UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Standards for Business Practices and Communication Protocols for Public Utilities	**)** **)**	**Docket No. RM05-5-022**

COMMENTS OF THE ISO/RTO COUNCIL

In accordance with Paragraph 58 of the Commission's July 18, 2013 *Notice of Proposed Rulemaking* ("NOPR") in this proceeding,[1] the ISO/RTO Council ("IRC")[2] respectfully submits these comments. The NOPR proposes to incorporate by reference in the Commission's regulations Version 003 of the Standards for Business Practices and Communication Protocols for Public Utilities adopted by the Wholesale Electric Quadrant ("WEQ") of the North American Energy Standards Board ("NAESB").

The IRC is generally supportive of the NOPR and of NAESB's efforts. As is set forth below, the IRC asks that the Commission: (i) clarify certain statements in the NOPR related to redirect requests; (ii) clarify that transmission providers that will not be exempt from new NAESB standards related to OASIS functionality will have twenty four months to come into compliance with them; (iii) confirm that it will not interpret the proposed Smart Grid-related

[1] *Standards for Business Practices and Communication Protocols for Public Utilities*, 144 FERC ¶ 61,026 (July 18, 2013).

[2] The IRC is comprised of the Alberta Electric System Operator ("AESO"), the California Independent System Operator Corporation ("CAISO"), the Electric Reliability Council of Texas ("ERCOT"), the Independent Electricity System Operator of Ontario, Inc., ("IESO"), ISO New England, Inc. ("ISO-NE"), Midcontinent Independent Transmission System Operator, Inc., ("MISO"), New York Independent System Operator, Inc. ("NYISO"), PJM Interconnection, L.L.C. ("PJM"), and Southwest Power Pool, Inc. ("SPP"). The AESO, and IESO are not subject to the Commission's jurisdiction. ERCOT is subject to the Commission's jurisdiction for reliability matters pursuant to Section 215 of the Federal Power Act. AESO and ERCOT do not join these comments. The IRC's mission is to work collaboratively to develop effective processes, tools, and standard methods for improving the competitive electricity markets across North America.

standards as imposing enforceable compliance mandates on Independent System Operators or Regional Transmission Organizations ("ISOs/RTOs"); (iv) establish a twenty four month implementation period for the new Public Key Infrastructure standards; and (v) confirm that it will give substantial weight to language adopted by NAESB regarding the applicability of business practice standards when considering future ISO/RTO requests for exemptions from them.

I. COMMENTS

A. The Commission Should Clarify that, as Expressly Provided for in the Version 003 NAESB Standards, Capacity on the Original Path is Released for Resale when a Transmission Provider Confirms a Redirect Request

The IRC respectfully notes that there is a contradiction between how the Version 003 NAESB Standards treat capacity release upon confirmation of redirect requests and how the Commission describes that treatment in the NOPR. In particular, the NOPR asserts that in "the Version 003 standards, NAESB modified WEQ-001-9.7 so that it would conform to the Commission's policy granting rollover rights to requests for redirect on a firm basis."[3] The NOPR goes on to explain, in a footnote, that:

> As we stated in *Entergy Services, Inc.*, 143 FERC ¶ 61,143, at P 25 & n.68 (2013), our guiding precedent on the issue of when a customer requesting redirect loses rights on the original path was set in Dynegy Power Marketing, Inc., 99 FERC ¶ 61,054, at P 9 (2002), where we held that a transmission customer receiving firm transmission service does not lose its rights to its original path until the redirect request satisfies all of the following criteria: (1) it is accepted by the transmission provider; (2) it is confirmed by the transmission customer; and (3) it passes the conditional reservation deadline under OATT section 13.2.[4]

The implication in the above is that the Version 003 NAESB Standards provide that a redirect customer loses its rights on the original path only when the redirect request becomes unconditional under the OATT. However, the Version 003 NAESB Standards contain no

[3] NOPR at P 25.
[4] *Id*. at n.35.

provisions tying the capacity release and corresponding loss of rights on the original path to the conditional reservation deadline under Section 13.2 of the OATT. In fact, the Version 003 NAESB Standards clearly provide that, once a Transmission Provider confirms a customer's redirect request, the customer's rights on the original path terminate and are available for purchase by third parties, irrespective of whether the conditional deadline for the redirect request has passed.

The rules for the release of capacity and corresponding transmission rights are set forth in WEQ-001-9.5 of Version 003, which states that "[u]pon confirmation of the request to Redirect on a Firm basis, the Capacity Available to Redirect shall be reduced by the amount of the redirected capacity granted for the time period of that Redirect." The members of the IRC that are subject to redirect requirements,[5] and indeed most of the rest of the industry, have always understood this requirement to mean that capacity associated with the parent reservation is to be released for resale once a redirect request is confirmed. The IRC notes that the timing of the release of capacity and corresponding transmission rights expressed in the Version 003 NAESB Standards at WEQ001-9.5 is further supported by the *pro forma* Open Access Transmission Tariff.

Indeed, Section 23 of the *pro forma* Open Access Transmission Tariff provides that:

> Any request by a Transmission Customer to modify Receipt and Delivery Points on a firm basis shall be treated as a new request for service in accordance with Section 17 hereof, except that such Transmission Customer shall not be obligated to pay any additional deposit if the capacity reservation does not exceed the amount reserved in the existing Service Agreement. While such new request is pending, the Transmission Customer shall retain its priority for service at the existing firm Receipt and Delivery Points specified in its Service Agreement.

[5] The IRC notes that certain of its members have Commission-approved tariffs and market designs that do not include redirect provisions. These members currently have exemptions from NAESB requirements related to redirects and plan to seek to renew those exemptions to the extent that the Version 003 redirect requirements are adopted.

New requests for transmission service submitted in accordance with Section 17 are subject to preemption by challenging transmission service requests based on their reservation priority under Section 13.2 of the *pro forma* Open Access Transmission Tariff. Thus, based on the terms of the *pro forma* Open Access Transmission Tariff, redirect requests must be treated as new requests for service and are, thus, subject to preemption. Existing industry software and processes have been designed to follow the approach set forth in WEQ-001-9.5 and Section 23 of the *pro forma* Open Access Transmission Tariff, which both require Transmission Providers to release capacity (and, therefore, the corresponding transmission rights) upon confirmation of the redirect request regardless of the timing of such release.

Accordingly, before it adopts the new NAESB standards, the Commission should resolve the above-described contradiction, and clarify that – as expressly provided for in WEQ-001-9 of the Version 003 standards – the transmission capacity associated with the parent reservation is released when the Transmission Provider confirms the redirect request – whether or not such timing is concurrent with the unconditional period of the redirect request. To the extent that the Commission now seeks to change the rule, the IRC members respectfully note that there are strong pro-competitive reasons to clarify the NAESB Standards to mean that capacity on a parent reservation is released once a Transmission Provider has confirmed a redirect request. Nonetheless, the IRC further respectfully submits that, to the extent that the Commission now seeks to change the rule, such change is not supported by the Version 003 NAESB Standards as proposed and the Commission should take further action to ensure consistency amongst its interpretations as outlined in the NOPR, the NAESB Standards, and the terms of the *pro forma* Open Access Transmission Tariff.

B. The Commission Should Clarify that Transmission Providers Will Have Twenty Four Months After the Adoption of the New NAESB Standards to Develop and Implement Necessary OASIS Functionality

WEQ-002-5.10, which sets forth an implementation timeline for the new OASIS Standards and Communications Protocols in the Version 003 Standards, provides that OASIS Nodes must be able to support the new OASIS standards within twenty four months of the date that they are adopted as regulations. The IRC highlights this provision in order to respectfully request that the Commission clarify and confirm that Transmission Providers will have at least twenty four months from the effective date of an order adopting the Version 003 Standards to develop OASIS functionality that is compliant with those new standards.

A twenty four month timeline to come into compliance is particularly important because the Version 003 Standards contain many new OASIS-related requirements, particularly with respect to the use of network service. Modification of OASIS functionality requires not only changes to internal processes, but also a series of technical changes that can take many months to develop and implement. It is very important to the IRC that its members, to the extent that they will not be exempt from particular requirements, have the full time allotted by the NAESB Standards to develop and implement the required OASIS functionality, and to come into compliance with those standards. Accordingly, the IRC respectfully requests that the Commission clarify that Transmission Providers will have twenty four months from the effective date of the order documenting the Commission's adoption of the new standards to develop and implement OASIS functionality that complies with the Version 003 NAESB Standards.

C. The Commission Should Confirm that NAESB's Proposed Smart Grid-Related Standards Will Not Impose Enforceable Compliance Mandates on ISOs/RTOs

The NOPR proposes to incorporate by reference into the Commission's regulations five "Smart Grid-related" NAESB wholesale practice business standards, *i.e.,* WEQ-016, -017, -018,

-019, and -20. It specifically invites comment "on whether the Commission should incorporate by reference the version of Standard WEQ-019 ratified by NAESB membership on March 21, 2013, rather than the version contained in Version 003." [6]

The IRC takes no position as to which version of WEQ-019 should be adopted so long as the Commission confirms that WEQ-019 will not require ISOs/RTOs to adopt, implement, or otherwise be subject to enforceable requirements. The "Executive Summary" included in Version 003 of WEQ-019 expressly states that:

> These Business Practice Standards do not require that wholesale electricity markets administered by System Operators adopt this energy usage information model since System Operators generally do not maintain or have access to the system of record for individual end use customer energy usage information and load data or individual end-use customer forecasted usage and load data. These Business Practice Standards are not intended to replace applicable Governing Documents, and, in the event of a conflict, the latter documents shall have precedence over these Business Practice Standards. Without limiting the foregoing, these Business Practice Standards are only applicable to the extent the information covered by this energy usage information model is collected, managed or communicated pursuant to the applicable Governing Documents. End-use customer energy usage information communication encompasses a variety of interactions between Distribution Companies, end-use customers and energy services providers. In a business environment where best practices are voluntary, these Business Practice Standards may be applied within the context of regulatory or other market requirements and agreements.

The quoted language clearly suggests that ISOs/RTOs are not intended to be subject to compliance obligations under WEQ-019. This interpretation is entirely reasonable because ISOs/RTOs do not generally have access to end-user usage information and thus could not reasonably be expected to "comply" with the energy usage model. Nevertheless, the IRC requests that the final rule in this proceeding clearly state that ISOs/RTOs, as opposed to "wholesale electricity markets administered by System Operators," will not be required to adopt the WEQ-019 model.

[6] NOPR at P 41.

If the Commission's intention is that WEQ-019 subject ISOs/RTOs to enforceable requirements then the IRC would not support the incorporation of either version of WEQ-019 into the Code of Federal Regulations. The IRC's understanding has always been that WEQ-019 is meant to define a set of business processes that would serve as an input into the development of a broader smart grid information model. These business processes describe the data elements that may flow between the wholesale market operator and other parties (typically demand response aggregators). They do not establish clear and specific requirements for public utilities to implement and follow. If WEQ-019 were interpreted as imposing enforceable obligations on ISOs/RTOs it would be unclear whether they would be required to implement all or part of the business processes or the data elements that it describes (or both). It would also be unclear how ISOs/RTOs that only use a portion of the processes or data elements would be treated. These difficulties would be in addition to the even more fundamental issues caused by ISO/RTOs' limited access to end-user usage information.

Similarly, the Commission should further clarify that its incorporation of the other four Smart-Grid related standards, *i.e.,* WEQ-016, -017, -018, and -020, into the Code of Federal Regulations will not impose enforceable requirements on public utilities, including ISOs/RTOs. Unlike WEQ-019, the other Smart-Grid related standards do not include express language indicating that ISOs/RTOs were not intended to be subject to them. Nevertheless, the very nature of these standards makes it unworkable, at least at this time, to impose compliance obligations derived from them. [7]

[7] In addition, several of the Smart-Grid related standards contain language indicating that they are not intended to establish enforceable obligations. *See, e.g.*, WEQ-016 at Executive Summary (link to PAP-03); WEQ-018 at Introduction ("The purpose of the following is to provide standards developers with a context for understanding the range of interactions between wholesale electricity market System Operators and Market Participants . . . A major objective in producing these Business Practice Standards is to emphasize the importance of interoperability at all levels of the GWAC interoperability

The Smart-Grid related standards collectively "define use cases, data requirements, and a common model to represent customer energy usage."[8] As NAESB has explained, the standards "were developed at the request of the National Institute of Standards and Technology (NIST) and the Smart Grid Interoperability Panel (SGIP) as part of their national effort to fulfill NIST's obligations under the Energy Independence and Security Act ("EISA")."[9] They were created to "define use cases and data requirements that respond to the priority action plans created by the SGIP to foster standards development within standards setting organizations."[10] It is not yet clear how the models, cases, and data requirements described by the Smart-Grid related standards will ultimately relate to, or be used by, future standards. It also not clear what the scope of certain standards would be if they were treated as establishing enforceable rules.[11]

In short, the Smart-Grid related standards are building blocks that support ongoing efforts to develop future smart grid standards. Unlike other approved NAESB Standards they do not themselves establish specific requirements for individual public utilities to follow. They therefore should not be interpreted as imposing binding obligations. Doing so would appear to

framework."); WEQ-020 at Introduction ("The Business Practice Standard and data elements included herein are not intended to: (i) require the use of any of these data elements; (ii) require the provision or purchase of any products, programs, rates, markets or services, or (iii) supersede applicable Governing Documents . . . .").

[8] NOPR at P 40.

[9] *See* North American Energy Standards Board Report dated Sept. 18, 2012 at 10 (RM05-5-022).

[10] *Id.*

[11] For example, it is unclear whether WEQ-018 "Specifications for Wholesale Standard Demand Response Signals" would apply to any demand response application, only to Smart Grid applications that implicate demand response, or to some other category.

be inconsistent with applicable precedent.[12] It would also seem to conflict with NIST's previously articulated view that smart grid standards should not impose binding obligations.[13]

The IRC's position regarding the enforceability of the proposed Smart Grid-related standards should not be taken as criticism of NAESB, its stakeholder process, or its smart grid-related efforts in general. The IRC appreciates that NAESB has worked for years to develop the Smart Grid-related standards. Indeed, the IRC's members were active participants in their formulation and drafting. The IRC also recognizes the importance that Congress,[14] President Obama's administration,[15] and the Commission have placed on Smart Grid development. It is apparent that NAESB's proposed Smart Grid-related standards have value and are likely to promote the development of future standards. They represent a serious attempt to address complex technical, security, and legal/jurisdictional issues. Nevertheless, if the Smart Grid-related standards are incorporated into the Code of Federal Regulations, the Commission should make it clear that they will not impose enforceable compliance obligations on Commission-jurisdictional public utilities, including ISOs/RTOs, at this time. Enforceability issues could be revisited in future rulemakings concerning future standards.

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[12] *See, e.g.*, Mandatory Reliability Standards for the Bulk-Power System, FERC Stats. & Regs. ¶ 31,242, Order No. 693 at P 254 (requiring that for NERC reliability standards to be enforceable they must "be sufficiently clear so that an entity is aware of what it must do to comply . . . .") (2007).

[13] *See* Smart Grid Interoperability Standards, 136 FERC ¶ 61,039 (2011).

[14] *See, e.g.,* Section 1305 of the Energy Independence and Security Act of 2007 ("EISA"), which directed FERC to adopt in a formal rulemaking proceeding standards and protocols necessary to ensure smart grid functionality and interoperability in interstate transmission of electric power, and regional and wholesale electricity markets.

[15] *See, e.g.,* < http://www.whitehouse.gov/blog/2012/01/18/green-button-providing-consumers-access-their-energy-data>.

D. The Commission Should Establish a Twenty Four Month Implementation Period for NAESB's Proposed Public Key Infrastructure Standards

The NOPR proposes to incorporate by reference WEQ-012 which establishes new Public Key Infrastructure ("PKI") standards ("PKI Standards"). The NOPR suggests that public utilities could be required to implement the new NAESB standards, including potentially the new PKI standards as soon as the Commission has incorporated them by reference into its regulations. [16]

As a practical matter, "End Entities," including ISOs/RTOs will need a fairly lengthy time for implementation. The PKI Standards address complex and evolving technical issues with broad commercial and cyber-security implications. Previously, the NAESB's PKI requirements related to "an encryption system that companies can, but are not required to, use" for business transactions. [17] Now, for the first time, the PKI Standards specify "those transactions for which public utilities need to use PKI." [18] It will take time to update software, systems, and procedures to use PKI where required and ensure compliance with all relevant aspects of the PKI Standards. It will also take time to satisfy requirements that End Entities identify the Authorized Certification Authority (or Authorities) that they intend to use, "[e]xecute all agreements and contracts" required by them, comply with all obligations required by such authorities, and to institute a complete PKI certificate management program. [19] Entities that had not previously acted as "Relying Parties" under the PKI Standards may need to do so once certain transactions are required to use PKI. It will take time for these entities to satisfy requirements that Relying Parties perform specified actions "prior to relying on information contained in a Certificate

[16] *See* NOPR at P 44.

[17] *See* NOPR at P 19.

[18] See NOPR at P 20.

[19] WEQ-012-1.4.3.

traceable to an End Entity."[20] There are expected to be a relatively small number of Authorized Certification Authorities.

PKI Standards compliance is also likely to require significant resources that entities will need to provide for in future budgets. It is reasonable to expect that entities will wait until after the PKI Standards are accepted in final form before addressing them in their normal budgeting cycles.

ISOs/RTOs will have to address a number of additional factors related to PKI Standards implementation. They will need to evaluate the interactions between their OASIS and EIR systems, which are subject to the PKI Standards, and other market software which may not be subject to the rules but are integrally related to the administration of Commission-jurisdictional markets. They will need to coordinate their efforts with thousands of market participants and other certificate users and with neighboring ISOs/RTOs. They must also ensure that their relationships with Authorized Certification Authorities are consistent with their Commission-approved codes of conduct and other independence requirements.

For example, the NYISO currently acts as its own Certificate Authority and Registration Authority. It currently supports nearly four thousand valid digital certificates for market participants, non-market participant stakeholders, NYISO staff, and NYISO servers. The PKI Standards directly impact existing business practices and the architecture of NYISO information technology systems. New processes will need to be implemented, staff will need to be trained, and systems will need to be modified to meet the requirements of the PKI Standards by leveraging services from a NAESB Accredited Certification Authority (once the NYISO has selected one).

[20] WEQ-012-1.4.4.

It is therefore essential that the Commission provide sufficient time for an orderly transition to the PKI Standards to avoid disruption of critical business processes. The IRC respectfully submits that allowing twenty four months from the date of a final rule adopting the PKI Standards for implementation would be reasonable. The Commission should adopt a reasonable timetable for the entire industry, rather than setting a deadline that would be impossible for many entities and requiring them to seek individual extensions. Such an approach would be consistent with how the Commission has handled the implementation of other complex technical requirements such as the North American Electric Reliability Corporation's Critical Infrastructure Protection Standards.

E. The Commission Should Attach Substantial Weight to NAESB Statements Regarding the Applicability of Standards When Considering Future ISO/RTO Exemption Requests

The Commission has recognized that it is often necessary for jurisdictional entities to seek waivers of NAESB standards.[21] A number of ISOs/RTOs administer market designs or operate transmission models that differ substantially from those contemplated under the Commission's *pro forma* Open Access Transmission Tariff ("OATT"). Because many NAESB wholesale business practice standards are based on or relate to *pro forma* OATT requirements they are sometimes inapplicable to ISO/RTO regions. The Commission has granted numerous waivers of NAESB standards to individual ISOs/RTOs.

The IRC's members have participated actively in NAESB stakeholder processes associated with the development of wholesale business practice standards, including those related to the WEQ Version-003 standards. As was the case in prior NAESB stakeholder efforts

[21] *See Standards for Business Practices for Interstate Natural Gas Pipelines,* Order No. 587-V at P 38 (July 19, 2012) ("As discussed in the Version 2.0 NOPR, in previous compliance proceedings there has been a marked increase in the number of requests for waivers or for extensions of time to comply with standards.")

it proved impracticable to develop "universal" WEQ-003 standards that would encompass both *pro forma* OATT systems and all ISO/RTO systems.

One IRC member therefore worked through the NAESB stakeholder process to add "applicability" or "scope" language to certain WEQ Version-003 standards to specifically identify requirements that are not applicable or relevant it, and potentially to other similarly situated ISOs/RTOs. This proposed language complements more general WEQ provisions establishing that Commission-approved language in ISO/RTO tariffs overrides NAESB requirements when there is a conflict.

The IRC understands that it is the Commission's policy and preference to address requests for waivers from NAESB standards in individual waiver proceedings. It is therefore not asking the Commission to grant any individual waivers in this rulemaking proceeding. The IRC does ask, however, that the Commission attach substantial weight to applicability and scope provisions included in WEQ standards when it considers individual ISO/RTO waiver requests. Because these provisions have been developed through, and approved by, the NAESB stakeholder process, they should be afforded the deference that is normally given to NAESB standards language. By showing deference the Commission would encourage ISOs/RTOs to continue their substantial and good faith participation in the NAESB stakeholder process and potentially simplify the issues that eventually reach the Commission in waiver proceedings.

II. CONCLUSION

The IRC respectfully requests that the Commission consider and adopt the suggestions and requests included in these comments.

Respectfully submitted,

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Dated: September 24, 2013

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2013).

Dated at Washington, DC this 24th day of September, 2013.

By: */s/Catherine A. Karimi*

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