



## DELIVERING STRATEGIC SOLUTIONS ACCA'S 2000 ANNUAL MEETING

### FORM PREPARED FOR ACCA ANNUAL MEETING 2000

#### Electric Power Supply Service Purchase and Sales Agreement

Between

[SELLER]

And

[BUYER]

THIS ELECTRIC POWER SUPPLY SERVICE PURCHASE AND SALES AGREEMENT is made effective this \_\_\_\_\_ ("Effective Date") by and between \_\_\_\_\_ - ("Seller") and \_\_\_\_\_ ("Buyer"). Buyer desires to purchase Electric Power Supply Service (defined as all necessary electric energy, installed electric capacity, ancillary services, and transmission capacity) from Seller according to the terms of this Agreement outlined below and in Exhibit A.

#### I. TERM

The Initial Term of this Agreement will be from \_\_\_\_\_ through \_\_\_\_\_. Thereafter, this Agreement shall remain in effect month to month until the later of: (1) all transactions evidenced by a signed Confirmation have expired; or (2) either party gives the other party sixty (60) days prior written notice of its intent to terminate this Agreement.

#### II. DELIVERY POINT AND TITLE

The Delivery Point for all Electric Power Supply Service sold hereunder shall be the point of interconnection between the applicable transmission provider's transmission system and the local electric distribution company (LDC) in whose territory Buyer's Facilities are located. Seller will schedule Electric Power Supply Service to the Delivery Point for Buyer's account. Title to all Electric Power Supply Service will pass from Seller to Buyer at the Delivery Point. Seller warrants that it has good and marketable title to the Electric Power Supply Service delivered under this Agreement. Buyer will be responsible for paying all LDC charges associated with the distribution of electricity from the Delivery Point to Buyer's facilities, and Seller is not a party to Buyer's service agreement with Buyer's LDC.

#### III. AGENCY PROVISION

Buyer appoints Seller to act as Buyer's agent in accordance with this provision. Buyer authorizes Seller to obtain information about the Buyer's LDC account including, but not limited to, account numbers, billing history, payment history, historical electric usage, projected electric usage, meter readings and characteristics of electric service. Seller will use this information to aggregate Buyer's usage with that of Seller's other customers and to perform duties necessary to provide and bill for Electric Power Supply Service. Further, Buyer authorizes Seller to make nominations, aggregate Buyer's electricity supply, schedule, balance, make settlement, and perform all other tasks necessary to provide Electric Power Supply Service to Buyer.

#### IV. BILLING, PAYMENT AND CREDIT

**A. Monthly Billing.** Seller or its agent shall bill Buyer monthly for purchases made under this Agreement. Buyer shall pay the bill within 20 days of the date of the bill, or in accordance with the LDC payment terms if Seller's charges are billed by the LDC. Seller will be responsible for all taxes assessed prior to the Delivery Point. Buyer will be responsible for all taxes assessed at the Delivery Point and thereafter, including any gross receipt taxes or sales taxes levied on the sale of Electric Power Supply Service.

**C. Late Payment.** Bills not paid within 20 days shall bear interest at a rate of 1% per month. Seller reserves the right to terminate this Agreement for non-payment without written notice. Buyer shall be liable for all costs, including legal fees, associated with the collection of outstanding balances.

**C. Credit.** Buyer agrees to provide Seller any financial information and/or financial assurances that Seller deems reasonable to ensure Buyer's full performance of the obligations hereunder. Buyer represents and warrants that all information supplied is correct and that Buyer is financially able to continue its business, is unaware of any situation which would alter its financial abilities and has not filed, planned to file or have had filed any bankruptcy proceedings.

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#### **V. TARIFFS AND REGULATIONS**

This Agreement is subject to all applicable federal, state and local laws, as well as all other applicable rules and regulations including, but not limited to, those of Buyer's LDC, Buyer's state regulatory commission, and Federal Energy Regulatory Commission ("FERC") approved Open Access Tariffs ("OATs") of transmission service providers as they may be amended or superseded from time to time. Further, this Agreement is contingent upon the continuation of all necessary regulatory approvals and authorizations. If any necessary regulatory approval(s) or authorization(s) are not continued or changes in any regulation or utility tariff make this transaction uneconomic for Seller, then Seller has the option to terminate this Agreement, or to renegotiate terms with Buyer.

#### **VI. CONFIRMATION**

From time to time the parties hereto will verbally agree to terms and conditions for the sale and purchase of Electric Power Supply Service. In such case, Seller will send Buyer a Confirmation in the form attached as Exhibit A. The Confirmation will document the agreement as to price, quantity, level of Electric Power Supply Service, and the term of the Confirmation. Buyer and Seller will execute the Confirmation indicating their acceptance of the terms and conditions therein. Buyer expressly agrees to waive any rescission rights afforded it under local regulatory orders or regulations. This waiver is granted expressly in consideration of the price and other terms offered by Seller as detailed in the Confirmation.

#### **VII. GENERAL TERMS**

**A. Damages.** If Seller fails to deliver Buyer's Electric Power Supply Service requirements specified in any Confirmation for reasons other than Buyer's failure to perform or *force majeure* as defined below, and if Buyer is eligible to return to LDC regulated standard offer service in the event of such failure, then Seller shall not be liable for damages as a result of such failure. If Buyer is not eligible to return to regulated standard offer service in the event of such failure, then Seller will pay Buyer a Deficiency Amount which shall be the product of the electricity usage of Buyer during such period(s), or projected usage of Buyer during such period(s) based on historical usage, and the negative difference, if any, between (i) the Sales Price reflected in the Confirmation and (ii) the price at which Buyer is able to acquire replacement Electric Power Supply Service, acting in a commercially reasonable manner. If Buyer fails to take delivery of Electric Power Supply Services specified in any Confirmation, for reasons other than Seller's failure to perform or *force majeure*, as defined below, Buyer will pay Seller a Deficiency Amount which shall be the product of the electricity usage of buyer during such period(s), or the estimated electricity usage for Buyer during such period(s) based on historical usage, and the positive difference, if any, between (i) the Sales Price reflected in the Confirmation and (ii) the Resale Price at which Seller is able to sell or otherwise dispose of such Electric Power Supply Services, acting in a commercially reasonable manner.

**B. Force Majeure.** Except for payment obligations, a *force majeure* event will, upon notice, excuse both parties' performance during the event. In the event of *force majeure*, Buyer and Seller shall each use due diligence to restore their respective ability to meet their obligations under this Agreement. *Force majeure* means those events not reasonably foreseeable on the effective date hereof and not within the reasonable control of the party claiming *force majeure* including but not limited to: acts of God; changes in governmental regulations; *force majeure* events of the Buyer's LDC or of transmission service providers; any required or lawful action of Buyer's LDC or transmission service providers that curtail or interrupt the Electric Power Supply Service; *force majeure* or other outages of generating facilities or other service providers Seller uses to provide Electric Power Supply Service to Buyer hereunder; or other government appropriation or curtailment of electricity.

**C. Limitation of Liability.** Liability is limited to direct actual damages only as the sole and exclusive remedy for each party. Neither party will be liable for consequential, incidental, punitive, exemplary or indirect damages, lost profits or any other business interruption damages.

**D. Authority.** Buyer represents and warrants that it has the contractual authority to bind any third party for which the Electric Power Supply Service hereunder is being purchased.

**E. Integration of Agreement.** This Agreement constitutes the entire agreement between Seller and Buyer. No statement, promise or inducement made by either party which is not contained in or derived from this Agreement shall be valid or binding.

**F. Severability.** If any part, term or provision of this Agreement is specifically held to be illegal or in conflict with any applicable law, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of Seller and Buyer shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision so held to be illegal or in conflict.

G. Assignment. This shall be an assignment, transfer or sub-licensing of this Agreement, or any part or interest in this Agreement, and delegation of

**G. Assignability.** There shall be no assignment, transfer, or subcontracting of this Agreement, nor of any interest in this Agreement, nor delegation of duties hereunder, except upon written consent of the Seller and Buyer, which shall not be unreasonably withheld. This Agreement shall inure to the benefit of, and be binding upon, the heirs, executors, administrators, and successors of the respective parties.

**H. Waiver.** No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. Notwithstanding anything in this Agreement to the contrary, all remedies afforded in this Agreement shall be taken and construed as cumulative in addition to every other remedy provided herein or by law.

**I. Governing Law.** Buyer and Seller agree that, in the event of a dispute, this Agreement shall be governed by the laws of the jurisdiction where Buyer's facilities are located. If Buyer has facilities being served by Seller in two or more of the three jurisdictions noted above, the laws of the jurisdiction where Buyer's facility with the highest annual electricity usage is located shall govern.

**VII. BUYER INFORMATION**

**Full Legal Name of Buyer:** \_\_\_\_\_

**Buyer Entity:** \_\_\_ Corporation \_\_\_ Limited Liability Corp. \_\_\_ Non-profit Corporation \_\_\_ Sub Chapter S Corporation  
\_\_\_ General Partnership \_\_\_ Limited Partnership \_\_\_ Sole Proprietorship

**Buyer's Representative:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Buyer's Telephone: Telefax:** \_\_\_\_\_

**Buyer's Billing Address:** \_\_\_\_\_

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**VIII. SELLER INFORMATION**

**Full Legal Name of Seller:** \_\_\_\_\_

**Seller's Representative:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Seller's Telephone: Telefax:** \_\_\_\_\_

**Seller's Address:** \_\_\_\_\_

This Agreement is agreed to on the date first written above by:

**Seller: Buyer:**

By: \_\_\_\_\_ By: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

**Exhibit A**

**CONFIRMATION**

THIS CONFIRMATION is effective \_\_\_\_\_ by and between \_\_\_\_\_ ("Seller") and \_\_\_\_\_ ("Buyer") for the Facilities listed in Exhibit B, and is subject to the terms and conditions of the Electric Power Supply Service Purchase and Sales Agreement.

**CUSTOMER USAGE PROFILE**

The following are the best electric usage estimates available from Buyer or historical information supplied by Buyer's LDC, and are for the aggregate of all Facilities served under this Confirmation.

Month Total kwh Peak kwh Int. Peak kwh Off Peak kwh

Month Total kwh Peak kwh Int. Peak kwh Off Peak kwh


Capacity peak load contribution: \_\_\_\_\_ kw (Circle one: Actual / Estimated )

Transmission peak load contribution: \_\_\_\_\_ kw (Circle one: Actual / Estimated )

**QUANTITY**

100% of Buyer's electricity requirements for the aggregate of all Facilities served under this Confirmation.

Seller shall be responsible for supplying the full electric requirements of all Facilities served under this Confirmation subject to all terms and conditions of the Electric Power Supply Service Purchase and Sales Agreement, provided however, that Buyer must notify Seller in writing if the electric requirements of the Facilities served under this Confirmation materially change. A Material Change is any non-weather-related change in electric requirements that causes a deviation of more than \_\_% from the Customer Usage Profile listed above. Buyer must notify Seller of anticipated Material Changes as early as practical, but in no case less than 30 days in advance of any Material Change. In the event of a Material Change, Seller reserves the right to bill Buyer Seller's incremental cost of providing Electric Energy Supply Service in excess of the Customer Usage Profile listed above appropriately adjusted for weather-related variance, or to bill customers for the cost of selling or otherwise disposing of Electric Energy Supply Service below the Customer Usage Profile listed above appropriately adjusted for weather-related variance.

"OR"

Month Min. kwh Max. kwh Max. hourly

kw demand


**SALES PRICE FOR ELECTRIC POWER SUPPLY SERVICE**

**Local Electric Distribution Company:** \_\_\_\_\_

Electric Energy and Ancillary Services (per kwh billed in the month for all kwh):

Month Price per kwh

Month Price per kwh

\_\_\_\_\_ \$ \_\_\_\_\_  
 \_\_\_\_\_ \$ \_\_\_\_\_  
 \_\_\_\_\_ \$ \_\_\_\_\_  
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**Installed Electric Capacity (per kw of capacity peak load contribution/obligation):**

Period Price per kw/month

Summer (billing months June through September) \$ \_\_\_\_\_

Non-summer (billing months October through May) \$ \_\_\_\_\_

**Transmission Capacity (per kw of transmission peak load contribution/obligation):**

Period Price per kw/month

All billing months \$ \_\_\_\_\_

The price for Transmission Capacity is based upon the applicable FERC regulated rate for transmission service on the effective date of this Confirmation. If the FERC regulated rate for transmission service is increased, Seller reserves the right to adjust the quoted Transmission Capacity Price by the amount of the increase.

**Seller:** \_\_\_\_\_ **Buyer:** \_\_\_\_\_

By: \_\_\_\_\_ By: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

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