

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

Electricity Market Design and Structure)

Docket No. RM01-12-000

**COMMENTS
OF
THE NATIONAL ENERGY MARKETERS ASSOCIATION**

The National Energy Marketers Association (NEM) hereby submits comments pursuant to the, "Order Providing Guidance on the Formation of a Standards Development Organization for the Wholesale Electric Industry," issued December 19, 2001,¹ in above-referenced proceeding.

NEM is a national, non-profit trade association representing a regionally diverse cross-section of both wholesale and retail marketers of energy and energy-related products, services, information and technology throughout the United States. NEM's membership includes: small regional marketers, large international wholesale and retail energy suppliers, billing and metering firms, Internet energy providers, energy-related software developers, risk managers, energy brokerage firms, information technology providers as well as suppliers of advanced metering and distributed generation technology. Membership includes both affiliated and unaffiliated companies.

This regionally diverse, broad-based coalition of energy and technology firms has come together under the NEM auspices to forge consensus and to help eliminate as many issues as possible that would delay competition. NEM is committed to working with representatives of state and federal governments, large and small consumer groups and utilities to devise fair and effective ways to implement the competitive restructuring of natural gas and electricity markets. NEM and its members appear before state Public Utility Commissions, the Federal Energy Regulatory Commission and legislative bodies throughout the nation.

NEM members urge lawmakers and regulators to implement:

¹ 97 FERC ¶ 61,289 (2001) [hereinafter the "Order"].

- Laws and regulations that open markets for natural gas, electricity and related products, services, information and technology in a competitively neutral fashion;
- Rates, tariffs, taxes and operating procedures that unbundle competitive services from monopoly services and encourage true competition on the basis of price, quality of service and provision of value-added services;
- Competitively neutral standards of conduct that protect consumers;
- Accounting and disclosure standards to promote the proper valuation of energy assets, equity securities and forward energy contracts, including derivatives; and
- Policies that encourage investments in new technologies, including the integration of energy, telecommunications and Internet services to lower the cost of energy and related services.

I. A Wholesale Electric Standards Organization Should Integrate Reliability Standards and Commercial Practices

NEM has participated in the industry collaborative efforts to create a single, wholesale electric standards organization. NEM recognizes that an extensive amount of time and resources have been expended on the development of the organization and believes the process in arriving at the "Joint Filing on the Formation of a Standards Development Organization for the Wholesale Electric Industry," (hereinafter "Joint Filing") has been helpful.

However, NEM is concerned about the process outline in the Joint Filing meant to "coordinate" reliability standards and commercial practices. The Joint Filing states that the signatories have reached a "preliminary consensus" as to how NAESB's Wholesale Electric Quadrant (WEQ) will be coordinated with North American Electric Reliability Council (NERC). By the terms of the Joint Filing, NERC will develop core reliability policies.² The NAESB WEQ is to develop industry business practice standards.³ Coordination is to take place through the use of an initial policy screen to ensure conformance with reliability and commercial standards.⁴ The initial policy screen could include NERC involvement.⁵ Coordination is also to take place by virtue of the submission of standards to reliability review and commercial review subcommittees.⁶ The filing

2 Joint Filing at page 6.

3 Joint Filing at page 7.

4 Joint Filing at page 9.

5 Joint Filing at page 9.

6 Joint Filing at page 10.

states that the reliability review subcommittee, "could include formal NERC involvement and could be populated with individuals from the NERC standing committees, NERC staff, or representatives of NERC Regional Reliability Councils."⁷ (emphasis added). The Filing summarizes the coordination effort as follows:

In addition to the explicit NERC participation in the WEQ Committee process, the Joint Parties agree that there will be a formal coordination process between the WEQ and NERC. NAESB and NERC have begun initial discussions regarding the development and execution of a Memorandum of Understanding that will outline this relationship.⁸

As the Commission recognized in its Order, "[b]usiness practices for wholesale electric transactions may be integrally linked with certain reliability standards, since reliability requirements often overlap with business practices; for example, congestion management supports reliability, but also may significantly affect business practices."⁹ NEM is concerned that the Joint Filing leaves significant issues unresolved as to the relationship between the NAESB WEQ and NERC.

NEM submits that without resolution of the ambiguities in the NAESB-NERC relationship much of the discussion of the "coordination" process in the Joint Filing will be for naught. NEM submits that the industry needs reliability standards and commercial practices that are integrated in a one-stop shop. The process of "coordinating" standards between two organizations will be open to a continuing debate about "who does what" with respect to any specific standard. Given the current state of the industry, time and resources (both financial and intellectual) become more valuable and costly with each passing day.

It is unfortunate that the NERC Board of Trustees has taken the position that it will not integrate its procedures for reliability with the market's need for commercial standards and business practices. Given the resulting bifurcated process, it is likely that FERC will be regularly called upon to adjudicate whether a reliability standard adopted through the NERC process has provided sufficient deference to the markets. Apparently in contemplation of this result, in the Statement

7 Joint Filing at page 10, note 3.

8 Joint Filing at page 14.

9 Order at 3.

by the Board of Trustees of NERC from their February 20, 2002, meeting, they state that, "[i]f NERC, having accounted for the views of market participants, adopts a standard that any market participant believes conflicts with its interests, we believe that a public regulatory authority ultimately should address that conflict." Accordingly, NEM has serious concerns that the standards development process, particularly one that is premised at the outset by "jurisdictional" issues between NERC and NAESB, will be extremely slow, costly and potentially counterproductive.

II. FERC Should Assume Responsibility for Wholesale Electric Market Standards

The Commission stated in its Order that, "[i]f the industry does not agree, by March 15, 2002, on a single standards organization, we will institute our own procedures either to choose an organization to develop such standards or to develop the standards ourselves." Given the need for one standards setting organization with transparent, competitively neutral governance to take timely, cost-effective actions, FERC should either select one organization or process to establish both reliability and commercial standards or institute its own procedures and propose standards subject to sixty days notice and comment.

NEM submits that FERC should require a single organization or process be utilized for both commercial and reliability standards. The Commission has specifically recognized the usefulness of the GISB process in the development of wholesale gas standards.¹⁰ This model could form the basis of an effective wholesale electric quadrant that develops both commercial and reliability standards. A one-stop shop will allow industry participants to allocate their time and resources in a cost-effective manner.

The bifurcated approach advocated by the Joint Filing will impose an unnecessary and unproductive extra burden on the industry due to the need to monitor and participate in the processes of two separate entities. Pure retail energy companies and smaller wholesale generators cannot afford to staff all of the meetings of multiple industry standard-setting organizations or processes. Accordingly, the competitive market entrants for whom standardization is chiefly meant to benefit tend to be woefully underrepresented. There is serious concern in the

¹⁰ Order at page 2.

unregulated industry that standards developed in this fashion will delay implementation of competitive markets and will not adequately address the needs of new, competitive entrants. NEM submits that all market participants can maximize their allocation of resources with respect to wholesale electric standards through a single standard setting organization or process.

An alternative approach is for FERC to lead the standard-setting process itself. NEM maintains that FERC has the expertise to promulgate standards, particularly since the standards will implement the Commission's much-anticipated standard market design. Furthermore, the notice and comment procedure will ensure that rules are adopted through a fully-informed process. Properly functioning RTOs must have well-integrated commercial and reliability rules. A FERC-led standard-setting process can ensure that this goal is accomplished and is done so in a timely, cost-effective fashion.

If FERC leads the wholesale electric standard-setting process, this will address a significant problem revealed in the Joint Filing document itself. NEM maintains that collaborative, consensus processes frequently yield sub-optimal results. For instance, the Joint Filing does not identify and define the voting segments of the WEQ after extensive debate in the months leading up to the filing pertaining to how many segments are needed and how those segments should be composed.

The Joint Filing merely says that the parties will engage in, "further due process discussions that will set forth the details of this voting structure to ensure a broad representation of interests."¹¹ The lack of agreement on this important issue, given the FERC-mandated time frame for the Joint Filing, does not bode well in terms of the parties' future ability to agree to business standards on a timely and efficient basis in the future. If FERC requires a single organization or process be utilized for development of wholesale electric standards, this organization or process must be held to strict deadlines for results subject to FERC's issuance of the proposed standard subject to proper industry notice and comment.

III. Conclusion

NEM submits that the industry and the country need standards to govern both the commercial practices and the operational reliability of the wholesale electricity market at the earliest practical

¹¹ Joint Industry Filing at page 13.

time. Accordingly, NEM urges the Commission to require that a single organization or process be utilized to develop both commercial and reliability standards. Alternatively, NEM urges FERC to lead the standard-setting process and issue proposed standards with sixty days notice and opportunity to comment. Either of these alternatives will represent a more efficient use of time and resources than a "coordinated," yet bifurcated approach recommended in the Joint Filing.

Respectfully submitted,

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