

TABLE 2—ADDITIONAL SOURCES OF GUIDANCE FOR CERTAIN FSLs—Continued

The FSL identified in Lockheed Service Bulletin 093–28–098, Revision 1, dated January 22, 2008, in paragraph—	Refers to Lockheed Service Bulletin—	For—
2.B.(1)(e) .....	093–28–095, dated September 13, 2006 .....	Inspecting the airplane fuel tanks and vent boxes for cleanliness and evidence of deteriorated or damaged fuel/vent tubes and components; inspecting bonding jumpers for proper installation, corrosion, frayed or broken strands, and the condition of the environmental sealing or bonding clamps and hardware; correcting any discrepant conditions; adding bonding jumpers to the fuel/vent tube fittings; and inspecting the bonding jumpers on the fuel/vent tube fittings.
2.B.(1)(f) .....	093–28–096, Revision 2, dated June 23, 2006 .....	Inspecting the wiring harnesses of the No. 1 and No. 3 engine tank valves for evidence of damage and fuel contamination; replacing any damaged wire with new wire; and repairing or replacing any contaminated wires as applicable.
2.B.(1)(g) .....	093–28–097, dated August 3, 2006 .....	Identifying the wiring harnesses for the fuel quantity indicator system (FQIS); inspecting the FQIS wiring harnesses for any visible damage, wear, chafing, or indications of electrical arcing; and replacing or repairing any damaged wires as applicable.

**No Reporting Requirement**

(i) Although Lockheed Service Bulletin 093–28–095, dated September 13, 2006; Lockheed Service Bulletin 093–28–096, Revision 2, dated June 23, 2006; and Lockheed Service Bulletin 093–28–097, dated August 3, 2006; specify to notify Lockheed of any discrepancies found during inspection or any evidence of damage or wire replacement, this AD does not require that action.

**No Alternative Inspections, Inspection Intervals, or CDCCLs**

(j) After accomplishing the actions specified in paragraphs (g) and (h) of this AD, no alternative inspections, inspection intervals, or CDCCLs may be used unless the inspections, intervals, or CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (k) of this AD.

**New Information****Explanation of CDCCL Requirements**

**Note 5:** Notwithstanding any other maintenance or operational requirements, components that have been identified as airworthy or installed on the affected airplanes before the revision of the FAA-approved maintenance program, as required by paragraph (g) of this AD, do not need to be reworked in accordance with the CDCCLs. However, once the FAA-approved maintenance program has been revised, future maintenance actions on these components must be done in accordance with the CDCCLs.

**Alternative Methods of Compliance (AMOCs)**

(k)(1) The Manager, Atlanta Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Robert Bosak,

Aerospace Engineer, Propulsion Branch, ACE–118A, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, GA 30337; telephone (404) 474–5583; fax (404) 474–5606.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

**Material Incorporated by Reference**

(l) You must use Lockheed Service Bulletin 093–28–098, Revision 1, dated January 22, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register previously approved the incorporation by reference of this service information on June 25, 2008 (73 FR 29410 May 21, 2008).

(2) For service information identified in this AD, contact Lockheed Continued Airworthiness Project Office, Attention Airworthiness, 86 South Cobb Drive, Marietta, Georgia 30063–0567; telephone 770–494–5444; fax 770–494–5445; e-mail [ams.portal@lmco.com](mailto:ams.portal@lmco.com); Internet <http://www.lockheedmartin.com/ams/tools/TechPubs.html>.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go

to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Issued in Renton, Washington, on October 26, 2009.

**Stephen P. Boyd,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E9–28301 Filed 12–2–09; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****18 CFR Part 38**

[Docket No. RM05–5–013; Order No. 676–E]

**Standards for Business Practices and Communication Protocols for Public Utilities**

Issued November 24, 2009.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is revising its regulations to incorporate by reference in its regulations at 18 CFR 38.2 the latest version (Version 002.1) of certain business practice standards adopted by the Wholesale Electric Quadrant of the North American Energy Standards Board (NAESB). NAESB's Version 002.1 Standards include standards adopted by NAESB in response to Order Nos. 890, 890–A, and

890–B. The Version 002.1 Standards we are incorporating by reference in this Final Rule modify NAESB's Commercial Timing Table (WEQ–004 Appendix D) and Transmission Loading Relief Standards (WEQ–008) to provide clarity and align NAESB's business practice standards with the reliability standards adopted by the North American Electric Reliability Corporation, and amend certain ancillary services definitions appearing in the Open Access Same-Time Information Systems Standards (WEQ–001) relating to the inclusion of demand response resources as potential providers of ancillary services. Incorporating these revised standards by reference into the Commission's regulations 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.

**DATES:** *Effective Date:* This Final Rule will become effective on January 4, 2010. 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 January 4, 2010.

**FOR FURTHER INFORMATION CONTACT:**

Bruce McAllister (technical issues), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street, NE.,

Washington, DC 20426, (202) 502–8296.

Valerie Roth (technical issues), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8538.

Ryan M. Irwin (technical issues), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6454.

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

**SUPPLEMENTARY INFORMATION:**

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1. The Federal Energy Regulatory Commission (Commission) is amending its regulations under the Federal Power Act (FPA) <sup>1</sup> to incorporate by reference the latest version (Version 002.1) of certain business practice standards adopted by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB). These revised standards update an earlier version of the standards that the Commission previously incorporated by reference into its regulations at 18 CFR 38.2 in Order No. 676–C.<sup>2</sup>

2. The new and revised standards that NAESB adopted in the Version 002.1 standards enable public utilities to implement requirements of Order Nos. 890, 890–A, and 890–B.<sup>3</sup> In addition,

these standards modify the Commercial Timing Table (WEQ–004 Appendix D) and Transmission Loading Relief Standards (WEQ–008) to provide clarity and align NAESB's business practice standards with the reliability standards adopted by the North American Electric Reliability Corporation (NERC), and amend certain ancillary services definitions appearing in the Open Access Same-Time Information Systems (OASIS) Standards (WEQ–001) relating to the inclusion of demand response resources as potential providers of ancillary services.<sup>4</sup>

**I. Background**

3. NAESB is a non-profit standards development organization established in January 2002 that serves as an industry

forum for the development of business practice standards that promote a seamless marketplace for wholesale and retail natural gas and electricity.<sup>5</sup> 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.<sup>6</sup>

4. 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

<sup>1</sup> 16 U.S.C. 791a, *et seq.*

<sup>2</sup> *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676–C, FERC Stats. & Regs., ¶ 31,274 (2008), *order on clarification and reh'g*, Order No. 676–D, 124 FERC ¶ 61,317 (2008).

<sup>3</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007); *order on reh'g*, Order No. 890–A, FERC Stats. & Regs. ¶ 31,261

(2007); *order on reh'g and clarification*, Order No. 890–B, 123 FERC ¶ 61,299 (2008).

<sup>4</sup> The Version 002.1 Standards also revise the Manual Time Error Correction Standards (WEQ–006) to maintain consistency with revised NERC Standard BAL–004, but we are not incorporating this standard by reference because the Commission's consideration of the revised BAL–004 is still pending. Thus, the earlier version of WEQ–006 will remain in force.

<sup>5</sup> See *Standards for Business Practices and Communication Protocols for Public Utilities*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,612, at P 3 (2007) (Version 2.1 NOPR).

<sup>6</sup> *Id.*

and participate in standards development.<sup>7</sup>

5. 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 six industry segments: transmission, generation, marketer/brokers, distribution/load serving entities, end users, and independent grid operators/planners. 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 six industry segments.<sup>8</sup> For final approval, 67 percent of the WEQ's general membership must ratify the standards.<sup>9</sup>

6. On September 2, 2008, NAESB reported to the Commission that its WEQ Executive Committee had approved Version 002.0 of its business practice standards.<sup>10</sup> NAESB states that its leadership responded to Order Nos. 890, 890-A, and 890-B, by requesting that its Electronic Scheduling Subcommittee/Information Technology Subcommittee (ESS/ITS) and its Business Practice Subcommittee (BPS) coordinate efforts to address the issues raised by those orders. NAESB states that the ESS/ITS and BPS worked in close coordination with the pertinent NERC committees to draft business practice standards on Order No. 890 issues that complement the NERC reliability standards related to these issues, so that the standards for both organizations would be consistent.<sup>11</sup>

7. On February 19, 2009, NAESB notified the Commission that the WEQ Executive Committee had approved its Version 002.1 standards, which include both new standards and modifications to existing Version 002.0 standards.<sup>12</sup> The Version 002.1 standards include

new standards related to capacity benefit margin and rollover rights, and were developed in response to Order Nos. 890, 890-A, and 676-C. Additional modifications included in the Version 002.1 standards include: (1) Modifications to existing standards pertaining to rollover rights; (2) modifications to the Coordinate Interchange Timing Tables contained in Appendix D of the Coordinate Interchange Standards (WEQ-004) to clarify the differences in timing requirements for the Western Electricity Coordinating Council and all other interconnections, complementary to the NERC reliability standards; and (3) modifications to the Transmission Loading Relief—Eastern Interconnection Standards (WEQ-008) to add clarity and ensure that the business practice standards are consistent with NERC reliability standard IRO-006. The Version 002.1 standards supersede and fully replace Version 002.0. To simplify our discussion, unless otherwise stated, we will refer to the new standards collectively as Version 002.1.

8. On March 19, 2009, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing to incorporate by reference in its regulations at 18 CFR 38.2 certain<sup>13</sup> NAESB WEQ Version 002.1 Business Practice Standards.<sup>14</sup> In response to this notice, thirteen timely comments, and one late-filed reply comment were filed.<sup>15</sup>

9. On July 7, 2009, and October 9, 2009, NAESB filed reports with the Commission stating that it made minor corrections to Standards WEQ-001, WEQ-003, WEQ-004, and WEQ-008, and corrections to Standard WEQ-008, which consisted of it deleting WEQ-008-1.4 and WEQ-008 Appendix D from Standard WEQ-008. These

corrections were ratified by NAESB's members and unanimously adopted by WEQ's Executive Committee.

## II. Discussion

### A. Overview

10. In this Final Rule, the Commission is amending its regulations under the FPA to incorporate by reference the NAESB WEQ Version 002.1 standards that the Commission proposed to incorporate in the WEQ Version 002.1 NOPR.<sup>16</sup> Most of the changes included in the Version 002.1 standards were made to support the requirements that the Commission established in Order Nos. 890, 890-A, and 890-B, in which the Commission took action to prevent undue discrimination under the *pro forma* open access transmission tariff (OATT).

11. In Order No. 890, the Commission specifically requested that NAESB seek to develop business practice standards governing the terms and conditions of conditional firm service and the posting requirements for available transfer capability, its calculation, and other values. We recognize that NAESB was faced with a difficult task in seeking to develop industry consensus for standards that establish a set of business practice and communication standards to govern an entirely new service (conditional firm service), as well as the other changes envisioned by Order No. 890. For the most part, the industry has

<sup>16</sup> Consistent with our proposal in the WEQ Version 002.1 NOPR, we are not revising our regulations to incorporate by reference the following standards: Standards of Conduct for Electric Transmission Providers (WEQ-009); Contracts Related Standards (WEQ-010); and WEQ/WGQ eTariff Related Standards (WEQ-014). We are not incorporating WEQ-009 into the Commission's regulations because it contains no substantive standards and merely serves as a placeholder for future standards. We are not incorporating WEQ-010 into the Commission's regulations because this standard contains an optional NAESB contract regarding funds transfers and the Commission does not require utilities to use such contracts. We are not incorporating WEQ-014, eTariff Related Standards, into the Commission's regulations, because the Commission already has adopted standards and protocols for electronic tariff filing based on the NAESB standards. See *Electronic Tariff Filings*, FERC Stats. & Regs. ¶ 31,276 (2008). We are not incorporating NAESB's interpretation of its standards on Gas/Electric Coordination (WEQ-011) into the Commission's regulations because, while interpretations may provide useful guidance, they are not determinative and we will not require utilities to comply with interpretations. Further, as discussed more specifically below, we are incorporating by reference into the Commission's regulations portions of WEQ-001, but are not incorporating the entire standard. Finally, we are not at this time incorporating by reference NAESB's Manual Time Error Correction Standards (WEQ-006) because this standard was developed to maintain consistency with NERC Standard BAL-004, and the Commission's review of BAL-004 is still pending. Thus, the existing version of WEQ-006 will remain in force.

<sup>7</sup> *Id.* P. 4.

<sup>8</sup> Under NAESB's procedures, interested persons may attend and participate in NAESB committee meetings, and phone conferences, even if they are not NAESB members.

<sup>9</sup> Version 2.1 NOPR, P. 5.

<sup>10</sup> See NAESB supplemental report dated Nov. 14, 2008.

<sup>11</sup> The Commission is addressing the associated reliability standards adopted by NERC in a companion final rule being issued in Docket No. RM08-19-000. *Mandatory Reliability Standards for the Calculation of Available Transfer Capability, Capacity Benefit Margins, Transmission Reliability Margins, Total Transfer Capability, and Existing Transmission Commitments and Mandatory Reliability Standards for the Bulk-Power System*, Final Rule, FERC Stats. & Regs. 129 FERC ¶ 61,155 (ATC Final Rule).

<sup>12</sup> On March 12, 2009, NAESB submitted a report to the Commission documenting its ratification of the Version 002.1 standards.

<sup>13</sup> See *infra* n.6.

<sup>14</sup> *Standards for Business Practices and Communication Protocols for Public Utilities*, Notice of Proposed Rulemaking, 74 FR 16160 (Apr. 9, 2009), FERC Stats. & Regs. ¶ 32,640 (Mar. 19, 2009) (WEQ Version 002.1 NOPR).

<sup>15</sup> The Commission will consider all the comments filed in response to the WEQ Version 002.1 NOPR, including Arizona Public Service Company's (APS) late-filed reply comment. The Commission received comments from the following entities: American Wind Energy Association (AWEA); APS; Bonneville Power Administration (Bonneville); Duke Energy Corporation (Duke); Electric Power Supply Association (EPSA); Entergy Services, Inc. (Entergy); ISO/RTO Council (IRC); National Rural Electric Cooperative Association (NRECA) and American Public Power Association (APPA) (collectively, NRECA/APPA); New York Independent System Operator, Inc. (NYISO); North Carolina Electric Membership Corporation (NCEMC); Open Access Technology International, Inc. (OATI); TranServ International, Inc. (TranServ); and Transmission Access Policy Study Group (TAPS).

reached a remarkable level of consensus on these standards. We recognize that not every standard enjoys universal support, and that standardization, by its very nature, requires the reconciliation of different interests and needs. The Commission is satisfied that NAESB's process was open and fair. We therefore find that deference to the considered judgment of the consensus of the industry is both reasonable and appropriate. Although we give great weight to the industry consensus, we also have reviewed these standards alongside our Order No. 890 requirements and find that they satisfy these requirements, except in a small number of cases discussed below.

12. In the NAESB WEQ Version 002.1 standards, NAESB has included business practice and technical standards to support conditional firm service, which will provide additional transmission and flexibility to customers. Additionally, NAESB has developed standards that govern the posting requirements for available transfer capability-related information, including narratives explaining changes in available transfer capability and total transfer capability, and explaining underlying load forecast assumptions for available transfer capability calculations and actual peak load. This will improve transparency for customers and allows them to validate available transfer capability calculations.

13. As to the minor corrections that the NAESB Executive Committee filed with the Commission on May 29, 2009 and October 9, 2009, the Commission agrees with NAESB that these corrections are non-substantive errata corrections, and we will incorporate these corrections by reference to ensure the standards we adopt are as accurate and up-to-date as possible.

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

- Open Access Same-Time Information Systems (OASIS), Version 1.5 (WEQ-001, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);<sup>17</sup>
- Open Access Same-Time Information Systems (OASIS) Standards

& Communications Protocols, Version 1.5 (WEQ-002, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);

- Open Access Same-Time Information Systems (OASIS) Data Dictionary, Version 1.5 (WEQ-003, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);

- Coordinate Interchange (WEQ-004, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);

- Area Control Error (ACE) Equation Special Cases (WEQ-005, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);

- Inadvertent Interchange Payback (WEQ-007, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);

- Transmission Loading Relief—Eastern Interconnection (WEQ-008, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);

- Gas/Electric Coordination (WEQ-011, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);

- Public Key Infrastructure (PKI) (WEQ-012, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009); and

- Open Access Same-Time Information Systems (OASIS) Implementation Guide, Version 1.5 (WEQ-013, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009).

15. The NAESB WEQ approved the Version 002.1 Standards under NAESB's consensus procedures.<sup>18</sup> As the Commission found in Order No. 587, 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 industry participants representing 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 means to carry out policy objectives or activities.<sup>19</sup>

16. The Commission will require public utilities to modify their open access transmission tariffs (OATTs) to include the standards that we are incorporating by reference in this Final Rule. In the past, to reduce the filing burden, we allowed public utilities to postpone making a separate tariff filing making this tariff modification and allowed them to include this revision as part of an unrelated subsequent tariff filing.<sup>20</sup> In this case, however, as compliance with the standards will not be required for more than a year from the issuance of this rule, we will require the tariff filing to be made at least 90 days before the compliance date (*i.e.*, on or before the first day of the first quarter occurring 365 days after approval of the NERC Reliability Standards being addressed in Docket No. RM08-19-000 by all applicable regulatory authorities). Public utilities may still, at their option, combine this tariff filing with an unrelated separate tariff filing, so long as the tariff filing is made at least 90 days before the compliance date. As we did in Order No. 676,<sup>21</sup> we clarify that, to the extent a public utility's OASIS obligations are administered by an independent system operator (ISO) 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.

17. The following sections address the issues raised by the commenters.<sup>22</sup>

<sup>19</sup> Public Law 104-113, section 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997).

<sup>20</sup> See Order No. 676, FERC Stats. & Regs. ¶ 31,216, P 100 (2006). As discussed further below, in order to align the implementation date for the NAESB WEQ Version 002.1 standards with that of the related NERC reliability standards being addressed in the proceeding in Docket No. RM08-19-000, we are not requiring compliance with the standards we are incorporating by reference in this Final Rule until the first day of the first quarter occurring 365 days after approval of the referenced Reliability Standards by all applicable regulatory authorities. In making its required tariff filing, each filing utility is to use the language specified later in this order, *see infra* P 129.

<sup>21</sup> *Standards for Business Practices and Communication Protocols for Public Utilities*, Final Rule, Order No. 676, FERC Stats. & Regs. ¶ 31,216, P 20 (2006).

<sup>22</sup> In the discussion below, we will discuss the issues raised by commenters. We are incorporating by reference without further discussion those standards that were not the subject of any adverse comments.

<sup>17</sup> With the exception of Standards 001-0.1, 001-0.9 through 001-0.13, 001-1.0, 001-9.7, 001-14.1.3, and 001-15.1.2. The Version 1.5 OASIS standards (WEQ-001, WEQ-002, WEQ-003, and WEQ-013) are included in the NAESB WEQ Version 002.1 Standards. While they are now developed by NAESB, the OASIS standards were initially developed by an industry working group, and are therefore designated as both Version 1.5 and Version 002.1. Version 1.5 references an update to the designation applied by the original working group, and Version 002.1 references their inclusion in the NAESB WEQ Version 002.1 Standards.

<sup>18</sup> This process first requires a super-majority vote of 17 out of 25 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 voting must ratify the standards.

*B. Issues Raised by Commenters*

## 1. Available Transfer Capability-Related Standards

18. In Order No. 890, we directed public utilities, working through NERC reliability standards and NAESB business practices development processes, to produce workable solutions to complex and contentious issues surrounding improving the consistency and transparency of available transfer capability calculations.<sup>23</sup> As described in the NOPR, NAESB developed several standards related to available transfer capability in response to Order No. 890. First, NAESB modified WEQ-001 to support the transparency reporting and related functions required by Order No. 890. Second, in response to the available transfer capability related posting requirements established by the Commission in Order No. 890, NAESB has developed business practice standards in WEQ-001 (including Standards 001-14, 001-15, 001-17, 001-18, 001-19, 001-20 and Appendix D), WEQ-002, WEQ-003 and WEQ-013 (including Appendices A and B).<sup>24</sup> We address below the comments filed with respect to these standards.

## a. Standard 001-13.1.5 (ATC Information Link)

19. NAESB developed Standard 001-13.1.5, which provides for an ATC Information Link on OASIS, in close coordination with the NERC available transfer capability drafting team. Standard 001-13.1.5 replaces NERC MOD-003, which NERC and NAESB determined were better classified as business practice standards than reliability standards.

20. In the WEQ Version 002.1 NOPR, the Commission proposed to incorporate by reference Standard 001-13.1.5, which provides for an ATC Information Link on OASIS and requires Transmission Providers to post links to their Available Transfer Capability Implementation Document, Capacity Benefit Margin Implementation Document, and Transmission Reserve Margin Implementation Document (as specified in NERC reliability standards MOD-001-1, MOD-004-1, and MOD-008-1, respectively). Under NERC Standard MOD-001-1 R3.2, the Available Transfer Capability Implementation Document must include a "description of the manner in which the Transmission Service Provider will account for counterflows."

21. In addition, the Commission made clear in the WEQ Version 002.1 NOPR that it expected that the provision in Standard 001-13.1.5 affording Transmission Providers the ability to redact sensitive information would be implemented by Transmission Providers subject to the OATT in a manner consistent with the Transmission Provider's obligation to make that information available to those with a legitimate need to access the information, subject to appropriate confidentiality restrictions.

## i. Comments

22. Several commenters<sup>25</sup> request that the implementation date for posting the Available Transfer Capability Information Link required by Standard 001-13.1.5 coincide with the effective implementation date for implementing the NERC reliability standards relating to available transfer capability currently before the Commission, as the documents to which links must be provided under Standard 001-13.1.5 are described in these NERC standards.

23. TAPS<sup>26</sup> supports the Commission's interpretation of the proposed business practices, particularly Standard 001-13.1.5.<sup>27</sup> TAPS states that it is essential for customers to have timely access to available transfer capability- and service request-related information. This will allow customers to verify the amount of transmission that appears to be available for purchase, thereby enhancing the Commission's goals of transparency, reliability, and competition.

24. EPSA is critical of Standard 001-13.1.5. EPSA comments that the standard affords transmission providers the ability to redact certain information due to market, security or reliability sensitivity concerns, but provides no definition or guidance as to what constitutes such concerns, thereby allowing transmission providers the flexibility to post whatever information they so choose.<sup>28</sup> EPSA requests that the Commission make explicit that nothing in these standards limits customers' ability to specifically request available transfer capability-related information subject to appropriate confidentiality protections and Critical Energy Infrastructure Information (CEII) requirements, as specified in Order No. 890-A.<sup>29</sup>

25. EPSA also argues that Standard 001-13.1.5 results in a "fill-in-the-

blank" standard governing the treatment of counterflows. EPSA claims that the standard will result in different calculation methodologies by different transmission providers. Because Standard 001-13.1.5 permits transmission providers to redact information due to market, security, or reliability sensitivity concerns, EPSA also contends that transmission providers will have unfettered discretion with respect to their obligations to post the methodology that they use to account for counterflows.<sup>30</sup>

26. APS requests that the Commission clarify that the Implementation Documents and Postback Methodology in the NAESB and NERC standards fulfill the requirements and detail specified in Order No. 890 for Attachment C. If the Commission does not believe that the Implementation Documents and Postback Methodology from the NERC and NAESB standards meet the requirements of Order No. 890 for the purpose of Attachment C, APS requests that the Commission clarify the difference between the Order No. 890 requirements and the documentation requirements found in the NERC and NAESB standards.

27. Additionally, APS asks for clarification that the statement in Order No. 890 that a "revised Attachment C to [the] Open Access Transmission Tariff (OATT) be made within 60 days of completion of the NERC and NAESB process" means that a revised Attachment C to the OATT must be filed within 60 days of the later effective date of the NERC standards or NAESB standards.<sup>31</sup>

## ii. Commission Determination

28. NAESB's Standard 001-13.1.5 represents a consensus approach agreeable to all six segments of the industry, and is not inconsistent with Commission policies. Therefore, we will incorporate the standard by reference as proposed in the WEQ Version 002.1 NOPR.

29. In response to EPSA's concerns relating to the redaction of information under Standard 001-13.1.5, we reiterate the statement we made in the WEQ Version 002.1 NOPR that we expect the provision for a transmission provider to redact sensitive information from postings to be implemented by a transmission provider subject to the OATT in a manner consistent with its obligation to make that information available to those with a legitimate need to access the information, subject to appropriate confidentiality

<sup>23</sup> Order No. 890, P 196.

<sup>24</sup> Id. P 369 and 371.

<sup>25</sup> APS at 2-3, Duke at 4, and Entergy at 6-7.

<sup>26</sup> TAPS is an association of transmission-dependent utilities in more than 30 states.

<sup>27</sup> TAPS at 3-4.

<sup>28</sup> EPSA at 16.

<sup>29</sup> Order No. 890-A, P 148.

<sup>30</sup> EPSA at 17.

<sup>31</sup> APS at 3.

restrictions.<sup>32</sup> We also clarify that these standards do not limit transmission customers' ability to request nor relieve transmission providers of their obligation to provide, subject to appropriate confidentiality protections and CEII requirements, data relating to the calculation of available transfer capability, as required by the Commission in Order Nos. 890 and 890-A.<sup>33</sup> With these clarifications, we will incorporate Standard 001-13.1.5 into our regulations as we proposed in the WEQ Version 002.1 NOPR.

30. As to EPSA's argument that Standard 001-13.1.5 allows transmission providers unfettered discretion with respect to their obligations to post the methodology that they use to account for counterflows, we again emphasize that we expect transmission providers subject to the OATT to implement this standard in a manner consistent with their obligation to make any redacted information available to those with a legitimate need to access it, subject to appropriate confidentiality restrictions. Moreover, Order No. 890 did not prescribe the exact methodology to account for counterflows, nor did it find that there could only be a single acceptable methodology for determining this available transfer capability component. The NAESB standards address the posting requirements for the document. Responsibility for developing the methodology to account for counterflows rests with NERC, and not NAESB.<sup>34</sup>

31. APS requests clarification that the Implementation Documents and Postback Methodology required to be posted on OASIS by Standard 001-13.1.5 fulfill the requirements and detail specified in Order No. 890 for Attachment C. The information that the Commission requires transmission providers to include in their Attachment C and the information that transmission providers are required to include in their Implementation Documents under NERC reliability standards MOD-001-1, MOD-004-1, and MOD-008-1 and Postback Methodology under NAESB Standard 001-18 (Postback Requirements) are not identical.

32. For example, some of the required components of an Attachment C include a detailed description of the specific mathematical algorithm used to calculate firm and non-firm available

transfer capability/available flowgate capacity for the transmission provider's scheduling horizon, operating horizon, and planning horizon; a process flow diagram that illustrates the various steps through which available transfer capability/available flowgate capacity is calculated; and a detailed explanation of how each of the available transfer capability components (including total transfer capability, existing transmission commitments, capacity benefit margin, and transmission reserve margin) is calculated for both the operating and planning horizons. In contrast, some of the requirements of the Implementation Documents include a description of how the available transfer capability/available flowgate capacity calculation methodology is implemented; a description of how the transmission provider will account for counterflows; the other transmission providers and/or transmission operators from which a given transmission provider receives data or to which it supplies data; the procedure and assumptions that a transmission provider uses to establish capacity benefit margin; the process through which a load-serving entity can request to set aside or use capacity benefit margin; and the components used to calculate transmission reserve margin. Thus, we clarify here that the Implementation Documents and Postback Methodology are not sufficient to satisfy the requirements and detail specified in Order No. 890 for Attachment C, as the information that they require to be posted is not the same as the information that Commission requires to be included in Attachment C.

33. Moreover, the Commission has determined that it is necessary for the information presented in Attachment C to be included in the tariff, not simply to be posted on OASIS as is required of the information included in the Implementation Documents and Postback Methodology by the Standard 001-13.1.5. In Order No. 890, the Commission rejected proposals to address the transparency of available transfer capability methodology by merely referencing business practices and reliability standards. Specifically, the Commission found that because available transfer capability calculations have a direct and tangible effect on the granting of open access transmission service, "an accurate and detailed statement of the methodology and its components that defines how the transmission provider determines available transfer capability belongs in the transmission provider's OATT as the means of holding the transmission

provider accountable for following non-discriminatory procedures for granting service, not in the business practices kept by the transmission provider."<sup>35</sup> Thus, we likewise clarify here that the Implementation Documents and Postback Methodology that must be posted on OASIS under Standard 001-13.1.5 are separate and distinct from the requirements and detail specified in Order No. 890 for Attachment C, which must be included in the transmission provider's OATT.<sup>36</sup>

34. Lastly, we clarify that the NAESB Version 002.1 standards and the related NERC reliability standards will have the same implementation date.<sup>37</sup> In addition, the revised Attachment C to the OATT should be filed early enough so that it is approved and in place by the time the NERC reliability standards become enforceable. This being the case, we are directing public utilities to file a revised Attachment C to the OATT on or before 275 days after approval of the NERC Reliability Standards being addressed in Docket No. RM08-19-000 by all applicable regulatory authorities. This will leave 90 days for review and approval of these filings before the NERC reliability standards become enforceable.

b. Standards 001-14 and 001-15 (Available Transfer Capability Narratives)

35. In the WEQ Version 002.1 NOPR, the Commission proposed to incorporate by reference Standard 001-14, which was developed by NAESB to meet the requirement in Order No. 890 for transmission providers to post a narrative in instances when available transfer capability remains unchanged at a value of zero for six months or longer. In addition, the Commission also proposed to incorporate by reference Standard 001-15, which requires transmission providers to post a brief narrative that explains the reason for a change in monthly or yearly available transfer capability values on a constrained path when a monthly or yearly available transfer capability value changes as a result of a 10 percent change in total transfer capability.

i. Comments

36. Entergy requests that the Commission clarify that, where a transmission provider is not required to convert available flowgate capability

<sup>32</sup> See Order No. 890, P 403-04 (requiring the development of standard disclosure for timely disclosure of CEII information to those with a legitimate need for it).

<sup>33</sup> See Order No. 890, P 348 and Order No. 890-A, P 148.

<sup>34</sup> See MOD-008-1.

<sup>35</sup> Order No. 890, P 325.

<sup>36</sup> We also note that in the companion rulemaking in Docket No. RM08-19-000 the Commission found that the requirement to provide this information is not overly burdensome. See ATC Final Rule at P 147.

<sup>37</sup> See *supra* P 16 & n.20.

values to available transfer capability values for posting, the values to be used to fulfill the posting requirements set forth in Standard 001–14 and 001–15 are the values calculated and posted by the transmission provider, *i.e.*, in Entergy’s circumstance, available flowgate capability values. Entergy submits that this interpretation is supported not only by the Commission’s statement in Order No. 890–B, but also by the NERC reliability standards, the inclusion of “Other” as reasons for zero available transfer capability in Standard 001–14, and the specific inclusion of total flowgate capacity as an underlying assumption in Standard 001–15.<sup>38</sup>

37. EPSCA contends that Standard 001–15, while consistent with the requirements of Order No. 890, does not reflect the underlying goals of the Commission in Order No. 890.<sup>39</sup> EPSCA argues that the standard allows transmission providers five business days to post a narrative, provides no linkage between the duration of the contingency that has caused the reduction in total transfer capability and the resulting changes in available transfer capability/available flowgate capability, and does not require a narrative posting by a transmission provider when an outage on an adjacent system affects the original transmission provider’s available transfer capability. EPSCA states that these current requirements are insufficient to promote market transparency.

#### ii. Commission Determination

38. In this Final Rule, we will incorporate by reference Standards 001–14 and 001–15, with the exception of Standards 001–14.1.3 and 001–15.1.2. As explained further below, we decline to incorporate Standards 001–14.1.3 and 001–15.1.2 by reference, as they permit transmission providers to post an available transfer capability change narrative within five business days of meeting the criteria under which a narrative is required to be posted, which is inconsistent with the Commission’s rejection in Order No. 890 of delays in posting data.<sup>40</sup>

39. In regards to Entergy’s question of whether the transmission provider’s calculated and posted available flowgate capability values should be used to fulfill the posting requirements set forth in Standard 001–14 and 001–15 in instances where there is no requirement to convert this calculation to available transfer capability values, we agree with Entergy that this requirement can be met

by the transmission provider posting its available flowgate capability values. As to EPSCA’s argument that Standard 001–15 falls short of the goals of Order No. 890, we find that, with the exception of Standard 001–15.1.2, compliance with Standard 001–15 provides all of the information required by Order No. 890. However, Standards 001–14.1.3 and 001–15.1.2 permit transmission providers to post an available transfer capability change narrative within five business days of meeting the criteria under which a narrative is required to be posted. In Order No. 890, the Commission rejected calls for delays prior to posting data and required posting as soon as possible.<sup>41</sup> We do not find the NAESB standard meets this criterion and therefore decline to incorporate Standards 001–14.1.3 and 001–15.1.2 by reference. Transmission providers must post their narratives as soon as feasibly possible. Posting within one day would appear in most cases to be reasonable.

#### c. Standard 001–16.1 (Available Transfer Capability or Available Flowgate Capability Methodology Questions)

40. In the WEQ Version 002.1 NOPR, we proposed to incorporate by reference Standard 001–16.1, which requires transmission providers to respond to questions about the methodology for calculating available transfer capability and available flowgate capability. In the NOPR, we interpreted this standard as requiring the transmission provider to provide data when necessary to respond to the methodology questions in order to be consistent with the requirement in Order No. 890 that transmission providers must, upon request, “make available all data used to calculate [available transfer capability] and [total transfer capability] for any constrained paths and any system planning studies or specific network impact studies performed for customers.”<sup>42</sup>

#### i. Comments

41. TAPS supports the Commission’s interpretation of the proposed business practices for the disclosure of available transfer capability and transmission service related data. It also supports the Commission’s pro-transparency interpretation of NAESB Standard 001–16.1 which requires transmission providers to provide data used to calculate available transfer capability

<sup>41</sup> *Id.* P 370, where the Commission rejected calls for delays prior to posting data, finding that commenters supporting delay had “proffered no evidence to support the allegation of potential harm.”

<sup>42</sup> *Id.* P 348.

and total transfer capability for any constrained path upon request. TAPS states that timely access to available transfer capability and service request information and a transparent and accurate available transfer capability calculation process will encourage competition.

#### ii. Commission Determination

42. Standard 001–16.1 represents a consensus approach agreeable to all six segments of the industry, and, as we interpret the standard, is not inconsistent with Commission policies. Therefore, as proposed in the WEQ Version 002.1 NOPR, we will incorporate Standard 001–16.1 by reference into our regulations. We reiterate our interpretation of this standard, as described in the WEQ Version 002.1 NOPR. We expect that transmission providers will implement this standard in a manner consistent with the requirement in Order No. 890 that transmission providers must, upon request, “make available all data used to calculate [available transfer capability] and [total transfer capability] for any constrained paths and any system planning studies or specific network impact studies performed for customers”<sup>43</sup> by providing data when necessary to respond to methodology questions.

#### d. Actual and Forecasted Load Posting

43. Standard 001–17 is one of the standards that NAESB developed in response to Order No. 890 and addresses the obligations of transmission providers and ISOs and RTOs to post information concerning their actual and forecasted peak load.<sup>44</sup> Specifically, Standard 001–17.2.1 and Standard 001–17.4.1 require transmission providers and ISOs and RTOs respectively to post a single maximum hourly megawatt (MW) value for peak load. Standard 001–17.6.5 requires transmission providers and ISOs and RTOs to post on the available transfer capability Information Link a descriptive statement of the current underlying load forecast assumptions, which must include all weather variables used (*e.g.*, temperature, humidity, wind speed, number of measuring points).

#### i. Comments

44. Several of EPSCA’s comments relate to the actual and forecasted load posting requirements described in Standard 001–17. EPSCA contends that Standard 001–17.2.1, Standard 001–17.4.1, and

<sup>43</sup> Order No. 890, P 348.

<sup>44</sup> *Id.* P 413.

<sup>38</sup> Entergy at 7–8.

<sup>39</sup> EPSCA at 13.

<sup>40</sup> Order No. 890, P 370.

Standard 001–17.6.5 limit transparency in that they require the posting of only a single number for peak loads, even where a transmission provider's internal processes produce multiple (in many cases hourly) peak forecasts.<sup>45</sup> In addition, EPSA is concerned that transmission providers may post the information required by Standard 001–17.2.1 at a time subject to their discretion.<sup>46</sup> With regard to Standard 001–17.6.5, EPSA questions whether a document that includes the weather variables used to forecast load without providing the assumed values for each weather variable in a particular forecast adds any useful information, and therefore any enhanced transparency, to the load forecasting process.<sup>47</sup>

## ii. Commission Determination

45. Standard 001–17 represents a consensus approach agreeable to all six segments of the industry. Contrary to EPSA's representations, we find that this standard satisfies the requirement in Order No. 890 to post load forecasts and actual daily peak load.<sup>48</sup>

46. In Order No. 890, the Commission required transmission providers to post their load forecasts and actual daily peak load for both system-wide load (including native load) and native load,<sup>49</sup> not the data concerning multiple peaks requested by EPSA. In Order No. 890–B, the Commission clarified that it did not intend for transmission providers to post all economic and other data that underlies each and every daily load forecast, but rather the underlying factors used to make load forecasts that have a significant impact on calculations, such as temperature forecasts.<sup>50</sup>

47. Therefore, we will incorporate Standard 001–17 by reference into our regulations.

## e. Grandfathered Agreements

48. In response to Order No. 890,<sup>51</sup> NAESB has developed posting requirements for some of the components included in the amount of transfer capability that a transmission provider can set aside for its native load and other committed uses. As part of this package, Standard 001–19, establishes a mechanism for posting the grandfathered agreements component of existing transmission commitments associated with the available transfer

capability value posted on OASIS. Under Standard 001–19.1, transmission providers using available transfer capability calculation methodologies other than the Flowgate Methodology must post the aggregate MW value for the grandfathered agreements. Such data must be posted so that it can be viewed and queried using the system data template. Standard 1–19.1.2 does not require transmission providers using the Flowgate Methodology to post an aggregate MW value that can be viewed and queried using the system data template. Instead, it requires that the transmission provider must post a list of Grandfathered Agreements with MW values that are expected to be scheduled or expected to flow.

## i. Comments

49. TranServ recommends that all transmission providers should be required to post a list of the grandfathered agreements that are factored into their available transfer capability methodology, as is required of transmission providers using the Flowgate Methodology under Standard 001–19.1.2. TranServ argues that the requirement to post a single aggregate MW value representing the impact of all grandfathered agreements on available transfer capability has little additional value, and that those transmission providers using Flowgate Methodology may have difficulties identifying the specific impacts of grandfathered agreements from the aggregate impacts of network and native load service on their transmission system.

50. EPSA contends that the requirement to post a single aggregate MW value for all grandfathered agreements provides insufficient transparency, particularly as grandfathered agreements represent allocations of transmission capacity that pre-date the open access environment and may include non-standard provisions. Thus, transmission providers may need to make accommodations to incorporate these commitments into the current structure of OASIS reservations and available transfer capability calculations. To promote transparency, EPSA argues that the standard should require information concerning the duration, MW capacity and the associated point of receipt/point of delivery and source/sink combinations, the resulting allocation of the contract provisions to specific transmission interfaces, and the resulting calculation of the available transfer capability/available flowgate

capability associated with each contract.<sup>52</sup>

## ii. Commission Determination

51. One of the Commission's objectives in Order No. 890 was to reduce the potential for transmission providers to unduly discriminate when they provide transmission service by limiting their discretion to calculate available transfer capability using unknown assumptions and methodologies.<sup>53</sup> For this reason, the Commission found that “all [Available Transfer Capability] components (*i.e.*, [total transfer capability], [existing transmission commitments], [capacity benefit margin], and [transmission reliability margin]) and certain data inputs, data exchange, and assumptions be consistent and that the number of industry-wide ATC calculation formulas be few in number, transparent and produce equivalent results.”<sup>54</sup> In Order No. 890, the Commission required that grandfathered transmission rights be included as committed uses of the transmission system under the definition of Existing Transmission Commitments.<sup>55</sup>

52. As we pointed out in the NOPR, the NAESB standards adopt two different methods of posting grandfathered agreements, depending on whether the flowgate methodology is used. Because of the nature of the flowgate methodology, the standards exempt it from the requirement to post an aggregate MW value that can be viewed and queried using the system data template. Instead, the standards require the transmission provider to post a list of grandfathered agreements with MW values that are expected to be scheduled or expected to flow. Transmission providers using available transfer capability calculation methodologies other than the flowgate methodology are required to make this data accessible through the system data template.

53. EPSA and TranServ argue that the complete data on grandfathered agreements needs to be provided even for those systems that do not utilize the flowgate methodology. Order No. 890 does not require the posting of complete data for grandfathered agreements. It required only that grandfathered agreements be included in the Existing

<sup>45</sup> EPSA at 9 and 14.

<sup>46</sup> *Id.* at 18.

<sup>47</sup> *Id.* at 9.

<sup>48</sup> See Order No. 890, P 416, Order No. 890–A, P 143, and Order No. 890–B, P 34–35.

<sup>49</sup> Order No. 890, P 416.

<sup>50</sup> Order No. 890–B, P 35.

<sup>51</sup> Order No. 890, P 244.

<sup>52</sup> EPSA at 9–11.

<sup>53</sup> The Commission reasoned that the potential for discrimination is not primarily in the choice of an available transfer capability calculation methodology, but rather in the inconsistent application of its components. Order No. 890, P 208.

<sup>54</sup> *Id.* P 207.

<sup>55</sup> *Id.* P 244.

Transmission Commitments component of available transfer capability. All six segments of the industry concluded that for transmission providers not using the flowgate methodology, inclusion of the aggregate information in the calculations is sufficient, and we find reasonable the distinctions they have drawn and their determination that inclusion of grandfathered agreements in the system data template provides sufficient transparency. Moreover, as we discuss below, transmission providers must, upon request, provide the basis upon which they calculate available transfer capability should such information be requested in a particular circumstance.<sup>56</sup>

#### f. Availability of Data Used in Available Transfer Capability Calculations

54. Standard 001–16.1 requires Transmission Providers to respond to questions about the methodology for calculating available transfer capability and available flowgate capability. In the WEQ Version 002.1 NOPR, we stated that we interpreted this standard as requiring the Transmission Provider to provide data when necessary to respond to the methodology questions in order to be consistent with the requirement in Order No. 890 that transmission providers must, upon request, “make available all data used to calculate [available transfer capability] and [total transfer capability] for any constrained paths and any system planning studies or specific network impact studies performed for customers.”<sup>57</sup>

##### i. Comments

55. EPSA is concerned that there is a lack of transparency for the data items used in available transfer capability calculations, and contends that this issue was not adequately addressed through the NAESB process. Specifically, EPSA urges the Commission to require not only that data be made available, but that all underlying data supporting available transfer capability calculations be required to be posted.

##### ii. Commission Determination

56. Standard 001–16.1 represents a consensus approach agreeable to all six segments of the industry, and satisfies the requirement in Order No. 890 to make data used in available transfer capability calculations available. Therefore, as proposed in the WEQ Version 002.1 NOPR, we will incorporate Standard 001–16.1 by

reference into our regulations. As described above, we interpret Standard 001–16.1 as requiring the Transmission Provider to provide data when necessary to respond to the methodology questions in order to be consistent with the requirement in Order No. 890 that transmission providers must, upon request, “make available all data used to calculate [available transfer capability] and [total transfer capability] for any constrained paths and any system planning studies or specific network impact studies performed for customers.”<sup>58</sup> Since such data will be available on request, we see no need to impose a more onerous ongoing posting requirement as requested by EPSA.

#### 2. Conditional Firm Service Standards

57. In the OASIS Standards, NAESB has included a number of standards that support conditional firm service as envisioned by the Commission in Order Nos. 890 and 890–A. NAESB has developed business practice standards to facilitate the implementation of conditional firm service, relying on the Commission’s description of the attributes of that service in Order No. 890.<sup>59</sup> Specifically, NAESB developed Standards 001–21 through 001–21.5.5 on the Conditional Curtailment Option, the term that NAESB uses to describe conditional firm service. These standards address: (1) The limitations and conditions under which the Conditional Curtailment Option is offered; (2) the posting requirements for information concerning a Conditional Curtailment Option reservation and its curtailment criteria; (3) the process for performing the biennial reassessment; (4) the curtailment of a Conditional Curtailment Option reservation; and (5) the redirect, transfer, and resale of a Conditional Curtailment Option reservation.

58. Additionally, NAESB has developed other standards related to conditional firm service in response to the Commission’s requests for the development of specific standards in Order Nos. 890 and 890–A.<sup>60</sup> Specifically, NAESB has developed Standard 001–21.1.6, which requires that transmission providers offer short-term firm service to conditional firm customers as capacity (that would alleviate the constraints associated with a Conditional Curtailment Option reservation) becomes available. In response to Order No. 890–A, NAESB has created and modified standards in

WEQ–001, Appendix C to WEQ–001, WEQ–002, WEQ–003, WEQ–008 and WEQ–013, to provide a consistent set of tracking capabilities and business practices for tagging, as a means to implement conditional firm service.

59. The following addresses the comments received on these proposals.

##### a. Resales of Transmission Service

60. Standard 001–11.3.2 governs the conditions under which multiple transmission service reservations may be aggregated to support a resale of transmission service. Under Standard 001–11.3.2, transmission service reservations subject to the terms of a Conditional Curtailment Option<sup>61</sup> may not be aggregated to support a resale of transmission service.

##### i. Comments

61. In their comments, both AWEA and EPSA argue that there is no basis for treating resales of conditional firm service differently from resales of other long-term firm service.<sup>62</sup> Therefore, AWEA and EPSA request that the Commission direct NAESB to remove the restriction on aggregating reservations subject to the Conditional Curtailment Option to support a resale.

##### ii. Commission Determination

62. We will incorporate by reference into our regulations NAESB’s revisions to Standard 001–11.3.2. NAESB’s standard does not preclude the resale of conditional firm service. Such service can be resold as separate transactions. Unlike other types of long-term firm service, the conditions imposed in a conditional firm reservation are specific to the reservation, identified in the system impact study, and documented in the service agreement. The service agreement is a customer-specific, non-conforming agreement that must be filed with the Commission for review and approval. Because the contract terms for conditional firm service are likely to be different, we find reasonable NAESB’s determination not to create standards for the aggregation of such transactions.

##### b. Standard 001–21.1.6

63. NAESB has developed Standard 001–21.1.6 in response to Order No. 890, in which the Commission directed transmission providers to work through NAESB to develop appropriate communication protocols to assign short-term firm service to conditional firm customers as the service becomes

<sup>56</sup> WEQ Standard 001–16.1. See also WEQ Standard 001–13.1.5.

<sup>57</sup> WEQ Version 002.1 NOPR, P 21.

<sup>58</sup> Order No. 890, P 348.

<sup>59</sup> *Id.* P 1043–47.

<sup>60</sup> *Id.* P 1078; Order No. 890–A, P 592.

<sup>61</sup> “Conditional Curtailment Option” is the term that NAESB uses to describe conditional firm service.

<sup>62</sup> AWEA at 5–6, EPSA at 20.

available.<sup>63</sup> Standard 001–21.1.6 requires that transmission providers offer any available short-term firm capability that would alleviate the constraint(s) associated with a conditional firm reservation to the conditional firm customer prior to offering such capability to other customers.

#### i. Comments

64. In its comments, AWEA is concerned about the ability to interpret this standard in various ways, and suggests modifications to the standard to ensure that short-term firm capability is not double counted.<sup>64</sup> Both EPSA and AWEA contend that firm available transfer capability should be decremented when a conditional firm reservation is provided with short-term firm transfer capability before any additional short-term firm capability is offered to other transmission customers.<sup>65</sup> EPSA requests that the Commission indicate to NAESB that Standard 001–21.1.6 should be modified to reflect their proposal.

65. AWEA is also apprehensive that the proposed NAESB standard does not address an important aspect of the Conditional Curtailment Option: How new long-term available transfer capability will be allocated to Conditional Curtailment Option customers when it becomes available.<sup>66</sup> AWEA points out that there may be instances when long-term capacity becomes available after a customer signs a conditional firm contract. Since Order No. 890 states that conditional firm will be charged at the same rate as long-term service, AWEA states that conditional firm customers should have rights to long-term firm available transfer capability when it becomes available. Accordingly, AWEA urges the Commission to require clarification of the methodology for allocating such available transfer capability in the conditional firm service standard, as it believes this practice should not be left up to the transmission provider's discretion and should instead be consistent across the industry.

#### ii. Commission Determination

66. Standard 001–21.1.6 is consistent with the Commission's directive in Order No. 890<sup>67</sup> that transmission providers assign short-term firm service to conditional firm customers as the service becomes available and

represents a consensus approach agreeable to all six segments of the industry. Therefore, as proposed in the WEQ Version 002.1 NOPR, we will incorporate Standard 001–21.1.6 by reference into our regulations.

67. Both EPSA and AWEA are concerned that available transfer capability will not be properly decremented to reflect the assignment of short-term firm service to conditional firm customers. AWEA suggests that the standard should be modified to ensure that double-counting does not occur.<sup>68</sup>

68. As to the concerns raised over how new long-term available transfer capability will be allocated to conditional firm customers when it becomes available, as AWEA recognizes, in Order No. 890, the Commission established that conditional firm customers have priority relative to short term firm capability, and did not provide such priority with respect to long term firm capability. AWEA did not raise this issue in the Order No. 890 proceeding, and if it seeks a change to the priority order established in the rule, it should do so through an appropriate filing with the Commission. Since NAESB's standard complies with the requirement of Order No. 890, we are adopting it here.

#### c. Biennial Reassessment

69. NAESB developed Standards 001–21 through 001–21.5.5 to facilitate the implementation of conditional firm service, relying on the Commission's description of the attributes of that service in Order No. 890. In its discussion of conditional firm service, the Commission specified that transmission providers shall have the right to perform a biennial<sup>69</sup> reassessment of their ability to continue to reliably provide conditional firm service for those transmission customers taking conditional firm service who are unwilling to commit to a facilities study or the payment of network upgrade costs. When conducting a biennial reassessment, the transmission provider reassesses the conditions under which conditional firm service may be curtailed for those conditional firm service reservations subject to the system-conditions criteria or the maximum number of hours that service can be curtailed for those reservations subject to the number-of-hours criteria. The Commission also determined that a

transmission provider is permitted to waive or extend its right to reassess the availability of conditional firm service,<sup>70</sup> so that transmission providers may offer conditional firm service for a period of longer than two years without reassessment.

#### i. Comments

70. Bonneville raises objections to the incorporation by reference of Standard 001–21.3.1.2, which allows a transmission provider to waive its right to perform a biennial reassessment. Bonneville states that Standard 001–21.3.1.2 is inconsistent with the Commission's policy. Bonneville argues that the standard should allow a Transmission Provider the right to extend its reassessment of the conditions for conditional firm service. Bonneville proposes to modify the NAESB standard so that it permits transmission providers to extend their right to perform the biennial reassessment as well as to waive such right.

#### ii. Commission Determination

71. Nothing in Standard 001–21.3.1.2 prevents a Transmission Provider from extending its right to reassess the availability of conditional firm service. The standard states that a transmission provider is permitted to waive its right to conduct a biennial reassessment, not that a transmission provider is prohibited from extending the assessment period. Thus, we do not find the requirements of this standard inconsistent with the requirement in Order No. 890 that a transmission provider may extend its right to reassess the availability of conditional firm service and, as proposed in the WEQ Version 002.1 NOPR, will incorporate Standard 001–21.3.1.2 by reference into our regulations.

72. However, we reiterate here the Commission's finding in Order No. 890 that a transmission provider is permitted to extend its right to reassess the availability of conditional firm service.<sup>71</sup> Since the Version 002.1 Standards do not specifically address this issue, we would ask the industry, working through NAESB, to continue to look at additional business practice standards facilitating a transmission provider's extension of its right to perform a reassessment.

#### d. Posting System Conditions

73. As part of the overall Version 002.1 Standards, the Commission proposed to incorporate by reference

<sup>63</sup> Order No. 890, P 1078.

<sup>64</sup> AWEA at 6–7.

<sup>65</sup> EPSA at 21.

<sup>66</sup> AWEA at 7.

<sup>67</sup> Order No. 890, P 1078.

<sup>68</sup> The issue of double-counting data inputs to available transfer capability calculations affects the reliability of the Bulk Power System, and is addressed in the companion ATC Final Rule at P 183. See n.11 *supra*.

<sup>69</sup> Biennial is every two years, in contrast to biannual, which is twice a year.

<sup>70</sup> Order No. 890, P 985.

<sup>71</sup> *Id.*

Standard 001–21.4.2.1, which is part of a set of standards detailing the business practices for managing and curtailing transmission service with a conditional curtailment option. Standard 001–21.4.2.1 requires transmission providers to post on OASIS the reduction in each impacted conditional firm reservation prior to or coincident with any curtailments of conditional firm service at the conditional curtailment priority level. The conditional curtailment priority level is equal to that of secondary network transmission service, and is applied when conditional firm service is not firm in accordance with the terms of the transmission service agreement. For a conditional firm service reservation subject to the system conditions criteria, the conditional curtailment priority level is applied to a conditional firm service reservation under system conditions specified in the transmission service agreement. For a conditional firm service reservation subject to the number of hours criteria, it is applied due to reliability concerns when the maximum number of hours that service can be curtailed under the transmission service agreement has not yet been reached.

#### i. Comments

74. Entergy seeks Commission clarification on whether this standard requires the posting of any curtailment of conditional firm service actually be made “prior to or coincident with” the implementation of the curtailment, in light of the difficulty of making such postings while managing the reliability of the transmission system in a congested situation. Entergy urges the Commission to clarify that the same posting requirements currently in the regulations at 18 CFR 37.6(e)(3) are appropriate for posting curtailments of conditional firm service.<sup>72</sup>

75. Both AWEA and EPSA contend that the standards governing the provision of conditional firm service lack adequate transparency due to a deficiency of posting requirements regarding system conditions. Under a conditional curtailment option subject to the systems-condition criteria, conditional firm service can be curtailed based on pre-identified system conditions. To inform their business decisions and to evaluate the firmness

of their reservation at any given time, AWEA and EPSA argue that transmission customers taking conditional firm service require the maximum amount of information practical as to the risk that their service will be curtailed. Therefore, AWEA and EPSA claim that transmission providers should be required to post information pertaining to the system conditions in effect at any given time, even if the event of a single condition alone will not reduce the priority of the service to non-firm.<sup>73</sup>

#### ii. Commission Determination

76. Standard 001–21.4.2.1 represents a consensus approach agreeable to all six segments of the industry, and is not inconsistent with Commission policies. Therefore, as proposed in the WEQ Version 002.1 NOPR, we will incorporate Standard 001–21.4.2.1 by reference into our regulations. As to Entergy’s contention that Standard 001–21.4.2.1 should allow postings consistent with 18 CFR 37.6(e)(3), we note that 18 CFR 37.6(e)(3) does not include any specific time requirements for the posting. We believe that the timing of when information must be posted is an important element in providing for transparency and accountability surrounding the provision of conditional firm service. Revising the standards to remove any requirement as to when information must be posted would severely diminish the achievement of both of those goals. Thus, we will require the posting to be made “prior to or coincident with” as provided in the standard.

77. As to the concern raised by AWEA and EPSA about the lack of transparency regarding the conditions leading to curtailments, these commenters failed to persuade a majority of NAESB members to adopt their requests to impose posting obligations that exceed the requirements of Order No. 890. The requested postings would appear to impose a continuous burden on transmission providers which, in light of the non-curtailment status of the system for most of the time intervals, does not appear to be warranted. Given that the current NAESB standard satisfies the Order No. 890 requirements, we will incorporate the standard by reference.

#### e. Redirects of Conditional Firm Service

78. NAESB developed and adopted Standard 001–21.5.2.1 as part of its response to the Commission’s directive in Order No. 890 to implement conditional firm service; it provides that

redirects of conditional firm service do not affect the conditions applicable to the parent reservation.

#### i. Comments

79. When the evaluation of a request for a redirect of conditional firm service indicates that such redirected service can be provided without conditions, Entergy requests clarification that under Standard 001–21.5.2.1 “such service may be granted without the application of conditions so long as conditions are retained on the Parent Reservation.”<sup>74</sup>

#### ii. Commission Determination

80. Standard 001–21.5.2.1 represents a consensus approach agreeable to all six segments of the industry, and is not inconsistent with Commission policies. Therefore, as proposed in the WEQ Version 002.1 NOPR, we will incorporate Standard 001–21.5.2.1 by reference into our regulations, as we proposed in the WEQ Version 002.1 NOPR. As to Entergy’s request for clarification, we find no reason why the condition should apply if the evaluation of a request for redirect of conditional firm service shows that such redirected service can be provided without conditions. We note, however, that under Standard 001–21.5.2.1, the condition would remain on the parent reservation.

#### f. Accounting for Conditional Firm Service in Available Transfer Capability Calculations

#### i. Comments

81. EPSA contends that there is no standard governing the treatment of conditional firm service in available transfer capability calculations or requiring transmission providers to post the methodology that they use to account for conditional firm service in these calculations. Thus, EPSA argues that the Version 002.1 Standards give the transmission provider too much discretion.<sup>75</sup>

#### ii. Commission Determination

82. We agree with EPSA that the Version 002.1 standards do not provide a uniform methodology for treating conditional firm service in available transfer capability calculations. But Order No. 890 did not request NAESB to develop the methodology for transfer capability calculations. NERC has developed Standard MOD–001–1 which requires that the Available Transfer Capability Implementation Document (required by NAESB Standard 001–13.1.5 to be posted on OASIS) includes

<sup>72</sup> Entergy at 5–6. Entergy’s comments refer to 18 CFR 33.6, which is the regulation covering form of notice. We presume that Entergy intends to refer to 18 CFR 37.6(e)(3). To the extent Entergy’s comments are aimed at 18 CFR 33.6, we see no merit in its argument, because this regulation governs form of notice for applications pursuant to section 203 of the Federal Power Act, which appear to be inapplicable to this issue.

<sup>73</sup> AWEA at 4–5, EPSA at 18–19.

<sup>74</sup> Entergy at 6.

<sup>75</sup> EPSA at 20–21.

information describing how the available transfer capability methodology is implemented “in such detail that, given the same information used by the Transmission Service Provider, the results of the [available transfer capability] or [available flowgate capacity] calculations can be validated.”<sup>76</sup> Therefore, the methodology used to calculate available transfer capability or available flowgate capacity as described in the Available Transfer Capability Implementation Document will be posted on OASIS and should include the treatment of conditional firm service if such calculations are to be replicable. We also note that pursuant to the requirements of Order No. 890 and Standard 001–16.1, this information nevertheless must be provided upon request. Because the methodology used to account for conditional firm service in available transfer capability calculations could affect the reliability of the Bulk-Power System, the appropriate forum for addressing EPSC’s concern relating to the lack of a standard governing the treatment of conditional firm service in such calculations is the NERC standards development process.

### 3. Other Issues

#### a. Transmission Request Priority

83. NAESB revised Standard 001–4.16 to complement the Commission’s policies regarding pre-confirmed transmission service requests,<sup>77</sup> as articulated in Order No. 890. As required by Order No. 890, NAESB standards “give priority only to pre-confirmed non-firm point-to-point transmission service requests and short-term firm point-to-point transmission service requests”<sup>78</sup> and provide that “longer duration requests for transmission service will continue to have priority over shorter duration requests for transmission service, with pre-confirmation serving as a tie-breaker

for requests of equal duration.”<sup>79</sup> In addition, as requested by the Commission in Order No. 890, NAESB has developed a consensus solution to the question of whether a transmission customer should be prohibited from changing a request into a pre-confirmed request.<sup>80</sup>

84. The issue raised in the comments relates to whether daily network service can preempt short-term firm service under Standard 001–4.16. This standard includes Table 4–3, which illustrates the relative queue priorities of competing transmission service requests and reservations. In addition, the table describes the conditions under which a subsequent request can preempt a previously queued request or reservation, as well as the rules for offering a right-of-first-refusal.

85. Two previously adopted standards also address the queue priority for non-firm transmission service requests, *i.e.*, Standards 001–4.22 and 001–4.25. Standard 001–4.22 states that, once confirmed, a non-firm point-to-point request may not be displaced by a subsequent non-firm point-to-point request of equal duration and higher price. After a transmission provider has offered to provide non-firm transmission service to a transmission customer at a given price, the transmission customer is afforded a prescribed time limit within which to confirm the request. Standard 001–4.25 states that a transmission provider may not pre-empt a customer’s request in favor of a subsequent request of the same Tier and equal duration at a higher price while the customer considers whether to confirm its request during the Customer Confirmation Time Limit, unless the subsequent request is submitted as pre-confirmed.

#### i. Comments

86. TranServ claims that, under Table 4–3, a request for designation of a new network resource for a single day could potentially preempt all confirmed (but conditional) short-term firm point-to-point reservations, and that those transmission customers whose reservations were displaced would be unable to retain their service. TranServ suggests that designation of a new network resource for terms less than 12 months should be considered for preemption on a par with point-to-point services. At a minimum, it argues that requests to designate a new network resource should be eligible to preempt only those point-to-point reservations of equal or shorter duration. In addition,

TranServ requests Commission guidance as to whether longer term point-to-point requests should have any rights to preempt a shorter term network resource designation and whether a transmission customer whose point-to-point reservation has been displaced by a longer term request to designate a network resource has a right-of-first-refusal to modify its request to match the requested longer duration of the competing service request so it can retain its service priority.<sup>81</sup>

87. In its reply comments, APS opposes TranServ’s proposal to allow point-to-point services the same queue priority as network customers, contending it diminishes the value of network service, which is a long term service, to be on par with that of shorter term point-to-point service requests.

88. TranServ also notes that while confirmed but conditional short-term firm reservations may be preempted based on price, confirmed non-firm reservations and unconfirmed (but within the Customer Confirmation Time Limit) non-firm requests in response to which the transmission provider has offered service may not be preempted by subsequent requests based on price, as described in Standards 001–4.22 and 001–4.25. TranServ requests that the Commission advise the industry as to whether this disparate treatment of firm and non-firm service with regard to preemption based on price should be eliminated from the standards. Specifically, TranServ asks if Table 4–3 should be revised to include the preemption of non-firm reservations based on price and if Standards 001–4.22 and 001–4.25 should be removed.<sup>82</sup>

#### ii. Commission Determination

89. TranServ’s comments raise two separate arguments. First, TranServ argues that daily network service should not displace short-term firm reservations while those requests are still conditional. Standard 001–4.16 and Table 4–3, which govern the queue priorities of competing transmission service requests and reservations, reflects the Commission’s policies articulated in Order No. 890,<sup>83</sup> and are consistent with our determinations in that order. As specified in the *pro forma* OATT, network service (regardless of contract duration) and long-term firm service (over a year) have equal reservation priority that is higher than any short-term firm service. Both network and long-term firm service can preempt short-term firm service before

<sup>76</sup> NERC Standard MOD–001–1 R3.1.

<sup>77</sup> Under the OATT, there are two types of transmission service requests. One type of request involves three steps: (1) A prospective shipper requesting service; (2) the transmission operator processing that request and responding; and (3) the prospective shipper “confirming” its request. The second type of request has only two steps: (1) The prospective shipper “pre-confirms” its request with the initial submission; and (2) if the transmission operator unconditionally grants the request, it is deemed confirmed without further contractual communications. Thus, pre-confirmed transmission service requests are those requests for which the transmission customer commits to purchasing the requested transmission service if the transmission provider grants the full amount of capability requested for the full duration requested.

<sup>78</sup> Order No. 890, P 1401.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* P 1392.

<sup>81</sup> TranServ at 4–5.

<sup>82</sup> *Id.* at 5–6.

<sup>83</sup> See Order No. 890, P 1505.

the conditional reservation deadlines have expired (*i.e.*, one day before the commencement of daily service, one week before the commencement of weekly service, and one month before the commencement of monthly service).<sup>84</sup> In Order No. 890, the Commission clarified that the minimum term for the designation of new network resources should be the same as the minimum time period used for firm point-to-point service (*i.e.*, daily).<sup>85</sup>

90. Because the priority of network service of any duration is higher than that of short-term firm service, it will preempt short-term firm service during the conditional reservation period even if the short-term firm service is of longer duration. Therefore, the queue priority described in Standard 001–4.16 and Table 4–3 is consistent with the *pro forma* OATT, and we will incorporate by reference Standard 001–4.16 and Table 4–3 as proposed in the NOPR. Moreover, under the *pro forma* OATT, a customer whose reservation has been preempted does not have a right to modify its request to match the priority of the competing service request.

91. Second, TransServ contends that previously adopted standards should be modified to allow non-firm reservations to be preempted based on price. It argues that the same pricing rules that apply to firm services, which permit preemption based on price during the conditional reservation period, also should apply to non-firm service.

92. We note that the standards in question, Standards 001–4.22 and 001–4.25 (governing the queue priority for non-firm transmission service requests), were incorporated by reference in Order No. 676,<sup>86</sup> issued in 2006. These standards are not revised in Version 002.0 or 002.1 of the standards. Thus, TransServ's contention is beyond the scope of this proceeding.

93. In addition, we note that these standards are consistent with the *pro forma* OATT and prior Commission determinations. Under the *pro forma* OATT, the conditional reservation period applies only to firm requests for service, not to non-firm service.<sup>87</sup> Therefore, the NAESB standards are consistent with the Commission policies.

#### b. Rollover Rights for Redirects

94. In the WEQ Version 002.1 NOPR, the Commission proposed to incorporate by reference new and

modified standards that relate to rollover rights. The Commission recognized that the filed NAESB standards represented only the first part of a two part process through which NAESB will fully develop standards that are consistent with the Commission's policy on rollover rights as articulated in Order Nos. 676, 890, and 890–A. In the Version 002.1 Standards submitted to the Commission as part of the first part of the aforementioned two part process, NAESB included a new definition for Unexercised Rollover Rights in WEQ–001, as well as other modifications to existing standards in WEQ–001, WEQ–003, and WEQ–013. In its Version 002.1 filing letter of February 19, 2009, NAESB stated that the second part of this process would include modifications to Standard 001–9.7, as directed by Order No. 890. NAESB also indicated that it anticipates that the results of the second part of the process will be included in a new Version 002.2 set of business practice standards, which NAESB expects will be published in the first quarter of 2010.

#### i. Comments

95. Two commenters requested that the Commission not incorporate by reference standards related to rollover rights for redirects.<sup>88</sup> Duke states that the standards developed in the first part of the process were ratified by the NAESB membership with the understanding that they would not be significantly modified during the second part of the process. However, as Duke points out, certain standards were substantially revised and a new definition for “Unexercised Rollover Rights” was created and included in the recommendation posted for formal comment by the Electronic Scheduling Subcommittee/Information Technology Subcommittee of NAESB. Therefore, Duke requests that the Commission defer action on these standards until the second installment of the standards is submitted. IRC agrees.

#### ii. Commission Determination

96. We recognize that the standards relating to rollover rights for redirects included in the Version 002.1 Standards represent only the first part of a two-part process. In addition, we understand that both Duke and IRC are concerned that the standards currently before the Commission have been substantially revised in the second part of the two part process. However, neither Duke nor IRC has expressed any substantive concerns with the standards currently

before the Commission, or offered any suggested alternative to the filed standards. Given these circumstances and because we find no inconsistency between the standards governing rollover rights for redirects of transmission service in the Version 002.1 Standards and Order No. 890 and the Commission's regulations, we will incorporate these standards by reference. We expect that should Duke, IRC, or any other party have concerns with the standards being developed during the second part of the process that they will be able to raise these concerns within the NAESB process and work to achieve a consensus solution acceptable to all industry segments. We reserve judgment on any phase two standards governing rollover rights for redirects of transmission service until such time as these standards are developed and filed with the Commission for review.

#### c. Standard 002–5.10

97. Standard 002–5.10 requires that all template interactions with OASIS be updated to reflect the Version 1.5 OASIS standards within six months of the Version 002.1 Standards becoming effective.<sup>89</sup> During this six month implementation period, the standards require that OASIS nodes must also continue to support the Version 1.4 templates. The WEQ Version 002.1 NOPR did not propose a specific implementation date for compliance with any standards incorporated by reference by the Commission in a final rule.

#### i. Comment

98. Entergy requests clarification that Standard 002–5.10 is applicable only to the actual implementation of updated templates and not to the additional required OASIS functionalities proposed in the Version 002.1 Standards, which may require modification to or development of supporting software applications.<sup>90</sup>

#### ii. Commission Determination

99. The Commission will grant the requested clarification. The Commission finds that Standard 002–5.10 is applicable only to the actual implementation of updated templates and not to the additional required OASIS functionalities proposed in the Version 002.1 Standards, which may require modification to or development of supporting software applications. As discussed in the Implementation section

<sup>84</sup> *Pro forma* OATT, section 13.2.

<sup>85</sup> Order No. 890, P 1505.

<sup>86</sup> See Order No. 676, P 19.

<sup>87</sup> *Open Access Same-Time Information System and Standards of Conduct*, Final Rule, Order No. 638, FERC Stats. & Regs. ¶ 31,093, at 31,437 (2000).

<sup>88</sup> Duke at 5; ISO Council at 4–5.

<sup>89</sup> As explained above, *see* n.17 *supra*, the Version 1.5 OASIS Standards form part of the Version 002.1 Business Practice Standards package.

<sup>90</sup> Entergy at 4–5.

of this Final Rule,<sup>91</sup> the Commission is not requiring compliance with the OASIS requirements established in this rule before the first day of the first quarter occurring 365 days after approval of the referenced NERC Reliability Standards by all applicable regulatory authorities.

#### d. Order No. 717 Issues

100. In the WEQ Version 002.1 NOPR, the Commission recognized that a specific standard, Standard 001–13.1.2, contained references to Commission regulations regarding the posting of Standards of Conduct-related information. These regulations were revised by Order No. 717.<sup>92</sup> The Commission went on to acknowledge that the references in the standard were no longer accurate and did not conform to the Commission's current requirements, and therefore did not propose to require public utilities to comply with any portion of the standard that was inconsistent with Order No. 717.

#### i. Comments

101. Duke<sup>93</sup> requests that the Commission not adopt NAESB standards that conflict with Order No. 717, and instead adopt the revised NAESB standards whenever they are filed with the Commission.<sup>94</sup> Or, in the alternative, Duke states the Commission should provide greater clarity that transmission service providers do not have to comply with any posting or other requirements in the approved NAESB standards that have been revised by Order No. 717.<sup>95</sup> Similarly, APS requests that the Commission decline to incorporate by reference Standard 001–21.3.1.2.2 (which states that waivers of the Biennial Reassessment be posted on OASIS as a discretionary action) because such posting of discretionary actions is no longer required under Order No. 717.<sup>96</sup>

#### ii. Commission Determination

102. We addressed this concern in the WEQ Version 002.1 NOPR, in which we stated that “we do not propose to

require public utilities to comply with any portion of the standard that requires information to be posted in a manner inconsistent with Order No. 717.” While this statement related directly to Standard 001–13.1.2, we clarify here that we will not require public utilities to comply with any portion of the Version 002.1 standards that requires information to be posted in a manner inconsistent with Order No. 717.

#### e. Coordination of Requests Across Multiple Transmission Systems

103. In Order No. 890, the Commission directed transmission providers, working through NAESB, “to develop business practice standards related to coordination of requests across multiple transmission systems.”<sup>97</sup>

#### i. Comments

104. North Carolina Electric Membership Cooperative (NCEMC) urges the Commission to monitor closely NAESB's progress on developing standards for the coordination of transmission service requests across multiple transmission systems, including requiring status reports as appropriate. NCEMC argues that they have experienced difficulties when trying to conduct transactions across two transmission providers' systems. Because this issue was originally addressed by the Commission in response to comments filed by TDU Systems almost three years ago, NCEMC believes that it is necessary for the Commission to exert more pressure on NAESB to develop this standard, as they have yet to begin drafting it.

#### ii. Commission Determination

105. We agree that insufficient progress has been made on this issue. While we acknowledge that development of standards addressing this issue is included in NAESB's 2009 WEQ Annual Plan,<sup>98</sup> we nevertheless urge NAESB to address this issue as soon as possible. Accordingly, we request that NAESB provide the Commission with a status report concerning its progress on this issue every six months, counting from the date this final rule is published in the **Federal Register**, until NAESB's adoption of the applicable standard(s).

#### f. Waivers

106. NYISO asks the Commission to take the opportunity to reconsider its position regarding the process for filing waivers. NYISO states that it currently

is required to make a waiver filing every time the Commission incorporates a revised NAESB standard. It asks the Commission to revise this process so that recipients of waivers only need to file requests to renew their waivers when NAESB adopts (and the Commission incorporates by reference) new standards or revises existing ones in a substantive way. NYISO argues that tracking, analyzing and making frequent waiver filings are burdensome tasks and do not benefit NYISO.

#### i. Commission Determination

107. When the Commission adopts new requirements, it is incumbent on a public utility that wishes to maintain an existing waiver to making a showing to the Commission that, based on the particular facts at issue, the waiver should continue. The determination of whether a waiver from a prior requirement should apply to a revised requirement is one that needs to be made on a case-by-case basis. We do not agree that waivers should automatically be extended without Commission review and approval. Accordingly, we deny NYISO's request.

#### g. Suggestion To Develop Revised Standards on Available Flowgate Capacity/Total Flowgate Capacity Postings

108. NERC Standard MOD–030–02 R11 provides definitions of Available Flowgate Capacity and Total Flowgate Capacity and a formula to convert Available Flowgate Capacity to Available Transfer Capability. In Order No. 890, the Commission directed public utilities, working through NERC, to develop in the MOD–001 standard a rule to convert available flowgate capacity into available transfer capability values.<sup>99</sup>

#### i. Comments

109. TranServ comments they are not in support of posting of flow-based Available Flowgate Capacity and the related transmission system metrics used to convert Available Flowgate Capacity to an effective Available Transfer Capability. It seeks clarification on how the requirements of 18 CFR 37.6 to post Available Transfer Capability, Total Transfer Capability, Capacity Benefit Margin and Transmission Reliability Margin are to be addressed by a Transmission Provider selecting to use the Flow-based Available Transfer Capability Methodology as specified in NERC Standard MOD–030. It further states there is no guidance on how the Transmission Provider is to convert a

<sup>91</sup> See *infra* P 126.

<sup>92</sup> *Standards of Conduct for Transmission Providers*, Order No. 717, 73 FR 63796, FERC Stats. & Regs. ¶ 31,280 (2008).

<sup>93</sup> Duke at 3–4.

<sup>94</sup> Duke states that NAESB's Executive Committee approved modifications to the business practices to make them consistent with Order No. 717 on May 12, 2009, and they believe NAESB will “file these standards with the Commission soon.”

<sup>95</sup> For instance, Duke references standards WEQ 001–13.1.2, WEQ 001–21.3.1.2.2, WEQ 001–13.1, and WEQ 002–3.4b(ii) as examples of standards containing posting requirements that are no longer required by Order No. 717.

<sup>96</sup> APS at 4.

<sup>97</sup> Order No. 890, P 1377.

<sup>98</sup> Item 2, (a), (iii), 1.

<sup>99</sup> Order No. 890, P 211.

Total Flowgate Capability to an effective path Total Transfer Capability, nor how to convert flowgate Capacity Benefit Margin or Transmission Reliability Margin into an equivalent path-based value. TranServ also requests that the Commission direct either NAESB or NERC to provide the necessary computational standards to meet the Commission's posting requirements of 18 CFR 37.6.

ii. Commission Determination

110. Responsibility for developing an acceptable formula to convert available flowgate capacity to available transfer capability rests with NERC, and not NAESB. Our focus in this rulemaking is to evaluate NAESB's revised business practice standards, and the comments filed in response to our NOPR, to determine whether we should incorporate NAESB's revised standards by reference into our regulations. Thus, we find that this issue is beyond the scope of this proceeding.

h. Incorporation by Reference

i. Comments

111. While NRECA and APPA<sup>100</sup> do not object to the substance of the NAESB standards, they oppose the Commission's proposal to incorporate by reference non-public standards into its regulations and the OATTs of public utilities. NRECA and APPA claim that by incorporating standards by reference, the Commission is depriving those industry participants that are unable to participate in the time- and resource-intensive NAESB standards development process of adequate notice or a reasonable opportunity to comment on the standards before they are enacted. They argue that the Commission's ordinary notice and comment rulemaking process is more cost-effective for smaller stakeholders, as they are provided with the opportunity to submit comments before a neutral arbiter without incurring the costs involved in the time- and resource-intensive private standards development process. In addition, NRECA and APPA contend that, because these standards are incorporated by reference, industry participants without knowledge of, or practical access to, these rules may have to defend themselves against enforcement action by the Commission based on alleged noncompliance with the standards. Specifically, NRECA and APPA cite the enhancement of the Commission's civil penalty authority in EPAct 2005 and the possibility that such

penalties could be enforced against transmission customers for violations of the OATT.

112. Additionally, NRECA and APPA claim that the Commission has taken the National Technology Transfer and Advancement Act of 1995 (NTT&AA) out of context, as it applies to practices regarding federal procurement contracts and places no affirmative obligations on agencies outside of that context.

113. Therefore, they contend that the Commission can and should reproduce the content of the standards in order to provide for greater transparency and compliance.

114. To address these issues, NRECA and APPA recommend that the Commission "(1) cease incorporating NAESB standards by reference into the *pro forma* OATT and instead promulgate its standards by ordinary notice and comment rulemaking; (2) provide substantially greater access to those materials that are promulgated in regulations; (3) or, at a minimum, clarify that FERC will not attempt to assess civil penalties on transmission customers for violations of standards that have merely been incorporated by reference into regulations and OATTs of public utilities."<sup>101</sup> To support their position for Commission publication of the standards, NRECA and APPA claim that the United States Court of Appeals for the Fifth Circuit clarified that the contents of privately developed standards are not subject to copyright protections once incorporated.<sup>102</sup>

ii. Commission Determination

115. When the Commission first began to establish technical standards for communication protocols and business practices for the gas and electric industries, the Commission sponsored technical conferences and meetings at which all industry participants were entitled to participate. For example, when the Commission sponsored the process leading up to the OASIS standards adopted in Order No. 889, it relied on two ad hoc committees comprised of volunteers who offered to host and conduct their own meetings, open to participants from various industry sectors and attended by staff observers, to seek consensus on proposed OASIS standards. These

committees had no formal structure or voting rules.

116. The NAESB process for both the gas and electric industries resulted in streamlining the standards development process and making it more efficient by creating regularized procedures and voting rules. Under the NAESB approved ANSI consensus procedures, each industry segment is represented and it is no longer necessary for all participants to attend conferences at the Commission in order to ensure their votes are heard. They can now participate either directly or indirectly through their industry representatives at NAESB. From our experience, the NAESB process is far more efficient and cost effective method of developing technical standards for the industries involved than the use of a notice and comment rulemaking process involving numerous technical conferences in Washington that all believe they have to attend.

117. While the NAESB process includes numerous volunteers from the industries, NAESB incurs administrative expenses which it must cover. Membership dues and fees for obtaining standards provide a reasonable means of obtaining the necessary revenue stream.<sup>103</sup> When the Commission weighed the advantages achieved by the NAESB standards development process against the cost to the Commission and the industry of developing these standards through notice and comment rulemaking, we found, and continue to find, that the benefits of having a well-established, consensus process outweigh whatever costs non-members may incur in having to obtain copies of the standards.

118. In choosing to take advantage of the efficiency of the NAESB process, we followed the government regulations that require the use of incorporation by reference. These rules appropriately balance the interest of the standards organization and the expediency of governmental use of privately developed standards. Under section 552(a) of title 5, material may be incorporated by reference when such material is reasonably available to the public. Under the regulations adopted by the **Federal Register**, material incorporated by reference is maintained at the Office of the Federal Register for public viewing.<sup>104</sup> As part of the

<sup>101</sup> NRECA and APPA at 7.

<sup>102</sup> NRECA and APPA at 9. These commenters cite *Veck v. Southern Building Code Congress International, Inc.*, 293 F.3d 791 (5th Cir. 2002), cert. denied, 539 U.S. 969 (2003) (*Veck*) for the proposition that a model code incorporated into the law becomes part of the "public domain" and, therefore, is not copyrightable. They also cite *John G. Danielson, Inc. v. Winchester-Conant Properties, Inc.*, 322 F.3d 26, 39 (1st Cir. 2003) (*Danielson*) as supporting this proposition.

<sup>103</sup> American National Standards Institute, Why Charge for Standards, [http://www.ansi.org/help/charge\\_standards.aspx?menuid=help](http://www.ansi.org/help/charge_standards.aspx?menuid=help). Without such a revenue source, the Commission would have to consider imposing mandatory charges, similar to the mandatory charges to support NERC. 18 CFR 39.4(e).

<sup>104</sup> 1 CFR 51.3.

<sup>100</sup> NCEMC supports the comments filed by NRECA and APPA.

incorporation process, the material also must be available and obtainable by the user.<sup>105</sup> As we have pointed out in past orders, the NAESB standards are easily and readily available from NAESB, as well as being available at the Commission and the Office of the Federal Register. For example, for those who want to view the standards in order to make comments with the Commission, NAESB makes the standards available for free for a three day period.<sup>106</sup> Even for those non-members seeking to purchase a copy, the standards are available for \$900, which we do not find prohibitive, given the costs of otherwise participating in a notice and comment rulemaking proceeding, including the hiring of legal counsel.<sup>107</sup>

119. The *Veeck* case cited by the commenters dealt only with a third-party reprinting of local law derived from incorporation of a model building code. The case did not invalidate the copyrights held by the organization over their standards, nor did it require, nor authorize the government to provide copies of private sector standards either prior to or after incorporation by reference.<sup>108</sup>

120. Indeed, OMB Circular A-119 requires government agencies incorporating privately developed standards to “observe and protect the rights of the copyright holder and any other similar obligations.”<sup>109</sup> In

addition to copyright, the Commission also is barred contractually from reproducing the standards for distribution to third parties.<sup>110</sup>

121. Nor do we find that the need for public utilities to obtain standards to comply with Commission regulations is a sufficient reason to reconsider the Commission’s reliance on the NAESB process. Public utilities must incur numerous fees as a cost of doing business, including the payment of Commission annual charges, the filing of mandated reports and forms, and the costs incurred in having to maintain those records. As to commenters’ argument that the Commission has misinterpreted section 12d of the NTT&AA, we find that the Act and the accompanying regulations are not limited to procurement specifications, as suggested in the comments, but include adoption of standards “as a means to carry out policy objectives or activities.”<sup>111</sup> In any event, as discussed above, we see benefits to the continued role of NAESB in developing electronic communication and business practice standards for public utilities, whether required by NTT&AA or not.

### III. Implementation Dates and Procedures

122. OATI<sup>112</sup> supports the Commission’s proposed actions and has no immediate concerns with any of the proposed standards. Both OATI and TranServ suggest that the Commission

should defer implementation of WEQ-002, WEQ-003, and WEQ-013 for a minimum of six to nine months to allow transmission providers sufficient time to modify their existing OASIS systems and make necessary changes to their processes, procedures, and other supporting software systems. Both also suggest avoiding implementation during the summer or winter peak seasons.

123. APS argues that because the postings for the ATC Information Link and Postback Requirements relate to the Implementation Documents required by the NERC standards, there should not be an effective requirement to post items related to these documents prior to the date on which the underlying NERC rules take effect. Therefore, APS requests that the requirements of Standards 001-18 through 001-18.2 have the same effective date as the NERC available transfer capability related standards.

124. Entergy argues that because Standards 001-13.1.5, 001-14.1, and 001-15.1 relate to, and potentially depend on, the NERC reliability standards, the Commission should consider the need to coordinate the effective dates of these two sets of standards.<sup>113</sup>

125. While Entergy acknowledges the difficulty of developing a single industry methodology for implementing Standard 001-21.1.6, because Entergy believes that it does not provide significant guidance as to how transmission providers should implement this standard, Entergy argues that its implementation will require significant software development. To address this issue, Entergy asks that the Commission set the effective date of this provision to coincide with the date at which the OASIS vendors will have developed the appropriate software modifications necessary to implement this standard.<sup>114</sup>

#### A. Commission Determination

126. In light of the time needed to plan and complete the complex tasks involved in implementing the standards we are adopting in this Final Rule, as well as the desirability of aligning the implementation of the requirements in these standards that relate to the NERC standards being adopted in Docket No. RM08-19-000, we will make the implementation date for compliance with the NAESB standards we are incorporating by reference in this Final Rule coincident with the implementation date applicable to the NERC reliability standards that the

<sup>105</sup> 1 CFR 51.9.

<sup>106</sup> [http://www.naesb.org/misc/NAESB\\_Nonmember\\_Evaluation\\_LockLizard.pdf](http://www.naesb.org/misc/NAESB_Nonmember_Evaluation_LockLizard.pdf).

<sup>107</sup> The cost of obtaining the standards likely would be no higher than the legal cost to prepare the pleading at issue. [http://www.usdoj.gov/usao/dc/Divisions/Civil\\_Division/Laffey\\_Matrix\\_3.html](http://www.usdoj.gov/usao/dc/Divisions/Civil_Division/Laffey_Matrix_3.html). (\$180–\$380/hour depending on experience under the Laffey Matrix estimation procedure); [http://www.altmanweil.com/index.cfm/fa/r.resource\\_detail/oid/87716caa-56df-4ad9-b375-9e9366ba6d60/resource/New\\_Survey\\_Provides\\_Snapshot\\_of\\_Law\\_Firm\\_Economics\\_Across\\_US.cfm](http://www.altmanweil.com/index.cfm/fa/r.resource_detail/oid/87716caa-56df-4ad9-b375-9e9366ba6d60/resource/New_Survey_Provides_Snapshot_of_Law_Firm_Economics_Across_US.cfm). (2007 median Washington DC legal rates of \$455/hour for partners and \$295/hour for associates).

<sup>108</sup> *Veeck*, 293 F.3d at 803 (case deals only with the “relationship between non-federal government entities and copyright holders”). The court also emphasized that it was not dealing with extrinsic standards that government agencies incorporate by reference as part of the technical requirements of a government regulation, similar to our use of the NAESB standards as technical implementation of the Commission’s OASIS regulations. *Veeck*, 293 F.3d at 84; see *CCC Info. Services v. Maclean Hunter Market Reports, Inc.*, 44 F.3d 61 (2nd Cir. 1994); and *Practice Management Info. Corp. v. American Medical Ass’n*, 121 F.3d 516 (9th Cir. 1997), *opinion amended* by 133 F.3d 1140 (9th Cir. 1998). Unlike *Veeck*, NAESB does not solicit incorporation by reference. *Veeck*, 293 F.3d at 805. Likewise, in *Danielson*, the court found that architectural drawings were not made into judicial decisions and statutes in the public domain merely because they were referenced in a recorded deed.

<sup>109</sup> OMB Circular No. A-119 (Revised February 10, 1998), at 6J, <http://www.whitehouse.gov/omb/>

[rewrite/circulars/a119/a119.html](http://www.whitehouse.gov/omb/rewrite/circulars/a119/a119.html). See 28 U.S.C. § 1498 (federal government may be liable for copyright infringement). Other government agencies similarly have denied requests to publish copies of privately developed standards. See *Updating OSHA Standards Based on National Consensus Standards*, 74 FR 46350–46361 (September 9, 2009) (“OSHA notes that copyright laws protect national consensus standards”); *Airworthiness Directives; Airbus Model A300 Airplanes*, 72 FR 6923 (Feb. 14, 2007) (finding that incorporated by reference materials “do not lose their copyright protection”). Taken to its logical extreme, NRECA and APPA’s argument would require that a school system’s decision to require children to acquire and read the novel “Fahrenheit 451” over summer vacation operates to vitiate the copyright and obligates the system to reprint the text of the novel. See *Veeck*, 293 F.3d at 804–805 (copyrighted works do not “become law” merely because a statute refers to them); *CCC Info. Servs.* 44 F.3d at 74 (“It scarcely extends CCC’s argument to require that all such assigned books lose their copyright—as one cannot comply with the legal requirements without using the copyrighted works”).

<sup>110</sup> Agreement Granting Permission to Copy Standards (August 9, 1996), [http://www.naesb.org/pdf4/gisb\\_copy\\_permission\\_to\\_ferc\\_080996.pdf](http://www.naesb.org/pdf4/gisb_copy_permission_to_ferc_080996.pdf).

<sup>111</sup> Public Law 104–113, 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997). OMB Circular A-119 (agency “must use voluntary consensus standards, both domestic and international, in its regulatory” as well as procurement activities).

<sup>112</sup> Open Access Technology International, Inc. (OATI) is a supplier of software for the electric industry, including OASIS and back-office supporting systems.

<sup>113</sup> Entergy at 6–7.

<sup>114</sup> *Id.* at 4–5.

commission approved in an order being issued concurrently with this order. Accordingly, public utilities subject to these requirements will not be required to comply with these standards until the first day of the first quarter occurring 365 days after approval of the referenced Reliability Standards by all applicable regulatory authorities.

127. However, as we stated above, a revised Attachment C to the OATT must be filed on or before 275 days after approval of the NERC Reliability Standards being addressed in Docket No. RM08–19–000 by all applicable regulatory authorities.

128. Consistent with our regulation at 18 CFR 35.28(c)(vi), each electric utility must revise its OATT to include the Version 002.1 WEQ standards that 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. Moreover, as we proposed in the WEQ Version 002.1 NOPR, to lighten the burden associated with a stand-alone filing of a revised tariff reflecting the standards incorporated by reference in this Final Rule, we are giving public utilities the option of including these changes as part of an unrelated tariff filing, provided that the revised tariff is filed with the Commission at least ninety days before the prescribed date for compliance with the revised standards (the first day of the first quarter occurring 365 days after approval of the referenced Reliability Standards by all applicable regulatory authorities). In addition, consistent with our prior practice, if a public utility fails to file the required tariff revisions prior to the compliance date, it nonetheless must abide by these standards even before it has updated its tariff to incorporate these changes.

129. 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 002.1 to identify the standard. To incorporate these standards into their OATTs, public utilities must use the following language in their OATTs:<sup>115</sup>

- Open Access Same-Time Information Systems (OASIS), Version 1.5 (WEQ–001, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009), with the exception of Standards 001–0.1, 001–0.9 through 001–0.13, 001–1.0, 001–9.7, 001–14.1.3, and 001–15.1.2;

- Open Access Same-Time Information Systems (OASIS) Standards & Communications Protocols, Version 1.5 (WEQ–002, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);

- Open Access Same-Time Information Systems (OASIS) Data Dictionary, Version 1.5 (WEQ–003, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);

- Coordinate Interchange (WEQ–004, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);

- Area Control Error (ACE) Equation Special Cases (WEQ–005, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);

- Manual Time Error Correction (WEQ–006, Version 001, October 31, 2007, with minor corrections applied on Nov. 16, 2007);

- Inadvertent Interchange Payback (WEQ–007, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);

- Transmission Loading Relief—Eastern Interconnection (WEQ–008, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);

- Gas/Electric Coordination (WEQ–011, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);

- Public Key Infrastructure (PKI) (WEQ–012, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009); and

- Open Access Same-Time Information Systems (OASIS) Implementation Guide, Version 1.5 (WEQ–013, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009).

130. 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

131. 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

132. 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.

133. 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).

134. 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.

<sup>115</sup> As shown, the tariff language to be used should reference Version 001 of WEQ–006, as we

are not incorporating by reference Version 002.1 of WEQ–006 at this time.

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total number of hours
FERC-516 .....	176	1	6	1,056
FERC-717 .....	176	1	30	5,280
Totals .....				6,336

*Total Annual Hours for Collection:*  
(Reporting and Recordkeeping, (if appropriate)) = 6336 hours.

Information Collection Costs: The Commission projects the average

annualized cost for all respondents to be the following:<sup>116</sup>

	FERC-516	FERC-717
Annualized Capital/Startup Costs .....	\$390,720	\$2,344,320
Annualized Costs (Operations & Maintenance) .....	N/A	.....
Total Annualized Costs .....	390,720	2,344,320

135. The Commission sought comments on the burden of complying with the requirements imposed by these requirements. No comments were filed addressing the reporting burden.<sup>117</sup>

136. 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 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.

137. OMB regulations<sup>118</sup> 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:* Final Rule.

*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 to comply with the Commission's determinations in Order Nos. 676-C, 890, 890-A, and 890-B, to explicitly include demand resources in the definitions of certain ancillary services, to clarify parties' rollover rights, to clarify the differences in timing requirements for the Western Electricity Coordinating Council and all other interconnections by modifying the Coordinate Interchange Timing Tables contained in Appendix D of the Coordinate Interchange Standards (WEQ-004), and to modify the Transmission Loading Relief—Eastern Interconnection Standards (WEQ-008) to add clarity and ensure that the business practice standards are consistent with NERC reliability standard IRO-006.

138. These changes 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, 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.

139. 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.

140. *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.

141. 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, NE., Washington, DC 20426, Tel: (202) 502-8415/Fax: (202) 273-0873, E-mail: [michael.miller@ferc.gov](mailto:michael.miller@ferc.gov).

## VI. Environmental Analysis

142. 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

<sup>116</sup> The total annualized cost for the information collections is \$2,344,320. This number is reached by multiplying the total hours to prepare responses (6,336) by an hourly wage estimate of \$370 (a composite estimate that includes legal, technical

and support staff rates, \$250 + \$95 + \$25 = \$370), 6,336 hours × \$370/hour = \$2,344,320.

<sup>117</sup> 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.

<sup>118</sup> 5 CFR 1320.11.

environment.<sup>119</sup> The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.<sup>120</sup>

143. 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.<sup>121</sup> Therefore, an environmental assessment is unnecessary and has not been prepared in this Final Rule.

## VII. Regulatory Flexibility Act Certification

144. The Regulatory Flexibility Act of 1980 (RFA)<sup>122</sup> 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.

145. 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.<sup>123</sup> This

is consistent with the exemption provisions of the RFA. Accordingly, pursuant to section 605(b) of the RFA,<sup>124</sup> 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

146. 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 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

147. 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.<sup>125</sup>

148. User assistance is available for eLibrary and the FERC's website during our normal business hours. For assistance contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659.

## IX. Effective Date and Congressional Notification

149. This Final Rule will become effective January 4, 2010. 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.<sup>126</sup>

## List of Subjects in 18 CFR Part 38

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

overall benefits of the standards. *See supra* P 107, 130.

<sup>124</sup> 5 U.S.C. 605(b).

<sup>125</sup> 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](http://elibrary.ferc.gov:0/idmws/doc_info.asp?document_id=13566661).

<sup>126</sup> *See* 5 U.S.C. 804(2).

By the Commission.

**Nathaniel J. Davis, Sr.,**  
*Deputy Secretary.*

■ In consideration of the foregoing, the Commission amends 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. Amend § 38.2 by:

■ a. Revising paragraphs (a)(1) through (a)(5) and (a)(7) through (a)(11) as set forth below.

■ b. Amending paragraph (b) to add the phrase “(713) 356–0060, <http://www.naesb.org>” after the phrase “77002” and adding “(202) 502–8371” after the phrase “20426.”

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

(a) \* \* \*

(1) Open Access Same-Time Information Systems (OASIS), Version 1.5 (WEQ–001, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009, with the exception of Standards 001–0.1, 001–0.9 through 001–0.13, 001–1.0, 001–9.7, 001–14.1.3, and 001–15.1.2);

(2) Open Access Same-Time Information Systems (OASIS) Standards & Communication Protocols, Version 1.5 (WEQ–002, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);

(3) Open Access Same-Time Information Systems (OASIS) Data Dictionary, Version 1.5 (WEQ–003, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);

(4) Coordinate Interchange (WEQ–004, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);

(5) Area Control Error (ACE) Equation Special Cases (WEQ–005, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);

\* \* \* \* \*

(7) Inadvertent Interchange Payback (WEQ–007, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);

(8) Transmission Loading Relief—Eastern Interconnection (WEQ–008, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);

<sup>119</sup> Order No. 486, *Regulations Implementing the National Environmental Policy Act of 1969*, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regs. Preambles ¶ 30,783 (1987).

<sup>120</sup> 18 CFR 380.4.

<sup>121</sup> *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

<sup>122</sup> 5 U.S.C. 601–612.

<sup>123</sup> We also have provided for requests of waiver in instances where compliance would be very burdensome and a waiver would not diminish the

(9) Gas/Electric Coordination (WEQ-011, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);

(10) Public Key Infrastructure (PKI) (WEQ-012, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009); and

(11) Open Access Same-Time Information Systems (OASIS) Implementation Guide, Version 1.5 (WEQ-013, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009).

\* \* \* \* \*

[FR Doc. E9-28619 Filed 12-2-09; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 17

RIN 2900-AM82

#### Community Residential Care Program

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs (VA) Community Residential Care regulations to update the standards for VA approval of facilities, including standards for fire safety and heating and cooling systems. This rule also establishes a 12-month duration for VA approvals and would authorize provisional approval of certain facilities. Finally, this rule eliminates the statement of needed care requirement and clarifies that it is the care providers at the facility that determine the services needed by a particular veteran.

**DATES:** Effective Date: This amendment is effective January 4, 2010. The Director of the Federal Register approved the incorporation by reference of certain publications listed in this rule as of January 4, 2010.

**FOR FURTHER INFORMATION CONTACT:** Daniel Schoeps, Office of Geriatrics and Extended Care Services (114), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; (202) 461-6763. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** In a document published in the **Federal Register** on November 26, 2008 (73 FR 71999), VA proposed to amend its community residential care regulations, which are codified at 38 CFR 17.61 through 17.72. The regulations implement 38 U.S.C. 1730, which provides that VA health care personnel

may assist veterans by referring them for placement in a privately or publicly-owned community residential care facility if certain criteria are met. As a condition of approval, the regulations require facilities to meet industry-wide fire safety standards and to have safe and functioning systems for heating. We proposed to amend the regulations to update the standards for VA approval of community residential care facilities and clarify program requirements.

We received two comments on the proposed rule. Both commenters fully supported the proposed rule and discussed generally the importance of VA's requirement that community residential care facilities comply with certain provisions of the National Fire Protection Association (NFPA) 101, Life Safety Code (2006 edition), and the NFPA 101A, Guide on Alternative Approaches to Life Safety (2007 edition). We are grateful to the commenters for their submissions, and make no changes based on the comments.

This final rule amends § 17.63 to ensure that veterans who are placed in privately or publicly owned community residential care facilities are provided safe living conditions by making VA's approval contingent upon a facility's implementation of the NFPA fire safety guidelines in chapters 1-11, 32-33, 43, and Annex A of the NFPA 101, NFPA's Life Safety Code Handbook, Tenth Edition (2006 edition), and NFPA 101A, Guide on Alternative Approaches to Life Safety (2007 edition). These documents are incorporated by reference in this final rule in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Further, the final rule amends § 17.63(a)(3) to require safe and functioning heating and cooling systems. VA intends that facilities will meet the standard for heating and cooling systems in the county, parish, or other similar jurisdiction where a facility is located. These provisions will help to ensure that veterans referred by VA to an approved facility for community care are provided with safe and comfortable living conditions.

The final rule removes the "statement of needed care" requirement in § 17.63(b) and (i)(2)(i) for veterans referred by VA to a community residential care facility. We are removing this requirement because VA does not determine or control the care that is provided to a veteran in an approved facility under this program. This amendment clarifies that VA relies on the health care professionals employed by the facility and facility officials to determine the care that a particular veteran needs.

We are also removing § 17.64, which prescribes exceptions to VA standards for community residential care facilities that participated in VA's program prior to the effective date of regulations promulgated in 1989. There are no facilities that currently qualify for the exceptions and there are no facilities that could qualify for an exception in the future.

Regarding VA approval of facilities, we clarify that such approvals shall be for a 12-month period if all the standards in § 17.63 are met. We also clarify that VA may grant a provisional approval if the facility does not meet one or more of the standards in § 17.63, provided that the deficiencies do not jeopardize the health or safety of the residents and that the facility management and VA have agreed to a plan for correcting any deficiencies in a specified amount of time. The provisional approval provision allows VA to continue recommending facilities with temporary deficiencies when it is in the best interest of residents to do so. These amendments will help to ensure that approvals are based on current information and, given VA's practice of inspecting each facility at least once in each 12-month period, should not impose an additional burden on VA or on facilities.

#### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by the State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any given year. This final rule will have no such effect on State, local and tribal governments, or on the private sector.

#### Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives, and when regulation is necessary to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Order classifies a "significant regulatory action," requiring review by the Office of Management and Budget (OMB), as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or