ECNGC, LLC

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December 20, 2001

Gas Industry Standards Board
1100 Louisiana, Suite 3625
Houston, Texas 77002
Attn: Rae McQuade, Executive Director

Re: *Proposed GISB Base Contract for Sale and Purchase of Natural Gas*

Dear Ms. McQuade:

The East Coast Natural Gas Cooperative, LLC ("ECNGC"), on behalf of its members and certain affiliates of members, wishes to comment on GISB's proposed Base Contract for Sale and Purchase of Natural Gas ("Base Contract").[1] The ECNGC, since its founding in 1995, has provided a purchasing vehicle through which its members and others have purchased long and short-term supplies of natural gas as well as other materials and services. In addition, the ECNGC provides a mechanism by which its members are able to call upon each other for support during times of natural gas supply shortfalls. Entities purchasing gas supplies through the ECNGC currently use the ECNGC's Master Contract for their core long-term winter season purchases, but may use GISB contracts for supplemental purchases.

The ECNGC has considered the proposed Base Contract in detail, and we commend the Contract Subcommittee for its hard work. While we believe that the form of agreement and the substantive provisions are generally satisfactory for short-term, non-winter season transactions, we believe that the proposal does not adequately meet gas industry needs and contract norms for long-term and winter season transactions in many respects, thereby rendering it less useful for those purposes. For this reason, we would urge the GISB Executive Committee to direct its Contract Subcommittee to either (a) design a separate contract that would be available for parties entering into long-term or winter season purchase and sale transactions or (b) modify the Base Contract to strengthen it in certain critical areas. Unless and until key contract issues are

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[1] The ECNGC submits these comments on behalf of CNE Development Corporation, Consolidated Edison Company of New York Inc., Delmarva Power and Light Company, NUI Energy Brokers Inc., NUI Utilities Inc., and PECO Energy Company.

addressed, some examples of which are discussed below, the ECNGC cannot support general acceptance or use of the Base Contract for its non-core winter season transactions and will not be in a position to use the GISB contract for any purposes other than short-term, non-winter season purchases.

The ECNGC has a number of concerns about the appropriateness of the Base Contract for long-term and winter season transactions. Some examples are:

1) Performance Obligation. The Base Contract, in our judgment, provides inadequate incentive for the Seller's performance. In particular, the "cover standard" of Section 3.2 provides that the sole and exclusive remedy of the Buyer in the event of a breach by Seller of its delivery obligation is either the Buyer's cover costs or, if no replacement gas is available, the Buyer can recover only an amount based upon the difference between the contract price and the applicable spot price. While this approach may be satisfactory for spot transactions during the April-October period, it is clearly inadequate as an incentive to Sellers to perform on a long-term basis, especially, during the winter season. The ECNGC recommends that another option be made available to the parties, an option that would provide for a substantial, dollar-denominated penalty to the Seller in the event that the Seller fails to perform and the Buyer is unable to arrange for replacement supplies. We are requesting a third box for "Alternative Damages" to be negotiated by the parties. In addition, in the event of chronic or repeated failures to perform by the Seller, the Buyer should have the option to terminate the contract.

2) Financial Responsibility. With credit issues becoming more and more important in the energy industry, any GISB contract should provide that both parties to a transaction will have reasonable assurance that they can monitor and enforce meaningful credit standards. Section 10 of the proposed Base Contract is deficient in that it attempts to provide credit assurance primarily or exclusively for the benefit of the Seller. This provides no real protection for the Buyer. That is, in Section 10.1, the credit provisions are triggered when either party "has reasonable grounds for insecurity regarding performance of any payment obligation under this contract … ." However, the provision focuses only on the payment obligation –- typically only the Buyer's obligation. Thus, the provision ignores the fact that the continuing creditworthiness of the Seller is just as much a concern to the Buyer as the Buyer's creditworthiness is to the Seller. Experience in the market demonstrates that poor credit on the part of the Seller is a major risk factor affecting the Seller's ability to deliver gas to the Buyer. Notwithstanding this, the Base Contract completely ignores the Buyer's concerns. The contract should be revised so that it is triggered by Party A's insecurity concerning the effect of Party B's credit on Party B's ability to perform any material obligation under the agreement, whether that obligation be payment or delivery of gas.

Furthermore, the provision needs to provide that creditworthiness standards are made more specific (i.e., less subjective) and thus more easily enforceable. As proposed, Section 10 would in all likelihood lead to continuing arguments as to what constitutes "reasonable grounds" for insecurity regarding performance, what is a "creditworthy entity" for purposes of performance guarantees, etc.

3) Dispute Resolution. While this may not be as much of a concern for short-term spot agreements, we believe that a long-term GISB contract should include the option of a dispute resolution mechanism by which the parties can resolve disputes through efficient arbitration procedures without having to resort to costly and disruptive litigation. Dispute resolution provisions have become standard in contracts where the parties have an interest in efficiently resolving their disputes while, at the same time, maintaining contract performance. We believe these considerations are present in long-term natural gas transactions. For this reason, the contract should include the option of a dispute resolution provision. We favor "baseball" type arbitration as the most efficient mechanism.

In addition to the issues identified above, we believe there are other issues that should also be addressed, including certain proposed additions to the force majeure clause and other more minor matters of an editorial nature. The ECNGC stands ready to participate with the Contract Subcommittee in working to implement the changes we have proposed, and we will be prepared to provide specific contract language proposals. Unless this GISB contract can be made to address the concerns we have identified, the ECNGC will be unable to use the GISB contract for the purchase of long-term or winter supplies. If the contract is made acceptable, we will be in a position to recommend it as a supplement to our Master Contract. We appreciate very much the opportunity to submit these comments, and look forward to the opportunity to present our suggestions in more detail.

Very truly yours,

Reed R. Horting, President