

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Electricity Market Design and Structure

Docket No. RM01-12-000

**JOINT INDUSTRY FILING ON THE FORMATION
OF A STANDARDS DEVELOPMENT ORGANIZATION
FOR THE WHOLESALE ELECTRIC INDUSTRY**

I. Introduction

This joint industry filing is in response to the Commission’s December 19, 2001, Order in this docket requesting that the “various participants in the wholesale electric industry agree on a single standards organization to develop wholesale electric standards.”¹ After participation in an extensive series of industry meetings in an effort to reach consensus on such a proposal, the parties to this filing, who are individually identified and described below, (“the Joint Industry Parties”) believe that the proposal set forth in this filing meets the Commission’s requirements that the proposal include the structure and characteristics of a standards organization to develop wholesale electric business practice standards. This filing also serves to describe a process to coordinate between wholesale electric business practice standards and other standards that impact the integrated North American electric grid, including reliability standards.

II. The Process Leading to the Joint Industry Filing

Even before the Commission issued the December 19 Order, industry participants had begun a dialogue on the need to establish a process to develop commercial standards

¹ Order Providing Guidance on the Formation of a Standards Organization for the Wholesale Electric Industry,” RM01-12-000, 97 FERC ¶ 61,289 (December 19, 2001) (“the December 19 Order”).

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for the wholesale electric industry to carry out the Commission's policies and framework for the industry as set forth in Order No. 2000 and subsequent RTO orders, the upcoming Commission rulemaking on a standard market design, and other orders and policies.

Industry participants have seen the need for and benefits of a business standards development process in other segments of the energy industry, particularly the success of the Gas Industry Standards Board (GISB) for the wholesale natural gas industry. The Commission stated in the December 19 Order that it was "very pleased with the consensus development process" used by GISB, including its voting process. GISB has changed its charter to enable it to become the standards-setting framework for all four "quadrants" of the energy industry -- gas wholesale; gas retail; electric retail; and electric wholesale -- and is now known as the North American Energy Standards Board (NAESB). The challenge faced by the industry participants in this dialogue has been to adapt the success of the GISB process to the wholesale electric commercial industry, while recognizing the physical differences in the electric industry and the need to maintain the integrity of the electric grid. Reliability of the grid is the foundation of robust electricity markets. Thus, industry participants labored long and hard to develop a process that gives equal weight to both commercial and reliability concerns and that recognizes the record of industry service of the North American Electric Reliability Council (NERC). The consensus process also recognizes the need to coordinate with the NERC Organizational Standards Manual and accompanying Functional Model in designing a proposal in response to the December 19 Order. The reason this coordination is so essential now is that the consensus group intends for the joint process to encompass all standards development, while the NERC Function Model will focus exclusively on

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policy development, core reliability principles, contractual compliance and enforcement of reliability policy, and the other traditional work conducted by NERC and the Regional Reliability Councils.

The formal series of industry meetings was launched on December 7, 2001, at a meeting held at the Department of Energy (DOE). This was followed by two days of meetings held at the Commission's offices on January 24-25 and another meeting at DOE on January 28. All of these meetings were open to the public and very well attended.

The Edison Electric Institute, one of the Joint Industry Parties, had independently set up its own series of meetings to discuss this issue with its members. Following the issuance of the December 19 Order, the EEI-sponsored meetings were converted to industry-wide meetings, open to all industry participants, in order to provide an opportunity to continue the dialogue. These meetings were held on February 1 in New York, February 12 in Atlanta, February 21 in Phoenix, and March 1 in Washington, D.C. For those unable to attend in person, conference call participation was available.

All of these meetings were transcribed. Notices of the meetings were made available by email to all those who signed in at the DOE and FERC meetings. Meeting notices as well as relevant documents were posted on both the NAESB and EEI websites. The various meetings were attended by a wide range of industry participants from all segments of the industry, including non-jurisdictional utilities, Canadian entities and state regulators. Commission staff also attended several of the meetings. Starting with the New York meeting, a professional facilitator conducted the industry meetings to assist industry participants in focusing on issues and reaching consensus on a proposal.

III. Options Considered

The meeting participants first prepared an extensive matrix of issues involved and the comments and positions of participants on those issues. The matrix was useful in developing a range of options for consideration in developing a proposal in response to the December 19 Order. Three basic organizational options were considered. First, one organization would do both commercial and reliability standards for only the wholesale electric market. The NERC Wholesale Electric Standards Model (WESM), which envisioned an open, balanced and inclusive process for wholesale electric standards development, was the only proposal for such an organization. The second alternative was a single process focusing on the development of commercial standards and reliability standards under an organization that would include participation by all energy industry participants. This process contemplated NAESB's wholesale electric quadrant as such an organization. Third, the participants considered the option of separate organizations developing reliability and commercial standards using their own standards development processes, but with ongoing coordination between the two so that reliability and commercial concerns were integrated into both processes. In considering the options, participants were mindful of the concern by many that there be a "one-stop shop" for both commercial and reliability standards in order to reconcile the fact that reliability-commercial standards, retail-wholesale standards, and gas-electric standards are inextricably linked, and to reduce strains on limited human and financial resources. Another concern addressed was the need to assure that the expertise, and people with such expertise needed to develop both reliability and commercial standards, were

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involved, and that overall process accommodated such input. The Joint Industry Parties believe that the process outlined below in Section ---- is responsive to these concerns.

IV. The Joint Industry Parties

The Joint Industry Parties who are signatories to this filing include both trade associations and individual companies. Each of the Joint Industry Parties has or represents an interest that may be directly affected by the outcome in this proceeding and that cannot be represented by any other party. The Joint Industry Parties are:

[List]

The name and address of the person for each of the Joint Industry Parties upon whom further notices and filings in this matter should be served is set forth in Attachment A.

V. The Consensus Process Proposal

As mentioned above, the consensus process for standards development is predicated on several important considerations. First, a large majority of the stakeholders who participated in the working group meetings consider reliability and commercial standards to have nearly indistinguishable overlap in terms of issues and impact, thereby necessitating a single process for standards development – even if two organizations continue to exist. This means that the consensus process goes beyond the Commission’s December 19th Order in terms of having just one organization to concentrate on standards development for commercial business practices. Nevertheless, the working group strongly believes that the approach outlined here is faithful to the December 19th Order, yet still satisfies the majority sentiment on “one-stop” shopping for commercial and reliability standards.

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Second, the mindset throughout the meeting process has been based on the assumption that the process for wholesale electric standards development will occupy the wholesale electric quadrant under the NAESB framework – although extensive deference will be given to reliability requirements, especially in terms of system security.

Third, while reliability will always occupy a superior position in the reliability-commercial spectrum of wholesale market operations, there will be a continuous effort to seek an equitable balance between commercial and reliability interests. In this manner, the working group believes that its proposal is fully compliant with the December 19th Order's emphasis on coordination between commercial and reliability interests. It is this context under which the proposed standards development process has evolved.

Fourth, the working group has been virtually unanimous in its opinion that the consensus process should decouple standards development and policy development, as well as standards development and compliance/enforcement. As will be demonstrated, the consensus approach outlines an equitable division of responsibilities across both of these two dimensions.

What follows are the agreed-upon details to date. Please refer to Appendix A as the graphic schematic for the proposed process.

Step 1 – Request for Standard

The standards-setting process begins with a Request for Standard (RS). The RS can be submitted by any affected industry party to the NAESB office, but the RS form, itself, will be fairly rigorous; therefore, superfluous requests should be kept to a minimum. The RS application questions and requirements will be based on the existing NAESB and NERC request forms; that is, in addition to the normal boilerplate

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descriptive information on the requestor and the RS itself, a requestor would be required to provide the following information:

- Purpose, justification and use of the proposed standard
- Reliability/Commercial Principles to which the standard applies
- Entities to which the standard applies
- Description of tangible benefits
- Implementation plans and costs
- Legal considerations
- Entities willing to test the standard
- Regional impacts and considerations, as appropriate

These are proposed elements for an RS. They will be more fully developed as the Wholesale Electric Quadrant (WEQ) creates its formal quadrant procedures. At this point, the working group is still evaluating the salient features of those procedures, especially segment composition.

Step 2 – Posting and Initial Triage

The NAESB staff posts the SR on its website and simultaneously submits it to the Triage Committee, which reports to the full NAESB Executive Committee, and which includes balanced representation from all quadrants and segments. The posting of the RS will be open for a 30-day public comment period. Concurrently, the Triage Committee, through a balanced, simple majority vote, recommends the disposition of the request – i.e., which quadrant (s) should oversee its development, as well as the level of urgency for development. The Triage Committee recommendation is submitted to the full Executive Committee, which votes to support or modify the recommendation, again on a balanced, simple majority vote. The NAESB by-laws cover standards development that encompasses more than one quadrant. For illustrative purposes, however, the remainder of this section, covers those requests for standards that would apply solely to the EWQ.

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Step 3 – Initial Policy Screen

The EWQ takes ownership of the RS at this point and performs the initial policy screen. The RS policy screen consists of an initial review by the WEQ Executive Committee, which necessarily will be a combination of reliability and commercial interests to ensure that the RS conforms to *reliability and commercial policies*. These policies are currently defined as Guiding Principles, such as reliability principles or core reliability standards, as determined through the NERC “Functional Model,” or commercial principles that evolve through industry collaboration and/or FERC Orders on market design and market operations. The main distinction, here, is that policy is determined outside of the EWQ process. Standards development is intended to help implement policy, not necessarily drive it. Those entities responsible for the initial policy screen will report back to the EWQ within 30 days as to whether the RS conforms to policy. The report also focuses attention on those aspects of the SR that conflict with policy and what needs to be amended to resolve the conflict in question.

Step 4 – Subcommittee Assignment

A subcommittee of the EWQ, which is open to all interested market participants, is formed by the EWQ at this point for the purpose of converting the RS into a draft standard and for shepherding the draft through the development process. This step will also include a vote by the EWQ to authorize drafting. The chair and vice-chair of this drafting subcommittee will normally be members of the WEQ Executive Committee. All of the votes taken during the first four steps will be by simple majority and balanced by segment. (per Joel’s comment, I am fine with combining these steps; I made them separate to correspond with the flowchart).

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Step 5 – Preparing the Draft Standard

The drafting subcommittee will prepare the draft standard. This effort may involve the assistance of separate task forces to ensure that technical, operational, commercial or information technology issues are incorporated. In fact, the subcommittee chair can solicit (voluntary) expert assistance from vendors, consultants, grid operations specialists, etc. Membership in the EWQ is not required to participate in the drafting subcommittee. Nor is EWQ membership required for the iterative votes that will take place (balanced by segment, but with a two-thirds super majority) as the draft standard takes form. Upon completion of the draft standard, it is posted on the EWQ's website link for a minimum of 30 days to receive industry comment.

Step 6 – Review by the Reliability Review and Commercial Review Subcommittees

The signatories to this filing envision that the EWQ will have two standing subcommittees – a Reliability Review Subcommittee (RRS) and a Commercial Review Subcommittee (CRS). The intent of the working group is to have both subcommittees populated with selected individuals with the proper degree of experience and expertise who are willing to assume a formal review responsibility. For instance, the RRS scope and roster could be determined by NERC. It could be populated with individuals from the Regional Reliability Councils, as well as grid operations personnel from existing RTOs/ISOs, and from control area operators whose companies are not members of an existing ISO. The CRS could be populated with existing ISO Market Operations Executives (e.g. Andy Ott from PJM), market participant executives who serve on RTO/ISO Market Operations Committees, or consultants who have served as experts in

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market design and operations since the advent of FERC Orders 888 and 889. (we obviously need to flesh this out before the filing is completed).

These subcommittees would be charged with determining the level and extent of field testing the draft standard. These groups would also be required to conduct a technical assessment of the draft standard in their respective areas and to attach a report with suggested changes and recommendations for the draft standard. The time frame for RRS and CRS action would be 30-60 days.

Step 7 – Revisions to the Draft Standard

The drafting subcommittee receives the public comments and the reports from the RRS and CRS. It makes the necessary revisions to the draft standard, takes the necessary votes (again, balanced by segment but super majority), and resubmits to the RRS and CRS. A final public posting is made at this point, as well.

Step 8 – Final Public Posting and RRS/CRS Endorsement

The RRS and CRS make a final review and submit an endorsement or negative endorsement recommendation to the WEQ Executive Committee. It is important to note that these two subcommittees do not have approval or veto authority over the draft standard. Their role is to provide a technical assessment, along with an appropriate recommendation. The WEQ Executive Committee reviews the final public comments.

Step 9 – Draft Standard is Finalized and Approved

The WEQ Executive Committee considers the final public comments and recommendations of the RRS and CRS and finalizes the draft of the standard. At this point, the WEQ conducts a formal vote, balanced by segment, on the proposed standard.

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A super majority of 67 percent is required for approval. The results of the vote are posted on the WEQ website link.

Step 10 – WEQ Membership Ratification

The entire membership of the WEQ then ratifies the standard. Only WEQ members can vote, and a two-thirds super majority, balanced by segment, is required for ratification. The current NAESB bylaws also stipulate that at least 40 percent of any given segment must also vote in the affirmative for a standard. At present, the consensus working group has not agreed to this provision. There is significant concern that one segment should not be allowed to veto a standard that has been supported by all other segments. This is an outstanding issue that will need to be resolved during development of the WEQ procedures.

Step 11 – Submittal of Standard to Appropriate Regulatory Authorities

Upon ratification of a standard, NAESB staff will submit the standard to appropriate authorities, including, but not limited to: FERC, the Canadian National Energy Board, the Mexican CFE, various state and provincial regulatory agencies, and NERC. At this point, the development process is concluded, and an approved standard moves into the implementation, compliance and enforcement stages – all of which are beyond the scope of the WEQ.

VI. Remaining Issues

While significant progress has been made in achieving consensus on the structure and functions of the Commission-mandated Wholesale Electric Standard Setting Organization (“WESSO”), a number of issues still remain to be resolved. The current status of these remaining issues is discussed in this section. As indicated below, on each

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of these remaining issues consensus has been reached on some points, and in some cases on many points. However, additional time will be required for final resolution of these issues, and consensus may remain elusive on some, requiring Commission action to bring them to final closure. In the meantime, industry participants are continuing intensive negotiations in an attempt to finalize as many of these issues as possible in the next few weeks. (Note that consensus does not mean unanimity; the word is used as defined in the December 19, 2002 Order, as general agreement by a significant majority of participants.)

A. Scope

Areas of Consensus: The WEQ will develop standards and protocols for the wholesale electric industry. The WEQ's standards and protocols will be voluntary until adopted by a competent regulatory authority, and no enforcement activities will be carried out by the WEQ. The WEQ will not engage in policy-making, advocacy, or lobbying. Recognizing that the wholesale market is still evolving, the WEQ's scope may be subject to review and modification by the WEQ membership in the future.

Remaining Issues: How should the WEQ's scope be defined? Should it be limited to implementing FERC's standard market design and commercial policies, as well as NERC reliability policies? Or should it be broader: e.g., "whatever the industry thinks it needs?" Or narrower: e.g., limited to implementing FERC policies on "business practices and communication protocols?"

B. Governance and Standard-Setting Process

Areas of Consensus: The WEQ will operate as the Wholesale Electric Quadrant of the North American Energy Standards Board ("NAESB"), and will interface as such

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with NAESB's overall governance structure. The WEQ will be a "one-stop shop" for wholesale electric standards. WEQ governance and standard-setting processes will comport with ANSI requirements for standards setting organizations: i.e., its governance and processes will be fair, open, balanced, and inclusive, with ample opportunity for public comment and participation, as well as due process and opportunity for appeal by parties. WEQ will seek ANSI certification (actually, the WEQ will already have ANSI certification, as long as it is part of NAESB and comports to NAESB bylaws).

Participation in the WEQ will be voluntary. The WEQ's processes will be based on a hierarchy of committees and subcommittees that make decisions through segment voting, as described in detail in Section 2 of this paper ("Standards Development Process"), with the goal of developing strong consensus on all standards. Meetings of all committees and subcommittees will be open to the public, and transcripts will be made of some or all meetings. The governance structure will give equal weight to commercial and reliability interests and inputs, so that both are accommodated and neither becomes paramount to the other. The WEQ's membership will be divided into at least five, and perhaps more than five voting segments. Recognizing that the wholesale market is still evolving, the WEQ's governance structure and standard-setting processes may be subject to modification by the membership in the future.

Remaining Issues: Should NAESB's Board of Directors be restructured to accommodate independent directors, and how should it be populated? How will Directors be selected?

How many voting segments should there be, and how should these be populated?
(Various parties have suggested separate sectors for Generators, Transmission Owners,

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Marketers/Aggregators/Brokers, Distribution Companies, Transmission Dependent Utilities, Load-Serving Entities, Non-profit ISOs/RTOs/RRCs, For-Profit Independent Transmission Companies, End Users, Public Interest Groups, State/Provincial Regulators.) Should there be a materiality requirement for sector membership? If so, what? More generally, what should the specific criteria be for membership in each sector? Should membership by a single entity in multiple segments be permitted? If so, under what conditions? What segment voting percentages should be required for approval of a proposed standard at each step in the standard-setting process? (I would delete this last sentence since the ANSI-approved NAESB process already has these percentages in place)

Should NERC be the entity that represents reliability interests and performs reliability reviews and/or testing within the WEQ's processes? If so, how should it perform this function? Should NERC have a continued existence outside the WEQ? If not via NERC, how should reliability interests be represented within WEQ, and how should reliability reviews be performed? By whom? Whose reliability policies should the WEQ implement? NERC's? FERC's? (Does FERC have / will it exercise jurisdiction over reliability matters?)

C. Convergence

Areas of Consensus: Reliability and commercial effects of standards are closely intertwined, and may be inseparable in most or all cases; as a result, the WEQ should establish a single process that addresses both aspects of any proposed wholesale electric standard. The WEQ should also coordinate its standard-setting process with those of the NAESB Retail Electric and Wholesale and Retail Gas quadrants.

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Remaining Issues: What specific procedures should be set up within the WEQ for coordination with the other NAESB quadrants? How close should such coordination be?

D. Regional Variation

Areas of Consensus: Some degree of regional variation should be allowed for in the WEQ's processes and scope.

Remaining Issues: Should there be a presumption that the WEQ standards apply to all industry participants in every part of the United States (or North America), with the burden on participants (or localities, sub-regions, or regions) to gain exemption from the uniform standards if they can show good cause for such an exemption? Or should the presumption be reversed: i.e., should the WEQ have to show that uniform application of a standard across the United States (North America) is really necessary before it can approve a uniform standard to pre-empt existing local, sub-regional, or regional standards? In either case, what sort of showing should be required and what criteria must be met in order to rebut the initial presumption? When and how should such a showing be made – at the time a standard is approved or over time as the standard is implemented? What, if any, standards should not permit local variations under any circumstances? What, if any, standards should be left to localities, sub-regions, and regions under all circumstances?

E. Relationships with Other Entities

Areas of Consensus: One of the regulatory entities with primary oversight over the WEQ will be FERC. Therefore, all approved WEQ standards should be automatically submitted to FERC, along with other regulatory bodies such as states, Canadian provinces and appropriate Mexican authorities. All of these entities may elect

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to adopt some or all of these voluntary standards after going through their own due process procedures, making these adopted standards compulsory for jurisdictional entities. FERC will have enforcement authority for at least those commercial standards that it adopts to the extent they are implemented in the United States. The WEQ members under FERC jurisdiction will have the right to appeal WEQ decisions to FERC.

Remaining Areas: Does FERC have / will it exercise jurisdiction to enforce WEQ reliability as well as the WEQ commercial standards it adopts? If not, what entity will enforce reliability standards or the reliability aspects of standards? NERC? The RTOs? Does FERC have the authority to delegate its enforcement function to other entities, such as RTOs?

What authority over / relationship with non-jurisdictional WEQ members will FERC have? Non-jurisdictional Canadian and Mexican WEQ members? What kind and level of input should State utility regulators have in the WEQ process? Full voting rights? A separate voting sector? An advisory role only? Same questions for Canadian and Mexican utility regulators. Same questions for RTOs and ISOs.

What should the WEQ's relationship be with NERC? Will existing NERC reliability standards have to go through the WEQ process in order to remain effective, or should they be subject to a "sunset" provision? Or should they be grandfathered? Should NERC continue to make reliability policy, to be implemented by the WEQ? Should NERC continue to exist as a separate entity?

F. Funding

Areas of Consensus: At least some funding for the WEQ should be provided through membership fees, which should be levied upon at least some members.

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Remaining Items: Will membership fees be sufficient for funding the WEQ?

Should the answer to this question be driven by the level of staff and resources needed to support the WEQ mission, or should the level of staff and resources be driven by available membership funding? If membership fees are insufficient to operate the WEQ, what other sources of funds can / should be used?

Should membership fees be tiered? If so, what criteria should be used to determine who pays what? Size? Non-profit status? Governmental status? Or should the WEQ be run on the basis of one vote per membership fee? If some entities are permitted to join more than one voting sector, should they be required to pay more than one membership fee?