



MEMORANDUM

TO: Rae McQuade
FROM: Abby Snyder
SUBJECT: Funds Transfer Agent Agreement
DATE: June 7, 2002

SAN DIEGO GAS & ELECTRIC COMPANY COMMENTS TO THE FUNDS TRANSFER AGENT AGREEMENT

The following are San Diego Gas & Electric Company's (SDG&E) comments to the Funds Transfer Agent Agreement ("FTA Agreement"):

- 1. Bankruptcy:** The FTA Agreement appears to attempt to provide some limited bankruptcy protection to Producers if a WMBE Marketer goes bankrupt and a Buyer has already paid funds into the WMBE account. This assumes that the WMBE account is separated from other accounts (not commingled with other funds) and that the account is deemed to be held "in trust" by the bank (even though the Bank has waived any fiduciary duty in Section 1.3 of the FTA Agreement). The FTA Agreement does not provide bankruptcy protection to Buyers if the gas is not delivered and the Buyer is owed money after finding replacement gas. The FTA Agreement does not provide bankruptcy protection to Producers if the Buyer does not pay into the WMBE account. SDG&E recommends adding greater bankruptcy protections or further discussions on this issue so that parties are not mistaken with regard to the extent of the bankruptcy protections provided by the FTA Agreement.
- 2. Option of Repurchaser:** Section 5 of the Special Provision to the NAESB Base Contract for Sale and Purchase of Natural Gas states that Repurchasers have the power to specify the names of suppliers authorized to supply the Gas to Marketer. This passes risk to Marketers because they cannot pick their suppliers. This may be an acceptable risk, but it does make the agreement one-sided in this respect. Perhaps mutual agreement of the suppliers would make the FTA Agreement more widely acceptable to the industry.
- 3. Payments:** Payment from the Buyer to the bank account occurs on or about the 25th day of the month following the month of delivery. Changing the payment time from 25 days to 10 days could reduce credit risk.