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MEMORANDUM

DATE: April 3, 2001

RE: Proposed New Section 10

TO: GISB Contracts Subcommittee Participants

FROM: Mark N. Rae
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Scott Le Bouef

This working paper (the "Working Paper") summarizes the results of the discussion at the April 2, 2001 meeting (by conference call) of the GISB Contracts Subcommittee regarding certain proposed amendments to Section 10 of the Base Contract For Short-Term Sale and Purchase of Natural Gas (the "Base Contract"). The proposed amendments to Section 10 ("New Section 10") were contained in our prior Working Paper dated March 20, 2001.

The instant Working Paper shows the consensus changes that the participants in the April 2nd meeting agreed to make in Proposed New Section 10 and the related provisions of the Base Contract as bold, underlined language in the text of New Section 10 below. In its footnotes, this Working Paper also highlights certain additional issues that were discussed at that meeting.

The revised draft of New Section 10 and the related provisions of the Base Contract follow:

A. <u>Proposed Changes to the Base Contract</u>

Two new check boxes 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. The first new check

box will be titled "Forward Contract Damages." The choice under the box would be:

|__| If this Box is not checked, the provisions of Section 10.2.2 will be applicable in the event that an Early Termination Date is designated.[1]

The second new check box will be titled "Other Agreement Setoffs". The choice under the box would be:

|__| 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.

B. Proposed New Section 10

10.1. When reasonable grounds for insecurity of payment or title to the Gas arise **with respect to a party (including, without limitation, the occurrence of a Material Adverse Change with respect to a party)**,[2] **the other** ~~either~~ party may demand adequate assurance of performance. Adequate assurance shall mean sufficient security in the form, amount and for the term reasonably specified by the party demanding assurance, including, but not limited to, a standby

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[1] This check box and the one that follows it both would require the parties to a Base Contract to check the box if they do not want the Base Contract provision to which the check box relates to apply to their transactions. At the April 2nd meeting, a question was raised with respect to whether the presumption inherent in this structure should be changed to make the relevant Base Contract provisions inapplicable unless the relevant check boxes are checked. Because one of the proponents of the current structure did not participate in all of the April 2nd conference call, it was agreed that this question would be considered at the next meeting of the Contracts Subcommittee.

[2] This change would be coupled with the addition of the following new definition of the term "Material Adverse Change" to Section 2 of the Base Contract:

> "Material Adverse Change" shall mean, with respect to a party or its guarantor, if any, a reduction in the rating of its long-term, senior, unsecured debt (not supported by a third party credit support

irrevocable letter of credit, a prepayment, a security interest in an asset acceptable to the demanding party or a performance bond or guarantee by a creditworthy entity. In the event (each an "Event of Default") either party (the "Defaulting Party") (A) shall: (i) make an assignment or any general arrangement for the benefit of creditors; (ii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iii) otherwise become bankrupt or insolvent (however evidenced); (iv) be unable to pay its debts as they fall due; (v) have a receiver, provisional liquidator, conservator, custodian, trustee or other similar official appointed with respect to it or substantially all of its assets; (vi) fail to pay or perform any obligation to the other party with respect to any credit support obligations[3] relating to the Contract; (vii) fail to give adequate assurance of performance under this Section 10.1 within forty-eight (48) hours but at least one (1) Business Day of a reasonable written request by the other party; **or** (viii) not have paid any amount due the other party hereunder on or before the second (2nd) Business Day following written notice that such payment is due; ~~(ix) have a Material Adverse Change, which shall mean with respect to a party or its guarantor, if any, a reduction in the rating of its long-term, senior, unsecured debt (not supported by a third party credit support obligation(s)) by Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., to below "BBB-" or by Moody's Investor Services, Inc. to below "Baa3";~~ or (B) with respect to such party's guarantor, if any: (i) the occurrence of any of the events set forth in clauses (A)(i)-(v)~~,~~ **or** (vii) ~~or (ix)~~ above with respect to such guarantor; or (ii) the failure of the guarantor's guaranty to be in full force and effect (other than in accordance with its terms) prior to the satisfaction of all of the obligations of such party under each transaction to which such guaranty relates without the written consent of the other party; then the other party (the "Non-Defaulting Party") shall have the right, at its sole election, to immediately withhold and/or suspend deliveries or payments and/or

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obligation(s)) by Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., to below "BBB-" or by Moody's Investor Services, Inc. to below "Baa3".

[3] Exxon Mobil has agreed to propose a definition of the term "credit support obligation" for consideration by the Contracts Subcommittee.

to terminate and liquidate the Contract,[4] in the manner provided in Sections 10.2, without prior notice, in addition to any and all other remedies available hereunder.

10.2. If an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right, by notice to the Defaulting Party, to designate a day, no earlier **than** ~~that~~ the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date (the "Early Termination Date") for the liquidation and termination of any and all transactions under the Contract (other than those transactions, if any, that may not be liquidated and terminated under applicable law or that are, in the reasonable opinion of the Non-Defaulting Party, commercially impracticable to liquidate and terminate), as follows:

10.2.1. Upon the designation of an Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, the amount owed, if any, by each party with respect to all Gas delivered and received between the parties under transactions on and before the Early Termination Date, and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts due under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract.

Section 10.2.2 below will be applicable unless the parties have indicated otherwise in the Base Contract.

10.2.2. Upon the designation of an Early Termination Date and in addition to Section 10.2.1 above, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, the Market Value, as defined below, of each transaction closed out pursuant to Section

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[4] The definition of the term "Contract" in Section 2 of the Base Contract also would be amended as follows:

> "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

10.2. The Non-Defaulting Party shall (i) liquidate each closed-out transaction at its Market Value, as defined below, so that each such amount equal to the difference between such Market Value and the Contract Value, as defined below, of such transaction(s) shall be due to the Buyer under the transaction(s) if such Market Value exceeds the Contract Value and to the Seller if the opposite is the case; and (ii) discount each amount then due under clause (i) above to present value in a commercially reasonable manner as of the Early Termination Date (to take account of the period between the date of liquidation and the date on which such amount would have otherwise been due pursuant to the relevant transactions).

For purposes of this Section 10.2.2, "Contract Value" means the amount of Gas remaining to be delivered or purchased on a Firm basis under a transaction multiplied by the Contract Price, and "Market Value" means the amount of Gas remaining to be delivered or purchased on a Firm basis under a transaction multiplied by the market price determined by the Non-Defaulting Party in a commercially reasonable manner. To ascertain the Market Value, the Non-Defaulting Party may consider, among other valuations, any or all of the settlement prices of NYMEX Gas futures contracts, quotations from leading dealers in energy swap contracts, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term and differences in transportation costs. A party shall not be required to enter into a replacement transaction(s) in order to determine the Market Value. Any extension(s) of the term of a transaction to which the parties are not bound as of the Early Termination Date (including but not limited to "Evergreen" provisions and options to extend) shall not be considered in determining Contract Values and Market Values. The rate of interest used in calculating net present value shall be determined by the Non-Defaulting Party in a commercially reasonable manner.

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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.

10.2.3. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.2.1 and, if applicable, Section 10.2.2, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its option, the Non-Defaulting Party may setoff any Net Settlement Amount owed to it against any margin or other collateral held by it in connection with any credit support obligation relating to this Contract.

Section 10.2.4 below will be applicable unless the parties have indicated otherwise in the Base Contract.

10.2.4. 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.

10.2.5. If any obligation that is to be included in any netting, aggregation or setoff pursuant to Section 10.2.3 or, if applicable, Section 10.2.4 is unascertained, the Non-Defaulting Party may in good faith estimate that obligation and net, aggregate or set-off, as applicable, in respect of the estimate, subject to the Non-Defaulting Party accounting to the Defaulting Party when the obligation is ascertained. **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.**

10.2.6 The Non-Defaulting Party shall give notice that a liquidation pursuant to Section 10.2 has occurred to the Defaulting Party no later than the Business Day following such liquidation, provided that failure to give such notice shall not affect the validity or enforceability of the liquidation or give rise to any claim by the Defaulting party against the Non-Defaulting Party.

The net amount due pursuant to Section 10.2.3 or, if applicable, Section 10.2.4 shall be paid by the close of business on the fifth (5th) Business Day following notice of the Early Termination Date.

10.2.7. The parties agree that each transaction terminated and liquidated under Section 10.2 shall 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.

10.3. The Non-Defaulting Party's remedies under this Section 10 are the exclusive and sole remedies of the Non-Defaulting Party with respect to the occurrence of any Early Termination Date. Each party reserves to itself all other rights, set-offs, counterclaims and other defenses which it is or may be entitled to arising from the Contract.