UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Standards for Business Practices and Communication Protocols for Public Utilities	Docket No. RM05-5-013

COMMENTS OF THE ELECTRIC POWER SUPPLY ASSOCIATION

The Electric Power Supply Association ("EPSA")[1] submits these comments in response to the Federal Energy Regulatory Commission's ("FERC" or the "Commission") Notice of Proposed Rulemaking (the "NOPR") issued March 19, 2009, in the above-referenced proceeding, *Standards for Business Practices and Communication Protocols for Public Utilities*.[2] The Commission proposes to incorporate by reference in its regulations at 18 C.F.R. § 38.2 the North American Energy Standards Board's ("NAESB") Version 002.1 standards that modify NAESB's Version 001 Standards. The new and revised standards that NAESB adopted in its Version 002.0 and 002.1 standards implement requirements of Order Nos. 890, 890-A, and 890-B.[3] In addition, NAESB developed standards to support the Commission's eTariff program, modified the Commercial Timing Table (WEQ-004 Appendix D) and Transmission Loading Relief Standards (WEQ-008) to provide clarity and align NAESB's business

[1] EPSA is the national trade association representing competitive power suppliers, including generators and marketers. These suppliers, who account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities serving power markets. EPSA seeks to bring the benefits of competition to all power customers. The comments contained in this filing represent the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

[2] 126 FERC ¶ 61,248 (2009).

[3] *Preventing Undue Discrimination and Preference in Transmission Serv.*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007), *on reh'g,* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *reh'g denied,* Order No. 890-C, 126 FERC ¶ 61,228 (2009).

practice standards with the reliability standards adopted by the North American Electric Reliability Corporation ("NERC"), revised the Manual Time Error Correction Standards (WEQ-006) to maintain consistency with revised NERC Standard BAL-004, and amended certain ancillary services definitions appearing in the Open Access Same-Time Information Systems ("OASIS") Standards (WEQ-001) relating to the inclusion of demand resources as part of ancillary services.

The NOPR proposes that the Commission incorporate by reference standards developed by NAESB for informational and posting requirements for Available Transfer Capability ("ATC") and Available Flowgate Capacity ("AFC"). EPSA supports the Commission's effort to address issues to improve competition in organized wholesale electricity markets by adopting consistent and transparent ATC and AFC requirements. However, EPSA has concerns that the proposed standards fall short of adequately providing such requirements.

I. BACKGROUND AND OVERVIEW

When the Commission issued Order No. 890, it indicated that, although much had been achieved under Order No. 888, there remained a lack of transparency which in part resulted in continuing opportunities for discriminatory behavior on the part of transmission providers, especially those with affiliated generation. Thus, in Order No. 890 the Commission found that:

> the Final Rule will strengthen compliance and enforcement efforts. We are increasing the transparency of *pro forma* OATT administration, thereby increasing the ability of customers and our Office of Enforcement to detect undue discrimination.[4]

More generally, at paragraph 26 FERC stated:

[4] Order No. 890 at P 6.

> [a]lthough Order No. 888 has been successful in many important respects, the need for reform of the Order No. 888 *pro forma* OATT has been apparent for some time. In 1999, the Commission held, in adopting Order No. 2000, that the *pro forma* OATT could not fully remedy undue discrimination because transmission providers retained both the incentive and the ability to discriminate against third parties, particularly in areas where the *pro forma* OATT left the transmission provider with significant discretion. The Commission made a similar finding in Order No. 2003, holding that opportunities for undue discrimination continue to exist in areas where the *pro forma* OATT leaves transmission providers with substantial discretion. The NOPR reaffirmed these findings, preliminarily concluding that opportunities for undue discrimination continue to exist in the provision of open access transmission service. The Commission therefore proposed a number of reforms to the *pro forma* OATT to address the opportunities and incentives transmission providers have to unduly discriminate.[5]

EPSA strongly agrees with these statements. While Order No. 888 was a significant leap forward in creating a competitive wholesale electricity market, it was insufficient to fully eliminate discriminatory behavior. At the same time, substantial change does not occur quickly in an industry as complex, capital intensive and critical to the national economy as the electric power industry. Despite the recognized flaws in Order No. 888, it has taken over 10 years to move beyond Order No. 888 to the threshold of the next significant step forward in open access. As a result, EPSA recognizes that the implementation of Order No. 890 represents a significant opportunity to fully achieve the goals of greater transparency and reduce discrimination. EPSA has therefore been actively engaged, on behalf of its members, in all of the NAESB Wholesale Electric Quadrant ("WEQ") subcommittee and Executive Committee ("EC") deliberations on the implementation of Order No. 890 into NAESB standards. Due to its active involvement with these issues, EPSA has identified several important aspects in which the filed NAESB standards fall short of achieving the Commission's

[5] *Id.* at P 26.

Order No. 890 objectives. EPSA hereby submits for the Commission's consideration detailed comments on the proposed NAESB standards, and urges the Commission to give serious consideration to its suggestions and recommendations.

While many of the EPSA comments have been raised at the NAESB subcommittee level and formally submitted for the EC deliberations, it is EPSA's opinion that it is necessary for the Commission to independently evaluate the merits of these arguments. EPSA respectfully submits that the Commission's goals of transparency and elimination of undue discrimination are not universally shared by NAESB member representatives on the subcommittees or the EC, so that stakeholder processes cannot deliver in full the transparency needed for an efficient market. Therefore, EPSA submits that for the standards to meet the Commission's transparency objectives, the proposed tariff amendments need to incorporate the suggestions in these comments. In addition, where the technical expertise of the industry is required for proper implementation, the Commission should provide NAESB with explicit direction on FERC's policy goals and a limited timeframe within which to develop the necessary standards to implement them.

EPSA has also participated in NERC's development of the Modeling Data and Analysis ("MOD") ATC standards' NOPR that was issued concurrently with the NAESB NOPR. EPSA is also submitting comments on the NERC NOPR and we encourage the Commission to concurrently consider the interrelated comments.

II. DISCUSSION

EPSA shares the Commission's assessment that discrimination is still present in the wholesale electricity market and that Order No. 890 was needed to limit discrimination and enhance the efficiency of the market. However, EPSA does not

believe that the standards as proposed by NAESB in the NOPR and as included in its submissions of August 29, 2008, and February 19, 2009, are sufficient to achieve needed transparency and meet the Commission's goals.

EPSA has consistently articulated three major themes throughout the stakeholder process, and in almost all of EPSA's comments on the NAESB standards: lack of transparency, narrow interpretation of the scope of FERC policy, and allowance of overly broad transmission provider discretion. EPSA's comments herein focus on the shortcomings of the proposed standards with respect to these themes; that is, these comments discuss areas where competitive suppliers believe changes are needed for the Commission to accomplish its stated Order No. 890 objectives.

In a separate section of our comments, EPSA will address what we believe are necessary changes to the standards to implement the new Conditional Curtailment Option associated with Long Term Firm transmission service.

A. Lack of Transparency

All marketplaces, including the wholesale electric power market, need a level of transparency to achieve economic and efficiency goals. Adequate transparency helps markets function while also achieving Order No. 890's goal of limiting discrimination. Moreover, as the Commission noted in Order No. 890, transparency adds another tool to the regulatory tool box for aiding the Commission's Office of Enforcement in assessing compliance. Therefore, adequate transparency in the marketplace can be viewed as a threshold condition for a functioning market. Below are areas of the NAESB NOPR that EPSA has found to fall short of that threshold.

1. The ATC Information List

In NAESB's August 29, 2008 filing, reference is made to the ATC Information List. The ATC Information List was designed to supplement the ATCID, CBMID and TRMID documents that were developed as part of the NERC MOD standard development process. The "ID" documents, which pursuant to NERC standards are required to be made available to entities involved in the calculation of ATC, are also, pursuant to NAESB standards, required to be posted on OASIS. However, as discussed below (WEQ 001-13.5), these postings can be subject to redaction by transmission providers. Furthermore, these documents only define processes for calculation of the elements of the ATC calculation. The ATC Information List, on the other hand, is meant to supplement the "ID" postings with data used in the calculation where it was determined in the stakeholder process that the data was not sensitive for reasons of reliability, security or encompassing commercial information. [6]

Despite the benefits it could provide, the ATC Information List was not included in the February 19, 2009 filing because a segment block was exercised in the NAESB

[6] EPSA's experience in attempting to gain transparency for this ATC Information List has been difficult. Early on in the subcommittee processes, EPSA representatives proposed, and the subcommittee initially agreed to develop, an "ATC Information List" ("List"). Recognizing that the NERC MOD standards included a list of all of the information that was being used by entities involved in the calculation of ATC, a draft of the elements of the List was prepared. NERC was asked for, and did provide, an identification of the data elements that they believed should be kept confidential for reliability or security reasons. The NAESB subcommittee initially agreed that they would also identify elements that were commercially sensitive.

However, subcommittee progress on producing the List eventually stopped and the matter was returned to the EC. The EC appointed a Task Force to review the question of the List and report back. The Task Force consisted of one voting representative of each sector, a very different voting structure than is typically present at subcommittee or even EC meetings. The Task Force did ultimately produce a consensus standard, but that standard would have merely identified the elements of the ATC calculation in the List previously developed, and would require identification by transmission providers of whether or not this information was publicly available. EPSA reluctantly supported this standard in an effort to have something move forward, rather than nothing. Unfortunately, even this watered down version failed to pass the EC.

process by the Transmission segment. EPSA feels that this "block" impedes the movement towards greater transparency in the electric power industry. Furthermore, EPSA believes that appropriate transparency could be best achieved by relying on the process documentation captured in the NERC MOD standards (which provides for full posting requirements not subject to redaction unless specific exemption is granted by the Commission), and supplemented by the ATC Information List as originally conceived of by the NAESB BPS/ESS/ITS Subcommittee.

The Commission stated in NERC MOD standards NOPR that:

> [t]he Commission is concerned that the proposed Reliability Standards potentially restrict the disclosure of the available transfer capability, capacity benefit margin, and transmission reliability margin implementation documents.

The Commission further recommended that NERC perform compliance audits of transmission providers' MOD standard implementation documents to help ensure greater marketplace transparency. The Commission is correct in requiring that these documents be transparent and available on a broad basis to all market participants. EPSA attempted through the NAESB process to achieve similar transparency for data items that play a part in the ATC calculation process. Unfortunately, as discussed above, these attempts failed as a result of a segment block by the transmission providers.

Therefore, we urge the Commission to consider the relative merits of meeting its transparency goals through utilizing the NERC audit process versus utilizing tariff changes driven by NAESB standards that incorporate, or even expand upon, the efforts previously attempted. Monitoring compliance with such tariff changes could then be

accomplished both through FERC audits and through customer complaints where the marketplace observes that transparency is being limited.

2. Load Forecast Standard

EPSA also was disappointed by how the NAESB process dealt with the Commission's orders on Load Forecasting. As it stands, the proposed NAESB standard for load forecasts does not provide adequate transparency and falls substantially short of the Commission's transparency objectives regarding load forecast assumptions (WEQ-001-17.6.5). The Commission clarified in Order No. 890A that:

> [t]he Commission also required transmission providers to post their underlying load forecast assumptions.[7]

The Commission further clarified this requirement by stating:

> [i]n response to Constellation, we clarify that underlying load forecast assumptions should include economic and weather-related assumptions.[8]

and,

> [w]ith regard to posting of load forecasts and actual daily peak load, we conclude that such postings are necessary to provide transparency for transmission customers. . . . While we do not intend to penalize transmission providers for failing to account for unforeseen circumstances, we retain our ability to investigate any allegations of manipulation of load forecasts, as this could be used as a means of inappropriately denying requested transmission service.

In the NOPR, however, this FERC guidance was distilled into standard WEQ-001-17.6.5, which was derived from a motion passed by the joint BPS/ESS/ITS Subcommittee at its February 21, 2008 meeting. As documented in the subcommittee minutes, the motion stated that:

> [t]he requirements for load forecast assumptions shall include a descriptive statement which includes the load forecaster (methodology),

[7] Order No. 890-A, at P 161.

[8] Order No. 890-A at P 143.

> weather service (for example temperature, humidity, etc.), actual load assumptions (for example system wide load, native load, historical loads, existing contracts, etc.) **rather than posting specific weather values used in the specific load forecast.** (emphasis added).

EPSA questions whether a document stating merely that temperature, humidity and wind speed are used as underlying load forecast assumptions adds any useful information and therefore any enhanced transparency to the load forecasting process. Only when the assumed values that led to any particular load forecast are known, has useful information been made transparent. Therefore the document that would be produced as a result of this NAESB standard provides little help to competitive suppliers in understanding transmission providers' forecasts. It is also questionable whether such a document would assist Commission investigations of manipulation of load forecasts and the resulting ATC calculations. For example, based on the underlying load forecast assumptions to be provided pursuant to this standard, how would Commission staff determine whether a particular erroneous load forecast resulted from "unforeseen circumstances," such as temperatures higher than forecast, if the assumed temperature used in preparation of the forecast is not disclosed?

This standard, embodied in WEQ-001-17.2.1 for transmission providers, and WEQ-001-17.4.1 for ISOs and RTOs, further limits transparency enhancement by requiring only the posting of a single number for peak loads, even where a transmission provider's internal processes produce multiple (in many cases hourly) peak forecasts.

3. Grandfathered Agreements (WEQ 001-19)

Grandfathered agreements represent one component of what NERC has defined as an Existing Transmission Commitments ("ETC") in its proposed MOD standards. To market participants, including competitive suppliers, ETCs represent a reduction in ATC

based on an allocation of transmission capacity that pre-dates the open access environment, and may in some instances represent an on-going commitment of that transmission capability for many more years into the future. Therefore, many accommodations are made by transmission providers to "fit" such ETCs into the current structure of OASIS reservations and ATC calculations. Consequently, there are situations where:

- The appropriate amount of TTC/ATC/AFC on the appropriate transmission interfaces has been removed from the market;
- Roll-over rights have been granted if appropriate;
- Customers are provided with the right to re-direct the service if appropriate with appropriate adjustments being made to the ATC postings;
- Service is classified as firm or non-firm as appropriate, although those terms may not appear in the contracts or, if they do, their meaning may be different than in current industry usage; and,
- The transmission provider, perhaps a fully integrated utility when the contract was negotiated, may have certain obligations to backup the transmission service, etc.

Despite the possibility of several non-standard provisions in a number of existing contracts, the proposed NAESB standard 001-19.1 states only that:

> The transmission provider shall post on OASIS the aggregate MW value for the grandfathered agreements component of ETC associated with the ATC value posted on OASIS.

EPSA believes this standard insufficiently promotes transparency. There are a number of instances in which this standard could result in the transmission provider not reporting basic information market participants need to function effectively and efficiently in the market. For example, if a competitive supplier is trying to understand the ATC calculation that may underlie a commitment to a transmission purchase over multiple years in support of a purchase or sale of energy over that multi-year time

period, and a single aggregate MW value for all grandfathered agreements represents the total information that will be made available, there is insufficient transparency. Additionally, if the Commission wants to verify that there is no undue discrimination resulting from implementation of these grandfathered contracts on OASIS even though some of the contracts might have involved an affiliate of the transmission provider as a party to the contract, and a single aggregate MW value for all grandfathered agreements represents the total information that will be made available, there is insufficient transparency.

EPSA recognizes that protecting the confidentiality of the commercially sensitive terms of grandfathered agreements is important. However, the confidentiality protection provided to these contracts need not be any different than is provided to an analogous post Order No. 888 contract. For each contract, the standard should require information concerning the duration, MW capacity and the associated point of receipt/point of delivery and source/sink combinations, the resulting allocation of the contract provisions to specific transmission interfaces and the resulting calculation of the ATC/AFC associated with each contract and thus removed from the marketplace as a result of each specific grandfathered agreement. This would allow customers and Commission compliance staff to assess the appropriateness of assessments made and the resulting sensitivity of ATC forecasts to these assessments.

4. Other Services

Other Services represents an additional component of the NERC MOD standard's ETC calculation. Other Services is another deduction from the ATC that NERC in MOD 28 and 29 defines as,

> the firm or non-firm capacity reserved for any other service(s), contract(s), or agreement(s) not specified above using firm or non-firm transmission service, including any other firm or non-firm adjustments to reflect impacts from other ATC Paths of the transmission service provider as specified in the ATCID.

The ESS/ITS Subcommittee proposed, and the EC agreed, that no additional standards were required with respect to "Other Services" since the ATC Information Link standard (WEQ 001-13.1.5) already requires posting of NERC's ATCID. However, this standard includes a provision that:

> [t]he posting of this information [which includes the ATCID] would be subject to the Transmission provider's ability to redact certain provisions due to market, security or reliability sensitivity concerns.

As discussed further in the next section, "market, security or reliability sensitivity concerns" has not been defined in the NAESB standard thus leaving the transmission provider with virtually unfettered rights to redact information related to Other Services.

B. Narrow Interpretation of the Scope of FERC Policy

There are a number of other instances in the proposed NAESB standards where the standards have taken, in EPSA's view, an inappropriately narrow interpretation of the intent of the Commission's policy with respect to posting requirements. EPSA acknowledges that a minimal amount of transparency has been provided through the posting requirements, but has found that where options exist on specifying the nature of the information that will be provided, a "less is better" approach was adopted.

Consequently, both the narratives that detail ATC changes and certain proposed load forecast components are not as transparent as EPSA believes they should be and that it believes the Commission meant them to be.

1. Narratives related to ATC Changes (WEQ 001-15)

This standard is responsive to Order No. 890's directive to provide a narrative explanation whenever an ATC value changes as a result of a change in the related TTC of 10% or greater. While the explicit direction contained in the Order has been met, all attempts to get a standard specific enough to meet the underlying goal of the Commission in Order No. 890 were foiled by a rigid reading of the Commission's order and a reluctance on the part of the subcommittee drafting team to go outside this conservative approach to drafting the standard. Below are several examples of when this limited interpretation impeded the subcommittee from drafting adequate transparency safeguards into the proposed standard (001-15.1.1):

- Initially, when determining a timeline for the posting of this information, the subcommittee required a posting within 24 hours. This was later relaxed to 5 business days, *i.e*. in some circumstances more than a week.

- The standard also requires no posting by transmission provider B where the contingency has occurred on the system of Transmission provider A, even though there is an ATC change on transmission provider B's system. This is despite the fact that transmission provider B is aware of the circumstances given that he has posted a change in ATC.

- The standard provides no clear linkage between the duration of the contingency that has caused the reduction in TTC and the resulting changes in ATC/AFC. The system configuration could be such that the ATC may return to "normal" (the issue of primary concern to the marketplace) prior to the elimination of the contingency. However, that could not be determined from the annotation to be provided since, (a) 001-15.2.2 requires that the "Stop Time" indicated in the posting is to relate only to the anticipated end of the reason for the

reduction in TTC, if known, at the time of the posting; and (b) 001-15.1.3 precludes the Transmission provider from updating this information as additional information is acquired.

The limitations inherent in the narrow scope reflected in this proposed standard can be illustrated by the following hypothetical situation:

- Assume an outage occurs on the system of transmission provider A. This results in a 10% or greater TTC change and a resulting ATC change on some paths in transmission provider A's system and some on the system of transmission provider B.
- A transmission customer of transmission provider B will not see any posted narratives.
- A transmission customer of transmission provider A will see a posting, up to five business days later, that identifies the path that is changed and all affected paths. The posting will provide a time that the outage is expected to end, if known. However, the fact that some of these paths are affected for less than the full period of the outage will not be shown. In addition, if transmission provider A elects to update the outage information when better information is available (although they are not mandated to do so), there will be no linkage between this update and the original posting.

EPSA submits that the above examples and scenarios provide the Commission with many instances of how adequate transparency will be frustrated by the narrow reading of its orders. In addition, it demonstrates how, as a consequence, considerably less information will be provided to the market, and how it will be provided in a less timely manner.

2. Load Forecast Standard (WEQ-001-17.6.5)

As discussed above, at the joint BPS/ESS/ITS of February 21, 2008 meeting, there was considerable discussion on what peak load forecast should be posted in response to the direction contained in Order No. 890. Amongst participants in the meeting, it was understood that in order to carry out their ATC calculations, some transmission providers produced multiple independent hourly load forecasts, some

produced only a forecast of the daily peak, and some produced a daily peak load forecast, but then used mathematical techniques, such as a “typical” load shape, to produce 24 hourly forecasts each of which was dependent on the daily peak. However, the subcommittee recommended, and the EC approved, a standard that reflected the lowest common denominator by requiring only the posting of a single daily forecast value even if multiple values are generated and used in the calculation of ATC values.

C. Allowance of Overly Broad Transmission provider Discretion

The implementation of wholesale transmission access, which is the framework within which customers are able to purchase transmission services, is dependent on all of FERC policy directives and regulations, industry (NERC) Reliability Standards and (NAESB) Business Practice Standards and ultimately transmission provider business practices. For an efficient marketplace, particularly where participants such as EPSA members operate in multiple jurisdictions and frequently have to navigate several transmission systems in order to complete a transaction, consistent information provided in a consistent manner from different transmission providers is critical. As a result, transmission customers generally engage in the standards development process in order to achieve standards that have consistent rules among transmission providers. However, in developing NAESB’s proposed standards contained in this NOPR, EPSA found that in many cases consensus was achieved only when important additions to the standards were not included. The lack of a fully developed standard has typically left transmission providers in these instances with significant discretion in complying with the proposed standard. Several of those instances are detailed below.

1. ATC Information Link 001-13.5

This standard identifies ATC-related information, including the NERC-defined ATCID, TRMID and CBMID, for posting on the OASIS. However, the standard also includes the statement that the posting of information on the ATC Information Link is "subject to the transmission provider's ability to redact certain provisions due to market, security or reliability sensitivity concerns." In addition, the standard provides no definition or guidance with respect to what constitutes "market, security or reliability sensitivity." Therefore the information subject to redaction, and as a result, the information actually posted on the ATC Information Link, will be subject to substantial transmission provider discretion.

In addition to EPSA's concerns about the possible redaction of important information from the ATC Information Link, EPSA requests that the Commission make explicit that nothing in these NAESB standards limits customers' ability to specifically request ATC-related information subject to appropriate confidentiality protections and CEII requirements, as specified in Order No. 890A, at paragraph 148 as follows:

> In Order No. 890, the Commission required transmission providers to make available, upon request, all data used to calculate ATC, TTC, CBM and TRM for any constrained posted path.[footnote removed] We believe that this adequately addresses Constellation's request for access to modeling data used by the transmission provider. Specifically, we expect transmission providers to make available, upon request and subject to appropriate confidentiality protections and CEII requirements, the following modeling data: (1) load flow base cases and generation dispatch methodology; (2) contingency, subsystem, monitoring, change files and accompanying auxiliary files; (3) transient and dynamic stability simulation data and reports on flowgates which are not thermally limited; (4) list of transactions used to update the base case for transmission service request study; (5) special protection systems and operating guides, and specific description as to how they are modeled; (6) model configuration settings; (7) dates and capacities of new and retiring generation; (8) new and retired generation included in the model for future years; (9) production cost models (including assumptions, settings, study results, input data, etc.), subject to reasonable and applicable generator confidentiality limitations; (10) searchable

transmission maps, including PowerWorld or PSSE diagrams; (11) OASIS names to Common Names table and PTI bus numbers; and, (12) flowgate and interface limits including limit category (thermal, steady state or transient, voltage or angular). We decline, however, to require the transmission provider to post this information on OASIS, as Constellation suggests. We conclude that making this information available on request provides sufficient transparency for customers without unduly burdening the transmission provider.

2. Counterflows

In paragraph 293 of Order No. 890 FERC stated that:

[c]ounterflows are included in the list of assumptions that public utilities, working through NERC, are required to make consistent.[9]

However, the current versions of the NERC and NAESB standards with respect to counterflows specify only that transmission service providers:

- Prepare and keep current an ATCID (NERC MOD-001 R3) which includes a description of the manner in which the transmission service provider will account for counterflows (NERC MOD-001 R3.2), and,
- Post the ATCID (NAESB WEQ 001-13.5), with the additional proviso that "the posting of this information is subject to the transmission provider's ability to redact certain provisions . . . ."

The sum response therefore to FERC's Order to make the treatment of counterflows consistent is that a methodology will be described and posted if the Transmission provider determines that it does not meet their criteria for redaction. EPSA asserts that this treatment results in a "fill-in-the-blank" standard. Thus, the proposed standard will result in different calculation methodologies by different transmission providers, each of whom will have unfettered discretion with respect to the posting obligations.

3. Load Forecast Standard (WEQ-001-17.2)

Summarized above in Section B2 was the discussion the subcommittee had with respect to whether the load forecast to be published should include one value per day,

[9] Order No. 890 at P 293.

or multiple values if the transmission provider produced multiple values. When this standard was under development, there was also discussion of standardizing the time at which this posting would occur. One proposal was to specify a "Close of Business" requirement. However, the subcommittee could not reach an agreement. As a result, the standard is silent on this issue and, by default, each transmission provider will post this information at a time subject to their discretion.

D. Conditional Firm

EPSA strongly supports the provision of Conditional Firm as an appropriate and beneficial change to the existing long term firm product. As FERC noted at paragraph 925 of Order No. 890, the absence of such a service means that for a customer wanting to make a multi-year commitment for Long-Term Firm service:

> a request can be denied because firm service is unavailable in a very few hours of the year. For a customer who needs long-term point-to-point service to support a long-term transaction, this leaves the customer in the position of trying to cobble together a collection of shorter-term requests to effectuate its transaction.[10]

The proposed NAESB standard on Conditional Firm Service appropriately addresses many aspects of the implementation of this service. However, in a few very significant ways, it remains deficient. The most significant of these is an issue of lack of transparency.

In assessing the appropriateness of the provisions of the standard, it is important to remember that, by definition, the Conditional Firm customer is really a Long-Term Firm customer. Conditional Firm is only offered when a customer has requested, and is prepared to pay for, Long-Term Firm service. The customer is being counter-offered an

[10] Order No. 890 at P 925.

inferior service as the best available, although it is highly likely that the price of this service is the same as the price for Long-Term Firm service. Therefore, in EPSA's view, it is incumbent on the transmission provider to offer a service that is as close as possible to firm service and to mitigate as much as possible the inferior conditions that are offered due to unavailability of traditional Long-Term Firm service.

In this regard, there is one substantial element of a lack of transparency inherent in the standard as drafted. Given that the customer's request for Long-Term Firm service has been encumbered with a Conditional Curtailment Option, there should be a maximum amount of information made available to the customer to assist in an on-going evaluation of the level of firmness of the transmission service so as to inform any decisions the customer must make or actions that the customer might choose to take to protect the firmness of the related energy deliveries. Therefore, where the curtailment is based on pre-identified system conditions, the customer should be advised when any of the conditions have been triggered, even though the triggering of a single condition may not result in the service being reduced to non-firm priority. Specifically, EPSA, supported by the American Wind Energy Associations (AWEA), proposed during the standards' development that the following language be included:

> [t]he transmission provider will post on OASIS, information to indicate when any system condition contained within any CCO Reservation that is subject to the System-Conditions Criteria, is in effect which may, alone or in combination with other identified conditions, result in the reduced curtailment priority (that is to non-firm status). Such posting will be made as soon as practicable but not later than 3 hours after the TP becomes aware of the occurrence of the condition.

While this language was opposed by the transmission providers at the subcommittee and ultimately rejected by the EC, there was never an indication that it

was not feasible. In fact, the information requested is information that the transmission providers would have to be monitoring in order to implement the contract. The only incremental obligation would be to provide additional transparency by posting the information. It is EPSA's position that such a requirement should be mandated in order to provide maximum opportunity for customers to mitigate the fact that their Long-Term Firm service is subject at times to an inferior priority. This increased transparency would increase the value of the service.

The draft of this standard originally recommended by the subcommittee to the EC included a prohibition on resales of Conditional Firm service to which EPSA had objected during the subcommittee deliberations. Prior to the EC review of the standard, the Commission issued Order No. 676-C, clarifying that such a prohibition was not allowed. The subcommittee eliminated most aspects of the prohibition but retained the following language in Section WEQ 001-11.3.2:

> With the exception of reservations subject to a Conditional Curtailment Option, the Reseller shall have the right to aggregate multiple reservations into a single Resale provided that each reservation being aggregated is of exactly the same service attribute, priority, product and point of receipt/point of delivery. Long-term Firm Point-to-Point reservations or any other reservations subject to the terms of a Conditional Curtailment Option may not be aggregated to support a Resale.

EPSA submits that there is no rationale for treatment of resales of Conditional Firm service to be any different than the treatment of resales of other Long-Term Firm service.

As part of its coordination with NERC, the subcommittee discussed with NERC how to include Conditional Firm service in the calculation of ATC. There was a consensus that at any point in time the service was either firm or non-firm, and that its

status should guide how the service was accounted for in the ATC calculation. However, early drafts of the NAESB standard only required documentation of the transmission provider's methodology. The final version of the standard even omitted this obligation, such that this element is wholly a matter of transmission provider discretion. EPSA submits that this discretion is inappropriate.

One other aspect of the Conditional Firm service that remains to be addressed is the incorporation of FERC's direction to provide priority to Conditional Firm customers when additional firm capability becomes available. Standard 001-21.1.6 deals with the circumstance when short term firm capability becomes available. However, debate at the meeting revealed some differences in interpretation of the standard. Therefore, EPSA suggests that standard 001-21.1.6 be amended with the italicized additions:

> If short term firm capability that would alleviate the constraint(s) associated with a CCO Reservation becomes available, the transmission provider shall ensure the CCO Reservation is not subject to curtailment at the Conditional Curtailment Priority Level *and the firm ATC is appropriately decremented as a result of the CCO reservation being provided with short-term firm transmission capability* prior to offering *any additional* short-term firm capability as Short-Term Firm Point-to-Point Transmission Service to other Transmission Customers.

EPSA agreed with the subcommittee recommendation to defer discussions of the treatment of Conditional Firm when additional long term firm capability becomes available. We agreed in an effort to move expeditiously to make Conditional Firm service available. However, it remains an important issue to resolve and we request that FERC indicate to NAESB its desire to have this incorporated in the standard quickly. In the interim, its absence from the standard suggests that it would be treated as a matter of Transmission provider discretion.

III. CONLCUSION

EPSA has identified three systematic underlying problems with NAESB's proposed standards. The first is that the standards fail to promote transparency in the market place. The Commission has made clear in several instances that transparency is integral to an efficient and effective market place. However, in many instances, the NAESB standards read as though they have willfully adopted standards that inappropriately limit the information to be shared. Examples of this include the elimination of the ATC information list, and the posting of information so general as to be unhelpful in the standards related to Load Forecast and Grandfathered Agreements. Second, the standards reflect a deliberately narrow reading of FERC orders that is inconsistent with the underlying goals of those orders. EPSA was involved in the debate of several standards in which greater information disclosure was suggested. Consistently, these suggestions were ignored though they would have allowed the standards to better meet the Commission's policy goals. Third, the standards persistently include language that allows transmission providers discretion on what manner they will provide the information to be reported, on when to provide such information, and in some cases transmission providers even have discretion to decide whether to provide certain non-proprietary data at all. Overall, NAESB's proposed standards fall short of meeting the requirements set forth by the Commission in Order Nos. 890, 890-A and 890-B, and EPSA urges the Commission to require modification of the proposed tariff changes as discussed herein.

Respectfully submitted,

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Dated: May 26, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the comments via email upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., May 26, 2009.

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Nancy Bagot, VP of Reg. Policy