

Subj: **FW: Request for Comments - NAESB WEQ Funds Transfer Agent Agreement**
Date: 4/27/03 12:42:10 AM Central Daylight Time
From: Will Johnson - Visage

Sent from the Internet ([Details](#))

Rae,

I read the Conectiv Energy comments and deduced that there could be some confusion because of a lack of a basic understanding of the underlying feature of the FTAA. Therefore, in an effort to describe the underlying structure of the FTAA concept, it might prove helpful to review the attached FTAA Summary. Although this summary describes a natural gas transaction, it is essentially the same structure which we hope to utilize in the power sector and therefore, the same underlying principals would apply to a power transaction.

In response to the Conectiv Energy comments, I agree that the FTAA, "...does not take the place of a Guarantee or LOC, which the seller will still require..." The FTAA concept is based upon the assumption that the ultimate purchaser is creditworthy and that the Producer would have been willing to sell directly to that specific end user without requiring a letter of credit.

It was my understanding that this FTAA Summary provides the basic underlying tenets for structuring the new FTAA Power Agreement. If that is true, then I am somewhat confused about some of the questions. Perhaps we can focus upon areas of similarities and differences between the FTAA Natural Gas provisions and the proposed FTAA Power document as a starting point then attempt to resolve the perceived problems.

Best regards,
Will

The Funds Transfer Agent Agreement (FTAA) is a unique financing agreement that will allow Women/Minority-Owned Business Enterprises (WMBEs) to finance natural gas purchases for resale to Local Distribution Companies (LDCs) (of natural gas) without being required to post Letters of Credit. In the past, many Women and Minority-Owned Business Enterprises (WMBEs) have been unable to finance their natural gas purchases because of their inability to assure the Producer that he would be paid for gas sold to the WMBE. Conversely, some LDC Repurchasers were concerned about the level of reliability of delivery of the gas contracted for with WMBEs. Southern California Gas Co. (SoCalGas), Visage Energy Corp., Union Bank of California, and the Department of Energy (DOE) have all assisted in the formulation and development of the Funds Transfer Agent Agreement (FTAA). The FTAA has been used to finance hundreds of millions of dollars of natural gas purchases by WMBEs.

Many LDC Repurchasers are of the opinion that diversity of suppliers is an essential and profitable business practice. This practice allows LDC Repurchasers to avoid the potential of being exposed to undue "Market Powers" being excreted by a few large Producer/Suppliers. Consequently, many of these LDC Repurchasers will limit the amount of natural gas that it will purchase from any one of the large Producers, thereby providing opportunities for medium and small companies to market natural gas supplies to the LDC Repurchaser. Additionally, some LDCs have deducted that they have been able to lower the average cost of their gas purchases because of the increased number of suppliers from whom they purchased their natural gas.

The underlying provisions of the FTAA are designed to facilitate transactions between Producers, WMBEs, and LDC Repurchasers using a Funds Transfer Agent (FTA) Bank. This design assures the Producer that by selling gas to a WMBE for resale to a Repurchaser, that the Producer's risk is essentially the same as if the Producer had sold the gas directly to the Repurchaser. Similarly, the design also assures the Repurchaser that by purchasing gas from a WMBE who acquired the gas from an Authorized Producer, the Repurchaser's delivery reliability risk is essentially the same as if the Repurchaser had purchased the gas directly from that particular Producer. Therefore, the Producer's credit loss protection and the Repurchaser's reliability of delivery protection are reasonably assured by utilizing the specific rules and provisions of the FTAA.

Key Attributes of the FTAA

It is reasonable to deduce that the two main goals of the FTAA (i.e., Producer credit risk protection and Repurchaser delivery reliability risk protection) are accomplished through utilizing the FTAA, which provides the following:

1. Producer agrees to delivery of the gas into the control of the LDC Repurchaser.
2. The LDC Repurchaser agrees to pay for the gas received by transferring the funds into a blocked account that only the FTA Bank controls. Additionally, the LDC Repurchaser also agrees that it will not change the payment instructions of an operative Exhibit A-2 (i.e. deal summary sheet).
3. On the next business day following the receipt of funds, the FTA Bank transfers a portion of the funds received to the Producer in accordance with the Producer's invoice.
4. FTA Bank transfers the remainder of the funds to the WMBE gas marketer.

Summary of Benefits to be Derived by the Participants of the FTAA Process

1. **Producer:** Receives a contract with the FTA Bank that requires the bank to pay the Producer with the funds received from the LDC Repurchaser.
2. **LDC Repurchaser:** Receives gas from a reliable source under a mirror back-to-back supply contract and simply agrees to pay the funds into the Bank Control Account for all gas received in accordance with the terms and conditions of the FTAA.
3. **WMBE:** Obtains the ability to sell gas to the LDC and purchase gas from the Producer without being required to post a letter of credit by being able to utilize the FTAA process.
4. **FTA Bank:** The bank's fiduciary responsibility is to represent to both Producer and the LDC Repurchaser that there are matching deals with a positive spread (i.e., on the Exhibit A-1 and Exhibit A-2 the deal summary sheets). The FTA Bank signs contracts agreeing to receive the money from the LDC Repurchaser and pay the Producer on the next

business day. The bank does not have any obligation to pay the Producer if the funds are not received; however, there is minimal risk because the LDC Repurchaser always pays for gas it has received. The FTA bank has use of multi-million dollars of FTAA funds for one business day and over the weekend if the funds are received on Friday. Additionally, the bank receives Community Reinvestment Act (CRA) credit for participating in the FTAA program (for CRA details see below).
