

NAESB FUNDS TRANSFER AGENT AGREEMENT

(~~Electric Power~~ ~~Natural Gas~~)

This NAESB Funds Transfer Agent Agreement ("FTA Agreement") is made and entered into as of [_____,] by [Market] ("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 _____ (Buyer's Repurchaser).
- 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 between the Buyer and such repurchaser.
- c) This FTA Agreement contemplates an instantaneous transfer of title to the ~~Power Gas~~ from Seller to Buyer to Buyer's Repurchaser, so that all parties agree that the transportation of the ~~Power Gas~~ is only to be nominated to delivery points that belong to the Buyer's Repurchaser.

ARTICLE 1 SCOPE OF AGREEMENT

1.1. Special Provision: This FTA Agreement constitutes a Special Provision to that certain [Need to insert related contract for sale and purchase of electric power. The likely contract will be a form of the EEI Master Power Purchase and Sale Agreement or the Western Systems Power Pool Agreement. At this time there is no NAESB Base Contract for Sale and Purchase of Power]~~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 transactions thereunder wherein Buyer and Seller assume the respective roles as indicated 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 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.

1.3. 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. Buyer shall have full obligation to compensate the FTA for its service (transaction) fees.

1.4 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS~~[Suggest that governing law be left blank or the same as the underlying Base Contract. Many parties agree to New York due to the relationship of the physical contracts to financial contracts that almost universally are New York law.]~~ WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT

ARTICLE 2 TRANSACTION PROCEDURE

2.1. Modification to Transaction Procedure and Transaction Confirmation to Base Contract: The parties will use the following Transaction Confirmation procedure in lieu of the procedure set out in Sections [need to conform the section cites to the appropriate sections in the Base Contract named above. These section cites are to the NAESB Base Contract for Sale and Purchase of Natural Gas. Further need to conform all of the following sections (2.2 to 2.4) to the Transaction Confirmation practices of the Base Contract named above.]~~4-2 and 4-3~~ of the GT&C. (An example of this form of Transaction Confirmation is attached as Exhibit A-1.)

2.2. Execution of Transaction Confirmation By Buyer And Seller: Should Buyer and Seller come to an agreement regarding a ~~Power 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, FTA will verify (i) that Buyer has contracted with Buyer's Repurchaser to take delivery of a like quantity of Power Gas at the Delivery Point(s) and under the same performance obligation (Firm or 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 Power Gas delivered and accepted at such Delivery Point(s); and (iii) that the price to be paid by the Buyer's Repurchaser for such Power Gas 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.

Special Condition - FTA Confirmation Statement

[Bank], as the Funds 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 Power – Gas delivered subject to this Transaction Confirmation pursuant to the terms and conditions of its FTA Agreement with Buyer and Seller. FTA further confirms that Buyer's Repurchaser has contracted for the repurchase of a corresponding quantity of Power Gas 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 Power Gas 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 to Seller.

2.5 Confidentiality: Neither Party, Buyer, Seller and FTA shall disclose the terms or conditions of a Transaction under this FTA Agreement to a third party (other than the Party's employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

2.6. No Modification: A fully executed and confirmed Transaction Confirmation may not be modified without the written consent of Buyer, Seller, and FTA. 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. FTA shall notify to the Seller if the Buyer's payments hereunder are not made on the due date hasn't made timely payment.

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], [City, State]
Account No. [000-00-000000] ABA # [000000000]

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 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]

Telephone No:

Facsimile No:

Email Address:

Emergency Contact:

[name]

Telephone No:

Facsimile No:

Email Address:

4.3. Notices to Buyer:

Primary Contact:

[name]

Telephone No:

Facsimile No:

Email Address:

Emergency Contact:

[name]

Telephone No:

Facsimile No:

Email Address:

4.4. Notices to Seller:

Primary Contact:

[name]

Telephone No:

Facsimile No:

Email Address:

Emergency Contact:

[name]

Telephone No:

Facsimile No:

Email Address:

4.5. Change of Contacts : Any party may change the designated contact and/or telephone and/or facsimile numbers and/or Email Address for notices upon seven 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:

SELLER:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

FUNDS TRANSFER AGENT:

By: _____
Name: _____
Title: _____

**SPECIAL PROVISION
TO THE
~~NAESB~~-BASE CONTRACT FOR SALE AND PURCHASE OF ELECTRIC POWERITY NATURAL GAS**

This Special Provision is made and entered into as of _____, and amends that certain ~~NAESB~~-Base Contract for Sale and Purchase of Electric Powerity Natural Gas dated _____, between [Repurchaser] and [Marketer] ("Base Contract"), and is intended to supplement the General Terms and Conditions ("GT&C") affecting all Transactions where [Repurchaser] is buyer, hereinafter referred to as Repurchaser, and [Marketer] is seller, hereinafter referred to as Marketer. Capitalized terms used in this Agreement, which are not herein defined, will have the meanings ascribed to them in the GT&C.

1. **DEFINITION OF "FTA"**: The term "FTA" or "Funds Transfer Agent" will refer to:
[Bank]
[Bank's address]

2. **CONFIRMATION OF TRANSACTION BY FTA**: Repurchaser and Marketer will send copies of their respective periodic Transaction Confirmations to FTA. Repurchaser will obtain confirmation by the FTA that Marketer has contracted with a supplier to deliver a like quantity of Power Gas at the Delivery Point(s) identified on the Transaction Confirmation, under the same performance obligation (Firm or Interruptible) and at a price no greater than the price set out on the Transaction Confirmation between Repurchaser and Marketer. Such confirmation will be documented by the FTA's execution of the FTA Confirmation Statement, as provided below, as a Special Condition at the bottom of the Transaction Confirmation sent by FTA to Marketer and to Repurchaser. (An example of this form of Transaction Confirmation is attached as Exhibit A-2.)

Special Condition - FTA Confirmation Statement

_____, as the Funds Transfer Agent (FTA), has reviewed the foregoing Transaction Confirmation and confirms that Marketer has contracted for delivery of a corresponding quantity of Power Gas at the Delivery Point(s) identified above, under the same performance obligation and at a price no greater than the price set out above. FTA will accept payment from Repurchaser on behalf of Marketer under the terms and conditions of the Base Contract.

[FTA]: _____

3. **NO MODIFICATION**: The payment instructions may not be modified during the operative period of a binding Transaction Confirmation. Any modification to a binding Transaction Confirmation must be in the form of a revised Transaction Confirmation and subject to the same confirmation process set out in paragraph 2 above.

4. **NOTIFICATION**: Repurchaser and Marketer agree to furnish to the FTA a copy of this Special Provision and each operative Transaction Confirmation, substantially in the form of Exhibit A-2. Repurchaser and Marketer hereby advise FTA that any information furnished hereunder is confidential.

5. **OPTION OF REPURCHASER**: The Repurchaser has the option to specify the names of suppliers authorized to supply the Power Gas to Marketer. Therefore, Repurchaser and Marketer agree that Power Gas sold to Repurchaser under this Special Provision shall be purchased only from the companies listed below. If no suppliers are listed below, any supplier shall be deemed acceptable to Repurchaser. Repurchaser may amend the authorized suppliers list for future transactions by written notice to the Marketer and to the FTA, so long as the change(s) are made prior to the fifteenth Day of the Month preceding the Month of delivery.

Authorized Suppliers List

REPURCHASER:

MARKETER:

By: _____
 Name: _____
 Title: _____
 Date: _____

By: _____
 Name: _____
 Title: _____
 Date: _____

**TRANSACTION CONFIRMATION EXHIBIT A-1
 FOR IMMEDIATE DELIVERY**

**Date:
 Transaction Confirmation #: (1) A-1**

This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated _____.
 The terms of this Transaction Confirmation are binding unless disputed in writing within 2 Business Days of Receipt
 unless otherwise specified in the Base Contract.

SELLER: [Supplier] _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No.: _____	BUYER: [Marketer] _____ _____ Attn: _____ Phone: _____ Fax.: _____ Base Contract No.: _____
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Performance Obligation: _____ Firm (Fixed) _____ Interruptible (2) A-1

(3) A-1 Daily Quantity	(4) A-1 Delivery Point(s)	(5) A-1 Price \$/MWh MMBtu	(6) A-1 Delivery Period

Special Condition: FTA Confirmation Statement

Seller: _____ By: _____ (7) A-1 Title: _____ Date: _____	Buyer: _____ By: _____ (8) A-1 Title: _____ Date: _____
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**BUYER AND SELLER AGREE THAT THE PAYMENT INSTRUCTIONS MAY NOT BE MODIFIED
 DURING THE
 OPERATIVE PERIOD OF THIS BINDING TRANSACTION CONFIRMATION.**

FTA Confirmation Statement:
 [Bank], as the Funds 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 **Power Gas** delivered subject to this Transaction Confirmation pursuant to the terms and conditions to its FTA Agreement with Buyer and Seller. FTA further confirms that Buyer's Repurchaser has contracted for the repurchase of a corresponding quantity of **Power Gas** at the Delivery Point(s) identified above, under the same performance obligation and at a price greater than the price set out above, and that Buyer's Repurchaser has agreed to make payments for such **Power Gas** directly to FTA.

[Bank] _____
 Name: _____
 Title: _____
 Date: _____

**TRANSACTION CONFIRMATION EXHIBIT A-2
 FOR IMMEDIATE DELIVERY**

Date: _____
Transaction Confirmation #: _____

This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated _____. The terms of this Transaction Confirmation are binding unless disputed in writing within 2 Business Days of Receipt unless otherwise specified in the Base Contract.

SELLER: [Marketer]	BUYER: [[Repurchaser]
_____	_____
_____	_____
Attn: _____	Attn: _____
Phone: _____	Phone: _____
Fax: _____	Fax.: _____
Base Contract No.: _____	Base Contract No.: _____

Performance Obligation: _____ Firm (Fixed) _____ Interruptible

Daily Quantity	Delivery Point(s)	Price \$/MWh MMBtu (Dth)	Delivery Period

Special Condition: FTA Confirmation Statement

Seller: _____	Buyer: _____
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

**BUYER AND SELLER AGREE THAT THE PAYMENT INSTRUCTIONS MAY NOT BE MODIFIED
 DURING THE
 OPERATIVE PERIOD OF THIS BINDING TRANSACTION CONFIRMATION.**

FTA Confirmation Statement:
 [Bank], as the Funds Transfer Agent (FTA), has reviewed the foregoing Transaction Confirmation and confirms that Marketer has contracted for delivery of a corresponding quantity of ~~Power~~ Gas at the Delivery Point(s) identified above, under the same performance obligation and at a price no greater than the price set out above. FTA will accept payment from Repurchaser on behalf of Marketer under the terms and conditions of the Base Contract.

[Bank] _____
 Name: _____
 Title: _____
 Date: _____

FTA Agreement Instructions

The FTA Agreement is composed of two basic documents, which are Agreement #1 between the Producer/Supplier, the WMBE and the Bank, and Agreement #2 between the Repurchaser and the WMBE. The Bank's administration of these documents occurs at two different phases of each transaction, which are the Transaction Confirmation Phase of Exhibit A-1 and Exhibit A-2, and the Funds Transfer Phase.

Transaction Confirmation (see EXHIBIT A-1 and EXHIBIT A-2)

The Transaction Confirmation process should be completed by the end of the month preceding the month of Delivery. Therefore, the Producer/Supplier will have received from the FTA Bank a fully executed Exhibit A-1 prior to the flow of Power on the first day of the Delivery month.

The Bank will verify eight (8) items on the Exhibit A-1 and eight (8) items on the Exhibit A-2, which are as follows:

1. (1) A-1 & (1) A-2 – the Transaction Confirmation number is the same on both Exhibits.
2. (2) A-1 & (2) A-2 – the Performance Obligation is the same, both “Firm Fixed” or both “Interruptible” on both Exhibits.
3. (3) A-1 & (3) A-2 – the Daily Quantity is the same on both Exhibits.
4. (4) A-1 & (4) A-2 – the Delivery Point is at the same place on both Exhibits.
5. (5) A-1 & (5) A-2 – the (5) A-2 price is greater than the (5) A-1 price, so that the deal is on at a positive profit margin.
6. (6) A-1 & (6) A-2 – the Delivery Period is for the same time period on both Exhibits.
7. (7) A-1 & (7) A-2 – both Exhibits have been signed by the Sellers, as provided for.
8. (8) A-1 & (8) A-2 – both Exhibits have been signed by the Buyers, as provided for.

After the above verification process has been completed and if applicable, the FTA confirms that the Supplier is on the Buyer's Authorized Suppliers List, the Bank signs the bottom of the Exhibit A-2 and faxes it back to the Repurchaser and the WMBE, and then the Bank signs the bottom of the Exhibit A-1 and faxes it back to the Producer/Supplier and the WMBE. This completes the Transaction Confirmation phase. This repeats once a year for one-year deals and once a month for one-month deals.

Flow of Funds of FTAA (see Flow of Funds of FTAA diagram)

Prior to the 25th Day of the Month following the Month of Delivery, the Bank will receive Payment Instructions and a copy of the Producer/Supplier's Invoice from the WMBE. On or about the 25th Day of the Month following the Month of Delivery, the Repurchaser will transfer funds into the “WMBE Account Controlled by Bank.” The FTA will transfer to the Producer/Supplier the indicated amount of funds on the next Business Day after receipt of payment. The remainder of the funds in the “WMBE Account Controlled by Bank” (i.e., the Profit Margin) will be transferred to the WMBE. This transfer of funds will occur each month following a month in which the Power was delivered in accordance with the operative Exhibit A-1 and Exhibit A-2.