

flowing day recall standards. Five comments⁵ and one reply comment⁶ were filed. The comments generally support adoption of the standards, although some comments raise questions about the timing of implementation.

Discussion

7. The Commission is incorporating by reference Version 1.6 of the WGQ's consensus standards and the standards adopted for partial day recalls.⁷ Pipelines will be required to file tariff sheets to reflect the changed standards by May 1, 2003, with an effective date of July 1, 2003, which is the first day of the month following 90 days after the issuance of this rule.

8. The adoption of Version 1.6 of the WGQ standards⁸ will help continue the process of implementing Order No. 637 and will update and improve the current standards.⁹ Adoption of the partial day recall standards¹⁰ will provide shippers with enhanced flexibility to recall capacity, while ensuring that replacement shippers receive notice sufficient to allow them to reschedule their capacity. The partial day recall standards also address the method for determining how capacity will be allocated among releasing and replacement shippers when capacity is recalled during the gas day. Among the most notable of these standards are: A revision to the capacity release timeline to permit prearranged non-biddable

releases on non-Business as well as Business days (Standard 5.3.2); a revision to the Commission's interim timeline for recall transactions to permit recalls at any of the four nomination opportunities, while still providing sufficient notice to replacement shippers to enable them to reschedule their capacity (Standard 5.3.z1); the adoption of procedures governing notice to replacement shippers (Standards 5.3.z2 through 5.3.z4); and the use of elapsed prorata capacity as the allocation method for flowing day recalls, unless a different method is necessary to reflect the nature of the pipeline's tariff, services, or operational characteristics (Standard 5.3.z13).¹¹

9. The WGQ approved the standards under its consensus procedures.¹² As the Commission found in Order No. 587, 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 standards organizations, like the WGQ, as means to carry out policy objectives or activities.¹³

10. The comments addressing various aspects of the standards will be addressed below.

A. Implementation Date

11. The Commission had proposed that pipelines implement the new standards three months after issuance of a final rule. INGAA, Duke, Dominion, and Williston maintain that the Commission should establish the implementation date on the first day of the month, 90 days after the issuance of the rule. First-of-the-month

implementation, they maintain, will provide for a more efficient transition for accounting and nomination systems and avoids middle-of-the-month billing period changes. The Commission agrees, and is requiring implementation on the first of the month, following 90 days after issuance of this final rule.

B. Implementation Date for Partial Day Recall Standards

12. INGAA, Duke, and Williston argue that the Commission should delay implementation of the partial day recall standards until these standards are formally adopted in Version 1.7 of the WGQ standards. INGAA, Duke, and Williston all maintain that the standards already adopted are not complete, citing to certain examples of using elapsed prorated capacity that have not yet been approved by the NAESB membership. They argue that the Commission should not adopt these standards until they are complete. These three commenters also raise procedural issues with respect to adoption of the standards. INGAA maintains that the partial day recall standards are not numbered and could confuse pipeline customers who rely on the NAESB standards numbering system and implementation guide. Duke and Williston argue that without officially assigned numbers, pipelines will not be able to incorporate the standards by reference in their tariffs. Williston maintains that since the partial day recall standards are not published, parties who are not members of NAESB will not be able to obtain copies.

13. KeySpan opposes any delay in implementing the partial day recall standards. It argues procedural problems, such as the absence of officially assigned numbers, should not deprive shippers of the benefits of using partial day recalls. It further argues that all NAESB standards evolve over time, and that is not a justification for delaying implementation of these standards.

14. The Commission will not delay implementation of the partial day recall standards. NAESB developed these standards as a result of the Commission's March 12, 2002, determination in Order No. 587-N that permitting such recalls is necessary to improve the capacity release marketplace by providing releasing shippers with the flexibility to structure capacity release transactions that best fit their business needs, by providing greater incentives for releasing shippers to release capacity, and by fostering greater competition for pipeline capacity by creating parity between scheduling of capacity release transactions and pipeline interruptible

⁵ Those filing comments are: American Gas Association (AGA), Dominion Resources, Inc. (Dominion), Duke Energy Gas Transmission Corporation (Duke), Interstate Natural Gas Association of America (INGAA), Williston Basin Interstate Pipeline Company (Williston).

⁶ The reply comment was filed by KeySpan Delivery Companies.

⁷ Pursuant to the regulations regarding incorporation by reference, copies of Version 1.6 and the partial day recall standards are available from NAESB. 5 U.S.C. 552(a)(1); 1 CFR 51 (2001).

⁸ In Version 1.6, the WGQ made the following changes to its standards. It revised Standards 1.3.63, 4.3.4, 4.3.6, 4.3.8, 4.3.10, 4.3.15, 4.3.21, 4.3.23, 4.3.61, 4.3.70, and 4.3.83, and Data Sets 1.4.6, 5.4.1 through 5.4.4, 5.4.7, 5.4.8, 5.4.9, 5.4.13, 5.4.14, 5.4.15, 5.4.18, and 5.4.19. It added Principle 4.1.39, Standard 4.3.88, and Data Sets 5.4.20, 5.4.21, and 5.4.22. It deleted Principles 4.1.1 and 4.1.11.

⁹ The Commission also is incorporating by reference Standards 2.3.29 and 2.3.30 (dealing with operational balancing agreements and imbalance netting and trading, respectively) which in previous versions, the Commission had not incorporated because the standards conflicted with the Commission's regulations in these areas. 18 CFR 284.12(b)(2)(i)&(ii). The WGQ has amended these standards so they no longer conflict with the Commission regulations.

¹⁰ In the partial day recall standards, the WGQ made the following changes to its standards. It revised Standards 5.3.2, 5.3.7, 5.3.41, and 5.3.42, and Data Sets 1.4.4, 5.4.1, 5.4.3, 5.4.4, 5.4.7, and 5.4.9. It added Principles 5.1.z1, 5.1.z2, and 5.1.z3, Definition 5.2.z1, and Standards 5.3.z1 through 5.3.z15. It deleted Standard 5.3.6.

¹¹ Elapsed prorata capacity means the portion of the capacity that would have theoretically been available for use prior to the effective time of the intraday recall based on a cumulative uniform hourly use of the capacity. Definition 5.2.z1.

¹² This process first requires a super-majority vote of 17 out of 25 members of the WGQ's Executive Committee with support from at least two members from each of the five industry segments—interstate pipelines, local distribution companies, gas producers, end-users, and services (including marketers and computer service providers). For final approval, 67% of the WGQ's general membership must ratify the standards.

¹³ Pub L. 104-113, § 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997).