

BOOK REVIEW

THE GAS SELLER'S COMPANION: A PRACTICAL GUIDE TO GAS CONTRACTS by William D. Watson (PennWell Books, 1992).

Reviewed by *Kristine L. Delkus**

This book is a clear and concise primer on natural gas contracting for both sellers and buyers. It provides the beginner with a comprehensive overview of the nuts and bolts of creating an enforceable contract that accurately reflects the deal struck. Although its focus is the neophyte, this book may also be useful to the more experienced practitioner as a basic checklist.

Only 197 large-print pages, the book's eleven chapters are comprehensive and generally well laid out. It starts with an overview of the history of the natural gas industry and the nature of gas markets. The introductory materials are followed by a hodge-podge chapter, entitled "The Law and Lawyers," that covers the Uniform Commercial Code, contract law traps, settlement agreements, and dealing with lawyers. This chapter seems vaguely out of place and is probably more useful to the reader as an endpoint rather than a beginning. The book then turns to a discussion that progresses from describing the players in the gas business, the types of gas contracts, the elements of a gas contract, the fundamentals of making a good deal, turning that deal into a contract (with a useful contract review checklist) to contract enforcement. A separate chapter is devoted to short-term contracts and a glossary of natural gas terms is provided. The discussion tends to be repetitive, but on the whole, an easy read.

The book's advice is basic: "Simple declarative sentences in an active voice are the ideal building blocks for a contract. . . If you negotiate your deal with enforcement in mind, you have a better chance of getting an enforceable contract. . . If you want to make an enforceable deal, keep it simple. . . Deals that seem too good to be true probably are. . . Signing a contract you don't understand is like marrying someone you don't know. . . ." He suggests that contracts be negotiated, drafted and reviewed using an effective "who, what, when, where, why and how" approach. Simple stuff, but these are fundamentals that even the experienced practitioner needs to be reminded of in an age of increasingly creative gas contracting.

The author, an attorney with more than 20 years experience in natural gas contracting for gas producers, voices some strong opinions. That this book is written, as its title indicates, with the gas seller in mind comes through repeatedly in a way that can be jarring to the party on the other side of the negotiating table. The theme of the introductory overview is that, historically, contracts were written to protect the buyer and that the buyer had no qualms about walking away from a deal when it suited him. This perspective perme-

* Associate, Morgan, Lewis & Bockius, Washington, D.C.

ates the balance of the book leading to characterizations like: "Each month your buyer will decide how much gas to take and how much to pay for last month's deliveries, and you will decide whether to sue or not"¹ Watson's apparent view that buyers will walk from a deal whenever possible can be unsettling to the reader.

Watson also exhibits a bias against contracting with regulated entities. In a section entitled "Pick the Right Buyer", the regulated buyer is described as "always hav[ing] at least one more reason than an unregulated buyer for not performing your contract."² He explains that in regulatory proceedings "the idea of a strictly enforceable contract is an alien concept" and that the "regulated buyer may eventually stop performing your contract just to avoid the irritation of explaining it."³ The message is clear — avoid regulated buyers.

Nevertheless, this heavy-handed view does not detract from the basic message of the book — a message equally important to buyers as well as sellers — that there is an advantage to drafting the contract yourself rather than responding to the other party's contract and that contracts should always be drafted with enforcement in mind.

The book's biggest failing is its lack of any real discussion of transportation and the allocation of transportation risk in today's markets. Passing references to transportation issues are scattered throughout the book. Watson recommends that a producer be familiar with regulations applicable to natural gas transportation and pipeline dispatching requirements with its attendant penalties. The seller is advised to fully investigate the circumstances under which the buyer's transportation can be interrupted or discontinued. But that gives short shrift to a factor that can seriously affect both the mechanics and the economics of a deal. Buyers and sellers alike need to fully understand, and address in their contracts, how the gas will move from the wellhead to its ultimate market and the impact that changes in transportation will have on the sale. A more extensive discussion of this issue in a consolidated, separate section or chapter would have been useful.

The reader of this book will not walk away a skilled negotiator or drafter of natural gas contracts. He or she will, however, be armed with the fundamentals of effective contracting. It is also a useful "back to basics" text for all sellers and buyers of gas as well as for their lawyers.

1. WATSON, W., *THE GAS SELLERS COMPANION: A PRACTICAL GUIDE TO GAS CONTRACTS* 10 (1992).

2. *Id.* at 109.

3. *Id.*