

128 FERC ¶ 61,263
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 38

(Docket No. RM05-5-017)

Standards for Business Practices and
Communication Protocols for Public Utilities

(Issued September 17, 2009)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to incorporate by reference in its regulations at 18 CFR 38.2 business practice standards adopted by the Wholesale Electric Quadrant of the North American Energy Standards Board (NAESB) to categorize various demand response products and services and to support the measurement and verification of these products and services in wholesale electric energy markets.

DATES: Comments on the proposed rule are due [insert date 30 days after publication in the **FEDERAL REGISTER**].

ADDRESSES: You may submit comments identified by Docket No. RM05-5-017, by one of the following methods:

- Agency Web Site: <http://www.ferc.gov>. Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures Section of the preamble.

- Mail: Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE, Washington, DC 20426. Please refer to the Comment Procedures Section of the preamble for additional information on how to file paper comments.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

128 FERC ¶ 61,263
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Standards for Business Practices and
Communication Protocols for Public Utilities

Docket No. RM05-5-017

NOTICE OF PROPOSED RULEMAKING

(Issued September 17, 2009)

1. In this Notice of Proposed Rulemaking (NOPR), the Federal Energy Regulatory Commission (Commission) proposes to amend its regulations under the Federal Power Act¹ to incorporate by reference business practice standards adopted by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB) to categorize various demand response products and services and to support the measurement and verification of these products and services in wholesale electric energy markets.

I. Background

2. NAESB is a non-profit standards development organization that serves as an industry forum for the development of business practice standards. These standards promote a seamless marketplace for wholesale and retail natural gas and electricity.² Since 1995, NAESB and its predecessor, the Gas Industry Standards Board, have

¹ 16 U.S.C. 791a, et seq.

² See Standards for Business Practices and Communication Protocols for Public Utilities, Final Rule, FERC Stats. & Regs. ¶ 31,274, at P 2 (2008).

been accredited members of the American National Standards Institute (ANSI), complying with ANSI's requirements that its standards reflect a consensus of the affected industries.³

3. NAESB's standards include business practices that streamline the transactional processes of the natural gas and electric industries, as well as communication protocols and related standards designed to improve the efficiency of communication within each industry. NAESB supports all four quadrants of the gas and electric industries – wholesale gas, wholesale electric, retail gas, and retail electric. All participants in the gas and electric industries are eligible to join NAESB and participate in standards development.⁴

4. Wholesale electric industry business practice standards are developed by the WEQ (Wholesale Electric Quadrant) of NAESB. To become a WEQ standard, a consensus of six industry segments, transmission, generation, marketer/brokers, distribution/load serving entities, end users, and independent grid operators/planners, must approve the standard. Under the WEQ process, for a standard to be approved, it 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 of each of the six industry segments. For final approval, 67 percent of the WEQ's general membership must

³ Id.

⁴ Id. P 3.

ratify the standards.⁵ In a series of Orders,⁶ the Commission has incorporated certain of NAESB's standards into its regulations. These standards include standards for business practices as well as standards and protocols for electronic communication, and business practice standards related to reliability standards promulgated by NERC and approved by the Commission.

5. On April 17, 2009, after two years of development, NAESB reported to the Commission that, on March 16, 2009, it adopted its initial set of business practice standards for the measurement and verification of demand response products and services (NAESB Phase I M&V Standards).⁷ NAESB states that these initial standards will need to be followed by the development of more detailed technical standards for the measurement and verification of demand response products and services in independent system operator/regional transmission organization (ISO/RTO) footprint areas. NAESB states that its Demand Side Management-Energy

⁵ Standards for Business Practices and Communication Protocols for Public Utilities, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,582, at P 13 (2005); Standards for Business Practices of Interstate Natural Gas Pipelines, Final Rule, Order No. 587-O, FERC Stats. & Regs. ¶ 31,129, n. 14 (2002).

⁶ See n.2 *supra*.

⁷ When NAESB adopts a business practice standard as a Final Action, the standard is considered complete from NAESB's perspective, but, from the Commission's perspective, compliance with such a standard is not mandatory until such time as the Commission takes formal action to incorporate such a standard by reference into its regulations. NAESB's Phase I M&V Standards were adopted in the WEQ's 2009 Annual Plan 5(a) Final Action. NAESB's Apr. 17, 2009 submittal is also available for viewing in eLibrary under Docket No. RM05-5-017. The link to eLibrary is as follows: <http://www.ferc.gov/docs-filing/efiling.asp>.

Efficiency subcommittee has already begun efforts to plan the development of these more detailed (Phase II) standards; however, actual standards development has not yet started.

6. The NAESB Phase I M&V Standards include 40 definitions and 31 business practice standards. The definitions identify basic product categories, i.e., energy service, capacity service, reserve service and regulation service. They identify the measurement and verification characteristics of demand response products and services offered in organized wholesale electricity markets, such as reduction deadlines, advance notification instructions, telemetry accuracy, and communication protocols. The business practice standards address the major operational categories associated with demand response. NAESB stresses that the key to several NAESB participants' willingness to accept the standards submitted on April 17th was the agreement among participants to include more specific technical measurement and verification standards in NAESB's current annual work plan and to proceed with further work on more detailed technical standards.

II. Description of NAESB's Phase I M&V Standards

7. The Phase I M&V Standards include two parts. First, there are standards that identify operational information about demand response products that system operators need to make available. Second, specific standards address the performance evaluation methods appropriate to use for demand response products. These standards are described briefly below. In addition, associated terms are defined in a glossary.

8. First, the NAESB Phase I M&V Standards address transparency of the provision of four wholesale electric demand response products: energy (WEQ-015-1.0 through WEQ-015-1.3); capacity (WEQ-015-1.4 through 1.7); reserves (WEQ-015-1.8 through 1.11); and regulation (WEQ- 015-1.12 through 1.15). For each of these products, the standards require system operators to make information publicly available on: (1) specific operational requirements listed in the business practice standards, e.g., notification requirements; (2) telemetry requirements, e.g., the telemetry interval shall not exceed five minutes; (3) after-the-fact metering requirements, e.g., the metering accuracy shall not exceed three percent of full scale; and (4) performance evaluation rules, e.g., the performance evaluation method applicable to the product being delivered. Most of these transparency requirements are the same for all four products, although some only apply where appropriate. Other requirements apply only to one product; for example, demand resources providing regulation services are required to automatically respond to grid frequency deviations, similar to the governor action provided by generation resources, unless otherwise specified by the system operator.

9. Second, the NAESB Phase I M&V Standards require the system operator to make publicly available the specific method to be used and the information required for the performance of resources providing demand response products (the performance evaluation method). Information standards specify that a system operator must define criteria and requirements for telemetry, metering, and performance evaluation, including baseline window, calculation type, sampling,

baseline adjustments and measurement methods for each method that may be used to evaluate the performance of each demand response product. The system operator must specify that some or all of five methods may be used: Maximum Base Load Evaluation (WEQ-015-1.16 through WEQ-015-1.18); Meter Before/Meter After (WEQ-015-1.19 through WEQ-015-1.21); Baseline Type I – Interval Meter (WEQ-015-1.22 through WEQ-015-1.24); Baseline Type II – Non-Interval Meter (WEQ-015-1.25 through WEQ-015-1.27); and Metering Generator Output (WEQ-015-1.28 through WEQ-015-1.30).

III. Discussion

10. The Commission proposes to incorporate by reference into our regulations the NAESB Phase I M&V Standards and associated terms used in the WEQ-015 glossary.⁸ The Phase I M&V Standards are primarily intended to enhance the transparency and consistency of the methods used to measure and verify demand response products in wholesale electricity markets administered by RTO's and ISO's. The glossary provides standardized definitions of demand response services,

⁸ We propose to incorporate by reference the following standards collectively identified by NAESB as 2008 Annual Plan Item 5(a): Provision of Wholesale Electric Demand Response Energy Products- Standards 015-1.0–1.3; Provision of Wholesale Electric Demand Response Capacity Products- Standards 015-1.4–1.7; Provision of Wholesale Electric Demand Response Reserve Products- Standards 015-1.8–1.11; Provision of Wholesale Electric Demand Response Regulation Products- Standards 015-1.12-1.15; Maximum Base Load Evaluation- Standards 015-1.16-1.18; Meter Before/Meter After- Standards 015-1.19–1.21; Baseline Type I – (Interval Meter)- Standards 015-1.22–1.24; Baseline Type II – (Non-Interval Meter)- Standards 015-1.25-1.27; and Metering Generator Output- Standards 015-1.28-1.30.

operational terms and performance measurements. The NAESB Phase I M&V Standards that we are proposing to incorporate by reference in this NOPR provide a starting place to develop a more comprehensive set of standards for the provision of demand response products in wholesale markets.

11. NAESB adopted its Phase I M&V Standards under its consensus procedures.⁹ Adoption of consensus standards is appropriate because the consensus process helps to ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of all segments of the industry. Moreover, because 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 section 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 NAESB, as a means to carry out policy objectives or activities determined by the agencies unless use of such standards would be inconsistent with applicable law or otherwise impractical.¹⁰

12. The NAESB Phase II M&V Standards are intended to establish business practice standards that facilitate the ability of demand response providers to participate in electricity markets, reducing transaction costs and providing an

⁹ See P 4 *supra*.

¹⁰ Pub. L. No. 104-113, 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997).

opportunity for more customers to participate in these programs, especially customers that operate in more than one organized market. The NAESB Phase I M&V Standards provide a framework for further business practice standardization efforts, and participants in the WEQ process can use these standards to identify those elements for which standardization would be beneficial. We believe it is appropriate to develop criteria and standards that system operators can use to determine how demand response will be initiated, communicated, controlled, adjusted, measured and verified.

13. We appreciate the efforts of the WEQ thus far in developing these standards. It is clear, however, that much work still needs to be done. Members of the WEQ need to continue their efforts to develop the substantive standards needed to achieve greater efficiency in the operation and evaluation of the performance of demand response products and services. The Commission continues to believe that the industry should take the lead in developing and implementing demand response standards that will be both practical and workable. However, we request comments on whether the Commission should establish a deadline for the development of these remaining critical standards and, if so, what that deadline should be.

IV. Notice of Use of Voluntary Consensus Standards

14. Office of Management and Budget Circular A-119 (section 11) (Feb. 10, 1998) provides that federal agencies should publish a request for comment in a NOPR when the agency is seeking to issue or revise a regulation proposing to adopt a voluntary consensus standard or a government-unique standard. In this NOPR, the Commission

is proposing to incorporate by reference a voluntary consensus standard developed by the NAESB WEQ.

V. Information Collection Statement

15. The following collections of information contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB Control number.

16. The following burden estimate is based on the projected costs for the industry to implement revisions to the WEQ Standards currently incorporated by reference into the Commission's regulations at 18 CFR 38.2 and to implement the new standards adopted by NAESB that we propose here to incorporate by reference.

| Data Collection | No. of Respondents | No. of Responses Per Respondent | Hours Per Response | Total No. of Hours |
|------------------------|--------------------|---------------------------------|--------------------|--------------------|
| FERC-516 ¹¹ | 6 | 1 | 6 | 36 |
| FERC-717 ¹² | 6 | 1 | 12 | 72 |
| Totals | | | | 108 |

Total Annual Hours for Collection

(Reporting and Recordkeeping, (if appropriate)) = 108 hours

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost for all respondents to be the following:¹³

| | FERC-516 | FERC-717 |
|---|----------|------------------------|
| Annualized Capital/Startup Costs | \$13,320 | \$26,640 |
| Annualized Costs (Operations & Maintenance) | N/A | |
| Total Annualized Costs | \$13,320 | \$26,640 ¹⁴ |

¹¹ “FERC-516” is the Commission’s identifier that corresponds to OMB control no. 1902-0096 which identifies the information collection associated with Electric Rate Schedules and Tariff Filings.

¹² “FERC-717” is the Commission’s identifier that corresponds to OMB control no. 1902-0173 which identifies the information collection associated with Standards for Business Practices and Communication Protocols for Public Utilities.

¹³ The total annualized costs for the information collection is \$39,960. This number is reached by multiplying the total hours to prepare responses (108) by an hourly wage estimate of \$370 (a composite estimate that includes legal, technical and support staff rates, \$250+\$95+\$25=\$370), 108 hours x \$370/hour= \$39,960.

¹⁴ We note that 36 hours at \$370/hr.= \$13,320 and 72 hours at \$370/hr.=\$26,640. Together, \$13,320+\$26,640=\$39,960 as in note 13 supra.

17. OMB regulations¹⁵ require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB. These information collections are mandatory requirements.

Title: Standards for Business Practices and Communication Protocols for Public Utilities (formerly Open Access Same Time Information System) (FERC-717); Electric Rate Schedule Filings (FERC-516).

Action: Proposed collection.

OMB Control No.: 1902-0096 (FERC-516); 1902-0173 (FERC-717).

Respondents: Business or other for profit, (Public Utilities - Not applicable to small businesses).

Frequency of Responses: One-time implementation (business procedures, capital/start-up).

Necessity of the Information: This proposed rule, if implemented would standardize the definitions used by ISOs and RTOs to identify their various demand response products and to measure and verify the results obtained by these products.

18. Internal Review: The Commission has reviewed the revised business practice standards proposed in this NOPR and has made a preliminary determination that these standards are necessary to maintain consistency among the ISOs/RTOs as to the demand response products they offer in their wholesale electricity markets. The

¹⁵ 5 CFR 1320.11.

Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimate associated with the information requirements.

19. Interested persons may obtain information on the reporting requirements by contacting the following:

Federal Energy Regulatory Commission,
Attn: Michael Miller, Office of the Executive Director
888 First Street, NE
Washington, DC 20426
Tel: (202) 502-8415 / Fax: (202) 273-0873
Email: michael.miller@ferc.gov

20. Comments concerning the information collections proposed in this NOPR and the associated burden estimates, should be sent to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395-7345, fax: (202) 395-7285].

VI. Environmental Analysis

21. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.¹⁶ The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the

¹⁶ Regulations Implementing the National Environmental Policy Act, Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

human environment.¹⁷ The actions proposed here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of electric power that requires no construction of facilities.¹⁸ Therefore, an environmental assessment is unnecessary and has not been prepared in this NOPR.

VII. Regulatory Flexibility Act Certification

22. The Regulatory Flexibility Act of 1980 (RFA)¹⁹ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The regulations proposed here impose requirements only on ISOs and RTOs, which are not small businesses. Moreover, these requirements are designed to benefit all customers, including small businesses.

23. The Commission has followed the provisions of both the RFA and the Paperwork Reduction Act on potential impact on small business and other small entities. Specifically, the RFA directs agencies to consider four regulatory alternatives to be considered in a rulemaking to lessen the impact on small entities: tiering or establishment of different compliance or reporting requirements for small entities, classification, consolidation, clarification or simplification of compliance and reporting requirements, performance rather than design standards, and exemptions.

¹⁷ 18 CFR 380.4.

¹⁸ See 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

¹⁹ 5 U.S.C. 601-612.

As these proposed standards would only be applicable to ISOs and RTOs, which are not small entities, the Commission hereby certifies, pursuant to section 605(b) of the RFA,²⁰ that the regulations proposed herein will not have a significant adverse impact on a substantial number of small entities.

VIII. Comment Procedures

24. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due [insert date 30 days from publication in the **FEDERAL REGISTER**]. Comments must refer to Docket No. RM05-5-017, and must include the commenter's name, the organization they represent, if applicable, and their address. Comments may be filed either in electronic or paper format.

25. Comments may be filed electronically via the eFiling link on the Commission's web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

²⁰ 5 U.S.C. 605(b).

26. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

IX. Document Availability

27. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE, Room 2A, Washington, DC 20426.

28. From FERC's Home Page on the Internet, this information is available in the eLibrary. The full text of this document is available in the eLibrary both in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, go to the FERC website at <http://www.ferc.gov> and type the docket number "RM05-5" in the docket number field, type "017" under the subdocket field, and request submittals filed on April 17, 2009.

29. User assistance is available for eLibrary and the FERC's web site during our normal business hours. For assistance contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659.

List of subjects in 18 CFR Part 38

Conflict of interests, Electric power plants, Electric utilities, Incorporation by reference, Reporting and recordkeeping requirements.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

In consideration of the foregoing, the Commission proposes to revise Chapter I, Title 18, part 38 of the Code of Federal Regulations, as follows:

PART 38 – BUSINESS PRACTICE STANDARDS AND COMMUNICATION PROTOCOLS FOR PUBLIC UTILITIES

1. The authority citation for part 38 continues to read as follows:

Authority: 16 U.S.C. 791-825r, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352.

2. In § 38.2, paragraph (a)(12) is added to read as follows:

§ 38.2 Incorporation By Reference Of North American Energy Standards Board Wholesale Electric Quadrant Standards

(a) * * *

(12) Measurement and Verification of Wholesale Electricity Demand Response (WEQ-015, 2008 Annual Plan Item 5(a), Mar. 16, 2009).

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