Gas Industry Standards Board
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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 – September 11, 2000
DATE:	October 19, 2000

GAS INDUSTRY STANDARDS BOARD

GISB CONTRACTS SUBCOMMITTEE CONFERENCE CALL

2:00 p.m. to 4:00 p.m. central, September 11, 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 August 21 minutes were adopted after a review and modifications.

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

The subcommittee began with Section § 7.1. Voting on each of the sections will be by roll call unless there is no opposition.

SECTION	DISCUSSION
Section § 7.1	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 August 21 meeting, it was determined that more time was needed to check with staff before this group made a decision. A work paper was prepared for this meeting. Regarding rounding conventions, the issue is whether rounding should take place for each line item in an invoice, or should it only take place at the final calculation. It was noted that the discussion and language pertained only to the invoice as presented, not to the internal processing of a company's system. It was clear in the discussion that several companies had differing practices, and that after closer review, the differing practices did not seem to cause much if any concern. As a result, it was determined to take a vote to reaffirm if language regarding rounding and decimal places for the invoice was needed in the short-term contract. The motion failed a balanced vote (voting issue 1 – to see the specific votes cast, please review the voting record presented later in these minutes). ***The motion to include language for invoicing regarding rounding and decimal places failed. There will be no language in the short-***

SECTION	DISCUSSION
	term contract regarding the number of decimal places or rounding conventions used.
Section § 7.2/10.1	Southern asked that the language be appended to Section § 7.2, and it was tabled until Section § 10 was discussed. The language presented and amended by Southern during this meeting was: "A party may retain only the disputed portion pending resolution of the dispute without breach of the Contract. If a party retains a disputed amount, then the other party may, at its option, require the party withholding that amount to post collateral, in a form acceptable to it, in an amount sufficient to cover the retained disputed amount. Upon resolution of such 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." There was general support of this concept at the meeting on August 21, but it was agreed that it would be further discussed at this meeting in concert with Section § 10.1 before a vote is taken. Several on the call voiced their support for the concept of previously agreed to credit limits to be included in this section. During discussion, it was agreed to drop the reference to credit limits and change "collateral" to "security." The motion passed, (voting issue 2 – to see the specific votes cast, please review the voting record presented later in these minutes).
Sections § 10.1, 10.2, 10.3, 10.4 and 10.5	The following language changes were submitted by Dynegy (in red-line) regarding security: "10.1. When reasonable grounds for insecurity of payment or title to the Gas arise, either Party (the "Demanding Party") may demand adequate assurance of performance from the other Party (the "Debtor Party"). Adequate assurance shall mean sufficient security in the form and for the term reasonably specified by the Demanding Party ~~party demanding assurance~~, including, but not limited to, a standby irrevocable letter of credit, a prepayment, a security interest in an asset acceptable to the D~~d~~emanding P~~p~~arty or a performance bond or guarantee by a creditworthy entity. In the event either party shall (i) make an assignment or any general arrangement for the benefit of creditors; (ii) default in the payment obligation to the other party; (iii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iv) otherwise become bankrupt or insolvent (however evidenced); or (v) be unable to pay its debts as they fall due; then the other party shall have the right to either withhold and/or suspend deliveries or payment, or terminate the Contract without prior notice, in addition to any and all other remedies available hereunder. Seller may immediately suspend deliveries to

SECTION	DISCUSSION
	Buyer hereunder in the event Buyer has not paid any amount due Seller hereunder on or before the second day following the date such payment is due.
	10.2 At any time after the Debtor Party has provided security to the Demanding Party, the Debtor Party may by written notice, accompanied by such supporting information as the Debtor Party deems appropriate, request that the Demanding Party withdraw and terminate its demand for security for the Debtor Party's performance. The Demanding Party shall thereupon determine, in the exercise of its good faith judgment, based upon the information provided by the Debtor Party in support of such request, whether or not the Demanding Party any longer has reasonable grounds for insecurity with respect to the Debtor Party's performance under this Contract. If the Demanding Party determines that such reasonable grounds no longer exist, the Demanding Party shall promptly so notify the Debtor Party in writing and permit the Debtor Party to cancel any then outstanding security.
	10.3 If the Demanding Party permits the Debtor Party to cancel any security provided by the Debtor Party pursuant to this Section 10, such cancellation shall not preclude the Demanding Party from later demanding security for the Debtor Party's performance, should the Demanding Party again in its good faith opinion believe itself insecure with respect to the Debtor Party's performance.
	10.4 Failure of the Debtor Party to provide security for its performance within five (5) Business Days of receipt of the Demanding Party's written request therefor, unless such request has been withdrawn, shall be grounds for the Demanding Party to suspend performance under this Contract five (5) Business Days after the Debtor Party's receipt of written notice of such suspension provided, however, that if the Debtor Party demonstrates to the Demanding Party that it is diligently seeking the requested security and the Demanding Party, in its sole discretion, is satisfied with the Debtor Party's efforts to obtain the requested security, then the Demanding Party agrees to forbear any such suspension for up to an additional thirty (30) Days.
	10.5 If, during the term of this Contract, (a) Buyer fails to pay any amounts required under this Contract or (b) either Party, in its sole judgment reasonably exercised, determines that the creditworthiness or financial responsibility of the other Party has become impaired or unsatisfactory, or is otherwise insufficient to support the exposure (the "Mark-to Market Exposure") resulting from the differences between a fixed price and the relevant market prices (based upon the NYMEX Gas Futures curve and/or quotations from leading dealers in Gas swap contracts) for Gas to be delivered during the remaining term of any Transaction under this Contract; then Seller or Buyer (as applicable) may, upon written notice to the other Party, request other security as

SECTION	DISCUSSION
	contemplated in this Section 10 (such as a letter of credit, guarantee, or in the case of any Transactions with a fixed price, performance assurance margin (cash or cash equivalent collateral) equal to the Mark-to-Market Exposure from time to time in effect) satisfactory to the requesting Party." It was determined that for short term contracts, the contract may expire before the credit limits may require security. As such, the motion was made to defer this discussion to the long term contract. The motion passed with a unanimous voice vote.
Section § 10.1	Williams Marketing and Trade recommended the following language changes to Section § 10.1. Financial Responsibility: "If a party to this Agreement becomes subject to Bankruptcy Code proceedings, it is understood and agreed that the other Party shall be entitled to exercise its contractual right to liquidate as a forward contract merchant under Section 556 of the U.S. Bankruptcy Code." In discussion, it was noted that this language would be addressed in the section on liquidation. It was also noted that this should be considered a forward contract and the parties considered forward contract merchants. There was agreement to the concept that a recital should be included in this section that the parties are to be considered forward contract merchants. The motion passed with no opposition.
Sections § 10.1	PPL EnergyPlus recommended the following language changes to Section 10.1. Financial Responsibility: The third (3rd) and fourth (4th) sentences of *SECTION 10.1 FINANCIAL RESPONSIBILITY* shall be deleted in their entirety and replaced with the following: "Notwithstanding and in addition to but not in limitation of any other provision hereof or of any other agreement between the parties, in the event (each a "default") either party (the "Defaulting Party") shall (i) make an assignment or any general arrangement for the benefit of creditors, (ii) become bankrupt or insolvent, however evidenced, or be unable to pay its debts as they fall due, (iii) file a petition or otherwise commence a proceeding under any bankruptcy, insolvency, reorganization or similar law; or have any such petition filed or proceeding commenced against it, (iv) have a liquidator, administrator, receiver or trustee appointed with respect to it or any substantial portion of its property or assets, (v) fail to pay or perform, when due, any material obligation to the other party (the "Non-Defaulting Party"), whether under this agreement, or in connection with credit support obligations or otherwise (other than its obligations to deliver or receive natural gas, the exclusive remedy for which is provided in Section 3

SECTION	**DISCUSSION**

hereof) and such failure is not cured within two (2) Business Days after written notice thereof to the Defaulting Party, or (vi) fail to provide adequate assurance of its ability to perform all of its outstanding obligations to the Non-Defaulting Party under this Base Contract, any Transaction or otherwise within a period not to exceed 48 hours (but at least one Business Day) of a demand therefor when the Non-Defaulting Party has reasonable grounds for insecurity, then in any such event the Non-Defaulting Party shall have the right, without notice, to liquidate any or all Forward Contracts, as defined below, (including any portion of a Forward Contract not yet fully delivered) then outstanding at any time or from time to time thereafter by:

10.1.1 Closing out each priced Forward Contract or priced portion of a Forward Contract being liquidated at its Market Value, as defined below, so that each such Forward Contract is canceled and a settlement payment in an amount equal to the difference between such Market Value and the Contract Value, as defined below, of such Forward Contract shall be due to the Buyer under the Forward Contract if such Market Value exceeds the Contract Value and to the Seller if the opposite is the case; and

10.1.2 Closing out each unpriced Forward Contract or unpriced portion of a Forward Contract being liquidated at the amount, if any, which the Non-Defaulting Party would have to pay or would receive if it were to replace such Forward Contract, such settlement payment to be determined by the Non-Defaulting Party in a commercially reasonable manner and to be due to the non-Defaulting Party if a payment and to the Defaulting Party if an amount to be received; and

10.1.3 Discounting each amount then due under Section 10.1.1 to present value as at the time of liquidation (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 Forward Contract); and

10.1.4 Setting off or aggregating, as appropriate, any or all settlement payments (discounted as appropriate) and (at the election of the Non-Defaulting Party) any or all other amounts owing between the parties hereunder or under any Forward Contract so that all such amounts are aggregated and/or netted to a single liquidated amount payable by one party to the other.

The net amount due after any such liquidation shall be paid by the close of business on the next Business Day."

In discussion it was noted that this language is similar to several other proposed provisions on events of default leading to early liquidation and termination, which has been offered for sections § 4, 7 and 10.

A straw vote was considered to be taken on the short-term contract

SECTION	DISCUSSION
	including language regarding events of default that lead to early termination leading to liquidation. Others noted that they would like more discussion first, as this language adds additional complexity to a short term contract. Several participants voiced their support for language describing events of default leading to early liquidation and termination – and others on the phone noted that it was appropriate to be applied to physical defaults but not financial defaults (derivatives). It was noted that this is a common clause for electricity contracts. The purpose of this language is to provide a value for a position for claim in a bankruptcy court. This language protects parties where the counter party has not paid for one transaction but has other ongoing transactions. It was noted that there is not much case law for forward contracts. In discussion, a Canadian bankruptcy case was cited, the Blue Range Alta. CA Decision. [1] Because the discussion highlighted other reasons for such language in the contract, ExxonMobil asked for additional time to review and consider its opinion on the inclusion of such language. As a result of this discussion, to gauge the level of support for the inclusion of language, a non-binding vote was taken. The straw vote was specific to the concept of the short-term contract including language regarding events of default such as bankruptcy or non-payment after notice that lead to early termination which would then lead to liquidation. Dynegy noted that they listed four other items for events of default so the above language does not define the full list of events for default. The language in section 3.3 was amended in a previous meeting to include reasons for default. The non-binding straw vote passed (voting issue 3 – to see the specific votes cast, please review the voting record presented later in these minutes). This will be further discussed at the next meeting. AEP urged participants to read an article written by Ms. Carolyn Hazel (attached to these minutes).

IV. Adjourn

The next meeting will be held via conference call on October 16 from 1:00 p.m. to 3:00 p.m. **[This was later changed to October 18 from 3:00 pm to 5:00 pm central to avoid scheduling problems.]** The meeting will continue review of the short term contract, beginning with the changes for section § 10.1 regarding events of default such as bankruptcy or non-payment after notice that lead to early termination which would then lead to liquidation. The meeting was adjourned at 2:50 p.m. central.

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1 To access the decision, the Internet address is: http://www.albertacourts.ab.ca/webpage/jdb/judgments/00ca239.htm

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V. Attendees & Voting Record

GISB Member?[2]	Name	Voting?[3]	Issues: 1	2	3	Company
Services:						
✔	Dutton, Mitch	✔	N	Y	Y	AEP Energy Services, Inc.
✔	Shaffer, Janis W.					AEP Energy Services, Inc.
✔	Szasz, Cathy					AEP Energy Services, Inc.
✔	Lane Dennis	✔	N	Y	Y	Coral Energy
✗	Forbes, Joe	✔	N	Y	Y	Duke Energy Trading
✔	Scheel, Mark	✔	A	Y	Y	Dynegy Inc.
✔	McAfee, Brenda	✔	A	Y	Y	Dynegy Marketing and Trade
✗	Ryan, Porter	✔	N	Y	A	Engage Energy US, LP
✔	Dickson, Stacy	✔	N	Y	Y	Enron North America
✔	Hodge, Jeffrey T.					Enron North America
✔	Payne, Gary					Enron North America
✔	Alphin, Rhonda	✔	N	Y	Y	Reliant Energy Trading
✔	Graff, Paramy					Reliant Energy Trading
✔	Minnis, Jennifer					Reliant Energy Trading
✔	Russo, Dianne					Reliant Energy Trading
✔	Wong, Mark					Reliant Energy Trading
✔	Starbird, Zachary	✔	N	Y	Y	Southern Co. Energy Marketing, L.P.
✔	Stofer, Sherry					Southern Co. Energy Marketing, L.P.
✔	Milanowski, Carol	✔	N	A	A	Williams Energy Marketing & Trading
Producers:						
✔	Hazel, Carolyn	✔	N	N	Y	Conoco
✔	Cross, Matt	✔	N	Y	N	Exxon Mobil
Admin:						
✔	McQuade, Rae					GISB
End Users:						
✔	Rogers, Marty Jo	✔	A		Y	Entergy Power Marketing
✔	Metz, Cary	✔	N	A	A	Midland Cogeneration Venture
✔	Hurlocker, Eric.	✔	N	Y	Y	PPL EnergyPlus, LLC

[2] 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.

[3] Only one representative per company can vote at a meeting.

✔	Lovett, Anne C.					PPL EnergyPlus, LLC
✔	Shay, Gary E.					PPL EnergyPlus, LLC
✔	McVicker, Diane	✔	N	Y	A	Salt River Project
LDCs:						
✔	Ishikawa, Angie	✔	N	Y	Y	SoCal Gas
✔	Ishikawa, Rick					SoCal Gas

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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	0	3	1	0	2
LDCs	0	1	0	0	1
Pipelines	0	0	0	0	0
Producers	0	2	0	0	2
Services	0	8	2	0	2
Total	**0**	**11**	**3**	**0**	**7**

Segment	Total Votes Cast on Issue 2			Balanced Vote Results	
	Favor	Oppose	Abstain	Favor	Oppose
End Users	2	0	1	2	0
LDCs	1	0	0	1	0
Pipelines	0	0	0	0	0
Producers	1	1	0	1	1
Services	9	0	1	2	0
Total	**13**	**1**	**2**	**6**	**1**

Segment	Total Votes Cast on Issue 3			Balanced Vote Results	
	Favor	Oppose	Abstain	Favor	Oppose
End Users	2	0	2	2	0
LDCs	1	0	0	1	0
Pipelines	0	0	0	0	0
Producers	1	1	0	1	1
Services	8	0	2	2	0
Total	**12**	**1**	**4**	**6**	**1**

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

Issue 2: Section § 7.5, Inclusion of language for payment of liquid damages.

Issue 3: Section § 10.1 and others, Non-binding vote on the inclusion of language for events of default (such as bankruptcy or non-payment after notice) that lead to early termination and then liquidation.

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