



North American Energy Standards Board

801 Travis, Suite 1675, Houston, Texas 77002

Phone: (713) 356-0060, Fax: (713) 356-0067, E-mail: naesb@naesb.org

Home Page: www.naesb.org

NAESB Base Contract Special Provisions Matrix Survey

Special Provision	Is the proposed Special Provision generally accepted by the Industry (Yes/No)?
<p>Section 1</p> <p>(Encana) Amend Section 1.2 "Oral Transaction Procedures" as follows:</p>	
<p>In the last sentence replace the phrase, "agreed to by both parties" with the phrase, "agreed to in writing by both parties".</p>	
<p>(Encana) In Section 1.3 the following is added as the last sentence: "The parties agree that all transactions entered into shall form a single, integrated agreement between the parties and each transaction shall be merged into the Contract, and that the parties would not otherwise enter into any transaction."</p>	
<p>(SMUD) The following is added to the end of Section 1.1: This Base Contract Shall apply to, and supersede and replace all similar provisions contained in, all transactions between the Buyer and Seller for the purchase and sale of Gas and the parties agree that such transactions are, effective as of the effective date of this Base Contract, governed by this Base Contract and are part of a single integrated agreement between Buyer and Seller.</p>	
<p>(BP) Purpose and Procedures: Add the phrase "or other electronic means of communication" after "conversation" and before "with" in the second line of Section 1.2</p>	
<p>(LDES) Purpose and Procedures: Section 1.3 is amended by, in the last line, adding before the period, "absent a party's assertion, whether before or after the Confirm Deadline, of manifest error in the Contract Price, Contract Quantity, Performance Obligation, Delivery Point(s), Delivery Period, and/or transportation conditions as set forth in a Transaction Confirmation, in which case the terms of the Transaction Confirmation shall not have priority over the other terms."</p>	
<p>Section 2</p>	
<p>(Encana) A new definition is added as follows:</p>	



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<p>“2.36 “Costs” shall mean all reasonable third party legal fees incurred by the Non-Defaulting Party in connection with a Terminated Transaction pursuant to Section 10.3.1”</p>	
<p>(Encana) A new definition is added as follows:</p>	
<p>“2.37 “Present Value Discount Rate” shall mean with respect to any transaction the most recently published “Daily Treasury Yield Curve Rate” for United States Government Treasury notes with a term closest to the time remaining in the Delivery Period, plus 100 basis points, as published by the U.S. Department of the Treasury.”</p>	
<p>(FPL) Add definition as follows “Event of Default” shall mean with respect to a party (the “Defaulting Party”) any of the following:</p>	
<p>(i) the failure by the Defaulting Party to make, when due, any payment required hereunder if such failure is not remedied within three (3) Business Days after Notice of such failure is given to the Defaulting Party;</p>	
<p>(ii) the failure by the Defaulting Party to provide Adequate Assurance of Performance pursuant to Section 10.1 if such failure is not remedied within two (2) Business Days after Notice of such failure is given to the Defaulting Party;</p>	
<p>(iii) any representation or warranty made by the Defaulting Party herein shall prove to have been false or misleading in any material respect when made;</p>	
<p>(iv) the breach by the Defaulting Party of any material covenant set forth herein (other than any covenant otherwise listed as a specific Event of Default in this provision) if such failure is not remedied within 30 Days after Notice of such failure is given to the Defaulting Party;</p>	
<p>(v) the Defaulting Party disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, any transaction or this Contract;</p>	
<p>(vi) a Bankruptcy Event occurs with respect to the Defaulting Party;</p>	
<p>(vii) an Event of Default occurs (howsoever determined) with respect to the Defaulting Party under any transaction or agreement between Seller and Buyer under any forward contract, swap agreement or commodity contract, in each case as defined in the United States Bankruptcy Code;</p>	
<p>(viii) the Guarantor of the Defaulting Party fails to perform any covenant set forth in any guaranty; any representation or warranty made by the Guarantor in such guaranty shall prove to have been false or misleading in any material respect when made; the Guarantor disaffirms,</p>	



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<p>disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, any such guaranty; or the Guarantor takes or suffers any actions set forth in item (vi) above as applied to it; or</p> <p>(ix) the Defaulting Party and/or its Guarantor (individually or collectively), defaults under any one or more agreements or instruments relating to indebtedness for borrowed money or the payment of money under any forward contract, swap agreement or commodity contract in an amount of not less than the Threshold Amount which has resulted in such amount becoming, or becoming capable at such time of being declared, due and payable under the applicable agreement or instrument, before it would otherwise have been due and payable, or a default (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the Threshold Amount under such agreements or instruments (after giving effect to any applicable Notice requirement or grace period).</p> <p>Sometimes Added:</p> <p>(x) a Merger Event occurs with respect to the Defaulting Party;</p> <p>(xi) the issuer of a letter of credit provided pursuant to Section 10.1 fails to comply with or perform its obligations under such letter of credit if such failure shall be continuing after the lapse of any applicable grace period, or disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such letter of credit, or takes or suffers any actions set forth in item (vi) above as applied to it, or such letter of credit expires or terminates or fails or ceases to be in full force and effect at any time during the term of the transactions for which it is issued without having been replaced, or such issuer is not reasonably acceptable to the party requesting Adequate Assurance of Performance</p>	



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<p>(FPL) Add definition as follows: 2.36 "Bankruptcy Event" shall mean, with respect to a party or other entity, that such party or other entity (x) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (xi) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (xii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (xiii) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (a) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (b) is not dismissed, discharged, stayed or restrained, in each case within 30 Days of the institution or presentation thereof; (xiv) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (xv) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (xvi) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 Days thereafter; (xvii) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) (inclusive); or (xviii) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in,</p>	



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<p>any of the foregoing acts.</p> <p>(FPL) Add definition as follows</p> <p>2.39 "Threshold Amount" shall mean, in respect of Seller, Buyer, or Guarantor of Seller and Buyer, if applicable, that amount set forth by the Parties under Section 10.2 on the Base Contract indicating the applicable percentage of shareholders' equity (howsoever described) as shown on the most recent annual audited financial statements of the relevant entity.</p>	
<p>(FPL) Add definition as follows</p> <p>2.38 "Merger Event" shall mean, with respect to a party or its Guarantor, that such party or its Guarantor entity, consolidates or amalgamates with, or merges into or with, or transfers substantially all of its assets to another entity and (i) the resulting entity fails to assume all of the obligations of such party or other entity hereunder or (ii) the benefits of any credit support provided pursuant to Section 10.1 fail to extend to the performance by such resulting, surviving or transferee entity of its obligations hereunder or (iii) the resulting entity's creditworthiness is materially weaker than that of such party or other entity immediately prior to such action.</p>	
<p>(SMUD) The parenthetical phrase "(or an alternate fuel if elected by Buyer and replacement Gas is not available)," is deleted from the definition of Cover Standard at Section 2.12.</p>	
<p>(SMUD) 2.11.1 "Costs" means, with respect to the Non-Defaulting Party, (a) losses associated with transportation and (b) brokerage fees, commissions and other similar transaction costs and expenses (including attorneys' fees and court costs, if any) reasonably incurred by the Non-Defaulting Party either in (1) terminating any arrangement pursuant to which it has hedged its obligations or (2) entering into new arrangements which replace a Terminated Transaction.</p>	
<p>(LDES) Section 2.12 ("Cover Standard") is amended by deleting "(or an alternate fuel if elected by Buyer and replacement Gas is not available)," after "Gas" in the third line.</p> <p>Section 2 is amended by adding the following definitions at the end thereof:</p> <p>2.37 "Costs" shall mean all out-of-pocket expenses incurred by the Non-Defaulting Party as a result of termination and liquidation of transactions pursuant to Section 10, including, without</p>	



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<p>limitation, reasonable legal fees and costs, brokerage fees, commissions and expenses incurred in obtaining, maintaining, replacing or liquidating hedges or trading positions relating to the transactions being terminated.</p> <p>2.39 "Present Value Discount Rate" shall mean the "Constant Maturity Treasury" rates for United States Government Treasury notes as quoted by the United States Treasury Department on its website (http://www.usdtreas.gov/offices/domestic-finance/debt-management/interest-rate/yield.html), or substitute publication most recently published, with a term closest to the time remaining in the Delivery Period, plus 100 basis points."</p>	
<p>Section 3 (Encana) In Section 3.1, the following words are added as the last sentence: "Unless expressly agreed by the parties in the Transaction Confirmation or otherwise in writing, Seller and Buyer shall nominate Gas with respect to a transaction so that such Gas will flow at a reasonably consistent rate (to the extent such rate of flow is within the control of the applicable party) over the course of each Day during the Delivery Period."</p>	
<p>NOTE: Encana would like to discuss the possibility of adding "keep whole" language, similar to that detailed below (new Section 3.5). We are seeing this frequently in the Special Provisions that we receive from our counterparties. Perhaps this could be included as an optional provision?</p> <p>Notwithstanding anything in this Contract to the contrary, in the event a transaction (a) has a Firm performance obligation, (b) as a result from an event of Force Majeure, Seller is unable to sell and deliver, or Buyer is unable to purchase and receive, the Contract Quantity, either in whole or in part, for such transaction, (c) the Contract Price for such transaction is a Fixed Price (as defined below) and (d) the Delivery Period for such transaction is equal to or greater than one Month, then, for the duration of the event of Force Majeure, for each Day that Seller is unable to sell and deliver, or Buyer is unable to purchase and receive, such Contract Quantity, the following settlement obligations between the parties shall apply:</p>	



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<p>(a) if the FOM Price (as defined below) exceeds the Fixed Price, Seller shall pay Buyer the difference between the FOM Price and the Fixed Price for each MMBtu of such Gas not delivered and/or received on that Day, or</p> <p>(b) if the Fixed Price exceeds the FOM Price, Buyer shall pay Seller the difference between the Fixed Price and the FOM Price for each MMBtu of such Gas not delivered and/or received on that Day.</p> <p>For the purpose of this Section 3.5:</p> <p>“Fixed Price” means, a Contract Price for a transaction that is expressed as a flat dollar amount for the Month of delivery, excluding any transactions that have been entered into after the last trading day (as defined by the NYMEX) for the applicable Month. Subject to the foregoing exclusion, “Fixed Price” also includes any transaction containing a Contract Price or a component of a Contract Price that has been converted from a floating price mechanism (i.e., a NYMEX/first of the month index basis component and a fixed price or floating price component, or a NYMEX/first of the month index priced component with a fixed basis component) to a flat dollar amount for any Month of delivery, either upon the mutual agreement of the parties or as a result of a party exercising a pricing “trigger” option in the relevant transaction.</p> <p>“FOM Price” means the price per MMBtu, stated in the same currency as the transaction subject to such event of Force Majeure, for the first of the Month delivery, either as the NYMEX settlement price or as an index price published in the first issue of a publication commonly accepted by the natural gas industry as mutually agreed by both parties for the Month of such event of Force Majeure for the geographic location closest in proximity to the Delivery Point(s) for the relevant Day, adjusted for the basis differential between the Delivery Point(s) and the NYMEX or such published geographic location as determined by the Seller in a commercially reasonable manner.”</p>	
<p>(LDES) Performance Obligation</p> <p>Section 3 is amended by adding the following new Section 3.5:</p>	



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<p>3.5 Notwithstanding anything to the contrary in this Contract (including, without limitation, anything in Section 11 of this Contract), in the event (i) a transaction has a Firm performance obligation, and (ii) Seller is unable to sell and deliver the Contract Quantity for such transaction as a result of an event of Force Majeure or Buyer is unable to purchase and receive the Contract Quantity for such transaction as a result of an event of Force Majeure, and (iii) the Delivery Period for such transaction is at least one calendar month, and (iv) the Contract Price is a Fixed Price (as defined below), then (a) if the FOM Price (as defined below) is above the Fixed Price, Seller shall pay Buyer for each MMBtu of gas not delivered and/or received the difference between the FOM Price and the Fixed Price, or (b) if the FOM Price is below the Fixed Price, Buyer shall pay Seller for each MMBtu of gas not delivered and/or received the difference between the Fixed Price and the FOM Price. "Fixed Price" means, a Contract Price for a transaction that is expressed as a flat dollar amount (Fixed Price includes prices that were converted from an index-based price to a flat dollar amount upon the mutual agreement of the parties or as a result of a party exercising a price option that resulted in a maximum price or a minimum price). "FOM Price" means the price per MMBtu, stated in the same currency as the transaction subject to such Force Majeure event, for the first of the month delivery, as published in the first issue of a publication commonly-accepted by the natural gas industry (selected by the Seller in a commercially reasonable manner) for the calendar month of such Force Majeure event for the geographic location closest in proximity to the Delivery Point(s) for the relevant Day adjusted for the basis differential between the Delivery Point(s) and such published geographic location determined by the Seller in a commercially reasonable manner."</p>	
<p>Section 8 (SMUD) The following sentence is added to the end of Section 8.3: "Neither party shall be required to indemnify the Claims of the other party resulting from the gross negligence or willful misconduct of such other party."</p>	
<p>Section 9 (BP) Notices In the first sentence of Section 9.4, delete the words "commercially acceptable".</p>	
<p>Section 10 (Encana) In Section 10.3.1 eighth line, after the words "such Terminated Transaction(s)" insert " ,</p>	



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<p>adjusted for Costs,"</p> <p>(Encana) In two locations under Section 10.3.1 "Early Termination Damages Apply": a) in the 10th line of the first paragraph and b) in the last line of the second paragraph, the words "in a commercially reasonable manner" are replaced with "by applying the Present Value Discount Rate".</p>	
<p>(OGE) Amend Section 10.2 as follows:</p> <ol style="list-style-type: none"> 1. Insert a left parenthesis in front of "ix" in the ninth line. 2. Delete the word "or" that precedes (ix) in the ninth line. 3. Insert the following after "Event of Default;" in the tenth line:" or, (x) (Credit Event Upon Merger) directly or indirectly consolidate or amalgamate with, merge with or into, transfer all or substantially all of its assets to, or reorganize, reincorporate or reconstitute into or as another entity, or if any entity directly or indirectly acquires the beneficial ownership of any interest allowing it to control such party ("X"), and the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of X, or its Guarantor, as the case may be, immediately prior to such action." 	
<p>(Encana) Section 10.5 shall be deleted in its entirety and replaced with the following:</p> <p>"10.5 The parties agree that (i) all transactions entered into under this Contract constitute a "forward contract" within the meaning of the United States Bankruptcy Code (the "Bankruptcy Code") or a "swap agreement" within the meaning of the Bankruptcy Code; (ii) each party hereto is a "forward contract merchant" within the meaning of the Bankruptcy Code; (iii) all payments made or to be made by one party to the other party pursuant to this Contract constitute "settlement payments" within the meaning of the Bankruptcy Code; (iv) all transfers of Adequate Assurance of Performance or Collateral by one party to the other party under this Contract constitute "margin payments" within the meaning of the Bankruptcy Code; and (v) this Contract constitutes a "master</p>	



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<p>netting agreement" within the meaning of the Bankruptcy Code Each party further agrees that, for purposes of this Contract, the other party is not a "utility" as such term is used in 11 U.S.C. Section 366, and each party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding wherein such party is a debtor. In any such proceeding, each party further waives the right to assert that the other party is a provider of last resort."</p> <p>NOTE: May want to discuss the effect of the Dodd / Frank Legislation.</p>	
<p>(FPL) Section 10.2 shall be deleted in its entirety and replaced with the following: 10.2 In the event an Event of Default or Additional Event of Default occurs then the Non-Defaulting Party shall have the right, at its sole election, to immediately withhold and/or suspend deliveries or payments upon Notice and/or to terminate and liquidate the transactions under the Contract, in the manner provided in Section 10.3, in addition to any and all other remedies available hereunder.</p>	
<p>(SMUD) The text of Section 10.1 is deleted in its entirety and replaced with the following: If either party ("X") has reasonable grounds for insecurity regarding the performance of any obligation under this Contract (whether or not then due) by the other party ("Y") (including, without limitation, the occurrence of a material change in the creditworthiness of Y or its Guarantor, if applicable), X may demand Adequate Assurance of Performance. "Adequate Assurance of Performance" shall mean sufficient security in the form, amount, for a term, and from an issuer, all as reasonably acceptable to X, including, but not limited to cash, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or a guaranty. Adequate Assurance of Performance shall not exceed the sum of (i) the amount calculated in accordance with the procedure for determining the Net Settlement Amount set forth at Section 10.3.2, as of the date of the demand for Adequate Assurance of Performance, as if all transactions had been terminated, plus (ii) all other outstanding amounts owed or accrued under the Contract plus (iii) all reasonably foreseeable amounts that will become owing or will accrue under the Contract as a result of anticipated deliveries of Gas by X to Y during the remainder of the then current Month and the Month following. Y hereby grants to X a continuing first priority security interest in, lien on, and right of setoff against all Adequate Assurance of Performance in the form of cash transferred by Y to X pursuant to this Section 10.1. Upon the return by X to Y of such Adequate</p>	



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<p>Assurance of Performance, the security interest and lien granted hereunder on that Adequate Assurance of Performance shall be released automatically and, to the extent possible, without any further action by either party.</p>	
<p>(SMUD) The following parenthetical is inserted between "payments upon Notice" and "and/or terminate and liquidate the transactions" near the end of Section 10.2:</p> <p>(provided, however, that the right to suspend payment and/or performance shall be limited to a single ten (10) day period, unless an Early Termination Date (hereafter defined) shall have been declared (in which event suspension of payment and performance may continue until such Early Termination Date))</p>	
<p>(SMUD) The paragraph denominated as Section 10.3.2 that immediately follows the heading "Triangular Setoff Option" is deleted in its entirety and replaced with the following paragraphs:</p> <p>10.3.2 The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option, and without prior Notice to the Defaulting Party, the Non-Defaulting Party is hereby authorized to set off any Net Settlement Amount against any (a) margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract and/or (b) amount(s) (including any excess cash margin or excess cash collateral) under any other agreement or arrangement owed (i) by the Non-Defaulting Party and/or its Affiliates to the Defaulting Party and/or (ii) by the Defaulting Party and/or its Affiliates to the Non-Defaulting Party and/or its Affiliates.</p>	
<p>If an obligation is unascertained, the Non-Defaulting Party may in good faith estimate that obligation and setoff in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained. With respect to each Excluded Transaction, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to withhold payment of a commercially reasonable portion of the aggregate amount, if any, determined under the first paragraph of Section 10.3.1 to be payable by the Non-Defaulting Party and any Affiliate of the</p>	



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<p>Non-Defaulting Party to the Defaulting Party after any pertinent setoff(s), until such Transactions are liquidated in accordance with Section 10.3.</p> <p>The obligations of the Defaulting Party and the Non-Defaulting Party under this Contract and the obligations of Affiliates of the Non-Defaulting Party under any other agreement or arrangement in respect of amounts set off by the Non-Defaulting Party and/or any Affiliates of the Non-Defaulting Party under this Section shall be deemed satisfied and discharged to the extent of any such setoff. The Non-Defaulting Party will give the Defaulting Party notice of any setoff effected under this Section as soon as practicable after the setoff is effected provided that failure to give such notice shall not affect the validity of the setoff.</p> <p>Nothing in this Section shall be effective to create a charge or other security interest except as may be provided under applicable law. This setoff provision shall be in addition to any right of setoff, netting, off-set, combination of accounts, counterclaim, lien or other right to which any party is at any time otherwise entitled (whether by operation of law, contract or otherwise).</p>	
<p>(SMUD) The paragraph denominated as Section 10.5 is deleted in its entirety and replaced with the following:</p> <p>10.5 (a) The parties understand and agree that (i) Transaction(s) hereunder constitute "forward contracts" within the meaning of title 11 of the United States Bankruptcy Code (the "Bankruptcy Code"); (ii) each of the parties is a "forward contract merchant" within the meaning of the Bankruptcy Code with respect to any Transactions that constitute "forward contracts"; (iii) all payments made or to be made by one party to the other party pursuant to this Contract constitute "settlement payments" within the meaning of the Bankruptcy Code; (iv) all transfers of credit support by one party to the other party under this Contract or the Credit Support Annex, if applicable, constitute "margin payments" within the meaning of the Bankruptcy Code; (v) each party's rights under Section 10 "Financial Responsibility" of this Contract and Paragraph 2 of the Credit Support Annex, if applicable, constitute a "contractual right to liquidate" the transactions within the meaning of the Bankruptcy Code, and (vi) if the parties have elected to have Section 7.7, Netting, apply to this Contract, then (1) this Contract constitutes a "master netting</p>	



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<p>agreement" within the meaning of the Bankruptcy Code and (2) each party is deemed as a "master netting agreement participant" within the meaning of the Bankruptcy Code.</p> <p>(b) upon a party becoming bankrupt, the other party shall be entitled to exercise its rights and remedies under this Contract in accordance with the safe harbor provisions of the Bankruptcy Code set forth in, inter alia, Sections 362(b)(17), 546(e), 548(d)(2), 556 and 560 thereof.</p>	
<p>(SMUD) Section 10.3.2 (Other Agreement Setoffs Apply) is amended by deleting the language after subsection (ii) in line five and replacing it with the following:</p> <p>(ii) any amount (including the Net Settlement Amount) payable to the Defaulting Party by the Non-Defaulting Party and/or its Affiliates under this Contract or any other agreement or arrangement against any amount(s) payable to the Non-Defaulting Party and/or its Affiliates by the Defaulting Party under this Contract or any other agreement or arrangement. The obligations of the Non-Defaulting Party, the Non-Defaulting Party's Affiliates, and the Defaulting Party under this Contract or otherwise in respect of such amounts shall be deemed satisfied and discharged to the extent of any such set-off. Nothing in this Section shall be deemed to create a charge or other security interest. The rights provided by this Section are in addition to and not in limitation of any other right or remedy (including any right to set-off, counterclaim, or otherwise withhold payment) to which a party may be entitled (whether by operation of law, contract or otherwise). The Parties further acknowledge that each is executing this Contract on behalf of itself as principal and, with respect to this Section, as agent on behalf of its Affiliates, which Affiliates shall receive the benefits of this Section as if such Affiliates had entered into this Contract as it relates to this Section.</p>	
<p>(SMUD) Section 10.3.2 of this Contract is hereby amended by adding the following as Other Setoff Option:</p> <p>10.3.2 In addition to any rights of set-off a party may have as a matter of law or otherwise, upon the occurrence of an Event of Default or an Early Termination Date pursuant to Section 10 of the Contract with respect to a party ("X"), the other party ("Y") will have the right (but not the</p>	



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<p>obligation) without prior notice to X or any other person to set-off or apply (A) any obligation of X (and/or any Affiliate of X) owed to Y (and/or to any Affiliate of Y) (whether or not matured or contingent and whether or not arising under this Agreement or any other agreement or arrangement, or otherwise, and regardless of the currency, place of payment or booking office of obligation) against (B) any obligation of Y (and/or of any Affiliate of Y) owed to X (and/or to any Affiliate of X) (whether or not matured or contingent and whether or not arising under this Agreement or any other agreement or arrangement, or otherwise, and regardless of the currency, place of payment or booking office of obligation). The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).</p>	
<p>(ii) If the amount of an obligation is unascertained, Y may in good faith estimate that amount and set-off in respect of the estimate, subject to the relevant party accounting to the other when the amount of the obligation is ascertained.</p>	
<p>(iii) This Section 10.3.2 shall not constitute a mortgage, charge, lien or other security interest upon any of the property or assets of either party to this Agreement or its Affiliates.</p>	
<p>(BP) Financial Responsibility Add the following at the end before the “.” In the last sentence of Section 10.2: “provided that no suspension of performance shall continue for more than ten (10) Days unless an Early Termination Date has been declared and the Defaulting Party is given Notice thereof in accordance with Section 10.3”</p>	
<p>Delete the words “and without prior Notice to the Defaulting Party” in the second sentence of Section 10.3.2 “Other Agreements Setoffs Apply”.</p>	



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<p>(LDES) Financial Responsibility</p> <p>Section 10.2 is amended by (1) deleting the word "or" in front of "(ix)"; and (3) adding the following new subsections: "(x) fail to perform any material obligation under the Contract (other than obligations which are specifically covered in this definition as a separate Event of Default or covered under Section 3.2), if not remedied within two (2) Business Days after receiving Notice thereof; or (xi) with respect to a party or a party's Guarantor, consolidate or amalgamate with, or merge into or with, or transfer substantially all of its assets to another entity and, at the time of such consolidation, amalgamation, merger or transfer, (a) the resulting entity fails to assume all of the obligations of such party or Guarantor hereunder, (b) the benefits of any credit support provided under this Contract fail to extend to the performance by such resulting, surviving or transferee entity of its obligations hereunder, or (c) the resulting entity's creditworthiness is materially weaker than that of such party or Guarantor immediately prior to such action."</p> <p>Section 10.3.1 (Early Termination Damages Apply) is amended in the first paragraph by replacing "in a commercially reasonable manner" in the third to last line with "using the Present Value Discount Rate"; by adding the following sentence at the end: "The Non-Defaulting Party shall also aggregate the Costs which it incurs in liquidating and accelerating each Terminated Transaction, or otherwise settling obligations arising from the liquidation and termination of each Terminated Transaction, and such Costs shall be due to the Non-Defaulting Party."; and by deleting in the last line of the second paragraph "determined by the Non-Defaulting Party in a commercially reasonable manner" and inserting "the Present Value Discount Rate".</p> <p>Section 10.3.3 is amended in the last line by replacing "in a commercially reasonable manner determined by the Non-Defaulting Party" with "using the Present Value Discount Rate".</p>	
<p>Section 11</p> <p>(Encana) A new Section 11.7 is added as follows:</p> <p>"11.7 If on any Day Force Majeure partially restrains a party's ability to perform its Firm obligations for any transaction at a Delivery Point and a party's ability to perform its Firm obligations to others under transactions at the same Delivery Point, then all Firm obligations shall be reduced pro rata without regard to the price paid or received for Gas, prior to the affected party performing under any interruptible purchase or sale arrangement."</p>	



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<p>(SMUD) The following new Sections 11.7 and 11.8 are added:</p>	
<p>11.7 For clarity, Force Majeure shall not require the parties to: (i) extend the term of any transaction; (ii) find alternate sources of Gas supply or to make up any quantity of Gas they would otherwise have been obligated to sell and/or to purchase during any period in which Force Majeure was validly claimed; or (iii) deliver or receive the Gas at points other than the Delivery Point.</p>	
<p>11.8 Without restricting the generality of Section 15.3, if an event of Force Majeure occurs, the Party affected may, in its sole discretion and without notice to the other Party, determine not to make a claim of Force Majeure and to waive its rights hereunder as they would apply to such event. Such determination or waiver shall not preclude the affected Party from claiming Force Majeure in respect of any subsequent event, including any event that is substantially similar to the event in respect of which such determination or waiver is made.</p>	
<p>(BP) Force Majeure: Insert the following at the end of Section 11.2: "To the extent an event of Force Majeure occurs, Seller or Buyer will allocate the supply or purchase of Firm Gas for affected transactions, as applicable, on a pro rata basis with other similarly situated Firm Gas customers."</p>	
<p>(LDES) Force Majeure Section 11.3 is amended as follows: insert the following language after "also curtailed" in the third line: ", and, then, only to the extent of such curtailment on the affected pipeline segment"; delete "or" in front of subsection (v); and insert the following language after "Section 11.2" in the ninth line: ", or (vi) failure of specific, individual wells or appurtenant facilities in the absence of a Force Majeure event broadly affecting other wells in the same geographic area."</p>	
<p>Section 12</p>	
<p>(Encana) Section 12 shall be amended by adding the following after the first sentence:</p>	
<p>"Termination shall be effective on the first day of the Month following the latest Delivery Period</p>	



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<p>of any transaction.”</p> <p>(LDES) Term</p> <p>Section 12 is amended by replacing the second sentence with the following: "The rights of either party pursuant to Section 7.6, Section 10, Section 13 and Section 15.10, the obligations to make payment hereunder, the obligation of either party to indemnify the other, the waiver of jury trial provision (if applicable) and the arbitration provision (if applicable) pursuant hereto shall survive the termination of the Base Contract or any transaction."</p>	
<p>Section 14</p> <p>(SMUD) The title of Section 14 is changed to "MARKET DISRUPTION AND CORRECTIONS TO PUBLISHED PRICES"; the existing paragraph thereunder is denominated as Section "14.1" and the following new Section 14.2 is added thereafter:</p> <p>14.2 For purposes of determining the relevant prices for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within 30 days from the original publication, either party may notify the other party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If a party gives notice that an amount is so payable, the party that originally either received or retained such amount will, not later than five (5) Business Days after the effectiveness of that notice, pay, to the other party that amount, together with interest at the Interest Rate (specified in Section 7.5) for the period from and including the day on which payment originally was made.</p> <p>(BP) Market Disruption</p> <p>In Section 14, delete "and averaging the four quotes" at the end of the first sentence.</p>	
<p>In Section 14, delete the second sentence and replace it with the following:</p> <p>"Once the Parties obtain the quotes, the following methodology shall be used to determine the replacement price for the Floating Price: (i) if each Party obtains two quotes, the arithmetic mean of the quotations, excluding the highest and lowest values, shall be utilized; (ii) if one Party obtains two quotes and the other Party only obtains one quote, the highest and lowest values shall be excluded and the remaining quotation shall be utilized; (iii) if both Parties each obtain one</p>	



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<p>quote, the arithmetic mean of the quotations shall be utilized; or (iv) if only one Party is able to obtain a quote, the obtained quotation shall be utilized. For purposes of the foregoing sentence, if more than one quotation is the same as another quotation, and such quotations are the highest and/or lowest values, only one of the quotations shall be excluded.”</p>	
<p>Section 15 (Encana) Section 15.5 is amended by adding the following as the last sentence: “Each party hereby irrevocably waives any and all rights it has or may acquire in the future to request a trial by jury in any action or proceedings hereunder.”</p>	<p><u>NO</u>. While this language may be acceptable at times, it is a special condition that should be mutually agreed on by the parties at the time of contracting and should not be a part of the base contract.</p>
<p>(FPL) Section 15.1 is hereby amended by the inserting at the end of the third sentence: “and any guaranty of the transferor’s obligations hereunder or other credit support arrangement supporting the transferor provided pursuant to Section 10.1 continues to extend to the performance of any such permitted assignee.”</p>	
<p>(OGE) Add the following as Section 15.13: 1. “15.13 Representations and Warranties. On the effective date and the date of entering into each transaction, each party represents and warrants to the other party that: (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and has all regulatory authorizations necessary for it to legally perform its obligations under these Contract and each transaction; (ii) the execution, delivery and performance of these Contract and each transaction are within its powers, and do not violate any contracts to which it is a party or any law, rule, regulation, order; (iii) the Contract, each transaction, and each other document executed and delivered in accordance with the Contract constitute its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any equitable defenses; (iv) it, or its Guarantor, if applicable, is not bankrupt and there are no proceedings pending or being contemplated by it, its Guarantor, if any, or, to its knowledge, threatened against it which would result in it being or becoming bankrupt and there is not pending or, to its knowledge, threatened against it, or its Guarantor, if any, or any of its Affiliates, any legal proceedings that could materially adversely affect its ability to perform its obligations under the Contract and each transaction; (v) no Event of Default with respect to it has occurred and is continuing and no</p>	



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<p>such event or circumstance would occur as a result of its entering into or performing its obligations under the Contract and each transaction; (vi) it is acting for its own account, has made its own independent decision to enter into the Contract and each transaction and as to whether the Contract and each such transaction are appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of the Contract and each transaction; and (vii) it is an "eligible contract participant" as that term is defined in Section 1a(12) of the Commodity Exchange Act. The parties agree that this Contract constitutes a "qualified financial contract" as that term is defined in N.Y.G.O.L. §5-701(b) and that this Contract be a "master agreement" for purposes of 11 U.S.C. 101(53B) or any successor provisions."</p>	
<p>(OGE) Add the following as Section 15.14: 1. "15.14. This Contract may be executed and delivered in counterparts (including by facsimile or other electronic transmission), each of which, taken together, will be deemed one and the same instrument. Delivery of an executed counterpart of a signature page to this Contract by facsimile or other electronic means shall be as effective as delivery of an originally executed counterpart of this Contract."</p>	
<p>(Encana) Section 15.8 shall be amended by adding the following language to the end thereof: "As of the date first mentioned on the Base Contract, each party represents and warrants to the other party that (a) it has all current valid and applicable state and federal regulatory authorizations, consents, or approvals required for it to legally perform its obligations under this Contract; (b) this Contract constitutes its legally valid and binding obligations enforceable against it in accordance with its terms (subject to applicable bankruptcy, reorganization, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application regardless of whether enforcement is sought in a proceeding in equity or at law); (c) there are no proceedings similar to those described in Section 10.2 (i) through (v) pending or being contemplated by it or, to its knowledge, threatened against it; (d) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its</p>	



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<p>entering into or performing its obligations under this Contract; (e) it is acting for its own account, has made its own independent decision to enter into this Contract and as to whether this Contract is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Contract; (h) it has entered into this Contract in connection with the conduct of its business and it has the capacity or ability to make or take delivery of the Gas referred to in any transaction hereunder to which it is a party and the material economic terms of each transaction are subject to individual negotiation by the parties; and (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation. Notwithstanding the foregoing, neither party shall be considered in breach of Section 15.8(i) if and to the extent that such breach is due to an unintentional administrative oversight and such party has taken all necessary steps to remedy the situation."</p>	
<p>(Encana) The following is added as new subsection 15.13:</p> <p>"Mobile-Sierra</p> <p>(a) Absent the agreement of all parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Contract, whether proposed by a party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such party), a non-party or FERC acting sua sponte, shall solely be the "public interest" application of the "just and reasonable" standard of review set forth in <i>United Gas Pipe Line Co. v. Mobile Gas Service Corp.</i>, 350 U.S. 332 (1956) and <i>Federal Power Commission v. Sierra Pacific Power Co.</i>, 350 U.S. 348 (1956) (the "Mobile-Sierra" doctrine), and clarified in <i>Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish</i> 554 U.S. ___, 171 L.Ed.2d 607 (2008).</p> <p>(b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section or transaction of or under this Contract specifying the rate, charge, classification, or other term or</p>	



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<p>condition agreed to by the parties, it being the express intent of the parties that, to the fullest extent permitted by applicable law, neither party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Contract, notwithstanding any subsequent changes in applicable law or market conditions that may occur.”</p> <p>NOTE: Is this language still necessary? We are still seeing this included in the Special Provisions received from our counterparties.</p>	
<p>(FPL) Add New Section:</p> <p>15.13 Each of the parties hereby represents and warrants (which representations and warranties will be deemed to be repeated by each party on each date on which a transaction is entered into):</p> <ul style="list-style-type: none"> (i) that it is entering into this Contract and each transaction as principal and not as agent for any other party; (ii) the execution, delivery and performance of this Contract and each transaction, including, without limitation, the provision of Adequate Assurance of Performance pursuant to Section 10.1, are within its powers, have been duly authorized by all necessary action, and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law or regulation applicable to it; (iii) this Contract and each transaction when entered into in accordance with this Contract constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defenses; and (iv) there is not pending or, to its knowledge, threatened against it or its Guarantor, if any, any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability of this Contract, any transaction, or any guaranty or (v) other Adequate Assurance of Performance provided pursuant to <u>Section 10.1</u>, or the ability to perform the obligations thereunder. 	



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<p>(SMUD) Section 15.5 is amended by adding the following to the end thereof: "(except if New York law has been indicated on the Base Contract, in which case the parties agree not to exclude New York General Obligations Law Section 5-1401)."</p>	
<p>(SMUD) The text of Section 15.8 is deleted in its entirety and replaced with the following:</p> <p>On the trade date of each transaction under this Base Contract, each party represents and warrants to the other party that: (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; (ii) it has all governmental authorizations necessary for it to legally enter into and perform its obligations under the Contract; (iii) the execution, delivery and performance of the Contract is within its powers, have been duly authorized by all necessary action and do not violate any terms and conditions in its governing documents, any contracts to which it is a party or any law applicable to it; (iv) the Contract constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defenses; (v) there are no bankruptcy proceedings being contemplated by it or, to its knowledge, threatened against it; (vi) there are no legal proceedings pending or, to its knowledge, threatened against it that, if unfavorably resolved, would materially adversely affect its ability to perform its obligations under the Contract; and (vii) it has knowledge and experience in financial matters and the gas industry that enable it to evaluate the merits and risks of entering into the Contract; and (viii) it is entering into the Contract as a principal and not as an agent for any party.</p>	
<p>(SMUD) The text of Section 15.1.1 is deleted in its entirety and replaced with the following:</p> <p>Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this Contract or any transaction entered into pursuant hereto.</p>	
<p>(SMUD) Section 15.8 is deleted in its entirety and replaced with the following:</p> <p>"15.8 Mutual Representations and Warranties. Each party represents and warrants to the other party, as of the date of the Base Contract, each Transaction hereunder, and of each delivery of Gas in</p>	



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<p>connection with such Transactions, that (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; (ii) the execution, delivery and performance of this Contract have been duly authorized by all necessary action, including all regulatory authorization, and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party, or any law, rule, regulation, order or the like applicable to it and constitute its legally valid and binding obligations enforceable against it in accordance with its terms, subject to any bankruptcy, insolvency or equitable defense; (iii) no Event of Default with respect to it has occurred and is continuing; (iv) it is acting for its own account, has made its own decision to enter into this Contract, is not relying upon the advice or recommendations of the other party, and is capable of assessing the merits of and understands the terms, conditions and risks of this Contract; and (v) all applicable information that is furnished in writing by or on behalf of it to the other party under this Contract is, as of the date the information is furnished, true, accurate and complete in every material respect.”</p>	
<p>(LDES) Miscellaneous</p> <p>Section 15.1 is amended as follows: delete “(and shall not relieve the assigning party from liability hereunder)” from the second sentence; replace subsection (ii) of the second sentence with the following: “(ii) transfer or assign this Contract to any Affiliate, person or entity succeeding to all or substantially all of the transferring party’s assets without the prior approval of the other party if (A) the transferring party or its Guarantor, if any, agree in writing to remain liable for the obligations of the transferee or (B) the creditworthiness of the transferee is equal to or better than that of the transferring party or its Guarantor, if any, immediately preceding such transfer and the transferee agrees in writing to be bound by this Contract, and (C) in the case of either (A) or (B) the transfer has no adverse tax consequences to the non-assigning party.”; and delete the last sentence in its entirety.</p> <p>Section 15.3 is deleted and replaced in its entirety with the following: “Waiver of any breach of this Contract by a party shall not be effective unless it is in writing, and any such waiver shall not constitute a waiver of any other or subsequent breach.”</p> <p>Section 15.5 is amended by inserting the following at the end thereof: “EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT</p>	<p>No comment as to 15.1 and 15.3</p> <p>As to 15.5: <u>NO.</u> While this language may be acceptable at times, it is a special condition that should be mutually agreed on by the parties at the time of contracting and should not be a part of the base contract.</p>



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IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDINGS RELATING TO THESE SPECIAL PROVISIONS, THE BASE CONTRACT OR ANY TRANSACTION THEREUNDER."	