date of this rule until 30 days after publication in the **Federal Register** because: (1) The relevant provisions of this part require that the percentages designated herein for the 2009–10 crop year apply to all NS raisins acquired during the crop year; (2) handlers are aware of this action, which was unanimously recommended at a public meeting, and need no additional time to comply with these percentages; and (3) this interim rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule. Also, for the reasons stated above, a 30-day comment period is deemed appropriate.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 989 is amended to read as followed:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 989.257 is revised to read as follows:

§ 989.257 Final free and reserve percentages.

(a) The final percentages for the respective varietal type(s) of raisins acquired by handlers during the crop year beginning August 1, which shall be free tonnage and reserve tonnage, respectively, are designated as follows:

Crop year	Varietal type	Free percentage	Reserve percentage
2003–04	Natural (sun-dried) Seedless	70	30
2005–06	Natural (sun-dried) Seedless	82.50	17.50
2006–07	Natural (sun-dried) Seedless	90	10
2007–08	Natural (sun-dried) Seedless	85	15
2008–09	Natural (sun-dried) Seedless	87	13
2009–10	Natural (sun-dried) Seedless	85	15

(b) The volume regulation percentages apply to acquisitions of the varietal type of raisins for the applicable crop year until the reserve raisins for that crop are disposed of under the marketing order.

Dated: April 16, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–9241 Filed 4–21–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 38

[Docket No. RM05–5–017; Order No. 676–F]

Standards for Business Practices and Communication Protocols for Public Utilities

Issued April 15, 2010.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations at 18 CFR 38.2 to incorporate by reference business practice standards adopted by the Wholesale Electric Quadrant of the North American Energy Standards Board (NAESB) to categorize various demand response products and services and to support the measurement and verification of these products and services in wholesale electric energy markets. This rule ensures that participants in wholesale energy markets where demand response products are administered receive standardized access to information that will enable them to participate in those markets and addresses performance evaluation methods appropriate to use for demand response products. This rule facilitates the ability of demand response providers to participate in electricity markets, reducing transaction costs and providing an opportunity for more customers to participate in these programs, especially customers that operate in more than one organized market. It also provides a foundation for further business practice standardization efforts, and participants in the NAESB process can use these standards to identify those elements for which standardization would be beneficial. Further, adoption of measurement and verification standards will improve the methods and procedures for measuring accurately the performance of demand response resources and assist in monitoring demand response services for potential manipulation.

DATES: *Effective Date*: This rule will become effective May 24, 2010. 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 May 24, 2010.

FOR FURTHER INFORMATION CONTACT: Ryan Irwin (technical issues), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6454.

Gary D. Cohen (legal issues), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8321.

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Before Commissioners: Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, and John R. Norris.

Final Rule

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 business practice standards adopted by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB) to categorize various demand response products and services and to support the measurement and verification of these products and services in wholesale electric energy markets. We also take this opportunity to update 18 CFR 38.2(b) to reflect NAESB's new address.

2. These standards identify operational information about demand response products that system operators need to make available to participants in markets where such products are offered and address performance evaluation methods appropriate to use for demand response products. They also facilitate the ability of demand response providers to participate in electricity markets, reducing transaction costs and providing an opportunity for more customers to participate in these programs, especially customers that operate in more than one organized market. In addition, these standards provide a foundation for further business practice standardization efforts, which participants in NAESB's WEQ process can use to identify those elements for which standardization would be beneficial. Further, adoption of measurement and verification standards will improve the methods and procedures for measuring accurately the performance of demand response resources and assist in monitoring demand response services for potential manipulation.

I. Background

3. 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.[2] 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 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. Under the WEQ process, for a standard to be approved, it must receive a super-majority vote of 67 percent of the members of the WEQ's Executive Committee with support from at least 40 percent of each of the seven industry segments.[3] For final approval, 67 percent of the WEQ's general membership must ratify the standards.[4] NAESB's standards are voluntary. However, the Commission has made compliance with these standards mandatory in those instances where it has incorporated such standards by reference into its regulations.

4. 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.[5] 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 the standards by reference into the Commission's regulations.[6]

5. NAESB began work on the development of business practice standards pertaining to the measurement and verification of demand response products and services in July 2007, when the NAESB WEQ Demand Side Management—Energy Efficiency (DSM) subcommittee began work on this issue. This effort led to the adoption and ratification by NAESB of measurement and verification standards early in 2009. 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.

6. 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 wholesale electric energy markets. The NAESB report recognized

[1] 18 CFR 38.2(a).

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

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

[4] *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).

[5] *Id.*

[6] *Standards for Business Practices and Communication Protocols for Public Utilities,* Order No. 676–E, *Final Rule,* 74 FR 63288 (Dec. 3, 2009), FERC Stats. & Regs. ¶ 31,299 (2009), Order No. 676–D, *order granting clarification and denying reh'g,* 124 FERC ¶ 61,317 (2008), Order No. 676–C, *Final Rule,* FERC Stats. & Regs. ¶ 31,274 (2008), Order No. 676–B, *Final Rule,* FERC Stats. & Regs. ¶ 31,246 (2007).

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 independent system operator/regional transmission organization (ISO/RTO) footprint areas.

7. After a review of NAESB's April 2009 Report, the Commission issued a notice of proposed rulemaking on September 17, 2009 that proposed to amend the Commission's regulations at 18 CFR 38.2 to incorporate by reference the consensus standards adopted by NAESB's WEQ on March 16, 2009 (NAESB Phase I M&V Standards).[7] NAESB has initiated specific plans to improve and adopt additional technical standards (Phase II M&V Standards).[8] In the Phase I M&V NOPR, the Commission specifically requested comments on whether the Commission should establish a deadline for the development of these remaining critical standards and, if so, what that deadline should be.

8. In response to the Phase I M&V NOPR, comments were filed by 19 entities.[9]

II. Discussion

A. Overview

9. In this Final Rule, the Commission is revising its regulations at 18 CFR 38.2 to incorporate by reference the NAESB Phase I M&V Standards. The new standards will facilitate development of standardized business practices for measuring and verifying demand resource products and services for the wholesale electric market. In addition, they will help create a framework for a more seamless electronic marketplace by providing consistent terms and definitions that can be used in electronic protocols across both the wholesale and retail electric markets. Further, adoption of measurement and verification standards will improve the methods and procedures for measuring accurately the performance of demand response resources and assist in monitoring demand response services for potential manipulation.

10. The NAESB Phase I M&V Standards were approved by the WEQ and ratified by the NAESB membership under NAESB's consensus procedures.[10] As the Commission found in Order No. 587,[11] adoption of consensus standards is appropriate because the consensus process helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of 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 standards that have the widest possible support. In section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTT&AA), Congress affirmatively requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like NAESB, as a means to carry out policy objectives or activities determined by the agencies unless use of such standards would be inconsistent with applicable law or otherwise impractical.[12]

11. The specific NAESB standards that we are incorporating by reference in this Final Rule are business practices for Measurement and Verification of Wholesale Electricity Demand Response. The standards have 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.

12. The NAESB Phase I M&V Standards also provide a foundation for further business practice standardization efforts, and participants in the WEQ process can use these standards to identify those elements for which standardization would be beneficial. We believe that development of the Phase II M&V Standards to which NAESB has committed will help improve the methods and procedures for measuring accurately the performance of demand responders. Such standards also will facilitate the ability of demand response providers to participate in electricity markets, in particular customers and aggregators that may participate in multiple markets. Standards for measuring and verifying demand response can help these customers reduce the transaction costs of participating in these markets.

13. Because of the importance of moving forward on the development and adoption of the Phase II M&V Standards, we urge NAESB to complete its development of these standards within one year, as discussed below. If NAESB is unable to meet this goal, we request that it file with the Commission within one year, a report of the progress it has made, as well as the areas in which consensus has not been reached.

14. We address below the issues raised by the commenters.

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[7] *Standards for Business Practices and Communication Protocols for Public Utilities,* Notice of Proposed Rulemaking, 74 FR 48173 (Sep. 22, 2009), FERC Stats. & Regs. ¶ 32,646 (2009) (Phase I M&V NOPR).

[8] Item 4a of NAESB's 2010 Annual Plan calls for the WEQ to review the NAESB Business Practices for Measurement and Verification of Wholesale Electricity Demand Response (WEQ–015) in conjunction with the Demand Response Matrix developed by the ISO/RTO Council and to identify business practice requirements that could be improved or made clearer through the addition of specific technical detail. The ISO/RTO Council's 2009 "North American Wholesale Electricity Demand Response Program Comparison" may be viewed at the ISO/RTO Council's Web site at *http://www.isorto.org.* The Annual Plan provides that wholesale and retail demand response work groups and the Smart Grid task force should actively and timely communicate and coordinate work products to ensure consistency among the three work groups. The Annual Plan further provides that each work group should take into account the work products developed by the other groups.

Item 4b of NAESB's 2010 Annual Plan calls for the WEQ, using the ISO/RTO Council's matrix as a starting point, to review each performance evaluation type/service type combination identified in WEQ–015 to assess and determine what standards or guidelines, if any, should be developed to aid all participants in the use of measurement and verification methods for demand response programs in organized wholesale electric markets. If the determination is made that standards or guidelines will be developed, those items will be added as sub-items to 4(b).

Item 4c of NAESB's 2010 Annual Plan calls for the WEQ to develop a glossary of terms used in demand response business practice standards.

Item 4d of NAESB's 2010 Annual Plan calls for the WEQ to develop business practice standards to measure and verify energy reductions that are made to comply with a Renewable Portfolio Standard that includes energy efficiency or a stand-alone Energy Efficiency Portfolio Standard as part of an overall effort to measure and verify reductions in energy and demand from energy efficiency in wholesale and retail markets.

[9] The entities that filed comments and the abbreviations used in this Final Rule to identify these entities are listed in Appendix A.

[10] This process first 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, which are enumerated in P 3, *supra.* For final approval, 67 percent of the WEQ's general membership voting must ratify the standards.

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

[12] Pub. L. 104–113, § 12(d), 110 Stat. 775 (1996), 15 U.S.C. § 272 note (1997). This requirement is further discussed at P 48, *infra.*

B. NAESB Phase I M&V Standards

1. Adoption of NAESB Phase I M&V Standards

a. Comments

15. Nearly all the commenters support the proposal to incorporate the NAESB Phase I M&V Standards by reference. California Commission, Comverge, EEI, EnerNOC, EPSA, Indiana Commission, ISO/RTO Council, NARUC, NRECA, Public Interest Orgs, SDG&E, TVA and Westar all express support for the proposal. For example, EnerNOC asserts the NAESB Phase I M&V Standards address a need within the industry to develop consistent measurement and verification (M&V) practices across the country. While NRECA and Indiana Commission raised concerns about the costs of obtaining NAESB standards, addressed below, they did not oppose the incorporation by reference of the NAESB Phase I M&V Standards.

b. Commission Determination

16. The Commission is revising its regulations at 18 CFR 38.2 to incorporate by reference the NAESB Phase I 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 demand resources in wholesale electric markets.

2. Clarification of Jurisdictional Concerns

17. As we explained in the Phase I M&V NOPR, the NAESB Phase I M&V Standards will enhance transparency and consistency in the methodology used to measure and verify demand response products in wholesale markets administered by the ISOs and RTOs.[13]

a. Comments

18. FirstEnergy, the California Commission and NARUC all caution that these standards are only applicable in the wholesale energy market and that the states have jurisdiction over retail demand response programs, meters and infrastructure.

19. FirstEnergy argues that the Commission's involvement in demand response activities must continue to acknowledge that the states have jurisdiction in retail markets. Similarly, NARUC states that the Commission should continue to work closely with the states to outline jurisdictional boundaries with respect to the standards being proposed in the NAESB process.

[13] Phase I M&V NOPR at P 10.

b. Commission Determination

20. We agree with the commenters that the NAESB Phase I M&V Standards that we are incorporating by reference in this Final Rule are applicable to wholesale energy markets under the Commission's jurisdiction and nothing in this Final Rule is intended to interfere with the states' jurisdiction over retail demand response programs.

3. Nomenclature

21. The NAESB Phase I M&V Standards include 40 definitions. These definitions "identify basic product categories, *i.e.,* energy service, capacity service, reserve service and regulation service. They identify the measurement and verification characteristics of demand response products and services offered in organized wholesale electricity markets, such as reduction deadlines, advance notification instructions, telemetry accuracy, and communication protocols." [14]

a. Comments

22. ELCON suggests in several instances that the definition included in the NAESB Phase I M&V Standards should be revised to add more specificity. For example, it would add further operating characteristics to the definitions of Normal Operations, Recovery Period and Demand Resource Availability Measurement.[15] Additionally, ELCON suggests several edits and clarifications to these same terms and to the definition of Triggering Events and Telemetry.[16] EPSA, likewise, asserts the standards in their current form do not provide enough detail to ensure demand response resources receive comparable treatment to those of other resources.[17]

b. Commission Determination

23. We find the definitions included in the NAESB Phase I M&V Standards adequate for the purposes of Phase I and we will incorporate them by reference as proposed in the Phase I M&V NOPR. Also, as we noted above, item 4c of the WGQ 2010 Action Plan is devoted to the formulation of a glossary of demand response terminology. ELCON and EPSA may pursue their concerns about the need for greater specificity in the definition of demand response terms by continuing their participation in the NAESB process.

[14] *Id.* at P 6.

[15] ELCON Comments at 4–7.

[16] *Id.* at 5.

[17] EPSA Comments at 4.

C. Phase II M&V Standards

1. Proper Organization(s) to Develop Phase II M&V Standards

a. Comments

24. Nearly all the comments support NAESB as the proper organization to develop the Phase II M&V Standards.[18] For example, ISO/RTO Council asserts the NAESB process has been an effective way to bring demand response organizations together to create the NAESB Phase I M&V Standards. Comverge commends the efforts of NAESB to develop this initial set of standards. EPSA also supports the NAESB process and notes the ANSI-certified consensus-based approach is an effective means to craft standards. Comverge expresses appreciation to NAESB for its efforts and is supportive of its efforts that ensure increased demand response participation.

25. By contrast, Duke is the sole commenter raising an objection to the continuing role of NAESB in developing the Phase II M&V Standards. Duke contends that the ISOs and RTOs are in a better position to develop these standards, due to regional differences.

b. Commission Determination

26. In our view, NAESB is best suited to develop these common Phase II M&V Standards. The NAESB DSM subcommittee has the membership and participation of demand response providers, ISOs, RTOs, public utilities and trade groups.

27. The continued cooperation and efforts of all these participants in the NAESB Phase II M&V Standards process will create an environment conducive to creating transparent and consistent standards for the measurement and verification of demand response resources offered into wholesale electricity markets. Furthermore, the efforts of a single group sponsored by NAESB will allow for more efficient participation in the standards development process and will help provide greater consistency than might be possible from the individual efforts sponsored by six separate regional organizations.

28. Improvement in measurement and verification standards will work to ensure that the performance of demand

[18] *See* supporting comments on this subject by Comverge, Curtailment Specialists, EEI, EPSA, ISO/RTO Council, NARUC and Westar. FirstEnergy also supports these efforts, although it cautions that we need to keep jurisdictional concerns in mind. *See* discussion at P 18–19, *supra.* TVA also stresses the need for the proper coordination of efforts. *See* P 39, *infra.* The objections of Industrial Coalitions on its preference for the Commission developing all standards are discussed in P 42, *infra.*

response resources can be accurately quantified. Standardization of measurement and verification methods also will help to reduce costs for customers participating in multiple markets. Without consistent standards, customers and demand response providers that participate in more than one RTO or ISO would then have to incur the costs of developing different business processes to adapt to the differing RTO/ISO requirements, increasing the cost and complexity of their business. Furthermore, the Phase II M&V Standards should help achieve greater efficiency in the operation and evaluation of the performance of demand response products and services.

2. Guidance on the Scope of the Phase II M&V Standards

a. Comments

29. Many of the commenters find that NAESB's development of Phase II M&V Standards and the Commission's incorporation by reference of such standards will have the benefit of creating additional consistency and standardization across markets. These same commenters also noted the benefits to adoption of a common terminology for M&V methods. For example, Public Interest Orgs supports the standardization of M&V business rules and asserts that such standardization will increase participation, eliminate gaming opportunities and enable aggregators to overcome varying business practices. EPSA also finds benefit in the Commission acting to reduce needless and costly disparities among the ISOs and RTOs, but is concerned that the standards provide too much deference to ISO/RTO policies and that this will hinder efforts to standardize demand response rules. ELCON does not object to the role of NAESB in developing the Phase II M&V Standards, but finds that the process needs improvement in Phase II so that the concerns of demand response providers are given more consideration and the views of ISOs and RTOs are given less deference.[19]

30. SDG&E supports the adoption of standards that promote transparency and consistency across markets. SDG&E further states that adopting consistent standards across ISOs and RTOs could reduce barriers to demand response providers who operate in multiple markets. Industrial Coalitions states the standardization of demand response practices across power markets will improve their business objectives.[20] Comverge supports Phase II M&V Standards that would simplify baseline approaches and expand the deployment of demand response. ISO/RTO Council notes approvingly that the use of common terminology has accelerated the development of retail standards as well as supported development of other demand response initiatives. TVA states that NAESB's Phase II M&V Standards efforts should concentrate on the measurement and verification of demand response.

31. Both Duke and FirstEnergy request guidance as to the content of the Phase II M&V Standards and what information is needed to facilitate and promote demand response in markets.

b. Commission Determination

32. While NAESB's Phase I 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. The measurement and verification standards needed to accomplish this goal should be a focus of NAESB's Phase II M&V Standards development efforts.

33. While the development of the Phase II M&V Standards should be an industry-driven consensus-seeking process, we agree with commenters that more detailed measurement and verification standards will reduce costs for customers and market participants, particularly those participating in multiple markets. As discussed earlier, 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 to the differing RTO/ISO requirements, increasing the cost and complexity of their business.

34. In response to Duke's and FirstEnergy's requests for additional guidance as to the content of the Phase II M&V Standards, we agree with NAESB's plan to start the process by reviewing the elements of the performance evaluation methods detailed in the ISO/RTO Council's demand response program matrix. While we do not expect NAESB to develop a single performance evaluation method, we reiterate that greater standardization of the performance evaluation methods will improve the accuracy of measuring and verifying demand response performance and may reduce costs. ELCON expresses concern that the views of RTOs and ISOs will be given greater consideration than those of other participants in the NAESB process. As discussed earlier, the NAESB process requires consensus agreement from all seven segments of the industry and no segment, therefore, can dominate the development of a standard. We expect the participants in the NAESB process actively to consider and be open to proposals and concerns from any source and to try to reconcile differences so that the standards promote accurate measurement and verification of the performance of demand resources.

3. Suggested Improvements to Standards

35. In the Phase I M&V NOPR, the Commission stated that these standards represent a starting place to develop a more comprehensive set of standards, with the development of more detailed technical standards for the measurement and verification of demand response resources, to take place in the Phase II M&V Standards development process.

36. A few of the commenters have raised some specific concerns that they would like addressed in the Phase II M&V Standards development process. For example, ELCON complains that the NAESB process gives too much weight to the views of ISOs and RTOs and argues that the standards place specific requirements on demand response providers while not spelling out the complementary obligations of system operators. ELCON would like this corrected in the Phase II M&V Standards process.[21] Water Project stresses that the Phase II M&V Standards should be designed to accurately verify the performance of demand response resources according to the specific service they are providing. Curtailment Specialists suggests the DSM subcommittee concentrate its efforts on developing the five baseline types; Baseline Type-I and Type-II, Meter Before/Meter After, Maximum Base Load and Metering Generator Output.

a. Commission Determination

37. As discussed above, the NAESB process provides for a reasonable balance of interests so that no one sector, RTOs or any other sector, can dominate the process. We agree that the process needs to consider the issues and views of the participants. We expect the NAESB process to develop Phase II M&V standards which incorporate the interests of all stakeholders in the process of developing consensus standards. In response to Curtailment Specialists, we expect Phase II will address issues related to baseline

[19] ELCON Comments at 3.

[20] Industrial Coalitions members include: Coalition of Midwest Transmission Customers; NEPOOL Industrial Customer Coalition; and PJM Industrial Customer Coalition.

[21] ELCON Comments at 3.

development, but we do not believe that Phase II should be limited to baseline development issues alone.

4. Deadline for Phase II M&V Standards Development

38. In the Phase I M&V NOPR, the Commission invited comment on whether the Commission should establish a deadline to complete the Phase II M&V Standards. The comments we received were split on this issue.

a. Comments

39. ELCON strongly supports a deadline for the development of the Phase II M&V Standards.[22] EPSA and TVA support a deadline that should take into consideration efforts underway at the North American Electric Reliability Corporation (NERC) and the National Institute for Standards and Technology (NIST) for both demand response and Smart Grid activities. Similarly, FirstEnergy recommends that the Commission coordinate its efforts with those of NERC, NIST and the Electric Power Research Institute. EPSA also supports prompt action and notes that NERC is in the process of developing demand response measurement standards through its Demand Response Availability Data System (DADS). EPSA expresses concern that a long delay in the Phase II M&V Standards development process may hinder NERC's demand response registration processes. Likewise, Comverge and EnerNOC also both support an aggressive deadline for the timely completion of the Phase II M&V Standards development process.

40. By contrast, ISO/RTO Council, FirstEnergy, EEI, SDG&E, NRECA and the Indiana Commission all oppose a deadline. They all argue that setting a deadline would be premature and contend that the NAESB process should be allowed to run its course. Many of these commenters, however, agree that, absent a deadline, it would be appropriate for NAESB to provide the Commission with regular status reports on the progress made in the development of the Phase II M&V Standards.[23]

b. Commission Determination

41. We request that NAESB seek to conclude its Phase II M&V Standards development within one year from the effective date of this order. In light of the importance of measuring and verifying demand response products, as well as the utility of these standards to the NIST and NERC initiatives, the Phase II M&V Standards should be developed as soon as possible. Prompt action in developing the Phase II M&V Standards is essential, in light of the importance of these standards in ensuring that the performance of demand response resources can be accurately quantified. A year for development of such standards is reasonable. Due to the importance of these standards, if NAESB is unable to fully develop standards within the one-year period, we request that it file a report with the Commission indicating the progress it has made, including the standards it has considered and the issues on which it has been unable to reach consensus. The Commission can then build upon the information developed during the NAESB process to propose standards or establish procedures for the development of such standards.

D. Incorporation by Reference

42. A number of organizations (Industrial Coalitions, NRECA, and the Indiana Commission) filed comments objecting to the incorporation by reference of the NAESB standards, maintaining they should not have to pay to obtain copies of the copyrighted standards. We addressed this issue at length in Order No. 676–E[24] in November of 2009, concluding that the NAESB process is the most 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 must respect NAESB's copyright.[25] As we pointed out in that order, obtaining these standards is not cost prohibitive. NAESB, in fact, makes the standards available for free for three consecutive business days for those who want to view the standards in order to make comments with the Commission.[26] Even for those non-members seeking to purchase a copy, the standards are available for $900, which is not prohibitive, given the costs of otherwise participating in a notice and comment rulemaking proceeding, including the hiring of legal counsel.

III. Implementation Dates and Procedures

43. The Commission is requiring, consistent with our regulation at 18 CFR 35.28(c)(vi), each ISO and RTO to revise its OATT to include the NAESB Phase I M&V Standards we are incorporating by reference herein. For standards that do not require implementing tariff provisions, the Commission will allow the ISO or RTO 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.,* thirty days after publication in the **Federal Register**), even if this precedes the filing of a revised OATT reflecting these new requirements.

44. However, as we proposed in the Phase I M&V NOPR, 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 ISOs and RTOs 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.[27]

45. If adoption of these standards does not require any changes or revisions to existing OATT provisions, ISOs and RTOs 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, ISOs and RTOs must use the following language in their OATTs: Measurement and Verification of Wholesale Electricity Demand Response (WEQ–015, 2008 Annual Plan Item 5(a), March 16, 2009).

46. If an ISO or RTO 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 an ISO or RTO 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 ISO or RTO's OATT should specify those standards for which the ISO or RTO has obtained a waiver or has pending a request for waiver. Once a waiver request is denied, the ISO or RTO will be required to include in its OATT the standard(s) for which waiver was denied.

IV. Notice of Use of Voluntary Consensus Standards

47. In section 12(d) of NTT&AA, Congress affirmatively requires federal

[22] ELCON Comments at 3.

[23] *See* comments by FirstEnergy, EEI, Indiana Commission and ISO/RTO Council.

[24] Order No. 676–E, FERC Stats. & Regs. ¶ 31,299 at P 115–121.

[25] *Id.*

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

[27] *See* Order No. 676, P 100 (2006). If the ISO or RTO makes no unrelated tariff filing by December 31, 2010, it must make a separate tariff filing incorporating these standards by that date.

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.[28] 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 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 Phase I M&V NOPR.

V. Information Collection Statement

48. The Office of Management and Budget's (OMB) regulations in 5 CFR 1320.11 require that it approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency. Upon approval of collections of information, OMB is expected to assign new expiration dates to FERC–516 (OMB Control Number 1902–0096) and FERC–717 (OMB Control Number 1902–0173). The OMB Control Numbers will not be displayed in the NAESB standards; an explanation will be included in the clearance package submitted to OMB. The Commission will not enforce the requirements of this rule until OMB approval is obtained.

49. This Final Rule upgrades the Commission's current business practice and communication standards to include NAESB's Phase I M&V Standards. The implementation of these standards is necessary to increase the efficiency of demand response in wholesale electric energy 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 implementation of these data requirements will help the Commission carry out its responsibilities under the Federal Power Act.

50. The Commission sought comments on its estimate provided in the NOPR of the burden 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.

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total Number of hours
FERC–516[29]	6	1	6	36
FERC–717[30]	6	1	12	72
Totals				108

Total annual Hours for Collection.

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

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. The Commission projects the average annualized cost for all respondents as follows:[31]

	FERC–516	FERC–717
Annualized Capital/Startup Costs	$13,320	$26,640
Annualized Costs (Operations & Maintenance)	N/A	
Total Annualized Costs	13,320	[32] 26,640

51. OMB regulations[33] require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting this Final 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: Information collection.

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

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

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

52. *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 ISOs and RTOs to identify their various 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 ISOs/RTOs with respect to the measurement and verification of demand response performance in their wholesale electricity markets.

53. Interested persons may obtain information on the reporting requirements by contacting: Federal

[28] *See* n.12 *supra.*

[29] "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.

[30] "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.

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

[32] We note that 36 hours at $370/hour= $13,320 and 72 hours at $370/hour = $26,640. Together, $13,320 + $26,640 = $39,960 as shown in note 32, *supra.*

[33] 5 CFR 1320.11.

Energy Regulatory Commission, Attn: Ellen Brown, Office of the Executive Director, 888 First Street, NE., Washington, DC 20426 Tel: (202) 502–8663, fax: (202) 273–0873, e-mail: *DataClearance@ferc.gov* or by contacting: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, e-mail: *oira_submission@omb.eop.gov;* Tel: (202) 395–4638, fax: (202) 395–7285]. Comments to OMB should include 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) as a point of reference.

VI. Environmental Analysis

54. 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.[34] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[35] 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

55. The Regulatory Flexibility Act of 1980 (RFA)[36] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. In drafting a rule an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment.[37]

56. The regulations we are adopting in this Final Rule impose filing requirements only on ISOs and RTOs, 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.

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

VIII. Document Availability

58. 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 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

59. 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.

60. User assistance is available for eLibrary and the FERC's Web site 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. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

IX. Effective Date and Congressional Notification

61. These regulations are effective May 24, 2010. 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. In § 38.2, paragraphs (a)(10), (a)(11), and (b) are revised and paragraph (a)(12) is added to read as follows:

§ 38.2 Incorporation by Reference of North American Energy Standards Board Wholesale Electric Quadrant standards.

(a) * * *

(10) Public Key Infrastructure (PKI) (WEQ–012, Version 002.1, March 11, 2009, with minor corrections applied on May 29, 2009 and September 8, 2009);

(11) Open Access Same-Time Information Systems (OASIS) Implementation Guide, Version 1.5 (WEQ–013, Version 002.1, March 11, 2009, with minor corrections applied on May 29, 2009 and September 8, 2009); and

(12) Business Practices for Measurement and Verification of Wholesale Electricity Demand Response (WEQ–015, 2008 Annual Plan Item 5(a), March 16, 2009).

(b) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these standards may be obtained from the North American Energy Standards Board, 801 Travis Street, Suite 1675, Houston, TX 77002, Tel: (713) 356–0060. NAESB's Web site is at *http://www.naesb.org/*. Copies may be inspected at the Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, Tel: (202) 502–8371, *http://www.ferc.gov,* or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/*

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

[35] 18 CFR 380.4.

[36] 5 U.S.C. 601–612.

[37] 5 U.S.C. 601–604.

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Note: The following Appendix will not appear in the Code of Federal Regulations.

Appendix A

List of Commenters [38]

California Department of Water Resources State Water Project (Water Project)
California Public Utilities Commission (California Commission) (with notice of intervention)
Comverge, Inc. (Comverge)
Duke Energy Corporation (Duke)
Edison Electric Institute (EEI)
FirstEnergy Service Company (FirstEnergy)
Electric Power Supply Association (EPSA)
Electricity Consumers Resource Council (ELCON)
Energy Curtailment Specialists, Inc. (Curtailment Specialists) (also filed motion to intervene)
EnerNOC, Inc. (EnerNOC) (also filed motion to intervene)
Indiana Utility Regulatory Commission (Indiana Commission) (with notice of intervention)
Industrial Coalitions [39]

List of Commenters

ISO/RTO Council [40]
National Association of Regulatory Utility Commissioners (NARUC)
National Rural Electric Cooperative Association (NRECA)
Public Interest Organizations (Public Interest Orgs) [41]
San Diego Gas & Electric Company (SDG&E)
Tennessee Valley Authority (TVA) (with motion to intervene)
Westar Energy, Inc. (Westar) (with motion to intervene)

[FR Doc. 2010–9084 Filed 4–21–10; 8:45 am]

BILLING CODE 6717–01–P

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

[39] Filed on behalf of Coalition of Midwest Transmission Customers, NEPOOL Industrial Customer Coalition, and PJM Industrial Customer Coalition.

[40] ISO/RTO Council includes the Independent System Operators operating as the Alberta Electric System Operator, the California Independent System Operator, Electric Reliability Council of Texas, the Independent Electricity System Operator of Ontario, Inc., ISO New England, Inc., Midwest Independent Transmission System Operator, Inc., New York Independent System Operator, Inc., PJM Interconnection, L.L.C., Southwest Power Pool, Inc., and New Brunswick System Operator.

[41] Jointly filed on behalf of Project for Sustainable FERC Energy Policy, Natural Resources Defense Council, the Pace Energy and Climate Center and Conservation Law Foundation.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 358

[Docket No. RM07–1–002; Order No. 717–C]

Standards of Conduct for Transmission Providers

Issued April 16, 2010.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order on Rehearing and Clarification.

SUMMARY: The Federal Energy Regulatory Commission (Commission) issued Order No. 717–A to address requests for rehearing and make clearer the Standards of Conduct as implemented by Order No. 717. The Commission issued Order No. 717–B to address expedited requests for rehearing and clarification concerning paragraph 80 of Order No. 717–A and whether an employee who is not making business decisions about contract non-price terms and conditions is considered a "marketing function employee." This order addresses additional requests for rehearing and clarification concerning Order No. 717–A.

DATES: *Effective Date:* This rule will become effective July 21, 2010.

FOR FURTHER INFORMATION CONTACT: Leonard Tao, Office of the General Counsel—Energy Markets, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8214.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, and John R. Norris.

Order on Rehearing and Clarification

I. Introduction

1. On October 16, 2008, the Commission issued Order No. 717 amending the Standards of Conduct for Transmission Providers (the Standards of Conduct or the Standards) to make them clearer and to refocus the rules on the areas where there is the greatest potential for abuse.[1] On October 15, 2009, the Commission issued Order No. 717–A to address requests for rehearing and clarification of Order No. 717, largely affirming the reforms adopted in Order No. 717.[2] On November 16, 2009, the Commission issued Order No. 717–B to address expedited requests for rehearing and clarification concerning paragraph 80 of Order No. 717–A and whether an employee who is not making business decisions about contract non-price terms and conditions is considered a "marketing function employee." [3] In this order, the Commission grants additional clarification concerning matters petitioners raised regarding the Commission's determinations in Order No. 717–A.

II. Requests for Clarification and/or Rehearing

2. Edison Electric Institute (EEI), Transmission Dependent Utility Systems (TDUS), Transmission Access Policy Study Group (TAPS), National Rural Electric Cooperative Association (NRECA), Associated Electric Cooperative (AEC), Basin Electric Power Cooperative (Basin Electric), Xcel Energy Services (Xcel), E.ON U.S., Avista Corporation (Avista), the American Public Gas Association (APGA) and Western Utilities [4] filed requests for clarification, or in the alternative, requests for rehearing. The Tri-State Generation and Transmission Association (Tri-State) filed in support of the NRECA's request. The Electric Power Supply Association (EPSA) filed a motion for leave to answer and an answer to Western Utilities' request for clarification and rehearing.[5]

[1] *Standards of Conduct for Transmission Providers,* Order No. 717, 73 FR 63796 (Oct. 27, 2008), FERC Stats. & Regs. ¶ 31,280 (2008) (Order No. 717).

[2] *Standards of Conduct for Transmission Providers,* Order No. 717–A, 74 FR 54463 (Oct. 22, 2009), FERC Stats. & Regs. ¶ 31,297 (2009) (Order No. 717–A).

[3] *Standards of Conduct for Transmission Providers,* Order No. 717–B, 74 FR 60153 (Nov. 20, 2009), 129 FERC ¶ 61,123 (Nov. 16, 2009) (Order No. 717–B). On October 30, 2009, EEI filed a request for expedited clarification of a single issue addressed in Order No. 717–A. The Commission determined that it should address this issue expeditiously even though the time allowed under the regulations for filing rehearing requests had not yet expired. For this reason, the Commission issued Order No. 717–B on November 16, 2009, in which it addressed a single clarification request of EEI, Western Utilities, Otter Tail and Central Vermont. All other timely requests for rehearing, i.e. those filed by November 16, 2009, are addressed in this order.

[4] Western Utilities is comprised of Arizona Public Service Company, Avista Corporation, El Paso Electric Company, Idaho Power Company, Pacific Gas and Electric Company, PacifiCorp, Portland General Electric Company, Puget Sound Energy, Southern California Edison Company, and Tucson Electric Power Company.

[5] EPSA objects to Western Utilities' characterization of its filing as a request for clarification.