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January 14, 2002

Ms. Rae McQuade
Gas Industry Standards Board
1100 Louisiana, Suite 3625
Houston, TX 77002

**Re: Proposed New GISB Base Contract for Sale and Purchase of Natural Gas
("Contract")**

Dear Ms. McQuade:

Duke Energy Trading and Marketing, L.L.C. (DETM) and Duke Energy Marketing Limited Partnership (DEMLP), on their own behalf and on behalf of their affiliate, Duke Energy North America, LLC (DENA) have reviewed the proposed Contract that is posted on GISB's website. Listed below are our comments regarding the Contract. As you will note, most of these comments require no additional explanation; however, with respect to our addition of Section 10.1.1, Collateral Threshold, we wanted to emphasize that we believe these credit provisions are essential to making the Contract a workable document in today's volatile market.

The following are our comments regarding the Contract:

- **Throughout the Contract** – The Contract is referred to as "Base Contract" or "Contract." Select one definition and change all references throughout the Contract.
- **Page Numbering** – The page numbering in the Contract is incorrect; it states "Page 1 of 1," "Page 2 of 2" etc. instead of "Page 1 of 10," "Page 2 of 10," etc. Please correct this error.
- **Cover Sheet, second sentence** – Change this sentence as follows: "The parties to this Base Contract (referred to as "Party" or "Parties") are the following." Capitalize "Party" and "Parties" throughout the contract.
- **Cover Sheet** – Add the following as a new box on the cover sheet:

Section 10.1.1 Collateral Threshold	<input type="checkbox"/>	Collateral Threshold shall apply (default) and the Collateral Threshold for the Party first listed above shall be: _____; and the Collateral Threshold for the Party listed second shall be: _____
	<input type="checkbox"/>	Collateral Threshold shall not apply

- **Cover Sheet, paragraph preceding the check boxes** – Add “as attached” after “the General Terms and Conditions for Sale and Purchase of Natural Gas published by the Gas Industry Standards Board.”
- **Cover Sheet, Section 14.5** – Change the Choice of Law default to New York (rather than Texas).
- **Section 1.2 (Oral Transaction Procedure)** – Delete the last sentence of this section.
- **Section 2** – Add the following definitions:

“Collateral” is defined in Section 10.1.1.

“Event of Default” is defined in Section 10.2.

“Exposed Party” is defined in Section 10.1.1.

“Net Settlement Amount” is defined in Section 10.3.2.

“Non-Exposed Party” is defined in Section 10.1.1.

“Non-Secured Party” is defined in Section 10.1.1.

“Secured Party” is defined in Section 10.1.1.

- **Section 2.10** – In the last line, Delete “agreed to by the parties” and insert “as specified by the Non-Defaulting Party” in its place.
- **Section 2.13** – Delete the current definition of “Delivery Point(s)” and insert the following in its place:

“Delivery Point(s)” shall mean that specific point at which the Parties have mutually agreed that Seller will deliver the Gas to Buyer and Buyer will receive the Gas from Seller, as specified for each Transaction in the Transaction Confirmation. Title to the Gas shall transfer from Seller to Buyer at the Delivery Point(s).

- **Section 2.25** – This section defines the “Spot Price Standard,” but in Section 3.2, this definition is referred to simply as “Spot Price.” Please either select one term and change all the applicable references accordingly, or create a separate description for Spot Price.
- **Section 2.28** - Add the following definition as Section 2.28:

"Demand Charge" - shall mean the portion of the Price that is paid periodically irrespective of whether any quantity of Gas is delivered or received.

- **Section 3.2, Cover Standard** – Delete “or alternative fuels” in the third line, first sentence of this section.
- **Section 6, Taxes** – Insert the following wording at the end of the second sentence: “including, but not limited to all sales or use, gross receipts and consumption taxes.”
- **Section 10.1.1.** – Add the following as Section 10.1.1:

If at any time and from time to time during the term of this Contract (and notwithstanding whether an Event of Default has occurred or is continuing) the Net Settlement Amount (without giving effect to any rights which allows for set-off of obligations not arising from this Contract) which would be owed by a Party (the “Non-Exposed Party”) to the other Party (the “Exposed Party”) exceeds such Non-Exposed Party's Collateral Threshold then the Non-Exposed Party shall be required to transfer Collateral within two (2) Business Days following receipt of a request by the Exposed Party in an amount equal to the positive difference between the Net Settlement Amount

owed to the Exposed Party and the applicable Collateral Threshold (rounding upwards for any fractional amount to the next \$100,000). Upon receipt of the Collateral (defined below), the Exposed Party shall be deemed the "Secured Party." If the Secured Party should thereafter become under-secured, the Non-Exposed Party will be required to transfer additional Collateral. The amount of additional Collateral required by the Secured Party shall be rounded up to the nearest \$100,000. If the Secured Party becomes over-secured it shall promptly return any excess Collateral. The amount of Collateral to be returned shall be rounded down to the nearest \$100,000. Collateral shall mean: (a) cash payment by wire transfer to the Secured Party's account or (b) posting of an irrevocable letter of credit in a form and substance which is and remains acceptable to the Secured Party and issued by a bank acceptable to the Secured Party in its sole discretion. Interest on any cash held as Collateral will accrue at a rate per annum equal to the one-month London Interbank Offered Rate (LIBOR) determined daily as provided under the heading "**Money Rates**" in **The Wall Street Journal** minus ½%. Such interest shall be calculated commencing on the date cash Collateral is received by the Secured Party but excluding the earlier of (i) the date such Collateral is returned to Non-Secured Party and (ii) the date such Collateral is applied to the Non-Secured Party obligations.

If at any time an Event of Default has occurred and is continuing with respect to a Party the Collateral Threshold for such party shall be \$0 notwithstanding the amounts indicated on the cover page. The obligations of the parties in this Section 10.1.1 shall constitute Credit Support Obligations.

- **Section 10.2(vi)** – Delete the phrase “with respect to any Credit Support Obligations.”
- **Section 10.2(vii)** – Revise as follows: “ fail to provide Collateral in accordance with Section 10.1.”
- **Section 11.3** – Add “or Demand Charges” at the end of the second sentence.
- **Section 11.3(iii)** – Please provide clarification as to the intent of the wording “...or a regulatory agency disallowing, in whole or in part, the pass through of costs resulting from this Agreement.”
- **Section 11.3** – Add the following sentence at the end of this section: “Force Majeure, however, shall not excuse the payment of financial obligations, such as those incurred in liquidating hedge positions undertaken by a Party in reliance upon a trigger price, fixed price, or other price risk management option exercised by the other Party, who shall be liable for any losses incurred in such liquidation.”
- **Section 14.1** – At the end of 14.1(i), add “as long as such entity has a credit status which, in the non-assigning Party’s sole opinion, is at least as high as that of the assignor.”
- **Section 14.10** – Capitalize “contract” which is found on the fifth line at the end of the sentence.
- **Canadian Addendum, Cover Sheet** – In Section 10.4, change the termination currency default to Canadian dollars (rather than U.S. dollars).
- **Canadian Addendum, Cover Sheet** – In Section 14.5, create a default Choice of Law to Alberta.
- **Canadian Addendum, Section 6.3.1** – Please include a statement as to what would happen if Seller does not agree to treat the Gas as zero-rated.
- **Canadian Addendum, Section 6.3.2** – It is not expressly stated whether it is mandatory for Seller to treat the Gas as zero-rated. If Seller is allowed to use its sole discretion in this matter, this should be clarified.
- **Canadian Addendum, Section 7.3** – Delete The Toronto Dominion Bank and insert Bank of Canada in its place.

- **Canadian Addendum, Section 7.3** – In item (i), add “Canadian dollar” prior to “commercial loans.”

If you have any questions about the above comments, please do not hesitate to call me at (801) 531-5443 or e-mail me at jaroberts@duke-energy.com. Thank you for your consideration of our comments.

Very truly yours,

Julie A. Roberts
Senior Contract Analyst