

Avoiding Pitfalls in Electric Supply Contracts

The Energy Market 2005

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Why is the Electric Supply Contract Important?

- ▶ It documents the deal
 - Supplier and customer obligations
 - Price, duration, services to be provided
 - Credit support
 - Termination and default
 - Remedies
- ▶ It assigns risk when things go wrong
- ▶ If its not in the contract, its not part of the deal.

Make Sure the Electric Supply Contract Works for You

- ▶ If you procure electricity through an RFP process include a satisfactory form of contract.
- ▶ If you are presented with a form of contract:
 - Don't sign immediately!
 - Review the terms
 - Make sure it properly documents your understanding of the deal
 - Have a person with specialized knowledge review the document
 - Negotiate if necessary

Negotiating the Electric Supply Contract

- ▶ Things to understand about negotiations:
 - Your power to negotiate is directly related to the importance of the transaction to the other party.
 - Negotiation power increases with revenues and business opportunities associated with contract
 - Risk/Certainty = \$'s

Important Contract Considerations

- ▶ Term of Contract – how and when can the deal be terminated?
- ▶ What quantity and type of electric services are being purchased?
- ▶ What happens when your usage suddenly increases or decreases?
- ▶ What happens if new charges are imposed (i.e. Locational ICAP)?

Important Contract Considerations

- ▶ What happens when things beyond the parties' control go wrong (Force Majeure)?
- ▶ What happens if either you or the supplier defaults?
- ▶ What credit assurances or security mechanisms are provided for and when can they be invoked?
- ▶ When and how can the deal be modified?

Last Thoughts

- ▶ If you don't think electric supply contracts are important think about Enron.
- ▶ Things can go bad very quickly!
- ▶ Your contract and vigilance are your only protections.
- ▶ Remember, if its not in the contract, its not part of the deal!