



North American Energy Standards Board

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via email and posting
March 27, 2002

TO: NAESB Contracts Subcommittee Participants & Posting for Interested Industry Participants
FROM: Rae McQuade, NAESB Executive Director
Cary Metz, Midland Cogeneration Venture, Chairman Contracts Subcommittee
RE: Final Minutes of the Contracts Subcommittee Conference Call – March 26, 2002

**NORTH AMERICAN ENERGY STANDARDS BOARD
NAESB CONTRACTS SUBCOMMITTEE MEETING – CONFERENCE CALL
Tuesday, March 26, 2002
FINAL MINUTES**

1. Administrative

Participants were welcomed, attendance was taken, and the antitrust statement was read. The agenda was adopted as modified to reflect the discussion of the workpaper submitted by Will Johnson. The minutes of the March 14, 2002 meeting were adopted with the changes identified in the meeting.

2. Review of Modifications to the FTAA

The subcommittee reviewed the FTAA as modified to date. Such modifications to the FTAA were indicated by redline markup and was posted as a workpaper for this meeting. Those modifications that have been agreed to by the committee today are in regular font. The redline in the agreement following is a result of discussions from this meeting.

3. Next Steps

April 1, 2002, 2:00-4:00 cct. Next Meeting

Items for discussion: Review modifications to FTAA (including Will Johnson's workpaper), Special Provisions to the Base Contract for Sale and Purchase of Natural Gas, Exhibits A-1 and A-2.

4. Adjourned at 5:00 pm

5. Attendance

Conoco Carolyn Hazel
Duke Energy Robert Wheadon
El Paso Porter Ryan
Midland Cogeneration..... Cary Metz
PanCanadian Paramy Graff
San Diego Gas & Electric Abby Snyder
Sempra Trading Tony Molnar

NAESB FUNDS TRANSFER AGENT AGREEMENT
(Natural Gas)

The NAESB Funds Transfer Agent Agreement ("FTA Agreement") is made and entered into as of [_____], by [Marketer] ("Buyer"), [Bank] ("Funds Transfer Agent" or "FTA"), and [Supplier] ("Seller").

- a) The Buyer, Seller, and Funds Transfer Agent agree that Buyer's purchases from Seller under this Funds Transfer Agreement shall only be resold to _____
- a)b) There is a separate and distinct FTA Agreement between the Seller, Buyer, and Funds Transfer Agent for each of the Buyer's Repurchasers, which reflects the underlying terms and conditions of the Base contract Contract between the Buyer and ~~the such~~ Buyer's Repurchaser.
- b)c) The FTA Agreement ~~provides for~~ contemplates an instantaneous transfer of title to the Gas from Seller to Buyer to Buyer's Repurchaser, ~~(e.g. in the case of natural gas so that,~~ all parties agree that the transportation of the ~~natural gas~~ Gas is only to be nominated to delivery points that belong to the Buyer's Repurchaser ~~as indicated on the Exhibit A-2 and the corresponding Exhibit A-1).~~

~~The Buyer, Seller, and Funds Transfer Agent agree that Buyer's purchases from Seller under this Funds Transfer Agreement shall only be resold to _____ (i.e., Buyer's Repurchaser).~~

ARTICLE 1. SCOPE OF AGREEMENT

1.1. Special Provision: This FTA Agreement constitutes a Special Provision to that certain NAESB Base Contract for Sale and Purchase of Natural Gas dated _____, between Buyer and Seller ("Base Contract"), and is intended to supplement the General Terms and Conditions ("GT&C") affecting all ~~Transaction~~ transactions thereunder wherein Buyer and Seller assume the respective roles as indicated ~~above~~ in the first paragraph of this FTA Agreement. Capitalized terms used in this FTA Agreement, which are not herein defined, will have the meanings ascribed to them in the GT&C.

1.2. Term: This FTA Agreement shall commence on _____, and continue on a Month-to-Month basis until terminated by any party upon 30 ~~days~~ Days written notice to the other parties; provided, however, that this FTA Agreement may not be terminated prior to the expiration of the latest Delivery Period of any Transaction Confirmation(s) previously agreed to by the parties subject to this FTA Agreement. The obligation to make payment hereunder, including any related adjustments, shall survive the termination or cancellation of this FTA Agreement.

Appointment of Funds Transfer Agent ("FTA"): Seller and Buyer hereby appoint FTA as their agent under this FTA Agreement and all related documents, instruments, and agreements ("Related Agreement(s)"), and authorize the FTA, in such capacity, to exercise such powers and perform such duties as are expressly delegated to the FTA by the terms of this FTA Agreement and the Related Agreements, together with such other powers as are reasonably incidental thereto. The FTA shall not have any duties or responsibilities to, or any fiduciary relationship with, Buyer or Seller, and no implied covenants, functions, responsibilities, duties, obligations, or liabilities shall be read into this FTA Agreement or any Related Agreement or otherwise exist with respect to the FTA, except those expressly set forth herein ~~including those identified in Section 3.1.~~

ARTICLE 2. TRANSACTION PROCEDURE

2.1. Modification to Transaction Confirmations to Base Contract: The parties will use the following Transaction Confirmation procedure in lieu of the procedure set out in Sections 1.2 and 1.3 of the GT&C.

2.2. Execution of Transaction Confirmation By Buyer And Seller: Should Buyer and Seller come to an agreement regarding a Gas purchase and sale transaction for a particular Delivery Period subject to this FTA Agreement, the Confirming Party shall, and the other party may, record that agreement on a Transaction Confirmation and communicate such Transaction Confirmation by facsimile, to the other party and to the FTA by the close of the Business Day following the date of agreement. If a sending party's Transaction Confirmation is agreeable to the receiving party, the receiving party will execute the Transaction Confirmation and communicate copies thereof to the sending party and to the FTA by facsimile transmission by the close of the Business Day following receipt. Buyer and Seller will assign to each Transaction Confirmation the same identification number as Buyer's Repurchaser assigns to the corresponding Transaction Confirmation between Buyer and Buyer's Repurchaser.

2.3 Confirmation of Transaction by FTA: Upon the FTA's receipt of a Transaction Confirmation executed by

both Buyer and Seller ~~or of non-conflicting Transaction Confirmations from both Buyer and Seller~~, FTA will verify (i) that Buyer has contracted with ~~Buyer's Repurchaser a repurchaser~~ to take delivery of a like quantity of gasGas at the Delivery Point(s) ~~identified on the Transaction Confirmation and~~ under the same Performance Obligation (~~firm-Firm or interruptible~~Interruptible as identified on the Transaction Confirmation); (ii) that Buyer's Repurchaser has agreed to make payment through the FTA of the funds due for its purchase of the gasGas delivered and accepted at such Delivery Point(s); and (iii) that the price to be paid by the ~~Buyer's Repurchaser repurchaser~~ for such gasGas is not less than the price set out on the Transaction Confirmation between Buyer and Seller. The FTA will confirm its verification within 24 hours of its receipt of the executed Transaction Confirmation(s) by executing the FTA Confirmation Statement, as provided below, as a Special Condition at the bottom of the Transaction Confirmation and returning copies of such executed FTA Confirmation Statement to Buyer and Seller by facsimile transmission. (An example of this form of Transaction Confirmation is attached as Exhibit A-1.)

Special Condition - FTA Confirmation Statement

[Bank], as the Fund Transfer Agent (FTA), has reviewed the foregoing Transaction Confirmation and hereby confirms to Seller and Buyer that it shall make payment on behalf of Buyer to Seller for the gasGas delivered subject to this Transaction Confirmation pursuant to the terms and conditions ~~to of~~ its FTA Agreement with Buyer and Seller. FTA further confirms that ~~Buyer's Repurchaser Buyer~~ has contracted for the repurchase of a corresponding quantity of gasGas at the Delivery Point(s) identified above, under the same Performance Obligation (~~Firm or Interruptible~~) -and at a price greater than the price set out above, and that Buyer's Repurchaser has agreed to make payments for such gasGas directly to FTA.

[Bank]: _____

[Bank], as the Fund Transfer Agent (FTA), has reviewed the foregoing Transaction Confirmation and hereby confirms to Seller and Buyer that it shall make payment on behalf of Buyer to Seller for the gasGas delivered subject to this Transaction Confirmation pursuant to the terms and conditions ~~to of~~ its FTA Agreement with Buyer and Seller. FTA further confirms that ~~Buyer's Repurchaser Buyer~~ has contracted for the repurchase of a corresponding quantity of gasGas at the Delivery Point(s) identified above, under the same Performance Obligation (~~Firm or Interruptible~~) -and at a price greater than the price set out above, and that Buyer's Repurchaser has agreed to make payments for such gasGas directly to FTA.

[Bank]: _____

2.4 Confirmation Execution Required: If Seller or Buyer has not received the FTA's Confirmation Statement within 24 hours after communication of the executed Transaction Confirmation to FTA, such party shall contact FTA and the other party by telephone regarding such non-receipt. The parties acknowledge that their agreement will not be binding until FTA executes its FTA Confirmation Statement and communicates a copy of such to Buyer and Seller.

2.5 No Modification; Entire Agreement: A fully executed and confirmed Transaction Confirmation may not be modified without the written consent of Buyer, Seller, and the FTA. ~~The entire agreement between the parties shall be those provisions contained in both the Base Contract, as supplemented by this FTA Agreement, and any effective Transaction Confirmation.~~ In the event of a conflict among the terms of (i) a Transaction Confirmation,; (ii) the Base Contract, including any Special Provisions; and (iii) the GT&C, the terms of the documents shall govern in the priority listed in this sentence.

ARTICLE 3. PAYMENTS

3.1. Payment From FTA: FTA shall pay Seller by wire transfer for the benefit of Buyer on the next Business day following receipt of funds paid by Buyer's Repurchaser, and in accordance with FTA wire instructions contained in Section 3.2 below. ~~Additionally, Buyer will furnish to FTA a copy of Seller's invoice, which will determine the amount of the wire transfer.~~ Buyer shall not be required to enter into any other contractual or other arrangements in order to effectuate payments to Seller. FTA's obligation to make payment to Seller hereunder is specifically conditioned upon FTA's receipt of funds from Buyer's Repurchaser. Funds received from Buyer's Repurchaser shall be held in trust by the FTA for the benefit of the Seller to the extent of the purchase price owing from the Buyer to the Seller.

3.2. Payment Address: All payments from Buyer to Seller shall be sent through FTA via Fed Funds to Seller at the address set out herein. Only Seller may request revisions to the address specified for payment herein, which requests shall not be made more than two times per year, unless due to merger or mandated by State or Federal regulations.

[Supplier'] - Wire Transfer Account
Bank: [Supplier's Bank]
Account No. [000-00-000000] ABA # [000000000]
[City, State]

Invoice Reference No. _____
Please include invoice reference number _____ in the text field of your wire transfer.

ARTICLE 4. NOTICES

4.1. **Notice Requirements:** Any notice provided for in this FTA Agreement, or any notice which any party may desire to give to the others, shall be ~~in writing and shall only be deemed to be duly delivered upon receipt. Such notice shall in each instance be~~ sent by facsimile or other mutually acceptable electronic means, and confirmed by a telephone call as soon as possible during common business hours, to the contacts set out below.

4.2. **Notices to FTA**

Primary Contact: [name]	Emergency Contact: [name]
Telephone No:	Telephone No:
Facsimile No:	Facsimile No:

4.3. **Notices to Buyer:**

Primary Contact: [name]	Emergency Contact: [name]
Telephone No:	Telephone No:
Facsimile No:	Facsimile No:

4.4. **Notices to Seller:**

Primary Contact: [name]	Emergency Contact: [name]
Telephone No:	Telephone No:
Facsimile No:	Facsimile No:

4.5 **Change of Contacts:** Any party may change the designated contact and/or telephone and/or facsimile numbers for notices upon seven ~~days-Days~~ written notice

As evidence of their agreement hereto, the parties have caused this FTA Agreement to be duly executed in triplicate originals by their authorized representatives as of the date first written above.

BUYER:

By: _____
Name: _____
Title: _____

SELLER:

By: _____
Name: _____
Title: _____

FUNDS TRANSFER AGENT:

By: _____
Name: _____
Title: _____