

# GasEDI

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## NEW GasEDI BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS

**Mission:** Develop a New GasEDI Base Contract for Sale and Purchase of Natural Gas (“New GasEDI Base Contract”) based on: the GasEDI Base Contract for Short-Term Sale and Purchase of Natural Gas as published by GasEDI on October 26, 2000, (“GasEDI 2000 Base Contract”); the North American Energy Standards Board (“NAESB”) Base Contract for Sale and Purchase of Natural Gas as published by NAESB on April 19, 2002, and its addenda (“NAESB 2002 Base Contract”); the NAESB General Terms and Conditions for Day Trade Interruptible Contract as published by NAESB on April 16, 1998; and additional recommendations from committee participants.

### COMMENTARY: JUNE 30, 2005, DRAFT Draft - July 15, 2005

Following is a commentary on the differences between the June 30, 2005, Draft and the June 21, 2005, Draft, and the recommended change to Section 11, Option A, Section 11.2.

- “Contract Quantity” definition: added “ each Day” to the definition, to make it clear that Contract Quantity is per Day. Note - except for the definitions for Market Price and Market Value (see below), all uses of Contract Quantity mean per Day.
- “Market Price” definition: changed “Contract Quantity” to “remaining Contract Quantities”, to be consistent with the revised definition for Contract Quantity”.
- “Market Value” definition: changed “Contract Quantity” to “remaining Contract Quantities”, to be consistent with the revised definition for Contract Quantity”.
- Section 10.3: The sentence starting with “Notwithstanding” in line 11 was modified so the language would be consistent with the equivalent concept in Section 10.2.
- Section 10.4.c:
  - ◆ Issue: June 28, 2005; Rosa McDonald; Imperial Oil Resources Limited:
    - I did have one more question, if I may: re Section 10.4.c -- therein it states that netting against any Net Settlement Amount is permitted only if netting provisions have been expressly permitted in the Special Provisions or Credit Annex, yet in Section 10.2(iii), one can setoff any amounts due from other agreements against amounts not paid by a Payer without reference to netting provisions in the Special Provisions or Credit Annex. Why is there a difference?
  - ◆ Response: June 28, 2005; Niall Armstrong; Direct Energy Marketing Limited:
    - With respect to setoff, I applaud your attention to detail. And I admit that it appears to be (and may in fact be) inconsistent.
      - ★ The draft 2005 version permits setoff against other agreement amounts under 10.1.b (until PA is provided) and 10.2 (failure to pay), without anything necessary in the Sps.

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- ★ The 2000 version allowed setoff against other agreement amounts in 10.2 (when an event of default occurs) and 10.4 (netting the Total Termination Payment).
  - ★ NAESB only permits setoff against other agreement amounts if that option is chosen and when an early termination date had been designated.
  - It seems odd that a Non-defaulting party would lose one of the remedies it enjoys prior to termination unless it actually includes it in the SPs or the Credit Annex.
  - When we discussed this at the committee, there was pushback to the concept. I'm guessing it came from people who elect not to permit it under the NAESB. However, it would seem that under GasEDI (where most participant wanted the expansion of setoff for PA) we taking a step backwards. I note that you can likely setoff anyway at law if the other agreement amount is liquidated.
  - ◆ Niall Armstrong (Overall Chair) and Ian Anderson agreed to delete, from lines 3 and 4, “, if setoff against amounts owing under other agreements is expressly permitted under the Special Provisions or the Credit Annex”, thus making the right to net or setoff consistent with similar rights to net or setoff elsewhere in the Contract.
  - Section 11, Option A, Section 11.2: Due to an interpretation comment / question re the definition of Force Majeure under Option A, Section 11.2 in the June 30, 2005, Draft, Diane Pettie (Force Majeure Subcommittee Chair) and Ian Anderson recommend clarifying the intent of the language by adding the words " pursuant to a Transaction under this Contract" after the words “of Gas” to the lead-in, so the lead-in would read:
    - ◆ "Force Majeure" means any event not reasonably within the control of the Claiming Party which event prevents or restricts delivery by Seller or receipt by Buyer, as applicable, of Gas pursuant to a Transaction under this Contract, including, without limitation, the following events:
    - ◆ Note - this language is not in the June 30, 2005, draft.
  - Section 11, Option B, Section 11.2.a: The position and phraseology of the “prevents or restricts” language changed to be structured like Section 11.2.b.
  - Section 14.11: Language tidied up - to reflect the concept that “it is the intent of the parties”.

## FURTHER INFORMATION

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