Suffolk, VA, Suffolk Executive, RNAV (GPS) RWY 4, Amdt 1
Suffolk, VA, Suffolk Executive, RNAV (GPS) RWY 7, Orig
Suffolk, VA, Suffolk Executive, GPS RWY 7, Orig-B, CANCELLED
Suffolk, VA, Suffolk Executive, Takeoff Minimums and Textual DP, Amdt 3
Oak Harbor, WA, Wes Lupien, RNAV (GPS) RWY 7, Orig-A
Oak Harbor, WA, Wes Lupien, RADAR–1, Orig
Laramie, WY, Laramie Regional, RNAV (GPS) RWY 12, Orig
Laramie, WY, Laramie Regional, RNAV (GPS) RWY 30, Orig
Laramie, WY, Laramie Regional, VOR/DME OR TACAN RWY 12, Amdt 6
Laramie, WY, Laramie Regional, VOR/DME OR TACAN RWY 30, Amdt 7

** * * Effective 03 August 2006*

Chickasha, OK, Chickasha Muni, NDB RWY 17, Amdt 1, CANCELLED
Washington, PA, Washington County, NDB RWY 27, Amdt 1, CANCELLED

[FR Doc. 06–4067 Filed 5–3–06; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35, 37 and 38

[Docket No. RM05–5–000; Order No. 676]

Standards for Business Practices and Communication Protocols for Public Utilities

Issued April 25, 2006.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations under the Federal Power Act to incorporate by reference the following standards promulgated by the Wholesale Electric Quadrant of the North American Energy Standards Board: Business Practices for Open Access Same-Time Information Systems (OASIS); Business Practices for OASIS Standards and Communication Protocols; OASIS Data Dictionary; Coordinate Interchange; Area Control Error (ACE) Equation Special Cases; Manual Time Error Correction; and Inadvertent Interchange Payback. Incorporating these standards by reference into the Commission's regulations will standardize utility business practices and transactional processes and OASIS procedures.

DATES: This Final Rule will become effective June 5, 2006. The incorporation by reference of certain standards listed in this Final Rule is approved by the Director of the **Federal Register** as of June 5, 2006. Public utilities must implement the standards adopted in this Final Rule by July 1, 2006, and must file revisions to their open access transmission tariffs (OATTs) to include these standards in accordance with the following schedule. On or after June 1, 2006, a public utility proposing OATT revisions unrelated to this rule is required to include the standards adopted in this Final Rule as part of that filing. (Prior to June 1, 2006, a public utility making OATT revisions unrelated to this rule has the option of including the standards adopted in this Final Rule as part of that filing.) As the standards adopted in this Final Rule must be implemented by July 1, 2006, the OATT revisions filed to comply with this rule are to include an effective date of July 1, 2006. Any requests for waiver of any of these standards must be filed on or before June 1, 2006.

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Kay Morice (technical issues), Office of Energy Markets and Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–6507.

Gary D. Cohen (legal issues), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8321.

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Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeen G. Kelly.

1. The Federal Energy Regulatory Commission (Commission) is amending its regulations under the Federal Power Act (FPA)[1] to incorporate by reference certain standards promulgated by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB). These standards establish a set of business practice standards and communication protocols for the electric industry that will enable industry members to achieve efficiencies by streamlining utility business and transactional processes and communication procedures. The standards replace, with modifications, the Commission's existing Business Practice Standards for Open Access Same-Time Information Systems (OASIS) Transactions and OASIS Standards and Communication Protocols and Data Dictionary requirements. In addition, the standards include business practices to complement the North American Electric Reliability Council's (NERC) Version 0 reliability standards and ultimately the standards to be adopted by the Electric Reliability Organization (ERO) pursuant to Order Nos. 672 and 672–A.[2] Adopting these standards will establish a formal ongoing process for reviewing and upgrading the Commission's OASIS standards as well as adopting other electric industry business practice standards.

I. Background

2. When the Commission developed its OASIS regulations, OASIS Standards and Communication Protocols, Data Dictionary, and OASIS Business Practice Standards, it relied heavily on the assistance provided by all segments of the wholesale electric power industry and its customers in the ad hoc working groups that came together and offered consensus proposals for the

[1] 16 U.S.C. 791a, *et seq.*

[2] *See* 18 CFR Part 39 Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards, Order No. 672, 71 FR 8662 (corrected at 71 FR 11505), FERC Stats. & Regs. ¶ 31, 204, Order No. 672–A, 71 FR 19814 (2006), 114 FERC ¶ 61,328 (2006).

Commission's consideration.[3] While this process was very successful, it became apparent to the Commission that ongoing issues remained that would be better addressed by an ongoing industry group dedicated to drafting consensus industry standards to implement the Commission's OASIS-related policies as well as to complement policies on other industry business practices.

3. On December 19, 2001, the Commission issued an order asking the wholesale electric power industry to develop business practice standards and communication protocols by establishing a single consensus, industry-wide standards organization for the wholesale electric industry.[4]

4. Subsequently, in 2002, the Gas Industry Standards Board stepped forward and volunteered to play this role by modifying its organization to broaden the scope of its activities to address electric power standards. The result of this reorganization has been the emergence of NAESB's WEQ, a non-profit, industry-driven organization working to reach consensus on standards to streamline the business practices and transactional processes within the wholesale electric industry and proposing and adopting voluntary communication standards and model business practices.

5. The WEQ's procedures ensure that all industry members can have input into the development of a business practice standard, whether or not they are members of NAESB, and each standard it adopts is supported by a consensus of the five industry segments: transmission, generation, marketer/brokers, distribution/load serving entities, and end users.[5]

6. The Commission also urged the industry to expeditiously establish the procedures for ensuring coordination between NERC and NAESB, and requested NAESB and others to file an update on the progress on coordination between it and NERC 90 days after the formation of the WEQ.[6] In response to the Commission's request, NAESB and NERC filed a joint letter, on December 16, 2002, explaining that they had signed a memorandum of understanding (MOU) ''designed to ensure that the development of wholesale electric business practices and reliability standards are harmonized and that every practicable effort is made to eliminate overlap and duplication of efforts between the two organizations.'' The MOU describes, among other coordination procedures, the establishment of a Joint Interface Committee (JIC) that will review all standards development proposals received by either organization and determine which organization should be assigned to draft the relevant standards.

7. On January 18, 2005, NAESB submitted a status report to the Commission detailing the WEQ's activities over the two years since the group's inception, and informed the Commission that it had adopted its first set of business practice and communication standards for the electric industry (Version 000). NAESB stated that these standards, in addition to adopting the Commission's existing OASIS standards, included improvements and revisions to: (1) Facilitate the redirection of transmission service; (2) address multiple submissions of identical transmission requests/queuing issues; (3) address OASIS posting requirements under Order No. 2003 (the Large Generator Interconnection rule);[7] and (4) provide non-substantive editing to improve the formatting, organization, and clarity of the text.

8. In its report, NAESB also informed the Commission that the WEQ adopted four business practice standards to complement NERC's Version 0 reliability standards.[8] NAESB stated that these business practice standards were developed as part of a joint effort with NERC in which the JIC divided the existing NERC operating policies into reliability standards for development by NERC and business practices standards for development by NAESB.

9. Further, NAESB stated that the WEQ had adopted business practice standards for Standards of Conduct to implement the Commission's requirements in Order Nos. 2004, 2004–A, and 2004–B.[9]

10. In response to NAESB's report, on May 9, 2005, the Commission issued a Notice of Proposed Rulemaking (Standards NOPR)[10] that proposed to incorporate by reference the following Version 000 standards developed by the WEQ: (1) Business Practices for Open Access Same-Time Information Systems (OASIS), with the exception of standards that duplicate the Commission's regulations; (2) Business Practices for Open Access Same-Time Information Systems (OASIS) Standards & Communication Protocols; and (3) an OASIS Data Dictionary. The Commission also proposed to incorporate by reference the WEQ's business practice standards on Coordinate Interchange, Area Control Error (ACE) Equation Special Cases, Manual Time Error Correction, and Inadvertent Interchange Payback. The Commission did not propose to incorporate by reference Standard 001–9.7 concerning redirects of transmission service,[11] because the standard was unclear and could be interpreted to conflict with provisions of the *pro forma* open access transmission tariff (OATT).[12] The Commission also did not propose to incorporate by reference the WEQ's Standards of Conduct for Electric Transmission Providers (WEQ–009) because they duplicate the

[3] *See Open Access Same-Time Information System and Standards of Conduct,* Order No. 889, 61 FR 21737, FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 31,035 at 31,588–9 (1996), Order No. 889–A, 62 FR 12484, FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31, 049 (1997). *See Open Access Same-Time Information System and Standards of Conduct,* Order No. 638, 65 FR 17370, FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,093 (2000).

[4] *See Electricity Market Design and Structure,* 97 FERC ¶ 61,289 (2001) (December 2001 Order), 99 FERC ¶ 61,171 (2002) (May 2002 Order), *reh'g denied,* 101 FERC ¶ 61,297 (December 2002 Order).

[5] Under the WEQ process, for a standard to be approved, it must receive a super-majority vote of 67 percent of the members of the WEQ's Executive Committee with support from at least 40 percent of each of the five industry segments. For final approval, 67 percent of the WEQ's general membership must ratify the standards.

[6] May 2002 Order at P 22.

[7] *See Standardization of Generator Interconnection Agreements and Procedures,* Order No. 2003, 68 FR 49846, 68 FR 69599, FERC Stats. & Regs., Regulations Preambles ¶ 31,146 (2003), *order on reh'g,* Order No. 2003–A, 69 FR 15932, FERC Stats. & Regs., Regulations Preambles ¶ 31,160 (2004), *order on reh'g,* Order No. 2003–B, 70 FR 265, FERC Stats & Regs., Regulations Preambles ¶ 31,171 (2004), *order on rehearing,* Order No. 2003–C, 70 FR 37661, FERC & Stats. ¶ 31,190 (2005), *appeal pending sub nom. National Ass'n of Regulatory Commissioners* v. *FERC,* D.C. Cir. Nos. 04–1148, *et al.*

[8] These standards include: Coordinate Interchange; Area Control Error (ACE) Equation Special Cases; Manual Time Error Correction; and Inadvertent Interchange Payback.

[9] *Standards of Conduct for Transmission Providers,* Order No. 2004, 68 FR 69134, FERC Stats. & Regs., Regulations Preambles ¶ 31,155 (2003) (Order No. 2004), *order on reh'g,* Order No. 2004–A, 69 FR 23562, FERC Stats. & Regs., Regulations Preambles ¶ 31,161 (2004), *order on reh'g and clarification,* Order No. 2004–B, 69 FR 48371, FERC Stats. & Regs., Regulations Preambles ¶ 31,166 (2004), *order on reh'g and clarification,* Order No. 2004–C, 70 FR 284, FERC Stats. & Regs., Regulations Preambles ¶ 31,172 (2005), *order on reh'g and clarification,* Order No. 2004–D, 110 FERC ¶ 61,320 (2005), *appeal pending sub nom. American Gas Association* v. *FERC,* D.C. Cir. No. 04–1178, *et al.* (filed June 9, 2004 and later).

[10] *Standards for Business Practices and Communication Protocols for Public Utilities,* Notice of Proposed Rulemaking, 70 FR 28222 (May 17, 2005), FERC Stats. & Regs. ¶ 32,582 (2005).

[11] On November 16, 2005, NAESB filed a report notifying the Commission that the WEQ business practice standards had been renumbered for ease of reference and to ensure the uniqueness of the number, but the text of the standards had not been changed. References in this order are to the revised standard numbers.

[12] The Commission did, however, invite comment on this issue.

Commission's regulations on this subject.

11. Twenty-three comments were filed in response to the Standards NOPR.[13] These comments raise a number of issues concerning the relationship of the standards to reliability standards, the substance of specific standards, and the availability and process for obtaining regional variances and waivers of the standards.

II. Discussion

12. The Commission is pleased that the WEQ has begun the process of developing business practice and communication standards for the electric industry. Standardization of business practices and communication processes will benefit the electric industry by providing for uniform methods of doing business with different transmission providers. Many participants in electric markets conduct business transactions involving a number of different transmission providers and establishing a uniform set of procedures and communication protocols will help make such transactions more efficient. Moreover, having the industry consider business practice standards through a consensus process may result in the industry devising ways to improve and make business practices more efficient.

13. The Version 000 standards adopted by the WEQ establish the baseline upon which future wholesale electric business practice standards can be built. The WEQ has, for example, adopted the existing Commission OASIS standards, but significantly has modified these standards to provide customers with greater flexibility.

14. The WEQ also adopted business practice standards that complement NERC's Version 0 reliability standards. The development of such standards will be of increasing importance in the future as the Commission approves reliability standards under the recently enacted Energy Policy Act of 2005 (EPAct 2005).[14] Business practice and reliability standards must complement each other to support an efficient grid. Companies need to have means of conducting business that ensure compliance with the reliability standards. We, therefore, are pleased NERC and NAESB have developed operating protocols that synchronize their standards development to provide for efficient and coordinated implementation of their respective standards.

15. In addition, since the electric industry relies heavily on natural gas as a fuel source, it is becoming increasingly important for the business practices and communication protocols of these industries to work together efficiently. Because NAESB develops business practice and communication standards for the wholesale and retail natural gas and electric industries, NAESB standards will enable participants in these industries to better coordinate their activities and improve their communications.[15]

16. Nonetheless, while standardization of business practice and communication standards will promote efficient transactions, we recognize that different regions may conduct business differently and regional variations may be needed. The WEQ standards we adopt in this order include standards recognizing such regional differences. Similarly, transmission providers use different business models. For example, independent system operators (ISOs), regional transmission organizations (RTOs), and traditional vertically integrated public utilities conduct business in very different ways, and the WEQ standards will need to recognize such differences.

17. A number of parties have raised issues with respect to the applicability of certain WEQ standards to specific circumstances. In the future, we would encourage all industry participants to raise such issues during the standard development process so that all industry segments can determine whether a particular standard should recognize such differences. This process may resolve requests before they reach the Commission. Even if the request is not satisfactorily resolved by the WEQ, the process will help create a record should the requester seek a variance or waiver when the standard is presented to the Commission.

18. We recognize that with respect to the standards being incorporated in this Final Rule, parties cannot seek review of their issues at the WEQ prior to implementation. Rather than seek to resolve these specific issues in a generic proceeding, we are establishing a process for those parties to file requests for waiver with respect to particular standards prior to implementation of this Final Rule.

19. The specific standards developed by the WEQ that we are incorporating by reference in this Final Rule are as follows:

- Business Practices for Open Access Same-Time Information Systems (OASIS) (WEQ–001, Version 000, January 15, 2005, with minor corrections applied on March 25, 2005, and additional numbering added October 3, 2005) including Standards 001–0.2 through 001–0.8, 001–2.0 through 001–9.6.2, 001–9.8 through 001–10.8.6, and Examples 001–8.3–A, 001–9.2–A, 001–10.2–A, 001–9.3–A, 001–10.3–A, 001–9.4.1–A, 001–10.4.1–A, 001–9.4.2–A, 001–10.4.2–A, 001–9.5–A, 001–10.5–A, 001–9.5.1–A, and 001–10.5.1–A;
- Business Practices for Open Access Same-Time Information Systems (OASIS) Standards & Communication Protocols (WEQ–002, Version 000, January 15, 2005, with minor corrections applied on March 25, 2005, and additional numbering added October 3, 2005) including Standards 002–1 through 002–5.10;
- Open Access Same-Time Information Systems (OASIS) Data Dictionary (WEQ–003, Version 000, January 15, 2005, with minor corrections applied on March 25, 2005, and additional numbering added October 3, 2005) including Standard 003–0;
- Coordinate Interchange (WEQ–004, Version 000, January 15, 2005, with minor corrections applied on March 25, 2005, and additional numbering added October 3, 2005) including Purpose, Applicability, and Standards 004–0 through 004–13, and 004–A through 004–D;
- Area Control Error (ACE) Equation Special Cases Standards (WEQ–005, Version 000, January 15, 2005, with minor corrections applied on March 25, 2005, and additional numbering added October 3, 2005) including Purpose, Applicability, and Standards 005–0 through 005–3.1.3, and 005–A;
- Manual Time Error Correction (WEQ–006, Version 000, January 15, 2005, with minor corrections applied on March 25, 2005, and additional numbering added October 3, 2005) including Purpose, Applicability, and Standards 006–0 through 006–12; and
- Inadvertent Interchange Payback (WEQ–007, Version 000, January 15, 2005, with minor corrections applied on March 25, 2005, and additional numbering added October 3, 2005) including Purpose, Applicability, and Standards 007–0 through 007–2, and 007–A.

20. The Commission will also require public utilities to modify their OATTs to include the WEQ standards that we are incorporating by reference, the next time they make any unrelated filing to revise their OATTs. We also clarify that, to the extent that a public utility's OASIS obligations are administered by an ISO or RTO and are not covered in its OATT, the public utility will not need to modify its OATT to meet these particular requirements.

[13] The Appendix provides a list of the comments received and the abbreviations used to refer to individual commenters in this rule.

[14] Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005), 42 U.S.C. 15801 *et seq.* *See* Order Nos. 672 and 672–A.

[15] Indeed, NAESB already has developed business practice standards to enable the wholesale gas and electric industries to communicate more effectively. *See* NAESB reports in Docket Nos. RM05–28–000, RM96–1–027, and RM05–5–001, where NAESB submitted to the Commission business practice standards it had adopted for the wholesale gas and electric industries (filed on June 27 and 28, 2005).

21. We will address below the issues raised in the comments on the standards.

A. Business Practice Standards Complementing NERC Reliability Standards

22. As explained above, when NAESB's WEQ was formed, NERC and NAESB signed an MOU that set up the JIC.[16] The MOU was subsequently amended to include participation by the ISO/RTO Council.[17] Among other duties, the JIC determines whether a proposed standard is a reliability standard to be developed by NERC or is a business practice standard to be developed by NAESB.

23. The JIC unanimously approved the drafting committee's determination that certain standards be developed as business practice standards by NAESB. Among them were: Coordinate Interchange; ACE Equation Special Cases; Manual Time Error Correction; and Inadvertent Interchange Payback.[18] These standards previously had been part of NERC's policy statements, which included both reliability and commercial components. The translation of the reliability and commercial components of the existing NERC policy statements into standards resulted in the NERC Version 0 reliability standards dealing with the reliability component and the complementary WEQ Version 000 business practice standards dealing with the commercial component. Any changes that were required to bring the standards up to date were to be made in subsequent Version 1 standards.[19]

Comments

24. NERC and other commenters[20] supporting NERC's position, requested that the Commission defer action on three of the WEQ standards designed to complement NERC's Version 0 reliability standards, so that these standards could be developed as reliability standards by NERC.[21] Other commenters expressed confidence that NERC and NAESB could resolve any differences.[22]

25. Subsequently, NERC and NAESB have resolved this issue. In comments filed on February 21, 2006, by NERC and on February 17, 2006 by NAESB, they report that NERC is withdrawing its request to the Commission to defer action on the three standards, and NERC states that the three standards complement and are consistent with the existing NERC Version 0 reliability standards.[23] In addition, NERC and NAESB inform the Commission that they are in the process of finalizing new procedures for coordinating the development of standards in areas that affect both reliability and business practices. The new approach will allow reliability standards to be developed under the NERC process and business practices to be developed under the NAESB process, while the actual development work will be done by a joint team sponsored by NERC and NAESB.

Commission Conclusion

26. The Commission is pleased that NERC and NAESB have reached agreement on how to deal with the three standards[24] and commends their efforts to develop an improved process for standards development. The Commission agrees that appropriate classification of standards between reliability and business practices is important, because the statutory procedures under which the Commission adopts business practice and reliability standards differ significantly. An improved process by NERC and NAESB for standards development should form a firm foundation for ensuring that standards in these two important areas are properly developed, classified, and coordinated so that the grid can run efficiently. We look forward to hearing that the parties have finalized their process.

27. The Commission incorporates by reference the four NAESB standards complementing NERC reliability standards: Coordinate Interchange, Area Control Error (ACE) Equation Special Cases, Manual Time Error Correction, and Inadvertent Interchange Payback. We address below issues raised in comments with respect to some of the standards.

1. Inadvertent Interchange Payback

28. The Inadvertent Interchange Payback standards define the methods by which energy imbalances between Balancing Authorities can be repaid. Inadvertent Interchange occurs when a Balancing Authority is not able to fully balance generation and load within its area. The standards permit Balancing Authorities to repay imbalances though bilateral in-kind payback, unilateral in-kind payback, or ''other payback methods,'' *e.g.*, through financial payments.

Comments

29. In its February 17, 2006 comments, NAESB informs the Commission that based on the report of its Inadvertent Interchange Payback Task Force (Task Force), it does not recommend any additional changes to the commercial business practices for inadvertent interchange payback at this time. The Task Force report recognized that significant effort was expended by NAESB and its member organizations to develop an Inadvertent Interchange settlement standard that would mitigate the potential financial gain that misuse of the payback-in-kind methodology might create. However, a majority of the Task Force members determined that, at this time, no consensus regarding any proposed solutions considered by the task force could gain approval. Each of the proposed solutions considered had one or more significant implementation hurdles to overcome, including but not limited to: data acquisition and integrity; pricing; credit; funding; and 100 percent participation of the affected interconnection.

30. TAPS claims that the proposed business practice continues the current practice of ''return-in-kind'' payment for inadvertent energy exchange between Balancing Authorities/control areas, while non-control areas remain subject to a $100/MWh charge for energy imbalance. TAPS argues that this treatment of non-control areas is discriminatory compared to the treatment of control area imbalances.[25]

Commission Conclusion

31. We are adopting the WEQ business practice standards (Standard WEQ–007) because they follow a long-standing industry practice for repaying imbalances between Balancing Authorities. TAPS does not claim that

[16] Memorandum of Understanding between North American Energy Standards Board and North American Electric Reliability Council, dated November 30, 2002 and filed in Docket No. RM01–12 on December 16, 2002.

[17] The ISO/RTO Council is comprised of the nine ISOs and RTOs in North America, including: Alberta Electric System Operator; California Independent System Operator Corporation; the Independent Electricity System of Ontario; ISO New England, Inc.; Midwest Independent Transmission System Operator, Inc.; New York Independent System Operator, Inc.; PJM Interconnection, LLC; the Electric Reliability Council of Texas (ERCOT); and the Southwest Power Pool.

[18] *See* NAESB Report on WEQ Business Practices, filed with the Commission on January 18, 2005, at 25–26.

[19] *Id.* at 2.

[20] Bonneville, CAISO, EEI, ISO/RTO Council, LADWP, Midwest ISO, NY Transmission Owners, and Southern Companies.

[21] ACE Equation Special Cases, Manual Time Error Correction, and Inadvertent Interchange Payback standards.

[22] EEI, FirstEnergy, and Exelon.

[23] NERC Supplementary Comments at 1.

[24] The three standards are: Area Control Error (ACE) Equation Special Cases, Manual Time Error Correction, and Inadvertent Interchange Payback.

[25] TAPS at 3–4.

return-in-kind payback should not be used by Balancing Authorities/control area; it contends only that it is discriminatory to limit this approach to Balancing Authorities. TAPS has raised the same issue in the Commission's rulemaking in RM05–25–000, where the Commission has issued a notice of inquiry to consider reforms to the Order No. 888 *pro forma* OATT and the OATTs of public utilities.[26] We find the issue of whether non-control areas should be allowed in-kind payback, as raised by TAPS, is more appropriately considered in the rulemaking in RM05–25–000, and we will address it there.

32. We are concerned that, as reported by NAESB, the existing Inadvertent Interchange Payback standards are susceptible to abuse for financial gain, particularly if such abuse can lead Balancing Authorities to create imbalances that may jeopardize reliability. We urge NERC and NAESB to continue to work cooperatively to revise these standards to ensure that Inadvertent Interchange Payback cannot be abused and that reliability is not jeopardized by such actions. We emphasize that these standards refer only to *inadvertent* interchange, not to advertent actions, and that the Commission does not condone abusive actions taken by any party. The Commission retains authority under section 206 of the FPA to take actions in the event of such abuse.[27]

2. Manual Time Error Correction

33. The Manual Time Error Correction standards specify the procedure to be used for reducing a time error. The need for manual time error correction stems from the inability of Balancing Authorities to perfectly balance generation and load. The frequency of the Interconnection is normally scheduled to 60.00 Hz and Balancing Authorities attempt to balance generation and load in order to meet this objective. However, the balancing function is imperfect and over time the frequency will average slightly above or below 60.00 Hz resulting in mechanical electric clocks developing an error relative to true time.[28]

Comments

34. Bonneville and EEI claim that the chart on the second page of the Manual Time Error Correction standards (Standard 006–5) does not reflect a NERC waiver setting the Western Electricity Coordinating Council (WECC) initiation of manual time error as plus or minus five seconds instead of two seconds.[29]

Commission Conclusion

35. We will accept the WEQ's Manual Time Error standard (Standard WEQ–006). As to the concerns raised by the commenters, the waiver expired on February 8, 2004.[30] If a different timing requirement is needed by the WECC, the WECC or its members may seek such a change from the WEQ and, while that change is pending, request a waiver from the Commission allowing deviations from the requirements of the chart in Standard 006–5 in appropriate circumstances.

3. Coordinate Interchange

36. The Coordinate Interchange standards define procedures for market participants to request implementation of transactions crossing one or more Balancing Authority boundaries.

Comment

37. The ISO/RTO Council states that Appendix A of the Coordinate Interchange standards (Standard 004–A), dealing with interchange transactions from the Eastern Interconnection through the Southwest Power Pool (SPP) to ERCOT, is out of date. The ISO/RTO Council states that certain provisions of SPP's tariff recently have been changed and the Coordinate Interchange standards should be revised accordingly.

Commission Conclusion

38. We expect that, given the ever changing nature of the industry, the WEQ will revise its standards when appropriate.[31] In fact, the WEQ is already in the process of revising the Coordinate Interchange standards, including Appendix A.[32] We encourage the ISO/RTO Council to participate in the development of revised standards. In the meantime, we will accept the WEQ's Coordinate Interchange standards (Standard WEQ–004). The ISO/RTO Council, or its members, may request a waiver allowing deviations from the requirements of Appendix A in appropriate circumstances.

4. Definition of Terms

Comments

39. The ISO/RTO Council reports that the four NAESB standards define terms somewhat differently from the NERC definitions. The ISO/RTO Council would have NERC define reliability terms and NAESB use these definitions. In support of its argument, the ISO/RTO Council argues that operators should not have to understand more than one definition of the same item.[33]

Commission Conclusion

40. While we will accept the definitions associated with the four existing standards complementing NERC's Version 0 reliability standards so that these standards can be implemented, we agree with the ISO/RTO Council that in the future there should be a single definition of reliability terms. It is appropriate that NERC take the lead on defining these terms, as they are reliability-related, and that these same definitions be used by the WEQ in its standards. In future versions of the standards, NAESB should use the NERC definitions relating to reliability.

B. OASIS Business Practice Standards

1. Redirect Standard 001–9.7

41. The WEQ adopted standards intended to facilitate the redirect of transmission services. In the Standards NOPR, the Commission expressed concerns, and requested comment, about Standard 001–9.7 in relation to the policies the Commission has adopted in the *pro forma* OATT. Standard 001–9.7 states:

42. Unless otherwise mutually agreed to by the primary provider and original customer, a request for Redirect on a Firm basis does not impact the [Transmission Customer's] long term firm renewal rights (*e.g.*, rollover or evergreen rights) on the original path, nor does it confer any renewal rights on the redirected path.

43. In the Standards NOPR, the Commission expressed concern about how to interpret this standard in light of the rollover rights as defined in the *pro forma* OATT. The Commission requested comment on whether, if it determines that this standard is in conflict with its policies, there is an immediate need for a standard on this issue or whether the Commission can

[26] *Preventing Undue Discrimination and Preference in Transmission Services*, Notice of Inquiry, 70 FR 55796 (2005).

[27] *Southern California Edison Co.* v. *FERC*, 172 F.3d 74 (D.C. Cir. 1999).

[28] True time refers to the time maintained by the National Institute of Standards and Technology (NIST) in Boulder, Colorado.

[29] Bonneville at 7 and EEI at 4.

[30] *See* NERC Operating Committee letter issued on August 8, 2003 granting a waiver request on Western Interconnection thresholds to initiate manual corrections for time error.

[31] *See Standards for Business Practices of Interstate Natural Gas Pipelines*; Order No. 587, 61 FR 39053 (Jul. 26, 1996), FERC Stats. & Regs., Regulations Preambles ¶ 31,038, at 30,060 (Jul. 17, 1996) (''standards development is not like a sculptor forever casting his creation in bronze, but like a jazz musician who takes a theme and constantly revises, enhances, and reworks it'').

[32] *See* WEQ request for comments at *http://www.naesb.org/pdf2/weq_cibp010506req_com.doc.*

[33] IRC at 12–13.

wait for the WEQ to reconsider this issue and develop alternate language.

Comments

44. NAESB states that, during the deliberations on Standard 001–9.7, there was a concern that in some instances a transmission customer may wish to retain all rollover rights under an existing service agreement yet still request service over alternate points of receipt or delivery. Because of these issues, the WEQ determined that there may be circumstances with respect to redirects on a firm basis where the parties may mutually agree as to the disposition of rollover rights. NAESB states that it will develop alternate language, if the Commission determines that this standard conflicts with its policy.[34]

45. Bonneville asserts that Standard 001–9.7 can be read in harmony with the *pro forma* OATT and urges the Commission to adopt Standard 001–9.7 with one suggested modification. According to Bonneville, the Commission has stated that the redirect requestor retains the reservation priority rights afforded by section 2.2 of the *pro forma* OATT on the parent (or original) path. In the Standards NOPR, Bonneville contends, the Commission has suggested that the redirect requestor holds section 2.2 rights on both the parent path and the redirect path. Bonneville argues that, if this is allowed, a redirect requestor could encumber the future available transmission capability (ATC) of two paths for the price of one. It argues that the practical impact of requiring section 2.2 rights on both paths is that firm redirects will not be granted. Bonneville agrees with NAESB that rollover should not be given to the redirect request. However, Bonneville would create an exception when a long-term firm redirect reservation terminates when the service agreement terminates. Then Bonneville recommends moving the reservation priority from the original request path to the redirect request path and initiating a contract amendment for this type of redirect, thus allowing for contract modification on a firm basis with all the rights that flow with the service agreement. Bonneville contends that this approach will allow the redirect requestor to choose which path it values most, releasing the other path to new entrants.[35]

46. Southern Companies contends that a request by a transmission customer to redirect service on a firm basis does not change that customer's rollover rights on the original path and does not confer rollover rights on the redirected path. However, Southern Companies argues that transmission providers and transmission customers should have the ability to mutually agree to change the rollover rights from the original path to the redirected path if both parties find this beneficial. Southern Companies believes that Standard 001–9.7 allows for this flexibility.[36]

47. On the other hand, Cinergy shares the Commission's concern in the Standards NOPR that Standard 001–9.7 does not appear to be consistent with the *pro forma* OATT. Accordingly, Cinergy does not support its adoption. Cinergy contends that requests for redirect transmission service should be treated as a new transmission service request and the customer should be able to indicate whether any rollover rights are requested on the new path. If the remaining term of service on the original path with long-term firm rights is requested on the redirected path, the customer should be able to request rollover rights on the redirected path at the time of the request. If the redirected request is approved, the rollover rights on the existing path should terminate for the amount of service being redirected on a long-term firm basis.[37]

48. Likewise, Exelon argues that Standard 001–9.7 not be adopted for the reasons stated in the Standards NOPR. In Exelon's view, Standard 001–9.7 would permit a customer to relinquish rollover rights, contrary to the Commission's policy that transmission customers should not be permitted to contract away rollover rights because transmission owners could unfairly induce customers to give up their rollover rights.

49. Exelon also opposes adoption of Standard 001–9.7 because it would change the present Commission policy that allows rollover rights on a redirect of transmission. Exelon interprets Standard 001–9.7 to provide that a customer who is granted transmission on a new path would have to forego rollover rights on that new path. Exelon agrees with the Commission that rollover rights should be transferred to the new path. Exelon also states that Standard 001–9.7 begs the question of what would be the effect of a ''request'' for redirected service. Exelon believes that acceptance and confirmation by the transmission provider are necessary to grant the right for redirected service, but Standard 001–9.7 does not make that clear.[38]

50. The Midwest ISO believes that there is no immediate need to change the Commission's policy on redirect service and rollover rights and that the WEQ should be given a further opportunity to discuss with the industry any departure from the Commission's policy on rollover rights.[39]

Commission Conclusion

51. Standard 001–9.7 does not specify clearly the parties' responsibilities with respect to the ability of a customer requesting a firm redirect to obtain rollover rights on the redirect path.[40] Under section 22.2 of the *pro forma* OATT, a request for a firm redirect is like a request for new transmission service. The transmission provider, therefore, is required to offer rollover rights to a customer requesting a firm redirect if rollover rights are available on the redirect path. However, the transmission provider may not operationally be able to offer rollover rights on the requested redirect path due to reasonably forecasted native load needs for the transmission capacity.

52. Standard 001–9.7 provides that ''unless otherwise mutually agreed to by the primary provider and original customer, *a request for a Redirect on a Firm basis * * * [does not] confer any renewal rights on the redirect path.*'' (Emphasis added). This phrase could be interpreted to mean that the parties to an agreement may mutually agree to eliminate rollover rights and that a transmission provider may agree, but is not obligated, to offer rollover rights on the redirect path even when such rights are available. These provisions are inconsistent with the *pro forma* OATT and the Commission's policies. In addition, the last phrase of the standard also conflicts with the last sentence of section 22.2 of the *pro forma* OATT, which is limited to the period while the new request for service is pending. Therefore, we will not adopt Standard 001–9.7 at this time, but will allow the WEQ to reconsider the standard and to adopt a revised standard consistent with the Commission's policies.

53. The comments on this issue show that there is confusion in the industry regarding the provisions of sections 22.1 and 22.2 of the *pro forma* OATT. To assist the WEQ in developing a standard

[34] NAESB at 1–2.

[35] Bonneville at 2–5.

[36] Southern Companies at 1–2.

[37] Cinergy at 3–4.

[38] Exelon at 2–3.

[39] Midwest ISO at 3–4.

[40] Standard 001–9.7 appears consistent with section 22.2 of the existing *pro forma* OATT insofar as it provides that a customer requesting a firm redirect does not relinquish its rollover rights over its primary path simply by making the request.

that is consistent with the Commission's policy, we offer the following guidance.

54. Section 22 of the *pro forma* OATT addresses changes in service specifications. Section 22.1 pertains to modifications on a *non-firm* basis and section 22.2 covers modifications on a *firm* basis. Under section 22.1, a *firm* point-to-point transmission customer may request *non-firm* transmission service at secondary receipt and delivery points (points other than those specified in the service agreement). Section 22.1(c) provides that the transmission customer shall retain its right to schedule firm point-to-point transmission service at the receipt and delivery points specified in its relevant service agreement in the amount of its original capacity reservation.

55. Under section 22.2, any request by a transmission customer to modify receipt and delivery points on a *firm* basis is treated as a new request for service. This section also provides that, ''*[w]hile such new request is pending,* the Transmission Customer shall retain its priority for service at the existing *firm* Receipt and Delivery Points specified in its Service Agreement'' (emphasis added). Once the new request is accepted and confirmed, the transmission customer loses all rights to the original receipt and delivery points, including rollover rights associated with the original path.

56. Bonneville asserts that the Commission has stated that the redirect requestor retains section 2.2 reservation priority rights on its original path.[41] Under section 22.1(c), which pertains to redirects on a *non-firm* basis, the transmission customer retains its right to schedule firm point-to-point service on its original path. This means that the transmission customer retains its original rights on its original path including its rollover rights on its original path and the requestor does not obtain new rollover rights on the redirected path. However, there is no similar provision in section 22.2 for redirects on a *firm* basis.[42]

57. Southern Companies argues that a request by a transmission customer to redirect service on a firm basis cannot change that customer's rollover rights on the original path and does not confer rollover rights on the redirected path. We disagree. Section 22.2 provides that, while a transmission customer's request for new service on a firm basis is *pending*, the transmission customer retains its priority for service on its existing path, including rollover rights on its existing path. However, once a transmission customer's request for firm transmission service at new receipt and delivery points is accepted and confirmed, the new reservation governs the rights at the new receipt and delivery points and the transmission customer can obtain rollover rights with respect to the redirected capacity. In addition, at the time the transmission customer's request for the redirected capacity is accepted and confirmed, the transmission customer loses all rights to the original receipt and delivery points, including rollover rights associated with the original path.

58. As part of its process of review, NAESB identified several questions that were raised regarding rollover rights under the *pro forma* OATT during members' deliberations on Standard 001–9.7. These questions generally raised issues with respect to whether customers retain rollover rights on both the original and the redirected path.

59. A long-term firm transmission customer may request multiple, successive redirects and, as provided in section 22.2 of the *pro forma* OATT, each such successive request is treated as a new request for service in accordance with section 17 of the *pro forma* OATT. As a new request for service, each request is subject to the availability of capacity and subject to the possibility that the transmission provider may not be able to provide rollover rights on the new, redirected path. For example, assume a transmission customer with a one-year agreement for service between points A and B. If the transmission customer seeks to redirect on a firm basis in month 4 to points C to D and then redirect back to points A to B thereafter, at the end of the one year agreement the transmission customer would have rollover rights only with respect to points A to B.[43] With the same assumptions, if the transmission customer begins with points A to B, but redirects in month 4 to points C to D for the remainder of the one-year agreement, the transmission customer would have rollover rights only with respect to points C to D. If the transmission provider is unable to provide rollover rights on any redirected path, whether to points C to D or, thereafter, to points A to B, it would have to demonstrate at the time of the redirect request that it has native load growth or contracts that commence in the future that prevent it from providing rollover rights.[44]

60. If a transmission provider claims, either at the time of the original transmission request or at the time of a redirect request, that it is unable to provide rollover rights because it has native load growth or a contract that commences in the future, it must still offer transmission service for the time preceding the native load growth or commencement of the future contract. As explained above, however, it may limit rollover rights based on native load growth or contracts that commence in the future.

61. Further, if a transmission customer with a long-term firm transmission agreement requests to redirect on a firm basis for one month and then redirect on a firm basis back to its original receipt and delivery points for the remainder of the term of the agreement, such requests do not convert its existing long-term firm transmission service agreement into separate short-term transmission service agreements.[45] Under this scenario, the transmission customer has rollover rights for the original receipt and delivery points, because those are the points to which it has rights at the end of the agreement.

Standard 001–10.6

62. Standard 001–10.6 states:

> For the purposes of curtailment and other capacity reductions, confirmed Redirects on a Non-Firm basis shall be treated comparably to all other types of Non-Firm Secondary Point-to-Point Service.

63. In this standard, the phrase ''all other types'' is not defined. In the Standards NOPR, the Commission interpreted this phrase to apply only to services that are comparable to non-firm secondary point-to-point service, proposed to accept the standard based

[41] As explained in the notice of inquiry in Docket No. RM05–25–000, 70 FR 55796, FERC Stats. & Regs. ¶ 35,553 at P 18 (2005), section 2.2 of the *pro forma* OATT (Reservation Priority for Existing Firm Service Customers) provides that ''existing firm service customers (wholesale requirements and transmission-only, with a contract term of one-year or more) have the right to continue to take transmission service from the public utility transmission provider when the contract expires, rolls over or is renewed. It specifically provides that this transmission reservation priority is independent of whether the existing customer continues to purchase capacity and energy from the public utility transmission provider or elects to purchase capacity and energy from another supplier.''

[42] Bonneville at 2.

[43] The Commission assumes that a transmission customer would make the two requests to redirect to points C to D and then back to points A to B at the same time. Otherwise, the transmission customer would put itself at risk of not being able to redirect back to points A to B because of an intervening request for transmission service.

[44] *See, e.g., Tenaska Power Services Co. v. Southwest Power Pool, Inc.,* 99 FERC 61,344 (2002), *reh'g denied,* 102 FERC ¶ 61,140 at P 33, 38 (2003); *Nevada Power Company,* 97 FERC ¶ 61,324, at 62,492 (2001).

[45] *See, e.g., Commonwealth Edison Co.,* 95 FERC ¶ 61,027 (2001).

on this interpretation, and invited comments on this interpretation.

Comments

64. Cinergy, the Midwest ISO and NAESB support the Commission's interpretation of Standard 001–10.6 in the Standards NOPR. Cinergy also proposes that the WEQ consider revising the standard to read as follows:

> For the purposes of curtailment and other capacity reductions, confirmed Redirects on a Non-Firm basis shall be treated comparably to other Non-Firm Secondary Point-to-Point Service.[46]

Commission Conclusion

65. Since there is no disagreement with the Commission's interpretation of Standard 001–10.6 in the Standards NOPR, we will adopt this standard as proposed. We will allow the WEQ to determine whether this standard would be clearer if revised as Cinergy proposes.

3. Standard 002–4.2.10.2 and OASIS Data Dictionary

Comments

66. Bonneville states that the Commission's current OASIS Standards and Communication Protocols and OASIS Data Dictionary and the NAESB WEQ version of those documents contain some definition discrepancies, most likely due to editing errors during the reformatting process. It proposes four minor technical revisions to Standard 002–4.2.10.2, Status Value, for the status values for COUNTEROFFER, DECLINED, DISPLACED and REFUSED. In addition, Bonneville suggests that a data element ''ANNULLED'' be added to the OASIS Data Dictionary and that it be defined as ''assigned by Provider or Seller when, by mutual agreement with the Customer, a confirmed reservation is to be voided (Final State).''[47]

Commission Conclusion

67. Bonneville's request for the four technical revisions is moot. On March 25, 2005, the WEQ made the requested minor revisions to its January 15, 2005 standards. As to Bonneville's suggestion that a data element ''ANNULLED'' be added to the OASIS Data Dictionary, this definition is included in Standard 002–4.2.10.2, but is not currently included in the Commission's Data Dictionary. If Bonneville wishes to have this definition included in the OASIS Data Dictionary, it may submit a request to the WEQ to make such a change. In that way, the requested change will receive consideration by all industry segments before it is approved. If approved, the Commission will then have the opportunity to incorporate the change by reference in its regulations when the WEQ reports the next version of its standards to the Commission.

4. Standard 002–4.5

Comments

68. Bonneville and the ISO/RTO Council raise concerns about Standard 002–4.5, Information Supported by Web page, which states:

> When a regulatory order requires informational postings on OASIS and there is no OASIS [Standards and Communication Protocols] template to support the postings or it is deemed inappropriate to use a template, there shall be a reference in INFO.HTM to the required information, including, but not limited to, references to the following * * *
>
> For the purposes of this section, any link to required informational postings that can be accessed from INFO.HTM would be considered to have met the OASIS posting requirements, provided that the linked information meets all other OASIS accessibility requirements.

69. Bonneville contends that this standard requires the exclusive use of INFO.HTM. It argues that as long as postings are logically organized, user friendly and transparent to all users, exclusive use of INFO.HTM should not be mandated to provide links to the required informational postings.[48]

70. The ISO/RTO Council recommends that the Commission consider revising the standard to allow the information defined in Standard 002–4.5 to be posted on either the OASIS Main/Home page (as customers are accustomed to that posting) or INFO.HTM—rather than prescribing that they all must be on INFO.HTM. The ISO/RTO Council contends that very few OASIS sites use an INFO.HTM page. Thus, enforcing this requirement would be a new practice and would add confusion to the finding of such information, and may create duplicate links to the same information that would only lead to further confusion.[49]

Commission Conclusion

71. We do not interpret Standard 002–4.5 to mandate the exclusive use of INFO.HTM to provide links to required informational postings. While this standard requires certain information to be made available through a link from INFO.HTM, this does not preclude the posting of the same information elsewhere on OASIS, such as on the main or home page, as the ISO/RTO Council suggests, or, as Bonneville suggests, in a manner that is logically organized, user friendly and transparent to all users. Requiring informational postings to be available through a link from INFO.HTM provides for standardization and helps new users find the required information. At the same time, permitting links from other areas of OASIS allows flexibility.

5. Standards of Conduct

72. In the Standards NOPR, the Commission declined to propose adopting the WEQ's Standards of Conduct for Electric Transmission Providers (WEQ–009) because they duplicate, with some problematic revisions, the Commission's existing regulations codifying the Standards of Conduct, rather than implementing these standards.[50] In addition, the Commission stated that ''it would be useful if the WEQ would adopt standards comparable to those NAESB adopted regarding standards of conduct on the gas side.''[51]

Comments

73. APPA supported the Commission's proposal in the Standards NOPR not to incorporate duplicative standards.[52] NAESB stated that it would review the wholesale gas quadrant standards of conduct to prepare comparable standards for the wholesale electric quadrant which would amend the WEQ standards.[53]

Commission Conclusion

74. We will not incorporate by reference the WEQ's Standards of Conduct for Electric Transmission Providers (WEQ–009) since they duplicate the Commission's regulations. As explained above, the WEQ has offered to revise its standards of conduct to implement the Commission's standard of conduct regulations, rather than duplicate them. We look forward to reviewing this work product when it is completed.

C. Applicability, Waivers, and Variances

1. General Principles

75. The Commission proposed in the Standards NOPR to incorporate by reference in its regulations most of the standards adopted by the WEQ and to require that all public utilities revise their OATTs to include these standards. Some commenters question the applicability of the standards or possible waiver of the standards. These commenters raise issues concerning: (1)

[46] Cinergy at 4–5.

[47] Bonneville at 5–6.

[48] *Id.* at 5.

[49] ISO/RTO Council at 9.

[50] *See* 18 CFR 358.1–358.5.

[51] Standards NOPR at P 47.

[52] APPA at 2–3.

[53] NAESB at 1–2.

Possible variances for regional practices that may be inconsistent with the national standards; (2) waivers of certain standards for small entities or for ISOs and RTOs; and (3) whether non-public utilities (including Canadian entities) that participate in the wholesale electric power market can generally meet the open access reciprocity requirement established in Order Nos. 888 [54] and 889 without complying with these standards and whether they may apply for waivers of particular standards on a case-by-case basis.

76. The Commission recognizes, as it did in Order Nos. 888 and 889, that there is a need for regional variances and waivers. Certain regions may conduct business differently than other regions. The current WEQ standards recognize this. We also recognize that ISOs and RTOs operate using a business model for making transmission reservations to which certain OASIS and other standards may not be applicable.

77. In implementing the OASIS standards, the Commission has sought to determine whether compliance with a standard should be required of all public utilities or whether waivers or variances of those standards should be allowed. In some cases, the Commission has insisted on uniform national standards. For example, the Commission has required ISOs and RTOs to comply with naming standards for paths into, through and out of their territory, in order to facilitate moving power across the grid.[55]

78. Now that the WEQ is developing these standards, we prefer that initially all regional and other generic requests for variances, such as to accommodate different business models, be raised during the WEQ standards development process, and we encourage participation by all interested persons in that process.[56] The standards adopted by the WEQ recognize the need, in specific circumstances, for regional differences to be recognized in a national standard.[57] Having the WEQ consider requests for regional differences to be reflected in a specific business practice standard will allow all industry segments, at the outset, to determine whether the standard should recognize such differences. By first submitting the request to the WEQ during development of the standard, the request may be resolved during the WEQ process. Even if the request is not resolved by the WEQ, the process will help create a record should the requester seek a variance or waiver when the standard is presented to the Commission.

79. We recognize that with respect to the standards being incorporated in this rule, some commenters request specific waivers or variances of certain of the WEQ standards and they cannot seek review of their issues at the WEQ prior to implementation. We do not have a sufficient record to resolve such issues in this proceeding. Therefore, we will require each public utility that wants a waiver of any standard we are incorporating by reference in this Final Rule to file a request for waiver. In its request for waiver the public utility should explain that it is seeking the waiver under this Final Rule, citing the caption and docket number of this proceeding, and should identify the specific standard(s) for which it requests waiver and make its arguments as to why the waiver should be granted. Utilities, including ISOs and RTOs, that have existing waivers of certain OASIS standards may reapply for such waivers using the following simplified procedures. They should identify the specific standards from which they are seeking waivers and provide the caption, date and docket number of the proceeding in which they received the waiver and of this Final Rule and must certify that the circumstances warranting such waivers have not changed. Requests for waivers must be filed on or before June 1, 2006.

80. Moreover, the exemptions previously granted by the Commission will not be expanded to apply to the new WEQ OASIS standards dealing with redirects and multiple requests because it is not clear, at this point, that all public utilities that previously obtained waivers of the OASIS posting requirements will need waivers of these standards.

81. NY Transmission Owners argues that ISOs and RTOs should be allowed to upgrade from the minimally acceptable business practice required in a business practice standard. The business practice standards we are adopting here are minimum standards and all public utilities, including ISOs and RTOs, can provide customers with more flexibility than afforded by the standards. Such improvements must provide customers with increased flexibility, but should not affect customers' ability to utilize the standard procedure or adversely affect the rights of those not a party to the revision to meet the minimum standards criteria established.[58] Any such improvement would need to be filed with the Commission as a request to amend the public utility's OATT.

2. Specific Issues

a. Compliance by ISO/RTO Members

Comment

82. NY Transmission Owners asks that public utilities that are members of ISOs and RTOs not be required to revise their OATTs to incorporate the proposed OASIS standards, because the ISOs or RTOs operate their OASIS.

Commission Conclusion

83. We agree with NY Transmission Owners. A public utility whose OASIS is administered by an ISO or RTO may comply with the requirement to include the OASIS standards in its OATT by adding a provision to its OATT stating that the ISO or RTO will be performing these functions on its behalf.

b. Waivers for Small Entities

Comments

84. Several commenters [59] argue that small utilities that previously have obtained waivers from the Commission from compliance with the requirements of Order Nos. 888 and 889 should be granted an automatic waiver of the OASIS-related business practice

[54] *See Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 FR 21540, FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 31,036 at 31,691 (1996), *order on reh'g*, Order No. 888 A, 62 FR 12274, FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31048 (1997), *order on reh'g*, Order No. 888 B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888 C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC*, 225 F.3d 667 (D.C. Cir. 2002), *aff'd sub nom. New York* v. *FERC*, 535 U.S. 1 (2002).

[55] *See New York Independent System Operator, Inc.*, 94 FERC ¶ 61,215 (2001).

[56] NAESB has recognized the need for standards reflecting different business models. In developing standards for pipeline nominations, for example, NAESB recognized that pipelines used three different models for nominations, and it developed standards to fit each model.

[57] For example, the WEQ's standards on Coordinate Interchange, Manual Time Error Correction, and Inadvertent Interchange Payback each recognize regional differences.

[58] The same standard has been applied to judge improvements to NAESB standards for natural gas pipelines. *See* Order No. 587, 61 FR 39053 at 39062, FERC Stats. & Regs. Regulations Preambles ¶ 31,038 at 30,069. For example, a NAESB business practice standard requires pipelines to offer three intraday nominations. 18 CFR 284.12(a)(1)(ii) (2005). Some pipelines have improved upon this standard by offering hourly nominations, which the Commission accepted because they add additional intraday nomination times for the pipelines' customers, but do not prevent shippers from relying on the three intraday nomination times required by the standard. *See, e.g., Tennessee Gas Pipeline Company*, 104 FERC ¶ 61,063 at P 88 (2003); *Reliant Energy Gas Transmission Company*, 93 FERC ¶ 61,141 at 61,430 (2000), order on reh'g, 94 FERC ¶ 61,322 (2001).

[59] This argument is raised in comments filed by GCEC, Lockhart, and NRECA.

standards proposed to be incorporated by reference by the Standards NOPR. Moreover, to the extent that public utilities need to apply for a waiver of the OASIS-related business practice standards, TAPS requests that the Commission clarify that the waiver criteria provided in Order Nos. 888, 889, and 2004 should be applied to the pertinent WEQ standards, rather than the criteria in the two orders cited in the Standards NOPR,[60] which relate to the stricter standard for waivers under Order No. 2001.[61]

Commission Conclusion

85. We will extend to small entities (that the Commission previously granted waivers of the Commission's OASIS-related standards) a streamlined procedure for requesting waivers of the corresponding newly adopted OASIS-related standards, as long as the circumstances warranting such waivers remain unchanged. For small entities to obtain such a waiver, they must file a letter explaining that they are seeking a waiver under this Final Rule, citing the caption and docket number of this proceeding, and identifying the caption, date and docket number of the proceeding in which they received their waiver and certifying that the circumstances warranting such waivers have not changed. These waivers would not apply to newly created standards, including standards to: Facilitate redirects of transmission service; address multiple submissions of identical transmission requests and queuing issues; and address Coordinate Interchange, ACE Equation Special Cases, Manual Time Error Correction, and Inadvertent Interchange Payback.

86. We also note that, while the costs of creating a fully functional OASIS Web site may be beyond the resources of a small company, such a company could comply with the redirect standards without undue additional cost. Nevertheless, a small company that believes that compliance with a particular redirect or other business practice standards would cause it hardship may request a waiver of a particular standard for good cause. Such a request will be evaluated on a case-by-case basis. In its waiver request, the requesting entity should specifically reference the standard at issue, describe its problems in complying with the standard, and describe how the entity intends to process such transactions.

87. We agree with TAPS and clarify that the appropriate criteria governing waiver requests relating to OASIS-related business practice standards should be the applicable criteria regarding waivers under Order Nos. 888 and 889, which were laid out in *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232 (1996) (*Black Creek*),[62] and in *Inland Power & Light Company,* 84 FERC ¶ 61,301 (1998) (*Inland P&L*) and for the Commission's Standards of Conduct under Order No. 2004,[63] which were laid out in *Bear Creek Storage Company*, 108 FERC ¶ 61,011 (2004) (*Bear Creek*), among other cases. In *Inland P&L*, the Commission explained that waiver of Order No. 889 is appropriate: (1) If the applicant owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) if the applicant is a small public utility[64] that owns, operates, or controls an integrated transmission grid (unless it is a member of a tight power pool, or other circumstances are present that indicate that a waiver is not justified). The waiver would last until such time as the public utility receives a request for transmission service, at which time the public utility must file a *pro forma* OATT within 60 days.[65] Moreover, as the Commission explained in *Inland P&L*, the Commission has held, among other matters, that a waiver of Order No. 889 remains in effect until an entity evaluating its transmission needs finds that it needs the information not being reported (because of the waiver) and files a complaint on this subject with the Commission and the Commission takes action in response to the complaint.[66]

88. Finally, the Commission routinely processes requests for waivers and does not see a need to include a specific reference to waivers for non-public utilities in Part 38, as requested by NRECA. We will apply the same principles in granting waivers that the Commission established in *Inland P&L* and other relevant Commission cases.

c. Reciprocity for Canadian Entities

Comment

89. The ISO/RTO Council argues that requiring compliance with business practice standards by Canadian entities, which are non-jurisdictional, through the imposition of reciprocity conditions is not appropriate. It contends that the open access considerations underlying Order No. 888 should not be assumed to apply to the business practice standards. The ISO/RTO Council urges that, at a minimum, the Commission should defer consideration of this condition at this time, pending further review.[67]

Commission Conclusion

90. The Commission previously found that OASIS-related rules are necessary for reciprocity tariffs of non-jurisdictional entities unless an entity has shown that a waiver is justified. Canadian entities have not requested any generic changes to this policy.[68] Thus, at this time, we will retain our current policy. Canadian entities with reciprocity tariffs that need a waiver of particular standards may request such a waiver.

D. Other Issues

1. Cost Recovery

Comment

91. The Standards NOPR included an information collection statement that projected the annualized cost of complying with the proposals in the Standards NOPR and invited comments on this cost estimate. In response, FirstEnergy Companies states that it ''cannot comment on the estimated cost of compliance'' but requests that the Commission approve the recovery of the actual costs of compliance. FirstEnergy Companies argues that such cost recovery is warranted because compliance with the WEQ standards will be mandatory.[69]

Commission Conclusion

92. The Commission typically allows recovery in rates of prudently incurred costs to comply with standards such as those promulgated by the WEQ, and we

[60] *Bridger Valley Electric Association, Inc.,* 101 FERC ¶ 61,146 (2002) and *Sussex Rural Electric Cooperative*, 103 FERC ¶ 61,299 (2003).

[61] Unitil Companies argues, alternatively, that, if entities granted waivers under Order No. 889 are not eligible for waivers, then the Commission should clarify that waivers should not be limited to entities that fall within the Regulatory Flexibility Act (RFA) definition of ''small entities.'' As discussed below, entities granted waivers under Order No. 889 are eligible, upon a proper showing, for waivers of the OASIS-related standards adopted in this rule. Thus, we find Unitil Companies' alternative proposal to be moot.

[62] *See also* Order No. 638 at 31,451.

[63] Order No. 2004 states that transmission providers may request waivers or exemptions from all or some of the requirements of part 358 for good cause. *See* 18 CFR 358.1(d)(2005).

[64] To qualify as a small public utility, the applicant must meet the Small Business Administration definition of a small electric utility, *i.e.*, disposes of no more than four million Mwh annually.

[65] 84 FERC at 62,387.

[66] *Id.*

[67] ISO/RTO Council at 12.

[68] We note, however, that two Canadian entities, the Alberta Electric System Operator and the Independent Electricity System Operator of Ontario, are members of the ISO/RTO Council, which did file comments on this issue. We also note that some Canadian entities are members of NAESB and are represented in the standards development process and Canadian non-NAESB members, like their U.S. counterparts, may also participate in the NAESB process.

[69] FirstEnergy Companies at 4.

will make those determinations on a case-by-case basis.

2. Fees for Obtaining NAESB–WEQ Standards

93. In the Standards NOPR, the Commission explained that, in section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Congress requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like NAESB's WEQ, as a means to carry out policy objectives or activities.[70] As the Commission has pointed out on several occasions,[71] incorporation by reference is the appropriate, and indeed the required, method for adopting copyrighted standards material.[72] The Standards NOPR also explained that, as required by the NTTAA, the WEQ standards are reasonably available from NAESB.

Comments

94. Three commenters oppose the proposal to allow NAESB to charge a fee to obtain its copyrighted materials. They argue that these materials should be made available at no charge. In particular, NEPOOL cautions against mandating compliance with standards that are only accessible to NAESB members, to those that pay a fee or to those that travel to the FERC Public Reference Room in Washington, DC, and that carry licensing restrictions. NEPOOL argues that these accessibility concerns extend not only to all the public utilities that will be affected by any final rule in this proceeding, but also to all customers of transmission services that need to review them.

95. Similarly, IRH requests that the Commission remove any fee or membership restrictions currently placed by NAESB on obtaining access to the most current standards incorporated by reference by the Commission. IRH argues that these documents should be freely available to the public. UI similarly claims that these fee and licensing restrictions will seriously limit the ability of entities to obtain access to applicable regulatory requirements pertaining to OASIS. UI argues that existing OASIS standards are presently available to the public, at no charge, and any amendments proposed by the WEQ to those standards as part of this rulemaking proceeding should also be publicly available.

Commission Conclusion

96. The Commission neither determined the fees for the standards, nor are we in a position to waive the fees charged by NAESB. NAESB's policies are set by the industry, and the industry has determined that charging fees for access to the standards is appropriate. To the extent the commenters wish to change this NAESB policy, they need to pursue this issue at NAESB to craft an approach that a consensus of the industry finds reasonable.

97. As the Commission has explained in previous orders,[73] the Commission cannot waive or otherwise change the NAESB policy. Section 12 of NTTAA establishes a government policy under which agencies are to rely upon, and adopt, private sector standards, such as those adopted by the WEQ, whenever practicable and appropriate.[74] The Freedom of Information Act and its implementing regulations establish that the proper method of adopting such copyrighted material by a federal agency is to incorporate it by reference into the agency's regulations.[75] To be eligible for incorporation by reference, the document must be reasonably available to the class of persons affected by the publication.[76] Once adopted, a copy must be provided to the Office of the Federal Register for viewing and the material must be available and readily obtainable. Neither the statute nor the regulations require that the standards be available at no cost. Indeed, standards incorporated by reference are exempt from the requirement that the agency charge fees for providing copies of documents according to its fee schedule.[77] The Office of the Federal Register has approved the WEQ standards for incorporation by reference. Most standards incorporated by reference in government regulations require a fee or charge to obtain the standards. The American National Standards Institute (ANSI), which administers and coordinates the U.S. voluntary standardization and conformity assessment system, explains that fees for standards are necessary because ''while most of the people working on standards development are volunteers, standards developers incur expense in the coordination of these voluntary efforts.'' [78]

98. The Commission finds that the WEQ standards meet the test of being reasonably accessible to all industry members. Members of NAESB obtain access to the standards for free. Those who choose not to join can obtain the standards booklet for a fee of $100.[79] The commenters do not, and cannot reasonably, contend that a $100 cost constitutes an extreme burden to members of the electric industry.

99. As to NEPOOL's argument that these standards will need to be accessed not only by public utilities, but also by their customers, we do not find that $100 is beyond the means of most customers, and the public utilities may be willing to make the standards available to their customers to review. In our view, the costs public utilities will incur to obtain these standards from NAESB are a *de minimis* expense since the benefits to the industry and the public of replacing a Commission-driven approach to standards development with the NAESB process far outweighs the burden of these costs. In fact, one of the major reasons for having the WEQ develop standards is that it is far more efficient and cost effective for the industry than having the Commission develop standards, like OASIS, using Commission processes.

[70] Pub. L. 104–113, section 12(d), 110 Stat. 783, as amended Pub. L. 107–107, Div. A Title XI, section 1115 (2001), 15 U.S.C. 272 note (2005).

[71] *See, e.g., Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587–R, 68 FR 13813, FERC Stats. & Regs., Regulation Preambles ¶ 31,141 at P 29–37 (2003).

[72] *Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587–A , 61 FR 55208, 77 FERC ¶ 61,061, at 61,232 (1996); Order No. 587–K, 64 FR 17276, FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,072 at 30,775 (1999). *See* Freedom of Information Act, 5 U.S.C. 552 (a)(1) (2000); 1 CFR 51.7(4) (requirements established for incorporation by reference); Federal Participation in the Development and Use of Voluntary Standards, OMB Circular A–119, at 6(a)(1) (Feb. 10, 1998), *http://www.whitehouse.gov/omb/circulars/a119/a119.html* (incorporation by reference appropriate means of adopting private sector standards under the NTTAA). Indeed, the Commission could not reproduce the WEQ standards in violation of the NAESB copyright. *See* 28 U.S.C. 1498 (government not exempt from patent and copyright infringement).

[73] Order No. 587–R, 68 FR 13813, FERC Stats. & Regs., Regulation Preambles ¶ 31,141 at P 29–37 (2003); Order No. 587–A, 61 FR 55208, 77 FERC ¶ 61,061 at 61,232 (1996); Order No. 587–K, 64 FR 17276, FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,072 at 30,775 (1999).

[74] *See* note 71, *supra*.

[75] 5 U.S.C. 552(a)(1) (for the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the **Federal Register** when incorporated by reference therein with the approval of the Director of the Federal Register); 1 CFR 51.7(4). Indeed, the Commission could not reproduce the WEQ standards in violation of the NAESB copyright. *See* 28 U.S.C. 1498 (government not exempt from patent and copyright infringement).

[76] 1 CFR 51.7(a)(2)–(4).

[77] 5 U.S.C. 553(a)(3).

[78] *See* American National Standards Institute, *Why Charge for Standards?, http://www.ansi.org/help/charge_standards.aspx?menuid=help* (accessed 12/9/05). Allowing non-NAESB members free access to these standards would permit them to free ride off of the time and money invested by those who have joined NAESB and are actively participating to make the standards process beneficial to the entire industry.

[79] NAESB Home Page, *http://www.naesb.org/pdf/ordrform.pdf.*

III. Implementation Dates and Procedures

100. The Version 000 standards we are incorporating by reference in this Final Rule must be implemented by July 1, 2006. Public utilities are required to include these standards in their OATTs. Public utilities filing proposed revisions to their OATTs to include these standards must do so with their next unrelated OATT filing in accordance with the following schedule. On or after June 1, 2006, a public utility filing proposed OATT revisions unrelated to this rule is required to file proposed revisions to its OATT to include the standards adopted in this Final Rule as part of that filing. (Prior to June 1, 2006, a public utility filing proposed OATT revisions unrelated to this rule has the option of filing proposed OATT revisions to include the standards adopted in this Final Rule as part of that filing.) As the standards adopted in this Final Rule must be implemented by July 1, 2006, the OATT revisions filed to comply with this rule are to include an effective date of July 1, 2006.[80] Any requests for waiver of any of these standards must be filed on or before June 1, 2006.

101. If adoption of these standards does not require any changes or revisions to existing OATT provisions, public utilities may comply with this rule by adding a provision to their OATTs that incorporates the standards adopted in this rule by reference, including the standard number and Version 000 to identify the standard. To incorporate these standards into their OATTs, public utilities must use the following language in their OATTs:

- Business Practices for Open Access Same-Time Information Systems (OASIS) (WEQ–001, Version 000, January 15, 2005, with minor corrections applied on March 25, 2005, and additional numbering added October 3, 2005) including Standards 001–0.2 through 001–0.8, 001–2.0 through 001–9.6.2, 001–9.8 through 001–10.8.6, and Examples 001–8.3–A, 001–9.2–A, 001–10.2–A, 001–9.3–A, 001–10.3–A, 001–9.4.1–A, 001–10.4.1–A, 001–9.4.2–A, 001–10.4.2–A, 001–9.5–A, 001–10.5–A, 001–9.5.1–A, and 001–10.5.1–A;
- Business Practices for Open Access Same-Time Information Systems (OASIS) Standards & Communication Protocols (WEQ–002, Version 000, January 15, 2005, with minor corrections applied on March 25, 2005, and additional numbering added October 3, 2005) including Standards 002–1 through 002–5.10;
- Open Access Same-Time Information Systems (OASIS) Data Dictionary (WEQ–003, Version 000, January 15, 2005, with minor corrections applied on March 25, 2005, and additional numbering added October 3, 2005) including Standard 003–0;
- Coordinate Interchange (WEQ–004, Version 000, January 15, 2005, with minor corrections applied on March 25, 2005, and additional numbering added October 3, 2005) including Purpose, Applicability, and Standards 004–0 through 004–13, and 004–A through 004–D;
- Area Control Error (ACE) Equation Special Cases Standards (WEQ–005, Version 000, January 15, 2005, with minor corrections applied on March 25, 2005, and additional numbering added October 3, 2005) including Purpose, Applicability, and Standards 005–0 through 005–3.1.3, and 005–A;
- Manual Time Error Correction (WEQ–006, Version 000, January 15, 2005, with minor corrections applied on March 25, 2005, and additional numbering added October 3, 2005) including Purpose, Applicability, and Standards 006–0 through 006–12; and
- Inadvertent Interchange Payback (WEQ–007, Version 000, January 15, 2005, with minor corrections applied on March 25, 2005, and additional numbering added October 3, 2005) including Purpose, Applicability, and Standards 007–0 through 007–2, and 007–A.

102. If a public utility requests waiver of a standard, it will not be required to comply with the standard until the Commission acts on its waiver request. Therefore, if a public utility has obtained a waiver or has a pending request for a waiver, its proposed revision to its OATT should not include the standard number associated with the standard for which it has obtained or seeks a waiver. Instead, the public utility's OATT should specify those standards for which the public utility has obtained a waiver or has pending a request for waiver. Once a waiver request is denied, the public utility will be required to include in its OATT the standard(s) for which waiver was denied.

IV. Notice of Use of Voluntary Consensus Standards

103. Office of Management and Budget (OMB) Circular A–119 (section 11) (February 10, 1998) provides that when a Federal agency issues or revises a regulation containing a standard, the agency should publish a statement in the final rule stating whether the adopted standard is a voluntary consensus standard or a government-unique standard. In this rulemaking, the Commission is incorporating by reference voluntary consensus standards developed by the WEQ.

V. Information Collection Statement

104. OMB's regulations in 5 CFR 1320.11 (2005) require that it approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency. Upon approval of a collection of information, OMB assigns an OMB control number and an expiration date. Respondents subject to the filing requirements of this Final Rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

105. This Final Rule will affect the following existing data collections: Electric Rate Schedule Filings (FERC–516) and Standards for Business Practices and Communication Protocols for Public Utilities (FERC–717) (formerly Open Access Same Time Information System).

106. The following burden estimates cover compliance with this rule:

Public Reporting Burden:

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total number of hours
FERC–516	220	1	6	1,320
FERC–717	220	1	24	5,280
Totals			30	6,600

[80] Please note that the standards adopted in this Final Rule must be implemented as of July 1, 2006, regardless of whether the public utility has yet filed OATT revisions incorporating these standards.

Total Annual Hours for Collection (Reporting and Recordkeeping, (if appropriate)) = 6,600

Information Collection Costs: The Commission has projected the average annualized cost for all respondents to comply with these requirements to be the following: [81]

	FERC–516	FERC–717
Annualized Capital/Startup Costs	$198,000	$792,000
Annualized Costs (Operations & Maintenance)	N/A	N/A
Total Annualized Costs	198,000	792,000

107. The Commission sought comments on the burden of complying with the requirements imposed by these requirements. No comments addressed the reporting burden.

108. The Commission's regulations adopted in this rule are necessary to establish a more efficient and integrated wholesale electric power grid. Requiring such information ensures both a common means of communication and common business practices that provide entities engaged in the wholesale transmission of electric power with timely information and uniform business procedures across multiple transmission providers. These requirements conform to the Commission's goal for efficient information collection, communication, and management within the electric power industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

109. OMB regulations [82] require it to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this Final Rule to OMB. These information collections are mandatory requirements.

110. *Title:* Electric Rate Schedule Filings (FERC–516).

Standards for Business Practices and Communication Protocols for Public Utilities (FERC–717) (formerly Open Access Same Time Information System).

Action: Proposed collections.

OMB Control Nos.: 1902–0096 and 1902–0173.

Respondents: Business or other for profit (Public Utilities (Not applicable to small business.)).

Frequency of Responses: One-time implementation (business procedures, capital/start-up).

Necessity of Information: This rule upgrades the Commission's current business practice and communication standards to include standardized practices and address currently unresolved issues. The implementation of these standards and regulations is necessary to increase the efficiency of the wholesale electric power grid.

111. The information collection requirements of this Final Rule are based on the transition from transactions being made under the Commission's existing OASIS posting requirements and business practice standards to conducting transactions under the NAESB WEQ standards. This Final Rule requires utilities to include the incorporated standards in their respective tariffs and requires OASIS postings to be reported in forums that are directly accessible by industry users. The implementation of these data requirements will help the Commission carry out its responsibilities under the FPA. The Commission will use the data in rate proceedings to review rate and tariff changes by public utilities, for general industry oversight, and to supplement the documentation used during the Commission's audit process.

112. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, 888 First Street, NE., Washington, DC 20426, Tel: (202) 502–8415/Fax: (202) 273–0873, E-mail: *michael.miller@ferc.gov;* or by contacting:

Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Energy Regulatory Commission (Re: OMB Control Nos. 1902–0096 & 1902–0173), Tel: (202) 395–4650, E-mail: *omb_submissions@omb.eop.gov.*

VI. Environmental Analysis

113. The Commission is required to prepare an environmental assessment or an environmental impact statement for any action that may have a significant adverse effect on the human environment.[83] As the Commission stated in the Standards NOPR, the Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in this categorical exclusion are rules that are clarifying, corrective, or procedural, or that do not substantially change the effect of the regulations being amended.[84] The categorical exclusion also includes information gathering, analysis, and dissemination.[85] The requirements imposed by this Final Rule fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of electric power that requires no construction of facilities.[86] As a result, neither an environmental impact statement nor an environmental assessment is required.

VII. Regulatory Flexibility Act Certification

114. The Regulatory Flexibility Act of 1980 (RFA) [87] generally requires a description and analysis of any final rule that will have significant economic impact on a substantial number of small entities. The rule adopted here imposes requirements only on public utilities, which are not small businesses, and, these requirements are, in fact, designed to benefit all customers, including small businesses.

115. The Commission has followed the provisions of both the RFA and the Paperwork Reduction Act on potential impact on small businesses and other small entities. Specifically, the RFA directs agencies to consider four regulatory alternatives to be considered in a rulemaking to lessen the impact on small entities: Tiering or establishment of different compliance or reporting

[81] The total annualized costs for the two information collections is $198,000 + $792,000 = $990,000. This number is reached by multiplying the total hours to prepare a response (6,600 hours) by an hourly wage estimate of $150. $990,000 = $150 × 6,600.

[82] 5 CFR 1320.11.

[83] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47897, FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[84] 18 CFR 380.4(a)(2)(ii).

[85] 18 CFR 380.4(a)(5).

[86] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

[87] 5 U.S.C. 601–612.

requirements for small entities, classification, consolidation, clarification or simplification of compliance and reporting requirements, performance rather than design standards, and exemptions. As the Commission originally stated in Order No. 889, the OASIS regulations now known as ''Standards for Business Practices and Communication Protocols for Public Utilities'' apply only to public utilities that own, operate, or control transmission facilities subject to the Commission's jurisdiction, and should a small entity be subject to the Commission's jurisdiction, it may file for waiver of these regulations.[88] As discussed above, in response to comments on this issue, in this order we are extending (to small entities that previously were granted waivers from the requirements of Order Nos. 888 and 889) waivers of the OASIS requirements adopted in this Final Rule, with the condition that these entities file a short letter identifying the case name, date, and docket number of the proceeding in which they received their waiver. In addition, if material circumstances change that would affect their continued qualification for a waiver, they must report this to the Commission.

116. The procedures the Commission is following in this Final Rule are in keeping with exemption provisions of the RFA. Accordingly, pursuant to section 605(b) of the RFA,[89] the Commission hereby certifies that the regulations proposed herein will not have a significant adverse impact on a substantial number of small entities.

VIII. Document Availability

117. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

118. From FERC's Home Page on the Internet, this information is available in the eLibrary. The full text of this document is available in the eLibrary both in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type ''RM05–5'' in the docket number field.

119. User assistance is available for eLibrary and the FERC's Web site during the Commission's normal business hours. For assistance contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

IX. Effective Date and Congressional Notification

120. This Final Rule will take effect June 5, 2006. The Commission has determined with the concurrence of the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, that this rule is not a major rule within the meaning of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.[90] The incorporation by reference of certain standards listed in this Final Rule is approved by the Director of the Federal Register as of June 5, 2006. The Commission will submit this Final Rule to both houses of Congress and the Government Accountability Office.[91]

List of Subjects

18 CFR Part 35

Electric utilities, Reporting and recordkeeping requirements.

18 CFR Part 37

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

18 CFR Part 38

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

By the Commission.

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, the Commission revises parts 35 and 37 and adds part 38 in Chapter I, Title 18, Code of Federal Regulations, as follows:

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

■ 1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. In § 35.28, add paragraph (c)(1)(vi) to read as follows:

§ 35.28 Non-discriminatory open access transmission tariffs.

* * * * *

(c) *Non-discriminatory open access transmission tariffs.*

(1) * * *

(vi) Each public utility's open access transmission tariff must include the standards incorporated by reference in part 38 of this chapter.

* * * * *

PART 37—OPEN ACCESS SAME-TIME INFORMATION SYSTEMS

■ 3. 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.

■ 4. In § 37.5, paragraph (b) is revised to read as follows:

§ 37.5 Obligations of transmission providers and responsible parties.

* * * * *

(b) A Responsible Party must provide access to an OASIS providing standardized information relevant to the availability of transmission capacity, prices, and other information (as described in this part) pertaining to the transmission system for which it is responsible.

* * * * *

■ 5. Part 38 is added to read as follows:

PART 38—BUSINESS PRACTICE STANDARDS AND COMMUNICATION PROTOCOLS FOR PUBLIC UTILITIES

Sec.
38.1 Applicability.
38.2 Incorporation by reference of North American Energy Standards Board Wholesale Electric Quadrant standards.

Authority: 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

§ 38.1 Applicability.

This part applies to any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce and to any non-public utility that seeks voluntary compliance with jurisdictional transmission tariff reciprocity conditions.

§ 38.2 Incorporation by reference of North American Energy Standards Board Wholesale Electric Quadrant standards.

(a) All entities to which § 38.1 is applicable must comply with the following business practice and electronic communication standards promulgated by the North American Energy Standards Board Wholesale Electric Quadrant, which are incorporated herein by reference:

[88] Small entities that qualified for a waiver from the requirements of Order Nos. 888 and 889 may apply for a waiver of the requirement to comply with the standards incorporated by reference in the regulations we are adopting in this Final Rule.

[89] 5 U.S.C. 605(b).

[90] *See* 5 U.S.C. 804(2).

[91] *See* 5 U.S.C. 801(a)(1)(A).

(1) Business Practices for Open Access Same-Time Information Systems (OASIS) (WEQ–001, Version 000, January 15, 2005, with minor corrections applied March 25, 2005, and additional numbering added October 3, 2005) with the exception of Standards 001–0.1, 001–0.9 through 001–0.13, 001–1.0 through 001–1.8, and 001–9.7.

(2) Business Practices for Open Access Same-Time Information Systems (OASIS) Standards & Communication Protocols (WEQ–002, Version 000, January 15, 2005, with minor corrections applied March 25, 2005, and additional numbering added October 3, 2005);

(3) Open Access Same-Time Information Systems (OASIS) Data Dictionary (WEQ–003, Version 000, January 15, 2005, with minor corrections applied March 25, 2005, and additional numbering added October 3, 2005);

(4) Coordinate Interchange (WEQ–004, Version 000, January 15, 2005, with minor corrections applied March 25, 2005, and additional numbering added October 3, 2005);

(5) Area Control Error (ACE) Equation Special Cases (WEQ–005, Version 000, January 15, 2005, with minor corrections applied March 25, 2005, and additional numbering added October 3, 2005);

(6) Manual Time Error Correction (WEQ–006, Version 000, January 15, 2005, with minor corrections applied March 25, 2005, and additional numbering added October 3, 2005); and

(7) Inadvertent Interchange Payback (WEQ–007, Version 000, January 15, 2005, with minor corrections applied March 25, 2005, and additional numbering added October 3, 2005).

(b) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these standards may be obtained from the North American Energy Standards Board, 1301 Fannin, Suite 2350, Houston, TX 77002. Copies may be inspected at the Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426 and at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

Appendix

LIST OF COMMENTERS TO STANDARDS NOPR

Abbreviation	Name
APPA	American Public Power Association.
Bonneville	Bonneville Power Administration.
CAISO	California Independent System Operator Corporation.
Cinergy	Cinergy Services, Inc., *et al.*
EEI	Edison Electric Institute and Alliance of Energy Suppliers.
Exelon	Exelon Corporation.
FirstEnergy Companies	FirstEnergy Companies.
GCEC	Graham County Electric Cooperative, Inc.
IRH	Interconnection Rights Holders Management Committee.
ISO/RTO Council	ISO/RTO Council.
LADWP	City of Los Angeles Department of Water and Power.
Lockhart	Lockhart Power Company.
Midwest ISO	Midwest Independent Transmission System Operator, Inc.
NAESB	North American Energy Standards Board.
NEPOOL	New England Power Pool Participants Committee.
NERC	North American Electric Reliability Council.
NRECA	National Rural Electric Cooperative Association.
NY Transmission Owners	Indicated New York Transmission Owners.
SCE	Southern California Edison Company.[92]
Southern Companies	Southern Company Services, Inc., *et al.*
TAPS	Transmission Access Policy Study Group.
UI	United Illuminating Company.
Unitil Companies	Unitil Energy Systems, Inc., *et al.*

[92] SCE filed a motion to intervene, but no comments.

[FR Doc. 06–4072 Filed 5–3–06; 8:45 am]

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DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA37

Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Requirement That Mutual Funds Report Suspicious Transactions

AGENCY: Financial Crimes Enforcement Network, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the regulations implementing the statute generally known as the Bank Secrecy Act to require mutual funds to report suspicious transactions to the Financial Crimes Enforcement Network. The amendment constitutes a further step in the enhancement of the comprehensive system for the reporting of suspicious transactions by major categories of financial institutions operating in the United States, as a part of the Department of the Treasury's counter-money laundering program.