



Confidential

New Hampshire - Large Commercial

Terms of Service

These Terms of Service govern Customer's purchase of electricity supply services from Actual Energy, Inc. Please keep a copy for your records.

- 1. Purchase and Sale:** These Terms of Service together with the Electric Service Agreement ("ESA") and Attachment A - Account List ("Attachment A") collectively form the "Agreement." Subject to acceptance of this Agreement by Actual Energy Inc. ("Company" or "Actual Energy"), licensed by the NH PUC, and in accordance with the terms of the Agreement, Actual Energy Inc. agrees that it will sell and deliver to customer ("Customer") and Customer agrees to receive electricity supply service for the service addresses in Attachment A. Customer's electricity consumption amount is not subject to a maximum or minimum usage limit.
- 2. Term and Termination of Electricity Supply Agreement :** The Customer's supply term will begin on the supply term start date and will continue on a month-to-month basis for a minimum 30-day supply service period. Either Party may terminate this Agreement upon 30 days' written notice, whereby Company will terminate Customer's service at the end of Customer's billing cycle on the next Electric Distribution Company ("EDC") meter reading and will bill Customer for amounts owed.
- 3. Enrollment Start-date:** The supply term start date will be determined after the Company makes best efforts to enroll Customer's EDC accounts on Attachment A on the Desired Start Date, but Company's Electric Distribution Company will determine the final supply start date based on Company's utility cycle date. Customer's first bill will reflect this supply term start date.
- 4. Billing:** Customer will continue to receive a bill from its Electric Distribution Company for delivery service, as it does now, including but not limited to, the price of transmission and distribution, the system benefits charge, stranded cost recovery charge, and taxes; and it will receive a separate bill from Actual Energy Inc. for the supply portion of service. Customer's payment is due net 10 days from the invoice date via Electronic Funds Transfer ("EFT") only, per Company's acceptance of Customer's valid EFT form, which is specifically incorporated into this Agreement. The Company's initial and continuing obligation to service Customer is expressly conditioned on Customer's successful initial EFT set up and continued viability. If Customer's EFT lapses, or Customer otherwise fails to pay its bill in a timely manner, Company may cancel this Agreement upon 10 days written notice without any liability to Customer. If Customer fails to make payment by the due date, interest charges will accrue daily on outstanding amounts from the due date until the bill is paid in full at a rate of 0.95% per month, or the highest rate permitted by law, whichever is less. Additionally, if Customer's full payment is not received by the date due and not timely cured, it will be considered late, and may be reported to a credit agency.

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- 5. Customer Class Representation:** Customer warrants and represents that: (1) the aggregate demand of all accounts on Addendum A is greater than or equal to 20 kW, and (2) no account listed on Addendum A is classified as residential under NHPUC rules.
- 6. Contact Information: Company/EDC/Commission:** Customer may reach Company by (i) phone at 844-822-8825; (ii) email at customercare@actualenergy.com; or (iii) mail at 74 Route 6A Sandwich, MA 02563. Company's website is actualenergy.com. Customer agrees to accept notices in electronic format. Should Customer wish to change its preferred method of communication, Customer agrees to submit its request to Company in writing. For emergencies, outages, and equipment service, below is contact information for the Company's various LDCs: Eversource Energy (PSNH) at 876-800-662-7764; Liberty Utilities at 1-800-375-7413; Unitil at 1-888-301-7700. For information or to file a complaint, please contact the Commission's Consumer Services and External Affairs Division of the Public Utility Commission at 1-800-852-3793.
- 7. Contract Rate and Pricing Structure:** Customer's electric service contract price (the "Purchase Price") is a variable price composed of a generation rate based on either the Real-Time or Day-Ahead wholesale hourly Locational Marginal Price ("RTLMP or DALMP") or a combination thereof plus all additional energy costs associated with serving the Customer including, but not limited to: Capacity, Renewable Energy Credits ("RECs") and similar state required renewable program costs, Line Losses, Ancillary Costs (such as system congestion, NCPC, wholesale transmission and distribution). In addition, the company charges a \$0.01/kWh fee. Capacity will be charged based on the Customer's ICAP tag as defined by the Utility/EDC, with service elements and pricing shown on Customer's monthly bill. Certain rate elements will be averaged into separate billing categories and adjusted from time to time as needed to match the Company's final costs to serve the Customer. The Company does not guarantee the Customer savings on their energy bill. The Purchase Price does not include increases in costs and charges which arise from, or relate to, any ISO adjustments, power pool or EDC program that is supplemented, amended or otherwise modified from time to time by a change in law(s). Any such costs are in addition to the Purchase Price and will be passed through to Buyer from Seller. Further, settlement costs in accordance with ISO-NE market rules, are the Customer's responsibility.
- 8. Customer Usage:** Customer's hourly kWh usage will be determined using Customer's actual hourly meter reading provided by Customer's Electric Distribution Company (EDC) when available, or the EDC standard load profile and a good faith Company estimate using Customer's historical usage data and other relevant information when Customer does not have an hourly meter, or EDC hourly information is not available. If Company receives actual data that varies substantially from Company's good faith estimate, Company will reconcile the estimated charges and adjust them as needed in subsequent invoices.



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- 9. Risk Associated with Variable Rate:** Electricity prices may be subject to substantial volatility based on economic conditions, fuel prices, seasonal electricity demands, generator outages, weather and other factors. Past results regarding particular electricity products are not necessarily an indication of future results. Electricity supplied directly through the ISO-NE administered energy markets can involve substantial direct and indirect costs, including but not limited to capacity and ancillary service costs, credit assurances, and NEPOOL and ISO expense assessments. In addition, participation in these markets may require processes such as Company and Customer load forecasting, scheduling, and settlement in accordance with ISO-NE market rules.
- 10. Credit Worthiness:** At any time, Company may require that Customer provide information to Company so that Company may evaluate Customer's creditworthiness. Counter-signed contract indicates Customer's credit approval.
- 11. Assurances:** If at any time during the Agreement, (i) Actual Energy Inc. has reasonable basis to believe Customer's creditworthiness or ability to perform obligations under this Agreement have become unsatisfactory; or (ii) any Financial Assurance held by Actual Energy Inc. has, in its reasonable discretion, become unsatisfactory, then Actual Energy Inc. shall be entitled to request Customer provide Actual Energy with Financial Assurance (including replacement or additional replacement Financial Assurance); Customer shall have five (5) business days from such request to provide Actual Energy with the requested Financial Assurance. The posting or amount of any Financial Assurance hereunder shall be subject to any applicable Laws and any limitations imposed by such Laws.
- 12. Consent to Obtain Usage Data and Billing Information from EDC:** By executing this Agreement and/or accepting delivery of electricity under this Agreement, Customer authorizes Actual Energy to obtain, and its EDC to release, to Actual Energy for purposes related to account establishment, any Customer account information, including historical usage information, interval data, account number, and payment history. Specifically, Customer consents to the release to Actual Energy, from its EDC, any meter data, including demand (kW), usage (kWh) and/or kVA data, at both the interval and summary level for all accounts and service addresses listed in Attachment A. Customer further authorizes Actual Energy to release confidential and other information to Customer's EDC necessary to enroll Customer, but Actual Energy will not release confidential customer information, except as otherwise permitted under PUC 2004.19, without written authorization from Customer, and a description of confidential customer information and any other information considered confidential by the CEPS. Further, by accepting the terms of service, the customer affirmatively consents to the utility sharing billing and payment information with the CEPS.



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- 13. Notices:** Notices, correspondence, and address changes shall be in writing and delivered by regular or electronic mail, facsimile, or similar means or in person. Notice by facsimile, electronic mail or hand delivery shall be deemed to have been received on the date and time delivered (after 5 p.m. deemed received on next Business Day) and notice by overnight mail or courier are deemed received two Business Days after it was sent. All notices shall be provided to the person and addresses specified herein, or to such other person and address as a Party may from time to time specify in writing to the other Party.
- 14. Taxes:** "Taxes" shall mean all taxes and fees imposed on the purchase and sale of electric energy by any Governmental Authority. Customer will be responsible to pay, and indemnify Company for all Taxes hereunder (excluding Actual Energy's income taxes).
- 15. Force Majeure:** "Force Majeure" shall mean an event beyond the reasonable control of the Party claiming Force Majeure that could not have been prevented by the exercise of due diligence. If either Party is rendered unable by Force Majeure to carry out, in whole or part, its obligations under this Agreement, such Party shall give notice and provide full details of the event to the other Party in writing as soon as practicable after the occurrence of the event. During such Force Majeure period, the obligations of the Parties (other than the obligation to make payments then due or becoming due with respect to performance prior to the event) will be suspended to the extent required. The Party claiming Force Majeure will make all reasonable attempts to remedy the effects of the Force Majeure and continue performance under this Agreement with all reasonable dispatch; provided, however, that no provision of this Agreement shall be interpreted to require Company to deliver, or Customer to receive, electric energy at points other than the delivery point(s). Force Majeure shall not include Customer's economic loss (e.g., Customer's loss of market(s) or supply chain(s)).

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- 16. Events of Default:** “Event of Default” means, with respect to a Party alleged to have taken or been affected by any of the actions set forth below in this section (the “Defaulting Party”): (a) the failure by the Defaulting Party to make, when due, any payment required under this Agreement if such failure is not remedied within five (5) Business Days after written notice of such failure is given to the Defaulting Party by the other Party (“Non-Defaulting Party”), or (b) any material information or representation or warranty made or presented by the Defaulting Party in this Agreement and/or any attachment to this Agreement, and Actual Energy’s Customer Service Application Form proves to have been false or misleading in any material respect when made or ceases to remain true during the Term; or (c) the failure by the Defaulting Party to perform any covenant set forth in this Agreement and for which a remedy is not provided herein and such failure is not excused by the other Party in writing or by Force Majeure or cured within five (5) Business Days after written notice thereof to the Defaulting Party; or (d) the failure of the Defaulting Party to provide Performance Assurance in accordance with the Credit Worthiness and Assurances Sections above; (e) the Defaulting Party: (1) makes an assignment or any general arrangement for the benefit of creditors or (2) otherwise becomes Bankrupt or Insolvent. It will not be an Event of Default and no Termination Payment will be due if Customer discontinues service at a facility prior to the End Date due to the sale or closure of the facility, but only if Customer provides at least thirty (30) days’ prior written notice and an accurate Customer forwarding address and other evidence required by Company that Customer no longer occupies the facility.
- 17. Remedies Upon an Event of Default:** If an Event of Default occurs, after any cure period have expired or if such Event of Default has not been cured in a timely fashion for any reason, upon such date, the Non-Defaulting Party shall have the right to terminate this Agreement effectively immediately and terminate all accounts hereunder and/or suspend performance without liability.
- 18. Limitation of Liability:** For breach of this Agreement, the liability of the Defaulting Party shall be limited as set forth in this Agreement, and all other damages or remedies hereby are waived. If no remedy or measure of damages is expressly provided, the liability of the defaulting party shall be limited to direct actual damages only and all other damages and remedies are waived. In no event shall either party be liable to the other party for consequential, incidental, punitive, exemplary or indirect damages in tort, contract, or under an indemnity provision herein.
- 19. Indemnification:** Except as limited in the Limitation of Liability Section herein, each Party will indemnify, defend and hold harmless the other Party, its officers, agents, and employees from any claims, damages and actions of any kind arising from personal injury including without limitation, death, tangible property damage or any other damages arising from or out of any event, circumstance, act or incident occurring or existing with respect to the electricity provided pursuant to this Agreement while title to such electric energy shall be deemed to vest in Customer upon transfer from the EDC at the delivery point(s) on Attachment A.

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- 20. Representations and Warranties:** As a material inducement to entering into this Agreement, each Party, represents and warrants to the other Party: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary to perform this Agreement; (b) it has all regulatory authorizations, permits and licenses necessary for it to legally perform its obligations under this Agreement; (c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents or any contract to which it is a party or any law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination applicable to it; (d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defenses; (e) it is not Bankrupt or Insolvent and there are no reorganization, receivership or other arrangement proceedings pending or being contemplated by it, or to its knowledge threatened against it; and (f) it has read this Agreement and fully understands its rights and obligations under this Agreement, and has had an opportunity to consult with an attorney of its own choosing to explain the terms of this Agreement and the consequences of signing it. Customer further represents and warrants to Company throughout the term of this Agreement that no facility or account listed on Attachment A is classified by the applicable utility as a residential account. Apart from any warranty that is expressly set forth in this Agreement, Company and its successors, assigns and delegates make NO WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PURPOSE. Regarding the services Company provides, or the activities Customer undertakes, pursuant to this Agreement, Company acts solely as counterparty in all transactions with Customer under this or any other Agreement. Accordingly, Company has no duty to advise Customer or exercise judgment on Customer's behalf as to the merits or suitability of any transactions that Company proposes to enter into with Customer.
- 21. Assignment:** Customer may not assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the Company. The Company may sell, transfer, pledge, or assign the accounts, revenues, or proceeds due to it under this Agreement, which shall not require Customer consent or further notice. The Company may assign its obligations under the Agreement to another licensed retail electric provider or other entity as permitted by law.



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- 22. Change in Law:** In the event that there is a change in law, administrative regulation, or any fees or costs imposed by the applicable ISO or a Governmental Authority, or a change in ISO/RTO Operations, market structure, congestion zone design, or protocols, and such causes the Company to incur capital, operating, or other costs relating to the provision of services contemplated herein, such costs shall be passed through to Customer, provided that, in the event such a change in law renders performance under this Agreement illegal, the Parties shall meet as soon as practicable to attempt to renegotiate the Agreement to comply with such change. If the Parties are unable to amend the Agreement, the Parties' obligations hereunder shall terminate upon the earlier of the date the change in law becomes effective or on the date Customer commences service with a retail energy provider in lieu of Company.
- 23. Governing Law:** THIS AGREEMENT AND ALL MATTERS ARISING OUT OF OR RELATING TO IT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW HAMPSHIRE, WITHOUT REGARD TO ANY CONFLICTS-OF-LAW PRINCIPLE THAT DIRECTS THE APPLICATION OF ANOTHER JURISDICTION'S LAWS. EACH PARTY CONSENTS TO THE PERSONAL JURISDICTION IN ANY FEDERAL OR STATE COURT WITHIN NEW HAMPSHIRE AND WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION RELATING TO THIS AGREEMENT.
- 24. No Waiver Provision:** No waiver by any Party of any one or more defaults by the other Party in the performance of any of the provisions of this Agreement will be construed as a waiver of any other default or defaults whether of a like kind or different nature. No delay or failure by Company in enforcing any part of this Agreement shall be deemed a waiver of any of its rights or remedies. If any provision of this Agreement is found to be illegal or unenforceable, the other provisions shall remain effective and enforceable to the greatest extent permitted by law. All confidentiality and indemnity rights will survive the termination of this Agreement. This Agreement may be executed in several counterparts, each of which will be an original and all of which constitute one and the same instrument. In any action or proceeding to collect amounts due under this Agreement, the prevailing Party shall be entitled to recover its collection costs and expenses, including reasonable attorneys' fees, from the other Party.

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- 25. Enrollment and Contract Authorization:** Customer has read and agrees to the provisions contained in this Agreement. Customer acknowledges receiving Actual Energy's Informational Disclosure Label with, and on the date of its signing of, this Agreement. Customer authorizes Actual Energy to enroll Customer with its EDC as Customer's electricity supplier. Customer understands that it may only designate one company as its retail electric supplier for each account and that there may be a fee charged by its current supplier to switch to Actual Energy. By signing this Agreement and/or accepting electricity supply, the individual undersigning below warrants and represents that he/she is legally authorized to enter into this Agreement on behalf of Customer. Customer also understands that supply of electricity under this Agreement is conditioned upon Actual Energy's verification of the accuracy of all Customer-provided information with respect to electricity usage and Attachment A. Actual Energy Inc. is licensed by the New Hampshire Public Utilities Commission to provide electric supply services under License No. _____.
- 26. Dispute Resolution:** Contact Actual Energy Customer Care via mail (74 Route 6A, Sandwich, MA 02563), email (customer care@actualenergy.com), or telephone (844-822-8825) with any complaints or disputes. In the event of an unresolved dispute or complaint, or for general utility information, Customer may contact the New Hampshire Public Utilities Commission (NH PUC) (i) by phone at 1-800-852-3793 or 1-603-271-2431, Monday through Friday, 8:00am to 4:30pm; (ii) by mail at New Hampshire Public Utilities Commission, 21 South Fruit Street, Suite 10, Concord, NH 03301-2429; (iii) or by website at <http://www.puc.nh.gov/ConsumerAffairsForms/complaintfrm.aspx>.
- 27. Environmental Disclosure Statement:** Customer may find Company's Environmental Disclosure Label on Company's website, <https://www.actualenergy.com/wp-content/uploads/2020/03/MA-Disclosure-Label-030302.pdf>
- 28. Third-party Fees:** If Customer was represented by a third party in connection with the procurement or performance of this Agreement, Customer's price may include that third-party's fee. Customer should consult the contract between Customer and the third-party to determine whether the prices set forth herein include any such fee and, if so, the amount per kilowatt hour of such fee.
- 29. Miscellaneous:** This Agreement sets forth the entire agreement between the Parties respecting this subject matter, and all prior agreements, understandings, and representations, whether oral or written, are merged in this Agreement. No modification or amendment of this Agreement shall be binding on either Party unless in writing and signed by authorized representatives of both Parties. The Parties acknowledge and agree that this Agreement is a "forward contract" and that they are "forward contract merchants" within the meaning of the United States Bankruptcy Code. If any provision of this Agreement is held by a court or regulatory agency of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force without being invalidated in any way.



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30. Definitions: The electricity account(s) in the Agreement are referred to herein individually as an "Account", and collectively as the "Account(s)." "Change in Law" means any new Laws, rules, regulations, filed tariffs, orders, or any change, modification, or change in interpretation or application of any Laws, rules, regulations, filed tariffs, or orders (including but not limited to: changes to rates, formula rate calculations, inputs, percentages, forecasts, or variables) issued by any applicable federal or state regulatory authority, or applicable regional transmission organization ("RTO") or independent system operator ("ISO"). "Commercial Account" means an Account classified by NH PUC or applicable EDC tariffs as not residential. "EDC" means the Account's local electricity distribution company. "ESA" means the Electricity Sales Agreement executed under this Agreement. "Historic kWh Usage" means Customer's kWh usage in the preceding 12 months from the date of this Agreement. "ISO" means the independent system operator or regional transmission organization responsible for the service territory governing an electricity account or any successor or replacement entity. "kWh" means the amount of electrical energy (expressed in kilowatt hours) purchased by Customer under the terms of this Agreement. "Laws" means any law, rule, order, regulation, ordinance, statute, judicial decision, administrative order, ISO business practices or protocol, EDC tariff, ISO tariff, rule of any commission or jurisdiction in the state in which an Account is located, or rule by the Federal Energy Regulatory Commission. "NH PUC" means the New Hampshire Public Utilities Commission. "Non-Indexed Variable Rate" is a non-indexed rate, which may fluctuate each month, and has no cap or limit in its variation month to month.