



NORTH AMERICAN ENERGY STANDARDS BOARD

801 Travis, Suite 1675 • Houston, Texas 77002 • Phone: (713) 356-0060 • Fax: (713) 356-0067
email: naesb@naesb.org • Web Site Address: www.naesb.org

February 7, 2011
comments electrically submitted¹

Dr. Patrick Gallagher
Director, National Institute of Standards and Technology
Co-Chair, National Science and Technology Council's Sub-Committee on Technology
100 Bureau Drive, Stop 1000
Gaithersburg, MD 20899-1000

RE: Request For Information on Effectiveness of Federal Agency Participation in Standardization in Select Technology Sectors for National Science and Technology Council's Sub-Committee on Standardization, [Docket Number 0909100442-0563-02]

Dear Dr. Gallagher,

NAESB appreciates the opportunity to offer these comments on the "Effectiveness of Federal Agency Participation in Standardization in Select Technology Sectors." We offer the following general comments for consideration provided in Attachment A. In addition, we direct you to the 2006 Energy Law Journal article "North American Energy Standards Board: Legal and Administrative Underpinnings of a Consensus Based Organization"², authored by the NAESB General Counsel, William P. Boswell and former staff attorney, James P. Cargas.

We are grateful for the opportunity to contribute and are available to answer any questions or provide any additional information necessary to support the efforts of the National Institute of Standards and Technology and the National Science and Technology Council's Sub-Committee on Standardization in this endeavor.

With Best Regards,

Jonathan Booe

Jonathan Booe, Deputy Director, NAESB

cc: Rae McQuade, President, NAESB
Valerie Crockett, Chairman of the NAESB Board of Directors
William P. Boswell, NAESB General Counsel
Michael D. Desselle, Wholesale Electric Quadrant Vice Chairman of the NAESB Board of Directors
Ralph Cleveland, Retail Gas Quadrant Vice Chairman of the NAESB Board of Directors
J. Cade Burks, Retail Electric Quadrant Vice Chairman of the NAESB Board of Directors

¹ The Federal Register notes that comments will be accepted by email to SOS_RFI@nist.gov only.

² William P. Boswell & James P. Cargas, *North American Energy Standards Board: Legal and Administrative Underpinnings of a Consensus Based Organization*, 27 Energy L. J. 47 (2006).



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Comments of the North American Energy Standards Board

Standards-Setting Processes, Reasons for Participation and the Benefits of Standardization

The North American Energy Standards Board (NAESB) is an American National Standards Institute (ANSI) accredited, non-profit 501(c)(6) corporation formed with the support of the Department of Energy (DoE) for the purpose of developing voluntary standards and model business practices designed to promote more competitive and efficient natural gas and electric services that streamline the transactional processes of the natural gas and electric industries. NAESB and its predecessor organization, the Gas Industry Standards Board (GISB), have developed voluntary consensus based standards in these industries for nearly twenty years with the support of the Federal Energy Regulatory Commission (FERC), the DoE, the North American Electric Reliability Corporation (NERC), the National Association of Regulatory Utility Commissioners (NARUC) and state utility commissions among other governmental and industry agencies. The relationships formed between NAESB and these agencies have been fundamental to the organization's achievements and serve as an example of successful public-private partnerships.

NAESB maintains a membership of over three hundred corporate members, divided into four quadrants, representing the wholesale gas, wholesale electric, retail gas and retail electric markets and has more than two-thousand participants active in standards development. These quadrants are further divided into segments representing the various market participants of the respective quadrant. The purpose of this structure is to ensure that all entities participating in the market are represented and have an equal opportunity to participate and make decisions in the NAESB process. While NAESB is primarily funded through its corporate memberships, the NAESB standards development process allows for all interested parties to participate and vote in the standards development activities regardless of membership status. This practice is vital to ensure that all NAESB standards have been properly vetted by the industry prior to adoption.

All NAESB standards developed for the wholesale gas and wholesale electric markets are filed with the FERC and all NAESB standards developed for the retail gas and retail electric markets are submitted to NARUC and made available to all state commissions. With few exceptions, all NAESB wholesale market standards have been adopted by the FERC and mandated as federal regulation for federally jurisdictional entities through the FERC process of incorporation by reference. Many of the NAESB retail market standards have also been adopted by various state commissions and enforced in a similar manner. Through the NAESB process, all entities that may be affected by a standard have an opportunity to voice their opinions and vote through a balanced process, which ensures that no one segment of the market is dominated by the other. Participation in the NAESB process provides entities the opportunity to have a seat at the table for the development of standards that may be made mandatory and require implementation by that entity.

As previously noted, NAESB is an ANSI accredited standards development organization. This requires that the NAESB process adhere to the ANSI principles of openness, balance of interests, due process, consensus and the availability of an appeals process. Every step of the NAESB process is fully documented through agendas, work papers, minutes and transcripts in order to provide complete transparency of actions taken and decisions made in the standards development process. This is of the utmost importance for regulators who evaluate the NAESB standards in compliance with the National Technology Transfer and Advancement Act (NTTAA) and the Office of Management and Budget Circular A-119. A detailed description of the NAESB process in relation to regulatory



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activity can be found in the 2006 Energy Law Journal article “North American Energy Standards Board: Legal and Administrative Underpinnings of a Consensus Based Organization.”¹ This Energy Law Journal was drafted by the NAESB General Counsel and a former NAESB staff attorney and describes in detail the history of the organization and the process by which voluntary standards are adopted by federal agencies.

The standards setting activities of each NAESB quadrant are determined by the NAESB Board of Directors and managed through the NAESB annual plans. The NAESB governance structure provides a separation of powers between the Board of Directors, responsible for the strategic direction of the organization and management of the standards development process, and the Executive Committee, responsible for the standards development in fulfillment of the annual plans. This separation of powers ensures that the NAESB process is followed and not used to abate, delay or in anyway affect NAESB standards. Requests for standards development activity may be submitted in a number of ways and may come from a number of sources, including the FERC, state commissions, other government agencies, the North American Reliability Corporation (NERC) and NAESB members and non-members alike. To date, a large majority of the NAESB standards development activity has been initiated by the FERC for the wholesale market and by state commissions for the retail market.

Perspectives on Government’s Approach to Standards Activities

Since its inception, NAESB has maintained a very close relationship with FERC, NARUC, the DoE and NERC, along with other agencies. These relationships play a key role in the organization’s success and the continued support of the industry. NAESB staff and NAESB leadership meet frequently with the FERC and state commissioners, as well as the leadership at the DoE, NARUC and NERC to ensure that these agencies are aware of the NAESB standards development activities and that the activities meet the needs of policy makers.

As previously noted, a large portion of the NAESB standards development activity is initiated at the request of government and other energy industry agencies. Specifically, FERC has directed participants in the wholesale gas and electric markets to utilize the NAESB process to develop standards in response to policy decisions adopted by the Commission through their rulemaking process. Such action ensures that those subject to federal regulation have an opportunity to shape the implementation of standards in a cost effective, efficient manner that best serves the industry as a whole. This process also reduces the burden on the FERC by allowing the industry to resolve issues and formulate solutions to issues that would otherwise be presented, and potentially adjudicated, through the rulemaking process.

While the FERC and other agencies may submit standards requests and direct industry participants to implement policy through the NAESB process, it is important to recognize NAESB’s position as an independent consensus based organization. All standards developed through the NAESB process are voluntary and are industry driven. NAESB does not mandate the use of its standards to its members, nor does it monitor for compliance, set penalties for non-compliance or determine performance measures by which to define compliance. NAESB

¹ William P. Boswell & James P. Cargas, *North American Energy Standards Board: Legal and Administrative Underpinnings of a Consensus Based Organization*, 27 Energy L. J. 47 (2006).



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standards are only made mandatory through the actions of regulators. The organization is also prohibited from advocating the adoption of its standards by regulators and does not adopt standards that direct policy decisions unless previously approved by the Board of Directors.

In most cases, FERC's participation in the NAESB standards development process is limited to providing clarity or guidance on policy issues when necessary. This non-binding guidance is typically provided by FERC staff at the request of NAESB when a policy issue has been identified. However, FERC staff and NAESB did act jointly to help develop what we believe to be a unique electronic case filing system. Because of industry objections to an internally developed prototype FERC system, FERC asked NAESB to collaborate in the development of standards for a filing system that would be acceptable to industry but would provide the functionality needed by FERC. Unlike typical court or administrative agency electronic filing systems in which the entirety of a document must be filed, the NAESB/FERC system utilizes an XML data structure that allows affected entities to file individual tariff sections that FERC can input into a database used to reassemble the entirety of a pipeline or utility's tariff.

The FERC and other regulatory bodies also may affect the standards development timeline when an area of standards development has been identified as time sensitive or high priority. On average the lifecycle of the NAESB standards development process is ten to twelve months from request to fully vetted standard. However; when the need for a standard is made clear through a well defined policy statement by the regulatory body and is accompanied by strong industry executive support, the standards development timeline can be reduced to as little as four to five months.

Issues Considered During the Standards Setting Process

While NAESB standards are developed to address the needs of the North American markets, including Canada and Mexico, some NAESB standards have been reviewed and adopted by other international regulatory bodies. Indeed, NAESB has participated in international standards development for the European Union and the International Gas Union. We have also developed standards in conjunction with other groups, thus developing complementary work products. This joint development has occurred most notably with NERC.

All NAESB standards are copyright protected but made freely available to FERC, NARUC, requesting state commissions and other interested parties as determined on a case by case basis. The standards are freely available to all NAESB members and are available for purchase at a nominal cost to all non-members. All standards are also available for a limited evaluative period at the request of interested parties at no cost. The FERC has stated on many occasions, most recently in FERC Order 676-E¹, that the NAESB standards are reasonably available to the public in compliance with 5 U.S.C. 522(a).

NAESB has developed over one-thousand standards that have been adopted and mandated by regulatory bodies since incorporation. In that time, NAESB has not faced a challenge nor identified an issue concerning its

¹ Standards for Business Practices and Communication Protocols for Public Utilities, Order No. 676-E, FERC Stats. & Regs. ¶ 31,299 (2009).



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intellectual property right policy. The NAESB policy requires that all contributions of the participants in the standards development process are granted with a perpetual, irrevocable, non-exclusive, royalty-free, worldwide license under any intellectual property interest. The NAESB copyright policy and intellectual property right policy may be found through the following hyperlink: <http://www.naesb.org/copyright.asp>.

Adequacy of Resources

NAESB is a completely voluntary, industry driven organization. While the NAESB staff provides the legal and administrative support of the standards development activities, the membership and the industry at large are responsible for the development of NAESB standards. The significance of the request for standards development is therefore determined by the industry, which must dedicate resources and provide subject matter volunteers to participate in and complete the standards development process. Without membership support and participation, timely and effective standards development activities to meet North America's future energy requirements to enhance competitive market may not be possible. This membership driven process for development of standards ensures that the NAESB standards developed are recognized as helpful to the market; otherwise, the industry would not provide the needed volunteers to complete the standards.

Concluding Remarks

As previously noted, the key to NAESB's success and the benefits the organization provides to the industry as a whole are largely dependent on two factors: (1) the excellent working history NAESB has developed with the FERC, the DoE, the state commissions and NERC, and (2) the support of the industry through its volunteers. These relationships and the willingness of the industry to participate and provide subject matter experts has fostered a private-public partnership that allows the industry to participate in the implementation of regulatory policy in a way that is efficient, cost effective and, in the end, in the public's best interest.