

# GasEDI

c/o Canadian Association of Petroleum Producers  
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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.

### **FORCE MAJEURE SUBCOMMITTEE - "FORCE MAJEURE EVENT" Response Due - by 5:00 pm on Friday, March 4, 2005**

At the January 27, 2005, Committee of the Whole meeting, a participant requested a new definition "Force Majeure Event" in Section 11, to differentiate between the events described in Section 11.2.a and 11.2.b (1), (2) or (3) that restrict or prevent performance, and "Force Majeure", which is the state of suspension resulting from such events when the Claiming Party has exercised its rights. Another participant asked for clarification of the payment of Imbalance Charges in different suspensions scenarios: where delivery and receipt obligations are suspended for Force Majeure, for failure to pay under section 10.2, and in other instances where Imbalance Charges arise.

We encourage you to provide qualitative feedback on these two issues, to finalize the proposed language for presentation to the Committee of the Whole on March 9, 2005.

Attached are:

- Proposed definitions for "Force Majeure" and "Force Majeure Event".
- The January 24, 2005, definitions for "Claiming Party", "Imbalance Charges" and "Nomination Change Period" (no revisions proposed; included for convenience).
- Proposed revised Section 11 using the revised terms, blacklined vs the January 24, 2005, draft of the New GasEDI Base Contract.
- Proposed revised Section 4.3, blacklined vs the January 24, 2005, draft of the New GasEDI Base Contract.
- Diagram of the processes leading to Imbalance Charges.

Discussion of the new definitions of Force Majeure and Force Majeure Event:

- Do you agree that the new term "Force Majeure Event" is useful to differentiate between events and the result (restricted or prevented ability to perform)?

Discussion of the blackline of Section 4.3:

- What was the group's consensus on whether a Party could recover Imbalance Charges for Interruptible transactions since by its terms, a party can interrupt at any time for any reason?
  - ◆ One view is that there could be imbalance charges for Interruptible transactions if the interruption happened after a nomination was made. The current GasEDI and NAESB clearly contemplate allowing these Imbalance Charges in the definition of "Interruptible":

that the interrupting party may be responsible for Imbalance Charges if the interruption happens after a nomination is put in until such time as the Transporter confirms changes of delivery/receipt.

- Section 4.3 Explanation:
  - ◆ If changing noms relieves the Imbalance Charges, that's the end of the issue. If it does not, then the parties look to their actions to determine responsibility. If a party did not act in a timely manner, and acting could have relieved the Imbalance Charge, that is a factor to consider under 4.3 in determining which party is responsible.
- One final check to make sure we are not creating a process outside industry practice:
  - ◆ Operationally, what practice do most companies follow in a force majeure? Do parties actually adjust noms or do they leave the nom a stand nom and let the pipeline adjust based upon the gas delivered/received. We don't want to create the obligation to change noms in a force majeure if companies do not actually change noms.
- Delete the last sentence of 11.5:
  - ◆ I do not think that this sentence is needed as the remainder of Section 11.5 adequately deals with the various scenarios that could arise with respect to Imbalance Charges during a Force Majeure.

Company families should submit a single response. Please submit your comments and if desired propose different language to illustrate your preference.

Please submit your response by email to Diane Pettie, [dpettie@sempratrading.com](mailto:dpettie@sempratrading.com).

Thank you for your attention.

## **FURTHER INFORMATION**

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

## WordPerfect Document Compare Summary

Original document: Force Majeure Etc 050124.wpd

Revised document: Force Majeure Etc 050215.wpd

Deletions are shown with the following attributes and color:

~~Strikeout~~, Blue RGB(0,0,255).

Deleted text is shown as full text.

Insertions are shown with the following attributes and color:

Double Underline, Redline, Red RGB(255,0,0).

The document was marked with 11 Deletions, 16 Insertions, 0 Moves.

“Claiming Party” has the meaning set forth in Section 11.2.a or Section 11.2.b, as applicable.

“Force Majeure” means the state when the obligations of Seller to deliver Gas and of Buyer to receive Gas are suspended because performance is prevented or restricted by the Force Majeure Event and Notice has been given by the Claiming Party of the Force Majeure Event in accordance with section 11.5.

“Force Majeure Event” has the meaning set forth in Section 11.2.a, 11.2.b(1), 11.2.b(2) or 11.2.b(3), as applicable.

“Imbalance Charges” means any fees, penalties, costs or charges (in cash or in kind) assessed by a Transporter for failure to satisfy the Transporter’s balance and/or nomination requirements.

“Nomination Change Period” means a reasonable period of time to change a nomination, taking into account the applicable Transporter’s nomination deadline(s), after receipt of an operational notice pursuant to Section 4.2 or a notification pursuant to Section 11.5, as applicable.

4.3 The parties shall use commercially reasonable efforts to avoid the imposition of any Imbalance Charges. If Buyer or Seller receives an invoice from a Transporter that includes Imbalance Charges, the parties shall determine the validity as well as the cause of such Imbalance Charges. Except as otherwise provided in Section 11.5, if the Imbalance Charges ~~could have~~ not ~~have~~ been avoided through a revision by Buyer or Seller of its nomination with the Transporter during the Nomination Change Period, then the party whose actions or inactions resulted in the Imbalance Charges (which shall include, but shall not be limited to, failure to accept or deliver quantities of Gas equal to the Scheduled Gas) shall pay for such Imbalance Charges, or reimburse the other party for those Imbalance Charges paid by such other party.

## SECTION 11 - FORCE MAJEURE

11.1 Except with regard to a party’s obligation to make payment due under the Contract, neither party shall be liable to the other for failure to perform a Firm obligation, to the extent such performance is prevented by a Force Majeure Event.

The parties have selected either “Option A” or “Option B” as indicated on the Base Contract.
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Option A:
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11.2.a “Force ~~Majeure~~ Majeure Event” means any event not reasonably within the control of the party claiming a suspension of its obligations (the “Claiming Party”) which event prevents or restricts delivery by Seller or receipt by Buyer, as applicable, of Gas, including but not limited to the following events: (i) physical events such as acts of God; landslides; lightning; earthquakes; fires; storms or storm warnings, such as hurricanes, resulting in evacuation of the affected area; floods; washouts; explosions; breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather-related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption or curtailment of firm transportation or storage by Transporters or storage operators; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, terrorist acts, insurrections or wars; or (v) compliance with any court order, law, statute, ordinance, or regulation promulgated by a governmental authority having jurisdiction.

Option B:

11.2.b

(1) If the Delivery Point is NIT, this subsection (1) of Subsection 11.2.b applies. “Force ~~Majeure~~ Majeure Event” means only an interruption, curtailment or pro-rationing by NOVA of firm NIT service which affects all NOVA shippers who had nominated for firm deliveries or firm receipts to take place by NIT on that Day. On any Day or any portion of a Day when there is a Force Majeure Event and either party provides Notice of the Force Majeure Event to the other, Seller shall deliver to Buyer, and Buyer shall receive from Seller, that percentage of the Contract Quantity which is equal to the percentage amount of Gas which according to NOVA has been nominated by all NOVA shippers for NIT and which NOVA is not interrupting, curtailing or pro-rationing on the Day or that portion of a Day.

(2) If the Delivery Point is a “Liquid Delivery Point” as expressly identified by the parties on the Cover Sheet, a Transaction Confirmation or in the Special Provisions, this subsection (2) of Subsection 11.2.b applies. “Force ~~Majeure~~ Majeure Event” is restricted to mean any one or more of the following events which prevents or restricts delivery by Seller or receipt by Buyer, as applicable, of Gas at a Delivery Point: (i) an interruption, curtailment, or pro-rationing by a Transporter of firm service at the Liquid Delivery Point, regardless of the reasons therefor, or (ii) compliance with any court order, law, statute, ordinance, or regulation promulgated by a governmental authority having jurisdiction. If the parties have not expressly identified any Liquid Delivery Points in accordance with this subsection (2), then this subsection (2) shall not apply.

(3) If the Delivery Point is other than NIT or a Liquid Delivery Point (if applicable), then this Subsection (3) of Subsection 11.2.b applies. “Force ~~Majeure~~ Majeure Event” means any event not reasonably within the control of the party claiming a suspension of its obligations (the “Claiming Party”) which event prevents or restricts delivery by Seller or receipt by Buyer, as applicable, of Gas, including but not limited to the following events: (i) physical events such as acts of God; landslides; lightning; earthquakes; fires; storms or storm warnings, such as hurricanes, resulting in evacuation of the affected area; floods; washouts; explosions; breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather-related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption or curtailment of firm transportation or storage by Transporters or storage operators; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, terrorist acts, insurrections or wars; or (v) compliance with any court order, law, statute, ordinance, or regulation promulgated by a governmental authority having jurisdiction.

11.3 This Section 11.3 applies only when subsection 11.2.a has been elected by the parties and in the case when subsection 11.2.b has been elected by the parties, where Subsection (3) thereof is applicable. Neither party shall be entitled to the benefit of the provisions of Section 11 to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of interruptible or secondary firm transportation unless primary, in path, firm transportation is also curtailed; (ii) the Claiming Party having failed to avoid the adverse implications, or to remedy the condition in accordance with Section 11.4 and to resume the performance of such covenants or obligations with reasonable dispatch, or to provide timely notification in accordance with Section 11.5; (iii) economic hardship, which shall include but not be limited to, lack of finances; (iv) Seller's ability to sell Gas at a higher or more advantageous price than the Contract Price, Buyer's ability to purchase Gas at a lower or more advantageous price than the Contract Price, or a regulatory agency disallowing, in whole or in part, the pass-through of costs resulting from this Contract; or (v) scheduled maintenance by a Transporter or storage operator, provided that notice of such scheduled maintenance has been provided by such Transporter or storage operator at or prior to the time the parties entered into the Transaction.

11.4 The Claiming Party shall make commercially reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the [eForce Majeure Event](#) once it has occurred in order to resume performance; provided, however, the parties agree that nothing contained in this Section 11 shall require: (i) the settlement of strikes, lockouts or other industrial disturbances except in the sole discretion of the party experiencing such disturbance; (ii) the extension of the Delivery Period of any Transaction (iii) the parties to make up any quantity of Gas they would otherwise have been obligated to sell and purchase during any period when Force Majeure was validly claimed; (iv) Seller to deliver, or Buyer to receive, the Gas at a point other than the Delivery Point; or (v) Seller to purchase replacement Gas at a price greater than the Contract Price.

11.5 The Claiming Party must provide notification, as soon as reasonably possible, to the other party of the occurrence of the Force Majeure [Event](#). Initial notification may be given orally; however, Notice with reasonably full particulars of the [eForce Majeure Event or occurrence](#) is required as soon as reasonably possible. Notwithstanding Section 9, the Notice shall be deemed effective at the onset of the occurrence of the Force Majeure [Event](#) and the Claiming Party will be relieved of its obligation to make or accept delivery of Gas, as applicable, to the extent and for the duration of Force Majeure. During the period of Force Majeure, the Claiming Party shall be responsible for any Imbalance Charges arising from the interruption or curtailment of Firm deliveries or receipts due to the Force Majeure which (i) Claiming Party incurs, or (ii) the other party incurs during the period of the Force Majeure and which the other party could not reasonably avoid by changing its nomination for deliveries or receipts with its Transporter within the Nomination Change Period. ~~After the Nomination Change Period, responsibility for any Imbalance Charges incurred while the Force Majeure continues shall be allocated in accordance with Section 4.3.~~

11.6 If a Force Majeure [Event](#) only partially affects the Claiming Party's ability to perform its purchase or sale obligations at a Delivery Point, the Claiming Party shall curtail its interruptible obligations at such Delivery Point to the extent required to meet its Firm obligations under this Contract. If, after completely curtailing all of its interruptible obligations, the Claiming Party is still unable to meet its Firm obligations under this Contract, then such affected party may, to the extent permitted by the applicable Transporter(s), reduce its Firm obligations under this Contract by the same percentage that all of its other firm obligations at the Delivery Point are reduced, without regard to the price paid under any transaction between the Claiming Party and the other firm customers or suppliers, as applicable, of the Claiming Party.

**Responsibility for Imbalance Charges - Section 11.5**

Prior to FM

FM Occurs

Notification Change Period

FM Ends

Section 4.3	Claiming Party	Notice Provided	See Below	Section 4.3
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