

VIII. Market Participant Interactions: Governing Documents, Creditworthiness and Performance Standards

A. INTRODUCTION

This chapter presents an overview of topics that provide support for the interactions between Utilities and Suppliers outlined in the other sections. Successful development and operation of competitive energy markets require that all market participants have a clear understanding of their roles and the obligations. Role definition incorporates not only the processes and functions to be performed, but also describes interactions and communications necessary between Utilities and Suppliers to enable the market to function efficiently.

Expectations and the obligations associated with the roles will be defined by applicable laws, regulations, agreements executed between market participants, and operational or procedures manuals—collectively referred to here as “Governing Documents”. Where the roles and responsibilities of the market participants create financial risks and/or obligations between Utilities and Suppliers, the establishment of creditworthiness requirements between the parties may be appropriate. Performance Standards should be established for key processes and transactions to ensure that all parties fulfill their roles. Performance targets established by these standards should reflect the market’s maturity and recognize the need for tolerance to accommodate extraordinary events. Performance standards agreed to by the market participants should be recorded in the governing documents including any remedies for failing to meet the standards.

The participants recognize that documents and performance standards will vary depending on the jurisdiction, but suggest that key elements outlined in this section need to be in place for all parties to be aware of their responsibilities. An outline for a Master Service Agreement (MSA) that would capture applicable agreements and obligations between the Utility and the Supplier is provided to establish direction when developing these market-tools.

B. REGULATORY POLICY ISSUES

As described more fully in the Preface, there are a number of regulatory policy issues that affect the business practices addressed in this document. The key policy issues impacting Market Participant Interaction practices are identified below, along with implementation issues that were not resolved by the participants. Regulators and other policymakers are encouraged to examine these issues before, or in conjunction with, considering the recommended business practices for a particular jurisdiction.

Specific issues that impact Market Participant Interactions are:

1. Use of Regulatory Documents, Agreements between Parties and Operational Manuals to govern the interaction between market participants.
2. The need and the extent that Performance Standards are required between market participants.
3. Grace period for meeting minimum performance standards.

4. Creditworthiness Practices – There was no consensus on the majority of the business practices related to the requirements for establishing and maintaining creditworthiness. Therefore, recommended practices do not appear elsewhere in this Report. The unresolved creditworthiness issues include:

a. The applicability of creditworthiness standards, including a definition of the risks to be considered and the situations under which credit standards apply to either party, and whether creditworthiness standards or other techniques should serve to mitigate the risk of Supplier default on the Default Service provider.

b. Whether and to what extent the potential impact of creditworthiness standards on the competitive markets should be considered in establishing those standards.

c. The credit application and evaluation process.

d. The extent to which the credit application and evaluation process should be described in Governing Documents.

e. The process by which Suppliers may challenge a Utility's creditworthiness determination (or vice versa), if applicable, and the role of the Applicable Regulatory Authority.

f. The credit criteria that would qualify a Supplier for unsecured credit with a Utility.

g. Whether unsecured credit extended to those who qualify should have limits, and if so, what criteria should be used to determine a limit on the amount of unsecured credit extended to a Supplier.

h. The set of security instruments acceptable for meeting creditworthiness requirements where unsecured credit requirements cannot be met.

i. The method of calculating the amount of credit exposure and the amount of security required.

j. The process for monitoring and/or ensuring compliance with creditworthiness requirements.

k. Remedies available to either party in the event that creditworthiness requirements are not maintained, including the determination of situations where security may be called.

l. The degree to which creditworthiness standards and/or practices should be established in an open, standard, statewide basis.

m. The confidentiality requirements associated with any information provided as part of the creditworthiness process.

The balance of the section presents business practices that the participants believe can be used to effectively implement Market Participant Interactions.

C. GOVERNING DOCUMENTS

1. Governing Documents are those that determine the interactions between market participants. Governing Documents generally include a) regulatory documents (tariffs, rules, regulations), b) contractual agreements between the parties, and/or c) Utility operational manuals. The distinction between each type of document varies between state jurisdictions. For example, the topics in the Master Service Agreement referenced below may be found in either regulatory documents, agreements between the parties or operational manuals. The following is provided to give a general idea for content and purpose of each.

a. Regulatory Documents

Regulatory documents are those established by the Applicable Regulatory Authority and provide the policy framework for Retail Access. Regulatory documents create a legal obligation to the state. The content of regulatory documents include:

- (1) All fees and/or credits required for regulated services,
- (2) Definitions of roles and responsibilities, including what has to be done, by when and by whom,
- (3) Definitions of regulatory policy in such areas as, billing options available, metering options available, creditworthiness standards and Load Profiling eligibility.

b. Agreements between the Parties

Agreements establish the legal relationship and obligations between individual parties. A Master Service Agreement (Exhibit 1) may be used which encompasses the various types of agreements that may be needed including Billing Services Agreement, Metering Services Agreement, Trading Partner Agreements¹, as well as others. The Utility and the Supplier shall execute the Master Service Agreement. As appropriate, the Master Services agreement and any modifications should be reviewed or approved by the Applicable Regulatory Authority. The Master Service Agreement may also:

- (1) Define the communication process between the parties,
- (2) Set forth performance expectations,
- (3) Define data required to interact,
- (4) Specify the optional services, such as billing method or metering options that one party will supply to the other along with the relevant terms and conditions, and
- (5) Define the dispute resolution process.

c. Operational Manuals

The Utility in cooperation with other market participants may also establish operational manuals, addressing those details not covered in the above documents.

¹ The Utility and the Supplier should execute a uniform Trading Partner Agreement, to commit to the proper use of Uniform Electronic Transaction protocols.

Operational manuals should provide the details of market participant interactions. Operational manuals provide an efficient and flexible vehicle for facilitating the functioning of the Retail Access market. It is recommended that Operational manuals:

- (1) Be nondiscriminatory;
- (2) Be publicly available;
- (3) Be collaboratively developed and modified; and
- (4) Be acknowledged by the Applicable Regulatory Authority.

2. At a minimum, the following operational items should be addressed in Governing Documents, as applicable:

- a. Any fees or charges;
- b. Switching;
- c. Imbalances;
- d. Load Profiles;
- e. Scheduling;
- f. Billing;
- g. Metering;
- h. Retail Settlements;
- i. Scheduling Coordinators;
- j. Losses;
- k. Customer Information;
- l. Dispute Resolution Process;
- m. Standard operating rules;
- n. Performance Incentives and Standards;
- o. Creditworthiness, and
- p. Uniform Electronic Transaction Standards.

D. PERFORMANCE STANDARDS

Effective operation of competitive electrical and gas markets requires that the business practices described in this document work properly. The Applicable Regulatory Authority should establish performance standards through rulemaking, formal collaboration or other appropriate mechanisms. Market performance should be monitored, compared to these standards, and appropriate actions taken to achieve performance that meets the standards.

1. Prior to Switching Customers, the parties should demonstrate the ability to exchange data and conduct business via the Uniform Electronic Transactions that have been developed.

2. A party offering consolidated billing services must demonstrate, in a volume commensurate with the number of Customers reasonably expected to be served by that entity, the ability to accept billing information from the non-billing party, accurately produce and render the bill, process payments from the Customer, respond to Customer inquiries, and comply with collection laws and regulations in accordance with the requirements of the Billing and Payments section.

3. Applicable Regulatory Authority should analyze the business practices established in their jurisdiction and solicit input from stakeholders when establishing the performance standards and the means for monitoring performance in the following areas, as appropriate:

a. Customer Information Exchange

Customer information request responses issued within the appropriate time frame (indication of problems accessing and/or transmitting Customer information).

b. Customer Switching

(1) rejected Switch Requests (indication of problems obtaining necessary validation data from Customer and/or passing data from Supplier to Utility);

(2) Customer notification letters issued within the appropriate time frame (indication that Customers are notified of Switching activity in time to take action if appropriate);

(3) Customer rescissions (indication of Customer confusion, misinformation, and/or unauthorized Switching); and

(4) Switch responses to valid Switch Requests (or Drop responses to valid Drop Requests) within specified time frame (indication of degree of automation and/or accuracy of Switching systems and ability to implement Customer choices).

c. Meter Usage and Meter Attributes Data Transfer

(1) meter data provided within appropriate time frame (indication of degree of automation and/or accuracy of meter data management systems); and

(2) estimated/missing data (indication of degree of automation and/or accuracy of meter reading and meter data management systems).

d. Billing

1) Bill Ready charges provided in the appropriate time frame (indication of problems receiving, calculating and/or transmitting bill-ready billing information within the billing window);

2) consolidated bills issued with all appropriate charges (indication that Customers are receiving timely and accurate consolidated bills); and

3) time to render bills after receipt of the non-billing party charges (indication that consolidated bills are issued promptly).

e. Payments

(1) Customer payments provided by billing party to non-billing party within appropriate time frame (indication of problems exchanging cash transactions between the parties); and

(2) purchased receivable payments made by the billing to the non-billing party within the appropriate time frame (indication of problems exchanging cash transactions between the parties).

4. While all parties are expected to perform their respective functions satisfactorily from “day one” – it is recognized that implementation of certain new Customer choice business practices can represent a substantial challenge to parties and that a grace period may be needed for parties to meet final performance standards. A grace period of up to six (6) months may be appropriate for achievement of final performance standards, with an option to appeal for an extension based on significant technical issues. Instances where such a grace period might be appropriate include, but are not limited to, initial market opening, subsequent phase-in of additional Customers or Customer classes, and implementation of major new functionality such as Supplier consolidated billing or seamless moves.

5. Systematic non-compliance with established performance standards by any market participant could result in additional costs and delay the implementation or ongoing operation of effective Retail Access, and, therefore, must be reviewed and dealt with swiftly by the Applicable Regulatory Authority through an expedited process.