**North American Energy Standards Board**

**Request for Initiation of a NAESB Business Practice Standard, Model Business Practice or Electronic Transaction**

**or**

**Enhancement of an Existing NAESB Business Practice Standard, Model Business Practice or Electronic Transaction**

**Instructions:**

 **1. Please fill out as much of the requested information as possible. It is mandatory to provide a contact name, phone number and fax number to which questions can be directed. If you have an electronic mailing address, please make that available as well.**

 **2. Attach any information you believe is related to the request. The more complete your request is, the less time is required to review it.**

 **3. Once completed, send your request to:**

 **Rae McQuade**

 **NAESB, President**

 **1415 Louisiana, Suite 3460**

 **Houston, TX 77002**

 **Phone: 713‑356‑0060**

 **Fax: 713‑356‑0067**

 **by either mail, fax, or to NAESB’s email address, naesb@naesb.org.**

**Once received, the request will be routed to the appropriate subcommittees for review.**

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 Date of Request: May 3, 2023

1. Submitting Entity & Address:

Southwest Power Pool

Joshua Phillips

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Denver, PA 17517

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Brian Wagaman

Vice President Gas Supply and System Operations

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Houston, Tx 77002

2. Contact Person, Phone #, Fax #, Electronic Mailing Address:

 Name : Joshua Phillips

 Title : Principal Strategic Initiatives

 Phone : 501-688-1761

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1. Title and Description of Proposed Standard or Enhancement:

Title:

Enhancement to the NAESB Base Contract for Sale and Purchase of Natural Gas Force Majeure Terms

Description:

This request proposes revisions to the NAESB Base Contract for Sale and Purchase of Natural Gas to improve the clarity associated with the force majeure provisions in the contract. There are three primary areas of concern: clarity regarding repeated claims of force majeure for an avoidable situation; requirements that parties claiming force majeure should take actions to prevent the condition; and additional specificity regarding the force majeure events.

We propose that a definition for “gas supply” be incorporated into the contract section 2, a potential definition could be:

2.21        “gas supply” shall mean the specific source of supply designated as the supply source in the transaction confirmation, and if no specific source of supply is designated, then the phrase refers to all reasonably available alternative sources of supply.

The following provide additional detail regarding these concepts and potential redlines to address them.

1. Clarity is needed regarding the ability to invoke the force majeure provision related to weather. While cold weather is certainly a potential cause for a force majeure situation, an appropriate level of preparation and communication is reasonably expected. Potential language to address weather related events be added to section 11.2 subsection (ii) “**however in no case shall this provision be interpreted to absolve a party from taking winterization actions or allow a claim of force majeure in absence of taking such preventative measures**;”. During consideration of this request, we also suggest determining what “winterization actions” should be or how to make such a common determination.
2. Within section 11.3 there are three areas for improvement.

The first is in subsection (ii) which clarifies that a party responsibility attempt to remedy the condition causing force majeure, including advance preparation:

* 1. This could be achieved through the following, “(ii) the party claiming excuse failed to remedy **or reasonably prevent** the condition…”.
	2. The second enhancement under section 11.3 helps clarify that a single supplier should not be able to claim force majeure when the force majeure cause does not interrupt other supplies from a pooling hub. This could be achieved by the addition of a subsection **(vi) interruption of specific supply or markets at “pooling points” or “hubs” without the hub or pooling point operator claiming Force Majeure**.
	3. The final is consideration of removing the phrase under 11.3.iv. “**except, in either case as provided in Section 11.2**”
1. When force majeure is a necessary action, there should be reasonable details provided by the party claiming force majeure. The current language indicates “reasonable” details; however, it is not clear what details should be included. This lack of clarity leaves a costly and time-consuming burden on the counterparties to determine the validity of the force majeure claim. As such, specific details associated with a force majeure claim should be included in the contract by appending the following to Section 11.5:

**For purposes of this Section 11.5, reasonably full particulars as required for a valid Notice of Force Majeure shall include, but not be limited to, a detailed description of the Force Majeure event or occurrence with a full and specific explanation that clearly establishes:**

1. **that the event constitutes a Force Majeure as defined in Sections 11.1 and 11.2;**
2. **how, why, and to what extent the Force Majeure event actually and directly caused the affected party’s non-performance of its Firm obligation, either wholly or partially;**
3. **what immediate actions were and are being taken to avoid or limit the adverse effects of the Force Majeure on the performing party, what ongoing efforts are being made to remedy the Force Majeure condition and to resume full performance as quickly as possible, and how and why those actions were prompt and reasonable under the circumstances; and**
4. **if interruptions or curtailments occurred at a delivery point that is a “pooling” point or “hub,” that:**
	1. **the point or hub operator also claimed Force Majeure,**
	2. **all curtailments or cuts in Firm deliveries or receipts of Gas that were made, to the extent permitted by applicable law, by the non-performing party were reasonably pro rata across all Firm obligations, and**
	3. **the non-performing party did not execute incremental spot Gas sales or purchases after the onset and during the period of Force Majeure.**

**If applicable, as in the case of interruption or curtailment of Firm transportation or sequential or “cascading” events of Force Majeure upstream or downstream of the affected Delivery Point(s), the non-performing party’s Notice shall include and be supported by copies of all notices, information, and documentation received by it from Transporters and/or Gas suppliers upstream or downstream of the affected Delivery Point(s).**

These proposals are made to improve the clarity associated with the cause of force majeure event and through improved communication details associated with the event. These redline proposals are suggestions for consideration to address the concepts identified and not necessarily meant to be final contract language.

4. Use of Proposed Standard or Enhancement (include how the standard will be used, documentation on the description of the proposed standard, any existing documentation of the proposed standard, and required communication protocols):

These revisions will be utilized by parties entering into the contract.

5. Description of Any Tangible or Intangible Benefits to the Use of the Proposed Standard or Enhancement:

The proposed modifications add clarity to the current force majeure language within the contract. The language enhancements will provide guidance regarding the details and reduce the likelihood of signatories misunderstanding force majeure claims.

6. Estimate of Incremental Specific Costs to Implement Proposed Standard or Enhancement:

Incremental costs will be based upon entities accepting the new language into their contracts. Additionally, these modifications may reduce the potentially litigious burden for parties claiming force majeure by providing additional transparency to the impacted parties.

7. Description of Any Specific Legal or Other Considerations:

This language will enhance the current force majeure language in the standard contract. Legal counsel for those entering the contract will need to review the new language that may be added to the contract. It is anticipated that those entities with an objection will modify the force majeure language similar to their practice today for this or any other section of the contract that requires alterations.

8. If This Proposed Standard or Enhancement Is Not Tested Yet, List Trading Partners Willing to Test Standard or Enhancement (Corporations and contacts):

No testing will be required for this modification.

9. If This Proposed Standard or Enhancement Is In Use, Who are the Trading Partners :

N/A

10. Attachments (such as : further detailed proposals, transaction data descriptions, information flows, implementation guides, business process descriptions, examples of ASC ANSI X12 mapped transactions):