



Gas Industry Standards Board

1100 Louisiana, Suite 3625, Houston, Texas 77002

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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 – December 15, 2000

DATE: January 19, 2001

GAS INDUSTRY STANDARDS BOARD
GISB CONTRACTS SUBCOMMITTEE MEETING
Hosted by Reliant Energy in Houston, Texas
December 15, 2000 – 8:30 a.m. to 11:00 a.m. Central
FINAL MINUTES

I. Administrative

Ms. McVicker welcomed the participants and took roll call. Ms. Cary Metz read the antitrust statement. The agenda was adopted as posted. The November 28 minutes were adopted with changes. Reliant Energy was thanked for hosting the meeting in Houston.

II. Miscellaneous

Ms. Metz discussed the following action plan:

- For completing Section 10, the consensus document drafting group has been organized by Mr. Dutton of AEP (fmdutton@AEP.com). If anyone is interested in participating, they should contact Mr. Dutton.
- GISB will post the following workpapers or websites:
 - The GasEDI Agreement can be located at <http://gasedi.ca>
 - Draft workpaper from AEP on consensus document
 - AEP's draft comparison of GISB to GasEDI agreements
- After completing the first pass of the concepts, the Contracts Subcommittee will determine if there will be subgroup(s) to draft language and provide it to the subcommittee as a workpaper.
- Those drafting language will consider the benefit of adopting language to incorporate international terms or adding an addendum for international business, depending upon the extent of the changes necessary. They will also compare the GasEDI and EEI contracts with the GISB. The guiding principle will be to the extent that the drafting group thinks the language in the GasEDI agreement will work for us, then the bias should be in favor of that language.

All agreed to the plan. No other items were added.



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

SECTION	DISCUSSION
Section § 11.2	<p>The Williams proposal (5/22) was discussed:</p> <p>“The following shall be added to Section 11.2. Force Majeure: Force Majeure may, in the case of an EFP, also include the inability to transact relevant futures trading for any reason beyond the reasonable control of Buyer or Seller, including without limitation closing of the New York Mercantile Exchange (“NYMEX”) or Kansas City Board of Trade (“KCBOT”) or any refusal by the NYMEX or KCBOT to allow trading during trading hours; failure of telecommunications lines or of computers or other equipment utilized in trading broadly affecting other similar equipment in the same geographic area.”</p> <p>There was discussion on the applicability of this language to the short-term contract. This could be included in the definition for Force Majeure.</p> <p>Reliant offered alternate language, which will be posted and discussed at the next meeting.</p>
Section § 11.3	<p>Exxon/Mobil will provide information to the AEP language to include terms economic hardship in the language. A draft is forthcoming.</p>
Section § 11.5	<p>ExxonMobil offered the following language (from the 4/24 comments):</p> <p>Replace 3rd line of Section § 11.5 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 or"</p> <p>The purpose of the change was to resolve ambiguities. No determination was made on the addition of the language until the other Force Majeure suggestions were discussed, such as those from Dynegy (below).</p>
Section § 11.6	<p>Dynegy offered language on Section § 11.6 (from the 4/24 comments) – This section was added to give procedures for curtailing firm volumes if they are cut due to force majeure. It was noted that it could be merged with the AEP language and the ExxonMobil language to be offered at the next meeting.</p> <p>There was concern that it had been agreed at prior meetings that there would be no partial day curtailments noted in the base contract. While cross contract ranking is being discussed at the FERC, it may be necessary to address partial day curtailments in the base contract. This may also be referred to as pro-rata allocations. As partial day curtailments and pro-rata allocations are subject to negotiation, it was noted that a standard term may not be needed. It was agreed that suppliers may want the security of supply, so it is a more a term of negotiation, rather than appropriate for standard language.</p>



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SECTION**DISCUSSION**

Section § 13.1

As such there was general agreement to withdraw this language.

PPL discussed section § 13.1 proposed changes (provided in comments on 5/26/00):

The second sentence of *SECTION 13.1* shall be deleted in its entirety and replaced with the following:

“No assignment of this Contract, in whole or in part, will be made without the prior written consent of the non-assigning party, which consent will not be unreasonably withheld or delayed; provided, however, that either party may, without the consent of the other party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Contract or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Contract to an affiliate of such party which affiliate's creditworthiness is comparable to or higher than that of such party, or (iii) transfer or assign this Contract to any person or entity succeeding to all or substantially all of the assets of such party; provided, however, that in each such case, any such assignee shall agree to in writing be bound by the terms and conditions hereof.”

In discussion, it was noted that it is administratively convenient to assign contracts to affiliates. It was noted that the original language may suffice and sections (ii) and (iii) are not needed. The original language is:

“13.1. This Contract shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, and heirs of the respective parties hereto, and the covenants, conditions, rights and obligations of this Contract shall run for the full term of this Contract. No assignment of this Contract, in whole or in part, will be made without the prior written consent of the non-assigning party, which consent will not be unreasonably withheld or delayed; provided, either party may transfer its interest to any parent or affiliate by assignment, merger or otherwise without the prior approval of the other party. Upon any transfer and assumption, the transferor shall not be relieved of or discharged from any obligations hereunder.”

In discussion, it was noted that chapter 9, section 3.18 of the UCC may apply. Reliant noted that (i) was requested to satisfy audit requirements. After further discussion, it was noted that the following language would be added to the original section § 13.1 (red-lined denotes the changes):

“13.1. This Contract shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, and heirs of the respective parties hereto, and the covenants, conditions, rights and obligations of this Contract shall run for the full term of this Contract. No assignment of this Contract, in whole or in part, will be made without the prior written consent of the non-assigning party, (and without relieving itself from liability hereunder) which consent will not be unreasonably withheld or delayed; provided, either party may (i) transfer, sell, pledge, encumber or assign this Contract or the



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SECTION	DISCUSSION
Section § 13.10	<p>accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, or (ii) transfer its interest to any parent or affiliate by assignment, merger or otherwise without the prior approval of the other party. Upon any transfer and assumption, the transferor shall not be relieved of or discharged from any obligations hereunder.”</p> <p>All were in agreement with the conceptual language change.</p> <p>AEP described the recommended language for a new section for a confidentiality provision (as provided in comments on April 26):</p> <p>“Section 13.10 The terms of any Transaction Confirmation hereunder, including but not limited to the Contract Price, the Contract Quantity, the Delivery Period, the identified Transporter(s), and all other material terms thereof shall be kept confidential by the parties hereto and their affiliates for one year from the expiration of such Transaction, except to the extent that any information must be disclosed to a third party for the purpose of effectuating transportation of Gas subject to the Contract or to meet New York Mercantile Exchange requirements or governmental orders or regulations.”</p>
Section § 13.6	<p>In discussion, it was noted that there may be a need for exclusions if this language provided terms to allow for the contracts to be shared with consultants, auditors and potential purchasers. Additional language may be needed to allow for such sharing. Language changes will be posted for the next meeting.</p> <p>Dynegy described language changes to section § 13.6 as provided in comments on April 26. The purpose of the changes was to include the right to declare an Early Termination Date if any provision of the Contract is determined to be illegal or invalid. The changes are denoted in redlined formatting.</p> <p>“13.6. 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. If any provision of this Contract is held to be illegal, invalid, or unenforceable under the present or future laws effective during the term of this Contract and such invalidity or unenforceability has or would have a material and substantial negative impact on the rights, duties or obligations of either Party, then the Parties shall meet to determine if such negative impact can be eliminated or mitigated. If such negative impact cannot be eliminated or mitigated to the satisfaction of the Party affected thereby, that Party shall have the right to terminate this Contract. Notwithstanding the foregoing, any Firm Transaction affected with the termination of this Contract shall be designated as an Event of Default and terminated in accordance with the procedures of Section 3.”</p>

It was noted that the above language would be more appropriate for a longer-term contract. There was general agreement to discuss this



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SECTION	DISCUSSION
	language inclusion for a long term contract. Restructuring of the transaction rather than early termination may be more appropriate and would require changes to the above language. It may be more appropriate for voiding contracts for illegalities related to existing law.
	There was general agreement to review this language for the long term contract.
Section § 13.9	AEP suggestions for section § 13 were modified by inserting the following new Sections §§ 13.9 and 13.10 at the end thereof (4/26/00): "13.9 Each Party hereby expressly consents that the other Party may record, by tape or otherwise, any verbal agreements or discussions, whether telephonic or otherwise, between the Parties. Each Party agrees to obtain the consent of its agents and employees to such recording. A recording of the verbal agreement may be relied upon to resolve any differences provided that a true and complete copy is made available to the other Party. No Party may knowingly destroy or erase a recording once the possessing Party becomes aware of an actual dispute in which the recording may reasonably be anticipated to be discoverable."
	It was agreed that this suggestion had already been accommodated in the recordation text of section § 1.
Section § 13.9	ExxonMobil suggestions to add a new section, as provided in comments on 4/26/00 follow: "The heading and subheadings contained in this Contract are used solely for convenience and do not constitute a part of this Contract between the parties and shall not be used to construe or interpret the provisions of this Contract. This Contract was prepared jointly by the parties. The parties agree that any rule of construction that would construe ambiguities against the drafter shall not apply to this Contract."
	In discussion, it was noted that this is general language for most contracts. It was recommended that the group review the titles and heading of the base contract to ensure that they accurately reflect their provisions. The applicability of just the first sentence was discussed.
	A vote was taken on first sentence, and it passed. The first sentence will be included in the contract.
Section § 13.9	Williams Energy Marketing and Trading made the following suggestion for section § 13.9, as noted in comments prepared on May 26, 2000: 13.9 Notwithstanding the language of Paragraph 1.2, Oral Transaction Procedure, each of the parties hereto (i) consents to the recording of the telephone conversations of their respective trading and marketing personnel in connection with this Contract, (ii) agrees such recording will constitute the Transaction Confirmation, and (iii) agrees that any such electronic recordings may be submitted in evidence in any suit, action or other proceedings in relation to this contract without objection to the admissibility under the statute of



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SECTION	DISCUSSION
	frauds, the hearsay rule, the best evidence rule or other rule of evidence.
	It was noted that the recordation test had already been discussed and included in section § 1.
Section § 13.10	Williams Energy Marketing and Trading made the following suggestion for section § 13.10, as noted in comments prepared on May 26, 2000: 13.10 Buyer shall establish and maintain credit satisfactory to Seller during the term of this Agreement. If Buyer fails to maintain satisfactory credit, Seller may (a) suspend deliveries of Gas until satisfactory credit is reestablished and/or (b) after providing fifteen (15) Business Days written notice, terminate this Agreement.
	It was noted that this item was to be tabled along with others regarding credit, and revisited at a subsequent meeting discussing section § 10.
Section § 13.11	Williams Energy Marketing and Trading made the following suggestion for section § 13.11, as noted in comments prepared on May 26, 2000: 13.11 Notwithstanding the language of Paragraph 1.2, Oral Transaction Procedure, and Paragraph 1.2, Written Transaction Procedure, any electronic signature, including but not limited to a "bit map" or digital signature, attached to or logically associated with a Transaction Confirmation or notice under this Contract shall be deemed to be a "signature" and satisfy any rule of law requiring a signature. The Parties agree not to contest or assert a defense to the validity or enforceability of an Electronic Record or an electronic signature, in accordance with this Contract, under laws relating to whether certain agreements are to be in writing or signed by the Party to be bound. Neither Party shall object to the admissibility of the Electronic Record or electronic signature on the basis that such were not maintained in documentary form under either the hearsay rule, the best evidence rule, or other rule of evidence. In discussion it was agreed that the above language was not needed, as it is already covered in federal legislation, (cite 15 USC 7001, enacted June 30, 2000, Public Law 106-229). The cite was provided by Ms. Hazel.
Section § 13.12	Williams Energy Marketing and Trading made the following suggestion for section § 13.12, as noted in comments prepared on May 26, 2000: 13.12 Equipment and Electronic Record. Each Party shall have the option, at its expense, to maintain equipment necessary to generate and send Transaction Confirmations, provided that such Party shall maintain each such Transaction Confirmation in such a manner as to protect it from improper access, and further provided, such Party shall not be liable for any equipment malfunction or the operation thereof in respect of any Transaction WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING, WITHOUT LIMITATION, THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR



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SECTION	DISCUSSION
	<p>CONCURRENT, OR ACTIVE OR PASSIVE. No Transaction shall be vitiated should a malfunction occur in equipment regularly utilized for generating, sending, and storing Electronic Record Transaction Confirmations of Transactions, and in such event, the Transaction shall be evidenced by the written and computer records of the Parties concerning the Transaction.</p>
	<p>In discussion it was determined that the above language was addressed in the recordation language contained in section § 1. It was further noted that recordation is a right and not an obligation.</p>
	<p>The suggestion to change section § 13/12 was withdrawn.</p>
Section § 13.9	<p>Pennsylvania Power and Light made the following suggestion for section § 13.9, as noted in comments prepared on May 26, 2000:</p> <p>“Except as otherwise provided for herein, the provisions of the Uniform Commercial Code (“UCC”) of the state whose laws shall govern this Base Contract shall be deemed to apply to all Transactions and Gas shall be deemed to be a “good” for purposes of the UCC. EXCEPT AS EXPRESSLY SET FORTH HEREIN, SELLER EXPRESSLY NEGATES ANY OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY WITH RESPECT TO THE MERCHANTABILITY OR FITNESS OF GAS FOR ANY PARTICULAR PURPOSE.”</p>
	<p>The language was reviewed and determined to be contained with sections §§ 3.3 and 8.2.</p>
Section § 13.10	<p>Pennsylvania Power and Light made the following suggestion for section § 13.10, as noted in comments prepared on May 26, 2000:</p> <p>“Notwithstanding any other provision to the contrary herein, with regard to references to “Imbalance Charges” in Sections 2.15, 2.18, 4.3, 11.1 and 11.3, it is understood and agreed that upon receiving notice of Force Majeure, the party not claiming Force Majeure shall adjust nominations with its Transporter(s) to account for any change in quantities to be delivered or received. Such nomination change shall be made as soon as practicable after receipt of notice of such event of Force Majeure, but not later than the next Business Day thereafter.”</p>
	<p>In discussion, it was discussed that the above language is contained in sections §§ 4.2 and 4.3. It was also noted that the time limit has not currently been addressed in the contract, and that the scheduled gas reference in section § 4.3 is confirmed by transporter according to “lesser of” rules.</p>

IV. Adjourn

The next meeting is scheduled to be a conference call on Friday, January 19, 2001 from 2:00 to 4:00 p.m. CCT. Items for discussion at the meeting include:



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- Draft Consensus Document and relevant concepts
- Applicability of Force Majeure to EFP transactions, pending the attendance of someone with derivatives experience.
- Any workpapers dealing with the remaining sections.
- Next meeting dates.

The meeting was adjourned at 11:10 am CCT.



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V. Attendees

Member? ¹	Name	Voting? ²	Issue #1	Company
Services:				
Y	Mitch Dutton	Y	N	AEP
Y	Janis Shaffer	N		AEP
Y	Cathy Szasz	N		AEP
Y	Scott Eckerman	Y	Y	Aquila
Y	Gina McMahon	Y	A	BTUWatch.com
No	Mark Rae	Y	Y	
Y	Mark Scheel	Y	A	Dynegy Inc.
No	Porter Ryan	Y	Y	Coastal Merchant Energy LP
Y	Jennifer Minnis	Y	N	Reliant
Y	Dede Russo	N		Reliant
Y	Paramy Graf	N		Reliant
Y	Rhonda Alphin	N		Reliant
Y	Sherry Stofer	Y	N	Southern Co. Energy Marketing, L.P.
Y	David Hollingsworth	Y	Y	Williams Energy Marketing
End Users:				
Y	Cary Metz	Y	Y	MCV
Y	Anne Lovett	Y	Y	PPL
Y	Gary Shay	N		PPL
Y	Dona Gussow	Y	Y	FPL
	John Ebner	Y		FPL
Y	Diane McVicker	Y	Y	Salt River Project
Y	Joel Greene	Y	Y	Energy Advocates
Y	Bill Hebenstreit	Y	Y	El Paso Merchant Energy
Producers:				
Y	Carolyn Hazel	Y	N	Conoco
Y	Matt Cross	Y	Y	ExxonMobil
LDCs:				
Y	Rick Ishikawa	N		SoCal Gas
Y	Angie Ishikawa	Y	Y	SoCal Gas

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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Voting Issue 1 Results:

Vote 1

Segment	Actual Count				Balanced Count		
	For	Against	Abstain	Total Voting	For	Against	Total
End User	6	0	0	6	2.00	0.00	2.00
LDC	1	0	0	1	1.00	0.00	1.00
Pipelines	0	0	0	0	0.00	0.00	0.00
Producers	1	1	0	2	1.00	1.00	2.00
Services	4	3	1	7	1.15	.85	2.00
Total	12	4	1	17	5.15	1.85	7.00