



# North American Energy Standards Board

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**via email and posting**

**TO:** NAESB WEQ Funds Transfer Agent Agreement (FTAA) Task Force Conference Call Participants and Posting for Interested Parties

**FROM:** Rae McQuade, Executive Director

**RE:** NAESB WEQ FTAA Task Force Conference Call Minutes – February 21, 2003

**DATE:** February 24, 2003

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**NORTH AMERICAN ENERGY STANDARDS BOARD  
WEQ Funds Transfer Agent Agreement (FTAA) Task Force  
February 21, 2003, 1:00 p.m. to 4:00 p.m. CST**

**1. Welcome**

Ms. Gasca, the point person for the FTAA Task Force, opened the call and welcomed participants. Mr. Oncken gave the antitrust advice. Participants introduced themselves.

**2. Review of charge of the task force**

This item was not discussed since it was covered during the February 14, 2003 meeting.

**3. Discussion and review of request, including any modifications**

Participants briefly discussed the draft request. Mr. A. Johnson asked if the document being prepared through the FTAA Task Force was a new agreement or an expansion of the gas FTAA, as was noted in the draft request form. It was confirmed this was a new agreement, applicable only to power transactions, which was based on the gas FTAA. It was noted the request should be modified to this effect, even though the submitted form would not really affect the request or the JIC process.

**4. Discussion of redlined FTAA, plan for any changes**

Ms. Gasca reviewed the work paper, which incorporates the changes recommended during the last meeting. Ms. Gasca noted the confidentiality clause language is still pending. Participants reviewed the work paper by sections.

Mr. A. Johnson asked several general questions. First, Mr. A. Johnson asked if the use of the word *power* was purposeful. Ms. Gasca responded that yes, power was used on purpose, since the more general term would work easier with different base documents. Mr. Sappenfield concurred that while in some cases the transaction might be energy only, power was more appropriately used in the agreement. Mr. Dison proposed the term power be defined in the FTAA. It was agreed to modify Section 1.1 to include the definition. Additionally, it was agreed to expand the scope of Section 1.1 to include bilateral agreements other than the EEI or WSPP.

Mr. Freitas commented on the scope of Section 1.1. Mr. Freitas expressed concerns that the FTAA would not be an addendum to a standard agreement. Mr. Freitas suggested the FTAA would be more widely used by the General Services Administration (GSA) if it were an addendum to a standard agreement. Mr. Freitas noted that if there is a master contract for power with a master addendum, the GSA would review the



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contract and addendum. Approval by the GSA would mean the FTAA was useful for government contracting, a market segment that would be unreachable without that approval. Mr. Freitas stated his opinion that for the FTAA to be effective with the federal government, eventually there will need to be a standard contract.

Ms. McQuade noted the WEQ Contracts Subcommittee has not reached agreement on the need for a standard power contract. However, the FTAA Task Force has been developing the power FTAA for use as an addendum to either the EEI or WSPP agreement. Ms. McQuade stated Mr. Freitas has highlighted the need for a NAESB standard power contract. Mr. Freitas suggested the NAESB office contact the GSA for input on contract language for a standard power contract, if applicable.

Ms. Gasca suggested the new broader language would address Mr. Freitas' concerns, since the power FTAA would be applicable to any agreement the GSA has approved. Mr. Freitas was not convinced the addition of the new language would address his stated concern.

Mr. Ulch initiated discussion on the reasoning for deleting the proposed language on governing law, Section 1.4. He reasoned the funds transfer agent (FTA) would have some comfort in having governing law in this document. Ms. Gasca stated that removal of the language would allow the power FTAA to be used nationwide, and noted that choice of law exists in the EEI or WSPP base contract. It was noted that the FTA was not a party to the base contract, so the base contract language would not necessarily apply. Mr. W. Johnson noted this has not historically been a big problem from the bank's perspective. No alternative language was proposed.

Mr. A. Johnson asked if the section on confirmation of transaction, including the language on setting the delivery point the same, is an issue in terms of retail vs. wholesale. It was noted this approach might work well on the wholesale side, but on the retail side, the result might be delivery at different points. Ms. Gasca noted that on the retail side it would be very rare to have agreement in delivery points. However, she said the intent of the proposed language was to make the document and transaction less complicated and the proposed language would remove the need to account for transmission or zone issues. Ms. Gasca noted the FTA is managing the pricing for margins and having different delivery points would heighten that burden.

Participants discussed the confidentiality clause, Section 2.5. Mr. W. Johnson, who had concerns with the language at the previous meeting, asked if confidentiality is addressed by the base agreements. Ms. Gasca stated the language was added here to make it explicit that the FTA cannot disclose information outside of the parties to the transaction. Ms. Gasca noted the FTA is not a party to the base agreement. However, Ms. Gasca agreed the language would be redundant between the buyer and seller.

Participants discussed proposed language in Section 3.1, Payment from FTA. In the work paper, the following language was proposed: FTA shall notify Seller if the Buyer's Repurchaser payments hereunder are not made on the due date. Mr. W. Johnson suggested the language might not be necessary, in that it would add an additional responsibility for the FTA with little benefit to the other parties. Mr. W. Johnson noted the parties will know of payment the next day, so you are only gaining one day's notice. Mr. Sappenfield added that there are several reasons payment by the FTA might not occur, so it would be helpful to know if lack of reciprocal payment was the reason for current non-payment. Mr. W. Johnson noted the concept of the FTAA has been a hard sell to make to the financial institutions. Mr. W. Johnson urged that unless it is



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something really needed, it would be best to keep the FTA's obligations to a minimum. The language was removed.

The use of the term WMBE in the work paper was discussed. Mr. Sappenfield noted the current use of generic terms in the proposed power FTAA. If the WMBE terminology is important, Mr. Sappenfield suggested addressing that in the users guide. Ms. Gasca proposed substituting the current use of *Marketer* with *WMBE*. It was noted that by taking that approach, if a non-WMBE company wanted to use the agreement, it would have to modify the agreement. Mr. Sappenfield did not oppose the proposed change, so long as it is consistent across the document.

The need to make conforming changes from producer to generator was also discussed.

Ms. Gasca proposed to make all proposed changes and produce a clean document for review at the next conference call. It was agreed the clean document would be forwarded to Ms. Lauderdale at EEI for review, since it would function as an addendum to the EEI agreement.

Ms. McQuade thanked Ms. Gasca for her considerable work on the power FTAA.

## 5. Other Business

No other business was discussed.

## 6. Adjourn

Ms. Gasca adjourned the call at 2:45 p.m. CST.

## 7. Meeting Attendees:

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Name	Company	Notes
Davis, Ed	Entergy	
Dison, Joel	Southern Company	
Freitas, Christopher	US Department of Energy	
Gasca, Amy	Ampro Energy	Call Leader
Johnson, Alan	Mirant	
Johnson, Will	Visage Energy Corporation	
McQuade, Rae	NAESB Executive Director	Administrative
Oncken, Todd	NAESB	Administrative
Sacks, Tanya	PacifiCorp	
Sappenfield, Keith	Encana Corp.	Call Leader
Ulch, Dean	Southern Company	