

146 FERC ¶ 61,088
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Standards for Business Practices and Communication
Protocols for Public Utilities

Docket No.
RM05-5-023

ORDER DENYING REHEARING

(Issued February 11, 2014)

1. In this order, the Commission denies the PSEG Companies' request for rehearing of Order No. 676-G.¹

I. Background

2. On February 21, 2013, the Commission issued Order No. 676-G, a Final Rule that incorporated by reference updated business practice standards adopted by the Wholesale Electric Quadrant of the North American Energy Standards Board (NAESB) to categorize various products and services for demand response and energy efficiency and to support the measurement and verification of these products and services in organized wholesale electric markets.² These standards provide common definitions and processes regarding demand response and energy efficiency products in organized wholesale electric markets where such products are offered. The standards also require each regional transmission organization (RTO) and independent system operator (ISO) to address in the RTO's or ISO's governing documents the performance evaluation methods to be used for demand response and energy efficiency products.

¹ *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676-G, FERC Stats. & Regs. ¶ 31,343 (2013) (cross-referenced at 142 FERC ¶ 61,131 (2013)) (Final Rule).

² Specifically, NAESB had adopted a revised set of standards covering measurement and verification for demand response (Phase II Demand Response M&V Standards) and a new set of standards covering measurement and verification for energy efficiency (Wholesale Energy Efficiency M&V Standards).

3. On March 25, 2013 the PSEG Companies (PSEG)³ filed a request for rehearing alleging that the Commission erred in adopting the Phase II Demand Response M&V Standards by not giving due consideration to concerns raised by the parties in their comments on the underlying Notice of Proposed Rulemaking (NOPR) and failing to act on PSEG's request for additional standards. PSEG argues that the Commission failed to adequately address its comments on the NOPR, and in particular its concern that the Phase II Demand Response M&V Standards "do not go far enough to ensure that demand response providers ... comply with their capacity obligations."⁴ PSEG argues that the Commission should direct development of additional standards that define testing requirements to ensure efficient operation of the market and that demand response resources have the capability to reduce demand during the time period for which they are committed, including "seasonality" considerations.

4. PSEG also argues that the Commission erred in finding that it was not necessary to require any additional process to further refine or develop demand response measurement and verification standards at this time.

II. Discussion

5. We deny PSEG's request for rehearing for the reasons discussed below.

6. Order No. 676-G incorporated by reference certain standards developed through the NAESB process into the Commission's regulations. The Commission concluded that the Phase II Demand Response M&V Standards represent an incremental improvement to the business practices for measuring and verifying demand resource products and services in the organized wholesale electric markets, and adopted them on that basis.

7. The Commission noted that it had considered the objections raised against the benefits of the standards and determined, on balance, to accept the standards as submitted, explaining:

in choosing to take advantage of the efficiency of the NAESB process to establish technical standards for business practices and communication protocols for the gas and electric industries, we follow the standard regulatory process by which standards are incorporated by reference. These rules appropriately balance the interests of the standards organization and the expediency of

³ The PSEG Companies are comprised of Public Service Electric & Gas Company, PSEG Power LLC and PSEG Energy Resources & Trade LLC.

⁴ PSEG Rehearing Request at 5.

governmental use of privately developed standards. We find that, on balance, the objections raised to adopting the standards do not warrant rejecting them. While additional efforts to increase consistency across regions could benefit end users and demand response providers, as presented the Phase II Demand Response M&V Standards nonetheless represent an incremental improvement to the standards incorporated by reference in Order No. 676-F.⁵

8. PSEG argues that the Commission failed to respond to all of the arguments raised in comments on the NOPR, and, specifically, failed to respond to PSEG's request for additional standards to define testing requirements, despite the Commission's recognition that additional standards could be beneficial. While Order No. 676-G did acknowledge potential benefits of additional efforts to increase consistency across regions, that alone does not mean that the incremental standards adopted in this proceeding are unjust and unreasonable or should be rejected.⁶ Similarly, the Commission's acceptance of the Phase II Demand Response M&V Standards does not preclude the Commission, RTOs and ISOs, NAESB, or stakeholders from exploring and proposing additional standards in the future; indeed, the Commission stated that it would continue to monitor RTO, ISO and NAESB efforts to address the issues raised, and would take action as necessary. The Commission merely found, based on the record before it, that there was an insufficient basis to reject the standards proposed by NAESB or institute processes leading to development of additional standards at this time. While PSEG asserts that the Commission should have specifically responded to every discrete comment, we disagree. Having noted and summarized the comments in Order No. 676-G, the Commission addressed them collectively as part of the above-referenced balancing of interests and in determining that although the current record does not support directing additional standards, the possibility of doing so need not be foreclosed. For these reasons, we reject PSEG's arguments that the Commission failed to respond to PSEG's arguments raised in comments on the NOPR.⁷

⁵ Final Rule, FERC Stats. & Regs. ¶ 31,343 at P 36 (citations omitted).

⁶ Cf. *City of Bethany v. FERC*, 727 F.2d 1131 (D.C. Cir. 1984) (there can be more than one just and reasonable rate).

⁷ See *Professional Drivers Council v. Bureau of Motor Safety*, 706 F.2d 1216, 1220-21 (D.C. Cir. 1983) (in a rulemaking proceeding, the Commission is "accorded considerable deference in evaluating information presented and reaching decisions based upon its expertise ... the agency's decision to refrain from amending the elaborate, established regulatory scheme cannot be disturbed absent a strong showing that such action was unreasonable."); *Maier v. EPA*, 114 F.3d 1032, 1043 (10th Cir. 1997).

The Commission orders:

PSEG's request for rehearing of Order No. 676-G is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.