



Gas Industry Standards Board

1100 Louisiana, Suite 3625, 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 – August 6 & 7, 2001
DATE: August 27, 2001

GAS INDUSTRY STANDARDS BOARD
GISB CONTRACTS SUBCOMMITTEE MEETING – CONFERENCE CALL
August 6 & 7, 2001 – 2:00 p.m. to 4:00 p.m. Central
FINAL MINUTES – August 6, 2001

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

II. Review of the Contract Language Drafted by the Drafting Team

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.

Section 6

6 The discussion began with Dynegey's request to consider including the language on consumption taxes as they are required to place this language in their special provisions each time they have a transaction in New York and New Jersey. Dynegey asked that the highlighted struck-though text not be deleted. It was noted that gross receipts tax is normally levied on the seller and the consumption tax is normally levied on the consumer. Dynegey further noted that mentioning it specifically in the contract would streamline negotiations. The language is shown below:

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.



Gas Industry Standards Board

1100 Louisiana, Suite 3625, Houston, Texas 77002

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

Home Page: www.gisb.org

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 After discussion, it was determined that it was not necessary to re-add the highlighted deleted language for the support of New York and New Jersey. New York and New Jersey specifications for consumption tax can be addressed through the addition of a special provision.

The prior vote on adoption of section 6, taken on July 31, 2001 stands.

Section 7 There was discussion on the need to add language for the express remedy for failure to pay. After discussion it was determined to not add additional language.

For clarity, the following language change was suggested to section 7.4:

7.4 A party shall have the right, at its own expense, upon reasonable notice and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under the Contract. This examination right shall not be available with respect to proprietary information not directly relevant to transactions under this Contract. All invoices and billings shall be conclusively presumed final and accurate and all associated claims for under- or overpayments shall be deemed released unless such invoices or billings are objected to in writing, with adequate explanation and/or documentation, within two years after the ~~Month of Gas delivery.~~ **date of the invoice**. All retroactive adjustments under Section 7 shall be paid in full by the party owing payment within 30 days of notice and substantiation of such inaccuracy.

After discussion, it was determined not to make the change.

Section 7 vote The section as drafted by the drafting group was adopted unanimously with no changes to the work paper.

Section 8 vote The section as drafted by the drafting group was adopted unanimously with no changes to the work paper.



Gas Industry Standards Board

1100 Louisiana, Suite 3625, Houston, Texas 77002

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

Home Page: www.gisb.org

- Section 9 It was discussed that two days was not sufficient for first class mail. It was suggested that five business days was more appropriate for first class mail. There had been discussion to omit the first class mail option, but it was addressed by extending the amount of time for the notice to be delivered. The language change is shown below in highlighted text:
- 9.3 Notice shall be given when received on a Business Day by the addressee. In the absence of proof of the actual receipt date, the following presumptions will apply. Notices sent by facsimile shall be deemed to have been received upon the sending party's receipt of its facsimile machine's confirmation of successful transmission. If the day on which such facsimile is received is not a Business Day or is after five p.m. on a Business Day, then such facsimile shall be deemed to have been received on the next following Business Day. Notice by overnight mail or courier shall be deemed to have been received on the next Business Day after it was sent or such earlier time as is confirmed by the receiving party. Notice via first class mail shall be considered delivered **two five** Business Days after mailing.
- No subcommittee participants opposed the change.
- Section 9 vote The section as drafted by the drafting group was adopted unanimously with the changes to the work paper as shown above.
- Section 10 The following discussion item was raised "Shall Non-Defaulting Party have right to withhold payment when transactions that are not liquidated (commercially impracticable or applicable law) are outstanding? [language in EEI 5.6]." No change was offered.
- The following discussion item was raised "Consider if Non-Defaulting Party should get costs." No change was offered.
- Section 10.4 It was suggested that the following change be made to make section 10.4 of the contract consistent with electric and ISDA contracts:
- 10.4 As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the Net Settlement Amount, and whether the Net Settlement Amount is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount, 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 Settlement amount shall be paid by the close of business on the **second fifth (2nd) (5th)** Business Day following such notice, which date shall not be earlier than the Early Termination Date.
- All were in favor of the above change.



Gas Industry Standards Board

1100 Louisiana, Suite 3625, Houston, Texas 77002

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

Home Page: www.gisb.org

-
- Section 10.4 For section 10.4, it was also noted that this section did not specifically note how the net settlement should be paid. ISDA and existing US contracts support the prior language and do not address how the calculation is made and the payment is made. The GasEDI contract does address how the net settlement is calculated and paid.
- The non-defaulting party does the calculation for the net settlement amounts, and can be inferred from the language of section 10.4: "The notice shall include a written statement explaining in reasonable detail the calculation of such amount", which is given by the non-defaulting party.
- After further discussion, no action was taken to offer language changes.
- Section 10.3 For section 10.3, it was noted that the language supported "cherry picking" on liquidation. It was suggested that all transactions be liquidated rather than permit selective liquidation.
- 10.3 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 the day such notice is given and no later than 20 days after such notice is given, as an early termination date (the "Early Termination Date") for the liquidation and termination pursuant to Section 10.3.1 of all transactions under the Contract. On the Early Termination Date, all transactions will terminate, 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, which transactions must be liquidated and terminated as soon thereafter as is reasonably practicable.
- It was added that GasEDI's contract does not allow for "cherry picking." Language in the above clause provides flexibility to allow for selective liquidation, but states that selective liquidation cannot be enacted unless it is the reasonable opinion of the non-defaulting party that the termination of all transactions is commercially impracticable.
- The vote was called to endorse section 10.3 as presented in the work paper. There was one abstention.
- Section 10 vote The section as drafted by the drafting group was adopted unanimously with the change to Section 10.4 as noted above. The vote was called to endorse section 10.3 as presented in the work paper. There were two abstentions.



Gas Industry Standards Board

1100 Louisiana, Suite 3625, Houston, Texas 77002

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

Home Page: www.gisb.org

-
- Section 11.5 In the original workpaper (4/24/00), ExxonMobil proposed that line 3 of this section be replaced with the following: "Upon providing written notice of Force Majeure to the other party, the affected party will be relieved of its obligation, from the onset of the Force Majeure event, to make . . ." The minutes do not reflect the outcome; however, notes taken indicate it was okayed 12/15/00.
- 11.5 The party whose performance is prevented by Force Majeure must provide notice to the other party. Initial notice may be given orally; however, written **noticenotification** with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written notice of Force Majeure to the other party, the affected party will be relieved of its obligation, **from the onset of the Force Majeure event**, to make or accept delivery of Gas, as applicable, to the extent and for the duration of Force Majeure, and neither party shall be deemed to have failed in such obligations to the other during such occurrence or event.
- All endorsed the change to section 11.5 as offered by ExxonMobil.
- Section 11 vote The section as drafted by the drafting group was adopted unanimously with the change to section 11.5 as shown above.
- Section 12 vote The section as drafted by the drafting group was adopted unanimously.
- Section 13 Section 13 had a misspelling that was corrected:
- FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, A PARTY'S LIABILITY HEREUNDER SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, A PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND **EXCLUSIVE** REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS
- Section 13 vote The section as drafted by the drafting group was adopted unanimously with the change to correct the spelling.



Gas Industry Standards Board

1100 Louisiana, Suite 3625, Houston, Texas 77002
Phone: (713) 356-0060, Fax: (713) 356-0067, E-mail: gisb@aol.com
Home Page: www.gisb.org

Section 14

It was noted that the concept that the confidentiality survive the agreement should be added to the contract. A vote was taken on the concept and it passed a balanced vote (vote 1).

The addition of the following text as the last sentence of 14.10 was suggested along with an additional provision for enforcement:

14.10 Unless the parties have elected on the Base Contract not to make this Section 14.10 applicable to this Contract, neither party shall disclose without the prior consent of the other party the terms of any transaction to a third party (other than the employees, lenders, royalty owners, counsel, or accountants of the party and its affiliates or prospective purchasers, directly or indirectly, of a party of all or substantially all of a party's assets or of any rights under this Contract, provided such persons shall have agreed to keep such terms confidential) except (i) in order to comply with any applicable law, order, regulation, or exchange rule, (ii) to the extent necessary for the enforcement of this contract, (iii) to the extent necessary to implement any transaction, or (iv) to the extent such information is delivered to such third party for the sole purpose of calculating a published index. Each party shall notify the other party of any proceeding of which it is aware which may result in disclosure of the terms of any transaction (other than as permitted hereunder) and use reasonable efforts to prevent or limit the disclosure. The existence of this Contract is not subject to this confidentiality obligation. Subject to Section 13, the parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with this confidentiality obligation. The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction.

There was no opposition to the addition of the (ii) clause. The last sentence passed a balanced vote (vote 2).

Section 14.4, 14.6

14.4 This Contract sets forth all understandings between the parties respecting each transaction subject hereto, and any prior contracts, understandings and representations, whether oral or written, relating to such transactions are merged into and superseded by this Contract and any effective ~~Transaction Confirmation~~ transaction(s). This Contract may be amended only by a writing executed by both parties.

14.6 This Contract and all provisions herein will be subject to all applicable and valid statutes, rules, orders and regulations of any Federal, State, or local governmental authority having jurisdiction over the parties, their facilities, or Gas supply, this Contract or ~~Transaction Confirmation~~ or any provisions thereof.

There was no opposition to making the change from Transaction Confirmation to transaction as shown in the above text.

Disclaimer

It was agreed to move the disclaimer to the last page.

2.2

In discussion on the BTU definition, it was determined to modify the contract language to conform with GISB standard 1.3.14:

2.2 "British thermal unit" or "Btu" shall mean the international BTU, which is also called the Btu(IT).

All endorsed the modification to section 2.2. Williams abstained.



Gas Industry Standards Board

1100 Louisiana, Suite 3625, Houston, Texas 77002

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

Home Page: www.gisb.org

Canadian
Changes

(Item 20 of the Discussion Paper)

Mr. Anderson reviewed the reasons for merging the GasEDI contract and the GISB contract. The discussion will continue tomorrow.

III. Next Steps

The agenda items to be covered tomorrow include discussion on the changes needed to conform with Canadian requirements and the discussion and vote on whether the contract should be only applied to short term transactions or if it could be applied to longer term transactions.

IV. Adjourn

The meeting recessed at 4:10 pm central, and will reconvene at 2:00 p.m. central tomorrow, August 7.



Gas Industry Standards Board

1100 Louisiana, Suite 3625, Houston, Texas 77002

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

Home Page: www.gisb.org

V. Attendees – August 6, 2001

Segment	Member	Company	Name	Voting		
				1	2	
Services	Y	AEP	John Toserio	Y	Y	
			Cathy Szasz			
			Patricia McLaughlin			
			Janis Shaffer			
		Y	Aquila	Scott Ackerman	N	N
		Y	BTUWatch.com	Gina McMahon	A	A
		Y	Dynergy	Mark Scheel	Y	Y
	Margaret Lester					
		Y	Enron North America	Stacey Dickson	Y	Y
		Y	Mirant Energy	Stephany Tolbert	Y	Y
		Y	PPL	Anne Lovett	Y	Y
		Y	Reliant	Rhonda Alphin	Y	Y
	Paramy Graf					
	Jennifer Minnis					
			PanCanadian	Tracey Ruffeno	Y	Y
		GasEDI	Ian Anderson	A	A	
		Williams Services	David Hollingsworth	X	X	
End User	Y	Midland Cogeneration Ventures	Cary Metz	N	N	
	Y	El Paso Merchant Energy	Porter Ryan	N	Y	
	Y	Calpine	Tiffany Silvey	Y	Y	
	Y	Salt River Project	Jim Trangsrud	A	A	
LDC	Y	SoCal Gas	Angie Ishikawa	Y	Y	

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: Endorse the concept that confidentiality survive the agreement (Section 14).

Motion 2: Adopt the language change to Section 14.10 that the confidentiality be preserved for one year after the expiration of the transaction.

Vote Legend: (Y) in favor, (N) opposed, (A) abstaining, (X) not present when vote was called.



Gas Industry Standards Board

1100 Louisiana, Suite 3625, Houston, Texas 77002

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

Home Page: www.gisb.org

VI. Voting Results - August 6, 2001

Vote 1 Endorse the concept that confidentiality survive the agreement. (Section 14)

Segment	Actual Count				Balanced Count		
	For	Against	Abstain	Total	For	Against	Total
Services	7	1	2	8	1.75	0.25	2.00
LDC	1	0	0	1	1.00	0.00	1.00
End Users	1	2	1	3	0.67	1.33	2.00
Pipelines	0	0	0	0	0.00	0.00	0.00
Producers	0	0	0	0	0.00	0.00	0.00
Total	9	3	3	12	3.42	1.58	5.00

Vote 2 Adopt the language change to Section 14.10 that the confidentiality be preserved for one year after the expiration of the transaction.

Segment	Actual Count				Balanced Count		
	For	Against	Abstain	Total	For	Against	Total
Services	7	1	2	8	1.75	0.25	2.00
LDC	1	0	0	1	1.00	0.00	1.00
End Users	2	1	1	3	1.33	0.67	2.00
Pipelines	0	0	0	0	0.00	0.00	0.00
Producers	0	0	0	0	0.00	0.00	0.00
Total	10	2	3	12	4.08	0.92	5.00



FINAL MINUTES – August 7, 2001

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

II. Review of the Contract Language Drafted by the Drafting Team

Mr. Anderson reviewed the changes suggested to make the base contract applicable to Canadian transactions. The notes below reflect discussion only. No decisions were made by the subcommittee during this meeting to amend the base contract.

Suggested Changes For Canadian Transactions:

Section	Proposed Change and Discussion:
2.7	<p>Replace the definition of contract price with the definition shown below to:</p> <p><i>2.7 "Contract Price" shall mean, if the Delivery Point is in the United States, the amount expressed in U.S. Dollars per MMBtu or U.S. Dollars per Dekatherm or, if the Delivery Point is in Canada, the amount expressed in Canadian Dollars per GJ, unless specified otherwise in a Transaction.</i></p> <p>It was noted that a clause was left out: "to be paid by Buyer to Seller for the purchase of Gas as agreed to by the parties in a transaction." Mr. Anderson will add the additional language.</p>
New	<p>Insert the following definition after 2.17:</p> <p><i>2.17 "GJ" shall mean 1 gigajoule; 1 gigajoule = 1,000,000,000 Joules. The standard conversion factor between Dekatherms and GJ's is 1.055056 GJ's per Dekatherm.</i></p> <p>Mr. Anderson will refer to the SI system of units, to determine if the definition should be expanded.</p>
2.3	<p>Replace the definition of Business Day with the following text:</p> <p><i>2.3 "Business Day" shall mean any day except Saturday, Sunday, or a statutory or banking holiday observed in the jurisdiction specified pursuant to Section 14.5. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant party's principal place of business. The relevant party, in each instance unless otherwise specified, shall be the party to whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.</i></p>
6.2, 6.3 and 6.4	<p>Add the following clauses to section 6 to address the good and services tax (GST) specific to Canada:</p> <p><i>6.2 The Contract Price does not include any amounts payable by Buyer for the goods and services tax ("GST") imposed pursuant to the Canadian Excise Tax Act ("ETA") or any similar or replacement value added or sales or use tax enacted under successor legislation. Notwithstanding the selection made pursuant to Section 6.1, Buyer will pay to Seller the amount of GST payable for the purchase of Gas in addition to all other amounts payable under the Contract. Seller will hold the GST paid by Buyer and will remit such GST as required by law. Buyer and</i></p>



Gas Industry Standards Board

1100 Louisiana, Suite 3625, Houston, Texas 77002

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

Home Page: www.gisb.org

Seller will provide each other with the information required to make such GST remittance or claim any corresponding input tax credits, including GST registration numbers.

6.3 Where Buyer indicates to Seller that gas will be exported from Canada, the following shall apply:

6.3.1 Where Buyer is not registered for GST under the ETA and Buyer indicates to Seller that Gas will be exported from Canada, Buyer may request Seller treat such Gas as "zero-rated" Gas for export within the meaning of the ETA for billing purposes. If Seller, in its sole discretion, agrees to so treat such Gas, then Buyer hereby declares, represents and warrants to Seller that Buyer will: (i) export such Gas as soon as is reasonably possible after Seller delivers such Gas to Buyer (or after such Gas is delivered to Buyer after a zero-rated storage service under the ETA) having regard to the circumstances surrounding the export and, where applicable, normal business practice; (ii) not acquire such Gas for consumption or use in Canada (other than as fuel or compressor gas to transport such Gas by pipeline) or for supply in Canada (other than to supply natural gas liquids or ethane the consideration for which is deemed by the ETA to be nil) before export of such Gas; (iii) ensure that, after such Gas is delivered and before export, such Gas is not further processed, transformed or altered in Canada (except to the extent reasonably necessary or incidental to its transportation and other than to recover natural gas liquids or ethane from such Gas at a straddle plant); (iv) maintain on file, and provide to Seller, if required, or to the Canada Customs and Revenue Agency, evidence satisfactory to the Minister of National Revenue of the export of such Gas by Buyer; and/or (v) comply with all other requirements prescribed by the ETA for a zero-rated export of such Gas.

6.3.2 Where Buyer is registered for GST under the ETA and Buyer indicates to Seller that Gas will be exported from Canada, Buyer may request Seller treat such Gas as "zero-rated" Gas for export within the meaning of the ETA for billing purposes, and Buyer hereby declares, represents and warrants to Seller that Buyer intends to export such Gas by means of pipeline or other conduit in circumstances described in Section 6.3.a (i) to (iii).

6.3.3 Without limiting the generality of Section 8.3, Buyer indemnifies Seller for any GST, penalties and interest and all other damages and costs of any nature arising from breach of the declarations, representations and warranties contained in Section 6.3.a or 6.3.b, or otherwise from application of GST to Gas declared, represented and warranted by Buyer to be acquired for export from Canada.

6.4 In the event that any amount becomes payable pursuant to the Contract as a result of a breach, modification or termination of the Contract, the amount payable shall be increased by any applicable Taxes or GST remittable by the recipient in respect of that amount.

It was recommended that a heading be placed that notes that this section be specific for Canadian transactions, as defined by delivery points in Canada. There may be further changes necessary for the original section 6, which would become 6.1 with the addition of the above clauses. Section 6.2 does not seem to specify who would be responsible for paying the tax. Mr. Anderson will contact the Canadian tax experts regarding these questions. Mr. Anderson will also verify the numbering for these clauses.



QUALITY AND MEASUREMENT

All Gas delivered by Seller shall meet the pressure, quality and heat content requirements of the Receiving Transporter. The unit of quantity measurement for purposes of this Contract shall be one MMBtu dry, one Dekatherm dry or one GJ. Measurement of Gas quantities hereunder shall be in accordance with the established procedures of the Receiving Transporter.

It was noted that the language of section 2.8 "as agreed to by the parties in a transaction" should be added.

- 7.2 Replace section 7.2 with the following text, that adds the compounded monthly interest on the amount due and adds language with referencing the Toronto bank for Canadian transactions:

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 from the date due until the date of payment at a rate equal to the lower of: (i) if the amount payable is in United States currency, the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum, compounded monthly; or, if the amount payable is in Canadian currency, the per annum rate of interest identified from time to time as the prime lending rate charged to its most credit worthy customers for commercial loans by The Toronto Dominion Bank, Main Branch, Calgary, Alberta, Canada, plus two percent per annum, compounded monthly; or (ii) the maximum applicable lawful interest rate. ~~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.~~ 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. In the event the parties are unable to resolve such dispute, either party may pursue any remedy available at law to enforce its rights pursuant to this Section.

The participants agreed to review the language with their tax experts to determine compounding daily or compounding monthly should be included in the language, or if the contract should be silent and the parties individual business practices should govern.

It was noted that the phrase "From the date due to the date of payment" means compounding daily. The EEI contract specifies compounding monthly and the Western Power Pool contract specifies compounding daily.

- 7.6 Add a new clause:

Payment shall be made in the currency of the Contract Price.

- 10.5 Section 10.5 will need modification to reflect Canadian bankruptcy language:

*10.5 The parties agree that each transaction terminated and liquidated under Section 10.3 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**.*



Gas Industry Standards Board

1100 Louisiana, Suite 3625, Houston, Texas 77002

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

Home Page: www.gisb.org

Mr. Anderson noted that he did not have language at this time.

As an aside, a concern was raised on the “commercially impracticable” term used in Section 10.3.1, which may be internally inconsistent. Ms. Metz will have one of the drafters contact Mr. Ryan regarding this concern. Mr. Rae noted that the “commercially impracticable” term was language that appears in the EEI master agreement, and was suggested by Reliant Energy.

No conversion was specified. ISDA notes that at the time the contract is entered into the contract you select the currency to be used for early terminations so that only one amount is given when early termination occurs. This would probably require a new clause 10.7. Mr. Rae noted that he would review the contract for possible language, consistent with ISDA.

14.5 Section 14.5 will need modification as shown in highlighted text:

The interpretation and performance of this Contract shall be governed by the laws of the **state jurisdiction** as indicated on the Base Contract, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.

14.6 Section 14.6 will need modification as shown in highlighted text:

This Contract and all provisions herein will be subject to all applicable and valid statutes, rules, orders and regulations of any Federal, State, **Province**, or local governmental authority having jurisdiction over the parties, their facilities, or Gas supply, this Contract or Transaction Confirmation or any provisions thereof.

14.11 The following section should be added to address conversions:

For currency conversions required under the Contract, to convert Canadian or United States currency to the other, the parties shall use the average of the Bank of Canada posted noon spot exchange rates as quoted for each Day during the Month during which Gas was, or was obligated to be, delivered and received.

Exhibit Three changes are needed to the exhibit to reflect Canadian currency and units of measure:

Contract Price: USD\$_____/MMBTU or **CAD\$_____/GJ** or _____

Performance Obligation and Contract Quantity: (Select One)

Units: MMBtu **GJ** Other _____

Then units/day

Canadian Export Zero Rating (Section 6.3) **No (default)** **Yes**

The group then discussed the method by which to make changes to the contract to reflect Canadian transactions. Two choices are available: either modify the body of the contract and maintain those changes within the body of the contract, or prepare a standard amendment, much like the amendment that was built for the Funds Transfer Agency Agreement, and maintain those changes separately. This process could also be followed as the contract requires changes to be applicable for Mexican transactions. The group will determine which is



Gas Industry Standards Board

1100 Louisiana, Suite 3625, Houston, Texas 77002

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

Home Page: www.gisb.org

the preferred mechanism at the next meeting.

III. Next Steps

The agenda items to be covered at the next meeting include how to be present the Canadian changes - either as a standard amendment or as within the body of the agreement, and the discussion and possible vote on long term and short term issues.

IV. Adjourn

The meeting adjourned at 4:00 p.m. central. The next meeting is scheduled for August 27 as a conference calls from 2:00 to 4:00 p.m. central.



Gas Industry Standards Board

1100 Louisiana, Suite 3625, Houston, Texas 77002

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

Home Page: www.gisb.org

V. Attendees - August 7, 2001

Segment	Member	Company	Name
Services	Y	AEP	John Toserio
			Janis Shaffer
	Y	Aquila	Scott Ackerman
	Y	BTUWatch.com	Gina McMahon
	Y	Dynegy	Mark Scheel
			Margaret Lester
	Y	Enron North America	Stacey Dickson
			Jeff Hodge
	N	GasEDI	Ian Anderson
		Mirant Energy	Stephany Tolbert
	Y	PanCanadian	Tracey Ruffeno
	Y	PPL	Anne Lovett
	Y	Reliant	Rhonda Alphin
			Paramy Graf
		Jennifer Minnis	
	N	Stroock Stroock & Lavan	Mark Rae
	Y	Williams Services	David Hollingsworth
End User	Y	Midland Cogeneration Ventures	Cary Metz
	Y	El Paso Merchant Energy	Porter Ryan
	Y	Calpine	Tiffany Silvey
	Y	Salt River Project	Jim Trangsrud
Producer	Y	ExxonMobil	Matt Cross
			Vernon Sevier

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.