



Gas Industry Standards Board

1100 Louisiana, Suite 4925, Houston, Texas 77002

Phone: (713) 356-0060, Fax: (713) 356-0067, E-mail: gisb@aol.com

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 24, 2000

DATE: April 24, 2000

GAS INDUSTRY STANDARDS BOARD

GISB CONTRACTS SUBCOMMITTEE CONFERENCE CALL

1:00 p.m. to 5:00 p.m., April 24, 2000

FINAL MINUTES

I. Administrative

Ms. McVicker and Ms. Metz welcomed participants. Ms. McVicker asked participants to introduce themselves for the roll call. Ms. McQuade read the antitrust statement. The agenda as written was adopted with an indication that if votes were taken they would be straw votes. Ms. McVicker and Ms. Metz were unanimously endorsed as co-chairs of the subcommittee.

II. Task Force Process

This subcommittee is charged initially with determining changes for GISB Standard No. 6.3.1, the short-term base contract for purchases and sales of natural gas. Once completed, the subcommittee is charged with the development of a long-term model contract. Ms. McQuade reviewed the subcommittee process. The subcommittee will use balanced voting. Each industry segment has two votes (pipelines, producers, services, end users, LDCs and end users). Votes cast will be unitized to a total of two votes per segment. Each participating company can have one voting representative, regardless of GISB membership status. Once the subcommittee has finalized its work product and adopted it, it will be distributed for a thirty-day comment period, after which the Executive Committee (EC) will consider it with all comments submitted. For adoption by the Executive Committee, a total of 17 affirmative votes are needed with at least two affirmative votes from each segment. If adopted, the work product is then considered by the GISB membership. To be a standard, the EC adopted work product required a 67% affirmative vote from the GISB membership for those members voting.

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

After discussion on whether today's meeting should be to discuss changes to the existing base contract, creation of a new standard for the base contract, or creation of a long and short term contract, it was determined through reference to the agenda and the annual plan, that the group was discussing the changes necessary to the existing short term base contract. If the changes were adopted, the modified contract would be available in a new version. Because the use of the standard is voluntary and parties enter into it on a mutually agreeable basis, the activities undertaken today would not necessarily affect contracts that are in place today. For those contracts to change, the trading partners would have to mutually



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agree to transfer to the modified contract. Below are the comments for changes to the short-term contract.

SECTION	DISCUSSION
Section § 1.2	Ms. McVicker noted that the changes offered to section § 1.2 could be summarized as: (1) allowing no confirmation, (2) allowance to record any deal, (3) option of arbitration, and (4) allowing the contract to specify physical options for future months.
Section § 1.2 Options	Reliant Energy noted that item no. 4 could be addressed through definitions. Some noted that item 4 could be more appropriate for a long term contract even though the deal may be for 30 days. The threshold question is "How many changes do we want to consider for this base contract?" The language related to item 4 is put to the side and will be considered later.
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.
Section § 1.4 Alternative 1 on Recordation:	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."
Section § 1.4 Alternative 2 on recordation:	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



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SECTION	DISCUSSION
	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 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.
Section § 1.2 Confirmations	<p>Mr. Anderson explained the Canadian efforts where the determination had been made to require recordations. UCC language notes that a conflicting confirmation is considered an objection.</p> <p>The process of confirmations currently supports the following:</p> <ul style="list-style-type: none">• If the confirming party does not send a confirmation within the specified time, then the other party controls.• If the confirming party does send a confirmation within the specified time then the confirming party controls.• If the confirmations conflict within the specified time, then there is no deal. <p>The EEI agreement has language on confirmations that might apply. A general principle was supported that the non-confirming party has no rights until after the specified timeline.</p>
Section § 1.2 Alternative 1 on Confirmations	<p>Dynegy language was proposed to amend section § 1.2:</p> <p>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.</p>
Section § 1.2 Alternative 1 on Confirmations	<p>The Midland Cogeneration Ventures and ExxonMobil prefer existing language to the language proposed by Dynegy. This language more supported the existing UCC language.</p> <p>Mr. Anderson explained the agreements that were recently reached by the Canadian contracts groups.</p> <p>"Control" was discussed and it was urged that we be careful in its use. Some clarification was requested that if a confirmation was sent in late, and it was in conflict, there should be language added on who control the transaction.</p>
Section § 1.2 Written Procedure	<p>ExxonMobil supported changing Section 1.2 Written Transaction Procedure, 3rd sentence: "Confirmation" should be plural. There was no opposition.</p>
Section § 1.2 Arbitration	<p>Reliant Energy offered to add an Arbitration Option. Add this option as a choice on the first cover page of the GISB and provide an appropriate</p>



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	<p>provision in the body of the Base Contract.</p> <p>Several companies noted that they did not support arbitration – baseball style or other. Because arbitration is company specific, it is difficult to add to the contract. As such, some companies noted that it was best to leave it as a special provision. For defining arbitration, a further complication is whether it is based on international rules or AAA rules. In discussion, it was noted that many of the companies would not agree to the arbitration language supported by the Canadian contracts group.</p> <p>Reliant Energy agreed to drop this request to add an arbitration option. Those who will follow arbitration will specify such in the special provisions.</p>
Section § 1.2 Paperless Option	<p>Reliant Energy offered to add “Paperless” Option (no follow-up confirms sent for certain defined transactions). Add this option as a choice on the first cover page of the GISB and provide an appropriate provision in the body of the Base Contract.</p> <p>Dynegy offered similar language for paperless transactions (which shows changes supported during the conversation):</p> <p>"If an Interruptible 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."</p> <p>The Dynegy language was modified during the discussion to apply only to interruptible transactions and to stress that it was to be supported only if it was mutually agreeable between the buyer and seller. It was noted that the law may not have quite caught up with commerce – this is not supported in the UCC code.</p> <p>Reliant Energy supports three options: oral, written, and paperless. The paperless transaction does not accommodate confirmations – only supports recordings. Signatures are not required for paperless transactions. They support a box to be checked on the front and a separate section § 1.2 describing paperless transactions. The language in the separate section follows closely on the above-amended Dynegy language. There may be inherent evidentiary problems with paperless transactions. It was also noted that technology may not completely support paperless transactions nor may the law yet.</p>
Section § 1.3 Governance	<p>Reliant Energy withdrew its request for paperless transactions.</p> <p>AEP offered the following change to Section § 1.3 regarding governance. Section § 1.3 is amended by replacing the last sentence thereof with the following: “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</p>



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	of the documents shall govern in the priority listed in this sentence.”
	The above language matches the concept of the EEI agreement but uses the natural gas purchases and sales language.
Section § 1.3 Manifest Error	Dynegy offered a change to reference manifest error in Section § 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. <u>Absent manifest error</u> , the 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. ..."
	There was discussion that by specifying manifest error, we could, by inference, exclude other error reasons. For example, mutual mistake could be excluded.
	Dynegy withdrew its changes as a result of the discussion.
Section § 1.4	The discussion on the addition of section § 1.4 was covered under the discussion on section § 1.2.

IV. Adjourn

The next meeting will be held via conference call. The meeting will continue with the agenda and begin with the changes suggested for section § 2 of the base contract. The meeting adjourned at 4:15 p.m. central.



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V. Attendees

Member? ¹	Name	Voting? ²	Company
Services:			
✓	Dutton, Mitch		AEP Energy Services, Inc.
✓	Szasz, Cathy A.		AEP Energy Services, Inc.
✓	Shaffer, Janis W.		AEP Energy Services, Inc.
✓	Steele, Perry		Coral Energy
✓	Lane, Dennis		Coral Energy
✓	Corcoran, Cynthia		Corcoran Law Offices
✓	Klecka, Ellen		Dynegy Marketing & Trade
✓	Scheel, Mark		Dynegy, Inc.
✓	Kohnky, Ernie		Dynegy, Inc.
✗	Hebenstreit, Bill		El Paso Merchant Services
✗	Bettis, Vicky		Engage Energy US, LP
✗	Ryan, Porter		Engage Energy US, LP
✓	Dickson, Stacy		Enron North America
✓	Hodge, Jeffrey T.		Enron North America
✓	Burrell, Carl		GPU Energy
✗	Anderson, Ian		IS Anderson Consulting
✓	Young, Randy		Koch Midstream Services
✓	Minnis, Jennifer		Reliant Energy
✓	McGough, Scott		Southern Company Energy Marketing, L.P.
✓	Milanowski, Carol		William Energy Marketing and Trading
✓	Cooper, John		Williams Energy Marketing and Trading
End Users:			
✓	Patton, Tina		Boeing
✓	Rogers, Marty Jo		Entergy Power Marketing Corp.
✓	Gussow, Dona		Florida Power & Light
✓	Ebner, John		Florida Power & Light
✓	Metz, Cary		Midland Cogeneration Venture
✓	Lovett, Anne C.		PPL Utilities Corporation
✓	McVicker, Diane		Salt River Project

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

² Only one representative per company can vote at a meeting. No votes were cast at this meeting, so it was not necessary to determine who was the voting party for a company with multiple representatives.



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Member? ¹	Name	Voting? ²	Company
Producers:			
✓	Sevier, Vernon		ExxonMobil
✓	Cross, Matt J.		ExxonMobil
LDCs:			
✓	McAvoy, Ken		National Fuel Gas Distribution
✓	Oppenheim, Bill		PECO Energy
Pipelines:			
✓	Davis, Dale		Williams Gas Pipeline
Administrative:			
✓	McQuade, Rae		GISB