



December 4, 2001

Gas Industry Standards Board  
1100 Louisiana, Suite 3625  
Houston, TX 77002

Re: Comments on Base Contract for the Sale and Purchase of Natural Gas

DTE Energy Trading, Inc. ("DTEET") is an energy trading organization based in Ann Arbor, Michigan that markets natural gas, electricity, and other physical and financial energy commodities. DTEET, a wholly owned subsidiary of DTE Energy, is a corporate industry member of the Gas Industry Standards Board ("GISB").

DTEET hereby submits comments in support of the draft Base Contract for the Sale and Purchase of Natural Gas ("Base Contract"). As stated in the GISB recommendation, the new Base Contract would "Modify [GISB] standard 6.3.1 to reflect changes generally accepted in the industry, to remove the restriction of applicability to short term arrangements only, and add the Canadian addendum to extend the applicability of the contract to Canadian terms."

While DTEET generally supports the new draft Base Contract, we have one comment regarding Section 14.5, Choice of Law. Unlike the current version of the Base Contract, which is silent on which state's laws apply, the cover sheet of the new draft Base Contract specifies "Texas" as the default selection for Section 14.5.

DTEET objects to the selection of Texas as the default Choice of Law. While Section 14.5<sup>1</sup> does not dictate the venue or forum in which disputes must be adjudicated, the predisposition towards Texas law creates an implicit bias in favor of Texas courts and Texas-based companies, to the clear disadvantage of companies from outside Texas.

DTEET submits that even though Texas law is not mandated and the parties remain free to negotiate an alternate choice of law, Texas' selection as the "default" creates an unequal bargaining position. Companies that do not prefer Texas law must overcome the presumption in favor of Texas law and will likely have to make other concessions in the Base Contract in order to have the choice of law changed.

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<sup>1</sup> Section 14.5 provides that "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."

DTEET suggests that a more neutral standard be adopted by specifying New York as the default choice of law. Alternatively, the Base Contract could remain silent on the choice of law, and leave this as an issue to be negotiated by the parties, which is how it is handled today. Even if the parties leave Section 14.5 blank, any court with jurisdiction can perform an interest analysis to resolve any potential conflicts of law.

Finally, DTEET would like to thank the GISB for undertaking the effort to update the Base Contract. On balance, we believe that the Base Contract represents a fair and equitable form of agreement that will serve to expedite contract negotiations and promote the sale and purchase of natural gas.

Respectfully submitted,

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