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P's
comments on the GISB contract<FONT COLOR="#000000" BACK="#ffffff" style="BACKGROUND-C
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Date: 12/6/01 9:23:45 AM Central Standard Time

From: dbmcvick@srpnet.com

To: gisb1@aol.com, gisb@aol.com

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FAMILY="SANSSERIF" FACE="Arial" LANG="0">Salt River Project has the following comments on the
GISB
contract that is

out for review.

1. Financial Responsibility (Section 10.1) provides that adequate

assurances can only be demanded if there is a reasonable grounds for

insecurity "regarding the performance of any payment obligation under this

Contract." It appears that this provision is more favorable to the seller.

For example, if a seller takes a significant financial hit and its ability

to deliver becomes questionable, the buyer couldn't ask for adequate

assurances because the seller doesn't owe any money to the buyer and there

is no payment obligation. Also, the buyer may find itself in a position

where it doesn't know whether to enter into a replacement transaction or

not. Therefore, we ask that Section 10.1 be modified by deleting the word

"payment" in the first line.

2. Events of Default (Section 10.2) should include a general provision that

can cover most of the ground not included in the itemized events of default.

We ask that the following provision be included in Section 10.2: "failure to

perform any obligation under this Contract (except to the extent such

failure constitutes a separate Event of Default under this Section 10.2 and

except for such party's obligation to deliver or receive Gas, the exclusive

remedy for which is provided in Section 3) if such failure is not remedied

within ten (10) Business Days after a demand for corrective action."

3. Any reference to "alternate" (Section 2.9) or "alternative" (Section 3.2) fuel should be deleted. If a seller defaults and the buyer enters into a replacement transaction, the buyer should be able to recover any (negative) price difference. However, if there is a provision for "alternative fuel", the amount of liquidated damages may be questioned if there was a cheaper alternate fuel available (for example # 6 oil). Furthermore, if the parties to the Contract decide to substitute Gas for some other commodities, they can do so at the time of transaction whether it is mandated by the master agreement or not. Therefore, we request any reference in these sections to "alternate" or "alternative" fuels be deleted.

4. Section 10.3 (and corresponding box on the cover page) deals with "Forward Contract Damages." The concept of "forward contracts" and "forward contracts merchants" is a fairly recent development. It was implemented, in part, to strengthen the contractual protection of non-defaulting parties in case their counterparts declare bankruptcy. Most of these concerns have already been addressed in other sections of the Contract. The Commodity Exchange Act and the Commodity Futures Modernization Act have a list of requirements that need to be met before a contract can be designated as a "forward contract" or before a merchant can be designated as a "forward contract merchant." These concepts could be challenged and/or disputed. Consequently, we don't think that GISB should designate (what was always called liquidated or actual damages) as "Forward Contract Damages." If a concept of a "forward contract" is questioned, does it automatically mean that there cannot be any "forward contract damages" even though a defaulting party is clearly in breach of its contractual obligations? Hence, we ask that "Forward Contract Damages" be removed and be replaced with either "liquidated damages" or "actual damages."

5. Check-out. We request to include some language in section 7 that would provide for monthly check-out, something similar to: "Parties shall perform a monthly confirmation of gas quantities and corresponding price prior to the invoice being issued. The parties shall confirm by telephone, fax, e-mail or other mutually acceptable method."

We appreciate your consideration of these comments.

Diane McVicker

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