



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 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 7, 2000

DATE: August 21, 2000

GAS INDUSTRY STANDARDS BOARD
GISB CONTRACTS SUBCOMMITTEE CONFERENCE CALL
2:00 p.m. to 4:00 p.m. central, August 7, 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 June 26 minutes were adopted after a review and modifications.

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

The subcommittee began with Section § 6.1. Voting on each of the sections will be by roll call unless there is no opposition.

SECTION	DISCUSSION
Section § 6 New Section § 6.1	<p>Dynegy proposed the tax language for section § 6.1. ExxonMobil noted that their tax department understood that consumption taxes are taxes on gas, not taxes on transactions. As such he added the language “for with respect to the gas.”</p> <p>In discussion it was noted that the language below is not intended to modify the contracts language where the buyer pays at and after the delivery point. It does modify the language where the current heading in section § 6 is “The seller pays before and at the delivery point:”</p> <p>Salt River Project noted that they would need language to delineate the taxes on the invoice. Mr. Scheel noted that this language defines who pays the taxes, not how or if it is shown on the invoice – which is a separate issue. Some companies may have an exemption certificate from the buyer, or direct pay certificate, which does not require grossing up the invoice. All agreed that there should be flexibility such that the tax line items can be reflected on the invoice, should that be a company’s practice.</p> <p>The language offered for the new section with today’s changes are: “6.1: Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority (“Taxes”) with respect to the Gas prior to the Delivery Point(s) and all Taxes at the Delivery</p>



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SECTION	DISCUSSION
Section § 7.1	<p>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 Tax levied on Transactions with respect to the Gas under this Contract by the state (or any other governmental subdivision) in which the Gas is consumed or otherwise used. 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><i>There was agreement in concept to the above language changes.</i></p> <p>Dynegy noted that the contract should contain language to standardize the number of decimal points to ensure consistency throughout the industry.</p> <p>On the call it was noted that some companies carry three decimals and others carry four or five decimals – with the clear majority carrying four decimals. For AEP, at the deal level, 5 decimal places are specified but at the invoice level (contract price level) four decimal places are used. The invoice level is the level for which the base contract could specify a standard set of decimal places. If supported, the definition for contract price would be amended to show the number of decimal places to specify.</p> <p><i>There was agreement to have a standardized number of decimal points, and to discuss at the next meeting what the standard number should be.</i></p> <p>Regarding rounding conventions, the issue is: "Should each stage be rounded or should it only be rounded at the final calculation?" This issue should be taken back to each committee participant's accounting department for information on how to define the rounding conventions.</p> <p><i>There was agreement to have a standardized rounding convention. For the next meeting, each committee participant should be prepared to address the rounding convention to be used.</i></p>
Section § 7.2	<p>Dynegy described its change to the language to specify 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. 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. If Buyer, in good faith, disputes the amount of any such statement or any part thereof, Buyer will pay</p>



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SECTION	DISCUSSION
	<p>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>After discussion on GISB Standard No. 3.3.17, it was clear that there is not agreement among the subcommittee participants on whether this standard should apply to purchase and sales invoices, and in particular, to the base contract (GISB Standard No. 6.3.1).</p> <p>Mr. Scheel made the motion, seconded by Mr. Dutton, to explore developing standards for the order of payments – which might change GISB Standard No. 3.3.17 and the base contract. The motion failed. (See section IV of these minutes, column denoted “issue 1,” for voting by company).</p> <p>The language in section § 7.2 will not be changed to reflect the order of payments.</p>
Section § 7.4	<p>Section § 7.4 currently reads, (with red-lined changes to reflect below discussions):</p> <p>“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, and records and telephone recordations 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 over-payments shall be deemed released unless objected to in writing, with adequate explanation and/or documentation, within two years after the Month of Gas delivery. 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.”</p> <p>AEP asked that Section § 7 be 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.”</p> <p>Conceptually, all agreed with the above change to section § 7.4.</p> <p>AEP asked that after the word “accurate” in the third sentence add the words “and all associated claims for under- or over-payments shall be deemed released”.</p> <p>Conceptually, all agreed with the above change to section § 7.4.</p> <p>Midland Cogeneration recommended that:</p> <p>7.4. A party shall have the right, at its own expense, upon reasonable notice and at reasonable times, to examine the books, and records, and telephone recordations 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.</p> <p>Conceptually, all agreed with the above change to section § 7.4.</p>



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SECTION	DISCUSSION
Section § 7.5	<p>Dynegy recommended that a new section, section § 7.5 should be added:</p> <p>“7.5 In the event that Buyer and Seller are each required to pay an amount under this Contract in the same Month, then such amounts with respect to each Party may be aggregated and the Parties may discharge their obligations to pay through netting, in which case the Party, if any, owing the greater amount may pay to the other Party the difference between the amounts owed. The Parties shall not net disputed amounts from a previous Month(s) against amounts due in the current Month. Unless mutually agreed to between the Parties, neither Party may net an amount previously due, whether or not in dispute, against the amount due under the current Month’s invoice.”</p> <p>In discussion, ExxonMobil asked that decisions be held on the inclusion of this section until the next meeting so that they can confer with their accountants. All agreed to the postponement. Southern noted that it has a stand-alone netting agreement per commodity across contracts.</p> <p>In further discussion, parties would agree to net the prior month’s adjustment in a subsequent month. This would also apply to disputes that are in the process of being resolved – so that either there is prior mutual agreement on how to net, or the concept supported by this language would, by default, apply. In the last meeting, netting would automatically apply unless there was an “opt out” specified. As such the default is that netting applies, and a box on the front page would indicate that the default is not to be used.</p> <p>It was also noted that “netting does not apply” is the exception. The majority of all contract parties permit netting – those that do not net typically do not have the technical ability in their accounting systems to do so.</p> <p><i>All agreed conceptually to support netting language in the contract.</i></p> <p>Others agreed that netting would not be across commodity, across affiliates, or across contracts and that this language should be added in the netting language. If netting is allowed across contracts, affiliates, or commodities, it should be included in a separate agreement.</p> <p>AEP and PAPL both had similar comments and recommendations for a new section § 7.5.</p> <p>Reliant Energy offered another new section to prevent early termination by having liquid damages paid immediately. This would apply to non-performance under section 3, and those damages to be recovered within three days of the invoice being sent. Accelerating damage payments would avoid termination. The damages are not as a result of default of payment – the damages only apply to non-performance. Reliant Energy does not recommend specifying this process as a default -- this would be decided on a case-by-case basis. It might be more appropriate for the long-term contract.</p> <p><i>It was agreed to consider this at the next meeting.</i></p>
Section § 7.6	<p>Dynegy recommended the following new section § 7.6:</p>



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SECTION DISCUSSION

7.6 Notwithstanding any other provision of this Contract, if Buyer or Seller fails to pay to the other Party any amounts when due, the aggrieved Party shall have the right to suspend performance under any and all Transactions until such amounts plus interest as described in Section § 7.2 have been paid. The Party suspending performance shall provide written notice of the suspension to the non-paying Party. The notice of suspension shall provide a period not to exceed forty-eight (48) hours (but at least one Business Day) during which the non-paying Party may cure by paying any overdue amounts before the deadline for suspension provided in the written notice. Notwithstanding the foregoing, if the non-paying Party, in good faith, disputes the amount of any such billing or part thereof and pays the amount it concedes to be correct, no suspension shall be permitted.

AEP noted that this is probably more of a credit risk issue than a termination issue. As such AEP recommended that it remain in section 10, and there was general consensus to do so.

Section 7.6 was withdrawn.

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 August 7 meeting for the meeting scheduled for August 21. The meeting was adjourned at 2:05 p.m. central.

V. Attendees & Voting Record

Member²¹	Name	Voting²²	Issue 1	Company
Services:				
✓	Hazel, Monique	✓	A	Coral Energy
✓	Stubblefield, Deborah	✓	A	Corcoran Law Offices
✓	Klecka, Ellen	✓	Y	Dynegy Inc.
✓	Scheel, Mark			Dynegy Inc.
✓	McAfee, Brenda	✓	Y	Dynegy Marketing and Trade
✗	Bettis, Vicky	✓	N	Engage Energy US, LP
✗	Ryan, Porter			Engage Energy US, LP
✓	Dickson, Stacy	✓		Enron Administrative Services
✓	Hodge, Jeffrey T.	✓	N	Enron North America
✗	Anderson, Ian	✓	A	IS Anderson Consulting

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.



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✓	Alphin, Rhonda	✓	N	Reliant Energy
✓	Graff, Paramy			Reliant Energy
✓	Minnis, Jennifer			Reliant Energy
✓	McGough, Scott	✓	N	Southern Co. Energy Marketing, L.P.
✓	Starbird, Zachary			Southern Co. Energy Marketing, L.P.
✓	Stofer, Sherry			Southern Co. Energy Marketing, L.P.
✓	Hollingsworth, David	✓	N	Williams Energy Marketing & Trading
Producers:				
✓	Cross, Matt	✓	Y	ExxonMobil
✓	Sevier, Vernon			ExxonMobil
Admin:				
✓	McQuade, Rae			GISB
End Users:				
✓	Dutton, Mitch	✓	N	AEP Energy Services, Inc.
✓	Shaffer, Janis W.			AEP Energy Services, Inc.
✓	Szasz, Cathy			AEP Energy Services, Inc.
✓	Hebenstreit, Bill	✓	Y	El Paso Merchant Energy
✓	Metz, Cary	✓	A	Midland Cogeneration Venture
✓	McVicker, Diane	✓	N	Salt River Project
✓	Transgrud, Jim			Salt River Project
LDCs:				
✓	Ishikawa, Angie	✓	N	SoCal Gas
✓	Ishikawa, Rick			SoCal Gas

VI. Voting Results

Segment	Total Votes Cast on Issue 1			Balanced Vote Results	
	Favor	Oppose	Abstain	Favor	Oppose
End Users	1	2	1	.7	1.3
LDCs	0	1	0	0	1
Pipelines	0	0	0	0	0
Producers	1	0	0	1	0
Services	2	5	3	.6	1.4
Total	4	8	4	2.3	3.7