



January 14; 1994

Mr Jeffrey G. Taylor  
General Manager  
SATCO  
4041 Maritime Boulevard  
Tampa, FL 33605

950379-9i

Dear Jeff:

Thanks for your letter of December 15, 1993 and your agreement to resign our Sulfuric Acid Sales Agreement in order to incorporate sample calculations.

To that end, enclosed are two signed copies incorporating the sample calculations. Please note in the calculations that I have changed, in two places, "average netback" to "theoretical value" in example 2. Also note the reference to the calculations in paragraphs 7.B and 7.C.

If you have any questions, please give me a call in Houston at (713) 235-2091. Again, thanks for all your support and cooperation and I look forward to your return of one copy of the agreement after you have signed it.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jim Nail'.

Jim Nail  
Senior Engineer

enclosure  
cc: C.A. Shelnut

DOCUMENT NUMBER-DATE  
04395 APR 17 88  
FPSC-RECORDS/RF

## SULPHURIC ACID SALE AND PURCHASE AGREEMENT

This Agreement entered into the 7<sup>th</sup> day of JAN 1994, between Tampa Electric Company, hereafter called "Seller", and Sulphuric Acid Trading Company, hereafter called "Purchaser".

Whereas, Seller is a Florida Corporation with offices at 702 N. Franklin Street, with a mailing address of Post Office Box 111, Tampa, Florida 33601 and Purchaser is a New York joint venture between Freeport-McMoRan Resource Partners, Limited Partnership, a Delaware limited partnership and Interacid Holdings LTD, a British Virgin Islands Corporation, as joint venturers with its offices at 4041 Maritime Blvd., Tampa, Florida:

Whereas, Seller has acquired real estate located in Polk County, Florida with the intention of constructing the Polk Power Station Unit 1, a power generating facility which is in part designed to produce by-product sulfuric acid from the process.

Whereas, Purchaser is engaged in selling sulfuric acid produced by its affiliated company, Agrico Chemical Company, a Division of Freeport-McMoRan Resource Partners, Limited Partnership, with facilities in South Pierce, Florida and from other domestic and international sources to consumers, directly or through terminal operations.

Whereas, Purchaser desires to buy from Seller all sulfuric acid to be produced from the Polk Power Station Unit 1, and Seller desires to sell to Purchaser all sulfuric acid produced by the Polk Power Station Unit 1 provided that Purchaser complies with all the terms and conditions set forth in this Agreement.

Therefore, in consideration of the premises and the mutual covenants and agreements herein contained, Seller agrees to sell and Purchaser agrees to purchase sulfuric acid on the terms and conditions set forth as follows:

1) DEFINITIONS.

Where used in this Agreement, the following words are defined to mean:

- Ton: A short ton of 2,000 pounds net.
- Year: A calendar year.
- Quarter: A calendar quarter.
- Month: A calendar month.
- Product: Sulphuric Acid as defined in Article 3 hereto.
- Transportation and Other in Transit Expenses: Any and all of the costs paid or to be paid or assumed or to be assumed by Purchaser on or for the product shipped as defined in detail in paragraph 7.
- Product Costs: All weighing, transportation, and analytical costs.

- Gross Sales Revenue: The revenues received or receivable, in U.S. dollars, by the Purchaser from its Customers for the Product.

- Netback: Gross Sales Revenue less product costs and taxes where applicable.

## 2) QUANTITY.

Seller shall sell and Purchaser shall purchase on the price, terms and conditions set forth in this Agreement, all of the Seller's output of Product produced as a result of desulfurization process at its Polk Power Station Unit 1.

Seller's maximum output of Product will not exceed 90,000 tons per year (100% dry basis).

Seller does not guarantee that any quantity of sulfuric acid will be produced.

At least sixty (60) days prior to the commencement of each year Seller shall provide a written estimate to Purchaser of the quantity of Product available for sale from the Seller's facility.

At least thirty days prior to the start of each quarter, Seller shall notify Purchaser of the quantity of Product available for the following quarter.

## 3) QUALITY.

The Product shall be similar to the typical specifications in Exhibit A, attached hereto and made part of this Agreement. Other grades or specifications may be added to Exhibit A by mutual

written agreement between Purchaser and Seller. Specifications listed in Exhibit A are not limits or a complete list of specifications.

In the event that the Seller produces any material that does not meet Product specifications, mutually acknowledged in writing by both Seller and Purchaser, the Purchaser shall purchase the "non-conforming" material under such price, terms and conditions as mutually agreed, provided that the material has commercial value. In the event the material has no commercial value or shall be deemed as unusable under existing law, or by interpretation of future laws then Purchaser shall not be obligated to purchase any portion of this material and Seller shall be responsible for its proper disposal.

4) TERM.

This Agreement is effective as of the \_\_\_\_ day of \_\_\_\_ 1994 and shall remain effective for five calendar years following initial production of Product (Initial Term). This Agreement shall be automatically renewed for successive five (5) year periods (renewal term) unless either party so notifies the other party in writing of its intent not to renew at least eighteen months in advance.

This Agreement can be terminated:

- A) By mutual agreement.

B) By either party by giving notice in writing to the other party at least eighteen (18) months prior to the desired termination date. The termination date shall always be the last day of the month.

C) By the Seller or Purchaser in case of a Force Majeure event which extends to the end of the fourth month of Force Majeure; provided the party initiating the termination action has notified the other party in writing before the end of the third month, unless the parties have agreed to a plan to mitigate or resolve the effects of such event.

#### 5) DELIVERY.

Seller shall deliver Product to Purchaser, FOB rail car or tank truck provided by Purchaser ("Delivery"), and the risk of loss and title to Product shall pass from the Seller to Purchaser after completion of proper loading at the Seller's loading facilities. This loading includes weighing of vehicle, analysis of Product and shipment document preparation as may be agreed to by the parties. Purchaser shall be responsible for resolving damages resulting from contaminated transportation vehicles.

#### 6) SETTLEMENT OF QUANTITY AND QUALITY.

Settlement of Quantity and Quality issues for all Product purchased or rejected by Purchaser shall be made upon the basis of grade, analysis and weight as loaded by the Seller at the time of Delivery. Seller shall provide to Purchaser, daily production chemical analysis, inventory

volumes, analysis on shipments, and bills of lading of shipments by the following business day from the date of shipment or production as mutually agreed by both parties.

Samples shall be taken by Seller from Purchaser's vehicles and a portion of the material is to be retained by the Seller for a period of not less than thirty (30) days.

Purchaser shall have the right to take for its own analysis samples from Purchaser-provided transportation at Seller's loading facilities, and Seller shall give Purchaser access to Seller's property for the purpose of taking said samples.

Weighing of Product will be done by Seller, railroad or truck lines at certified scales or other commonly used and mutually agreed method of weight determination, whether at Seller's plant site or public scale, however, the responsibility for weighing and providing the weights is borne by the Seller. Any related cost of weighing, if performed by an outside party, will be considered as a Transportation Cost, as defined in paragraph 7, for purposes of calculating the Netback.

Purchaser shall have the right to have a representative present at weighing of Product.

Any objection shall be made known to Seller in writing within thirty (30) days after receipt of notice of delivery from Seller covering the quantity of Product in question.

Upon receipt of notice of Purchaser's objections to analysis, parties shall exchange samples of Product in question and shall attempt to reconcile the differences to their mutual satisfaction.

Should such not be possible, then a sample of the Product shall be taken from the Purchaser's Customers' disputed shipment and/or retained by Seller from such shipment which shall be sent for referee analysis to the following laboratory:

THORNTON Laboratories  
1145 East Cass Street  
Tampa, Florida 33601-2880

Settlement of issues relating to the conformance of the Product to specifications shall be based in the average of the referee result and the result of the party nearer to the referee result unless the referee result is the exact mean of the results of both parties, in which case the referee result shall be used as basis for the settlement.

The cost of the referee analysis shall be borne by the party whose analysis deviates by the greater amount from the referee analysis except when the referee analysis is the average of the parties' analyses which shall then be divided equally between the Purchaser and Seller.

In the event that the said laboratory discontinues operations, refuses to perform the analysis or shall be determined unreliable, then the parties shall select another reputable laboratory.

7) PRICE.

The Netback per ton (100% H<sub>2</sub>SO<sub>4</sub> on dry basis) on product sold hereunder shall be apportioned on a specific account basis between the Seller and Purchaser as follows:



- A. Purchaser will establish a theoretical value for the product based on the price of Tampa Frasch sulphur, FOB Tampa. The posted price used will be that which is effective the first day of a calendar month. The calculation for this theoretical value is \_\_\_\_\_ times the posted sulphur price.
- B. On any portion of the average netback which exceeds the calculation in paragraph 7.A, the Purchaser shall retain \_\_\_\_\_ of the average netback which exceeds the calculation. (See exhibit B, sample calculations, Example 2).
- C. In addition, on any portion of the average netback which is equal to or less than the calculations in paragraph 7.A, the Purchaser shall retain \_\_\_\_\_ of the average netback. (See exhibit B, sample calculations, Example 1).

In no event shall the Purchaser's portion of the retain Netback be less than \_\_\_\_\_ per ton, 100% dry basis. Should conditions prevail where due to market changes that the average netback is less than \_\_\_\_\_ per ton, the Purchaser must obtain the Seller's approval.

For these purposes, the posted price of Tampa Frasch sulfur will be that which is published in Fisher & Pike's "GREEN MARKETS" and shall reflect the price which appears at the first publication of the month in which the calculations are made. In the event "GREEN MARKETS" shall be discontinued or discontinue reporting the price of Tampa Frasch Sulphur, or if the Tampa Frasch Sulphur price posting shall be changed in such a manner deemed material by either party, then the parties shall confer in good faith and agree upon a new method upon which price adjustments hereunder shall be based.

Transportation expenses are to be deducted from the sales revenues to determine the Netback of all freight costs paid or to be paid to the transportation companies who transported the Product from the Seller's facilities to the destination designated by the Purchaser. These costs include but are not limited to the following:

- A) Reconsignment charges resulting from incorrect instructions or documentation stemming from the Seller.
- B) Demurrage or detention charges, unless directly caused by the Seller whether at loading at Seller's facility or unloading at destination.
- C) Lease and maintenance costs, including cleaning, of vehicles supplied by Purchaser in service at Seller's facility.
- D) Insurance-related expenses and insurance surcharges, as a result of transportation.
- E) Cost to weigh transportation vehicles when charged by service provider to determine Product shipments, if facilities not provided by Seller.
- F) Taxes, applicable to freight and Transportation Costs which may be charged by service Producer or by other parties on transportation-related costs.

8) PAYMENT.

Within ten (10) days following the end of each month, Purchaser shall provide Seller with a statement of tonnage sold detailing selling price, Transportation Costs and Netback for the month.

Seller shall invoice Purchaser within ten (10) days following receipt of the statement and Purchaser shall pay the invoice within thirty days (30) of the Seller's invoice. Such invoices shall be mailed to Purchaser at 4041 Maritime Blvd., Tampa Florida 33605. Purchaser shall mail remittance to Seller at Post Office Box 111, Tampa, Florida 33601 (Attention: General Accounting).

The statement of selling prices, Transportation Costs and Netback shall be certified by the Purchaser's General Manager or Director(s).

9) DISCLOSURE.

The Parties agree that this Agreement and all parties' business information related to this Agreement, the purchases and sales of the Product, Transportation Costs and Netbacks shall be deemed to be proprietary information and shall be confidential.

In recognition of this, Seller and Purchaser shall permit access to such information only to its employees who have a "need to know" in order to perform their assigned duties, or to the extent that Seller is required to disclose such information to governmental regulatory bodies on a

confidential basis or a restricted basis after giving Purchaser advance notice of such obligation so that Purchaser may seek a Protective Order.

10) AUDIT.

The Seller shall have the right to audit all elements of the Netback calculations verified once each year by Tampa Electric or an independent third party designated by the Seller. Purchaser grants to Seller's designated party access to the Purchaser's books and records underlying the Netback calculations during normal business hours (the transactions between Seller and Purchaser) for the purpose of checking the calculations. The Seller's designated party shall not copy or remove any books or records from the Purchaser's premises. The audit shall be limited to the Netback calculations for the preceding one year period unless a significant error is detected, in which case the audit may extend to cover the entire period which transpired since the preceding audit.

The cost of verification shall be borne by the Seller unless a significant error is detected, in which case the cost shall be borne by the Purchaser. Costs to be borne by the Purchaser will be limited to the actual costs to the Seller and will be duly justified by the Seller at the Purchaser's request.

Seller and Purchaser agree that "significant error" means an individual error, the correction of which gives a rectification of the Netback by 0.1 percent or more in the month the error occurred.

11) FORCE MAJEURE.

In the event that either party is delayed or prevented by Force Majeure in the performance of this Agreement, the obligation of the party so affected shall be suspended for the period following which such Force Majeure persists and the party so affected shall not be liable in damages or otherwise for its failure to perform during said period, so long as such party is taking reasonable steps to prevent, avoid, and/or mitigate the impacts of such event. Force Majeure as used herein shall mean any cause beyond the reasonable control of either party hereto, including, but not limited, to any acts of God or any other disaster: any shortages or disruptions and/or inability to obtain on reasonable terms any means of transportation of production, or any materials, raw or otherwise.

In case the Purchaser is affected by Force Majeure, Seller shall be free to take all reasonable measures necessary to keep its plant in operation including marketing Product to a third party.

In case Seller is affected by Force Majeure, Purchaser shall be free to Purchase product from others as may be necessary to meet its commitments.

12) MATERIAL SAFETY DATA SHEETS.

If requested by Purchaser, Seller shall furnish MSDS using OSHA format for Product covered by this contract. Failure to furnish data in sufficient time or detail to meet Purchaser's needs shall be grounds for cancellation of this Agreement under the provisions of paragraph 4.

Cancellation hereafter shall be Purchaser's sole and exclusive remedy for Seller's failure to meet its obligation under this section.

13) TAXES.

Purchaser will pay any applicable taxes. Seller, upon production of Product, will pay any taxes imposed by any present or future law upon or in respect to the Product purchased hereunder unless otherwise specified in this Agreement as it would apply to the production.

14) REMEDIES.

The remedies herein reserved shall be cumulative and additional to any other or further remedies provided in law of equity. No waiver of a breach of any provision of this Agreement shall constitute a waiver of any other breach or of such provision.

15) PRODUCT REMOVAL.

Purchaser acknowledges that Seller's storage has a limited capacity and that timely removal of the Product to market is essential so that electrical generation is not impacted. Purchaser agrees to remove all conforming Product so that electrical generation at the Polk Power Station is not impeded to any degree. Failure of Purchaser to remove the Product in a timely manner shall be grounds for cancellation of this agreement and Seller may make other marketing agreements with third parties.

16) ENTIRETY OF AGREEMENT.

This Agreement contains all the agreements, warranties and representations of the parties and supersedes all other prior or contemporaneous agreements, warranties and representations (oral or written) between the parties relating to the subject matter hereof. No waiver of, change in, or addition to any of the terms and provisions of the Agreement shall be binding on either party unless same shall be in writing and signed by each party's duly authorized representative. All notices in writing shall be delivered by hand or deposited in the U.S. Mail, postage prepaid, addressed to the parties at their mailing address provided on the signature page of this Agreement.

17) APPLICABLE LAW.

The laws of the State of Florida shall apply to the interpretation, validity and enforcement of this Agreement.

18) ASSIGNMENT.

This Agreement shall bind and inure to the benefit of the legal representatives and successors of the parties hereto. This Agreement may not be assigned to a third party without the prior written consent of the other party hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement of duplicate as the day and year first above written.

Sulphuric Acid Trading Company

4041 Maritime Blvd.

Tampa, Florida 33605

(Purchaser)

BY: \_\_\_\_\_

AS ITS: \_\_\_\_\_

ATTEST: \_\_\_\_\_

Tampa Electric Company

Post Office Box 111

Tampa, Florida 33601

(Seller)

BY: Robert F. [Signature]

AS ITS: Vice President

ATTEST: [Signature]



**EXHIBIT A****Typical Sulphuric Acid Specification**

GRADE	93, 96, or 98%
SPECIFIC GRAVITY @ 60°	1.843
FREEZING POINT	34°F
ARSENIC (As)	1.0 PPM
AMMONIA	10.0 PPM
ANTIMONY (Sb)	0.5 PPM
BARIUM (Ba)	0.4 PPM
CADMIUM (Cd)	.025 PPM
CHROMIUM (Cr)	0.18 PPM
CHLORIDE	1.0 PPM
COPPER (Cu)	10.0 PPM
HARDNESS AS CaCO <sub>3</sub>	5 PPM
IRON (Fe)	50.0 PPM
LEAD (Pb)	0.1 PPM
MANGANESE (Mn)	50.0 PPM
MERCURY (Hg)	0.006 PPM
NICKEL (Ni)	1.0 PPM
NITRATES	5 PPM
SELENIUM (Se)	20.0 PPM
SILVER (Ag)	0.05 PPM

EXHIBIT B

Sample Calculations

Assumptions

Sulfur Frash Price = \$80.00 per ton

\*Theoretical Value = \$80.00 x = per ton

\* AS PER PARAGRAPH 7A

Example 1:

Average Netback equal to or less than theoretical value:

Assume Average Netback = \$20.00 per ton

SATCO Revenues = of Average Netback = x \$20.00 = per ton.

TEC Revenues = of Average Netback = x \$20.00 = per ton.

Example 2:

Average Netback greater than theoretical value:

Assume Average Netback = \$30.00 per ton.

SATCO Revenues = of theoretical Value ÷ of Average Netback

minus theoretical value = x ÷ (30.00 - ) =

TEC Revenues = of theoretical Value ÷ Average Netback minus

theoretical value = ÷ (30.00 - ) =