

152 FERC ¶ 61,156
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. ER15-518-003

ORDER ON COMPLIANCE AND REQUEST FOR WAIVERS

(Issued August 27, 2015)

1. On May 20, 2015, Duke Energy Carolinas, LLC (Duke Carolinas), Duke Energy Progress, Inc. (Duke Progress), and Duke Energy Florida, Inc. (Duke Florida) (collectively, the Duke Southeast Utilities) submitted a filing¹ to comply with the Commission's May 18, 2015 order² addressing the Duke Southeast Utilities' compliance filing and request for waivers of Order No. 676-H.³ In addition, Duke Carolinas and Duke Progress filed a renewed request for waivers to be in effect until July 15, 2015.⁴

¹ Duke Southeast Utilities May 20, 2015 Filing (May 20 Filing).

² *Duke Energy Carolinas, LLC*, 151 FERC ¶ 61,146 (2015) (May 18 Order).

³ *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).

⁴ Duke Southeast Utilities state that although their previous request included Duke Florida, Duke Florida is able to comply with the Business Practice Standards and is therefore omitted from this waiver request because it has a broader array of network service product "service increments" built into its existing OASIS software. May 20 Filing at 2 & n.5.

Additionally, on July 15, 2015, the Duke Southeast Utilities filed a letter and revised tariff record informing the Commission that, as of July 15, 2015, the Duke Southeast Utilities are able to comply with Order No. 676-H and, thus, only require the requested waivers for the period that ended on July 15, 2015.⁵ For the reasons discussed below, we conditionally accept the Duke Southeast Utilities' compliance filing, grant Duke Carolinas' and Duke Progress' request for 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.

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)⁶ to incorporate by reference, with certain enumerated exceptions, the latest version (Version 003) of the Business Practice 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.⁷

3. The Version 003 Business Practice Standards update earlier versions of the WEQ Business Practice Standards that the Commission previously incorporated by reference into its regulations.⁸ These revised Business Practice Standards include modifications to support Order Nos. 890, 890-A, 890-B, and 890-C,⁹ including Business Practice

⁵ Duke Southeast Utilities July 15, 2015 Filing (July 15 Filing).

⁶ 16 U.S.C. § 791a (2012).

⁷ The specific NAESB Business Practice 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.

⁸ 18 C.F.R. § 38.2 (2015).

⁹ *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 Business Practice Standards also included revisions made in response to Order No. 890.

Standards to support Network Integration Transmission Service (NITS) on an Open Access Same-Time Information System (OASIS), Service Across Multiple Transmission Systems (SAMTS), Business Practice Standards to support the Commission's policy regarding rollover rights for redirects on a firm basis, Business Practice Standards that incorporate the functionality for Transmission Providers to credit redirect requests with the capacity of the parent reservation, and Business Practice Standards modifications to support consistency across the OASIS-related Business Practice Standards.¹⁰

4. In Order No. 676-H, 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, 2015.¹¹ Subsequently, the February 2, 2015 deadline was extended to May 15, 2015.¹² In April 16, 2015, the Commission issued the Order No. 676-H Rehearing Order, which addressed various requests for rehearing of Order No. 676-H.

5. In the May 18 Order, the Commission conditionally accepted the Duke Southeast Utilities' compliance filing, denied in part and dismissed in part the requested waivers, and directed the Duke Southeast Utilities to make a further compliance filing. As relevant here, regarding the Duke Southeast Utilities' request that the Commission not require the implementation of SAMTS-related Business Practice Standards until NITS-related Business Practice Standards are implemented, in the May 18 Order the Commission found that it had already denied this request on rehearing of Order No. 676-H.¹³ The Commission stated that if a particular public utility encounters specific problems that will prevent its compliance with these requirements in a timely manner, it

¹⁰ See Order No. 676-H, FERC Stats. & Regs. ¶ 31,359 at P 2.

¹¹ See *id.* PP 20, 88, 95. The Commission also established a separate 18-month compliance schedule for Business Practice Standard 002-5.10.3 regarding the implementation of Network Integration Transmission Service OASIS templates, which are not at issue in this compliance filing.

¹² *Standards for Business Practices and Communication Protocols for Public Utilities*, Notice Granting Limited Time Extension, Docket No. RM05-5-024 (issued Jan. 15, 2015).

¹³ May 18 Order, 151 FERC ¶ 61,146 at P 12 (noting that in the Order No. 676-H Rehearing Order the Commission found contentions concerning the implementation schedule for all OASIS template interactions (including SAMTS) to be general and non-specific and did not justify an across-the-board revision to the required timetable).

can ask for an extension for itself, and the merits of such a request will be considered on a case-by-case basis.¹⁴ The Commission found that the Duke Southeast Utilities had not demonstrated that good cause exists to grant their request for waivers related to the SAMTS-related Business Practice Standards because they had made general statements in their waiver request concerning the unavailability of necessary software,¹⁵ failed to specify the Business Practice Standard subsections for which they sought waivers, and provided no time restriction for their waiver request. Consequently, the Commission denied the waiver request but stated that its denial was “without prejudice to the Duke Southeast Utilities’ filing a new request for waivers that corrects these defects.”¹⁶

6. Additionally, consistent with the Commission’s clarification in the Order No. 676-H Rehearing Order, the Commission dismissed the Duke Southeast Utilities’ request for waivers of Business Practice Standards WEQ-015 and WEQ-021 as unnecessary.¹⁷

II. The Duke Southeast Utilities’ Filing

7. Duke Carolinas and Duke Progress note that, in the May 18 Order, the Commission stated, “we deny the request for waivers of ‘relevant portions of the standards’ that the Duke Southeast Utilities have not identified,” and that such denial “is without prejudice to the Duke Southeast Utilities’ filing a new request for waivers that corrects these defects.”¹⁸ Duke Carolinas and Duke Progress state that they are providing the information requested as to which Business Practice Standard the waivers are for (the entirety of Business Practice Standard WEQ-001-23), the duration of the waivers (until July 15, 2015), and additional information as to why they are requesting the waivers.

8. Duke Carolinas and Duke Progress state that WEQ-001-23 provides for an automated procedure for queuing and processing “Coordinated Requests” across multiple transmission systems and that WEQ-001-23.2.2 sets forth the types of services and products that can be “coordinated.” They also state that both network and point-to-point

¹⁴ *Id.* (citing Order No. 676-H Rehearing Order, 151 FERC ¶ 61,046 at P 24).

¹⁵ The software is being developed by Open Access Technology International, Inc. (OATI).

¹⁶ May 18 Order, 151 FERC ¶ 61,146 at P 13.

¹⁷ *Id.* P 15.

¹⁸ May 20 Filing at 2 (citing May 18 Order, 151 FERC ¶ 61,146 at P 13).

service requests can be coordinated but that the coordinated requests must all have a minimum duration of one month. Duke Carolinas and Duke Progress further state that WEQ-001-23 contemplates that a network request may be paired with a point-to-point service request and assert that, if a transmission provider does not provide network service through OASIS, it likely cannot implement the network request aspects of WEQ-001-23 until it does. Duke Carolinas and Duke Progress state that because they already provide network service through a version of OASIS that does not yet fully comply with the NAESB Business Practice Standards for NITS on OASIS, they planned to implement WEQ-001-23 for both network and point-to-point requests at the same time instead of delaying implementation of WEQ-001-23 to network requests until NITS is implemented on OASIS.

9. Duke Carolinas and Duke Progress state that, as with other Version 003 Business Practice Standards, new software is necessary to implement WEQ-001-23 but after receiving and testing this new software, they knew that the flaws in the new software meant that a software package that could “properly deal with SAMTS” for network and point-to-point service requests would not be in place by May 15, 2015 (i.e., the compliance deadline).¹⁹

10. Duke Carolinas and Duke Progress argue that partial implementation of SAMTS will confuse customers and waste transmission providers’ resources. They also contend that they now have a better understanding of what software flaws exist and how quickly to expect their correction. Consequently, they ask for temporary waivers of WEQ-001-23 for the period that ended on July 15, 2015.

11. Duke Carolinas and Duke Progress state that the companies’ network and point-to-point customers must enter a service increment since both companies’ network customers submit network service requests through OASIS. Duke Carolinas and Duke Progress state that the service increments identified in WEQ-002-2.3.6.1 are aligned with the service increments for point-to-point service under Part II of the *pro forma* tariff, but that Part III of the tariff, which pertains to network service, does not include similarly defined service increments. More specifically, they state that there are no yearly network or monthly network products.²⁰

12. Duke Carolinas and Duke Progress add that, although the NAESB Business Practice Standards do not yet require a service increment for network service, to be able

¹⁹ *Id.* at 3.

²⁰ *Id.* at 5.

to allow network requests on OASIS they have to require a service increment for their two network products (which are referred to as “network service” and “secondary service”). Duke Carolinas and Duke Progress state that they thus require customers to categorize the network service product as a daily product and the secondary service product as an hourly product.²¹ While Duke Carolinas and Duke Progress concede that many transmission providers have crafted systems that allow yearly and monthly values for network service, they assert that adopting this approach would require extensive training for their operators and customers and rewriting of software. Because NITS on OASIS will supersede the need for these changes, Duke Carolinas and Duke Progress do not intend to adopt such an approach.²²

13. Duke Carolinas and Duke Progress further state that the fact that their network service products are given hourly (secondary service) or daily (network service) service increments causes problems because the minimum term under WEQ-001-23 for each coordinated request is one month. Duke Carolinas and Duke Progress explain that the OATI software implements this one-month minimum term by coding that indicates which products are eligible to be processed as coordinated requests. According to Duke Carolinas and Duke Progress, for point-to-point service, the software is set to allow coordinated requests if the product is yearly or monthly. They assert that the software could be set to only allow yearly and monthly network service requests to be coordinated. However, they state that because Duke Carolinas and Duke Progress have only one product type each for network and secondary network service, no network service requests could be coordinated through SAMTS “until NITS on OASIS was implemented if the software was set in such a way.”²³ They argue that, while they could comply with the Business Practice Standards by denying SAMTS to all network requests until the implementation of NITS on OASIS, such an approach would be unfavorable to customers and would require piecemeal SAMTS implementation. Duke Carolinas and Duke Progress state they therefore decided to allow network requests to be coordinated requests well prior to implementation of NITS on OASIS. Additionally, they state that they decided to address the software issues by delaying the start of SAMTS by obtaining waivers until OATI is able to adjust the software to address the unique problems caused by Duke Carolinas’ and Duke Progress’ use of the daily/hourly service increment for all network products.²⁴

²¹ *Id.*

²² *Id.*

²³ *Id.* at 6.

²⁴ *Id.*

14. Duke Carolinas and Duke Progress further state that, as they expected, the OATI software did not initially test satisfactorily because it does not validate the request interval to prevent a customer from submitting a network request with a request interval of shorter than a month as a coordinated request. Further, they state that the OATI software does not properly establish the response time limit for any instance where one of the grouped requests is for network service and does not have a service increment of yearly or monthly. According to Duke Carolinas and Duke Progress, in such a scenario, the transmission provider would have to manually establish the response time limit, but there are no alarms or notifications to alert the transmission provider that all of the coordinated requests have a disposition other than as a pending request. They further argue that, without such notification, manual monitoring would be necessary and it would be “likely that the response time limit would not be established in all cases in a timely manner,” resulting in the possible inequitable treatment of customers.²⁵

15. Duke Carolinas and Duke Progress state that they informed OATI of these issues and that it may take OATI four weeks to prepare the software fixes and an additional two weeks for Duke Carolinas and Duke Progress to test them. For these reasons, Duke Carolinas and Duke Progress request waivers for the period that ended on July 15, 2015.²⁶

16. Duke Carolinas and Duke Progress state that the Commission has made it clear that if a Business Practice Standard “simply does not apply on its face,” an entity need not seek waiver.²⁷ Duke Carolinas and Duke Progress state that, if the Commission grants temporary waivers of WEQ-001-23, they will not accept any coordinated requests for that time period and, thus, any Business Practice Standards that address definitions or processing of such requests will simply not be applicable on their face.

III. Notice and Responsive Pleadings

17. Notice of the May 20 Filing was published in the *Federal Register*, 80 Fed. Reg. 30,225 (2015), with interventions and protests due on or before June 10, 2015. North Carolina Electric Membership Corporation filed a timely motion to intervene. Notice of the July 15 Filing was published in the *Federal Register*, 80 Fed. Reg. 43,423

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 4 (citing May 18 Order, 151 FERC ¶ 61,146 at P 15).

(2015), with interventions and protests due on or before August 5, 2015. None were filed.

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), North Carolina Electric Membership Corporation's timely, unopposed motion to intervene serves to make it a party to this proceeding.

IV. Discussion

19. We conditionally accept the Duke Southeast Utilities' compliance filing, grant Duke Carolinas' and Duke Progress' request for 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, as discussed below.

20. With regard to the Duke Southeast Utilities' compliance filing, we find that the Duke Southeast Utilities have complied with the Commission's directives in the May 18 Order except for the directives concerning Duke Southeast Utilities' request for waivers of Business Practice Standards WEQ-015 and WEQ-021. In the May 18 Order, consistent with the Commission's clarification in the Order No. 676-H Rehearing Order, the Commission dismissed the Duke Southeast Utilities' request for waivers of Business Practice Standards WEQ-015 and WEQ-021 as unnecessary.²⁸ The Commission explained that both WEQ-015 and WEQ-021 provide, in their respective applicability sections, that they are only applicable to regional transmission operator (RTO) and independent system operator (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.²⁹ The Commission stated that:

[a]s 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.³⁰

²⁸ May 18 Order, 151 FERC ¶ 61,146 at P 15.

²⁹ *Id.*

³⁰ *Id.* (citing Order No. 676-H Rehearing Order, 151 FERC ¶ 61,046 at P 20).

21. The Commission also explained that if a public utility submits its compliance filing, which includes a tariff revision incorporating the NAESB Business Practice Standards, the public utility must either incorporate by reference each Business Practice Standard or indicate in its tariff that it has obtained a waiver of that Business Practice Standard.³¹ No Business Practice Standard should be excluded or considered implicitly.³² Therefore, because the Duke Southeast Utilities failed to incorporate by reference

WEQ-015 and WEQ-021 and, because as discussed above, the Commission dismissed the Duke Southeast Utilities' request for waivers of Business Practice Standards WEQ-015 and WEQ-021 as unnecessary, we conditionally accept Duke Southeast Utilities' compliance filing, and direct the Duke Southeast Utilities to make a further compliance filing to modify their tariff to incorporate by reference WEQ-015 and WEQ-021.

22. With regard to Duke Carolinas' and Duke Progress' request for temporary waivers of WEQ-001-23, we disagree that if the Commission grants temporary waivers of WEQ-001-23 and Duke Carolinas and Duke Progress do not accept any coordinated requests for that time period, any Business Practice Standards that "address definitions, processing, etc. [] will simply not be applicable on their face."³³ Duke Carolinas and Duke Progress misconstrue the Commission's clarification in the Order No. 676-H Rehearing Order, as reiterated in the May 18 Order, concerning the compliance requirement for Business Practice Standards that "on their face, specifically state that they are only applicable to entity groups that the potential waiver requestor does not belong to."³⁴ In its applicability section, WEQ-001-23 provides that it applies to transmission service providers, and because Duke Carolinas and Duke Progress are transmission service providers, they are not exempt from incorporating WEQ-001-23 into their tariff.

23. Nevertheless, for good cause shown, we will grant Duke Carolinas' and Duke Progress' request for waivers of WEQ-001-23 for the period that ended on July 15, 2015. Duke Carolinas and Duke Progress explain that this waiver, which is only for a specific subsection of WEQ-001, would be for a limited period of time until July 15,

³¹ *Id.* (citing Order No. 676-H Rehearing Order, 151 FERC ¶ 61,046 at P 21).

³² Order No. 676-H Rehearing Order, 151 FERC ¶ 61,046 at P 21.

³³ May 20 Filing at 4.

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

2015, when OATI would be able to finalize software necessary to fully implement SAMTS. In addition, we agree with Duke Carolinas and Duke Progress that granting waivers in this instance would be preferable to unnecessarily confusing customers and requiring Duke Carolinas and Duke Progress to expend resources on a temporary issue when the new software became available after a relatively short period of time.³⁵

24. Consistent with the foregoing determinations, we will require the Duke Southeast Utilities to submit a compliance filing, within 60 days of the date of this order, to revise their tariff to: (1) incorporate by reference the entire set of the NAESB WEQ Version 003 Business Practice Standards that the Commission has incorporated by reference; and (2) for each Business Practice Standard for which the Commission has granted waiver, cite to the order granting that waiver.

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) Duke Carolinas and Duke Progress are directed to submit a compliance filing, within 60 days of the date of this order, as discussed in the body of this order.

(C) Duke Carolinas' and Duke Progress' request for waivers is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

³⁵ As noted, in the July 15 Filing Duke Southeast Utilities informed the Commission that as of July 15, 2015, they are able to comply with Order No. 676-H.