



*Filed Via Email (naesb@naesb.org)*

November 28, 2022

North American Energy Standards Board  
1415 Louisiana Street, Suite 3460  
Houston, Texas 77002

**RE: AGA Comments in Advance of the December 5, 2022 GEH Forum Meeting**

North American Energy Standards Board:

The American Gas Association (“AGA”) appreciates the opportunity to provide supplemental comments in advance of the December 5, 2022 Gas-Electric Harmonization Forum (“GEH Forum”) meeting scheduled by the North American Energy Standards Board (“NAESB”).

**I. Introduction**

AGA, founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States. There are more than 77 million residential, commercial and industrial natural gas customers in the U.S., of which 95 percent — more than 73 million customers — receive their gas from AGA members. AGA is an advocate for natural gas utility companies and their customers and provides a broad range of programs and services for member natural gas pipelines, marketers, gatherers, international natural gas companies, and industry associates. Today, natural gas meets more than one-third of the United States’ energy needs. AGA is an active member of NAESB and participates in the various gas-electric coordination and harmonization efforts at NAESB and in other forums.

**II. Comments**

AGA submits this letter to, first, provide the GEH Forum with a recent American Gas Foundation (“AGF”) study titled “[Enhancing and Maintaining Gas and Energy System Resiliency - Areas of Focus and Change](https://gasfoundation.org/2022/10/14/enhancing-and-maintaining-gas-and-energy-system-resiliency/-Areas-of-Focus-and-Change)” (“AGF Resiliency Study”).<sup>1</sup> As discussed below, the AGF Resiliency Study discusses matters that are relevant to the work of the GEH Forum and issues that have been discussed at the various meetings. The AGF Resiliency Study examines regulatory changes that will support investments and infrastructure improvements necessary to support broader energy system resilience. The AGF Resiliency Study concludes that the ability of the gas

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<sup>1</sup> Available at <https://gasfoundation.org/2022/10/14/enhancing-and-maintaining-gas-and-energy-system-resiliency/-Areas-of-Focus-and-Change> (last visited November 28, 2022) and submitted with this letter.

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system to meet seasonal and peak day demands and to reliably deliver natural gas, even during high-impact events, represents an important and valuable resource that must be considered when designing future energy systems and building pathways to a low-carbon future.

More citizens are reliant on gas-powered electricity to meet their energy needs during peak demand periods and high-impact events, placing an added burden on the nation's natural gas pipeline network. Regulators must create a framework for natural gas utilities to make resiliency investments and upgrades. The AGF Resiliency Study presents several recommendations to help policymakers achieve that goal.

As noted in the AGF Resiliency Study, legislation or other federal directives to the Federal Energy Regulatory Commission ("FERC") could establish baseline resilience requirements for jurisdictional energy systems. In addition, according to the study, FERC can develop rules that require electric generators operating in regulated power markets to engage with fuel suppliers that adhere to resilience requirements. The AGF Resiliency Study goes on to say that FERC resiliency requirements may be adopted by some states and utilities provided that supportive policies in the state and regulatory arenas recognize regional differences and state-specific requirements.

The AGF Resiliency Study also recommends improving the interdependencies and coordination between the electric and natural gas industries, saying that FERC and the U.S. Department of Energy ("DOE") should consider policy and rules that recognize the importance and interdependencies and coordination of the natural gas and electric energy systems. In parallel, state commissions can establish workshops and/or dockets that establish policy and rules that recognize the importance and interdependencies of the natural gas and electric energy systems to ensure the points raised in the study are recognized and implemented at the federal level.

AGA can arrange to have the appropriate representatives present the AGF Resiliency Study at a future meeting if the Co-Chairs of the GEH Forum believe it will benefit the overall discussion.

Second, AGA provides these supplemental comments to respond to certain issues raised at the November 8, 2022 GEH Forum meeting. Some of the matters raised at the last GEH Forum meeting would not preserve and enhance reliability for all customers, both gas and electric. Moreover, some of the proposals would undermine an important pillar of the existing regulatory framework that ensures reliability and resiliency. Therefore, AGA provides a brief response to the matters raised at the November meeting.

#### **A. Enhancing and Maintaining Gas and Energy System Resiliency**

As discussed above, the AGF issued a study titled "Enhancing and Maintaining Gas and Energy System Resiliency - Areas of Focus and Change." The study was conducted to investigate the resilience of the U.S. gas system and the necessary changes required to the regulatory framework to support gas resilience investments. The full report is available on the AGF's webpage<sup>2</sup> and it is being submitted with this letter.

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<sup>2</sup> See [gasfoundation.org](https://gasfoundation.org).

In summary, the study explains that resilience is an inherent and crucial component of a dependable energy system, which is obtained through diverse and redundant energy sources. The ability of the gas system to meet seasonal and peak day demands represents an important and valuable resource that must be considered when designing future energy systems and building pathways to a low-carbon future. The report examines gas system resilience attributes, focusing on how it enables overall energy system resilience, changes to the regulatory framework to support gas resilience investments, and the infrastructure improvements necessary to support broader energy system resilience. The report also examines opportunities to enhance the resilience of the entire “energy system” and how future investments in the gas system that support the resilience of other parts of the energy system can also support a low-carbon future and the increased integration of renewables in both the gas and electric grids. A focus on the evolution of electric and gas grids as a complete energy system which includes additions of renewable supply is needed.

The resilience of the overall energy system rests upon gas system resilience since natural gas accounts for one-third of primary energy consumption across all principal sectors of the economy and is the primary fuel for the generation of electric power in the US. There is broad recognition that gas system resilience is critical to overall energy system resilience. As the use of natural gas has become the primary fuel for the generation of electric power, the importance of natural gas has increased beyond its role as a fuel for homes and businesses. Recent weather events have shown the value and necessity of a resilient gas system and the inextricable linkage between fuel delivery, the supply of electricity, and peak energy management across the gas and electric system.

The report provides the technical, commercial, and regulatory analysis associated with the resilience of the US gas system with the goal of identifying the necessary changes to the policy and regulatory framework for the energy industry to support gas resilience investments. It builds off the prior report published by the American Gas Foundation in January 2021: [Building a Resilient Energy Future: How the Gas System Contributes to US Energy System Resilience](https://gasfoundation.org/2021/01/13/building-a-resilient-energy-future/).<sup>3</sup>

The AGF Resiliency Study set out to address the following four key questions:

- What characteristics of the current regulatory framework enable or hinder gas resilience?
- What recommended changes are needed to fully enable gas system resilience?
- How can resilience be valued and measured to better qualify gas infrastructure investments?
- Through what modified regulatory frameworks can the recommended changes be implemented?

Resilience attributes of the gas system are examined in the study focusing on how it enables overall energy system resilience, the changes to the regulatory framework which may support future gas resilience investments, and the infrastructure improvements necessary to support broader energy system resilience into the future.

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<sup>3</sup> Available at <https://gasfoundation.org/2021/01/13/building-a-resilient-energy-future/> (last visited November 28, 2022).

## 1. High-Level Recommendations

According to the study, there are a number of recommendations that should be considered to achieve enhanced energy system resiliency:

**Recommendation: State Commission Analysis into Value of Gas Infrastructure -** Commissions may explore methodologies that look beyond used and useful analysis to understand the true value gas infrastructure provides to the resilience of the entire energy system - relying on traditional regulatory criteria may not cover the future benefits of resiliency or weather-related system improvements.

**Recommendation: Emphasize Safety and Renewable Integration When Seeking Approval -** When seeking approval for resilience infrastructure investments and stakeholder support, gas companies should emphasize the investment's value to ensure safety and the future integration of renewables in both the gas and electric systems.

**Recommendation: Focus on Enabling Mechanisms Emphasizing Resiliency and a Low-Carbon Future -** To achieve current and future resilience, regulatory and financial supportive mechanisms should be considered that emphasize the gas system's long-term role in a low-carbon energy system.

## 2. Downstream and Upstream of the City Gate Recommendations

Investments downstream of the city gate address the risk of upstream supply chain disruptions today, but greater investment may provide greater contingency planning.

Key downstream investment recommendations include:

- Increase investments in the weatherization of pipelines and storage distribution infrastructure.
- Continue improving downstream of city gate pipeline interconnections.
- Develop additional storage facilities on the gas distribution system to enhance the resilience of the overall pipeline distribution system.
- Introduce and expand the integration of alternative fuels (*e.g.*, hydrogen or RNG) or LNG produced and stored behind the city gate.
- Continue to modernize infrastructure, including distribution pipelines to help enhance safety, reliability, resiliency, and affordability while in turn driving down emissions and delivering ever more low-carbon gas supply solutions over time.

Key upstream investment recommendations include:

- Increase investments in the weatherization of well-heads, gathering, and processing systems, gas transmission networks, and storage facilities to ensure they are prepared for extreme weather events and potential duration changes.

- Continue to modernize aging pipelines and interconnections with long lived assets that support broader energy system resilience.
- Design systems to accommodate low-carbon fuels such that future system operations can continue to provide resilience benefits while supporting mid-century decarbonization emission reduction goals.

### 3. Federal and State Recommendations

**Recommendations: Federal and state intervention and approval to implement resilience measures** - At both the federal (*e.g.*, US House of Representatives, Senate, and federal agencies) and the state (*e.g.*, state legislative or regulatory commission) levels hearings may be held on the impacts and consequences of extreme weather events on the US or state, including the risks of prolonged outages to customers, utilities, and state economies.

- **Federal** - From the findings, Congress may consider issuing formal documentation notating the critical importance of enhancing energy system resilience, including the pipeline network and electric grid, to meet the challenges associated with climate change.
- **State** - At the state level, legislators may request utilities to develop plans that describe the resilience investments necessary to mitigate against the impacts of extreme weather events. Resilience is important for forward looking plans required by regulatory agencies or submitted to reduce carbon going forward. For example, New York recently passed legislation which allows utilities to recover their climate resilience plan costs through a specific cost recovery clause.

**Recommendations: Implement resilience regulatory requirements** - Both state and federal regulators may incorporate resilience into updated regulatory frameworks that govern the broader energy system.

- **Federal** - By the means of legislation or other federal directives, the FERC can address this issue by establishing baseline resilience requirements for jurisdictional energy systems, possibly via the North American Electric Reliability Corporation (“NERC”). In addition, they can develop rules that require electric generators operating in regulated power markets in FERC’s jurisdiction to engage with fuel suppliers that adhere to resilience requirements.
- **State** - While FERC resiliency requirements or related rules may be adopted by some states and utilities, supportive policies in the state and regulatory arenas should recognize regional differences and state-specific requirements. State regulators will also need legislative support to expand the principle of “used and useful” to include the approval of resilience asset investments that may have very low utilization through their targeted response to high-impact, low-probability events.

**Recommendations: Enable federal and state funding support for resilience investments for all energy sources.**

- **Federal** - Federal legislation could provide federal funding avenues for resilience investments, including both upstream and downstream of the city gate. Congress can also consider either amending the Infrastructure Investment and Jobs Act (“IIJA”) or producing new legislation to provide energy system infrastructure resilience investment avenues.
- **State** - A template tariff for natural gas distributed energy resources may be developed to compensate local natural gas utilities (“LDCs”) for resilience investments. This would help address supply during peak demand periods (*e.g.*, winter heating season) and help allocate a portion of the revenues earned by distributed energy resources (“DERs”) from participation in wholesale capacity markets and demand response programs.

States can also consider innovative regulatory constructs to manage the costs from energy system resilience investments and extreme weather impacts.

**Recommendations: Improve the interdependencies and coordination between the electric and natural gas industries.**

- **Federal** - FERC and DOE may consider policy and rules that recognize the importance and interdependencies and coordination of the natural gas and electric energy systems to ensure the points raised above are recognized and implemented at the federal level.
- **State** - In parallel, state commissions can establish workshops and/or dockets that (i) establish policy and rules that recognize the importance and interdependencies of the natural gas and electric energy systems to ensure the points raised above are recognized and implemented at the federal level, (ii) recognize electric service to pipeline and distribution infrastructure as critical load so they are excluded from load shedding by utilities during extreme weather events; and (iii) establish broader state energy system dockets which review electric and natural gas initiatives that support overall energy system resilience.

**B. The Overall Goal Should be to Preserve and Enhance Reliability for All Customers, Both Gas and Electric**

In a September 14, 2022 letter submitted to the GEH Forum (“September 14 Letter”) AGA listed a few preliminary recommendations and concerns regarding the forum’s activities.<sup>4</sup> The first item stated that the overall goal should be to preserve and enhance reliability for all customers, both gas and electric. AGA also maintained that reliability efforts should be coordinated so that the reliability of one system is not achieved at the expense of the other system’s customers. AGA

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<sup>4</sup> AGA incorporates the September 14 Letter into this letter by reference.

further explained, *inter alia*, that any harmonization effort must preserve the historic quality of service received by all firm pipeline customers. During the November 8 GEH Forum meeting, however, concepts were discussed that could hinder service to gas customers, disputed the need for natural gas utilities to plan to meet customer needs, and challenged utility service obligations.<sup>5</sup> Each of these concepts could reduce the reliability of gas customers and undermine the ability of LDCs to receive the pipeline services that have been contracted for to serve customers.

The ability to serve customers safely and reliably cannot be frustrated. First, regarding the proposal that there should be an examination regarding how pipeline capacity is allocated, as AGA explained in its September 14 Letter, interstate pipeline prioritization should remain subject to FERC's authority under Commission approved tariffs and its non-discrimination policy.<sup>6</sup> FERC's policy mandates non-discriminatory transportation of natural gas.<sup>7</sup> Moreover, FERC requires that pipelines establish a level playing field for all shippers on the interstate pipeline system so that "no gas seller has an advantage over another gas seller."<sup>8</sup> Attempts to alter pipeline capacity allocations based on end-uses invites – rather than resolve – controversy, and would be completely inconsistent with FERC's non-discrimination policy as well as other policies. Furthermore, any attempts to reallocate pipeline capacity and redirect supply would not only run afoul of state and federal laws and requirements, it may also be inconsistent with any applicable contract terms and general contract law.

During the discussion on November 8, the concept that LDCs should not plan for contingencies and that the utilities' service obligations should be reviewed were also raised. As an essential predicate to providing natural gas distribution services, LDCs develop and implement detailed long-term supply plans<sup>9</sup> that are subject to periodic update, review and approval processes,

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<sup>5</sup> See, e.g., Comments of and discussion with Mark Spencer, LS Power, WEQ – Generator.

<sup>6</sup> Notably, interstate and intrastate pipelines may have different prioritization mechanisms due to differing regulatory requirements. Even if local rules permit different prioritization, this should not impact interstate pipelines. Natural gas supply being transported via an interstate pipeline to an LDC in one state should not be adversely affected by local rules in another state.

<sup>7</sup> *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, FERC Stats. & Regs. ¶ 30,665 (1985), vacated and remanded, *Associated Gas Distribs. v. FERC*, 824 F.2d 981 (D.C. Cir. 1987), readopted on an interim basis, Order No. 500, FERC Stats. & Regs. ¶ 30,761 (1987), remanded, *Am. Gas Ass'n v. FERC*, 888 F.2d 136 (D.C. Cir. 1989), readopted, Order No. 500-H, FERC Stats. & Regs. ¶ 30,867 (1989), *reh'g granted in part and denied in part*, Order No. 500-I, FERC Stats. & Regs. ¶ 30,880 (1990), *aff'd in part and remanded in part*, *Am. Gas Ass'n v. FERC*, 912 F.2d 1496 (D.C. Cir. 1990), *order on remand*, Order No. 500-J, FERC Stats. & Regs. ¶ 30,915, *order on remand*, Order No. 500-K, FERC Stats. & Regs. ¶ 30,917, *reh'g denied*, Order No. 500-L (1991).

<sup>8</sup> *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs. ¶ 30,939, at 393, *order on reh'g*, Order No. 636-A, FERC Stats. & Regs. ¶ 30,950, *order on reh'g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992), *order on reh'g*, 62 FERC ¶ 61,007 (1993), *aff'd in part and remanded in part sub nom. United Dist. Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997).

<sup>9</sup> As one state court succinctly explained, "[n]ecessarily encompassed within a utility's obligation to serve is an attendant obligation to plan and make reasonable provision for the continuing availability of its products or services in order to meet reasonably expected future demand, given the information which the utility possesses and the options open to it." *People's Org. for Wash. Energy Res. v. Utils. & Transp. Comm'n*, 104 Wn.2d 798 (Supreme Court of Washington, 1985).

as applicable.<sup>10</sup> Guided by past experience and regulatory oversight, LDCs plan natural gas deliveries on a daily, weekly, monthly, and seasonal basis by matching supply resources to forecasted demand and preparing for “design day” conditions (or a historic “peak day” load). This is done because the highest priority for a natural gas utility is the ability to deliver natural gas to its customers safely,<sup>11</sup> reliably, responsibly, and at just and reasonable rates.<sup>12</sup> There are serious public safety implications if an LDC has a service interruption during winter, hence the robust planning.

LDCs are obligated, in accordance with applicable state law and regulatory requirements, to distribute natural gas to retail residential, commercial, governmental, and industrial customers.<sup>13</sup> A fundamental principle of public utility regulation relevant to this analysis is the “regulatory contract” or “regulatory compact” theory. The “regulatory contract” has been said to be a “bedrock” principle underlying utility regulation.<sup>14</sup> It reflects a *quid pro quo*, under which a utility is permitted to serve an area, subject to reasonable rate regulation and the expectation that the utility has a “duty to serve,” *i.e.*, the utility cannot selectively decide what customers it will and will not serve. To challenge a utility’s service obligation is an attack on the regulatory compact and the regulatory relationship between the public and a utility.

### III. Conclusion

The American Gas Association respectfully requests that NAESB and the GEH Forum consider these comments.

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<sup>10</sup> This update, review, and approval process relates to both internal company practices and, where applicable, regulatory review. *See, e.g.*, Mass. G.L. c. 164, § 69I (the Massachusetts Department of Public Utilities shall approve or reject utility company long-range plans).

<sup>11</sup> Regarding safety, natural gas distribution pipeline systems are regulated by the Pipeline & Hazardous Materials Safety Administration, and its state partners, under 49 CFR Part 192.

<sup>12</sup> Elements of a utility’s retail services are regulated at the state level.

<sup>13</sup> Most laws or regulations that govern utility service include the concept of the “obligation to serve.” In short, this duty stems from the reality that when a franchise service territory is granted by a state or regulatory entity a public interest is established in maintaining reliable service. *See, e.g.*, 66 Pa. Cons. Stat. § 2207 (stating that “the natural gas distribution company shall serve as the supplier of last resort for residential, small commercial, small industrial and essential human needs customers and any other customer classes determined by the commission”); Nev. Admin. Code § 704.499 (stating that each utility shall exercise reasonable diligence and care to provide customers with natural gas and to the extent possible, should avoid any shortage or interruption).

<sup>14</sup> *See, generally, United States Gypsum, Inc. v. Indiana Gas Co.*, 735 N.E.2d 790 (Ind. 2000).



Respectfully submitted,

A handwritten signature in black ink, appearing to read "Matthew J. Agen", is positioned above a horizontal line.

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Enclosure: American Gas Foundation, “Enhancing and Maintaining Gas and Energy System Resiliency - Areas of Focus and Change”