

**Con Edison of NY/Orange & Rockland Utilities**  
**Comments on Proposed Revisions to**  
**GISB Sale & Purchase of Natural Gas**

**A. General Comments**

Con Edison does not support the proposed expansion of the use of GISB's form contract to long-term transactions without further modifications, additions, and/or deletions that address the needs of buyers under longer term arrangements. Even with such modifications, however, the GISB will likely not be appropriate for all long-term gas needs. For instance, the GISB does not require a Seller to maintain reserves or available, uncommitted gas supplies for a Buyer's long-term, firm needs. This type of provision and others that are designed to assure reliable gas supplies during peak periods would still need to be individually negotiated by the parties.

**B. Specific Concerns**

**Section 11:** Force Majeure: GISB adds examples of "economic hardships" that will not constitute a force majeure event. Some of the examples added by GISB are references to events that LDCs typically include in long-term agreements as events which excuse non-performance or give rise to a right to terminate, *i.e.*, a regulatory agency disallowing pass through of costs and the loss of Buyer's markets. There appears to be no rationale for making these changes at this time, particularly in an agreement that may be used for long-term arrangements.

**Section 10:** Financial Responsibility: The Financial Responsibility section has been substantially revised and, for the most part, these revisions are consistent with changes that are typically proposed to the current form GISB. Nonetheless, the section needs to be broader in scope. As subsection 1 currently reads, a party may request adequate assurance of performance if the party has "reasonable grounds for insecurity regarding the performance of any payment obligation." The section should be revised to give a party the right to request adequate assurance of performance if the party has "reasonable grounds for insecurity regarding performance" by the other party. In a circumstance where a Buyer is purchasing gas, the insecurity is likely to be with respect to a Seller's ability to continue delivering gas and the Buyer needs the ability to address this insecurity.

**Sections 1.1, 1.2, 1.3 and 2.6:** Transactions: There are revisions to the transaction procedures that may make sense in short-term transactions, but should not be extended to long-term arrangements. Additionally, there are some ambiguities in the proposed GISB caused by the revisions to the provisions on confirming a transaction. First, Section 1.2

should be revised to require that the parties “expressly agree **in writing**” to Transaction Confirmations that contain any provisions other than those relating to the commercial terms (as set forth in Section 1.2), which modify or supplement the Base Contract or General Terms and Conditions of the Contract. Second, “transaction”, as it is used throughout the proposed form GISB to refer to transactions that are confirmed orally should be defined in the Contract. Additionally, the Contract uses both the term “effective Transaction Confirmation” and “binding Transaction Confirmation” interchangeably. Binding appears to be the better term since it is used in defining the Written Transaction Procedure in Section 1.2.

**Section 14:** Miscellaneous:

1.4 Proposed Section 1.4 provides that the parties agree that “each party may electronically record all telephone conversations between their respective employees, without any special or further notice.” This Section should be revised to read “each party may electronically record all telephone conversations between their respective employees **who are involved in the purchase, sale, and/or trading of Gas**, without any special or further notice.” The GISB contract should not be requiring a blanket authorization to record ALL telephone calls between the parties.

14.1 The assignment clause has been revised to add the following language: “(and shall not relieve the assigning party from liability hereunder)”. This clause appears misplaced or unnecessary, however, since typically if consent to assignment is required (as is the case for the applicable part of the GISB’s provision) then once the consent is given, the assigning party is relieved from liability. The intent of the clause as revised is now uncertain.

Section 2 Definitions

2.9 In the definition of “Cover Standard” references to the actions to be taken by the “non-defaulting party” have been replaced with references to the actions to be taken by “the performing party.” The two terms are not synonymous. This change is not one which has frequently appeared in revisions to the GISB form in the past and it is not clear why the change is being proposed. The change should not be accepted without an adequate explanation of why it is necessary. .