UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Standards for Business Practices and Communication Protocols for Public Utilities	)))	Docket No. RM05-5-017

COMMENTS OF FIRSTENERGY SERVICE COMPANY

Pursuant to the Commission's Notice of Proposed Rulemaking regarding the Standards for Business Practices and Communication Protocols for Public Utilities issued on September 17, 2009 in this proceeding, FirstEnergy Service Company ("FirstEnergy") respectfully submits these comments for the Commission's consideration, on behalf of its affiliates: American Transmission Systems, Incorporated ("ATSI"), The Cleveland Electric Illuminating Company ("The Illuminating Company"), Jersey Central Power and Light Company ("JCP&L"), Metropolitan Edison Company ("Met-Ed"), Ohio Edison Company ("Ohio Edison"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power"), and The Toledo Edison Company ("Toledo Edison") (collectively, the "FirstEnergy Companies"). FirstEnergy appreciates the opportunity to offer these comments on behalf of its affiliates.

I. Description of FirstEnergy

FirstEnergy is the service company subsidiary of FirstEnergy Corp. that provides the operating subsidiaries of FirstEnergy Corp. with a variety of services, and appears before the Commission and reviewing courts on their behalf. FirstEnergy Corp., together with its eight electric utility operating company subsidiaries, is the fifth-largest investor-owned electric system

in the United States based on customers served, serving approximately 4.5 million customers within 36,100 square miles of New Jersey, Ohio, and Pennsylvania.

II. Communications

All communications, correspondence, and service of documents in this proceeding should be addressed to:

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III. Summary

On September 17, 2009, the Commission issued a Notice of Proposed Rulemaking requesting comment on whether the Commission should incorporate in its regulations at 18 CFR 38.2 business practice standards adopted by the Wholesale Electric Quadrant ("WEQ") of the North American Energy Standards Board ("NAESB") to classify demand response products and services including energy, capacity, reserves and regulation, as well as to support the measurement and verification ("M&V") of such products and services in the wholesale market. This initial set of standards is intended to lead to a more specific technical measurement and verification standards. In addition, the Commission requested comments on whether the Commission should establish a deadline for development of these remaining standards and, if so, what the deadline should be.

IV. Comments

For convenience, these comments are organized to address the following issues: (i) the need to ensure that jurisdictional requirements are met; (ii) the need to ensure coordination between parties actively involved in the implementation of demand response; and (iii) the need to provide sufficient time to fully develop Phase II M&V standards.

i. Jurisdictional Requirements

The Commission's jurisdiction extends to adopting standards that will facilitate demand response in the wholesale electricity markets on both a non-discriminatory and a just and reasonable basis. To this end, the Commission should identify what information is needed to facilitate and promote demand response participation in competitive wholesale electricity markets. The Phase I M&V Standards provide a workable framework to identify operational information about demand response that system operators will need to make available in an open and transparent manner to promote wholesale electricity markets.

While the Commission has jurisdiction over demand response to the extent it affects or occurs in the wholesale markets, it is clear that states have jurisdiction over distribution infrastructure, retail customer meters and state approved retail rates. The Commission must continue to work closely with the states to clarify and resolve ambiguities regarding federal and state jurisdiction as it relates to demand response and FERC must discern between these two jurisdictional areas when incorporating in its regulations any forthcoming NAESB standards on Demand Response as not to infringe on state jurisdictional issues.

ii. Ensure Coordination between Participants

Proper standards development requires the effort of the entire industry, including the Commission, states, utilities, market participants and equipment vendors, among other stakeholders. While the Phase I M&V Standards provide a framework to identify operational information about demand response, the Commission should verify that the forthcoming standards build upon the existing framework and coordinate with other related standards and work being done by other entities such as the Electric Power Research Institute ("EPRI"), the National Institute of Standards and Technology ("NIST"), the Institute of Electrical and Electronic Engineers ("IEEE") and the North American Reliability Corporation ("NERC"). The Commission must ensure that the standards do not contradict other established standards and protocols developed on other jurisdictional initiatives such as the "Smart Grid." The standards must be consistent with other existing standards and wholesale electric market rules and not in conflict with state required peak demand reduction mandates.

iii. Allow Time for Fully Developed Phase II M&V Standards

In addition to its inquiry on the incorporation of the Phase 1 M&V Standards, the Commission also requested comments on whether the Commission should establish a deadline for development of the Phase II M&V Standards and, if so, what the deadline should be. The NAESB Phase II M&V Standards are intended to establish business practice standards to better facilitate demand response providers participation in wholesale markets and reduce transaction costs, especially for those providers participating in more than one organized market.

In order for such standards to be fully and properly developed, the standards should be the result of a thorough and comprehensive vetting process that has achieved broad consensus of

industry and its stakeholders. Standards should not be developed in haste. While building consensus can be a lengthy process, properly developed well thought out standards need to be based on industry consensus. The standards should be consistent with the requirements of the diverse body of stakeholders, and should not contradict other related standards, efforts and initiatives.

In order for standards to be fully and adequately developed, the Commission should not establish a deadline for the Phase II M&V Standards. Instead FirstEnergy recommends the establishment of quarterly reports whereby NAESB reports to the Commission the progress of the Phase II M&V Standards. This will keep the process moving and allow stakeholders to be kept apprised of the progress being made towards final Phase II M&V Standards.

V. Conclusion

FirstEnergy supports the Commission's goals of implementing demand response in the wholesale market. Further, FirstEnergy supports the incorporation of the business practice standards adopted by the Wholesale Electric Quadrant ("WEQ") of the North American Energy Standards Board ("NAESB") into its regulations at 18 CFR 38.2. While FirstEnergy is supportive of these efforts, it is of critical importance that jurisdictional issues be considered throughout the implementation of any further standards so as to better allow demand response to work between state and federal jurisdictional facilities. Additionally, the forthcoming standards should take into consideration the work that has already been accomplished by numerous stakeholders to ensure that pre-existing standards are taken into consideration and incorporated where possible. Finally, this is a very complex topic and as such a deadline should not be set as to when the next standards should be developed. Rather, a quarterly report should be instituted

to keep the stakeholders apprised of the work being done and keep the focus on reaching comprehensive workable standards that benefit the industry and all stakeholders.

Dated: October 22, 2009

Akron, Ohio

Respectfully submitted,

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Standards for Business Practices and	**)**	**Docket No.**
Communication Protocols for Public Utilities	**)**	**RM05-5-017**

COMMENTS OF THE ISO/RTO COUNCIL

I. INTRODUCTION

The ISO/RTO Council ("IRC")[1] respectfully submits these joint comments in response to the Commission's Notice of Proposed Rulemaking ("NOPR") issued on September 17, 2009 in which the Commission proposes to incorporate into its regulations certain business practice standards adopted by the Wholesale Electric Quadrant ("WEQ") of the North American Energy Standards Board ("NAESB"). The standards categorize wholesale electricity products and services in which demand response resources can participate and provide measurement and verification (M&V) criteria for these resources in ISO/RTO wholesale energy markets.

[1] The IRC is comprised of the Independent System Operators operating as the Alberta Electric System Operator ("AESO"), the California Independent System Operator ("CAISO"), Electric Reliability Council of Texas ("ERCOT"), the Independent Electricity System Operator of Ontario, Inc., ("IESO"), ISO New England, Inc. ("ISONE"), Midwest Independent Transmission System Operator, Inc., ("MISO"), New York Independent System Operator, Inc. ("NYISO"), PJM Interconnection, L.L.C. ("PJM"), Southwest Power Pool, Inc. ("SPP"), and New Brunswick System Operator ("NBSO"). The IESO, AESO and NBSO are not subject to the Commission's jurisdiction and these comments do not constitute agreement or acknowledgement that either can be subject to the Commission's jurisdiction. ERCOT is not subject to the Commission's jurisdiction for the purposes of the NAESB standards, but is joining in support of these comments. Neither AESO nor NBSO are parties to this filing. The IRC's mission is to work collaboratively to develop effective processes, tools and standard methods for improving the competitive electricity markets across North America. In fulfilling this mission, it is the IRC's goal to provide a perspective that balances reliability standards with market practices so that each complements the other, thereby resulting in efficient, robust markets that provide competitive and reliable service to customers.

II. BACKGROUND

The Commission proposes to incorporate by reference into its regulations the NAESB Phase I M&V Standards and associated terms used in the WEQ-015 glossary. The Commission states that the Phase I M&V Standards are primarily intended to enhance the transparency and consistency of the methods used to measure and verify demand response resources in wholesale electricity markets administered by RTOs and ISOs. The Commission also states that the standards will facilitate the ability of demand response providers to participate in electricity markets, thereby reducing transaction costs and providing an opportunity for more customers to participate in these programs.

The Commission also states that members of the WEQ should continue their efforts to develop the substantive standards needed to achieve greater efficiency in the operation and evaluation of the performance of demand response resources. The Commission believes that the industry should take the lead in developing and implementing demand response standards that will be both practical and workable. To that end, the Commission requests comments on whether it should establish a deadline for the development of these remaining standards and, if so, when that deadline should be.

III. COMMENTS

The IRC provides the following comments for the Commission's consideration.

A. The Commission Should Approve the NAESB Phase I Demand Response M&V Standards

The Commission seeks comment on its proposal to incorporate by reference into its regulations the Phase I M&V Standards and associated terms used in the WEQ-015 glossary. The IRC believes that the NAESB process for developing the Phase I M&V Standards and associated terms has been an effective way to bring together organizations that are involved in

or impacted by wholesale demand response. Ratification of the Phase I M&V Standards by NAESB's membership has already had the following impacts on the industry:

1. The associated terms are beginning to replace region-specific terms related to demand response and demand response event timing in stakeholder meetings, manuals, and public forums.

2. The Phase I M&V Standards and associated terms were adopted by the NAESB Retail working group as the basis for the Phase I M&V Standards for Retail Demand Response, which helped accelerate the development of M&V Standards specifically tailored to retail markets, thereby reducing development time to less than one year.

3. NERC's Demand Response Data Task Force has adopted many of the associated terms from the Phase I M&V Standards for development of a collection system to track demand response event participation.

4. Many ISOs/RTOs are currently working with NAESB on Smart Grid communication standards for demand response and are using the associated terms from the Phase I M&V Standards.

IRC members actively participated in the development of the Phase I M&V Standards. NAESB staff supported the development of these standards by providing the forum for review of draft recommendations and comments and managing the process of ratification by NAESB membership. The IRC supports the NAESB standards development process, which includes provisions for on-going revisions. The IRC supports the Commission's proposal to incorporate by reference into its regulations the NAESB Phase I M&V Standards and associated terms used in the WEQ-015 glossary.

B. The Current Process for the Development of Technical Standards is Working Well and there is No Need for the Commission to Establish a Deadline at this Time.

The NOPR asks for comments on whether the Commission should establish a deadline for the development of more detailed technical standards. The IRC believes that it would be premature for the Commission to establish a deadline for the development of more detailed Phase II standards at this time because the scope and priorities of the Phase II M&V standards, similar to any other new standard that is adopted by NAESB, will need to be

identified and discussed by stakeholders. The IRC concurs with the Commission that the most comprehensive and effective standards are those that are developed in an environment that permits full vetting within the industry. The IRC believes that the NAESB subcommittee process and industry working groups provide a representative forum and open process for vetting new standards. In particular, NAESB provides an open and inclusive process so that all interested participants can have a voice in the development of business practices. Meetings are posted in advance on the NAESB website and have adequate lead times. Also, meeting materials and work product from the working groups, subcommittees, and Executive committee are available to the public. Working group meetings are either conference calls or in person meetings with remote access capability so that cost is not a hindrance to participation. Membership in NAESB is not required at the working group level. With the balanced voting requirements of the NAESB ANSI accredited standards development process, all parties are ensured a voice. Imposing an arbitrary deadline on the process could result in the development of standards that are not fully vetted by the industry or that subsequently could face significant opposition as they work their way through the NAESB ratification process**.** In lieu of establishing a specific deadline, the IRC recommends that the Commission establish a series of semi-annual communications deadlines for NAESB Staff to report to the Commission on the progress and status of the Phase II effort.

The IRC agrees with the Commission's longstanding position that a comprehensive stakeholder consensus process helps to ensure the reasonableness of industry standards and that standards have the widest possible support within the industry that must conduct business under them. The NAESB process, under which the Phase I M&V Standards were developed, was effective for developing a comprehensive set of NAESB standards for measurement and verification of demand response resources in wholesale electricity markets administered by

RTOs and ISOs. The IRC recommends that Phase II, currently underway, follow the same course.

When NAESB prepared its filing for the Phase I M&V Standards, the wholesale electric working group tasked with supporting NAESB's 2009 Work Plan item 4b[2] had not begun to meet. Since NAESB's filing, however, the Wholesale Demand Response Working Group 3 has met eight times, produced numerous work papers[3] and continued to define scope. A semi-monthly schedule is in place for future Working Group 3 meetings. The NAESB DSM/EE web page link[4] documents the activities to date of the Wholesale Demand Response Working Group 3 and shows the future meeting schedule.

Thus, the NAESB Phase II efforts are underway and are proceeding under the direction of the NAESB Executive Committee and Board, similar to the Phase I M&V Standards that the Commission now seeks to approve. This process should be permitted to continue on its course. There is no need for the Commission to establish a deadline for the completion of this effort.

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[2] "Develop more detailed technical standards for the measurement and verification of demand response products and services in ISO-RTO footprint areas, including examples to be developed to support item 4(a) above."

[3] As an additional matter, the IRC notes that during the development, and then after the adoption, of the Phase I M&V Standards, the IRC developed and made available the "North American Wholesale Electricity Demand Response Program Comparison", also known as the IRC Matrix. This Matrix addresses outstanding stakeholder questions regarding the technical details and applicability of the standards to existing ISO/RTO products. This document, which was posted to the IRC website on April 28, 2009 (www.iso-rto.org) and is available through the NAESB website along with the Phase I M&V Standards, provides detailed technical information on all North American wholesale electricity products in which demand response resources may participate. The IRC Matrix constitutes a completed work product under the NAESB WEQ work plan for 2009 (Item 4.a)[6] and supports the Phase I and Phase II M&V Standards as the first consolidated source of information regarding the implementation of the NAESB business practice standards by ISOs and RTOs. The IRC Matrix allows stakeholders, demand response providers, and regulators easy access to the technical data for the purpose of obtaining M&V requirements administered by the ISO or RTO, as specified in the Phase I M&V Standards. The IRC has committed to updating the Matrix each spring to reflect any changes or development of new market products for demand response resources.

[4] http://www.naesb.org/dsm-ee.asp

IV. CONCLUSION

The IRC requests that the Commission consider the expressed comments before proceeding to issue the final order on the NAESB Phase I M&V Standards and process for developing the Phase II standards.

Respectfully submitted,

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Date: October 22, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all of the parties listed on the official service list for the captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom this 22nd day of October, 2009.

Anna Pascuzzo

Anna Pascuzzo

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Standards for Business Practices and Communications Protocols for Public Utilities	**)** **)** **)** **)**	**Docket No. RM05-5-017**

COMMENTS OF THE EDISION ELECTRIC INSTITUTE

The Edison Electric Institute ("EEI"), on behalf of its member companies, hereby respectfully submits these Comments in support of the Federal Energy Regulatory Commission ("FERC" or "Commission") Notice of Proposed Rulemaking ("NOPR") that proposes to incorporate by reference in the Commission's regulations (18 C.F.R. § 38.2) business standards adopted by the Wholesale Electric Quadrant ("WEQ") of the North American Energy Standards Board ("NAESB") to categorize various demand response ("DR") products and services and to support the measurement and verification of these products and services in wholesale electric energy markets ("NAESB Phase I M&V Standards").[1]

EEI is the trade association for shareholder-owned electric companies and serves international affiliates and industry associates worldwide. Our U.S. member companies serve 95 percent of the ultimate customers in the shareholder-owned segment of the industry and nearly 70 percent of all electric utility customers in the nation. EEI members own approximately 60 percent of the nation's circuit miles of transmission. EEI's members are owners, operators and users of the bulk power system. EEI membership includes vertically integrated and stand-alone utility business models.

[1] *Standards for Business Practices and Communications Protocols for Public Utilities*, 128 FERC ¶ 61,263 (September 17, 2009)(the "NOPR").

EEI submits these comments in support of the NOPR because incorporating the NAESB business practice standards in the Commission's regulations will aid the effort to streamline wholesale electric business practices and transactional processes, helping to mitigate a broad range of business-related issues. EEI has supported the NAESB process since the creation of the Wholesale Electric Quadrant and many EEI members participate in NAESB at all levels. EEI appreciates the Commission's recognition of ANSI-certified consensus-based processes for standards development in the WEQ. See NOPR at P 11. The Commission should continue to recognize NAESB as one forum for standardizing the industry's business practices, including the organization's ability to recognize regional or interconnection-wide approaches on issues. In this light, the Commission should amend its regulations to incorporate by reference business practice standards adopted by the WEQ of NAESB, but should not impose a deadline for the second phase of developing more technically detailed business practices standards, as discussed below.

COMMENTS

I. The Commission should incorporate by reference business practice standards adopted by NAESB into its regulations

EEI supports the NOPR's proposal to incorporate by reference the NAESB Phase I M&V Standards, as well as associated terms used in the WEQ-015 glossary. See NOPR at P 10. Nevertheless, many of these standards must be subjected to RTO/ISO stakeholder processes and therefore it must be recognized that there will be some regional variation between RTOs/ISOs. These standards identify basic product categories, the measurement and verification characteristics of DR products and services offered in organized electricity markets. These business practice standards also address major operational categories associated with DR. Additionally, the glossary provides standardized definitions of DR services, operational terms

and performance measurements. These standards are specifically intended to enhance the transparency and consistencyof the methods used to measure and verify DR products in wholesale electricity markets administered by Regional Transmission Organizations ("RTOs") and Independent System Operators ("ISOs") (collectively "RTOs/ISOs").[2] The NOPR is also correct that these standards should help to facilitate the ability of DR providers to participate in electricity markets, reduce transaction costs and provide an opportunity for more customers to participate in these programs.

EEI also appreciates the NOPR's acknowledgment that the NAESB Phase I M&V Standards have been adopted by NAESB under its consensus procedures, and agrees that adoption of consensus-based standards is appropriate because consensus helps to ensure the reasonableness of standards by requiring that standards draw support from a broad spectrum of all segments in the industry. See NOPR at P 11. For example, a WEQ standard requires a consensus of six industry segments and 67 percent of WEQ's general membership must ratify the standards to obtain final approval. Accordingly, since the industry itself must conduct business under these standards it is appropriate that the Commission's regulations should reflect those standards that have the widest possible support. See id.

II. The Commission should not establish deadlines for Phase II business practices standards

The NOPR is correct that the NAESB Phase I M&V Standards can provide a framework for further business practice standardization efforts and those participants in the WEQ process

[2] EEI notes the NOPR incorrectly characterizes the Phase I M&V Standards as "primarily intended to enhance . . . .methods used to measure and verify . . ." DR products in wholesale electricity markets administered by RTOs/ISOs, when in fact these standards are specifically limited in scope to measurement and verification methods for DR products in wholesale electricity markets administered by RTOs/ISOs. The Commission should ensure that any Final Rule issued in this proceeding is accurate in this regard.

can use these initial standards to identify those elements for which standardization would be beneficial. EEI agrees it would be appropriate for the electric industry to develop criteria and standards that RTOs/ISOs can use to determine how demand response will be initiated, communicated, controlled, adjusted, measured and verified. See NOPR at P 12. However, EEI does not support the Commission establishing a deadline for the development of further standards. See NOPR at P 13.

In submitting NAESB Phase I M&V Standards to the Commission for incorporation by reference into its regulations, NAESB emphasized that the key to obtaining consensus on the initial set of standards was the agreement among participants to include more specific technical measurement and verification standards in NAESB's current annual work plan and to proceed with further work on more technical detailed standards. See NOPR at P 6. NAESB likewise agreed that this initial set of standards needs to be followed by the development of more detailed technical standards for the measurement and verification of DR products in areas with RTOs/ISOs. See NOPR at P 5. Significantly, NAESB also informed the Commission that its Demand Side Management-Energy subcommittee has already begun efforts to plan the development of these more detailed standards. See NOPR at P 5. While actual development work may not have begun on this next phase of more detailed standards, there is a lot of planning activity and it is therefore premature for the Commission to consider mandating deadlines or to supplant NAESB in developing its work plan. In the interest of transparency and coordination, it would be more appropriate at this point for the Commission to encourage NAESB to provide the Commission with voluntary biannual informational filings detailing progress and timelines for developing these more detailed technical standards. In this manner, the Commission will best

support industries efforts to lead in developing and implementing DR standards that are both practicable and workable.

CONCLUSION

WHEREFORE, for the reasons stated in these comments, EEI urges the Commission to amend its regulations to incorporate by reference business standards adopted by the WEQ of NAESB and submitted to the Commission on April 17, 2009, and not to impose any deadlines for the completion of further more detailed technical standards as currently contemplated by NAESB. If the Commission has any questions, please contact Rick Tempchin, at 202-508-5558, or Aryeh Fishman, at (202) 508-5023. Thank you.

Respectfully submitted

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Date: October 22, 2009

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Standards for Business Practices and Communication Protocols for Public Utilities	:	RM05-5-017

COMMENTS
OF DUKE ENERGY CORPORATION

I. INTRODUCTION

On September 17, 2009, the Federal Energy Regulatory Commission ("Commission" or "FERC") issued a Notice of Proposed Rulemaking ("NOPR") proposing to incorporate by reference in its regulations at 18 CFR 38.2 business practice standards adopted by the Wholesale Electric Quadrant ("WEQ") of the North American Energy Standards Board ("NAESB") pertaining to the categorization of demand response resources and to their measurement and verification in wholesale electric energy markets. Duke Energy Corporation's ("Duke Energy") franchised public utilities, Duke Energy Carolinas, LLC ("DEC"), Duke Energy Kentucky, Inc. ("DEK"), Duke Energy Ohio, Inc. ("DEO"), and Duke Energy Indiana, Inc. ("DEI") are participants in wholesale electric energy markets, primarily in the Midwest Independent Transmission System Operator ("Midwest ISO") and PJM Interconnection, L.L.C. ("PJM") markets. In addition, DEO and DEI are transmission owning members of the Midwest ISO. Duke Energy is a member of the North American Energy Standards Board ("NAESB") and participates in the Demand Side Management and Energy Efficiency ("DSM/EE") subcommittee.

Duke Energy generally supports the Commission's proposal but offers several comments.

II. COMMUNICATIONS

All correspondence, communications, pleadings and other documents related to these proceedings should be addressed to the persons listed below.

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III. COMMENTS

In Paragraph 13 of the NOPR, the Commission asks for comment on whether the Commission should establish a deadline for the development of the "remaining critical standards" and, if so, what the deadline should be. Duke Energy has a strong preference that more detailed measurement and verification standards for the organized energy markets be initiated and developed at the RTO/ISO level, and not at the NAESB level. The regions are diverse and have varied market dynamics. Therefore, a "one size fits all approach" to measurement and verification standards is problematic. If through the RTO/ISO standard development process, the ISOs/RTOs believe that it would benefit the industry to have a particular standard(s) be uniform, Duke Energy would support the RTOs/ISOs requesting NAESB to initiate the development of the particular standard(s) pursuant to the NAESB standard development process.

Duke Energy does not support a deadline for these additional standards. As mentioned above, Duke Energy supports RTO/ISO developed standards with the caveat

that if the RTOs/ISOs believe that a uniform standard will benefit the industry then, at that point, the request for standards development should be made at NAESB. That said, given that NAESB does not have a detailed work scope defined for these standards and the Commission has not provided guidelines as to what the measurement and verification standards should contain, it would be premature to set a deadline for their development.

IV. CONCLUSION

Wherefore, Duke Energy respectfully requests that the Commission consider these comments when addressing issues in this docket.

Respectfully submitted,

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October 22, 2009

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Wholesale Competition in Regions with Organized Electric Markets	: :	Docket Nos. RM05-5-017

COMMENTS ON THE NOTICE OF PROPOSED RULEMAKING

ON BEHALF OF

COALITION OF MIDWEST TRANSMISSION CUSTOMERS
NEPOOL INDUSTRIAL CUSTOMER COALITION
PJM INDUSTRIAL CUSTOMER COALITION

The Coalition of Midwest Transmission Customers ("CMTC"), NEPOOL Industrial Customer Coalition ("NICC"), and PJM Industrial Customer Coalition ("PJMICC") (jointly, "Industrial Coalitions") join in submitting these limited Comments on the Notice of Proposed Rulemaking ("NOPR") issued by the Federal Energy Regulatory Commission ("FERC" or "Commission") on September 17, 2009. For the reasons discussed below, Industrial Coalitions agree with standardization of demand response rules and procedures as much as possible across organized wholesale power markets. However, any standards that are incorporated by reference into Commission regulations must be readily available to the public, at no charge, in order to facilitate an open and transparent rulemaking process.

I. BACKGROUND

In the NOPR, the Commission proposes to incorporate by reference into its regulations certain definitions and business practice standards adopted by the North American Energy Standards Board ("NAESB"), a non-profit organization that serves as an industry forum for the development of business practice standards for the wholesale and retail gas and electricity

markets.[1] The NAESB standards and definitions categorize various demand response products and services and support the measurement and verification ("M&V") of these products and services in wholesale electric energy markets.[2]

In April 2009, NAESB voluntarily reported to the Commission that it had adopted these "Phase I M&V Standards," an initial set of business practice standards for the measurement and verification of demand response products and services.[3] The Phase I M&V Standards include 40 definitions that identify basic product categories and 31 business practices that address the major operational categories associated with demand response.[4] The Phase I M&V Standards are primarily intended to enhance the transparency and consistency of the methods used to measure and verify demand response products in organized wholesale electricity markets.[5]

II. DESCRIPTION OF INDUSTRIAL COALITIONS

CMTC is an *ad hoc* association of large industrial end-users of electricity. All CMTC members operate one or more manufacturing facility in the Midwest and purchase electric delivery service or bundled electric service from at least one of the transmission owners encompassed by the Midwest Independent Transmission System Operator, Inc. ("MISO"). CMTC members consume more than 12 billion kilowatt-hours of energy annually.

NICC is an *ad hoc* association of industrial customers with manufacturing facilities located in New England. NICC members consume large quantities of electricity, and electricity comprises a substantial part of many NICC members' manufacturing costs. Several NICC

[1] NOPR at P 2.

[2] *Id*. at P 6.

[3] *Id*. at P 5.

[4] *Id*. at P 6.

[5] *Id*. at P 10.

members actively participate in ISO New England, Inc.'s ("ISO-NE") committees and working groups, as well as ISO-NE's load response programs.

PJMICC is an *ad hoc* association consisting exclusively of large commercial and industrial end-users of electricity. PJMICC members operate electricity-consuming manufacturing and institutional facilities in all states in the PJM footprint, except the District of Columbia. PJMICC member companies consume approximately 10 billion kilowatt-hours of electricity annually. Several PJMICC members are also currently voting participants of the PJM Interconnection, L.L.C. ("PJM") Members Committee and actively participate in the PJM committee structure. Additionally, a number of the PJMICC members participate in one or more of PJM's load response programs.

III. INDUSTRIAL COALITIONS' COMMENTS ON NOPR PROPOSALS

Demand response is critical to the success of competitive wholesale markets.[6] Despite its integral role, however, it is well established that demand response is an under-developed and under-utilized resource in such markets.[7] In recent years, the Commission has taken steps to identify the barriers to robust demand response and implement policies designed to eliminate those barriers. In the Commission's view, incorporating the NAESB standards into its regulations advances this ongoing objective by laying "the groundwork for expanding the use of demand response in organized wholesale power markets."[8] Thus, the NOPR is intended to promote the Commission's policy of encouraging demand response.

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[6] *See, e.g., ISO New England, Inc.*, 104 FERC ¶ 61,206 at P 2 (2003).

[7] *See, e.g., A National Assessment of Demand Response Potential*, at xiv (June 2009) (identifying a "'gap' between what is being achieved today through demand response and what could economically be realized in the future if appropriate policies were implemented") *available at*: www.ferc.gov (last visited Oct. 16, 2009).

[8] *See* "FERC Acts to Expand Demand Response with New Measurement Standards" (Sept. 17, 2009) *available at*: www.ferc.gov (last visited Oct. 19, 2009).

Industrial Coalitions have been strong proponents of demand response in organized wholesale power markets. To that end, Industrial Coalitions argued in previous FERC rulemaking proceedings in favor of further standardization of demand response practices and procedures across organized wholesale power markets.[9] Accordingly, Industrial Coalitions laud the Commission's initiative to standardize M&V standards for demand response as a step in the right direction.

While Industrial Coalitions support what the Commission is proposing to accomplish, Industrial Coalitions object to how the Commission is proceeding. Specifically, Industrial Coalitions object to the Commission's proposal to incorporate by reference the NAESB Phase I M&V Standards into federal regulations. As discussed below, the NOPR does not require publication of the NAESB standards under consideration. As a result, Industrial Customers may be deprived of the opportunity to review the content of the NAESB standards and provide meaningful feedback to the Commission in this proceeding or in future proceedings as the NAESB standards/Commission regulations are modified going-forward. Therefore, the Commission should reconsider incorporating by reference into its regulations such standards and, instead, promulgate demand response standards pursuant to established public notice and rulemaking processes.

Although the NOPR contains a general description of the Phase I M&V Standards,[10] the actual provisions are not included in the NOPR. In fact, the Phase I M&V Standards are freely available only to NAESB members through the NAESB website. In order to access the NAESB

[9] *See, e.g., Industrial Coalitions' Comments on the Advance Notice of Proposed Rulemaking*, Docket No. RM07-19-000 *et al.*, Wholesale Competition in Regions with Organized Electric Markets (filed Sept. 14, 2007) (supporting standard metrics for measuring demand elasticity).

[10] *See* NOPR at PP 6-9.

standards, non-members must either pay $6,500 to become a NAESB member[11] or purchase a copy of the NAESB standards for $900 per copy.[12] The failure to publish the NAESB standards in the NOPR negatively impacts market participants, such as Industrial Coalition members, that are not NAESB members and do not participate in the resource-intensive NAESB stakeholder process. Such market participants may be denied a reasonable opportunity to review the substance of these provisions and provide informed comments on the appropriateness of incorporating such standards into federal regulations.

Moreover, the potential incorporation of NAESB standards into the Commission's regulations sight unseen places the subjects of such regulations, presumably demand response providers, in the precarious position of having compliance obligations with standards that are not readily accessible. As a result, they cannot make decisions about how to satisfy applicable compliance obligations without purchasing a copy of the standards or joining NAESB. The inequity of this situation is compounded by the risk of a Commission determination of non-compliance and the potential assessment of a financial penalty or other sanction. Such outcomes are unjust and unreasonable.

The Commission also supports its incorporation by reference approach by citing the National Technology Transfer and Advancement Act of 1995 ("1995 Act"). According to the Commission, the 1995 Act requires that federal agencies use technical standards developed by voluntary consensus standards organizations to carry out policy objectives unless inconsistent with applicable law or otherwise impractical.[13] The Commission's reliance on the 1995 Act,

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[11] *See* NAESB Membership Application, *available at*: http://www.naesb.org/pdf4/naesbapp.pdf (last visited October 13, 2009).

[12] *See* NAESB Materials Order Form, *available at*: http://www.naesb.org/pdf/ordrform.pdf (last visited October 13, 2009).

[13] NOPR at P 11.

however, is misplaced. The 1995 Act pertains to practices related to federal procurement contracts; it does not apply to federal agencies outside of that context. Thus, the Commission has no legal obligation to adopt standards developed by a private, non-jurisdictional entity, such as NAESB.

The Commission further contends that adoption of the NAESB standards is appropriate because they reflect the support of a broad segment of the industry.[14] It is important to note, however, that end use customers (the actual providers of demand response) represent only 5% of the 141 Wholesale Electric Quadrant ("WEQ") members, the lowest participation of all the participating market segments.[15] The composition of the WEQ membership demonstrates that only the very largest industry players participate regularly in the time- and resource-intensive NAESB process. Comparatively smaller players with more limited resources must typically focus on the stakeholder process in the market in which they do business (Regional Transmission Organization ("RTO") stakeholder process for the Industrial Coalitions) and in proceedings before FERC and state agencies. Contrary to the Commission's claim, the NAESB stakeholder process is not as representative as it may initially appear. This process, and its limited-access results, should not be accepted as a substitute for public notice and an opportunity to comment in a Commission proceeding.

Finally, while the Commission has a history of incorporating by reference standards promulgated by the Gas Industry Standards Board ("GISB"), the Commission has only recently

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[14] *Id*.

[15] *See* NAESB Membership List as of October 1, 2009, at 1 *available at* http://www.naesb.org/pdf4/memstats.pdf (last visited October 16, 2009).

begun to apply this approach to standards impacting the wholesale electric market.[16] Order No. 676 and its progeny focused on the incorporation of standards and protocols pertaining to Open Access Same-Time Information Systems ("OASIS"), provisions of potential importance to the sophisticated industry players that typically participate in NAESB. By contrast, the current NOPR proposes to incorporate demand response standards that directly impact retail end users of electricity, some of whom also provide demand response. Moreover, unlike the natural gas industry, the wholesale power industry has developed elaborate RTO stakeholder processes that have been used by interested market participants to develop rules, regulations, and business practices. Industrial Coalitions have invested substantial time and resources to participate in their respective RTO governance structures. Although the incorporation-by-reference approach may be well suited to the natural gas industry, it may undermine established RTO stakeholder processes and disenfranchise those market participants that may not have time or resources to devote to participation in the NAESB process. For these reasons, incorporating by reference NAESB's demand response business practices standards is inappropriate under these particular circumstances.

[16] *Compare Standards for Business Practices of Interstate Natural Gas Pipelines*, 77 FERC ¶ 61, 061 (1996), *with Standards for Business Practices of and Communication Protocols for Public Utilities*, Order No. 676, 115 FERC ¶ 61,102 (2006).

IV. CONCLUSION

WHEREFORE, Industrial Coalitions respectfully request that the Commission to adopt as part of any approach of demand response standardization an open, transparent process that will allow demand response providers to file written comments on standards as they are under consideration by the Commission.

Respectfully submitted,

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Counsel to the Coalition of Midwest Transmission Customers, NEPOOL Industrial Customer Coalition and PJM Industrial Customer Coalition

October 22, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have this day served *via* first-class mail, electronic transmission, or hand-delivery the foregoing Comments of the Industrial Coalitions upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC this 22nd day of October 2009.

/s/ Robert A. Weishaar, Jr.

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Standards for Business Practices and Communications Protocols for Public Utilities	Docket No. RM05-5-017

Comments of the Electricity Consumers Resource Council (ELCON)

The Electricity Consumers Resource Council (ELCON) appreciates the opportunity to comment on the September 17, 2009 Notice of Proposed Rulemaking (NOPR) on certain business practice standards developed by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB) (the Proposed Phase I Standards). The Proposed Phase I Standards are intended to categorize various demand response products and services and to support the measurement and verification of these products and services in wholesale electric energy markets, *i.e.,* FERC-jurisdictional organized markets such as PJM, MISO, *et al*. NOPR at ¶ 1.

ELCON is the national association representing large industrial consumers of electricity. ELCON member companies produce a wide range of products from virtually every segment of the manufacturing community. ELCON members operate hundreds of major facilities and are consumers of electricity in the footprints of all ISOs and RTOs in North America that are potentially affected by the recommended business practice standards. Most ELCON members have facilities in multiple wholesale electric markets.

Many ELCON members are "Demand Response Providers" as defined by the proposed standards. They have had years, if not decades, of experience operating under interruptible tariffs and contracts. In return for curtailing pre-specified load(s), these arrangements compensated the companies for the services with lump sum payments or rate discounts. More recently, ELCON members have participated in the demand response and emergency load curtailment programs of FERC-approved ISOs and RTOs, and similar programs in ERCOT. ELCON has long supported the role of demand response as a reliable and cost effective source of capacity (kW) that is capable of competing with traditional generation resources and deliver net benefits to all ratepayers, and like the Commission, we believe that demand response is an underutilized service.

ELCON Comments

ELCON submitted comments to NAESB in response to the October 6, 2008 WEQ informal request on proposed measurement and verification business practice standards for Wholesale Electric Market Demand Response Programs. In those comments, we indicated our strong support for NAESB's efforts that produced the draft standards. We said it was an important milestone for the industry and applauded NAESB for its leadership role on this important issue. ELCON explained that we reviewed many of the provisions of the draft standards in the context of how they might be used as barriers to the efficient use of demand resources, as the stakeholder processes at the ISOs and RTOs have proven ineffective in removing such barriers.

ELCON participated in the December 2, 2008 WEQ DSM-EE subcommittee meeting to raise these issues. Unfortunately, ELCON found the NAESB stakeholder process to be deficient. The comments by ELCON were dismissed, as well as the equally constructive comments submitted by other parties, which would have promoted demand response. Even straightforward language clarifications, on which there appeared to be widespread agreement, were not considered. Accordingly, we

question whether the Proposed Phase I Standards represent the outcome of a sound consensus-building process, and ELCON believes that considerable revisions are needed to ensure that the Proposed Phase I Standards do not become a barrier to demand response.

Unfortunately, as of the date of this filing, the NAESB Phase II effort does not appear to be on track and the Phase II group has reached no consensus on the purpose of its mission. It is not clear to us whether we should pursue enhancements to the standards in this ("Phase I") docket or wait to do so in the NAESB Phase II effort when and if our comments become germane. In this context, ELCON offers the following comments on the procedural setting followed by more specific concerns respecting the technical aspects of any such standards. Based on the issues with the Phase I Standards raised herein and the slow start to Phase II, it is in any event clear that FERC should establish an early deadline for completion of the Phase II M&V Standards and direct NAESB to consider the viewpoint of demand response providers in their development.

A. The Phase I and Phase II Process

ELCON greatly appreciates the qualification in the NOPR that the current Proposed Phase I Standards are deemed "initial standards" that are to be "followed by the development of more detailed technical standards for the measurement and verification of demand response products and services." NOPR at ¶ 5. The NOPR further states that the Proposed Phase I standards "provide a starting place to develop a more comprehensive set of standards for the provision of demand response products in wholesale markets." NOPR at ¶ 10. We concur with the NOPR's presumption that the "NAESB Phase II M&V Standards are intended to establish business practice standards that facilitate the ability of demand response providers to participate in electricity markets, reducing transaction costs and providing an opportunity for more customers to participate in these programs, especially that operate in more than one market." NOPR at ¶ 12.

Particularly in view of the obvious deficiencies in the Proposed Phase I Standards and the stakeholder process followed by NAESB to date, ELCON supports the need for a reasonable deadline for the completion of the NAESB Phase II M&V Standards -- no more than one year from the date of the final rule.[1] The deadline should also be factored into the pending National Action Plan on Demand Response that Congress has directed FERC to prepare.[2]

B. Use of M&V Nomenclature

ELCON believes that it is a misnomer and misleading to define the Proposed Phase I Standards in the context of "measurement and verification" (M&V). They do not standardize many M&V functions, but rather provide (i) a standardized template (or taxonomy) for designing demand response programs and offerings in the wholesale electric markets, and (ii) preliminary capabilities for supporting the future development of M&V standards. There are aspects of M&V that are not covered under the Proposed Phase I Standards that the industry may seek to address in future standards. Approval of the Proposed Phase I Standard denoted as "M&V Standards" may preclude or delay opportunities in the future to standardize M&V protocols on a more comprehensive basis.

Notwithstanding the addition of "framework" to the title that was subsequently removed by the ISOs and RTOs, the first two items in the "Introduction" are "1. Measurement and Verification Standards" and "2. Applicability of Measurement and Verification Standards." The continued emphasis on M&V misrepresents the actual substance of the Proposed Phase I Standards.

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[1] The only specific request for comment in the NOPR preamble is "whether the Commission should establish a deadline for the development of these remaining critical standards and, if so, what that deadline should be." NOPR at ¶ 13.

[2] Section 529 of the Energy Independence and Security Act of 2007 (EISA) directed the Commission to develop a National Action Plan on Demand Response.

C. Triggering Events

The need for reasonable limits on "Events" that are triggered as call options is a significant issue that pervades the Proposed Phase I Standards. The Proposed Phase I Standards tend to emphasize only the obligations of demand resources and demand response providers, without sufficiently specifying the complementary obligations of the System Operators. Such limitations are critically important, as System Operators that are overly cautious tend to over use a demand resource. This imposes a considerable burden on demand response providers and establishes a disincentive to participation in demand response programs.

D. Telemetry

The Proposed Phase I Standards contain an abundance of definitions and references to telemetry that would serve to impose undue burdens on demand response providers. ELCON recognizes and respects that there is a need for telemetry adequate to ensure predictable system operations and reliable confirmation of instructions by the demand resource in providing services. However, the broad scope of provisions such as "Telemetry Requirements" and "Other Telemetry Measurements" do not establish any implied or explicit limits on what the System Operator may require. ELCON suggests that any telemetry requirements (initial or additional) as a matter of FERC policy be commensurate with achieving compliance at least cost to the demand response provider.

A key example of the deficiencies in NAESB's stakeholder process is their summary dismissal of ELCON's comment in this regard as "inconsistent with intent and scope of these proposed standards."[3] In fact, the promotion of demand response is the entire point of standardized M&V protocols. The imposition of undue burdens on demand response providers and the establishment of inappropriate constraints on

[k] NAESB WEQ DSM-EE Draft Standards, Response to Comments/Modifications submitted to the WEQ DSM-EE Subcommittee, December 2, 2008 at 22.

participation in demand response should be rejected as inconsistent with Commission policy.

E. Return to Normal Operations

Business practice standards or technical standards should not require a return to "normal operations" (implying a return to a higher or the ex ante level of load) unless the demand response provider has been compensated to do so. The demand response provider should be allowed the discretion to remain at the lower load level (or any other level) after the demand response event consistent with its contractual obligations. Any other such requirement should be treated as a separate event. The applicable definitions should be clarified as follows:

> **Normal Operations –** The time following Release/Recall at which a System Operator shall allow a Demand Resource to cease any obligation regarding its Load consumption, and to be available again for Deployment. ("Definition of Terms")
>
> **Recovery Period –** The time between Release/Recall and Normal Operations, representing the window under which a Demand Resource may return to its normal or other load level. ("Definition of Terms")
>
> **Release/Recall –** The System Operator shall specify the time at which a Demand Resource shall cease any obligation regarding its Load consumption. ("Business Practice Requirements" except for Regulation Products (015-1.12))

F. Demand Resource Availability Measurement

The section of the Proposed Phase I Standards on Demand Resource Availability Measurement is too open-ended and potentially burdensome to demand response providers. Many large industrial customers have provided demand response products to their host system operators for decades. The current language is inconsistent with demonstrated practices of the past and would impose a barrier to demand response; as an alternative, ELCON proposes the following:

> **Demand Resource Availability Measurement** – The System Operator shall specify any reasonable requirements for measuring the capability of a Demand Resource to meet its obligation that do not burden the Demand Resource with unnecessary or unduly costly requirements. ("Business Practice Requirements" – Capacity Products (015-1.4) and Reserve Products (015-1.8))

G. Aggregation

Section on aggregation in the Proposed Phase I Standards, and in particular the reference to four service types, may be subject to abuse or discriminatory treatment of Aggregators. The System Operator should not be in the position to decide who can or cannot aggregate loads. Rather, the System Operator should be required to accept resources from Aggregators that are already pre-qualified under applicable state or federal regulations, and the terms and conditions of each ISO or RTO's tariffs. Accordingly, ELCON proposes the following:

> **Aggregation** – The System Operator shall treat Aggregated Demand Response on a comparable basis with other Demand Response. ("Business Practice Requirements")

H. Dispatch of Demand Resources for Reasons Other Than for What was Specified

A general concern of demand response providers is committing to provide a specific demand response product or service, and then when the event actually occurs, the demand resource is dispatched as another product or service. While ELCON understands and appreciates a System Operator's need for flexibility, there is a more compelling need for transparency and fairness. Demand response providers should not be put in situations in which they are routinely providing uncompensated services or being otherwise misled by the System Operator. The System Operator should not be so empowered as to deny demand response providers any opportunities to sell higher valued products and services.

ELCON proposes the following language to address this issue:

It is the intent of these standards that when a System Operator offers to procure a specific Demand Response product/service from a Demand Response Provider that the System Operator will dispatch that product/service at the time of Deployment for the intended purpose unless other arrangements have been negotiated with the Demand Response Provider.

Respectfully submitted,

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Standards for Business Practices and	)
Communication Protocols for Public Utilities	) Docket No. RM05-5-017
	)

COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY

I. SUMMARY

Pursuant to the Notice of Proposed Rulemaking ("NOPR") issued September 17, 2009 by the Federal Energy Regulatory Commission ("Commission") in the captioned proceeding,[1] San Diego Gas & Electric Company ("SDG&E") hereby comments on the Commission's proposal to adopt by incorporation demand response business practice standards developed by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB).

The standards proposed for adoption are designed as a first step towards defining and delineating measurement and verification in the wholesale Demand Response ("DR") landscape. The proposed standards are intended to promote transparency by requiring system operators to identify and post operational information, such as notification, telemetry, and metering requirements for DR products. Additionally, the proposed standards are intended to promote consistency by requiring each system operator to

[1] *Standards for Business Practices and Communication Protocols for Public Utilities,* Notice of Proposed Rulemaking 74 Fed. Reg. 48173, 128 FERC ¶ 61,263 (2009).

measure and verify a demand response program's performance using one of five commonly accepted baseline evaluation metrics.

SDG&E supports adoption of the proposed standards. Requiring system operators to post the specific operational characteristics promotes transparency and encourages fuller participation by demand response providers in wholesale markets. Moreover, requiring system operators to use one or a combination of the performance evaluation methods currently used in the ISOs and RTOs delineates the playing field, while at the same time providing system operators with the flexibility to apply appropriate metrics to certain programs. The standards help to remove operational and regulatory uncertainty, promote transparency and consistency across the markets, and provide system operators with the flexibility needed to ascribe differing evaluative methodologies to various DR programs. In short, they provide both foundation and framework for a more technologically rigorous methodology for evaluating DR products, and should be adopted without delay.

SDG&E urges the Commission not to establish a deadline for the development of additional standards at this time. The electric industry understands the urgency and importance of increasing participation in DR programs, as well as the need for greater efficiency in operating and evaluating DR programs. SDG&E expects market participants, through NAESB in particular, to mobilize in support of creating a second phase of more technically-advanced measurement and verification standards.

II. COMMUNICATIONS

Communications and correspondence concerning this filing should be directed to the following:

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III. IDENTITY AND INTERESTS

SDG&E is a California public utility corporation with its principal place of business at 8330 Century Park Court, San Diego, California. SDG&E is engaged in the transmission, distribution and sale of energy services to approximately 3.5 million consumers in San Diego and Orange Counties, California, pursuant to regulation by the Commission and by the California Public Utilities Commission. Under the Commission's regulations, SDG&E is a "major" electric utility required to prepare and file the FERC Forms 1 and 3-Q. SDG&E is also a customer of other electric utilities subject to these reporting requirements. SDG&E therefore has interests in this proceeding that cannot be represented by any other party.

IV. COMMENTS

A. Introduction

SDG&E supports FERC's leadership on this important issue, and shares the Commission's goal of bolstering DR participation in the bulk power markets. SDG&E notes the prominence of DR in FERC's recently-released Strategic Plan for fiscal years 2009 – 2014, and intends to participate in forthcoming rulemakings designed to develop best DR practices and to remove entry barriers to economically-efficient DR participation

in wholesale markets. SDG&E also anticipates participating in the Commission's effort to develop a National Action Plan for DR.

SDG&E recognizes the importance and necessity of introducing efficient and effective DR products in wholesale markets, particularly if California is to maintain grid reliability in the face of ever-increasing renewable energy goals. In addition to providing one of the missing reliability pieces in the renewable energy puzzle, SDG&E believes that properly-defined DR products will provide meaningful market benefits as well, most notably increased competitive pressure on wholesale electric prices.

SDG&E is already bidding DR products into the day-ahead ancillary services markets run by the California Independent System Operator ("CAISO"). SDG&E's Participating Load Pilot (PLP) program aggregates multiple customers in its service area into a single resource for bidding Non Spinning (10 Minute) Reserves into the CAISO's ancillary services markets on a 24/7, peak and off season basis. SDG&E's PLP program thus speaks directly to one of the Commission's chief DR goals outlined in Order 719: assess the viability of integrating small demand response resources into AS markets through aggregation.[2]

SDG&E had to overcome several obstacles in order to make its PLP program a success. Chief among them was obtaining and transmitting real-time telemetry values to meet the CAISO's product requirements. SDG&E worked closely with APX to integrate the participant systems into a 24x7 internet-based service in order to provide telemetry to the CAISO. Updates sent through this service were aggregated in SCADA and transmitted to the CAISO EMS. As lessons are learned from the PLP program with

[2] Wholesale Competition in Regions with Organized Electric Markets, 125 FERC ¶ 61,071 (October 17, 2008).

respect to telemetry requirements for small aggregated loads, SDG&E is becoming better positioned to work with the CAISO in developing standards designed for the particular needs of dispersed DR providers.

SDG&E is also currently identifying modifications to enable some of its existing retail DR programs to participate in the CAISO's recently filed Proxy Demand Resource (PDR) program. Once approved, PDR will facilitate the ability of utilities like SDG&E to bid retail DR products directly into the wholesale market. Additionally, PDR will allow independent aggregators of DR resources to bid their dispatchable DR directly into the day-ahead and real-time markets. Consistent standards across ISO/RTOs should serve to reduce barriers that limit participation by the many independent aggregators that operate in multiple North American electricity markets. SDG&E believes that the PDR product will further the Commission's goal of facilitating greater participation in the wholesale market by aggregated DR. SDG&E expects to make the necessary changes to allow some portion of its existing DR programs to participate in the CAISO markets via PDR by summer 2010. SDG&E has an overall goal of achieving a load impact of 265 megawatts for all of its DR programs in 2011.

B. Specific Comments on the Proposed Standards

The Commission's proposal to adopt some 40 definitions will reduce confusion and promote consistency by defining more clearly certain terms used by system operators and DR providers. The definitions will ensure that going forward DR providers and system operators will speak the same language not just within markets, but across them.

The proposed business standards will serve two beneficial functions. First, they require ISOs and RTOs to post notice, metering, and telemetry requirements for DR

products being offered into each of the four distinct bulk power markets: energy, capacity, reserves, and regulation services. For each of these products, system operators will be required to make information publicly available with respect to: 1) specific operational requirements listed in the business practice standards, e.g., notification requirements; 2) telemetry requirements, e.g., the telemetry interval shall not exceed five minutes; 3) after-the-fact metering, e.g., after the fact metering is required and the system operator must specify the meter data reporting deadline. By requiring the system operators to post this information in a clear format, the proposed standards will define the playing field for market participants.

Second, the proposed standards impose a duty on system operators to evaluate a DR resources' performance using any one of five commonly accepted baseline evaluation methodologies.[3] Yet, the standards remain flexible, and do not require that a particular evaluative method be used in conjunction with a particular DR product. In NAESB's own words,

> "[t]hese standards do not specify detailed characteristics of performance evaluation methodologies, but rather provide a framework that may be used to develop performance evaluation methodologies for specific Demand Response services. The System Operator may offer multiple performance evaluation models and may assign a Demand Resource to a model based on the characteristics of the Demand Resource's Load or

[3] Those methods are the five commonly used in ISOs and RTO's today. Specifically, they are Maximum Base Load Evaluation; Meter Before/Meter After; Baseline Type I – Interval Meter; Baseline Type II – Non-Interval Meter ; and Metering Generator Output.

allow the Demand Resource to choose a performance evaluation model consistent with its load characteristics from a predefined list."[4]

Finally, with regards to the deadline question for the completion of Phase II standards, SDG&E agrees that at this point the Commission should adopt industry-developed criteria and standards that define how ISOs and RTOs initiate, measure, and verify load reduction through DR programs. The standards under review here provide both the groundwork for consistency and transparency, as well as the framework within which to develop more technically specific measurement and verification standards. They are indeed the first, not the last, step in developing commonly accepted measurement practices across all FERC-jurisdictional markets. SDG&E believes specific, additional standards should continue to be developed by the industry. Accordingly, SDG&E requests that the Commission refrain at this point from imposing a deadline for the production of Phase II measurement standards. SDG&E believes that NAESB and the WEQ recognize the value of developing these standards in a timely manner and will work diligently to accomplish this goal. In the event the process moves more slowly than SDG&E anticipates, the Commission can revisit the deadline issue at a later date.

[4] NAESB's *Business Practices for Measurement and Verification of Wholesale Electricity Demand Response.*, adopted in the WEQ's 2009 Annual Plan 5(a) Final Action. NAESB's Apr. 17, 2009

V. CONCLUSION

SDG&E respectfully requests that the Commission consider the foregoing comments in issuing any final rule in this proceeding.

Respectfully submitted,

/s/ DON GARBER
Don Garber

Attorney for
San Diego Gas & Electric Company

DATED: October 22, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding. Dated at San Diego, California, this 22nd day of October, 2009.

/s/ Lisa Fucci-Ortiz

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Standards for Business Practices and Communication Protocols for Public Utilities **Docket Nos. RM05-5-017**

COMMENTS OF THE CALIFORNIA DEPARTMENT OF WATER RESOURCES STATE WATER PROJECT

Pursuant to the procedures contained in the above-captioned Notice of Rulemaking,[1] the California Department of Water Resources State Water Project (SWP) hereby submits comments on the Notice of Proposed Rulemaking to incorporate by reference in its regulations at 18 CFR § 38.2 business practice standards adopted by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB)[2] to categorize various demand response products and services and to support the measurement and verification of these products and services in centralized wholesale electric energy markets through an estimated Baseline usage approach.

Briefly, SWP respectfully requests that in acting on the proposed NAESB Standards under consideration in this docket, the Commission

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[1] *Standards for Business Practices and Communication Protocols for Public Utilities*, Docket No. RM05-5-017, Notice of Proposed Rulemaking (FERC Sept. 17, 2009), *available at* http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=12148320.

[2] *See* NORTH AMERICAN ENERGY STANDARDS BOARD, PROPOSED STANDARDS APPROVED BY THE SUBCOMMITTEE ON DECEMBER 2, 2008 AND AMENDED BY THE WEQ EC AND OUT FOR NOTATIONAL BALLOT ON JANUARY 27, 2009, *available at* http://www.naesb.org/pdf4/weq_ec012709a1.doc (hereinafter Standards). The 2008 WEQ Annual Plan Item 5(a) Final Action: Review and develop business practice standards to support DR and DSM-EE programs. - Ratified March 16, 2009 apparently requires NAESB membership or a payment of $3,500 to view.

- ensure that demand response in the form of loads' reaction to accurate, granular price signals on a symmetrical basis with generation will be recognized as the preferred option—and not crowded out through standards rewarding load drop as measured against estimated Baseline usage;

- take action implementing Order 719[3] to require ISO/RTOs provide comparable treatment of demand response and generation in price signals, cost allocation and compensation;

- make clear, to the extent that the Commission accepts the NAESB Standards, that such action neither precludes other, superior demand response not consistent with such standards nor prejudges the outcome of pending or future FERC proceedings in which the Baseline approach adopted in the standards may be challenged; and

- promote the establishment of standards across all electricity markets that focus on the functional performance and verification requirements of individual specific services, which requirements must be met by all resources providing such services.

I. About the State Water Project, a demand response provider offering 3,225 MW of available Participating Load.

According to the Participating Load Agreement between the California Independent System Operator Corporation (CAISO) and SWP, SWP's pump loads offer 3,225 MW of available Participating Load capacity, consisting of 1,871 MW of

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[3] *Wholesale Competition in Regions with Organized Electric Markets*, 73 Fed Reg 61,400 (Oct. 28, 2008), FERC Stats. & Regs. ¶ 31,281 at P 47 (Oct. 17, 2008) (hereinafter Order 719; emphasis added):

> In this Final Rule, the Commission adopts the NOPR proposal to require each RTO or ISO to accept bids from demand response resources, on a basis comparable to any other resources, for ancillary services that are acquired in a competitive bidding process, ***if the demand response resources: (1) are technically capable of providing the ancillary service and meet the necessary technical requirements; and (2) submit a bid under the generally-applicable bidding rules at or below the market-clearing price,*** unless the laws or regulations of the relevant electric retail regulatory authority do not permit a retail customer to participate. All accepted bids would receive the market-clearing price.

water pumping capacity and 1,354 MW of pump-gen capacity.[4] SWP's demand response is subject to the same basic bidding regime, metering obligations, and technical performance requirements applicable to generators. Moreover, because SWP's Participating Loads are priced at nodal level (in contrast to other CAISO loads priced at a Load Aggregation Point level, which is averaged over the entirety of one of the three incumbent investor owned utilities' transmission systems), SWP's Participating Loads can respond to direct wholesale price signals.

The CAISO's annual reports on demand response establishes that SWP's Participating Load has been the *only* active source of wholesale demand response participating in CAISO markets.[5] These CAISO reports also show that SWP's daily and hourly contributions of demand response to the CAISO grid have been substantial. Notably, SWP pumping loads provide demand response in the form of increased consumption to address overgeneration, as well as load curtailments to provide imbalance energy and Ancillary Services in CAISO markets[6]

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[4] *Cal. Indep. Sys. Operator Corp.,* Docket No. ER08-1203, Participating Load Agreement Attch. B (FERC July 1, 2008), *available at* http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=11738170.

[5] *Cal. Indep. Sys. Operator Corp.,* Docket No. ER06-615, CAISO Second Annual Demand Response Report (FERC Jan. 15, 2009) (non-public version), *available at* http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=11914584; *Cal. Indep. Sys. Operator Corp.* Docket No. ER06-615, First Annual Demand Response Report of the California ISO (non-public version) (FERC Jan. 25, 2008), *available at* http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=11578093.

[6] *Cal. Indep. Sys. Operator Corp.,* Docket No. ER06-615, CAISO Second Annual Demand Response Report at 7 (FERC Jan. 15, 2009) (non-public version) ("Per CAISO real-time dispatch instructions, a Participating Load Resource is either paid for the amount of energy that the resource is instructed to curtail or pays for the amount of energy that the resource is instructed to consume. (This is analogous to the CAISO paying a generator to increase output ("INC") and, correspondingly, the generator paying the CAISO to decrease output ("DEC") relative to the resource's scheduled energy amount.) Any deviations associated with the CAISO's real-time dispatches, i.e. underdeliveries or over-deliveries, will be settled with the Participating Load resource as uninstructed energy. The *Total*
Footnote continued

Moreover, SWP provides forms of demand response under Existing Transmission Contracts that are not currently viable in the CAISO market. For instance, under its Comprehensive Agreement with Pacific Gas & Electric Company (PG&E), SWP provides Remedial Action Schemes (RAS) that support the capacity ratings of Paths 16 and 66.[7] When that contract terminates in 2014[8] or before, SWP will have no identifiable means under the CAISO tariff to continue the RAS. Under its Existing Transmission Contracts, SWP also provided Under-Frequency Load Shedding, Voltage Support, and Spinning Reserves from synchronous pump motors.[9] SWP would like to be able to continue to provide these demand-based services, however, under the CAISO tariff.

A. SWP's water operations make it a major user of power and transmission.

The Department of Water Resources (DWR) is an agency of the State of California, headquartered in Sacramento. It is responsible for monitoring, conserving and developing California's water resources, providing public safety and preventing

Footnote continued
Energy Settlement values shown in Table 3 and Table 4 below are the net settlement of the CAISO's instructed and uninstructed energy for dispatches to decrease consumption and for dispatches to increase consumption, respectively."), *available at* http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=11914584.

[7] *See generally, Pac. Gas & Electric Co.,* Docket Nos. ER03-409, SWP Testimony of RD Jones at .pdf pp. 17-18 (FERC Sept. 2, 2003), *available at* http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=9794363.

[8] CAL. INDEP. SYS. OPERATOR, TRANSMISSION CONTROL AGREEMENT, at .pdf p. 134, *available at* http://www.caiso.com/docs/09003a6080/25/a3/09003a608025a3bd.pdf.

[9] *See generally, Cal. Indep. Sys. Operator Corp.,* Docket No. ER02-1656, Comments & Protest of SWP on CAISO Demand Response Report, at 4 (FERC Nov. 12, 2002), *available at* http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=9591689.

property damage related to water resources. A primary responsibility of DWR is the construction, operation, and maintenance of the SWP.

SWP is the largest state-owned, multi-purpose water project in the country and its operations are critical to the resources and economy of the state. SWP's system spans nearly the entire state, from Lake Oroville in Northern California to Pyramid, Castaic, Silverwood and Perris reservoirs in Southern California. SWP delivers an average of 3.3 million acre-feet of water per year to 29 public agency water contractors throughout California. Approximately 40% of the deliveries are used to irrigate approximately 750,000 acres of farmland. The rest of the deliveries serve the water needs of more than 24 million Californians.

SWP's water conveyance system includes 29 water storage facilities, approximately 675 miles of aqueducts and pipe lines, 21 pumping plants, 3 pumping-generating plants and 5 hydroelectric power plants. SWP's power generating sources have capacity of over 1,900 megawatts, and generate an average of 5 billion kilowatt-hours of energy per year. SWP's pumping facilities have capacity of approximately 2,600 megawatts, and consume an average of 9 billion kilowatt-hours of energy per year. In addition to SWP's hydroelectric facilities, SWP also receives power from long-term contracts. Furthermore, SWP manages its power operation through self-generation, load management including demand response, power exchanges, purchase and sales transactions with other entities, and participation in the CAISO power markets.

SWP's aqueducts and reservoirs are designed to provide water storage that enhances SWP's ability to choose (within the constraints of water delivery obligations) the hours and locations in which certain generators and pumps will run. SWP has the ability to operate its pumps to provide demand response services to respond to price

signals in the CAISO market and also to enhance the reliability of the grid. SWP is the largest individual demand response provider in California.

Nonetheless, SWP is able to use its demand-side resources to provide reliability support to the power grid only when water management conditions so permit. Recent developments have increased the urgency of SWP's need for reliable transmission service for its pump load, when that load is not bid into CAISO markets for reliability services. Within the past months, California's Governor declared a state-wide drought emergency. Compounding that emergency are newly imposed severe environmental restrictions. These developments make it essential that SWP have the ability to pump as much as possible in any window of opportunity when environmental conditions allow. If available water flows to the ocean because involuntary transmission interruptions preclude pumping, that water could never be retrieved.

SWP's generation resources and pumping loads are integrated through transmission service purchased from PG&E and SCE. To the extent SWP requires transmission not covered under existing transmission contracts, it must take service under the California Independent System Operator Corporation's tariff.

B. SWP representatives in this proceeding.

The persons to whom correspondence, pleadings, and other papers regarding this proceeding should be addressed and whose names are to be placed on the Commission's official service list are designated as follows pursuant to Rule 203:

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II. The NAESB Standards presume event-triggered load reduction with various metering options and performance evaluation based on estimated Baseline load volumes.

The standards in question are intended to support the measurement and verification characteristics of Demand Response programs administered by Independent System Operators (ISOs) and Regional Transmission Operators (RTOs) for application in the wholesale market and may be the subject of individual tariffs filed with FERC. Nonetheless, they are not intended to replace applicable tariff, market rules, operating procedures, protocols or manuals, for wholesale Demand Response, and in the event of a conflict, the latter documents shall have precedence over these standards.

These standards are, however, supposed to set general principles for wholesale demand response across all wholesale electricity markets. They are "intended to facilitate Demand Response in wholesale electricity markets by providing a common framework for the following:

- "Transparency: accessible and understandable M[easurement] &V[erification] requirements for Demand Response products;
- "Accountability: criteria that will enable the System Operator to accurately measure performance of Demand Response resources; and
- "Consistency: standards applicable across all wholesale electricity markets."[10]

The proposed standards would apply to measurement and verification of wholesale market Demand Response services including Energy, Capacity, Reserves and Regulation.

The Standards contemplate demand response in the context of a triggering event that causes the ISO/RTO to direct a change in demand (load drop except in the case of Regulation Service), timelines for load response to ISO/RTO dispatch, any telemetry the ISO/RTO may call for, and after-the-fact metering unless the ISO/RTO does not require it.[11] To evaluate performance, the Standards rely heavily on Baseline estimates of what load volumes would have been had they not been asked to provide demand response reductions:

> "Performance shall be evaluated through the use of one of the following methods unless otherwise specified by the System Operator:
>
> - "Maximum Base Load [average load or as specified by the ISO/RTO]
> - "Meter Before / Meter After [ISO/RTO sets "Baseline Window"]
> - "Baseline Type-I [sampling with interval meters]
> - "Baseline Type-II [sampling with non-interval meters]

[10] Standards, Introduction § 1.

[11] *See generally id.* at §§ 015-1.8 though 015.10.

- "Metering Generator Output [Baseline calculations for Metering Generator Output]"[12]

III. The Commission should ensure that the proposed NAESB demand response standards will not establish policies that exclude or limit demand response provided on a basis comparable to generation.

SWP strongly supports NAESB's first two objectives of

- "Transparency: accessible and understandable M[easurement] &V[erification] requirements for Demand Response products;
- "Accountability: criteria that will enable the System Operator to accurately measure performance of Demand Response resources" [13]

The remaining objective, "Consistency: standards applicable across all wholesale electricity markets,"[14] gives rise to concern, however, to the extent that NAESB's proposals may have the effect of cementing practices and policies that thwart more sustainable forms of demand response founded in consumer choices in response to price signals on a basis comparable to generation.

A. Optimum demand response occurs as consumers react to accurate price signals, on comparable terms as generators.

FERC's adoption of continent-wide NAESB demand response standards using Baseline estimates has the potential to skew contested demand response proposals and to preclude optimum demand response based on accurate price signals to loads. As members of the CAISO's Market Surveillance Committee have stated in a Center for the Study of Energy Markets (CESM) Whitepaper, "[W]e fear that efforts to increase traditional demand response programs with an administratively set baseline

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[12] *Id.* at § 015-1.11.

[13] *Id.*, Introduction § 1.

[14] *Id.*

could very well crowd out more reliable and effective dynamic pricing approaches – simply because customers will prefer them for the wrong reasons."[15] Such reasons include the potential for windfall demand response profits and regulators' use of socialized ratemaking to shield certain users from high prices[16]—which practices are directly at odds with the Commission's conclusion that scarcity price signals enabling customers to "find it worthwhile to invest in technologies that allow them to respond to prices."[17]

In Order 719, the Commission identified the single most important barrier to demand response: "Without accurate prices that reflect the true value of energy, we cannot expect the optimal integration of demand response into organized markets."[18] To effect this optimal integration, demand must be able to schedule, bid and respond to market dynamics on the same basis as generation. This paradigm is distinct from

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[15] JAMES BUSHNELL, BENJAMIN F. HOBBS, AND FRANK A. WOLAK, WHEN IT COMES TO DEMAND RESPONSE, IS FERC ITS OWN WORST ENEMY?, Center for the Study of Energy Markets Whitepaper at 3 (Aug. 24, 2009), *available at* http://www.ucei.berkeley.edu/PDF/csemwp191.pdf (hereinafter CSEM Whitepaper). *Accord, Cal. Indep. Sys. Operator Corp.,* Docket No. ER09-1048, Report of CAISO Market Surveillance Committee (FERC July 10, 2009), *available at* http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=12079663 ("Any paradigm that sells 'reductions' from an exogenous baseline will crowd-out the adoption of direct pricing options such as critical peak and real-time pricing. Thus, we fear that the adoption of this weak form of demand response will ultimately work against the adoption of a truly symmetric treatment of load and generation that is an essential component of an efficient wholesale electricity market. We believe that there is a significant risk of creating conditions that will crowd out true price response by focusing too much on DR programs with unverifiable baselines and reliability-based rather than price-based mechanisms for obtaining consumption reductions.")

[16] As the CAISO's Market Surveillance Committee explained, the CAISO's three Default Load Aggregation Points were developed to enable a "cross-subsidy from loads in low-cost areas" in order to "eliminate[ ] the risk of high relative prices for certain load-serving entities (LSEs)." *Cal. Indep. Sys. Operator Corp.,* 112 FERC ¶ 61,013 at P 17 (July 1, 2005).

[17] Order 719 at P 203.

[18] *Id.* at P 193.

the NAESB Standards calling for demand response solely in the form of compliance with load shedding directives upon a triggering demand response event, with performance based on administratively-determined Baselines.

1. Traditional demand response relying on Baseline estimates raises issues of inefficiencies and gaming.

Continued and expanded use of the NAESB Standards' traditional demand response in which customers are paid to reduce their consumption relative to an administratively set Baseline level of consumption may, according to the CSEM Whitepaper, create significant market distortions. Such distortions are exactly what demand response programs are intended to rectify. First, administratively set Baseline estimates are inherently imprecise: an "adverse selection problem arises from the fact that, when paying for reductions, the 'buyer' of demand response does not know precisely what the consumer would have consumed in the absence of a DR payment."[19]

Second, reliance on the Baseline approach may invite gaming *and* excessive consumption. As the CSEM Whitepaper explained,

> The moral hazard problem arises whenever customers are rewarded for having higher baselines. Put simply, firms and customers have a strong incentive to inflate the level of their baseline, because they are paid based upon the comparison of their actual consumption to this baseline. In many cases, customers can be given a perverse incentive to over-consume as a means to inflate their baselines. . . . It is critical to recognize that this is more than just a measurement problem. Even *perfect* measurement of consumption does not eliminate the moral hazard problem with regards to baselines. The problem is created by an

[19] CSEM Whitepaper at 7.

> underlying rate structure that provides asymmetric rewards for consumption and reductions.[20]

The CSEM Whitepaper points out that ISO/RTO markets (for which the NAESB Standards are intended) are ideally suited to symmetrical treatment of demand and supply resources. Like their generator counterparts, demand resources would have an ability to bid in the day ahead market and then sell real time energy reductions in relation to amounts bid. What the CSEM Whitepaper calls a "buy your baseline" approach provides objectivity and accountability.[21] Indeed, demand response that is purchased by ISO/RTOs—as contrasted with voluntarily conservation drives—should be transparent and objectively verifiable to comply with standards of just and reasonable rates.

2. Symmetrical treatment of demand and generation provides genuine market efficiencies—and should not be crowded out by demand response requiring Baseline accommodations.

As the CSEM Whitepaper indicates, the approach contained in the NAESB Standards accommodates such socialized pricing regimes, and in so doing may crowd out actual demand response to accurate price signals. Demand response operates best when it is based on price signals that are as granular in time and geography as are available to generators. This Commission has long held, "Market designs that base prices on the averaging or socialization of costs may distort consumption, production, and investment decisions and ultimately lead to economically inefficient outcomes."[22]

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[20] *Id.* at 8.

[21] *Id.* at 9.

[22] *Regional Transmission Organizations*, Order 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC STATS. & REGS. 31,089 at 31,219 (1999), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (Mar. 8, 2000),
Footnote continued

Indeed, the CSEM Whitepaper makes clear that the real value of demand response is in rapid adjustments that are "highly localized."[23] Submerging Locational Marginal Pricing data in huge geographically averaged Load Aggregation Points, as occurs in CAISO ratemaking, makes such LMP price-sensitive demand response infeasible for all but SWP's Participating Loads, which are nodally scheduled and settled. Moreover, widely socializing non-market reliability and transmission costs without regard to geography and often without regard to time of use further distorts price signals in the CAISO "load pays" regime.

In focusing on traditional demand response that is *not* comparable generation, the proposed NAESB Standards do nothing to accommodate or remove barriers to the kind of demand response that SWP and others already provide, which is functionally equivalent to generation. Standards that cater to demand that may not meet market requirements for bidding, scheduling, metering and performance through such mechanisms as Baseline estimates may, as the CSEM report indicates, divert attention from the need to remove barriers to the kind of demand response that responds to price signals in the same basic manner as generation. This does not only crowd out the preferred dynamic response of demand to pricing. It may raise questions of undue discrimination.

For instance, much along the lines of the proposed NAESB Standards, the currently-effective non-conforming Pilot Participating Load Agreements for each of California's investor-owned utilities involve no discernible nodal price signals and impose no apparent obligations or risks on such pilot aggregated Participating

Footnote continued
FERC STATS. & REGS. 31,092 (2000), *aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC,* 272 F.3d 607 (D.C. Cir. 2001).

[23] CSEM Whitepaper at 8.

Loads.[24] In contrast, because CAISO systems can "see" SWP's Participating Load that is not aggregated but rather is bid, scheduled, metered and settled on the same basis as generation, SWP's pump loads are exposed to additional costs and risks of curtailment in the day ahead market that apparently do not apply to other pilot Participating Loads. The Commission has rationalized these unique burdens and risks applied to SWP's Participating Load as relating to the benefits associated with being able to respond to price signals and provide demand response.[25]

As the CAISO Market Surveillance Committee has stated, this focus on demand response resources requiring a Baseline mechanism can make less viable forms of demand response more attractive: "Even customers who are fully capable and willing to participate in dynamic pricing programs might prefer to instead participate as DR customers, simply because the baseline problems could work to their advantage. Thus, the current paradigm of demand response if it comes to

[24] *Cal. Indep. Sys. Operator Corp.,* 128 FERC ¶ 61,184 (Aug. 25, 2009). *See also, Cal. Indep. Sys. Operator Corp.,* Docket No. ER09-1361, Pilot Participating Load Program with Pac. Gas & Elec. Co. (FERC June 26, 2009), *available at* http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=12067296; *Cal. Indep. Sys. Operator Corp.,* Docket No. ER09-1362, Pilot Participating Load Program with San Diego Gas & Elec. Co. (FERC June 26, 2009), *available at* http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=12067291; *Cal. Indep. Sys. Operator Corp.,* Docket No. ER09-1363, Pilot Participating Load Program with S. Cal. Edison Co. (FERC June 26, 2009), *available at* http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=12067292.

[25] *E.g., Cal. Indep. Sys. Operator Corp.,* 128 FERC ¶ 61,246 at PP 24-25 (Sept. 17, 2009) (approving additional risk and costs for nodally scheduled and settled Participating Load because "fairness dictates that where State Water Project's participating load takes advantage of potential benefits in the pricing of its provision of demand response from the nodal settlement process, that same participating load should also bear the concomitant risks associated with possible adjustment in the day-ahead market from being treated nodally for purposes of determining feasible schedules in the day-ahead market").

dominate industry practice could become the single largest barrier to truly price-responsive demand."[26]

Although both the Commission and the CAISO had indicated that concerns about disproportionate costs and burdens imposed on SWP's Participating Load were to have been addressed in the stakeholder process surrounding Order 719 compliance,[27] this did not occur.[28] As the CAISO explained, its focus is on non-price-responsive demand response, largely to the exclusion of the kind of demand response the CSEM report advocates.[29] Much as the CSEM report concludes, interest in potential new programs of the kind exemplified in the NAESB Standards is crowding out consideration of price responsive demand response operating on a par with generation.

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[26] *Cal. Indep. Sys. Operator Corp.,* Docket No. ER09-1048, Report of CAISO Market Surveillance Committee at 10 (FERC July 10, 2009), *available at* http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=12079663.

[27] *Cal. Indep. Sys. Operator Corp.,* 126 FERC ¶ 61,147, at P 101 (Feb. 19, 2009) ("If the design features that State Water Project raises are found to be problematic for developing demand response applications in the CAISO markets, this **would best be addressed through the ongoing demand response stakeholder process**. According to the CAISO, it has worked with interested stakeholders to comply with the Commission's directive to develop proposals for integrating demand response resources into the MRTU markets and its schedule provides for the enhancements to demand response participation in the MRTU tariff to be filed in 2009. Further, **in conjunction with its compliance obligation under Order No. 719, the CAISO and its stakeholders will work to strengthen competition in its market, including the use of demand response**") (Footnotes omitted; emphasis added.)

[28] *Cal. Indep. Sys. Operator Corp.,* Docket No. ER09-1048, Answer of CAISO at 4-20 (FERC June 10, 2009), *available at* http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=12044369

[29] *Id.* at 6-7 ("The CAISO understood the Commission's directive regarding the study to be focused on barriers to entry of new demand response. In contrast, SWP is already participating in the CAISO's markets as demand response. . . . Further, the portion of the Commission's Order No. 719 which directs the barriers effort asks for a *report*, not an extended stakeholder process, and recognizes that the effort would be an abbreviated process: 'The report should identify all known barriers, and provide an in-depth analysis of those that are practical to analyze in the compliance time frame given and a time frame for analyzing the remainder.' Given the timeframe, the CAISO believes it was appropriate to focus on the barriers to new entry, not on particulars specific to SWP." (Emphasis in original; footnote omitted.))

B. ISOs and RTOs have—and should cultivate—demand response providers operating on a basis comparable to generators.

The model supported in the CSEM Whitepaper—and not in the NAESB Standards—is in fact providing demand response in ISO/RTO systems. Except with respect to non-market costs that are socialized in regulated ratemaking, SWP's Participating Load does respond to price signals on a basis comparable to generation. SWP's Participating Loads are scheduled in the day ahead market on largely the same basis as generation, and with anticipated market design upgrades, Participating Load will have much the same flexibility in bidding as is currently available to generators. To provide Participating Load service, SWP was required to install meters of the same kind and quality as required for generators. SWP's Participating Loads also undergo testing and must have technical capabilities to provide Ancillary Services and demand response.

Although demand response resources, including SWP's pump loads, are not identical to generation and must remain dedicated to the purposes for which the loads were designed, various loads can operate on a symmetrical basis with generation in providing demand response. Rules that can accommodate different kinds of generation can also be modified to accommodate demand response—using the same basic pricing, bidding and scheduling procedures, technical requirements and measurement and validation mechanisms.

In the Midwest ISO, Alcoa's Warrick Plant participates in Energy and Ancillary Services markets, bidding on the same basis as generators with the same kinds of sophisticated metering and performance requirements.[30] In PJM, Occidental

[30] *Midwest ISO,* Docket No. ER09-1049, Comments of Alcoa at 7-9 (FERC May 26, 2009), *available at* http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=12028426.

Petroleum successfully petitioned the Commission to obtain nodal price signals that would permit its loads to respond to Locational Marginal Price signals using the standard bidding and scheduling procedures for PJM load serving entities.[31]

The CSEM Whitepaper explained that although requiring comparability between demand response and generation resources may reduce the overall number of demand response providers, it ensures that demand response programs actually achieve their objective:

> It is true that the quantity of demand response resources that market participants are willing to provide is likely to be less if demand response resources are required to participate in the ISO markets under the same terms and conditions as generation unit owners. However, the success of DR programs should not be judged by the amount of MWs or MWhs sold, if these magnitudes are in fact not financially binding or directly verifiable. For example, the ISO could purchase a large quantity of MWhs of demand reductions that are purely the result of an artificially high baseline. These demand reductions provide no economic or reliability benefits, but consumers must still pay for them. To judge a program as a success because it has a large number of participants and a large number of MWhs sold fails to recognize the primary goal of symmetric treatment of demand and supply resources—to improve market efficiency and system reliability.[32]

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[31] *Occidental Power Serv., Inc. v. PJM Interconnection, LLC*, 104 FERC ¶ 61,289 (Sept. 15, 2003) (ordering PJM to comply with tariff provisions allowing any wholesale customer with hourly meter data to elect nodal pricing—even in the case of a wholesale LSE serving only its affiliated oil refinery end user whose nodal pricing was opposed on the ground of anticipated cost shifts to other load at more expensive locations).

[32] CSEM Whitepaper at 9.

C. Whether and how measures of demand response performance and validation should be established in ISO/RTO markets is currently in active development and contention.

The advisability of adopting the kind of approach contained in the proposed NAESB Standards is currently under active debate. In comments on the CAISO's Order 719 compliance filing, SWP pointed out that the CAISO was incorrect in reporting that no party objected to use of a Baseline in the Proxy Demand Response proposal. Citing the CAISO Market Surveillance Committee's opposition,[33] SWP specifically objected[34] for the same reasons set forth above.

Similarly, questions have arisen in PJM's Docket No. EL09-68 regarding the need for objective evaluation of demand response programs through the same standards applied to generation resources. The Electric Power Supply Association, for instance, questioned the lack of parity between generation and demand response resources, citing concerns set forth in the CESM Whitepaper discussed in this pleading. [35] Other parties ranging from investor owned utilities[36] to state

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[33] CAL. INDEP. SYS. OPERATOR MARKET SURVEILLANCE COMMITTEE, THE CALIFORNIA ISO'S PROXY DEMAND RESOURCE (PDR) PROPOSAL 8 (May 1, 2009), *available at* http://www.caiso.com/23ab/23abe281e498.pdf.

[34] *Cal. Indep. Sys. Operator Corp.,* Docket No. ER09-1048, Comments of DWR-SWP at 12-15 (FERC May 26, 2009), *available at* http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=12028476.

[35] *PJM Interconnection, LLC,* Docket No. EL09-68, Protest of EPSA (FERC Sept 16, 2009), *available at* http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=12147443.

[36] *PJM Interconnection, LLC,* Docket No. EL09-68, Protest of PSE&G (FERC Sept 16, 2009), *available at* http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=12147706.

commissions[37] have questioned whether PJM's proposal sufficiently treats demand response on a comparable basis with generation.

NAESB Standards should not be permitted to predetermine or skew the outcomes of such proceedings.

D. At a minimum, demand response standards applicable across all wholesale electricity markets should focus on ensuring compliance with requirements applicable to particular services being offered.

SWP fully appreciates that demand based resources are not identical to generation, and that demand-side resources must first and foremost serve the purpose for which the load was established. Nonetheless, the critical criteria for standards concerning performance and verification of grid services are the needs the services must meet. Standards should focus on the service the grid requires—not simply *who* is providing the service.

This point cuts both ways. On one hand, standards should not bar technically qualified demand-based resources from providing a service for no reason other than an arbitrary requirement that only generation is allowed. For instance, unlike other regional reliability councils, the Western Electricity Coordinating Council (WECC) by definition prohibits spinning reserves from any resource other than generation.[38] SWP had, under its Existing Transmission Contracts, used highly responsive pump loads to

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[37] *PJM Interconnection, LLC,* Docket No. EL09-68, Protest of New Jersey & District of Columbia Commissions (FERC Sept 28, 2009), *available at* http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=12159186.

[38] *Cal. Indep. Sys. Operator Corp.,* Docket No. ER09-1048, CAISO Compliance Filing at 29 (FERC Apr. 28, 2009), *available at* http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=12002611 ("WECC defines spinning reserve as 'unloaded *generation* which is synchronized and ready to serve additional demand.'" (Emphasis in original))

meet spinning reserve obligations.[39] To its credit, the CAISO is proposing to ask WECC to make rules for Spinning Reserves resource-neutral, with an emphasis on the technical needs rather than the type of resource meeting those needs.[40]

On the other hand, standards such as NAESB's should not invite resources to provide services they are not qualified to perform merely because they are demand-based resources. No matter whether the resources is a conventional generator, a demand-side resource or storage or other resource, distinct services such as Regulation and 10 or 30 minute Reserves must meet distinct performance and measurement criteria to be actually useful to the grid and worthy of compensation. For instance, demand response providing Regulation services must be able to change consumption levels within relatively rapid timeframes in a fashion that is immediately recognizable to the Balancing Authority. Ten- or thirty-minute Reserves must be verifiably capable of responding in the required timeframe, with sufficient transparent

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[39] *E.g., S. Cal. Edison Co.*, Docket No. ER80-178 (FERC. Oct. 11, 1979) (Rate Schedule No. 112).

> 6.2.1.2. Each of the following either constitutes spinning reserve capacity or shall be considered a substitute for spinning reserve capacity:
>
> a. Unloaded generation capability synchronized to an electric system which has the ability to generate energy.
>
> b. **Controllable pump loads that will respond to the same intelligence as a synchronized generating unit.**
>
> c. **Interruptible pump loads can be used to satisfy up to 50% of CDWR's spinning reserve requirement.** Underfrequency load shed relaying will be in place to interrupt pump loads at 59.3 Hz.
>
> d. Energy being delivered by CDWR to Third Parties which can be interrupted without advance notice at the discretion of CDWR.
>
> e. Spinning reserve capacity purchased by CDWR from SCE or Third Parties.

S. Cal. Edison Co., Docket No. ER94-589 § 6.2.1.2 (FERC Apr. 1, 1983) (Operating Procedures) (emphasis added).

[40] CAL. INDEP. SYS. OPERATOR, PARTICIPATION OF NON-GENERATOR RESOURCES IN ANCILLARY SERVICES MARKETS (Oct. 1, 2009), *available at* http://www.caiso.com/244c/244cd1f1612d0.pdf.

metering for the Balancing Authority to have real time confidence that its dispatch is being met.

NAESB's proposal does not establish standards from the perspective of performance and measurement based on nationwide technical criteria for the four specific services identified in the proposed standards. Rather, it appears to defer to individual ISO/RTO rules, with emphasis on the Baseline approach. From the perspective of system reliability and ensuring that ISO/RTO expenditures are justifiable, specific, non-resource-discriminatory standards based on the needs to be met by the service in question seems a valid methodology.

Establishing standards focused on the defined needs underlying the service to be provided is not unrealistic. LMP price signals, day ahead markets and metering improvements offer tools that both wholesale and retail end users can use to make real strides in demand response. For instance, "California's three investor-owned utilities all have plans to install interval meters for all of their customers by the end of 2011. In addition, many technologies allowing customers to respond automatically to pricing signals currently exist and many more are being developed."[41] Even as accommodations may be made, demand response resources should meet technical criteria ensuring that their services actually are worth their cost and that reliability is enhanced—and not jeopardized—with demand response.

WHEREFORE, SWP respectfully requests that in acting on the proposed NAESB Standards under consideration in this docket, the Commission

- ensure that demand response in the form of loads' reaction to accurate, granular price signals on a symmetrical basis with generation will be

[41] *Id.* at 5.

recognized as the preferred option—and not crowded out through standards rewarding load drop as measured against estimated Baseline usage;

- take action implementing Order 719 to require ISO/RTOs provide comparable treatment of demand response and generation in price signals, cost allocation and compensation;

- make clear, to the extent that the Commission accepts the NAESB Standards, that such action neither precludes other, superior demand response not consistent with such standards nor prejudges the outcome of pending or future FERC proceedings in which the Baseline approach adopted in the standards may be challenged; and

- promote the establishment of standards across all electricity markets that focus on the functional performance and verification requirements of individual specific services, which requirements must be met by all resources providing such services.

Respectfully submitted this 22nd day of October, 2009.

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CERTIFICATE OF SERVICE

I hereby certify that I have on this day served the foregoing document by email or first class mail postage prepaid upon each person designated on the official service list compiled by the Secretary of the Commission in this proceeding.

Dated at Washington, DC this 22nd day of October, 2009.

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UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

Standards for Business Practice and Docket No: RM05-5-017

Communication Protocols for Public Utilities

Initial Comments of Public Interest Organizations
On Notice of Proposed Rulemaking

I. Recommendations

1. Public Interest Organizations ("PIOs") strongly support the Federal Energy Regulatory Commission's ("Commission") adoption of the North American Electric Standards Board ("NAESB") Phase I M&V Standards to enhance the transparency and consistency of methods used to measure and verify demand response ("DR") products and services in organized wholesale electric markets. We believe that adding these standards to Commission rules will facilitate the development of more comprehensive business practice standards for DR products in ISO and RTO markets.

2. Because a comprehensive set of business practice standards for DR will facilitate DR provider participation in the electricity markets, reduce transactions costs, and provide opportunities for more customers to participate in DR programs, PIOs urge the Commission to establish a clear deadline for NAESB to complete development and adoption of Phase II M&V Standards. PIOs believe that facilitating greater DR participation is important to well-functioning markets, increasing demand elasticity, reducing system costs, and mitigating market power; and, thus, we believe that the Commission should expedite development of Phase II standards.

II. Discussion

A. DR Participation in Wholesale Markets Produces System and Market Benefits.

3. In its recent Order on Rehearing on Competition in Regions with Organized Wholesale Markets (Order 719-A), the Commission noted that demand reductions from DR participation have both direct and indirect effects on wholesale prices, the direct effect occurring when DR is bid directly into the wholesale market resulting in lower prices, and the indirect effect occurring at the retail level by reducing an LSE's need to purchase power from the wholesale market.[1] Further, the Commission discussed DR's ability to lower the average cost of producing energy by flattening an area's load profile which, in turn, may reduce the need to construct and use more costly resources during periods of high demand.[2]

[1] See Order 719-A, ¶17, July 16, 2009. .

[2] See id.

4. DR also reduces generator market power by placing downward pressure on generator bidding strategies, increasing the risk to suppliers that they may not be dispatched if they bid a price that is too high.[3] Finally, the Commission noted DR's tendency to enhance system reliability by reducing electric demand at critical times, e.g., when a generator or a transmission line unexpectedly fails and the system operator dispatches DR on short notice to help return the system to pre-contingency levels.[4]

B. Standardization of M&V Business Rules Will Increase DR Participation in Markets.

5. Standardization of M&V protocols for DR will provide DR customers and Aggregators of Retail Customers (ARCs) much-needed consistency in their treatment across regional markets. Standardization of more specific M&V business practice rules in Phase II, such as rules to establish appropriate customer base lines, will both enhance system reliability, by eliminating nonexistent MWs of DR from economic load response programs, enable ARCs to more easily overcome the financial and educational barriers of meeting different business practice rules for each market they want to enter. Finally, standardization will help ISO/RTOs, especially ISO/RTOs without DR programs, to create more robust wholesale markets using rules based on best DR M&V practices.

6. Relieving financial and educational barriers to new entrants will ultimately result in the increased availability of DR products in wholesale markets. The system and market impacts of DR could be dramatically enhanced if, as expected, standardization of M&V rules for DR products across wholesale markets helps the nation move towards the 20% reduction in peak demand by 2019 envisioned in FERC Staff's 2009 Assessment of DR Potential.[5] The Assessment lists M&V challenges as a regulatory barrier to increased DR in the markets.[6] Standardizing M&V protocols across markets will address this barrier and help the nation capture more of its unrealized DR potential.

C. Robust DR Participation in Markets Can Help Achieve Desired Climate Goals.

7. To the extent that adoption of Phase I and Phase II M&V standards removes regulatory barriers to DR participation, increased DR in the market place will enable greater integration of clean, zero-carbon renewable and distributed generation ("DG") resources into the grid. In July 2009, the Commission adopted a Smart Grid Policy Statement prioritizing the adoption of interoperability standards for certain key Smart Grid functionalities such as DR, electric storage, and plug-in hybrid electric vehicles ("PHEVs") in order to accommodate, in part, the integration

[3] See id.

[4] See id (citing to 2006 FERC Staff Assessment of Demand Response and Advanced Metering, p. 11, August 2006 and 2008 FERC Staff Assessment of Demand Response and Advanced Metering, pp. 50-53, December 2008.)

[5] A National Assessment of DR Potential, FERC Staff Report, June 2009.

[6] See id, p. 66.

of large amounts of variable wind generation.[7] PIOs strongly support the adoption of uniform M&V standards for DR that facilitate increased DR participation and, in turn, allow for greater grid integration of zero-carbon resources such as variable wind and solar generators.

8. Finally, enabling increased levels of DR to participate in wholesale markets should not produce adverse climate impacts.[8] While qualification and eligibility rules for DR resources are not within NAESB's purview, Phase II M&V rules adopted by the Commission should take account of DR resource eligibility to participate in wholesale markets under state air emissions standards and federal environmental protection statutes. Environmentally benign behind-the-meter generation, including combined heat and power, small renewable resources, and other clean, efficient distributed resources located in areas where they can help serve load, reduce transmission congestion, and improve system reliability should be encouraged by standardized M&V rules. However, on-site emergency diesel generators, while appropriately serving a narrow reliability function, should not be permitted under M&V rules to displace cleaner available resources that are able to provide comparable reliability service.

III. Conclusion

9. PIOs support the Commission's proposal to adopt NAESB M&V standards for DR products and services. However, because more specific DR M&V standards will be required to facilitate actual entry of new DR products and services into the wholesale markets and receive the resultant system benefits, PIO's strongly encourage the Commission to set a deadline for NAESB development and adoption of Phase II DR M&V standards.

Respectfully Submitted,

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[7] Smart Grid Policy Statement, Docket No. PL09-4-000, July 16, 2009.

[8] In its recently-released Strategic Plan, the Commission listed as a strategy to maintain the reliability of the electric grid, *identifying reliability parameters that affect national goals of reducing carbon and increasing the penetration of renewable energy resources on the electric transmission grid.* The Strategic Plan FY 2009-2014, a report by the Federal Energy Regulatory Commission, September 2009 at p. 32 (emphasis added).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Standards for Business Practices and Communication Protocols for Public Utilities Wholesale Electric Quadrant Demand Response Standards	**)** **)** **)** **)**	**Docket No. RM05-5-017**

COMMENTS OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

The National Association of Regulatory Utility Commissioners ("NARUC") appreciates the opportunity to provide comments to the Federal Energy Regulatory Commission ("FERC" or "Commission") in response to its September 22, Notice of Proposed Rulemaking on Standards for Business Practices and Communication Protocols for Public Utilities (74 Fed. Reg. 48,173, Docket No. RM05-5-017).

INTRODUCTION

NARUC is the national organization of the State commissions responsible for economic and safety regulation of the retail operations of utilities. Specifically, NARUC's members have the obligation under State law to ensure the establishment and maintenance of such energy utility services as may be required by the public convenience and necessity, as well as ensuring that such services are provided at just and reasonable rates. Demand response necessarily engages the retail operations of utilities, which falls in the State Commissions' jurisdiction. NARUC's members include the government agencies in the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands charged with regulating the rates and terms and conditions of service associated with the intrastate operations of electric, natural gas, water, and telephone

utilities. Both Congress[1] and the federal courts[2] have long recognized NARUC as the proper party to represent the collective interests of State regulatory commissions.

COMMENTS

NARUC supports the Commission's proposed rule to adopt the North American Energy Standards Board ("NAESB") Wholesale Electric Quadrant ("WEQ") initial measurement and verification standards for demand response products and services in organized markets ("NAESB Phase I M&V Standards"). *See* 74 Fed. Reg. 48,173 (Sept. 22, 2009). NARUC recognizes that this is a first step, and that subsequent iterations will develop more detailed technical standards for measurement and verification for Regional Transmission Organization and Independent System Operator (RTO/ISO) demand response programs. We encourage continued efforts to further develop and systematize the standards.

In the context of these standards, it is important to reiterate that States play a significant role in demand response programs inside and outside of RTO/ISO regions. Demand response programs necessarily involve retail customers which are within the States' jurisdiction under the Federal Power Act. States retain jurisdictional control over retail demand response programs. As FERC Order 719[3] acknowledges, States may also prohibit aggregators of retail customers from participating in organized markets. States within organized markets often work with RTOs and ISOs to promote and create successful demand response programs at the wholesale level. States

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[1] *See* 47 U.S.C. § 410(c) (1971). (Congress designated NARUC to nominate members of Federal-State Joint Boards to consider issues of concern to both the Federal Communications Commission and State regulators with respect to universal service, separations, and related concerns); *Cf.* 47 U.S.C. § 254 (1996) (describing functions of the Joint Federal-State Board on Universal Service). *Cf. NARUC, et al. v. ICC*, 41 F.3d 721 (D.C. Cir 1994) (where the Court explains "…Carriers, to get the cards, applied to…[NARUC], an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the 'bingo card' system").

[2] *See United States v. Southern Motor Carrier Rate Conference, Inc.*, 467 F. Supp. 471 (N.D. Ga. 1979), *aff'd* 672 F.2d 469 (5th Cir. 1982), *aff'd en banc on reh'g*, 702 F.2d 532 (5th Cir. 1983), *rev'd on other grounds*, 471 U.S. 48 (1985).

[3] Wholesale Competition in Regions with Organized Electric Markets, Docket Nos. RM07-19-000 and AD07-7-000 (Oct. 17, 2008).

play an important role within RTOs/ISOs' robust stakeholder processes and contribute to those programs' success.

For example, over the course of 2009, the California Public Utilities Commission ("CPUC") and the California Independent System Operator Corporation ("CAISO") conducted a collaborative process that, in the view of the CPUC staff, works well towards maximizing the potential for demand response resources in California while respecting the CPUC's jurisdiction over retail load. The results of this collaboration, outlined in more detail, *infra*, are clear and measurable. Moreover, this collaboration resulted in a commitment from the CPUC to align retail demand response programs with the CAISO to the greatest extent possible. CPUC staff finds this collaborative effort to be extremely productive and believes that FERC should not impose any standards that would unnecessarily hinder such efforts.

In the summer of 2008, the three major CPUC-jurisdictional IOUs filed their respective Applications for approval of demand response programs, goals and budgets for 2009- 2011.[4] As part of these proceedings, the CPUC intended to address the manner in which many of the demand response programs of CPUC-jurisdictional investor-owner utilities ("IOUs") would interact with the CAISO markets and the baseline methodology that would be used to determine actual demand reductions.

As a consequence of these proceedings, in its Decision D-08-12-038, the CPUC authorized funding for the each of the IOUs to conduct a Participating Load Pilot project.[5] These pilot projects are designed to test the technical and economic feasibility of demand response

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[4] *See*, Southern California Edison Application A-08-06-001; San Diego Gas & Electric Application A-08-06-002, and Pacific Gas & Electric Application A-08-06-003.

[5] *See*, CPUC Decision D.08-12-038, December 18, 2008, *available at* http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/95495.doc.

resources to provide the CAISO with non-spinning reserves. With CAISO support, these pilot projects, went live on July 28, 2009.

Another CAISO stakeholder process, this one addressing the participation in CAISO markets of Proxy Demand Resources ("PDR"), was initiated in December 2008. From the beginning, the CPUC, working closely with CAISO staff, the California IOUs, demand resource aggregators and consumer advocates, has been an active participant in this CAISO process and has provided numerous written comments, counter proposals, and presentations. The CAISO staff was very responsive to these inputs, and on September 10, 2009, the CAISO's Board of Governors approved the PDR proposal that resulted from this extraordinary collaboration. CAISO staff is currently preparing tariff language that will implement this proposal for filing at FERC.

The CAISO staff proposal for PDR baseline methodology closely mirrors the recent decision of the CPUC adopting the demand response budgets of the California IOUs for 2009 through 2011.[6] The similarities between these two baselines are not accidental. The CAISO and CPUC staff worked together over an extended period of time to harmonize these two baseline methodologies, which should have the beneficial effect of reducing the opportunity for gaming any differences between wholesale and retail baselines.

The CAISO has deferred to the CPUC on matters such as how demand response aggregators should interact with CPUC-jurisdictional IOUs. Along these lines, the CPUC will soon be initiating a proceeding to address outstanding issues with PDR that remain matters within the CPUC's jurisdiction. Additionally, the CPUC has ordered that the IOUs make "at

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[6] *See*, CPUC Decision D-09-08-027, August 20, 2009, *available at* http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/106008.doc.

least 10 percent of the megawatts enrolled in [retail] demand response programs authorized in this decision comply with the requirements of the CAISO's Proxy Demand Resource."[7]

These initiatives demonstrate that the CPUC and the CAISO are able to work collectively and productively towards making demand response an effective resource.

California is not alone. In New York, the New York Independent System Operator, Inc. ("NYISO") has a well developed stakeholder process that involves a unique form of shared governance, where representatives from stakeholder groups discuss, debate and vote on issues directly affecting the NYISO's operations, reliability and markets. The three committees – Management, Operating, and Business Issues – are supported by several subcommittees, including one on demand response (*i.e.*, the Price Responsive Load Working Group), which are made up of individuals from five major sectors of the marketplace: Transmission Owners, Generation Owners, Other Suppliers, End-Use Consumers, and Public Power and Environmental Parties. The NYISO has several demand response programs that have been developed through the collaborative working group process, including a "Special Case Resources" Program in the Installed Capacity Market, an Emergency Demand Response Program, and a Day-Ahead Demand Response Program. In addition, a new program to allow demand response resource participation in providing Ancillary Services will soon be implemented.

The New York Public Service Commission ("NYPSC") has encouraged the development of demand response by implementing retail tariff changes that have fostered participation in the wholesale market demand response programs by all public utilities within the NYPSC's jurisdiction. In addition, utilities such as Consolidated Edison Company of New York, Inc. ("Con Edison") have implemented demand response programs at the retail level to address unique needs in New York City. For example, a Distribution Load Relief Program and Direct

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[7] *See*, CPUC Decision D-09-08-027, at 240-241.

Load Control Program have been in place for several years and the NYPSC recently approved four new demand response programs for Con Edison.

Other NARUC member commissions also participate in the development of wholesale demand response programs, whether as individual States or through organizations of States within an RTO/ISO.

NARUC encourages the continued development of increasingly clear and comprehensive standards for wholesale demand response. As FERC adopts NAESB Phase I M&V Standards for the wholesale market[8] and reviews and considers subsequently developed standards, FERC should not in any way limit the States ability to develop demand response programs that fit specific State requirements or constraints, even if those requirements or constraints conflict with the standards. It is essential to continue to support robust RTO/ISO stakeholder processes and State involvement therein that creates effective demand response programs in different regions. Demand response standards and FERC's involvement must also continue to acknowledge that States retain jurisdiction over retail demand response programs and that the States may prohibit the aggregation of retail customers into the organized markets.

[8] NAESB's Retail Electric Quadrant is developing standards for retail demand response that will be available to States for adoption.

COMMUNICATIONS

All pleadings, correspondence, and other communications related to this proceeding should be addressed to the following person:

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October 22, 2009

PROOF OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010.

Dated at Washington, D.C. this 22nd of October 2009.

_____/s/_____
Robin J. Lunt

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Standards for Business Practices and Communication Protocols for Public Utilities	Docket No. RM05-5-017

COMMENTS OF THE ELECTRIC POWER SUPPLY ASSOCIATION

The Electric Power Supply Association ("EPSA")[1] submits these comments in response to the Federal Energy Regulatory Commission's ("FERC" or the "Commission") Notice of Proposed Rulemaking (the "NOPR") issued September 17, 2009, in the above-referenced proceeding, *Standards for Business Practices and Communication Protocols for Public Utilities*.[2] The Commission proposes to incorporate by reference in its regulations at 18 C.F.R. § 38.2 the North American Energy Standards Board's ("NAESB") Standards to categorize various demand response products and services and to support measurement and verification of these products and services in the wholesale electric markets (NAESB Phase I M&V Standards).

EPSA has supported the NAESB process since the Wholesale Electric Quadrant (WEQ) was created and endorses the use of ANSI-certified consensus-based industry processes for the development of WEQ standards. Therefore, EPSA recommends that the Commission incorporate the Phase I M&V standards by reference into the

[1] EPSA is the national trade association representing competitive power suppliers, including generators and marketers. These suppliers, who account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities serving power markets. EPSA seeks to bring the benefits of competition to all power customers. The comments contained in this filing represent the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

[2] *Standards for Business Practices and Communications Protocols for Public Utilities*, 128 FERC ¶ 61,263 (2009).

Commission's regulations as a first step in the process of streamlining wholesale electric demand response business practices.

Competitive suppliers appreciate the Commission's effort to address issues to improve competition in organized wholesale electricity markets by adopting consistent and transparent standards for demand response measurement and verification (M&V). Demand response, in addition to generation and transmission additions, plays an increasingly important role in meeting wholesale electric demand. All of these options must be equally considered. Planning robust, reliable markets requires accurate and verifiable demand resources. Verifiability, accuracy and responsiveness to market price signals are especially important as the use of demand response increases in electric wholesale markets. EPSA is concerned that the proposed M&V standards are not thorough enough and urges the Commission to set a deadline for the development of the remaining necessary standards for demand response M&V as discussed below.

I. BACKGROUND

In April of 2007, NAESB started the process that has produced this initial set of business practice standards for the measurement and verification of demand response products and services now before the Commission. The Phase I M&V Standards include 40 definitions and 31 business practice standards that identify the major demand response product categories: energy service, capacity service, reserve service and regulation service. Additionally, the standards identify the key characteristics of demand response measurement and verification, as well as the operational categories associated with demand response.

NAESB noted in its submission that these initial standards will need to be followed by the development of more detailed technical standards for the measurement and verification of demand response products and services in organized markets with Independent System Operators (ISOs) and Regional Transmission Organizations (RTOs). The Phase I work took over 2 years to complete and recognizes that the standards will require more detail to be truly viable. Given the prominent and emerging role that demand response plays in today's wholesale electric market and its impact on future reliability, the Phase II standards must be produced more rapidly than the Phase I standards. EPSA recognizes the hard work done by various segments of industry to develop the Phase I standards and hopes the Commission will encourage greater participation by industry in the ensuing Phase II process. However, it is important that the Phase II process keep pace with the need for precise and clear demand response M&V standards. Consequently, the Commission should set a deadline for the development of Phase II standards.

II. DISCUSSION AND COMMENTS

EPSA supports policies that allow demand resources to participate on an equal footing with generation supply resources. Therefore, the development of standards that can measure demand side resources and ensure that the resources can be verified is appropriate. EPSA supports broad inclusion and participation by qualified resources in forward capacity markets and has previously expounded on the important role that

demand response can play as a wholesale electric market resource by improving efficiency and producing more efficient price signals to the marketplace.[3]

Generally, EPSA asserts that as ISOs and RTOs work to make demand response resources more viable market participants, the Commission must ensure that these resources are subject to the same performance verification, measurement and rules, testing and performance requirements and obligations as all other resources in order to maintain the reliability and viability of the market. Demand response resources can provide reliability benefits to the system, but all resources must be held accountable to detailed measurement and verification standards to perform when needed. Like traditional providers, demand resources that intend to provide ancillary services must test to demonstrate acceptable functionality, and then consistently provide the reliability products that they sell when required. A lack of comparability among resources runs the risk of artificially skewing incentives towards potentially less reliable resources, discouraging investments needed for reliable demand response, and ultimately compromising the reliability of the system.

Based on these needs and as recognized by NAESB and the Commission, more detail is needed than the Phase I M&V standards provide. While the standards distinguish product types, the broad categories need more precise definitions to accurately count demand response and ensure comparability with other resources. The standards do not provide requirements for compensation, design, operation or use of demand response services. Some capacity market designs currently include significant

[3] *See* Comments of EPSA regarding the Advanced Notice of Proposed Rulemaking on Wholesale Competition in Regions with Organized Electric Markets, Docket No. RM07-19, et al., pgs. 11-36, September 14, 2007.

participation by demand resources that are already a critical element in the composition of committed capacity resources and the pricing of resources that support investments needed for system reliability. However, some RTOs/ISOs may currently have inadequate and/or unreliable mechanisms to determine whether all committed demand response resources can be completely relied upon by the RTO/ISO when needed to ensure system reliability. Many of those demand resources are also not price responsive and activation of those resources may well depress valid pricing signals, especially during scarcity situations. Consequently, accurate and reliable measures of the availability and performance of demand response resources need to be developed expeditiously to ensure that all RTO/ISOs have adequate tools to verify the expected reliance upon demand response resources.

All market participants rely on the rules established by transmission providers in their tariffs for comparability and non-discriminatory markets. The tariff provides the basis for fair operation and compensation, as well as the legal provisions should a dispute arise. The Phase I M&V standards properly give substantial deference to RTO and ISO tariffs, but this only highlights the need for all parties and the Commission to carefully review the relevant tariff provisions for effectiveness and to reduce needless and costly disparities among the various RTO/ISO tariffs. The deference to RTO and ISO tariff requirements raises practical questions regarding the value of adopting the NAESB standards other than to provide an opportunity to state a standard exists. From the standard:

> In the event of a conflict between these business practices and System Operators Tariffs, market rules or operating procedures, protocols or manuals, the Tariff, market rules, operating procedures, protocols or

> manuals shall have preference. Terms defined in the Definition of Terms do not modify or supersede market rule or tariff definitions that apply to the compensation design and operation of use of Demand Response Services.

The standard essentially provides that the NAESB standards will have little weight or effectuate standardization and effective M&V relative to the demand response rules that exist today. Moreover, the standard suggests that these rules are not part of the tariff, such that reliance on such rules calls into question their enforceability. Thus, rules needed for reliability of demand resources will continue to exist as business practices rather than as tariff provisions until the Phase II M&V standards are completed.

While the proposed standard states that demand response services will comply in the future with the mandatory and enforceable NERC standards with which competitive suppliers currently must comply, there is little in the proposal to require demand response entities to currently comply with these NERC standards. NERC is in the process of developing demand response measurement through its Demand Response Availability Data System (DADS). The NERC Rules of Procedure (ROP) will require a change to make it mandatory for demand response entities to respond to surveys about how much dispatchable and controllable demand response they provide. Moreover, NERC is in the process of defining demand response entities in its Functional Model. After completion of these changes NERC will be able to define demand response and curtailment service entities for inclusion in the compliance registry. Thus, NERC is in the process of being able to accurately measure demand response entities and their contribution to reliability. Also, many demand response entities are not currently registered by NERC and do not have to comply with reliability standards. Therefore, the NAESB Phase I M&V standards statement that demand response

entities have to comply with NERC standards may not apply to a number of demand response resources.

While NERC registration for demand response entities does not exist today, fast track proposals to require such registration will be reviewed by the NERC Board of Trustees and then by the Commission in the first half of 2010. It would not appear that the NAESB timetable for Phase II M&V standards will allow completion of those standards by that time. If the Phase I timetable is replicated, Phase II standards may take years.

The Commission should provide a schedule for the NAESB Phase II M&V standards so that the process is completed in a timely manner. Demand response resources are being relied upon in growing quantities within wholesale markets to provide services that system operators count on to maintain reliability of the bulk power system. Additionally, these resources are being factored into ISO/RTO reliability planning processes and therefore it is critical to know what resources are really available to ensure long-term reliability objectives are met. Therefore, the deadlines associated with this schedule should be aligned with the NERC process and actions regarding demand response entities. Only when such standards and rules are established can measurable comparability be ensured in organized wholesale electric markets.

III. CONCLUSION

EPSA respectfully requests that the Commission incorporate by reference the NAESB Phase I M&V standards for demand response products and services for the

wholesale electric market. For the reasons listed herein, the Commission should provide deadlines for the completion of the Phase II M&V standards that aligns with NERC's timetable for registering demand response entities. The Phase II standards should set out the M&V standards that are to be consistently applied across all of the ISOs and RTOs ensuring market comparability among generation and demand response entities.

Respectfully submitted,

_____

Nancy Bagot, Vice President of Regulatory Policy
Jack Cashin, Director Regulatory Affairs
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1401 New York Avenue, NW
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Dated: October 22, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the comments via email upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., October 22, 2009.

Nancy Bagot, VP of Reg. Policy

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Standards for Business Practices and	**)**	
Communication Protocols for Public Utilities	**)**	**Docket No. RM05-5-017**

COMMENTS OF THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION ON NOTICE OF PROPOSED RULEMAKING

Pursuant to the Commission's September 17, 2009, Notice of Proposed Rulemaking ("NOPR") 128 FERC ¶ 61,263, the National Rural Electric Cooperative Association ("NRECA") respectfully submits the following comments on the Federal Energy Regulatory Commission's ("FERC's" or the "Commission's") proposal to incorporate by reference in the Commission's regulations 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.

INTRODUCTION

NRECA is a not-for-profit national service organization representing approximately 930 not-for-profit, member-owned rural electric cooperatives. The great majority of these cooperatives are distribution cooperatives that provide retail electric service to over 42 million consumer-owners in 47 states. NRECA's members also include approximately 65 generation and transmission ("G&T") cooperatives, which supply wholesale power to their distribution cooperative owner-members. NRECA's membership includes both transmission-owning and transmission-dependent utilities ("TDUs").

NRECA is itself a member of NAESB, as are a number of its members. NRECA and a number of its members actively participate in NAESB's WEQ standards development processes, and as members of the NAESB Board of Directors and the WEQ Executive Committee. At the same time, a substantial number of NRECA members do not belong to, or participate in the activities of, NAESB. Hence, NRECA has an interest both in the proposed Standards themselves, and in the Commission's proposal to impose them on industry participants by incorporation of the changes into the Code of Federal Regulations by reference. NRECA filed comments on the Commission's original NOPR[1] in this docket.[2]

COMMENTS

NRECA supports the substance of the NAESB standards proposed for incorporation in the Commission's regulations and commends NAESB for its careful work. The proposed standards represent developed business practices for the provision of measurable and verifiable demand response products and services. The Phase I definitions and business practice standards developed by NAESB identify the operational information about demand response products that system operators need to make available and address the performance evaluation methods appropriate to use for demand response products.

NAESB's Demand Side Management-Energy Efficiency subcommittee, which developed the standards proposed for incorporation in the instant proceeding, is currently in the initial stages of Phase II of the development of more detailed standards. In the current NOPR, the Commission inquired whether it should establish a deadline for the development of these additional standards and what that deadline should be. NOPR at 13. NRECA believes that the

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1 *Standards for Business Practices and Communication Protocols for Public Utilities*, Notice of Proposed Rulemaking, 111 FERC ¶ 61,204 (2005).

2 Comments of the National Rural Electric Cooperative Association, filed in Docket No. RM05-5-000 (July 1, 2005).

Commission should not impose a deadline on this standards development process. One of the principal virtues of the Commission's delegation of standards-making to NAESB is the assurance that the industry's expertise will be applied to the delegated problems in a deliberate, open, inclusive process. An arbitrarily imposed deadline could disrupt this process, undermining the rationale for the Commission's reliance on NAESB for development of the standards in the first place.

While NRECA supports the substance of the proposed standards, it objects to the Commission's current proposal to incorporate these standards by reference into its regulations without ever publishing the standards themselves. NOPR at P 10. Although a copy of the standards to be enacted is available for review at FERC's Public Reading Room in Washington, DC, the standards are otherwise only available to NAESB members and those non-members that pay $350 for a copy. While the largest industry participants need not worry about limited access, because, as a matter of course, they are all members of NAESB, very large numbers of smaller industry participants are not members of NAESB.

It is particularly ironic that the Commission has proposed to adopt the instant standards without publishing their actual content because, according to the Commission, the standards are "primarily intended to enhance the *transparency* and consistency of the methods used to measure and verify demand response." NOPR at 10 (emphasis added). The failure to disclose the actual content of the proposed new regulations deprives industry participants that were not able to participate in the resource-intensive NAESB standards development process of both adequate notice and a reasonable opportunity to comment. Furthermore, by failing to publish the contents of the proposed new regulations in its NOPR, the Commission's procedures require some industry participants to buy copies of the proposed "law" from a private organization. Once

done, the Commission's proposed incorporation of NAESB copyrighted materials by reference will limit access to the law as enacted and force some industry participants to pay for access to the public laws to which they are subject. Once the standards are enacted, a non-NAESB member that attempts to find the Commission's regulations applicable to demand response products and services will instead find a citation to outside standards. Those standards, although purporting to have the force of law, are not readily available publicly or through standard legal research services. A non-member's search for the referenced standards will merely lead to the NAESB website, which will offer to sell the non-member a hardcopy of the applicable standards.[3]

NRECA notes that the Motion to Intervene and Comments of Ohio Consumer Counsel, filed in these dockets on October 21, 2009, at pp. 5-6, also point both to the need for a publicly available copy of the standards so that non-members of NAESB can read them and to the inconsistency between the Commission's avowed goal of transparency and the incorporation of privately-published language into the Commission's regulations by mere reference. It is also noteworthy that the attached promotional brochure for a commercial web conference on the standards invokes the Commission's proposal to incorporate the standards into the regulations without publishing them as reason to subscribe. This is mentioned not to suggest that there is anything untoward about the firm's offer of this service but simply to illustrate that one consequence of the Commission's practice is to create an apparent additional need for the service. Stakeholders should not have to pay to see regulations that they can be penalized for

[3] The legal and policy defects of the Commission's practice of incorporating standards in its regulations by reference without publishing their content is discussed in more detail in the Comments Of The National Rural Electric Cooperative Association And The American Public Power Association on Notice Of Proposed Rulemaking, filed May 26, 2009 in *Standards for Business Practices and Communication Protocols for Public Utilities*, Docket No. RM05-5-013.

violating. Legal issues aside, this is hardly consistent with the basic notion that the public is entitled to notice of the laws by which it is expected to abide. The Commission should reconsider the practice of enacting regulations without first publishing them.

CONCLUSION

NRECA respectfully requests that the Commission adopt the recommendations discussed in these comments in the Final Rule to be issued in this docket.

Respectfully submitted,

NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

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Attorneys for
National Rural Electric Cooperative Association

October 22, 2009

Attachment

ATTACHMENT A

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November 5, 2009 | WEBINAR | 1:00pm - 2:30pm EDT

FERC's NOPR Incorporating NAESB Demand Response Standards

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INTERACTIVE WEB CONFERENCE

FERC's NOPR Incorporating NAESB Demand Response Standards

FERC's recent NOPR calling for new demand response "standards" would incorporate into its rules business practices adopted by the members of the North American Energy Standards Board (NAESB), an electric industry standards development organization. This proposed rulemaking has the potential to affect all market participants in organized markets. The impact of this FERC rule would be to codify for all market participants in a particular ISO or RTO the criteria providers will be required to use to communicate, measure and verify demand reductions for demand response products and services.

Although improved market transparency is a principal objective of the standards, FERC has not made the standards themselves available as part of the rulemaking. As a result, readers of the NOPR who have not participated in the NAESB process likely will have questions about what exactly is being standardized and how these business practices will affect the provision of demand response.

Moderator:

George E. Johnson, *Senior Counsel*, DICKSTEIN SHAPIRO LLP

Panelists:

Angela S. Beehler, *Senior Director of Energy Regulation/Legislation*, WAL-MART STORES, INC. (invited)

Eric Winkler, Ph.D., *Project Manager - Demand Response Qualification*, ISO NEW ENGLAND INC.
and *Co-Chair*, NAESB DSM/EE WHOLESALE DEMAND RESPONSE WORKING GROUP

Dr. Eric Woychik, *Vice President for Regulatory Affairs*, COMVERGE, INC.

Agenda

In order to explain what the proposed standards would standardize and what they would not standardize, how the standards were developed, what their likely impact will be on the competitive marketplace, and what comes next, we have invited a panel of experts close to the NAESB process and demand response in organized markets to explore these subjects and to answer the following questions:

- How can you get a copy of the NAESB demand response standards?
- How can you participate in the NAESB demand response standards development process?
- Will incorporation of the standards in FERC rules require ISOs and RTOs to change their demand response programs? If so, in what ways?
- Do the standards require ISOs and RTOs to offer the same demand response products and services?
- To what extent do the standards require all ISOs and RTOs to measure and verify delivery of demand response in the same way?
- Will these standards increase participation of demand response in the organized markets—and with what impacts on other market participants (particularly generation and load)?
- What impact will these standards have on the evolution of demand response programs currently underway in the organized markets?
- What will the “more detailed” standards that FERC says NAESB intends to develop look like?

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UNITED STATE OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Standards for Business Practice and Communication Protocols for Public Utilities	Docket No. RM05-5-017

MOTION TO COMMENT OF
ENERGY CURTAILMENT SPECIALISTS, INC.

Pursuant to Rules 211 and 212 of Rules of Practice and Procedures of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. §385.211 and §385.212, and the Commission's September 17, 2009 Notice of Proposed Rulemaking ("NOPR"), Energy Curtailment Specialists, Inc. ("ECS") hereby submits comments in the above captioned docket.

I. COMMUNICATIONS

All communications, correspondence, and documents related to this proceeding should be directed to the following individuals:

Jim Korczykowski
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Buffalo, New York 14225
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B. Marie Pieniazek
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II. INTRODUCTION

ECS is one of the nation's largest privately held full service Demand Response and Energy Management Service Companies, and a leading demand response provider for commercial, industrial, and institutional customers. ECS provides demand response

services in New York, New England (*Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island*), PJM (*Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and the District of Columbia*), California, Missouri, Kansas, and international operations in Ontario, Canada. ECS actively participates in a range of demand response programs, such as reliability, economic, and ancillary service based demand response throughout the country.

ECS would like to thank FERC for their unwavering support to enhance and further develop demand response markets, across the United States, including the Commission's support for Measurement and Verification ("M&V") standards for demand response. As a participant in several organized wholesale energy markets, and an active participant in the North American Energy Standard Board's ("NAESB") Phase II M&V working group, ECS respectfully submits the following comments regarding the FERC NOPR.

III. BACKGROUND

On September 17, 2009, the Commission issued a NOPR in the above captioned proceeding. The Commission, in the NOPR, proposes to amend their regulations under the Federal Power Act to incorporate by reference the business practice standards adopted by NAESB's Wholesale Electric Quadrant ("WEQ") on March 16, 2009.[1]

FERC also stated that because the demand response industry itself will have to conduct business under the standards, the standards should have the widest possible

[1] NAESB Phase I M&V Standards adopted in WEQ's 2009 Annual Plan 5(a) Final Action

support.[2] ECS submits the following comments with regards to the establishment of a deadline for the development of these remaining critical standards.

IV. COMMENTS

It is Energy Curtailment Specialists, Inc. (ECS) position that NAESB WEQ DSM/EE Workgroup 3 efforts should focus on further development of Phase II Measurement and Verification Standards, which are intended to establish business practice standards. These standards should facilitate the ability of demand response providers to participate in electricity markets, and should further provide an opportunity for *more* loads to participate in demand response while being careful not to restrict participation by certain types of consumers.

ECS believes there are two critical elements that must be addressed in the Phase II M&V Technical Standards development: 1) Phase II M&V Technical Standards should specifically not seek to circumvent the individual ISO/RTO stakeholder process; and 2) Further development of the five approved NAESB baselines should be integrated into Phase II development.

ISO/RTO Stakeholder Process

ISO/RTO governance structures are critical components in the development of the market rules. The governance structure provides stakeholders the opportunity to participate in a forum where issues regarding the operation, implementation, and future of both the wholesale market and demand response programs are discussed, debated and voted on by all stakeholders. ECS believes that demand response program designs are extremely critical issues that all market participants, within each ISO/RTO, must share in the discussion, debate, and vote, and should not be determined through NAESB standard development.

The purpose of NAESB's WEQ is to propose, evaluate, and adopt ***voluntary*** standards designed to promote more competitive, efficient, reliable wholesale electric service. ECS believes that Phase II, development of more detailed technical standards for

[2] FERC, Docket RN05-5-017, September 17, 2009, page 7

measurement and verification, must include all elements of demand response program designs that are currently present in ISO/RTO demand response programs. If more technical measurement and verification standards are developed that seek to eliminate methods which are currently used by individual ISO/RTO's, this action will directly circumvent the governance structure of ISO/RTOs.

Maximizing Demand Response Participation

ECS supports statements in FERC's recent NOPR, that the ***entire*** industry must conduct business under the standards developed by NAESB (and their members), and Phase II M&V Standards are intended to establish business practice standards that facilitate the ability of demand response providers to participate in electricity markets, reducing transaction costs and providing an opportunity for ***more*** customers to participate in these programs, especially customers that operate in more than one organized market. As FERC has stated, these standards should reflect the widest possible support.

ECS believes it is critical that measurement and verification protocols provide alternatives, as developed during Phase I, based on customer load types and operating practices, as no single baseline approach is necessarily perfect for all types of demand response loads. As is documented in the Phase I development, there are several ISO/RTOs that utilize the firm service level baseline for capacity products, and several ISO/RTO's that utilize baseline Type I for capacity products, and some ISO/RTO's that utilize both methods. Clearly, Phase II development of more detailed technical standards must focus on the established measurement and verification methods that are currently utilized across ISO/RTO's. The five established baseline methods permit maximum inclusion of all types of demand response loads. If Phase II seeks to bar, or eliminate, ***any*** of the five baseline methods, which have been established through ISO/RTO governance structures, this action will impede participation in demand response programs for some loads.

Clearly Phase I development shows some consistency across ISO/RTO's, as many of the ISO/RTO's utilize some, if not all, of the baseline methodologies. Phase II development should focus on providing more technical details for each of the established

baselines and should not seek to eliminate or bar the use of one baseline over another for some or all demand response products.

Establishing a Deadline for Phase II Technical Detailed Standards

While ECS supports the approval of the Phase I standards, as outline in NAESB's April 17, 2009 filing, ECS believes that placing a deadline on filing Phase II, more specific technical M&V standards, should not be fast tracked so as to side step each individual ISO/RTO's governance structure. Additionally, developing more technical detailed M&V should not seek to depress demand response participation for some sectors of the market. Clearly, development of more technical detail M&V standards should be fully vetted, include a large sector of demand response providers, and seek to allow development of standards that allow numerous sectors of load participation in demand response markets. NAESB Phase II M&V Standards should seek to establish standards that will allow demand response programs the ability to bring to market all end use customers, not just a select few.

Therefore, ECS supports the Phase I demand response standards, as adopted by the WEQ in the NAESB stakeholder process. ECS believes these initial standards are a step in the providing clarity for demand response program participation, within the wholesale markets. ECS also expresses caution as NAESB continues to develop more technical M&V demand response industry standards. While ECS supports more technical M&V standards, these standards should not seek to redesign ISO/RTO demand response program designs, and should not seek to circumvent ISO/RTO's critical governance structures.

/s/ B. Marie Pieniazek
B. Marie Pieniazek
Authorized Agent for
Energy Curtailment Specialists, Inc.

UNITED STATE OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Standards for Business Practice and Communication Protocols for Public Utilities	Docket No. RM05-5-017

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/s/ B. Marie Pieniazek
B. Marie Pieniazek
Authorized Agent for
Energy Curtailment Specialists, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served *via* first-class mail, electronic transmission, or hand-delivery the foregoing Comments of Energy Curtailment Specialists, Inc. upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Delanson, NY this 22nd day of October 2009.

/s/ B. Marie Pieniazek
B. Marie Pieniazek.
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Phone: (518) 470-6692

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Beth Krogel Roads
Legal Counsel, RTO/FERC Issues
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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Standards for Business Practices and Communications Protocols for Public Utilities
Docket No. RM05-5-017

Comments of Comverge, Inc. on the Proposed Rule Making

Pursuant to Section 212 and 602(f) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR Section 385.602(f), Comverge, Inc. (Comverge) requests that the Commission accept the comments of Comverge on the Rule Making on Standards for Business Practices and Communications Protocols for Public Utilities.

Introduction

Comverge, Inc. (Comverge) greatly appreciates the opportunity offered by the Federal Energy Regulatory Commission (Commission) to comment on the Notice of Proposed Rule Making. Comverge commends the efforts of the Commission in its work together with the North America Energy Standards Board (NAESB) in the development of these standards.

A. Comverge support for the Commission Proposal

First of all Comverge fully encourages the adoption of the NAESB Phase I Measurement & Verification (M&V) Standards for Demand Response (DR). Comverge is in general support of standards and protocols, which facilitate the expanded

deployment of DR systems. We are particularly interested to support standards for measurement and verification of DR capacity so that DR can be considered to have greater certainty in relation to markets for electrical capacity, ancillary services, and energy. DR is the fastest, cheapest, cleanest capacity resource, and it provides significant benefits to suppliers and consumers. The NAESB Phase I M&V Standards for the Wholesale Electric Quadrant (WEQ) are a valuable step in the deployment of such standards.

Second, Comverge also strongly supports the Commission efforts to encourage the industry development of the NAESB Phase II M&V Standards. Comverge suggests that the Phase II standards provide additional guidance on the use of statistical sampling for DR systems with large numbers of participants that each separately provide small DR contributions. Historically, such aggregated systems have proved themselves to be highly valuable assets for the electric system. However, measurement for all participants has often proven costly to implement. Comverge also suggests that the standards be expanded to consider the other quality measurements to evaluate DR beyond the measurement of the net total DR.

Third, and more broadly, Comverge supports the needs to identify and eliminate barriers DR participation in organized wholesale electric markets. Lack of well defined standards for measurement and verification of DR represents a major barrier. Appropriate standards are needed to enable DR to provide qualifying ancillary services, particularly so that renewable resources can be integrated at the lowest possible cost.

B. Development of More Detailed Technical Standards

Comverge agrees with the Commission's statement that there is still much to be done in the development of these M&V standards. Through the WEQ the industry is actively working to develop standards. To the extent possible, common standards across the industry streamline the processes of DR providers such as Comverge. This enables the providers to improve efficiency by centralizing some common services and to realize scale efficiencies in operations centers and information systems.

The acceptance of common M&V standards that also simplify the multiplicity of baseline approaches, telemetry implementations, and M&V data reporting procedures & systems will significantly expand the deployment of DR.

C. Establishment of a Deadline for Detailed Standards

Comverge suggests that the Commission establish an aggressive deadline for the development of the detailed standards. The Phase I standards were developed over a two year period. A first effort is often a longer process as the stakeholder community comes together and builds a common understanding of the task at hand.

For this second phase, the interested parties have for the most part identified themselves for participation. They should have an understanding of their expectations for Phase II. Therefore it should be reasonable to expect that the interval for development would be shorter. NAESB has already started work on the WEQ Phase II standard.

Comverge suggests that the goal for completion of the Phase II standards be between six months and one year from adoption of the Phase I standards.

Conclusion

Comverge thanks the Commission, its commendable Staff, and NAESB for the substantial contributions of knowledge and the important effort that went into this process. We look forward to participating with NAESB in rapid adoption of the Phase II M &V standards and acceptance by the Commission.

Respectfully submitted,

_____/s/_____

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Dated: Oct 22, 2009

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JOHN MICHAEL ADRAGNA
JAMES H. BYRD
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October 29, 2009

Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Erratum to Comments of National Rural Electric Cooperative Association
Submitted October 22, 2009 in Docket No. RM05-5-017

Dear Secretary Bose:

The National Rural Electric Cooperative Association ("NRECA") filed Comments in the above referenced docket on October 22, 2009. It has come to NRECA's attention that those Comments contained an inadvertent error.

In its Comments, NRECA stated that the standards at issue in the above referenced docket are available to non-NAESB members at a price of "$350" per copy. Since filing its comments, NRECA has learned that a copy of the standards at issue in the above referenced docket may be purchased by non-members from NAESB for $50 per copy.

Consequently, the statement found on page 3 of NRECA's Comments that "the standards are otherwise only available to NAESB members and those non-members that pay $350 for a copy," should read "$50," not "$350."

Sincerely,

/s/ Sean T. Beeny
Sean T. Beeny
Phyllis G. Kimmel
Justin R. Cockrell

Attorneys for National Rural Electric
Cooperative Association

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October 22, 2009

VIA ELECTRONIC FILING

Honorable Kimberly D. Bose,
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: RM05-05-17: Standards for Business Practices and Communication Protocols for Public Utilities

Dear Ms. Bose:

Transmitted electronically for filing in the above-referenced dockets are the comments of EnerNOC, Inc.

If there are any questions concerning this filing, please call me at (617) 224-9918.

Sincerely,

Aaron Breidenbaugh
Sr. Manager, Regulatory Affairs
EnerNOC, Inc.

Enclosure

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Standards for Business Practices and Communication Protocols for Public Utilities	**)** **)**	**Docket No. RM05-5-017**

COMMENTS OF ENERNOC, INC. ON NOTICE OF PROPOSED RULEMAKING (NOPR), 18 CFR Part 38

EnerNOC, Inc. ("EnerNOC") submits the following Comments on the proposed rules issued pursuant to the Notice of Proposed Rulemaking ("NOPR") of the Federal Energy Regulatory Commission (the "Commission") in the above-referenced docket.[1]

I. BACKGROUND

EnerNOC is a leading provider of demand response resources and energy management services in the United States and Canada. EnerNOC currently has more than 3,150 MW of demand response resources under management across more than 5,500 sites. EnerNOC actively participates in a wide range of reliability-based demand response programs, price response programs, and ancillary services available in centralized electricity markets across the country. EnerNOC also provides these demand response and energy management products and services directly to utilities and utility customers in bilateral markets.

EnerNOC was an active participant in the North American Energy Standards Board ("NAESB") development of the business practices standards that are the subject of this rulemaking. EnerNOC is also an active participant in the demand response programs in the

[1] Standards for Business Practices and Communications Protocols for Public Utilities, 74 Fed. Reg. 48,173 (2009) ("NOPR").

organized electricity markets that are the focus of this NOPR. EnerNOC has extensive experience in the subject matter of this rulemaking and has a direct interest in the outcome of this proceeding.

II. COMMENTS

The NOPR addresses an urgent need within the demand response industry for greater consistency across electricity markets and the development of "best practices." Addressing these needs will allow the demand response ("DR") programs to progress and evolve by building upon past experience.

A. The Proposed NAESB Standards Should be Adopted

1. The proposed standards represent a crucial first step in the development of greater standardization and development of "best practices" for the measurement and verification of DR.

EnerNOC fully supports the Commission's proposal to incorporate by reference in its regulations the business practices adopted by the NAESB Wholesale Electric Quadrant ("WEQ") (collectively "Phase I Standards"). The Phase I Standards categorize various demand response products and services and support the measurement and verification of these products and services in wholesale electricity markets. This represents a laudable first step in achieving the goals of greater standardization and best practice development that this Commission recognizes. EnerNOC shares that goal with the Commission. The Phase I Standards represent a valuable semantic framework that allows wholesale demand response measurement and verification ("M&V") to be discussed in a common way. The glossary and DR event timelines are particularly valuable.

The ISO/RTO spreadsheet summarizing the attributes of the various ISO/RTO DR programs ("The Matrix") provides a very useful summary of the current program designs. The Matrix is a key part of the initial Phase II efforts. It identifies areas of commonality and difference between the existing ISO/RTO DR programs and the differences in the programs concerning performance evaluation, including M&V.[2]

These Phase I Standards establish a "framework for further business practice standardization efforts."[3] (emphasis supplied). This framework of business practices clearly contemplates the development of detailed standards – additional "phases" that develop the necessary detail to become objective industry standards. For example, the Phase I Standards include more than one hundred references to determinations that generally must be "specified by the system operator," providing no further details for how the business practices are to operate or be applied in any consistent way across the various regions.[4] These specifics will appropriately be addressed in subsequent phases of the development of standards, e.g., the Phase II Standards.

EnerNOC was a strong voice in the NAESB process for developing real standards that apply to all RTO/ISO programs and do not simply defer to existing ISO/RTO rules or rulemaking processes[5]. As the Commission correctly notes, EnerNOC's vote, and that of several other NAESB members, in favor of the Phase I standards was conditioned on "the agreement among participants to include more specific technical measurement and verification standards in

[2] The "matrix" is available at the ISO/RTO Council website: http://www.isorto.org/atf/cf/%7B5B4E85C6-7EAC-40A0-8DC3-003829518EBD%7D/IRC%20DR%20M&V%20Standards%20Implementation%20Comparison%20(2009-04-28).xls

[3] NOPR at 8.

[4] The American Heritage Dictionary defines a standard as "something, such as a practice or a product, that is widely recognized or employed, especially because of its excellence." The Oxford English Dictionary defines a "standard" as "something used as a measure, norm, or model in comparative evaluations" and something can be described as "standard" when it is "used or accepted as normal or average" or "regularly used or produced." The key words here are "widely", "norm" and "regularly." In no way can a collection of references to vastly disparate approaches to doing the same things be accurately characterized as a "standard" or a collection of "standards," yet that is exactly what fully half of the Phase I "standards" do.

[5] At the time, we described the developing framework as "standards not to have standards."

NAESB's current annual work plan" and to proceed with such efforts.[6] Indeed, it was at that time that the proposed standards were designated "Phase I Standards" in contemplation of the development subsequent and more objective and specific standards.

2. The Phase I Standards are the Framework for Developing Objective Industry Standards.

a. The Phase I semantic framework is no substitute for objective, substantive standards.

EnerNOC fully supports the Commission's rearticulating the NAESB view that the "real standards" that need to be developed are the ones that will facilitate participation in the electricity markets by demand response providers to reduce transaction costs and provide an opportunity for more customers (especially those that operate in several markets) to participate in DR programs.[7]

b. Objective Industry Standards Are Necessary to Complete the Work Done in Phase I.

The Commission correctly characterized the Phase I standards as "a starting place."[8] What NAESB has accomplished so far is a major first step toward "substantive standards," but the substantive standards themselves remain to be developed. This Commission's test of whether the standards are objective and estimate best practices is whether NAESB has "develop[ed] the substantive standards needed to achieve greater efficiency in the operation and evaluation of the performance of demand response products and services."[9] The WEQ will need to devote significant additional attention to, and the development of, specific performance criteria.

[6] NOPR at 4
[7] NOPR at 7
[8] NOPR at 7.
[9] NOPR at 8

The greatest obstacle to progress in the Phase II efforts has been the intransigence of certain members of the ISO/RTO community. The Commission should continue to reject the position of these parties that it is not "appropriate to develop criteria and standards the system operators can use to determine how demand response will be initiated, communicated, controlled, adjusted, measured and verified." These parties apparently do not agree that any of those criteria or standards should be developed.

This position is contrary to the Commissions stated intent and the sound development of reasoned standards for these programs across RTOs/ISOs. Surprisingly, they claim that that pursuit of the Commission's agenda outlined above would constitute interference with their existing "program designs," and that they cannot engage in such efforts while at the same time respecting the various stakeholder processes through which those programs were developed. Certainly EnerNOC appreciates this commitment to the stakeholder process, yet to be successful in Phase II the principal subject matter experts - the RTOs/ISOs - must be willing and able to participate fully and share their wealth of experience with the rest of the NAESB stakeholders.

B. The "Phase II" Effort Should be Complete by June 1, 2010.

1. Capturing the ISO/RTO Industry-wide experience is important.

As noted above, the development of "additional technical details," to use the NAESB parlance or the "criteria and standards" sought by the Commission is essential to the efficient future development of the entire DR industry. Provided with sufficient guidance from the Commission and support from its membership, NAESB should either be able to develop "best practices" for DR M&V within approximately six months, or determine that such development through a voluntary industry process will not be possible, regardless of the amount of time available.

The last decade has seen the deployment of a broad set of reliability- and price-driven demand response programs by FERC-jurisdictional wholesale electricity market operators. In virtually all cases, the growth of these programs required the development of solutions to problems and addressing shortcomings of all sorts. At the same time, this last decade has also seen the development of DR programs or program attributes that proved to be highly salutary. In many cases, the very same programs that experienced problems in one facet of their design also proved to be the fertile ground from which nascent "best practices" subsequently grew. Not infrequently, it was the solutions to certain problems which actually led directly to potential best practices.

Unfortunately, there has been relatively little "cross-pollination" between the ISO/RTOs. Each has developed it programs largely on its own, experiencing and repeating the errors of the other RTOs/ISOs. As a result, the Commission has been required to address and resolve problems in one market that it previously addressed in other RTOs/ISOs.

The ISO/RTO Council ("IRC") is comprised of the independent electricity market operators. The IRC would seem to be the ideal place in which to identify and adopt "best practices" and avoid "poor practices." Unfortunately, the unwillingness (for whatever reason) of the IRC members to take the next obvious step in developing Phase II Standards has not occurred. This is a clear reversal of the IRC's intent as explained in its Whitepaper only two years ago:

> **Standardization of Performance Validation Protocols and Terminology to Enhance the Nationwide Development of Demand Response**
>
> The Barriers
>
> Demand response involves change in electricity usage over relatively short time periods, such as hours and in some cases minutes. Conventional metering only measures total consumption. Clearly, new technology is required. Even

with the proper interval metering, protocols are required to measure demand response. Demand response is manifested by a reduction in usage during a specified time. What is metered and readily available is the consumer's actual usage after it has undertaken its demand-response actions. However, measuring the amount of load that was reduced requires ascertaining the level of energy usage the consumer would have otherwise consumed, often referred to as the customer baseline load (CBL). Currently, ISOs, RTOs, and utilities use somewhat varying CBL methodologies to measure and verify the load impacts of demand-response resources participating in wholesale markets (e.g., capacity, electric energy, ancillary services). As is the case with metering and communications, a lack of uniformity in CBL protocols stands in the way of realizing the scale and scope economies that characterize demand-response resources. A number of retail suppliers, curtailment service providers, and some large customers whose facilities or plants have a national or regional footprint (e.g., national chain accounts, very large industrial customers) have argued that more standardized methods to measure and verify the load impacts of demand-response resources would lower transaction costs and reduce barriers to participation by end users in wholesale markets. Moreover, the North American Energy Standards Board (NAESB) has embarked upon a process to develop wholesale (and retail) market standards for the measurement and verification (M&V) of the contributions of demand resources. The Federal Energy Regulatory Commission (FERC) has been supportive of the NAESB effort.

Establishing common M&V standards as well as demand-response product specifications among the ISOs and RTOs would better enable third parties and load aggregators to serve multiple markets. It would enable firms that operate facilities in multiple markets and geographic locations to devise and carry out standardized demand-response behaviors. These efforts also would facilitate the full integration of demand-response transactions into ISO and RTO market systems, which will ensure that demand-response resources are paid promptly for the actual value they deliver. (Emphasis Supplied).

ISO and RTO Initiatives

The ISOs and RTOs are working collaboratively with other stakeholders and NAESB to define more standardized M&V approaches that build on the body of existing experiences and recognize the diverse nature of demand-response resources and the consumers that provide them, with the goal of making demand response attractive to all electricity consumers.[10]

[10] "Harnessing the Power of Demand – How ISOs and RTOs Are Integrating Demand Response into Wholesale Electricity Markets", ISO/RTO Council, October 16, 2007 at 12.

It is precisely this lack of "common M&V standards as well as demand response product specifications among the ISOs and RTOs" that EnerNOC, for its part, intended the Phase II process to rectify as a condition to supporting the Phase I Standards. EnerNOC is encouraged that it appears this Commission shares our view, and urges the Commission to encourage all IRC members to adopt this approach.

2. The distinction between "measurement and verification" and "program design" is arbitrary and unhelpful to this process.

a. Measurement and Verification is the core of DR program design

The integration of demand response resources into wholesale markets is a goal that is shared by the Commission and all of the ISO/RTOs. Central to this goal is the measurement of the extent to which a DR resource has complied with program rules. For most programs (all but some CBL-Type II approaches) this involves comparing what the resources measured load was during a DR deployment with what its load would have been but for that deployment. This counter-factual value is usually known as the resource's "baseline" and it is the difference between the baseline and the metered load that constitutes the "output" of the DR resource on which payments are based and performance is judged.

Some parties, particularly some of those in the ISO/RTO community now appear to believe that it is only the measurement of the actual load that is the subject of the NAESB process and that consideration of the standardization of baselines or approached to developing baselines impermissibly intrudes into realm of "program design." These parties have attempted to limit discussions about additional standards to just half of the equation.

EnerNOC entirely agrees that how performance is measured and the basis for what DR providers is paid is integral to program design, and that these elements must be considered together.

b. Program design must be considered in Phase II.

The purpose of the Phase II process is to develop "more detailed technical standards" for wholesale DR M&V. By definition this must also include consideration of program design. It would be impossible to accomplish that charge if program design were not considered. To limit the efforts of Phase II to only those things that cannot potentially impact existing program designs would prevent the development of the "detailed technical standards" that NAESB agreed to address when it approved the Phase I standards.

Some of the ISO/RTOs take a very different position and it is one that has hamstrung our efforts to date: The following communication to the parties involved in the Phase II process sums up their view quite well:

> The NAESB effort is for Measurement and Verification standards, and not for demand response program design. That activity of developing demand response programs belongs to the ISO/RTOs and they have done so. I do not believe that it is the assignment of this M&V task force to redesign or even recommends demand response program design.
>
> While the demand response programs of each ISO/RTO are not exactly the same, there are a number of similarities. However, the markets operated by each ISO/RTO have different needs and rules. You may want to argue about which ISO/RTO's "got it right", but each one of the implementations has something of value to contribute toward the creation of a "national" solution. Remember that there are still lots of areas across the US that have no DR programs so they will look to what exists for guidance as they develop their own programs. You cannot lose sight of the fact that demand response programs serve a specific purpose which is exactly why they are a little different at each ISO/RTO or utility.
>
> While a standard that provides a cookbook of demand response programs might be needed, and NAESB might be the correct entity to develop such a standard, that is not the work of this task force. Such a tool might give areas looking to develop demand response programs for a specific purpose some excellent basics for developing the program that will work and will meet their needs. Demand response programs are

> serving the need of the market or the local utility. While aggregators might like the programs to serve their needs, aggregators need to meet the needs of the local system operator (be that an ISO/RTO or a local utility) and not the other way around.[11]

ISO-NE, along with EnerNOC presently Co-Chairs the Phase II work group that is responsible for development of the Phase II standards. Unfortunately, for the goal of developing additional standards, ISO-NE's actions in that role have been consistent with the view just described and progress has been minimal, with ISO-NE calling for votes long before the issues have been fully vetted or even discussed. Indeed, ISO-NE recently took the position that alternative proposals for "best practices" built on areas of commonality between the ISO/RTOs should not even be discussed among the participants in the Phase II Working Group 3 process until a motion to adopt them had been made and seconded[12].

To be sure, there have been meetings, and papers have been exchanged, but no substantive progress has been made. Indeed, the group has been unable to agree on what its scope should be. It was hoped that the Commission might provide some guidance, yet even after the Commission issued the instant NOPR laying out its goals, several parties, including ISO-NE continued to oppose their inclusion in the group's scope of work.

EnerNOC strongly urges the Commission to clarify that that "program design" issues must be addressed in the NAESB process, consistent with the Commission's recently-issued Strategic Plan[13] where the Commission identifies its second Long Term Goal:

[11] Email from Robert Burke, ISO-New England to the NAESB Phase II work group, October 12, 2009.
[12] Telephone conversation with Eric Winkler, Co-Chair, October 20, 2009.
[13] "The Strategic Plan, FY 2009-2014", Federal Energy Regulatory Commission, Issued October 9, 2009.

Best practices for demand response products and procedures will be explored and, as appropriate, implemented in organized wholesale electric markets.

FY 2010 Perform outreach with ISOs/RTOs, demand response providers, and others; as appropriate, issue NOPR on best practices
FY 2011 as appropriate, issue Final Rule on best practices
Best Practices for Demand Response Products and Procedures: Encouraging the implementation of best practices for demand response products and procedures in the organized wholesale electric markets will help to achieve the potential benefits associated with demand response. The identification of best practices will further facilitate demand response participation in these markets on a non-discriminatory basis. The Commission will identify best practices through informal outreach with industry representatives and, as appropriate, will consider initiating formal proceedings to reform existing market rules.[14]

These goals established by this Commission are consistent with the IRC goals identified above. EnerNOC urges the Commission to clarify that program design must be considered in the Phase II Standards, and that such consideration should reach beyond individual RTOs/ISOs. Program design best practices and standards must be determined based upon an assessment of all the RTO/ISO programs.

Contemporaneous with this filing, EnerNOC is submitting a request to the NAESB WEQ Executive Committee and Board that a new business practice standard in the form of "Best Practices for Demand Response Products and Procedures," as called for in the Commission's Strategic Plan 2010-2019, be developed. We are asking that the current Phase II effort, which is limited, to measurement and verification, be subsumed within this broader effort. It is our hope that the WEQ's endorsement of this effort will break the logjam that has thus far prevented progress on this critical initiative[15].

[14] Id at 9.
[15] To the extent that the WEQ does not support the development of this new standard, EnerNOC will request that it clarify that the charge of the Phase II effort is as the Commission has described it in the NOPR, and make appropriate alternations to the leadership of that effort to ensure that it proceeds effectively.

III. CONCLUSION

EnerNOC supports the Commissions' adoption of the Phase I Standards and acknowledges the important guidance it has provided in developing the standards that are the subject of this NOPR. EnerNOC also requests the Commission require the adoption of Phase II Standards by June 1, 2010, and that such standards include program design issues, as described above and consistent with the guidance provided in the NOPR.

Respectfully submitted,

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On behalf of EnerNOC, Inc.

Dated: October 22, 2009

CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2009, I caused a copy of the foregoing document to be served electronically upon each person designated on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission.

Aaron Breidenbaugh
EnerNOC, Inc.