



posting requirements imposed by Order No. 717<sup>3</sup> (the Final Rule on Standards of Conduct for Transmission Providers).

## I. SUMMARY

In its request for clarification of Order No. 717, EEI noted that NAESB OASIS Standards and Communications Protocol, Version 1.4 (“NAESB S&CP Standards”) “provides requirements for posting on OASIS links to information that was required by the pre-Order No. 717 Standards of Conduct, but is no longer required, such as organizational charts.”<sup>4</sup> EEI asked for clarification that any requirements of WEQ-002-4.5.2 that were rendered obsolete by Order No. 717 could be disregarded.<sup>5</sup> EEI members that are Transmission Providers who must commit to abide by the NAESB Standards identified in Order No. 676-C, and have made or will make open access transmission tariff (“OATT”) filings that memorialize such commitment, are concerned that such clarification may be insufficient. EEI is thus seeking a formal waiver of all obsolete NAESB Standards on behalf of electric Transmission Providers. That is, due to the fact that OATT language commits Transmission Providers to abide by certain NAESB Standards, a formal waiver is the appropriate means for seeking relief from certain NAESB Standards. Additionally, EEI is seeking such relief because the clarification sought in Docket No. RM07-1 did not identify NAESB Business Practices

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<sup>3</sup> *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008) (“Order No. 717”).

<sup>4</sup> Request for Clarification of the Edison Electric Institute at 17, Dkt. No. RM07-1 (Nov. 17, 2008).

<sup>5</sup> *Id.*

for Open Access Same-Time Information Systems, Version 1.4 WEQ-001-1.6(g)(4)<sup>6</sup> and NAESB S&CP Standard WEQ 002-4.3.10.5, which also impose posting requirements that reflect Order No. 2004 rather than Order No. 717.

## II. DISCUSSION

NAESB S&CP Standard WEQ-002-4.5.2<sup>7</sup> provides that Transmission Providers **shall** establish a link entitled “Standards of Conduct” and that certain information “as found in Standards of Conduct for Transmission Providers, Order 2004,” **should** be accessible at that link. Specifically, NAESB S&CP Standard WEQ-002-4.5.2 identifies the following information that should be posted: Emergency Circumstances Deviations; Marketing and Energy Affiliate List; Shared Facilities; Organizational Charts and Job Descriptions; Common Employees; Potential Merger Partners; Transfers; Information Disclosure; Voluntary Consent to Share Non-Affiliated Customer Information; Discretionary Actions under Tariff; Discounts; Chief Compliance Officer; and Written Procedures for Implementation. Although this NAESB Standard is arguably not mandatory due to the use of “should”, at least one of the posting requirements -- the Discretionary Actions under Tariff log -- is mandated by other NAESB Standards.

NAESB OASIS Standard WEQ-001-1.6(g)(4) states:

Logs detailing the circumstances and manner in which a Transmission Provider or Responsible Party exercised its discretion under any terms of the tariff shall be posted as described in Standard WEQBPS-007-000 5(c)(4). The

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<sup>6</sup> WEQ-001-1.6(g)(4) does not take effect until January 31, 2009.

<sup>7</sup> In Version 1.5 of the NAESB OASIS Standards, this requirement has been moved to WEQ-001-13.1.2.

posting requirements are the same as those provided in Standard 1.7 for audit data postings.<sup>8</sup>

NAESB S&CP Standard WEQ-002-4.3.10.5 dictates the exact template to be used to post a log of acts of discretion under an OATT. Because these two NAESB Standards are not optional (in contrast to NAESB S&CP Standard WEQ-002-4.5.2), a waiver is the appropriate vehicle for relieving Transmission Providers of their obligations.

In Order No. 717 the Commission made significant changes to its Standards of Conduct posting requirements. The Commission, among other things, 1) eliminated the requirement to post an organizational chart (formerly in 18 C.F.R. § 358.4(b)(3)(i)); 2) eliminated the requirement to post emergency circumstances deviations (formerly in 18 C.F.R. § 358.4(a)(2)); 3) eliminated the requirement to post a log of discretionary actions taken under an open access tariff<sup>9</sup>; 4) altered the requirement regarding posting of affiliates; 5) eliminated the requirement to post common employees (formerly in 18 C.F.R. § 358.4(b)(3)(iii)); and 6) eliminated the discount posting requirement (formerly in 18 C.F.R. § 358.5(d)). NAESB should not impose or suggest, through its Standards, requirements that are not reflected in the Commission's own Standards of Conduct. One or more EEI members thus will seek to change to the relevant NAESB Standards to reflect Order No. 717.

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<sup>8</sup> The "WEQBPS-007-000 5(c)(4)" reference does not appear to be correct.

<sup>9</sup> This requirement was replaced with a requirement to post a "notice of each waiver of a tariff provision that it grants in favor of an affiliate, unless such waiver has been approved by the Commission." 18 C.F.R. § 358.7(i) (2008). A log of such notices of waivers must be maintained. *Id.*

Until and unless NAESB alters its Standards, the Commission should issue a blanket waiver, or take some similar action, to confirm that Transmission Providers are not obligated to abide by NAESB Standards that either impose or suggest Standards of Conduct posting requirements, where those posting obligations have been eliminated as a result of the adoption of Order No. 717.

Respectfully submitted,

/s/

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January 6, 2009

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on those parties on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 6th day of January, 2009.

/Barbara A. Hindin/

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