



# 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 – June 26, 2000

**DATE:** June 26, 2000

**GAS INDUSTRY STANDARDS BOARD**  
**GISB CONTRACTS SUBCOMMITTEE CONFERENCE CALL**  
**1:00 p.m. to 3:00 p.m. central, June 26, 2000**  
**FINAL MINUTES**

**I. Administrative**

Ms. Metz welcomed participants. Ms. McQuade read the roll call and read the antitrust statement. The agenda was adopted as presented with no changes. The May 22 minutes were adopted after a review and a change to page 6 regarding the use of EFP.

**II. Review of Changes Submitted for the Short Term Base Contract**

The subcommittee began with Section 3.2.

SECTION	DISCUSSION
Section § 3.2	EFP Discussion:  While there will be no changes in the contract to provide for EFP (a vote was taken on May 22 regarding this item), it was discussed that there should be a flexibility in the base contract such that if parties want to engage in EFP, they could under a confirmation letter with provisions stated in the confirmation letter.
and Section § 2.14	This could formally be accommodated through a change to the definition in section § 2.14. Section 2.14 currently reads: "2.14. "EFP" shall mean the purchase, sale or exchange of natural Gas as the "physical" side of an exchange for physical transaction involving gas futures contracts. EFP shall incorporate the meaning and remedies of "Firm."  The change to section § 2.14 should reflect that force majeure would not excuse non-performance.  <b><i>Because of the complexity of the issue, the change will be presented at the next meeting for consideration. All participants conceptually agreed to the language change to section § 2.14.</i></b>
Section § 4.1	The current language is: "4.1. Seller shall have the sole responsibility for transporting the Gas to the



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SECTION	DISCUSSION
and Section § 5	<p>Delivery Point(s) and for delivering such Gas at a pressure sufficient to effect such delivery but not to exceed the maximum operating pressure of the Receiving Transporter. Buyer shall have the sole responsibility for transporting the Gas from the Delivery Point(s)."</p> <p>Dynegy described the proposed change to Section § 4.1 – language is offered to address that neither party shall be obligated to install compression in order to deliver Gas at a pressure sufficient to effect such delivery. Dynegy noted that the transporter should be the party responsible for installing compressors rather than the signatories to the contract.</p> <p>The additional language to section § 4.1 that Dynegy proposed is: <b>"Notwithstanding anything to the contrary herein, neither Buyer nor Seller shall be obligated to install compression to effect deliveries of Gas hereunder."</b></p> <p>There was further discussion on the need for this language addition. This information could be accommodated through a special provision specific to a delivery point where pressure problems are occurring. This could be added to section § 5 and delete the reference to pressure in section § 4.1, so that section § 5 would read:</p> <p>"5. All Gas delivered by Seller shall meet the <b>pressure</b>, quality and heat content requirements of the Receiving Transporter. The unit of quantity measurement for purposes of this Contract shall be one MMBtu dry. Measurement of Gas quantities hereunder shall be in accordance with the established procedures of the Receiving Transporter."</p> <p>And changes to section § 4.1:</p> <p>"4.1. Seller shall have the sole responsibility for transporting the Gas to the Delivery Point(s) and Buyer shall have the sole responsibility for transporting the Gas from the Delivery Point(s)."</p> <p><b>All were in agreement with these changes.</b></p>
Section § 4.2	<p>Dynegy described changes to section § 4.2 to make language more specific for deadlines for nominations. <b>After discussion Dynegy agreed to drop the proposed changes</b>, as other participants noted that it was unlikely that the group could come to consensus on language.</p>
Section § 4.3	<p>ExxonMobil described that the last 2 sentences of Section § 4.3 are confusing and ambiguous and should be deleted and replaced with the following:</p> <p>"If the Imbalance Charges were incurred as a result of Buyer's receipt of quantities of Gas greater than or less than the Scheduled Gas, then Buyer shall pay for such Imbalance Charges, or reimburse Seller for such Imbalance Charges paid by Seller to the Transporter. If the Imbalance Charges were incurred as a result of Seller's delivery of quantities of Gas greater than or less than the Scheduled Gas, then Seller shall pay for such Imbalance Charges, or reimburse Buyer for such Imbalance Charges paid by Buyer to the Transporter. "</p> <p><b>There was agreement on the concept to modify section § 4.3 along</b></p>



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SECTION	DISCUSSION
	<b><i>the lines of the proposed language from ExxonMobil.</i></b>
Section § 5	See above changes noted in section § 4.1, which also change section § 5.
Section § 6 New Section § 6.1	<p>Dynegy described the changes to section § 6, which should be renumbered section § 6.1, where language was proposed to be added to note that the Buyer should be responsible for any Taxes that are imposed by the state (or any other governmental subdivision) in which the Gas is consumed. The language offered for the new section is:</p> <p>“6.1: Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority (“Taxes”) on or with respect to he Gas prior to the Delivery Point(s) and all Taxes at the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas after the Delivery Point(s), <b>including but not limited to, any Tax levied on Transactions under this Contract by the state (or any other governmental subdivision) in which the Gas is consumed or otherwise used.</b> If a party is required to remit or pay Taxes, which are the other party’s responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.”</p> <p>It was noted that both New York and New Jersey have consumption taxes, which would be accommodated through this new section.</p> <p><b><i>This issue will be postponed to the next meeting so that participants can confer with their tax departments.</i></b></p>
New Section § 6.2	<p>Dynegy described its proposed changes that this section was added to note that each Party indemnifies the other Party as far as Taxes and other charges are concerned. The language proposed is:</p> <p>“6.2 <b>Seller will indemnify and save Buyer harmless against all loss, damage and expense of every character on account of adverse claims to the Gas delivered by Seller, or on royalties, Taxes, payment, or any other charges thereon applicable before delivery to Buyer. Buyer will indemnify and save Seller harmless against all loss, damage and expense of every character on account of adverse claims to the Gas delivered by Buyer or of royalties, Taxes, payments or any other charges thereon applicable after receipt of the Gas by Buyer.</b>”</p> <p>During the discussion it was noted that this would be moved to section § 8.3.</p> <p><b><i>All agreed that in concept this language would be added to section § 8.3.</i></b></p>
New Section § 6.3	<p>Dynegy described its proposed language, which would address the issue of new taxes. This was added primarily to address deals under the base contract, which are of longer than a one-month duration. It could be addressed through the development of a long-term contract.</p> <p><b><i>All agreed that it would be addressed in discussions on the long-term contract.</i></b></p>



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SECTION	DISCUSSION
Section § 7	<p>Reliant described its change to section § 7 for netting. Netting is a routine payment practice and should not be confused with offsets. Not all companies have a netting practice – which could be accommodated through a check box on the front page of the contract, or it could be crafted so that it is optional, but if followed, it should be consistent with the drafted language for this section.</p> <p>For simplicity, AEP added that the default should be that netting is permitted, with a box on the front that gives those parties that do not have a netting practice to so note. All agreed to it in concept. This would apply only to those transactions covered in the agreement.</p> <p><b>All agreed in concept to add language on netting as described above.</b></p>
Section § 7.1	<p>Dynegy noted that the contract should contain language to standardize the number of decimal points to ensure consistency throughout the industry. SoCal Gas noted that this might be more appropriate to be added under the contract price definition. The number of decimal places and when rounding is addressed should be reviewed.</p> <p><b>This issue will be revisited at the next meeting.</b> Participants will check with their accounting staff to determine if these changes should be considered, and also to determine if there are generally accepted accounting principles that could be followed. Ms. McQuade will reference existing GISB standards that might be applied. COPAS should be contacted to determine if they have existing standards.</p>
Section § 7.2	<p>Dynegy described its change to note the order in which a payment is applied if late charges are due, and offered the following language:</p> <p>“7.2. Buyer shall remit the amount due in the manner specified in the Base Contract, in immediately available funds, on or before the later of the Payment Date or 10 days after receipt of the invoice by Buyer; provided that if the Payment Date is not a Business Day, payment is due on the next Business Day following that date. If Buyer fails to remit the full amount payable by it when due, interest on the unpaid portion shall accrue at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum from the date due until the date of payment; or (ii) the maximum applicable lawful interest rate. <b>If either principal or interest is due, any payments thereafter received shall first be applied to the late charges due, then the previously outstanding principal due and lastly, to the most current principal due.</b> If Buyer, in good faith, disputes the amount of any such statement or any part thereof, Buyer will pay to Seller such amount as it concedes to be correct; provided, however, if Buyer disputes the amount due, Buyer must provide supporting documentation acceptable in industry practice to support the amount paid or disputed.”</p> <p>Some noted that this had never arisen as an issue in their offices. AEP noted that there might be a GAAP, which notes that the payment should</p>



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SECTION	DISCUSSION
	<p>be applied to the oldest balance first.</p> <p><b><i>This issue will be revisited at the next meeting</i></b> with language reflective of GISB Standard No. 3.3.17, after review the issues with accounting staff to determine if changes are needed. COPAS will also be contacted.</p> <p>ExxonMobil described their changes to add the following to section § 7.2: "For the purposes of this Contract, Automated Clearing House (ACH) is defined as ACH Credit. No ACH Debits are authorized for any transactions hereunder." Others noted that it could be accommodated through ACH as "ACH Credit Only."</p> <p><b><i>This issue will be revisited at the next meeting</i></b> after review the issues with accounting staff to determine if changes are needed. <b><i>All participants conceptually agreed to the language changes for this section, barring no reservations from their accounting staff.</i></b></p> <p>Southern noted its proposed change which was to have the following language appended to the end of the section § 7.2:</p> <p>"Buyer may retain only the disputed portion pending resolution of the dispute without breach of the Contract. If retention of the disputed portion increases the total amount unpaid by the party withholding the sum claimed owed by the other party beyond any credit limits approved by the other party, then the other party may require additional collateral in a form acceptable to that other party in the amount of the credit overage. Upon resolution of such billing dispute, any underpayments or overpayments shall be paid or refunded with accrued interest at the above-designated rate for the period in which held by the other party."</p> <p>This could be used as another reason for asking for credit. The undisputed amount should be paid which is already addressed in the existing language of section § 7.2. There may be changes based on the financial responsibility in section § 10.</p> <p><b><i>This issue will be postponed until discussion is held on section § 10.</i></b></p>

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#### IV. Adjourn

The next meeting will be held via conference call. The meeting will continue with the agenda and begin with the changes that were tabled in the June 26 meeting for the meeting to be scheduled in July. At the next meeting several dates for future meetings will be offered. The meeting was adjourned at 3:05 p.m. central.



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### V. Attendees

Member? <sup>1</sup>	Name	Voting? <sup>2</sup>	Company
✓	Dutton, Mitch	✓	AEP Energy Services, Inc.
✓	Shaffer, Janis W.		AEP Energy Services, Inc.
✓	Hazel, Carolyn	✓	Conoco
✓	Barnett, Jane	✓	Coral Energy
✓	Lane, Dennis		Coral Energy
✓	Stubblefield, Deborah	✓	Corcoran Law Offices
✓	Klecka, Ellen	✓	Dynegy Inc.
✓	Kohnky, Ernie	✓	Dynegy Marketing and Trade
✓	McAfee, Brenda		Dynegy Marketing and Trade
✓	Hebenstreit, Bill	✓	El Paso Merchant Energy
✗	Bettis, Vicky	✓	Engage Energy US, LP
✗	Ryan, Porter		Engage Energy US, LP
✓	Dickson, Stacy	✓	Enron Administrative Services
✓	Hodge, Jeffrey T.	✓	Enron North America
✓	Sevier, Vernon	✓	ExxonMobil
✓	Ebner, John	✓	Florida Power & Light
✓	Gussow, Dona		Florida Power & Light
✓	McQuade, Rae		GISB
✓	Buccigross, Jim	✓	Group 8760
✗	Anderson, Ian	✓	IS Anderson Consulting
✓	Metz, Cary	✓	Midland Cogeneration Venture
✓	Alphin, Rhonda	✓	Reliant Energy
✓	Graff, Paramy		Reliant Energy
✓	Minnis, Jennifer		Reliant Energy
✓	Ishikawa, Angie	✓	SoCal Gas
✓	Ishikawa, Rick		SoCal Gas
✓	McGough, Scott	✓	Southern Company Energy Marketing, L.P.
✓	Starbird, Zachary		Southern Company Energy Marketing, L.P.
✓	Stofer, Sherry		Southern Company Energy Marketing, L.P.
✓	Watson, Janine	✓	TransCanada Energy Ltd.

<sup>1</sup> 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.

<sup>2</sup> Only one representative per company can vote at a meeting.



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|------------------------|---------------------------------------|
| ✓ Cooper, John         | ✓ Williams Energy Marketing & Trading |
| ✓ Hollingsworth, David | ✓ Williams Energy Marketing & Trading |
| ✓ Davis, Dale          | ✓ Williams Gas Pipeline               |