Gas Industry Standards Board
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via email and posting

TO: GISB Contract Subcommittee Participants & Posting for Interested Industry Participants

FROM: Rae McQuade, Executive Director
Diane McVicker, Co-Chairman, GISB Contracts Subcommittee
Cary Metz, Co-Chairman, GISB Contracts Subcommittee

RE: Final Minutes of the Contracts Subcommittee Meeting – January 19, 2001

DATE: January 19, 2001

GAS INDUSTRY STANDARDS BOARD

GISB CONTRACTS SUBCOMMITTEE MEETING – CONFERENCE CALL

January 19, 2001 – 2:00 p.m. to 4:00 p.m. Central

FINAL MINUTES

I. Administrative

Ms. McVicker welcomed the participants and Ms. McQuade announced the attendees. Ms. Cary Metz read the antitrust statement. The agenda was adopted as posted. The December 15 minutes were changed, and the redlined changes will be reviewed at the next meeting for adoption.

II. Review of Changes Submitted for the Short Term Base Contract

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Section § 11.2	Williams Energy Marketing and Trading on May 22, offered the following derivatives language: Force Majeure may, in the case of an EFP, also include the inability to transact relevant futures trading for any reason beyond the reasonable control of Buyer or Seller, including without limitation closing of the New York Mercantile Exchange ("NYMEX") or Kansas City Board of Trade ("KCBOT") or any refusal by the NYMEX or KCBOT to allow trading during trading hours; failure of telecommunications lines or of computers or other equipment utilized in trading broadly affecting other similar equipment in the same geographic area. Reliant Energy provided additional language for consideration on December 15, 2000: ADP or EFP: "ADP" or "Alternative Delivery Procedure" means that the Parties have agreed to utilize an alternate delivery procedure in accordance with the rules of a regulated exchange to consummate delivery in connection with a futures position and to follow all exchange rules, regulations and guidelines applicable to ADP Transactions. "EFP" or "Exchange for Physical" means that the Parties have agreed to utilize the EFP procedures of a regulated

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	exchange to exchange a futures position for a physical position of equal quantity. The performance obligation of ADP and EFP transactions are the same as the performance obligation of Firm (LD) transactions stated above; provided that, performance of ADP and EFP Transactions are also excused if the related regulated exchange excuses performance.
	There was discussion on whether, conceptually, the language should be added to the contract describing force majeure for EFP as inability to transact relevant futures trading such as the closing of the New York Mercantile Exchange ("NYMEX") or Kansas City Board of Trade ("KCBOT") or any refusal by the NYMEX or KCBOT to allow trading during trading hours; failure of telecommunications lines or of computers or other equipment utilized in trading broadly affecting other similar equipment in the same geographic area.
	In further discussion, Williams withdrew its changes. Reliant also withdrew its changes. This does not preclude parties to the contract from entering into EFP transactions.
Exhibit A	Dynegy provided changes to Exhibit A, where the contract would have a separate signature for special provisions (April 24, 2000):
	This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated _____. The terms of this Transaction Confirmation are binding unless disputed in writing within 2 Business Days of receipt unless otherwise specified in the Base Contract. If this Transaction Confirmation contains Special Provisions, other than those relating to the commercial terms of the Transaction (e.g., price, volume, delivery point, period of delivery and/or transportation conditions), which modify or supplement the Base Contract or General Terms and Conditions of this Contract (e.g., arbitration provisions or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 1.3 unless agreed to in writing; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties.
	AEP had offered a similar modification, based on the EEI Master Power Purchase & Sale Agreement (Section 2.4) be considered for inclusion in the GISB Base Contract for Short-Term Sale and Purchase of Natural Gas, (12/15/00):
	"2.4 Additional Confirmation Terms. If the Parties have elected on the Cover Sheet to make this Section 2.4 applicable to this Master Agreement, when a Confirmation contains provisions, other than those provisions relating to the commercial terms of the Transaction (e.g., price or special transmission conditions), which modify or supplement the general terms and conditions of this Master Agreement (e.g., arbitration provisions or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 2.3 unless agreed to either orally or in writing by

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	the Parties; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties."
	Several noted that there should be a default for accepting the special provisions to accommodate a two-day turn-around, which would obviate the need for a signature and the difficulty of obtaining the signatures in a short period of time.
	If special provisions were added, and it may take more than two days to review, the confirming party could return the contract rejecting the changes while they perform the legal review of the proposed changes. This would negate the need for a signature.
	The discussion has centered on special provisions where both contracting parties have not previously discussed them. In disagreements, transaction tapes and notes can be used as evidence that the special terms were not agreed to by both parties.
	The signatures could be used for the oral transaction confirmation, where no special provisions could be added that had not previously had agreement of both parties through the oral confirmation. As such, Dynegy suggested language would apply to the oral transaction. For a written transaction confirmation, the whole agreement is agreed to within two days or it is rejected. This language should be added to section § 1.2 or § 1.3. In neither case are the special provisions commercial, so it would not affect invoicing.
	All on the call supported in concept the addition of the Dynegy language to section § 1.3 for the oral transaction confirmation.
Section § 11.3	ExxonMobil offered the following language for economic hardship (from the 12/15 comments) by modifying Section § 11.3 by deleting the phrase "or (iii) economic hardship." and replacing with the following:
	"(iii) economic hardship, to include, without limitation, Seller's ability to sell Gas at a higher or more advantageous price than the Contract Price, Buyer's ability to purchase Gas at a lower or more advantageous price than the Contract Price, or a regulatory agency disallowing, in whole or in part, the pass through of costs resulting from this Agreement; (iv) the loss of Buyer's market(s) or Buyer's inability to use or resell Gas purchased hereunder, except, in either case, as provided in Section 11.2; or (v) the loss or failure of Seller's gas supply or depletion of reserves, except, in either case, as provided in Section 11.2."
	All on the call supported in concept the addition of the ExxonMobil language to section § 11.3 regarding economic hardship.
Section § 13.10	AEP described the recommended language for a new section for a confidentiality provision (as provided in comments on April 26):
	"Section 13.10 The terms of any Transaction Confirmation hereunder, including but not limited to the Contract Price, the

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> Contract Quantity, the Delivery Period, the identified Transporter(s), and all other material terms thereof shall be kept confidential by the parties hereto and their affiliates for one year from the expiration of such Transaction, except to the extent that any information must be disclosed to a third party for the purpose of effectuating transportation of Gas subject to the Contract or to meet New York Mercantile Exchange requirements or governmental orders or regulations."

This was discussed at the last meeting for further discussion at today's meeting. Reliant provided additional language for consideration:

> If the Parties have elected on the Cover Sheet to make this Section 10.14 applicable to this Master Agreement, neither Party shall disclose the terms of any Transaction to a third party (other than the employees, lenders, counsel or accountants of the Party and its Affiliates or prospective purchasers, directly or indirectly, of a Party of all or substantially all of a Party's assets or of any rights under this Agreement, provided such Persons shall have agreed to keep such terms confidential) except (i) in order to comply with any applicable law, order, regulation or exchange rule, (ii) to the extent necessary to implement any Transaction, or (iii) to the extent such information is delivered to such third party for the sole purpose of calculating a published index. Each Party shall notify the other Party of any proceeding of which it is aware which may result in disclosure of the terms of any Transaction (other than as permitted hereunder) and use reasonable efforts to prevent or limit the disclosure. The existence of this Master Agreement is not subject to this confidentiality obligation. Subject to Article 7, the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with this confidentiality obligation.

It was discussed that confidentiality may be accommodated through a check box on the front page of the contract, as some of the companies do not regularly include confidentiality terms. The box would provide the confidentiality clause as an option. The box could be described so that if not checked, the transaction described by the contract was confidential, or was not confidential. There was no general consensus on how to describe the box, but all were in agreement that if there is a box, it would be on the cover sheet. It was suggested that the norm should be the default. Liability was raised, where if the default was that the agreement was confidential, it may assume that printed copies of the agreement were kept in a secure and locked area.

This discussion will continue at the next meeting.

III. Adjourn

The next meeting is scheduled to be a conference call on February 1 from 2:00 to 4:00 p.m. CCT. Items for discussion at the meeting include:

- Confidentiality.
- Liquidation.
- Any additional workpapers.
- Next meeting dates.

A face-to-face meeting with conference calling available is scheduled for February 23, beginning at 10:00 a.m. central.

The meeting was adjourned at 3:45 p.m. CCT.

IV. Attendees

Member?[1]	Name	Company
Services:		
Y	Mitch Dutton	AEP
Y	Janis Shaffer	AEP
Y	Cathy Szasz	AEP
Y	Gina McMahon	BTUWatch.com
N	Mark Rae	Stook Stook and Lavan
Y	Mark Scheel	Dynegy Inc.
Y	Porter Ryan	Coastal Merchant Energy LP
Y	Paramy Graf	Reliant
Y	Sherry Stofer	Southern Co. Energy Marketing, L.P.
Y	David Hollingsworth	Williams Energy Marketing
Y	Margaret Lester	Dynegy Marketing and Trade
End Users:		
Y	Cary Metz	MCV
Y	Gary Shay	PPL
Y	Diane McVicker	Salt River Project
Y	Joel Greene	Arizona Public Services
Producers:		
Y	Matt Cross	ExxonMobil
Y	Vernon Sevier	ExxonMobil
LDCs:		
Y	Rick Ishikawa	SoCal Gas
Y	Angie Ishikawa	SoCal Gas

[1] GISB membership for 2000 – membership is not a requirement to participate in this or any GISB meeting. Membership is not a requirement for voting in this subcommittee.