

Yankee Gas Services Company's Comments on Proposed Revisions to GISB CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS

Yankee believes that it is worthwhile to expand the GISB to incorporate many of the provisions that are becoming "industry-standard", such as netting, closeout set-offs, and performance assurances. However, it is unlikely that the GISB will be useful as a template for longer-term arrangements, which need to be tailored to the specific business needs of the company and the arrangements. Many companies have invested time and effort in formulating a Master Gas Purchase and Sales Agreement containing credit support annexes or supplements for longer term transactions, and may be reluctant to adopt the GISB, which still contains fairly simplistic credit provisions.

We do have some specific comments on the revised document, as follows:

Section 1.2.: Where a Transaction contains additional terms to the Base Contract or General Terms and Conditions, the express agreement of the parties should be evidenced by a writing, rather than "expressly agreed to by both parties". If the language is intended to get away from "long-form" confirmations, then the only way to be sure that both parties have agreed to these provisions is to execute the confirmation. The distinction between oral transactions and those that are confirmed in writing is confusing in the new language.

Section 1.3: If the parties have selected Oral Transaction Procedure as their preferred standard of business, why should the Transaction Confirmation take precedence in the order of priority? Doesn't that undercut the validity of the oral transaction?

Section 1.4: We would clarify that the recording is between the parties' respective "marketing and trading" employees. It is not appropriate to have the parties concede that all their employees' conversations may be taped. For example, are your senior management willing to have their conversations taped? What about your in-house legal counsel?

Section 2.6: This section uses the term "effective Transaction Confirmations" which hasn't been defined. You have used "binding" in other sections. Is that different from "effective"?

Section 7.4: This section uses the term "released". Isn't "waived" more appropriate than released?

Section 7.5: Rather than trying to figure out whether a separate netting agreement contains provisions that are inconsistent with this section, it would be easier to state that if the Parties have executed a separate netting agreement, the terms and conditions therein shall supersede this section. The netting agreement will likely state that its terms supersede any payment and netting provisions of the agreements to which it applies.

Section 10.1: Insecurity should cover both performance and payment. We suggest changing the "of" to an "or" so that the first sentence reads "has reasonable grounds for insecurity regarding the performance or any payment obligation"

Section 10.2.: The parties don't terminate and liquidate the Contract, but rather terminate and liquidate the Transactions under the Contract.

Section 10.3: We generally don't like the language that allows the Non-Defaulting Party to determine, in its reasonable opinion, the commercial impracticability to liquidate and terminate, because it provides too much flexibility to game the timing of the market value of the gas, particularly in a volatile market. If you think it should be left in, perhaps you could limit it by adding at the end, "but no longer than 10 days."

Section 10.3.1 The present value should not be stated, but determined by the Non-Defaulting Party. While it may be a matter of dispute, it is different for each party.

Section 11.3. We agree with one of the comments made that regulatory disallowance should not be included as a specific example of a non-Force Majeure event. It should be a matter for the parties to negotiate, depending on their regulatory circumstances.