

COMMENTS OF NATIONAL FUEL GAS DISTRIBUTION CORPORATION (“NFGDC”)
NAESB WGQ 2011 Annual Plan Item 6
3/17/2011

Based upon the Special Provisions submitted to date, NFGDC observes that 1) very few provisions have been submitted and 2) for the most part, these while provisions merit consideration for unique circumstances between counter-parties, they may not all be suitable to be industry standard provisions.

Based upon its experience, NFGDC observes that the 2006 Base Contract has not displaced the 2002 Base Contract and that many parties actually prefer the latter. There may be any number of reasons for this preference; perhaps parties believe the 2002 Base Contract is simpler (thus easier with which to work) or that the 2006 Base Contract does not provide enough benefit to displace the 2002 Base Contract as a starting point for negotiations. Either contract appears to be a valid place to start and counter-parties have apparent ease adding mutually agreeable special provisions. No doubt some companies support both versions because simply because it is practical to do so from a business perspective.

In some respects, NFGDC believes it would be more productive to have the WGQ Contracts Subcommittee use the 2002 Base Contract as a starting point for consideration of addition provisions. As appealing as this might be for some parties, this approach would be counter to past practice for the subcommittee and might necessitate reconsideration of provisions from the 2006 Base Contract. On the other hand, modifying an agreement that is not as widely used might yield a ‘2011 Base Contract’ that is less widely used than the 2006 Base Contract.

Given that very few provisions have been submitted for consideration, NFGDC believes it might be better for the subcommittee to take a step back and survey the industry to determine why parties prefer one vintage of the contract or another. Further, it may make sense to re-brand the contracts from their vintages to something like “A” and “B” or “Lite” and “Full”. The Base Contract is unlike the business practice standards where the expectation is that newer versions replace older versions. It may make more sense to more formally embrace this difference through re-branding. Certainly it makes no sense to abandon the 2002 Base Contract if it still used. Additionally, it makes sense to evolve to 2006 Base Contract in a manner that meets the needs of those who use that contract as well as to make changes that further it’s acceptance. NFGDC recommends deferring consideration of provisions submitted to date until after survey results could be analyzed. Further, other parties could submit additional provisions for consideration during the deferral period. Hopefully the survey would raise awareness of AP Item 6 and bring a larger cross-section of the industry into the discussion.

NFGDC recognizes that the Annual Plan anticipates that a new contract will be produced this year. The Base Contract is one of NAESB’s flagship workproducts and great care should be taken when considering changes thereto. NFGDC is concerned that the current track could lead to an on-time delivery of a workproduct that is not equal to it’s predecessors. Taking more time, even if completion does not happen this year, could be a better course of action.

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3/18/2011