

incorporation by reference pursuant to these guidelines.

32. Dominion argues that the WGQ standards should not be found reasonably available, because they are available only to non-members paying "required, *significant* fees" (emphasis added). Neither the Freedom of Information Act, nor the regulations, require that standards be available at no charge. In fact, standards incorporated by reference are exempt from the requirement that any agency provide copies of documents according to its fee schedule.³⁰ Moreover, Dominion's use of the adjective "significant" is inappropriate hyperbole. NAESB charges non-members an everyday low price of only \$25 to obtain the booklet including all the business practice standards.³¹ Computer aficionados can obtain the booklet containing the datasets for an additional \$25, and true computerphiles can obtain the SINGLE-CD ROM collection of the entire set of standards, including the Electronic Data Interchange requirements, at the new substantially reduced price of \$100.³² If Dominion truly considers these prices "significant,"³³ it can view copies of the standards at the Commission at no charge. Thus, by any stretch of language, the WGQ standards are "reasonably available to the class of persons affected by the publication."³⁴

33. Dominion further contends that the WGQ standards do not meet the requirement that the language incorporating the standards be as precise and complete as possible and that each incorporation by reference shall include an identification and subject description of the matter incorporated, in terms as precise and useful as practicable within the limits of reasonable brevity.³⁵ Dominion maintains that the incorporation by

reference does not meet these criteria because the Commission has not sufficiently identified which standards have changed when the WGQ publishes a new edition of the standards. Dominion asserts, for example, that in Version 1.5 of the standards, the WGQ added the term "Business Day" to the capacity release standards, but that this significant change was not highlighted by the Commission. Dominion further asserts that the Natural Gas Act requirements go beyond those of the Federal Register because they require the Commission to provide notice of the filing of new rate schedules. Dominion contends that the Commission should not adopt Version 1.6 of the standards until NAESB refiles the standards with "redlined" sheets showing all changes from the previous version.

34. The Federal Register regulations do not require the provision of notice of revised or modified standards, only that the incorporation by reference indicate the material to be incorporated with specificity. The regulations provide only that "the language incorporating a publication by reference shall be as precise and complete as possible;" and states "language incorporating a publication by reference is precise and complete if it * * * uses the words "incorporated by reference;" * * * states the title, date, edition, author, publisher, and identification number of the publication; * * * informs the user that the incorporated publication is a requirement; * * * makes an official showing that the publication is in fact available by stating where and how copies may be examined and readily obtained with maximum convenience to the user; and * * * refers to 5 U.S.C. 552(a).³⁶ The Commission regulations comply with these requirements.

35. Further, although not required by the regulations, the Commission endeavors in each NOPR to provide a listing of all the standards that have been revised, added, and deleted.³⁷ The WGQ too includes in each Standards publication a Version Cross-Reference listing for each standard, the Version in which it was adopted, revised, and interpreted. In the WGQ's filings with the Commission, the WGQ also includes a List of New Standards, Standards Modifications, and Interpretations for the new Version.³⁸ In fact, with respect to the change to Business Day in

Standard 5.3.2 of Version 1.5 about which Dominion complains, the Commission not only included Standard 5.3.2 among the list of standards revised,³⁹ but specifically referenced the change to "Business Day" twice in the text of the Preamble.⁴⁰ Thus, Dominion and all other users of the standards have sufficient notice of revisions of changes to the standards.

36. Dominion further argues the Commission's incorporation by reference is at odds with the requirement of the Natural Gas Act to provide notice of filings by natural gas companies. The Commission has the ability to act through notice and comment rulemaking proceedings that comply with the Administrative Procedure Act.⁴¹ Here, the Commission complied with the requirements of the Administrative Procedure Act, the Freedom of Information Act, and the National Technology Transfer and Advancement Act in incorporating the WGQ standards by reference. The listing of added, revised, and deleted standards in the Preamble to the NOPR was sufficient to alert parties to substance of the proposed rule and the subjects and issues involved.⁴²

37. The requirement for providing notice of a filing in section 4 of the NGA applies only to filings by natural gas companies, and since NAESB is not a natural gas company, the Commission cannot compel it to file its standards with the Commission or provide a specific form of public notice. However, even if the notice requirement did apply, the statute requires only notice of the filing of new rate schedules, not detailed descriptions of all changes to prior rate schedules or the redlined comparisons requested by Dominion.⁴³ The Commission's disclosure of the added, modified, or deleted standards is sufficient notice for parties to review the standards. Although the Commission, in addition, often tries to highlight what it thinks are important changes to the

³⁰ 5 U.S.C. 553(a)(3).

³¹ NAESB Order Form, <http://www.naesb.org/pdf/ordrform.pdf>. (Feb. 13, 2003). If the Commission were to charge its standard rate for copying of \$.20/page, the cost for Version 1.6 would be virtually identical to NAESB's charge, \$24 for the booklet (120 pages times \$.20). 18 CFR 388.109.

³² The paper-only version of the standards, including the EDI requirements, used to cost \$2000. See Order No. 587-A, 61 FR, at 55213, 77 FERC, at 61,232.

³³ Although \$25 would appear eminently affordable for a company that reported operating revenue of \$2.545 billion for the three month period ending September 30, 2002. Dominion Resources, Inc. Form 10-Q (for the quarterly period ended September 30, 2002). <http://www.sec.gov/Archives/edgar/data/715957/000071595702000143/0000715957-02-000143-index.htm>.

³⁴ Given the class of persons affected by these standards, Dominion's complaint could probably be dismissed under the doctrine of *de minimis* non curat lex.

³⁵ Dominion cites to 1 CFR 51.6. But this section does not appear in the 2002 edition of the CFR.

³⁶ 1 CFR 51.9(a)(b).

³⁷ See Notice of Proposed Rulemaking, 67 FR 72870, IV FERC Stats. & Regs. Proposed Regulations ¶ 32.566, at P 8 n.5 (Proposed adoption of Version 1.6).

³⁸ See Report of the North American Energy Standards Board, Docket No. RM96-1 (filed 10/7/2002).

³⁹ See Notice of Proposed Rulemaking, 67 FR 44 (Jan. 2, 2002), IV FERC Stats. & Regs. Proposed Regulations ¶ 32.557 (Dec. 20, 2001), at P 8 n.7 (Proposed adoption of Version 1.5).

⁴⁰ Notice of Proposed Rulemaking, 67 FR 44, IV FERC Stats. & Regs. Proposed Regulations ¶ 32.557, at P 15, 16.

⁴¹ *Wisconsin Gas Co. v. FERC*, 770 F.2d 1144, 1167 (DC Cir. 1985).

⁴² 5 U.S.C. 553(b)(3).

⁴³ The requirement to file redlined comparisons, cited by Dominion, is not a statutory requirement under the NGA, but is a Commission regulatory requirement applying only to tariff filings by natural gas companies. 18 CFR 154.201(a). Since NAESB is not a natural gas company and is not making a tariff filing, this regulation would not apply to it, even if the notice requirements of section 4 of the NGA were deemed to apply in this situation.