

**STATEMENT OF NATIONAL GRID USA REGARDING  
NAESB “DRAFT AGENDA” AND “PROCEDURAL RULES”  
FOR JUNE 20-21, 2002 MEETING IN COLUMBUS, OHIO**

**Summary**

By e-mail dated June 7, 2002, NAESB circulated documents entitled “Draft Agenda” and “Procedural Rules for the NAESB WEQ Formation Meeting, Columbus, Ohio, June 20 and 21, 2002.” These documents purport to change the procedural rules previously adopted by the Industry Working Group that has been meeting to form the WEQ. National Grid considers these documents invalid, and of no force and effect.<sup>1</sup> Among other things, the so-called “Procedural Rules” have not been adopted by the Industry Working Group, and they unfairly favor vertically integrated utilities at the expense of other participants. While any actions taken under such improperly-imposed rules will be null and void, National Grid proposes a solution that should satisfy all parties.

**The NAESB-Dictated “Procedural Rules” Are Null and Void**

The Industry Working Group has already painstakingly developed its own procedural rules (use of Robert’s Rules, two-thirds voting, etc) in a process that has required much time and effort. (Indeed, a motion to vote by segments was made and voted down at an earlier meeting.) These procedural rules are accepted by the vast majority of the Working Group participants – a significant achievement in itself. As a result of the orderly procedures made possible by these rules, the Working Group has made significant progress in recent meetings. These proven procedural rules should not be thrown out at the whim of some non-participant.

Second, while the Industry Working Group is discussing the conditions under which it will become part of NAESB, it is not yet part of NAESB. No Initial Procedures have yet been submitted to the NAESB Board – nor could they be, as they have not yet been finalized. Consequently, the opinion of the NAESB General Counsel that segmented voting “is to be used” is simply irrelevant to the operation of the Working Group.

Third, even if the Industry Working Group were already part of NAESB, each of NAESB’s Quadrants is self-governing. Consequently, regarding the governance issues under discussion now, the WEQ would have full authority to use the procedures it is using now, whatever the opinion of NAESB’s counsel or officers.

Fourth, recent history shows that, far from expediting progress, attempts by NAESB to dictate rules to the Working Group actually cause delay instead. For example,

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<sup>1</sup> As to the “Draft Agenda,” National Grid objects primarily to item 4., scheduled for 11:00 a.m. on June 20, which is apparently intended to implement the “Procedural Rules” document. While National Grid’s discussion below focuses on the “Procedural Rules” document, this should be understood to also include this portion of the “Draft Agenda.”

the discord and procedural disputes arising from NAESB's previous attempt to impose rules of its choosing on the Working Group (at the April 5 Houston meeting) resulted in all the work at that meeting having to be redone. There is every reason to think that NAESB's current attempt to dictate procedures will have the same effect. In any event, there is no longer any reason to consider NAESB's June 28 Board meeting as a drop-dead date for WEQ formation: FERC's May 16 Order has given the Working Group at least until September to complete this process (though rapid progress is still important).

Fifth, the negotiations regarding formation of the WEQ are supposed to be a *consensus* process. Whatever one believes the word "consensus" means, it certainly does *not* mean a process governed by fiat from on high, by one or more NAESB officers. Proceeding under rules imposed in this way would call the legitimacy of the WEQ formation process into serious question.

Finally, a perfectly reasonable process exists within the Industry Working Group for making the transition from plenary to segmented voting: bring the voting change proposal up for a vote by the Group. National Grid invites NAESB to submit its proposed rule changes under this process.

### **The NAESB-Dictated Rules Would Favor One Set of Stakeholders Over Others**

NAESB's "Procedural Rules" appear calculated to advance the interests of one stakeholder group – vertically integrated utilities ("VIUs") – at the expense of others. Because of NAESB's multi-segment voting rules (which the NAESB "Procedural Rules" document reaffirms under "Agenda Item 3"), VIUs are generally considered entitled to vote in four of the five segments identified by the Working Group, while other stakeholders are generally limited to voting in only one or two segments.<sup>2</sup> Consequently, dividing the Working Group into segments will in effect double or triple the VIUs' voting strength in one fell swoop. Such an increase in their voting power would enable the VIUs to dictate WEQ governance procedures to the rest of the Working Group participants.

National Grid recognizes that segmented voting may be desirable at some point in the governance negotiations, and does not object to the Working Group shifting to segmented voting in an appropriate manner. However, before making the transition to segmented voting, National Grid and many other minority voting groups wish to establish principles that will protect their interests once segmented voting – with its vastly increased VIU voting power – is in place. National Grid and the other minority interests have made no secret of their agenda, and the Working Group as a whole has been receptive to it. However, NAESB's attempt to circumvent the orderly procedures the Working Group has established for changing its voting rules appears calculated to cause a

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<sup>2</sup> Note that National Grid does not agree that the NAESB Bylaws' statement that qualifying entities may have "membership" in more than one segment necessarily means that such entities may *vote* in more than one segment. Indeed, in the absence of appropriate minority protections, National Grid believes that the voting power of the VIUs should be more limited. Such limitation could be accomplished by requiring VIUs to choose which of their segments to vote in, or to divide a single vote among different segments.

shift to segmented voting before such minority protective principles are put in place – a virtual guarantee that such principles will *never* be put in place, as the majority VIUs will likely oppose them.

## **A Proposed Solution**

National Grid believes that the interests of all parties can be accommodated without resort to back-room tactics. If appropriate principles protecting minority interests can be quickly adopted by the Industry Working Group as a whole, minority members should have no objection to a shift to segmented voting immediately after. This should satisfy both those worried about minority rights and those interested in expedition. Protective *principles* established by the Working Group as a whole – as opposed to the entire Group actually deciding each segment's subsegments and/or procedures – should also satisfy those participants who do not wish their own segments' structure and procedures voted upon by other participants who will not be part of their segments.

In the Appendix to this Statement, National Grid proposes a set of such protective principles in the form of Interim Procedures to be used within the WEQ segments once they are set up. These Interim Procedures are intended to implement FERC's "consensus" directive at the segment level. It should also be emphasized that these Interim Procedures are intended to be used *only* for setting up segment procedures, including number and functions of subsegments. Once the segment procedures are set up and approved by the segment participants, the segment in question will shift over to the segment procedures thus approved, and the Interim Procedures will become ineffective thereafter.

Should the proposed Interim Procedures be approved by the Industry Working Group during the June 20-21 meeting, National Grid will be prepared to support a shift to segmented voting, and would expect other minority interests to be similarly inclined, given that these procedures give all interests an opportunity to be adequately represented within their segments. Under such circumstances, a legitimate transition to segmented voting, implemented by means of a vote in accordance with currently effective procedures, should be easily obtainable.

## APPENDIX

National Grid proposes that the industry participants negotiating the WEQ procedures agree to the following *before* they break up into segments in order to formulate the segment procedures:

1. “Each segment shall have a set of internal operating procedures. Once established, each segment will formulate its own internal procedures on a consensus basis. Any group of members of a segment may agree to define and form a subsegment, provided that (a) each such subsegment must have at least four members, and (b) no member may belong to more than one subsegment of the same segment. For purposes of the formation of the internal segment procedures, each such subsegment must agree with a proposed procedure before it can be adopted.”
2. “A subsegment is considered to ‘agree with a procedure’ if a majority of the members of the subsegment [simple majority? super-majority?] votes in favor of the procedure. However, as noted above, all subsegments must agree before a procedure can be approved for the segment.”