

126 FERC ¶ 61,291
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 38

(Docket No. RM05-5-000; OA08-50-002)

Standards for Business Practices and
Communication Protocols for Public Utilities;
Duke Energy Carolinas, LLC

(Issued March 30, 2009)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order on Requests for Waiver.

SUMMARY: The Federal Energy Regulatory Commission grants in part, and denies in part, requests for waiver of certain North American Electric Standards Board (NAESB) business practice standards incorporated into Part 38 of the Commission's regulations.

EFFECTIVE DATE: This rule will become effective [insert date of publication in the

FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

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FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Standards for Business Practices and Communication Docket No. RM05-5-000
Protocols for Public Utilities

Duke Energy Carolinas, LLC Docket No. OA08-50-002

ORDER ON REQUESTS FOR WAIVER

(Issued March 30, 2009)

1. On January 6, 2009, the Edison Electric Institute (EEI) submitted in Docket No. RM05-5-000 a request on behalf of electric transmission providers that the Commission issue a blanket waiver of certain North American Electric Standards Board (NAESB) business practice standards incorporated into the Commission's regulations. EEI states that the NAESB business practices require the posting of information that is inconsistent with the Commission's posting requirements under Part 358 of its regulations, as amended in Order No. 717.¹ The Commission grants in part, and denies in part, the requested waiver, as discussed below.

2. On January 16, 2009, Duke Energy Carolinas, LLC (Duke) renewed EEI's request for waiver in Docket No. OA08-50-002 as part of a compliance filing proposing to incorporate the latest version of NAESB's business practice standards into Duke's Open

¹ Standards of Conduct for Transmission Providers, Order No. 717, 73 FR 63796 (Oct. 27, 2008), FERC Stats. & Regs. ¶ 31, 280 (2008), reh'g pending.

Access Transmission Tariff (OATT).² Duke proposed incorporating a reference to the pending request for waiver into certain provisions of its OATT. The Commission directs Duke to submit a further compliance filing, described below, to reflect the Commission's decision to grant in part, and deny in part, the requested waiver.

I. Background

3. NAESB is a non-profit standards development organization established in January 2002 that serves as an industry forum for the development of standards that promote a seamless marketplace for wholesale and retail natural gas and electricity. In a series of orders, the Commission has incorporated certain of NAESB's standards into its regulations.³ The NAESB standards include standards for business practices as well as standards and protocols for electronic communication on the Open Access Same-time Information System (OASIS).

4. Of particular relevance here, requirement WEQ-002-4.5.2 of NAESB's Business Practices for OASIS Standards and Communications Protocol (OASIS S&C Protocol),

² The Commission recently accepted Duke's compliance filing, but deferred action on its request for waiver of NAESB's business practice standards. See Duke Energy Carolinas, LLC, 126 FERC ¶ 61, 226 (2009).

³ Standards for Business Practices and Communication Protocols for Public Utilities, Order No. 676, 71 FR 26199 (May 4, 2006), FERC Stats. & Regs. ¶ 31,216 (2006), reh'g denied, Order No. 676-A, 116 FERC ¶ 61,255 (2006), Order No. 676-B, 72 FR 21095 (Apr. 30, 2007), FERC Stats. & Regs. ¶ 31,246 (2007), Order No. 676-C, 73FR 43848 (July 29, 2008, FERC Stats. & Regs. ¶ 31,274 (2008), Order No. 676-D, 124 FERC ¶ 61,317 (2008); Standards for Business Practices for Interstate Natural Gas Pipelines, Order No. 698, 72 FR 38757 (July 16, 2007), FERC Stats. & Regs. ¶ 31,251 (2007), order on clarification and reh'g, Order No. 698-A, 121 FERC ¶ 61,264 (2007).

version 1.4, directs transmission providers to establish a Standards of Conduct link on their OASIS home pages that contains information that the Commission in Order No. 2004 required transmission providers to post on their OASIS sites.⁴ Requirement WEQ-001-1.6(g)(4) of the Business Practices for Open Access Same-Time Information System (OASIS Business Practices), version 1.4, provides for the posting of logs, also required in Order No. 2004, detailing the circumstances and manner in which a transmission provider exercises discretion under its OATT. Requirement WEQ-002-4.3.10.5 of the OASIS S&C Protocol, version 1.4, establishes the template to be used when posting such acts of discretion.

5. In Order No. 676-C, the Commission incorporated by reference into Part 38 of its regulations version 1.4 of the OASIS S&C Protocol, including WEQ-002.4.5.2 and WEQ-002-4.3.10.5.⁵ However, the Commission declined to incorporate into its regulations the entirety of version 1.4 of the OASIS Business Practices.⁶ Among other things, the Commission declined to incorporate WEQ-001-1.6, having explained in the

⁴ Standards of Conduct for Transmission Providers, Order No. 2004, 68 FR 69134 (Nov. 25, 2003), FERC Stats. & Regs. ¶ 31,155 (2003), order on reh'g, Order No. 2004-A, 69 FR 23562 (Apr. 20, 2004), FERC Stats. & Regs. ¶ 31,161 (2004), order on reh'g, Order No. 2004-B, 69 FR 48371 (Aug. 10, 2004), FERC Stats. & Regs. ¶ 31,166 (2004), order on reh'g, Order No. 2004-C, 70 FR 284 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,172 (2004), order on reh'g, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), vacated and remanded as it applies to natural gas pipelines sub nom. Nat'l Fuel Gas Supply Corporation v. FERC, 468 F.3d 831 (D.C. Cir. 2006).

⁵ Order No. 676-C, FERC Stats. & Regs. ¶ 31,274 at P 9; see 18 CFR 38.2 (2008).

⁶ Id. P 7, n.10; see 18 CFR 38.2(a)(1).

Notice of Proposed Rulemaking initiating the proceeding that this business practice merely duplicates language already set forth in the Commission's regulations and, therefore, is not appropriate for incorporation.⁷

6. On September 2, 2008, NAESB reported to the Commission that its Wholesale Electric Quadrant (WEQ) Executive Committee had approved new versions of its standards, including the OASIS Business Practices and the OASIS S&C Protocol. In the new versions of these standards, the directive to establish a Standards of Conduct link on the OASIS is moved from requirement WEQ-002-4.5.2 to requirement WEQ-001-1-13.1.2. The language of the new requirement WEQ-001-1-13.1.2 is substantially identical to the prior version of WEQ-002-4.5.2, which has been amended to cross-reference the replacement language of WEQ-001-1-13.1.2. The requirements of WEQ-001-1.6(g)(4) and WEQ-002-4.3.10.5 are unchanged. The revised versions of the OASIS Business Practices and OASIS S&C Protocol are the subject of a Notice of Proposed Rulemaking issued recently in Docket No. RM05-5-013.⁸ Until such time as the Commission acts in that proceeding, version 1.4 of those standards remain in effect.

7. On October 16, 2008, the Commission issued Order No. 717, reforming the Standards of Conduct applicable to transmission providers and adopting corresponding

⁷ 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, at P 33-34 (2005).

⁸ Standards for Business Practices and Communications Protocols for Public Utilities, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,640 (2009).

revisions to Part 358 of the Commission's regulations. Among other things, the Commission eliminated various posting requirements previously imposed under Order No. 2004, including the requirement to post certain information identified in version 1.4 of requirements WEQ-001-1.6(g)(4), WEQ-002.4.3.10.5, and WEQ-002-4.5.2.

II. Requests for Waiver

A. Docket No. RM05-5-000

8. On behalf of all electric transmission providers, EEI requests in Docket No. RM05-5-000 that the Commission waive the requirements of WEQ-001-1.6(g)(4), version 1.4, and WEQ-002-4.5.2 and WEQ-002.4.3.10.5, version 1.4. EEI contends that these business practice standards are no longer consistent with the posting requirements under the Standards of Conduct as reformed in Order No. 717. Specifically, EEI states that WEQ-002-4.5.2, version 1.4, provides that transmission providers should post information on their OASIS sites regarding emergency circumstances deviations, marketing and energy affiliates, shared facilities, organizational charts and job descriptions, common employees, potential merger partners, transfers, information disclosures, voluntary consent to share non-affiliated customer information, discretionary actions under the OATT, discounts, chief compliance officers, and written implementation procedures. Although EEI acknowledges that the use of "should" in the business practice standard is arguably not mandatory, EEI states that WEQ-001-1.6(g)(4), version 1.4, requires the posting of discretionary actions under the OATT and that WEQ-002-4.3.10.5, version 1.4, dictates the exact template the transmission provider must use when posting a log of acts of discretion.

9. EEI states that, in Order No. 717, the Commission made significant changes to the Standards of Conduct. EEI notes that the Commission, among other things, eliminated the requirement to post an organizational chart, eliminated the requirement to post emergency circumstances deviations, altered the requirement to post information regarding affiliates, eliminated the requirement to post common employees, and eliminated the discount posting requirement. As a result, EEI states that the NAESB business practices standards impose or suggest requirements that are no longer reflected in the Commission's Standards of Conduct. EEI states that one or more of its members will be seeking to change the relevant NAESB standards to reflect Order No. 717, but in the interim EEI requests that the Commission issue a blanket waiver to confirm that transmission providers are not obligated to abide by NAESB standards that impose or suggest posting requirements under the Standards of Conduct that have been eliminated by Order No. 717.

B. OA08-50-002

10. Duke renews EEI's request for waiver as part of a compliance filing in Docket No. OA08-50-002 proposing to incorporate the latest version of NAESB's business practice standards. Duke states that it supports EEI's request for waiver and, to that end, Duke proposes to exclude WEQ 001-1.6(g)(4), WEQ-002-4.5.2, and WEQ-002-4.3.10.5 from the incorporation of the NAESB OASIS Business Practices and OASIS S&C Protocol into its OATT. The Commission recently accepted Duke's filing as it related to other compliance obligations, but deferred action on the request for waiver of the NAESB business practice standards.

III. Commission Determination

11. The Commission grants in part, and denies in part, the requested waiver. EEI and Duke request waiver of three NAESB business practice standards: WEQ-001-1.6(g)(4) of the OASIS Business Practices, version 1.4; and, WEQ-002-4.5.2 and WEQ-002.4.3.10.5 of the OASIS S&C Protocol, version 1.4. The Commission grants waiver of the posting requirements of WEQ-002-4.5.2, version 1.4, to the extent they extend beyond the requirements of Part 358 of the Commission's regulations, as amended by Order No. 717. The Commission denies as unnecessary the request for waiver of WEQ-001-1.6(g)(4) and WEQ-002.4.3.10.5, version 1.4.

12. As noted by EEI, certain of the posting requirements of WEQ-002-4.5.2 are no longer consistent with the posting requirements of part 358 of the Commission's regulations, as amended by Order No. 717. For example, WEQ-002-4.5.2 requires transmission providers to post information regarding emergencies that result in a deviation from the Standards of Conduct, referring to corresponding requirements in the Commission's regulations adopted in Order No. 2004. In Order No. 717, the Commission eliminated the requirement to post information regarding emergency deviations, revising its regulations accordingly.⁹ The version of WEQ-002-4.5.2 currently incorporated into Part 38 of the Commission's regulations therefore does not reflect changes adopted in Part 358 of the Commission's regulations. To conform the requirements incorporated into Part 38 with the requirements of Part 358, the

⁹ See 18 CFR 358.7(h) (as revised by Order No. 717 at P 214).

Commission grants waiver for all electric transmission providers of those requirements of section 38.2(b)(2) of the Commission's regulations relating to the posting of information under WEQ-002-4.5.2, version 1.4, that extend beyond the posting requirements of Part 358 of the Commission's regulations, as amended by Order No. 717.¹⁰

13. EEI and Duke also seek waiver of versions 1.4 of WEQ-001-1.6(g)(4) and WEQ-002.4.3.10.5. As noted above, the Commission has not incorporated WEQ-001-1.6 into Part 38 of its regulations and, therefore, there is no conflict in the Commission's regulations with respect to that posting requirement.¹¹ With regard to WEQ-002-4.3.10.5, although that standard has been incorporated into the Commission's regulations,¹² it merely establishes the template to be used when posting information under WEQ-001-1.6(g)(4). That template can continue to be used by transmission providers wishing to make such postings, even if not otherwise required under the Commission's regulations. Waiver of WEQ-001-1.6(g)(4) and WEQ-002.4.3.10.5 is

¹⁰ The Commission's determination here is consistent with its proposal in the Notice of Proposed Rulemaking addressing recent revisions to the NAESB business practice standards to not require public utilities to comply with the requirements of WEQ-001-13.1.2, version 1.5, that are inconsistent with Order No. 717. See Standards for Business Practices and Communications Protocols for Public Utilities, FERC Stats. & Regs. ¶ 32,640, at P 16 (2009).

¹¹ See 18 CFR 38.2(b)(1). As noted above, the Commission declined to incorporate into its regulations the requirements of WEQ-001-1.6, version 1.4, because those requirements merely duplicate language already set forth in the Commission's regulations.

¹² See 18 CFR 38.2(b)(2).

unnecessary and, accordingly, the Commission denies the requests for waiver of those business practice standards.

14. Consistent with the Commission's determination on the requests for waiver, the Commission directs Duke to submit within 30 days a further compliance filing in Docket No. OA08-50-002 to eliminate from its OATT language stating that waiver of the requirements of WEQ-001-1.6(g)(4) and WEQ-002-4.3.10.5 has been requested.

The Commission orders:

(A) The Commission hereby waives for all electric transmission providers those requirements of 18 CFR 38.2(b)(2) relating to the posting of information under WEQ-002-4.5.2, version 1.4, that extend beyond the posting requirements of Part 358 of the Commission's regulations, as amended by Order No. 717.

(B) The Commission directs Duke to submit within 30 days a further compliance filing in Docket No. OA08-50-002 to eliminate from its OATT language stating that a waiver of the requirements of WEQ-001-1.6(g)(4) and WEQ-002-4.3.10.5 has been requested.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.