

SUPPORTING STATEMENT FOR

FERC-717, Standards for Business Practices and Communication Protocols for Public Utilities (*formerly Open Access Same-Time Information System and Standards of Conduct*) and **FERC-516 Electric Rate Schedule Filings**, as proposed in Docket No. RM05-05-005

Standards for Business Practices and Communications Protocols for Public Utilities (Final Rule issued July 21, 2008)

The Federal Energy Regulatory Commission (Commission) requests the Office of Management and Budget (OMB) review and extend its approval of **FERC-717, Standards for Business Practices and Communication Protocols for Public Utilities** (*formerly Open Access Same-Time Information System and Standards of Conduct*) and **FERC-516 Electric Rate Schedule Filings**, both are existing information collections, regarding revisions to requirements contained in parts 35 and 38 of the Commission's regulations. In RM05-05-005, a Final Rule, the Commission is amending its regulations to incorporate the standards developed by an industry consensus group. **FERC-516 (OMB Control No. 1902-0096)** is approved through May 31, 2010.¹ **FERC-717 (OMB Control No. 1902-0173)** is currently approved through November 30, 2010.

The subject data collections will be affected because the Commission in its Final Rule, RM05-5-005 "**Standards of Business Practices and Communication Protocols for Public Utilities**", is incorporating by reference and placing into operation, standards developed by the North American Energy Standards Board's (NAESB's) Wholesale Electric Quadrant (WEQ). These standards cover Open Access Same-Time Information Systems (OASIS) business practice standards which are being revised and four business practice standards relating to reliability issues, adding new standards on transmission loading relief for the Eastern Interconnection and public key infrastructure, and adding a new OASIS implementation guide.

Incorporating these standards by reference into the Commission's regulations is intended to benefit wholesale electric customers by streamlining utility business practices and transactional processes and OASIS procedures and by adopting a formal ongoing process for reviewing and upgrading the Commission's OASIS standards and other electric business industry business practices. These practices and procedures will

¹ At the time of the NOPR's issuance, FERC-516 was the subject of another submission pending review and approval at OMB. Because OMB's document management system cannot accept two submissions containing the same control number simultaneously, the submission for the NOPR took a temporary number in order. However, since that OMB review has been completed, FERC-516 in the final rule is being submitted under its own control number.

benefit from the implementation of generic industry standards.

When the Commission developed its OASIS regulations, OASIS Standards and Communication Protocols, Data Dictionary, and Business Practice Standards, it relied heavily on the assistance provided by all segments of the wholesale electric power industry and its customers in the ad hoc working groups that came together and offered consensus proposals for the FERC's consideration. While this process was very successful, it became apparent to FERC that ongoing issues remained that would be better addressed by an ongoing industry group dedicated to drafting consensus industry standards to implement the Commission's OASIS-related policies and policies on other industry business practices. The policies would benefit from the implementation of generic industry standards rather than by continued reliance on an ad hoc approach.

The Commission estimates that the one-time annual reporting burden related to the subject Final Rule will be 2,816 total hours (an average of 16 hours per respondent) for adopting the changes initially proposed in the NOPR. After the issuance and publication of a final rule and the affected parties have instituted these changes to reflect compliance with the standards as proposed, the total burden under FERC-516 and 717 would be reduced by 2,816 hours.

Background

On December 19, 2001, the Commission issued an order² asking the wholesale electric power industry to develop business practice standards and communication protocols by establishing a single consensus, industry-wide standards organization for the wholesale electric industry, to complement the market design principles that FERC was developing.

Subsequently in 2002, the Gas Industry Standards Board (GISB) stepped forward and volunteered to play this role by modifying its organization to broaden the scope of the activities to address electric power standards. The result of this reorganization has been the emergence of NAESB's WEQ, a non-profit, industry-driven organization working to reach consensus on standards to streamline the business practices and transactional processes within the wholesale electric industry and proposing and adopting voluntary communication standards and model business practices. Because FERC considers "coordination between business practice standards and reliability standards to be critical to the efficient operation of the market"³ and urged industry to "expeditiously establish the procedures ensuring such coordination after the NAESB WEQ was

² See Electricity Market Design and Structure, 97 FERC ¶ 61,280 (2001)

³ May 2002 Order, 99 FERC ¶ 61.171 at P22.

formalized, and requested NAESB and others to file an update on the progress on coordination between it and NERC, 90 days after the formation of the WEQ.”⁴

NAESB is an accredited American National Standards Institute (ANSI) Standards Development Organization, and therefore, through its standards development process, ensures due process and provides an assurance that all industry members may participate in drafting the standards.

In response to FERC’s request, NAESB and the North American Electric Reliability Council (NERC) filed a joint letter on December 16, 2002 explaining that both organizations had signed a memorandum of understanding (MOU) “designed to ensure that the development of wholesale electric business practices and reliability standards are harmonized and that every practicable effort is made to eliminate overlap and duplication of efforts between the two organizations.” The MOU describes, among other things, coordination procedures, the establishment of a Joint Interface Committee that will review all standards development proposals received by either organization and determine which organization should be assigned to draft the relevant standards.

On January 18, 2005 NAESB filed a report with the Commission detailing the WEQ’s activities over the past two years since the group’s inception. This filing represented NAESB’s first filing with the Commission reporting on wholesale electric business practices. NAESB reported that the WEQ adopted business practices standards and communication protocols for the wholesale electric industry.

The WEQ’s standards were developed under a voluntary consensus process. Under this process, to be approved a standard 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 from each of the five industry segments-transmission, generation, marketer/brokers, distribution/load serving entities, and end users. For final approval, 67 percent of the WEQ’s general membership must ratify the standards.

RM05-5-000 Final Rule (April 25, 2006)

On April 25, 2006, the Commission issued a Final Rule, Order No. 676. In the Final Rule, the Commission proposed to incorporate by reference (in part 38 of its

⁴ Id. At P22.

regulations under the Federal Power Act, 18 CFR Part 38) the following standards developed by the WEQ as follows:

Business Practices for Open Access Same-Time Information Systems (OASIS) (WEQ-001, Version 000, January 15, 2005, with minor corrections applied on March 25, 2005, and additional numbering added October 3, 2005) including Standards 001-0.2 through 001-0.8, 001-2.0 through 001-9.6.2, 001-9.8 through 001-10.8.6, and Examples 001-8.3-A, 001-9.2-A, 001-10.2-A, 001-9.3-A, 001-10.3-A, 001-9.4.1-A, 001-10.4.1-A, 001-9.4.2-A, 001-10.4.2-A, 001-9.5-A, 001-10.5-A, 001-9.5.1-A, and 001-10.5.1-A;

Business Practices for Open Access Same-Time Information Systems (OASIS) Standards & Communication Protocols (WEQ-002, Version 000, January 15, 2005, with minor corrections applied on March 25, 2005, and additional numbering added October 3, 2005) including Standards 002-1 through 002-5.10;

Open Access Same-Time Information Systems (OASIS) Data Dictionary (WEQ-003, Version 000, January 15, 2005, with minor corrections applied on March 25, 2005, and additional numbering added October 3, 2005) including Standard 003-0;

Coordinate Interchange (WEQ-004, Version 000, January 15, 2005, with minor corrections applied on March 25, 2005, and additional numbering added October 3, 2005) including Purpose, Applicability, and Standards 004-0 through 004-13, and 004-A through 004-D;

Area Control Error (ACE) Equation Special Cases Standards (WEQ-005, Version 000, January 15, 2005, with minor corrections applied on March 25, 2005, and additional numbering added October 3, 2005) including Purpose, Applicability, and Standards 005-0 through 005-3.1.3, and 005-A;

Manual Time Error Correction (WEQ-006, Version 000, January 15, 2005, with minor corrections applied on March 25, 2005, and additional numbering added October 3, 2005) including Purpose, Applicability, and Standards 006-0 through 006-12; and

Inadvertent Interchange Payback (WEQ-007, Version 000, January 15, 2005, with minor corrections applied on March 25, 2005, and additional numbering added October 3, 2005) including Purpose, Applicability, and

Standards 007-0 through 007-2, and 007-A.

The Commission also required public utilities to modify their OATTs to include the WEQ standards that it incorporated by reference; the next time they made any unrelated filing to revise their OATTs. The Commission also clarified that, to the extent that a public utility's OASIS obligations are administered by an ISO or RTO and are not covered in its OATT, the public utility will not need to modify its OATT to meet these particular requirements.

Public Utilities had to implement the standards adopted in the final rule by July 1, 2006, and to file revisions to their open access transmission tariffs (OATTS) (FERC-913/516) to include these standards. These standards established a set of business practice standards and communication protocols for the electric industry that will enable industry members to achieve efficiencies by streamlining utility business and transactional processes and communication procedures. The standards replaced, with modifications, the Commission's existing Business Practice Standards for Open Access Same-Time Information Systems (OASIS) Transactions and OASIS Standards and Communication Protocols and Data Dictionary requirements. In addition, the standards included business practices to complement the North American Electric Reliability Council's (NERC) Version 0 reliability standards and ultimately the standards to be adopted by the Electric Reliability Organization (ERO) pursuant to Order Nos. 672 and 672-A.⁵ Adopting these standards established a formal ongoing process for reviewing and upgrading the Commission's OASIS standards as well as adopting other electric industry business practice standards.

RM05-5-005 NOPR (April 21, 2008)

On April 21, 2008 the Commission issued a Notice of Proposed Rulemaking (NOPR) to upgrade the Commission's current business practice and communication standards. Specifically, these standards include several modifications to the existing business practice standards as well as creating new standards to provide additional functionality for OASIS transactions, transmission loading relief and public key infrastructure. The standards will assist in providing greater security for business transactions over the Internet, identify the business practices to be used to relieve potential or actual loading on a constrained facility and facilitate the transfer of electric energy between entities responsible for balancing load and generation. These practices

⁵ See 18 CFR Part 39 Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards, Order No. 672, 71 FR 8662 (corrected at 71 FR 11505), FERC Stats. & Regs. ¶ 31,204, Order No. 672-A, 71 FR 19814 (2006), 114 FERC ¶ 61,328 (2006).

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 and 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.

On December 26, 2007, NAESB filed a report informing the Commission that the NAESB WEQ had ratified WEQ Version 001 of its standards. These standards include several modifications to the existing business practice standards that the Commission incorporated by reference in Order Nos. 676 and 676-B, as well as creating new standards to provide additional functionality for OASIS transactions, transmission loading relief for the Eastern Interconnection, and public key infrastructure. Some of the standards subsequently were corrected by the WEQ and these minor corrections were applied to the Version 001 standards on November 16, 2007.⁶

While many of the standards simply revise or update existing standards, some of the standards address new business practices. For example, NAESB adopted new business practice standards for Resales and Transfers to standardize secondary transmission service on OASIS. These standards also standardize how Resales and Transfers are conducted off OASIS. NAESB also adopted public key infrastructure standards to create greater security for business transactions taking place over the Internet. In addition, NAESB has revised and added standards establishing business practices related to the NERC reliability standards. In particular, NAESB has adopted standards governing transmission loading relief (TLR) that specify business practices for cutting transmission services in the event of a TLR, consistent with the NERC reliability standards.

NAESB approved the standards under its consensus procedures. 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 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 §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

⁶ The Version 001 standards do not include modifications of existing standards or new standards to support Order No. 890, the Commission's Final Rule amending the Commission's pro forma Open Access Transmission Tariff, Preventing Undue Discrimination and Preference in Transmission Service, 72 FR 12266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 (Feb. 16, 2007), order on reh'g, Order No. 890-A, 73 FR 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (Dec. 28, 2007), reh'g pending, with the exception of modifications to resales and transfers to address the Commission's rules for resales described in Order No. 890 in P 815 and footnote 496.

standards organizations, like NAESB, as a means to carry out policy objectives or activities.⁷

The Commission also proposed, consistent with its regulations at 18 CFR 35.28(c) (vi), to require each electric utility to revise its open access transmission tariff (OATT) to include the Version 001 WEQ standards the Commission proposed to incorporate by reference in the NOPR. For standards that do not require implementing tariff provisions, the Commission proposed to permit the utility to incorporate the WEQ standard by reference in its OATT. The Commission did not, however, require a separate tariff filing to accomplish this change. Consistent with its prior practice, the Commission proposed to give public utilities the option of including these changes as part of an unrelated tariff filing.⁸ However, consistent the Commission's prior practice; it proposed that, once the Commission incorporates these standards by reference into its regulations, public utilities must abide by these standards even before they have updated their tariffs to incorporate these changes.

OASIS Standards

In Standards WEQ-001, WEQ-002, and WEQ-003, NAESB revised the OASIS Standards currently incorporated by reference by the Commission. More specifically, in Standard WEQ-001, NAESB adopted new standards addressing Resale and Transfer transactions⁹ that are consistent with the Commission's policies articulated in Order No. 890.¹⁰

The Commission in Order No. 890 adopted reforms to its underlying rules governing capacity reassignments. Specifically, the Commission required that all sales or assignments of capacity be conducted through or otherwise posted on the transmission provider's OASIS on or before the date the reassigned service commences.¹¹ The Commission directed transmission providers (working through NAESB) to develop the appropriate OASIS functionality to allow such postings and stated that transmission providers need not implement this new OASIS functionality and any related business practices until NAESB develops appropriate standards. These business practices and functionality have now been adopted by NAESB in Standard WEQ-001.

7 Pub L. No. 104-113, 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997).

8 See Order No. 676 at P 100.

9 NAESB defines a "Resale" as "[t]he request to convey scheduling rights associated with a reservation for Point-to-Point Transmission Service from a Reseller to an Assignee." Standard WEQ-001.0.19. NAESB defines "Transfer" as a "[r]equest to convey all rights and obligations associated with a reservation for Point-to-Point Transmission Service from a Reseller to an Assignee." Standard WEQ-001-0.20.

10 See Order No. 890, P 815 and n.496.

11 Id.

The WEQ's Standard WEQ-002 creates a new business practice standard requiring a Standards of Conduct link on the OASIS in response to the Commission's NOPR that preceded Order No. 676.¹² In addition, WEQ Standard WEQ-002 divides the OASIS Standards and Communications Protocols Document (S&CP Document) into two documents, thus separating the technical requirements (which remain in WEQ-002) from the business requirements (now found in WEQ-013). The WEQ's Standard WEQ-003 revised the OASIS Data Dictionary to include minor clarifications or corrections to the format, appearance, or descriptions of standards in standards documentation, as well as corrections and minor revisions that did not materially change a standard.

The WEQ's Standard WEQ-013 contains a new OASIS Implementation Guide. While this Standard condenses and incorporates the various OASIS S&CP Document business practices and requirements that formerly were found in WEQ-002 into a separate Implementation Guide, it makes no significant substantive changes to the prior standard.

In the NOPR, the Commission proposed to incorporate by reference all four of these OASIS-related business practice standards, as revised (i.e., Standards WEQ-001, WEQ-002, WEQ-003, and WEQ-013).¹³

Public Key Infrastructure

In Version 001, NAESB adopted new standards for secure communications over the public internet, Public Key Infrastructure (PKI)¹⁴ (WEQ-012). These standards describe the requirements that Certification Authorities (CAs)¹⁵ must meet to claim the

12 The types of information accessible from this link include 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.

13 As FERC stated in Order No. 676, it is not proposing to incorporate by reference WEQ standards 001-0.1, 001-0.9 through 001-0.13, 001-1.0 through 001-1.8, and 001-9.7, because these standards merely restate Commission regulations and because standard 001-9.7 is not consistent with the Commission's policy on redirects.

14 This PKI mechanism occurs through the use of extremely long prime numbers, called keys. Two keys are involved -- a private key, which only the user has access to, and a public key, which can be accessed by anyone. The two keys work together so a message scrambled with the private key can only be unscrambled with the public key and vice versa. The more digits in these keys, the more secure the process. Similar to proving an identity through a handwritten signature offline, a digital signature is used to prove an identity online.

15 A Certification Authority is a third-party entity that issues digital certificates used to create digital signatures and public-private key pairs. A Certification Authority plays a critical role in data security and electronic commerce since it is entrusted to guarantee that the two parties exchanging information are really who they claim to be.

electronic certificate that a CA issues meets the NAESB WEQ PKI Standards and to conform to the NAESB Certification Program and, thus, be considered an Authorized Certification Authority (Authorized CA).¹⁶ Providing security for transactions across the public internet is an important part of supporting energy markets and system reliability functions. Therefore, the Commission proposed to update its regulations at 18 CFR 38.2 to incorporate by reference Standard WEQ-012.

The WEQ has also adopted revisions to business practice standards addressing the business ramifications of certain reliability-related issues.

Coordinate Interchange

In Version 001 standards for Coordinate Interchange (WEQ-004), NAESB has made additional modifications to the Coordinate Interchange standards that the Commission incorporated by reference into its regulations in Order No. 676-B.¹⁷ These modifications were made to account for a regional difference in the Western Electricity Coordinating Council regarding acceptable backup methods for creating a Request for Interchange, to provide for Purchasing-Selling Entity optional approval rights, to explain the terms “correctable” and “required,” to clarify that tag data elements may be “not correctable” or “not required,” and to make the element of “Energy Product Type” required. These modifications were made as a result of a joint effort of NERC and NAESB via the Joint Interchange Scheduling Working Group which is a committee of both NERC and NAESB participants.

The Commission proposed to update its regulations at 18 CFR 38.2 to incorporate by reference the Coordinate Interchange Standard WEQ-004, Version 001. However, the Commission sought comment on two aspects of these standards. Standard 004-3.1 states that “[f]or Interchange where the sink is in the Western Interconnection for same day transactions, the last Purchasing-Selling Entity before the DC Tie in the Eastern Interconnection shall be responsible for submitting the e-Tag.” This standard identifies only the last Purchasing-Selling Entity before the DC Tie in the Eastern Interconnection

¹⁶ On achieving NAESB certification, NAESB will provide NERC with the names of Authorized CAs. The Authorized CA may immediately display the NAESB certification mark and will be authorized to claim compliance with NAESB WEQ PKI Standards. All industry applications (e.g., OASIS) secured under these PKI Standards must permit access to any legitimate user that presents a valid electronic certificate issued by an Authorized CA.

¹⁷ The revised Coordinate Interchange standards were designed to facilitate the transfer of electric energy between entities responsible for balancing load and generation. Also, the revised Coordinate Interchange standards were intended to be compatible with the NERC Interchange Scheduling and Coordination Reliability Standards that the Commission approved in Order No. 693, Mandatory Reliability Standards for the Bulk-Power System, 72 FR 16416 (Apr. 4, 2007), FERC Stats. & Regs. ¶ 31,242, at P 961-65 (2007), order on reh'g, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

as being responsible for submitting the e-Tag Interchange when the sink is in the Western Interconnection. However, the Commission requested comment on whether, based on the NERC standards, this standard also should address whether a Generator Owner or Load Serving Entity may schedule directly to the DC Tie owner.

Additionally, Standard 004-6.1.2 states that “[i]f the PSE, LSE, and GPE do not respond to a request from the Interchange Authority, the Interchange is considered passively approved.” While confirmation by silence is a common business practice eliminating unnecessary communications, the Commission requested comment on whether this is appropriate for a business practice intended to complement a reliability standard.

Area Control Error (ACE) Equation Special Cases

In the Version 001 standards for Area Control Error (ACE) Equation Special Cases (WEQ-005), NAESB has made only minor modifications to the standards to number the definitions and make other minor edits. The Commission proposed to update its regulations at 18 CFR 38.2 to incorporate by reference this revised standard in lieu of the current version of this standard.

Manual Time Error Correction

In the Version 001 standards for Manual Time Error Correction (WEQ-006), NAESB has made changes to remove references to the Electric Reliability Council of Texas (ERCOT), to make minor corrections to the standards for the Western Interconnection, and to make other minor modifications including numbering the definitions. The Commission proposed to update its regulations at 18 CFR 38.2 to incorporate by reference this revised standard in lieu of the current version of this standard.

Inadvertent Interchange Payback

In the Version 001 standards for Inadvertent Interchange Payback (WEQ-007), NAESB has made changes to remove references to ERCOT and make other minor modifications including numbering the definitions. The Commission proposed to update its regulations at 18 CFR 38.2 to incorporate by reference this revised standard in lieu of the current version of this standard.

Transmission Loading Relief

In Version 001, NAESB adopted new standards for Transmission Loading Relief – Eastern Interconnection (WEQ-008). NAESB stated that these business practice standards are intended to be complementary to the NERC reliability standards INT-004-1 – Reliability Coordination – Operations Planning and INT-006-4 – Reliability Coordination – Transmission Loading Relief. NAESB reported that its Transmission Loading Relief (TLR) business practice standards are the result of a multi-year joint effort of the NERC Transmission Loading Relief Drafting Team and the NAESB WEQ Business Practices Subcommittee to split the existing NERC Transmission Loading Relief reliability standards into reliability and business practice components. In addition, NAESB stated that the NAESB WEQ TLR standards have been further modified to allow for regional differences for market flows.¹⁸ The NAESB WEQ TLR standards include general requirements regarding the use of Interconnection-wide TLR procedures;¹⁹ Interchange Transaction²⁰ priorities for use with Interconnection-wide TLR procedures; the Eastern Interconnection procedure for physical curtailment of Interchange Transactions; appendices with various examples; and an appendix specifying regional differences for PJM Interconnection, L.L.C./Midwest Independent System Operator, Inc. and for Southwest Power Pool.

The Commission sought to ensure that the NAESB WEQ TLR business practice standards and the proposed NERC TLR reliability standard complement each other and can be implemented together harmoniously. Therefore, the Commission proposed to update its regulations at 18 CFR 38.2 to incorporate by reference Standard WEQ-008 and invites comments on this proposal.

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¹⁸ Market flows are the calculated energy flows on a specified Flowgate as a result of the dispatch of generating resources within a Market-Based Operating Entity's market. NAESB defines "Flowgate" as a "designated point of the transmission system through which the Interchange Distribution Calculator calculates the power flow from Interchange Transactions." The treatment of the market flows of regional transmission organizations compared with the treatment of generation-to-load impacts of non-market entities as they relate to the use of TLRs has been addressed by the Commission in a number of cases, including Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 987, Alliance Companies, 100 FERC ¶ 61,137 (2002) and Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C., 106 FERC ¶ 61,251 (2004).

¹⁹ NAESB defines "Transmission Loading Relief" (TLR) as "[a] procedure used in the Eastern Interconnection to relieve potential or actual loading on a Constrained Facility or Flowgate." Standard WEQ-008-0.40.

²⁰ NAESB defines an "Interchange Transaction" as "[a] transaction that crosses one or more Balancing Authorities' boundaries. The planned energy exchange between two adjacent Balancing Authorities." Standard WEQ-008-0.19.

On July 21, 2008 the Commission issued a Final Rule amending its regulations under the FPA to incorporate by reference the NAESB WEQ Version 001 standards that the Commission proposed to incorporate in the WEQ Version 001 NOPR.²¹ While many of the standards simply revise or update existing standards, some of the standards address new business practices. For example, NAESB adopted new business practice standards for resales and transfers to standardize secondary transmission service on the OASIS. These standards also standardize how resales and transfers are conducted off the OASIS. NAESB also adopted PKI standards to create greater security for business transactions taking place over the Internet. In addition, NAESB has revised and added standards establishing business practices related to the North American Electric Reliability Corporation (NERC) reliability standards.²² For example, NAESB has adopted standards governing TLR that specify business practices for cutting transmission services in the event of a TLR, consistent with the NERC reliability standards.

A. JUSTIFICATION

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

FERC-516

The collection of information for electric rate filings is mandated by Sections 15, 19, 20, 205, 206 and 207 of the Federal Power Act as amended by the Energy Policy Act

21 Consistent with the Commission's proposal in the WEQ Version 001 NOPR, the Commission is not revising its regulations to incorporate by reference the following standards: Standards of Conduct for Electric Transmission Providers (WEQ-009) and Contracts Related Standards (WEQ-010). In addition, consistent with the Commission's discussion in the WEQ Version 001 NOPR, it is not incorporating by reference the following WEQ-001 standards: WEQ-001-0.1, 001-0.9 through WEQ-001-0.13, WEQ-001-1.0 through WEQ-001-1.8 and WEQ-001-9.7.

22 In Docket No. RM08-7-000, the Commission issued a Final Rule (being issued simultaneously with this rule) approving six modified Reliability Standards submitted to the Commission for approval by the North American Electric Reliability Corporation (NERC). The Final Rule issued in Docket No. RM08-7-000 also approved NERC's proposed interpretation of five specific Requirements of Commission-approved Reliability Standards. While Final Rule RM08-7-000 addresses modified Reliability Standards, this Final Rule (RM05-5-005), is addressing, among other matters, the business practice standards related to these Reliability Standards.

of 1992 (EPAAct) and section 402(a) of the Department of Energy Organization Act (DOE Act). EPAAct expands the Commission's authority in section 211 of the Federal Power Act (FPA) to order transmission services upon application and created a new category of power producers called exempt wholesale generators. EPAAct and other industry developments increased competition in wholesale electric markets. The Commission's goal has been to encourage lower electricity prices by structuring an orderly transition to competitive bulk power markets.

In addition, the Commission has a statutory obligation under section 205 and 206 of the FPA to prevent unduly discriminatory practices in transmission access. To accomplish this, the Commission added section 35.28 to its regulations concerning the standards a public utility must satisfy regarding non-discriminatory open access transmission services on the utility's facilities that transmit electric energy in interstate commerce. The regulations require that all public utilities owning or controlling facilities for the transmission of electric energy in interstate commerce to file tariffs of general applicability that offer transmission services, including ancillary services, on a network and point-to-point basis. The regulations require the public utility to take transmission service for itself under the rates, terms and conditions of these tariffs.

FERC-717 In its Final Rule Order No. 888: "Promoting Wholesale Competition through Open Access Nondiscriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities" issued on April 24, 1996, (Docket No. RM95-8/RM94-7), the Commission required that all public utilities that own, control or operate facilities used for transmitting electric energy in interstate commerce to have on file open access nondiscriminatory transmission tariffs that contain minimum terms and conditions of nondiscriminatory service.

In addition, the Commission required public utilities to establish OASIS sites to provide transmission customers with equal and timely access to information about transmission and ancillary services provided in the tariffs. The Commission does not believe that open-access nondiscriminatory transmission services can be completely realized until it removes real-world obstacles that prevent transmission customers from competing effectively with the Transmission Provider. One of the obstacles is unequal access to transmission information. The Commission believes that transmission customers must have simultaneous access to the same information available to the Transmission Provider if truly nondiscriminatory transmission services are to be a reality.

The FERC-717 data and communications standards on OASIS are required to carry out the Commission's policies in accordance with the general authority in Sections

309 and 311, of the Federal Power Act of 1935 (FPA) (16 U.S.C. 825h) and 16 U.S.C. 825j).

In the NOPR, the Commission proposed to amend its regulations under the Federal Power Act²³ to incorporate by reference the latest version (Version 001) of certain business practice standards concerning the Open Access Same-Time Information Systems (OASIS) and four business practice standards relating to reliability issues adopted by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB). These revised standards update earlier versions of these standards that the Commission previously incorporated by reference into its regulations at 18 CFR 38.2 in Order Nos. 676 and 676-B.²⁴ In addition, the Commission proposed to incorporate by reference NAESB's new standards on transmission loading relief for the Eastern Interconnection and public key infrastructure, and add a new OASIS implementation guide.

In Order No. 676, with certain specified exceptions, the Commission incorporated by reference into its regulations at 18 CFR 38.2 the Version 000 OASIS Business Practice Standards adopted by NAESB in January 2005. In Order No. 676, the Commission also incorporated by reference into its regulations at 18 CFR 38.2 NAESB's OASIS Standards & Communication Protocols, OASIS Data Dictionary and four business practice standards related to reliability issues. Specifically, the business practice standards related to reliability issues are: Coordinate Interchange, WEQ-004, Version 000; Area Control Error (ACE) Equation Special Cases, WEQ-005, Version 000; Manual Time Error Correction, WEQ-006, Version 000; and Inadvertent Interchange Payback, WEQ-007, Version 000.

In Order No. 676, the Commission not only adopted business practice standards and communication protocols for the wholesale electric industry, it also established a formal ongoing process for reviewing and upgrading the Commission's OASIS standards and other wholesale electric industry business practice standards.²⁵

23 16 U.S.C. 791a, *et seq.*

24 Standards for Business Practices and Communication Protocols for Public Utilities, Order No. 676, 71 FR 26199 (May 4, 2006), FERC Stats. & Regs., Regulations Preambles ¶ 31,216 (Apr. 25, 2006), *reh'g denied*, Order No. 676-A, 116 FERC ¶ 61,255 (2006), Order No. 676-B, 72 FR 21095 (Apr. 30, 2007), FERC Stats. & Regs. ¶ 31,246 (Apr. 19, 2007).

25 In developing the original OASIS standards and communications protocols adopted in Order No. 889, and revised in subsequent orders, the Commission enlisted the assistance of two *ad hoc* industry working groups (the "How" Group and the "What" Group) that developed proposals for OASIS standards and communications protocols that the Commission reviewed, modified where appropriate, and ultimately adopted as Commission regulations and requirements. See Open Access Same-Time Information System (OASIS) and Standards of Conduct, Order No. 889, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 31,035 at 31,588-89 & n. 13 (Apr. 24, 1996). In Order No. 676, this informal process was replaced by the more formal NAESB process, where NAESB, as an ANSI-approved standards development

In Order No. 676-B, the Commission incorporated by reference into its regulations at 18 CFR 38.2 the revised Coordinate Interchange Standards adopted by NAESB in June 2005.

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.

2. HOW, BY WHOM, AND FOR WHAT PURPOSE THE INFORMATION IS TO BE USED AND THE CONSEQUENCES OF NOT COLLECTING THE INFORMATION

FERC-516

The information from FERC-516 enables the Commission to exercise its wholesale electric rate and electric power transmission oversight and enforcement responsibilities in accordance with the Federal Power Act and the DOE Act as referenced above. Sufficient detail must be obtained for the Commission to make an informed and equitable decision concerning the appropriate level of rates, and to aid customers and other parties who may wish to challenge the rate proposed by the utility. Other more abbreviated data requirements are required where utility filings involve (1) non-rate increase applications, such as changes in the points where electricity is delivered to a customer, (2) formula rates, (3) settlement rates, and (4) qualifying small power producer rates.

In the Final Rule, the Commission will require public utilities to modify their open access transmission tariffs (OATTs) to include the WEQ standards that the Commission is incorporating by reference the next time they make any unrelated filing to revise their OATTs.²⁶ As the Commission did in Order No. 676,²⁷ it clarifies that, to the extent a public utility's OASIS obligations are administered by an independent system operator or

organization, adopted standards and requirements that were then reported to the Commission to consider and, following public comment, incorporate by reference into its regulations, where appropriate.

²⁶ See Order No. 676, FERC Stats. & Regs. ¶ 31,216 at P 100. If the public utility makes no unrelated tariff filing by January 31, 2009, it must make a separate tariff filing incorporating these standards by that date. They are to use the language specified later in this order, see infra P 83. The Commission also notes that, once the standards have become effective, utilities must abide by the standards even before they make their tariff filings incorporating the standards into their tariffs.

²⁷ Order No. 676, FERC Stats. & Regs. ¶ 31,216 at P 20.

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.

FERC-717

These requirements apply to all Public Utilities owning and/or controlling facilities used for the transmission of electricity in interstate commerce. These procedures enable the Commission to ensure compliance with the functional unbundling established in the Commission's Open Access rulemaking.

The Commission's Office of Energy Market Regulation uses the information in rate and proceedings to review rate and tariff changes by public utilities, for general industry oversight, and to supplement the documentation used during the Commission's audit process. The collection of this information is necessary to meet the legal requirements, namely the statutory obligations under section 205 and 206 of the FPA, to prevent unduly discriminatory practices.

Failure to issue these requirements would mean the Commission is not meeting its statutory obligations and permitting discrimination in interstate transmission services provided by the public utilities. The Commission believes the implementation of these data requirements will help the Commission carry out its responsibilities under the Federal Power Act of promoting the efficiency of the electric industry's operations.

3. DESCRIBE ANY CONSIDERATION OF THE USE OF IMPROVED TECHNOLOGY TO REDUCE BURDEN AND TECHNICAL OR LEGAL OBSTACLES TO REDUCING BURDEN.

In both FERC-516 and FERC-717, the Commission has shown a commitment to the use of information technology. For FERC-516 requirements, the Commission in Order No. 614, required public utilities to refile their tariffs to comply with new formatting requirements, including the removal of suspended tariff language, extraneous provisions, and items that were not subject to the Commission's jurisdiction.²⁸ These

²⁸ Designation of Electric Rate Schedule Sheets, Order No. 614, 65 FR 18221, FERC Stats. & Regs. ¶31,096 at 31,501 (2000).

filings were to aid public utilities in preparing their tariffs for conversion to electronic format. As another step in moving towards electronic filing, the Commission in Order No. 2001 eliminated the requirement to file paper copies of conforming service agreements but required the filing of an electronic report that summarized the contractual terms and conditions in the service agreements.²⁹

At the same time, the Commission has been expanding the scope of electronic filing with respect to material filed with the Commission by amending its regulations. These regulations permit the electronic filing of interventions, protests, rehearings, and other material. But to date, they do not include materials to revise tariffs, and have not provided for the electronic filing of tariffs.

In a Notice of Proposed Rulemaking (NOPR) issued on July 8, 2004, the Commission proposed to require public utilities, gas and oil pipelines to file tariff and tariff related material electronically.³⁰ The Commission's initial proposal contemplated that tariff filings would be made using electronic tariff filing software developed by the Commission. The Commission developed a tariff database that would store tariff and tariff related information for retrieval by Commission staff and the public. In order to implement a tariff database system that would permit such functionality, Commission staff developed a software system for tariff filings similar to that used in filing forms with the Commission. Commission staff worked with many industry representatives and experts to test this software and held public meetings to demonstrate and receive comment on the software.

In a Supplemental Notice of Proposed Rulemaking issued on April 17, 2008 the Commission is proposing to revise its previous Notice of Proposed Rulemaking for electronic tariff filing. The revised proposal would require that all tariffs and tariff revisions and rate change applications for the public utility, natural gas pipeline, and oil

29 Revised Public Utility Filing Requirements, Order No. 2001, 67 FR 31043, (May 8, 2002), FERC Stats. & Regs., §31,127 (2002).

30 Electronic Tariff Filings, Notice of Proposed Rulemaking, 69 FR 43,929 (July 23, 2004) FERC Stats. & Regs., Proposed Regulations ¶ 32,575, 2004 NOPR), Notice of Additional Proposals and Procedures, 70 FR 40941 (July 15, 2005), FERC Stats. & Regs. ¶ 35,551, 2005), 112 FERC ¶61,043 (2005 Notice).

pipeline industries be filed electronically according to a set of standards developed in conjunction with the North American Energy Standards Board. These standards will enable the Commission to develop a tariff database for use by the Commission staff, the industry, and the public to view and research tariffs, and also provides companies the flexibility to design or purchase software for making tariff filings that best fits their business needs. Upon the effective date of a final rule in this proceeding, the Commission will no longer accept tariff filings submitted in paper format.

Further, the Commission's requirement for the use of OASIS to provide transmission service information to the public, demonstrates the use of information technology to reduce the burden. With a single Internet connection, transmission customers are able to access information from any utility as well as be able to display information.

4. DESCRIBE EFFORTS TO IDENTIFY DUPLICATION AND SHOW SPECIFICALLY WHY ANY SIMILAR INFORMATION ALREADY AVAILABLE CANNOT BE USED OR MODIFIED FOR USE FOR THE PURPOSE(S) DESCRIBED IN INSTRUCTION NO. 2

Commission filings and data requirements are periodically reviewed in conjunction with OMB clearance expiration dates. This includes a review of the Commission's regulations and data requirements to identify any duplication. Electric transmission information is not available from other sources and therefore, no use or other modification of the information can be made to perform oversight and review responsibilities under applicable legislation (e.g., Federal Power Act (FPA), Energy Policy Act of 1992 (EPAct), Energy Policy Act of 2005)).

In adopting the Commission's OASIS Business Practice Standards, the WEQ has included language that duplicates language already set out in 18 C.F.R. part 37 of its

regulations. Incorporating by reference standards that duplicate Commission regulations could result in inconsistent regulations in the event that the Commission revises its regulations before the WEQ has issued revised standards and because the Commission's regulations stand on their own. In order to prevent these problems, the Commission is not proposing to incorporate by reference the WEQ's standards that duplicate the Commission's regulations.

5. METHODS USED TO MINIMIZE BURDEN IN COLLECTION OF INFORMATION INVOLVING SMALL ENTITIES

No small businesses are impacted under FERC-516 reporting data requirements. The proposed additions and revisions to the Commission's regulations will impact the day-to-day operations of public utilities whose operational status would exceed the SIC standards for a "small business concern" as implemented under the Regulatory Fairness Act (RFA). Likewise for FERC-717, the Commission has reviewed the provisions of the RFA and found they would not be applicable to the public utilities that will be subject to the requirements of this Final Rule.

6. CONSEQUENCE TO FEDERAL PROGRAM IF COLLECTION WERE CONDUCTED LESS FREQUENTLY

It is not possible to collect the data less frequently. Only public utilities owning, operating, and/or controlling facilities used for the transmission of electricity in interstate commerce are required to comply with the Commission's proposed requirements. The required information will impose the least possible burden for companies while collecting the information that will be used for promoting the efficiency of the electric industry's

operations. The Commission believes the adoption of these standards will permit industry to use the NAESB consensus process to suggest further modifications and enhancements to business practices and the OASIS standards as industry considers necessary, subject to the Commission's approval.

If the data were not updated regularly, the Commission and Industry would be placed at a disadvantage by not having the most current data for competitive and regulatory purposes available.

7. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION COLLECTION

The adoption of these standards is appropriate because the consensus process assists the Commission in determining the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of all segments of industry. 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.

The WEQ standards are reasonably available from NAESB. Members can access these materials at no additional charge from the NAESB website or pay \$50 for the booklet or CD rom. Non-members can obtain the standards booklet or CD rom for \$100. As required by regulations, copies of the standards are also available for inspection in the Commission's Public Reference Room. Because standards development is of importance to the entire industry, the Commission strongly encourages all companies to become

members and participate actively in the NAESB process. (*See further discussion in item no. 8*).

Section 12(d) of the National Technology Transfer and Advancement Act of 1995, requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like NAESB's WEQ, as a means to carry out policy objectives or activities. The Commission believes that incorporation by reference is appropriate, and indeed the required, method for adopting copyrighted standards material.³¹

8. DESCRIBE EFFORTS TO CONSULT OUTSIDE THE AGENCY: SUMMARIZE PUBLIC COMMENTS AND THE AGENCY'S RESPONSE TO THESE COMMENTS

Commission procedures require that rulemaking notices be published in the Federal Register, thereby allowing all electric utilities, natural gas pipeline companies, state commissions, Federal agencies, and other interested parties an opportunity to submit views, comments or suggestions concerning the proposal. These rulemaking procedures allow for public conferences to be held as required. In response to the WEQ Version 001 NOPR, ten comments were filed.³² Some of these comments raised concerns about specific standards, none of the ten comments filed raise any general objection to the Commission's proposal to incorporate by reference the WEQ standards into the Commission's regulations.

Cost of Obtaining NAESB Standards

Lafayette and LEPA are concerned that the cost of obtaining the NAESB standards impedes dissemination and understanding of the applicable requirements. Lafayette and LEPA claim that incorporating by reference standards necessarily purchased at not insubstantial costs imposes a burden on small entities, particularly where issues of interpretation of the standards arise.

31 *See* 5 U.S.C. 552 (a)(1)(2000); 1 C.F.R. 51.7(4) (requirements established for incorporation by reference); Federal Participation in the Development and Use of Voluntary Standards, OMB Circular A-119, at 6 (a)(1) (Feb. 10, 1998), <http://www.whitehouse.gov/omb/circulars/a119/a119.html> (incorporation by reference appropriate means of adopting private sector standards under the National Technology Transfer and Advancement Act). The Commission cannot reproduce the WEQ standards in violation of the NAESB copyright. *See* 28 U.S.C. 1498 (government not exempt from patent and copyright infringement).

32 Commenters on the WEQ Version 001 NOPR, and the abbreviations used in the Final Rule to identify them are listed in the Appendix.

Commission's Response

In Order No. 676, the Commission explained that standards organizations are permitted to charge for standards incorporated by reference into federal government regulations.³³ Under the Freedom of Information Act, to be eligible for incorporation by reference, standards must be reasonably available to the class of persons affected by their publication.³⁴ The NAESB standards are reasonably available to all industry members. The cost for obtaining the NAESB standards for non-members is \$100 for the printed standards booklet and \$300 for the CD-ROM of the standards. NAESB members can obtain the standards on-line at no cost.

The arguments raised by Lafayette and LEPA are identical to those that the Commission considered and rejected in Order No. 676, which became a final determination when no party filed a request for rehearing of Order No. 676 objecting to the Commission's finding on this issue. None of the arguments raised in response to the NOPR by Lafayette and LEPA lead the Commission to reverse the determination that the Commission previously reached on this issue in Order No. 676, i.e., that the standards are reasonably available to all industry members. Furthermore, the Commission finds that the benefits to both the industry and the public that have resulted from the adoption of an industry-driven approach to standards development outweigh the cost of the fees required to obtain the NAESB standards. If industry participants remain concerned about the accessibility of the standards, these concerns should be addressed through the NAESB process.

Interpretation of NAESB Standards and OATT Principles

LEPA requested that the Commission clarify that it will interpret NAESB standards in accordance with the principles underlying the OATT. In particular, LEPA requests that the Commission clarify that it is not, by incorporating the NAESB standards, intending to override settled matters of contract law or the Commission policies underlying open access transmission service.

³³ Order No. 676, FERC Stats. & Regs. ¶ 31,216 at P 97.

³⁴ 1 CFR 51.7(a)(2)-(4).

Commission's Response

The NAESB standards are incorporated by reference in the regulations and therefore must be followed to the same extent as other regulations and policies of the Commission. The Commission's regulations require compliance with both the pro forma OATT (18 CFR 35.28) and the NAESB standards that the Commission has incorporated by reference (18 CFR 38.2) and that must be included in the utility's OATT. If LEPA is concerned that there are inconsistencies between specific NAESB standards and the Commission's open access transmission service regulations, it can seek an interpretation of the standards from NAESB and can make appropriate filings with the Commission.

Weighing Costs and Benefits of Proposed Standards

The Midwest ISO is concerned that the cost of complying with and implementing some of the WEQ-001 NAESB standards (for example, standards WEQ-001-9.4.3³⁵ and WEQ-001-12³⁶) will be greater than the benefits that will result. The Midwest ISO believes it would be unreasonable and unduly discriminatory to adopt a business practice that results in substantial compliance costs while producing only negligible benefits for a particular NAESB segment or a group of industry participants and states that the Commission has the authority to determine what costs are considered just and reasonable through rulemaking. Thus, Midwest ISO is not, at this time, requesting a waiver of specific standards (such as WEQ-001-9.4.3 and WEQ-001-12) but is asking that the Commission provide a waiver option and that NAESB be directed to review this entire topic. The Midwest ISO wants consideration to be given to the relative costs and benefits of the standards for entities such as the Midwest ISO or to allow affected entities to seek waivers.³⁷

Commission's Response

NAESB's stakeholder process for adopting standards ensures that an industry consensus is necessary before any standard is approved. This process helps to ensure that all approved standards are beneficial to the industry. However, as the Commission explained in order No. 676, each public utility that wants a waiver of any standard the Commission incorporates by reference in the Final Rule may file a request for waiver,

35 WEQ-001-9.4.3 provides that "[I]f the TP determines that only a portion of the requested capacity can be accommodated, the TP shall extend to the TC that portion of the capacity (i.e., partial service) that can be accommodated through a COUNTEROFFER. An example is shown in Appendix B" of the Final Rule.

36 WEQ-001-12 is the set of standards for transfers.

37 Midwest ISO Comments at 5-9.

supported by the reasons it believes a waiver is warranted.³⁸ To the extent that implementation of certain standards will result in substantial compliance costs for small industry participants, the Commission has in the past considered waivers of extensions of compliance obligations where granting such requests would not noticeably diminish the expected benefits to the rest of the industry that would derive from compliance with the standard. Any such waiver requests should specifically detail the expected compliance costs and the reasons why a waiver would not diminish the overall expected benefits from compliance with the standard. Therefore, the Commission will incorporate these standards in its regulations, as originally proposed in the WEQ Version 001 NOPR.

Standard WEQ-001-11.2.1

WEQ-001-11.2.1 states:

The Assignee shall be obligated directly to the Transmission Provider (TP) for any usage-based charges and overuse penalties resulting from its subsequent use of the Resale.

The Midwest ISO is concerned that WEQ-001-11.2.1 introduces a high risk of financial exposure to the transmission provider in the event that the assignee defaults on payment. The Midwest ISO believes that the RTO should not have to bear the financial risk associated with an assignee defaulting on usage-based market charges. Furthermore, the Midwest ISO is concerned that this standard does not address the allocation and ownership of Financial Transmission Rights/Auction Revenue Rights. To address these concerns, the Midwest ISO recommends that WEQ-001-11 be revised to include prior validation requirements, similar to those mandated by the Commission in Order Nos. 890 and 890-A in the context of service agreements. Alternatively, the Midwest ISO requests clarification and assurance that those standards are to be interpreted such that transmission providers will not be held liable in the event of nonperformance of a resale obligation.

Commission Determination

The Commission does not interpret WEQ-001-11.2.1 to expose a transmission provider to high financial risks in an event an assignee defaults on usage-based charges. At least 24 hours prior to any resale an Assignee must execute a service agreement with the Transmission Provider under WEQ-001-11.1.7. The Commission has held that this service agreement is a requirement meant to commit the Assignee to abide by the terms and conditions of the Transmission Provider's OATT governing the reassignment of

³⁸ Order No. 676, FERC Stats. & Regs. ¶ 31,216 at P 79.

transmission service.³⁹ The assignee therefore must comply with all creditworthiness requirements required for signing a service agreement. If an Assignee were to default on its usage-based charges or overuse penalties, it would still be subject to its service agreement with the Transmission Provider, and the Transmission Provider would have access to any collateral or other assurances required under its OATT. Furthermore, Midwest ISO itself points out the Commission's policy in Order No. 890-A that allows a transmission provider to take action against the Assignee as it would any other default under the pro forma OATT, as well as transfer to the reseller its legal rights to enforce the Assignee's payment obligations.⁴⁰ The Commission finds that these procedural protections, coupled with NAESB standard WEQ-001-11.2.1.1, which grants the Transmission Provider the right to nullify the Resale in the event the service agreement is not executed, address the concerns of Midwest ISO regarding its comments on financial exposure and the request for prior validation. The Commission will therefore incorporate this standard into the Commission's regulations by reference as it proposed in the WEQ Version 001 NOPR.

9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS

There are no payments or gifts to respondents under any circumstance.

10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS

All data filed is public information and, therefore, are not confidential. However, a company may request confidential treatment of some or all parts of the FERC-717 information requirement under the FOIA and FERC regulations at 18 CFR 388.112. Each request for confidential treatment will be reviewed by the Commission on a case-by-case basis.

11. PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A SENSITIVE NATURE THAT ARE CONSIDERED PRIVATE.

There are no questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs and other matters that are commonly considered private in the reporting requirements.

12. ESTIMATED BURDEN OF COLLECTION OF INFORMATION

³⁹ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 423.

⁴⁰ Id. n.166.

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 (i.e., WEQ-008 and WEQ-012).

The Commission estimates there are approximately 176 public utilities who own or control facilities used for the transmission of electric energy in interstate commerce and would be subject to the filing requirements of this Final Rule. No comments were filed addressing the reporting burden.⁴¹

The burden estimate includes the time required to implement the standards proposed in this rule, review the standards, search existing data sources, gather and maintain the data needed, and complete and review the information and file as appropriate with the Commission. Details of the burden estimates are shown in the following table:

DATA COLLECTION (FERC-516)

					Current
					Proposed
					Proposed
					New
					OMB
					INV.
Estimated Number of Respondents					1,268
					176
					176
					1,268
<u>Estimated number of responses/respondent/yr</u>	3.52	1	1		3.52

⁴¹ The Commission notes, however, that two commenters argued that it would be too costly for small entities to obtain copies of the NAESB Standards from NAESB. (See item no. 8 of this submission).

FERC-717 & FERC-516

RM05-5-005 Final Rule
Issued July 21, 2008

Estimated annual number of responses	4,464	176	176	4,464
Estimated hours per information requirement 98.5612	98.3246	6	6	
Total estimated annual burden hours	438,921	1,056	1,056	439,977
Estimated annual burden in OMB inventory Increase/decrease in burden hours		+1,056		

DATA COLLECTION (FERC-717)

				Current Proposed Proposed
	Inventory	In NOPR	Final Rule	NEW OMB INV.
Estimated no. of Respondents	220	176	176	176
Estimated no. of responses/respondent/yr				1
				1
				1
Estimated annual no. of responses				1
				220
				176
				176

				176
Estimated hours per information requirement	1,013.*	10	10	990.43*
Total estimated annual burden hours				222,955
				1,760
				1,760
				174,316
Estimated annual burden in OMB inv.				
Increase/decrease in burden hours	+1,760			
Adjustment:	-43,139			
*rounded off.				

***There was an error above in the figures first reported for the estimates in OMB's "new" inventory for FERC-516. The total universe identified below is based on a staff assessment for the Commission's market based rule. (See 1902-0234, ICR 200805-1902-007) The table below corrects that error.*

DATA COLLECTION (FERC-516)

				Current Proposed Proposed
				New Inventory In NOPR Final Rule OMB INV.
Estimated Number of Respondents				1,268
				176
				176
				1,230
Estimated number of responses/respondent/yr	3.52	1	1	3.52

FERC-717 & FERC-516

RM05-5-005 Final Rule
Issued July 21, 2008

Estimated annual number of responses	4,464	176	176	4,330
Estimated hours per information requirement	98.3246	6	6	
98.5686				
Total estimated annual burden hours	438,921	1,056	1,056	426,802
Estimated annual burden in OMB inventory				
Increase/decrease in burden hours (program change)		+1,056		
Increase/decrease in burden hours (adjustment)		-12,119	(13,175 – 1,056)	
Increase/decrease in responses (adjustment)		-134		
(reflects a decrease in the no. of respondents subject to Part 35 requirements)				

13. ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS

The Commission's estimate for costs to comply with the Final Rule is based on a one-time implementation of the proposed standards for public utilities. The estimated hours needed to comply with this Final Rule Rulemaking include the following activities:

filing of open access transmission tariff that includes incorporated by reference the requirements in 18 C.F.R. Part 38 of the Commission’s regulations;

a change to their OASIS or Internet websites to disclose information relevant to the transmission system;

	FERC-516	FERC-717
Annualized Capital/Startup Costs	\$337,920	\$563,200
Annualized Costs (Operations & Maintenance)	N/A	
Total Annualized Costs	\$337,920	\$563,200

The total annualized costs for the information collection is \$901,120. This number is reached by multiplying the total hours to prepare responses (2816) by an hourly wage estimate of \$320 (a composite estimate that includes legal, technical and support staff rates, \$200+\$95+\$25=\$320), 2816 hours x \$320/hour= \$901,120.

The cost per respondent is

\$
 5,120.

The Commission did not receive any comments concerning its cost estimates.

14. **ESTIMATED ANNUALIZED COST TO FEDERAL GOVERNMENT** The estimated annualized cost to the Federal Government for FERC-516 and FERC-717 is as follows:

Data

Analysis

Estimated

**FERC
 Data
 Total**

**Cost
 of Data**

Salary

**Clearance
 One
 Year's
 (FTEs)**

x

Per

Year +

(FY

'08) =

Operation

Collection

Number

FERC-717 & FERC-516

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Issued July 21, 2008

FERC-516

2.0

\$126,384

\$

2,430

\$255,198

FERC-717

1.5

\$126,384

\$

2,430

\$192,006

Total Cost

3.5

\$126,384

\$

4,860

\$447,204#

The average cost per staff year reflects direct human resource's costs. These costs consist of direct labor and fringe benefit costs. The direct labor cost is that portion of staff salary that is charged to a collection of information activity. The fringe benefits cost consists of allowances and services provided to Government employees in addition to employee salaries. It is expressed as a percentage of the salary costs.

#The cost above represents staff costs as it pertains to this final rule only. A cumulative cost to Federal Government for implementing the business standards and communication protocols in this rulemaking series (RM05-5-000 et. al) is \$1,672,292. (See table below)

Data Collection	RM05-5-000	RM05-5-003	RM05-5-005	Totals
1902-0096	\$457,353	\$0	\$255,198	\$712,551

1902-0173	\$457,353	\$311,382	\$192,006	\$960,741
	\$914,606	\$311,382	\$447,204	\$1,672,292

15. REASONS FOR CHANGES IN BURDEN INCLUDING THE NEED FOR ANY INCREASE

As reported in item #12, there is an increase in the annual reporting burden. The Commission's estimates for the annual reporting burden in the Standards of Conduct Final Rule are anticipated to be 2,816 hours. This increase is attributable to the implementation of standards of conducts as noted preamble to this submission.

16. TIME SCHEDULE FOR THE PUBLICATION OF DATA

This is not a collection of information for which results are planned to be published.

17. DISPLAY OF THE EXPIRATION DATE

It is not appropriate to display the expiration date for OMB approval of the information collected pursuant to Parts 35 and 38 in the Code of Federal Regulations. The information collected is not collected on a standard, preprinted form which would avail itself of this display for either FERC-516 or FERC-717. However, the Commission has printed the OMB Control number and a disclaimer that respondents will not be subject to a penalty if a valid OMB control number is not displayed on the Commission's publication OASIS Standards and Communication Protocols. This publication contains the standards of conduct and communication protocols that industry must follow. The proposed reporting requirements under FERC-717 are not filed on formatted/printed forms but rather based on posting requirements for Internet web sites.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

Item No. 19(g) (vi) see Instruction No. 17 above for further elaboration. In addition, the data collected for this reporting requirement is not used for statistical purposes. Therefore, the Commission does not use as stated in item no. 19(i) "effective and efficient statistical survey methodology."

B. Collections of Information Employing Statistical Methods

These are not collections of information employing statistical methods.