Gas Industry Standards Board
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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 – July 31, 2001
DATE:	August 6, 2001

GAS INDUSTRY STANDARDS BOARD

GISB CONTRACTS SUBCOMMITTEE MEETING – CONFERENCE CALL

July 31, 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 May 7 minutes were adopted with changes identified in the meeting.

II. Discussion Items and Review of the Cover Page and Contract

The contract as drafted by the drafting team and forwarded to the subcommittee was reviewed section by section. As the review of each section was completed, the subcommittee voted to support the language discussed along with any changes made during the discussion.

Cover Page	
Cover Page	Default of oral transaction procedure on the cover page was discussed. Concern was raised that there could be inadvertent agreement to do an oral agreement because it was a default on the cover page. No change was offered.
Check off box	Section 7.2 Check Off Box To correct a typo, under notices the "nos" should be changed to "numbers" to be consistent with the remainder of the document: *Wire Transfer or ACH Nos. (if applicable)*: Will be changed to: *Wire Transfer or ACH Numbers. (if applicable)*:
Check off box	Check off box for section 1.2 All check off boxes on the cover page were reviewed with the defaults noted. A vote on the check off box for section 1.2 which indicates a default of "oral" was discussed and voted. The default of "oral" was adopted with a vote of 13 in favor to 1 opposed, and a balanced vote of 6 in favor and 1 opposed.

Check off box	Check off box for section 7.2 There was discussion on the frequency with which contracting parties use ACH or wire transfers as the method of payment. It was noted that ACH was a less expensive option, but some companies noted it was not available to them. A vote on the check off box for section 7.2, which indicates a default of "wire transfer" was discussed and voted. The default of "wire transfer" was adopted with a vote of 10 in favor to 3 opposed, and a balanced vote of 4.2 in favor and 1.8 opposed.
All other check off boxes	A vote on the defaults specified for the check off boxes on the cover page on the recommendation from the drafting team was discussed and voted. The defaults as specified were adopted unanimously, with a vote of 14 in favor to 0 opposed, and a balanced vote of 7 in favor and 0 opposed.

Section 1

1.1	It was noted that the highlighted portion of section 1.1 is redundant with section 2.6 and should therefore refer to section 2.6 instead of repeating it. As such, the following portion was modified, where the highlighted struck-through language is deleted and the highlighted underlined text was added: The entire agreement between the parties shall be ~~those provisions contained in (i) the Base Contract, (ii) all effective Transaction Confirmations, and (iii) where the parties have selected the oral transaction procedure, all transactions that the parties have entered into by an EDI transmission or by telephone, but that have not been confirmed in an effective Transaction Confirmation~~ the Contract as defined in Section 2.6. All were in favor of the change.

1.2 Oral Transaction Procedure

For clarification, it was recommended that the "e.g." referenced below (highlighted) be changed to "i.e." to correctly identify the list provided in the parenthetical:

If the Transaction Confirmation contains any provisions other than those relating to the commercial terms of the transaction (e.g., price, quantity, performance obligation, 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 or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 1.3 but must be expressly agreed to by both parties; provided that the foregoing shall not invalidate any transaction agreed to by the parties.

The change is shown in the highlighted text:

If the Transaction Confirmation contains any provisions other than those relating to the commercial terms of the transaction (i.e. price, quantity, performance obligation, 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 or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 1.3 but must be expressly agreed to by both parties; provided that the foregoing shall not invalidate any transaction agreed to by the parties.

Vote was taken and it was unanimous to support the change to section 1.2.

1.3

It was recommended during discussion and review that the following text of section 1.3:

In the event of a conflict among the terms of (i) a binding Transaction Confirmation pursuant to Section 1.2, (ii) the oral agreement of the parties which may be evidenced by a recorded conversation, where the parties have selected the Oral Transaction Procedure of the Base Contract, (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.

be changed to "provided" for clarity:

In the event of a conflict among the terms of (i) a binding Transaction Confirmation pursuant to Section 1.2, (ii) the oral agreement of the parties which may be evidenced by a recorded conversation, provided the parties have selected the Oral Transaction Procedure of the Base Contract, (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.

It was further discussed and the change was not made.

1.4	It was recommended during discussion and review that the following text of section 1.4: The parties agree that each party may electronically record all telephone conversations between their respective employees, without any special or further notice. be changed to: The parties agree that each party may electronically record all telephone conversations involving their respective employees, without any special or further notice. After discussion, it was determined not to make the change.
1.4	During discussion and review, it was recommended that the language in section 1.4 was not sufficient in that it omitted the requirement in some states that consent of its employees or representatives is required before their conversations can be recorded. The language in question in section 1.4 follows: The parties agree that each party may electronically record all telephone conversations between their respective employees, without any special or further notice. After discussion, it was determined that the highlighted text below be added to section 1.4: The parties agree that each party may electronically record all telephone conversations between their respective employees, without any special or further notice to the other party. Each party shall obtain any necessary consent of its agents and employees to such recording. After discussion, the highlighted additions to section 1.4 were adopted unanimously.
Section 1 Vote	The section as drafted by the drafting group was adopted unanimously with the changes listed above that were endorsed by the subcommittee through vote.

Section 2

2.7	The discussion was held on the definition for price could be changed to be made applicable to both U.S. and Canada. The language as drafted for section 2.7 is: "Contract Price" shall mean the amount expressed in U.S. Dollars per MMBtu to be paid by Buyer to Seller for the purchase of Gas as agreed to by the parties in a transaction. Reliant noted that language was available from the GasEDI contract that could be applicable which could be reviewed later. It was determined not to change the language at this time.

2.9 After discussion, it was agreed to change the highlighted language in section 2.9 from:

"Cover Standard", as referred to in Section 3.2, shall mean that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Contract, then the performing party shall use commercially reasonable efforts to obtain Gas or alternate fuels, or sell Gas, at a price reasonable for the delivery or production area, as applicable, including but not limited to the amount of notice provided by the non-performing party; the immediacy of the Buyer's Gas consumption needs or Seller's Gas sales requirements, as applicable; the quantities involved; and the anticipated length of failure by the non-performing party.

To:

"Cover Standard", as referred to in Section 3.2, shall mean that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Contract, then the performing party shall use commercially reasonable efforts to obtain Gas or alternate fuels, or sell Gas, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the non-performing party; the immediacy of the Buyer's Gas consumption needs or Seller's Gas sales requirements, as applicable; the quantities involved; and the anticipated length of failure by the non-performing party.

All were in favor of the change.

2.25 To clean up the wording in section 2.25, it was recommended that the following highlighted struck-though language on section 2.25 be deleted:

"Spot Price Standard" as referred to in Section 3.2 shall mean the price listed in the publication ~~as~~ indicated on ~~in~~ the Base Contract, under the listing applicable to the geographic location closest in proximity to the Delivery Point(s) for the relevant Day; provided, if there is no single price published for such location for such Day, but there is published a range of prices, then the Spot Price Standard shall be the average of such high and low prices. If no price or range of prices is published for such Day, then the Spot Price Standard shall be the average of the following: (i) the price (determined as stated above) for the first Day for which a price or range of prices is published that next precedes the relevant Day; and (ii) the price (determined as stated above) for the first Day for which a price or range of prices is published that next follows the relevant Day.

All were in favor of the change.

2.15 There was clarification requested on:

"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", provided that a party's excuse for nonperformance of its obligations to deliver or receive Gas will be governed by the rules of the relevant futures exchange regulated under the Commodity Exchange Act.

It was noted that the EFP rules would be found in the regulations, and were not included in the base contract.

Section 2 Vote	The section as drafted by the drafting group was adopted unanimously with the changes listed above that were endorsed by the subcommittee through vote.
Sections 3, 4 and 5	
Section 3 Vote	The section as drafted by the drafting group was adopted unanimously.
Section 4 Vote	The section as drafted by the drafting group was adopted unanimously.
Section 5 Vote	The section as drafted by the drafting group was adopted unanimously.
Section 6	
6	For consistency, it was agreed to eliminate the "the" in front of the second choice, as shown in the highlighted struck-through text: The parties have selected either "Buyer Pays At and After Delivery Point" or ~~the~~ "Seller Pays Before and At Delivery Point" as indicated on the Base Contract**.** The Seller Pays Before and At Delivery Point clause has only been used in New York and with the addition of the underlined text, the box is unusable, so it was discussed that the text referring to consumption taxes be deleted (as shown below in highlighted struck-through formatting): **Seller Pays Before and At Delivery Point:** 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 the 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)~~ including but not limited to any consumption Taxes levied by the jurisdiction in which the Gas is consumed or otherwise used~~. If a party is required to remit or pay Taxes that 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. Consumption tax is specified but not utility tax or other types of tax. It was further recommended to delete all references to consumption tax. As such the language was deleted from both clauses: **Buyer Pays At and After Delivery Point:** 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 the Gas prior to the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas at the Delivery Point(s) and all Taxes after the Delivery Point(s).~~ including but not limited to any consumption Taxes levied by the jurisdiction in which the Gas is consumed or otherwise used.~~ If a party is required to remit or pay Taxes that 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.
Section 6 vote	The section as drafted by the drafting group was adopted with the changes listed above with one vote in opposition.

III. Next Steps

The next conference calls will be held on August 6 and 7, from 2:00 p.m. to 4:00 p.m. central.

For the conference call on August 6, the agenda will address review and adoption of the contract by section, beginning with section 6. Dynegy will research the changes that had been offered for section 6 regarding consumption taxes.

IV. Adjourn

The meeting adjourned at 4:05 pm central.

V. Attendees

				Vote Taken:		
Segment	Member	Company	Name	1	2	3
Services	Y	AEP	John Toserio	Y	Y	Y
			Cathy Szasz			
			Patricia McLaughlin			
			Janis Shaffer			
	Y	Aquila	Scott Ackerman	Y	Y	Y
			Lance Miller			
			Amy Blunt			
	Y	BTUWatch.com	Gina McMahon	A	A	A
	Y	Dynegy	Mark Scheel	Y	N	Y
			Margaret Lester			
	Y	Enron North America	Stacey Dickson	Y	Y	Y
			Jeff Hodge			
	Y	Mirant Energy	Stephany Tolbert	Y	Y	Y
			Stan Lane			
	Y	PanCanadian	Tracey Ruffeno			
	Y	Reliant	Rhonda Alphin	Y	Y	Y
			Paramy Graf			
			Jennifer Minnis			
	N	Stroock & Stroock & Lavan	Scott LeBoeuf	Y	Y	Y
			Mark Rae			
End User	Y	Midland Cogeneration Ventures	Cary Metz	Y	Y	Y
	Y	El Paso Merchant Energy	Porter Ryan	Y	Y	Y
	Y	Calpine	Janet Dixon	Y	Y	Y
	Y	Salt River Project	Jim Trangsrud	Y	N	Y
Producer	Y	Conoco	Carolyn Hazel	Y	A	Y
	Y	ExxonMobil	Matt Cross	N	Y	Y
LDC	Y	SoCal Gas	Ibtissam Chang	N	N	Y
			Angie Ishikawa			
			Rick Ishikawa			

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 Results:
Motion 1: Adopt the default of “oral” for section 1.2 on the cover page.
Motion 2: Adopt the default of “wire transfer” for section 7.2 on the cover page.
Motion 3: Adopt the remaining check off box defaults shown on the cover page.

Vote Legend: (Y) – in favor, (N) opposed, (A) abstaining.

VI. Voting Results

Vote 1 Cover Page: Check off boxes, default for Section 1.2 of "oral" for transaction procedure

	Actual Count				Balanced Count		
Segment	For	Against	Abstain	Total	For	Against	Total
End User	4	0	0	4	2.00	0.00	2.00
LDC		1	0	1	0.00	1.00	1.00
Pipelines	0	0	0	0	0.00	0.00	0.00
Producers	1	1	0	2	1.00	1.00	2.00
Services	7	0	1	7	2.00	0.00	2.00
Total	12	2	1	14	5.00	2.00	7.00

Vote 2 Cover Page: Check off boxes, default for Section 7.2 of "wire transfer" for method of payment

	Actual Count				Balanced Count		
Segment	For	Against	Abstain	Total	For	Against	Total
End User	3	1	0	4	1.50	0.50	2.00
LDC	0	1	0	1	0.00	1.00	1.00
Pipelines	0	0	0	0	0.00	0.00	0.00
Producers	1	0	1	1	1.00	0.00	1.00
Services	6	1	1	7	1.71	0.29	2.00
Total	10	3	2	13	4.21	1.79	6.00

Vote 3 Cover Page: All other check off boxes with defaults as specified in draft discussed on 7-31-01

	Actual Count				Balanced Count		
Segment	For	Against	Abstain	Total	For	Against	Total
End User	4	0	0	4	2.00	0.00	2.00
LDC	1	0	0	1	1.00	0.00	1.00
Pipelines	0	0	0	0	0.00	0.00	0.00
Producers	2	0	0	2	2.00	0.00	2.00
Services	7	0	1	7	2.00	0.00	2.00
Total	14	0	1	14	7.00	0.00	7.00