



February 27, 2004

Mr. Bill Newbold  
Co-Chair  
Supplier-Utility Interface Subcommittee  
c/o North American Energy Standards Board  
1301 Fannin Street  
Suite 2350  
Houston, TX 77002

Re: Comments on Outline of NDA

Dear Bill:

I applaud you, your Co-Chair Suzanne Calcagno and the rest of the Supplier-Utility Interface Subcommittee (SUIS) for moving forward on a developing a model non-disclosure agreement (NDA) under the NAESB process.

These agreements have become common place and tend to be 95% identical to each other. However, because of the 5% variance, Generation Power's management team must run every one through our legal department before signing. This extra step typically slows down negotiations and the exchange of information for a few days. Having a NAESB model NDA would allow my management team to immediately recognize its acceptability, execute it on the spot, and continue with their revenue generating activities.

Generation Power submits the following comments for consideration by SUIS at its next scheduled meeting.

1. Although I understand that the outline is not the final model agreement, please make sure that business development activities are included in Section 3 as one of the permitted usages of the Confidential Information. Indeed, it is during this initial contact with a **potential** business partner that these stand-alone agreements are the most important. Once a business relationship has been established, the controlling master agreement will often contain a confidentiality provision. See e.g., Section 14.10 of NAESB Base Contract for the Sale of Natural Gas.

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2. Section 1.2, which defines the term of the NDA, could benefit from language covering the amount of time a receiving party has to return or destroy the Confidential Information after the date of termination.
3. Consider consolidating Section 2, defining the term Confidential Information, and Section 5, containing the exclusions from the definition of Confidential Information. These two interconnected provisions would benefit from inclusion under the same heading.
4. Section 6, covering enforcement, should contain an acknowledgement that the disclosing party is entitled to injunctive relief in addition to any other relief that may be granted. For example, Generation Power typically uses the following language:
  - o *Each Party expressly agrees that monetary damages would be inadequate to compensate the Discloser for any breach by the Recipient of its obligations and covenants set forth in this Agreement. Accordingly, each Party agrees and acknowledges that any such violation or threatened violation will cause irreparable injury to the Discloser and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the Discloser shall be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach by the Recipient, without the necessity of proving actual damages.*
5. Section 9, signature page, should be the last provision. Some jurisdictions have held that any language below the signature line is not part of the agreement's terms and therefore not enforceable.
6. Consider adding a new section that permits the parties to select their choice of law, and choice of forum. For example, the default could be the state law and jurisdictional court of the disclosing party's corporate headquarters. Like Section 14.5 of the NAESB Base Contract for the Sale of Natural Gas there could then be a check box that allows the parties to choose a different law and forum if they so desire.

This area is ripe for standardization and your leadership is sincerely appreciated. Thank you for the opportunity to comment.

Sincerely yours,

James P. Cargas  
General Counsel

cc: Emil Peña, President and CEO