

# GasEDI

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

### Special Provisions by Party - Force Majeure - June 25, 2004

The following Special Provisions re Force Majeure were submitted for consideration:

#### Party A

##### Section 11 - FORCE MAJEURE

Section 11.3 is hereby amended by deleting subparagraph (iii) and adding the following subparagraphs at the end thereof:

"(iii) Seller's inability to obtain Gas supplies at a desirable or economic price; (iv) Buyer's inability to resell Gas supplies at a desirable or economic price; (v) depletion of Seller's gas supply and reserves; (vi) either party's inability to meet its financial obligations; (vii) either party's account balance with a Transporter prevents such party from performing its obligations under a Transaction; (viii) either party's inability to contract for and hold sufficient firm transportation or Seller's inability to contract for and hold processing capacity at Gas plants upstream of the Delivery Point; (ix) scheduled maintenance of the facilities required to produce, transport or process Gas upstream or downstream of the Delivery Point; or (x) if the Delivery Point is NOVA Inventory Transfer ("NIT"), Force Majeure is not deemed to have occurred unless there is an interruption, curtailment or prorationing by NOVA of NIT service, which affects all NOVA shippers who had nominated for deliveries or receipts to take place by NIT on the particular day."

Section 11.6 is hereby added to the Contract as follows:

11.6 "Notwithstanding anything to the contrary contained in this Section 11, if Force Majeure results in the partial curtailment of Seller's ability to deliver or Buyer's ability to receive Gas at the Delivery Point, then the party whose performance is prevented by Force Majeure may only reduce the quantity of Gas it is obligated to deliver or receive, as the case may be, by the same percentage that it reduces its other like and similar firm Transactions; provided that differences in contract price shall not be a consideration in determining "like and similar Transactions" at the Delivery Point for the applicable Day."

#### Party B

##### SECTION 11. FORCE MAJEURE

1. Section 11.2 - (1) insert "means any cause not reasonably within the control of the party claiming suspension and" following "Majeure" in the first line; and (2) delete the phrase "by Transporters" from clause (iii).

2. Section 11.3 - Delete the words "economic hardship" in (iii) and replace with the following:

"lack of funds, an unanticipated increase in Seller's cost of producing or Buyer's cost of acquiring Gas or Buyer's loss of markets for Gas."

## Party C

### Section 11 Force Majeure

15. Section 11.2 is amended by immediately before the word "interruption" in (iii), adding the following words; "where the Delivery Point is not a field processing facility", and after clause (v) ending with the words "having jurisdiction", adding the following:

", or (vi) where the Delivery Point is a field processing facility, interruption of firm gathering, processing, treating, compression or similar service; (vii) where the Delivery Point is a field processing facility (or at the outlet thereof) and such Delivery Point has multiple takeaway transporters, the failure, interruption or curtailment of all firm transportation by all takeaway transporters; or (viii) where the Delivery Point is a storage facility (or outlet thereof), the curtailment of all or a portion of firm storage service; provided that and only to the extent that, any Force Majeure event relied upon under this Section 11.2, directly prevents or restricts delivery by Seller or receipt by Buyer of Gas at the Delivery Point."

16. Section 11.3 is amended by adding the following after the words, "economic hardship":  
", to include, without limitation, lack of finances, 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; (iv) the loss of Buyer's market(s) or Buyer's inability to use or resell Gas purchased hereunder, except, in either case, as provided in Section 11.2; (v) the loss or failure of Seller's gas supply or depletion of reserves, except, in either case, as provided in Section 11.2; (vi) increases or decreases in Gas supply due to allocation or reallocation of production by well operators, pipelines, or other parties; (vii) unless the parties specifically agree that Gas is to be sourced from a specific individual well, the lack of pressure or failure of specific, individual wells or appurtenant facilities in the absence of a Force Majeure event broadly affecting other wells in the same geographic area."

17. Insert as Section 11.6 the following clause:

"11.6 Force Majeure shall not (i) require the parties to extend the term of any Transaction; (ii) require parties to make up any quantity of Gas they would otherwise have been obligated to sell and purchase during any period Force Majeure was validly claimed; or (iii) require Seller to deliver, or Buyer to receive, the Gas at points other than the Delivery Point."

18. Insert as Section 11.7 the following clause:

"11.7 If on any Day that Force Majeure partially restrains a party's ability to perform its Firm obligations for any Transaction at a Delivery Point and a party's ability to perform its Firm obligations to others under Transactions at the same Delivery Point, then all Firm obligations shall be reduced pro rata without regard to the price paid or received for Gas, prior to the affected party performing under any interruptible purchase or sale arrangement."

## Party D

### Section 11-Force Majeure

9. In Section 11.1, add the following sentence: "The term "Force Majeure" as employed herein means any cause not reasonably within the control of the party claiming suspension, as further defined in Section 11.2"

10. In Section 11.5, 4th line, add the words "from the onset of the Force Majeure event" after the words "the affected party will be relieved of its obligation,".

11. A new Section 11.6 is added to the Contract--"In the event of non-performance due to Force Majeure, the affected party shall, to the extent permitted by the Transporters, reduce Firm obligations to the other party at the affected Delivery Point by a percentage which shall not be more than the percentage of the total curtailment, and shall give firm obligations priority over all interruptible obligations."

12. A new Section 11.7 is added to the Contract--" If the Force Majeure is caused by a single event lasting a minimum two (2) consecutive Months, upon Notice either party may terminate the Transaction(s) affected by the Force Majeure; provided, however, that such Notice is received prior to the cessation of the Force Majeure."

## Party E

### Amendments To Section 11. Force Majeure

Section 11 is amended, in its entirety, to read as follows:

"11.1 Neither party shall be liable to the other, if a Force Majeure event occurs which prevents it from performing all or part of its Firm obligations under this Contract. Upon the party claiming Force Majeure (the "Claiming Party") giving Notice and full particulars of such Force Majeure event to the other party as soon as reasonably possible, (such Notice to be confirmed in writing), such obligations of the Claiming Party shall, to the extent that its performance is prevented by such Force Majeure event, be suspended for so long as such Force Majeure event prevents performance. Notwithstanding the foregoing, the obligation of either party to make payments when due under this Contract shall not be suspended and the Claiming Party shall not be excused from its responsibility for Imbalance Charges.

11.2 If the Delivery Point is NIT, this Section 11.2 shall apply. "Force Majeure" means only an interruption, curtailment or pro-rationing by NOVA Gas Transmission Ltd. ("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 that there is a Force Majeure and either party provides Notice of the Force Majeure 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 had 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 without regard to price.

11.3 If the Delivery Point is a Non-Liquid Delivery Point, this Section 11.3 shall apply. "Force Majeure" means any event beyond the reasonable control of the party invoking the provisions of this Section 11 including, without limitation, the following: (i) physical events such as acts of God, landslides, lightning,

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earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or unscheduled 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) any curtailment or interruption by a Transporter of firm service regardless of the reasons therefor; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, terrorism, sabotage, insurrections or wars; and (v) governmental actions such as the requirement to comply with any court order or any law, statute, regulation or authorization of a governmental authority having jurisdiction. "Non-Liquid Delivery Point" means a delivery point located at a producer's, processor's, distributor's or consumer's plant gate or a specified location on the gathering system for production from the wells in a particular geographic area.

11.4 If the Delivery Point is other than NIT or a Non-Liquid Delivery Point, this Section 11.4 shall apply. "Force Majeure" means only (i) a curtailment or interruption by a Transporter of firm service, regardless of the reasons therefor, and (ii) any governmental actions such as the requirement to comply with any court order or any law, statute, regulation or authorization of a governmental authority having jurisdiction.

11.5 "Force Majeure" does not include: (i) a lack of financial resources or available funds or similar financial predicament; (ii) any unanticipated increase in Seller's cost of Gas, inability of Seller to perform its obligations at a profit or any increase in the market price of Gas; (iii) Buyer's loss of markets, Buyer's inability to economically use Gas purchased under this Contract or any decrease in the market price of Gas; (iv) the curtailment of interruptible transportation service; (v) the failure of specific, individual wells or related facilities in the absence of a force majeure event broadly affecting other wells in the same geographic area; or (vi) a regulatory agency disallowing, in whole or in part, the pass through of costs resulting from this Contract.

11.6 Force Majeure shall not extend the term of any Transaction, or require the parties to make up any quantity of Gas they would otherwise have been obligated to sell and purchase during any period in which Force Majeure was validly claimed.

11.7 For an event of Force Majeure under Section 11.3(iv), the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be entirely within the sole discretion of the party experiencing such disturbances.

11.8 Seller and Buyer will make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence, once it has occurred, in order to resume performance. Notwithstanding anything to the contrary contained in this Section 11: (i) Seller shall not be obligated to deliver, and Buyer shall not be obligated to receive, Gas under this Contract at points other than the Delivery Point; (ii) if as a result of Force Majeure a party is prevented from delivering or receiving, as the case may be, only a portion of the Contract Quantity at the Delivery Point, then such party may only reduce the quantity of Gas it is obligated to deliver or receive, as the case may be, at the Delivery Point by the same percentage that it reduces its deliveries or receipts of Gas under firm transactions with all of its other customers at that Delivery Point for the applicable period regardless of the price paid hereunder or under firm transactions with other customers; and (iii) Force Majeure shall not extend the term of any transaction, or require a party to procure Gas from alternate sources of Gas or make up any quantity of Gas it would otherwise have been obligated to sell or purchase during any period in which Force Majeure was validly claimed."

No comments.

## **Party G**

No comments

## **Party H**

No comments

## **Party I**

No comments.

## **Party J**

### SECTION 11 - FORCE MAJEURE

26. Add the following new Section 11.6 at the end of Section 11:

"During an event of Force Majeure, the party whose performance is prevented by Force Majeure must cease interruptible deliveries to other markets, if it is Seller, and purchases from interruptible supply sources, if it is Buyer, prior to suspending the performance obligation under a Firm obligation in question. The party whose performance is prevented by Force Majeure then must treat the other party equitably with its other Firm deliverability based customers on a proportionate basis with regard to the remaining supply available for market, if it is Seller, and to remaining market availability, if it is Buyer."

## **Party K**

### SECTION 11 - FORCE MAJEURE

19. In Section 11.3 after "economic hardship", add the following subsection: or (iv) unless the Parties specifically agree that Gas transacted on a Firm basis is to be sourced from a specific individual well or field processing facility (or outlet), lack of pressure or failure of specific, individual wells or appurtenant facilities or such facility (or outlet) in the absence of a Force Majeure event broadly affecting other wells in the same geographic area.

20. Add the following section as Section 11.6: For clarity, Force Majeure shall not require the parties to: (i) extend the term of any Transaction; (ii) find alternate sources of Gas supply to make up any quantity of Gas they would otherwise have been obligated to sell and/or to purchase during any period in which Force Majeure was validly claimed; or (iii) deliver or receive the Gas at points other than the Delivery Point.

21. Add the following section as Section 11.7: "Notwithstanding anything to the contrary contained in this Section 11, if Force Majeure results in the partial curtailment of Seller's ability to deliver or Buyer's

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ability to receive Gas at the Delivery Point, then the party whose performance is prevented by Force Majeure may only reduce the quantity of Gas it is obligated to deliver or receive, as the case may be, by the same percentage that it reduces its other Firm Transactions at the Delivery Point for the applicable Day. All Interruptible Transactions will be reduced to zero."

## Party L

### SECTION 11 - FORCE MAJEURE

(a) Section 11.2 is deleted in its entirety and replaced with the following;

"11.2 "Force Majeure" means the occurrence of one or more of the following events beyond the control of a party, and which causes that party to fail to perform pursuant to one or more Transactions under the Contract:

- (i) interruption, curtailment or prorationing of firm transportation, storage, or both or either of them by a Transporter or storage operator, whether or not the Transporter or storage operator declares a force majeure in writing or otherwise in accordance with the provisions of any applicable transportation or storage capacity tariff, specific contractual right or general terms and conditions;
- (ii) the implementation of any court order, law, statute, ordinance, or regulation as issued by any court, tribunal, or governmental or regulatory authority having jurisdiction; or
- (iii) a claim in the nature of Subsection (i) or (ii) above made by a third party buyer or seller to a party under this Contract, to the extent the claim by that third party causes the party to this Contract to be unable to perform a Firm Transaction obligation hereunder."

(b) Section 11 is amended to add the following new Section:

"11.6 Seller and Buyer shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance. Without limiting the generality of the foregoing, if the Force Majeure event partially restrains one party from performing its delivery or receipt obligations under any Transaction at the specified Delivery Point, then the restrained party will continue to deliver to or receive from the other party, as the case may be, on a pro rata basis, as determined among the other party and all of the other firm customers of the restrained party transacting at the applicable Delivery Point. The pro rata determination specifically will have regard for the daily firm volumetric delivery obligations then owed to the other party and each other firm customer, but without regard to the price paid under any transaction by the other party and the other firm customers."

## Party M

### SECTION 11. FORCE MAJEURE

10. In Section 11.3, item (iii) after the words "economic hardship" add the following:

"including but not limited to, lack of funds, an unanticipated increase in Seller's cost of producing or Buyer's cost of acquiring Gas or Buyer's loss of markets for Gas."

11. Insert as Section 11.6 the following clause:

"11.6 If on any Day that Force Majeure partially restrains a party's ability to perform its Firm obligations for any Transaction at a Delivery Point and a party's ability to perform its Firm obligations to others under transactions at the same Delivery Point, the affected party shall, to the extent permitted by the Transporters, prorate all Firm obligations at the affected Delivery Point and shall give Firm obligations priority over all Interruptible obligations. Firm obligations shall be reduced pro rata without regard to the price paid or received for Gas, prior to the affected party performing under any interruptible purchase or sale arrangement."

## **Party N**

### Section 11 - Force Majeure

Section 11.1 is amended by adding the following new sentence:

"The term "Force Majeure" as used herein means any cause beyond the reasonable control of a party which prevents a party from performing a Firm obligation under the Contract."