

Comments of National Fuel Gas Distribution (NFGD) to
RGQ/REQ Supplier Utility Interface Subcommittee (SUIS)
5/12/2003

General Comments

NFGD has general concerns about the administrative effort necessary support the model business practices under consideration. Utility staffing is often limited and credit evaluation work is not steady or predictable. A 5 day limit for a given response may be more than adequate under some circumstances yet impossible to meet when the workload is at a peak. Further, other factors such as the size and structure of the entity under evaluation have considerable bearing on response turn-around time.

Never the less, some deadlines and time limits are necessary to ensure the credit evaluation process is functional. NFGD proposes that rather than set specific timelines within the model business practices, that variables be provided (e.g. Creditor will respond within [x] days). This type of approach would permit utilities some flexibility to develop tables, for example, that identify values of [x] for different classes of customers. Such identification should be public and could provided within utility tariffs, operating manuals, etc...

Model Business Practices requiring verification should utilize email as is envisioned in Proposed Creditworthiness Standards under development in NAESB's Wholesale Gas Quadrant. This is not meant to exclude the use of signatures or mail return receipts but more to make more effective use of time when limits are placed upon response time.

NFGD also cautions against language that would permit a Creditor and Applicant to mutually agree to take another course of action. A general challenge of Model Business Practices development is balancing specificity with the need for latitude when appropriate. For example, the non-existence of a given document for an Applicant shouldn't automatically disqualify an Applicant when a substitute document may meet the needs of both parties. NFGD suggests that a new principle within the 1.1.1 Overall section addressing Mutual Agreement would be appropriate. Additionally, the Model Business Practices should defer to the Regulator when ever any element of a policy decision is present.

Specific Comments

NFGD recommends modifications to properly allow for the regulator to make a policy decision.

1.1.1.2 The Utility should make public general information concerning The-the evaluation process and methodology for determining credit limits and risk exposure. Whether this information, as well as more detailed information, is should be reflected in the Utility's Supplier-tariff or elsewhere is-or subject to approval-determination by the Applicable Regulatory Authority.

NFGD recommends the insertion of "as practicable" below so that this model business practice leaves some situational latitude. No two applicants are identical yet it is reasonable that they be evaluated in a comparable fashion.

1.3.2.2 The same criteria and methodology for calculating credit exposure should be used for all Applicants, as practicable, presenting a given risk, such as the risk associated with Consolidated Billing, Provider of Last Resort, etc.

NFGD recommends the modifications below because in unmodified format, publication of methodology details unnecessarily restricts Utility latitude to manage the risk profile presented by unique customer

applicants. Further, the concept espoused is a policy matter subject to a determination of the Regulator. On the other hand, under appropriate confidentiality provisions, it is reasonable for the Creditor to provide the Applicant with the methodology in advance to expedite the evaluation process.

1.3.2.3 Examples of ~~The~~ methodology for calculating credit exposure for various risks should be ~~publicly~~ available to the Applicant, so that Applicants have a general idea of the requirements.

NFGD recommends creation of a new section governing communication of information between parties.

1.3.9 Communication

1.3.9.1 When notices, return-receipts or written communication are required, they may be delivered by overnight delivery, facsimile, or e-mail.

1.3.9.2 The Applicant should provide the Creditor with the Internet E-mail address, fax number and mailing address of up to two authorized representatives who are designated to receive Creditworthiness communications. The Creditor should provide comparable information to the Applicant. The obligation of either party to provide notifications or for the Creditor to formally initiate the credit evaluation process is waived until the above requirement has been met. Both parties should manage internal distribution of communications that are received.

With creation of Section 1.3.9, conforming changes can be made to several proposed model business practices:

1.3.3.4 The Applicant should submit the Credit Application Form and supporting documents using a method that verifies that delivery took place, ~~such as requiring a signature or requesting a return receipt.~~

Additionally, NFGD recommends replacement of numeric value(s) with a variable(s) to be specified elsewhere.

1.3.3.6 The Creditor should evaluate the Applicant's Credit Application Form and all supporting financial documents for completeness and notify the Applicant of any missing elements within ~~five (5)~~[x] business days of receipt. Such notification should be in writing and specify the elements needed to complete the application. ~~The notice may be delivered by overnight delivery, facsimile, or e-mail.~~ The credit evaluation process timelines will be re-started when the Creditor receives the missing elements. The value for [x] should be specified in the TSP's Governing Documents.

1.3.3.11 The Creditor should complete the creditworthiness evaluation within ~~thirty (30)~~[x] days of receipt of all required documents. The value for [x] should be specified in the TSP's Governing Documents.

1.3.3.12 The Creditor should provide the results of the evaluation to the Applicant in writing within ~~five (5)~~[x] business days of completing the evaluation. ~~The results may be delivered by overnight delivery, facsimile, or e-mail.~~ The written notice should include the rationale for the determination of the risk exposure and unsecured credit limits. The value for [x] should be specified in the TSP's Governing Documents.

1.3.4.1 An Applicant should be granted an opportunity to challenge an initial unsecured credit limit determination. The Challenge should be submitted within ~~30~~[x] days of receiving the written notification of the initial unsecured credit limit determination. The value for [x] should be specified in the TSP's Governing Documents.

1.3.4.4 An Applicant should notify the Creditor of any adverse Material Change in its financial condition within ~~three (3)~~[x] business days of such change. The value for [x] should be specified in the TSP's Governing Documents.

1.3.7.1 Creditor may call upon the security posted by the Applicant as specified in applicable agreements or tariffs or after all of the following events occur:

- The Creditor provides notice to the Applicant of its intent to call upon the security posted by the Applicant unless the Applicant makes payment within a cure period of five [x] days ~~(also suggested to replace 5 days with "the cure period")~~;
- Written notice of default is provided to the Applicant;
- Payment is not made within the timeframe specified; and
- Any applicable cure period ends.

The value for [x] should be specified in the TSP's Governing Documents.

1.3.7.2 The Creditor may call upon the security posted by the Applicant without prior notice if the Applicant files a petition for bankruptcy (or equivalent, including the filing of an involuntary petition in bankruptcy against the Applicant, if the petition is not dismissed within ~~20~~[x] days). The value for [x] should be specified in the TSP's Governing Documents.

NFGD recommends that Section 1.3.6 be replaced with one Model Business Practice modeled along the lines of that proposed in the Wholesale Gas Quadrant. The definitions of the instruments could be handle through the Glossary Committee but in general, should be included with Section 1.2. NFGD notes that Surety Bonds should be a matter of mutual agreement between the Creditor and Applicant – they are of inferior quality to Prepayments, Cash Deposits as wells as guarantees and Letters of Credit from creditworthy institutions.

1.3.6.1 Creditors should offer the option of one or more of the following forms of secured credit to those Applicants who do not qualify for sufficient unsecured credit for the risks that they present to receive initial service or continue to receive service:

- (1) guarantee;
- (2) an irrevocable letter of credit; or
- (3) prepayment of service.

Such credit option(s) should be acceptable to the Creditor, provided that the Creditor's acceptance should not be unreasonably withheld, and in accordance with standard industry practices. The Creditor and Applicant may mutually agree that the Applicant will provide other forms of credit options. In order for a guarantee or an irrevocable letter of credit to be accepted by the Creditor, the entity that provides such guarantee or letter of credit must be creditworthy in accordance with the Creditor's Governing Documents.

Finally, NFGD agrees that the credit evaluation process should be subject to non-disclosure provisions but notes that tariffs and contracts used to provide service in many cases already exist and recommend changes to reflect this case:

1.3.8.2 When entering into the creditworthiness evaluation process, unless provided for with the Creditor's Governing Documents, the Applicant and the Creditor should execute a non-disclosure agreement. An example of a Non-disclosure Agreement is enclosed as Model 1.5.1.2