



# 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:** Draft Minutes of the Contracts Subcommittee Meeting – August 21, 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 21, 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.

<b>SECTION</b>	<b>DISCUSSION</b>
Section § 7.1	<p>Dynegy proposed language for section § 7.1 regarding decimal places. At the last meeting, there was agreement to have a standardized number of decimal points. In discussion today, the two options offered by the attendees were either four or five decimals. After discussion, the motion was made to accept four decimal places. The roll call vote was taken, and the motion to include a standard four decimal places in the base contract passed a balanced vote. In response to questions from the chair, those voting in opposition were in support of five decimals.</p> <p><b><i>In the resulting balanced roll call vote on the motion to include language in the base contract specifying four decimal places, the motion was adopted.</i></b></p>
Section § 7.1	<p>During the June 26 discussion when the Dynegy request on decimal places was first highlighted, the participants at the meeting also determined that the group should review the rounding conventions used and when they should be applied. At the last meeting, it was determined that more time was needed to check with staff before this group made a decision.</p> <p>Regarding rounding conventions, the issue is: "Should each stage be rounded or should it only be rounded at the final calculation." In</p>



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SECTION	DISCUSSION
	<p>discussing various examples, one was highlighted – for a monthly invoice, does the rounding take place for each of the daily transactions which then are aggregated to a monthly total, or is the rounding applied only to the monthly total.</p> <p><b><i>In light of the above and other discussed examples, rounding will be discussed at the next meeting.</i></b></p>
Section § 7.5	<p>At the last meeting, Reliant Energy offered another new section to prevent early termination by having liquid damages paid immediately. It was agreed that this would be discussed again at this meeting. 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>There was significant concern on the inclusion of this language in the base contract. <b><i>In the resulting balanced roll call vote on the motion to include the above language in the base contract, the motion was defeated.</i></b></p>
New Section § 7.6	<p>Pennsylvania Power and Light (PAPL) offered the following new section. They were not on the call to discuss the section change:</p> <p>“Payment Obligation Absent Netting. If no mutual debts or payment obligations exist on any given Due Date established under this Agreement and only one Party owes a debt or obligation to the other Party under this Agreement on any day, then the Party who owes such amount shall pay such sum in full when due to the other Party.”</p> <p>It was noted that this language is duplicative of other language already in the agreement. <b><i>In the resulting balanced roll call vote on the motion to include the above language in the base contract, the motion was defeated.</i></b></p>
New Section § 7.7	<p>Pennsylvania Power and Light (PAPL) offered the following new section. They were not on the call to discuss the section change:</p> <p>“Application. This Netting shall apply only to amounts charged for Gas delivered and to any other charges under this Agreement, including, but not limited to, Transporter Penalties, liquidated damages and interest. This Netting provision shall not apply to any financial derivative agreements between the Parties, including, but not limited to, swaps and options; provided, however, that this Netting provision shall apply to the exchange of futures for physical agreements between the Parties.”</p> <p>During discussion, it was noted that this concept could be considered during the final wording of the document as the netting concept has already been accepted on a conceptual basis. The issue addressed in the proposed language is the extent to which netting can be applied to</p>



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	financial derivatives.  <b><i>In a unanimous voice vote, it was determined not to include this language in the base contract.</i></b>
Section § 8.2/8.5	<p>AEP offered the following disclaimer language for inclusion at the end section § 8.2:</p> <p>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."</p> <p>ExxonMobil, similarly, had the following language for section § 8.5:</p> <p>"EXCEPT FOR THE WARRANTIES CONTAINED IN SECTIONS 5. AND 8., SELLER MAKES NO OTHER WARRANTIES HEREUNDER AND EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE GAS DELIVERED HEREUNDER."</p> <p>In discussion, the existing disclaimer in the contract is more from GISB's perspective. The above disclaimers are for the signatory parties.</p> <b><i>In a unanimous voice vote, it was agreed to include the concept represented by the above disclaimers in the base contract.</i></b>
Section § 8.3	<p>PAPL offered the following change to Section § 8.3 (shown in red-line):</p> <p>"Seller agrees to indemnify Buyer and save it harmless from all losses, liabilities or claims including reasonable attorneys' fees and costs of court ("Claims"), from any and all persons, arising from or out of claims of title, personal injury or property damage from said Gas or other charges thereon which attach before title passes to Buyer."</p> <p>After discussion, it was unanimously supported that that above changes were not needed. By this determination the group did not imply that "unreasonable attorneys fees and cost of court" were intended.</p> <b><i>In a unanimous voice vote, it was determined not to include this language in the base contract.</i></b>
Section § 9.3	<p>Exxon/Mobil suggested the following to correct a grammatical error to Section § 9.3 (red-lined):</p> <p>"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<del>-. If</del> 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</p>



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SECTION	DISCUSSION
	considered delivered two Business Days after mailing.” <b><i>In a unanimous voice vote, it was agreed to correct the grammatical error as shown in the above red-lines.</i></b>
Section § 2.9	Reliant Energy offered changes for the addition to the Events of Default Section.  It was noted that this language is more appropriate in the longer term base contract, to which Reliant Energy agreed.  <b><i>In a unanimous voice vote, it was agreed to address this modification when the group undertakes the development of a longer term contract.</i></b>
Section § 10.1, §10.3 (vi), and §10.4	AEP asked that following changes be made to specify the event of default:  New Sections § 10.1(vi), 10.3 and 10.4 are added to the Base Contract as follows:  At the end of Section § 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;”.  During discussion, it was also noted that this language addresses concerns raised by Dynegy.  <b><i>In a unanimous voice vote, it was agreed to support the conceptual language.</i></b>
Section § 7.2	Southern asked that the following language be appended to Section § 7.2, and it was tabled until Section § 10 was discussed. The language is:  “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.”  In discussion, Southern explained that in disputes, due to the unpaid disputed portions of payments, a disputing party’s credit exposure could increase such that it would impact the disputing party’s ability to conduct business. Permitting an increase the collateral to address the disputed party’s outstanding disputed payments would provide an increase in the credit threshold so that purchases and sales could continue. It was noted that credit limits are not specified in section 10 of the contract now, nor are they expected to be included in a short term agreement. The proposed language provides a mechanism to allow for continued



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	transactions between trading partners when there exists disputed amounts that could exceed the credit threshold of one of the trading parties. Several examples were discussed. If parties do not have credit thresholds, then the language should be crafted such that it does not apply to them.  <b><i>There was general support of this concept, but it will be further discussed at the next meeting in concert with Section § 10.1 before a vote is taken.</i></b>

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#### IV. Adjourn

The next meeting will be held via conference call on September 11 from 1:00 p.m. to 3:00 p.m. The meeting will continue with the agenda and begin with the changes that were tabled this meeting (section § 7.1 - rounding and sections § 7.2/10.1 - additional collateral to support disputed payments) followed with changes recommended to section § 10. The meeting was adjourned at 2:10 p.m. central.



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## V. Attendees & Voting Record

GISB Member? <sup>1</sup>	Name	Voting? <sup>2</sup>	Issues:			Company
			1	3	2	
<b>Services:</b>						
✗	Forbes, Joe	✓	A	N	A	Duke Energy Trading
✓	Klecka, Ellen	✓	Y	N	Y	Dynegy Inc.
✓	McAfee, Brenda	✓	Y	N	Y	Dynegy Marketing and Trade
✗	Bettis, Vicky	✓	Y	N	N	Engage Energy US, LP
✗	Ryan, Porter					Engage Energy US, LP
✓	Dickson, Stacy	✓	Y	N	Y	Enron Administrative Services
✓	Hodge, Jeffrey T.	✓				Enron North America
✓	Alphin, Rhonda	✓	Y	N	Y	Reliant Energy Trading
✓	Graff, Paramy					Reliant Energy Trading
✓	Minnis, Jennifer					Reliant Energy Trading
✓	McGough, Scott	✓	N	N	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	✓	Y	N	N	Williams Energy Marketing & Trading
<b>Producers:</b>						
✓	Cross, Matt	✓	N	N	N	ExxonMobil
✓	Sevier, Vernon					ExxonMobil
<b>Admin:</b>						
✓	McQuade, Rae					GISB
<b>End Users:</b>						
✓	Dutton, Mitch	✓	Y	N	A	AEP Energy Services, Inc.
✓	Shaffer, Janis W.					AEP Energy Services, Inc.
✓	Szasz, Cathy					AEP Energy Services, Inc.
✓	Hebenstreit, Bill	✓	Y	N	A	El Paso Merchant Energy
✓	Metz, Cary	✓	Y	N	N	Midland Cogeneration Venture
<b>LDCs:</b>						
✓	Ishikawa, Angie	✓	Y	N	N	SoCal Gas
✓	Ishikawa, Rick					SoCal Gas

<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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## VI. Balanced Voting Results

Segment	Total Votes Cast on Issue 1			Balanced Vote Results	
	Favor	Oppose	Abstain	Favor	Oppose
End Users	3	0	0	2	0
LDCs	1	0	0	1	0
Pipelines	0	0	0	0	0
Producers	0	1	0	0	1
Services	6	1	1	1.7	0.3
<b>Total</b>	<b>10</b>	<b>2</b>	<b>1</b>	<b>4.7</b>	<b>1.3</b>

Segment	Total Votes Cast on Issue 3			Balanced Vote Results	
	Favor	Oppose	Abstain	Favor	Oppose
End Users	0	3	0	0	2
LDCs	0	1	0	0	1
Pipelines	0	0	0	0	0
Producers	0	1	0	0	1
Services	0	8	0	0	2
<b>Total</b>	<b>0</b>	<b>13</b>	<b>0</b>	<b>0</b>	<b>6</b>

Segment	Total Votes Cast on Issue 2			Balanced Vote Results	
	Favor	Oppose	Abstain	Favor	Oppose
End Users	0	1	2	0	1
LDCs	0	1	0	0	1
Pipelines	0	0	0	0	0
Producers	0	1	0	0	1
Services	4	3	1	1.1	0.9
<b>Total</b>	<b>4</b>	<b>6</b>	<b>3</b>	<b>1.1</b>	<b>3.9</b>

Issue 1: Section § 7.1, Inclusion of language for four decimal places.

Issue 3: Section § 7.5, Inclusion of language for payment of liquid damages.

Issue 2: Section § 7.6, Inclusion of language for payment obligations absent netting.