



# Gas Industry Standards Board

1100 Louisiana, Suite 3625, Houston, Texas 77002

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Home Page: www.gisb.org

**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 - April 2, 2001

**DATE:** April 2, 2001

## GAS INDUSTRY STANDARDS BOARD

### GISB CONTRACTS SUBCOMMITTEE MEETING - CONFERENCE CALL

**April 2, 2001 - 2:00 p.m. to 4:00 p.m. Central**

#### FINAL MINUTES

#### I. Administrative

Ms. Metz welcomed the participants and Ms. McQuade announced the attendees. Ms. Cary Metz read the antitrust statement. The agenda was adopted as posted. The March 15 minutes were postponed to review at the next meeting.

#### II. Short Term Base Contract Proposed Changes

##### Section § 10 Liquidation Language

It was determined to begin the review with the work paper provided by Mark Rae of Stroock & Stroock & Lavan (attached). The work paper represents the work of the task force in determining the liquidation language of the contract. For other than section A of the work paper, it was determined to review the work paper by footnotes.

SECTION	DISCUSSION
Section § 10 Liquidation Paper provided by Stroock & Stroock & Lavan, 3/20/01 Cover Page	<p><u>Two new A check boxes <del>box</del></u> will be added to the Base Contract to be located below the Section 7.2 Method Of Payment box and above the Section 13.5 Choice of Law box. <u>The first <del>this</del></u> new check box will be titled "Forward Contract Damages." The choice under the box would be:</p> <p><input type="checkbox"/> If this Box is <u>not</u> checked, the provisions of Section 10.2.2 will be applicable in the event that an Early Termination Date is designated.</p> <p><u>The second new check box will be titled "Other Agreement Setoffs". The choice under the box would be:</u></p> <p><input type="checkbox"/> <u>If this Box is not checked, the provisions of Section 10.2.4 will be applicable in the event that an Early Termination Date is designated.</u></p>



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SECTION	DISCUSSION
	<p>In the discussion, Dynegy raised concerns on the negative implication of the check off box – if the box is overlooked, then the provisions are applicable. It was further noted by Dynegy that normally an affirmative action is required in order for a check off provision to apply. This issue will be discussed with Mr. Dutton of AEP before the group decides on the conceptual language.</p>
Paper provided by Stroock & Stroock & Lavan, 3/20/01 Footnote 1 & 2	<p>Exxon Mobil has agreed to propose a definition of the term "credit support obligation" for consideration by the Contracts Subcommittee.</p> <p>Set forth below is the text of a proposed amendment to the definition of the term "Contract" to deal with certain issues that were discussed at the March 15<sup>th</sup> meeting:</p> <p>"Contract" shall mean the legally binding relationship established by (i) the Base Contract, (ii) the provisions contained in any and all effective Transaction Confirmations and (iii) where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, any and all transactions that the parties have entered into through an EDI transmission or by telephone, but that have not yet been confirmed in an effective Transaction Confirmation."</p> <p>There was no discussion on the language – the participants raised no opposition to the language.</p>
Paper provided by Stroock & Stroock & Lavan, 3/20/01 Footnote 3	<p>The bracketed language is modeled on the Early Termination Date language in the EEI Master Contract.</p> <p>There was no discussion on the language – the participants raised no opposition to the language. There was a subsequent modification to change "that" to "then" on the last sentence of page three of the work paper.</p>
Paper provided by Stroock & Stroock & Lavan, 2/20/01 Footnote 4	<p>The bracketed language is intended to provide the Non-Defaulting Party with a basis for not terminating those transactions which cannot or should not be liquidated.</p> <p>There was no discussion on the language – the participants raised no opposition to the language.</p>
Paper provided by Stroock & Stroock & Lavan, 3/20/01 Section § 10.2.4	<p><u>Upon the occurrence of an Early Termination Date, the Non-Defaulting Party may set-off, without prior notice to the Defaulting Party, any Net Settlement Amount payable to the Defaulting Party against any amount(s) payable by the Defaulting Party to the Non-Defaulting Party under any other agreement or arrangement between the parties to this Contract, so that all such amounts are aggregated and/or netted to a single liquidated amount payable by one party to the other. If any</u></p>



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SECTION	DISCUSSION
	obligations.
Paper provided by Stroock & Stroock & Lavan, 3/20/01 Footnote 6 Section § 10.2.5	<p>Consideration should be given to adding the following additional concept to Section 10.2.5:</p> <p>"Any amount not then due which is included in any netting, aggregation or setoff pursuant to Section 10.2.3 or, if applicable, 10.2.4 shall be discounted to net present value in a commercially reasonable manner determined by the Non-Defaulting Party."</p> <p>In general discussion, there was agreement to add the language presented in the footnote to Section § 10.2.5.</p>
General Comments on Section § 10	<p>Reliant raised concerns on why material adverse events are considered an event of default. Material adverse events are not as serious as an impending bankruptcy. The material adverse events were added to the list of events of default because they were non-subjective and easily verifiable reasons in the contract for events of default. An example of a change in bond rating and not supported by third party was given. Material adverse events do not rise to the level of impending bankruptcy unless the non defaulting party asks for additional credit support which cannot be secured. If credit support cannot be secured, then it is an event of default.</p> <p>As such, it was determined that for a short term contract, material adverse events are only considered an event of default if additional credit support cannot be secured. It was proposed that material adverse events be considered non-exclusive reasonable grounds for insecurity payment in section § 10.1. Mr. Rae will propose language at the next meeting.</p>

### Section § 2 Credit Support Obligation

It was noted at the meeting on March 15 that Mr. Cross would provide language for a definition for credit support obligation. The definition would be placed in section § 2 of the base contract.

SECTION	DISCUSSION
Section 2 Credit Support Obligation Definition	<p>Mr. Cross provided a definition of term "credit support obligation" and read the definition to the group.</p> <p>There was no discussion on the definition and no concern was raised on the language read by Mr. Cross. He will provide it to the GISB office for</p>



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**SECTION****DISCUSSION**

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posting and distribution prior to the next meeting.

## Section § 2 Confirmation Process

The confirmation process had two options described in the April 24, 2000 minutes (which are posted on the GISB home page: <http://www.gisb.org/contract.htm>). The table below extracts the relevant portion of the April 24 minutes, the discussion by the subcommittee and the straw vote taken.

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**SECTION****DISCUSSION**

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Confirmation  
Process

Sections §§ 1.2 &  
1.3

There were two alternatives described for the confirmation process.

The first alternative is to change section § 1.2 to allow for the confirming party to send a confirmation which after a period of time would stand unless a notice is received from the non-confirming party that the confirming party's confirmation is incorrect. This may reduce the amount of paper flowing between the two parties, and possibly speed up and simplify the confirmation process. It could also introduce ambiguity and require the non-confirming party to possibly change its process to allow for the period of time to review the confirmation and respond back to that confirmation rather than generating its own confirmation and forwarding it on to the confirming party for a match.

The second alternative is the existing language: that for the written procedures, the deal is not be binding until the exchange of non-conflicting Transaction Confirmations or the passage of the Confirm Deadline without objection from the receiving (non-confirming) party. For oral procedures, parties agree that Confirming Party shall, and the other party may, confirm a telephonic transaction by sending the other party a Transaction Confirmation. While more paper and possible more labor intensive, this process provides for possibly less ambiguity.

Alternative 1  
Language

Dynegy language was proposed to amend section § 1.2, and similar changes were offered by Reliant Energy:

If the Confirming Party fails to send a Transaction Confirmation within one (1) Business Day after the Transaction is entered into, the other Party may send a Transaction Confirmation to the Confirming Party. If a Transaction is for a Delivery Period of less than one calendar Month, either Party may, but shall not be required to, confirm the Transaction by sending the other Party a Transaction Confirmation by facsimile, EDI or any other mutually agreeable electronic means. The parties acknowledge that their agreement will not be binding until the exchange of a fully executed Transaction Confirmation or the passage of the Confirm Deadline without objection from the receiving party, as provided in Section § 1.3.

Alternative 2

Midland Cogeneration Ventures and ExxonMobil prefer existing



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SECTION	DISCUSSION
Language	<p data-bbox="479 323 1417 443">language to the language proposed by Dynegy. This language more supported the existing UCC language. The existing language (with underlined text denoting conceptually agreed language from prior subcommittee meetings):</p> <p data-bbox="479 464 1130 485">The original language for sections 1.2 and 1.3 are:</p> <p data-bbox="537 506 889 527">Oral Transaction Procedure:</p> <p data-bbox="479 562 1417 1241">1.2 The parties will use the following Transaction Confirmation procedure. Any Gas purchase and sale transaction may be effectuated in an EDI transmission or telephone conversation with the offer and acceptance constituting the agreement of the parties. The parties shall be legally bound from the time they so agree to transaction terms and may each rely thereon. Any such transaction shall be considered a "writing" and to have been "signed". Notwithstanding the foregoing sentence, the parties agree that Confirming Party shall, and the other party may, confirm a telephonic transaction by sending the other party a Transaction Confirmation by facsimile. EDI or mutually agreeable electronic means. Confirming Party adopts its confirming letterhead, or the like, as its signature on any Transaction Confirmation as the identification and authentication of Confirming Party. <u>If the 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 this Section unless agreed to in writing; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties.</u></p> <p data-bbox="537 1272 930 1293">Written Transaction Procedure:</p> <p data-bbox="479 1329 1417 1671">1.2 The parties will use the following Transaction Confirmation procedure. Should the parties come to an agreement regarding a Gas purchase and sale transaction for a particular Delivery Period, the Confirming Party shall, and the other party may, record that agreement on a Transaction Confirmation and communicate such Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means, to the other party by the close of the Business Day following the date of agreement. The parties acknowledge that their agreement will not be binding until the exchange of non-conflicting Transaction Confirmations or the passage of the Confirm Deadline without objection from the receiving party, as provided in Section 1.3.</p> <p data-bbox="479 1703 1417 1852">1.3 If a sending party's Transaction Confirmation is materially 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 by the Confirm Deadline, unless such receiving party has previously sent a Transaction Confirmation to the sending party. The</p>



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**SECTION****DISCUSSION**

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failure of the receiving party to so notify the sending party in writing by the Confirm Deadline constitutes the receiving party's agreement to the terms of the transaction described in the sending party's Transaction Confirmation. If there are any material differences between timely sent Transaction Confirmations governing the same transaction, then neither Transaction Confirmation shall be binding until or unless such differences are resolved including the use of any evidence that clearly resolves the differences in the Transaction Confirmations. The entire agreement between the parties shall be those provisions contained in both the Base Contract and any effective Transaction Confirmation. In the event of a conflict among the terms of (i) a Transaction Confirmation that is signed or passage of the Confirm Deadline without objection from the receiving party, (ii) a recorded conversation, (iii) the Base Contract, and (iv) these General Terms and Conditions, the terms of the documents shall govern in the priority listed in this sentence.

## Discussion

It was observed that the oral transaction confirmation process is not substantially different from the written transaction confirmation process. In both processes, one person is chosen as the confirming party. The confirming party's confirmation is the ruling one. If it is not sent by deadline, the non confirming party's confirmation would rule. This is relevant regardless of written or oral process selection.

It was further agreed that an oral deal is considered in place as soon as it is made on the phone. A written deal is not in place until there is a non-conflicting confirmation(s).

In discussion of alternative one, the non-confirming party is precluded from sending its own confirmation until a period of time has passed. It may be more advantageous for both parties to send in confirmations to immediately identify possible conflicts, but it also means more paper. The non-confirming party is handed a fait accompli and has two days to identify the conflicts or abide by the terms described in the confirming party's deal. If the non-confirming party misses the deadline, abide by the terms described in the confirming party's deal.

In most experiences, when there are disagreements, the recordings have resolved it quickly. After further discussion, there was a realization by some that the two options are not that different.

Conflicting  
Confirmations

The straw vote was taken to determine the level of support for option 1 versus the level of support for option 2. The subcommittee voted for option 2 over option 1 by a tally of 6 to 3. The straw vote results can be found in the attendance list in these minutes under the column entitled "Motion 1."

There was a subsequent motion to not alter the language of sections §§ 1.2 and 1.3 regarding the confirmation process. The motion passed



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**SECTION****DISCUSSION**

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with no opposition.

## Section § 1 Recordation

The recordation process had two language alternatives for adding a new section 1.4 regarding recordation, which were described in the April 24, 2000 minutes (which are posted on the GISB home page: <http://www.gisb.org/contract.htm>). The table below extracts the relevant portion of the April 24 minutes, notes discussion and straw vote results.

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**SECTION****DISCUSSION**

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Section § 1.2  
Recordation

For recordation, there was no opposition noted for adding information to allow for recording of the conversation in oral transaction procedure. There were concerns noted on admissibility as evidence -- particularly "care, custody and control issues," authenticity and relevance. It was noted that similar language was recently drafted for the electric industry (EEI agreement), which addressed recording oral transactions.

New Section § 1.4  
Alternative 1:

Mr. Young and others supported creation of a new section to address recording telephone conversations, section § 1.4, (composed of Koch and Southern comments with waiving language from ExxonMobil):

"The Parties agree that each party may electronically record all telephone conversations between their respective employees, without any special or further notice, and each party hereby waives any claim against the validity of any telephonic Transaction (under laws that may require a writing or otherwise. All such recordings may be introduced into evidence and used to prove oral agreements between the parties. The parties agree not to contest, challenge or assert any defense to the validity or enforceability of telephonic recordings entered into in accordance with the requirements of this Base Contract. However, that nothing herein shall be construed as a waiver of any objection to the introduction of such evidence."

New Section § 1.4  
Alternative 2:

PECO Energy was not in agreement with the above language. Many LDCs do not record. They support section § 1.4 as presented by Dynegy with modifications:

Each Party consents to the recording, at its own expense, of all telephone conversations between its employees and the employees of the other Party and shall retain such recordings in such manner as to protect its business records from improper access. No Transaction shall be rendered ineffective should a malfunction occur in equipment regularly utilized for recording Transactions or retaining Transaction tapes or the operation thereof, and in such event, the Transaction must be based on either the written or computer records of the Parties concerning the Transaction made contemporaneously with the telephone conversation. Any such recordings may be introduced to prove the intent of a Transaction; provided, however, that nothing herein shall be construed as a waiver of any objection to the



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SECTION	DISCUSSION
	introduction of such evidence. Absent manifest error, any conflict between such recording and written documentation of a Transaction that is executed by both Parties shall be resolved in favor of such written documentation.
Discussion:	<p>Some participants noted that option two provides more protection to the parties that do not record. The difference is absent manifest error, any conflict between a recording and written documentation will be found in favor of written documentation that is executed by both parties. Others noted that from a practical standpoint, there is no difference.</p> <p>This section is required to prioritize documents. The section does not contest introduction of tapes, but does preserve the consent to recording and the statute of fraud.</p> <p>The straw vote was taken to determine the level of support for option 1 versus the level of support for option 2. The subcommittee voted unanimously for option 1. The straw vote results can be found in the attendance list in these minutes under the column entitled "Motion 2."</p>

### III. Adjourn

The meeting adjourned at 4:16 pm. The next meeting will be a conference call to resolve the remaining open issues: a third review of section 10 with the work paper provided by Mr. Rae of Stroock & Stroock & Lavan, a definition for credit support obligation in section 2 with the work paper provided by Mr. Cross of ExxonMobil. The call is scheduled for April 23 from 2:00 p.m. to 3:00 p.m. CCT.

On the process, all agreed to support a drafting team to take the agreed upon concepts and place them into the base contract. That group will meet in a three-day face-to-face meeting, and may require more than one meeting to conclude its work. Volunteers for this smaller drafting group should notify the GISB office (713-356-0060, gisb1@aol.com). Several companies have already volunteered to work in this drafting effort. Once the drafting team has completed its work, the Contracts Subcommittee will review and vote whether to endorse it. Should the Contracts Subcommittee endorse the product, it will be made available for industry comment (typically a 30 day period). Once the comments are received, the Contracts Subcommittee may determine to prepare responses to the Executive Committee. The Executive Committee will review the recommended contract, comments, and input from the Contracts Subcommittee and vote. To pass, the contract will require 17 affirmative votes out of the 25 available votes on the Executive Committee, including at least two affirmative votes from each of the five segments represented on the Executive Committee. After Executive Committee endorsement, the membership is required to ratify the Executive Committee actions by a 67% affirmative vote of those members returning ballots. Once ratified, it is considered a final action and will be published.



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## IV. Attendees

Member?	Name	Motion 1	Motion 2	Company
<b>Services:</b>				
Y	Mitch Dutton	A		AEP
Y	Cathy Szasz		1	AEP
Y	Patty McLaughlin			AEP
Y	Scott Eckerman	M	M	Aquila Energy
Y	Gina McMahon	A	A	BTUWatch.com
N	Margaret Lester	1	A	Dynegy Marketing and Trade
Y	Stacey Dickson	1	1	Enron North America
Y	Tracey Ruffeno	2	A	PanCanadian Energy Marketing
Y	Rhonda Alphin	1	1	Reliant
Y	Paramy Graf			Reliant
Y	Jennifer Minnis			Reliant
N	Mark Rae	A	A	Stroock & Stroock & Lavan
Y	David Hollingsworth	2	1	Williams Energy Marketing
<b>End Users:</b>				
Y	Janet Dixon	M	M	Calpine EMI Marketing
Y	Fay Corbin			El Paso Merchant Energy
Y	Bill Hebenstreit			El Paso Merchant Energy
Y	Porter Ryan	A	1	El Paso Merchant Energy LP
Y	Cary Metz	2	1	Midland Cogeneration Ventures
Y	Anne Lovett	M	M	PPL Energy Plus LLC
<b>Producers:</b>				
Y	Carolyn Hazel	2	1	Conoco
Y	Matt Cross	2	1	ExxonMobil
	Vernon Sevier			ExxonMobil
<b>LDCs:</b>				
Y	Angie Ishikawa	2	1	SoCal Gas

GISB membership for 2001 – membership is not a requirement to participate in this or any GISB meeting. Membership is not a requirement for voting in this subcommittee.

Voting Legend: (M)issing when vote was taken, (A)bstain, (1) voted in favor of option 1, (2) voted in favor of option 2.