

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.

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

³ 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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