



AMERICAN PUBLIC GAS ASSOCIATION

Submitted via email to naesb@naesb.org

October 5, 2023

Ms. Elizabeth Mallett
NAESB Director, Wholesale Gas and Retail Markets Quadrants
North American Energy Standards Board
1415 Louisiana Street, Suite 3460
Houston, TX 77002

Re: APGA Comments Pertaining to Standards Request R23001

Ms. Mallett and Wholesale Gas Quadrant Executive Committee Members:

The American Public Gas Association (APGA) respectfully submits these comments pertaining to the North American Energy Standards Board (NAESB) Standards Request R23001. Standards Request R23001 deals with proposed revisions to the NAESB Base Contract for Sale and Purchase of Natural Gas (Base Contract) to improve the clarity associated with the force majeure provisions in the contract. While the standards request was being considered before NAESB's Wholesale Gas Quadrant (WGQ) Contracts Subcommittee, the subcommittee has since voted forward a "No Action" Recommendation. As the WGQ Executive Committee (EC) takes this request under consideration, APGA urges the EC to oppose the "No Action" Recommendation to ensure that important conversations pertaining to the Base Contract's force majeure provisions can continue.

APGA is the trade association representing more than 730 communities across the U.S. that own and operate their retail natural gas distribution entities. These include not-for-profit gas distribution systems owned by municipalities and other local government entities, all accountable to the citizens they serve. Public gas systems provide safe, reliable, and affordable energy to their customers and support their communities by delivering fuel to be used for cooking, clothes drying, and space and water heating, as well as for various commercial and industrial applications, including electricity generation.¹

NAESB serves as an industry forum for the development and promotion of standards which intend to lead to a seamless marketplace for wholesale and retail natural gas and electricity. Specifically, NAESB proposes and adopts voluntary standards and model business practices designed to promote more competitive and efficient natural gas and electric service. Publicly owned natural gas utilities utilize the Base Contract on a regular basis to contract for the purchase of natural gas in order to serve their customers, so any changes to the language will have a direct impact on APGA's members. We offer the below comments for the subcommittee's consideration in support of continuing discussions pertaining to making potential changes to the Base Contract.

Comments

Standards Request R23001 was jointly submitted by Southwest Power Pool, PJM Interconnection, MISO Energy, Texas Competitive Power Association, UGI Utilities, and CenterPoint Energy on May 3, 2023.

¹ For more information, please visit www.apga.org.

While APGA did not jointly submit the proposal, on the same day, APGA staff did notify NAESB that our membership was supportive of many of the concepts in the proposal and that we look forward to working with other stakeholders through NAESB's process to find a path forward to best support the needs of the energy industry. The WGQ Contracts Subcommittee held a meeting on July 27, 2023, to begin discussions of the standards request. Unfortunately, at this meeting, before any substantive discussion could be had, a motion was made to take no action on the standards request. Informal comments were submitted before the subcommittee's subsequent meeting on September 14, 2023, during which a successful vote for a "No Action" Recommendation took place. This recommendation is now before the EC for consideration. As explained below, APGA is opposed to this recommendation.

APGA believes that the language in the standards request submitted by Southwest Power Pool, et al., while not perfect, is a good starting point for important discussions on how to update NAESB contract language in order to best serve the changing needs of the industry. Accordingly, APGA is opposed to any efforts to halt discussions on this topic before they have even had the chance to begin. APGA urges the EC to not support the "No Action" Recommendation from the subcommittee on this standards request, at least until there has been sufficient opportunity for all market participants to discuss concerns and potential solutions.

APGA continues to be disappointed that some market participants do not even wish to have a conversation on ways to potentially improve the instruments used by our members on a regular basis to conduct natural gas transactions. APGA members operate as not-for-profit entities and many of the systems we represent serve modest communities with limited staff. This means that the sophistication and negotiation strength that may be present in larger counterparties is not always present in our members. Accordingly, many rely on the Base Contract to ensure a fair deal with the limited resources available to them.

In the recent past, APGA members have encountered a number of concerns pertaining to the implementation of the force majeure provisions in the Base Contract that are ripe for discussion in WGQ Contracts Subcommittee. These concerns surround many of the same concepts raised in the standards request and include, but are not limited to, the need for specificity and/or clarifications as to (1) the location and reason of the force majeure notice (*e.g.*, a member received a blanket notice for an entire state); (2) the timeliness of the force majeure notice (*e.g.*, a member has received notice after more than 2 weeks); (3) which governing entity rules (*i.e.*, whether a contract's terms are superseded by a state official's decree in an emergency situation, even if the supply at issue is not directly impacted by the emergency); and (4) how force majeure notices impact pooling hub operations while taking into account how the market currently operates and how our members contract for natural gas.

The natural gas industry has done an impressive job in maintaining reliability and resiliency, but it is important that all market participants take responsibility for important preventative actions, such as region-dependent weatherization and clear communication, in order to support planning purposes of all counterparties and ensure a well-functioning natural gas network in all but the worst-case scenarios.

Being an issue of great concern to our members, APGA believe that conversations pertaining to this standards request should continue. Our members are willing to consider unique solutions, such as including some of these desired provisions in a formal NAESB addendum to the Base Contract. However, such potential solutions cannot be explored if all facets of the industry do not participate in these important discussions.

It is also important to note that APGA does not intend for the discussions or final outcome of the subcommittee and NAESB more broadly to impact existing contracts or ongoing legal proceedings that involve contract language that was agreed to before Standards Request R23001 was brought before NAESB. However, the fact that so many legal proceedings are ongoing is yet another indication that it is prudent for the energy industry to review the language of the Base Contract.

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Thank you for your review and consideration of these comments. APGA and its members again urge the EC to vote in opposition to the subcommittee's "No Action" Recommendation on this important standards request. We look forward to further engaging in future discussions pertaining to updating the Base Contract's force majeure language to best fit the changing needs of the industry. If you have any questions regarding this submission, please do not hesitate to contact me.

Respectfully submitted,



David Schryver

President & CEO

American Public Gas Association