interested persons had an opportunity to express their views and provide input; (3) Oregon-California potato handlers are aware of this rule and need no additional time to comply with the relaxed requirements; (4) this rule should be in effect by July 1, 1999, the date 1999–2000 season shipments of the Oregon-California potato crop are expected to begin, and this action should apply to the entire season's shipments; and (5) this rule provides a 60-day comment period, and any comments received will be considered prior to finalization of this rule.

### List of Subjects in 7 CFR Part 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 947 is amended as follows:

## PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR Part 947 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. In Part 947, §§ 947.120, 947.123, 947.130, 947.132, 947.133, 947.134 and 947.340 are suspended in their entirety effective July 1, 1999, through June 30, 2000.

3. In Subpart—Rules and Regulations, under the undesignated center heading ''Exemptions'', a new § 947.125 is added, and a new undesignated center heading and §194.180 are added to read as follows:

**§ 947.125 Minimum quantity exemption.**

From July 1, 1999, through June 30, 2000, any person may handle not more than 19 hundredweight of potatoes on any day without regard to the assessment requirements of § 947.41 of this part. This exemption shall not apply to any part of a shipment which exceeds 19 hundredweight.

### Reports

**§ 947.180 Reports.**

From July 1, 1999, through June 30, 2000, each person handling potatoes shall submit a Monthly Assessment Report to the Committee containing the following information:

(a) The date and quantity of fresh potatoes sold including identification numbers;

(b) the name and address of the producers;

(c) the assessment payment due; and

(d) the name and address of such handler.

Dated: June 18, 1999.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 99–16056 Filed 6–24–99; 8:45 am]

BILLING CODE 3410–02–P

---

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Part 37

**[Docket No. RM98–3–000; Order No. 605]**

## Open Access Same-Time Information System

Issued May 27, 1999.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is amending its regulations to: Extend the retention period and availability of information on curtailments and interruptions; allow the Commission staff and the public to access the supporting information on curtailments and interruptions, upon request; codify that OASIS users are allowed to make file transfers and queries as defined in the Standards and Communications Protocols (S&CP) Document; clarify that Responsible Parties are required to provide access to their OASIS sites for OASIS users making automated queries for extensive amounts of data; add a provision to allow Responsible Parties, under certain circumstances, to limit a user's access to an OASIS node; and add a provision to require OASIS users to notify Responsible Parties one month in advance of initiating a significant amount, or significantly increasing the use, of automated queries. The Commission believes that additional information about the state of the transmission system will enable customers to make better decisions about the quality of the transmission service they intend to purchase.

**EFFECTIVE DATE:** This final rule is effective on July 26, 1999.

**FOR FURTHER INFORMATION CONTACT:**

Marvin Rosenberg (Technical Information), Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, (202) 208–1283

Paul Robb (Technical Information), Office of Electric Power Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, (202) 219–2702

Andrea Weinstein (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, (202) 208–1017

**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., Room 2A, Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission from November 14, 1994, to the present. CIPS can be accessed via Internet through FERC's Home page (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. Documents will be available on CIPS in ASCII and WordPerfect 6.1. User assistance is available at 202–208–2474 or by E-mail to cipsmaster@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or

remotely via Internet through FERC's Home page using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to rimsmaster@ferc.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc. 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, William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

## Background

This proceeding began with the issuance of a Notice of Proposed Rulemaking (NOPR) on July 29, 1998.[1] The NOPR addressed three main Open Access Same-Time Information System (OASIS)[2] issues: (1) The retention period and availability of information about curtailments and interruptions; (2) the ability of OASIS users to make file transfers and automated computer-to-computer file transfers and queries; and (3) limiting a user's access to an OASIS node.

We invited comments on enumerated issues, along with general comments. Comments were filed by 16 commenters. These comments were generally favorable to the proposed changes, although numerous disagreements remained as to the details. The comments will be discussed below on an issue-by-issue basis.[3]

This final rule is being issued after a review of the comments filed in response to the Commission's NOPR issued in this proceeding on July 29, 1998. The final rule becomes effective on July 26, 1999.

## Discussion

In this final rule, we are making revisions to 18 CFR Part 37. These revisions include: (1) Amending the retention period for supporting information about curtailments and interruptions in § 37.6(e)(3)(ii); (2) amending § 37.6(e)(3)(ii) to allow the Commission staff and the public access to the supporting information on curtailments and interruptions, upon request; (3) amending § 37.6(a)(6) to allow OASIS users to make file transfers and queries as defined in the S&CP Document; (4) adding § 37.5(c) to require Responsible Parties to provide access to their OASIS sites for OASIS users making automated queries for extensive amounts of data; (5) adding § 37.5(d) and § 37.5(e) to allow Responsible Parties, under certain circumstances, to limit a user's access to an OASIS node; and (6) adding § 37.8(a) to require OASIS users to notify Responsible Parties one month in advance of initiating a significant amount, or significantly increasing the use, of automated queries.

### *A. Access to, and Retention of Supporting Information on Curtailments and Interruptions*

1. Retention Period

The first issue is whether to extend the retention period of supporting information on curtailments and interruptions. Currently, our regulations at 18 CFR 37.6(e)(ii) require that Transmission Providers make available supporting information about curtailments and interruptions for 60 days after the occurrence of the curtailment or interruption, upon request by the affected customer. Our regulations at § 37.6(e)(i) require that a Transmission Provider post notice of the curtailment or interruption on the OASIS and state why the transaction could not be continued or completed. Furthermore, § 37.6(e)(ii) required that information to support the curtailment and the operating status of the facilities involved in the constraint must be maintained.

In the NOPR, we noted that issues concerning curtailments and interruptions have been the subject of a number of informal complaints to the FERC Enforcement Hotline. Accordingly, we proposed to revise our regulations to require that Transmission Providers retain supporting information about curtailments and interruptions for three years.

*Comments*

A number of commenters supported the Commission's proposal to require Transmission Providers to retain the supporting information about curtailments and interruptions for three years. Numerous commenters believe that several aspects of the Commission's proposal need clarification.

The How Group[4] recognizes that supporting data can be voluminous and it recommends the following clarification: OASIS systems are still required to provide curtailment information on-line in the current templates for ninety (90) days [18 CFR 37.6(e)(3)(i)], and supporting information must be retained off-line for three years.[5] The How Group notes that their recommendation is consistent with the retention requirements for audit data. Cal ISO, MAIN and Southwest support the How Group's proposal.[6]

Cinergy is unclear as to where the information needs to be maintained. Cinergy requests that, if storage of the supporting information is to be off-line, then the Commission should require the Transmission Providers to provide near-term curtailment and interruption data on-line for at least 120 days.[7]

EPSA supports the Commission's proposal to amend its regulations to require that Transmission Providers retain supporting information about curtailments and interruptions for three years. EPSA, however, argues that three years may be insufficient in some circumstances. EPSA argues that Transmission Providers should be required to maintain the supporting data for so long as necessary if such data relates to a complaint pending before the Commission, or otherwise is needed to resolve issues in an ongoing proceeding.[8]

CSW and VEPCO argue that a three-year retention period is too long and that Transmission Providers would be transformed into archivists.[9] CSW asserts that a one-year retention period is a more cost-effective approach. VEPCO recommends that the Commission keep the 60-day retention requirement. However, VEPCO notes that at a maximum, requiring retention for one year might be useful in

[1] Open Access Same-Time Information System, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,531 (1998); 63 FR 42296, August 7, 1998.

[2] Open Access Same-Time Information System (Formerly Real-Time Information Networks) and Standards of Conduct, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g*, Order No. 889–A, FERC Stats. & Regs. ¶ 31,049 (1997), *order on reh'g*, Order No. 889–B, 81 FERC ¶ 61,253 (1997).

[3] In the discussion that follows, our references to comments are illustrative and not exhaustive. While we have identified all of the major issues raised by the commenters, we have not attempted to identify all commenters in instances where more than one comment makes the same point.

[4] During a technical conference held by the Commission's staff in July 1995, a consensus developed that two industry groups should be formed, one dealing with ''what'' information should be posted on the network and the other dealing with ''how'' to design the OASIS. The ''what'' group would be facilitated by the North American Electric Reliability Council (NERC) and the ''how'' group would be facilitated by the Electric Power Research Institute. *See* Real-Time Information Networks, Notice of Timetable and Opportunity for Participation in Industry Working Groups, FERC Stats. & Regs. ¶ 35,029 (1995).

[5] How Group comments at 2.

[6] A list of Commenters' full names and corresponding abbreviations is contained in Attachment 1.

[7] *See* Cinergy comments at 2.

[8] EPSA comments at 4.

[9] *See* CSW comments at 2; VEPCO comments at 5–6.

comparing curtailments and interruptions on a seasonal basis.

*Commission Conclusion*

After considering the comments, we continue to believe that three years is an appropriate period for maintaining supporting information about curtailments and interruptions. As the How Group notes, the proposed three-year retention period for supporting curtailment and interruption data is consistent with the retention period for audit data.[10] Therefore, we will modify the regulations at 18 CFR 37.6(e)(3)(ii) to require that the information to support a curtailment or interruption must be retained off-line for three years. In our judgment, a three-year retention period is useful in comparing curtailments and interruptions over time.

In response to EPSA, we note that under the Federal Power Act, public utilities have record-keeping and reporting obligations and are subject to the Commission's investigation and enforcement powers.[11] These requirements provide safeguards for the handling of documents during pending cases. In any event, we see no need at this time to adopt regulations specifically on retention of information relevant to pending proceedings on curtailments or interruptions.

2. Access to and Availability of Supporting Information

Currently, our regulations at § 37.6(e)(3)(ii) give access to the supporting curtailment and interruption information to affected customers, upon request. In the NOPR, we expressed concern that the regulations did not allow the Commission staff and the public access to the supporting information. We noted that lack of access to the supporting information limits the Commission's ability to audit the circumstances under which a curtailment or interruption occurs, as well as the Commission's ability to identify compliance problems and resolve complaints. Therefore, we proposed to make the supporting information about curtailments and interruptions available on request, not only to affected customers, but also to the Commission staff and the public.

*Comments*

EPMI strongly supports the Commission's proposal to require Transmission Providers to make the supporting information relating to curtailments and interruptions available to affected customers, the Commission Staff and the public. Due to the commercial sensitivity of the supporting curtailment and interruption information, however, EPMI proposes that the information not be made available for at least 30 days after the end of the month in which the curtailment or interruption was imposed.

EEI recommends that access to information on curtailments and interruptions should only be available to Transmission Customers. EEI argues that there are serious risks to the reliability of the interconnected transmission system that could result from disclosure to the general public. EEI recommends that the Commission modify § 37.6(e)(3)(ii) to provide the information to ''any other transmission customer who: (i) Demonstrates a legitimate basis for requesting the information and (ii) agrees to keep the information on curtailment or interruptions confidential, provided that the information may be disclosed to the Commission pursuant to 18 CFR 388.112.'' [12] VEPCO recommends the same modifications to this section of our regulations.

*Commission Conclusion*

First, disclosure of supporting curtailment and interruption data to the Commission will provide useful information for discerning patterns of undue discrimination. With access to the additional information, the Commission will have a greater ability to examine the circumstances under which a curtailment or interruption occurred. This in turn, will lead to early identification of compliance problems and faster resolution of complaints. Accordingly, we will revise § 37.6(3)(ii) to include the Commission staff.

Second, commenters raised two types of arguments concerning the Commission's proposal to allow the public access to the supporting information on curtailments and interruptions, upon request: (1) Commercial sensitivity; and (2) reliability of the transmission system.

We have given careful consideration to the possible harmful commercial effects of disclosing supporting curtailment and interruption information to the public. We believe that the disclosure of this information to the public will provide useful information to the public for discerning any patterns of undue discrimination in the rendering of transmission services. Thus, disclosure to the public should promote non-discrimination and lead to better competitive utilization of transmission systems.

The Commission considers the reliability of the interconnected transmission system to be of utmost importance. NERC and the industry have made significant efforts to ensure that reliability of the transmission system is maintained and that reliability criteria are compatible with competitive markets.[13] NERC and its member Regional Reliability Councils have worked cooperatively and effectively to provide reliability standards for public utilities. Furthermore, these entities have not cited any risks to reliability from disclosure of this information. Currently, Transmission Providers already post curtailment-related information on the OASIS including the Available Transmission Capacity for a constrained path. Also, section 213(b) of the Federal Power Act requires transmitting utilities to make annual filings informing the ''public of potentially available transmission capacity and known constraints.'' [14] However, we are taking the precaution of requesting the Market Interface Committee (MIC) [15] to review and specify the supporting information about curtailments and interruptions that should be maintained.[16] In these circumstances, the Commission believes that the disclosure of information on curtailments and interruptions to the public is appropriate at this time.

*3. Additional Information on the Congested Path*

In the NOPR, we proposed that the information under 18 CFR 37.6(e)(3)(ii) should include information on any other uses of the congested path at the time of the curtailment or interruption. We noted that it would be helpful to know whether the curtailment or interruption was imposed on other

[10] *See* 18 CFR 37.7 (1998).

[11] *See* Federal Power Act, Section 301 (making and preservation of accounts, records, and memoranda; Commission's right to inspect and examine); Section 304 (periodic and special reports; obstruction of the making or keeping of required information unlawful); Section 307 (investigations) and Section 314 (enforcement). These Sections are codified at 16 U.S.C. 825, 825c, 825f and 825m.

[12] EEI comments at 3–4.

[13] *See* Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 at 30,185 (1997).

[14] 16 U.S.C. 8241 (1994).

[15] The Commercial Practices Working Group (CPWG) was an independent industry-initiated and managed group committed to providing an open forum dedicated to the development and consensus-based business practices in support of reliable and competitive bulk electricity markets. CPWG's membership included members from various segments of the wholesale electric industry, including Transmission Providers and Customers. Recently, the CPWG has been reconstituted and its functions taken over by a replacement group, the MIC, sponsored by NERC.

[16] *See infra* section 3.

users. Furthermore, information on any other uses of the congested path at the time of the curtailment or interruption would not be burdensome to assemble.

*Comments*

Many commenters supported the Commission's proposal to include additional information on other uses of the congested path at the time of curtailment or interruption. Many commenters argued that the supporting information must be clearly defined and consistent across all nodes.

Cinergy asserts that it is not always possible for Transmission Providers to know all of the uses of a given path due to the dynamic nature of the power system.[17] Cinergy recommends that the Commission clarify that the information furnished for congested paths be scheduled uses only.

Dynegy states that OASIS operators should be required to provide information with respect to the depth of transmission loading relief (TLR) cuts, *i.e.,* whether transactions are being cut hourly or daily, as well as the number of transactions and the total amount in megawatts of each curtailment.[18]

EPMI proposes that the Commission require hourly load data and generation output levels. EPMI further proposes that the names of impacted parties to the curtailment and the magnitude of the curtailment should be disclosed.[19]

PECO submits that each Transmission Provider's OASIS site should identify, for each incident for which transmission TLR procedures are invoked, resulting in a halting or curtailment: (1) Each transaction that is halted or curtailed; (2) the time at which halting or curtailment commenced; (3) the time at which the halting or curtailment terminated; (4) which Security Coordinator instituted the TLR procedures that led to such a halt or curtailment; (5) the name of the transmission facility or flowgate for which the TLR procedures were instituted; (6) what level in the TLR procedures has been called; (7) what paths are affected by the TLR procedures; (8) the quantity of megawatts per hour necessary to halt or curtail in order to achieve the desired relief for the constrained transmission facility or flowgate; (9) the total aggregate of megawatts per hour halted or curtailed; and (10) the quantity of megawatts per hour that are made available as a result of such halt or curtailment that would not have otherwise been available.[20]

*Commission Conclusion*

We believe that additional information about the state of the transmission system will enable customers to make better decisions about the quality of the transmission service they intend to purchase. We further believe that additional supporting information concerning curtailments and interruptions will make it easier to document unduly discriminatory practices concerning facilities critical to transmission capacity. However, a thorough consideration of this issue necessitates a more extensive record than we have before us at this time. To this end, we conclude that the industry is best situated to identify what other supporting information concerning curtailments and interruptions would be helpful and appropriate. We request that the MIC and the How Group prepare a report within three months from the date of publication of this final rule in the **Federal Register** outlining what additional supporting information about curtailments and interruptions should be posted on the OASIS and available for query. This report should address the scope of the information to support curtailments and interruptions and also include templates for queries of the additional information and for responses containing the information.

*B. File Transfers, Automated Queries, and Extensive Requests for Data*

When the Commission first proposed OASIS, it envisioned two primary methods of accessing information on OASIS. First, small customers would generally retrieve and post information using the interactive features of OASIS. Second, medium and large customers would generally use computer-to-computer communications to upload and download files. Using computer-to-computer communications, a customer could send a request (automated query) to an OASIS node's computer and the node's computer would respond with the requested files (download). To facilitate these file uploads and downloads, the Commission previously requested that the How Group develop standardized templates for OASIS transactions.

1. File Transfers and Automated Queries

In the NOPR, the Commission noted that it received Hotline calls showing misunderstandings about the use of file transfers and automated queries. In the NOPR, we proposed to add 18 CFR 37.6(a)(6) to allow OASIS users to make file transfers and automated computer-to-computer file transfers and queries of the nodes.

*Comments*

Cal ISO, MAPP and the How Group submitted comments on this issue. All three note that the S&CP Document has definitions and standards for ''file transfers'' and they recommend that the Commission replace references to ''file transfers'' with references to the upload and download specifications in the S&CP.

*Commission Conclusion*

At the outset, we note that the commenters correctly recognize that the S&CP Document contains definitions and standardized procedures for file transfers. The Commission did not intend to propose file transfers that were not defined in the S&CP Document. Accordingly, we will amend § 37.6 (a)(6) to clarify that OASIS nodes must allow OASIS users to make file transfers and queries as defined in the S&CP Document.

2. Extensive Requests for Data and Limits on OASIS Use

In the NOPR, we proposed to add a provision, 18 CFR § 37.5(c), to clarify that Responsible Parties are required to provide access to their OASIS sites for OASIS users making automated queries and extensive requests for data. In the NOPR, we also proposed to add a provision, 18 CFR 37.5(d), to permit Responsible Parties, under certain circumstances, to restrict access by OASIS users who use the system in a grossly inefficient manner and degrade the performance of the node. We suggested that if a Responsible Party and an OASIS user could not resolve the matter informally, the Responsible Party would be able to seek Commission approval to limit the grossly inefficient use of the system. Comments on this issue fall into three categories: (a) Disagreements with the proposal to require Commission approval before limits can be placed on individual OASIS users; (b) limits on heavy OASIS usage; and (c) the meaning of grossly inefficient use.

a. *Prior Commission Approval for OASIS Limits.* In the NOPR, we proposed that Commission approval be needed for imposition of limits on a user's access to OASIS because we wanted to avoid unwarranted limits on access. Furthermore, we wished to assure OASIS users that they would not be disconnected without cause.

[17] *See* Cinergy comments at 2–3.

[18] *See* Dynegy comments at 2.

[19] *See* EPMI comments at 3–4.

[20] *See* PECO comments at 2.

*Comments*

All commenters recognize that there are circumstances under which a user's automated query capability should be limited. However, commenters disagree over whether limits should be imposed before or after notification and concurrence by the Commission.

EPSA, EPMI and Power Navigator agree with the Commission's proposal to require Transmission Providers to obtain Commission approval before limiting a user's access to an OASIS node for grossly inefficient usage. Dynegy cautions that permitting Transmission Providers to limit OASIS use presents the potential for abuse and Transmission Providers could punish certain customers.[21]

The How Group, Cal ISO, Cinergy, MAPP, VEPCO, Southern Company and Southwest support allowing Responsible Parties to limit access to an OASIS node prior to Commission notification and approval. The How Group states that because OASIS nodes operate 24 hours a day, seven days a week and process transmission requests as they are received, the nodes are vulnerable to excessive demands by individual customers and therefore, limits on access should be available without Commission authorization.[22]

Furthermore, MAPP, MAIN, Cinergy, VEPCO and the How Group argue that mistakes and bugs in computer programs used to make the automated requests can inadvertently result in a request for more information than the user desires or the same data is repeatedly requested. These commenters argue that node performance could be seriously impaired unless Responsible Parties have the ability to limit a user's access before obtaining Commission concurrence. MAPP further cites the rapid responses associated with computer-to-computer communications and claims that a delay in disconnecting requests due to mistakes or bugs can inadvertently bring down a whole OASIS node.[23] Cinergy proposes that requests be terminated when it is clear that computer bugs or mistakes have occurred.

MAIN proposes that when a user's request seriously impacts node performance, the Responsible Party administering the node and the user should try to resolve the problem together. Cal ISO proposes that Responsible Parties should follow specific procedures, including promptly notifying the Commission about OASIS limits, working with the user to solve the problem and providing the Commission with a closure report that describes the problem and the resolution.[24] The How Group and MAPP also propose specific procedures for Responsible Parties to follow when they block access to OASIS nodes.

*Commission Conclusion*

We are persuaded that Responsible Parties should be permitted, without prior Commission concurrence, to limit access by users who seriously degrade node performance. At the same time, we must ensure that limits on usage are imposed for good reason and that reasonable efforts are made by both parties to resolve problems. Restrictions and disconnections from OASIS should occur in only very limited circumstances. When a problem arises due to grossly inefficient use, all parties should first attempt to resolve the problem in a cooperative manner without OASIS restriction or limitation. If the problem is not resolved in a timely fashion, a Responsible Party can limit a user's access without prior Commission approval. Notification of the restriction must be made to the Commission within two business days of the incident and include a description of the problem and whether a resolution was reached. A closure report describing how the problem was resolved must be filed with the Commission within one week of the incident.

If the problem requires Commission resolution, the Responsible Party will have the obligation to demonstrate to the Commission that the limited user seriously impacted the performance of the node, the node is properly sized for the number of users and types of customers and that the Responsible Party made a good faith effort to resolve the problem. In response, the user will have the obligation of demonstrating to the Commission that its queries were efficient and were the result of reasonable business needs. We anticipate in cases where a Responsible Party has no interest in generation that these types of disputes can be resolved without resort to Commission processes.

Similarly, for errors in queries, the Responsible Party can block the affected query and notify the user of the nature of the error. Users should correct the error before making any additional query. If there is a dispute over whether an error occurred, then the rules for grossly inefficient use would apply.

b. *Limits on Heavy Use of OASIS.* In the NOPR, the Commission proposed not to limit heavy use of automated computer-to-computer uploads and downloads (queries and responses) that arise from legitimate ordinary course of business needs. The NOPR distinguished between heavy use in the ordinary course of business and grossly inefficient use.

*Comments*

Detroit Edison, Southern Company, EPMI and EPSA agree with the Commission that heavy use alone should not justify disconnection from an OASIS node. Southern Company notes that the Commission's requirements regarding automated queries are consistent with the industry's movement toward conducting business on a moment-to-moment basis. Southern Company argues that moment-to-moment transactions can only be accommodated if large volumes of automated information can be transmitted by an OASIS node. Southern requests that the Commission emphasize automated query access over browser access.[25]

Power Navigator describes its experiences with OASIS nodes when using automated queries. Power Navigator states that it has been disconnected from an OASIS node, as a punitive measure after a problem was resolved and also, Power Navigator has been restricted by a node to only one automated query a day.[26] Furthermore, Power Navigator was disconnected from an OASIS node because of queries deemed inefficient without notice and the opportunity to make the query more efficient.

Southern Company reports that it has also experienced problems using automated queries and file transfers on several OASIS nodes. Southern argues that the ''inability of these OASIS nodes to meet the minimum requirements of the S&CP Document regarding automated queries and file transfers increases the transaction costs of market participants by increasing manpower and the time required to gather and analyze information.'' [27] Southern notes that the Commission has not sufficiently defined ''minimum performance requirements'' and that the lack of specificity has resulted in some OASIS nodes lacking sufficient capacity to accommodate bulk transactions. Southern Company requests that the Commission develop, or encourage the industry to develop, a benchmark program to determine if a node satisfies

[21] *See* Dynegy comments at 4.

[22] *See* How Group comments at 3–4.

[23] *See* MAPP comments at 4.

[24] *See* Cal ISO comments at 7–8.

[25] *See* Comments of Southern Company at 7.

[26] *See* Comments of Power Navigator at 1–2.

[27] Comments of Southern Company at 6–7.

the minimum performance requirements.

MAIN argues that even well-designed automated queries can significantly degrade OASIS performance. MAIN states that OASIS requires a substantial database and MAIN maintains the database on a daily basis. During periods of maintenance, the ability of computer systems to respond to queries and requests is inherently limited. Thus, MAIN claims that even well-designed automated queries can significantly degrade OASIS performance during periods of database maintenance.[28] MAIN notes that it was forced to put limits on ''traffic from particular Internet addresses that sent repeated and multiple queries to the MAIN OASIS node.''[29] The result is that MAIN restricts access by automated queries ten and one-half hours a day. MAIN suggests that some problems caused by automated queries could be reduced if users were required to furnish Transmission Providers with adequate and timely advance notice of usage requirements. MAIN would use this information in planning for system upgrades and other system modifications.

The How Group raises the question of what constitutes basic service and disagrees with the Commission's interpretation that the basic service level agreement allows large volume, computer-to-computer usage of OASIS to meet ordinary legitimate business needs of users. The How Group argues that the basic service level agreement only provides for average or normal uses of the system. The How Group further argues that the performance requirements in the S&CP Document are based on average, expected usage levels and cover average or normal users of the system.[30]

*Commission Conclusion*

We continue to believe that large volume usage and automated computer-to-computer file transfers and queries do not constitute the kind of excessive use of resources warranting limitation or disconnection, as discussed in the previous section. Thus, a particular user's heavy use of an OASIS node, even if it would require the node to be upgraded, would not, by itself, be a basis for limitation or disconnection.

However, based on the comments, we are convinced that the standards for node performance and bandwidth need refinement. We therefore request the MIC and the How Group to develop standards for node response time, node capabilities and the bandwidth of the node's connection to the Internet. We further request that the MIC and the How Group report back to the Commission within three months from the date of publication of this final rule in the **Federal Register**. The standards should explicitly incorporate the concept of requiring nodes to meet the legitimate, ordinary course of business needs of users.

The new standards should take into account the industry's experience with OASIS. The MIC and How Group have the option of proposing a redefinition of the existing standards[31] or if appropriate, they can develop a new approach. If the existing approach is used, the MIC and the How Group should consider that the assumption in the existing standard of 5 percent of customers in communication with a node at any time was developed before OASIS was implemented. The MIC should determine if a higher or lower percentage is more appropriate. Furthermore, the 28,800 bps/customer, used in the existing standards was a relatively fast modem speed in 1996 when the OASIS standards were formulated.[32] Today, many customers use faster connections to the Internet.

Furthermore, we agree with MAIN's suggestion that OASIS nodes would better meet user needs for automated queries if users notify Responsible Parties prior to increasing their demands significantly. We will, therefore, require users to notify a node of anticipated usage one month in advance of initiating a significant amount of queries or when users expect their use of automated queries to increase significantly. We believe it is appropriate to allow each node to determine reasonable criteria for such notification because nodes have varying requirements. Responsible Parties will post on their OASIS nodes the criteria under which users must notify them of increased usage of automated queries.

c. *''Grossly Inefficient'' Usage of OASIS.* In the NOPR, we proposed to not limit heavy use of automated queries that arose from legitimate, ordinary business needs. We distinguished between legitimate OASIS uses and grossly inefficient uses. By using the term grossly inefficient, we intended to address situations where a user fails to adopt more efficient methods of accessing a node or obtaining information in favor of very inefficient methods that may needlessly degrade or damage the node.

*Comments*

Cinergy, Detroit Edison, MAIN, Southern Company and VEPCO argue that unless the Commission clarifies the definition of ''grossly inefficient'' and what constitutes degradation of service on an OASIS node, there will be continued disputes over automated queries.

*Commission Conclusion*

We continue to believe that it would be impracticable to delineate all instances of ''gross inefficiency''. At the same time, we have narrowed the definition of grossly inefficient use by adding the new error category, by clarifying that heavy volume usage and automated computer-to-computer file transfers and queries do not constitute grossly inefficient use and by requiring OASIS users to notify Responsible Parties in advance of substantial increases in automated query usage. We believe that these actions reduce the areas of dispute.

Examples of grossly inefficient use include: (1) When a user seeks data in a resource-intensive wasteful way even though the same data could be obtained as quickly in a far less resource-consuming manner; and (2) when an OASIS user seeks updates more frequently than information on the OASIS is updated. This list, however, is not exhaustive and questions as to whether a particular user's access or use of the node is ''grossly inefficient'' will be resolved on a case-by-case basis. We also believe that Responsible Parties should use the disconnection procedures as a last resort.

[28] *See* comments of MAIN at 6–7.

[29] *Id.* at 7.

[30] *See* comments of How Group at 6.

[31] The existing standards are as follows:

Transmission Services Information Providers can only be responsible for the response capabilities of two portions of the Internet-based OASIS network:

- The response capabilities of the OASIS node server to process interactions with users; and
- The bandwidth of the connection(s) between the OASIS node server and the Internet.

Therefore, the OASIS response time requirements are as follows:

a. OASIS Node Server Response Time: The OASIS node server shall be capable of supporting its connection(s) to users with an average aggregate data rate of at least ''A'' bits per second. ''A'' is defined as follows:

A = N * R bits/sec

Where: N = 5% of registered Customers and R = 28,800 bits/sec per Customer.

b. OASIS Node Network Connection Bandwidth: The bandwidth ''B'' of the OASIS node connection(s) to the Internet shall be at least:

See Standards & Communications Protocol Document (Version 1.3) at section 5.3 (1998). Version 1.3 of the S&CP Document is posted on the Commission Issuance Posting System (accessed through the Commission's Internet Home Page at http://ferc.fed.us) or may be inspected in the Commission's Public Reference Room.

[32] See Order No. 889, FERC Stats & Regs. at 31,623.

*C. Other Issues*

MAIN proposed that users of automated query systems be charged for their use.[33] Similarly, CSW proposes an industry-wide OASIS usage charge whereby subscribers pay more when they use an OASIS node continuously and/or intensively.

We note that the issue of OASIS cost recovery was addressed in Orders No. 889[34] and 889–A.[35] In those orders, we concluded that the cost of developing an OASIS should be included in unbundled transmission rates and that variable costs of operating an OASIS should be recovered, to the extent possible, in usage fees. We left it to individual rate proceedings to determine which OASIS costs can be identified as varying with usage and how to set the recovery of these fees. However, the concept of automated queries has been a basic part of the functionality of OASIS since its inception and special charges for legitimate, ordinary course of business queries should not be imposed.[36]

A few other commenters raised issues that were not discussed in the NOPR. For example, Dynegy asks the Commission to revisit the posting of generator run status on OASIS nodes.[37] In addition, Southern Company complains that some Transmission Providers require users of their system to purchase expensive proprietary security software from third party vendors and that this practice imposes limits on OASIS. EPMI requests that the Commission require Transmission Providers to acknowledge receipt of faxed or electronically transferred OASIS requests when the request is received.[38]

All of these issues are beyond the scope of this proceeding and therefore, we will not address them at this time. Commenters will have the opportunity to raise these issues, as well as submit comments on additional issues, during the OASIS Phase II proceedings.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA)[39] 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 have a significant economic impact on small entities within the meaning of the RFA.[40]

As discussed above, this final rule will make minor revisions to Part 37. Given that we do not expect these minor revisions to have any significant economic impact and given that we have granted waivers from the requirements of the OASIS Final Rule to small entities where appropriate, and will continue to do so, we hereby certify that the changes in 18 CFR Part 37 will not have a significant economic impact on a substantial number of small entities and that no regulatory flexibility analysis is required pursuant to 5 U.S.C. 603.

**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 Docket Nos. RM95–8–000 and RM94–7–001 on April 12, 1996. Given that this final rule makes only minor changes in the regulations, none of which would have any environmental impact, no separate environmental assessment or environmental impact statement is being prepared for this final rule.

**Public Reporting Burden**

As discussed previously, this final rule makes minor revisions to 18 CFR 37.6(e)(3)(ii). We do not believe that extending the retention period or extending the category of persons who may request the information on curtailments or interruptions will measurably increase the public reporting burden.

Nor do we believe our rule to amend 18 CFR 37.5 and 37.6 to clarify the required minimum access that Responsible Parties must provide to OASIS users, or to allow (under certain circumstances) limitations on access by grossly inefficient users, will increase the public reporting burden.

Consequently, the public reporting burden associated with issuance of this final rule is unchanged from our estimation in Order Nos. 889, 889–A, and 889–B.[41] The Commission has conducted an internal review of this conclusion and thereby has assured itself 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, 889–A, and 889–B, and has determined that the collection of information is necessary and conforms to the Commission's plan, as described in those prior orders, for the collection, efficient management, and use of the required information.

**Information Collection Statement**

As explained in Order Nos. 889–A and 889–B, Order No. 889 contained an information collection statement for which the Commission obtained approval from the Office of Management and Budget (OMB).[42] Given that the changes on curtailments and interruptions make only minor revisions to the regulations, we do not believe that these changes would require any revision to the information collection statement approved by OMB for Order No. 889. Nor do we believe that our revisions to 18 CFR 37.5 and 37.6, to clarify the required minimum access Responsible Parties must provide to OASIS users, or to allow (under certain circumstances) limitations on access by grossly inefficient users, would require any revision to the information collection statement approved by OMB for Order No. 889. Accordingly, we conclude that OMB approval for this final rule will not be necessary. However, the Commission will send a copy of this final rule to OMB, for informational purposes only.

Interested persons may obtain information on the reporting requirements and associated burden estimates by contacting the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 [Attention: Michael Miller, Office of the Chief Information Officer, (202) 208–1415], and the Office of Management and Budget [Attention: Desk Officer for the Federal Energy Regulatory Commission (202) 395–3087 (telephone), 202–395–7285 (facsimile)]. In addition, interested persons may file written comments on the collections of information required by this rule and associated burden estimates by sending written comments to the Desk Officer for FERC at: Office of Management and Budget, Room 10202 NEOB, Washington, D.C. 20503, 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: Secretary,

[33] MAIN comments at 12.

[34] *See* Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,624–26.

[35] *See* Order No. 889–A, FERC Stats. & Regs. ¶ 31,049 at 30,576–77.

[36] This would also include automated queries by the public.

[37] Dynegy comments at 5.

[38] EPMI comments at 4.

[39] 5 U.S.C. 601–612.

[40] *See* Order No. 889, FERC State. & Regs. at 31,628.

[41] Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,587–88, Order No. 889–A, FERC Stats. & Regs. ¶ 31,049 at 30,549–50, Order No. 889–B, 81 FERC ¶ 61,253 at 62,171 (1998).

[42] OMB Control No. 1902–0173.

Federal Energy Regulatory Commission, Room 1A, 888 First Street, N.E., Washington, D.C. 20426.

**Effective Date and Congressional Notification**

This rule will take effect on July 26, 1999. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a ''major rule'' within the meaning of section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.[43] The Commission will submit the rule to both houses of Congress and the Comptroller General prior to its publication in the **Federal Register**.

This final rule will not have an adverse effect on Year 2000 readiness. This rule makes only minor revisions to our regulations and no major system changes to OASIS are required. Furthermore, commenters did not cite any adverse effects of the rule on their Year 2000 preparation.

In this rule, we are extending the retention period and the availability of supporting information on curtailments and interruptions. These changes will not jeopardize work on the Year 2000 problem. Currently, our regulations require that the supporting information about curtailments and interruptions be maintained for 60 days and available to affected customers. We are extending the retention period to three years and we are allowing the Commission Staff and the public access to the information. Because Transmission Providers already must maintain information on curtailments and interruptions, extending the retention period and the access to this information will not affect Year 2000 preparations.

In addition, we are asking the How Group/MIC to prepare a report outlining what additional supporting information about curtailments and interruptions should be posted on the OASIS. We request that the report be prepared within 3 months from the date of publication of this final rule in the **Federal Register**. Therefore, the report will be received by the Commission in early September and final implementation, including the adoption of new templates, will not occur until after January 2000.

We also believe that the provision to allow (under certain circumstances) limitations on OASIS access by grossly inefficient users will not have any effect on Year 2000 readiness. The procedures we are adopting in 18 CFR 37.5(d) and 37.5(e) will not add any new information technology requirements. Instead, these regulations enable Responsible Parties to disconnect or limit an OASIS user's access to the node.

Finally, we are adopting a new procedure whereby OASIS users notify Responsible Parties one month prior to increasing their automated query demands. Each OASIS node will determine reasonable criteria for such notification and the methods for notification will be posted on the OASIS. We believe that this new provision will not hinder Year 2000 efforts. Posting the notification criteria on the OASIS is only a minor administrative change and this requirement should not divert resources from Year 2000 efforts.

**List of Subjects in 18 CFR Part 37**

Conflict of interests, Electric power plants, Electric utilities, Reporting and recordkeeping requirements.

By the Commission. Commissioner Bailey concurred with a separate statement attached.

**Linwood A. Watson, Jr.,**

*Acting 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 37.5 is amended by redesignating paragraph (c) as paragraph (f), and by adding paragraphs (c), (d) and (e) to read as follows:

**§ 37.5 Obligations of Transmission Providers and Responsible Parties.**

* * * * *

(c) A Responsible Party may not deny or restrict access to an OASIS user merely because that user makes automated computer-to-computer file transfers or queries, or extensive requests for data.

(d) In the event that an OASIS user's grossly inefficient method of accessing an OASIS node or obtaining information from the node seriously degrades the performance of the node, a Responsible Party may limit a user's access to the OASIS node without prior Commission approval. The Responsible Party must immediately contact the OASIS user to resolve the problem. Notification of the restriction must be made to the Commission within two business days of the incident and include a description of the problem. A closure report describing how the problem was resolved must be filed with the Commission within one week of the incident.

(e) In the event that an OASIS user makes an error in a query, the Responsible Party can block the affected query and notify the user of the nature of the error. The OASIS user must correct the error before making any additional queries. If there is a dispute over whether an error has occurred, the procedures in paragraph (d) of this section apply.

* * * * *

3. Section 37.6 is amended by revising the section heading and paragraphs (a) introductory text, (a)(4), (a)(5), and (e)(3)(ii), and adding paragraph (a)(6) to read as follows:

**§ 37.6 Information to be posted on the OASIS.**

(a) The information posted on the OASIS must be in such detail and the OASIS must have such capabilities as to allow Transmission Customers to:

* * * * *

(4) Clearly identify the degree to which transmission service requests or schedules were denied or interrupted;

(5) Obtain access, in electronic format, to information to support available transmission capability calculations and historical transmission service requests and schedules for various audit purposes; and

(6) Make file transfers and automated computer-to-computer file transfers and queries as defined by the Standards and Communications Protocols Document.

* * * * *

(e) * * *

(3) * * *

(ii) Information to support any such curtailment or interruption, including the operating status of the facilities involved in the constraint or interruption, must be maintained and made available upon request, to the curtailed or interrupted customer, the Commission's Staff, and any other person who requests it, for three years.

* * * * *

4. Section 37.8 is added to read as follows:

**§ 37.8 Obligations of OASIS users.**

Each OASIS user must notify the Responsible Party one month in advance of initiating a significant amount of automated queries. The

[43] 5 U.S.C. 804(2).

OASIS user must also notify the Responsible Party one month in advance of expected significant increases in the volume of automated queries.

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

ATTACHMENT 1.—LIST OF COMMENTERS TO THE NOPR

| Number/Commenter name | Abbreviation |
|---|---|
| (1) California Independent System Operator, Corp | (Cal ISO). |
| (2) Cinergy Services, Inc | (Cinergy). |
| (3) CSW Operating Companies | (CSW). |
| (4) Detroit Edison Company | (Detroit Edison). |
| (5) Dynegy, Inc | (Dynegy). |
| (6) Edison Electric Institute | (EEI). |
| (7) Electric Power Supply Association | (EPSA). |
| (8) Enron Power Marketing, Inc | (EPMI). |
| (9) Mid-America Interconnected Network, Inc | (MAIN). |
| (10) Mid-Continent Area Power Pool | (MAPP). |
| (11) OASIS How Working Group | (How Group). |
| (12) PECO Energy Co-Power Team | (PECO). |
| (13) Power Navigator | (Power Navigator). |
| (14) Southern Company Services, Inc | (Southern Company). |
| (15) Southwest Power Pool | (Southwest). |
| (16) Virginia Electric & Power Co | (VEPCO). |

## Attachment 2—Concurring Statement by Commissioner Bailey

Issued May 27, 1999.

Bailey, Commissioner, *concurring*

I support this rulemaking, which amends the Commission's regulations to improve in several respects the operation and effectiveness of OASIS sites. I write separately only to explain my support for one aspect of the final rule.

The Commission revises its OASIS regulations to allow access to supporting information on curtailments and interruptions, upon request, to Commission staff and the public, as well as to affected customers. Slip op. at 8–10. The Commission makes this revision despite the articulated concern of two intervenors—EPMI and EEI—that this type of information is commercially sensitive (EPMI) and, if disclosed, might impair the reliability of the interconnected transmission system (EEI).

In my judgment, the Commission's and the public's need for this type of information—for the purpose of detecting any undue discrimination in any pattern or practice of transmission curtailment—outweighs the articulated concern for the commercial and reliability implications of disclosure. Significantly, intervenor concerns of commercial and reliability sensitivity here are presented with little explanation and vigor.

In contrast, I have dissented in other cases where the commercial and competitive implications of information disclosure have been well defined and vigorously argued. *See Open Access Same-Time Information System and Standards of Conduct*, 83 FERC ¶ 61,360 at 62,467–69 (1998), *reh'g denied*, 85 FERC ¶ 61,139 at 61,493 (1999); *American Electric Power Company and Central and South West Corp.*, 86 FERC ¶ 61,091 at 61,334 (1999). I continue to believe that it is important for the Commission, when confronted with concern for the competitive implications of information disclosure, to balance carefully those concerns against the usefulness of that information in fulfilling the Commission's regulatory responsibilities. Here, unlike in other cases in which I have dissented, I am comfortable with the Commission's conclusion that the balance tips in favor of immediate disclosure.

Vicky A. Bailey,

*Commissioner.*

[FR Doc. 99–15061 Filed 6–24–99; 8:45 am]

BILLING CODE 6717–01–P

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 101

**[Docket No. 99N–1979]**

## Apple Cider Food Safety Control; Workshop

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of workshop.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a workshop on food safety controls for the apple cider industry. The workshop will clarify issues related to the implementation of the agency's regulations requiring a warning statement for certain juice products. Specifically, the workshop will address pathogen reduction interventions that may be effective for apple cider production and the methods used to measure and validate such interventions. Results of research conducted by Federal, State, private, and academic institutions will be presented.

**DATES:** The workshop will be held on Thursday, July 15, 1999, from 9 a.m. to 4 p.m., and Friday, July 16, 1999, from 9 a.m. to noon. Written comments and requests to distribute materials and scientific studies at the meeting will be accepted until Friday, July 2, 1999. Submit written notices of registration by July 8, 1999.

**ADDRESSES:** The workshop will be held at the Department of Health and Human Services, Hubert Humphrey Bldg., conference room 705–A, 200 Independence Ave. SW., Washington, DC 20201. Submit registration and written notices of participation to Darrell J. Schwalm (address below). Submit written comments, written requests to distribute materials, and materials regarding relevant scientific studies to be distributed at the workshop to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Two copies of any comments and materials to be distributed are to be submitted, except that individuals may submit one copy. Comments and materials to be distributed are to be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Darrell J. Schwalm, Center for Food Safety and Applied Nutrition (HFS–625), Food and Drug Administration, 200 C. St. SW., Washington, DC 20204, 202–205–4040, FAX 202–205–4121 or e-mail ''dschwalm@bangate.fda.gov''.

Registration for the workshop will be provided on a first come first served basis. Persons interested in attending this workshop should, by Friday, July 8, 1999, fax their name, title, firm name,