

# History and Development of Standardized Natural Gas Contracts

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## Introduction

With the expiration of the Natural Gas Policy Act of 1978 in the mid-1980's, the natural gas market in the United States (and shortly afterwards Canada) began a process of deregulation which lasted into the 1990's. As this process unfolded, there was a marked shift in commercial activity as new participants entered the market as buyers, sellers and traders of natural gas. Because of these substantial changes, the historic participants in the market, primarily the pipeline companies, were forced to adapt to new ways of doing business. As pipeline companies exited the merchant function, and transformed into transport-only providers, contracting practices began to evolve. Market forces, particularly as they related to buying and selling natural gas, replaced regulatory policies as the dominant influence on the natural gas market. In her 1996 presentation to the 9<sup>th</sup> Annual Oil & Gas Law Institute, Carolyn S. Hazel of Conoco described the changes in the market as a revolution of the industry as follows:

“Until the mid-1980's, producers sold their natural gas production in the field under long term contracts with pipeline purchasers. Gas marketers were rare. This made the gas marketing business relatively simple and straightforward: negotiate one contract for each package of gas (usually a field or group of wells) every ten to twenty years, and sometimes an occasional surplus gas contract. Potential purchasers were limited to those with pipeline assets in the vicinity of the production. Beginning in 1983 to 1984, an

oversupply in the natural gas market and drastic changes in producer and interstate pipeline regulation combined to produce an active spot market. The repainted 1996 picture of gas marketing looks much different. Producers sell gas to marketers (who are often affiliates of producers or pipeline companies) or to local distribution companies or directly to end users. The gas sold by producers to marketers is resold to local distribution companies or end users. Over half of these sales have terms less than one year, and over a third have terms of one month or less. For each of these sales, someone (either the seller or the buyer or both) must arrange for transportation, pooling gas supply from several sources and balancing of over and under deliveries and receipts. Each of these commercial and operational arrangements requires separate contracts.” Carolyn Hazel’s conclusion to her presentation sums up the situation in 1996, “Considering the number of companies buying and selling gas each day and each month, it is reasonable to estimate that tens of thousands of spot transactions are concluded each month. Because of the extremely compressed negotiation time for these transactions, many (if not most) of these transactions are concluded with delinquent, inadequate, ambiguous or absent documentation. Further, the differences among the general terms and conditions in most contracts in use in today’s spot market are not substantive, but rather reflect different drafting styles and vocabularies. The differences in well drafted spot contracts very rarely have distinct commercial value and therefore do not deserve extensive negotiation. The industry would therefore be well served to embrace a standard form for the spot market business. The GISB standard contract offers a very workable, balanced solution to the current waste of time and

monies spent fitting antiquated contracting practices to a very new and different commercial reality.”

In the early 1990's, similar deregulation activities began to spread across the Atlantic and influenced changes in the British and European markets. North American companies as well as large British and European companies turned their focus on those markets in pursuit of similar opportunities that had been achieved in North America.

As the transition from a highly regulated market to an open access market unfolded, companies began to develop contracts that were more reflective of the current market and each company would develop a contract form that met their specific internal needs. As transactions were negotiated a discussion would ensue regarding whose contract would be utilized. Sometimes this “simple” process would lead to a negotiation lasting many months.

As a result of these developments, market participants began to investigate the possibility of developing an “industry standard” contract that would allow for more efficient execution of primarily short term transactions. By the mid-1990's groups of market participants in North America, from all sectors began meeting together with the idea of creating a “standard” agreement. Similar discussions for a Canadian standard agreement commenced in this same timeframe, as the Canadian natural gas market was experiencing the same market change dynamics.

This effort was significant for the industry as companies who routinely competed with each other on a day to day basis were working together to develop a model contract for the industry; a contract that would allow for expedited negotiations and clear understanding of the obligations of both parties to a transaction.

In the late 1990's the European market began to enter the early phases of an open market, and groups of market participants began to discuss the need to establish a standard contract from which to conduct its business. Market forces in Europe and Britain were similar to those in North America and there was a need to develop documents that allowed for a smooth transition to an open market.

In this paper, we will explore the issues facing these international markets, how the challenges to develop standardized contracts were approached and then discuss the evolution of the major standardized contracts in the physical natural gas markets. All of the standardized documents discussed in this report are related to the Physical natural gas market, and not to financial markets.

### **Formation of the Gas Industry Standards Board (GISB)**

In September of 1994 the Gas Industry Standards Board was established as an independent and voluntary North American organization. Its purpose was to develop and promote the use of business practices and related electronic communications standards designed to promote more competitive, efficient and reliable gas service. At the time of its establishment, the GISB had over 150 corporate members, a board of directors, an executive committee, an advisory committee and many other working committees and task forces.<sup>1</sup> In November 1994, Karyl M. Lawson, Assistant General Counsel of MidCon Gas Services Corporation, delivered a paper to the Federal Energy Bar Association describing current changes in the gas market and challenging the

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<sup>1</sup> NAESB Press Release Documents, [www.naesb.org](http://www.naesb.org)

industry to develop a standard gas sales and purchase contract form for use in the spot market.<sup>2</sup>

The effort to establish a standard contract intensified in 1995, when MidCon Gas Services circulated its draft contract to GISB members along with a survey form requesting the member companies' opinions regarding the need for a standard contract for use in electronic trading and the appropriateness of the MidCon form. The survey responses compiled in August 1995 showed general overwhelming support for GISB's development of a model gas sales contract.<sup>3</sup> Over the next several years, GISB began working on developing standardized contracts for the natural gas industry. In 1996, the GISB Base Contract For Short-Term Sale And Purchase Of Natural Gas was introduced. As implied by the name, transactions entered into under this contract were intended to be short term in nature.

Among the many reasons for the introduction of a "short term" standard agreement, the most important was that in the early stages of deregulation, the North American natural gas market had become very short term focused and very few long term transactions were contemplated or completed. The GISB contract was widely accepted in the industry, and the GISB organization continued to update its standard form to reflect the needs presented in the maturing natural gas market.

In October of 2001, GISB received accreditation as a Standards Development Organization by the American National Standards Institute (ANSI). This accreditation

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<sup>2</sup> "How and When to Use Gas Industry Standards Board (GISB) Contract For Short-Term Sales of Natural Gas", Origins of the GISB Standard Form Contract, Carolyn S. Hazel

<sup>3</sup> "How and When to Use Gas Industry Standards Board (GISB) Contract For Short-Term Sales of Natural Gas", Origins of the GISB Standard Form Contract, Carolyn S. Hazel

lent credibility to GISB as the developer of standards for the natural gas industry, and increased GISB's level of influence in the market.

In December of 2001, the North American Energy Standards Board (NAESB) was formed and took the place of GISB in the market. NAESB continues to update and improve the Standard Contract, and add new capabilities for participants utilizing the form. On April 23, 2002 NAESB introduced the newest version of its Standard Contract, including the ability to execute long term transactions.

In response to the North American nature of its standardized contracts, along with the use of its forms in the Canadian natural gas market, NAESB also produces a Canadian Addendum to the Standard Contract. This Addendum amends the NAESB Base Contract to conform to Canadian standards, including Canadian Index Pricing references, Currency, and Choice of Law, among others impacted by Canadian Law and custom. Additionally, NAESB also produces a Model Credit Support Addendum (CSA), along with a Model Credit Support Agreement User's Guide, which gives appropriate guidance on the use and administration of the credit provisions outlined in the CSA.

Copies of the Base Contract for Sale and Purchase of Natural Gas, (GISB and NAESB), the Model Credit Support Addendum and the CSA User's Guide are attached as Exhibits to this report.

## **Developing the Gas EDI Contract in Canada**

Following closely behind the effort to develop the GISB was the Canadian version of a Standard Contract. The Gas EDI was introduced in 1996, and contained many of the same provisions as the GISB and subsequently the NAESB Base Contract. The Gas EDI contract was viewed as necessary because of the differences between the Canadian and US natural gas markets. Attached as exhibits to this report is the most recent version of the Gas EDI Standard Contract, along with a June, 2001 presentation which provides a comparison of the 1996 GISB Base Contract and the Gas EDI Standard Contract.

## **Contracting in the European Market**

Though deregulation, termed “Liberalisation” in Europe has followed the North American markets, the progress and effort to open this very diverse market has been significant. The European Commission continues to make decisions and issue orders related to opening up the market to competition, not only in natural gas but for the electric generation market as well. Similar to the evolution of the market in North America, participants in Britain and Europe have come together to develop a standard contract for all of Europe. The issues with this market are very complex due to the existence of so many regulatory bodies.

In 1999, the European Federation of Energy Traders (EFET) was formed. Today, EFET’s membership includes 90 of the top energy market participants. EFET’s primary

role is to act as an advocate for the energy markets, and interact with the various regulators on decisions and rulings that impact the energy markets, with the goal of forming one energy market for Europe.

The natural gas market in Europe officially opened in August of 2000. With the opening of the market came the hope of providing all customers with the opportunity to have a choice of suppliers. The market in Europe is very complex, and yet the regulators continue to push forward in developing and opening up the market.

The development of standard contracts has also become a priority in the European market and EFET released its most recent Standard Contract in 2007. While the EFET document is much more voluminous than the versions from North America, the principles included within its framework are consistent.

A copy of the EFET “General Agreement” is attached as an exhibit to this report.

## **Transportation Agreements**

Transportation capacity is governed by strict regulations in nearly every market in the world. Regulators, charged with protecting the public interest along with those of market participants, commonly emphasize treating customers consistently and fairly. “Standard” contracts have not been developed in the US market. However, through detailed regulatory processes, the pipeline industry has been transformed to reflect the open market. Shippers negotiate transportation agreements on a bilateral basis with each pipeline company they work with. Nominations are executed directly with the pipeline company, and this is the case for all pipeline companies discussed in the report. In this sense, the system is “decentralized.”

As in Colombia, the majority of pipeline capacity in the North American and European markets is contracted on a firm basis. Interruptible capacity is available from time to time, and firm capacity is released periodically. Dispatch schedules have become more flexible as the market has opened up. Shippers who are holders of Firm capacity are allowed to deliver to alternate delivery points, if they have so elected in their firm agreements. Otherwise, these “diversions” are done on secondary firm, in most cases. Typically, this type of diversion or delivery to an alternate delivery point is allowed within the pipeline segment where firm capacity is held.

The transformation of the market has also included increased flexibility with regard to nominations and delivery of natural gas to markets. This is evidenced by more flexible nominations schedules, which allow for transportation customers to adjust deliveries multiple times in a twenty-four hour period. Following is a fairly typical nomination schedule from one of El Paso Corporation’s pipeline companies:

| Nomination Cycle | Nomination Deadline for Shippers/Poolers | Point Operator Confirmation Deadline | Receipt of Final Scheduled Quantities By Shippers and Point Operators | Effective Flow Time                  |
|------------------|--|--------------------------------------|---|--------------------------------------|
| Intraday 1       | 9:15 a.m. MT                             | 12:00 p.m. MT                        | 1:00 p.m. MT  | 4:00 p.m. MT<br>On the same gas day  |
| Timely           | 10:45 a.m. MT                            | 2:30 p.m. MT                         | 3:30 p.m. MT  | 8:00 a.m. MT<br>On the next gas day  |
| Intraday 2       | 4:15 p.m. MT                             | 7:00 p.m. MT                         | 8:00 p.m. MT  | 8:00 p.m. MT<br>On the same gas day  |
| Evening          | 5:15 p.m. MT                             | 8:00 p.m. MT                         | 9:00 p.m. MT  | 8:00 a.m. MT<br>On the next gas day  |
| Late Day Cycle 5 | 10:00 p.m. MT                            | 10:00 p.m. MT                        | 11:00 p.m. MT   | 12:00 a.m. MT<br>On the same gas day |
| Late Day Cycle 6 | 12:00 a.m. MT                            | 12:00 a.m. MT                        | 1:00 a.m. MT  | 2:00 a.m. MT<br>On the same gas day  |
| Late Day Cycle 7 | 2:00 a.m. MT                             | 2:00 a.m. MT                         | 3:00 a.m. MT  | 4:00 a.m. MT<br>On the same gas day  |

This nomination schedule provides flexibility to re-nominate gas supplies throughout the gas day. Attached to this report is a similar nomination schedule extracted from the Tariff of Transcontinental Gas Pipe Line Company, LLC.

Also attached are examples of transportation contracts that have been utilized in Canada. As with all of the pipelines discussed herein, the rates associated with the Union Gas contracts are strictly regulated by the National Energy Board of Canada.

Also attached to this report is a copy of the Interconnector (UK) Limited Standard Transportation Agreement Summary, which discusses the Standard Transportation Agreement for this pipeline company.

## Characteristics of Standardized Contracts

Standardized Contracts allow for predictable and consistent execution of transactions for the purchase and sale of natural gas. As discussed herein, there have been successful efforts to develop such contracts in large markets around the world. In this report, the focus has been on two of the most familiar standardized agreements, The NAESB Base Contract and the European Federation of Energy Traders' General Agreement. Following is a brief discussion and analysis of these two contract forms, highlighting the essential terms and conditions outlined in each.

### NAESB Base Contract

The NAESB Base Contract is very brief, but contains very specifically defined terms and obligations for Buyers and Sellers of natural gas. This Contract form is established specifically for physical transactions. The NAESB Base Contract Form is laid out in several parts, and is used as the basis for multiple transactions (Purchases or Sales) between the counterparties. Following is a description by section:

**The Base Contract for Sale and Purchase of Natural Gas** contains the Agreement between the parties to the contract, including:

- Name, Website, Tax Identification Number, Corporate Entity Designation (Corporation, Limited Partnership, LLP, LLC, Partnership or Other).
- The Contract also provides a space to identify a Guarantor, if applicable.
- Additional information on the cover sheet includes Contact Information for Commercial, Scheduling, Credit, Transaction Confirmations, Accounting

Information for invoicing, payments and settlements, Banking Information along with other payment information.

- Additionally, options are provided as to how transactions are to be acknowledged or documented, and the timing associated with confirmations.
- There are basic choices that are also made with regard to who will send the Confirmation, the choice of Performance Obligation to be utilized in transactions (Cover Standard or Spot Price Standard and what Index will be used for Spot Pricing
- There are also options for who is responsible for taxes, payment date and payment methodology
- Parties to the Base Contract may also choose options with regard to Netting of payment obligations (as the Basic Contract allows for Sales and Purchases).
- The parties may also determine whether there are Additional Events of Default to be included in the Contract, Early Termination Damages and Choice of Law.
- The parties also make the determination as to whether the contract is confidential.
- Lastly, the Base Contract contains an option to include Special Provisions and Addenda.

The purpose of these first two pages is to detail the basic business understanding between the parties, and how transactions between them will be

managed. The signatures of the parties are affixed to the Base Contract (first two pages).

Following the Base Contract for Sale and Purchase of Natural Gas are the **General Terms and Conditions** which contain the details of the commitments made by the parties. As mentioned in the discussion of the Base Contract above, there are many options that counterparties can choose from that represent the agreement. The definition, processes and procedures related to those selections is contained within the General Terms and Conditions. Following are descriptions of some of the key sections :

- **Section 1 Purpose and Procedures.** In the Basic Contract, the counterparties choose between “Oral” or “Written” Confirmations.
- **Section 3 Performance Obligation.** This is one of the key sections of the Base Contract as it defines the obligations of the parties when a breach of the agreement has occurred. The definition of “Cover Standard” or “Spot Price Standard” are critical in the event of any kind of breach of a transaction under the Contract. The “Cover Standard” provides that if either party fails to perform, the non-performing party will be required to pay the difference between the contract price and the price the other party pays or receives in the market. The “Spot Price” Standard has similar implications, but payment is dictated by an agreed-upon Index price. The Base Contract also allows the parties to choose an Alternative Damages calculation. The parties may also mutually choose to terminate the agreement.

- **Section 4 Transportation, Nominations, and Imbalances.** This section outlines the obligations and responsibilities of the parties with regard to delivery and receipt of gas, i.e. “Seller shall have the sole responsibility for transporting Gas to the Delivery Point(s). Buyer shall have the sole responsibility for transporting the Gas from the Delivery Point(s).” The section also discusses cooperation in coordinating nominations and the avoidance of Imbalance Penalties, and which party is responsible if such penalties are incurred.

Note: The Base Contract does not address transportation issues other than Imbalances and the responsibility for payment in the event of an Imbalance occurring.

- **Section 10 Financial Responsibility.** This section provides details relating to the Financial Security of the parties to the Agreement, the remedies for Default and Early Termination as a result of Default. It also give a detailed description of the calculation of damages as a result of Early Termination, and under what circumstances Early Termination Damages do not apply. This section of the General Terms and Conditions is important, particularly if the potential for financial hardship or failure is significant for one of the parties to the Agreement. The standard established in this language allows for timely reconciliation of damages if a breach or default occurs.
- **Section 11 Force Majeure.** The Force Majeure section of the NAESB Base Contract is very clear as to what events qualify as an excuse for non-

performance under the contract, and has been accepted as the Standard definition in the natural gas industry in North America.

- Following is the excerpted language for Section 11 of the NAESB Base Contract:

***“SECTION 11. FORCE MAJEURE***

11.1 Except with regard to a party's obligation to make payment(s) due under Section 7, Section 10.4, and Imbalance Charges under Section 4, neither party shall be liable to the other for failure to perform a Firm obligation, to the extent such failure was caused by Force Majeure. 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.

11.2 Force Majeure shall include, but not be limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result 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 and/or curtailment of Firm transportation and/or storage by Transporters; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars, or acts of terror; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction. 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.

11.3 Neither party shall be entitled to the benefit of the provisions of Force Majeure 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 party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship, to include, without limitation, 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; or (v) the loss or failure of Seller's gas supply or depletion of reserves, except, in either case, as provided in Section 11.2. The party claiming Force Majeure shall not be excused from its responsibility for Imbalance Charges.

11.4 Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the party experiencing such disturbance.

11.5 The party whose performance is prevented by Force Majeure must provide Notice to the other party. Initial Notice may be given orally; however, written Notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written Notice of Force Majeure to the other party, the affected party will be relieved of its obligation, from the onset of the Force Majeure event, to make or accept delivery of Gas, as applicable, to the extent and for the duration of Force Majeure, and neither party shall be deemed to have failed in such obligations to the other during such occurrence or event.

11.6 Notwithstanding Sections 11.2 and 11.3, the parties may agree to alternative Force Majeure provisions in a Transaction Confirmation executed in writing by both parties.”

While there is mention of natural events such as floods, hurricanes, freezing of wells, and breakage of equipment, there is no mention of Excusable Events or Scheduled

Maintenance in this language. It is important that market participants are clear in their understanding of what comprises an event of Force Majeure.

- **Transaction Confirmation.** As discussed earlier, the Base Contract is meant to be a general agreement that allows multiple transactions, either purchase or sale, to be executed between the parties. Key to the flexibility of the Contract is the Transaction Confirmation that accompanies the execution of every transaction under the Base Contract.
- This form designates the Buyer and Seller under the transaction, the Price and Volume agreed to, the Term of the transaction, whether the contract is Firm, Firm (Variable Quantity) or Interruptible, and specifies the Delivery Point(s).
- There is also a “Special Conditions” section of the Confirmation that allows the counterparties to memorialize any unique circumstances, requirements or conditions affecting the transaction. Issues such as diversions, redispach and others are managed through transportation companies and capacity controlled by the parties. However, there is clearly an allowance for alternate Delivery Points, which can be designated in the Confirmation.

Specific terms from the NAESB standard contract that should be included in this discussion are “Firm” and “Interruptible”.

### **The NAESB Base Contract defines “Firm” as follows:**

- 2.19.1 "Firm" shall mean that either party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure; provided, however, that during Force Majeure interruptions, the party invoking Force Majeure may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by the Transporter.

This definition represents the highest level of obligation in the North American gas market. The only excuse for non-performance is an event of Force Majeure. The “Firm” obligation has essentially eliminated the notion of Take or Pay in the market, and provided both physical and financial assurances of performance to buyers and sellers.

### **The NAESB Base Contract defines “interruptible” as follows:**

- 2.24 "Interruptible" shall mean that either party may interrupt its performance at any time for any reason, whether or not caused by an event of Force Majeure, with no liability, except such interrupting party may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by Transporter.

An “interruptible” transaction in North America is fully interruptible, without liability. This type of sales transaction allows market participants to sell excess gas on the market with the ability to curtail deliveries for any reason. If interruption occurs after a nomination is in place the interrupting party may be subject to imbalance penalties.

### **European Federation of Energy Traders (EFET) General Agreement Concerning the Delivery and Acceptance of Natural Gas**

Attached to this report is the 2007 version of the EFET General Agreement. This Agreement, while in general form different than the NAESB Base Contract, is very similar at its heart. The Agreement contains many of the same clauses and definitions

as does the NAESB Agreement and is intended to be a “Base” contract for multiple transactions effecting the physical delivery of natural gas. In addition to traditional sales and purchases, the EFET General Agreement is also used in the execution of “option” transactions between counterparties.

Following are key clauses in the EFET General Agreement:

- **Article 1 Purchase and Procedures.** “this General Agreement (which includes its Annexes and the election sheet (“Election Sheet”) governs all transactions the Parties shall enter into for the purchase, sale, delivery and acceptance of Natural Gas, including Options on the purchase, sale, delivery and acceptance of Natural Gas (each such transaction being an “Individual Contract”).
- **Article 4 Primary Obligations for Delivery and Acceptance of and Payment for Natural Gas.** This section covers the obligations of Buyer and seller to Schedule in accordance with the transaction in the correct timeframe and to deliver volume to the Delivery Point in accordance with the appropriate Applicable Code.
- **Section 7 Non-Performance Due to Force Majeure.** The General Agreement defines Force Majeure as follows:

“Unless otherwise specified in the election Sheet, for the purposes of the Agreement “Force majeure” means an occurrence beyond the reasonable control of the Party claiming Force majeure (the “Claiming Party”) which it could not reasonably have avoided or overcome and which makes it impossible for the Claiming Party to perform or procure performance of its delivery or acceptance obligations, including, but without limitation, due to one of the following:

  - (a) The failure of communications or computer systems of the relevant network Operator(s) which prevents the Claiming Party from performing its obligations of delivery or acceptance; or

- (b) The relevant Network's Operator failure to respond to all efforts by the Claiming Party to communicate with such Network Operator;

Provided that "Force majeure" shall not include any curtailment or interruption of transportation rights or any problem, occurrence or event affecting any relevant pipeline system unless this constitutes a Transportation Failure."

There is additional language covering Notification, Mitigation, Long Term Force majeure and Remedies.

- **Section 8 Remedies for Failure to Deliver or Accept the Contract Quantity.**
  - Paragraph 1. Underdelivery deals with situations where the responsible party delivers less than the Contract Quantity and establishes an obligation to replace the Defaulted Quantity
  - Paragraph 2. Underacceptance deals with the responsibilities of the Accepting Party to take all of the contracted supply and the consequences of not accepting that amount. This is in the form of penalties based on current market conditions.
  - Paragraph 3 Overdelivery deals with the circumstance where the seller has delivered more than the contract amount and violates the tolerance levels of the pipeline. In this case, the Seller will pay compensation for this violation of the contract.
  - Paragraph 4 Over Acceptance deals with the occurrence of a variation in quantity related to the Buyer accepting more than the contract quantity. In this event, the Buyer is required to replace the excess volume he has received from the Seller.

- **Section 17 Performance Assurance.**
  - Right to Require Performance Assurance. At any time when a Party believes in Good Faith that a Material Adverse Change has occurred in respect of the other Party, the Requesting Party shall be entitled to require, by written notice, that the other Party provide to it or increase in amount: (a) a Letter of Credit; (b) cash; or (c) other security (including a bank or parent guarantee), in a form, amount and from an entity which is reasonably acceptable to the Requesting Party (each a Performance Assurance). There is provision for Performance Assurance, along with other key issues, in the “Election Sheet to the General Agreement” which is included as an Addendum to the General Agreement. This Addendum is similar in nature to the Special Provisions which can be added to the NAESB Base Contract.

These key sections Of the EFET Gneral Agreement detail the commitments of the parties in much the same way as the NAESB Base Contract. Upon review of these Standard Documents, it is clear that they accomplish similar goals in these two developed markets. The obligations, commitments, performance expectations and penalties for non-performance are similar, and are in place to ensure performance on behalf of both parties to the contract.

## **Conclusion**

The practice of contracting for natural gas has taken many forms over the past fifteen years. What was once a tenuous exercise has been simplified through standardization of contracts in developing natural gas markets, particularly in North America and Europe. With simplified contracting practices in place, the North American and European markets have been able to shift the focus from time-consuming contract negotiations to executing more transactions. The process of achieving a true Standard Contract has not been easy, but has been of significant value to the market and its participants. As the market continues to change, so has the Standard Contract; growing to reflect changing circumstances related to energy commerce.