**via posting**

**TO:** NAESB Retail Markets Quadrant (RMQ) and Wholesale Electric Quadrant (WEQ) Business Practices Subcommittee (BPS) Participants and Interested Parties,

**FROM:** Caroline Trum, Director, Wholesale Electric Quadrant

**RE:** Final Minutes from Joint RMQ BPS and WEQ BPS Conference Call – May 29, 2024

**DATE:** June 3, 2024

**NORTH AMERICAN ENERGY STANDARDS BOARD**

**Joint RMQ/WEQ Business Practices Subcommittee**

**Conference Call with Webcasting**

**May 29, 2024 – 1:00 PM to 4:00 PM Central**

**FINAL MINUTES**

1. **Welcome**

Ms. Sieg welcomed the participants to the meeting. Ms. Trum provided the Antitrust and Other Meeting Policies reminder. Ms. Sieg reviewed the agenda. Mr. Sappenfield moved, seconded by Maples, to adopt the draft agent. The motion passed a simple majority vote without opposition.

Ms. Sieg reviewed the draft minutes from the May 16, 2024 meeting with the participants. No modifications were offered. Mr. Sappenfield moved, seconded by Mr. Maples, to adopt the draft minutes as final. The motion passed a simple majority vote without opposition. The final minutes for the meeting are available at the following link: <https://www.naesb.org/pdf4/weq_rmq_bps051624fm.docx>

1. **Continue to Develop Initial Draft of the NAESB Base Contract for the Sale and Purchase of Distribution Services from DER Aggregations**

Ms. Sieg stated Mr. Sappenfield submitted a [Draft DS Base Contract Conditions Precedent Addendum](https://naesb.org/member_login_check.asp?doc=weq_rmq_bps052924w2.docx) (Conditions Precedent Addendum). She asked him to review the document. Mr. Sappenfield stated that the draft addendum incorporates the areas within the Base Contract for the Sale and Purchase of Distribution Services from DER Aggregations Work Paper identified by the participants as potential preconditions or conditions precedent and uses as a template the NAESB Renewable Natural Gas Addendum. He explained that the draft Conditions Precedent Addendum identifies what would be supplemental terms and conditions to the NAESB DS Base Contract.

Mr. Sappenfield reviewed the terms and conditions in the Conditions Precedent Addendum that would supersede and apply in lieu or in addition to, as applicable, the like-numbered sections of the NAESB DS Base Contract. He noted that Section 1.3 includes a reference to the WGQ Business Practice Standards that support the electronic communication of the NAESB Base Contract for the Sale and Purchase of Natural Gas and the Renewable Natural Gas Addendum, as does the expanded definition for ECS in Section 2.17. He explained that these references are placeholders and may need to be modified or deleted. Ms. Sieg stated that the NAESB Base Contract for Sale and Purchase of Voluntary Renewable Energy Certificates contains language that could be mirrored if needed.

The participants discussed the definition for Applicable Program in Section 2.36. Mr. Sappenfield stated that definition clarifies that the parties will identify the program under which the Seller is providing the distribution service as part of the Transaction Confirmation. He noted that during previous discussions, participants have indicated that the specific performance expectations and measurement and verification requirements will differ depending on the type of distribution service being provided or the program under which the service is provided. He explained that specifying the program type and distribute service within the Transaction Confirmation will allow parties to identify and provide notice regarding the applicable requirements that must be met.

Mr. Sappenfield stated that he included as part of the Conditions Precedent Addendum requirements similar to those included in the NAESB Renewable Natural Gas Addendum regarding the generation information systems (GIS) used to track renewable natural gas transactions. He explained that if a registry concept is not used as part of the sale and purchase of distribution services, then these references and applicable provisions will need to be struck. He stated that Sections 7.6.1, 15.2, and 15.13 would supplement and expand on provisions included in the NAESB DS Base Contract related to a party’s ability to conduct audits and regulatory oversight. The participants discussed including these provisions for potential consideration as part of the terms and conditions of the base contract.

The participants discussed the provisions of the addendum that would serve as new terms and conditions to specifically address the conditions precedent. Mr. Sappenfield explained that the intent of the provisions is to identify the additional requirements that must be met and agreements that must be in place prior to the initiation of purchase and sale transactions under the NAESB DS Base Contract. He suggested the use of a catch-all defined term for DS Interconnection Agreement that could be used to broadly reference all agreements that may be required to establish the aggregator’s Portfolio and the individual DERs as a resource within the aggregator’s Portfolio. He stated that these would include the pre-contracting validation and qualification requirements that must be met by an aggregator seeking to register a DER aggregation for distribution services.

Mr. Sappenfield noted that the addendum also includes a provision found in the Renewable Natural Gas Addendum to address transactions that are disqualified after Delivery because the product did not meet the specified requirements. He suggested the participants include a similar provision if there is the possibility of a similar concept being applicable to the sale and purchase of distribution services made as part of regulatory programs. Mr. Sappenfield stated that Section 16.4 addresses situations where time is of the essence and a commercial operations date has been agreed to by the parties of the contract. Ms. Sieg thanked Mr. Sappenfield and asked if there were any objections to moving forward with the addendum. None were offered. Mr. Sappenfield stated that he would make additional revisions to the document for the next meeting.

Ms. Sieg reviewed the Base Contract for the Sale and Purchase of Distribution Services from DER Aggregations Work Paper. The participants began by discussing Section 17. DER Aggregation Plan. Ms. Sieg noted that the [U.S. DoE Standard Distribution Services Contract White Paper](https://naesb.org/member_login_check.asp?doc=weq_rmq_bps052924w1.docx) (U.S. DoE Standard Contract White Paper) identified several areas related to aggregation plans, including aggregation rules and capacity limits, the implementation plan, customer and DER information, the customer engagement plan, and the aggregator code of conduct. She asked if these areas should be addressed within the general terms and conditions of the NAESB DS Base Contract or if these requirements should be included as part of the Conditions Precedent Addendum. Mr. Sappenfield stated that requirements related to the aggregation rules and capacity limits, the required customer information, and the aggregator code of conduct will likely vary based on the utility’s tariff or rules established by the applicable regulatory authority. He noted that these requirements are not likely to be directly related to conducting transactions under the contract. Mr. Dotson-Westphalen stated that some states like New York and California have adopted uniform business practices for DERs and DER service providers but noted that other states may take a different approach. He suggested that the default governing factor for any provisions in this area should be that parties must follow applicable state regulations. Mr. Sappenfield noted that failure to meet a term and condition established by the contract is considered nonperformance. He stated that in drafting language in this area, the participants should avoid unintentionally creating default events that could immediately trigger nonperformance. The participants agreed that this is an area where additional industry input could be helpful and to continue discussions on Sections 17.1.x2 – 17.1.x7 during the next meeting.

The participants discussed Section 18. Operational Coordination. Ms. Sieg stated that the U.S. DoE Standard Contract White Paper addresses performance forecast, planned and unplanned outages, and curtailment and derates as part of this topic. She noted that some of these requirements will likely be established as part of a utility’s tariff. Mr. Sappenfield suggested that these areas may be better addressed as part of the Conditions Precedent Addendum. The participants agreed to include as part of the contract terms and conditions the provisions that would prevent a participant from enrolling its Resource with multiple aggregators and those related to dispatch.

The participants discussed Section 19. Regulatory Oversight. Ms. Sieg noted that the additional provision related to notification after a regulatory authority approval could be applicable but may be addressed as part of the tariff or other documentation. The participants agreed to include this provision for additional discussion as well as strike from consideration the provisions that addressed defined terms that are not used as part of the contract.

Ms. Sieg reviewed Section 20. Relevant Documents. She noted that the Conditions Precedent Addendum expanded the audit requirements and suggested the participants verify whether the addendum adequately addresses this area. The participants discussed the Transaction Confirmation and agreed to use Example 1. Ms. Sieg proposed that, based on earlier discussions, lines be added to the Transaction Confirmation for parties to identify the Resource Identifier(s) and/or Portfolio Identifier, Applicable Regulatory Authority, Applicable Program, and Applicable Program Authority. There was general agreement.

Ms. Sieg stated that the participants had completed its initial review of all sections of the work paper. She suggested the participants re-review the sections to identify any areas that may still need to be addressed. The participants began with Section 1. Purpose and Procedures. In reviewing Section 3. Performance Obligation, the participants discussed the available remedies that should be identified in the contract in the event of a breach of an obligation. Ms. Sieg proposed that references to spot price as a remedy be struck and the contract identify the cover standard only. The participants revised Section 3.2 to make this modification and other consistency changes. Mr. Sappenfield noted that some of the language within the provisions as part of Section 3 may be better addressed within the Conditions Precedent Addendum. He volunteered to review this section and provide as a work paper for the next meeting any proposed updates.

Mr. Maples noted that Section 4.2 addresses notifications related to curtailments and that Section 4.8 addresses notifications related to differences in contract quantity versus quantity delivered. He suggested moving these provisions to Section 18. Operational Coordination. The participants agreed to make the modification. Ms. Sieg stated that Section 9. Financial Responsibility may need to be expanded to broaden the concept of failure to perform. She noted that Section 9.1 does not clearly define default beyond material change to creditworthiness and suggested that participants consider incorporating language related to the failure of a seller to operate, maintain, or repair the Distribution Service Delivery System as agreed by the parties. There was general agreement to make these changes. The participants discussed Section 9.9 and agreed that additional input would be helpful to determine if termination assistance services to the Buyer are common as part of these transactions and should be included in the contract. Ms. Sieg suggested that further information may be helpful to determine if thirty-day written notice is sufficient to terminate the contract, as stated in Section 11. Term.

The participants discussed Section 13. Miscellaneous. Ms. Seig suggested modifications to Section 13.1 to strike the phrase “or (ii) transfer its interest to any parent or Affiliate by assignment, merger, or otherwise without the prior approval of the other party”, explaining that all assignments should be written. The participants agreed to strike Sections 13.x13 and 13.x14 as the terms are not needed and redundant.

The Base Contract for the Sale and Purchase of Distribution Services from DER Aggregations Work Paper as revised during the meeting is available through the following hyperlink: <https://naesb.org/member_login_check.asp?doc=weq_rmq_bps052924a1.docx>

1. **Identify Next Steps and Action Items**

Ms. Sieg noted that Mr. Sappenfield volunteered to review the work paper and update the Conditions Precedent Addendum for the next meeting.

1. **Discuss Future Meetings**

Ms. Sieg stated that the next meeting of the WEQ/RMQ BPS is scheduled for June 11, 2024. She noted that the intent is to finalize an initial draft of the contract during this meeting and then hold an informal comment period to solicit feedback from industry participants.

1. **Adjourn**

The meeting adjourned at 3:21 PM Central on a motion by Mr. Maples

1. **Attendance**

| **First Name** | **Last Name** | **Organization** |
| --- | --- | --- |
| Rebecca | Berdahl | BPA |
| Tanner | Brier | BPA |
| Katie | Davis | BPA |
| Peter | Dotson-Westphalen  | CPower Energy |
| Shawn  | Grant | CAISO |
| Ben | Hammer | WAPA |
| Tanguy | Hubert | EPRI |
| Hayden | Maples | Evergy |
| Amrit | Nagi | NAESB |
| Joshua | Phillips | SPP |
| Cory  | Samm | Henn |
| Keith | Sappenfield | Corpus Christi Liquefaction, LLC |
| Lisa | Sieg | LGE & KU Services |
| James | Sorrels | AEP |
| Scott | Stewart | BPA |
| Caroline | Trum | NAESB |
| Sam | Watson | North Carolina Utilities Commission rep. NARUC |
| Bobbi | Welch | MISO |