November 20, 2019

**TO:** Parliamentary Committee Members

**FROM:** Rae McQuade, NAESB President and COO, Bill Boswell, NAESB General Counsel & Jonathan Booe, NAESB Executive Vice President & CAO, Elizabeth Mallett, NAESB Deputy Director

**RE:** NAESB Governance Documents 2.0 – NAESB Bylaws Work Paper

This work paper has been prepared per the direction of the NAESB Parliamentary Committee and the NAESB Board of Directors to support the review and update of the NAESB Governance Documents (NAESB Certificate of Incorporation, NAESB Bylaws (the Bylaws), and the NAESB Operating Procedures). During its previous meetings, the Parliamentary Committee reached consensus on modifications designed to support the alignment of the Bylaws with the following goals.

1. The Bylaws are consistent with Delaware corporate law
2. The Bylaws are consistent with itself and the other Governance Documents
3. The language of the provisions and/or procedures included in the Bylaws are consistent with the original intent of the adopted provision and/or procedure
4. The language of the provisions and/or procedures included in the Bylaws are consistent with the original intent of the adopted provision and/or procedure

On November 21, 2019, the Committee will move forward with its Bylaws review to ensure consistency with goal 5.

1. The Bylaws are consistent with, and incorporate where necessary, undocumented practices and procedures of NAESB

As the NAESB Governance Documents are structured into a hierarchy, each document should be reviewed in a “top down” approach – (1) Certificate of Incorporation, (2) Bylaws, (3) Operating Practices.

This work paper separates each section of the Bylaws and recommends specific redlines or offers questions that the Committee should discuss during the review.

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| **Article** | **Section** | **Text of NAESB Bylaws** | **Page** | **Notes** |
| **1** |  | **DEFINITIONS** |  |  |
|  | **1.1** | **Definitions**  The following terms used in these Bylaws shall have the meanings set forth below.  A. “Agent” means an individual, partnership, firm, corporation or other entity representing the interests of a Member of NAESB, but who, itself, is not necessarily a Member of NAESB.  B. “Balanced Voting” means that, in the context of EC Subcommittees and task forces, with respect to Standards/Model Business Practices development, voting is governed by NAESB Operating Procedures that provide for balance of interests among industry Segments and Quadrants participating in NAESB so as to avoid having any one interest exert undue influence over any decision.  C. “Board” means the Board of Directors of NAESB.  D. “Certificate” means the NAESB Certificate of Incorporation, as amended from time to time.  E. “Contribution” is defined asany idea, procedure, process, system, method of operation, concept, principle, or discovery conveyed during the standards development process, as well as the tangible form of expression of any of the foregoing and any other tangible forms of expression created during the development of NAESB Standards or Model Business Practices.  F. “Director” means an individual serving on the Board.  G. “EC” means the Executive Committee(s) of NAESB, Inc. (~~in whole, as a Quadrant EC,~~ or any combination of the Quadrant EC(s)).  H. “EC Subcommittee” means a subcommittee established by the EC pursuant to Section 10.5 of these Bylaws.  I. “Exhibit” means an attachment to these Bylaws.  J. “Majority” means a simple majority of each of the applicable Quadrant EC for the purposes of voting.  K. “Members” means individuals and entities that satisfy the requirements for membership set forth in Article 5 of these Bylaws, and includes Voting Members and Non-Voting Members.  L. “Model Business Practice” means a protocol or procedure for the conduct of specified acts or transactions. The term “Model Business Practice” does not imply enforceability by NAESB.  M. “NAESB” means the North American Energy Standards Board, Inc.  N. ~~“Non-Voting Member” may include, but not be limited to, federal, state and local agencies; governmental entities, non-profit research organizations, and similar entities.~~ “Non-Voting Member” shall include any individual or entity, including a governmental entity, which has a legitimate business interest in a Quadrant of NAESB and desires to participate as a non-voting member.  O. “Operating Procedures” means the policies and rules that govern the behavior and operation of committees, subcommittees and task forces of NAESB, as established and maintained by the Parliamentary Committee of the Board, ~~(~~as established in Section 7.8(c) of these Bylaws. They apply equally to all Quadrants and Segments.  P. “Quadrant” means any one of the industry sectors that make up NAESB, whose name has been assigned by the Board, for example, ~~gas wholesale, electric wholesale~~ wholesale gas, wholesale electric, and retail markets.  Q. “Reconsideration” means a review of a proposed Standard or proposed Model Business Practice subsequent to adoption by the EC and prior to ratification, as described in Section 10.3(h) of these Bylaws.  R. “Segment” means one of the co-equal Member groupings of a given Quadrant, as defined by that Quadrant and approved by the Board as an Exhibit to these Bylaws.  S. “Standard” means a protocol or procedure for the conduct of specified acts or transactions. The term “Standard” does not imply enforceability by NAESB.  T. “Triage Process” refers to the actions taken from the time a request for a proposed Standard or a proposed Model Business Practice is received by the NAESB office, through consideration by the EC~~the Triage Subcommittee~~, and until such time as the EC assigns the request for consideration.  U. “Voting Members” means individuals, partnerships, firms, governmental entities, or corporations, which shall apply for membership in one or more Segments and are in good standing in accordance with the procedures of their Segment(s). As a condition of membership, each Voting Member will be required to execute a revocable appointment, in a form approved by the Board, authorizing a designated proxy to vote in support of any of the proposals adopted by the Board, described in Article V, Section 3 of the Certificate~~, of Incorporation~~ which may be submitted to a vote of the general membership. Any Voting Member may resign from NAESB by written notice to the President. |  | Throughout the document, should “meeting of the Members” be a capitalized term and “Chair” lowercased?  Should 1.1 G be revised to be consistent with previous discussion during PC meetings, i.e., taking into account the multiple EC structure?  1.1 N – Should the Bylaws definition be identical to the Certificate definition for “Non-Voting Members”?  1.1 O revised to delete an extraneous open parenthesis.  Q5: Should 1.1 P be revised to include the terms, in the word order, that we use most frequently?  Q5: In 1.1 T, if we use “the EC’ instead of “Triage Subcommittee, “would that better reflect the current practices?  “Certificate” is a defined term, should 1.1 U be revised to replace “Certificate of Incorporation” with “Certificate”? |
| **2** |  | **PURPOSES, SCOPE, ACTIVITIES AND POLICIES** |  |  |
|  | **2.1** | **Purposes, Scope and Activities**  The purposes, scope and activities of NAESB are set forth in Article II of the Certificate. | 3 |  |
|  | **2.2** | **Policies**   1. As expressed in Article IV, Section 1 of the Certificate, NAESB's policy is to encourage a widely-based membership of diverse stakeholders whose business interests are directly affected by the adoption of Standards and Model Business Practices for their commercial activities. Consistent with this approach, NAESB's policy is that all meetings of NAESB, including those of its Members, Board, EC, Advisory Council (as established in Section 7.9), Board committees, EC Subcommittees and task forces, shall be open to any member of the public and the minutes thereof shall be available to the public, except as provided in Section 9.1 of these Bylaws. 2. The principles governing NAESB are:   **Independence** – NAESB should be an independent body. While it may have informal liaisons to trade associations, other standards organizations and government agencies, it should be a separately incorporated, fully independent, organization.  **Openness –** NAESB should conduct its activities in the open. Openness should apply to all aspects of its organizational governance, elections and Standards or Model Business Practices development processes, including work products and related meetings. The meetings, agendas and items set for discussion and/or possible vote should be publicly noticed, and interested parties, regardless of membership, should have the opportunity to participate.  **Voluntary –** Participation in NAESB should be voluntary and adherence to its Standards and Model Business Practices should, from NAESB's perspective, also be voluntary. Membership should not be dependent upon whether the company seeking membership implements the Standards and Model Business Practices. NAESB will not maintain any type of enforcement activity.  **Balance of Interests** – The voting with respect to governance, Standards, Model Business Practices, and Operating Procedures should provide for balance among industry Segments and Quadrants participating in NAESB so as to avoid any one interest group or group of interests having the ability to exert undue influence over any decision.  **Inclusivity** – All interested parties have the opportunity to participate in the activities of the standards organization and to join NAESB. All participants should be identified and associated with a Segment and Quadrant.  **Consensus-Based Decisions** **–** The voting rules should be constructed so that decisions based upon consensus are encouraged. In addition, with respect to voting upon the Standards or Model Business Practices issued or to be issued by NAESB, energy Quadrants and their Segments should be assured that each energy Quadrant and its Segments can protect its interests by requiring both super-majorities and a minimum per Segment, and that a per Quadrant threshold be achieved for passage of such Standards and Model Business Practices by NAESB.  **No Advocacy** – NAESB should be prohibited from taking advocacy positions on its Standards or Model Business Practices as a party to any proceeding before a governmental agency. This is not intended to preclude NAESB’s duly authorized representatives from educating or communicating with any group as to NAESB’s Operating Procedures and/or work product(s).  **Membership Driven** – NAESB should be membership driven. The paid staff should perform administrative functions to support NAESB's activities. Requests for Standard(s) or Model Business Practices should be proposed by identified persons and not by NAESB or its committees and subcommittees. NAESB’s staff should neither have a vote nor a role with respect to conducting the affairs of NAESB other than to provide ministerial functions.  **Develop Practices, Not Policy** – The committees, subcommittees and task forces of NAESB should endeavor not to create policy in their Standards or Model Business Practices development activities absent being requested to do so by the Board.  **Incorporate Best Practices** – To the extent reasonable, the Standards and Model Business Practices to be established should reflect standardization and streamlining of activities chosen as best practices from among existing and reasonably anticipated policies and practices.  **Broad Applicability** – To the extent reasonable, the Standards and Model Business Practices to be established should be structured such that they can be applicable to both the electric and natural gas industries. The two industries should work together to develop Standards and Model Business Practices when joint Standards and Model Business Practices are appropriate. However, where operating requirements dictate the need for different approaches, discrete Standards and Model Business Practices will be established separately by Quadrant(s).  **ANSI Accreditation** – NAESB will retain accreditation as an American National Standards Institute Standards Development Organization.   1. It is the policy of NAESB to comply to the fullest extent possible with both the letter and spirit of all applicable federal and state laws and regulations, including the antitrust laws. The purpose of the antitrust laws is to preserve and promote competition. Any conduct that violates Federal or State antitrust laws is detrimental to the best interests of NAESB and its Members, and is, therefore, contrary to NAESB policy. No officer, employee or Member of NAESB is authorized by NAESB to act contrary to this policy. | 3 |  |
|  | **2.3** | **Quadrants and Segments**  The procedures of each Quadrant and Segment, respectively, shall conform to the policies of NAESB as stated in the Certificate and these Bylaws. The Board shall have authority to enforce these NAESB policies with regard to the procedures of the Quadrants and Segments.  In order to have representation on the Board or the EC, a Quadrant shall have at least forty Voting Members and at least four Segments. Each Segment shall have at least five Voting Members. If minimum representation requirements are not met, then the Board will review the minimum representation biannually. Without limitation, and in addition to the other options it may choose, the Board may combine Quadrants, either for operational purposes or administrative purposes (including voting at the Board or the EC), or both, and may add new Quadrants.  A fully populated segment is one which has eighty percent (80%) of the seats filled on the Board (for a vote at the Board) or one hundred percent (100%) for the EC (for a vote at the EC). | 6 |  |
| **3** |  | **OFFICES** | 7 |  |
|  | **3.1** | **Offices**  The registered office of NAESB shall be located in Delaware. NAESB may have any number of other offices at such places as the Board may determine. |  |  |
| **4** |  | **SEAL** |  |  |
|  | **4.1** | **Seal**  NAESB may use a Corporate Seal. The Corporate Seal shall bear the name of NAESB, the year of its incorporation and the words "Corporate Seal, Delaware." |  |  |
| **5** |  | **MEMBERS** |  |  |
|  | **5.1** | **Voting Members**  (a) The general requirements for Voting Membership are set forth in Article IV, Sections 1 and 2 of the Certificate. Individuals, partnerships, firms, governmental entities, or corporations shall join as Members through application for Voting Membership in one or more Quadrants and Segments. The membership requirements for each Quadrant and Segment are set forth in Exhibits 1 through 3 of the Bylaws.  (i) Each Voting Member shall be entitled to one vote in person or by proxy, and shall designate in writing the individual authorized to cast that vote.  (ii) Each Voting Member may vote by proxy. Every proxy shall be executed in writing by the Voting Member or by such Voting Member's duly authorized attorney in fact and filed with the Secretary of NAESB. A proxy shall be revocable at will, notwithstanding any other agreement or any provision in the proxy to the contrary. The revocation of a proxy shall not be effective until notice thereof has been given to the Secretary. A proxy shall not be revoked by the death or incapacity of the maker unless, before the vote is counted or the authority is exercised, written notice of such death or incapacity is given to the Secretary of NAESB. No proxy shall be valid after three years from the date of its execution unless otherwise provided in the proxy.   1. As described in Article IV, Section 2 of the Certificate, each Voting Member is required, as a condition of membership, to execute a revocable appointment, in a proxy form approved by the Board, authorizing a designated proxy to vote in favor of any of the proposals described in Article V, Section 3 of the Certificate; provided, however, that any Voting Member shall have the right to cast its vote, in lieu of such revocable proxy, either in favor of or in opposition to any such proposal. This proxy shall not expire until revoked by the Voting Member. 2. A trade association may join as a Non-Voting Member. A trade association may become a Voting Member only if there are no other Voting Members of NAESB that can represent the interests of the trade association’s membership, or if the Quadrant determines that the trade association’s membership is otherwise under-represented by Voting Members. A trade association shall not be eligible to hold a seat on either the Board or the EC, except as an Agent of an eligible Voting Member.   (b) The Board may, by resolution, determine (a) the amount of the membership fee described in Article VII, Section 1 of the Certificate to be assessed to each Voting Member, and (b) the time and method of payment.  (c) Unless otherwise restricted by the Certificate or these Bylaws, any action required or permitted to be taken by the Members at any annual or special meeting may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the Members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all Members having a right to vote thereon were present and voted. Such written consents shall be delivered to NAESB by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or Agent of NAESB having custody of the book in which proceedings of meetings of Members are recorded. Delivery made to NAESB's registered office shall be by hand or by certified or registered mail, return receipt requested. Every written consent shall bear the date of signature of each Member who signs the consent, and no written consent shall be effective to take the corporate action referred to therein unless, within sixty days of the earliest dated consent delivered to NAESB in the manner required by this Section 5.1, written consents signed by a sufficient number of Members to take action are delivered to NAESB by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or Agent of the Corporation having custody of the book in which proceedings of meetings of Members are recorded. Delivery made to NAESB's registered office shall be by hand or by certified or registered mail, return receipt requested. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those Members who have not consented in writing. In the event that the action which is consented to is such as would have required the filing of a certificate by law, if such action had been voted on by Members at a meeting thereof, the certificate filed shall state, in lieu of any statement required by law concerning any vote of Members, that written consent has been given in accordance with the Delaware law, and that written notice has been given. |  |  |
|  | **5.2** | Reserved | 9 |  |
|  | **5.3** | **Nontransferable**  Membership in NAESB is not transferable to another corporation or entity, although member organizations may transfer representation from one individual(s) to another upon written notice to the Secretary. Such transfer of representation shall not extend to transfer of Board or EC seats. | 10 | Q5: Should “individual” be plural to reflect current practices? |
|  | **5.4** | **Resignation**  Any Member may resign from membership by written notice to the Secretary, whereupon the voting rights and benefits of the Member shall cease. | 10 |  |
| **6** |  | **MEETINGS OF MEMBERS** |  |  |
|  | **6.1** | **Place of Meetings**  Meetings of the Members shall be held at such place as may be fixed by the Board. If no place is fixed by the Board, meetings of the Members shall be held at the registered office of NAESB. |  |  |
|  | **6.2** | **Annual Meeting**  Unless the Board provides by resolution for a different time, the ~~Annual~~annual Meeting of the Members shall be held in September, October, November or December of each year on the date specified by the Board in the notice of annual meeting. |  |  |
|  | **6.3** | **Special Meetings of Members**  Special Meetings of the Members may be called at any time by the Board Chair, by a majority of the Board or by a majority of Voting Members. Upon written request of any person entitled to call a special meeting, the Secretary shall (a) fix the date and time of the meeting, which shall be held not less than ten days nor more than sixty days after receipt of the request, and (b) give notice thereof in accordance with Article 11 of these Bylaws. If the Secretary neglects or refuses to fix the meeting date or give notice, the person or persons calling the meeting may do so. |  |  |
|  | **6.4** | **Determination of Members of Record**  The Board may fix a time, not more than sixty days prior to the date of any Meeting~~meeting~~ of the Members or any adjournment thereof, as a record date for the determination of the Members entitled to notice of, or to vote at, such meeting. The Board may similarly fix a record date for the determination of the Members of record for any other purpose. When a determination of the Members of record has been made for purposes of a meeting, the determination shall apply to any adjournment thereof unless the Board fixes a new record date for the adjourned meeting. | 11 |  |
|  | **6.5** | **Notice of Meetings of Members**  Notice of meetings of Members and meetings of Quadrants and Segments to elect or remove Directors or EC Members, or to amend their Exhibits, shall be given in the manner described in Article 11 of these Bylaws. When a Meeting~~meeting~~ of the Members is adjourned, it shall not be necessary to give any notice of the adjourned meeting or of the business to be transacted at an adjourned meeting, other than by announcement at the meeting at which such adjournment is taken, unless the Board fixes a new record date for the adjourned meeting or the Delaware law requires notice of the business to be transacted and such notice has not previously been given. |  |  |
|  | **6.6** | **Quorum**  The quorums for meetings of Voting Members shall be as described in Article V, Section 2 of the Certificate. The quorums may be determined by counting attendance in person or by proxy. The Voting Members present at a duly organized meeting can continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum. If a meeting cannot be organized because a quorum has not attended, those present may, except as otherwise provided in Delaware law, adjourn the meeting to such time and place as they may determine. | 11 |  |
|  | **6.7** | **Adjournment**  Adjournments of any Meeting~~meeting~~ of the Members may be taken. | 11 |  |
|  | **6.8** | **Organization**  At every Meeting of the Members, the Board Chair, or in his or her absence, the Board Vice Chair or in the absence of the Board Chair and the Board Vice Chair the Board Second Vice Chair or the Board Third Vice Chair, etc., respectively, together representing each of the Quadrants within the Board, or a Chair chosen by the Members, shall act as chair. The Secretary, or in his or her absence, a person appointed by the Chair shall act as secretary. | 11 |  |
|  | **6.9** | **Voting on Particular Issues**  Article V, Sections 3, 4, and 5 of the Certificate describe the voting procedures and the number of votes required for adoption and approval for particular issues with respect to NAESB. | 12 |  |
| **7** |  | **BOARD** |  |  |
|  | **7.1** | **Board**  The business and affairs of NAESB shall be managed by the Board. The powers of NAESB shall be exercised by, or under the authority of, the Board except as otherwise provided by statute, the Certificate, or these Bylaws. Specific powers and duties are delegated to the EC by Article III, Section 5 of the Certificate. The Board may delegate such other powers to the EC, as it deems appropriate if such delegation is consistent with the Certificate. | 12 |  |
|  | **7.2** | **Qualification of Directors**  Each Director shall be a natural person at least eighteen (18) years of age who need not be a resident of Delaware and who shall be a Voting Member, or a partner in, or an officer, employee or Agent of, a Voting Member. | 12 | See Work Paper 1 |
|  | **7.3** | **Number and Election of Directors**  The Board shall consist of representatives of the Quadrants, each Quadrant determining the number of Directors who shall occupy seats on the Board, except that every Segment of a Quadrant shall be represented by at least one Director. Regardless of the number of Directors elected from each Quadrant, no Quadrant shall be entitled to cast a vote greater than the percentage that its Quadrant represents in relation to the total number of Quadrants represented on the Board at a given time. Each Segment within a Quadrant shall be represented by an equal number of Directors, to be determined by that Quadrant. The procedures for electing the Directors shall be as specified in each Quadrant’s Exhibit. Each Quadrant shall communicate the timing of its election of Directors. |  |  |
|  | **7.4** | **Term of Office**  (a) The term of office of a Director shall be for a period set by the Quadrant, not less than one year, not to exceed three years. Quadrants may elect Directors for varying terms. Directors may be reelected to subsequent terms.  (b) Each Director shall hold office during his or her term until the earliest of: (i) the expiration of the term for which he or she was elected and until his or her successor has been elected and qualified, (ii) the Director's resignation of his or her Voting Membership (if the Director is the Voting Member as an individual) or the lapse of the Director's Voting Membership for delinquency in membership fee payment, (iii) the resignation or lapse (through delinquency in membership fee payment) of Voting Membership of the entity of which the Director is a partner, officer, employee or Agent, or (iv) the Director's death, resignation, or removal. | 13 |  |
|  | **7.5** | **Vacancies**  Vacancies in the Board resulting from the circumstances described in Subsections 7.4(b)(ii), (iii) or (iv) above shall be filled by the Quadrant and Segment in which the vacancy occurs, in accordance with the procedures specified in that Quadrant’s Exhibit. | 13 |  |
|  | **7.6** | **Removal of Directors**  Directors shall act in the best interest of NAESB consistent with Delaware law. Directors may be removed for malfeasance, misfeasance or nonfeasance by simple majority vote at any meeting of the Board, or by notational ballot, pursuant to the NAESB Operating Procedures. | 13 |  |
|  | **7.7** | **Resignations**  Any Director may resign at any time by giving written notice to the Secretary. The resignation shall be effective upon receipt by ~~NAESB~~the Secretary or at such subsequent time as may be specified in the notice of resignation. | 13 | Q5: Should NAESB be changed to “the Secretary”? |
|  | **7.8** | **Board Committees**   1. The Board, by majority vote of the entire Board, or the Chair of the Board, may establish, by means of resolutions to be attached hereto, committees of the Directors. The resolutions shall describe the powers and authorities of each committee, require each committee to adopt procedures, and provide opportunity for Directors from each Quadrant and Segment to participate in the committee's work. 2. There shall be a Managing Committee, consisting of the chair, the vice chairs of each Quadrant, the past chairs (if a Member of the Board), the Chair of the Advisory Council, the President, and the General Counsel. It shall have the authority of the Board between Board meetings, subject to the limitations placed upon it by the Board; however it shall have no authority to amend the Certificate or the Bylaws. The President and the General Counsel shall be Non-Voting Members of the committee.   (c) There shall be a Parliamentary Committee, consisting of Members of the Board with at least two Directors from each Quadrant. The function of the Parliamentary Committee is to address issues related to corporate governance, including, but not limited to, the Certificate, the Bylaws and the Operating Procedures. Members of the Parliamentary Committee shall be appointed by the Chair of the Board, who shall serve as the chair of this committee. | 13 | Hyphen added to “Non-Voting” in last sentence of Article 7, Section 7.8(b) for consistency.  Q5: In 7.8(a), should “the Chair of the Board” be added here to reflect current practices?”  Q5: In 7.8 (b), should “Chair of the Advisory Council” be added here to reflect current practices? |
|  | **7.9** | **Advisory Council**  The Board shall establish a standing Advisory Council, to be known as the "NAESB Advisory Council." The Advisory Council shall be composed of persons who shall be knowledgeable about the issues involved in carrying out the purposes, scope and activities of NAESB. The membership of the Advisory Council should be rotated from time to time, and should reflect participation by federal, state and local agencies; public interest groups; non-profit research organizations; and similar organizations. The Advisory Council shall advise both the Board and EC. | 14 |  |
| **8** |  | **OFFICERS** | 14 |  |
|  | **8.1** | **Number**  The officers of NAESB shall include a Chair, and up to three Vice Chairs (each representing a different Quadrant within the Board), a Secretary, a Treasurer, and a President. The officers may include other officers as the Board may determine by resolution. Any number of offices may be held by the same person. | 14 |  |
|  | **8.2** | **Qualifications of Officers of NAESB**  The officers shall be natural persons at least eighteen years of age who are Directors, except that the President, and Secretary, need not be Directors. | 15 |  |
|  | **8.3** | **Election and Term of Office**  The officers of NAESB shall be elected by the Board at any meeting of the Board. Each officer except for the President, shall serve for a term of one ~~(1)~~ year and until his or her successor begins his or her term, or until his or her earlier death, resignation, or removal, or lapse of Director status pursuant to Subsections 7.4(b)(ii),(iii) or (iv) or Section 7.6 of these Bylaws. On expiration of the terms of the officers of NAESB, the Vice Chair shall become the Chair, the Second Vice Chair shall become the Vice Chair, the Third Vice Chair shall become the Second Vice Chair and the Board shall elect a new Third Vice Chair. The new Third Vice Chair shall be elected in the following order of rotation, which shall be repeated indefinitely: Gas Wholesale, Markets Retail, and Electric Wholesale. If no Director representing a Quadrant is willing to serve as Third Vice Chair when the rotation turns to that Quadrant, the Board shall elect a Third Vice Chair from among its remaining Directors, and the rotation shall continue thereafter as though a Director representing the Quadrant had in fact served as Third Vice Chair. | 15 | Should “(1)” be deleted for consistency in the second sentence of Section 8.3? |
|  | **8.4** | **Removal of Officers**  Any officer may be removed by action of a majority of the Directors whenever in their judgment the best interests of NAESB will be served. Such removal shall be without prejudice to the contract rights, if any, of any person so removed. | 15 |  |
|  | **8.5** | **Resignations**  Any officer may resign at any time by giving written notice to the Secretary. The resignation shall be effective upon receipt by the Secretary or at such subsequent time as may be specified in the notice of resignation. | 15 |  |
|  | **8.6** | **The Chair**  The Chair shall be the Chief Executive Officer of NAESB and shall have general supervision over the business and operations of NAESB, subject to the control of the Board. The Chair shall chair all meetings of the Board and the Members. The Chair shall execute in the name of NAESB, deeds, mortgages, bonds, contracts, and other instruments to the extent authorized by the Board, except in cases where the execution thereof shall be expressly delegated by the Board to some other officer or Agent of NAESB. In general, the Chair shall perform all duties incident to the office of Chair and such other duties as may be assigned by the Board. | 16 |  |
|  | **8.7** | **The Vice Chairs**  There shall be a Vice Chair for each Quadrant. In the absence of other Quadrant procedures, the Vice Chair of each Quadrant shall be elected by a simple majority of its respective Quadrant Board Members. In the absence or disability of the Chair or when so directed by the Chair, a Vice Chair (in order of precedence) may perform all the duties of the Chair, and, when so acting, shall have all the powers of, and be subject to all the restrictions upon, the Chair The Vice Chair shall perform such other duties as may be assigned by the Board or the Chair. | 16 |  |
|  | **8.8** | **The Secretary**  (a) Unless the Board directs otherwise, the President shall be the Secretary of NAESB.  (b) The Secretary shall attend all meetings of the Board and of the Members. The Secretary shall record all votes of the Board, EC and the Voting Members and the minutes of the meetings of the Board, EC and of the Members in a book or books belonging to NAESB to be kept for that purpose. The Secretary shall see that required notices of meetings of the Board and of the Members are given and that all records and reports are properly kept and filed by NAESB. The Secretary shall be the custodian of the seal of NAESB and shall see that it is affixed to all documents to be executed on behalf of NAESB under its seal. In general, the Secretary shall perform all duties incident to the office of Secretary and such other duties as may be assigned by the Board or the Chair  (c) Reserved  (d) To the extent not provided for by the EC, the Secretary shall appoint persons to take minutes of EC Meetings and EC Subcommittee meetings. | (a) | Title 8 § 224 Ann.:  “Any records maintained by a corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or by means, of, or be in the form of, any information storage device, or method provided that the records so kept can be converted into clearly legible paper form within a reasonable time…” |
|  | **8.9** | **The Treasurer**  (a) Unless the Board directs otherwise, the Second Vice Chair shall be the Treasurer.  (b) The Treasurer shall be responsible for corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to NAESB. The Treasurer shall have full authority to receive and give receipts for all money due and payable to NAESB, and to endorse checks, drafts, and warrants in its name and on its behalf and to give full discharge for the same. The Treasurer shall deposit all funds of NAESB, except such as may be required for current use, in such banks or other places of deposit as the Board may designate. In general, the Treasurer shall perform all duties incident to the office of Treasurer and such other duties as may be assigned by the Board or the Chair.  (c) Reserved | 17 |  |
|  | **8.10** | **The President**  The President shall be the Chief Operating Officer of NAESB, and be subject to the control of the Board. The President shall have all powers and duties necessary for managing the day-to-day operating and business affairs of NAESB and directing all activities of NAESB as prescribed by the Board. Unless the Board directs otherwise, the President shall be the Secretary of NAESB. The compensation of the President shall be fixed by the Board. | 17 |  |
| **9** |  | **MEETINGS OF DIRECTORS** | 18 |  |
|  | **9.1** | **Place of Meetings**  The Board may hold its meetings at such places as the Board may appoint or as may be designated in the notice of the meeting. Meetings or portions of meetings may be closed to the public only (and the pertinent minutes withheld from the public) for discussion of paid NAESB employees or their compensation and for litigation matters involving NAESB as a corporate entity. | 18 |  |
|  | **9.2** | **Organization**  Every meeting of the Board shall be presided over by the Chair, or in the absence of the Chair, a Vice Chair in order of precedence, or in the absence of the Chair and the Vice Chair, a chair chosen by a majority of the Directors present. The Secretary, or in his or her absence, a person appointed by the chair, shall act as secretary. | 18 |  |
|  | **9.3** | **Annual Meeting**  Unless the Board provides by resolution for a different time, the annual meeting of the Board shall take place immediately after the annual Meeting~~meeting~~ of the Members. The newly constituted Board shall meet without prior notice at the place where the Meeting~~meeting~~ of the Members was held, or at any other place and time designated in a notice given as provided in Article 11 of these Bylaws, for the purposes of organization, election of officers, and the transaction of other business. | 18 |  |
|  | **9.4** | **Regular Meetings**  The Board may hold its regular meetings at such place and time as shall be designated by resolution of the Board. If the date fixed for any regular meeting is a legal holiday under the laws of the state in which the meeting will be held, the meeting shall be held on the next succeeding business day or at such other time as may be determined by resolution of the Board. The Board shall transact such business as may properly be brought before its meetings. | 18 |  |
|  | **9.5** | **Special Meetings of the Board**  The Chair or at least one-third of the Directors may call special meetings of the Board, which shall be held at such time and place as shall be designated in the call for the meeting. Ten days' notice of any special meeting shall be given to each Director pursuant to Article 11 of these Bylaws or by telephone. Such notice shall state the time and place of such special meeting and state the matters to be discussed at the special meeting. Action taken at special meetings shall be limited to the matters described in the meeting notice. | 19 |  |
|  | **9.6** | **Quorum**  The quorum necessary for a meeting of the Board is a majority of the Directors, as described in Article V, Section 1 of the Certificate. | 19 |  |
|  | **9.7** | **Participation and Voting in Meetings**  (a) One or more Directors may participate in a meeting of the Board or a committee thereof by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other.  (b) Each Director shall be entitled to one vote.  (c) Article V, Sections 1, 3, 5 and 6 of the Certificate describe the voting procedures and the number of votes required for adoption or approval for particular issues with respect to NAESB.  (d) In the event that a weighted vote is requested pursuant to Article V, Section 6 of the Certificate, the following process shall be followed:  (i) Any vote that passes by a weighted majority of the Board and also obtains a simple majority of each Quadrant shall be deemed to be a final vote.  (ii) Any vote that passes by a weighted majority of the Board but does not obtain a simple majority of Directors votes from each Quadrant shall be deemed to be a preliminary vote.  (iii) In the event of a preliminary vote the Chairman shall appoint a committee of directors, which shall also include directors not supporting the proposal. The committee shall, within the period set by the Chairman, but not to exceed thirty days from the date of appointment, attempt to draft a substitute proposal.  (iv) If the committee drafts a substitute proposal, it shall be presented to the Board for a notational ballot when received by the NAESB office. If the revised proposal receives a greater weighted majority vote of the Board than did the original proposal, the revised proposal shall become the final action of the Board. If the committee fails to present a revised proposal within the indicated time frame, or the revised proposal does not receive a greater weighted majority vote of the Board than did the original proposal, the original proposal upon which there was a preliminary vote shall be presented to the Board for a final weighted vote of the Board.  (e) No substitutes shall be permitted to vote at Board meetings.  (f) Notational voting by Directors is proper in the following circumstances and pursuant to the following procedures:  (i) In lieu of meeting: The Chairmay request that any vote or action be taken by the Board without a meeting and without unanimous consent, and such action may be taken if approved by the appropriate voting levels specified in Article V of the Certificate. Notice of the Chair’s request shall be given to all Directors in the manner specified in Article ll of the Bylaws.  (ii) During meetings: Notational votes from a Director not in attendance shall be accepted and counted at a Board meeting with respect to any resolutions circulated in writing in advance of a Board meeting; provided, however, that if substantive changes are made in a resolution at the Board meeting such advance notational votes shall not be counted with respect to that resolution, but the procedures specified in (iii) below should be used.  (iii) Following a meeting: The Board shall indicate whether, and if so for how long, notational votes will be accepted after a meeting relating to particular issues voted on at that meeting.  (g) While Board Members may participate and vote by means of teleconference or other electronic means, eligibility to continue serving as a Board Member is dependent upon in-person attendance at a minimum of one scheduled Board Meeting per year and participation in at least two such meetings per year. Such attendance/participation ~~threshold~~ shall be reviewed annually. | 19 | Q5: Should the word “threshold” be deleted in 9.7(g) to indicate that it is the participation, not the threshold itself, that is being reviewed? |
| **10** |  | **EXECUTIVE COMMITTEE** |  |  |
|  | **10.1** | **Duties and Responsibilities**  The EC shall have the duties and responsibilities described in Article III, Section 5 of the Certificate. | 21 |  |
|  | **10.2** | **EC Members**  (a) The EC shall consist of representatives of the Quadrants, with each Quadrant determining the number of EC Members representing that Quadrant. Regardless of the number of EC Members elected from each Quadrant, no Quadrant shall be entitled to cast a vote greater than the percentage that its Quadrant represents in relation to the total number of Quadrants represented on the EC. Each Segment within a Quadrant shall be represented by an equal number of EC Members, to be determined by that Quadrant. The procedures followed for electing the EC Members shall be those specified in that Quadrant’s Exhibit.   1. The term of office of an EC Member shall be for a period set by the Quadrant, not less than one year, not to exceed three years. Each Quadrant will determine the terms for their EC Members. EC Member terms may vary between Quadrants. EC Members may be reelected to subsequent terms. Each EC Member shall hold office during his or her term until the earliest of: (i) the expiration of the term for which he or she was elected and until his or her successor has been elected and qualified, (ii) the EC Member's resignation of his or her Voting Membership (if the EC Member is the Voting Member as an individual) or the lapse of the EC Member's Voting Membership for delinquency in membership fee payment, (iii) the resignation or lapse (through delinquency in membership fee payment) of Voting Membership of the entity of which the EC Member is a partner, officer, employee or Agent, or (iv) the EC Member's death, resignation, or removal. 2. Each EC Member shall be a natural person at least eighteen years of age who need not be a resident of Delaware and who shall be a Voting Member, or a partner in, or an officer, employee or Agent of, a Voting Member.   (d) Vacancies in the EC resulting from the circumstances described in Subsections 10.2(b)(ii), (iii), or (iv) above or described in Section 10.2(e) below shall be filled by the Segment in which the vacancy occurs, in accordance with the procedures specified in that Quadrant’s Exhibit.  (e) Procedures for removal of EC Members representing a Segment are contained in the pertinent Quadrant’s Exhibit.  (f) Any EC Member may resign at any time by giving written notice to NAESB. The resignation shall be effective upon receipt by the Secretary or at such subsequent time as may be specified in the notice of resignation. | 21 |  |
|  | **10.3** | **EC Organization**  (a) The EC shall elect from among its members an EC Chair, and a vice chair ~~up to three vice-chairs~~ (each representing a different Segment~~Quadrant~~ within the EC). Each of these officers shall serve for a term of one year and until his or her successor has been elected and qualified, or until his or her earlier death, resignation, or removal. The EC may appoint a secretary.  (b) Every meeting of the EC shall be presided over by the EC Chair, an EC Vice Chair ~~(in order of precedence)~~ or, in the absence of the EC Chair and EC Vice Chair, a chair chosen by a majority of the EC Members present.  (c) A majority of the EC may remove the EC Chair or an EC Vice Chair from his or her position whenever in its judgment the best interests of the EC or NAESB will be served thereby.  (d) The EC Chair and EC Vice Chair may resign at any time by giving written notice to the NAESB Secretary. The resignation shall be effective upon receipt by the NAESB Secretary or at such subsequent time as may be specified in the notice of resignation.  (e) The EC ~~shall divide itself into Quadrants to~~ considers Standards and Model Business Practices~~. The number of Quadrants considering a particular Standard or a particular Model Business Practice shall be determined by the EC as a whole~~, acting upon requests presented to it through the Triage Process or as set by the annual plan.  (f) By a Majority vote, the EC shall assign responsibility to one or more Quadrants to address each request for a proposed Standard or a proposed Model Business Practice, at the conclusion of the Triage Process. The Quadrant(s) assigned such responsibility shall process the request and vote on the ultimate recommendation. Only the members of the Quadrant(s) to which the request has been assigned may vote to ratify actions taken to approve a Standard or a Model Business Practice. Any Standard or Model Business Practice adopted by a Quadrant(s) shall apply only to the activities of the energy sector covered by that Quadrant(s).  (g) As part of the Triage Process, the EC may direct that two or more Quadrants jointly consider a request for proposed Standards or proposed Model Business Practices. In such event, the indicated Quadrants of the EC shall jointly act on the recommendation (and in so doing, may appoint joint subcommittees or task forces to assist in such consideration) and, if applicable, the members of the affected Quadrants shall act on ratification of the Standards or Model Business Practices. To the extent that multiple Quadrants, having jointly considered Standards or Model Business Practices, cannot reach agreement on such Standards or Model Business Practices, the EC representatives of any of the participating Quadrants may, by a Majority vote, instruct the subcommittee to provide a status report. After receiving the status report, the EC representatives from any of the participating Quadrants may request that the EC repeat the Triage Process ~~to re-triage the request~~ for a proposed Standard or proposed Model Business Practice to allow a Quadrant(s) to proceed independently.  (h) Any Quadrant(s) that believes that it is affected by a Standard or Model Business Practice adopted by any other Quadrant(s) ~~of the~~ EC may seek Reconsideration of the assignment of such proposed Standard or Model Business Practice.  (i) Within thirty days after the publication of the meeting minutes recording the EC vote to approve a proposed Standard or Model Business Practice, any Quadrant(s) that believes itself to be affected by such action shall so indicate in a resolution adopted by a Majority vote of the EC of such Quadrant(s), which shall be forwarded by the NAESB office to the EC Chair and the entire EC.  (ii) Within thirty days of notice to the EC of such affirmative vote, the EC shall enter a Reconsideration action on the agenda for its next meeting. A Reconsideration action shall pass if a Majority of each Quadrant of the EC that did not vote to adopt the recommended Standard or Model Business Practice now votes in favor of Reconsideration.   1. In the event the Reconsideration action passes, an affected Quadrant and any other Quadrants that were assigned the request for a proposed Standard or proposed Model Business Practice as a result of the initial Triage Process shall jointly consider such request for a proposed Standard or a proposed Model Business Practice as described in Section 10.3(g) of these Bylaws. 2. If the Reconsideration action fails, the Quadrant(s) that adopted the recommendation for a proposed Standard or a proposed Model Business Practice shall proceed with ratification of such proposals by the members of such Quadrant(s). 3. The ratification of a Standard or Model Business Practice requires a sixty-seven percent (67%) approval of the members returning ballots of each of the applicable Quadrant(s) ~~returning ballots~~.   (j) Minutes shall be kept of all EC and EC Subcommittee meetings and forwarded to the NAESB Secretary. | 22 | Q5: In 10.3(e), should the annual plans be included as items for consideration along with triaged requests?  Also, should the proposed modification to 10.3(e) delete “[t]he number of Quadrants considering a particular Standard or a particular Model Business Practice shall be determined by the EC as a whole”, as concept is captured in the first sentence of 10.3(f)?  Should the reference of Section 10.3 (h)(iii) to “Section 103(g)” be corrected to state “10.3(g).”  Q5: as currently written, 10.3(i) could be mistook to mean that 67% of the quadrant needs to approve. Should the words “returning ballots” be moved up in the sentence to clarify that it is 67% of the members *that are returning ballots* that need to approve? |
|  | **10.4** | **Meetings**  (a) The EC ~~as a whole, or the EC for individual Quadrant(s),~~ may hold regular meetings at such place and time as shall be designated by resolution of the EC ~~as a whole or the EC for individual Quadrants, as applicable~~.  (b) ~~Quadrant~~ ECs will make all reasonable efforts to coordinate the times and locations of their meetings such that meetings which occur on concurrent or consecutive days will be in close physical proximity, facilitating attendance of multiple meetings by EC Members, individual NAESB members of any Quadrant, or other interested parties.  (c) The EC Chair or at least one-third of the EC Members may call special meetings of the EC which shall be held at such time and place as shall be designated in the call for the meeting. At least five days' notice of any special meeting shall be given to each EC Member pursuant to Section 11.1 of these Bylaws or by telephone. Such notice shall state the time and place of such special meeting and state the matters to be discussed at the special meeting. Action taken at special meetings shall be limited to the matters described in the meeting notice.  (d) The quorum necessary for EC meetings is a majority, as set forth in Article V of the Certificate.  (e) Each EC Member shall be entitled to one vote.  (f) Article V, Section 4 of the Certificate describes the EC voting procedures and number of votes required for adoption or approval for particular issues with respect to NAESB.  ~~(g) Each EC Member may participate and vote in EC meetings by proxy. Every proxy shall be executed in writing by the EC Member or by his or her duly authorized attorney in fact and filed with the Secretary of NAESB. A proxy shall be revocable at will, notwithstanding any other agreement or any provision in the proxy to the contrary. The revocation of a proxy shall not be effective until notice thereof has been given to the Secretary of NAESB. A proxy shall not be revoked by the death or incapacity of the maker unless, before the vote is counted or the authority is exercised, written notice of such death or incapacity is given to the Secretary of NAESB. Proxies may be limited in scope to the specific matters described in the agenda for the meeting. The voting directions contained in a proxy shall be read by the EC Chair at the beginning of the meeting.~~  (g~~h~~) One or more EC Members may participate in a meeting of the EC or a committee thereof by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other.  (h~~i~~) No substitutes shall be permitted to vote at EC meetings. However, a Designated Alternate may vote at meetings of the EC in place of an absent EC Member from a given Segment. A Designated Alternate is defined as a person named in a list by the Segment that is received by the EC Secretary at least five days prior to the pertinent meeting of the EC. Each Segment's list shall be developed, amended and structured in the manner described in that Quadrant’s Exhibit. A Designated Alternate has all voting rights of the EC Member in whose place he or she serves, except for those matters on which the EC Member has already voted by proxy prior to the beginning of a meeting.  (i~~j~~) While EC Members may participate and vote by means of teleconference or other electronic means, eligibility to continue serving as an EC Member is dependent upon in-person attendance at one meeting per year.~~no less than twenty-five percent~~ ~~(25%) of scheduled EC Meetings and participation in at least seventy-five percent (75%) of such meetings.~~ Such attendance/participation ~~threshold~~ shall be reviewed annually~~at March 31 and September 30 of each year~~ for the preceding twelve months.  (j~~k~~) Notational voting by EC Members is proper in the following circumstances and pursuant to the following procedures:  (i) In lieu of meeting: The EC Chair may request that any vote or action be taken by the EC without a meeting and without unanimous consent, and such action may be taken if approved by the appropriate voting levels specified in Article V of the Certificate. Notice of the EC Chair’s request shall be given to all EC Members in the manner specified in Article 11 of these Bylaws.  (ii) During meetings: Notational votes from an EC Member that is not present shall be accepted and counted at an EC meeting with respect to any resolutions circulated in writing in advance of an EC meeting; provided, however, that if substantive changes are made in a resolution at the EC meeting such advance notational votes shall not be counted with respect to that resolution, but the procedures specified in (iii) below should be used.  (iii) Following a meeting: The EC shall indicate whether, and if so for how long, notational votes will be accepted after a meeting relating to particular issues voted on at that meeting. Notational ballots will be distributed to EC members and EC alternates. | 25 | In 10.4(a), the definition of “EC” includes the deleted test. Should the language be deleted because it is redundant?  Q5: Should 10.4(g), concerning proxies, be deleted to reflect current practices? Note: 10.4(h) states that there are no substitutes are permitted to vote at EC meetings.  Q5: Proposed 10.4(i): Should this language be modified in light of the changes to the frequency of EC meetings? |
|  | **10.5** | **EC Subcommittees**  (a) The EC may establish subcommittees to be comprised of Members and other interested parties who have the opportunity to participate. Each EC Subcommittee shall employ Balanced Voting when requested. Each EC Subcommittee shall report to, and serve at the pleasure of, the EC. EC Subcommittees shall each:  (i) elect a chair or co-chair, which shall be an EC Member and will serve until removed by the subcommittee's membership;  (ii) carry out its work in accordance with the procedures adopted by the EC for EC Subcommittees; and  (iii) keep regular minutes of its proceedings and provide copies of these minutes promptly to the Secretary.  Any task forces established by EC Subcommittees shall be comprised of Members and other interested parties.  (b) The Triage Subcommittee shall review and recommend disposition of each request received by NAESB for a Standard, or Model Business Practice. Disposition shall mean scope, priority consistent with the Annual Plan, and assignment to a Quadrant(s) and subcommittee(s) for action. | 27 | Q5: 10.5 (a) seems to say that subcommittees must use Balanced Voting. Should this be changed to reflect our practice of holding ballots votes only when requested? |
| **11** |  | **NOTICE** | 28 |  |
|  | **11.1** | **Written Notice**  (a) Whenever written notice is required to be given to any person, it may be given to the person, either personally or by sending a copy by first class or express mail, postage prepaid, or courier service, charges prepaid, or by telegram (with messenger service specified), electronic mail (or its equivalent), or by facsimile transmission, to his or her address or to his or her electronic mail address or facsimile number appearing on the books of NAESB, in the case of Directors or EC Members, supplied by him or her to NAESB for the purpose of notice. If the notice is sent by mail, telegraph or courier service, it shall be deemed to have been given when deposited in the United States mail or with a telegraph office or courier service for delivery to that person. A notice of meeting shall specify the place, day and hour of the meeting and any other information required by Delaware law. Except as otherwise provided by the Delaware law or these Bylaws, when a meeting is adjourned, it shall not be necessary to give any notice of the adjourned meeting, or of the business to be transacted at an adjourned meeting, other than by announcement at the meeting at which such adjournment is taken.  (b) Notices given shall comply with the provisions of Article VI, Sections 1 and 3 of the Certificate. | 28 | Requirements for a written notice for a meeting: Title 8 § 222 is paraphrased/summarized as:  Written Notice = place, if any, date and hour, the means of remote comms, if any, the record date for determining the stockholders entitled to vote, if that date is different from the record date for determining stockholders entitled to notice of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Written notice= 10 > 60 days before the date of the meeting to each stockholder entitled to a vote as of the record date. If mailed, notice is given when deposited in the mail, postage prepaid, directed to the stockholder at their address as it appears in the records of the corporation. |
|  | **11.2** | **Waiver by Writing**  Whenever any written notice is required to be given, a waiver in writing, signed by the person or persons entitled to the notice, whether before or after the time stated, shall be deemed equivalent to the giving of the notice. | 28 |  |
|  | **11.3** | **Waiver by Attendance**  Attendance of a person at any meeting shall constitute a waiver of notice of the meeting except where a person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting was not lawfully called or convened. | 29 |  |
| **12** |  | **CONFLICTS OF INTEREST** | 29 |  |
|  | **12.1** | **Interested Directors and Officers**  No contract or transaction between NAESB and one or more of its Members, Directors, or officers, or between NAESB and any other corporation, partnership, association, or other organization in which one or more of its Directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for such reason, or solely because the Member, Director, or officer is present at or participates in the meeting of the Board or committee thereof which authorizes the contract or transaction, or solely because his, her, or their votes are counted for that purpose, if:  (a) the material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the Board or the committee thereof and the Board or committee thereof in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested Directors even though the disinterested Directors are less than a quorum;  (b) the material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the Members entitled to vote thereon, if any, and the contract or transaction is specifically approved in good faith by vote of such Members; or  (c) the contract or transaction is fair as to NAESB as of the time it is authorized, approved, or ratified by the Board or the Members.  Common or interested Directors may be counted in determining the presence of a quorum at a meeting of the Board or of a committee thereof, which authorizes the contract or transaction. NAESB's adoption of a Standard shall not constitute a "contract or transaction" within the meaning of this Section. | 29 |  |
| **13** |  | **LIMITATION OF LIABILITY; INSURANCE** | 30 |  |
|  | **13.1** | **Limitation of Liability**  Article III, Section 6 of the Certificate contains limits on personal liability of Directors, EC Members and other persons acting for NAESB, and these limitations are incorporated herein by reference. Any repeal or amendment of Section 13.1 of these Bylaws shall be prospective only and shall not increase, but may decrease, a Director's liability with respect to actions or failures to act occurring prior to such change. | 30 |  |
|  | **13.2** | **Insurance**  NAESB shall purchase and maintain insurance on behalf of any person who is or was a NAESB Director or NAESB Officer and, to the extent approved by the Board, on behalf of EC Members, employees or Agents of NAESB or on behalf of persons now or previously serving at the request of NAESB as a director, officer, employee or Agent of another domestic or foreign corporation for profit or not-for-profit, partnership, joint venture, trust, or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not NAESB would have the power to indemnify him or her against that liability under the Delaware law. | 30 |  |
| **14** |  | **INDEMNIFICATION** | 30 |  |
|  | **14.1** | **Representative Defined**  For purposes of Article 14 of these Bylaws, "representative" means any Director, officer, employee, or Agent of NAESB. | 30 | “of these Bylaws” added to the first sentence of Article 14. |
|  | **14.2** | **Third-Party Actions**  NAESB shall indemnify, to the full extent not prohibited by law, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of NAESB), by reason of the fact that he or she is or was a representative of NAESB, or is or was serving at the request of NAESB as a representative of another domestic or foreign corporation for profit or not-for-profit, partnership, joint venture, trust, or other enterprise, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with the action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of NAESB and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent shall not of itself create a presumption that the person did not act in good faith and in a manner that he or she reasonably believed to be in, or not opposed to, the best interests of NAESB and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful. | 30 |  |
|  | **14.3** | **Derivative and Corporate Actions**  NAESB shall indemnify, to the full extent not prohibited by law, any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action or suit by or in the right of NAESB to procure a judgment in its favor by reason of the fact that he or she is or was a representative of NAESB or is or was serving at the request of NAESB as a representative of another domestic or foreign corporation for profit or not-for profit, partnership, joint venture, trust, or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of the action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of NAESB. Indemnification shall not be made under Section 14.3 of these Bylaws in respect of any claim, issue or matter as to which the person has been adjudged to be liable to NAESB unless and only to the extent that the Court of Chancery or the court in which the action or suit was brought determines upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses that the Court of Chancery or other court shall deem proper. | 31 |  |
|  | **14.4** | **Procedure for Effectuating Indemnification**  Unless ordered by a court, any indemnification under Section 14.2 or Section 14.3 of these Bylaws shall be made by NAESB only as authorized in the specific case upon a determination that indemnification of the representative is proper in the circumstances because he or she has met the applicable standard of conduct set forth in those Sections. The determination shall be made:  (a) by the Board by a majority vote of a quorum consisting of Directors who were not parties to the action, suit or proceeding; or  (b) if such a quorum is not obtainable or if obtainable a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion. | 32 |  |
|  | **14.5** | **Advancing Expenses**  Expenses (including attorneys' fees) incurred in defending any action, suit or proceeding referred to in Article 14 of these Bylaws may be paid by NAESB in advance of the final disposition of the action, suit or proceeding upon receipt of an undertaking by or on behalf of the representative to repay the amount if it is ultimately determined that he or she is not entitled to be indemnified by NAESB as authorized in this Article or otherwise. | 32 |  |
|  | **14.6** | **Supplementary Coverage**  The indemnification and advancement of expenses provided by or granted pursuant to Article 14 of these Bylaws shall not be deemed exclusive of any other rights to which a person seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of the Members or disinterested Directors, or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding that office. Section 12.1 (relating to interested Directors or officers) shall be applicable to any bylaw, contract, or transaction authorized by the Directors under this Section 14.6. | 32 |  |
|  | **14.7** | **Duration and Extent of Coverage**  The indemnification and advancement of expenses provided by or granted pursuant to Article 14 of these Bylaws shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a representative of NAESB and shall inure to the benefit of the heirs and personal representatives of that person. | 32 |  |
|  | **14.8** | **Reliance and Modification**  Each person who shall act as a representative of NAESB shall be deemed to be doing so in reliance upon the rights provided by Article 14 of these Bylaws. The duties of NAESB to indemnify and to advance expenses to a representative provided in Article 14 shall be in the nature of a contract between NAESB and the representative. No amendment or repeal of any provision of this Article shall alter, to the detriment of the representative, his or her right to the advance of expenses or indemnification related to a claim based on an act or failure to act which took place prior to such amendment or repeal. | 33 |  |
| **15** |  | **ANNUAL REPORT** | 33 |  |
|  | **15.1** | **Annual Report**  The Board shall present annually to the Members a report, verified by the Board Chair and Treasurer or by a majority of the Board, describing the activities and accomplishments of NAESB and containing a financial report addressing at least the following matters:  (a) The assets and liabilities, including the trust funds, of NAESB as of the end of the fiscal year immediately preceding the date of the report.  (b) The principal changes in assets and liabilities, including the trust funds, during the year immediately preceding the date of the report.  (c) The revenue or receipts of NAESB, both unrestricted and restricted to particular purposes, for the year immediately preceding the date of the report, including separate data with respect to each trust fund held by or for NAESB.  (d) The expenses or disbursements of NAESB, for both general and restricted purposes, during the year immediately preceding the date of the report, including separate data with respect to each trust fund held by or for NAESB.  (e) The number of Members of NAESB as of the date of the report, together with a statement of increase or decrease in such number during the year immediately preceding the date of the report, and a statement of the place where the names and addresses of the current Members may be found.  The annual report of the Board shall be filed with the minutes of the Meeting of the Members. | 33 |  |
| **16** |  | **TRANSACTION OF BUSINESS** | 34 |  |
|  | **16.1** | **Real Property**  NAESB shall make no purchase of real property nor sell, mortgage, lease away or otherwise dispose of its real property, unless authorized by the vote of the Board. If the real property is subject to a trust, the conveyance away shall be free of trust and the trust shall be impinged upon the proceeds of such conveyance. | 34 |  |
|  | **16.2** | **Negotiable Instruments**  All checks or demands for money and notes of NAESB shall be signed by such officer or officers as the Board may designate. | 34 |  |
| **17** |  | **CORPORATE RECORDS** | 34 |  |
|  | **17.1** | **Corporate Records**  NAESB shall keep at its registered office or at its principal place of business: (a) a copy of the Certificate, including all amendments thereto; (b) the original or a copy of its Bylaws, including all amendments thereto to date, certified by the Secretary of NAESB; (c) an original or duplicate record of the proceedings of the Board; (d) an original or duplicate record of the proceedings of the EC; (e) an original or a duplicate membership register showing the names of the Members, their respective addresses, and other details of membership, and (f) appropriate, complete, and accurate books or records of account. | 34 |  |
| **18** |  | **AMENDMENTS** | 34 |  |
|  | **18.1** | **Amendments**  The Bylaws of NAESB may be amended by the Board in the manner described in the Certificate. Each Quadrant's Exhibit may be adopted or amended by majority vote of the Directors representing that Quadrant or as may be specified in the procedures contained in that Quadrant’s Exhibit. Votes on consistency of Quadrant procedures with the Certificate and Bylaws are in the manner described in Article V, Section 5 of the Certificate. | 34 |  |
| **19** |  | **CONTRIBUTIONS TO STANDARDS AND MODEL BUSINESS PRACTICES** | 35 |  |
|  | **19.1** | **Assignment of Rights in Contributions**  All NAESB Members and other interested parties shall be allowed to participate in the creation of NAESB Standards and Model Business Practices. Participation in the creation of NAESB Standards and Model Business Practices requires service on a subcommittee that serves at the pleasure of, and reports to, the EC. The procedures and requirements for contributing to Standards and Model Business Practices shall conform to the policies of NAESB as stated in the NAESB Intellectual Property Rights Policy Concerning Contributions and Comments, NAESB Intellectual Property Rights Policy Concerning Patents, and the NAESB~~’s~~ Operating Procedures. At the request of NAESB, participants in the development of a NAESB Standard or Model Business Practice shall execute a document assigning to NAESB any intellectual property interest that the individual has in any Contribution. To the extent a participant’s Contributions are made within the scope of the participant’s employment, the participant’s employer shall assign to NAESB its rights in the employee’s Contributions to the Standards or Model Business Practices. As standards are copyrighted by NAESB, the NAESB “Copyright Procedure Regarding Member and Purchaser Self-Executing Waiver” is available for self-executing waivers for use of the NAESB copyrighted material by Members and entities who have purchased the standards. |  |  |
|  |  | **EXHIBIT 1 WHOLESALE GAS QUADRANT PROCEDURES** |  |  |
|  |  | **EXHIBIT 2 WHOLESALE ELECTRIC QUADRANT PROCEDURES** |  |  |
|  |  | **EXHIBIT 3 RETAIL MARKETS QUADRANT PROCEDURES** |  |  |