

151 FERC ¶ 61,046
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Standards for Business Practices and Communication Docket No. RM05-5-024
Protocols for Public Utilities

ORDER ON REHEARING

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(Issued April 16, 2015)

1. In this order, we grant clarification, in part, but otherwise deny requests for rehearing and/or clarification by the Edison Electric Institute (Edison) and the New York Independent System Operator, Inc. (NYISO) of Order No. 676-H, a final rule in this proceeding that incorporated by reference the latest version of certain business practice standards for public utilities developed by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB).¹

¹ *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676-H, 79 Fed. Reg. 56,939 (Sept. 24, 2014), FERC Stats. & Regs. ¶ 31,359 (2014) (Order No. 676-H or Final Rule).

I. Background

2. On September 18, 2014, the Commission issued the Final Rule that amended its regulations under the Federal Power Act (FPA)² to incorporate by reference into its regulations as mandatory enforceable requirements, with certain enumerated exceptions, the latest version (Version 003) of the Standards for Business Practices and Communication Protocols for Public Utilities adopted by NAESB's WEQ and filed with the Commission as a package on September 18, 2012, as modified in a report filed with the Commission on January 30, 2013. In that same final rule, the Commission listed NAESB's Smart Grid Standards (Standards WEQ-016, WEQ-017, WEQ-018, WEQ-019 and WEQ-020) in Part 2 of the Commission's Regulations, but did not incorporate these standards by reference into its regulations.³

3. In response to the Final Rule, Edison and NYISO each filed a request for rehearing and/or clarification. Edison seeks rehearing of nine separate findings made by the Commission in the Final Rule. NYISO requests a 24-month implementation period for WEQ-012, the business practice standard prescribing public key infrastructure (PKI) requirements, rather than the roughly seven months prescribed by the Final Rule and subsequent extension.⁴

II. Discussion

A. Posting Requirements for ATC Narratives

4. In Order No. 676-E, the Commission declined to incorporate by reference WEQ Standards WEQ-001-14.1.3 and WEQ-001-15.1.2, which addressed the posting of narratives explaining the calculation of Available Transfer Capability (ATC) on a transmission provider's Open Access Same-time Information Site (OASIS), because it found that these standards were inconsistent with the Commission's rejection in Order No. 890 of delays in posting data.⁵ In WEQ Version 003, NAESB modified these two standards to provide that Transmission Providers should strive to post their ATC narratives within one business day and are required to make this posting within five business days. In the Final Rule, the Commission declined to incorporate by reference

² 16 U.S.C. § 791a, *et seq.* (2012).

³ 18 C.F.R. § 2.27 (2014), 79 Fed. Reg. 56,954 (Sept. 24, 2014).

⁴ 80 Fed. Reg. 3880 (Jan. 26, 2015).

⁵ *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676-E, FERC Stats. & Regs. ¶ 31,299, at P 39 (2009).

NAESB Standards WEQ-001-14.1.3 and WEQ-001-15.1.2 because the standards did not meet the Commission's requirement in Order No. 890 to post the ATC narrative "as soon as feasible."⁶ The Commission stated that posting within one day would be consistent with Order No. 890.⁷ The Commission explained in the Final Rule that there was no reason shown why five business days would be needed to post an ATC Narrative and reiterated that one day appears reasonable.

5. Edison argues on rehearing that the Commission should clarify that it intended in the Final Rule to advise NAESB that Standards WEQ-001-14.1.3 and WEQ-001-15.1.2 would satisfy Order No. 890 if they were revised to require postings "within one business day" rather than "within one day." We clarify that a standard requiring the posting of ATC narratives within one business day appears reasonable and consistent with Order No. 890. If the industry finds that posting within one business day is not feasible, NAESB should include a detailed explanation of why this is not feasible and why the time period it chooses is as quickly as is feasible.

B. Redirect Policies

6. In the Final Rule, the Commission declined to incorporate by reference Standards WEQ-001-9.5 and WEQ-001-10.5 as inconsistent with the Commission's *Dynegy* policy.⁸ The Commission determined that the WEQ-001-9.5 standard as written would

⁶ See *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, at P 370, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁷ Order No. 676-H, FERC Stats. & Regs. ¶ 31,359 at P 28.

⁸ In 2001, in *Dynegy Power Marketing, Inc. v. Southwest Power Pool, Inc.*, 96 FERC ¶ 61,275 (2001), *order granting clarification and dismissing reh'g*, 99 FERC ¶ 61,054 (2002) (*Dynegy*), the Commission granted Dynegy's complaint and found that provisions in the Southwest Power Pool, Inc. tariff were inconsistent with those in the Commission's *pro forma* tariff established in Order No. 888. 96 FERC ¶ 61,275 at 62,048. In its order on rehearing, the Commission clarified that "a transmission customer does not lose its rights to its original path until the redirect request satisfies all of the following criteria: (1) it is accepted by the transmission provider; (2) it is confirmed by the transmission customer; and (3) it passes the conditional reservation deadline under section 13.2." 99 FERC ¶ 61,054 at P 9. The Commission recently affirmed this policy under Order No. 890 in *Entergy Services, Inc.*, 137 FERC ¶ 61,199 (2011), *order on reh'g and compliance*, 143 FERC ¶ 61,143 (2013), *order on reh'g*, 148 FERC ¶ 61,209, at P 12 (2014).

reduce the “Capacity Available to Redirect” before a redirect has passed the conditional reservation deadline. Also, in the Final Rule the Commission determined that Standard WEQ-001-10.5 provides that the capacity available for a redirect will be reduced at the time when the request for a firm redirect is confirmed, which precedes expiration of the conditional reservation deadline. Because NAESB standards must conform to the Commission’s *Dynegy* policy before the Commission would incorporate them by reference, the Commission requested that NAESB revise Standards WEQ-001-9.5, WEQ-001-10.5, and any other standards affected by those standards, to conform to the Commission’s *Dynegy* policy.

7. Edison argues that the Commission erred by arbitrarily and capriciously finding that Standard WEQ-001-9.5 and Standard WEQ-01-10.5 do not meet the standards set in the Commission’s precedent and argues that the Commission failed to provide a rational explanation for its findings. In its rehearing request, Edison does not dispute that the Commission’s policy on redirects was established in *Dynegy*, nor does it argue that the Commission’s *Dynegy* policy should be abandoned or revised. Instead, it argues that NAESB’s Standards WEQ-001.9.5 and WEQ-001-10.5 already operate in accordance with the Commission’s *Dynegy* policy.

8. In this regard, Edison argues that the term “Capacity Available to Redirect,” which is defined in WEQ-000 (Abbreviations, Acronyms, and Definition of Terms) as “the granted capacity of the Parent Reservation at the time of Transmission Customer confirmation ..., less all ... confirmed Redirects on a firm basis [and] confirmed Redirects on a non-firm basis” does not mean the parent reservation is reduced.⁹ Rather, Edison contends, it refers only to the amount of capacity available to be redirected by the transmission customer.¹⁰ Consequently, Edison argues that, under the existing NAESB Standards, reducing the “Capacity Available to Redirect” does not change or reduce the Parent Reservation’s capacity, but rather it identifies unused capacity on a reservation that may be redirected (either as a firm redirect or as a non-firm redirect).¹¹ If the redirect request does not survive the conditional reservation deadline, Edison maintains that the “Capacity Available to Redirect” will be credited with the appropriate amount. In addition, Edison expresses a concern that, without this mechanism in place, transmission customers would be able to acquire transmission rights in excess of the parent reservation.

⁹ Edison Rehearing at 6-7.

¹⁰ *Id.* at 7.

¹¹ *Id.*

9. We deny rehearing. There are two problems with Edison's argument. First, the current language of the standards, by referring to the capacity available to redirect, suggests that the parent reservation will be reduced and utilities have interpreted it in like fashion.¹² Even if Edison's argument had merit, it nonetheless illustrates that the current language of the standards is not clear and should be revised to make clear that it conforms to the Commission's *Dynegy* policy.¹³

10. Second, putting aside the question of how "Capacity Available for Redirect" is processed, the standards themselves only refer to confirmed redirects and are silent as to what is to take place between the time when a reservation is confirmed and when it becomes unconditional. Accordingly, because these standards are vague enough to allow some transmission operating utilities to interpret them in a manner that conflicts with the Commission's *Dynegy* policy, and because they appear not to address the appropriate calculation of available redirect capacity in some circumstances, the Commission continues to decline to incorporate these standards by reference into its regulations.

C. Conflicts between Standards and Tariffs

11. As explained in the Final Rule, PJM Interconnection, L.L.C. (in its comments to the notice of proposed rulemaking that preceded issuance of the Final Rule¹⁴) requested clarification that, if there is a conflict between terms of a Commission-approved tariff and NAESB Business Practice Standards, the tariff takes precedence and that a Regional Transmission Organization (RTO) or Independent System Operator (ISO) following the terms of its Commission-approved tariff need not seek waiver of specific NAESB standards to avoid being deemed in violation of the standards. In the Final Rule, the Commission adopted revised procedures that should prevent a conflict between a public utility's existing tariff and newly-incorporated by reference NAESB standards.

12. In its request for rehearing, Edison renews PJM's arguments, alleging that the Commission erred by failing to specify in the Final Rule that, in event of a conflict between the terms of a Commission-approved tariff and the NAESB business standards, that the tariff takes precedence. Edison argues that such a clarification is needed to avoid exposing Transmission Providers to the possibility that they might be subject to conflicting provisions within the same rate schedule.

¹² *Entergy Services, Inc.*, 148 FERC ¶ 61,209 at PP 9, 12.

¹³ *See supra* n.8.

¹⁴ *Standards for Business Practices and Communication Protocols for Public Utilities*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,698 (2013).

13. We deny Edison's request for rehearing. Under the revised procedures adopted in the Final Rule, after the issuance of a final rule, the public utility must make a compliance filing to make necessary revisions to its tariff to reference the NAESB standards, as appropriate, or to request waiver of those standards, as appropriate.¹⁵ In each case, every standard must be identified in a single section of the public utility's tariff with an indication whether 1) it is incorporated by reference, 2) is subject to a waiver request, or 3) whether compliance is covered by another tariff provision (with the tariff provision identified). Under this process, any deviations or waiver of the standards will have been noticed in the filing and any tariff provision accepted by the Commission will take precedence over the standards.

14. In a related argument, Edison objects to the Commission's directive that all potential conflicts between the terms of a Commission-approved tariff and the NAESB business practice standards should be identified by the December 1, 2014 filing deadline and relying on utilities pursuing the waiver process in advance of a potential conflict. In Edison's view, not all such conflicts would be known prior to implementation. Edison also requests notice of what to do should such a conflict arise.¹⁶

15. As explained above, when the public utility submits a compliance filing, it will need to include in its tariff a section either incorporating each standard by reference or identifying where in its tariff it complies with that standard. Edison appears to be suggesting that a public utility inadvertently may incorporate by reference a standard while it has an inconsistent provision in its tariff. In that situation, both provisions are tariff provisions and the Commission cannot determine *a priori* how it will resolve a tariff inconsistency. That may depend on the facts and circumstances of individual cases. Should the public utility discover such an inconsistency, it should make an FPA section 205 filing to resolve the discrepancy.

16. Edison also argues that the Commission failed to explain that it intended to adopt standards that may revise the *pro forma* Open Access Transmission Tariff (OATT) and failed to provide notice to industry that it was proposing to revise the requirements set forth in a Commission-approved OATT. This argument mischaracterizes the Commission's action in the Final Rule. In the Final Rule, the Commission incorporated by reference certain NAESB standards into the Commission's regulations at 18 C.F.R. Part 38. Nowhere in the Final Rule did the Commission revise the *pro forma* OATT. As

¹⁵ A public utility will not be required to make a compliance filing only if its tariff incorporates into its tariff all the standards incorporated by reference by the Commission as specified in Part 38 of the Commission's Rules of Practice and Procedure as updated and revised. Order No. 676-H, FERC Stats. & Regs. ¶ 31,359 at P 71.

¹⁶ Edison Rehearing at 12.

the Commission did not revise the *pro forma* OATT in the Final Rule, Edison's objection is without basis. Moreover, Edison does not identify any standards that the Commission incorporated by reference in the Final Rule that it alleges are in conflict with, and override, the *pro forma* tariff. Indeed, when the standards do deviate from the *pro forma* OATT, the Commission declines to incorporate them by reference as occurred with respect to the redirect standards. In any event, the objection ignores that the Commission afforded adequate notice and opportunity for comment before issuing the Final Rule, which is all that due process required.

D. Applicability of Standards WEQ-015 and WEQ-021

17. Edison argues on rehearing that the Commission erred in the Final Rule by failing to specify that NAESB business practice standards WEQ-015 (Measurement and Verification of Wholesale Electricity Demand Response) and WEQ-021 (Measurement and Verification of Energy Efficiency Products) only apply in markets administered by RTOs and ISOs, and that Transmission Providers that are not located in RTOs or ISOs are not required to adopt or follow these standards.

18. No such statement was needed in the Final Rule. Standard WEQ-015 and WEQ-021 both state on their face that they only apply to markets administered by RTOs/ISOs.¹⁷ Additionally, in Order No. 676-G, the Commission's Final Rule incorporating by reference NAESB's business practice standards to categorize various products and services for demand response and energy efficiency and to support the measurement and verification of these products and services in organized wholesale electric markets, the Commission stated specifically that

the particular standards we are incorporating by reference in this Final Rule apply only in organized wholesale electric markets administered by RTOs or ISOs. NAESB made this clear in the applicability section of its standards, and we do not see any need to further amend 18 C.F.R. § 38.2.^[18]

¹⁷ See Applicability statements in WEQ-015 and in WEQ-021-2.1.1.

¹⁸ *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676-G, FERC Stats. & Regs. ¶ 31,343, at P 37 (2013). Also see *id.* P 50, where we reiterated that the "standards that we are incorporating by reference are sufficiently clear that the standards apply to organized wholesale electric markets administered by RTOs or ISOs."

19. Additionally, we clarify that, whenever a standard specifically states on its face that it only applies to certain types of entities, there is no need for other entities outside of that grouping (i.e., those to whom the requirement is not applicable) to obtain a waiver of that standard to be excused from compliance, as those standards clearly do not apply to them. This being the case, we shall hereafter dismiss as unnecessary any requests for waivers of standards that by their terms specifically apply only to entity groups (e.g., balancing authorities or western utilities or RTOs/ISOs) that the potential waiver requestor does not belong to during the time those standards are effective.

20. Requiring a public utility to file (and the Commission to process) a waiver request for standards that on their face specifically state are only applicable to entity groups that the potential waiver requestor does not belong to is an unnecessary expenditure of time and effort for both the potential waiver requestors and the Commission, since the standard itself makes clear to whom it applies.¹⁹ Including such standards in the public utility's tariff will have no adverse effects on the company, since the standards would not impose a compliance obligation on that company as long as it is not the target of the compliance obligation prescribed by the standard.

21. Moreover, in each public utility's compliance filing in which it submits a tariff revision incorporating the NAESB standards, the public utility must either incorporate by reference each standard or indicate in its tariff that it has obtained a waiver of that standard. No standard should be excluded or considered implicitly.

E. Implementation Schedule for OASIS Template Interactions

22. In the Final Rule, the Commission required public utilities to make compliance filings by December 1, 2014 in order to achieve compliance with the incorporated Version 003 business practice standards by February 2, 2015, with the exception of those standards related to the Network Integration Transmission Service (NITS) OASIS template, for which compliance is required by April 25, 2016. The February 2, 2015 deadline was subsequently extended until May 15, 2015 and all other compliance obligations set forth in the Final Rule were unchanged and remained in force.²⁰ Thus, all components of the Final Rule have been set for a May 15, 2015 implementation with the exception of the requirements related to the NITS OASIS template.

¹⁹ For example, standard WEQ-006-9 WESTERN INTERCONNECTION TIME ERROR NOTIFICATION applies only to western entities using the WECCNet system. Similarly, as pointed out by Edison, the demand response measurement and verification standards are limited in the applicability section to ISOs and RTOs.

²⁰ 80 Fed. Reg. 3880 (Jan. 26, 2015).

23. On rehearing, Edison argues that the Commission erred by failing to specify that the implementation schedule for all OASIS template interactions (including Service Across Multiple Transmission Systems(SAMTS)) is 18 months after the effective date of the Final Rule. It argues that the industry needs additional time to comply with all the new OASIS standards, and not just those involving the NITS OASIS template and that not allowing its requested timeline would be more burdensome than allowing an 18-month schedule for all OASIS requirements. With regard to the SAMTS requirements, in particular, Edison argues that, because an increment of a SAMTS request may be network service and the NITS business practice standards will not be implemented until 2016, SAMTS service may not be available to fully implement a SAMTS request that contains a network service increment.²¹

24. We find that the contentions by Edison as to the need for an extended compliance timetable for all the new OASIS requirements are general and non-specific and do not justify an across-the-board revision to the required timetable. If a particular public utility encounters specific problems that will prevent its compliance with these requirements in a timely manner it can ask for an extension for itself, and the merits of such a request will be considered on a case-by-case basis.

F. Implementation Schedule for PKI Standard (WEQ-012)

25. In the Final Rule, the Commission established the same timetable for compliance with the PKI requirements in WEQ-012 as it established for all the requirements of the Final Rule not related to the transition to the NITS OASIS template (i.e., by May 15, 2015).²²

26. On rehearing, NYISO argues that the Commission erred by failing to provide a 24-month implementation schedule for PKI. Specifically, NYISO asks the Commission to reverse its unexplained rejection of the ISO/RTO Council's request that Transmission Providers be given 24 months to come into compliance with the new PKI standards in WEQ-012 of the newly accepted WEQ Version 003 standards. It goes on to state that the ISO/RTO Council set forth substantial technical and process reasons why additional time would be needed to comply with the PKI standards and these were not addressed in the Final Rule.

²¹ Edison Rehearing at 17-18.

²² See Order No. 676-H, FERC Stats. & Regs. ¶ 31,359 at P 95.

27. Standard WEQ-012 specifies the requirements that a certificate authority must meet to claim that the electronic certificates issued by that certificate authority meets Standard WEQ-012. This standard also describes the minimum requirements that public utilities and RTOs/ISOs using PKI must meet to achieve compliance with the NAESB Business Practice Standard WEQ-012.

28. In addition to filing its request for rehearing in the instant proceeding, NYISO filed a compliance filing in Docket No. ER15-550-000 to implement NAESB's new business practice standards and requested the same 24-month compliance schedule for implementing the PKI standards applicable to OASIS transactions conducted on NYISO's Market Information System (MIS) that it requests on rehearing. In its request for rehearing of the Final Rule, NYISO states that it anticipated seeking an extension of the deadline for PKI compliance in its forthcoming compliance filing and that, if this request for an extension is granted, it will withdraw its limited request for rehearing of the Final Rule. This request for an extension has been granted.²³ No other interested person filed for rehearing of the PKI compliance timetable established in the Final Rule.²⁴ Given that NYISO's request for an extension of the PKI compliance schedule has already been granted in a notice of extension issued in Docket No. ER15-550-000, NYISO's request to withdraw its request for rehearing of the PKI standards established in the Final Rule is accepted.

²³ In Docket No. ER15-550-000, a notice of extension was issued on April 15, 2015 granting NYISO an extension of time to comply with the requirements of Standards WEQ-012 applicable to transactions on NYISO's MIS. NYISO's compliance filing in Docket No. ER15-550-000 remains pending.

²⁴ We note that ISO/RTO Council did not renew the objections that it raised in its comments on the NOPR by filing a request for rehearing. Thus, the only challenge to the PKI timetable that is before us in this order on rehearing is the request for rehearing filed by NYISO.

The Commission orders:

(A) NYISO's withdrawal of its request for rehearing is hereby accepted and its request for rehearing is hereby denied as moot, as discussed in the body of this order.

(B) Edison's request for rehearing is hereby denied and its request for clarification is hereby granted, in part, and denied, in part, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.