**From:** Jarvis, Jeff - Encana
**Sent:** Friday, March 09, 2012 11:10 AM
**To:** naesb
**Cc:** Veronica Thomason; Sappenfield, Keith
**Subject:** GAPA Comments

NAESB

I have concerns about the proposed language drafted by NAESB regarding the GAPA.  Section 17.3 states the following:

"17.3.   Except as otherwise noted, the effective date and substance of the provisions listed in Section 17.2 shall be the date/substance of the provision incorporated in a party’s Federal Government contract or Federal Lease."

Question #1:

            Party A is selling gas to the Federal Government under a NAESB Base Contact where the initial service started January 1, 2010.

            Party A enters into a NAESB Base Contact with a GAPA with Party B where Party B sells gas to Party A and the date of the NAESB Base Contact is January 1, 2011.  First deliveries from Party B to Party A are February 1, 2011.

            Section 17.3 of the GAPA requires that Party B's sale to Party A under the GAPA is effective January 1, 2010 and not the date of Party A's and Party B's NAESB Base Contract dated January 1, 2011, thus retroactively requiring Party B to comply with the GAPA Federal Government requirements.  This could be problematic for Party B for many reasons.  What would happen if Party B either by omission or mistake or lack of a requirement did not comply with such provisions prior to February 1, 2011?  What would happen if the Party A’s contract with a governmental entity preexisted the date Party B was even in business?

Question #2:

            I believe it is also problematic to have Party B (in the above example) agree to be bound by Party A’s substantive language listed in Section 17.2 with a governmental entity without Party B reviewing what those substantive provisions are.  Is Party A contemplating allowing Party B to review the specific language contained in Party A’s contract with its governmental entity?  If not, I am not sure why Party B would agree to be bound by such provisions.

I suggest that the effective date of such provisions not be retroactive and not incorporate the substantive language by reference.  To the extent that the substantive language contained in Party A’s contract with the governmental entity is not contained in the GAPA, it should be added perhaps as additional provisions.

Regards,

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