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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 366

[Docket No. RM11–12–001; Order No. 771–A]

Availability of E-Tag Information to Commission Staff

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order on rehearing and clarification.

SUMMARY: In this order on rehearing and clarification, the Federal Energy Regulatory Commission (the Commission) clarifies that: Balancing Authorities and their Authority Services will have until 60 days after publication of this order to implement the validation requirements of Order No. 771; validation of e-Tags means that the Sink Balancing Authority, through its Authority Service, must reject any e-Tags that do not correctly include the Commission in the CC field; the requirement for the Commission to be included in the CC field on the e-Tags applies only to e-Tags created on or after March 15, 2013; the Commission will deem all e-Tag information made available to the Commission pursuant to Order No. 771 as being submitted pursuant to a request for privileged and confidential treatment under 18 CFR 388.112; the Commission is to be afforded access to the Intra-Balancing Authority e-Tags in the same manner as interchange e-Tags; and the requirement on Balancing Authorities to ensure Commission access to e-Tags pertains to the Sink Balancing Authority and no other Balancing Authorities that may be listed on an e-Tag.

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SUPPLEMENTARY INFORMATION:

Order on Rehearing and Clarification

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Before Commissioners: Jon Wellinghoff, Chairman; Philip D. Moeller, John R. Norris, Cheryl A. LaFleur, and Tony Clark.
Issued March 8, 2013.

1. On December 20, 2012, the Commission issued Order No. 771, a Final Rule that amended the Commission's regulations to grant the Commission access, on a non-public and ongoing basis, to the complete electronic tags (e-Tags) used to schedule the transmission of electric power interchange transactions in wholesale markets.[1] Order No. 771 requires e-Tag Authors (through their Agent Service) and Balancing Authorities (through their Authority Service), beginning on March 15, 2013, to take appropriate steps to ensure Commission access to the e-Tags covered by this Final Rule by designating the Commission as an addressee on the e-Tags. In response to this rule, requests for rehearing and/or clarification were filed by four entities. The National Rural Electric Cooperative Association (NRECA) individually filed a request for rehearing and also filed, together with Edison Electric Institute (EEI), a joint request for rehearing and clarification that included a motion for an expedited response to its motion for an extension of the compliance deadlines prescribed in the rule. Southern Company Services, Inc. (Southern) similarly filed a request for rehearing and clarification that included a request for expedited consideration of a request for a time extension. In addition, Open Access Technology International, Inc. (OATI) filed a request for clarification. A motion for leave to answer and answer was filed by PJM Interconnection, L.L.C. (PJM) and Southwest Power Pool, Inc. (SPP) (collectively, PJM/SPP). In this order, the Commission addresses only those issues that need to be answered on an expedited basis to allow entities affected by this rule to understand their obligations and comply with the requirement to ensure Commission access to the e-Tags covered by the Final Rule in a timely manner. In due course, the Commission will issue an additional rehearing order, addressing the remaining issues raised on rehearing and clarification. As discussed further below, the Commission also issued a notice on February 1, 2013, granting limited time extensions but requiring compliance by March 15, 2013 for the bulk of the requirements under the rule.

[1] *Availability of E-Tag Information to Commission Staff,* Order No. 771, 77 FR 76367 (Dec. 28, 2012), FERC Stats & Regs ¶ 31,339 (2012).

I. Overview

2. In this order, the Commission clarifies that: (1) Balancing Authorities and their Authority Services [2] will have until 60 days after publication of this order to implement the validation requirements of Order No. 771; (2) validation of e-Tags means that the Sink Balancing Authority, through its Authority Service, must reject any e-Tags that do not correctly include the Commission in the CC field; [3] (3) the requirement for the Commission to be included in the CC field on the e-Tags applies only to e-Tags created on or after March 15, 2013; (4) the Commission will deem all e-Tag information made available to the Commission pursuant to Order No. 771 as being submitted pursuant to a request for privileged and confidential treatment under 18 CFR 388.112; (5) the Commission is to be afforded access to the Intra-Balancing Authority e-Tags in the same manner as interchange e-Tags; and (6) the requirement on Balancing Authorities to ensure Commission access to e-Tags pertains to the Sink Balancing Authority and not other Balancing Authorities that may be listed on an e-Tag.

II. Introduction

3. E-Tags, also known as Requests for Interchange (RFI), are used to schedule interchange transactions in wholesale markets. Generally, e-Tags document the movement of energy across an interchange over prescribed physical paths, for a given duration, and for a given energy profile(s), and include information about those entities with financial responsibilities for the receipt and delivery of the energy. As stated in Order No. 771, the Commission determined that access to complete e-Tag data [4] will help the Commission in its efforts to detect market manipulation and anti-competitive behavior, monitor the efficiency of the markets, and better inform Commission policies and decision-making.[5]

4. As the Commission explained in Order No. 771, the Commission needs e-Tag data covering all transactions involving interconnected entities listed on the e-Tag because the information is necessary to understand the use of the interconnected electricity grid, and particularly those transactions occurring at interchanges.[6] The Commission also found in Order No. 771 that regular access to e-Tags for power flows across interchanges will make it possible for the Commission to identify or analyze various behaviors by market participants to determine if they are part of a potentially manipulative scheme(s).[7] As demonstrated by recent investigations by the Commission's Office of Enforcement, for example, e-Tag information can enable the Commission to investigate whether entities may be engaging in manipulative schemes involving the circular scheduling of imports and exports into a market to benefit other positions held by these entities.[8] The Commission also noted that e-Tag access will help the Commission to understand, identify, and address instances where interchange pricing methodologies or scheduling rules result in inefficiencies and increased costs to market participants collectively.[9] The Commission also noted that access to e-Tag information will allow the Commission to determine whether the requirements of the mandatory business practice standards related to e-Tags have been met.[10]

5. In Order No. 771, the Commission required e-Tag Authors, through their Agent Service, and Balancing Authorities, through their Authority Service, to take appropriate steps to ensure that the Commission is included as an addressee on all e-Tags for interchange transactions scheduled to flow into, out of, or within the United States' portion of the Eastern or Western Interconnection, or into Electric Reliability Council of Texas (ERCOT) and from the United States' portion of the Eastern or Western Interconnection; or from ERCOT into the United States' portion of the Eastern or Western Interconnection.[11] The Commission required that the e-Tag Authors include the Commission on the CC list of entities with view-only rights to the e-Tags described above. Further, the Commission required that the Balancing Authorities (located within the United States) validate the inclusion of the Commission on the CC list of the e-Tags before those e-Tags are electronically delivered to an address specified by the Commission.[12]

6. Order No. 771 also required that Regional Transmission Organizations (RTO), Independent System Operators (ISO) and their Market Monitoring Units (MMU) shall be afforded access to complete e-Tags, upon request to e-Tag Authors and Authority Services, subject to their entering into appropriate confidentiality agreements.

7. As noted above, requests for rehearing and/or clarification of Order No. 771 were filed by four entities.[13] In addition, PJM/SPP filed a motion for leave to answer and answer in response to the requests for rehearing and clarification. Rule 713(d) of the Commission's Rules of Practice and Procedure prohibits an answer to a request for rehearing.[14] Accordingly, we will reject the answer.

8. The main concern raised by EEI/NRECA in its joint request for rehearing and clarification pertains to the requirement that Sink Balancing Authorities and their Authority Services must validate that the Commission is a CC recipient of the e-Tags.[15] NRECA's individually filed rehearing request questions the Commission's legal authority to require access to e-Tag data. Southern filed a request for rehearing and clarification raising a number of issues, including: the responsibilities of Balancing Authorities with respect to e-Tag data; maintaining the confidentiality of e-Tag data; the applicability of the Final Rule to new e-Tags; and what e-Tag data can be

[2] An Authority Service is the ''focal point for all interactions with an e-Tag and maintains the single authoritative 'copy of record' for each e-Tag received.'' *See NAESB Electronic Tagging Functional Specifications,* Version 1.8.1.1, section 1.4.1.2, at p. 24. Every Sink Balancing Authority is responsible for registering an URL of an Authority Service. The Authority Service forwards all valid received e-Tag requests to each entity identified in the transaction as having ''approval'' or ''viewing'' rights over the request and collects approvals/denials. The Authority Service then sends final disposition of the request to each entity in the distribution list. *See id.* Authority Services are currently provided by a small number of commercial software vendors.

[3] In previous times, the term ''CC'' referred to those who would be given a carbon copy; the term has been carried over into the electronic age. E-Tag Authors may include a CC list (Carbon Copy List) on their e-Tags specifying the entities that will be provided with a copy of the e-Tag without being given approval rights. *See* NAESB Electronic Tagging Functional Specifications, Version 1.8.1.1, section 1.4.11, at p. 37.

[4] Order No. 771 defined ''complete e-Tags'' for purposes of this rulemaking proceeding as: (1) e-Tags for interchange transactions scheduled to flow into, out of, or within the United States' portion of the Eastern or Western Interconnection, or into the Electric Reliability Council of Texas and from the United States' portion of the Eastern or Western Interconnection, or from the Electric Reliability Council of Texas into the United States' portion of the Eastern or Western Interconnection; and (2) information on every aspect of each such e-Tag, including all applicable e-Tag IDs, transaction types, market segments, physical segments, profile sets, transmission reservations, and energy schedules. *See* Order No. 771, FERC Stats & Regs ¶ 31,339 at n.2.

[5] Order No. 771, FERC Stats & Regs ¶ 31,339 at P 27.

[6] *Id.*

[7] *Id.* P 28.

[8] *Id.* P 28, n.72 (citing *Gila River Power, LLC,* 141 FERC ¶ 61,136 (2012)).

[9] *Id.* P 29.

[10] *Id.*

[11] *Id.* P 1; *see also* 18 CFR 366.2(d).

[12] *Id.* P 41.

[13] *See supra* P 1.

[14] 18 CFR 713(d) (2012).

[15] EEI/NRECA at 2.

requested by RTO/ISO MMUs. OATI [16] filed a request for clarification asking three questions: (1) Whether the requirements in the Final Rule pertain only to Sink Balancing Authorities; (2) what e-Tag data can be requested by RTOs, ISOs, and MMUs; and (3) what confidentiality restrictions should apply to such requests. As stated above, in this order, the Commission will address only those issues that require an expedited response from the Commission to allow entities affected by this rule to understand their obligation to ensure Commission access to e-Tag data and comply with the rule in a timely manner. The Commission will issue an additional rehearing order in due course to address remaining issues, including its legal authority to access e-Tags.

III. Discussion

A. Requests for Extensions of Time

1. Comments

9. NRECA requests that the Commission issue an interim order on rehearing extending Order No. 771's compliance deadline of March 15, 2013 until 60 days after the Commission acts on the merits of NRECA's request for rehearing. EEI/NRECA also filed a motion for expedited extension of the March 15, 2013 compliance deadline, asking that the Commission grant the motion by February 15, 2013.[17] Specifically, EEI/NRECA ask the Commission to extend the deadline for including the Commission in the CC field of the requisite e-Tags to 60 days after the Commission responds to the EEI/NRECA request for rehearing and clarification and, if the Commission retains the validation requirement, the Commission should extend the deadline until 60 days after the North American Energy Standards Board's (NAESB) e-Tag protocols are modified to implement the requirement.[18] Southern also filed a motion for extension of time, asking that the Commission extend the effective date to 60 days after NAESB implements the revisions to its protocols to automate the system required to implement the Final Rule.

2. Commission Determination

10. The Commission considers it important to begin obtaining the data on e-Tags as soon as possible so that we can begin to analyze the data and enhance our ability to carry out our regulatory missions of detecting market manipulation and inefficient market rules and taking appropriate action, where needed, to address any such problems. Accordingly, the Commission is averse to allowing any unnecessary delays before the requirements of Order No. 771 become effective.

11. Nevertheless, when the Commission reviewed the requests for rehearing and for clarification, we determined that some of the rehearing requests asked important questions that needed explanation before action could be taken to comply with the rule. For this reason, the Commission issued a notice, on February 1, 2013, extending the time until Balancing Authorities are to be required to validate the inclusion of the Commission on e-Tags until 30 days after the issuance of an order, this order, which clarifies exactly what is entailed by such validation. To ensure that Balancing Authorities have sufficient time to implement this requirement, this order extends the time for Balancing Authorities to comply with the validation requirement until 60 days from the date of publication of this order in the **Federal Register**.

12. Given the importance of the objectives served by issuance of Order No. 771, our notice of a limited time extension denied all other requested time extensions and affirmed the time deadlines prescribed in the Final Rule in all other respects. Therefore, given our clarification in this order of the obligations of Sink Balancing Authorities regarding the validation of Commission access to e-Tags, Balancing Authorities will have until 60 days after publication of this order to implement the validation requirement, as clarified below.

13. We also note that requests for rehearing and/or clarification do not act as a stay of the compliance obligations prescribed in final orders.[19] As stated in the February 1, 2013 notice, full compliance with all other obligations under Order No. 771 is required by March 15, 2013.

B. Requests for Rehearing and Clarification

1. Validation of the Commission on E-Tags

a. Comments

14. EEI/NRECA and Southern encourage the Commission to eliminate the validation requirement if validation means that the Sink Balancing Authority or its Authority Service should reject an e-Tag that does not include the Commission in the CC field.[20] EEI/NRECA and Southern states that if validation means rejecting e-Tags that do not include the Commission, then the Commission should direct the industry to adjust the NAESB protocols to enable an automated process for validation and careful implementation of the requirement.[21]

15. According to Southern, rejecting e-Tags that do not CC the Commission could result in significant commercial and reliability disruptions.[22] EEI/NRECA also assert that rejecting e-Tags could disrupt necessary power deliveries and implementing the change via changes to the NAESB e-Tag protocols would avoid or minimize negative consequences.[23] EEI/NRECA add that if a Balancing Authority or Authority Service reject an e-Tag and, thus, the power delivery it covers, the e-Tag Author's only option may be to recreate the e-Tag if time and circumstances permit.[24]

16. EEI/NRECA add that Sink Balancing Authorities and their Authority Services may mistakenly reject an e-Tag and associated delivery in error, when in fact the particular e-Tag is not required to be CC'd to the Commission, such as for an internal or international transaction.[25] EEI/NRECA state that developing and implementing such a change to NAESB protocols would take more time than the March 15, 2013 implementation deadline allows, possibly a year or more, especially if NAESB addresses e-Tag issues other than validation.[26] Southern states that, at most, the Commission should require the Authority Services to add the Commission to the CC field, when appropriate, but states that even this effort will require a reasonable amount of time to provide for software changes and implementation.[27]

b. Commission Determination

17. The Commission has been asked to clarify whether the Commission's directive in Order No. 771 (that Balancing Authorities, through their Authority Services, validate that the Commission be given access to e-Tags) requires rejection of e-Tags that fail to include the Commission on the CC list as required, or merely requires Balancing Authorities to notify the Commission that the e-Tag Author has failed to include the Commission on an

[16] OATI states that it provides software solutions in the North American energy industry, including e-Tag services (through OATI webTag). OATI states it also provides Agent Services and Authority Services to e-Tag Authors and Balancing Authorities, respectively. *See* OATI at 1.

[17] EEI/NRECA at 3.

[18] *Id.* at 5.

[19] *See* 18 CFR 713(e) (2012).

[20] EEI/NRECA at 4; Southern at 5–6.

[21] EEI/NRECA at 2; Southern at 6.

[22] Southern at 6.

[23] EEI/NRECA at 2, 4.

[24] *Id.* at 7.

[25] *Id.*

[26] *Id.*

[27] Southern at 6.

e-Tag. We also have been asked to abandon or delay this requirement, if validation means that tags that fail to include the Commission on the CC list are to be rejected.

18. Our requirement in Order No. 771 for validation of e-Tags by Balancing Authorities, through their Authority Services, means that Balancing Authorities are to reject e-Tags that fail to include the Commission on the CC list and not merely notify the Commission that this requirement has not been met; the Commission's objective is to gain access to the e-Tags covered by the Final Rule. Furthermore, we reject the suggestion that we abandon this requirement as the Commission is interested in actually obtaining access to the information and is not merely interested in compiling a list of those that fail to provide the required access to the information. Without a validation process in place, the Commission would need to employ additional, less efficient checks to ensure that the Commission is obtaining consistent access to all relevant e-Tags.[28]

19. We also reject the suggestions by EEI/NRECA and Southern that we should delay implementation of the validation requirement until such time as the industry, through NAESB, can develop a formalized automated process. While we have no objection to the industry formalizing the manner in which validation will be performed by asking NAESB to develop a standard covering this, we are unwilling to allow such a process to delay Commission access to this important information and, accordingly, decline to defer compliance until the development of a formal NAESB business practice standard on this topic.[29]

20. Additionally, as discussed above, the Commission has already provided Balancing Authorities (and their Authority Services) with an extension to accommodate their devising a system to comply with the requirement that they must validate Commission access to e-Tags until 60 days after the publication of this order. By extending the validation requirement for Balancing Authorities until 60 days after the publication of this order, rather than March 15, 2013 (the implementation date for aspects of Order No. 771), we are providing e-Tag Authors and Balancing Authorities a testing period before all requirements of Order No. 771 take effect. During this testing period, e-Tag Authors will be able to comply with the Final Rule without concern over whether their e-Tags will be rejected. Also during this period, the Balancing Authorities (through their Authority Service) can assess e-Tags submitted by e-Tag Authors after-the-fact and alert e-Tag Authors to practices that would result in rejection once the validation mechanisms are in place. Accordingly, we believe this staggered approach will allow for the development of an automated process and limit any operational or reliability issues associated with validation requirements by giving e-Tag Authors and Balancing Authorities time to familiarize themselves with the process of providing the Commission with access to e-Tags, prior to all of the requirements of Order No. 771 taking effect.

21. In its comments, OATI states that it plans to offer additional automated functionality to Balancing Authorities to further enable them to satisfy their obligations under the Final Rule.[30] OATI further notes that scoping, development, testing, training and deployment of automated functionality typically requires at least four weeks, and sometimes longer, depending on the particular service.[31] Staff's research indicates that the vast majority of Balancing Authorities (i.e., 135 out of 148 total Balancing Authorities registered in the OATI webRegistry) rely on OATI to provide their Authority Service; nine Balancing Authorities rely on another e-Tag service provider; three do not have a registered Authority Service; and one appears to provide its own Authority Service.[32] Given the extension of time granted with regard to the validation requirement, we anticipate that Balancing Authorities and their Authority Services will be able to validate the Commission's inclusion on e-Tags once this requirement takes effect.

2. Prospective Effect of Order No. 771

a. Comments

22. EEI/NRECA and Southern seek clarification that the requirement to CC the Commission on e-Tags applies only to e-Tags created starting on or after the Order No. 771 compliance date, not ones created prior to the compliance date even if covering deliveries occurring after that date.[33] EEI/NRECA and Southern note that, under the current NAESB protocols, an e-Tag cannot be modified after it has been created. Therefore, EEI/NRECA argue that modification of e-Tags created prior to the compliance date for delivery after the compliance date would entail terminating or recreating the e-Tags.[34] Southern argues that, if all e-Tags already generated before the effective date of the Final Rule must be stopped and regenerated when the new requirements become effective, the result will be massive disruption of physical power transfers.[35]

b. Commission Determination

23. We clarify that the requirement for the Commission to be included in the CC field on the e-Tags applies only to e-Tags created on or after the compliance date of Order No. 771 (i.e., March 15, 2013). Accordingly, pre-existing e-Tags do not need to be stopped, regenerated, or otherwise modified.

3. Confidentiality of E-Tag Data Provided to Commission

a. Comments

24. EEI/NRECA encourage the Commission to ensure that its recently revised regulations for privileged and confidential information at 18 CFR Part 388 will not inadvertently create any problems for protecting the confidentiality of e-Tag data.[36] EEI/NRECA argue that, as amended, 18 CFR 388.112(b)(1) generally requires parties filing confidential information to identify the filing as containing confidential information with certain markings on each page and justification for non-release and other requirements that are not workable in the e-Tag context.[37]

25. Similarly, Southern asks the Commission to clarify that Balancing Authorities are not obligated to put a ''confidentiality stamp'' on e-Tags, as required for documents to prevent them from disclosure.[38] EEI/NRECA and Southern ask the Commission to specify that it will handle all e-Tag information as confidential without the need to comply with the requirements of section 388.112 of the Commission's regulations and that the Commission will not

[28] Neither the Final Rule nor this order preclude Sink Balancing Authorities and their Authority Services from conferring and agreeing on the best way to implement the validation requirement within the time limits provided by this order.

[29] We note, however, that in its comments filed on March 26, 2012, in response to the Notice of Proposed Rulemaking in this proceeding, NAESB stated that there may be ''fairly simple technical approaches'' to meet the Commission's request to receive all e-Tags used to schedule the transmission of power.

[30] OATI at 2.

[31] *Id.* at 2.

[32] These figures are based on staff analysis of the OATI webRegistry, or NAESB Electric Industry Registry, published on February 22, 2013.

[33] EEI/NRECA at 9; Southern Companies at 3, 7.

[34] EEI/NRECA at 9.

[35] Southern at 7.

[36] EEI/NRECA at 5.

[37] *Id.* at 10.

[38] *Id.* at 3, 8.

release the information to third parties in response to a FOIA request without first notifying the e-Tag Author and giving the e-Tag Author adequate time to respond to the request by justifying non-disclosure.[39] EEI/NRECA add that any information the author identifies as confidential is protected by a confidentiality agreement if it is released in response to a FOIA request.

26. Southern asks the Commission to clarify that, once e-Tag information is provided to the Commission, it meets the requirements of exemption 4 under FOIA, as it is information that would be otherwise privileged or confidential.[40] In addition, Southern states that Balancing Authorities should not be liable for any disclosure of confidential e-Tag information, including inadvertent publication of e-Tag information by a recipient of e-Tag data under Order No. 771 and publication of e-Tag data subject to FOIA.[41]

b. Commission Determination

27. In light of the concerns raised by EEI/NRECA with respect to claims of privileged or confidential information, the Commission will handle e-Tag information as privileged or confidential under section 388.112 of the Commission's regulations without the need for e-Tag Authors and Balancing Authorities to include certain markings required under section 388.112(b)(1) of the Commission's regulations.[42] In other words, the Commission will deem e-Tags made available to the Commission under Order No. 771 as universally being provided subject to a request for confidential treatment and e-Tag Authors do not need to separately make a request for confidential treatment in each instance for this to apply. This does not, however, foreclose the rights of persons to make a request for disclosure of this information under the Freedom of Information Act and the provisions of 18 CFR 388.108.

28. We decline to specify, as requested by Southern, that e-Tag information provided to the Commission meets the requirements of exemption 4 of FOIA because it is information that would be otherwise privileged or confidential. Order No. 771 acknowledged that some of the information contained in the e-Tags is likely to be commercially sensitive and that disclosure of such data may result in competitive harm to market participants and the market as a whole without reasonable confidentiality restrictions.[43] To the extent a person files a request to obtain e-Tag data from the Commission under the Freedom of Information Act (FOIA), we expect that any commercially-sensitive e-Tag data would be protected from disclosure if it satisfies the requirements of FOIA's exemption 4, which protects trade secrets and commercial or financial information that is privileged or confidential.[44] Nonetheless, such requests must be evaluated on a case-by-case basis and we cannot peremptorily foreclose such requests, as requested by Southern.

29. In addition, we find that, consistent with the procedures set forth in section 388.112(d) of the Commission's regulations, the Commission will not release e-Tag information to third parties in response to a FOIA request without first notifying the e-Tag Author and any relevant Sink Balancing Authority and giving the e-Tag Author and any Sink Balancing Authority an opportunity (at least five calendar days) in which to comment in writing on the request. If the e-Tag Author objects to the release of e-Tag information, and if the Commission or an appropriate Commission official determines that such information should be released, notice will be given to the e-Tag Author no less than five calendar days before disclosure, pursuant to section 388.112(e) of the Commission's regulations.

30. As to Southern's request that we determine that Balancing Authorities will not be held liable for inadvertent disclosure of confidential e-Tag information, we will address this request in our further rehearing order.

4. Internal E-Tags

a. Comments

31. EEI/NRECA ask the Commission to clarify that it is not seeking e-Tags that are used within a Balancing Authority for internal purposes, such as where there is only one ''party'' to an e-Tag.[45] EEI/NRECA state that such e-Tags are often used by companies and cooperatives to manage their internal systems within their service territories.[46]

b. Commission Determination

32. As noted above, e-Tags are used to schedule interchange transactions in wholesale markets, which are defined as ''[a]n agreement to transfer energy from a seller to a buyer that crosses one or more Balancing Authority Area boundaries.''[47] However, in practice, as noted by EEI/NRECA, e-Tags can also be used to schedule internal, or Intra-Balancing Authority, transactions. Business practice standards related to Intra-Balancing Authority e-Tags are the same as the standards that apply to e-Tags that cross Balancing Authority Area boundaries.[48] As such, we find that treating Intra-Balancing Authority e-Tags in the same manner as interchange e-Tags would be consistent with, and least disruptive of, established industry practice and fall within the categories of e-Tags that we required to be made available to the Commission in Order No. 771. Therefore, we clarify that e-Tag Authors, through their Agent Service, must include the Commission on the CC list of entities with view-only rights for all e-Tags covered by the Final Rule, which include intra-Balancing Authority e-Tags of the type described by EEI/NRECA.

33. Additionally, requiring that all e-Tags, including Intra-Balancing Authority e-Tags, include the Commission on the CC list simplifies compliance with the requirements of Order No. 771 for e-Tag Authors and Sink Balancing Authorities. Specifically, if the Commission created an exception whereby a limited number of Intra-Balancing Authority e-Tags do not include the Commission on the CC list, then Balancing Authorities would need to take additional steps to ensure that their validation procedures did not incorrectly reject these e-Tags. Simply put, by not allowing this exception for Intra-Balancing Authority e-Tags, Balancing Authorities with validation responsibilities would simply check

[39] EEI/NRECA at 10; Southern at 3, 9.

[40] Southern at 3, 8.

[41] *Id.* at 9.

[42] Section 388.112(b)(1) of the Commission's regulations, 18 CFR 388.112(b)(1), requires, among other matters, certain markings to be placed on ''documents'' that are filed with the Commission. Specifically, section 388.112(b)(1) provides: ''A person requesting that a document filed with the Commission be treated as privileged or CEII must designate the document as privileged or CEII in making an electronic filing or clearly indicate a request for such treatment on a paper filing. The header of the first page of the cover sheet or transmittal letter and of the pages or portions of the document containing material for which privileged treatment is claimed should be clearly marked in bold, capital lettering, indicating that it contains privileged, confidential and/or Critical Energy Infrastructure Information, as appropriate, and market □ DO NOT RELEASE. □''

[43] Order No. 771, FERC Stats & Regs ¶ 31,339 at P 58.

[44] *Id.*

[45] EEI/NRECA at 8.

[46] *Id.* at 8.

[47] *See* Order No. 771, FERC Stats & Regs ¶ 31,339 at P 3 n.8 (citing NERC's *Glossary of Terms Used in Reliability Standards* (updated November 15, 2012), *available at http://www.nerc.com/files/Glossary_of_Terms.pdf).*

[48] In particular, the NAESB Wholesale Electric Quadrant (WEQ) Business Practice Standards (Coordinate Interchange) requirement 004–1.1 provides that ''[t]o the extent that intra BA transactions are submitted as a RFI, those transactions will be subject to all provisions of this Business Practice Standard WEQ–004.''

only the CC list of an e-Tag to see if the Commission is included. If an Intra-Balancing Authority exception were created, Balancing Authorities with validation responsibilities would first need to check the market and physical segments of an e-Tag to see if they met additional criteria, and then check to see if the Commission is included on the CC list. Likewise, e-Tag Authors would have to develop additional procedures to ensure an Intra-Balancing Authority exception was appropriately implemented.

5. Balancing Authorities

a. Comments

34. OATI states that Order No. 771 creates certain obligations on ''Balancing Authorities'' and notes that multiple Balancing Authorities can be listed on a single e-Tag. OATI seeks clarification that the Final Rule refers to the Balancing Authority serving as the Sink Balancing Authority and providing e-Tag Authority Services for the particular e-Tag transaction, rather than to other Balancing Authorities that may be listed on the e-Tag.[49]

b. Commission Determination

35. Order No. 771 imposes certain requirements on Balancing Authorities located within the United States with respect to ensuring Commission access to e-Tags.[50] In response to OATI's question, we clarify that the requirements on Balancing Authorities to ensure Commission access to e-Tags relate only to the Sink Balancing Authority on an e-Tag and not to other Balancing Authorities that may be included on an e-Tag.[51]

The Commission orders:

The Commission hereby grants rehearing in part, and denies rehearing in part, as discussed in the body of the order.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–05856 Filed 3–13–13; 8:45 am]

BILLING CODE 6717–01–P

[49] OATI at 6.

[50] *See* Order No. 771, FERC Stats & Regs ¶ 31,339 at P 39; 18 CFR 366.2(d).

[51] *See, e.g.,* NAESB Wholesale Electric Quadrant (WEQ) Business Practice Standards (Coordinate Interchange) requirement 004–1 (''All requests to implement bilateral Interchange * * * between a Source BA and Sink BA, where one or both BAs are located in either the Eastern or Western Interconnection, shall be accomplished by the submission of a completed and accurate RFI) to the Sink BA's registered e-Tag Authority Service'') and requirement 004–2 (''Until other means are adopted by NAESB, the primary method of submitting the RFI shall be an e-Tag communicated to and managed by the Sink BA's registered e-Tag authority service using protocols compliant with the Version 1.8.1 Electronic Tagging Functional Specification.'' (Emphasis added.)). *See* NAESB Wholesale Electric Quadrant (WEQ) Business Practice Standards (Version 003), published July 31, 2012.

DEPARTMENT OF JUSTICE

28 CFR Part 58

[Docket No EOUST 102]

RIN 1105–AB17

Application Procedures and Criteria for Approval of Nonprofit Budget and Credit Counseling Agencies by United States Trustees

AGENCY: Executive Office for United States Trustees (''EOUST''), Justice.

ACTION: Final rule.

SUMMARY: This final rule (''rule'') sets forth procedures and criteria United States Trustees shall use when determining whether applicants seeking to become and remain approved nonprofit budget and credit counseling agencies (''credit counseling agencies'' or ''agencies'') satisfy all prerequisites of the United States Code, as implemented under this rule. Under the current law, an individual may not be a debtor under title 11 of the United States Code, unless during the 180-day period preceding the date of filing a bankruptcy petition, the individual receives adequate counseling from a credit counseling agency that is approved by the United States Trustee. The current law enumerates mandatory prerequisites and minimum standards applicants seeking to become approved credit counseling agencies must meet. Under this rule, United States Trustees will approve applicants for inclusion on publicly available agency lists in one or more federal judicial districts if an applicant establishes it meets all the requirements of the United States Code, as implemented under this rule. After obtaining such approval, a credit counseling agency shall be authorized to provide credit counseling in a federal judicial district during the time the agency remains approved.

EOUST intends to add to its regulations governing credit counseling agencies, two new provisions not previously included in the proposed rule on this subject. A new section 58.17(c)(11) will require agencies to notify the United States Trustee of certain actions pursuant to 11 U.S.C. 111(g)(2) or other consumer protection statutes, such as an entry of judgment or mediation award, or the agency's entry into a settlement order, consent decree, or assurance of voluntary compliance. The second provision will amend section 58.20(j) to require an agency to assist an individual with limited English proficiency by expeditiously directing the individual to an agency that can provide counseling in the language of the individual's choice. Because these provisions were not discussed in the proposed rule published on February 1, 2008, EOUST will publish another Notice of Proposed Rulemaking requesting public comment with respect to these two provisions.

DATES: *Effective Date:* This rule is effective April 15, 2013.

ADDRESSES: EOUST, 441 G Street NW., Suite 6150, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Doreen Solomon, Assistant Director for Oversight on (202) 307–2829 (not a toll-free number), Wendy Tien, Deputy Assistant Director for Oversight on (202) 307–3698 (not a toll-free number), or Larry Wahlquist, Office of the General Counsel on (202) 307–1399 (not a toll-free number).

SUPPLEMENTARY INFORMATION: On July 5, 2006, EOUST published an interim final rule entitled *Application Procedures and Criteria for Approval of Nonprofit Budget and Credit Counseling Agencies and Approval of Providers of a Personal Financial Management Instructional Course by United States Trustees* (''Interim Final Rule''). 71 FR 38,076 (July 5, 2006). Due to the necessity of quickly establishing a regulation to govern the credit counseling application process, EOUST promulgated the Interim Final Rule rather than a notice of proposed rulemaking (''proposed rule''). On February 1, 2008, at 73 FR 6,062, EOUST published a proposed rule on this topic in an effort to maximize public input, rather than publishing a final rule after publication of the Interim Final Rule. Before the comment period closed on April 1, 2008, EOUST received forty seven comments. The comments received and EOUST's responses are discussed below. This rule finalizes the proposed rule with changes that, in some cases, reduce the burden on credit counseling agencies while maintaining adequate protections for consumers.

This rule implements the credit counseling sections of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (''BAPCPA''), Public Law 109–8, 119 Stat. 23, 37, 38 (April 20, 2005), which are codified at 11 U.S.C. 109(h) and 111. Effective October 17, 2005, an individual may not be a debtor under title 11 of the United States Code unless during the 180-day period preceding the date of filing a bankruptcy petition, the individual