

Comments received by: [AIG](#), [APS](#), [BGE](#), [ConEd](#), [DTE](#), [Duke](#), [ECNGC](#), [J.Aron](#), [KeySpan](#), [NI Source](#), [PanCanadian](#), Peoples, [SDGE](#), [Sempra](#), [SoCal](#), [SRP](#), [WG](#), [Yankee](#)

Section	Footnote	Company	Issue	Disposition
General		PanCanadian	First and most important of all comments, PCES believes that the Executive Committee should vote and approve the Contracts Committee's recommendation at its EC meeting in February 2002. This version of the GI SB Sales and Purchase of Natural Gas is substantially superior to the earlier GI SB contract. The sooner the EC approves and GI SB members ratify the recommended version the sooner the market place will be able to expedite transactions and implement the many benefits of the revised GI SB contract.	
General		WG	As a final point, the draft contract needs to be revised to reflect that effective January 1, 2002, the Gas Industry Standards Board (GI SB) became the North American Energy Standards Board (NAESB).	
General		Yankee	Yankee believes that it is worthwhile to expand the GI SB to incorporate many of the provisions that are becoming "industry-standard", such as netting, closeout set-offs, and performance assurances. However, it is unlikely that the GI SB will be useful as a template for longer-term arrangements, which need to be tailored to the specific business needs of the company and the arrangements. Many companies have invested time and effort in formulating a Master Gas Purchase and Sales Agreement containing credit support annexes or supplements for longer term transactions, and may be reluctant to adopt the GI SB, which still contains fairly simplistic credit provisions.	
cover	001	PanCanadian	Since GI SB will convert itself to the wholesale gas quadrant of the North American Energy Standards Board in January 2002, PCES suggests that the GI SB Contract be renamed and restated as the "NAESB Contract" with corresponding changes made to the form and standard numbering system. The standard numbering system should reflect the fact that the NAESB Contract will be approved and ratified only by the wholesale gas quadrant of NAESB. Further, by referring to the revised contract as the "NAESB Contract" the market will be able to distinguish this revised contract from the previous "GI SB Contract" and not have to refer to the revised contract as the "GI SB <u>2</u> Contract" or some other short form name.	
2	002	DUKE	Throughout the Contract - The Contract is referred to as "Base Contract" or "Contract." Select one definition and change all references throughout the Contract.	
cover	003	DUKE	Page Numbering - The page numbering in the Contract is incorrect; it states "Page 1 of 1," "Page 2 of 2" etc. instead of "Page 1 of 10," "Page 2 of 10," etc. Please correct this	

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			error.	
General	004	WG	the draft contract needs to be revised to reflect that effective January 1, 2002, the Gas Industry Standard Board (GISB) became the North American Energy Standards Board (NAESB)	
cover	005	DUKE	Cover Sheet, second sentence - Change this sentence as follows: "The parties to this Base Contract (referred to as "Party" or "Parties") are the following." Capitalize "Party" and "Parties" throughout the contract.	
cover	006	DUKE	Cover Sheet, paragraph preceding the check boxes - Add "as attached" after "the General Terms and Conditions for Sale and Purchase of Natural Gas published by the Gas Industry Standards Board."	
cover	007	DUKE	<p>Add the following as a new box on the cover sheet:</p> <p>Section 10.1.1 Collateral Threshold</p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p>Collateral Threshold shall apply (default) and the Collateral Threshold for the Party first listed above shall be: _____;</p> <p>and the Collateral Threshold for the Party listed second shall be:</p> <p>_____</p> <p>Collateral Threshold shall not apply</p>	
10.3	012 013 014 127 128 129 139	SRP	Section 10.3 (and corresponding box on the cover page) deals with "Forward Contract Damages." The concept of "forward contracts" and "forward contracts merchants" is a fairly recent development. It was implemented, in part, to strengthen the contractual protection of non-defaulting parties in case their counterparts declare bankruptcy. Most of these concerns have already been addressed in other sections of the Contract. The Commodity Exchange Act and the Commodity Futures Modernization Act have a list of requirements that need to be met before a contract can be designated as a "forward contract" or before a merchant can be designated as a "forward contract merchant." These concepts could be challenged and/or disputed. Consequently, we don't think that GISB should designate (what was always called	

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			liquidated or actual damages) as "Forward Contract Damages." If a concept of a "forward contract" is questioned, does it automatically mean that there cannot be any "forward contract damages" even though a defaulting party is clearly in breach of its contractual obligations? Hence, we ask that "Forward Contract Damages" be removed and be replaced with either "liquidated damages" or "actual damages."	
cover	015	SoCal/SDGE	The Base Contract boxes are out of numerical order. Perhaps the Spot Price Publication box for Section 2.25 could be moved up, and the Note pertaining to Spot Price Publication could be put inside the box. The Note should be clarified by saying "This Spot Price Publication applies to the selection chosen in Section 3.2."	
14.5	016	DTEET	suggests that a more neutral standard be adopted by specifying New York as the default choice of law. Alternatively, the Base Contract could remain silent on the choice of law, and leave this as an issue to be negotiated by the parties, which is how it is handled today. Even if the parties leave Section 14.5 blank, any court with jurisdiction can perform an interest analysis to resolve any potential conflicts of law.	
14.5	017	J. Aron	Recommendation: remove Texas law as the default choice and leave the choice of law up to the parties to negotiate.	
14.5	018	PanCanadian	It has been suggested that the Choice of Law section be revised from Texas law to either New York law or to leave it blank for parties to negotiate. First since the GI SB contract is for the physical sale and purchase of natural gas, PCES believes that Texas is the most appropriate state for the law to apply to physical sale and purchase of natural gas. There is significant case law and many courts in the state of Texas experienced to resolve issues regarding the physical sale and purchase of natural gas under the GI SB contract. PCES believes that the suggestion for New York law to apply because of consistency with power and financial markets and commercially reasonableness is greatly misplaced. The GI SB contract is physical sales of natural gas not a derivative or financial transaction. Further Texas law provides any aggrieved party the ability to select the venue for filing of a complaint or claim in the state of Texas. PCES cannot support the selection of New York for Choice of Law. PCES can support Texas for Choice of Law as recommended by the contracts subcommittee or leaving the state blank as an alternative.	
14.5	019	Sempra	We strenuously believe that, although many of the participants in GI SB are from Texas, this is not an appropriate selection for the type of Transactions contemplated by the GI SB Contract. We believe that either there should be no default provision, as it was in the prior agreement, or the default be New York. transactions, are both governed by New York law.	
14.5	021	KeySpan	Section 14.5 Box: We object to the use of Texas as the default in a multi-year	

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			contract. Many multi-year contracts specify other States such as New York and we see no reason to use Texas as the default. We suggest that Section 14.5 be modified to require parties to specify the choice of law or in the alternative to list all States in the check-off box.	
14.5	022	AI G	We disagree that Texas law should appear as the default choice of law. There should either be no default choice of law or it should be New York for the reasons mentioned in both Sempra Energy Trading Corp. ("Sempra") and J.Aron & Company's (J.Aron) comments.	
14.5	023	NiSource	NiSource agrees that the controlling law should be agreed to between the parties and specified in a confirmation. NiSource does not agree, though, with establishing Texas as the default jurisdiction.	
14.5	024	SoCal/SDGE	Texas law should not be the default choice of law in Section 14.5 of the Base Contract. <i>[We believe that there should be no default provision, as it was in the prior version.]</i>	
14.5	025	DUKE	Section 14.5 - Change the Choice of Law default to New York (rather than Texas).	
14.5	026	WG	WG supports keeping the "Choice of Law" option a fill in the blank. WG does not support the default being Texas or any other state. The Choice of Law should be negotiated between the counter-parties.	
2	027	ConEd	"transaction", as it is used throughout the proposed form GI SB to refer to transactions that are confirmed orally should be defined in the Contract.	
1.2	028	APS	Add to the end of the 5th sentence, line 6: "within three (3) Business Days of telephonic transaction." APS believes it is important to specify and limit the amount of time between the telephone transaction and the transaction confirmation.	
1.2	030	ConEd	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.	
1.2	031	Yankee	Where a Transaction contains additional terms to the Base Contract or General Terms and Conditions, the express agreement of the parties should be evidenced by a writing, rather than "expressly agreed to by both parties". If the language is intended to get away from "long-form" confirmations, then the only way to be sure that both parties have agreed to these provisions is to execute the confirmation. The distinction between oral transactions and those that are confirmed in writing is confusing in the new language.	
1.2	032	DUKE	Section 1.2 (Oral Transaction Procedure) - Delete the last sentence of this section.	
1.3	033	APS	Change the first sentence to read as follows: "If the commercial terms of a sending	

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			party's Transaction Confirmation is different from the receiving party's understanding of the agreement referred to in Section 1.2, such receiving party shall notify the sending party via facsimile, e-mail, or other mutually agreeable means by the Confirm Deadline, unless such receiving party has previously sent a Transaction Confirmation to the sending party." APS believes the issue of "materially" is too vague and this would eliminate the potential for confusion. In addition, "email or any other mutually agreeable means" are common and acceptable forms of communication that should be recognized in the contract.	
1.3	035 045 047	ConEd	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.	
1.3	036	Yankee	If the parties have selected Oral Transaction Procedure as their preferred standard of business, why should the Transaction Confirmation take precedence in the order of priority? Doesn't that undercut the validity of the oral transaction?	
1.2 Oral	037	AI G	If Oral Transaction Procedure is chosen as the option for Section 1.2, then we believe that a binding Transaction Confirmation (binding means that a party has not responded to a previously sent Transaction Confirmation within two Business Days) should have precedence over a recorded conversation except in cases of manifest error in the Transaction Confirmation. If the parties bargain for "X" and this is duly noted in the recorded conversation, but the Transaction Confirmation states "Y", then because of the manifest error in the Transaction Confirmation, the recorded conversation should be given the highest priority in Section 1.3. Accordingly, we believe that Section 1.3 should read "In the event of a conflict among the terms of (i) a binding Transaction Confirmation, pursuant to Section 1.2, (ii) ... and (v) these General Terms and Conditions, the terms of the documents shall govern in the priority listed in this sentence absent manifest error in document (i), in which case document (ii) will have priority over document (i)."	
1	038	NiSource	While transactions may be entered into verbally, NiSource firmly supports the need to confirm the transaction in writing. The draft contract includes potentially significant reliance on recorded telephone conversations. The contract should not provide the opportunity to move away from written confirmations through a blanket agreement to recording without specific notice or use of recordings to enforce contracts. The language of Section 1.3 regarding conflict among oral and written agreements is not clear as to what document ultimately controls.	
1.4	039	ConEd	Proposed Section 1.4 provides that the parties agree that "each party may electronically record all telephone conversations between their respective employees,	

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			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 <u>who are involved in the purchase, sale, and/or trading of Gas</u> , without any special or further notice." The GISB contract should not be requiring a blanket authorization to record ALL telephone calls between the parties.	
1.4	040	Yankee	We would clarify that the recording is between the parties' respective "marketing and trading" employees. It is not appropriate to have the parties concede that all their employees' conversations may be taped. For example, are your senior management willing to have their conversations taped? What about your in-house legal counsel?	
2	041	DUKE	Add the following definitions: "Collateral" is defined in Section 10.1.1. "Event of Default" is defined in Section 10.2. "Exposed Party" is defined in Section 10.1.1. "Net Settlement Amount" is defined in Section 10.3.2. "Non-Exposed Party" is defined in Section 10.1.1. "Non-Secured Party" is defined in Section 10.1.1. "Secured Party" is defined in Section 10.1.1.	
2	042	WG	Section 2. Definitions. The following statement should be added: The terms set forth below shall have the meaning ascribed to them below. Other terms are also defined elsewhere in the Agreement and shall have the meanings ascribed to them therein. Rationale -- The listing is not inclusive of every definition in the contract.	
2.2	044	KeySpan	We request a clarification as to the reason for the change to the definition and the significance of adding "international" before BTU.	
2.6	046	Yankee	This section uses the term "effective Transaction Confirmations" which hasn't been defined. You have used "binding" in other sections. Is that different from "effective"?	
2.9	050	ConEd	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.	
2.9	051	SRP	Any reference to "alternate" (Section 2.9) or "alternative" (Section 3.2) fuel should be deleted. If a seller defaults and the buyer enters into a replacement transaction, the buyer should be able to recover any (negative) price difference. However, if	

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			there is a provision for "alternative fuel", the amount of liquidated damages may be questioned if there was a cheaper alternate fuel available (for example # 6 oil). Furthermore, if the parties to the Contract decide to substitute Gas for some other commodities, they can do so at the time of transaction whether it is mandated by the master agreement or not. Therefore, we request any reference in these sections to "alternate" or "alternative" fuels be deleted.	
3.2		APS	With respect to SRP's suggestion to delete "alternate" (Section 2.9) and "alternative" (Section 3.2) fuel reference, APS would like to leave this in the contract. The inclusion of "alternative fuel" is important to contracting parties that have the ability to switch to other fuel such as #2 or #6. APS would not be opposed to a provision that would require the use of alternative fuels only when natural gas is unavailable.	
2.9	052	AI G	Delete the words "or alternative fuels" in the second line of Section 2.9 and the third line of Section 3.2. Unless there is a force majeure situation, the buyer or the seller should be able to buy/sell Gas. The concept of a party being obligated for a commodity they had not bargained to either buy or sell is troublesome.	
2.9	053	SoCal/SDGE	Delete the words "or alternate fuels" in the second line of Section 2.9. <i>[We do not want to agree to use efforts to obtain alternate fuels since it is unclear what constitutes alternate fuels.]</i>	
2.10	054	DUKE	Section 2.10 - In the last line, Delete "agreed to by the parties" and insert "as specified by the Non-Defaulting Party" in its place.	
2.13	056	DUKE	Section 2.13 - Delete the current definition of "Delivery Point(s)" and insert the following in its place: "Delivery Point(s)" shall mean that specific point at which the Parties have mutually agreed that Seller will deliver the Gas to Buyer and Buyer will receive the Gas from Seller, as specified for each Transaction in the Transaction Confirmation. Title to the Gas shall transfer from Seller to Buyer at the Delivery Point(s).	
2.25	057 069 070	DUKE	Section 2.25 - This section defines the "Spot Price Standard," but in Section 3.2, this definition is referred to simply as "Spot Price." Please either select one term and change all the applicable references accordingly, or create a separate description for Spot Price.	
2.28	058	DUKE	Section 2.28 - Add the following definition as Section 2.28: "Demand Charge" - shall mean the portion of the Price that is paid periodically irrespective of whether any quantity of Gas is delivered or received.	
3	059	Sempra	Neither the new version nor the prior version of the GISB states when non-performance damages under Section 3 will be paid. Although we favor an accelerated payment due date for these damages, we approve of the EEI method of having an	

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			option for when these will be paid.	
3.2	060	AIG	In Section 3.2, there should be a date by which payment should be made for failure to deliver or receive Gas. It should occur promptly after the value of the performance breach been quantified. We suggest the following: "The amount of such unfavorable difference shall be payable within two Business Days after presentation of the non-breaching party's invoice for such amount which shall set forth the basis which such amount was calculated."	
3.2	062	SRP	Any reference to "alternate" (Section 2.9) or "alternative" (Section 3.2) fuel should be deleted. If a seller defaults and the buyer enters into a replacement transaction, the buyer should be able to recover any (negative) price difference. However, if there is a provision for "alternative fuel", the amount of liquidated damages may be questioned if there was a cheaper alternate fuel available (for example # 6 oil). Furthermore, if the parties to the Contract decide to substitute Gas for some other commodities, they can do so at the time of transaction whether it is mandated by the master agreement or not. Therefore, we request any reference in these sections to "alternate" or "alternative" fuels be deleted.	
2.9		APS	With respect to SRP's suggestion to delete "alternate" (Section 2.9) and "alternative" (Section 3.2) fuel reference, APS would like to leave this in the contract. The inclusion of "alternative fuel" is important to contracting parties that have the ability to switch to other fuel such as #2 or #6. APS would not be opposed to a provision that would require the use of alternative fuels only when natural gas is unavailable.	
3.2	063	AIG	Delete the words "or alternative fuels" in the second line of Section 2.9 and the third line of Section 3.2. Unless there is a force majeure situation, the buyer or the seller should be able to buy/sell Gas. The concept of a party being obligated for a commodity they had not bargained to either buy or sell is troublesome.	
3.2	064	SoCal/SDGE	In Section 3.2, "Cover Standard", delete the words "or alternative fuels", in the third line.	
3.2	065	DUKE	Section 3.2, Cover Standard - Delete "or alternative fuels" in the third line, first sentence of this section.	
3.2	067 071	SoCal/SDGE	In Sections 3.2, "Cover Standard" and "Spot Price Standard", add the following sentence to the end thereof: The amount of such unfavorable difference shall be payable three (3) Business Days after presentation of the performing party's invoice for such amount which shall set forth the basis upon which such amount was calculated.	
3	072	ECNGC	<u>Performance Obligation.</u> The Base Contract, in our judgment, provides inadequate incentive for the Seller's performance. In particular, the "cover standard" of Section	

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			<p>3.2 provides that the sole and exclusive remedy of the Buyer in the event of a breach by Seller of its delivery obligation is either the Buyer's cover costs or, if no replacement gas is available, the Buyer can recover only an amount based upon the difference between the contract price and the applicable spot price. While this approach may be satisfactory for spot transactions during the April-October period, it is clearly inadequate as an incentive to Sellers to perform on a long-term basis, especially, during the winter season. The ECNGC recommends that another option be made available to the parties, an option that would provide for a substantial, dollar-denominated penalty to the Seller in the event that the Seller fails to perform and the Buyer is unable to arrange for replacement supplies. We are requesting a third box for "Alternative Damages" to be negotiated by the parties. In addition, in the event of chronic or repeated failures to perform by the Seller, the Buyer should have the option to terminate the contract.</p>	
4.4	074	AIG	<p>We suggest that schedulers have the opportunity to "bookout" various purchases and sales entered into at the same delivery point in the same delivery month with the same counterpart, subject to rules of the Transporter. We propose adding a new Section 4.4 at the end of Section 4: "4.4 If, at the time the parties enter into a Gas purchase and sale transaction under which one party is to sell Gas to the other, one or more other Gas purchase and sale transactions are outstanding under which such other party is to sell Gas to such first party for delivery during the same Delivery Period and at the same Delivery Point for payment on the same Payment Date, then (subject to a) any applicable regulations of the relevant Transporter and b) Section 10) all such offsetting transactions shall be netted into a single transaction under which (a) the party required to deliver the larger amount of Gas shall deliver to the other party the difference between the amount of Gas it is to deliver and the amount it is to receive under such offsetting transactions, and (b) the party owing the greater purchase price under such offsetting Gas purchase and sale transaction shall pay to the other party the difference between the amount it owes and the amount owed to it under such offsetting transactions. The single resulting transaction shall be deemed entered into automatically and, once entered into, outstanding obligations under the offsetting transactions shall terminate. Such netting shall not affect that transaction's status as a "Forward Contract" for purposes of the U.S Bankruptcy Code based on the date it was originally entered into."</p>	
6	075	NiSource	<p>The draft should specify that neither the contract price nor any other term of the contract is affected by any change in the rate or amount of any applicable tax on either party.</p>	

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6	076 077	DUKE	Section 6, Taxes - Insert the following wording at the end of the second sentence: "including, but not limited to all sales or use, gross receipts and consumption taxes."	
7.x added	078	SRP	Check-out. We request to include some language in section 7 that would provide for monthly check-out, something similar to: "Parties shall perform a monthly confirmation of gas quantities and corresponding price prior to the invoice being issued. The parties shall confirm by telephone, fax, e-mail or other mutually acceptable method."	
7.x		APS	APS does not believe this should be addressed in the master document. The reason is not all counterparties utilize monthly checkouts. The issue is the distinction between "may" and "shall." APS is not opposed to this provision if this was optional.	
7	079	NiSource	The contract is unclear regarding when invoices must be issued, which could affect the length of time before an activity is finalized. NiSource prefers the invoice to be sent by the 10 th of the following month, to be paid by the 25 th or 10 days after receipt.	
7.2	081	SoCal/SDGE	In Section 7.2, at the beginning thereof, add the words, "Except as set forth in Section 3.2."	
7.4	083	SoCal/SDGE	In Section 7.4, after the word "Section" and before "7.2" add the number "3.2".	
7.4	086	Yankee	This section uses the term "released". Isn't "waived" more appropriate than released?	
7.6	087	WG	Section 7.6. WG supports the addition of netting language to the contract.	
7.6	088	Sempra	We approve of the netting provision in the new version of the GI SB. However, we believe the words "on the same day" should be added after the words "due and owing" on the second line. Non-performance damages could be due on a date other than the payment due date, and would not be netted with normal payment.	
7.6 Canada	089	AIG	We concur with Sempra that in Section 7.6 the words "on the same Payment Date" should be inserted after the words "all undisputed amounts due and owing".	
7.6	090	SoCal/SDGE	In Section 7.6, after the words "due and owing" in the second line add the words "on the same day."	
7.5	091	Yankee	Rather than trying to figure out whether a separate netting agreement contains provisions that are inconsistent with this section, it would be easier to state that if the Parties have executed a separate netting agreement, the terms and conditions therein shall supersede this section. The netting agreement will likely state that its terms supersede any payment and netting provisions of the agreements to which it applies.	
8.2	093 094	SoCal/SDGE	In Section 8.2, the first line, add an "(a)" after the word "that" and, after the word "claims" in the second line, add the following: (b) Its sale to Buyer is in compliance with all applicable laws and regulations, and (c)	

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			Buyer is not the first purchaser of the Gas. EXCEPT AS PROVIDED IN THIS SECTION 8.2 AND IN SECTION 14.8,	
8.4	096	NiSource	Quality is of such consequence that in addition to specifying that Seller be liable for claims that arise from failure to meet Transporter's minimum standards, NiSource believes Buyer should not be obligated to accept delivery of, or pay for, any Gas that does not meet the quality standards.	
9.3	097 098	AI G	In Section 9.3, the last sentence, we suggest that the words "five Business Days after mailing" be replaced with the words "upon actual receipt". The recipient should not have to take the risk of delayed mail service. You get the mail when you get the mail. Further, if Notices are being sent by facsimile, then they should be deemed received not upon the sending party's receipt of its facsimile machine's confirmation of successful transmission, but on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sending party's facsimile machine). This comports with the I SDA Notices provision.	
10	099	NiSource	This section as drafted shows a bent toward contracting from the Seller's point of view, noticeable in several other areas as well. In particular, only a party with reasonable grounds for insecurity regarding "performance of a payment obligation" may move or adequate assurances. For the LDC purchaser of gas, the key performance issue is the delivery of needed gas volumes.	
10	100	WG	Section 10. Financial Responsibility. The existing language in Section 10 is adequate to cover short-term transactions. The expansion of this area, in particular the paragraphs dealing with Forward Contract Damages, is not necessary for short-term transactions. WG supports keeping the language in this Section 10 as it exists in the current GI SB contract.	
10	101 108	AI G	GI SB has tied everything in the default provisions (outside of bankruptcy) to failure to pay. Thus the way you get to a default for performance is via clause 3.2 (where a party fails to perform under a transaction, the transaction is closed out and there is a failure to pay damages). The problem with this is that you don't get to close out for a potential failure to perform. We suggest that Section 10.1 read as follows: "Notwithstanding Section 3.2, if either party ("X") has reasonable grounds for insecurity regarding the performance of any obligation under this Contract (whether or not then due) by the other party ("Y") (including, without limitation, the occurrence of a material change in the creditworthiness of Y), X may demand Adequate Assurance of Performance. We also suggest that the following exception be added to the end of	

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			Section 10.2 (viii): "except in the case of a failure to pay pursuant to Section 3.2, in which case no notice hereunder shall be required in addition to that required under such Section."	
10	102 103 112	ECNGC	<u>Financial Responsibility</u> . With credit issues becoming more and more important in the energy industry, any GI SB contract should provide that both parties to a transaction will have reasonable assurance that they can monitor and enforce meaningful credit standards. Section 10 of the proposed Base Contract is deficient in that it attempts to provide credit assurance primarily or exclusively for the benefit of the Seller. This provides no real protection for the Buyer. That is, in Section 10.1, the credit provisions are triggered when either party "has reasonable grounds for insecurity regarding performance of any payment obligation under this contract" However, the provision focuses only on the payment obligation -- typically only the Buyer's obligation. Thus, the provision ignores the fact that the continuing creditworthiness of the Seller is just as much a concern to the Buyer as the Buyer's creditworthiness is to the Seller. Experience in the market demonstrates that poor credit on the part of the Seller is a major risk factor affecting the Seller's ability to deliver gas to the Buyer. Notwithstanding this, the Base Contract completely ignores the Buyer's concerns. The contract should be revised so that it is triggered by Party A's insecurity concerning the effect of Party B's credit on Party B's ability to perform <u>any material obligation</u> under the agreement, whether that obligation be payment or delivery of gas. Furthermore, the provision needs to provide that creditworthiness standards are made more specific (i.e., less subjective) and thus more easily enforceable. As proposed, Section 10 would in all likelihood lead to continuing arguments as to what constitutes "reasonable grounds" for insecurity regarding performance, what is a "creditworthy entity" for purposes of performance guarantees, etc.	
10.1	104	SRP	Financial Responsibility provides that adequate assurances can only be demanded if there is a reasonable grounds for insecurity "regarding the performance of any payment obligation under this Contract." It appears that this provision is more favorable to the seller. For example, if a seller takes a significant financial hit and its ability to deliver becomes questionable, the buyer couldn't ask for adequate assurances because the seller doesn't owe any money to the buyer and there is no payment obligation. Also, the buyer may find itself in a position where it doesn't know whether to enter into a replacement transaction or not. Therefore, we ask that Section 10.1 be modified by deleting the word "payment" in the first line.	
10	106	ConEd	Financial Responsibility: The Financial Responsibility section has been substantially	

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			revised and, for the most part, these revisions are consistent with changes that are typically proposed to the current form G I S B. 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.	
10.1	107	Yankee	Insecurity should cover both performance and payment. We suggest changing the "of" to an "or" so that the first sentence reads "has reasonable grounds for insecurity regarding the performance or any payment obligation"	
10.1	109 111 113	APS	In the first sentence, line 1 - delete "payment" before the word obligation. Second sentence, line 5 - after the word "credit" and before the words "a prepayment" add: "from a bank or institution acceptable to X", at the end of paragraph add: "acceptable to X".	
10.x added	114	DUKE	Section 10.1.1. - Add the following as Section 10.1.1: If at any time and from time to time during the term of this Contract (and notwithstanding whether an Event of Default has occurred or is continuing) the Net Settlement Amount (without giving effect to any rights which allows for set-off of obligations not arising from this Contract) which would be owed by a Party (the "Non-Exposed Party") to the other Party (the "Exposed Party") exceeds such Non-Exposed Party's Collateral Threshold then the Non-Exposed Party shall be required to transfer Collateral within two (2) Business Days following receipt of a request by the Exposed Party in an amount equal to the positive difference between the Net Settlement Amount owed to the Exposed Party and the applicable Collateral Threshold (rounding upwards for any fractional amount to the next \$100,000). Upon receipt of the Collateral (defined below), the Exposed Party shall be deemed the "Secured Party." If the Secured Party should thereafter become under-secured, the Non-Exposed Party will be required to transfer additional Collateral. The amount of additional Collateral required by the Secured Party shall be rounded up to the nearest \$100,000. If the Secured Party becomes over-secured it shall promptly return any excess Collateral. The amount of Collateral to be returned shall be rounded down to the nearest \$100,000. Collateral shall mean: (a) cash payment by wire transfer to the Secured Party's account or (b) posting of an irrevocable letter of credit in a form and	

Section	Footnote	Company	Issue	Disposition
			<p>substance which is and remains acceptable to the Secured Party and issued by a bank acceptable to the Secured Party in its sole discretion. Interest on any cash held as Collateral will accrue at a rate per annum equal to the one-month London Interbank Offered Rate (LIBOR) determined daily as provided under the heading "Money Rates" in The Wall Street Journal minus ½%. Such interest shall be calculated commencing on the date cash Collateral is received by the Secured Party but excluding the earlier of (i) the date such Collateral is returned to Non-Secured Party and (ii) the date such Collateral is applied to the Non-Secured Party obligations.</p> <p>If at any time an Event of Default has occurred and is continuing with respect to a Party the Collateral Threshold for such party shall be \$0 notwithstanding the amounts indicated on the cover page. The obligations of the parties in this Section 10.1.1 shall constitute Credit Support Obligations.</p>	
10.2	116	DUKE	Section 10.2(vi) -Delete the phrase "with respect to any Credit Support Obligations."	
10.2	117	APS	In line 8, delete the word "reasonable" before the words written request.	
10.2	118	DUKE	Section 10.2(vii) - Revise as follows: " fail to provide Collateral in accordance with Section 10.1."	
10.2	119	SPR	Events of Default should include a general provision that can cover most of the ground not included in the itemized events of default. We ask that the following provision be included in Section 10.2: "failure to perform any obligation under this Contract (except to the extent such failure constitutes a separate Event of Default under this Section 10.2 and except for such party's obligation to deliver or receive Gas, the exclusive remedy for which is provided in Section 3) if such failure is not remedied within ten (10) Business Days after a demand for corrective action."	
10.2	120	Yankee	The parties don't terminate and liquidate the Contract, but rather terminate and liquidate the Transactions under the Contract.	
10.2	121	AIG	the phrase in the penultimate line of Section 10.2 "terminate and liquidate the Contract" should for clarification read "terminate and liquidate those outstanding Transactions entered into pursuant to the Contract"	
10.2 10.3	122	BGE	the notice requirements in 10.2 and 10.3 appear to be inconsistent. Deleting the phrase "without prior notice" in the last line of 10.2 would eliminate that inconsistency. With this revision, 10.2 would incorporate, by reference to 10.3, the manner in which the non-defaulting party communicates to the defaulting party of its intent to exercise its rights under 10.2.	
10.2	123	AIG	We concur with BG&E that in the last line of Section 10.2 the words "without prior notice" should be removed.	
10.3	124	AIG	However in the first line of Section 10.3 the words "by notice to the Defaulting Party"	

Section	Footnote	Company	Issue	Disposition
			should be replaced with "by notice to the Defaulting Party, except in the case of (i) to (iv) in Section 10.2 above, in which case no notice is required".	
10.3	125	Yankee	We generally don't like the language that allows the Non-Defaulting Party to determine, in its reasonable opinion, the commercial impracticability to liquidate and terminate, because it provides too much flexibility to game the timing of the market value of the gas, particularly in a volatile market. If you think it should be left in, perhaps you could limit it by adding at the end, "but no longer than 10 days."	
10.3	126	AIG	In Section 10.3, for purposes of clarification (so as to avoid any doubt about which Early Termination Date is being considered) we suggest that the last sentence read "With respect to each Excluded Transaction, its actual termination date shall be the "Early Termination Date" for purposes of Section 10.3.1."	
10.3.1	130	Sempra	We believe that this provision would have been strengthened if it also provided that all entered into by the parties will be deemed to be one integrated contract. Additionally, we were truly perplexed by the option of having no Forward Contract damages, and can think of no situation where a party would reasonably want to opt out of the Forward Contract Damages provision. As evidenced by the recent bankruptcy of Enron, even the biggest can fall. Although this is only an option, we are concerned that by requiring parties to make an election, we are creating a point of negotiation where none should exist. As such, we strongly believe that the option should be deleted, and any individual company that wishes to delete this provision do so in its Special Provisions.	
10.3.1	131	AIG	We concur with Sempra's comment that the close-out and liquidation of forward contracts would be strengthened if all Transactions entered into pursuant to an executed Base Agreement were deemed to be one integrated contract.	
10.3.1		Yankee	The present value should not be stated, but determined by the Non-Defaulting Party. While it may be a matter of dispute, it is different for each party.	
10.3.1	132	AIG	does "liquidate <u>and accelerate</u> each Terminated Transaction at its Market Value" make sense? We suggest "liquidate <u>and terminate</u> " is more appropriate.	
10.3	133 134	APS	In line 9, after the words "to the Seller, if the opposite is the case" add "assuming the Buyer and Seller described herein is the Non-Defaulting Party. At the end of the first paragraph add: "If the total amounts due to the Non-Defaulting Party are negative, then no monies are due either Party."	
10.3.1	135 137	J. Aron	Recommendation: (a) delete the phrase "and options to extend" in the parenthetical in the penultimate sentence of the above referenced section, and (b) add the following sentence before the last sentence in the above referenced section: "For the avoidance of doubt, any option pursuant to which one party has the right to extend	

Section	Footnote	Company	Issue	Disposition
			the term of a transaction shall be considered in determining Contract Values and Market Values."	
10.3	136 138	AI G	We concur with J.Aron's point regarding options to extend as found in Section 10.3.	
10.3.1	140	AI G	We again concur with Sempra that there should be no option for "Forward Contract Damages Do Not Apply" as it makes no sense.	
10.3.2	141	J. Aron	Recommendation: add the following as new subsection 10.3.2(ii), "any Net Settlement Amount owed to the Defaulting party against any margin or other collateral held by the Defaulting Party in connection with any Credit Support Obligation relating to the Contract,"	
10.3.2	142	AI G	We concur with J.Aron's point in Section 10.3.2 regarding the need for language to allow for the set-off of margin against any Net Settlement Amount.	
10.4	143	AI G	provision should be made for payment of default interest on the Net Settlement Amount if not timely paid, as well as payment of expenses and legal fees incurred by the party seeking to enforce payment of the Net Settlement Amount.	
10.5	144	APS	Change to read as follows: "The Parties agree that the transactions hereunder constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code."	
10.x added	145	SoCal/SDGE	Add the following new section: 10.7 With respect to this Section 10, if the parties have executed a separate netting agreement with close-out netting provisions, the terms and conditions therein shall prevail to the extent inconsistent herewith. <i>[This is intended to address the close-out provision as opposed to the monthly netting covered by Section 7.6.]</i>	
11	146 149 151	KeySpan	In addition to Con Ed 's comments we would need this section further modified to exclude, for example, hurricanes and freeze-off s as force majeure events under a long-term contract. Many existing multi-year contracts exclude these events because the supplier knows in advance (unlike an earthquake) that such an event is likely to occur and can make adjustments and continue to perform. We would propose that the Force Majeure Section be included in the check off -Box where parties can indicate whether they agree to the GI SB form language (this would be the default) or to individually crafted language.	
11	148	NiSource	Force Majeure is defined specifically to include regional weather events and to exclude events of economic hardship including regulatory situations that are negotiable issues, particularly for long-term contracts. Such specific references	

Section	Footnote	Company	Issue	Disposition
			should be removed from the standard contract or it will not be readily usable for utilities.	
11.2	150	AI G	We believe that the Force Majeure language in Section 11.2 (i) is too broad and that the words "or necessity of repairs to machinery or equipment or lines of pipe" should be removed.	
11.3	152 156 157	AI G	In Section 11.3 Force Majeure, delete "or" before "(iii)" and before "(v)", add the following language after the end of clause (v): ", as provided in Section 11.2" and then add the following: "(vi) a State's controlling or rationing production; (vii) increases or decreases in natural gas supply due to allocation or reallocation of production by well operators, pipelines or other parties; or (viii) any failure of a supplier or purchaser to perform, for reasons other than set forth in Section 11.2."	
11	153	ConEd	Force Majeure: GI SB adds examples of "economic hardships" that will not constitute a force majeure event. Some of the examples added by GI SB 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>i.e.</i> , 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.	
11.3	154	Yankee	We agree with one of the comments made that regulatory disallowance should not be included as a specific example of a non-Force Majeure event. It should be a matter for the parties to negotiate, depending on their regulatory circumstances.	
11.3	155	DUKE	Section 11.3(iii) – Please provide clarification as to the intent of the wording "...or a regulatory agency disallowing, in whole or in part, the pass through of costs resulting from this Agreement."	
11.3	158	SoCal/SDGE	In Section 11.3, after part (v) and before the period, add the following phrase "or (vi) a State's controlling or rationing production."	
11.3	159	DUKE	Section 11.3 – Add "or Demand Charges" at the end of the second sentence.	
11.3	160	DUKE	Section 11.3 – Add the following sentence at the end of this section: "Force Majeure, however, shall not excuse the payment of financial obligations, such as those incurred in liquidating hedge positions undertaken by a Party in reliance upon a trigger price, fixed price, or other price risk management option exercised by the other Party, who shall be liable for any losses incurred in such liquidation."	
12	161	SoCal/SDGE	In Section 12, after the words "Section 7.5," add the words "Section 10.3.2" [<i>This is to ensure that the setoff right survives the agreement.</i>]	
14.x Added	162	ECNGC	<u>Dispute Resolution</u> . While this may not be as much of a concern for short-term spot agreements, we believe that a long-term GI SB contract should include the option of a	

Section	Footnote	Company	Issue	Disposition
			dispute resolution mechanism by which the parties can resolve disputes through efficient arbitration procedures without having to resort to costly and disruptive litigation. Dispute resolution provisions have become standard in contracts where the parties have an interest in efficiently resolving their disputes while, at the same time, maintaining contract performance. We believe these considerations are present in long-term natural gas transactions. For this reason, the contract should include the option of a dispute resolution provision. We favor "baseball" type arbitration as the most efficient mechanism.	
14.X	163	NiSource	The contract lacks important dispute resolution language. NiSource suggests at a minimum a procedure requiring that the aggrieved party promptly notify the other party and, if the parties fail to resolve the dispute within 10 Business Days, then appointed officers of the two parties meet to resolve the dispute.	
14.1	165	ConEd	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 GI SB'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.	
14.1	166	DUKE	Section 14.1 - At the end of 14.1(i), add "as long as such entity has a credit status which, in the non-assigning Party's sole opinion, is at least as high as that of the assignor."	
14.1	167	J. Aron	Recommendation: add the following after the word "party" in Section 14.1(ii), "provided, however, that (a) such transfer or assignment is to an entity whose credit worthiness is equal to or better than that of the transferee party immediately preceding the transfer and (b) such transfer has no adverse tax consequences to the non-transferring party".	
14.1	168	WG	Additional language needs to be added to this section to ensure that a contract is not assigned to a parent or affiliate whose creditworthiness is lower than the original party's. With credit issues becoming more and more important in the natural gas industry, it is imperative that this added protection be incorporated in the contract.	
14.1	169	AIG	We concur with J.Aron that Section 14.1 be reworked. We believe, however, that no party should be able to assign its rights without the prior written consent of the other party.	
14.4	172	SoCal/SDGE	Add the following sentences after the second to last sentence in Section to 14.4: All Gas purchase and sale transactions in effect on the date hereof, and all Gas purchase and sale transactions entered into between the parties on or after the	

Section	Footnote	Company	Issue	Disposition
			date hereof shall be governed by this Contract.	
14.10	173	WG	WG supports the addition of the confidentiality option. However, WG does not support disclosure to an affiliate and would suggest the reference to an affiliate be deleted.	
14.10	175	DUKE	Section 14.10 - Capitalize "contract" which is found on the fifth line at the end of the sentence.	
14.11	177	AIG	"14.11 Each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement or any transaction.	
14.12	178	AIG	Finally, as Sempra points out, the sub-committee should consider the inclusion of a formal Credit Addendum to the Base Contract. At the very least, the agreement should provide for the mitigation of delivery credit risk with the following new clause: "14.12: If Buyer at any time exceeds the delivery credit line then in effect as from time to time established by Seller, Seller may, not later than the second Business Day before the last day on which Gas deliveries for that delivery month or Delivery Period, as applicable, can be nominated on Seller's Transporter (the "Last Nomination Day"), require Buyer, to the extent of such excess, to make due on its Credit Support Obligations by (a) prepaying for that transaction, (b) by providing an irrevocable letter of credit in Seller's favor in a form and substance and having such terms and conditions as Seller shall reasonably specify, issued by a major bank which is and remains acceptable to Seller; such prepayment will be made to, or such letter of credit received by, Seller within two Business Days after Seller's request (but no later than the Business Day before the relevant Last Nomination Day), or (c) providing Seller with other collateral in an amount acceptable to Seller in its sole discretion. In the event a letter of credit is provided, all charges at Buyer's bank relating to any letter of credit are for Buyer's account."	
14.x added	179	SoCal/SDGE	Add the following new sections: (a) add a Section 14.12 to the Base Contract with a box to check if the Federal Acquisition Regulations are applicable. (b) add the following to Section 14.12: If the parties have indicated on the Base Contract that the Federal Acquisition Regulations are applicable, then each party hereby confirms that it shall comply with all applicable requirements set forth in the Federal Acquisition Regulations (or any successor thereto) in effect on the date of this Agreement, including but not limited to the following: 48 C.F.R. Part 52 <u>et seq</u> : Affirmative Action for Workers with Disabilities; Affirmative Action Compliance; Prohibition of Segregated Facilities; Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era;	

Section	Footnote	Company	Issue	Disposition
			Utilization of Small Business Concerns; Equal Opportunity; Affirmative Action Programs; Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan and any applicable sections contained in 41 C.F.R. Chapter 60. The terms and conditions thereof shall be controlling over any conflicting terms and conditions set forth in this Contract or any written Amendment hereto.	
FAQ?	180	PanCanadian	<p>Can I modify the contract?</p> <p>Any modification to the contract General Terms and Conditions terms, whether electronically or to the paper form should be clearly reflected to the party you are contracting with. When If you modify the contract <u>General Terms and Conditions</u> electronically, you should delete the GISB watermark from the document so that the recipient knows that it the contract is not the standard GISB contract. <u>You should also delete the GISB watermark in electronic versions of the General Terms and Conditions.</u></p> <p>PCES believes this FAQ rewrite makes it clear that if there are any modifications to the GISB standard General Terms and Conditions, the related contract shall no longer be considered between the counter parties as a "GISB" contract. PCES has experienced several instances where counter parties have modified the GISB contract General Terms and Conditions, but did not remove the GISB watermark and they believed the contract was a "GISB" contract. It is suggested that for future versions of the GISB contract that only *.pdf electronic and paper versions are furnished by GISB upon any party's request. This should minimize the above problem from occurring.</p>	
propose	181	Sempra	Although physical Transactions had traditionally been entered into on an open credit basis, this is not true any more. On the power side, the EEI, for example, contains margining provisions and increasingly counterparts are seeking comparable protections under physical gas agreements as well. We propose that GISB consider a standard addendum governing margin.	
15.x		NiSource	For long term arrangements, NiSource finds it appropriate and important to ensure in writing that the parties are engaged in the direct commercial use of Gas in the ordinary course of business, that the parties know and understand the industry, necessary regulatory authorizations or documentation, and each warrant that it has or will maintain such authorizations required of it. In addition, signatories to such a contract should warrant their full authority to enter into and be bound by the agreement.	
Canada	182	DUKE	Canadian Addendum, Cover Sheet - In Section 10.4, change the termination currency default to Canadian dollars (rather than U.S. dollars).	

Section	Footnote	Company	Issue	Disposition
Canada	182	DUKE	Canadian Addendum, Cover Sheet - In Section 14.5, create a default Choice of Law to Alberta.	
Canada	182	DUKE	Canadian Addendum, Section 6.3.1 - Please include a statement as to what would happen if Seller does not agree to treat the Gas as zero-rated.	
Canada	182	DUKE	Canadian Addendum, Section 6.3.2 - It is not expressly stated whether it is mandatory for Seller to treat the Gas as zero-rated. If Seller is allowed to use its sole discretion in this matter, this should be clarified.	
Canada	182	DUKE	Canadian Addendum, Section 7.3 - Delete The Toronto Dominion Bank and insert Bank of Canada in its place.	
Canada	182	DUKE	Canadian Addendum, Section 7.3 - In item (j), add "Canadian dollar" prior to "commercial loans."	
TC	183	WG	Credit is a major issue facing the natural gas industry today. Paragraph 2.10 contains the definition for credit support obligation. Within the definition there are various credit instruments identified. It would be helpful to have a place designated on the Transaction Confirmation sheet to identify whether or not credit assurance is required and if so what type of credit instrument is backing the transaction. This could be a check-off box and a fill in the blank	
TC	183	WG	In addition, the Transaction Confirmation # should be tied to the base contract number. Each party to the base contract can assign its own unique number to the contract. Therefore, the Transaction Confirmation Number should relate to the contract number and have a space for each party's identification number.	