

Whitman Breed Abbott & Morgan llp

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New York
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June 10, 1999

VIA FACSIMILE

Will J. Johnson
President
Visage Energy Corp.
6345 Green Valley Circle
Suite 216
Culver City, California 90230

Re: Funds Transfer Agreement

Dear Will:

This letter is written with respect to the arrangement Visage Energy Corp. ("Visage") has with its suppliers, the repurchasers of its product, and Union Bank of California (the "Bank"), whereby the Bank handles transfers of funds for the purchase and sale of natural gas. You have asked us to evaluate the risk that, in the event of a bankruptcy by Visage, funds subject to the arrangement would be part of Visage's bankruptcy estate, and the gas supplier would not be paid. The following analysis responds to this request. Please note that this letter and the analysis contained herein is furnished to you solely for your benefit, and is not to be relied upon by any other person or entity.

Our analysis is based on the following facts and assumptions. Visage purchases natural gas from suppliers (the "Supplier(s)") and markets and resells the gas to third parties (the "Repurchaser(s)"). A portion of the consideration paid to Visage by the Repurchaser is paid to the Supplier, and the balance is retained by Visage as its profit on the sale. As part of the transaction the parties enter into two agreements with the Bank. First, a Model Funds Transfer Agent Agreement (an "Agreement") is entered into among Visage, the Bank, and the Supplier. Under the Agreement, when Visage and the Supplier strike a deal, the parties notify the Bank, and the Bank confirms the transaction and agrees that it shall make payment to the Supplier from funds received from Visage's Repurchaser. A second Agreement is entered into among Visage, the Bank, and the Repurchaser, in which the Repurchaser agrees to pay for the

goods by depositing the purchase price with the Bank. The Bank agrees that, for the benefit of visage, it will utilize funds received to pay the Supplier. At the time of the sale, the Repurchaser wires funds to a Bank Control Account maintained at the Bank. On the next business day after receiving the funds the Bank (1) wires to the Supplier its purchase price, and (2) remits the balance remaining after this payment to Visage.

The Bank Control Account is a type of account having certain characteristics. According to internal Bank documents, funds deposited into the account are held for a specific purpose and disbursements are controlled by the Bank. The only authorized signatories on the account are Bank officers, and the Bank is only authorized to disburse the funds in accordance with the applicable Agreements. At no time does Visage have control over funds in the account intended for the Supplier. The Bank's written instructions for opening a Bank Control Account state that the Bank's name must appear in the account title, and give the following example: "ABC Co., Union Bank of California Control Account, Trustee." In the case of the Bank Control Account established for Visage, the account is variously titled "Union Bank of California as Transfer Agent for Visage Energy Corp." (in the Bank-Depositor Agreement) and "Visage Energy Corp, Union Bank of California NA Ttee, Control Account" (on Bank statements).

As noted above, under the Agreements, the funds the Bank receives from the Repurchaser are disbursed on the next business day. Thus, any funds received are in the Account for only one day. Nevertheless, from time to time Suppliers have expressed concern that in the event Visage were to file bankruptcy the same day funds are deposited into the Account by a Repurchaser, the funds would be part of Visage's bankruptcy estate, and the Supplier would not be paid. You have asked us to evaluate the likelihood of this occurring.

Property held in trust by a bankruptcy debtor for another is not property of the debtor's bankruptcy estate available for use by the debtor or distribution to creditors. In our view, there is a substantial likelihood that a court would find that the Agreements and Bank Control Account (collectively, the "FTA") create a trust, that Visage holds a portion of funds deposited into the Bank Control Account as trustee for the benefit of the Supplier, and that the Supplier's beneficial interest in, and right to, the funds would be undisturbed by a bankruptcy of Visage.

The four essential elements of a trust are (a) a trust property, (b) a trust purpose, (c) one or more beneficiaries, and (d) the intention to create a trust. The FTA seems to satisfy each of the four requirements. First, the funds deposited into the Bank Control Account undoubtedly qualify as

trust property. Second, the purpose of the trust can be defined as to give the Supplier an immediate beneficial interest in the funds, thereby eliminating the step of having legal and equitable title vest simultaneously in Visage. Third, it is not difficult to identify the Supplier as a beneficiary of the arrangement.

Finally, the FTA indicates the parties' intention to create a trust. Although the FTA does not explicitly state that the deposited funds are held in trust, it appears that the transaction is structured as it is in order to give the Supplier an interest in the funds from the moment they are deposited. The Repurchaser deposits the funds with the explicit understanding that a portion of the funds are intended for the Supplier. Visage also has this understanding, and essentially disclaims any beneficial interest in funds intended for the Supplier. The Supplier clearly expects to have an interest in, or right to, the funds from the moment the deposit is made. The role of the Bank as transfer agent can be viewed as a mechanism for assuring the Supplier that Visage will act in accordance with its duty as trustee to disburse the funds to the Supplier. This is accomplished by Visage irrevocably instructing the Bank, as its agent, to disburse a specific portion of the funds to the Supplier.

Aside from the overall expectations of the parties, specific provisions and references in the documents establishing the Bank Control Account also indicate the intention of Visage to create a trust. For example, the account is variously titled "Visage Energy Corp., Union Bank of California NA TTEE" (on the bank statements) and "UB CL -- Union Bank as Transfer Agent for Visage Energy Corp." (on the Bank-Depositor Agreement). In addition, the only authorized signatories on the account are officers of the Bank, and the Bank acknowledges that funds deposited are held for a specific purpose. The Bank also has instructed its officers that it is appropriate for a Bank Control Account to reflect the Bank as trustee.

Because of references to the Bank as trustee, a case may also be advanced that the FTA creates a trust having the Bank - rather than Visage -- as trustee. However, neither the Supplier nor the Repurchaser are privy to these references. In addition, the Agreements include a provision whereby the parties specifically appoint the Bank as their agent, and consistently refer to the Bank as an agent. It is our view that the references to the Bank as a trustee in the Bank's internal documents, and in documents to which only Visage is privy, are not likely to overcome the intention expressed in the Agreements that the Bank is acting merely as an agent.

There are additional doctrines that could be employed to preserve the right of the Supplier to claim funds on deposit in

the account. However, we view the trust theory outlined above as the most straightforward.

The FTA nowhere states explicitly that funds received are held in trust for the Supplier, leaving the door open to arguments that there was no intention to create a trust. The parties, who are experienced in business, could have plainly and forthrightly stated their intention to create a trust. The fact that they did not do so would lend support to the conclusion that a trust relationship was not intended. However, to the extent there is any doubt regarding the parties, intention, the Agreements could be modified to expressly state that the funds deposited by the Repurchaser are held (albeit for one day only) by Visage in trust for the benefit of the Supplier. This would remove any uncertainty and enhance the likelihood of a court finding the existence of a trust, without altering the economics or essence of the transaction. For example, a sentence could be added to Section 3.1 that reads, "Funds received from the Buyer's repurchaser shall be held in trust by the Buyer for the benefit of the Seller to the extent of the purchase price owing from the Buyer to the Seller."

Please call if you have any questions, or wish to discuss the foregoing.

Very truly yours,



Maita Deal Prout

: MDP

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New York
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Palm Beach

June 30, 1999

VIA FACSIMILE

Will J. Johnson
President
Visage Energy Corp.
6345 Green Valley Circle
Suite 216
Culver City, California 90230

Re: Funds Transfer Agreement

Dear Will:

It was disappointing to learn that you are still having a hard time convincing your suppliers that, if Visage Energy filed a bankruptcy, the suppliers are protected against having those funds in the Bank Control Account which are intended for them drawn into Visage's bankruptcy estate. I am surprised that they apparently are not even willing to discuss modification of the terms of the Funds Transfer Agreement and Bank Control Account to tighten the existing protections. Section 541 of the Bankruptcy Code, and cases decided under this Section, unambiguously provide that property held in trust by the debtor for another is not property of the debtor's bankruptcy estate. In fact, we are unaware of a case where a court has found that property held by a debtor in trust is available for use by the debtor or a bankruptcy trustee. If the Bank Control Account and Funds Transfer Agreements are revised to expressly provide that the purchase price, when deposited into the Bank Control Account, is held by Visage Energy in trust for the supplier, there should be no credible legal theory by which the funds could be characterized as property of Visage's bankruptcy estate.

This letter and the above analysis are furnished to you solely for your benefit, and are not to be relied upon by any other person or entity. However, I would be available to discuss with your suppliers or their counsel the theory they believe would permit the funds in question to be pulled into Visage's bankruptcy estate. If there is a particular case that raises concerns we would be happy to review it,

Will J. Johnson

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June 30, 1999

and see if there is a way to structure the transaction to address any risks the suppliers believe the case presents.

Please call if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Maita Deal Prout', with a stylized flourish at the end.

Maita Deal Prout

: MDP

Law Offices

HOLLAND & KNIGHT LLP

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September 26, 2001

MAITA DEAL PROUT
213-896-2447

Internet Address:
mprout@hldaw.com

Will Johnson
Visage Energy Corp.
6345 Green Valley Circle
Suite 216
Culver City, California 90230

Re: Funds Transfer Agreement

Dear Will:

This letter is a follow up to Whitman Breed Abbott & Morgan's letter to you of June 10, 1999, addressing the bankruptcy concerns relating to the arrangement Visage Energy Corp. ("Visage") has with its suppliers, the repurchasers, of its product, and Union Bank of California (the "Bank"), whereby funds for the purchase and sale of natural gas are handled through an account maintained at Union Bank. You have asked whether, in connection with one or more specific transactions under the arrangement that Visage may enter into in the future, Holland & Knight LLP can issue an opinion along the lines of Whitman Breed Abbott & Morgan's letter.

As a preliminary matter, I note that at such time as a specific transaction is contemplated we would only be able to issue an opinion if we are retained, and if it would not be a conflict of interest for Holland & Knight LLP (or waivers of any conflicts were obtained). Assuming there is no conflict, Holland & Knight LLP would be capable of opining on the likelihood, in the event of a bankruptcy of Visage, of funds in the account being determined to be property of Visage's bankruptcy estate. Of course, we would need to review the underlying transaction documents and other relevant facts, and confirm the status of the law at the time. Based on the status of the law today, we would expect that if the parties document their intention that funds on deposit are held in trust for the benefit of

Will J. Johnson
Visage Energy Corp.
September 26, 2001
Page 2

the party supplying product to Visage, and there is no commingling of funds from other sources in the account, that we would conclude that a court would find the funds are not property of Visage's bankruptcy estate. We must emphasize, however, that the language of the documents would need to be examined, any other relevant facts (such as whether funds of more than one supplier are commingled in the account) would need to be considered, and the law as in effect on the date of the opinion applied. While we do not foresee a major change in the law, the law in effect at the time is determinative of the conclusions in any opinion.

Also enclosed for your information are some materials about Holland & Knight LLP. As you can see, we have a broad based business practice, with expertise in many areas of the law.

Please let me know if you have any questions.

Very truly yours,

HOLLAND & KNIGHT LLP

A handwritten signature in black ink, appearing to read "Maita Deal Prout". The signature is fluid and cursive, with a horizontal line at the end.

Maita Deal Prout

**UNION
BANK OF
CALIFORNIA**

FAX TRANSMISSION

ENERGY CAPITAL SERVICES
445 SOUTH FIGUEROA STREET
LOS ANGELES, CA 90071-1602
FAX: (213) 236-4096

DATE: May 10, 1999

3 pages (including cover sheet)

TO: Will Johnson
Visage Energy Corp.

PHONE NO: (310) 216-6887

FAX NO: (310) 645-7720

SUBJECT: FTA AGREEMENT/UNION BANK CONTROL ACCOUNT

Dear Will:

Attached is our an excerpt from Union Bank of California's Operations Policy Manual. The subject matter concerns Bank Control Accounts.

Bank Control Accounts are an integral pan of the Funds Transfer Agent Agreement structure. We titled the accounts as follows:

Union Bank Control Account - (Marketer's corporate name]

The account carries the tax i.d. number of the Marketer. Collected balances from both the Control Account and the Operating Account of the Marketer are monitored by our Account Analysis Department and set against monthly service charges.

We require (2) authorized signers (the authorized signers must be bank officers), both of which must be officers from the Energy Capital Services Department.

The only transactions that take place are:

- 1) Incoming wire from Purchaser in payment for delivered natural gas (credit) per a matched transaction;
- 2) Next business day, outgoing wire to Supplier (per invoice for matched transaction) (debit); and then,
- 3) Transfer of net funds, after invoice is paid, from the Control Account to the Operating Account of the Marketer (debit).

The Control Account remains at a zero balance for the balance of the month.

Should you have any questions, please contact my office or, in my absence, please contact Patricia Gonzales, AVP at (213) 236-6199.

Thank you.



Yolande C. Hollis, VP
(213) 236-5130