

**MASTER ELECTRIC SERVICE AGREEMENT**

**between**

**ROCKY MOUNTAIN POWER**

**and**

**CUSTOMER**

This MASTER ELECTRIC SERVICE AGREEMENT (this "Agreement"), entered into on this 18 day of Oct, 2010, is by and between PacifiCorp, an Oregon corporation doing business in Utah as Rocky Mountain Power ("Rocky Mountain Power") and Praxair, Inc., a Delaware corporation ("Customer") conducting business at facilities located at Kennecott Utah Copper Corporation, Magna, Salt Lake County, Utah.

WHEREAS, Rocky Mountain Power is a provider of retail electric energy and power to retail electric customers, and

WHEREAS, Customer desires to purchase all firm power and energy requirements for its air separation facilities under this Agreement, and

WHEREAS, Rocky Mountain Power desires to be the exclusive provider of all firm power and energy to Customer's facility.

NOW, THEREFORE, the parties hereto agree as follows:

**SECTION 1: DEFINITIONS**

As used in this Agreement, the following terms shall have the following meanings:

- 1.1 Agreement: This Master Electric Service Agreement and any renewals thereof.
- 1.2 Billing Demand: The Demand in kilowatts ("kW") which is used to determine the Demand (power) charges in accordance with the provisions of this Agreement.
- 1.3 Billing Period: The period of approximately thirty (30) days intervening between

regular successive meter readings.

- 1.4 Change in Law: Any change in any international, federal, state, or foreign law, treaty, convention, rule, regulation, ruling, directive, requirement, determination, or decision of any Governmental Authority, including any of the same concerning GHGs, including amendments to the Clean Air Act Amendments of 1990 or any regulations promulgated thereunder, passage of the Waxman-Markey American Clean Energy and Security bill or any variant, conference report, or replacement thereof, regulation of any GHGs by the Environmental Protection Agency or any successor agency, or any ratification or implementation of the Kyoto Protocol to the United Nations Framework Convention on Climate Change or any aspect thereof.
- 1.5 Commission: The Public Service Commission of the state of Utah.
- 1.6 Contract Demand: The specified Demand in kW that Customer requires to meet its load requirements and that Rocky Mountain Power agrees to supply and have available for delivery to Customer, which shall be 45,000 kW unless otherwise agreed in writing in accordance with the terms of this Agreement.
- 1.7 Demand: The rate in kW at which Rocky Mountain Power delivers electric energy to Customer averaged over a fifteen minute period of time.
- 1.8 Electric Service Regulations: Rocky Mountain Power's currently effective electric service regulations, on file with and approved by the Commission, as they may be amended or superseded from time to time with the approval of the Commission.
- 1.9 Facility: The facility to which Rocky Mountain Power shall provide electric power and energy which facility is located at Kennecott – Utah Copper Corporation, Magna, Salt Lake County, Utah.
- 1.10 Firm Power and Energy: Electric power expressed in kW and associated energy expressed in kWh intended to have assured availability to Customer to meet all or any agreed-upon portion of Customer's load requirements.
- 1.11 Greenhouse Gas Costs: Any and all federal, state or local costs, expenses, assessments, taxes, or charges, losses, charges, payments, amounts due, fines, penalties, and obligations of any kind or nature, increasing or affecting the cost of

producing power delivered hereunder, however named or designated, and on whomever assessed, payable to or payable by (including any now or hereafter imposed by any Governmental Authority on Rocky Mountain Power or its assets), whether or not contestable, whether or not currently anticipated or predictable, with respect to or on account of any matter or thing respecting GHGs or actual or potential emissions to the air, water or ground of GHGs, including any (A) due to a Change in Law; (B) relating to or arising from emissions from the generating facility or the existence, transportation, generation, transmission, purchase, sale or use of fuel, capacity, or energy; (C) mandating GHG sequestration; (D) concerning or taxing the GHG content, emissions potential or molecular composition of fuel or emissions; (E) so-called "cap and trade" regime respecting GHGs, including the cost of auctioned, or value of allocated, allowance permits, or alternative compliance payments; or (F) changing the emissions baseline of Rocky Mountain Power GHG emissions.

- 1.12 Holidays: Holidays means New Year's Day, President's Day, Memorial Day, Independence Day, Pioneer Day, Labor Day, Thanksgiving Day and Christmas Day. When a Holiday falls on a Saturday or Sunday, the Friday before the Holiday (if the Holiday falls on a Saturday) or the Monday following the Holiday (if the Holiday falls on a Sunday) will be considered a Holiday and consequently Off-Peak.
- 1.13 Measured Demand: The Demand in kW as measured by Rocky Mountain Power's power (Demand) meter as specified by 1.6 herein representing Customer's greatest use during the Billing Period, adjusted for Power Factor as specified in this Agreement.
- 1.14 On-Peak: On-Peak hours means the definition contained in the approved Electric Service Schedule No. 9 for the on-peak time period and as shown in Exhibit 1. Off-Peak means all other times not included in On-Peak above.
- 1.15 Point of Delivery: The point of delivery for all Firm Power and Energy delivered to Customer shall be at Rocky Mountain Power's point of metering used for billing at the Customer site in facilities located at Kennecott Utah Copper

Corporation, Magna, Salt Lake County, Utah.

- 1.16 Power Factor: The percentage determined by dividing Customer's power use in kW (real power) by the kilovolt-ampere power load (apparent power) Customer imposes upon Rocky Mountain Power.
- 1.17 Termination Date: This Agreement terminates on December 31, 2011.

## SECTION 2: TERM

This Agreement shall become effective upon approval by the Utah Public Service Commission ("Commission") (the "Effective Date") and shall remain in full force through the Termination Date following Rocky Mountain Power's initial delivery of electric power and energy to Customer in accordance with this Agreement.

## SECTION 3: DELIVERY OF FIRM POWER AND ENERGY

- 3.1 Scope of Deliveries: Rocky Mountain Power shall deliver such amounts of Firm Power and Energy to the Point of Delivery as Customer requires to meet its load requirements up to, but not in excess of Contract Demand, subject to the provisions of Section 7.
- 3.2 Request for Additional Contract Demand: Upon Rocky Mountain Power's receipt of Customer's written request for power and energy above the Contract Demand, Rocky Mountain Power shall use reasonable commercial efforts to attempt to supply such additional power under terms and conditions acceptable to both parties. Within fifteen (15) days of the request Rocky Mountain Power shall advise Customer in writing whether the additional power and energy is or can be made available and the terms on which it can be made available. If Rocky Mountain Power and Customer agree that Rocky Mountain Power shall provide Customer with Firm Power and Energy in excess of the Contract Demand commitments, the amount of agreed deliveries shall become the new Contract Demand amending and superseding the Contract Demand specified in this Agreement.
- 3.3 Commencement of Deliveries: Rocky Mountain Power will cause initial

deliveries to occur on the later of the Effective Date or January 1, 2011.

- 3.4 Delivery Voltage: Rocky Mountain Power shall deliver Firm Power and Energy at the Point of Delivery in the form of three-phase, alternating current at a nominal frequency of 60 Hertz, and at a nominal voltage of 138,000 volts. For additional information on the delivery voltage, see the section "Voltage Level and Range" in the PacifiCorp Engineering Handbook.
- 3.5 Resale of Power: Customer shall not resell electric power and energy delivered by Rocky Mountain Power to any other person or entity.

#### SECTION 4: PRICES AND PAYMENT FOR POWER AND ENERGY

- 4.1 Billing: All billing statements for power and energy shall show the amount due for the type and quantity of power and energy purchased and charged in accordance with this Agreement and any charges permitted or required under the applicable Electric Service Regulations. Rocky Mountain Power shall sell and deliver and Customer shall purchase and receive service at the charges defined in Exhibit 1, which is attached hereto and incorporated herein. In the event the Commission approves any new or additional defined Power, Energy or Facilities Charge for Schedule 9, those new or additional charges shall apply effective 45 days after Commission approval.
- 4.2 Power Factor Adjustment: Customer will be responsible for maintaining at all times a Power Factor of 90% lagging, or higher, as determined by measurement. If the average Power Factor is found to be less than 90% lagging, the Demand as recorded by Rocky Mountain Power's meter will be increased by  $\frac{3}{4}$  of 1% for every 1% that the Power Factor is less than 90%.
- 4.3 Payments: All bills shall be paid within thirty (30) days after issuance of the bill, by wire transfer to an account designated by Rocky Mountain Power, and late charges shall be imposed upon any delinquent amounts. If Customer disputes any portion of Customer's bill, Customer shall pay the total bill and shall designate the disputed portion. Rocky Mountain Power shall respond to the dispute within

thirty (30) days after Customer's notice of dispute. Should the parties be unable to resolve the dispute, then each party shall have all rights and remedies provided at law or in equity.. Each Party may offset amounts owing to the other Party pursuant to this Agreement or any other agreement between the parties or otherwise Any refund Customer is due shall bear interest at the rate then specified by the Commission or, if no rate is specified, the then effective prime rate as established by the Morgan Guaranty Trust Bank of New York.

- 4.4 Deposits: Rocky Mountain Power may request deposits to the extent permitted under the Electric Service Regulations and the Electric Service Schedules. In the event of a default by Customer in any of its obligations under this Agreement, the applicable Electric Service Regulations, or the applicable Electric Service Schedule, Rocky Mountain Power may exercise any or all of its rights and remedies under this Agreement, the Electric Service Regulations, or the Electric Service Schedule and under any applicable laws, rules and regulations with respect to any such deposits.

## SECTION 5: PRICE ADJUSTMENT

Except for those items specifically addressed in Sections 5.1, 5.2 and 5.3 of this Agreement, the charges specified in Exhibit 1 of this Agreement shall be adjusted so that the charges equal the Commission-approved Utah Electric Service Schedule No. 9 rates, including, but not limited to, customer charges, demand charges, energy charges, surcharges, and credits, as specified in Utah Electric Service Schedule No. 9 or its successor. Adjustments to the charges in Exhibit 1 of this Agreement shall become effective 45 days following the effective date of any adjustment to Electric Service Schedule No. 9, including, but not limited to changes resulting from any power cost adjustment mechanism, deferred accounting, major plant addition case, single item rate case, general rate case, or other filing by Rocky Mountain Power.

- 5.1 Energy Cost Adjustment Mechanism. Customer agrees, upon implementation of an energy cost adjustment mechanism (“ECAM”) approved by the Commission, to pay its portion of the Commission determined ECAM surcharge, to be implemented 45 days following the Commission ordered effective date for customers under Schedule 9. The parties acknowledge that all customers should be subject to an ECAM and should be treated fairly based on their usage and cost-

causing characteristics. The parties further recognize that different rate schedules and different special contract customers have different seasonal usage characteristics that must be taken into consideration.

- 5.2 Demand-Side Management Surcharge. Customer represents that it has and will continue to implement demand-side management measures and practices. Rocky Mountain Power and Customer agree that Customer will be subject to demand-side management surcharges if so ordered by the Commission.
- 5.3 Greenhouse Gas Emissions. Customer agrees to be charged, and to pay on the timeline set forth by the Commission, as approved in any rate case, ECAM proceeding, or other order by the Commission, Customer's proportionate share of any and all Greenhouse Gas Costs deemed by the Commission to increase or affect the cost of producing power delivered hereunder this agreement. Rocky Mountain Power and Customer agree to discuss Greenhouse Gas Costs in the future as more details regarding such costs become known. Customer's obligation will be reduced by any offsets, allowances, credits or other cost mitigation provisions pursuant to any Change in Law available to the Customer or Rocky Mountain Power pursuant to an order of the Commission or other Governmental Authority or under other applicable law or regulation.

#### SECTION 6: METERING

- 6.1 Metering Equipment: Rocky Mountain Power shall provide, maintain and test meters and metering equipment required for billing purposes. The parties shall specify the locations for Rocky Mountain Power's installation of metering equipment in Customer's premises, and Customer shall allow Rocky Mountain Power access to such locations without charge during reasonable business hours.
- 6.2 Telecommunications Facilities: Upon Rocky Mountain Power's request, Customer shall install a dedicated telephone line for meter reading purposes without charge to Rocky Mountain Power. Customer shall pay all recurring charges related to line operation.
- 6.3 Secondary Metering: If the Point of Delivery is on the primary side of Customer's transformers, Rocky Mountain Power may install its meter on the secondary side

of the transformers, whereupon transformer and other losses occurring between the Point of Delivery and the meter shall be computed and added to the meter readings to determine the monthly demand and energy consumption.

- 6.4 Transformer Loss Curves: If Customer takes service at primary voltage and if secondary metering is used, Customer shall, prior to commencement of service, provide Rocky Mountain Power with transformer loss curves and test data to allow Rocky Mountain Power to calculate transformer losses for billing purposes.

#### SECTION 7: OPERATIONAL CONSTRAINTS

- 7.1 For details on the operational constraints and power quality, refer to the PacifiCorp Engineering Handbook – Power Quality. All measurements of currents and voltages under this Section shall be taken at the Point of Delivery.
- 7.2 Reactive Requirements: Customer shall control and limit the flow of reactive power between Rocky Mountain Power's and Customer's system so as to maintain a Power Factor in accordance with this Agreement. Rocky Mountain Power's Billing Demands shall be increased in accordance with this Agreement for excessive reactive flow.
- 7.3 Voltage Drop: In order to receive electric service from Rocky Mountain Power, Customer shall continuously comply with Rocky Mountain Power's flicker guidelines and with the operating criteria set forth in the PacifiCorp Engineering Handbook. Customer shall be limited to motor starts which cause a 2.5% voltage drop or less under normal operating conditions at the point of delivery. If operation outside of these limits is desired, Customer must contact Rocky Mountain Power for engineering studies to be done prior to changing operations.
- 7.4 Harmonic Distortion: Customer shall operate the Facility in such a manner so that the harmonic distortion and notching falls within Rocky Mountain Power's adopted guidelines and standards as described in the PacifiCorp Engineering Handbook, Section "Harmonic Distortion".
- 7.5 Voltage Balance: Customer shall operate the Facility in such a manner so that the Rocky Mountain Power system voltage balance falls within Rocky Mountain



Power's adopted guidelines and standards as described in the PacifiCorp Engineering Handbook in the Power Quality Section.

- 7.6 Voltage Transients: Customer shall operate the Facility in such a manner so that the Rocky Mountain Power system does not experience transient magnification issues, such as those outlined in Rocky Mountain Power's adopted guidelines and standards as described in the PacifiCorp Engineering Handbook - Power Quality Section.
- 7.7 Remediation: In the event that the Customer's operations fall outside of the technical requirements of this contract, or the Commission's requirements, or adversely affects the operations of Rocky Mountain Power's transmission or distribution system, or other Rocky Mountain Power customers and Rocky Mountain Power has demonstrated and documented the impact, Rocky Mountain Power shall give Customer written notice of the corrective actions required, and Customer shall have the opportunity for a period of sixty (60) days to discuss Rocky Mountain Power's requirements. Although Rocky Mountain Power will discuss the corrective action with Customer, any final determination of the corrective action required shall be based on compliance with PacifiCorp's Engineering Handbook, guidelines and standards. After such sixty (60) day period, Rocky Mountain Power shall give Customer its final determination of Rocky Mountain Power's required corrective action. Should Customer fail to begin to take corrective action required by Rocky Mountain Power within thirty (30) days after written notice from Rocky Mountain Power or fail to pursue completion of such corrective action with diligence, Rocky Mountain Power may perform such services or supply and install such equipment as it deems necessary to provide corrective action, whereupon Customer shall compensate Rocky Mountain Power for all sums expended, all materials utilized, and all services contracted or performed, by paying a sum equal to 110% of all costs, expenses, material, and labor charges incurred by Rocky Mountain Power, including Rocky Mountain Power's internal material and labor charges and standard overhead costs. Customer shall pay such sums within fifteen (15) days after Rocky

Mountain Power has mailed Customer an itemized statement of its charges therefore. If Customer desires to operate outside of these limits, Customer shall pay for studies done by Rocky Mountain Power to determine the impact on other Rocky Mountain Power customers and if the proposed operation is acceptable.

- 7.8 Notification. Customer shall notify Rocky Mountain Power prior to any significant change in load characteristics or installation of a significant number of devices (such as power factor correction capacitors, dynamic brakes, adjustable speed drives, etc.) that could impact the operation of the Rocky Mountain Power system and the interaction with the customers system

#### SECTION 8: INTEGRATION; AMENDMENT

This Agreement contains the entire agreement of the parties with respect to the subject matter, and replaces and supercedes in their entirety all prior agreements between the parties related to the same subject matter. Except pursuant to Section 9.3 below, this Agreement may be modified only by a subsequent written amendment or agreement executed by both parties.

#### SECTION 9: JURISDICTION OF REGULATORY AUTHORITIES; MATERIAL CHANGES; DIRECT ACCESS

- 9.1 This Agreement is subject to approval of the Commission. In the event the Commission order approving this Agreement does not provide for the direct assignment of the revenues and costs from the Agreement to the Utah jurisdiction in accordance with the Revised Protocol for rate making purposes, Rocky Mountain Power may terminate this Agreement by providing Customer notice within 30 days of the entry of the Commission's Order. In the event the Commission order approving this Agreement either requires imputation of revenue to the Rocky Mountain Power, or provides for possible future imputation of revenue to the Rocky Mountain Power, the Rocky Mountain Power may terminate this Agreement by providing Customer notice within 30 days of the entry of the Commission's Order. In the event the Commission order approving

this Agreement does not provide for the direct assignment of the revenues and costs from this Agreement to the Utah jurisdiction for rate making purposes, the Rocky Mountain Power may terminate this Agreement by providing Customer notice within 30 days of the entry of the Commission's Order. In the event that the Commission Order approving this Agreement contains any condition that is materially adverse to either party, the party adversely impacted by the condition may terminate this Agreement by providing the other party notice within 30 days of the entry of the Commission's Order. In any such event, both parties shall negotiate in good faith to agree to substitute terms and conditions in the Agreement that would achieve an equivalent commercial outcome.

- 9.2 The Electric Service Regulations of Company, together with all changes and amendments thereto as approved by the Commission, are incorporated herein and made a part of the Agreement. Rocky Mountain Power will take all appropriate steps necessary to obtain Commission approval. At Rocky Mountain Power's reasonable request, Customer will cooperate by providing such information as may be needed in connection with the approval process. Rocky Mountain Power will provide Customer with a copy of any Commission Order issued during or at the conclusion of the approval process within ten days of Rocky Mountain Power's receipt of such order. Once the Commission approves the Agreement, the provisions of the Agreement shall take precedence over any conflicting provisions of Rocky Mountain Power's Electrical Service Regulations.
- 9.3 This Agreement has been entered into by the parties with the mutual intent that it shall continue in force and effect in accordance with its provisions throughout its term, subject however to the supervision and regulation of the Commission to protect the public interest. Both parties agree that they will not petition the Commission for any changes in the Agreement without the consent of the other party.
- 9.4 In the event that the statutes of the state of Utah are amended to provide Customer with the ability to choose an electric supplier other than Rocky Mountain Power,

Customer may terminate the Agreement within 90 days of the effective date of the legislation by written notice delivered to Rocky Mountain Power.

#### SECTION 10: FORCE MAJEURE

**“Force Majeure”** means any act or event that delays or prevents Rocky Mountain Power or Customer from timely performing its obligations under this Agreement or from complying with this Agreement if such act or event is beyond the reasonable control of the Party relying thereon as justification for such delay, nonperformance or noncompliance, including, without limitation, (a) an act of God or the elements, explosion, fire, epidemic, landslide, mudslide, sabotage, equipment failure or breakdown, lightning, earthquake, flood or similar cataclysmic event, an act of public enemy, war, blockade, civil insurrection, riot, civil disturbance, strike or other labor difficulty caused or suffered by third parties beyond the reasonable control of Rocky Mountain Power or Customer (whether such cause is similar or dissimilar to the foregoing or is foreseen, unforeseen, or foreseeable), or (b) any restraint or restriction imposed by law or by rule, regulation, or other acts of governmental authorities, whether federal, state or local, not initiated or supported by the Party claiming the event of Force Majeure. Notwithstanding the foregoing, none of the following constitute “Force Majeure”: (i) changes in economic or market conditions; (ii) changes to the cost of fuel or fuel transportation, (ii) changes in the cost of electricity or its transmission, (iv) changes in the demand for products manufactured by Rocky Mountain Power; (v) changes to the price of energy (including Purchaser’s ability to buy energy at a lower price or Customer’s ability to sell energy at a higher price than the Hourly Market Price established pursuant to this Agreement); (v) an act or event that is not otherwise an event of Force Majeure that renders this Agreement uneconomic or unprofitable for a Party; (vi) economic hardship, including lack of money, including funds authorized or promised by a state or the federal government or agencies thereof and not delivered; (vii) delay or failure of either Party to obtain or perform any required permit or authority to operate, (vii) any delay, alleged breach of contract, or failure by Rocky Mountain Power acting in its regulated transmission function capacity, or (viii) a general increase in prevailing regional wages.

## SECTION 11: ASSIGNMENT

Neither Rocky Mountain Power nor Customer shall assign this Agreement without the written consent of the other party hereto, which shall not be unreasonably withheld; provided, Customer may assign this Agreement without such consent to an entity that acquires the majority of the Customer's operating facilities, in which event Customer as assignor shall guarantee the assignee's performance of Customer's obligations under this Agreement and further provided that Rocky Mountain Power may assign this Agreement without any such consent to an entity that acquires the majority of the value of Company's facilities, in which event Rocky Mountain Power as assignor, shall guarantee the assignee's performance of Company's obligations. Any assignee or successor shall remain subject to such successor's qualification as a customer under Company's policies and the Electric Service Regulations, and shall be bound by this Agreement, the Electric Service Regulations, and assume the obligations of Customer from the date of assignment. This Agreement shall inure to the benefit and be binding upon any authorized assignee, its agents and assigns; provided, that nothing herein shall prevent either party from assigning this Agreement to its parent corporation or to its survivor in connection with a corporate reorganization so long as such assignee is solvent and is able to meet its obligations hereunder for the Agreement and the Electric Service Regulations.

## SECTION 12: INFORMATION

- 12.1 Furnishing Information. Upon Rocky Mountain Power's request, Customer shall submit its year-end financial statements to Rocky Mountain Power, certified to be true and correct in accordance with GAAP. Rocky Mountain Power shall request the Customer to submit its year-end financial statements only in the event that Customer's financial statements are not publicly disclosed.
- 12.2 Accuracy of Information. Customer represents that all information it has furnished or will furnish under this section to Rocky Mountain Power will be accurate and complete in all material respects. Customer also represents that Customer has not omitted and will not knowingly omit any fact in connection with the information

to be furnished under this section which materially and adversely affects the business, operations, property or condition of the Facility or the obligations of Rocky Mountain Power under this Agreement. Should Rocky Mountain Power base its willingness to enter into any portion of this Agreement or any decision with respect to credit, deposits or any other material matter, on inaccurate information furnished under this section by Customer for any reason, Rocky Mountain Power shall have the right to revoke its decision with respect to such matter and modify this Agreement and/or its decision to reflect the determination which Rocky Mountain Power would have applied had Rocky Mountain Power received accurate information.

#### SECTION 13: NOTICE

Any notice required to be given hereunder shall be deemed to have been given when it is sent, with postage prepaid, by registered or certified mail, return receipt requested, to the parties hereto at their respective addresses on the signature page hereto.

#### SECTION 14: REMEDIES; WAIVER

Either party may exercise any or all of its rights and remedies under this Agreement, the applicable Electric Service Regulations and under any other applicable laws, rules and regulations affecting this single customer class. Rocky Mountain Power's liability for any action arising out of its activities relating to this Agreement, Rocky Mountain Power's provision or curtailment of electric service, or Rocky Mountain Power's electric facilities, shall be limited to repair or replacement of any non-operating or defective portion of Rocky Mountain Power's electric utility facilities. Under no circumstances shall either party be liable to the other for any economic losses, costs or damages, including but not limited to special, indirect, incidental, consequential, punitive, or exemplary damages. No provision of this Agreement or the Electric Service Regulations shall be deemed to have been waived unless such waiver is in writing signed by the waiving party. No failure by any party to insist upon the strict performance of any provision of this Agreement, the Electric Service Regulations or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach of

such provision or of any other provision. No waiver of any provision of this Agreement, or the Electric Service Regulations shall be deemed a waiver of any other provision of this Agreement, the Electric Service Regulations or a waiver of such provision with respect to any subsequent breach, unless expressly provided in writing.

#### SECTION 15: GOVERNING LAW; JURISDICTION; VENUE

All provisions of this Agreement and the rights and obligations of the parties hereto shall in all cases be governed by and construed in accordance with the laws of the State of Utah applicable to contracts executed in and to be wholly performed in Utah by persons domiciled in the State of Utah. Each party hereto agrees that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement, the Electric Service Regulations or the transactions contemplated hereby or thereby, may only be brought before the Commission, the Federal courts located within the State of Utah, or state courts of the State of Utah, and each party hereby consents to the exclusive jurisdiction of such forums (and of the appellate courts therefrom) in any such suit, action or proceeding. Furthermore, each party hereto waives, to the extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such forum or that any such suit, action or proceeding which is brought in any such forum has been brought in any inconvenient forum. If, for any reason, service of process cannot be found in the state of Utah, process in any such suit, action or proceeding may be served on a party anywhere in the world, whether within or without the jurisdiction of any such forum.

#### SECTION 16: WAIVER OF JURY TRIAL

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE ELECTRIC SERVICE SCHEDULE, THE ELECTRIC SERVICE REGULATIONS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

SECTION 17; HEADINGS

The descriptive headings contained in this Agreement are included for reference only and shall not affect in any way the meaning or interpretation of this Agreement.

SECTION 18: REPRESENTATIVES AND NOTICES

For the purposes of this Agreement, any notices required to be given hereunder shall be sent postage prepaid, by registered or certified mail, return receipt requested (or alternately by facsimile or any other method acceptable by both parties) to the parties at the respective addresses below and shall be deemed to have been given when received as evidenced by the appropriate receipt verifying delivery:

Representatives of Praxair

Praxair, Inc.  
Energy Manager  
~~2678 Bishop Drive, Suite 118~~ 2430 Camino Ramon Dr Suite 300 new  
San Ramon, CA 94583

Representatives of Company:

Rocky Mountain Power  
Director, Contract Administration  
825 NE Multnomah Street, Suite 600  
Portland, OR 97232

And

Rocky Mountain Power  
General Counsel  
201 South Main Street, Suite 2400  
Salt Lake City, Utah 84111



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by persons duly authorized as of the date first above written.

**ROCKY MOUNTAIN POWER**

**PRAXAIR, INC.**

By: ARWalje

Name: A. Richard Walje

Title: President

By: R C Nager

Name: R C Nager

Title: Energy Manager

Address:

201 South Main Street, Suite 2300

Salt Lake City, UT 84111

Address:

2470 Camino Nuevo Dr.

Suite 300

San Ramon, CA 94583

**EXHIBIT 1**

Monthly Charges shall be calculated using the following cost elements as they may apply and shall be adjusted as needed pursuant to Section 5.

On-Peak: October through April inclusive

7:00AM to 11:00PM, Monday through Friday, except Holidays

May through September inclusive

1:00PM to 9:00PM, Monday through Friday, except Holidays

Off-Peak: All other hours

**Customer Charge:** \$200.00 per month

**Facilities Charge:** \$1.71 per kW-month

**Power Charge:**

**Billing Months** May through September inclusive

On-Peak: \$10.76 per kW all kW

Off-Peak: None

**Billing Months** October through April inclusive

On-Peak: \$7.30 per kW all kW

Off-Peak: None

**Energy Charge:**

**Billing Months** May through September inclusive

On-Peak: \$ 0.035858 per kWh for all kWh

Off-Peak: \$0.022518 per kWh for all kWh

**Billing Months** October through April inclusive

On-Peak: \$0.026963 per kWh for all kWh

Off-Peak: \$0.022518 per kWh for all kWh

**Minimum:** The sum of the monthly Customer Charge, plus appropriate Facilities, Power, and Energy Charges.