



VIA E-MAIL

May 16, 2002

TO: North American Energy Standards Board (NAESB) Office (naesb@aol.com)
CC: Rae McQuade, NAESB Executive Director
FROM: The American Gas Association
RE: Comments of AGA Regarding Proposed Creditworthiness Standards

On April 19, the North American Energy Standards Board (NAESB) posted for comment its draft standards addressing creditworthiness. The Executive Committee (EC) of NAESB's Wholesale Gas Quadrant (WGQ) is considering the proposed standards at its meeting on May 20, 2003. Pursuant to the request for comments, the American Gas Association (AGA) submits the following comments and asks the Executive Committee to thoughtfully consider the following points during its deliberations regarding the proposed standards.

AGA appreciates the hours of diligent work and consensus discussions that were required to finalize the draft standards now pending before the EC. The industry owes the members of NAESB's WGQ Business Practices Subcommittee its gratitude in taking on this task that has been controversial from the start. From the beginning, many industry participants believed that general terms and conditions addressing interstate pipelines' creditworthiness requirements for shippers are not suitable for standardization. This belief is due to the financial management implications embodied in the need for business partners to evaluate their respective risk profiles and risk tolerance levels, which, out of necessity, are unique to each contractual relationship. Accordingly, the concept of standardization, although productive for many processes, is difficult to apply to an area filled with so many unique business decisions. Obviously, the process of establishing creditworthiness with an interstate pipeline must be fair and not unduly discriminatory, however, standardization by NAESB is not necessarily an effective means to achieve that statutory obligation.

Recognizing how difficult it was for NAESB to achieve this body of proposed standards, AGA seeks clarification on the meaning and intent of many of the draft standards. We have some concern that many of the proposed standards are confusing to all but those directly involved in the drafting (and even they have different interpretations as proven by discussions among segments). As with any good settlement – the principles may be solid and represent the will of the collective but the language memorializing the intended meaning can be subject to interpretation.

Therefore, AGA asks the EC in its deliberations to address whether the following restatements of the proposed standards are accurate and to answer any questions posed over language that is confusing. The language, in many of the proposed standards, should be modified or improved in order to prevent future disagreement and misinterpretation. Because of the difficulty of this issue in the first instance, we recognize that it will be equally difficult for NAESB to craft consensus proposals to address the

issues we raise below. Accordingly, our hopes are less ambitious – we ask that the EC discuss for the purposes of clarification the meaning and intent of some of the proposed standards so that the ultimate report to FERC is complete, regardless of whether the proposed standards are approved.

AGA recognizes that the proposed standards constitute a package that should be considered as a whole and not on an individual standard basis. The proposed standards, for the most part, are interrelated. Therefore it may be difficult to consider adopting these proposed standards on a one-by-one basis. If nothing else, the work product of the BPS provides the basis for a solid report to FERC on a process to establish creditworthiness with an interstate pipeline, the pros and cons of various provisions from the alternative perspective of various shippers and pipelines and the meaning and necessity of certain provisions. This work will provide FERC with substantial guidance as it continues its policy determinations on creditworthiness issues.

The NAESB report to FERC should also indicate that this body of proposed standards, which took an extreme number of hours of meeting time and personnel hours to complete, represents NAESB's best efforts to standardize creditworthiness provisions. Further NAESB efforts to standardize creditworthiness provisions would not be productive because there are too many important policy issues implicated by any further standards debates. AGA believes that because of these policy considerations, FERC should endeavor itself to address creditworthiness issues.

The Comments below are set out in the order the proposed standards are published and not in the order of importance or concern. Additionally, the comments and questions are not an exhaustive list but are representative of issues and concerns.

Proposed Standard 0.3zA

According to this proposed standard, a Transportation Service Provider¹ will specify in its tariff the information it will require from a service requestor. The information specified could be any one of the items on the list, need not be all the items on the list, and could be more than one item on the list. Additionally, the interstate pipeline is accorded some flexibility to include an item not listed, subject to approval by FERC. Finally, non-public information should be treated as if it were confidential, regardless of whether it is or not.

The EC should clarify that this proposed standard does not limit the TSP to using only the stated items when evaluating creditworthiness and it also does not limit a service requestor in what it may decide to provide to the TSP.

These proposed NAESB proposed standards here and elsewhere use the common phrase “Service Requestor,” when referencing entities that desire to contract with a TSP (or interstate pipeline) for capacity and when addressing existing shippers. The use of this term sometimes leads to confusion, especially in the context of proposed standards addressing credit status on an ongoing basis (after a contract has been initiated) and those addressing capacity release. It is confusing to use the same term to address all of those situations, especially when, in a capacity release context, it could refer to the releasing shipper or the replacement shipper. The EC should rewrite the proposed standards to clearly state whether they are referring to entities requesting service or existing shippers or both.

¹ NAESB Standards use the phrase “Transportation Service Provider” to encompass any transporter. For purposes of deliberations at FERC, a TSP is an interstate pipeline.

Proposed Standard 0.3zB

This proposed standard requires the TSP to provide reasons for seeking additional information from a Service Requester, if the TSP after initiation of service decides that it needs more information for credit evaluation. If both parties agree, the requirement of the proposed standard (for the TSP to provide reasons) can be waived.

Proposed Standard 0.3zC

This proposed standard requires the SR to acknowledge receipt of a request for information for credit evaluation from the TSP. If both parties agree, the requirement to acknowledge receipt of the request can be waived.

It should be clarified that this notification requirement, as well as the notification requirements in Proposed Standard 0.3zE and 0.3zL are email notification, similar to the email notification specified in Proposed Standard 5.3zF.

Proposed Standard 0.3zD

This proposed standard requires the SR to respond to the TSP 's request for credit information by the due date stated in the request. Either the number of days permitted to respond will be set by the pipeline's tariff or the fact that the TSP may request credit information will be set by the pipeline's tariff. All of the requested information must be presented at that time, or if not, reasons should be provided as to why information is missing.

The phrase "as allowed by the TSP's tariff" is confusing. What is "allowed" – the number of days for a response that results in the due date or the fact that the TSP may request credit information? The current draft implies that the phrase, "as allowed by the TSP's tariff," is modifying the ability to request credit information when it appears that the phrase was meant to modify the number of days. Does this proposed standard apply to a request for additional information pursuant to proposed standard 0.3.zB? Language should be clarified accordingly.

This proposed standard is inconsistent with the minimum three business day due date established by proposed standard 0.3.zI.

The inconsistency needs to be resolved. Without such resolution, the proposed standards could be confusing and lead to disputes.

Proposed Standard 0.3zE

This proposed standard requires the TSP to let the SR know it has received all of its credit information. If both parties agree, the requirement to acknowledge the receipt of the information can be waived. The comment with regard to Proposed Standard 0.3zC also applies here.

This proposed standard and proposed standard 0.3.zF, should also require the TSP to designate notice recipients or recipients for credit information, as it is possible, and perhaps likely, that the people responsible for credit matters at the TSP will not be the same people with whom the SR/shipper usually deal.

Proposed Standard 0.3zF

This proposed standard asks the SR to designate one or two representatives authorized to receive notices about its creditworthiness pursuant to Proposed Standard 0.3zE. If both parties agree, the requirements of this proposed standard can be waived.

Proposed Standard 0.3zE does not require general notices about creditworthiness, it only requires that the TSP provide notice to the SR that it received information about its credit. As noted above, this proposed standard should also require the TSP to designate notice recipients or recipients for credit information.

Is this proposed standard meant to create an obligation on the SR to provide the names and email addresses of one or two individuals to receive notices about creditworthiness issues beyond simply the notice of receipt discussed in Proposed 0.3zE?

Should this proposed standard reference Proposed Standard 0.3zD directly, rather than indirectly, by referencing Proposed Standard 0.3zE?

Proposed Standard 0.3zG

This proposed standard requires a TSP to provide, with clearly stated reasons, written notice to an SR that it has determined it is not creditworthy.

The comment with regard to Proposed Standard 0.3zC also applies here.

Proposed Standard 0.3zH

This proposed standard requires that, in addition to providing the required documents from Proposed Standard 0.3zA, a SR confirm at the time it requests service and any time the TSP asks, whether it has filed for bankruptcy and/or is operating under any bankruptcy laws; whether it is subject to liquidation or debt reduction procedures under governing laws, such as an assignment for the benefit of creditors or any creditors' committee agreement; and/or whether its credit rating has been downgraded by a credit rating agency within the last six months.

Proposed Standard 0.3zI

This proposed standard requires a SR to furnish information requested from Proposed Standard 0.3zA and 0.3zH, with an explanation for any unavailable information, within 3 business days or a later date acceptable to the TSP.

Other than establishing a response time to meet the requirements of Proposed Standard 0.3zH, how is this proposed standard different from 0.3zD? This proposed standard further highlights the confusion caused by the phrase "as allowed by the TSP's tariff" in proposed standard 0.3zD and clarification should be provided as to how the two proposed standards should be reconciled.

Does this proposed standard apply to a request for additional information pursuant to proposed standard 0.3.zB?

Proposed Standard 0.3zJ

This proposed standard is meant to provide a SR that does not have its own publicly filed documents the ability to use the documents of its parent corporation in order to establish credit with the TSP. If the SR is using its parent company's public documents to provide the confirmations required in Proposed Standard 0.3zH, the SR should specify the location in the document where the information appears.

This is a critical proposed standard, impacting many LDCs. When not considered a public company in its own name, an LDC would be able to submit its parent company's financial forms instead of its own forms. It is important to stress, however, that in no way does this proposed standard imply a parental guarantee.

Proposed Standard 0.3zK

This proposed standard allows an SR to be deemed to be non-creditworthy by a TSP. If a TSP makes that determination, this proposed standard allows the SR to initiate a credit status re-evaluation by the TSP and the SR should update or confirm in writing the prior information provided to the TSP regarding its credit status. The update is also to include substantial events that the SR believes could lead to a change in its credit status.

In terms of substantial events that an SR should divulge, does this refer to future anticipated events, events that have already occurred? Both? What is the SR to do if it cannot divulge that information for business purposes?

Proposed Standard 0.3zL

This proposed standard requires the TSP to respond in writing to the SR's request for credit status re-evaluation with a specific time limit. The response should either state a determination as to the SR's credit status, with reasons for the decision, or explain why the determination will be made at a future date. A decision must be made within a specified period of time.

Is this written response to be transmitted by email?

Proposed Standard 0.3zM

This proposed standard sets the following criteria for an SR to receive initial service and for a shipper to **continue to receive service**:

The SR or shipper must be creditworthy or provide credit alternatives

The SR or shipper must be current on all undisputed payments to the TSP

The SR or shipper must be in compliance with all terms of the TSP's tariff or service agreement.

AGA has serious concerns with the way this proposed standard is drafted in that it is not sufficiently delineated to apply to creditworthiness issues only. We would like to confirm that this proposed standard is not an enforcement standard and does not mean that the TSP can terminate service to an existing shipper simply because it believes the shipper is not in compliance with all of the terms of its tariff or service agreement. If that is the case, there are many more standards that would have to be drafted to determine how termination is achieved, whether written notice is required, how much notice to a shipper is required, whether an order from the Federal Energy Regulatory Commission approving such termination is required, etc. Is NAESB then defining very broad and important policy matters that are addressed by FERC?

Is the proposed standard meant instead to apply to only non-creditworthy shippers as opposed to a shipper that may not meet one or more tariff provision or that may be one-day late on a payment, for example? Moreover, even as to non-creditworthy shippers, is the third criterion intended to address only terms and conditions in the tariff applicable to eligibility to receive and continue to receive service? Or is the third criterion limited to only those provisions in the tariff addressing creditworthiness? Is the third criterion necessary in this context?

Additionally, the use of two separate terms in this proposed standard, “SR” and “shipper” further confuses the use of the term “SR” elsewhere in the proposed standards.

Proposed Standard 0.3zN

This proposed standard is meant to provide an SR that is determined to be non-creditworthy by the TSP the ability to provide credit alternatives in the form of a guarantee from a creditworthy entity, an irrevocable letter of credit from a creditworthy entity or prepayment of service. The TSP is given the ability to accept or reject the credit alternative, but it may not reject the alternative unreasonably. The SR and the TSP may agree to other forms of credit alternatives not listed in the proposed standard.

Does this proposed standard also permit an existing shipper who loses its creditworthiness status to offer the same types of credit alternatives? This proposed standard is another example of how the common term “service requestor” is confusing. Without the reader knowing more, this proposed standard could be interpreted to allow credit alternatives to new shippers requesting service but not to existing shippers.

Proposed Standard 0.3zO

This proposed standard requires the TSP to specify in its tariff the amount of alternative credit assurance that will be required of a SR that is not creditworthy. This proposed standard does not apply to shippers who are subscribing to new service in connection with construction, expansion, acquisition or lease of new facilities.

Proposed Standard 0.3zP

This proposed standard requires interest to be paid by the TSP on any cash payments submitted as a credit alternative, but no interest will be paid on a one-month advance payment made in order to continue service on a TSP after a SR has been determined to be non-creditworthy. This proposed standard also gives the TSP the sole option to allow the SR to deposit cash as a credit alternative into an escrow account that will provide the SR the interest payments and the TSP the assurance of payments for service.

This is another proposed standard where the use of the common term “service requestor” is confusing.

The language of this proposed standard is confusing and may be interpreted differently depending on which party is interpreting it. While it is clear that the shipper will not receive interest on the one-month advance payment, it is not clear how interest is applied, for example, to a three-month credit assurance that follows a one-month prepayment (e.g., to the entire amount or just the last two months).

Proposed Standard 5.3zA

This proposed standard allows a TSP to terminate a release transaction if the “original Service Requestor’s” service is terminated due to default or failure to maintain creditworthiness. The replacement shipper can continue the service if it agrees for the remaining term of the contract to pay the original shipper’s contract rate, the maximum tariff rate applicable to the original shipper’s service or another rate acceptable to the TSP.

If the TSP is going to terminate service, it must give notice to the replacement shipper, according to its tariff. Re-releases are not addressed by this proposed standard.

This proposed standard highlights the problem with the term “service requestor” as it is very unclear in reading this proposed standard whether the service requestor in this proposed standard is the releasing shipper or the replacement shipper. Also, the use of the term “original” is confusing because the proposed standard states that it does not apply to re-releases.

Proposed Standard 5.3zB

This proposed standard requires the TSP to evaluate the creditworthiness of a shipper bidding on released capacity as if that shipper were seeking to buy capacity directly from the pipeline. This proposed standard does not apply to permanent releases.

While this proposed standard is critical to LDCs in order to ensure that they are releasing capacity to creditworthy shippers and therefore are less exposed for nonpayment, the exclusion of permanent releases is problematic. Is it justifiable to adopt a standard that does not treat all releases equally? Why are permanent releases excluded? Does the fact that the proposed standard does not apply to permanent releases mean the pipeline will not evaluate the creditworthiness of a permanent replacement shipper or will evaluate it using different criteria?

Proposed Standard 5.3zC

This proposed standard establishes a process for shippers bidding on released capacity to pre-qualify creditworthiness with the pipeline up to a certain level before actually bidding on released capacity. Pre-qualifications are subject to periodic reevaluation by the pipeline.

As written, it is not clear whether the purpose of this proposed standard is to create an optional process to pre-qualify those bidding on released capacity or whether it is to create a required pre-qualification process.

The proposed standard should be clarified or amended by deleting the words “seek to” and the words “upon request by the SR” so that it is clear it is creating a pre-qualification requirement for those bidding on released capacity. It is our view that this proposal is consistent with the approved bidder’s list language that exists in several interstate pipeline tariffs on file with FERC.

Proposed Standard 5.3zD

This proposed standard prohibits a TSP from awarding a capacity release to a SR unless and until the SR meets the TSP’s creditworthiness requirements with regard to all of the services it is receiving from the TSP.

If the proposed standards require a prequalification process with the TSP prior to bidding, concerns with this proposed standard are alleviated. If pre-qualification is not necessary, does this proposed standard create a time-lag between capacity being successfully bid upon and the time that the capacity can be used?

Is the releasing shipper at risk for losing the award, which would require a reposting of the release and the loss of the revenue from the capacity release in the interim?

Does this proposed standard violate FERC's comparability principles associated with capacity release transactions?

To alleviate these concerns, it should be clarified that this proposed standard operates in conjunction with Standard 5.3.2.

Furthermore, the language of the proposed standard is not clear as to how the creditworthiness calculation will be made with regard to "all services that it received from the TSP including the service represented by the capacity release." As an example, for simplification, is it the case that if someone is pre-qualified to do a million dollars worth of business with the TSP and they are contracted for \$950,000 worth of service, then they are awarded a package that gives them \$50,000 more exposure, they move forward and can nominate gas to flow using the capacity but that if the capacity release awarded has \$70,000 worth of exposure, they have to come up with the extra \$20,000 in some fashion within the requirements of standard 5.3.2? Even under this example, however, what services constitute those valued at \$950,000 – e.g., would the value of imbalances be included in this credit limit calculation?

Proposed Standard 5.3zE

This proposed standard requires a TSP to allow an existing service requestor to permanently release its capacity to a replacement shipper under the same terms and conditions of the releasing shipper's contract, or other mutually agreeable terms and conditions, so long as the replacement shipper meets the TSP's creditworthiness and other tariff provisions qualifying shippers to receive service.

The use of the term "existing Service Requestor" further confuses the identity of a shipper vs. a potential shipper. Is this term meant to be synonymous with an existing shipper who releases capacity?

A permanent release in this proposed standard refers to a release for the remaining term of the contract and the original capacity holder no longer has any liability to pay for the capacity.

Proposed Standard 5.3zF

This proposed standard provides that a TSP should provide the releasing shipper with email notification when it provides notice to its replacement shipper of the following:

1. past due, deficiency, or default notice pursuant to the TSP's tariff;
2. suspension of service notice;
3. contract termination notice due to default or credit-related issues;
4. notice that a request for information has been initiated by the TSP for the purpose of credit evaluations, excluding routine communication related to credit maintenance or new service; and
5. notice that a replacement shipper(s) is no longer creditworthy and has not provided credit alternatives(s) pursuant to the TSP's tariff.

This proposed standard is important for LDCs and gives them protections in the capacity release process. If a Replacement Shipper defaults on any obligation to the pipeline, the releasing shipper(s) should be notified in order to have the discretion to use any recall capacity provisions in the contract.

It should be clarified that the notice will go to the original releasing shipper, even if the capacity has been re-released.

Proposed Standard 5.3zG

This proposed standard provides that the releasing shipper should provide the TSP with email addresses for one or two representatives who should receive the notification specified in Proposed Standard 5.3zF.

Proposed Standard 5.3zH

This proposed standard allows the TSP and releasing shipper to agree to other forms of notification of the items specified in Proposed Standard 5.3zF.

Conclusion

AGA hopes that the EC will dedicate its efforts at the meeting on May 20 to ensuring that the proposed standards are clarified so as to avoid future disputes over their meaning. The EC's goal should be to create a comprehensive, clear report for FERC to consider in its deliberations over creditworthiness policies.

Respectfully submitted,

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