COMMENTS OF THE AMERICAN PUBLIC POWER ASSOCIATION, NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION AND THE TRANSMISSION ACCESS POLICY STUDY GROUP REGARDING THE AGENDA FOR THE JUNE 20-21 NAESB WEQ MEETING IN COLUMBUS, OH
June 17, 2002

On June 6, 2002, NAESB distributed to the WEQ participants the agenda for the June 20-21 WEQ meeting taking place at the offices of AEP in Columbus, OH. Many of its provisions will make it impossible for the WEQ to form as an organization that could achieve credibility as a true industry-wide consensus standards setting organization.

Specifically, the agenda shows that NAESB is attempting to unilaterally change critical meeting rules and processes that the WEQ participants have been using since the first WEQ formation meeting in Houston, in a move that will disenfranchise municipal and cooperative interests. It also appears that NAESB has unilaterally concluded that the 5-segment model currently under consideration has already received a confirming vote. We strongly disagree and believe that many other WEQ participants disagree with this position as well. NAESB's actions severely undermine any hope that this WEQ formation process will yield the credible, industry-consensus standards setting organization FERC expects, as is underscored by NAESB's decision to hire a Sergeant-at-Arms to "keep order" in lieu of the parliamentarian we requested.

NAESB should not unilaterally change voting procedures in midstream. NAESB should allow the WEQ participants to continue their work under the rules and procedures developed during the previous WEQ meetings in April and May. At the Houston meeting it was suggested by ELCON that segment voting should be utilized in the formation process of the WEQ from the beginning of that process. However, the majority of the participants at that meeting decided against using segment-style voting and instead agreed to use the "all-comers" voting convention. We were placed at a significant disadvantage by that process, where large organizations who could afford to have multiple representatives present were permitted to vote up to five times, while the right to vote based on written proxy for 5 cooperatives was rejected. As a result, key votes were lost by one or only a few votes. Since that time, we have worked hard to mobilize municipal and cooperative involvement (primarily by phone) to achieve a more significant albeit still minority presence. While NAESB had no apparent problem with marketers, generators and investor-owned utilities dominating the process in the Houston and Denver meetings, NAESB's reaction to the increased municipal and cooperative presence in Birmingham is to change the rules so "no Segment or group of interests can 'stack the deck' or otherwise dominate the decision-making process."

Changing the rules mid-way through the formation process to a segment voting structure that has not been confirmed, and that makes no provision for minority protection, is the wrong direction to go. Given where we are, the participants should use the rules agreed to at past meetings. NAESB should not now adopt a major process change because some participants are no longer confident that they can consistently garner a 2/3-majority vote. With the potential that the process may be close to achieving a dynamic that drives entities to negotiate a solution that takes into account the needs and concerns of all significant industry interests (including RTOs, ISOs and RRCs), NAESB should not replace that structure with rules that guarantee the ability of the largest interests (generators/marketers, and vertically-integrated utilities) to prevail. Nor can this unilateral change in voting procedures be justified by NAESB rules; WEQ participants are not yet members of the NAESB WEQ and are not subject to NAESB rules or bylaws.

If this procedural maneuvering demonstrates anything it is that public power and cooperatives are distinct voices, with separate commercial interests from those likely to dominate voting in the five segments now identified. Our voices (and those of other minorities, such as ISOs, RTOs, RRCs, and end users), must be fairly represented on the WEQ EC and Board (through creation of additional segments or through hard-wired subsegment representation) if the resulting process is to obtain the credibility needed for NAESB to play a central role developing consensus business standards implementing FERC's standard market design.

The 5-segment model requires a confirming vote. As agreed to by many WEQ participants, the meeting facilitator, and NAESB staff at the May 29-30 meeting in Birmingham, NAESB must schedule a confirming vote on the 5-segment model and all aspects of the NAESB Board WEQ approval package. It is our position, and that of many other WEQ participants, that a confirming vote on the 5-segment model (segment identification) has not yet occurred. However, NAESB's agenda provides only for a confirming vote on segment *definitions*, rather than the segments themselves. And, the confirming vote on the segment definitions is to precede discussion of subsegments that, as we have repeatedly stated, are inextricably tied to the reasonableness of the segment structure and definition. If NAESB chooses to move forward despite this disagreement, it will risk losing any semblance of conducting a "consensus" WEQ formation process.

We believe the NAESB Board WEQ approval package must include (at a minimum) the following:

- Segment identification,
- Segment definitions,
- Subsegments,
- The number of seats for each segment on the WEQ EC and Board,
- The number of assigned seats for each subsegment on the WEQ EC and Board, and

- The process for selecting segment and subsegment representatives to the EC and Board.

In addition, the following additional issues must be resolved before we can properly present a package to the NAESB Board for approval:

- Industry consensus on the appropriate role to be played by RTOs, ISO, and RRCs,
- Agreement to employ a professional staff that is familiar with WEQ issues to draft and edit proposed WEQ business standards,
- Funding for WEQ activities in ways that do not impose a barrier to the participation of smaller entities, while ensuring adequate funding to meet the expedited standards development deadlines FERC will likely impose, and
- Public posting of a roster of all WEQ voting participants, identified by segment, subsegment, organizational affiliation, address and e-mail contact, to ensure better communication between all WEQ participants.

A confirming vote on the WEQ approval package cannot be taken until straw votes have been completed on subsegments, the number of seats for each segment (and each subsegment) on the WEQ EC and Board, and the process for selecting subsegment representatives. Such a confirming vote could be scheduled for the July 9-10 WEQ meeting. However, because straw votes are still needed on many critical items, a confirming vote on the NAESB Board WEQ approval package will not be possible at the June 20-21 meeting in Columbus. Therefore, we request that the scheduled confirming vote on segment definitions be removed from the Columbus agenda and postponed until the entire WEQ approval package is ripe for a confirming vote. While it would be convenient to present a WEQ approval package to the NAESB Board at its June 28 meeting, this date must not be the driving force for determining when the WEQ organizational package is ready for NAESB Board approval. The WEQ participants must continue to focus on the issues listed above, adhere to the straw vote/post for comments/confirming vote policy, and when complete, submit the WEQ package to the NAESB Board for approval.

NAESB needs to hire a parliamentarian, not a Sergeant-at-Arms. We reiterate our request that NAESB provide a professional registered parliamentarian for all WEQ formation meetings to ensure that Robert's Rules of Order are properly employed. At both the Denver and Birmingham meetings, a number of questionable rulings and voting irregularities took place. NRECA previously described in written comments to NAESB some of those problematic rulings/irregularities and requested that NAESB hire a parliamentarian for future meetings. This was not done for the Birmingham meeting. For the upcoming Columbus meeting, NAESB has instead listed on the agenda that a Sergeant-at-Arms will be present to "keep order." We are unclear what role the Sergeant-at-Arms will play, and request that NAESB provide more information on the

Sergeant-at-arm's role and the name of individual filling that role at least two business days prior to the Columbus meeting. It is less likely that a Sergeant-at-Arms would be necessary if the rules used to run the meeting were being applied in a fair, informed and impartial manner.

While we strongly believe that decisions regarding the WEQ should be made at the quadrant level, if any other subgroups of the quadrant are going to enter into discussions regarding segment-specific issues, logistical arrangements must be made in advance for conference call attendees to participate in any segment-specific discussions, including the provision of multiple phone lines and meeting rooms if breakout sessions are to be utilized

Finally, the agenda states "Robert's Rules of Order will be followed for the meeting, except where the group determines otherwise, or except where NAESB procedures apply." As noted above, during this formation period for the WEQ, that WEQ participants are not yet part of NAESB and therefore not subject to NAESB procedures, rules or bylaws. When the NAESB Board approves the WEQ, it would then be appropriate for NAESB procedures, etc., to apply to WEQ members.

Respectfully submitted,

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Electricity Market Design and Structure	**)**	**Docket No. RM01-12-000**

APPLICATION AND REQUEST FOR REHEARING OF
THE AMERICAN PUBLIC POWER ASSOCIATION,
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES,
THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION
AND THE TRANSMISSION ACCESS POLICY STUDY GROUP
REGARDING BUSINESS STANDARDS DEVELOPMENT PROCESS

Pursuant to Section 313(a) of the Federal Power Act ("FPA"), 16 U.S.C. § 825l(a), and Rule 713 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713, the American Public Power Association ("APPA"), the National Association of State Utility Consumer Advocates ("NASUCA"), the National Rural Electric Cooperative Association ("NRECA"), and the Transmission Access Policy Study Group ("TAPS") (together, "Joint Customer Interests") submit their joint application and request for rehearing of the Commission's May 16, 2001 "Order on a Standards Development Organization for the Wholesale Electric Industry" ("May 16 Order"). In support of their application and request for rehearing, Joint Customer Interests state the following.

I.

EXECUTIVE SUMMARY

The Commission needs to give substantive guidance *immediately* to the electric industry on the formation of the Wholesale Electric Quadrant ("WEQ") of the North American Energy Standards Board ("NAESB"). Chairman Wood has stated publicly that the Commission's blueprint for restructuring the electric power industry has three primary building blocks, one of

which is "balanced market rules." The Commission in its May 16 Order stated that it "needs to be confident that by Fall 2002, a standards development organization will be in place" to consider business practice issues arising from vital Commission rulemaking initiatives now pending, including the Standard Market Design initiative in Docket No. RM01-12-000 and the Notice of Proposed Rulemaking ("NOPR") on Generator Interconnection Procedures in Docket No. RM02-1-000. May 16 Order, *mimeo.* at 8, ¶ 21. The Commission also made clear that the WEQ must be "open to all," "ensure due process," and "*ensure that standards are developed by the industry through a consensus process with a balance of interests.*" *Id.* at 2, ¶ 3 (emphasis supplied).

This is not happening. Instead, the WEQ formation process as it has unfolded to date has been highly contentious, marred by continuing procedural irregularities and subject to sudden changes in applicable procedures. But above all, the process has been driven by those industry participants (primarily independent generators/marketers and large vertically-integrated investor-owned utilities with substantial generation and marketing interests) that have the resources and "person power" to impose their views on more diverse and often smaller and less well-funded participants (municipal and cooperative utilities, independent system operators ("ISOs") and independent transmission companies ("ITCs"), large and small end users, consumer advocates and state regulatory commissions). Moreover, the timetable for the WEQ's development has been driven more by the perceived need for the NAESB Board to approve a complete package at its meeting to be held in Seattle, Washington on June 28, 2002, than the need to develop a broadly-based, credible proposal.

Instead of producing an industry-wide consensus, the current NAESB process will produce only a consensus of the largest and best-funded industry players. The voices of

municipalities and cooperatives, ISOs/RTOs, transmission-dependent utilities, end users, consumer interests, and other significant, but minority, industry participants (whose commercial needs and concerns are very different) will be lost in the noise. If the Commission wants to see a WEQ that equitably reflects the balance of all the diverse interests in the wholesale electric industry, it must step in to ensure this result. Otherwise, it may be faced a few months down the road with the unattractive options of: (1) handing the standard-setting process over to an unrepresentative WEQ that will consider only the interests and needs of the largest and most well-funded industry participants; or (2) developing the necessary standards itself. The electric industry is now enduring an enormous amount of negative publicity, due to the questionable business practices of certain wholesale suppliers (both independent and utility-affiliated[1]), and the Commission's ongoing investigation of these practices. *It is therefore vital that this Commission ensure the WEQ is a highly credible standard-setting organization in which all significant industry interests are appropriately balanced and represented on the WEQ Executive Committee and NAESB Board.*

II.

SPECIFICATIONS OF ERROR

A. The Commission erred in taking a "hands off" approach to the formation of the WEQ of NAESB, failing to provide appropriate guidance to the industry and instead finding that "[t]hese internal organizational matters. . .should be resolved by the industry participants in their meetings." May 16 Order, *mimeo.* at 6, ¶ 16.

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[1] *See, e.g.*, the May 23, 2002 Submittal of Xcel Energy, Inc. in Docket No. PA02-2-000, Attachments II.A and II.B (transcripts of traders discussing "loop-t-looping," "ex-post type of game," "congestion type of game plus ex-post" and the need to subsequently figure out the splitting of the profits resulting from implementing these trading strategies).

B. The Commission erred in failing to address the issues relating to the formation of the WEQ set out in the "Joint Filing of the American Public Power Association, National Rural Electric Cooperative Association, and the Transmission Access Policy Study Group Regarding Business Standards Development Process" (all three entities of whom are joining in the instant pleading) filed in this docket on March 15, 2002 ("March 15 Comments").

III.

DESCRIPTION OF THE JOINT CUSTOMER INTERESTS

APPA is the national service organization representing the interests of not-for-profit, publicly owned electric utilities throughout the United States. More than 2,000 public power systems provide over 15 percent of all kilowatt hour (kWh) sales to ultimate customers in the United States. Approximately 1,870 of these systems are cities and municipal governments that currently own and control the day-to-day operation of their electric utility systems. They purchase nearly 70 percent of the power used to serve their ultimate customers. Public power systems own about 8 percent of the nation's high voltage transmission lines, although many of these lines are configured to deliver energy to their load centers, not to provide transmission service in interstate commerce. On balance, public power systems buy much more energy and transmission than they sell to third parties.

NASUCA is an association of state agencies and other entities that are designated by statute in their respective states as the representative of consumer interests in matters within the jurisdiction of that state's public utility commission, as well as before this Commission, or in matters affecting the price, reliability or quality of utility services. Currently there are 44 offices in 41 states and the District of Columbia that are NASUCA members. For many years,

NASUCA and its members have actively participated in matters pending before this Commission, including proceedings relating natural gas pipeline regulation, wholesale electric markets, the formation of Regional Transmission Organizations, the formation and operation of Independent System Operators in several regions of the country, and in recent matters involving Standard Market Design and market monitoring for the electric industry.

NRECA is a not-for-profit national service organization representing 930 not-for-profit, consumer owned rural electric cooperatives located in 47 states. NRECA's members serve more than 35 million end use electric customers. NRECA's members have built and now maintain approximately 27 precent of the nation's combined transmission and distribution infrastructure, and provide service in 83 percent of the nation's counties. NRECA's membership includes both transmission-owning and transmission-dependent utilities. While certain NRECA members do generate their own power and make sales of power to third parties in wholesale markets, electric cooperatives on the whole are net buyers of power. Overall, cooperatives purchase nearly half of their requirements from other wholesale suppliers and thus have a vital interest as buyers in wholesale business practices.

TAPS is an informal association of transmission-dependent utilities in more than 30 states, promoting open and non-discriminatory transmission access.[2] As entities entirely or predominantly dependent on transmission facilities owned and controlled by others, TAPS members are vitally interested in issues of industry structure, reliability and the business practices applicable to participation in electricity markets. TAPS and its members have commented on and been involved in nearly all aspects of electric industry restructuring activities

[2] For a full list of the TAPS Executive Committee members and a further explanation of its transmission policy advocacy activities, see the March 15 Comments at page 4, notes 3 and 4.

both before this Commission and in the legislative arena.

IV.

APPLICATION AND REQUEST FOR REHEARING

A. The WEQ Organizational Process To Date Has Been Riddled With Procedural Irregularities--Irregularities That Have Favored Certain Industry Participants--And Therefore Is Not Likely To Produce A Consensus WEQ Organizational Model That Equitably Represents All Industry Participants.

The WEQ organizational process as it has unfolded thus far has been riddled with procedural irregularities—irregularities that have worked in the favor of those industry participants with the greatest resources to devote to the formation process. If this process proceeds to its logical "end game," the WEQ will not be a consensus organization that gives all of the diverse interests in the wholesale electric industry a meaningful voice. The Commission must act now if it wishes to see a different result.

To fully appreciate the Joint Customer Interests' concerns, the Commission must understand the chronology of events to date. NAESB has sponsored three meetings to develop the organizational structure of the WEQ. The first meeting was held in Houston, Texas, on April 5, 2002; the second was held on May 8-9, 2002, in Denver, Colorado; and the third was held on May 29-30, 2002, in Birmingham, Alabama. A fourth meeting is now scheduled for Columbus, Ohio, on June 20-21, 2002.

The three meetings that have already been held have been marred by questionable procedures and accordingly questionable policy decisions. Among the problems that occurred at the April 5 Houston meeting were the following:

- NAESB sent out a general notice of the meeting on March 21, 2002, to many in the industry. But it was only on April 2, 2002, (three days prior to the meeting, when little time remained to communicate the enhanced importance of the meeting) that a single "strawman" proposal on WEQ segments with no stated authorship (in fact, it was written by Calpine) was distributed, along with an

agenda indicating that a "final" vote on WEQ segments would be taken at the meeting.

- The attendees at the meeting were overwhelmingly from the generator/marketer and IOU communities (not surprising, given that Houston is the headquarters of many of these entities). Despite suggestions that Robert's Rules of Order be used to run the meeting, this was not done, and the meeting therefore became quite chaotic at times.

- The Calpine five segment model (Transmission/ Generation/ Marketers and Brokers/ Distribution/ End Users) was discussed at the Houston meeting. After much pressure from a number of attendees, other strawman models were also raised and discussed.[3] A motion to adopt the ESC model was made. The motion passed, with 68 percent of the vote. After a lunch break, the vote was retaken, because incorrect voting instructions had been provided; the motion then passed with 67.3 percent of the vote. Although at least some meeting attendees were under the impression that all of the models that had been previously discussed would be voted on, NAESB representatives ended the meeting after the second vote on the ESC six-segment model, without taking any votes on other alternative models. Thus, the meeting was closed three hours prior to the scheduled ending time.[4]

In an attempt to avoid such problems at the May 8-9 Denver meeting, APPA, NRECA and TAPS submitted comments to NAESB on May 1, 2002 (Attachment B hereto[5]). They

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[3] These models included the Electric Scheduling Collaborative's ("ESC") six segment model (Transmission Owners/ ISOs, RTOs and Regional Reliability Councils ("RRCs")/ Generators/ Brokers, Aggregators and Marketers/ Transmission Dependent Utilities ("TDUs") and Load Serving Entities ("LSEs")/ End Use Customers) and the North American Electric Reliability Council's ("NERC") Wholesale Electric Standards Model ("WESM"), which calls for nine segments (Transmission Owners/ RTOs, ISOs and Regional Reliability Organizations ("RROs")/ LSEs/ TDUs/ Generators/ Marketers, Brokers and Aggregators/ Large End User/ Small End User/ Federal, State, and Provincial Regulators).

[4] Although the notes of the April 5 meeting which NAESB prepared and posted on its website indicated that a motion was made to end the meeting, which motion was seconded and voted upon, in fact none of these events took place, as the meeting transcript makes clear. *See* the April 26, 2002 "Comments of NRECA on the April 5 NAESB Wholesale Electric Quadrant Meeting and Other Matters" (Attachment A hereto, www.naesb.org/pdf/weq050802w5.pdf).

[5] www.naesb.org/pdf/weq050802w10.pdf

supported the NERC WESM nine segment model, to ensure that all the diverse interests in the industry had a meaningful role in the WEQ, including appropriate representation on the WEQ Executive Committee and the NAESB Board. They noted the importance of reaching an industry consensus, and suggested that the "2/3 of those present and voting" convention that had been used at the Houston meeting would not result in an industry consensus proposal. They requested that subsequent meetings be run using Roberts' Rules of Order (which has in fact occurred, although a number of improper applications of those rules have been made).

The May 8-9 Denver meeting, while an improvement over the April 5 Houston meeting, was also marred by procedural problems and dominated by those industry participants with the most resources.[6] Among the problems encountered:

- Soon after the beginning of the meeting on May 8, a motion was made to require a 75 percent majority to approve a WEQ organizational structure. This motion failed by a nearly tied 46-43 vote (demonstrating the lack of consensus on this threshold issue). The purpose of this motion was to ensure that any WEQ model adopted was in fact an industry consensus, and was an attempt to offset the lop-sided participation at the NAESB meetings by those industry segments with the most resources. A subsequent motion to employ a 67 percent majority rule for the passage of motions was approved by a vote of 55 for and 35 against.

- A substantial number of vertically integrated utilities had multiple representatives present (in person or by phone), all of who voted. For example, American Electric Power sent five representatives in person to vote, including one person who voted for "AEP End User."

- On the other hand, a cooperative representative who had brought five proxies executed by different generation and transmission cooperatives was told she could not vote for more than one cooperative because the use of general proxies was against NAESB procedures and might raise "antitrust concerns."[7]

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[6] NRECA has repeatedly requested copies of the transcripts of the Denver and Birmingham meetings, but to date has been advised that they are not yet available. The events at the Denver and Birmingham meetings described herein are therefore based on the notes and recollections of the attendees from the Joint Customer Interests.

[7] Given that the participants are still in the process of forming the NAESB WEQ,

- In an attempt to balance the scales, a substantial number of cooperative and municipal representatives participated in the meeting by phone (to the extent it was possible to do so). However, because the meeting on May 8 extended well past the adjournment time of five o'clock pm Mountain Time set out in the previously released meeting agenda, a number of important votes took place as late as 8:00 pm Eastern Time/7:00 pm Central Time, making it difficult for telephone attendees in those time zones to continue participating.

At the Denver meeting, APPA (although a supporter of the WESM nine segment model), with the support of NRECA, TAPS and others, put forth a compromise four-segment model, with defined subsegments (Attachment C hereto[8]). The goal of this compromise proposal was to attempt to accommodate the NAESB rule that any one segment can veto a quadrant's proposed business practice (a reason stated by many for rejecting models with a larger number of segments, such as the WESM nine segment model). The proposal limited the number of segments to four, but provided for representation on the WEQ Executive Committee and the NAESB Board for three subsegments within each segment. In this way, diverse views would be represented on the Executive Committee and Board, and the effect of the "one segment veto" rule would be offset by the requirement that two out of the three subsegments in a segment would have to agree to any veto action.

APPA, NRECA and TAPS made clear that the identified subsegments were an *integral part* of this proposal, as they were necessary to permit representation of all significant industry interests, thus ensuring that business practice standards the WEQ developed would indeed reflect true industry consensus. A representative of Xcel Energy, however, moved to consider APPA's four segment compromise proposal, *without the subsegments*, along with the other models being

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technically, NAESB rules need not govern the proceedings in any event; yet they have often been applied in instances such as this one.

[8] www.naesb.org/pdf/weq050802w17.pdf

proposed. This motion passed on a vote of 47 in favor and 37 against (with independent and affiliated generators and marketers largely voting to strip out the subsegments and other interest groups voting to keep them in). A simple majority was considered sufficient by NAESB for this motion to pass.

Show-of-hands votes were then taken on five different models (the NERC/WESM nine segment model, the APPA/NRECA stripped-out four segment model, the ESC six-segment model, the Calpine five segment model, and a different five segment model developed during the facilitation process led by the Edison Electric Institute this past spring). To accommodate this process, a motion was made to extend the meeting past the previously announced 5:00 pm Mountain Time adjournment, and this motion passed. The models getting the two highest vote counts (the Calpine five segment model and the ESC six segment model) were then voted on in a "run off" roll call vote. The model that got the highest vote count (the Calpine five segment model), was then voted on by the participants separately in a preliminary roll call straw vote. This model garnered a 67 percent vote, with 59 persons (primarily representatives of independent generators, marketers and IOUs) voting in favor, and 29 persons voting against it. It was thus considered "passed," something that might well not have occurred had the vote not been taken an hour after the scheduled conclusion of the meeting, at 6:00 pm Mountain Time/8:00 pm Eastern Time.

The agenda NAESB developed for the May 29-30 Birmingham meeting focused solely on segment definitions and subsegments, with no agenda item set aside for further consideration of segment models. Given that the segment model voted upon at the May 8-9 meeting was not the same segment model earlier voted on at the April 5 Houston meeting, a number of participants at the May 8-9 meeting voiced the view that under NAESB's own straw vote/notice

and comment/final vote procedures (under which the WEQ effort had purported to operate), another confirming vote would be necessary on the five-segment model. NAESB's Executive Director agreed that this was NAESB's general procedure. Another NAESB representative at the meeting, however, disagreed that the procedure should be applied in this case. It also became clear at the May 29-30 meeting that a substantial number of industry participants strongly opposed the five-segment model, including representatives of ISOs and RRCs, who believed that they were inappropriately placed with Transmission Owners. A letter was distributed from the Chief Executive Officers of all operating ISOs, opposing the five segment model on the ground that it forces ISOs/RTOs into the same segment with affiliated Transmission Owners, thus undermining the independence of the ISOs (Attachment D hereto[9]). NAESB responded to that letter with a letter of its own on May 31, 2002 (Attachment E hereto[10]).

Moreover, the representative from ELCON suggested at the beginning of the May 29 meeting to amend the "2/3 of those present and voting" convention for the passage of significant motions to a 75 percent standard, which motion was made and seconded by representatives from NARUC. The vote on this motion was 75 in favor of increasing the standard to 75 percent and 64 against. Nonetheless, the motion was considered to have failed because it did not garner a 2/3 majority.[11]

It was eventually agreed by a large number of participants and stated by the meeting moderator that a final confirming vote would be taken at the June 20-21 Columbus meeting on

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9 www.naesb.org/pdf/weq052902iso.pdf

10 www.naesb.org/pdf/weq.053102res.pdf

11 In contrast, the vote taken in Denver on May 8 to implement the 67 percent standard was ruled to require only a simply majority to pass.

the five segment model, the segment definitions, and any subsegments—in other words, the entire organizational "package." There was discussion on May 30 about the possible addition of subsegments to the five segment model, discussion that APPA and NRECA initiated in an effort to ensure significant, but minority, interests forced into a disparate segment under the five segment model would at least be assured representation on the WEQ Executive Committee and the NAESB Board. APPA and NRECA presented a specific subsegment model for discussion (Attachment F[12]), with the intent of assuring this would in fact occur. They also proposed "Principles for Design of NAESB WEQ" (Attachment G[13]) to ensure the development of a fair and balanced WEQ.

However, there was considerable sentiment expressed at the meeting that each segment should decide on its own after formation and population of the segment whether subsegments were in fact necessary. (Of course, in such a process, minority interests within a segment could easily be outvoted, thus getting no separate representation at either the segment or subsegment level. This is specifically why APPA and NRECA advocated the "hardwiring" of subsegments to accommodate all significant industry participants as part of the original development of a credible and balanced WEQ organizational model.) In fact, after members of the Electric Power Supply Association met in caucus during the morning break on May 30, it was announced that neither the generators nor marketer representatives attending the meeting believed that a separate break out of subsegments was necessary for "their" segments. (Municipal and cooperative generators and marketers present at the meeting were not consulted as to their views before this "consensus" was announced, leading them to suggest in response that a "not-for-profit"

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12 www.naesb.org/pdf/weq052902w4.pdf

13 www.naesb.org/pdf/weq052902w5.pdf

subsegment of these two segments might well be appropriate.) The May 30 meeting adjourned without any decisions or votes on the issue of subsegments.

On June 6, 2002, NAESB sent out the proposed agenda for the June 20-21, 2002 meeting in Columbus, Ohio (Attachment H hereto[14]). Joint Customer Interests find a number of features of the proposed agenda and procedures extremely troubling. Among their concerns:

- The agenda lists as an action item a confirming vote on "the five Segment definitions," but no confirming vote on the segments themselves. NAESB now appears to believe that the vote on the 5 segment model taken in Denver was a "confirming" (final) vote, even though the prior vote in Houston was taken on a different segment model (the ESC six segment model), and there appeared to be an agreement at the Birmingham meeting (confirmed by the meeting facilitator) that a confirming vote would be taken in Columbus on the entire WEQ organizational package, including the segments and any subsegments.

- On the ground that the five segments have now been "identified," NAESB (on the advice of its General Counsel) now intends to employ voting by segments at the Columbus meeting, so that "no Segment or group of interests can 'stack the deck' or otherwise dominate the decision-making process." Attachment H at 6. Joint Customer Interests note that this "rule" is being invoked for the first time after the Birmingham meeting (even though NAESB's view apparently is now that the segments were in fact "confirmed" at the prior Denver meeting). At the Birmingham meeting, municipal and cooperative interests for the first time had sufficient votes (by phone and in person) to prevent the generators, marketers and IOUs from garnering a reliable 2/3 majority. While Joint Customer Interests would have been amenable to voting by segment had such a rule been applied consistently (in fact, ELCON suggested voting by segment at the Denver meeting and certain of the Joint Customer Interests agreed), the timing of this change in procedures and the rationale provided for it suggests that this new rule is in fact intended to quash dissent.

- The discussion of possible subsegments (which in Joint Customer Interests' view are absolutely vital to ensure meaningful input by diverse industry participants if a five segment model is employed) is apparently to be voted upon after the close of discussion on segment definitions, not as a part of that discussion.

- The first item of business listed under the discussion of subsegments is "whether the establishment of Sub-segments should be left to the Segments." It is not clear

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[14] www.naesb.org/pdf/weq062002a.pdf

from the agenda whether this voting would be done by segment, under the new voting rule discussed above.

- The agenda's procedural rules (Attachment H at 6) note that, for the first time, a "sergeant-at-arms will be present to maintain order." This seems to imply that minority interests on the losing end of important votes will be silenced by any means necessary, including ejection from the meeting.[15]

The June 20-21 Columbus meeting has been expanded from two half days to a full day-and-a-half, in an attempt to make up the time lost at the prior meetings and presumably to have a WEQ package ready for action/approval at the June 28 NAESB Board meeting. But it is not time or the lack of it that is the problem. Rather, it is the lack of guidance from this Commission on the need for a balanced and inclusive WEQ organizational model, and the Commission's failure to send crystal clear signals to industry participants that "might does not make right" in either the WEQ formation process or the future business practice standards development process. While the Commission has sent a Staff observer to the three meetings held so far, it has provided no public feedback on its views of the events at the meetings to the participants, either during the meetings themselves or after they have taken place. To all public appearances, the Commission has no concerns about what has been taking place in these organizational meetings.

Joint Customer Interests believe that the Commission's continued failure to provide appropriate guidance will result in a fatally flawed WEQ organizational structure. Unless the Commission makes clear that the views and interests of *all significant* interest groups in the wholesale electric industry must be given a *meaningful voice* in the development and operation of the WEQ (including appropriate representation on the WEQ Executive Committee and

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[15] In marked contrast, NRECA's request that a registered parliamentarian be employed at the meetings (commencing with the Birmingham meeting) to ensure that Roberts' Rules of Order were being correctly applied was not honored. *See* Attachment I at 3 (NRECA's Comments on the WEQ May 8-9 Meeting in Denver, CO, dated May 22, 2002, www.naesb.org/pdf/weq052902w1.pdf).

Board), the resulting outcome will not be a "consensus" one. Any WEQ birthed from a process in which a sergeant-at-arms must be employed to quash dissent from those industry participants who are being rolled over is not going to enjoy widespread support or long-term credibility.

B. The Commission Erred In Not Providing The Direction That APPA, NRECA And TAPS Sought In Their March 15 Comments.

APPA, NRECA and TAPS anticipated that problems of the sort described above might occur, and hence sought Commission guidance on several key issues in their March 15 Comments in this docket. They raised a number of "fundamental concerns" with the NAESB WEQ formation process, and asked the Commission to "provide clear directives at this juncture." March 15 Comments at 10. These concerns were laid out in detail at pages 10-19 of the March 15 Comments.[16]

To recap APPA's, NRECA's and TAPS' concerns briefly: (1) under a five or six segment model, entities with dissimilar interests and functions would be forced to participate in a segment together, resulting in segments in which minority interests would be overwhelmed; (2) under Article V, Section 4 of the NAESB Amended and Restated Certificate of Incorporation, any one segment of a quadrant can veto adoption of a standard (which in turn leads to proposals for a very limited number of segments with distinct industry interests "shoe-horned" into the same segment); (3) NAESB's policy of allowing single entities to participate and vote in multiple segments so long as the entity meets the requirements of each segment and pays the dues for each segment favors larger and better-funded industry participants (a problem replicated in

[16] APPA, NRECA and TAPS appreciate the Commission's acknowledgement of NERC's role in setting reliability standards. They also agree that it is appropriate to develop the specific method of coordinating NERC's role in setting reliability standards and NAESB's role in setting business standards after the formation of the WEQ. They therefore are not seeking rehearing of paragraphs 19-20 of the May 16 Order.

spades in the voting procedures used at the WEQ formation meetings held thus far, in which some vertically-integrated utilities have voted four or even *five* times, simply by having multiple representatives in the room or on the phone and identifying them as voting for different business interests[17]); (4) the need for an independent professional NAESB staff to assist in drafting and developing standards, thus avoiding reliance on an "all volunteer army" staffed by industry participants with the most resources to devote to the process; and (5) the use of a "pay to play" funding mechanism, under which entities with greater resources can pay to participate in multiple segments, while less well funded and/or smaller entities might have difficulty even joining one segment.[18]

The Commission, however, addressed none of these issues in its May 16 Order. Instead, it stated (*mimeo.* at 6):

> 16. Some of the comments focused on issues relating to the organizational structure of NAESB's wholesale electric quadrant, such as establishing the voting structure of the segments within NAESB WEQ and the dues needed to finance the organization. Some comments suggested that a technical conference be held on these issues. The Commission believes that the industry itself is best suited to determine how best to structure the standards-setting process at NAESB: the industry members must operate under these standards, and they are best able to determine how to create structures that

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[17] Once it became clear that NAESB would allow such multiple voting by single entities at the WEQ formation meetings, certain G&T cooperatives and joint action agencies started to send multiple representatives to vote in person or to participate by telephone on behalf of their various business interests. These actions were undertaken reluctantly, as a defensive measure. NRECA, APPA and TAPS believe that the better practice is to limit the voting by all industry participants to one entity, one vote.

[18] While the issue of the WEQ dues structure has not yet arisen in the formation discussions, Joint Customer Interests remain concerned that a "flat fee" dues structure (*e.g.*, the current NAESB dues of $5,000 per year, per entity, per segment) will allow larger entities to join and participate in multiple segments, while small entities will find it difficult to participate in even one. The fee, while important, is only part of the problem—it is the cost of travel to meetings and dedication of the necessary personnel that weighs most heavily on smaller entities.

> provide for the widest possible participation and consensus, while at the same time, providing for a fair funding mechanism that will ensure the organization can fulfill its responsibilities. These internal organizational matters, therefore, should be resolved by the industry participants in their meetings.

Unfortunately, the Commission's faith in the industry's ability to create, without any continuing Commission guidance, a structure that provides for the "widest possible participation and consensus" is simply not merited, based on the events that have taken place in the three WEQ organizational meetings to date, and the proposed agenda for the upcoming meeting.[19] If the Commission wants to see a NAESB WEQ that indeed supports wide and meaningful participation and consensus, the Commission is going to have to apply the "elbow grease" necessary to ensure this result. Mere wishing will not make it so.

Joint Customer Interests therefore seek rehearing of the Commission's failure to address and provide direction with regard to the following concerns raised and discussed in the March 15 Comments:

- NAESB's single segment veto rule severely limits the ability to craft segments in a way that ensures the views of a wide diversity of industry participants are fairly reflected.
- Multiple segment representations for single entities (*e.g.*, vertically-integrated utilities) defeats the purpose of achieving a true industry-wide consensus, as opposed to merely a consensus of the divisions of the largest market participants.

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[19] Joint Customer Interests are reminded of Chairman Wood's and Commissioners Massey's and Brownell's respective comments at the Commission's May 30 open meeting, at which they expressed their dismay that the former Alliance Companies had not chosen to join the ISOs that would best support "natural markets and reliability" upon dissolution of the Alliance, but had instead chosen the ISOs that would best facilitate their own "parochial needs." *See* the June 3, 2002 issue of *Inside FERC*, pages 1-2, "Commissioners Express Unease Over RTO Choices of Alliance Companies." This is a similar situation, in which it is frankly naïve to expect that those industry participants with the resources and clout to dedicate to the WEQ formation will "do the right thing" by other industry participants of their own volition, out of a sense of duty or charity.

- An independent professional staff is needed to facilitate a result not tilted towards the interests of the most well-funded market participants that can "volunteer" their drafting services.

- "Pay to play" funding will not yield the broad representation necessary for credibility as a legitimate industry "consensus" process.

- In establishing a consensus business standards development body, the Commission needs to carefully preserve its authority to fully review proposed standards for consistency with the FPA and to ensure that these standards appropriately implement the Standard Market Design the Commission ultimately adopts.

See March 15 Comments at 1-2, 10-22.

C. A Five Segment Model Without Defined Subsegments Will Virtually Ensure That Diverse Industry Participants' Voices Will Not Be Heard In The Setting Of Business Practices.

Joint Customer Interests are deeply concerned that the adoption of a five (or even six) segment WEQ model, with no defined subsegments to provide balanced representation within and among all segments, will virtually ensure that the largest and most well-funded industry participants dominate the business practice standards-setting process at NAESB. Under such a model, minority interests would be outvoted in their respective segments, and thus presumably would have no effective voice on the WEQ Executive Committee or the NAESB Board (as those representatives would be elected "at large" from each of the segments). Such a system would ensure that the largest and most well-funded entities in each segment "capture" that segment, control the votes in it, and represent that segment on the WEQ Executive Committee and the Board. Such entities might well participate in and jointly control multiple segments, due to NAESB's allowance of participation in multiple segments by single entities.

Worse yet, the five segment model gives over two entire segments to supply-side interests, interests which are largely congruent, and which are dominated by independent, spun-

off and IOU-affiliated generators and marketers. Joint Customer Interests believe that it would be most appropriate to combine these two segments. Assuming that they remain distinct segments, it is plain that without defined subsegments for entities that perform generation and marketing functions, but that have different commercial interests (*e.g.*, customer-owned generators that wish to serve their customer-owners at the lowest reasonable cost), these two segments will be completely dominated by entities that desire to maximize profits through their sales of electric power in the wholesale market. Profit maximization itself is both understandable and desirable. But as recent revelations have made apparent, profit maximization through the bending (if not breaking) of market rules can have very substantial adverse consequences for end use customers, and indeed the entire economy. Allowing entities with such profit motivations to control 40% of the WEQ, and permitting either the marketer segment or the generator segment, acting alone, to veto a proposed business practice, is simply not wise policy.

At the same time, the five segment model lumps together diverse interests in the remaining three segments that make strange bedfellows indeed. Transmission owners are coupled with ISOs, RTOs, ITCs, and RROs/RRCs. The sheer number of affiliated transmission owners will ensure that they outvote the independent ISOs/RTOs that will have to implement and enforce many of the standards. Municipal and cooperative LSEs and distributors are forced to share a segment with investor-owned LSEs and distributors, which have very different commercial interests, and may have very different needs in terms of business practices.[20]

[20] For example, a business practice that works without problems for the largest load serving utilities may be wholly inappropriate for smaller LSEs, *e,g.*, minimum MW requirements for nominations, bids or offers, or rounding of nominations, bids or offers to the nearest MW. Business rules that require adoption of complex, proprietary software systems may create enormous barriers to bulk power market participation for smaller entities.

Transmission Dependent Utilities are lumped in with vertically-integrated LSEs. End Users, state regulators and consumer advocates must all share a segment, and the definition of the end user segment is broad enough that disparate entities now only suspected may apply for membership.[21]

In the absence of predesignated subsegments that carry "earmarked" representation on the WEQ Executive Committee and the NAESB Board, significant minority interests in all five of these segments stand to be outnumbered and outvoted. This might well lead them to conclude that devoting time and resources to the WEQ is the equivalent of throwing their money down a hole. If so, the result will be exactly what the Joint Customer Interests have feared—a wholesale electric industry business standard-setting process dominated by entities which stand to make a profit from commercial practices that may well harm end use customers.[22] If the Commission intends to have the WEQ develop the detailed business practices needed to implement the final rules in Docket Nos. RM01-12-000 and RM02-1-000, the Commission cannot permit this to happen. The stakes are simply too high to permit a stakeholder-controlled organization structured with such inherent biases in favor of large marketer, generator and vertically-

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[21] Joint Customer Interests note in this regard that the end user segment of NAESB's Wholesale Gas Quadrant is populated by a substantial number of electric utilities that use gas to generate electricity.

[22] It would not be in customers' or the Commission's interests to allow such a process to be used to develop the business practices needed to implement any Standard Market Design promulgated in Docket No. RM01-12-000. *See, e.g., Electric Power Daily* (June 6, 2002) at 1, "Lawmakers Ask If FERC Is Doing Enough To Protect Customers" (reporting that Rep. Billy Tauzin (R-Louisiana), Chairman of the House Commerce Committee, has written a letter to Chairman Wood asking, *inter alia,* for the Commission to "carefully review the impacts upon consumers of practices that created artificial congestion, increased benchmark prices, or exaggerated revenues and trading quantities through mutual 'round trip' transactions").

integrated utility interests to develop the wholesale market rules that all market participants must live by and end use customers must ultimately pay for. Not only are the economics of the wholesale electric industry implicated, but so is the continued reliability of the North American transmission grid.

V.

CONCLUSION

WHEREFORE, Joint Customer Interests request the Commission to grant rehearing of the May 16 Order, and on rehearing to provide definitive guidance to the industry on the need to form an inclusive WEQ in which all interest groups in the wholesale electric industry have a meaningful voice. This can be accomplished through: (1) the use of an organizational model that either (a) increases the number of segments to include all significant industry interest groups and does not apply the current NAESB rule that any one segment can effectively veto a proposed business practice, or (b) employs a smaller number of segments, but sets out defined subsegments for each segment that ensure places on the WEQ Executive Committee and NAESB Board for all significant industry interest groups; (2) barring multi-segment voting for single entities; (3) hiring by WEQ of an independent professional staff to assist the industry in developing wholesale electric business practices; (4) creation of a funding mechanism that is not based on a “pay to play” regime that favors larger, better funded industry participants with multiple business interests; and (5) preservation by the Commission of its authority to review proposed standards to ensure consistency with the FPA and with the Standard Market Design ultimately adopted in this docket.

Respectfully submitted,

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June 14, 2002

Attachment A

NRECA COMMENTS ON THE APRIL 5 NAESB WHOLESALE ELECTRIC QUADRANT MEETING AND OTHER MATTERS
April 26, 2002

We are concerned that many in the industry, including FERC, after reading the "NAESB WEQ Meeting Notes April 5, 2002" document dated April 17, 2002, would have the misimpression that, after the non-binding straw poll vote was taken on the ESC segment proposal, the meeting attendees voted unanimously to adjourn the meeting approximately three hours early. This does not accurately reflect the way in which the meeting ended. Consistent with my recollection and the recollection of others, the official meeting transcript shows that the meeting ended abruptly and unexpectedly, through the unilateral action of NAESB and no one else.

A vote was taken on only one segment strawman proposal, and many in attendance expected the meeting to continue after the vote and that discussions would continue on the other segment strawman proposals. They expected this for good reason because of the statements made by NAESB spokespersons Mr. Boswell and Mr. Spangler that the goal of the day was to arrive at a consensus on the appropriate segments and related definitions. Based on the number of segment strawman proposals that were proposed during the meeting, the industry continues to hold a broad range of opinions on the appropriate number and types of segments needed for the NAESB WEQ and a considerable amount of work and consensus building still needs to take place. Such discussions, however, were foreclosed by NAESB's unilateral action to end the April 5 meeting.

After reviewing the "Meeting Notes" document and the official transcript of the same meeting, we are concerned about how the meeting notes describe the ending of the meeting. The "Meeting Notes" document states that a motion was made by Mr. Young to adjourn the meeting and that the motion was seconded by Mr. Hebenstreit. It also states that the motion passed unanimously. By contrast, the official transcript of the meeting does not indicate that any of those events occurred. Rather the transcript indicates they did not occur.

First, Mr. Young is not on the NAESB official attendee list, but Mr. Charles Yeung is listed, and we assume that the meeting notes intended to refer to Mr. Yeung. A review of the transcript fails to evidence a motion to adjourn by Mr. Young (Yeung). Indeed, the transcript does not indicate that a motion was made by anyone to adjourn the meeting.

Second, the NAESB official attendee list did not indicate Mr. Hebenstreit as an attendee and the transcript failed to indicate a seconding of Mr. Young's (Yeung's) motion by Mr. Hebenstreit or by anyone else.

Third, the official meeting transcript reflects that there was absolutely no vote (unanimous or otherwise) to adjourn the meeting.

When NAESB ended the meeting, the meeting room was as full as it was at the beginning of the meeting. By ending the meeting more than three hours ahead of schedule, valuable time was lost as many participants were prepared to continue discussing the important issues regarding segments for the proposed NAESB WEQ. Immediately after the meeting ended, I asked Mr. Boswell and Mr. Spangler who decided to end the meeting early. Their response was that NAESB made the decision. Their response was certainly inconsistent with any suggestion that a vote was taken to adjourn the meeting.

Based on the preceding information, please promptly correct the "Meeting Notes" to accurately reflect the ending of the meeting. Also, please post this email on the NAESB website so that other participants can have an accurate sense of what occurred and respond if they choose to do so.

In addition, if the incorrect meeting notes have been shared (verbally or in writing) with FERC staff or with the Commissioners, we request that the mistake be rectified immediately in writing to them, so they do not formulate policy based on incorrect meeting notes prepared by NAESB.

It is troublesome that NAESB would unilaterally end the meeting, cutting off needed and promised discussion, and then make it appear that something different occurred. NAESB should take steps to avoid creating any impression that it is attempting to develop a written record that seeks to mislead readers into believing the process has been more collaborative than it had been in fact.

Finally, we continue to be concerned about the lack of a fair, open and clear process for the NAESB WEQ meetings, and the fact that only one of four strawman proposals were subject to a vote at the April 5 meeting. As a result, and in order to begin the May 8-9 meeting on a positive note, the following steps should be addressed at the beginning of this important meeting:

1. The development and approval by the meeting attendees (in person and on the phone) of a fair, open and clearly defined meeting process including voting rules;
2. Discussion of all strawman proposals and other segment designations that are not included in the strawman proposals; and
3. Upon successful completion of steps 1 and 2, votes on all strawman proposals and other segment designations that are not included in the strawman proposals;

Respectfully submitted,

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Attachment B

COMMENTS OF THE AMERICAN PUBLIC POWER ASSOCIATION, NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION AND THE TRANSMISSION ACCESS POLICY STUDY GROUP FOR NAESB WEQ MEETING MAY 8 – 9, 2002 DENVER, COLORADO

May 1, 2002

The American Public Power Association (APPA), National Rural Electric Cooperative Association (NRECA) and the Transmission Access Policy Study Group (TAPS) submit the following comments in response to NAESB's request for work papers or comments related to segment identification, segment descriptions, and number of seats for the WEQ Board and Executive Committee. Our comments focus on three critical issues: meeting and voting processes and rules for the formation stage of the NAESB WEQ, WEQ segment identification and related definitions, and other NAESB WEQ issues that if not resolved will adversely affect the ability of NAESB to develop standards that truly reflect an industry-wide consensus and protect minority interests.

Meeting and Voting Processes/Rules for the Formation Stage of the NAESB WEQ

We are pleased that the agenda for the May 8-9 NAESB WEQ meeting recognizes the importance of beginning with a discussion and decisions on meeting procedures and on meeting voting processes/rules. Because the NAESB WEQ is in the formation stage, meeting procedures and voting processes/rules must be developed by the meeting attendees.

In that light, the meeting attendees (in person and on the phone) must develop a consensus on these rules before the meeting can proceed to address any other issues regarding the formation of the NAESB WEQ. We believe that adherence to Robert's Rules of Order or similar well established procedures for conducting large meetings is necessary to ensure a fair, open and clearly defined meeting process in which all participants can have confidence.

Although the April 5 meeting utilized a voting process defined by NAESB, we believe that the meeting attendees must arrive at a consensus on the appropriate voting process for decisions related to formation issues of the NAESB WEQ. Based on the discussion at the April 5 meeting, it was apparent that the NAESB-implemented two-thirds majority vote of those in attendance needed for passage did not necessarily satisfy the meeting attendees' definition of an industry consensus. Any voting process for the formation stages of the NAESB WEQ must result in an industry consensus on the many critical issues we are discussing. The discussion on voting process should address the possible use of a weighted segment voting process or other consensus development voting processes that provides fair representation for all meeting attendees.

We also support the use of a professional facilitator for at least the NAESB WEQ formation meetings and possibly for future NAESB WEQ meetings.

Segment Identification and Related Definitions

At the April 5 meeting a non-binding straw poll vote was taken on the Electronic Scheduling Collaborative segment strawman proposal. The proposal passed with a one vote margin according to the voting process NAESB implemented for the meeting. However, there were also at least three other strawman segment proposals that were proposed, but not voted upon. At the May 8-9 meeting, after meeting and voting processes/rules are determined, all strawman proposals and other segment designations not included in the strawman proposals should be discussed and voted on to determine the appropriate initial NAESB WEQ segments and definitions.

We believe that the following segments and definitions (each of these segments could also have subsegments) should be included in the initial NAESB WEQ segment proposal for NAESB Board approval:

Generators – Any entity that is engaged in the activity of owning and/or operating electric generation facilities.

Governmental Entities – Any federal, state, local and provincial regulatory or other governmental entities including state public utility commissions and consumer advocates.

Large End Users – Any retail customer that receives service at 50 kV and above that is not purchased for resale. Such customer must use at minimum 50,000 MWh annually.

Load Serving Entities – Any entity serving end-use customers under a regulated tariff, a tariff governed by a regulatory body, local governing body or local board, or other entities with a legal obligation to serve, and any G&T Cooperative or joint action agency if designated by a member of such G&T or joint action agency.

Marketers/Brokers/Aggregators – Any entity that buys, sells or brokers energy and related services, including risk management, for resale in wholesale or retail markets.

RTOs/ISOs/Regional Reliability Councils (RRCs) – Any entity authorized by the appropriate regulator to operate as an RTO or ISO, and RRCs that are members of NERC.

Small End Users -- Any retail customer that receives service at a level below 50 kV that is not purchased for resale. Such customer must use must be less than 50,000 MWh annually. This segment can also include state consumer advocates.

Transmission Dependent Utilities (TDUs) – Any cooperative, municipal or investor-owned utility that has a regulatory, contractual, or other legal obligation to serve wholesale or end-use customers, and that depends primarily on the transmission systems of third parties to provide this service.

Transmission Owners/Providers – Any entity that owns or controls transmission facilities and has an open access transmission tariff or equivalent on file with a regulatory authority. This includes transmission owners that have placed their transmission facilities under the operational control of an RTO/ISO; and ITCs, merchant transmission developers and other transcos that are not an RTO/ISO.

Other NAESB WEQ Issues

While there are many important issues that need to be addressed by the meeting attendees at the May 8-9 meeting, it would be beneficial to discuss whether or not the NAESB WEQ should permit multi-segment membership for single corporations/entities with multiple business interests. We are concerned that if segments are not appropriately defined, many segments could be dominated by the entities that have the ability on a financial, personnel and time basis to join multiple segments. Such an outcome would deprive NAESB of the ability to present the standards that result from its processes as reflecting an industry-wide consensus.

We also believe that discussion is needed on the one-segment veto provision in the NAESB Bylaws. This existing provision may artificially limit the appropriate number of segments for the NAESB WEQ due to concerns by some in the industry. We firmly believe that the WEQ requires more segments than the other quadrants in NAESB due to the existing wholesale electric industry structure. However, the number of appropriate segments may change in the future as the industry matures and as more trust is developed among the participants in the wholesale electric quadrant. Notwithstanding other segment-related proposals minimizing this issue, one way to address these concerns would be to revise the one-segment can veto provision to require at least two segments to satisfy the veto provision.

Respectfully submitted,

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Attachment C

APPA Four Segment WEQ Strawman
May 8 - 9, 2002

Segment 1: Bulk power system operators and owners

- RTOs/ISOs and RRCs
- Transcos and ITCs
- Affiliated transmission operators/transmission owners in or out of ISOs

Segment 2: Load Serving Entities:

- IOUs with an obligation to serve,
- Munis/Coops including G&T Coops and Municipal Joint Action Agencies,
- Retail aggregators/marketers

Segment 3: Producers and Wholesalers:

- Generation owners/operators affiliated with an LSE or also an LSE,
- Unaffiliated generation owners/operators,
- Wholesale marketers/brokers with or without generation; risk management services

Segment 4: End-Use Customers:

- Large commercial/industrial customers,
- Residential, small commercial and consumer advocates
- State economic regulators and siting authorities

Segment 5: Service Providers to WEQ ***(Non-voting in WEQ Executive Committee)***

Attachment D

NEW YORK INDEPENDENT SYSTEM OPERATOR
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May 29, 2002

Mr. William Boswell
North American Energy Standards Board
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Re: Wholesale Electric Quadrant

Dear Mr. Boswell:

On behalf of the Chief Executive Officers of North America's Regional Transmission Organizations and Independent System Operators, we are writing to you and to the NAESB stakeholders to express our deep concerns with certain aspects of the formation of the Wholesale Electric Quadrant. Our concerns are both from a process as well as substantive standpoint.

At the last NAESB meeting, we understand that, by a narrow margin, the stakeholders reversed their previous decision to support the Electronic Scheduling Collaborative's designation of sectors. Moreover, sentiments were expressed that Regional Transmission Organizations and Independent System Operators be relegated to the Transmission sector of the yet-to-be formed Wholesale Electric Quadrant. We also understand that there were a number of concerns raised with the voting processes utilized at the meeting.

We believe that ISOs and RTOs are integral to the success of the Wholesale Electric Quadrant. Without the independent view and operational evaluation provided by the ISOs and RTOs, the standards which NAESB will arrive at may not be feasible or practical to implement. The designation of ISOs and RTOs in the Transmission, or other sector with market participants conflicts directly with our corporate governance principles and our Boards' fiduciary responsibilities to all users of the grid. By FERC Order and comparable Canadian legislation and regulations, we are required to be independent of transmission owners and other market participants—in fact, we were formed for that very purpose. Placing the ISOs and RTOs with market participants clearly departs from that very principle. We are no more aligned with transmission owners than we are with any other market participant and to so categorize ISOs and RTOs will compromise our independence. In Order 2000, FERC specified that, whatever governance arrangements are put in place, "the overarching (independence) standard" must be met, and that an ISO and RTO decision-making process must be independent of individual market participants and class of market participants.

Moreover, as CEOs of our respective organizations, we have much experience in making stakeholder processes work and ensuring that they are deemed fair by all sides. We do not believe that the voting processes that were employed at the last meeting were fair to all of the stakeholders. Quite simply, the credibility of the NAESB process is flawed when companies can vote in more than one sector. We have addressed these issues in our respective stakeholder processes by rules, which require the company and its affiliates to only be able to vote in a single sector. We think such a rule is sorely needed in the NAESB process if the voting process is to remain credible.

For these reasons, we are writing to seek reconsideration by the stakeholders of the changes that must be made to be compatible with ISO and RTO structures. All of the stakeholders indicated to FERC that they wanted to see coordination of reliability and business practices. The ISOs and RTOs undertake that function every day and we believe can provide that critical link that stakeholders were seeking.

We believe that NAESB holds much promise for the industry. For it to launch successfully however, our respective neutral organizations should be viewed as partners in the standard-setting process. The credibility of the NAESB process will be seriously undermined if the ISOs and RTOs are not properly recognized for the unique role they play in this industry to make markets work and maintain the reliability of the grid, and if the voting process is not deemed fair by the various segments of the industry.

We will have representatives at the Birmingham, Alabama meeting this week to raise these issues. We hope that we can operate in an environment that is open and practical and welcomes the unique value-added role that the ISOs and RTOs can provide in this process. We look forward to working with you to make the NAESB process a success.

Very truly yours,

William J. Museler
President & CEO

For the ISO/RTO CEOs:
David Goulding, IMO
Phillip G. Harris, PJM Interconnection
Thomas E. Noel, ERCOT
James P. Torgerson, Midwest ISO
Gordon vanWelie, ISO New England
Lorry A. Wilson, Power Pool of Alberta
Terry M. Winter, California ISO

cc: NAESB STAKEHOLDERS
Chairman Pat Wood III
Commissioner Linda Breathitt
Commissioner Nora Mead Brownell
Commissioner William Massey
Daniel Larcamp, FERC
Marvin Rosenberg, FERC

Attachment E

May 31, 2002

William J. Museler
President & CEO
NY ISO
3890 Carman Road
Schenectady, NY 12303

Re: Your Letter of May 29, 2002

Dear Mr. Museler:

I have your letter of the above date. In passing, I would note that I received a copy of the letter (not the original) on May 30 at the NAESB WEQ formation meeting in Birmingham, AL, along with approximately 140 other people. Indeed, my copy was handed to me after everybody else received theirs. For the future, I and NAESB will be in a better position to respond to your concerns – or indeed any concerns expressed by the many other interested parties – if we are given time to consider and respond to them.

Moving to the substance of your comments, NAESB is and will remain an inclusive organization. As with the formation of GISB in the early 90's and with the recent formation of the two NAESB Retail Quadrants, the purpose of the continuing WEQ discussions begun earlier this year is to develop quadrant procedures that meet the needs of the stakeholders and that give them the forum and the opportunity to have their interests raised and discussed.

Procedurally, the NAESB Board will approve any quadrant procedures for the WEQ that <u>are not inconsistent</u> with the NAESB bylaws. Accordingly, the Board will not determine the number or definitions of segments in the WEQ; rather that will be left to the quadrant participants themselves. That said, if the proposed quadrant procedures do not provide a place for all interested stakeholders, including ISOs and RTOs, they will not be approved by the Board.

We are, of course, a standards-setting organization, and different rules apply to organizations such as ours – as distinguished from ISOs and RTOs which have their own unique functions. First, anyone, member or non-member, may participate in the NAESB process of standards development. This includes the right to vote at all subcommittee and task force meetings that develop standards, but not the right to vote to ratify standards or the right to hold a seat on the Board or the Executive Committee (EC). Further, under NAESB's bylaws, if one has a legitimate business interest in a given

segment, one may join it. Also, under the NAESB bylaws, stakeholders having legitimate business interests in multiple segments may join each such segment should they wish to do so. This latter process has been approved by both FERC and ANSI.

The WEQ formation group, using Robert's Rules of Order, defined the voting procedures to be followed, including the percentages necessary for approval of motions. The percentage chosen was 67%, which, of interest, is the same percentage used by NAESB for the approval of standards at the EC. That percentage was reaffirmed following another vote at the Birmingham meeting this week. FERC and ANSI are likewise aware of the NAESB bylaws' 67% threshold for standards approval and are satisfied with it, so I do not see that the decision by the WEQ formation group to apply the same percentage is either unfair or not credible. It certainly was democratically adopted by the participants, and I don't know who would have the authority to overrule it or for what legitimate reason.

Like you and your fellow CEOs, we have substantial experience in making stakeholder processes work – in our case since 1994. The entire GISB process has been endorsed by FERC, and we are an ANSI-accredited organization. Moreover, the reason NAESB was formed is that there was an overwhelming sentiment in the electricity industry that the GISB process for standards development had the credibility to permit development and adoption of market standards in the electricity industry. I can say this because I was an integral part of the development process from the time the idea was first proposed to the GISB Board by representatives of the electricity industry in September of 1999. Recently, as you know, the FERC's May 16th Order reaffirmed its approval of and commitment to the NAESB process. To suggest otherwise is simply not correct.

I also should reaffirm two thoughts that may continue to be overlooked. First, NAESB does not set policy. Policy is set by the FERC and other regulatory bodies, and NAESB's members attempt to implement such policy by setting market standards. Second, all NAESB standards are voluntary. Thus, if any stakeholder group perceives problems following the adoption and ratification of a standard, or if it feels that system integrity might be compromised by implementing the standard in question, it may simply decline to follow the standard. Until FERC or some other body with the authority to mandate a standard does so, there is no obligation to do otherwise.

Moreover, there is always the additional opportunity to raise the concern prior to a regulatory body taking action. Given the threshold for approval contained in NAESB's bylaws, I cannot imagine any scenario where NAESB would adopt a standard over the objection that it compromises reliability. Nor can I imagine the FERC turning that standard into a regulation given the same concern.

The last thing I'd like to mention is that NAESB (through its WEQ) and NERC will adopt an MOU (perhaps preceded by an LOI) to describe our communications protocols and joint workings. We had planned to do this in any event, but the FERC's Order makes clear that they expect it to be done. It also may be that together we and NERC will cooperatively develop standards having both commercial and reliability components, so as to move the market forward. I certainly hope that this will be the case.

In the interim, I would be happy to meet with you and your members in advance of the next WEQ meeting, currently scheduled for Columbus, OH, on June 20/21. There apparently remains a lingering misunderstanding regarding NAESB and how we operate, which I hope I have clarified in this letter, but perhaps a discussion would move matters forward as well. It is critical that consistent with the FERC's May 16 Order, we do everything that we can to ensure that FERC has confidence that an organization is in place "to consider business practice issues arising from standard market design, interconnection procedures or other areas where business practice standards development is needed to improve the efficiency of the market." We sincerely welcome your help in achieving this goal by the Fall.

Very truly yours,

William P. Boswell
Chairman, Board of Directors

cc: NAESB Stakeholders (electronic posting)
The Honorable Patrick Wood, Chairman, FERC
The Honorable Linda Breathitt, Commissioner, FERC
The Honorable Nora Brownell, Commissioner, FERC
The Honorable William Massey, Commissioner, FERC
Mr. Larcamp, Federal Energy Regulatory Commission
Mr. Rosenberg, Federal Energy Regulatory Commission

Attachment F

APPA-NRECA Proposed
WEQ Definitions And Subsegments
May 29 - 30, 2002 WEQ Meeting

1 - Transmission: Any entity engaged in the activity of owning, operating or controlling bulk electric transmission facilities in North America.

- RTOs, ISOs and RRCs
- Single-Purpose Transcos and Independent Transmission Companies
- Transmission owners and operators that are integrated or affiliated with Market Participants.

2 - Generators: Any entity engaged in the activity of owning and/or operating wholesale electric generation facilities in North America.

- Generation owners and operators affiliated with an LSE or also an LSE,
- Unaffiliated generation owners and operators,
- Distributed generators and renewable generators

3 - Marketers/Brokers: Any entity engaged in the activity of buying and selling wholesale electric power in North America on a physical or financial basis.

- Market Administrators/Operators
- Wholesale Marketers integrated with the Generation function of Vertically Integrated Utilities
- Non-integrated wholesale marketers/brokers with or without generation; risk management services

4 - Distribution/Load Serving Entities: Any entity engaged in the activity of electric power supply and delivery to end use customers in North America, including any municipal joint action agency or generation and transmission cooperative that is contractually obligated to meet all or a portion of the power supply needs of such entities on a long term basis.

- Investor-Owned Utilities with an obligation to serve retail customers
- Federal, state, municipal and cooperatively-owned utilities, including G&T Cooperatives and Municipal Joint Action Power Supply Agencies
- Retail aggregators/marketers participating in retail choice markets

5 - Customers: ***[****The definition below was written on the chart at the session-end on May 9 as a suggestion to begin discussion. APPA-NRECA changed wholesale to retail:]* Any entity that is eligible to receive electric energy at retail ~~wholesale~~; and entities that represent customer interests including trade organizations, local, state, federal, provincial, etc. regulators and other companies or individuals not otherwise eligible for membership in another segment.

- Large commercial/industrial customers
- Residential, small commercial and consumer advocates
- State economic regulators and siting authorities

Note: this document utilizes the segments and segment definitions completed as of closing of the May 8-9 WEQ Meeting.

Attachment G

APPA-NRECA Principles for Design of NAESB WEQ
May 23, 2002

Principles:

- The WEQ must focus on standards for Business Practices and Communication Protocols raised by FERC's Standard Market Design
- Reliability standards remain the province of NERC, but close coordination between NERC and NAESB is required
- Arrangements for coordination between NAESB and NERC should be developed after the WEQ is formed.
- Group broadly related stakeholders with congruent *commercial interests* in same segment
- Establish larger number of subsegments to ensure inclusiveness and direct voice on the Executive Committee for minority interests within segments
- Allow multiple segment participation by affiliates and business units within single company (as permitted by NAESB), but no affiliated business group may have multiple seats on the NAESB Board or WEQ Executive Committee or participate in more than one subsegment within a single WEQ segment
- Six representatives to WEQ Executive Committee per segment, with designated seats for the constituent subsegments.
- Subsegments established through the WEQ formation process, not left to segments.
- Initial subsegments within a segment can be changed through a supermajority vote of registered segment members and a majority vote of the members of each affected subsegment, subject to the concurrence of the entire WEQ.
- Positive resolution of the following issues is needed to obtain support for the WEQ among smaller entities:
    - Commitment to a WEQ professional staff for drafting SMD business practices.
    - Tiered dues structure based on some measure of member organization size
    - Pursue RTO funding of WEQ activities through Grid Management Charges, with WEQ Board and FERC annual review of the budget
- Buy-in by each identified stakeholder group before the proposed WEQ design is sent to the NAESB Board for approval as an industry consensus.

Attachment H

North American Energy Standards Board

1100 Louisiana, Suite 3625, Houston, Texas 77002
Phone: (713) 356-0060, Fax: (713) 356-0067, E-mail: naesb@aol.com
Home Page: www.naesb.org

via email and posting

TO: NAESB Members and Interested Industry Participants

FROM: Rae McQuade, Executive Director

RE: Wholesale Electric Quadrant Meeting Agenda and Meeting Announcement – June 20 and June 21, 2002

DATE: June 6, 2002

As previously announced on May 30, NAESB will hold a meeting in Columbus, Ohio hosted by AEP on June 20 and June 21 to confirm Segment definitions; discuss Sub-segments and discuss the number of seats on the Board and Executive Committee for the Wholesale Electric Quadrant ("WEQ"). If necessary, a subsequent meeting may be scheduled for July 9/10 to confirm decisions made on June 20/21. The upcoming Board meeting is June 28 in Seattle.

The current actions being considered by the WEQ are necessary to the preparation of completed Quadrant Procedures for the WEQ, which must be approved by the NAESB Board of Directors; such Board action could occur as early as June 28, 2002. The minimum Quadrant Procedures require Segment identification and definitions, and procedures for election of Board of Directors and Executive Committee representatives. The minimum procedures for the election of Board of Directors and Executive Committee representatives include identifying the number of seats the Segments will hold on both the Board and the Executive Committee. The procedures may be further defined and changed by the WEQ as it determines after the WEQ has been formed. Similarly, Segment procedures may also be defined after the WEQ has been formed.

The meeting specifics are:

WHERE:	American Electric Power Offices 1 Riverside Plaza Columbus, OH 43215	
WHEN:	June 20	9:00 a.m. to 5:00 p.m.
	June 21	8:00 a.m. to Noon

While the meeting may go late on June 20, it will end no later than noon on June 21, as attendees will have made travel arrangements based on a noon adjournment.

Conference calling will be available for those unable to travel to the meeting. Written comments are also suggested from those unable to participate in the meeting, or for those who prefer to participate via written comments in addition to participation in the meeting. Comments should be provided 5 business days prior to the meeting to allow attendees sufficient time to review all meeting materials, late comments will be identified as such and posted and distributed. All written comments will be posted and distributed to the meeting attendees. The meeting will be transcribed and the transcripts available for purchase. Antitrust counsel will be present throughout the meeting.

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Please notify the NAESB office (naesb@aol.com) if you intend to attend, including:

- your name;
- organization represented;
- Segment represented; and
- email address.

We would appreciate notification of attendance by June 17 to provide adequate meeting planning. If you intend to participate by phone, the NAESB office (naesb@aol.com) will provide you with the conference calling number and instructions.

We look forward to your attendance,

Best Regards,
Rae McQuade

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North American Energy Standards Board
Draft Agenda For Wholesale Electric Quadrant Meeting
Columbus, Ohio
June 20 and 21, 2002

JUNE 20:

9:00 a.m. 1. Welcome and Opening Remarks

- Welcome
- Introductions and Roll Call
- Antitrust Guidance

9:30 a.m. 2. Review of Meeting Rules

- Time per speaker
- Time per topic to ensure that all agenda items are addressed
- How votes are taken

10:00 a.m. 3. NAESB Wholesale Electric Quadrant (WEQ) Segment definition confirming vote

10:00 a.m. Review Segments and Segment definitions

10:30 a.m. ***Confirming Vote*** of the five Segment definitions

11:00 a.m. 4. For each Segment, determine the following:

Discuss whether the Quadrant should designate Sub-segments or leave this to the Segments themselves.

Conduct vote on whether the establishment of Sub-segments should be left to the Segments. If yes, defer to Segments; if no, then 5 Votes on whether the Quadrant should determine if the Segment in question should have Sub-segments, (each Segment discussion and vote shall occur in no more than 20 minutes).

Noon Lunch

1:00 p.m. 4. Continuation of Item 4.

2:00 p.m. 5. For those Segments, if any, for which the Quadrant has determined to establish Sub-segments:

- Identify and discuss Sub-segments, based on comments received and prior discussions on May 30.
- At the end of each 30 minute period allotted to each Segment, take a ***Straw Vote*** on Sub-segments identified for each Segment.

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North American Energy Standards Board
Draft Agenda For Wholesale Electric Quadrant Meeting
Columbus, Ohio
June 20 and 21, 2002

4:00 p.m. 6. Number of Segment Seats on the Board of Directors and the Executive Committee

- Discussion on number of seats for the Board
  4:30 p.m. ***Straw Vote*** on Number of Seats for the Board
- Discussion on number of seats for the Executive Committee
- 5:00 p.m. ***Straw Vote*** on the Number of Seats for the Executive Committee

5:00 p.m. Adjourn First Day
(This day's ending time may be extended if the attendees determine it is needed).

JUNE 21:

8:00 a.m. Open Second Day of the Meeting

- Welcome
- Introductions and Roll Call
- Antitrust Guidance

8:15 a.m. 7. Discussion of the FERC May 16 Order

9:00 a.m. 8. Discussion on RTOs, ISOs and RROs, including the NY ISO et al. letter and the NAESB Chairman's response.

10:00 a.m. 9. Quadrant, Segment and Sub-segment Initial Procedures (see attached REQ and RGQ Procedures)

- Minimum requirements for Board approval of WEQ as a Quadrant:
  - Segment Identification and Definitions
  - Number of Segment seats for the WEQ on the Board and the Executive Committee
  - Possible confirming votes

11:00 a.m. 10. How to Populate the NAESB WEQ

11:30 a.m. 11. Additional Agenda Items not previously identified for the next WEQ formation meeting.

Noon Adjourn

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North American Energy Standards Board
Location Information for the NAESB WEQ Formation Meeting
Columbus, Ohio
June 20 and 21, 2002

The meeting venue is:

American Electric Power Offices
1 Riverside Plaza
Columbus, OH 43215

The AEP office is 10-15 minutes from the Columbus airport and a cab fare should be in the neighborhood of $18.00.

A hotel room block has been set aside until June 11 at the:

Hyatt Regency Hotel
350 North High Street
Columbus, OH 43215
Reservations: (800) 233-1234

The room rate for the room block is $95.00 per night. Please refer to the "NAESB" room block to receive this rate. The block of rooms will be held until June 11. The Hyatt is 3-4 blocks from the meeting location.

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North American Energy Standards Board
Procedural Rules for the NAESB WEQ Formation Meeting
Columbus, Ohio
June 20 and 21, 2002

Procedural Rules

AGENDA ITEM 1:

- Phone participant attendance will be recorded by the conference calling attendant. The participants will not be announced as they join the conference call to avoid meeting disruptions.

- Jim Buccigross, chair of the NAESB Executive Committee, will open the meeting. Facilitation for the meeting will be provided by Stanley Porter of Deloitte. Joelle Ogg of Williams Mullen will provide antitrust counsel. A sergeant-at-arms will be present to maintain order.

AGENDA ITEM 2:

- Roberts Rules of Order will be followed for the meeting, except where the group determines otherwise or except where NAESB procedures apply.

- Two minute/speaker rule followed at previous meetings will be utilized to allow for all participants (either in person attendance or via conference call) to voice their opinions prior to either confirming votes or non-binding straw votes ("sense of the room" votes), unless the group adopts a different time limit.

- The Segments have been identified. NAESB's General Counsel advises that balanced voting is to be used to ensure that no Segment or group of interests can "stack the deck" or otherwise dominate the decision-making process. With balanced voting, each Segment has an equal percentage of votes, regardless of the number of participants. The balanced voting procedure is used throughout the NAESB organization. Section 2.2 of the NAESB Bylaws requires the use of balanced voting to **"provide for balance of interests among industry Segments and Quadrants participating in NAESB so as to avoid any one interest group or group of interests having the ability to exert undue influence over any decision."**

- Roll call votes may be taken for confirming votes and possibly for straw votes as well. The voter must identify himself, the company and Segment represented and his vote. This voting procedure is then captured for the record on the transcript and is tallied as it is taken. As a matter of information, this procedure is used for many types of votes taken in NAESB – at the Board, Executive Committee and in subcommittee meetings.

- It was agreed at the May 8 and 9 meeting that consensus is a two-thirds vote, which was reaffirmed on May 29. This is the percentage used for the ratification process in NAESB and at the Executive Committee for each of the Quadrants.

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- Individuals have one vote. Individuals may not vote multiple times in multiple Segments on the same motion. If an individual represents more than one company and business interest, then that individual must choose which company and business interest he is representing before a roll call vote or balanced vote is taken. If more than one individual represents the same company and business interest, then only one of those individuals may cast a vote. All phone participants are eligible to vote under the rules outlined above. All NAESB Quadrants operate in this manner. Proxy voting is not permitted.

- Abstentions are recorded but do not count in either total votes cast nor in the total affirmative votes and total opposing votes. All NAESB Quadrants operate in this manner.

AGENDA ITEM 3:

- Under NAESB's Bylaws, companies may hold multiple voting memberships in different Quadrants and Segments. In order to do so, a company must have legitimate business interests within those Quadrants and Segments. This currently is the practice in the Wholesale Gas Quadrant and is likely to occur in both the Retail Quadrants. Multiple memberships are permitted in the NAESB governance documents – NAESB Certificate and Bylaws. Quadrant procedures may not be inconsistent with the NAESB Certificate and Bylaws.

- All industry participants for a given Quadrant must have the ability to join at least one of the Segments identified for that Quadrant. This is the principle of inclusivity noted in Section 2.2 of the Bylaws.

AGENDA ITEMS 4 and 9:

- Minimum Quadrant procedures are approved by the Board of Directors. Once the initial Quadrant procedures are approved, the Quadrant itself will determine other procedures, which may include procedures relating to the Quadrant, Segment or Sub-segments.

- NAESB's General Counsel will review such proposed or draft procedures prior to Board action to ensure that they are not inconsistent with the existing NAESB Bylaws and Certificate. Segment procedures and Sub-segment procedures may also be defined by the Segments. Ordinarily, the Segments will determine the identity of any Sub-segments, unless the Quadrant itself designates specific Sub-segments. Segment procedures and Sub-segment procedures are not required as part of the minimum Quadrant procedures.

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- The minimum Quadrant procedures must include (1) Segment identifications and definitions, which would permit the Board to determine if the inclusivity principle is met, and (2) the number of Segment seats on the Board and Executive Committee, which permits the NAESB office to start the procedure to hold elections.

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North American Energy Standards Board
Outcome of May 29 and 30 NAESB WEQ Formation Meeting

Segments Identified (5/9/02):

- Transmission
- Generation
- Marketers/Brokers
- Distribution/Load Serving Entities
- End Users

Segment Definitions (5/9/02 and 5/29-30):

- **Transmission:** Any entity engaged in the activity of owning, operating or controlling bulk electric transmission facilities in North America.
- **Generation:** Any entity engaged in the activity of owning and/or operating wholesale electric generation facilities in North America.
- **Marketers/Brokers:** Any entity engaged in the activity of buying and selling wholesale electric power in North America on a physical or financial basis.
- **Distribution/Load Serving Entities:** Any entity engaged in the activity of electric power sales and/or delivery to end use customers in North America, or any entity designated to represent a distribution utility.
- **End Users:** Any entity in North America that is an end use consumer of electricity, engages in electricity regulation, or represents customer interests, or any entity designated to represent an end user.

Sub-segments Identified for Discussion – no votes or any type of determination made (5/30/02):

- **Transmission:** Any entity engaged in the activity of owning, operating or controlling bulk electric transmission facilities in North America.

  APPA / NRECA suggests:

  1) RTOs, ISOs, RRCs

  2) Single purpose transcos and independent transmission companies

  3) Transmission owners and operators that are integrated or affiliated with market participants

North American Energy Standards Board
Outcome of May 29 and 30 NAESB WEQ Formation Meeting

- **Generation:** Any entity engaged in the activity of owning and/or operating wholesale electric generation facilities in North America.

  EPSA suggests:

  1) competitive generators – those entities who generate and sell electric power primarily at market-based rates.

  2) regulated generators – those generators who sell electric power primarily at regulated or contractual rates to customers.

  APPA/NRECA suggests:

  3) generation owners and operators affiliated with an LSE or also an LSE

  4) unaffiliated generation owners and operators

  5) distributed generators, renewable generators and demand side bidders

  6) not for profit generators

- **Marketers/Brokers:** Any entity engaged in the activity of buying and selling wholesale electric power in North America on a physical or financial basis.

  EPSA does not believe that Sub-segments are needed.

  APPA-NRECA suggests:

  1) Market Administrators/Operators

  2) Wholesale Marketers integrated with the generation function of vertically integrated utilities

  3) Non-integrated wholesale marketers / brokers with or without generation; risk management services

  Others suggest:

  4) Not for profit marketers/brokers (Tri-state)

  5) Delete 2 and 3 and add for profit marketers / brokers (NARUC)

  6) RTOs, ISOs, RROs only (Williams recommended only if the ISOs, RTOs and RROs want it – several RTOs, ISOs and RROs in the room do not support having this Sub-segment)

North American Energy Standards Board
Outcome of May 29 and 30 NAESB WEQ Formation Meeting

- **Distribution/Load Serving Entities:** Any entity engaged in the activity of electric power sales and/or delivery to end use customers in North America, or any entity designated to represent a distribution utility.

  APPA-NRECA suggests:

  1) Investor owned utilities with an obligation to serve retail customers

  2) Federal, state, municipal and cooperatively owned utilities including G&T Cooperatives and Municipal Joint Action Power Supply Agencies on behalf of its members

  3) Retail aggregators/marketers participating in retail choice markets

  Others suggest:

  4) Independent Distribution Companies with only provider of last resort (POLR) supply obligations (Granite State)

- **End Users:** Any entity in North America that is an end use consumer of electricity, engages in electricity regulation, or represents customer interests, or any entity designated to represent an end user.

  Elcon and NARUC suggest that no Sub-segments are needed.

  APPA-NRECA suggests:

  1) Large commercial/industrial customers

  2) Residential, small commercial and consumer advocates

  3) State economic regulators and siting authorities

In discussions it was noted that all groups have the ability to self-select the Segments to which they would belong and in which they have a legitimate business interest.

Questions were raised during the discussion on May 30 on to which Segments the following groups would belong:

- RTOs, RROs and ISOs – RTOs, ISOs and RROs believe that they may fit in the existing definitions (i.e., Transmission) but would prefer to have their own Segment to reflect independence from transmission owners.
- Suppliers/Vendors – may be accommodated through self-selection.
- Demand Side Management – may also be accommodated through self-selection.

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North American Energy Standards Board

Chairman's Perspective

When Mr. Boswell opened the first of these WEQ formation meetings, in Houston, he advised the group that its work product would be deemed finished when it determined to forward its procedures to the NAESB Board.

He also advised the group that the NAESB Board had no agenda regarding how the WEQ should be organized and segmented, since that is a decision the group itself must make, considering the individual needs of WEQ stakeholders. This is not to say that Board members who have chosen to participate in the WEQ formation process as individuals representing stakeholders do not have opinions regarding the WEQ's structure during these discussions, but rather that the Board as a Board will only concern itself with the end product forwarded by the WEQ. As has repeatedly been stated, the standard that will be used by the Board is as follows: "Are the proposed Quadrant procedures not inconsistent with NAESB's Certificate and Bylaws?" If the answer is yes, the procedures will be approved.

Lastly, once the Quadrant procedures have been approved, the Quadrant alone has the authority to amend its structure. In other words, matters do not go back to the Board as a whole but only to the WEQ Directors, subject to preliminary review by the NAESB General Counsel for compliance with NAESB's Certificate and Bylaws.

Attachment I

COMMENTS OF THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION ON THE WEQ MAY 8-9 MEETING IN DENVER, CO May 22, 2002

The National Rural Electric Cooperative Association (NRECA) appreciates the opportunity to submit these comments. We request that you post these comments to the NAESB website and distribute them to those participating in the WEQ process. While the meeting on May 8-9 in Denver was better organized than the previous meeting in Houston, serious concerns continue, and they are discussed below in a constructive effort to improve the overall process.

Recommendations for Real Industry Representation, Consensus and Legitimacy

On May 8th during the Denver WEQ meeting, NRECA voiced its support for a proposal and subsequent motion by APPA to use a functional definition of WEQ segments with designated sub-segments that would have assured at least minimal representation on the Executive Committee for significant but admittedly minority players in the electricity marketplace (i.e. cooperatives, municipals, State Public Service Commissions, State Consumer Advocates, and real end-use consumers). Supporters of this approach and motion were overcome, first by a successful amendment to modify APPA's original motion that effectively removed critical designated sub-segments, and subsequently by a successful motion to approve a straw vote on a five-segment proposal without designated sub-segments. Had just one vote been changed, that final motion would have failed. We acknowledge the vote, unfortunately the voting result does not solve the problem of appropriate Executive Committee representation of all significant players in the WEQ. These events at the May 8-9 Denver meeting will cause continuing problems in developing a WEQ proposal that can be presented by the industry to the Commission as a true "consensus," unless actions are taken to address these concerns.

It is important to review several significant votes taken at the May 8-9 meeting, beginning with the vote on whether to use a 67% or 75% plurality to represent the "industry consensus" on important issues. Supporters of the higher threshold, including NRECA, lost that vote 46 to 43. Subsequently, using the lower 67% "consensus" standard, two critical votes then passed where a change of just one vote would have changed the outcome, including the straw vote on the five-segment proposal. We point this out to indicate just how close these votes were at the lower 67% "consensus" standard.

We continue to believe -- and anticipate that the Commission would agree -- that cooperatives, municipals, public service commissions, state consumer advocates and real end-use consumers must be assured a place on the critically important Executive Committee. Only in this way will their important voices not be overwhelmed by large, deep-pocket players who, as ably demonstrated at the Denver meeting, plan to populate,

"pay to play" in and vote in, all possible segments. This could effectively disenfranchise the aforementioned significant but less well-funded entities.

We also strongly assert that suggested designation of sub-segments in the APPA proposal is particularly critical to assure more balanced voting in view of (1) the ability of a 60% majority of any single voting segment to veto needed business standards; (2) the particular five segments identified, along with the NAESB rule that allows divisions of the same entity to populate multiple segments, means that the large, well-funded, affiliated generator-marketer-IOU interests will be in a position to dominate multiple segments (covering similar business interests), while completely drowning out all other voices; and (3) the history to date in other NAESB quadrant sectors where, particularly, end-use voting segments are populated in a somewhat surprising manner. Given the recent revelations about the highly questionable commercial trading practices of certain marketers and generators in wholesale electric markets and the related high profile federal investigations, it might well undermine the confidence of load-serving entities, end users, consumer representatives and regulators to have a WEQ structure under which *either generators or marketers, acting as their own sector*, can veto any proposed business standard they find not to their liking. While having appropriate, inclusive, designated sub-segments will not resolve all of these problems, they would represent one significant step in the direction of inclusiveness and transparency necessary for NAESB WEQ credibility.

When cooperatives and municipals (serving 25% of all the nation's consumers over an area covering 75% of the nation's land mass), state public service commissions, state consumer advocates, and real end-use consumers are not assured participation in a segment where their voices will not be unduly diluted or where appropriate seats on the Executive Committee are not provided, we cannot agree that the work to date on developing the WEQ framework represents an industry consensus. Those participating in developing the WEQ need to be as inclusive and credible as possible in order to enable the development of a higher level of trust among all industry participants and an appropriate level of confidence among the regulators. In NRECA's view, this has not happened thus far.

We stress that unless NAESB, and the industry representatives participating in setting up the NAESB segments, focus on developing an organization that reflects and gives a meaningful voice and "place at the table" (on the Executive Committee) to the full range of interests that make up the electric industry, the standards that emerge from NAESB will never be able to reflect legitimacy at FERC and elsewhere as an industry "consensus" standard. Furthermore, when the voting rules used in establishing these segments and sub-segments permit well-funded entities to cast up to five votes on each item called to a vote (ostensibly to reflect their multiplicity of "business interests"), the deck is even more heavily stacked against smaller, less well-funded, entities seeking to have a meaningful and appropriate role in the organization that emerges from such a process.

Recommendations for Proper Application of Robert's Rules of Order

NRECA believes it is vitally important that NAESB hire a Professional Registered Parliamentarian who is certified by the National Association of Parliamentarians to properly interpret and enforce Robert's Rules. We were concerned about the ad hoc procedures and "lay" interpretations of Robert's Rules rendered at the Denver meeting. Several parliamentarians later advised us that a number of these "lay" interpretations were incorrect. For instance, at the meeting only one amendment to a motion was allowed to be discussed and voted on. According to the parliamentarians we discussed this with, it is correct that only one amendment can be voted on *at a time*. However, it is not correct that a motion may only have one amendment discussed before such motion must be voted upon. Additionally, several times, prior to the completion of discussion, or for that matter, any discussion, there was a "call for the vote" motion made from the floor. This led directly to votes on the motion that, according to the parliamentarians we consulted, are incorrect under Robert's Rules. There first should have been a vote taken to cut off discussion. The impact of this misinterpretation was to short-circuit needed discussion, and may have had a significant impact on the meeting's substantive decisions. In short, we believe the above-referenced misinterpretations of Robert's Rules clearly demonstrates that NAESB needs a professional registered parliamentarian at all subsequent meetings.

Respectfully submitted,

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