

139 FERC ¶ 61,041
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 38

[Docket No. RM05-5-020]

Standards for Business Practices and
Communication Protocols for Public Utilities

(April 19, 2012)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations to incorporate by reference the business practice standards adopted by the Wholesale Electric Quadrant of the North American Energy Standards Board (NAESB) that pertain to the measurement and verification of demand response and energy efficiency resources participating in organized wholesale electricity markets. NAESB adopted the measurement and verification of demand response standards in response to the Commission's findings in Order No. 676-F. These standards can be obtained from NAESB at 801 Travis Street, Suite 1675, Houston, TX 77002, telephone: (713) 356-0060, <http://www.naesb.org>, and are available for viewing in the Commission's Public Reference Room.

DATES: Comments are due **[INSERT DATE 60 days after publication in the FEDERAL REGISTER]**.

ADDRESSES: Comments, identified by docket number RM05-5-020, may be filed in the following ways:

- Electronic Filing through <http://www.ferc.gov>. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- Mail/Hand Delivery: Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE, Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document

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SUPPLEMENTARY INFORMATION:

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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NOTICE OF PROPOSED RULEMAKING

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NOTICE OF PROPOSED RULEMAKING

(April 19, 2012)

1. In this Notice of Proposed Rulemaking (NOPR), the Federal Energy Regulatory Commission (Commission) proposes to amend its regulations at 18 CFR 38.2 under the Federal Power Act¹ to incorporate by reference the business practice standards adopted by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB) that pertain to the measurement and verification of demand response and energy efficiency resources participating in organized wholesale electricity markets.² Adoption of these standards is intended to improve the methods and procedures used to accurately measure demand response and energy efficiency resource performance.

¹ 16 U.S.C. 791a *et seq.* (2006).

² See Report, North American Energy Standards Board, Measurement and Verification of Demand Response Products, Docket No. RM05-5-020 (filed May 3, 2011) (May 3 Report) (providing a status update and description of the proposed standards). In accordance with applicable copyright laws, complete versions of the standards are available from NAESB at 801 Travis Street, Suite 1675, Houston, TX 77002, telephone: (713) 356-0060, <http://www.naesb.org>, and are available for viewing in the Commission's Public Reference Room.

Additionally, these standards should help Regional Transmission Organizations (RTO) and Independent System Operators (ISO) to properly credit demand response and energy efficiency resources for their services.³

I. Background

2. NAESB is a private consensus standards developer that divides its activities among four quadrants, each of which is composed of members from all segments of its respective industry.⁴ NAESB is an accredited standards organization under the auspices of the American National Standards Institute (ANSI). NAESB's procedures are designed to ensure that all industry members can have input into the development of a standard, whether or not they are members of NAESB, and each wholesale electricity standard that NAESB's WEQ adopts is supported by a consensus of the seven industry segments: end users, distribution/load serving entities, transmission, generation, marketers/brokers, independent grid operators/planners and technology/services. 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

³ The Commission has also sought RTO and ISO proposals regarding their measurement and verification methodologies, including in Order No. 745, *Demand Response Compensation in Organized Wholesale Energy Markets*, Order No. 745, 76 Fed. Reg. 16,658 (Mar. 24, 2011), FERC Stats. & Regs. ¶ 31,322, at P 93-95 (2011), *order on reh'g*, Order No. 745-A, 137 FERC ¶ 61,215, at P 123 (2011).

⁴ The four quadrants are the wholesale and retail electric quadrants and the wholesale and retail natural gas quadrants.

each of the seven industry segments.⁵ For final approval, 67 percent of the WEQ's general membership must ratify the standard.⁶

3. In 2006, the Commission issued Order No. 676, a Final Rule that incorporated by reference business practice standards for the WEQ adopted by NAESB applicable to public utilities.⁷ Since 2006, the NAESB consensus industry stakeholder process has reviewed the NAESB business practice standards for public utilities with a view to creating a more efficient marketplace and it has adopted revisions that, in a number of instances, the Commission has made mandatory by incorporating by reference into the Commission's regulations.⁸

4. NAESB began work on the development of business practice standards pertaining to the measurement and verification of demand response⁹ products and services in

⁵ Under NAESB's procedures, interested persons may attend and participate in NAESB committee meetings and phone conferences, even if they are not NAESB members.

⁶ See May 3 Report at 2.

⁷ See *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676, FERC Stats. & Regs. ¶ 31,216, (2006), *reh'g denied*, Order No. 676-A, 116 FERC ¶ 61,255 (2006).

⁸ *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676-F, FERC Stats. & Regs. ¶ 31,309 (2010); Order No. 676-E, FERC Stats. & Regs. ¶ 31,299 (2009); Order No. 676-D, 124 FERC ¶ 61,317 (2008), Order No. 676-C, FERC Stats. & Regs. ¶ 31,274 (2008), Order No. 676-B, FERC Stats. & Regs. ¶ 31,246 (2007).

⁹ Demand response means a reduction in the consumption of electric energy by customers from their expected consumption in response to an increase in the price of

(continued...)

July 2007, when the NAESB WEQ Demand Side Management - Energy Efficiency (DSM-EE) subcommittee began work on this issue. This effort led to the adoption and ratification by NAESB of initial measurement and verification standards early in 2009.

5. On April 17, 2009, NAESB filed a report (April 2009 Report) informing the Commission that it had adopted an initial set of business practice standards to categorize various demand response products and services and to support the measurement and verification of these products and services in organized wholesale electricity markets (Phase I Demand Response M&V Standards).¹⁰ Key to obtaining consensus on the initial set of standards was the agreement to proceed with further work on more detailed technical standards for the measurement and verification of demand response resources. The NAESB report recognized that these standards would need to be followed by the development of more detailed technical standards for the measurement and verification of demand response products and services in RTO and ISO areas.

6. On April 15, 2010, the Commission issued Order No. 676-F, incorporating by reference¹¹ the Phase I Demand Response M&V Standards¹² that categorize various

electric energy or to incentive payments designed to induce lower consumption of electric energy. 18 C.F.R. § 35.28(b)(4) (2011).

¹⁰ Report, North American Energy Standards Board, Measurement and Verification of Demand Response Products, Docket No. RM05-5-017, at 2 (filed Apr. 17, 2009) (April 2009 Report).

¹¹ Incorporation by reference makes compliance with these standards mandatory for public utilities subject to Part 38 of the Commission's regulations.

demand response products and services and support the measurement and verification of these products and services in organized wholesale electricity markets.¹³ The Commission stated that “[w]hile NAESB’s Phase I [Demand Response] M&V Standards represent a good first step, additional substantive standards would appear beneficial in creating transparent and consistent measurement and verification of demand response products and services in wholesale electric markets.”¹⁴ The Commission also stated that “we expect Phase II will address issues related to baseline development”¹⁵ The Commission anticipated that the measurement and verification standards needed to accomplish this goal would be a focus of NAESB’s Phase II measurement and verification standards development efforts.¹⁶

7. NAESB subsequently initiated specific plans to improve and adopt additional technical standards and filed a report¹⁷ with the Commission on May 3, 2011 (May 3 Report) that informed the Commission that NAESB had adopted a revised set of

¹² See *Standards for Business Practices and Communication Protocols for Public Utilities*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,646 (2009) (2009 NOPR).

¹³ *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676-F, FERC Stats. & Regs. ¶ 31,309 (2010).

¹⁴ Order No. 676-F, FERC Stats. & Regs. ¶ 31,309 at P 32.

¹⁵ *Id.* P 37.

¹⁶ *Id.* P 32.

¹⁷ See *supra* n.2.

standards covering measurement and verification (Phase II Demand Response M&V Standards) and a new set of standards covering energy efficiency,¹⁸ and explained its efforts to develop these standards.

8. As discussed in more detail below, the Phase II Demand Response M&V Standards add more specifications to the existing Phase I Demand Response M&V Standards' definitions and business practice standards in the following areas: meter data reporting deadline, advanced notification, telemetry interval, meter accuracy for after-the-

¹⁸ Energy efficiency:

[r]efers to programs that are aimed at reducing the energy used by specific end-use devices and systems, typically without affecting the services provided. These programs reduce overall electricity consumption (reported in megawatthours), often without explicit consideration for the timing of program-induced savings. Such savings are generally achieved by substituting technologically more advanced equipment to produce the same level of end-use services (e.g. lighting, heating, motor drive) with less electricity. Examples include high-efficiency appliances, efficient lighting programs, high-efficiency heating, ventilating and air conditioning (HVAC) systems or control modifications, efficient building design, advanced electric motor drives, and heat recovery systems.

U.S. Energy Information Administration Glossary,
<http://www.eia.gov/tools/glossary/index.cfm?id=E> (last visited Feb. 24, 2012).

fact metering, meter data reporting interval, and adjustment window.¹⁹ During NAESB's work on Phase II, the WEQ DSM-EE Wholesale Demand Response Work Group (WEQ DR work group) discussed the level of detail to be included in the standards, with most participants agreeing that the standards developed should not "duplicate efforts undertaken in the ISO-RTO stakeholder process," which vetted the adopted programs extensively.²⁰ NAESB states that a majority of the WEQ DR work group agreed that "impacting the stakeholder process would require guidance from the FERC."²¹

9. In addition to demand response standards, NAESB drafted, discussed, and adopted business practice standards for the measurement and verification of energy efficiency in organized wholesale electricity markets (Wholesale Energy Efficiency M&V Standards). NAESB reports that the work took place between July 2009 and December 2010, and was considered in NAESB's DSM-EE subcommittee meetings and WEQ's Executive Committee meetings. The standards are designed to create a standard method for quantifying the energy reductions from energy efficiency measures. The Wholesale Energy Efficiency M&V Standards include six new definitions and 63 business practice

¹⁹ NAESB states that "advance notification" involves a communication to the demand response resource made prior to when its services are required. The "telemetry interval," as described by NAESB, is the period of time between submissions of data. NAESB defines "adjustment window" as a period of time used to calculate a baseline adjustment.

²⁰ May 3 Report at 1-2.

²¹ *Id.* at 1.

standards. Included are definitions for energy efficiency baseline and demand reduction value. The standards contain criteria for the use of energy efficiency products in organized wholesale electricity markets, general measurement and verification plan requirements, and detailed criteria of acceptable measurement and verification methodologies. NAESB states that the standards are built upon PJM Interconnection, L.L.C. and ISO New England Inc. manuals, the Federal Energy Management Program (FEMP) measurement and verification standards,²² the International Performance Measurement and Verification Protocol (IPMVP),²³ and several state protocols.²⁴

II. Discussion

10. The Commission proposes to incorporate by reference into our regulations both the Phase II Demand Response M&V Standards and associated terms, and the Wholesale Energy Efficiency M&V Standards and associated terms.

A. NAESB Phase II Demand Response M&V Standards

11. The Commission proposes to incorporate by reference into its regulations the Phase II Demand Response M&V Standards as a further step toward transparency and consistency in the methods RTOs and ISOs use to measure and verify demand response

²² U.S. Department of Energy, FEMP, M&V Guidelines: Measurement and Verification for Federal Energy Projects, Version 3.0, April 2008, http://www1.eere.energy.gov/femp/pdfs/mv_guidelines.pdf.

²³ Efficiency Valuation Organization, IPMVP Public Library of Documents, <http://www.evo-world.org/>.

²⁴ May 3 Report at 3.

in their organized wholesale electricity markets.²⁵ Additionally, the Commission seeks comment on the Phase II Demand Response M&V Standards and on certain aspects of measurement and verification of demand response more generally, including the degree to which standardization is important, the appropriate degree of detail and specificity that any such standards should contain, and the appropriate mechanism for achieving any necessary improvements in this area.

1. Description

12. The Phase II Demand Response M&V Standards build on the Phase I Demand Response M&V Standards. These new standards also include updates to certain associated definitions as well as some formatting and organizational changes. The collective set of Phase I and Phase II Demand Response M&V Standards comprise two parts: the first part establishes criteria for the use of equipment, technology, and

²⁵ We propose to incorporate by reference the following standards collectively identified by NAESB as 2010 Wholesale Electric Quadrant Annual Plan Item 4(a) and 4(b): General – Section 015-1.0; Telemetry – Section 015-1.1; After-the-Fact Metering – Section 015-1.2; Performance Evaluation – Section 015-1.3; General – Section 015-1.4; Telemetry – Section 015-1.5; After-the-Fact Metering – Section 015-1.6; Performance Evaluation – Section 015-1.7; General – Section 015-1.8; Telemetry – Section 015-1.9; After-the-Fact Metering – Section 015-1.10; Performance Evaluation – Section 015-1.11; General – Section 015-1.12; Telemetry – Section 015-1.13; After-the-Fact Metering – Section 015-1.14; Performance Evaluation – Section 015-1.15; Baseline Information – Section 015-1.16; Event Information – Section 015-1.17; Special Processing – Section 015-1.18; Baseline Information – Section 015-1.19; Event Information – Section 015-1.20; Special Processing – Section 015-1.21; Baseline Information – Section 015-1.22; Event Information – Section 015-1.23; Special Processing – Section 015-1.24; Baseline Information – Section 015-1.25; Event Information – Section 015-1.26; Special Processing – Section 015-1.27; Baseline Information – Section 015-1.28; Event Information – Section 015-1.29; and Special Processing – Section 015-1.30.

procedures to quantify the demand reduction value²⁶ of four product categories,²⁷ and the second part includes business practice requirements for five performance evaluation types.²⁸

13. In the Phase II Demand Response M&V Standards, NAESB consistently replaced references to the “System Operator” with the term “Governing Documents”²⁹ throughout most of the standards. Other changes include adding a meter data reporting deadline (103 days for the energy and capacity product categories and 55 days for reserve and regulation product categories); specifying an advanced notification of one day maximum to the demand response resource that its capacity product category will be required; establishing a telemetry interval of six seconds for the provider of the regulation product category to submit data to the system operator; tightening the requirement for meter accuracy for after-the-fact metering for all four product categories; and defining an

²⁶ NAESB defines “demand reduction value” as the amount of a demand resource’s reduced electricity usage.

²⁷ The four product categories are energy service, capacity service, reserve service, and regulation service.

²⁸ The five performance evaluation types are maximum base load, meter before/meter after, baseline type-I, baseline type-II, and metering generator output.

²⁹ “Governing Documents” are documents that control or affect the interaction and relationship between a system operator and other parties, for example, applicable statutes and regulations, tariffs, contracts, manuals, and other relevant procedures. The DSM-EE subcommittee made this change to remove system operator discretion and to more accurately reflect that rules are developed by markets not the system operator. *See* 2008 WEQ AP Item 5(a) Recommendation to the NAESB WEQ Executive Committee at 37 (Sept. 30, 2010) (*available at* May 3 Report, Appendix B, Page 5, http://www.naesb.org/pdf4/dsmee_group3_093010reqcom_a1.doc).

adjustment window of four hours for calculating baseline adjustments for the baseline type-I and baseline type-II performance evaluation types.

14. As characterized by NAESB, the set of business practice standards represented by the combination of Phase I and Phase II efforts “provide a framework that may be used to develop performance evaluation methodologies for specific Demand Response services; they do not specify detailed characteristics of performance evaluation methodologies.”³⁰ The standards state that, should a conflict arise between the business practice standards and a System Operator’s Governing Documents, the Governing Documents would have precedence.³¹

2. Discussion

15. As noted above, when the Commission approved the Phase I Demand Response M&V Standards in Order No. 676-F, it recognized that “additional substantive standards would appear beneficial in creating transparent and consistent measurement and verification . . . in wholesale electric markets.”³² The Commission agreed with commenters “that more detailed measurement and verification standards will reduce costs for customers and market participants, particularly those participating in multiple markets” and that “demand response providers that participate in more than one RTO or ISO should not have to incur the costs of developing different business processes to adapt

³⁰ 2010 WEQ AP Item 4(a) and 4(b) Final Action at 12 (ratified Mar. 21, 2011).

³¹ *Id.* at 10.

³² Order No. 676-F, FERC Stats. & Regs. ¶ 31,309 at P 32.

to the differing RTO/ISO requirements, increasing the cost and complexity of their business.”³³ While the Commission acknowledged that NAESB’s efforts may not result in a single performance evaluation method, the Commission emphasized that “greater standardization of the performance evaluation methods will improve the accuracy of measuring and verifying demand response performance and may reduce costs.”³⁴

16. The 2009 NOPR noted that the key to several NAESB participants’ willingness to accept the Phase I Demand Response M&V Standards was an agreement among participants to include more specific technical measurement and verification standards in NAESB’s annual work plan and to proceed with further work on more detailed technical standards.³⁵ Similarly, in its April 2009 Report, NAESB stressed that “more technical standards would be needed to support the standards provided in the recommendation,” that “[a]ll WEQ [Executive Committee] members agreed to have a follow-up development effort to provide additional technical context to the standards,” and that “the DSM-EE subcommittee [had already] begun efforts to scope the development of more detailed technical standards for the measurement and verification of demand response products and services in ISO-RTO footprint areas.”³⁶

³³ *Id.* P 33.

³⁴ *Id.* P 34.

³⁵ NOPR, FERC Stats. & Regs. ¶ 32,646 at P 6.

³⁶ April 2009 Report at 2.

17. As noted above, NAESB acknowledges that the resulting set of business practice standards represented by the combination of Phase I and Phase II efforts set forth a generalized performance evaluation methodology that lacks specific provisions or detailed requirements.³⁷ The Commission invites comments on the proposed Phase II standards. Further, in light of the Commission's statements in Order No. 676-F regarding the importance of consistency and specificity, we invite comment as to whether the Phase II Demand Response M&V Standards that we propose to adopt herein are sufficiently detailed to provide transparent measurement and verification among regions, and whether greater detail or prescriptiveness would be appropriate. We also seek comment on the degree to which encouraging greater consistency among markets and regions would reduce costs for customers and market participants or otherwise facilitate participation by end users in multiple markets.

18. To the extent that greater detail is recommended, the Commission seeks comment as to whether sufficient experience in demand response is available to identify best practices in the area of measurement and verification, particularly for performance evaluation types such as baseline calculations. Similarly, we seek comment about the particular areas where enhancing such detail or consistency would be most useful. For example, are consistent telemetry and metering requirements more or less important than consistent approaches to the determination of baselines; would it be worthwhile to

³⁷ See 2010 WEQ AP Item 4(a) and 4(b) Final Action at 12 (ratified Mar. 21, 2011).

address procedures for weather adjustments; or are any other particular aspects of measurement and verification appropriate for further effort regarding the addition of increased specificity and more consistency across RTOs and ISOs?

19. The Commission appreciates the efforts of the WEQ thus far in developing these standards. The Commission also understands that various participants in the NAESB process expressed concern that the NAESB process should not duplicate efforts undertaken in the stakeholder processes of the RTOs and ISOs, which vetted their individual programs extensively.³⁸ As a result, many of the standards defer to the existing Governing Documents of the RTOs and ISOs. The Commission seeks comment on whether further development of more substantive measurement and verification standards broadly applicable to RTOs and ISOs are required and, if so, whether a NAESB or a Commission-led, or other process should carry out the task. If commenters prefer the NAESB process, we request comment on the best relationship framework between NAESB and the RTO and ISO stakeholder processes to facilitate the formulation of standards.

B. NAESB Wholesale Energy Efficiency M&V Standards

20. The Commission proposes to incorporate by reference into our regulations the Wholesale Energy Efficiency M&V Standards.³⁹ These business practice standards

³⁸ See May 3 Report at 1.

³⁹ We propose to incorporate by reference the following standards collectively identified by NAESB as 2010 Wholesale Electric Quadrant Annual Plan Item 4(d):

(continued...)

provide criteria for energy efficiency resources participating in organized wholesale electricity markets, general requirements for the structure of a measurement and verification plan, and detailed criteria for acceptable measurement and verification methodologies. The standards incorporate documentation and reporting requirements applicable to installed energy efficiency measures. The standards also consider technical requirements such as identification of energy efficiency baseline conditions, statistical significance requirements for measurement methodologies requiring statistical estimation techniques, and technical requirements for measurement equipment.

1. Description

21. The purpose of these business practice standards is to establish a standard method for quantifying the energy reductions associated with energy efficiency measures such as lighting, appliances, industrial process improvements, and building management.

NAESB describes the Wholesale Energy Efficiency M&V Standards as an initial set of standards for the participation of energy efficiency products in organized wholesale electricity markets.

Energy Efficiency Resource Use Criteria in Wholesale Markets – Section 021-3.1; General Measurement and Verification Plan Requirements – Section 021-3.2; Post Installation M&V Report Components – Section 021-3.3; Performance Reporting – Section 021-3.4; M&V Supporting Documents – Section 021-3.5; M&V Methodologies – Section 021-3.6; Energy Efficiency Baseline Conditions – Section 021-3.7; Statistical Significance – Section 021-3.8; Nominated Energy Efficiency Value Calculations/Demand Reduction Value Calculations – Section 021-3.9; Measurement and Monitoring – Section 021-3.10; Measurement Equipment Specifications – Section 021-3.11; and Data Validation – Section 021-3.12.

22. NAESB adopted its Wholesale Energy Efficiency M&V Standards under its consensus procedures. The consensus process developed by NAESB requires the organization to be fully aware of the positions of each of NAESB's six wholesale electric segments (i.e., end users, distribution/load serving entities, transmission, generation, marketers/brokers, and independent grid operators/planners).

2. Discussion

23. The Commission preliminarily finds that the Wholesale Energy Efficiency M&V Standards provide substantive detail to assure more effective evaluation of the performance of energy efficiency products and services. The standards provide the means for demonstrating consistent and reliable evidence of reductions in electricity usage attributable to energy efficiency resources that qualify to participate in organized wholesale electricity markets. The NAESB standards are intended to provide for proper measurement and verification of energy efficiency resources so that the resources may be compensated in accordance with how well they perform, and how performance continues as equipment or systems age. The standards should also help to ensure that energy efficiency resources and other electricity resources are treated comparably.

24. The Commission appreciates the detail provided within the Wholesale Energy Efficiency M&V Standards. The standards provide four measurement and verification methodologies (Sections 021-3.6.1.1 - 021-3.6.1.4), as well as a mechanism by which energy efficiency resource providers may propose, and RTOs and ISOs may consider, alternative measurement and verification methodologies (Section 021-3.6.2). The Commission recognizes that the establishment of baseline performance data and

monitoring of post-installation performance of energy efficiency measures is conducted by directly measuring and monitoring system loads, or extrapolating from a selection of available measurement variables. The standards contain 15 technical requirements for all measurement equipment devices used by energy efficiency resource providers (Sections 021-3.11.1 - 021-3.11.15). Specifically, the 15 technical requirements provide standards for interval meters that record electricity usage data as well as for the measurement or monitoring of “proxy variables” that do not directly measure electricity consumption. The technical requirements for proxy variable measurement include detailed accuracy and precision requirements. The standards also contain five statistical requirements intended to ensure accuracy for the measurement methodologies requiring statistical estimation techniques (Sections 021-3.8.2 - 021-3.8.6). The Commission invites comment on the proposed standards.

III. Notice of Use of Voluntary Consensus Standards

25. 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 voluntary consensus standards developed by the NAESB WEQ.

IV. Information Collection Statement

26. The 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.

27. 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.

	FERC Collection Number	No. of Respondents (A)	No. of Responses Per Respondent (B)	Hours Per Response (C)	Total No. of Hours (A)x(B)x(C)
Demand Response Standards	FERC-516 ⁴⁰	6	1	4	24
	FERC-717 ⁴¹	6	1	9	54

⁴⁰ "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.

⁴¹ "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.

Energy Efficiency Standards	FERC-516	6	1	6	36
	FERC-717	6	1	12	72
Total for FERC-516					78
Total for FERC-717					108
Total One-Time Burden					186

Total Annual Hours for Collection: (Reporting and Recordkeeping, (if appropriate)) = 186 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:⁴²

	FERC-516	FERC-717
Demand Response Standards Annualized Capital/Startup Costs	\$1416	\$3186
Demand Response Standards Annualized Costs (Operations & Maintenance)	N/A	N/A
Energy Efficiency Standards Annualized Capital/Startup Costs	\$2124	\$4248

⁴² The Total Annual Cost for information collection is \$10,974. This number is reached by multiplying the total hours to prepare responses (186) by an hourly wage estimate of \$59 (a composite estimate of wages plus benefits that includes legal, technical and support staff rates. Based on data from the Bureau of Labor Statistics at http://bls.gov/oes/current/naics3_221000.htm and <http://www.bls.gov/news.release/ecec.nr0.htm>). (78 hours for demand response standards + 108 hours for energy efficiency standards) x \$59/hour= \$10,974.

Energy Efficiency Standards Annualized Costs (Operations & Maintenance)	N/A	N/A
Demand Response Standards Total Annualized Costs	\$1416	\$3186 ⁴³
Energy Efficiency Standards Total Annualized Costs	\$2124	\$4248 ⁴⁴
All Standards Total Annualized Costs	\$3,540	\$7,434

28. OMB regulations 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 for this Rulemaking: RTOs and ISOs.

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

⁴³ We note that 24 hours at \$59/hour= \$1,416 and 54 hours at \$59/hour= \$3,186.

⁴⁴ We note that 36 hours at \$59/hour= \$2,124 and 72 hours at \$59/hour= \$4,248.

Necessity of the Information: This proposed rule, if implemented, will help to standardize the methods and procedures used by RTOs and ISOs to accurately measure demand response and energy efficiency resource performance, thereby improving an RTO's or ISO's capability to detect anti-competitive or manipulative behavior. Additionally, this proposed rule will help RTOs and ISOs to properly credit demand response and energy efficiency resources for their efforts.

29. Internal Review: The Commission has reviewed the business practice standards proposed in this NOPR and has made a preliminary determination that these standards are necessary to maintain consistency and help increase the effectiveness of RTO and ISO rules pertaining to measurement and verification of demand response and energy efficiency resource practices. The 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.

30. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, Office of the Executive Director, 888 First Street, NE, Washington, DC 20426 [Attention: Ellen Brown, e-mail: DataClearance@ferc.gov, phone: (202) 502-8663, fax: (202) 273-0873].

31. Comments concerning the information collections proposed in this NOPR and the associated burden estimates, should be sent to the Commission in this docket and may also be sent 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]. For security reasons, comments should be sent by

e-mail to OMB at the following e-mail address: oira_submission@omb.eop.gov. Please reference FERC-xxx and the docket number of this proposed rulemaking (Docket No. RM05-5-020) in your submission.

V. Environmental Analysis

32. 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.⁴⁵ The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.⁴⁶ The actions proposed to be taken here fall within categorical exclusions in the Commission's regulations for rules that are corrective, clarifying, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of electric power that requires no construction of facilities.⁴⁷ Therefore an environmental review is unnecessary and has not been prepared in this rulemaking.

VI. Regulatory Flexibility Act Certification

33. The Regulatory Flexibility Act of 1980 (RFA)⁴⁸ generally requires an administrative agency to perform an analysis of rulemakings that will have a significant

⁴⁵ *Regulations Implementing the National Environmental Policy Act*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Regulations Preambles 1986-1990 ¶ 30,783 (1987).

⁴⁶ 18 CFR 380.4.

⁴⁷ See 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), and 380.4(a)(27).

⁴⁸ 5 U.S.C. 601-612.

economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rulemaking while minimizing any significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) develops the numerical definition of a small business.⁴⁹ The SBA has established a size standard for electric utilities, stating that a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed four million megawatt hours.⁵⁰

34. The regulations proposed here impose requirements only on RTOs and ISOs, which are not small businesses. Moreover, these requirements are designed to benefit all customers, including small businesses. Accordingly, the Commission hereby certifies, pursuant to section 605(b) of the RFA,⁵¹ that the regulations proposed herein will not have a significant economic impact on a substantial number of small entities.

VII. Comment Procedures

35. 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 60**

⁴⁹ 13 CFR 121.101.

⁵⁰ 13 CFR 121.201, Sector 22 Utilities n.1.

⁵¹ 5 U.S.C. 605(b).

days after publication in the FEDERAL REGISTER]. Comments must refer to Docket No. RM05-5-020, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

36. The Commission encourages comments to 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. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

37. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC, 20426.

38. 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.

VIII. Document Availability

39. 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 the Commission's Home Page (<http://www.ferc.gov>) and in the Commission'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.

40. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

41. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

List of subjects in 18 CFR Part 38

Conflicts 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 amend Part 38, Chapter I, Title 18, 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. Section 38.2 is amended by revising paragraph (a)(12) and adding paragraph (a)(13) to read as follows:

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

(a) * * *

(12) Business Practices for Measurement and Verification of Wholesale Electricity Demand Response (WEQ-015, 2010 Annual Plan Items 4(a) and 4(b), March 21, 2011).

(13) Business Practice Standards for Measurement and Verification of Energy Efficiency Products (WEQ-021, 2010 Annual Plan Item 4(d), May 13, 2011).

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