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.

MISCELLANEOUS SUBCOMMITTEE - SECTION 3.2(iii) RESPONSES
Summarized February 4, 2005

At the January 27, 2005, Committee of the Whole meeting, it was decided to seek "qualitative" Miscellaneous Subcommittee input by email response, on the language for Section 3.2(iii). The following responses have been received, and are being circulated to the Miscellaneous Subcommittee and the New GasEDI Base Contract Chairs, without comment.

JannaLyn Allen, Cinergy Canada / Cinergy Marketing & Trading, LP

First, on February 2, 2005, Cinergy revised its proposed Cover Standard language to the following (which revised proposed language is being circulated now for the first time):

"3.2 In addition to any liability for Imbalance Charges, which shall not be recovered' twice by the following remedy, subject to Section 10.5, the exclusive and sole remedy of the parties in the event of a breach of a Firm obligation shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the positive difference, if any, between the purchase price paid by Buyer utilizing the Cover Standard for replacement Gas or alternative fuels and the Contract Price, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between (i) the Contract Quantity and (ii) the quantity actually delivered by Seller for such Day(s) less the amount, if any, that Buyer was unable to purchase from a third party for such day(s); or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in an amount equal to the positive difference, if any, between the Contract Price and the price received by Seller utilizing the Cover Standard for the resale of such Gas, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between (i) the Contract Quantity and (ii) the quantity actually taken by Buyer for such Day(s) less the amount, if any, that Buyer was unable to purchase from a third party for such day(s); or (iii) in the event that Buyer has used commercially reasonable efforts to replace Gas or Seller has used commercially reasonable efforts to sell Gas to a third party, and no such replacement or sale for all or any portion of the Gas is available, then in addition to (i) or (ii) above, as applicable, the sole and exclusive remedy of the non-breaching party with respect to that portion of the Gas for which no replacement or sale is available shall be an amount equal to any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the difference between the Contract Quantity minus the sum of (a) the quantity of Gas actually delivered by Seller and received by Buyer for such Day(s), plus (b) the quantity of Gas, if any, sold or purchased using the Cover Standard as provided in (i) or (ii) above, as applicable."

With respect to the changes proposed by Brent Molesky, I think it is a good idea to try to shorten or simplify the language. However, I think that it should read "the quantity of gas not delivered or received" rather than "the quantity of gas not taken or received" on the second and third lines. The other thing his proposal does not address is the adjustment for transportation, although I do not know whether the rest of the group would prefer to see that addressed.

The comments below are based on Cinergy's language as proposed on or about January 7, 2005, which language was included in the Requests for Response dated January 14, 2005 and January 28, 2005.

Mark McNevin, Talisman Energy Inc.

Ian, here is another possibility for 3.2(iii), with some wording cut out

"; and (iii) in the event that Buyer has used commercially reasonable efforts to replace Gas or Seller has used commercially reasonable efforts to sell Gas to a third party, and no such replacement or sale for all or any portion of the Gas is available, then in addition to (i) or (ii) above, as applicable, the sole and exclusive remedy of the Performing Party with respect to such quantity of the Gas for which no replacement or sale is available shall be an amount equal to any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by such quantity."

Son Tran, TransAlta Energy Marketing

We would prefer language that allows parties to partially cover their gas sales or buys in the event of nonperformance by the other party and then spot price for whatever portion they could not sell or buy. Our traders felt this would provide better flexibility and a fairer result.

Penny Allen, EnCana Gas Marketing

I have discussed Cinergy's suggestion with our accounting department and while they do not have a problem with the concept, they find the suggested redline language to be confusing and difficult to understand. A suggested compromise was to remove the duplicate words "sole and exclusive remedy" from item (iii) [which is at the beginning of paragraph 3.2] and add something like "; or (iv) a combination of (i) or (ii) and (iii) above, as applicable." Granted, they aren't lawyers but I tend to agree that such a concept is much easier to understand than the "sum of.....plus.......minus..." language.

Rosa McDonald, Imperial Oil Resources Limited

Ian, re Section 3.2(iii), I like the language (and concept) proposed by Cinergy and would also like to substitute Brent Molesky's language.

Kelli Grier, Petro-Canada

On behalf of the representatives to the Gas EDI 2004-2005 drafting committee from Petro-Canada, please accept our approval of the language proposed by Cinergy Canada for Section 3.2(iii) that was discussed in our January 13 meeting.

Sandra comments that this is what most parties do anyway. As such, we are in favour of making this practice express in the agreement.

Should you have questions, please don't hesitate to contact me directly.

Brent Molesky, Burlington Resources Canada Ltd.

Cinergy Proposal: I think it can be simplified. I don't think that you need the "multiplied by the difference ..." language in its entirety. You could instead state "multiplied by the difference between, as applicable (iii) the quantity of gas not taken or received; and (iv) the quantity of gas sold or purchased pursuant to (i) and (ii), above".

Diane Pettie, Sempra Energy Trading (Canada) Limited

On behalf of Sempra Energy Trading Corp., we have the following response to the Issues document: Section 3.2(iii) Cover Standard - We support the changes proposed by Cinergy.

Deanna Welch, ConocoPhillips Canada Limited

We do not agree to the proposed change and ask that Jannalyn provide a better explanation as to why Cinergy thinks it is necessary. We feel that it causes more confusion than anything.

FURTHER INFORMATION

Please contact Ian Anderson (403-243-1079, ian@isanderson.com) or Pat Butler; Coral Energy Canada Inc.; 403-216-3574; pbutler@coral-energy.com; or Son Tran; TransAlta Energy Marketing; 403-267-6940; Son_Tran@TransAlta.com, or visit GasEDI's web site (http://www.gasedi.ca) .