

124 FERC ¶ 61,070
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 38

(Docket No. RM05-5-005; Order No. 676-C)

Standards for Business Practices and
Communication Protocols for Public Utilities

(Issued July 21, 2008)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising its regulations to incorporate by reference the latest version (Version 001) of certain standards adopted by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB). NAESB's standards (1) revise its Open Access Same-Time Information Systems (OASIS) business practice standards, (2) revise four business practice standards relating to reliability issues, (3) add new standards on transmission loading relief for the Eastern Interconnection, (4) add new standards for public key infrastructure, and (5) add a new OASIS implementation guide. Incorporating these revised standards will provide customers with information that will enable them to obtain transmission service on a non-discriminatory basis and will assist the Commission in supporting needed infrastructure and the reliability of the interstate transmission grid.

EFFECTIVE DATE: This Final Rule will become effective on [**insert date that is thirty days after publication in the FEDERAL REGISTER**]. Dates for implementation of

the standards are provided in the Final Rule. The Director of the Federal Register has approved the Incorporation by reference of the standards addressed in the Final Rule effective [**insert date that is thirty days after publication in the FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT:

Ryan M. Irwin (technical issues)
Office of Energy Market Regulation
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426
(202) 502-6454

Kay Morice (technical issues)
Office of Energy Market Regulation
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426
(202) 502-6507

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

SUPPLEMENTARY INFORMATION:

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Standards for Business Practices and
Communication Protocols for Public Utilities

Docket No. RM05-5-005

ORDER NO. 676-C

FINAL RULE

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1. The Federal Energy Regulatory Commission (Commission) is amending its regulations under the Federal Power Act (FPA)¹ to incorporate by reference the latest version (Version 001) of certain business practice standards concerning the Open Access Same-Time Information Systems (OASIS) and gas/electric coordination and four business practice standards relating to reliability issues adopted by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB). These revised standards update earlier versions of these standards that the Commission previously incorporated by reference into its regulations at 18 CFR 38.2 in Order Nos. 676, 676-B, and 698.² In addition, in this Final Rule, the Commission is amending its regulations under the FPA to incorporate by reference NAESB's new standards on

¹ 16 U.S.C. 791a, *et seq.*

² Standards for Business Practices and Communication Protocols for Public Utilities, Order No. 676, 71 FR 26,199 (May 4, 2006), FERC Stats. & Regs., ¶ 31,216 (Apr. 25, 2006), reh'g denied, Order No. 676-A, 116 FERC ¶ 61,255 (2006), Order No. 676-B, 72 FR 21,095 (Apr. 30, 2007), FERC Stats. & Regs. ¶ 31,246 (Apr. 19, 2007), Standards for Business Practices for Interstate Natural Gas Pipelines; Standards for Business Practices for Public Utilities, Order No. 698, 72 FR 38757 (July 16, 2007), FERC Stats. & Regs., ¶ 31,251 (June 25, 2007), order on clarification and reh'g, Order No. 698-A, 121 FERC ¶ 61,264 (2007).

transmission loading relief (TLR) for the Eastern Interconnection and on public key infrastructure (PKI) and to add a new OASIS implementation guide.

I. Background

2. NAESB is a non-profit standards development organization established in January 2002 that serves as an industry forum for the development of business practice standards that promote a seamless marketplace for wholesale and retail natural gas and electricity.³ Since 1995, NAESB and its predecessor, the Gas Industry Standards Board, have been accredited members of the American National Standards Institute (ANSI), complying with ANSI's requirements that its standards reflect a consensus of the affected industries.⁴

3. NAESB's standards include business practices that streamline the transactional processes of the natural gas and electric industries, as well as communication protocols and related standards designed to improve the efficiency of communication within each industry. NAESB supports all four quadrants of the gas and electric industries – wholesale gas, wholesale electric, retail gas, and retail electric. All participants in the gas and electric industries are eligible to join NAESB and participate in standards development.⁵

³ See Standards for Business Practices and Communication Protocols for Public Utilities, Notice of Proposed Rulemaking, 72 FR 8318 (Feb. 26, 2007), FERC Stats. & Regs. ¶ 32,612, at P 3 (Feb. 20, 2007).

⁴ Id.

⁵ Id. P 4.

4. NAESB's procedures are designed to ensure that all industry members can have input into the development of a standard, whether or not they are members of NAESB, and each standard NAESB adopts is supported by a consensus of the relevant industry segments.⁶

5. On December 26, 2007, NAESB submitted a report detailing its new and revised Version 001 business practice standards dated October 31, 2007 with minor corrections applied on November 16, 2007.⁷ These standards update the standards that we incorporated by reference into our regulations in Order Nos. 676, 676-B and 698, add a new OASIS implementation guide, and add new standards to: (1) provide additional functionality for OASIS transactions; (2) provide business practice standards for TLR in the Eastern Interconnection; and (3) provide business practice standards governing PKI.

6. On April 21, 2008, the Commission issued a Notice of Proposed Rulemaking, wherein we proposed to incorporate by reference into the Commission's regulations the WEQ Version 001 Standards (with certain exceptions) including NAESB's new

⁶ Id. P 5.

⁷ The Version 001 standards do not include modifications of existing standards or new standards to support Order No. 890, the Commission's Final Rule amending the Commission's pro forma Open Access Transmission Tariff, Preventing Undue Discrimination and Preference in Transmission Service, Order No. 890, 72 FR 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 (Feb. 16, 2007), order on reh'g, Order No. 890-A, 73 FR 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (Dec. 28, 2007), reh'g pending, with the exception of modifications to resales and transfers to address the Commission's rules for resales described in Order No. 890 at P 815 and n.496.

standards on TLR, PKI, and the new OASIS implementation guide.⁸ In response to the WEQ Version 001 NOPR, ten comments were filed.⁹

II. Discussion

A. Overview

7. In this Final Rule, the Commission is amending its regulations under the FPA to incorporate by reference the NAESB WEQ Version 001 standards that the Commission proposed to incorporate in the WEQ Version 001 NOPR.¹⁰ While many of the standards simply revise or update existing standards, some of the standards address new business practices. For example, NAESB adopted new business practice standards for resales and transfers to standardize secondary transmission service on the OASIS. These standards also standardize how resales and transfers are conducted off the OASIS. NAESB also adopted PKI standards to create greater security for business transactions taking place over the Internet. In addition, NAESB has revised and added standards establishing business practices related to the North American Electric Reliability Corporation (NERC)

⁸ Standards for Business Practices and Communication Protocols for Public Utilities, Notice of Proposed Rulemaking, 73 FR 22,849 (Apr. 28, 2008), FERC Stats. & Regs. ¶ 32,633 (2008) (WEQ Version 001 NOPR).

⁹ Commenters on the WEQ Version 001 NOPR, and the abbreviations used in this Final Rule to identify them are listed in the Appendix.

¹⁰ Consistent with our proposal in the WEQ Version 001 NOPR, we are not revising our regulations to incorporate by reference the following standards: Standards of Conduct for Electric Transmission Providers (WEQ-009) and Contracts Related Standards (WEQ-010). In addition, consistent with our discussion in the WEQ Version 001 NOPR, we are not incorporating by reference the following WEQ-001 standards: WEQ-001-0.1, 001-0.9 through WEQ-001-0.13, WEQ-001-1.0 through WEQ-001-1.8 and WEQ-001-9.7.

reliability standards.¹¹ For example, NAESB has adopted standards governing TLR that specify business practices for cutting transmission services in the event of a TLR, consistent with the NERC reliability standards.

8. In the NOPR, we asked for comment on differences in definitions in a few of the NERC's and NAESB's TLR standards. The comments indicate that NERC and NAESB have formed a subcommittee to ensure that their definitions are complementary in the future. We are very pleased that NERC and NAESB have taken active steps to ensure that their respective definitions are harmonized so as to ensure that these standards will operate efficiently in the future.

9. The specific NAESB standards that we are incorporating by reference in this Final Rule are:

- Business Practices for Open Access Same-Time Information Systems (OASIS), Version 1.4 (WEQ-001, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007) including Standards 001-0.2 through 001-0.8, 001-0.14 through 001-0.20, 001-2.0 through 001-9.6.2, 001-9.8 through 001-12.5.2, and 001-A and 001-B;¹²

¹¹ In Docket No. RM08-7-000, the Commission is issuing a Final Rule (being issued simultaneously with this rule) approving six modified Reliability Standards submitted to the Commission for approval by the North American Electric Reliability Corporation (NERC). The rule being issued in Docket No. RM08-7-000 is also approving NERC's proposed interpretation of five specific Requirements of Commission-approved Reliability Standards. While the Final Rule being issued in Docket No. RM08-7-000 addresses modified Reliability Standards, the Final Rule being issued in the instant proceeding (i.e., in Docket No. RM05-5-005), is addressing, among other matters, the business practice standards related to these Reliability Standards.

¹² The WEQ Version 001 package of standards includes Version 1.4 of the OASIS Standards. The reference to Version 1.4 is based on the fact that this is the fourth set of revisions to the Version 1.0 OASIS Standards that the Commission adopted in Order No. 889. Open Access Same-Time Information System and Standards of Conduct, 61 FR

- Business Practices for Open Access Same-Time Information Systems (OASIS) Standards & Communication Protocols, Version 1.4 (WEQ-002, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007) including Standards 002-0.1 through 002-5.10;
- Open Access Same-Time Information Systems (OASIS) Data Dictionary, Version 1.4 (WEQ-003, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007) including Standard 003-0;
- Coordinate Interchange (WEQ-004, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007) including Purpose, Applicability, and Standards 004-0.1 through 004-17.2, and 004-A through 004-D;¹³
- Area Control Error (ACE) Equation Special Cases Standards (WEQ-005, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007) including Purpose, Applicability, and Standards 005-0.1 through 005-3.1.3, and 005-A;
- Manual Time Error Correction (WEQ-006, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007) including Purpose, Applicability, and Standards 006-0.1 through 006-12;
- Inadvertent Interchange Payback (WEQ-007, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007) including Purpose, Applicability, and Standards 007-0.1 through 007-2, and 007-A;
- Transmission Loading Relief – Eastern Interconnection (WEQ-008, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007) including Purpose, Applicability, and Standards 008-0.1 through 008-3.11.2.8, and 008-A through 008-D;¹⁴
- Gas/Electric Coordination (WEQ-011, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007) including Standards 011-0.1 through 011-1.6;¹⁵

21,737 (May 10, 1996), FERC Stats. & Regs. ¶ 31,035 (April 24, 1996). The Version 1.4 reference appears in Standards WEQ-001, WEQ-002, WEQ-003, and WEQ-013.

¹³ See supra note 11.

¹⁴ Id.

¹⁵ These standards are identical to the standards the Commission incorporated by reference into its regulations at 18 CFR 38.2 in Order No. 698.

- Public Key Infrastructure (PKI) (WEQ-012, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007) including Recommended Standard, Certification, Scope, Commitment to Open Standards, and Standards 012-0.1 through 012-1.26.5; and
- Business Practices for Open Access Same-Time Information Systems (OASIS) Implementation Guide, Version 1.4 (WEQ-013, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007) including Introduction and Standards 013-0.1 through 013-4.2.

10. The Commission will also require public utilities to modify their open access transmission tariffs (OATTs) to include the WEQ standards that we are incorporating by reference the next time they make any unrelated filing to revise their OATTs.¹⁶ As we did in Order No. 676,¹⁷ we clarify that, to the extent a public utility's OASIS obligations are administered by an independent system operator or regional transmission operator (RTO) and are not covered in the public utility's OATT, the public utility will not need to modify its OATT to include the OASIS standards.

¹⁶ See Order No. 676, FERC Stats. & Regs. ¶ 31,216 at P 100. If the public utility makes no unrelated tariff filing by January 31, 2009, it must make a separate tariff filing incorporating these standards by that date. They are to use the language specified later in this order, see *infra* P 83. We also note that, as discussed in P 82, once the standards have become effective, utilities must abide by the standards even before they make their tariff filings incorporating the standards into their tariffs.

¹⁷ Order No. 676, FERC Stats. & Regs. ¶ 31,216 at P 20.

11. NAESB approved the standards under its consensus procedures.¹⁸ Adoption of consensus standards is appropriate because the consensus process helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of all segments of the industry. Moreover, since the industry itself has to conduct business under these standards, the Commission's regulations should reflect those standards that have the widest possible support. In section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTT&AA), Congress affirmatively requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like NAESB, as a means to carry out policy objectives or activities.¹⁹

B. Issues Raised by Commenters

12. Comments in response to the WEQ Version 001 NOPR were filed by ten commenters. While some of these comments raise concerns about specific standards, none of the ten comments filed raise any general objection to the Commission's proposal to incorporate by reference the WEQ standards into the Commission's regulations.

¹⁸ 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. 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.

¹⁹ Pub L. No. 104-113, 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997).

1. Cost of Obtaining NAESB Standards

a. Comments

13. Lafayette and LEPA are concerned that the cost of obtaining the NAESB standards impedes dissemination and understanding of the applicable requirements. Lafayette and LEPA claim that incorporating by reference standards necessarily purchased at not insubstantial costs imposes a burden on small entities, particularly where issues of interpretation of the standards arise.

b. Commission Determination

14. In Order No. 676, the Commission explained that standards organizations are permitted to charge for standards incorporated by reference into federal government regulations.²⁰ Under the Freedom of Information Act, to be eligible for incorporation by reference, standards must be reasonably available to the class of persons affected by their publication.²¹ The NAESB standards are reasonably available to all industry members. The cost for obtaining the NAESB standards for non-members is \$100 for the printed standards booklet and \$300 for the CD-ROM of the standards. NAESB members can obtain the standards on-line at no cost.

15. The arguments raised here by Lafayette and LEPA are identical to those that the Commission considered and rejected in Order No. 676, which became a final determination when no party filed a request for rehearing of Order No. 676 objecting to the Commission's finding on this issue. None of the arguments raised here by Lafayette

²⁰ Order No. 676, FERC Stats. & Regs. ¶ 31,216 at P 97.

²¹ 1 CFR 51.7(a)(2)-(4).

and LEPA lead us to reverse the determination that the Commission previously reached on this issue in Order No. 676, i.e., that the standards are reasonably available to all industry members. Furthermore, the Commission finds that the benefits to both the industry and the public that have resulted from the adoption of an industry-driven approach to standards development outweigh the cost of the fees required to obtain the NAESB standards. If industry participants remain concerned about the accessibility of the standards, these concerns should be addressed through the NAESB process.

2. Interpretation of NAESB Standards and OATT Principles

a. Comments

16. LEPA requests that the Commission clarify that it will interpret NAESB standards in accordance with the principles underlying the OATT. In particular, LEPA requests that the Commission clarify that it is not, by incorporating the NAESB standards, intending to override settled matters of contract law or the Commission policies underlying open access transmission service.

b. Commission Determination

17. The NAESB standards are incorporated by reference in the regulations and therefore must be followed to the same extent as other regulations and policies of the Commission. The Commission's regulations require compliance with both the pro forma OATT (18 CFR 35.28) and the NAESB standards that the Commission has incorporated by reference (18 CFR 38.2) and that must be included in the utility's OATT. If LEPA is concerned that there are inconsistencies between specific NAESB standards and the

Commission's open access transmission service regulations, it can seek an interpretation of the standards from NAESB and can make appropriate filings with the Commission.

3. Weighing Costs and Benefits of Proposed Standards

a. Comments

18. The Midwest ISO is concerned that the cost of complying with and implementing some of the WEQ-001 NAESB standards (for example, standards WEQ-001-9.4.3²² and WEQ-001-12²³) will be greater than the benefits that will result. The Midwest ISO believes it would be unreasonable and unduly discriminatory to adopt a business practice that results in substantial compliance costs while producing only negligible benefits for a particular NAESB segment or a group of industry participants and states that the Commission has the authority to determine what costs are considered just and reasonable through rulemaking. Thus, Midwest ISO is not, at this time, requesting a waiver of specific standards (such as WEQ-001-9.4.3 and WEQ-001-12) but is asking that the Commission provide a waiver option and that NAESB be directed to review this entire topic. The Midwest ISO wants consideration to be given to the relative costs and benefits of the standards for entities such as the Midwest ISO or to allow affected entities to seek waivers.²⁴

²² WEQ-001-9.4.3 provides that “[I]f the TP determines that only a portion of the requested capacity can be accommodated, the TP shall extend to the TC that portion of the capacity (i.e., partial service) that can be accommodated through a COUNTEROFFER. An example is shown in Appendix B.”

²³ WEQ-001-12 is the set of standards for transfers.

²⁴ Midwest ISO Comments at 5-9.

b. Commission Determination

19. NAESB's stakeholder process for adopting standards ensures that an industry consensus is necessary before any standard is approved. This process helps to ensure that all approved standards are beneficial to the industry. However, as we explained in order No. 676, each public utility that wants a waiver of any standard we are incorporating by reference in this Final Rule may file a request for waiver, supported by the reasons it believes a waiver is warranted.²⁵ To the extent that implementation of certain standards will result in substantial compliance costs for small industry participants, we have in the past considered waivers of extensions of compliance obligations where granting such requests would not noticeably diminish the expected benefits to the rest of the industry that would derive from compliance with the standard. Any such waiver requests should specifically detail the expected compliance costs and the reasons why a waiver would not diminish the overall expected benefits from compliance with the standard. Therefore, we will incorporate these standards in our regulations, as proposed in the WEQ Version 001 NOPR.

4. Implementation Date for WEQ-001

a. Comments

20. PJM argues that in order to implement the Resale and Transfer functionality required by WEQ-001, PJM will have to develop the internal business documentation, develop the software modifications, and test those modifications. To provide sufficient time to implement the necessary scheduling and settlements application changes, PJM

²⁵ Order No. 676, FERC Stats. & Regs. ¶ 31,216 at P 79.

requests an implementation date of January 31, 2009 or later for WEQ-001. NYISO agrees with PJM's comment and requests that the Commission institute an effective date of January 31, 2009 or later for compliance with WEQ-001.

b. Commission Determination

21. In order to allow adequate time to implement the new Resale and Transfer standards in WEQ-001, the Commission will provide for an implementation date for the WEQ-001 standards of January 31, 2009, as requested.

5. WEQ-001-0.5

22. WEQ-001-0.5 defines identical service requests as "those OASIS transmission service requests that have exactly the same values" for certain OASIS template Data Elements. The standard also states, "Service requests where any combination of PATH, POR and/or POD represent exactly the same commercial transmission elements shall be considered as 'having the exact same value.'"

a. Comments

23. Bonneville is concerned that no other OASIS template Data Elements are subject to the qualifying language "having the exact same value" included in the Data Elements of PATH, POR, and POD. Bonneville seeks clarification that "identical service requests" includes multiple transmission service requests that have substantially similar start times and stop times even if those elements are not exactly the same.

b. Commission Determination

24. Bonneville's requested clarification would change the meaning of this standard. The standard as adopted by NAESB requires that "identical service requests" must have "exactly the same values" for start time and stop time, not "substantially similar start

times and stop times.” Bonneville has not provided us with sufficient evidence that the standard needs to be modified as it suggests. If Bonneville believes the standard should be modified, it should, as we stated in Order No. 676, seek such a change through NAESB.²⁶

6. WEQ-001-1.5(d)

25. WEQ-001-1.5(d) provides, in part:

In the event that an OASIS user’s grossly inefficient method of accessing an OASIS node or obtaining information from the node seriously degrades the performance of the node, a Responsible Party may limit a user’s access to an OASIS node without prior Commission approval.

a. Comments

26. Bonneville asserts that the Responsible Party should have the right to determine whether the inefficient access of an OASIS node “seriously degrades” the performance of the node and recommends that WEQ-001-1.5(d) be revised.

b. Commission Determination

27. We are not incorporating WEQ-001-1.5(d) by reference in our regulations, because the standard is one of several that restate the Commission’s regulations, in this case § 37.5(d) of the Commission’s regulations. As we stated in Order No. 676, the proper function of the NAESB business practice standards is to provide business practice standards that implement the Commission’s regulations, not merely restate them.²⁷

²⁶ E.g., Order No. 676, FERC Stats. & Regs. ¶ 31,216 at P 67.

²⁷ E.g., *id.* P 72 and 74.

7. **WEQ-001-11 (Resales)**

28. WEQ-001-11 states:

Any Transmission Customer (Reseller) shall have the right to offer for sale the scheduling rights associated with the points of delivery and receipt of a Firm or Non-Firm Point-To-Point Transmission Service reservation (i.e. Parent Reservation). Any Eligible Customer (Assignee) may request to purchase scheduling rights from the Reseller.

a. **Comments**

29. Duke argues for the modification of WEQ-001-11, which establishes a two-party transaction on OASIS between the reseller and the assignee for resale transactions. Duke claims that, because the transmission provider is permitted to annul the transaction if the assignee does not execute the required service agreement, an inappropriate burden is placed on the transmission provider to intervene in a transaction to which it is not a party. Duke recommends that this standard be revised to provide for a three-party transaction, similar to the one presented in WEQ 001-12.1.2.

30. In addition, Duke asserts that, although WEQ-001-11 provides for the resale of both Firm Point-to-Point and Non-Firm Point-to-Point scheduling rights and permits the use of a blanket service agreement, the form of Service Agreement for resales that appears in the pro forma OATT refers only to firm sales. Duke suggests that this form may require revision to include non-firm sales.

31. Duke also requests guidance, in the form of examples of an Electric Quarterly Report (EQR) filing, of multiple resale transactions under a blanket agreement.

Alternatively, Duke suggests that the Commission could rescind its requirement that the transmission provider report resale transactions in its EQR filings and substitute a

requirement that summary reports showing a compilation of OASIS Resale reservations be posted quarterly on OASIS.

b. Commission Determination

32. The standard Duke refers to as a model for revising the standards for resales to provide for a three-party transaction²⁸ specifies that a transfer must be agreed to by the reseller, the assignee and the transmission provider. Transfers are distinct from resales because transfers result in a full conveyance of rights and obligations from the original transmission customer to the assignee. In the case of both a resale and transfer, however, the assignee must first execute a service agreement with the transmission provider.²⁹ In both instances, the transmission provider therefore has an opportunity to ensure that the assignee meets the transmission provider's credit requirements and is otherwise committed to abide by the terms and conditions of the transmission provider's OATT governing the reassignment of transmission service.

33. The Commission considers it reasonable for the industry to reach consensus through the NAESB process to require transaction-specific approval by the transmission provider for transfers, but not for resales. In a resale, the original transmission customer's service agreement remains in place and any default by the assignee does not

²⁸ WEQ-001-12.1.2 states that “[t]he Transfer must be agreed to by the FOTC [Financially Obligated Transmission Customer], the Assignee, and the TP. The Conveyance of Transfer rights is not complete until the TP approves the transfer. The Transmission Provider shall not unduly withhold such approval.”

²⁹ See Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 425.

relieve the original customer of its obligation to pay for service.³⁰ That may not be the case in a transfer³¹ and, therefore, it is reasonable to provide transmission providers with additional protection in the form of the right to review and approve the transfer.

Therefore, we see no need to modify the standards for resales as suggested by Duke and will incorporate these standards by reference as we proposed in the WEQ Version 001 NOPR.

34. In addition, Duke's concern regarding the reference to firm sales in the title of the Form of Service Agreement in Attachment A-1 of the pro forma OATT has been resolved by the Commission in Order No. 890-A. There the Commission revised Attachment A-1 to the pro forma OATT to clarify that the use of a blanket service agreement for resales is similar to the use of a blanket service agreement for primary capacity.³² The specification sheet for long-term reassignments was retained, consistent with the use of a specification sheet for long-term sales of primary capacity.³³

35. Finally, Duke's comments on the transmission provider's EQR obligations are beyond the scope of this rulemaking. The Commission adopted the EQR reporting requirement for reassigned capacity in the Order No. 890 proceeding, in which Duke actively participated, and Duke has failed to justify here rescission of that reporting

³⁰ See id.

³¹ See id. P 425, n.165.

³² Id. P 424.

³³ See id., n.164.

requirement.³⁴ Should Duke or any other transmission provider have particular concerns regarding how to comply with its reporting obligation, it should bring the matter to the Commission's attention for resolution.³⁵

8. WEQ-001-11.2.1

36. WEQ-001-11.2.1 states:

The Assignee shall be obligated directly to the TP for any usage-based charges and overuse penalties resulting from its subsequent use of the Resale.

a. Comments

37. The Midwest ISO is concerned that WEQ-001-11.2.1 introduces a high risk of financial exposure to the transmission provider in the event that the assignee defaults on payment. The Midwest ISO believes that the RTO should not have to bear the financial risk associated with an assignee defaulting on usage-based market charges. Furthermore, the Midwest ISO is concerned that this standard does not address the allocation and ownership of Financial Transmission Rights/Auction Revenue Rights. To address these concerns, the Midwest ISO recommends that WEQ-001-11 be revised to include prior validation requirements, similar to those mandated by the Commission in Order Nos. 890 and 890-A in the context of service agreements. Alternatively, the Midwest ISO requests

³⁴ See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 817; Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 423 and n.162; Order No. 890-B, 123 FERC ¶ 61,299 at P 84 (2008).

³⁵ The Commission recently clarified and expanded the opportunities for regulated entities and others to obtain guidance regarding compliance with the rules and regulations administered by the Commission. See Obtaining Guidance on Regulatory Requirements, 123 FERC ¶ 61,157 (2008).

clarification and assurance that those standards are to be interpreted such that transmission providers will not be held liable in the event of nonperformance of a resale obligation.

b. Commission Determination

38. The Commission does not interpret WEQ-001-11.2.1 to expose a transmission provider to high financial risks in an event an assignee defaults on usage-based charges. At least 24 hours prior to any resale an Assignee must execute a service agreement with the Transmission Provider under WEQ-001-11.1.7. The Commission has held that this service agreement is a requirement meant to commit the Assignee to abide by the terms and conditions of the Transmission Provider's OATT governing the reassignment of transmission service.³⁶ The assignee therefore must comply with all creditworthiness requirements required for signing a service agreement. If an Assignee were to default on its usage-based charges or overuse penalties, it would still be subject to its service agreement with the Transmission Provider, and the Transmission Provider would have access to any collateral or other assurances required under its OATT. Furthermore, Midwest ISO itself points out the Commission's policy in Order No. 890-A that allows a transmission provider to take action against the Assignee as it would any other default under the pro forma OATT, as well as transfer to the reseller its legal rights to enforce the Assignee's payment obligations.³⁷ We find that these procedural protections, coupled

³⁶ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 423.

³⁷ Id. n.166.

with NAESB standard WEQ-001-11.2.1.1, which grants the Transmission Provider the right to nullify the Resale in the event the service agreement is not executed, address the concerns of Midwest ISO regarding its comments on financial exposure and the request for prior validation. The Commission will therefore incorporate this standard into the Commission's regulations by reference as we proposed in the WEQ Version 001 NOPR.

9. WEQ-001-11.3 through WEQ-001-11.3.3

39. Standards WEQ-001-11.3 through WEQ-001-11.3.3 describe the service attributes and timing of resales. These standards read as follows:

WEQ-001-11.3:

A Resale shall retain all the same transmission service attributes, transmission service priority, and points of delivery and receipt of the Parent Reservation. For example, if one hour of a Monthly Firm reservation is Resold, the Resale reservation shall be a Monthly Firm Resale reservation lasting one hour.

WEQ-001-11.3.1:

The TP's OASIS shall not impose any restrictions regarding the timing of a Resale, either submission times or service duration, except that the start and stop times of the Resale must be within the bounds of the Parent Reservation(s) that are designated as supporting the Resale.

WEQ-001-11.3.2:

The Reseller shall have the right to aggregate multiple reservations into a single Resale provided that each reservation being aggregated is of exactly the same service attribute, priority, product and point of receipt/point of delivery.

WEQ-001-11.3.3:

A Resale must be in whole hours, beginning at the top of the hour, and within the start and stop time(s) of the Parent Reservation(s).

a. Comments

40. Southern Companies recommends that the Commission reject the portions of WEQ-001-11.3 through WEQ-001-11.3.3 that seem to require transmission providers to provide hourly firm service to assignees. Southern Companies argues that these provisions are inconsistent with the provisions of Order No. 890, the pro forma OATT, and the Commission's regulations.

41. First, Southern Companies states that, in Order No. 890, the Commission determined that transmission providers are not required to provide hourly firm service; it argues, therefore, that portions of WEQ-001-11.3 through WEQ-001-11.3.3 are in conflict with Order No. 890 and therefore should be rejected. Second, Southern Companies states that, in the pro forma OATT, the minimum term of firm point-to-point transmission service that is required to be offered is one day.

42. Lastly, Southern Companies points out that the Commission's regulations mandate that a reseller choosing to use OASIS to offer for resale transmission capacity must post relevant information on the same OASIS as used by the transmission provider from whom the reseller purchased the transmission capacity and in the same manner that the transmission provider posts its own information. Southern Companies argues that, if a reseller is allowed to sell hourly firm service when the transmission provider does not offer it, then the reseller will be unable to comply with the Commission's regulations regarding the posting of relevant information because the transmission provider will not have display pages, tables, etc., that are designed for hourly firm service.

43. Duke recommends against the adoption of WEQ-001-11.3.2 due to the administrative difficulties that the aggregation of multiple resale reservations could create. Duke argues that the value of this practice to its customers is nominal relative to the billing complexities that could be involved.

b. Commission Determination

44. A consensus of the electric industry has found that allowing customers the ability to resell scheduling rights on less than daily basis will increase the flexibility of resales and better serve the needs of customers. We agree that providing such enhanced flexibility is desirable.

45. We also find no inconsistency between these standards and Order No. 890, the pro forma OATT, or the Commission's regulations. Southern Companies appears to be confusing its obligation to offer transmission service with the resale of scheduling rights by customers that have previously reserved service. When a customer reserves daily transmission service, it is given the right to schedule the use of transmission capacity up to the amount reserved in every hour of that day (subject to OATT scheduling deadlines). The customer is not required to schedule use in each hour of the day and, in fact, could use as little as a single hour of the reserved service.

46. The assumption of a customer's scheduling rights by an assignee for one or more hours does not mean the transmission provider is offering hourly service to the assignee. As the Commission explained in Order No. 890-A, the reassignment of transmission capacity simply results in the reseller obtaining the right to schedule the reserved capacity during the period of the reassignment, consistent with the original customer's

reservation.³⁸ Indeed, permitting such resales is consistent with the Commission's determination in Order No. 888 that "a public utility's tariff must explicitly permit voluntary reassignment of all or a part of a holder's firm transmission capacity rights to any eligible customer."³⁹ We therefore find that WEQ-001-11.3.1 and WEQ-001-11.3.3 are not inconsistent with Order Nos. 888 and 890 and provide customers with additional flexibility to obtain capacity in competition with the transmission provider.⁴⁰

10. WEQ-001-11.5.3

47. WEQ-001-11.5.3 states:

All resales must include the price of the Resale. Price units shall always be \$/MW-Hour reserved.

³⁸ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 425.

³⁹ 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 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 at 31,696 (1996), order on reh'g, Order No. 888-A, 62 FR 12,274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (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. 2000) (TAPS v. FERC), aff'd sub nom. New York v. FERC, 535 U.S. 1 (2002) (emphasis in original; footnotes omitted).

⁴⁰ In the event of an hourly assignment of scheduling rights, the assignee would be subject to the same scheduling deadlines stated in the transmission provider's OATT as applicable to the reseller, e.g., 10 a.m. of the day prior to commencement of service if the transmission provider does not otherwise offer hourly firm service. Recently, in Order No. 890-B, the Commission directed transmission providers to include in their EQRs the rate that would have been charged under their OATTs had the assignee purchased primary service from the transmission provider for the term of the reassignment. See Order No. 890-B at P 84. If the transmission provider does not offer hourly firm service, the tariff rate that would be reported for an assignee receiving hourly scheduling rights would be the rate for daily service.

a. Comments

48. Southern Companies recommends that the Commission reject WEQ-001-11.5.3. Southern Companies claims that forcing resales to be converted to an hourly price is meaningless, particularly when transmission providers are not required to provide hourly firm service. Furthermore, Southern Companies claims that this provision is inconsistent with both the pro forma OATT and the Commission's regulations. Reassigned service is governed by the transmission provider's OATT, and Southern Companies claims that in order to be consistent with the transmission provider's OATT, the price of a resale should be based upon the increments of service that are set forth in that OATT and agreed to by the reseller and assignee. Furthermore, Southern Companies cites section 23.1 of the pro forma OATT, which mandates that assignees receive the same services and priority of service as did the reseller, and that the assignee is subject to all the terms and conditions of the tariff. Lastly, the Commission's regulations state that the transmission provider must post OASIS information for third parties in the same way that it posts its own information. Southern Companies argues that the transmission provider would be unable to comply with this regulation if WEQ-001-11.5.3 is adopted and the transmission provider does not offer hourly firm service because the transmission provider would be required to post prices in units different from the units in which it reports its own prices if they are based on the increments of service provided. Southern Companies notes that they raised these concerns throughout the NAESB process of developing the standards.

49. Bonneville argues that because resales may be of different increments of service, the pricing for the different increments must be permitted to vary to reflect these

increments. Furthermore, Bonneville claims that the term “Price units” in proposed WEQ-001-11.5.3 is inconsistent with the definition of “PRICE_UNITS” in the OASIS Data Dictionary, WEQ-003-0. Bonneville recommends the following revisions to WEQ-001-11.5.3:

All resales must include the price of the Resale.
PRICE_UNITS Price Units shall always be \$/MW-hour reserved be specified (e.g., \$/MWhr, \$/MWmonth, etc.).

50. Duke supports the adoption of WEQ-001-11.5.3. Duke claims that this requirement both simplifies the calculation of bills and provides the Commission with a consistent price format for the comparison of resale transactions. If the pricing methodology prepared by NAESB is not acceptable, then Duke would support a requirement that the total resale price be included in the reservation, with the Transmission Provider billing the total amount to the Assignee in one bill and crediting the total amount to the Reseller in a single credit, regardless of the duration of the resale reservation.

b. Commission Determination

51. The Commission in Order No. 890 did not address whether the price for resales must be stated in a particular unit of measure, such as \$/MW-Hour. Instead, the Commission left to negotiating parties the determination of the price for a particular reassignment of transmission capacity. It is not unreasonable for the industry to have reached consensus that the price of resales should be stated in \$/MW-Hour. The Commission agrees with Duke that having a consistent price format for all resale transactions will make it easier for the Commission to compare such transactions to each

other. This requirement also will improve the transparency and openness of resales of transmission service, allowing potential reassignment customers to better understand the comparative value of assigned transmission service. Therefore, we will incorporate this standard by reference as we proposed in the WEQ Version 001 NOPR.

52. Neither Southern Companies nor Bonneville stated a compelling reason as to why the Commission should not accept the proposed NAESB standard. It is the obligation of the parties negotiating the reassignment to state the price for the transaction and, pursuant to this standard, all such prices will be in a consistent format. We recognize that this may result in the posting of Resale prices that are not in the same unit of measure as the original reservation under which the Resale is accomplished. Nothing in Order No. 890 or our regulations prohibits this approach, which we conclude will permit customers to better compare prices for different transactions on the same transmission system, as well as transactions across transmission providers.

11. Resales of Conditional Long Term Firm Reservations

53. WEQ-001-11.1.7 states that “[t]he Assignee must execute a service agreement with the Transmission Provider that will govern the provision of reassigned service no later than twenty-four hours prior to the scheduling deadline applicable for the commencement of the reassigned service. The Transmission Provider may establish a blanket service agreement to include Resale transactions.”

54. WEQ-001-11.7 states that “[i]n the event a Transmission Provider requires that a higher priority, competing transmission service request must displace all or a portion of a

confirmed lower priority reservation, the TP shall have the right to nullify any Resales that reference the displaced reservation as their Parent.”

55. WEQ-001-11.7.1 states that “[o]nce the conditional window on the Parent Reservation has closed, Resales for firm service are not subject to displacement in accordance with Standard WEQ-001-11.”

a. Comments

56. Duke strongly recommends that the resale of Conditional Long Term Firm reservations be prohibited so that transmission providers can effectively manage these reservations and assure the reliable operation of the transmission grid. In the event that the resale of these reservations is permitted, Duke argues that they should only be permitted during periods in which the reservations are unconditionally firm and such resales should be restricted to the remaining portion of the biennial reassessment period, where applicable.

57. Furthermore, Duke argues that although WEQ-001-11.1.7 permits the use of blanket service agreements, if the resale of Conditional Long Term Firm reservations is allowed, then the use of a blanket service agreement as specified in WEQ-001-11.1.7 would not be permitted under Order No. 890. Duke states that, pursuant to Order No. 890, transmission providers and assignees are to execute a non-conforming Service Agreement for resales that specifies either specific system conditions during which

conditional curtailment may occur or annual number of curtailment hours during which conditional curtailment may occur.⁴¹

58. Bonneville also recommends that the Commission adopt a provision at WEQ-001-11.7 preventing transmission customers from initiating any resale during the conditional window because permitting this practice could allow resales initiated prematurely to impose risks on all parties involved in the transaction and could lead to inefficiencies in the resale market.

b. Commission Determination

59. As the Commission explained in Order No. 890-A, and reiterates above, the reassignment of transmission capacity results in the reseller obtaining the right to schedule the reserved capacity during the period of the reassignment consistent with the original customer's reservation.⁴² This applies equally to long-term firm point-to-point service using the conditional firm option adopted in Order No. 890. We conclude that the NAESB standards adequately address resales of conditional firm transactions. WEQ-001-11.1 makes clear that confirmation of a resale "shall also convey any outstanding conditions that may exist on the Parent Reservation (such as conditional approval pursuant to section 13.2(ii) of the OATT)." WEQ-001-11.7 and WEQ-001-11.7.1 also address the transmission provider's right to nullify resale transactions when a higher

⁴¹ Duke cites Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 960.

⁴² Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 425.

priority transaction displaces a lower priority transaction and when those rights apply to conditional firm transactions.

60. Since these standards permit resales of conditional firm transactions and give the transmission provider the right to nullify resales of displaced transactions, we find that the standards address the concerns of Duke and Bonneville about the effective management of conditional firm transactions. If Duke and Bonneville believe that these standards are not workable upon implementation, they may submit a request to NAESB to modify these standards based on their experience with these standards.

61. The Commission finds no reason to reject the industry's decision to permit a transmission provider to develop a blanket service agreement for resales of conditional firm service. Order No. 890 required only that an original conditional firm service contract would be nonconforming in every case, and thus, would be required to be filed with the Commission for approval. However, we see no reason to prohibit the use of a blanket service agreement for the resale of conditional firm service, since the resale only provides the right to schedule service consistent with the original transmission customer's reservation, which will be on file with the Commission. We agree with NAESB that the development of a blanket agreement for resales is beneficial because it will help encourage and expedite the processing of resales.

12. WEQ-004 (Coordinate Interchange) and WEQ-008 (Transmission Loading Relief - Eastern Interconnection)

62. WEQ-004 provides the NAESB business practice standards for coordinate interchange. These standards are designed to facilitate the transfer of electric energy between entities responsible for balancing load and generation.

63. WEQ-008 provides the NAESB business practice standards to complement the transmission loading relief procedures needed for curtailment and reloading of interchange transactions to relieve overloads on transmission facilities modeled for the eastern interconnection.

a. NOPR Requests for Comments

64. In the WEQ Version 001 NOPR, the Commission raised three questions concerning reliability-related standards and sought comments in response to these questions. First, as to WEQ-004, the Commission asked whether passive approval (also referred to as confirmation by silence) is appropriate for a business practice intended to complement a reliability standard.⁴³ Second, the Commission also asked a question about e-tagging.⁴⁴ Third, as to WEQ-008, the Commission asked whether the differences in NAESB and NERC definitions are significant and whether a single definition for reliability-related terms should be adopted in future standards.⁴⁵

b. Comments

65. In response to the Commission's request for comments regarding whether confirmation by silence is appropriate for a business practice intended to complement a reliability standard, NERC claims that it does not create a reliability impact and that the NAESB Standard does not alter the NERC Reliability Standards requirements, which require active response by the Balancing Authority and Transmission Service Provider.

⁴³ WEQ Version 001 NOPR at P 21.

⁴⁴ Id. P 20. No comments in response to this question were received.

⁴⁵ Id. P 28.

66. In response to the Commission's request for comments on whether the differences in the definition used by NAESB and NERC are significant and whether a single definition for reliability-related terms should be adopted in future standards, NERC asserts that the definitions do not affect the industry's ability to successfully implement the standards as written and reports that it is working with NAESB to develop more in-depth coordination procedures to ensure that definitions are consistent between both organizations. This task has been assigned to a newly formed Standards Committee Process Subcommittee.

67. Regarding the Commission's request for comment concerning the differences in the reliability-related definitions used by NAESB and NERC, the Midwest ISO states that it will rely on an effort undertaken by NAESB to resolve these differences and assumes that the Commission will direct that NAESB and NERC use the same definitions. SPP concurs with and endorses the comments submitted by the Midwest ISO on whether the differences in reliability-related definitions are significant and whether single definitions should be adopted in future standards.

68. The Midwest ISO is concerned that the inclusion of the Regional Difference in Appendix D of WEQ-008 Transmission Loading Relief–Eastern Interconnection results in overlapping requirements, since the same Regional Difference appears as Section E in the NERC TLR Standard IRO-006-04 – Reliability Coordination–Transmission Loading Relief. NERC retains responsibility for the Regional Difference Section of the NERC TLR Standard (section E) while a field test permitting PJM, Midwest ISO, and SPP market flows to use a three percent threshold is being conducted; however, when the field

test and an evaluation of the results are completed and a recommendation on the proper curtailment threshold that will be included in the Regional Difference is approved based on the results, the Regional Difference will be transferred to NAESB and removed from the NERC TLR Standard. In Order No. 693,⁴⁶ the Commission stated that it would neither approve nor remand the waiver of the regional difference to NERC TLR Standard IRO-006-03 while the field test was being conducted, and the Midwest ISO requests that the Commission take a similar action regarding WEQ-008 Appendix D, neither approving it nor remanding it while the field test is being conducted.

c. Commission Determination

69. As stated above, NAESB and NERC have agreed to establish a subcommittee to ensure that their definitions are consistent. Since all industry segments indicate that any existing differences in terms used by NAESB and NERC will not affect reliability or the ability to implement these standards, we will incorporate these standards.⁴⁷

70. While we will adopt the Regional Differences Section in Appendix D of the WEQ-008 TLR-Eastern Interconnection standards, we will not require it to be implemented until after the completion of the field tests within PJM, Midwest ISO, and SPP. Currently, the Regional Differences Section is housed in the NERC Reliability

⁴⁶ Mandatory Reliability Standards for the Bulk-Power System, 72 FR 31,452 (June 7, 2007), FERC Stats. & Regs. ¶ 31,242, at P 989 (Mar. 16, 2007).

⁴⁷ In Docket No. RM08-7-000, the Commission has deferred action on the proposed NERC TLR Reliability Standards. However, there is no need for us to defer action on WEQ-008. Thus, we will proceed to incorporate WEQ-008 by reference in this Final Rule. If developments concerning NERC's TLR Reliability Standards necessitate revisions to these standards, we are relying on NAESB, in coordination with NERC, to adopt any needed revisions.

Standards and will remain so until the completion of the field tests.⁴⁸ NERC states that, at that time, Section E of the NERC TLR Standard will be deleted from its Reliability Standards and transferred to the NAESB Business Practice Standards.

71. The Commission is mindful of Midwest ISO's concern regarding overlapping requirements, and therefore will postpone the implementation of Appendix D until after the field tests are over and NERC has transferred its responsibility to NAESB. This transfer will leave the responsibility for the Regional Differences Section in only one party's hands at a given time, and alleviate Midwest ISO's concerns.

72. Regarding the Commission's request for comments concerning passive approval, NERC replied that it does not believe NAESB's standard allowing confirmation by silence creates a detrimental effect on reliability. In addition, NAESB's standard does not alter or interfere with any of the reliability requirements for the NERC Reliability Standard. Therefore, we will accept the NAESB standard.

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⁴⁸ Pursuant to section E of the NERC TLR Standard.

13. WEQ-012-1.5 (Public Key Infrastructure)⁴⁹

73. WEQ-012-1.5 provides that the WEQ authorized certification authority may impose a “reasonable fee” for the issuance or renewal of certificates and other services and may not impose a fee to revoke certificates, for access to the subscriber’s certificate, or for access to an authorized certification authority’s published certificate revocation list.⁵⁰

a. Comments

74. The Midwest ISO is concerned about the provision in WEQ-012-1.5, stating that the provisions allowing a “reasonable fee” for the issuance or renewal of certificates and other services could lead to arbitrary fees and undue discrimination, because it: does not define what constitutes a “reasonable fee,” does not establish a methodology for determining whether or not a fee is reasonable, and does not establish what entity has the responsibility of deciding what constitutes a reasonable fee. Furthermore, the Midwest ISO is concerned that the standard does not identify how often certificates must be renewed, which results in ambiguity regarding how often fees would be charged. Lastly, the Midwest ISO is concerned that because the standard allows for imposing “reasonable

⁴⁹ As we explained in the WEQ Version 001 NOPR, FERC Stats. & Regs. ¶ 32,633, n.23, the PKI mechanism involves the use of extremely long prime numbers, called keys, to provide assurance that communications are properly protected. Two keys are involved -- a private key, which only the user has access to, and a public key, which can be accessed by anyone. The two keys work together so a message scrambled with the private key can only be unscrambled with the public key and vice versa. The more digits in these keys, the more secure the process. Similar to proving an identity through a handwritten signature offline, a digital signature is used to prove an identity online.

⁵⁰ Defined in WEQ-012-0.7.

fees” for other services, additional fees may be charged. To address these concerns, the Midwest ISO requests that the Commission direct NAESB to modify WEQ-012-1.5 to remove the ambiguities and recommends that all fees charged by a NAESB WEQ Certification Authority be approved by the Commission.

b. Commission Determination

75. The Commission will incorporate the standard. In order to implement PKI encryption companies are required to use a Certification Authority, and the company can choose among potential certifiers who offer electronic certificates that meet the NAESB PKI Standards.⁵¹ Competition among the Certification Authorities should ensure that fees are reasonable. In any event, the fees charged by a Certification Authority for PKI are not subject to the Commission’s jurisdiction, because they are not fees for the transmission or sale at wholesale of electric energy in interstate commerce.

⁵¹ Certification Authorities are no different than other entities which public utilities must hire to comply with Commission or other government regulations. For instance, the Commission requires companies to produce audited financial statements, and companies therefore must pay fees to produce such statements. Midwest ISO’s request for the Commission to regulate Certification Authority fees is akin to asking the Commission to approve the fees certified public accountants charge for preparing financial statements.

14. Requests for Modifications to NAESB Standards

a. Comments

76. In their comments, Bonneville⁵² and Duke⁵³ request modifications to numerous NAESB standards, and suggests the addition of two new standards. Bonneville's comments do not object to the incorporation by reference of these standards, nor allege that the standards are inconsistent with Commission policy, but in main part offer editorial suggestions that in Bonneville's view will make the standards clearer or clarify how they will play out in specific situations. For example, Bonneville's Attachment A suggests a number of revisions that attempt to make certain standards clearer by adding qualifications already implicit in NAESB's adopted standards.⁵⁴

b. Commission Determination

77. The Commission will not modify the various NAESB standards as requested by Bonneville and Duke. The task before the Commission in this Final Rule is to review the standards recently adopted by NAESB, and to decide whether to incorporate those standards by reference into the Commission's regulations as mandatory standards that must be complied with by public utilities. Our task is not to rewrite NAESB's standards

⁵² Specifically, Bonneville suggests revisions to WEQ-001-8.3, WEQ-013-2.1, WEQ-013-2.2, WEQ-013-2.4.2, WEQ-013-2.6.4, WEQ-013-2.6.5.1, WEQ-013-2.6.5.2, WEQ-013-2.6.6, WEQ-013-2.6.7.1, and WEQ-013-2.6.7.2. Bonneville also suggests the addition of new standards WEQ-001-11.5.4 and WEQ-001-12.5.3.

⁵³ Duke's suggested revisions relate only to WEQ-001-12. Duke suggests substituting the term "assignment" for "transfer," and adding a restricted value and definition for the term "transfer" (or its replacement).

⁵⁴ See, e.g., WEQ-013-2.6.6 and WEQ-013-2.6.7.1.

to make editorial revisions and enhancements, even if commenters correctly observe and point out some improvement that could be added to the standards. If the Commission finds NAESB's standards inadequate or finds that they conflict with the Commission's policies or regulations, we will decline to incorporate that standard by reference into our regulations and on occasion we may provide NAESB with guidance as to revisions NAESB might make to that standard to make it acceptable to the Commission.

78. While it is appropriate for commenters who object to the Commission's incorporation by reference of a standard to raise those arguments with the Commission, Bonneville should direct any proposed modifications or additions to NAESB's standards to NAESB for consideration. Following this procedure, Bonneville's proposed changes can receive proper consideration from all industry segments before they are acted on.⁵⁵

79. Duke also suggests that WEQ-001-12 be modified so as to revise the procedure established in Order No. 890-A for the pricing of reassigned transmission. But, as Duke concedes, WEQ-001-12 does not address the issue of pricing reassigned transmission. Duke is attempting to use the adoption of WEQ-001-12 as a pretext to collaterally attack an issue already determined by Order No. 890-A.

III. Implementation Dates and Procedures

80. The standards incorporated by reference in this Final Rule must be implemented by October 1, 2008, with the following exceptions:

⁵⁵ As to Bonneville's request that we clarify the reference to "deferral requests posted by the Primary Provider," see Bonneville Comments at 7, this matter may also be brought up with NAESB.

(1) The reliability related standards (WEQ-004 Coordinate Interchange, WEQ-005 Area Control Error (ACE) Equation Special Cases, WEQ-006 Manual Time Error, WEQ-007 Inadvertent Interchange Payback, and WEQ-008 Transmission Loading Relief - Eastern Interconnection) are required to be implemented by the later of the effective date of the Final Rule in RM08-7-000 or the effective date of this Final Rule;

(2) WEQ-001 OASIS Standards are required to be implemented by January 31, 2009; and

(3) Appendix D to the WEQ-008 Transmission Loading Relief - Eastern Interconnection standards need not be implemented until NERC completes the field testing.

81. To reduce the burden on filers, as we did in Order No. 676, although public utilities must fully comply with the requirements of this Final Rule in accordance with the implementation schedule above, we are not requiring public utilities immediately to file revised OATTs incorporating these changes.

82. The Commission is also requiring, consistent with our regulation at 18 CFR 35.28(c)(vi), each electric utility to revise its OATT to include the Version 001 WEQ standards we are incorporating by reference herein. For standards that do not require implementing tariff provisions, the Commission will allow the utility to incorporate the WEQ standard by reference in its OATT. We are not, however, requiring a separate tariff filing to accomplish this change. Consistent with our prior practice, we will allow public utilities the option of including these changes as part of an unrelated tariff filing.⁵⁶

⁵⁶ See Order No. 676, FERC Stats. & Regs. ¶ 31,216 at P 100. If the public utility makes no unrelated tariff filing by January 31, 2009, it must make a separate tariff filing incorporating these standards by that date. They are to use the language specified later in this order, see *infra* P 83.

However, consistent with our prior practice, as of the implementation dates above, public utilities must abide by these standards even before they update their tariffs to incorporate these changes.

83. 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 001 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), Version 1.4 (WEQ-001, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007) including Standards 001-0.2 through 001-0.8, 001-0.14 through 001-0.20, 001-2.0 through 001-9.6.2, 001-9.8 through 001-12.5.2, and 001-A and 001-B;
- Business Practices for Open Access Same-Time Information Systems (OASIS) Standards & Communication Protocols, Version 1.4 (WEQ-002, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007) including Standards 002-0.1 through 002-5.10;
- Open Access Same-Time Information Systems (OASIS) Data Dictionary, Version 1.4 (WEQ-003, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007) including Standard 003-0;
- Coordinate Interchange (WEQ-004, Version 001, October 31, 2007, with minor corrections applied on Nov. 16, 2007) including Purpose, Applicability, and Standards 004-0.1 through 004-17.2, and 004-A through 004-D;
- Area Control Error (ACE) Equation Special Cases Standards (WEQ-005, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007) including Purpose, Applicability, and Standards 005-0.1 through 005-3.1.3, and 005-A;

- Manual Time Error Correction (WEQ-006, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007) including Purpose, Applicability, and Standards 006-0.1 through 006-12;
- Inadvertent Interchange Payback (WEQ-007, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007) including Purpose, Applicability, and Standards 007-0.1 through 007-2, and 007-A;
- Transmission Loading Relief – Eastern Interconnection (WEQ-008, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007) including Purpose, Applicability, and Standards 008-0.1 through 008-3.11.2.8, and 008-A through 008-D;
- Gas/Electric Coordination (WEQ-011, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007) including Standards 011-0.1 through 011-1.6;
- Public Key Infrastructure (PKI) (WEQ-012, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007) including Recommended Standard, Certification, Scope, Commitment to Open Standards, and Standards 012-0.1 through 012-1.26.5; and
- Business Practices for Open Access Same-Time Information Systems (OASIS) Implementation Guide, Version 1.4 (WEQ-013, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007) including Introduction and Standards 013-0.1 through 013-4.2.

84. 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

85. Office of Management and Budget 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

86. 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 this collection of information unless the collection of information displays a valid OMB control number.

87. This Final Rule will affect the following existing data collections: Standards for Business Practices and Communication Protocols for Public Utilities (FERC-717) and Electric Rate Schedule Filings ((FERC-516).

88. The following burden estimate is based on the projected costs for the industry to implement revisions to the WEQ Standards currently incorporated by reference into the Commission's regulations at 18 CFR 38.2 and to implement the new standards adopted by NAESB that we are incorporating by reference in this Final Rule.

Data Collection	No. of Respondents	No. of Responses Per Respondent	Hours Per Response	Total No. of Hours
FERC-516	176	1	6	1056
FERC-717	176	1	10	1760
Totals				2816

Total Annual Hours for Collection

(Reporting and Recordkeeping, (if appropriate)) = 2816 hours

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost for all respondents to be the following:⁵⁷

	FERC-516	FERC-717
Annualized Capital/Startup Costs	\$337,920	\$563,200
Annualized Costs (Operations & Maintenance)	N/A	
Total Annualized Costs	\$337,920	\$563,200

89. The Commission sought comments on the burden of complying with the requirements imposed by these requirements. No comments were filed addressing the reporting burden.⁵⁸

90. 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

⁵⁷ The total annualized costs for the information collection is \$901,120. This number is reached by multiplying the total hours to prepare responses (2816) by an hourly wage estimate of \$320 (a composite estimate that includes legal, technical and support staff rates, \$200+\$95+\$25=\$320), 2816 hours x \$320/hour= \$901,120.

⁵⁸ We note, however, that two comments argued that it would be too costly for small entities to obtain copies of the NAESB Standards from NAESB. We addressed these comments in the preamble of this Final Rule.

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.

91. OMB regulations⁵⁹ require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB. These information collections are mandatory requirements.

Title: Standards for Business Practices and Communication Protocols for Public Utilities (formerly Open Access Same Time Information System) (FERC-717); Electric Rate Schedule Filings (FERC-516).

Action: Proposed collection.

OMB Control No.: 1902-0096 (FERC-516); 1902-0173 (FERC-717).

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

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

Necessity of the Information: This rule, will upgrade the Commission's current business practice and communication standards. Specifically, these standards include several

⁵⁹ 5 CFR 1320.11.

modifications to the existing business practice standards as well as creating new standards to provide additional functionality for OASIS transactions, transmission loading relief and public key infrastructure. The standards will assist in providing greater security for business transactions over the Internet, identify the business practices to be used to relieve potential or actual loading on a constrained facility and facilitate the transfer of electric energy between entities responsible for balancing load and generation. These practices will ensure that potential customers of open access transmission service receive access to information that will enable them to obtain transmission service on a non-discriminatory basis and will assist the Commission in maintaining a safe and reliable infrastructure and also will assure the reliability of the interstate transmission grid. The implementation of these standards and regulations is necessary to increase the efficiency of the wholesale electric power grid.

92. The information collection requirements of this Final Rule are based on the transition from transactions being made under the Commission's existing business practice standards to conducting such transactions under the proposed revisions to these standards and to account for the burden associated with the new standard(s) being proposed here (i.e., WEQ-008 and WEQ-012).

93. Internal Review: The Commission has reviewed the revised business practice standards and has made a determination that the revisions adopted in this Final Rule are necessary to maintain consistency between the business practice standards and reliability standards on this subject. The Commission has assured itself, by means of its internal

review, that there is specific, objective support for the burden estimate associated with the information requirements.

94. Interested persons may obtain information on the reporting requirements by contacting the following:

Federal Energy Regulatory Commission,
Attn: Michael Miller, Office of the Executive Director
888 First Street, N.E.
Washington, DC 20426
Tel: (202) 502-8415 / Fax: (202) 273-0873
Email: michael.miller@ferc.gov

VI. Environmental Analysis

95. 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.⁶⁰ The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.⁶¹

96. The actions required 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.⁶² Therefore, an environmental assessment is unnecessary and has not been prepared in this Final Rule.

⁶⁰ Order No. 486, Regulations Implementing the National Environmental Policy Act of 1969, 52 FR 47,897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,783 (1987).

⁶¹ 18 CFR 380.4.

⁶² See 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

VII. Regulatory Flexibility Act Certification

97. The Regulatory Flexibility Act of 1980 (RFA)⁶³ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The regulations adopted here impose requirements only on public utilities, which are not small businesses, and, these requirements are, in fact, designed to benefit all customers, including small businesses.

98. The Commission has followed the provisions of both the RFA and the Paperwork Reduction Act on potential impact on small business 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 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 the requirements.⁶⁴ This is consistent with the

⁶³ 5 U.S.C. 601-612.

⁶⁴ We also have provided for requests of waiver in instances where compliance would be very burdensome and a waiver would not diminish the overall benefits of the standards. See supra P 19.

exemption provisions of the RFA. Accordingly, pursuant to section 605(b) of the RFA,⁶⁵ 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

99. 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 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington, DC 20426.

100. 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 the docket number excluding the last three digits of this document in the docket number field.⁶⁶

101. User assistance is available for eLibrary and the FERC's website during our normal business hours. For assistance contact FERC Online Support at

⁶⁵ 5 U.S.C. 605(b).

⁶⁶ NAESB's Dec. 26, 2007 submittal is also available for viewing in eLibrary. The link to this file is as follows:
http://elibrary.ferc.gov:0/idmws/doc_info.asp?document_id=13566661

FERCOnlineSupport@ferc.gov or toll-free at (866)208-3676, or for TTY, contact (202)502-8659.

IX. Effective Date and Congressional Notification

102. This Final Rule will become effective [insert date 30 days after date of publication in the **FEDERAL REGISTER**]. 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 1996.⁶⁷

List of Subjects

18 CFR part 35

Electric utilities, Reporting and recordkeeping requirements, Incorporation by reference

18 CFR part 37

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁶⁷ See 5 U.S.C. 804(2).

In consideration of the foregoing, the Commission revises Chapter I, Title 18, part 38 of the Code of Federal Regulations, as follows:

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

1. The authority citation for part 38 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.

2 In § 38.2, paragraphs (a)(1) through (8) are revised, and paragraphs (a)(9) through (11) are added to read as follows:

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

(a) * * *

(1) Business Practices for Open Access Same-Time Information Systems (OASIS), Version 1.4 (WEQ-001, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007) 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, Version 1.4 (WEQ-002, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007);

(3) Open Access Same-Time Information Systems (OASIS) Data Dictionary, Version 1.4 (WEQ-003, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007);

(4) Coordinate Interchange (WEQ-004, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007);

- (5) Area Control Error (ACE) Equation Special Cases (WEQ-005, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007);
- (6) Manual Time Error Correction (WEQ-006, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007);
- (7) Inadvertent Interchange Payback (WEQ-007, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007);
- (8) Transmission Loading Relief – Eastern Interconnection (WEQ-008, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007);
- (9) Gas/Electric Coordination (WEQ-011, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007);
- (10) Public Key Infrastructure (PKI) (WEQ-012, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007); and
- (11) Business Practices for Open Access Same-Time Information Systems (OASIS) Implementation Guide, Version 1.4 (WEQ-013, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007).

* * * * *

NOTE: The Following Appendix Will Not Be Published in the Code of Federal Regulations.

List of Entities Filing Comments on NOPR in Docket No. RM05-5-005, and the Abbreviations Used to Identify Them

Bonneville Power Administration (Bonneville)

Duke Energy Corporation (Duke)

Lafayette Utilities System (Lafayette)

Louisiana Energy and Power Authority (LEPA)

Midwest Independent Transmission System Operator, Inc. (Midwest ISO)

New York Independent System Operator, Inc. (NYISO)

North American Electric Reliability Corporation (NERC)

PJM Interconnection, L.L.C. (PJM)

Southern Company Services, Inc. (Southern Companies)

Southwest Power Pool, Inc. (SPP)