

## SRP'S COMMENTS TO THE FUNDS TRANSFER AGENCY AGREEMENT

Salt River Project Agricultural Improvement and Power District ("SRP") is committed to providing competitive business opportunities to Woman/Minority owned businesses ("WMB") based on cost, quality and service. Our commitment is founded on the principles of fair and equitable business practices and social responsibility. We recognize that increasing opportunities for WMBs increases competitiveness among suppliers and strengthens the economy. SRP's commitment to doing business with WMB's is a component of SRP's overall business goal: providing low cost, reliable power and water to its customers.

For the reasons stated below, SRP believes that the Funds Transfer Agency Agreement ("FTAA"), proposed by the NAESB, will not be consistent with SRP's above-mentioned business goal. In fact, SRP feels that this agreement may increase the cost of doing business and decrease reliability to the detriment of our customers.

**Reliability.** The FTAA provides, in Section 2.4, that once a seller and a WMB enter into a confirmation agreement, such an agreement: "...will not be binding until the FTA [Funds Transfer Agent, usually a bank] executes its FTA Confirmation Statement and communicates a copy of such to Buyer and to Seller." This provision is diametrically opposite to the standard practice in energy trading, i.e., a confirmation properly signed by the buyer and seller should be binding. Otherwise, a seller may enter into a confirmation with a WMB and, in reliance on such a confirmation, subsequently may enter into a related transaction to firm-up or to hedge such a transaction. However, if the following day the FTA rescinds or fails to confirm the transaction, the seller may be exposed to risk of any such a related transaction. This uncertainty and reliance on a third party confirmation does not provide sufficient reliability to a native load serving utility, such as SRP. In fact, SRP feels that this agreement may increase the cost of doing business and decrease reliability to the detriment of our customers.

**Cost.** The costs associated with the FTAA could be classified in the following two categories: internal cost and external (transaction) cost. Internally, SRP would have to dedicate its already limited resources to execute a number of FTAA's without even knowing if any of those FTAA's will result in an actual transaction. This would require a shift in resources from day-to-day duties and it could create an undue risk and burden to SRP. Externally, any transaction effectuated under the FTAA would have to include an embedded cost for the FTA (the bank). Thus, it is unlikely that any transactions under the FTAA would allow SRP to maximize the value for its customers.

**Credit Risk.** SRP follows a clearly defined and mandated credit policy. Our diligent adherence to this credit policy has allowed SRP to maintain one of the highest credit ratings in the industry. Given a recent decimation of creditworthy counterparties industry

wide, SRP is even more committed to limiting its exposure by strictly enforcing its credit policy. If a counterparty does not meet SRP's credit criteria for an unsecured line of credit, SRP's credit policy requires collateral prior to entering into any transactions. The FTAA would require SRP to change its credit policy. Furthermore, the FTAA would require SRP to lower its credit approval thresholds and potentially increase its credit exposure. This approach is inconsistent with SRP's overall business goal. Also, this approach, as noble as it may be, should not be advanced as an industry standard because it is contrary to the industry's efforts to emphasize a solid credit rating among its participants.

**Legal Risk.** The FTAA is a three party agreement (between a WMB, a Seller and a bank). It provides that the FTA (a bank) is an agent of the WMB and the Seller. It appears to be more appropriate for a brokerage agreement rather than a trading agreement. It is unclear which events of default and remedies are applicable to the signatories. The FTAA seems to assume that no one would ever fail to perform under this agreement. Having a three party agreement for a simple purchase/sale of power is not something that should be advanced as an industry standard because it is not supported by the structure and the facts of the market. The FTAA only increases legal uncertainty and potential litigation costs.

**Operational Risk.** SRP is concerned with two aspects of operational risk in the FTAA. First, the FTAA provides that a bank (FTA agent) will issue final confirmations and it will: "...verify that Buyer has contracted with Buyer's Repurchaser to take delivery of a like quantity of Power at the Delivery Point(s) and under the same performance obligations as identified on the Transaction Confirmation..."(Section 2.3). Since banks generally do not trade physical power, SRP is uncomfortable about a bank's operational ability to adequately facilitate physical power trading. Furthermore, the FTAA does not provide any remedy against the bank, in case either party suffers any financial damage due to the bank's failure to adequately perform its obligations under the FTAA. Second, there are various requirements imposed by regional reliability organizations governing, for example, reserve requirements associated with firm power sales. If a WMB does not have any generation resources and it lacks sufficient financial assets to secure sufficient reserve, it could be violating those regional reliability requirements.

**Commodity Trading.** During the last several years, many market participants have worked hard to standardize the commodities trading markets and to provide as much legal and operational certainty as possible. The recent changes in commodity trading regulation, mainly the enactment of the Commodity Futures Modernization Act, as well as some amendments in the U.S. Bankruptcy Code, were intended to provide as much stability and certainty to the markets as possible. On the other hand, the FTAA appears to introduce a new segment of participants to the markets, even though, these participants do not meet the minimum established financial and operational standards for commodity trading participants. Furthermore, the rest of the market participants would have to bear the risks associated with the FTAA. Considering recent developments in the energy-trading arena, it seems counterproductive to introduce additional aspects of risk to the

market that has already been severely damaged by the lack of financially sound participants.

In conclusion, while SRP supports doing business with WMB's, whenever it is mutually beneficial, SRP does not believe that the FTAA should be adopted as an industry standard. The evolution and current trends in the energy-trading arena do not support the characterization of the FTAA as an industry standard. Individual market participants should have a choice to decide whether to use the FTAA and when. However, to declare the FTAA as an industry standard would be counterproductive and costly to the market as a whole.

If you have any questions or comments please contact Miki Kolobara at (602) 236-2242 or e-mail to [mmkoloba@srpnet.com](mailto:mmkoloba@srpnet.com).