

151 FERC ¶ 61,146
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.

Duke Energy Carolinas, LLC
Duke Energy Florida, Inc.
Duke Energy Progress, Inc.

Docket No. ER15-518-001

ORDER ON COMPLIANCE AND REQUEST FOR WAIVERS

(Issued May 18, 2015)

1. On December 1, 2014 in Docket No. ER15-518-000, as amended on May 13, 2015,¹ the Duke Southeast Utilities filed a compliance filing and a request for waivers in response to the compliance requirements of Order No. 676-H.² Order No. 676-H revised the Commission's regulations to incorporate by reference, with certain enumerated exceptions, the latest version (Version 003) of the Standards for Business Practices and Communication Protocols for Public Utilities (Business Practice Standards) adopted by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB) as mandatory enforceable requirements. For the reasons discussed below, we conditionally accept the Duke Southeast Utilities' compliance filing, effective May 15, 2015, deny in part and dismiss in part the requested waivers, and direct the Duke Southeast Utilities to make a further compliance filing, to be submitted within 60 days of the date of this order.

¹ On May 13, 2015, Duke Energy Carolinas, LLC, Duke Energy Florida, Inc., and Duke Energy Progress, Inc. (collectively, the Duke Southeast Utilities) submitted a filing in Docket No. ER15-518-001 to revise their tariff records to reflect a requested effective date of May 15, 2015.

² *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), *as modified, errata notice*, 149 FERC ¶ 61,014 (2014), *order on reh'g*, 151 FERC ¶ 61,046 (2015) (Order No. 676-H Rehearing Order).

I. Background

2. On September 18, 2014, the Commission issued Order No. 676-H, which amends the Commission's regulations under the Federal Power Act (FPA)³ to incorporate by reference, with certain enumerated exceptions, Version 003 of the Business Practice Standards.⁴ In addition, in Order No. 676-H, the Commission listed, as guidance, 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.⁵

3. The Version 003 Business Practice Standards update earlier versions of the WEQ standards that the Commission previously incorporated by reference into its regulations.⁶ These revised standards include modifications to support Order Nos. 890, 890-A, 890-B, and 890-C,⁷ including standards to support Network Integration Transmission Service (NITS) on an Open Access Same-Time Information System (OASIS), Service Across Multiple Transmission Systems (SAMTS), standards to support the Commission's policy regarding rollover rights for redirects on a firm basis, standards that incorporate the functionality for Transmission Providers to credit redirect requests with the capacity of the parent reservation, and standards modifications to support consistency across the OASIS-related standards.⁸

³ 16 U.S.C. § 791a (2012).

⁴ The specific NAESB standards that the Commission incorporated by reference in Order No. 676-H are WEQ-000, WEQ-001, WEQ-002, WEQ-003, WEQ-004, WEQ-005, WEQ-006, WEQ-007, WEQ-008, WEQ-011, WEQ-012, WEQ-013, WEQ-015, and WEQ-021. *See* Order No. 676-H, FERC Stats. & Regs. ¶ 31,359 at P 18.

⁵ *See id.* P 1; Order No. 676-H Rehearing Order, 151 FERC ¶ 61,046 at P 2 (citations omitted).

⁶ 18 C.F.R. § 38.2 (2014).

⁷ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007), *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 (2009) *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009). The Version 002 standards also included revisions made in response to Order No. 890.

⁸ *See* Order No. 676-H, FERC Stats. & Regs. ¶ 31,359 at P 2.

4. In Order No. 676-H, the Commission explained that public utilities have a number of options with respect to compliance with Order No. 676-H. The Commission explained that public utilities can incorporate the complete set of NAESB standards into their tariffs without modification by submitting a compliance filing containing a single statement acknowledging their obligation to comply with Version 003 Business Practice Standards as specified in Part 38 of the Commission's regulations as updated and revised.⁹ Alternatively, public utilities may incorporate the complete set of Version 003 Business Practice Standards into their tariffs, without modification, if they so choose.¹⁰ The Commission also indicated that a public utility can file a request for waivers of specific provisions, along with its reasons supporting the request.¹¹

5. 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, 2015.¹² Subsequently, the February 2, 2015 deadline was extended to May 15, 2015.¹³

6. On April 16, 2015, the Commission issued the Order No. 676-H Rehearing Order, which addressed various requests for rehearing of Order No. 676-H. With respect to entities seeking waivers of certain NAESB WEQ standards, the Commission clarified that:

[r]equiring a public utility to file (and the Commission to process) a waiver request for standards that on their face specifically state [that they] 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

⁹ *See id.* PP 87-88, 95.

¹⁰ *See id.* P 89.

¹¹ *See id.* P 88.

¹² *See id.* PP 20, 88, 95. The Commission also established a separate 18-month compliance schedule for Standard 002-5.10.3 regarding the implementation of Network Integration Transmission Service OASIS templates, which are not at issue in this compliance filing.

¹³ *Standards for Business Practices and Communication Protocols for Public Utilities*, Notice Granting Limited Time Extension, Docket No. RM05-5-024 (issued Jan. 15, 2015).

potential waiver requestors and the Commission, since the standard itself makes clear to whom it applies.¹⁴

Thus, the Commission stated that, going forward, any request for waivers of standards that by their terms do not apply to an entity potentially requesting waivers during the time frame the standards are effective would be dismissed as unnecessary.¹⁵

II. The Duke Southeast Utilities' Filing

7. In their filing, the Duke Southeast Utilities submit amendments to section 4 of their open access transmission tariff (OATT) and request waivers with regard to certain Version 003 standards. The Duke Southeast Utilities ask the Commission to waive the February 2, 2015 effective date on an industry-wide basis “given that 90 [percent] of relevant utilities are reliant on [Open Access Technology International, Inc. (OATI)] software.”¹⁶ The Duke Southeast Utilities state that they cannot comply with standards relating to the SAMTS because the necessary software to link multiple systems has not been finalized by OATI. According to the Duke Southeast Utilities, Edison Electric Institute (Edison) explained in its rehearing request of Order No. 676-H that the Version 003 standards were drafted based on the assumption that the business practice (both the NITS and SAMTS) would be implemented at the same time.¹⁷ The Duke Southeast Utilities assert that all SAMTS-related standards must await implementation of NITS on OASIS. The Duke Southeast Utilities further state that they prefer that the Commission grant Edison’s request for clarification/rehearing and not require the implementation of SAMTS-related standards until NITS-related standards are implemented. The Duke Southeast Utilities state that in the alternative, they “seek a temporary waiver of the relevant portions of the standards.”¹⁸

8. The Duke Southeast Utilities also state that, in Order No. 676-H, the Commission asked NAESB to revise standards WEQ-001-9.5, WEQ-001-10.5, and any other affected standards to conform to the policy established in *Dynegy Power Marketing, Inc.*,¹⁹ which

¹⁴ Order No. 676-H Rehearing Order, 151 FERC ¶ 61,046 at P 20.

¹⁵ *Id.* P 19.

¹⁶ Duke Southeast Utilities December 1, 2014 Filing at 2 (Compliance Filing).

¹⁷ *Id.*

¹⁸ *Id.* at 3.

¹⁹ 99 FERC ¶ 61,054 (2002) (*Dynegy*).

provides that a transmission customer requesting redirect service does not lose its rights to its original transmission path until the redirect request is: (1) accepted by the transmission provider; (2) confirmed by the transmission customer; and (3) passes the conditional reservation deadline provided in section 13.2 of the Commission's *pro forma* OATT.²⁰ The Duke Southeast Utilities state that most of the industry has "always understood that capacity associated with a parent reservation [is] to be released for resale once a redirect request was confirmed" by a transmission customer.²¹ They further state that the OATI software that they use does not follow the *Dynegy* policy. While the Duke Southeast Utilities assert that they "do not believe they have ever had a redirect request preempted," they request waivers of the WEQ standards because the Duke Southeast Utilities "have not been able to identify a viable workaround."²² The Duke Southeast Utilities state that OATI is working on software to address the *Dynegy* policy, but, because testing and training on that software will need to be conducted, they do not know when waivers would become unnecessary.²³ Consequently, they propose to submit a filing to indicate when waivers are no longer necessary "within a week of such determination being made."²⁴

9. The Duke Southeast Utilities state that because they are not regional transmission organizations, they did not include standards WEQ-015 and WEQ-021 in their compliance filing, assuming that they do not need waivers to omit such standards. The Duke Southeast Utilities also state that because their request for waivers impacts multiple subsections of WEQ-001, WEQ-002, WEQ-003, and WEQ-013, "[r]ather than identify and parse and each and every potentially impacted standard" to which they seek waiver, the Duke Southeast Utilities have proposed to include the following tariff language to inform customers of their waiver requests:

Waivers: The Transmission Provider has sought waiver of those Version 003 standards that relate to Service Across Multiple Transmission. The Transmission Provider has sought waiver of the Version 003 standards to the extent that they require the Transmission Provider to ensure that a transmission customer does

²⁰ Compliance Filing at 3 (citing *Dynegy*, 99 FERC ¶ 61,054 at P 9).

²¹ *Id.*

²² *Id.* at 4.

²³ *See id.*

²⁴ *Id.*

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 of this Tariff. The Transmission Provider's software results in the release of capacity on the original path once a redirect request is accepted and confirmed.²⁵

III. Notice and Responsive Pleadings

10. Notice of the Duke Southeast Utilities' filing was published in the *Federal Register*, 79 Fed. Reg. 73,062 (2014), with interventions and protests due on or before December 22, 2014. None was filed.

IV. Discussion

11. We conditionally accept the Duke Southeast Utilities' compliance filing, deny in part and dismiss in part the requested waivers, and direct the Duke Southeast Utilities to make an additional compliance filing. With regard to the Duke Southeast Utilities' request for the Commission to waive the February 2, 2015 effective date on an industry-wide basis, we note that the date for compliance with the Version 003 Business Practice Standards not related to the NITS OASIS template was extended to, and including, May 15, 2015 for all entities subject to these requirements.²⁶ Thus, we dismiss this waiver request.

12. Regarding the Duke Southeast Utilities' request that the Commission not require the implementation of SAMTS-related standards until NITS-related standards are implemented, the Commission has already denied this request. In its request for rehearing of Order No. 676-H, Edison argued that the Commission erred by failing to specify that the implementation schedule for all OASIS template interactions (including SAMTS) is 18 months after the effective date of Order No. 676-H. Edison argued that the industry needs additional time to comply with all the new OASIS standards and not allowing its requested timeline would be more burdensome than allowing an 18-month schedule for all OASIS requirements. In the Order No. 676-H Rehearing Order, the Commission found Edison's contentions to be general and non-specific and that it did not justify an across-the-board revision to the required timetable.²⁷ The Commission stated

²⁵ *Id.* at 4-5.

²⁶ *See supra* P 5.

²⁷ Order No. 676-H Rehearing Order, 151 FERC ¶ 61,046 at P 24.

that 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.²⁸

13. We find that the Duke Southeast Utilities have not demonstrated that good cause exists to grant their request for waivers. While the Duke Southeast Utilities make general statements concerning the availability of the software needed to link multiple systems and state that “[t]here are multiple subsections of WEQ-001, WEQ-002, WEQ-003, and WEQ-013 impacted by the waiver requests,” they do not specify the subsections of those Business Practice Standards for which they are seeking waiver. Additionally, they provide no time restriction for this waiver request. The Duke Southeast Utilities instead ask the Commission to rely on their proposal “to file a compliance filing indicating that they no longer require a waiver within one week of being satisfied that they can implement the relevant standards.”²⁹ Accordingly, we deny the request for waivers of “relevant portions of the standards” that the Duke Southeast Utilities have not identified.³⁰ Our denial is without prejudice to the Duke Southeast Utilities’ filing a new request for waivers that corrects these defects.

14. Additionally, with regard to Business Practice Standards related to the *Dynegy* policy, we dismiss the Duke Southeast Utilities’ request for waivers as unnecessary to comply with the requirements of Order No. 676-H. As explained in the 676-H Rehearing Order, in Order No. 676-H, the Commission stated that “NAESB standards must conform to the Commission’s *Dynegy* policy before the Commission would incorporate them by reference,” and therefore, the Commission “requested that NAESB revise Standards WEQ-001-9.5, WEA-001-10.5, and any other standards affected by those standards, to conform to the Commission’s *Dynegy* policy.”³¹ Accordingly, the Commission did not incorporate by reference Version 003 Business Practice Standards WEQ-001-9.5 and WEQ-001-10.5, and the Duke Southeast Utilities’ request for waivers is unnecessary. However, to the extent that the Duke Southeast Utilities’ waiver request could be viewed as a request for waiver of the redirect policy set out in *Dynegy*, we deny such request. As the Commission stated in Order No. 676-H, the Commission’s policy regarding when a redirect customer loses its rights to its original transmission path, as explained in *Dynegy* was “reinforced in the Commission’s recent order in *Entergy Services, Inc.*,” and still

²⁸ *Id.*

²⁹ Compliance Filing at 3.

³⁰ MISO 151 FERC ¶ 61,144 (2015) (granting temporary waiver of certain WEQ Version 003 standards).

³¹ Order No. 676-H Rehearing Order, 151 FERC ¶ 61,046 at P 6.

reflects the Commission's redirect policy.³² The Duke Southeast Utilities have failed to provide sufficient grounds to demonstrate that good cause exists to grant waiver of this policy.³³

15. Finally, consistent with the Commission's clarification in the Order No. 676-H Rehearing Order, we dismiss the Duke Southeast Utilities' request for waivers of Business Practice Standards WEQ-015 and WEQ-021 as unnecessary. Both WEQ-015 and WEQ-021 provide, in their respective applicability sections, that they are only applicable to RTO and ISO administered markets, and, therefore, WEQ-015 and WEQ-021 do not apply to the Duke Southeast Utilities because they are not RTOs or ISOs. As clarified in the 676-H Rehearing Order, requiring a public utility to file (and the Commission to process) a waiver request for standards that, on their face, specifically state that they 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. The Commission explained that including such standards in the public utility's tariff will have no adverse effects on the company, since the standards would not impose the compliance obligation prescribed by the standard on that entity.³⁴ The Commission stated that, 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.³⁵

16. Consistent with these determinations, we direct the Duke Southeast Utilities to submit a compliance filing within 60 days of the date of this order incorporating by reference all of the Version 003 NAESB standards. Additionally, given our denial and dismissal of the Duke Southeast Utilities' request for waivers, we direct the Duke Southeast Utilities to submit in their compliance filing revised tariff records that do not include references to waiver requests of the Version 003 NAESB standards.

³² Order No. 676-H, FERC Stats. & Regs. ¶ 31,359 at P 46 (citing *Entergy Servs., Inc.*, 137 FERC ¶ 61,199 (2011), *order on reh'g and compliance*, 143 FERC ¶ 61,143 (2013)).

³³ *See Midcontinent Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,144, at P 23 (2015).

³⁴ Order No. 676 Rehearing Order, 151 FERC ¶ 61,046 at P 20.

³⁵ *Id.* P 21.

The Commission orders:

(A) The Duke Southeast Utilities' compliance filing is hereby conditionally accepted, effective May 15, 2015, as discussed in the body of this order.

(B) The Duke Southeast Utilities' request for waivers is hereby denied in part and dismissed in part, as discussed in the body of this order.

(C) The Duke Southeast Utilities are directed to submit a further compliance filing within 60 days, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.