



Submitted Via Email (naesb@naesb.org)

October 16, 2023

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

RE: Comments on Standards Request No. R23001

North American Energy Standards Board Wholesale Gas Executive Committee:

The American Gas Association (“AGA”) appreciates the opportunity to provide these comments in response to Standards Request No. R23001 that proposes revisions to the North American Energy Standards Board (“NAESB”) Base Contract for Sale and Purchase of Natural Gas (“Base Contract”), specifically the force majeure provisions in the Base Contract. AGA provides these comments on the September 14, 2023 no action recommendation of NAESB’s WGQ Contracts Subcommittee meeting. As explained below, AGA submits these comments supporting the continued discussions surrounding Standards Request No. R23001 and opposing the no action recommendation.

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 96 percent — more than 74 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.¹ AGA is an active NAESB member and AGA members utilize the Base Contract on a regular basis.

¹ For more information, please visit www.aga.org.

II. Comments

A. Background

On May 3, 2023, Southwest Power Pool, PJM Interconnection, MISO Energy, Texas Competitive Power Association, UGI Utilities, and CenterPoint Energy submitted a standards request, “Enhancement to the NAESB Base Contract for Sale and Purchase of Natural Gas Force Majeure Terms.” The request was assigned No. R23001. NAESB’s WGQ Contracts Subcommittee held a meeting on Tuesday, July 25, 2023 to discuss Standards Request No. R23001. Sabine Pass Liquefaction, LLC (Wholesale Gas Quadrant, End User Segment) submitted comments to Standards Request No. R23001 on behalf of itself and its affiliated NAESB members Corpus Christi Liquefaction, LLC (Wholesale Electric Quadrant, End User Segment), and Cheniere Creole Trail Pipeline, L.P. (Wholesale Gas Quadrant, Pipeline Segment) (collectively, “Cheniere”) on July 25, 2023, prior to the scheduled subcommittee meeting. During the WGQ Contracts Subcommittee meeting, Cheniere moved for a no action recommendation vote on Standards Request No. R23001. Following the July 25 meeting, NAESB issued a request from the Chair of the NAESB WGQ Contracts Subcommittee for an informal comment period on two items discussed during the July 25 WGQ Contracts Subcommittee meeting:

- Standards Request No. R23001 – Proposed revisions to the NAESB Base Contract for Sale and Purchase of Natural Gas to improve the clarity associated with the force majeure provisions in the contract, and
- Comments Submitted by Cheniere in Response to Standards Request No. R23001.

AGA submitted informal comments in response to the request on September 5, 2023. On September 14, 2023, the WGQ subcommittee held a meeting to review the comments submitted in response to Standards Request No. R23001 and held a vote on the no action motion by Cheniere. The no action motion passed, despite being unanimously opposed by the LDC segment. Specifically, AGA opposed the no action motion and voted against it. Following the September 14 meeting, NAESB issued a notice to submit formal comments in response to the no action recommendation by October 16, 2023. AGA reiterates and expands on certain points presented in its September 5 comments.²

B. AGA Supports Stakeholder Discussion of Standards Request No. R23001

AGA supports continued discussion of Standards Request No. R23001, and the important supply and contracting issues raised by the request, among the WGQ Contracts Subcommittee participants and at NAESB. Standards Request No. R23001 raises important issues related to the NAESB Base Contract and the force majeure provisions in the contract and these issues should be discussed by the WGQ Contracts Subcommittee. Notably, this issue was raised as part of the

² AGA incorporates its September 5, 2023 comments into the comments by reference. *See* https://www.naesb.org/pdf4/wgq_contracts091423w8.pdf.

Gas-Electric Harmonization Forum (“GEH Forum”), has been raised in at least one state regulatory proceeding, and has come to the forefront due to Winter Storms Uri and Elliott.

Overall, this is a reliability issue for natural gas utilities (“LDCs”). Due to the obligation to serve, LDCs develop detailed long-term supply plans to ensure that they can reliably meet the physical demand for service on peak days both today and in the future. Acquiring and maintaining natural gas supply is an integral part of this planning process. LDCs rely on contractual agreements with suppliers as part of that process. The contract terms should not be barriers to receiving service, since supply contracts are essential to receiving reliable service.

Furthermore, Winter Storms Uri and Elliott highlighted production concerns in the production area. Notably, during Winter Storm Elliott, the Energy Information Administration reported a record-breaking U.S. domestic demand of 155.7 Bcf per day for December 23, 2022.³ Temperatures produced by Winter Storm Elliott caused wellhead freeze-offs which resulted in a 9.1 Bcf per day drop in production, from 96.2 Bcf to a seven-day average of 87.1 Bcf per day as reported by S&P Global.⁴ The majority of the production reduction occurred in the Northeast, Midcon, and Texas.⁵ The Northeast experienced the largest drop in production, falling from 34.6 Bcf per day the week prior to December 25th, to 24.6 Bcf per day on Christmas Day.⁶ S&P Global reported that this was the lowest level of production since November 2017.⁷ During this time period, cold (but not excessively cold) temperatures, in conjunction with the week-over-week loss in production, forced some LDCs to rely on contingency supplies, including not only ordinary storage withdrawals, but also even LNG peaking supplies, which would typically be called upon only during truly peaking days. Dispatching peaking supplies in response to Winter Storm Elliott so early in the winter created risks that insufficient supplies would remain available later in the winter, when colder temperatures could be expected. Such production declines are concerning to LDCs because, as noted above, supply contracts and performance pursuant to the contracts are an essential element to providing reliable service to customers and during peak conditions there are limited contingencies available, if any, for such supply losses. Rather than not discussing the matter, stakeholders and NAESB should actively encourage the discussion of Base Contract provisions, seeking a consensus wherein doing so will aid in ensuring reliable service.

Importantly, the supply issues during Winter Storm Elliott were discussed recently by FERC and NERC staff when the key findings and recommendations related to the December 2022 Winter Storm Elliott grid operations were presented at a recent FERC Open Meeting.⁸ The presentation and related press release highlighted the freeze-related production declines in production of Marcellus (23 percent) and Utica (54 percent) shales, as well as other natural gas

³ See AGA’s Natural Gas Market Indicators – January 17, 2023 (available at <https://www.aga.org/research-policy/resource-library/natural-gas-market-indicators-january-17-2023>).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ See Presentation FERC-NERC-Regional Entity Joint Inquiry Into Winter Storm Elliott (September 21, 2023), available at <https://www.ferc.gov/news-events/news/presentation-ferc-nerc-regional-entity-joint-inquiry-winter-storm-elliott>.

infrastructure freeze- and equipment-related problems.⁹ FERC explained that every cold weather inquiry report that has studied natural gas production has found cold-related declines in natural gas production, by as much as 70 percent in some cases.¹⁰ For Winter Storm Elliott, the presentation explained that Consolidated Edison Inc., which serves the greater New York Metropolitan area, faced reliability-threatening low pressures on its delivery pipelines, forcing it to declare an emergency and use its own LNG facility to maintain service. Notably, FERC Chairman Phillips stated, following FERC’s staff’s presentation, that “[i]t’s abundantly clear that we must make major improvements to the cold-weather reliability of both the natural gas and electricity production and grid systems.”¹¹ AGA supports continued stakeholder discussions in order to address the important LDC reliability issues highlighted by FERC.

Addressing the force majeure language of the Base Contract was also discussed during the GEH Forum and was Recommendation 4 in the final Gas Electric Harmonization Forum Report.¹² AGA voted in support of Recommendation 4 and throughout the GEH Forum process AGA stated the following related to the force majeure element of the Base Contract in letters and survey responses:

- “While there may be practical concerns related to implementation, AGA supports strategies or requirements to incent weatherization and resiliency upgrades of natural gas infrastructure, recognizing there are challenging jurisdictional questions that would need to be addressed. AGA supports legislation or economic incentives that make weatherization or resilience investment likely or otherwise mandatory, compared to strictly voluntary standards. AGA supports the consideration of revisions to the NAESB based contract, e.g., the force majeure provision. Moreover, such efforts should be prioritized.”¹³
- “AGA is supportive of additional reporting requirements surrounding force majeure declarations. While LDCs currently receive letters from suppliers regarding force majeure events, they typically arrive days after the event and are therefore unable to provide value for real time operations. The only real time notifications occur in the form of pipeline reductions.”¹⁴
- “AGA is supportive of NAESB initiating the process of updating the force majeure provision in the NAESB base contract. Force majeure should not apply to interruptions due to simple cold weather events. The force majeure provision in the NAESB base contract should be revised to narrow its scope and prevent risk shifting onto end-users.

⁹ See <https://www.ferc.gov/news-events/news/elliott-report-complete-electricity-standards-implement-gas-reliability-rules>.

¹⁰ *Id.*

¹¹ *Id.*

¹² Gas Electric Harmonization Forum Report, July 28, 2023, p. 5 and 27-28, (available at https://www.naesb.org/pdf4/geh_final_report_072823.pdf).

¹³ AGA Letter and Survey Response, NAESB/Gas-Electric Harmonization Forum, February 27, 2023.

¹⁴ AGA Letter and Survey Response, NAESB/Gas-Electric Harmonization Forum, March 31, 2023.

A revised force majeure provision could strengthen market incentives for winterization investments.”¹⁵

AGA also supports continued discussion of Standards Request No. R23001 because the Base Contract is a matter of concern for state regulators. For example, the Minnesota Public Utilities Commission ordered various LDCs to:

[P]articipate in the North American Energy Standards Board Gas/Electric Harmonization Forum and other relevant efforts to track and pursue beneficial reforms, such as improving the force majeure language in the NAESB standard contract.¹⁶

Notably, Standards Request No. R23001 states that proposals contained therein are “suggestions for consideration to address the concepts identified and not necessarily meant to be final contract language,” and, hence, are proposed potential revisions for discussion purposes. To end discussion of a proposal meant to initiate a stakeholder dialogue before it even begins is not in the best interest of the energy industry as this issue is of critical importance. Moreover, there are a range of options that could be discussed and ending discussions of the Standards Request No. R23001 at this stage would end stakeholder discussions of any potential revisions prematurely.

III. Conclusion

For the forgoing reasons, the American Gas Association supports continued stakeholder discussion regarding Standards Request No. R23001. AGA respectfully requests that NAESB consider these comments. AGA looks forward to continuing to work with NAESB on this important matter.

Respectfully submitted,



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¹⁵ AGA Letter and Survey Response, NAESB/Gas-Electric Harmonization Forum, April 24, 2023.

¹⁶ *In the Matter of a Commission Investigation into the Impact of Severe Weather in February 2021 on Impacted Minnesota Natural Gas Utilities and Customers, et al.*, Docket Nos. G-999/CI-21-135, et al., 2023 MINN. PUC LEXIS 51, at 56 (February 17, 2023).