

**DATE: April 20, 2000**

**To: GISB Contracts Subcommittee Meeting Attendees**

**FROM: AEP Energy Services, Inc. (AEPES)  
Cathy Szasz and Janis Shaffer**

**RE: Suggestions of Changes to the Base Contract for Short-Term Sale and Purchase of Natural Gas**

AEPES submits the following proposed amendments for the April 24 meeting of the GISB Contracts Subcommittee:

1. 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 of the documents shall govern in the priority listed in this sentence.”
2. The definition of “Contract” in Section 2.6 is modified by inserting the words “as modified by the Special Provisions” between the words “Base Contract” and “and (ii)”.
3. Section 7 is amended by adding in Section 7.4 after the word “examine” in the first sentence the words “and audit and to obtain copies of the relevant portion of.” After the word “accurate” in the third sentence add the words “and all associated claims for under- or over-payments shall be deemed released”.

The following new Section 7.5 is added at the end thereof:

“Section 7.5 Notwithstanding the other provisions of this Section 7, if Gas is purchased or sold pursuant to the Base Contract or any Transaction Confirmation, the Party owing the greater amount including any related liquidated damages, interest, and payments or credits for its purchases during such calendar month (the “Debtor”) shall apply the amount owed (the “Credit Balance”) by the other Party (the “Creditor”) toward payment of the amount owed by the Debtor to the Creditor for such calendar month. The remainder of the amount owed by the Debtor to the Creditor (after deduction of the Credit Balance) shall be paid to the Creditor in immediately available funds.

4. Add to the end of Section 8.2 the following: “ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.”
5. New Sections 10.1(vi), 10.3 and 10.4 are added to the Base Contract as follows:

At the end of Subsection 10.1(v) but before the word “then”, insert:  
“or (vi) fail to give adequate security for or assurance of its ability to perform its further obligations within forty-eight (48) hours but at least one (1) Business Day of a reasonable written request by the Non-Defaulting party;”.

Add Sections 10.3 and 10.4 as follows:

“Section 10.3 In the event that the Non-Defaulting party terminates the contract under Section 10.1, hereto, the Non-Defaulting party shall have the right to designate an early termination date ("Early Termination Date") as any date on or after the event of default under Section 10.1. Upon the Early Termination Date, the Non-Defaulting party shall have the right to liquidate any and all Transaction(s) under this Contract (including any portion of a Transaction(s) not yet fully delivered) then outstanding by:

(i) Closing out each Transaction(s) being liquidated 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) Discounting 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); and  
(iii) Setting off or aggregating, as appropriate, any or all settlement payments (discounted as appropriate) and (at the election of the Non-Defaulting party) any or all other amounts owing between the parties under this Contract so that all such amounts are aggregated and/or netted to a single liquidated amount payable by one party to the other. The Non-Defaulting party shall give notice that a liquidation pursuant to this Section 10.3 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 to any such liquidation shall be paid by the close of business on the fifth (5<sup>th</sup>) Business Day following notice of the Early Termination Date.

For purposes of this Section 10.3, "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. 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. The parties agree that a

Transaction under this Section 10.3 shall constitute a "forward contract" within the meaning of the United States Bankruptcy Code.

Section 10.4 The Non-Defaulting party's remedies under Section 10.3 and the non-breaching party's rights to those payments accrued prior to the Early Termination Date pursuant to Sections 3.2 are the sole and exclusive remedy. Unless the Party benefiting from a security arrangement notifies the other Party in writing, all amounts netted and/or liquidated shall not take into account or include any security arrangements, including but not limited to guarantees, letters of credit, and escrow accounts, which may be in effect to secure a Party's performance."

6. Section 11.3 is modified by deleting the word "or" before Subsection 11.3(iii) and adding the following at the end of the first sentence thereof:

"or (iv) increases or decreases in gas supply due to allocation or reallocation of production by well operators, pipelines, or third parties other than regulatory agencies; (v) the loss of Buyer's markets or Buyer's inability economically to use or resell Gas purchased hereunder; (vi) the loss or failure of Seller's gas supply or depletion of reserves; (vii) Seller's ability to sell Gas to a more advantageous market or Buyer's ability to purchase Gas at a price more advantageous than the Contract Price; (viii) a regulatory agency disallowing the pass through of costs resulting from this Agreement; or (ix) interruption of specific supply or markets at "pooling points" or "hubs" without the hub or pooling point operator claiming Force Majeure, or Gas Daily reporting less than two transactions at that pooling point during the claimed Force Majeure event."

7. Section 13 is modified by inserting the following new Sections 13.9 and 13.10 at the end thereof:

"13.9 Each Party hereby expressly consents that the other Party may record, by tape or otherwise, any verbal agreements or discussions, whether telephonic or otherwise, between the Parties. Each Party agrees to obtain the consent of its agents and employees to such recording. A recording of the verbal agreement may be relied upon to resolve any differences provided that a true and complete copy is made available to the other Party. No Party may knowingly destroy or erase a recording once the possessing Party becomes aware of an actual dispute in which the recording may reasonably be anticipated to be discoverable."

"Section 13.10 The terms of any Transaction Confirmation hereunder, including but not limited to the Contract Price, the Contract Quantity, the Delivery Period, the identified Transporter(s), and all other material terms thereof shall be kept confidential by the parties hereto and their affiliates for one year from the expiration of such Transaction, except to the extent that any information must be disclosed to a third party for the purpose of effectuating transportation of Gas

subject to the Contract or to meet New York Mercantile Exchange requirements or governmental orders or regulations."

Cathy Szasz  
Email: [caszasz@aep.com](mailto:caszasz@aep.com)  
614-324-4537

Janis Shaffer  
[Jwshaffer1@aep.com](mailto:Jwshaffer1@aep.com)  
614-324-6829

Fax: 614-324-5092