

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>

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.

FORCE MAJEURE SUBCOMMITTEE MEETING - JULY 28, 2004 - MINUTES Final - September 1, 2004

When Wednesday, July 28, 2004; 11:00 am - 1:00 pm Calgary Time
Where Cargill Energy, 300 - 440 - 2 Avenue SW, Calgary, AB
Thank You Cargill Energy and Brent Ohr for hosting this meeting.

■ Call to Order - Diane Pettie

■ Anti-Trust Guideline - Diane Pettie

We shall not engage in any discussion which could have the affect of influencing prices, supply or markets, and we shall assist each other to comply with this guideline.

■ Attendees

Brent Molesky	Burlington Resources Canada Ltd.
David Field	Cargill Energy
Brent Ohr	Cargill Energy
Diana Andel	EnCana Gas Marketing
Pam Webster	EnCana Gas Marketing
Ian Anderson	GasEDI
Ernie Kohnke	Louis Dreyfus Holding Company Inc. (by tele-conference)
Kathy Bolan	Nexen Marketing
Adam Rubin	Nexen Marketing
Kelli Grier	Petro-Canada
Sandra Lord	Petro-Canada Oil & Gas
Mary-Lou Zimmer	Phoenix Energy Marketing Consultants Inc. (by tele-conference)
Diane Pettie	Sempra Energy Trading (Canada) Limited
Shannon Glover	TD Commodity and Energy Trading Inc.
Jane Peck Hay	Thackray Burgess
Sterling Koch	TransAlta Energy Marketing

- Discussion
 - ◆ Recap of Committee of the Whole Meeting, July 20, 2004:
 - Extensive discussion at this meeting about the fact that the current draft language largely mimics the language of the GasEDI 2000 Base Contract and the NAESB 2002 Base Contract, and also the language of the ATCOR / Continental Energy Contract which has been severely criticised by the courts of Alberta.
 - ◆ ATCOR / Continental Energy:
 - ATCOR Ltd. v. Continental Energy Marketing Ltd. (1994), 161 A.R. 81 (Alta.Q.B.); (1996), 178 A.R. 372 (Alta.C.A.). This case is of particular application, as the Alberta Court of Queen's Bench and the Alberta Court of Appeal considered a clause similar to that in the GasEDI 2000 Base Contract.
 - The Alberta Court of Queen's Bench made statements about the clause, that:
 - ★ it is drafted "... in the typical archaic fashion and attempts at all cost to circumvent clarity".
 - ★ its definition as to the events of force majeure is "dreadfully lengthy ... and lacks clarity".
 - ★ it "is unfortunate that parties do not spend more time properly drafting these provisions ...".
 - ★ in response to a perceived inconsistency in the provision, "it is not a model of plain language drafting".
 - The Alberta Court of Appeal noted that certain provisions of the clause contained "... a choice of words that assured litigation".
 - In view of the courts' criticisms it appears that clarifying changes are warranted to Article 11.
 - ◆ Discussion - there was a wide ranging discussion about:
 - The concept of "products based" force majeure language (NIT, Non-Liquid Delivery Point, Liquid Delivery Point).
 - The concept of leaving the language more general, but trying to clean up the language to achieve clarity.
 - The concept of pro-rata performance.
 - The concept of reasonable commercial efforts to deliver or receive physical gas.
 - The concept of termination due to force majeure.
 - The need to make significant changes to the language given force majeure is infrequently claimed and very very rarely goes to court.
 - ◆ Decisions:
 - **Diane Pettie volunteered to develop proposed products based force majeure language, based on language currently used by Party E.**
 - **Pam Webster volunteered to develop proposed language to keep but clarify the existing general language.**
 - **Brent Molesky volunteered to develop proposed pro-rata language.**
 - **Diane Pettie will circulate the ATCOR v. Continental Energy and Tejas Power Corporation v. Amerada Hess Corp. (1999 Tex. App. Laxis 6014. August 12, 1999 Court of Appeals, Texas, 14th District Houston) court decisions.**
 - **Sterling Koch will (subject to copyright restrictions) circulate related WSPP information.**
 - No language will be developed covering the concept of reasonable commercial efforts to deliver or receive physical gas: this would be very difficult to develop as the level of reasonable commercial efforts required are context-based so are

difficult to negotiate and draft in advance, and the ATCOR v. Continental Energy decision stated that the level of such efforts must be determined on a case-specific basis.

- No language will be developed covering the concept of termination due to force majeure. **Instead, the clause that the term shall not be extended by force majeure will be added.**

■ Next Meeting

When Wednesday, September 1, 2004; 9:30 - 11:30 am Calgary Time
Where Petro-Canada, 150 - 6 Avenue SW, Calgary, AB
Contact Sandra Lord, 403-296-7200, SLORD@petro-canada.ca

FURTHER INFORMATION

Please contact Ian Anderson (403-243-1079, ian@isanderson.com) or Diane Pettie (403-750-5395, dpettie@sempratrading.com), or visit GasEDI's web site (<http://www.gasedi.ca>).