This document is scheduled to be published in the Federal Register on 03/07/2013 and available online at **http://federalregister.gov/a/2013-04433**, and on **FDsys.gov**

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 38

[Docket No. RM05-5-020; Order No. 676-G]

Standards for Business Practices and Communication Protocols for Public Utilities

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations which establish standards for business practices and electronic communications for public utilities to incorporate by reference updated business practice standards adopted by the Wholesale Electric Quadrant of the North American Energy Standards Board to categorize various products and services for demand response and energy efficiency and to support the measurement and verification of these products and services in organized wholesale electric markets. These standards provide common definitions and processes regarding demand response and energy efficiency products in organized wholesale electric markets where such products are offered. The standards also require each regional transmission organization (RTO) and independent system operator (ISO) to address in the RTO or ISO's governing documents the performance evaluation methods to be used for demand response and energy

efficiency products. The standards thereby facilitate the ability of demand response and energy efficiency providers to participate in organized wholesale electric markets, reducing transaction costs and providing an opportunity for more customers to participate in these programs, especially for customers that operate in more than one organized market.

DATES: This rule will become effective **[insert date 60 days after publication in the FEDERAL REGISTER]**. Dates for implementation of the standards are provided in the Final Rule. This incorporation by reference of certain publications in the rule is approved by the Director of the *Federal Register* as of **[insert date 60 days after publication in the FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT:

David Kathan (technical issues)
Office of Energy Policy and Innovation
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426
(202) 502-6404

Mindi Sauter (legal issues)
Office of the General Counsel
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426
(202) 502-6830

SUPPLEMENTARY INFORMATION:

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Standards for Business Practices and Communication Protocols for Public Utilities — Docket No. RM05-5-020

ORDER NO. 676-G

TABLE OF CONTENTS

Paragraph Numbers

I. Background ..... 2.

II. Discussion ..... 11.
A. Overview ..... 11.
B. NAESB Phase II Demand Response M&V Standards ..... 14.
1. Comments ..... 15.
a. Adoption of Phase II Demand Response M&V Standards ..... 15.
b. Level of Detail, Standardization, and Best Practices ..... 19.
c. Other Matters ..... 26.
2. Commission Determination ..... 33.
C. NAESB Energy Efficiency M&V Standards ..... 40.
1. Comments ..... 41.
a. Adoption of Wholesale Energy Efficiency M&V Standards ..... 41.
b. Other Matters ..... 45.
2. Commission Determination ..... 47.
D. Incorporation by Reference/Copyrighted Standards ..... 52.

III. Implementation Dates and Procedures ..... 54.

IV. Notice of Use of Voluntary Consensus Standards ..... 58.

V. Information Collection Statement ..... 59.

VI. Environmental Analysis ..... 67.

VII. Regulatory Flexibility Act ..... 68.

VIII. Document Availability ..... 71.

IX. Effective Date and Congressional Notification ..... 74.

142 FERC ¶ 61,131
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Standards for Business Practices and Communication Protocols for Public Utilities — Docket No. RM05-5-020

ORDER NO. 676-G

FINAL RULE

(Issued February 21, 2013)

1. The Federal Energy Regulatory Commission (Commission) is amending its regulations at 18 CFR 38.2(a) (which establish standards for business practices and electronic communications for public utilities)[1] to incorporate by reference[2] updated business practice standards adopted by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB) to categorize various products and services for demand response and energy efficiency and to support the measurement and verification (M&V) of these products and services in organized wholesale electric markets. These standards provide common definitions and processes regarding demand

[1] 18 CFR 38.2(a) (2012).

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

response and energy efficiency products in organized wholesale electric markets where such products are offered. The standards also require each regional transmission organization (RTO) and independent system operator (ISO) to address in the RTO's or ISO's governing documents the performance evaluation methods to be used for demand response and energy efficiency products. The standards thereby facilitate the ability of demand response and energy efficiency providers to participate in organized wholesale electric markets, reducing transaction costs and providing an opportunity for more customers to participate in these programs, especially for customers that operate in more than one organized market.

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.[3] 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 participants can have input into the development of a standard, whether or not they are members of NAESB, and each wholesale electric 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. The WEQ process

[3] The four quadrants are the wholesale and retail electric quadrants and the wholesale and retail natural gas quadrants.

requires 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 seven industry segments, to approve a business practice standard.[4] For final approval, 67 percent of the WEQ's general membership must ratify the standards,[5] at which point compliance with NAESB's standards would be voluntary.

3. In 2006, the Commission adopted Order No. 676, a Final Rule that incorporated by reference business practice standards adopted by NAESB applicable to public utilities.[6] 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. In a number of instances, the Commission has incorporated the standards by reference into the Commission's regulations, making them mandatory for the entities identified in the standards.[7]

---

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

[5] *See Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676, FERC Stats. & Regs. ¶ 31,216, n.5 (2006), *reh'g denied*, Order No. 676-A, 116 FERC ¶ 61,255 (2006).

[6] *Id.*

[7] *Standards for Business Practices and Communication Protocols for Public Utilities*, Final Rule, Order No. 676-F, FERC Stats. & Regs. ¶ 31,309 (2010); Final Rule, Order No. 676-E, FERC Stats. & Regs. ¶ 31,299 (2009); *order granting clarification and denying reh'g*, Order No. 676-D, 124 FERC ¶ 61,317 (2008), Final Rule, Order No. 676-C, FERC Stats. & Regs. ¶ 31,274 (2008), Final Rule, Order No. 676-B, FERC Stats. & Regs. ¶ 31,246 (2007).

4. NAESB began work on developing business practice standards pertaining to the measurement and verification of demand response[8] products and services in July 2007, when the NAESB WEQ Demand Side Management (DSM) - Energy Efficiency (EE) subcommittee began work on this issue. Key to obtaining consensus on the initial set of demand response measurement and verification standards was the agreement to proceed with further work on more detailed technical standards for the measurement and verification of demand response resources. This effort led to the adoption and ratification by NAESB of measurement and verification standards early in 2009.

5. On April 17, 2009, NAESB filed a 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 electric markets (Phase I Demand Response M&V Standards).[9] As mentioned above, the NAESB report recognized that adoption of 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.

---

[8] 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 electric energy or to incentive payments designed to induce lower consumption of electric energy. 18 CFR 35.28(b)(4) (2012).

[9] 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).

6. On April 15, 2010, the Commission issued Order No. 676-F, incorporating by reference the Phase I Demand Response M&V Standards that categorize various demand response products and services and support the measurement and verification of these products and services in organized wholesale electric markets.[10] 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."[11] The Commission also stated that "we expect Phase II will address issues related to baseline development . . . ."[12] 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.[13]

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

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

[12] *Id.* P 37. The NAESB Phase I Demand Response M&V Standards defines "baseline" as "an estimate of the electricity that would have been consumed by a Demand Resource in the absence of a Demand Response Event."

[13] *Id*. P 32.

7. NAESB subsequently initiated specific plans to improve and adopt additional technical standards and filed a report[14] with the Commission on May 3, 2011 informing the Commission that NAESB had adopted a revised set of standards covering measurement and verification (Phase II Demand Response M&V Standards) and a new set of standards covering energy efficiency[15] (Wholesale Energy Efficiency M&V Standards), and explaining its efforts to develop these standards.

8. After a review of NAESB's May 2011 Report, the Commission issued a notice of proposed rulemaking (NOPR) on April 19, 2012 proposing to amend the Commission's regulations at 18 CFR 38.2 to incorporate by reference specific enumerated business

---

[14] Report, North American Energy Standards Board, Measurement and Verification of Demand Response Products, Docket No. RM05-5-020 (filed May 3, 2011) (May 2011 Report).

[15] Energy efficiency, Electricity:

> [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. 6, 2013).

practice standards[16] and seeking comment on both the proposed Energy Efficiency and Phase II Demand Response M&V Standards.[17] In light of the Commission's statements in Order No. 676-F regarding the importance of consistency and specificity as discussed above, the Commission requested comments in the NOPR as to whether the Phase II Demand Response M&V Standards were sufficiently detailed to provide transparent

[16] NAESB Phase II Demand Response M&V 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. NAESB Energy Efficiency M&V Standards collectively identified by NAESB as 2010 Wholesale Electric Quadrant Annual Plan Item 4(d): 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.

[17] *Standards for Business Practices and Communication Protocols for Public Utilities*, Notice of Proposed Rulemaking, 77 FR 24427 (Apr. 24, 2012), FERC Stats. & Regs. ¶ 32,688 (2012) (Energy Efficiency and Phase II M&V NOPR).

measurement and verification among regions, and whether greater detail or prescriptiveness would be appropriate. The Commission also requested comments 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.

9. To the extent that commenters recommended greater detail in the standards, the Commission requested additional comment as to whether market participants have attained sufficient experience in demand response to allow them to identify best practices in the area of measurement and verification, particularly for performance evaluation-type areas such as baseline calculations, to help inform any guidance that the Commission may provide. Similarly, the Commission requested comment regarding particular areas where enhancing such detail or consistency would be most useful. The Commission also requested comment on whether further development of more substantive measurement and verification standards broadly applicable to RTOs and ISOs is necessary and, if so, whether a NAESB or a Commission-led, or other process should carry out the task. Further, the Commission requested that, if commenters prefer the NAESB process, they comment on the best relationship between NAESB and the RTO and ISO stakeholder process to facilitate the formulation of standards.

10. In response to the NAESB Energy Efficiency and Phase II M&V NOPR, 21 entities filed comments.[18] On July 17, 2012, NAESB filed a report with the Commission stating it made a modification to the Energy Efficiency M&V Standards by deleting reference to the International Performance Measurement and Verification Protocol (IPMVP).[19] Using NAESB operating procedures for minor clarifications and corrections to standards, the WEQ Executive Committee approved the correction on June 15, 2012.

II. Discussion

A. Overview

11. In this Final Rule, the Commission is revising its regulations at 18 CFR 38.2 to incorporate by reference the Phase II Demand Response M&V Standards and the Wholesale Energy Efficiency M&V Standards. The Commission concludes that the Phase II Demand Response M&V Standards represent an incremental improvement to the business practices for measuring and verifying demand resource products and services in the organized wholesale electric markets. This phase of demand response standard development builds upon the work that already has been accomplished to provide demand response resources with opportunities to participate in organized wholesale electric markets, including accurate measurement and verification of demand response

[18] The names of entities that filed comments are listed in the Appendix to this Final Rule.

[19] Errata Report, North American Energy Standards Board, Measurement and Verification of Demand Response Products, Docket No. RM05-5-000, RM05-5-020 (filed July 17, 2012).

resources' performance. Similarly, the Commission concludes that the Wholesale Energy Efficiency M&V Standards facilitate energy efficiency providers' ability to participate in electricity markets by providing standardized measurement requirements and reducing transaction costs, and assure more effective evaluation of the performance of energy efficiency products and services.

12. The Phase II Demand Response M&V Standards and Wholesale Energy Efficiency Standards were approved by the WEQ and ratified by the NAESB membership under NAESB's consensus procedures.[20] As the Commission found in Order No. 587,[21] adoption of consensus business practice 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 industry participants representing all segments of the industry. Moreover, since the industry itself has to conduct business under these standards, the Commission's regulations should reflect those business practice standards that have the widest possible support.

13. The specific NAESB standards that the Commission is incorporating by reference in this Final Rule are the Phase II Demand Response M&V Standards and associated terms, and the Wholesale Energy Efficiency M&V Standards and associated terms.[22]

---

[20] As noted earlier, 67 percent of the WEQ's general membership voting is required for ratification of a business practice standard.

[21] *Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587, 61 FR 39053 (July 26, 1996), FERC Stats. & Regs. ¶ 31,038 (1996).

[22] The specific standards are enumerated in n.16 *supra.*

B. NAESB Phase II Demand Response M&V Standards

14. In the NOPR, the Commission proposed to incorporate by reference the NAESB Phase II Demand Response M&V standards, which include three sections: the first section (Introduction and Definition of Terms) contains an overview of the standards and definitions, the second section (Standards 015-1.0 through 015-1.15) contains standards on Provision of Wholesale Electric Demand Response Energy, Capacity, Reserve and Regulation Products, and the third section (Standards 015-1.16 through 015-1.30) contains standards on the five performance evaluation methodologies: (1) Maximum Base Load; (2) Meter Before / Meter After; (3) Baseline Type-I (Interval Meter); (4) Baseline Type-II (Non-Interval Meter); and (5) Metering Generator Output.

1. Comments

a. Adoption of Phase II Demand Response M&V Standards

15. The Commission sought comments on whether it should incorporate by reference NAESB's proposed Phase II Demand Response M&V Standards. Commenters supporting incorporation of the proposed NAESB Phase II Demand Response M&V business practice standards into the Commission's regulations include the IRC, EPSA, AEP, Indicated New York Transmission Owners, DR Supporters, IECA, Hess, PSEG, and WEM. DR Supporters, IECA, Hess and PSEG also recommend further standardization, as discussed in detail below.

16. Viridity generally supports the incorporation of the Phase II Demand Response M&V Standards, but also requests that the Commission include in the final rule a

requirement for RTOs and ISOs to adopt performance evaluation methods that provide a reasonably accurate, reasonably unbiased, and reasonably consistent baseline for a customer's highly-variable load.[23]

17. EEI and Southern also generally support incorporation of the Phase II Demand Response M&V Standards, but request that, to avoid inadvertent ambiguity, the Commission clarify in the Final Rule and in revisions to 18 CFR 38.2 that the NAESB standards and associated terms for the Phase II Demand Response M&V and the Wholesale Energy Efficiency M&V apply only in markets administered by RTOs and ISOs. EEI and Southern further request that the Commission incorporate by reference those provisions of the NAESB standards that limit their applicability to RTO and ISO markets.

18. NAPP and the PJM IMM recommend against adopting the Phase II Demand Response M&V Standards. As discussed below, the PJM IMM states that the proposed standards do not reference the Peak Load Contribution recently adopted in PJM, that they do not adequately define "Capacity Service," and that they inappropriately allow the same five approaches for capacity as for energy products. It states that adopting the standards as applicable to capacity creates the potential to "reopen and confuse the issue

[23] Viridity notes that NAESB defines "highly-variable load" as a customer that has a "fluctuating or unpredictable electricity usage pattern." Viridity states that these customers' "business-as-usual" loads may have little or no relation to the weather; thus predicting their loads is based on factors specific to the customer instead of more universal factors such as the weather.

of double counting in PJM that was only recently resolved."[24] The PJM IMM also notes the difficulty of trying to apply common measurement and verification standards across all RTOs and ISOs.

b. Level of Detail, Standardization, and Best Practices

19. The Commission sought comments on whether the proposed NAESB Phase II Demand Response M&V Standards were sufficiently detailed and whether greater detail would be appropriate. The IRC believes that the five performance evaluation methodologies in the NAESB Phase II Demand Response M&V standards provide RTOs and ISOs with the necessary flexibility to enable accurate M&V. EPSA agrees and believes it is appropriate to defer to the RTO and ISO for an assessment of whether greater detail is needed for a particular region, and to establish the best next steps for refining demand response M&V mechanisms.

20. On the other hand, IECA states there has been minimal forward movement in developing greater standardization and "best practices" for demand response M&V, and argues that the status quo is unjust, unreasonable or unduly discriminatory and that the NAESB process discriminates against manufacturers. DR Supporters indicate that the proposed standards do not include specific and detailed characteristics of performance evaluation methodologies and that, because the NAESB standards defer to the RTO and ISO governing documents, the Phase II standards do little to bring consistency or standardization to the manner in which demand response is measured. The DR

[24] *See PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,138 (2012).

Supporters argue that greater detail or prescriptiveness is appropriate with respect to the measurement and verification of energy. However, DR Supporters state that efforts to impose consistent M&V approaches across RTO and ISO capacity markets would be misspent given that M&V in those markets is so intertwined with the details of the specific capacity markets themselves.

21. PSEG suggests that additional standards be developed that define the testing and auditing requirements for demand response resources to ensure that they have the capability to reduce demand during their time commitment. PSEG also argues that the requirement to provide real-time telemetry data for all four products (i.e., energy, capacity, reserve, and regulation) should be mandatory, and requests that the language in the standards be revised in the future to require specific language in this regard. PSEG also requests that additional standards be developed that require providers to measure demand response delivered via behind-the-meter generation, noting that it is important for system reliability planners to evaluate the impact of environmental regulations that affect those types of facilities.

22. The Commission also sought comments on whether encouraging greater consistency would reduce costs and facilitate participation. The IRC contends that further efforts at developing a standardized M&V performance evaluation methodology will not be productive at this time, and could reduce the accuracy of demand response M&V and exclude participation by resources with load shapes that do not conform to the standard. The IRC believes that a flexible, regional approach to demand response M&V

is crucial to ensuring the growth of demand response resources in wholesale electric markets. Hess recommends that the Commission pursue simplicity and consistency over time (i.e., stability), as opposed to simply consistency across all RTOs and ISOs. Hess urges the Commission to be mindful that confusion and loss of customer confidence due to frequent rule changes might outweigh marginal benefits of rule improvements.

23. However, DR Supporters indicate that encouraging greater consistency among RTO and ISO energy markets and regions would reduce costs and facilitate participation. DR Supporters argue that differences in baseline designs require demand response providers that are active across the country to pay for and/or develop, maintain and adapt diverse systems in order to settle energy payments for demand response customers in order to accommodate each market's differences, and that this can result in customer dissatisfaction related to increased costs and confusion.

24. The Commission also sought comments on whether the demand response industry has had sufficient experience to enable it to identify best practices. DR Supporters believe the industry has had sufficient experience, and that this experience should be used to develop a common energy baseline methodology for use across all RTOs and ISOs, which would be available as an alternative to the approach a particular RTO and ISO already has implemented. Hess agrees that there is sufficient experience to identify best practices, and suggests that the standards proposed for incorporation do not draw upon available market experience to provide the details necessary to allow for true standardization.

25. The Commission also asked commenters to identify particular areas in which enhancing detail or consistency would be useful. Viridity indicates that the proposed M&V standards give RTOs and ISOs complete discretion as to whether a region utilizes any baseline methodology that is suitable for highly-variable loads,[25] leaving these resources without a reasonable baseline against which their performance can be measured. EPSA asserts that a lack of specific comparability between demand resources and other resources that participate in the wholesale market risks artificially skewing incentives towards potentially less reliable resources, discouraging needed investments and compromising the reliability of the system.

c. Other Matters

26. The Commission requested comments on whether, if further development of more substantive measurement and verification standards broadly applicable to RTOs and ISOs is required, a NAESB, Commission-led, or other process should carry out the task.[26] Several commenters, including EVO, Hess, IECA, DR Supporters, PSEG, and NYTOs prefer a Commission-led process, with some suggesting that the Department of Energy and NAESB also should participate. IECA, NYTOs, and DR Supporters variously ask the Commission to undertake technical conferences to review the M&V methods used by the different RTOs and ISOs in order to fully understand their differences, develop a set of consistent, detailed demand response M&V standards to enable demand response

[25] *See supra* note 23.

[26] NOPR, FERC Stats. & Regs. ¶ 32,688 at P 19.

resources to participate in multiple jurisdictions without incurring costs of complying with different standards, determine the M&V floor required to provide demand response compensation, and establish a single Baseline Type I measurement and verification approach for energy that any curtailment service provider would be permitted to use in any Commission-jurisdictional market.

27. IRC states that in some cases, Commission action has provided critical guidance that can be more effective in providing direction than can be achieved in trying to reach consensus; therefore, future Commission guidance potentially can avoid significant hours of debate among NAESB participants on additional contentious M&V issues.

28. IRC further states that stakeholders have expressed only limited support for launching an additional NAESB process. IRC urges the Commission not to press for additional standardization at this time; however, should the Commission decide to do so, IRC suggests that the NAESB process is preferable to creating a new institutional process and requests that the Commission provide detailed guidance on the nature of further efforts. EPSA supports using existing NAESB processes in order to avoid establishing competing processes for developing demand response M&V baselines. EPSA believes the Phase II standards serve as a benchmark for RTO and ISO governing documents, establishing parameters that regional standards must either meet or surpass.

29. NAPP supports an industry-led standard development process, because it believes the NAESB process has little participation from demand response providers, energy efficiency providers and end use customers.

30. The PJM IMM also recommends that if the Commission decides to incorporate NAESB standards into its rules, the Commission should clarify that "Capacity Service" necessarily means achieving a reduction to a level at or below a resource's peak load contribution in order to prevent confusion in the industry and to avoid inefficient market rules. Additionally, the PJM IMM considers the NAESB standards to be flawed because they do not differentiate metrics appropriate to energy demand from metrics appropriate for capacity demand.

31. EPSA requests that the Commission confirm EPSA's understanding of the NOPR's explanation regarding conflicts between the RTO's or ISO's governing documents and the NAESB business standards. Specifically, EPSA requests that the Commission clarify that, if a conflict arises between a system operator's governing documents and the NAESB business standards, the system operator's governing documents would have precedence over the NAESB business standards with respect to things such as consistency of terms or definitions, but that such conflicts should not refer to use of or reliance on less rigorous regional demand response M&V techniques. EPSA believes this provision should allow for regional variation while protecting against a region adopting measures and protocols that are inferior to those prescribed in the Phase II proposal.

32. Mr. Lynch states that he opposes the proposed standard for power plants regulating carbon dioxide emissions from new coal-based power plants, arguing that such

a regulation would effectively outlaw coal as a fuel source for the next generation of power plants, causing energy costs to rise.

2. Commission Determination

33. The Commission is revising its regulations at 18 CFR 38.2 to incorporate by reference the revised NAESB Phase II Demand Response M&V Standards, as they represent an incremental improvement to the existing standards that we incorporated by reference in Order No. 676-F. This phase of the demand response standard development builds upon the work that allows demand response to participate in organized wholesale electric markets, including accurate measurement and monitoring of demand response resources' performance.

34. The Phase II Demand Response M&V Standards provide common definitions and processes regarding demand response products in organized wholesale electric markets where such products are offered. The standards address the applicability of performance evaluation, metering, and processes to each of the organized wholesale electric markets. The changes included in the Phase II Demand Response M&V Standards add greater specificity on items such as meter data reporting deadlines. The standards also require each RTO and ISO to address in the RTO's or ISO's governing documents the performance evaluation methods to be used for demand response products. The performance evaluation standards define each of the individual methods and their use during demand response events. The changes to the performance evaluation standards

included in the Phase II Demand Response M&V Standards add greater specificity on the use of the individual performance evaluation methods.

35. The Commission concludes that the Phase II Demand Response M&V Standards facilitate the ability of demand response providers to participate in organized wholesale electric markets, reducing transaction costs and providing an opportunity for more customers to participate in these programs, especially for customers that operate in more than one organized market. The improvements to the uniform set of definitions and applicability requirements in the Phase II Demand Response M&V Standards should further reduce differences in performance evaluation methods between regions. Incorporating by reference these measurement and verification standards also will improve the methods and procedures for accurately measuring the performance of demand response resources and assist in monitoring demand response services for potential market manipulation.

36. The Commission appreciates the thoughtful comments and proposals related to increasing the detail of the Phase II Demand Response M&V Standards, as well as the proposals to establish a common M&V approach that would supplement each RTO's and ISO's approved methods. As the Commission has explained in prior orders, in choosing to take advantage of the efficiency of the NAESB process to establish technical standards for business practices and communication protocols for the gas and electric industries, we follow the standard regulatory process by which standards are incorporated by

reference.[27] These rules appropriately balance the interests of the standards organization and the expediency of governmental use of privately developed standards. We find that, on balance, the objections raised to adopting the standards do not warrant rejecting them. While additional efforts to increase consistency across regions could benefit end users and demand response providers, as presented the Phase II Demand Response M&V Standards nonetheless represent an incremental improvement to the standards incorporated by reference in Order No. 676-F. The Commission therefore will incorporate by reference the standards without modification. While the Commission will not require any additional process to further refine or develop demand response measurement and verification standards at this time, we will monitor efforts at RTOs and ISOs and NAESB to address the issues raised in this proceeding and otherwise made known to us, and take action in the future in a separate docket as necessary.

37. We agree with EEI and Southern that the particular standards we are incorporating by reference in this Final Rule apply only in organized wholesale electric markets administered by RTOs or ISOs. NAESB made this clear in the applicability section of its standards, and we do not see any need to further amend 18 CFR 38.2. With respect to questions regarding whether the relevant RTO or ISO governing documents take precedence over the standards that we are incorporating by reference, we find that the standards adopted are sufficiently clear. To the extent that the Phase II Demand

[27] *See, e.g., Standards for Business Practices and Communication Protocols for Public Utilities,* Order No. 676-E, FERC Stats. & Regs. ¶ 31,299, at P 118 (2009).

Response M&V Standards refer to "Governing Documents," in the event of a conflict with the otherwise applicable NAESB standard, the governing documents will take precedence. If such a conflict arises and is of concern to affected parties, they may bring that concern to the Commission for consideration.

38. We also find merit in the suggestions to develop baselines that are more accurate for highly-variable load, to consider whether further work is needed to reflect in the standards the distinct functions provided by capacity and energy products, and to consider further development of appropriate rules for demand response supported by behind-the-meter generation. We encourage stakeholders to pursue these issues as they consider potential enhancements to the NAESB standards.

39. Mr. Lynch's comments are not related to the issues in this proceeding and, therefore, we will not address them here.

C. NAESB Energy Efficiency M&V Standards

40. In the NOPR, the Commission proposed to incorporate by reference the NAESB Wholesale Energy Efficiency M&V Standards, which include the following new standards -- 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. We address below the issues raised by the commenters.

1. Comments

a. Adoption of Wholesale Energy Efficiency M&V Standards

41. The Commission sought comments on whether it should incorporate by reference NAESB's proposed Energy Efficiency M&V Standards. Several commenters, including EEI, AEP, and IRC support incorporating the NAESB Energy Efficiency M&V business practice standards into the Commission's regulations.

42. Several other parties offer qualified support, including the DR Supporters, IECA, and PSEG. While generally supporting the incorporation of the energy efficiency business standards into the Commission rules, these commenters recommend several changes. The DR Supporters and IECA recommend that "streamlined, cost-effective application of coincidence factors for simple conversion of energy use to peak demand reduction" be included in the NAESB Energy Efficiency M&V standards, particularly for capacity markets. In its comments, PSEG recommends several specific modifications to the proposed Energy Efficiency M&V standards including wording changes, changes in report timing, and deletion of Standard 021-3.11.1.9, which addresses the precision of measurement or monitoring equipment for proxy variables that do not directly measure electrical demand. IRC states that the Commission also should adopt and incorporate

into its regulations the Introduction and Principles and Applicability sections identified in the Annual Plan item 4(d) as WEQ-021-1 and WE1-021-2, respectively. IRC argues that the Introduction and Principles frame the context of the standards and that the Applicability section: limits the applicability of the standard to RTOs and ISOs; establishes that RTO and ISO governing documents take precedence over the standard where there is a conflict; clarifies that the standard does not establish requirements related to compensation, design, operation, or use of energy efficiency products and services, and does not require system operators to offer energy efficiency products and services; and states that the standard includes the requirements on energy efficiency resource providers for M&V of energy efficiency products and services offered into wholesale electric markets.

43. NEEP, NAPP, WEM, Alliance to Save Energy, and EVO recommend against adopting the NAESB Energy Efficiency M&V Standards. NEEP and EVO share PSEG's objections to the required precision of measurement of monitoring equipment in Standard 021-3.11.1.9. NAPP, NEEP, Alliance to Save Energy, and EVO object to removing references to the International Performance Measurement and Verification Protocol (IPMVP). These commenters are concerned that deleting references to the IPMVP in the body of the Energy Efficiency M&V Standards removes the connection of the NAESB energy efficiency standards to the leading industry-accepted energy efficiency M&V guidance document. They argue that removing the references to IPMVP could cause confusion in the field and impede credible and consistent energy efficiency M&V, and

will make it much more difficult for the Commission to be assured of consistency and transparency. NAPP argues that the NAESB process resulting in removing references to the IPMVP did not involve broad industry participation.

44. DNV KEMA and NEEP recommend several modifications to the Energy Efficiency M&V standards that address statistical significance and accuracy of the measurement of proxy variables. NEEP proposes modifications stating that the plus or minus two percent accuracy requirement on equipment required in WEQ.021.3.11.9 is redundant with the overall accuracy level required in Section WEQ.021.3.8. NEEP argues that this requirement could lead to a departure from standard practice in evaluating energy efficiency resources, and may compromise the overall accuracy of the M&V results while imposing higher evaluation costs. NEEP contends the prescribed level of accuracy for measurement for monitoring equipment extends beyond the hardware-specific scope of Section WEQ.021.3.11.

b. Other Matters

45. Several comments request that the Commission initiate a process to examine specific energy efficiency standards or to convene a technical conference to discuss the proposed energy efficiency standards in general in order to resolve areas of concern. IECA requests that the Commission add a process to create streamlined, cost-effective application of factors for simple conversion of energy use to peak reduction. EVO, NECPUC, and NEEP ask the Commission to convene a technical conference to address energy efficiency issues identified by commenters in this rulemaking process and to

resolve areas of concern. EVO, supported by NEEP, also asks the Commission to convene a technical conference to address the removal of references to IPMVP from the energy efficiency standards, arguing that the removal constitutes a material change to the substance of the Wholesale Energy Efficiency M&V Standards.

46. NECPUC states its understanding that there is a significant divergence in views amongst the NAESB board with respect to the equipment accuracy requirement in WEQ.021.3.11.9, and NEEP states that its comments on statistical precision (discussed above) were not sufficiently considered or understood within the NAESB process.

2. Commission Determination

47. The Commission is revising its regulations at 18 CFR 38.2 to incorporate by reference the NAESB Wholesale Energy Efficiency M&V Standards. The new standards define terms and definitions that can be used to facilitate communications and provide standards for measurement and verification methodologies for energy efficiency in organized wholesale electric markets. These standards will reduce transaction costs and provide an additional opportunity and increased incentive for energy efficiency resources to participate in the wholesale markets established in RTO and ISO regions.

48. As with the Phase II Demand Response M&V Standards discussed above, the Wholesale Energy Efficiency M&V Standards were developed through the consensus-based NAESB process. Most of the modifications commenters suggest in response to the NOPR have already been considered through the NAESB process; consequently, the Commission declines to require that such modifications be included here. We find the

standard requiring a plus or minus two percent accuracy for measuring equipment, to be reasonable; thus we incorporate it here, noting that its applicability is limited to measuring equipment only. These standards on measuring equipment accuracy reflect industry consensus, arrived at through the NAESB standards development process, on the specific statistical precision requirements associated with the reliable operation of organized wholesale electric markets. Additionally, while some express concern with NAESB's use of the minor clarifications and correction procedures to remove the IPMVP requirement, this procedure is permitted by NAESB's rules, and the NAESB Executive Committee reached a consensus on the removal of references to IPMVP from the energy efficiency M&V standards. Since the standards before us do not include the IPMVP references, we will not address the comments in that regard. As previously stated, NAESB followed its processes to remove these references. We find that standards as presented are incremental improvements and incorporation by reference does not foreclose stakeholders from pursuing these enhancements and their concerns through RTO and ISO or NAESB processes. The Commission, therefore, incorporates the standards.[28]

49. Additionally, a few commenters suggested modifications that were not considered during the consensus-based NAESB process, and the Commission declines to require that those additional modifications here. Specifically, we will not include provisions

[28] *See* n.21 *supra*; *see also* OMB Circular A-119 Revised, February 10, 1998, *available at* http://www.whitehouse.gov/omb/circulars_a119.

requiring RTOs to carefully consider acceptance of industry developed coincidence factors when evaluating Energy Efficiency M&V plans, and thus the Commission will not undertake a Commission-led process to develop such coincidence factors. We encourage stakeholders to pursue these issues as they consider potential enhancements to the NAESB standards.

50. We will not incorporate into our regulations the Introduction and Principles and Applicability sections identified in the Annual Plan item 4(d) as WEQ-021-1 and WE1-021-2, respectively, as we find that standards that we are incorporating by reference are sufficiently clear that the standards apply to organized wholesale electric markets administered by RTOs or ISOs.

51. The Commission also declines to convene a process or conduct technical conferences to discuss potential changes to the Wholesale Energy Efficiency M&V Standards. We conclude that it is appropriate to allow industry to gain additional experience with these new standards prior to considering additional enhancements. If the Commission determines that further efforts are warranted at a later time, it will take appropriate steps in a separate docket.

D. Incorporation by Reference/Copyrighted Standards

52. EVO and WEM object to the incorporation by reference of the NAESB standards, maintaining they should not have to pay to obtain copies of the copyrighted standards. Similarly, WEM expresses concern that NAESB was utilized to develop the standards and contends that the fee NAESB charges for access to its standards will be onerous for

some entities, noting that it experienced complications in getting free access to the standards from NAESB during the NOPR comment period. The PJM IMM also recommends that the Commission ensure that any standards incorporated into its rules are published in full in the Federal Register.

53. We addressed this issue at length in Order No. 676-E[29] in November of 2009, concluding that the NAESB process is an efficient and cost-effective method of developing these standards, incorporation by reference is the appropriate method for the Commission to adopt the regulations, and the Commission is required to observe NAESB's copyright.[30] As we pointed out in that order, obtaining these standards is not cost prohibitive. NAESB, in fact, makes the standards available free for a limited period of time to those that want to view the standards during comment periods related to Commission proposals to incorporate standards by reference.[31] For non-members seeking to purchase a copy, an email copy of any final action (e.g., the Demand Response Phase II standards) is available for $50, which is not prohibitive.

III. Implementation Dates and Procedures

54. The Commission is requiring, consistent with our regulations at 18 CFR 35.28(c)(vi), each RTO and ISO to revise its OATT to include the NAESB Energy Efficiency and Phase II Demand Response M&V Standards we are incorporating by

---

[29] Order No. 676-E, FERC Stats. & Regs. ¶ 31,299 at PP 115-121.

[30] *Id.*

[31] *See* http://www.naesb.org/misc/NAESB_Nonmember_Evaluation_LockLizard.pdf.

reference herein. For standards that do not require implementing tariff provisions, the Commission will allow the RTO or ISO to incorporate the WEQ standard by reference in its OATT. Compliance with the standards incorporated in this Final Rule will be required beginning on the same date that the rule becomes effective (i.e., sixty days after publication in the Federal Register), even if this precedes the filing of a revised OATT reflecting these new requirements.

55. However, as we directed in the Phase I Demand Response M&V Final Rule, to lighten the burden associated with an immediate, stand-alone filing of a revised tariff reflecting the standards incorporated by reference in this Final Rule, we are giving RTOs and ISOs the option of including these changes as part of an unrelated tariff filing, even though compliance with the revised standards is required beginning on the effective date of this Final Rule.[32] If the RTO or ISO makes no unrelated tariff filing by December 31, 2013, it must make a separate tariff filing incorporating these standards by that date.

56. If adoption of these standards does not require any changes or revisions to existing OATT provisions, RTOs and ISOs may comply with this rule by adding a provision to their OATTs that incorporates the standards adopted in this rule by reference, including the standard number used to identify the standard. To incorporate this standard into their OATTs, RTOs and ISOs must use the following language in their OATTs: Measurement and Verification of Wholesale Electricity Efficiency (WEQ-021

[32] *See* Order No. 676-F, FERC Stats. & Regs. ¶ 31,309 at P 44.

2010 Annual Plan Item 4(d), July 16, 2012; and Measurement and Verification of Wholesale Electricity Demand Response (WEQ-015, 2010 Annual Plan Items 4(a) and 4(b), March 21, 2011).

57. If a RTO or ISO requests waiver of a standard, it will not be required to comply with the standard until the Commission acts on its waiver request. Therefore, if a RTO or ISO has obtained a waiver or has a pending request for a waiver, its proposed revision to its OATT should not include the standard number associated with the standard for which it has obtained or seeks a waiver. Instead, the RTO's or ISO's OATT should specify those standards for which the RTO or ISO has obtained a waiver or has pending a request for waiver. If and when a waiver request is denied, the RTO or ISO will be required to include in its OATT the standard(s) for which waiver was denied.

IV. Notice of Use of Voluntary Consensus Standards

58. In section 12(d) of NTT&AA,[33] Congress affirmatively requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like NAESB, as the 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.[34] NAESB approved the standards under its consensus procedures. Office of Management and Budget Circular A-119 (§ 11) (February 10, 1998) provides that federal agencies should publish a request for comment in a NOPR when the agency

[33] National Technology Transfer and Advancement Act of 1995.

[34] *Id.*

is seeking to issue or revise a regulation proposing to adopt a voluntary consensus standard or a government-unique standard. The Commission published a request for comment in the Energy Efficiency and Phase II Demand Response M&V NOPR.

V. Information Collection Statement

59. The Office of Management and Budget's (OMB) regulations require approval of certain information collection requirements imposed by agency rules.[35] Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a 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. The OMB Control Numbers will not be displayed in the NAESB standards; an explanation will be included in the clearance package submitted to OMB.

60. This Final Rule upgrades the Commission's current business practice and communication standards to include NAESB's Energy Efficiency M&V Standards and Phase II Demand Response M&V Standards. The implementation of these standards is necessary to increase the efficiency of demand response and energy efficiency in organized wholesale electric markets. In addition, requiring such information ensures a common means of communication and ensures common business practices that provide participants engaged in transactions with demand response programs with timely information and consistent business procedures across multiple markets. The

[35] 5 CFR 1320.11.

implementation of these data requirements will help the Commission carry out its responsibilities under the Federal Power Act.

61. The Commission sought comments on its burden estimates associated with adoption of the NOPR proposals. In response to the NOPR, no comments were filed that addressed the reporting burden imposed by these requirements. Therefore the Commission will use these same estimates in this Final Rule.

	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[36]	6	1	4	24
	FERC-717[37]	6	1	9	54
Energy Efficiency Standards	FERC-516	6	1	6	36
	FERC-717	6	1	12	72
Total for FERC-516					60
Total for FERC-717					126
Total One-Time Burden					186

[36] "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.

[37] "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.

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

Information Collection Costs: The Commission projects the average annualized cost for all respondents to be the following:[38]

FERC-516: 60 hours*$59/hour = $3,540 ($590 per respondent).

FERC-717: 126 hours*59/hour= $7,434 ($1,239 per respondent).

The following table breaks out the cost by standard:

	FERC-516 (Tariff Filing)	**FERC-717 (Standards Implementation)**
Demand Response Standards Capital/Startup Costs	$1,416	$3,186
Demand Response Standards Annualized Costs (Operations & Maintenance)	N/A	N/A
Energy Efficiency Standards Capital/Startup Costs	$2,124	$4,248
Energy Efficiency Standards Annualized Costs (Operations & Maintenance)	N/A	N/A
Demand Response Standards Total Costs	$1,416	$3,186[39]

[38] 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 Total Costs	$2,124	$4,248[40]
All Standards Total Costs	$3,540	$7,434

62. These new information collection requirements are mandatory.

Title: Standards for Business Practices and Communication Protocols for Public Utilities (FERC-717); Electric Rate Schedule Filings (FERC-516).

Action: Information collection.

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

Respondents: RTO and ISOs.

Frequency of Responses: One-time implementation.

63. Necessity of Information: The Commission's regulations adopted in this rule upgrade the Commission's current business practices and communication standards by standardizing the definitions used by RTOs and ISOs to identify their various energy efficiency and demand response products and to measure and verify the results obtained by these products. Moreover, the implementation of these data requirements will help ensure consistency among the RTOs/ISOs with respect to the measurement and verification of energy efficiency and demand response performance in their organized wholesale electric markets.

64. Internal Review: The Commission has reviewed the information collection requirements and has determined, as discussed above, that its action in this proceeding is

[39] We note that 24 hours at $59/hour= $1,416 and 54 hours at $59/hour= $3,186.

[40] We note that 36 hours at $59/hour= $2,124 and 72 hours at $59/hour= $4,248.

necessary because this rule increases access to standardized information for participants in wholesale energy markets that administer demand response and energy efficiency products and services. This rule also facilitates the ability of demand response and energy efficiency providers to participate in electricity markets, reducing transaction costs and providing an opportunity for more customers to participate in these programs.

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

66. For submitting comments concerning the collection of information and the associated burden estimate, please send your comments 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) 395-4718, fax: (202) 395-7285]. For security reasons, comments to OMB should be submitted by e-mail to: oira submission@omb.eop.gov. Comments submitted to OMB should reference the appropriate OMB Control Number(s) and collection number(s) (OMB Control No. 1902-0096 for FERC-516, and/or OMB Control No. 1902-0173 for FERC-717).

VI. Environmental Analysis

67. 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.[41] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[42] The actions adopted 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 natural gas and electric power that requires no construction of facilities. Therefore, an environmental assessment is unnecessary and has not been prepared in this Final Rule.

VII. Regulatory Flexibility Act

68. The Regulatory Flexibility Act of 1980 (RFA)[43] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[44] 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

[41] *Regulations Implementing National Environmental Policy Act* of 1969, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,783 (1987).

[42] 18 CFR 380.4.

[43] 5 U.S.C. 601-612.

[44] 13 CFR 121.101.

electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours.[45]

69. The regulations we are incorporating by reference in this Final Rule impose filing requirements only on RTOs and ISOs, none of which is a small business. Moreover, these requirements are designed to benefit all customers, including small businesses. As noted above, adoption of consensus standards helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of industry participants representing all segments of the industry. Because of that representation and the fact that industry conducts business under these standards, the Commission's regulations should reflect those standards that have the widest possible support.

70. Accordingly, pursuant to section 605(b) of the RFA, the Commission hereby certifies that the regulations incorporated by reference herein will not have a significant impact on a substantial number of small entities.

VIII. Document Availability

71. 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.

[45] 13 CFR 121.201, Sector 22, Utilities & n.1.

72. From FERC'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.

73. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC 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.

IX. Effective Date and Congressional Notification

74. These regulations are effective [**insert date 60 days from publication in Federal Register**]. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of subjects in 18 CFR Part 38

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

By the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

In consideration of the foregoing, the Commission amends 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).

* * * * *

Note: The following appendix will not be published in the Code of Federal Regulations.

Appendix

List of Commenters[46]

Alliance to Save Energy (Alliance)

American Electric Power Service Corporation (AEP)

DNV KEMA

DR Supporters[47]

Edison Electric Institute (EEI)

Efficiency Evaluation Organization (EVO)

Electricity Consumers Resource Council (ELCON)

Electric Power Supply Association (EPSA)

Hess Corporation (HESS)

Independent Market Monitor for PJM (PJM IMM)

Industrial Energy Consumers of America (IECA)

ISO/RTO Council (IRC)

John Lynch (Mr. Lynch)

North America Power Partners (NAPP)

New England Conference of Public Utilities Commissioners (NECPUC)

---

[46] The abbreviations used to identify these commenters in this Final Rule are shown parenthetically.

[47] DR Supporters include Comverge, Inc., Energy Connect, Inc., Energy Curtailment Specialists, Inc., EnerNOC, Inc., and Wal-Mart Stores, Inc.

New York Transmission Owners (NYTOs)[48]

Northeast Energy Efficiency Partnerships, Inc. (NEEP)

PSEG Companies (PSEG)[49]

Southern Company Services, Inc. (Southern)

Viridity Energy, Inc.; EnergyConnect, Inc.; and PJM Industrial Customer Coalition (Viridity)

Women's Energy Matters (WEM)

[FR Doc. 2013-04433 Filed 03/06/2013 at 8:45 am; Publication Date: 03/07/2013]

[48] New York Transmission Owners includes Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Power Authority, New York Power Authority, New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

[49] The PSEG Companies are: Public Service Electric and Gas Company (PSE&G), PSEG Power LLC (PSEG Power) and PSEG Energy Resources & Trade LLC (PSEG ER&T).