

The Peoples Gas Light and Coke Company's ("Peoples Gas") comments on the proposed GISB Purchase Gas Contract

Peoples Gas, an operating public utility, is engaged primarily in the purchase, storage, distribution, sale, and transportation of natural gas. It has approximately 847,000 residential, commercial, and industrial retail sales and transportation customers within the City of Chicago. Peoples Gas is a member of GISB.

I. General Comments

Peoples Gas does not support the proposed expansion of the use of GISB's form of contract for long-term transactions (transactions over 30 days). Even if additional provisions and modifications were made to the form of the GISB to address the concerns of buyers and sellers alike, it is unlikely (given the myriad of individual concerns) that a "one form fits all" concept will work for long-term transactions. Moreover, long-term transactions are often more complex than the simple purchases and sales that take place under the short-term GISB. Currently, using the GISB as a short-term agreement almost always involves negotiating additional terms and conditions which very often have to be tailored to the individual needs of the parties – an issue which will be much more prevalent if the GISB were used for long-term transactions. Of particular concern to Peoples Gas in any long-term transaction is the issue of liquidated damages for failure to take or deliver gas. In a long-term transaction Peoples Gas advocates a remedy for failure to take or deliver gas which provides for a liquidated damage in addition to the spot/cover standard. Such a measure of damages provides a disincentive for price majeure and for the buyer, helps ensure supply integrity. However, the negotiation of such liquidated damages will vary depending on the parties concerned and Peoples Gas would not be able to use a standard form of liquidated damages which did not meet their specific needs.

II. Specific Comments

The comments provided by Peoples Gas are based on our experience in using the GISB as well as other forms of agreements, both for short and long-term transactions. Some of these comments are intended to be clean up comments and others are intended to introduce changes which will obviate or at least lessen the use of supplementary terms and conditions.

a. Cover Page:

1. Section 1.2 – make the Written Transaction Procedure the default. In short-term deals, it is true that the industry standard is "oral." However, in long-term transactions Peoples Gas believes that it is more appropriate to use a written transaction procedure and have a written transaction confirmation signed by both parties.
2. Section 3.2 – make Spot Price Standard the default since this seems to be the more common industry standard.
3. Section 7.2 – delete word "date" and replace with "day."
4. Section 14.5 – the default should be silent on choice of law. If the parties cannot agree then conflicts of law rules should be used. Using Texas will not be appropriate in every case.

b. General Terms and Conditions:

1. Section 1.2 (Oral Transaction Procedure) – in line 7, insert space between “contains” and “any.”
2. Section 1.3 – in line 7, insert space between “a” and “binding.”
3. Section 2.2 – what is the meaning of the word International?
4. Section 2.7 – after word “MMBtu” insert the words “of Gas.”
5. Section 2.9 – use words “defaulting party” and “non-defaulting party” instead of words “performing party” and “non-performing party.” This is more accurate since a non-defaulting party may not always be a performing party; for example if performance is excused.
6. Section 2.13 – revise definition of Delivery Point to mean “the point(s) on Transporter’s system where Seller tenders Gas for delivery, as are agreed to by the parties in a transaction.”
7. Section 3.2 (Cover Standard) – after words “Firm obligation” insert words “to deliver or take Gas.” Delete from “or (iii)” on. The reason for deleting (iii) is to avoid any disagreement over what constitutes “commercially reasonable efforts.” Subsection (iii) unnecessarily intermingles the Cover Standard and the Spot Standard. It is an easier standard to follow if the parties simply elect the cover or spot standard up front.
8. Section 3.2 (Spot Standard) – after words “Firm obligation” insert words “to deliver or take Gas.”
9. Section 4.2 – in the first sentence we recommend the use of a specific nom. deadline rather than using the “sufficient time” language. This change will help avoid any disagreement over what is “sufficient time.” We propose 1 hour prior to the Transporter’s nom. deadline.
10. Section 7.1 – in the first line after the word “charges” insert the words “less any credits pursuant to Section 3.2.”
11. Section 7.2 – in the last line after the word “law” insert the words “or in equity.”
12. Section 7.5 – in line 2, delete the word “recordations” and insert the word “recordings.” In the second sentence, delete the words “This examination right” and insert in lieu thereof as follows: “This right to examine, audit and to obtain copies. . . “
13. Section 8.2 – although it is not uncommon to see parties attempting to waive warranties, we do not feel it is an appropriate provision for a gas supply agreement - especially in the case of the warranty of merchantability. We do not recommend including such a waiver of warranty. If such a waiver is included, then, at minimum, any such waiver needs to be made consistent with the remainder of the agreement. For example, the Section 5 quality and measurement representations should be elevated to a warranty and should then be excluded from any waiver of warranty. Otherwise, it would undercut the rights provided under Sections 8.3 and 8.4.
14. Section 8.3 – in line 1, after the word “including” insert the word “reasonable.”
15. Section 10.1 – the scope of this section should be expanded. We propose replacing the word “payment” in line 1 with the word “material.” In line 4 we propose replacing the words “specified by” with the words “acceptable to.”
16. Section 10.2 – add the following words at the end of subsection (ii): “or any of its property and such petition or proceeding is not stayed or dismissed within sixty (60) days of the filing thereof.”
17. Section 11.1 – at the end of the second sentence delete the words “Section 11.2” and replace with the words “Sections 11.2 and 11.3
18. Section 14.1 – delete the words beginning in the parenthetical in line 3. It is reasonable that if an assignment is consented to, then the assignor should be relieved of liability.

19. Section 14.2 - add the following new last sentence: "Neither party shall be held in default for failure to perform under this Base Contract or the Contract, if such failure is due to compliance with such rules, regulations, laws, orders or directives of any Federal, State or local governmental regulatory authority."
20. Section 14.4 – add the following at the end of the last sentence: "and no course of dealing or course of performance between the parties shall be construed to alter the terms hereof, except as stated in this Base Contract or the Contract."
21. Section 14.10 – in line 3 delete the words "its affiliates or." A party may not wish to have confidential information disclosed to an affiliate of the other party for competitive reasons.
22. Add the following new Section 14.11: "This Base Contract was prepared jointly by Seller and Buyer, and, in the event of doubt or ambiguity in the language of any of their provisions, shall be construed with equal strength in favor of both parties."
23. In the second sentence of the introductory paragraph the words "within 2 Business Days of receipt" should be replaced with the words "by the Confirm Deadline."

Respectfully submitted,

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