

GasEDI

c/o Canadian Association of Petroleum Producers
2100 - 350 - 7 Ave SW, Calgary, AB, Canada T2P 3N9

<http://www.gasedi.ca>

Project Manager: I. S. Anderson & Associates Limited • Tel: 403-243-1079 • Fax: 403-243-0546 • <http://www.isanderson.com>

UPDATING THE GasEDI BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS - COMMITTEE MEETING

MATERIALS Draft - June 24, 2004

The following comments re Updating the GasEDI Base Contract for Sale and Purchase of Natural Gas have been received - as of June 24, 2004, at noon.

On The Original Agenda

Proposed areas for consideration include, but are not limited to:

- Financial Responsibility, Defaults and Remedies.
- Defaults, Remedies for Default and Termination.
- Develop a Credit Support Annex.
- Force Majeure.
- Termination Rights, Failure to Deliver.
- Events of Default.
- Elected Financial Contract / Forward Contract.
- Concept of a "Qualified Party".
- Master Netting.
- Cross-affiliate / Cross-border Issues.
- Adopt Language from the EEI Master Purchase and Sale Agreement.
- Adopt Language from ISDA.
- Review Differences vs the NAESB 2002 Base Contract.
- Incorporation of Commonly Used Special Provisions.
- Protection in the Case of Bankruptcy.

Party 1

Improvements to S10 to include more robust collateral transfer provisions would be of particular interest.

Most companies with whom I have negotiated have similar Special Provisions and I believe some or most of these add-ons could be addressed in an updated version of the Base Contract, resulting in less time to negotiate GasEDI Contracts. As well, in my view, the Financial Responsibility section would benefit from a post-Enron review and update. I would like to see the Special Provisions still available to tailor the Contract.

Suggested discussion items include the following issues:

- Term - term of Transactions to be governed by the Contract - should transactions be limited to terms of less than one year?

- Single Agreement - all Transactions entered into in reliance on GTCs, each Transaction and each Transaction Confirmation constitute a single agreement between the parties.

Definitions

- Definitions of Business Day and Day - how they are used throughout the document.
- Deletion of "or alternate fuels" in Cover Standard definition and in 3.2.
- Review Events of Default definition (compare to NAESB).
- Market Value definition - 5 or 3 brokers - liquidity issues at some points.
- Review Potential Event of Default definition.

Billing and Payment

- In 7.2 - discuss adding payment of undisputed amounts due
- In 7.7 - discuss further cure period for Accelerated Payment Invoice
- Physical book out provisions.

Financial Responsibility, Defaults and

- Adequate performance assurances (compare to NAESB Section 10), margining and credit provisions, security interests, cash collateral (perfection issues, registration of PPR financing statements) - should margin provisions be included in GasEDI or is there a need for an industry standard Margin Agreement
- Recovery of reasonable costs (incl. attorneys fees, enforcement expenses) by Non-Defaulting Party incurred in exercising remedies
- In 10.3 - discuss adding language that Event of Default not cured (or deleting 'for so long as the Event of Default is continuing').

Force Majeure

- Should Force Majeure be defined (currently a list of events described as including . . .)
- Additional exclusions in 11.3 - including price majeure, regulatory disallowance of pass-through of costs, rationing of production, allocation, failure of supply
- Prorating of firm supplies prorata in the event of FM, then interruptible supplies.

Governing Law/Representations

- Limitation of Actions
- Representation re "eligible financial contract" or "forward contract"
- Representation that each party is "Qualified Party" under Alberta Securities Commission's Blaknet Order 91-502 (OTC Derivatives Transactions and Commodity Contracts).

Other

- Master Netting Agreements - the use of them, enforceability of cross-affiliate and cross-border agreements.

Party 2

We are thinking it might be more efficient and less time consuming to create an actual Canadian version of the NAESB. We know that the current version of the NAESB has a Canadian Addendum but it appears that quite a few people don't like having to work with so many documents (the NAESB Base Contract, Special Provisions to the NAESB Base Contract, the Canadian Addendum and, if needed, Special

Provisions to the Canadian Addendum). Thus, many prefer the GasEDI. However, if there were an actual Canadian NAESB, then more people would probably be willing to use a NAESB and it would be much easier for companies that have U.S. and Canadian entities to do things like cross margining with their customers. It's very cumbersome if the U.S. entity has a NAESB and the Canadian entity has a GasEDI.

Assuming that the industry thinks this is a good idea, the first step would be to take the existing Canadian Addendum to the NAESB and incorporate it into the actual NAESB and delete whatever parts of the NAESB conflict with those terms. After that is done, the participants could go through the NAESB and see if there is any other existing language that needs to be tweaked or deleted or additional Canadian terms that need to be added to the NAESB. The extra benefits of doing this would be the fact that (i) any revisions to standard NAESB language that aren't specific to Canadian issues could be used to update the existing NAESB (if the participants choose to do that) and (ii) it would be very easy to use the existing model of the NAESB CSA rather than having to create a new CSA for the GasEDI.

As you well know, when the industry decided to update the GISB, everyone thought it would take 3-6 months and it ended up taking 2 years. I don't think anyone wants to go through that again. Also, since credit issues are the hot item these days, if the industry does decide to update the GasEDI, then everyone will have to be willing to also develop a CSA (or model for a CSA) that relates to the GasEDI. As a member of the committee that worked on the NAESB CSA, I can tell you that it was a very intense process because certain customer types didn't want the organization to develop the CSA at all because they were afraid that they would be required to attach it to every contract they try to negotiate. The point I'm trying to make is that since the GasEDI and the NAESB are so similar and since the industry has gone through so much of this revision process with the existing NAESB documents, let's try to create a true Canadian NAESB so we can maximize our existing documents and, at the same time, give the Canadian companies a chance to revise the existing document to their satisfaction.

Party 3

I am interested in this committee and agree that updating it the GasEDI (as you have outlined) would be very beneficial for the industry as a whole. Of particular interest to me, would be updating it with some of the NAESB language (in particular the credit area).

Party 4

The issues of credit support and force majeure have become very important when negotiating a gas purchase and sale arrangement. It is my opinion that credit support is now very important not only because of issues arising around the CCAA and what is good security, but also because when there are price spikes, and a counterparty is long gas, transactions that were squarely within a counterparty's credit policy, quickly move outside of that credit policy. At that point, the credit support mechanism has to respond quickly and fairly. Force Majeure, in my opinion, is important, because, not only must one consider the events that could lead to a declaration of force majeure must be considered, but also, many counterparties that hedge their gas, are demanding that even in Force Majeure situations, a party claiming Force Majeure must still pick up the difference between the price of the gas under the physical transaction as recorded in the GasEDI, and the hedge.

Party 5

We don't need any changes to the standard.

Party 6

As to suggested changes -- I deal a lot with the EEI Master Purchase and Sale Agreement, and some of the provisions in there that I think would be useful. For example, defaults, remedies for default and termination. Calculations of termination payments. Think having a look at that agreement would be useful. A credit annex may be useful too.

Force majeure for sure should be considered. Termination rights, failure to deliver. There are certainly others, I have a binder of my GasEDI contracts, and as time progresses, I get more and more changes requested.

I am all in favour of keeping the GasEDI alive and well. No one has asked us to use the NAESB Agreement with the Canadian Schedule. We do not buy from any US suppliers.