



## Gas Industry Standards Board

1100 Louisiana, Suite 3625, Houston, Texas 77002  
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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 – August 27, 2001  
**DATE:** August 31, 2001

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**GAS INDUSTRY STANDARDS BOARD**  
**GISB CONTRACTS SUBCOMMITTEE MEETING – CONFERENCE CALL**  
**August 27, 2001 – 2:00 p.m. to 4:00 p.m. Central**  
**FINAL MINUTES**

**I. Administrative**

Ms. Metz welcomed the participants, took attendance and read the antitrust statement. The agenda was adopted as posted. The August 6 and 7 minutes were adopted as posted.

**II. Review of Outstanding Items**

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 10

Section 10.3

The group discussed if it was the drafting team's intent to exclude some transactions from liquidation on the Early Termination Date. The section as drafted is shown below and the language for discussion is highlighted:

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.

In discussion, it was stated that the government might not allow some transactions to be terminated. The language "commercially impracticable" is taken from the EEI contract, and an example of such a



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transaction would be if a transaction only has a few days left it might be impractical or impossible to liquidate; and therefore it would be an excluded transaction.

After discussion, it was decided to keep the language as drafted.

Section 10.3

There was discussion on the term “commercially impracticable”. It was proposed that perhaps “commercially reasonable” would be more appropriate.

After discussion, it was decided to keep the language as drafted.

Section 10.3 and  
Section 10.3.1

It was discussed that an inconsistency may be apparent between these two provisions. Section 10.3 requires transactions to be terminated as soon as practicable, and Section 10.3.1 requires all terminated transactions to be valued as of the Early Termination Date. The provisions were discussed, and for clarity, the following changes were suggested:

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, each a “Terminated Transaction”. 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 (“Excluded Transactions”), which Excluded Transactions must be liquidated and terminated as soon thereafter as is reasonably practicable, and upon termination shall be a Terminated Transaction and be valued consistent with Section 10.3.1 below. With respect to each Excluded Transaction, its actual termination date shall be the Early Termination Date for purposes of Section 10.3.1.

The parties have selected either “Forward Contract Damages Apply” or “Forward Contract Damages Do Not Apply” as indicated on the Base Contract.

Forward Contract Damages Apply:

10.3.1 As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, (i) the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed



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under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract and (ii) the Market Value, as defined below, of each **Terminated Transaction**. The Non-Defaulting Party shall (x) liquidate and accelerate each **Terminated Transaction** at its Market Value, so that each amount equal to the difference between such Market Value and the Contract Value, as defined below, of such **Terminated Transaction(s)** shall be due to the Buyer under the **Terminated Transaction (s)** if such Market Value exceeds the Contract Value and to the Seller if the opposite is the case; and (y) where appropriate, discount each amount then due under clause (x) above to present value in a commercially reasonable manner as of the Early Termination Date (to take account of the period between the date of liquidation and the date on which such amount would have otherwise been due pursuant to the relevant **Terminated Transactions**).

For purposes of this Section 10.3.1, "Contract Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the Contract Price, and "Market Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the market price for a similar transaction at the Delivery Point determined by the Non-Defaulting Party in a commercially reasonable manner. To ascertain the Market Value, the Non-Defaulting Party may consider, among other valuations, any or all of the settlement prices of NYMEX Gas futures contracts, quotations from leading dealers in energy swap contracts or physical gas trading markets, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term and differences in transportation costs. A party shall not be required to enter into a replacement transaction(s) in order to determine the Market Value. Any extension(s) of the term of a transaction to which parties are not bound as of the Early Termination Date (including but not limited to "Evergreen" Provisions and options to extend) shall not be considered in determining Contract Values and Market Values. The rate of interest used in calculating net present value shall be determined by the Non-Defaulting Party in a commercially reasonable manner.

Forward Contract Damages Do Not Apply:

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under **Terminated Transactions and Excluded Transactions** on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract.

All were in agreement with the above changes.

Section 7.2

The group discussed if this section should specify a method of



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compounding, and it was decided not to do so. However, the following change was proposed to clarify the sentence:

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) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; 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.

There was no opposition to the change.

Canadian language

During the August 7 meeting, the group discussed two methods to make the contract usable for Canadian transactions: (1) modify the body of the contract, and (2) prepare a standard amendment. The committee was to determine which method at this meeting.

The proposal was made to develop a standard amendment, and others voiced their support. Ian Anderson stated that his preference would be to have the Canadian language in the body of the contract; however, he stated that the group consensus sounded like the amendment was the popular choice. Therefore, he proposed the following changes be made to the body of the contract to make the amendment fit better with the contract.

base contract (cover page), above the heading Notices:

replace "Federal Tax ID Number" with "**U.S.** Federal Tax ID Number"

Section 7

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, 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



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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.

**7.3** 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) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

**7.4** In the event any payments are due Buyer hereunder, payment to Buyer shall be made in accordance with **Sections 7.2 and 7.3** above.

**7.5** 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. 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.

**7.6** Unless the parties have elected on the Base Contract not to make this Section **7.6** applicable to this Contract, the parties shall net all undisputed amounts due and owing, and/or past due, arising under the Contract such that the party owing the greater amount shall make a single payment of the net amount to the other party in accordance with Section 7; provided that no payment required to be made pursuant to the terms of any Credit Support Obligation shall be subject to netting under this Section. If the parties have executed a separate netting agreement, the terms and conditions therein shall prevail to the extent inconsistent herewith.

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

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



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The committee did not express any objection to the changes to the cover sheet, and to Sections 7.4, 7.5, 7.6, 14.5, and 14.6. The committee's response to the proposed changes to Sections 7.2 and 7.3 was not decided.

### III. Next Steps

The agenda items for next meeting are as follows:

- Discuss workpaper 3 (posted on 8/27 date);
- Discuss possible dates for joint conference consisting of both long- and short-term committees to determine if a separate long-term contract will be developed. (Proposed in the August 7 meeting to resolve the issue of the use of "short-term" in this contract.) Please note workpaper 5 (posted 8/27 date) that lists items tabled for long-term discussions;
- Sending this contract out for industry comment; and
- Canadian addendum

### IV. Adjourn

The meeting adjourned 4:00 pm CCT. The next conference call will be Wednesday, September 5, from 2:00 pm to 4:00 pm CCT.



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### **V. Attendees – August 27, 2001**

The attendee list will be provided under separate cover.