

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release (“Agreement”) is made and entered into between Heber Light & Power Company, an energy services interlocal entity of the state of Utah (“Heber Light & Power”), and Rocky Mountain Power, a division of PacifiCorp, an Oregon corporation (“Rocky Mountain Power”). Heber Light & Power and Rocky Mountain Power each may be referred to as a “Party” or collectively as the “Parties.” Other capitalized terms are defined in the text of the Agreement. This Agreement shall be effective as of the date the Town of Independence issues a franchise to Heber Light & Power acceptable to Heber Light & Power.

RECITALS

A. Heber Light & Power was formed in 1909 by Heber City, Midway City and the Town of Charleston (“Member Cities”) to provide electric service to customers in the Member Cities and surrounding areas. It has provided electric service to customers in the Member Cities and to other customers in Wasatch County for over 100 years. On or about September 9, 2002, Heber Light & Power became an energy services interlocal entity under Utah Code Ann. § 11-13-203(4). Heber Light & Power is currently providing service to nearly 9,000 customers of which nearly 3,000 are located outside the boundaries of the Member Cities.

B. Rocky Mountain Power is a public utility and an electrical corporation in the state of Utah. It and its predecessors-in-interest (hereinafter references to Rocky Mountain Power will include its predecessors-in-interest as applicable) have provided electric service to customers in many parts of the state of Utah pursuant to certificates of public convenience and necessity issued by the Public Service Commission of Utah (“Commission”), and its predecessor, the Public Utilities Commission of Utah, for over 100 years.

C. On April 4, 1960, Wasatch County granted a franchise to Rocky Mountain Power authorizing Rocky Mountain Power to use public rights-of-way in Wasatch County to provide electric service to customers in Wasatch County. On June 9, 1960, the Commission granted a certificate of public convenience and necessity to Rocky Mountain Power to provide electric service to customers in Wasatch County (“Current Certificate”). Rocky Mountain Power currently provides service to approximately 3,000 customers in Wasatch County pursuant to the Current Certificate.

D. On May 21, 2008, Wasatch County granted a franchise to Heber Light & Power, authorizing Heber Light & Power to use public rights of way in portions of Wasatch County for the purpose of providing electric service in portions of Wasatch County subject to the terms and conditions of the franchise.

E. On October 6, 2008, the Town of Daniel (“Daniel”) granted a franchise to Heber Light & Power, authorizing Heber Light & Power to utilize public rights of way within Daniel for the purpose of providing electric service to residents of Daniel.

F. Heber Light & Power and Rocky Mountain Power have had a dispute regarding: (1) the authority of Heber Light & Power to provide retail service to customers located outside the municipal boundaries of its Members Cities, (2) the authority of Rocky Mountain Power to serve customers within the area that Heber Light & Power regards as its historical service area,

(3) the obligation of Rocky Mountain Power to pay impact fees for electricity in excess of the amount provided under the Power Sale Agreement between Heber Light & Power Company and Utah Power & Light dated December 17, 1993 (“Power Sale Agreement”), and (4) whether Rocky Mountain Power’s transmission and distribution line proceeding south from Rocky Mountain Power’s Jordanelle Substation on the east side of Highway 40 trespasses on property of Heber Light & Power (collectively “Disputes”).

G. Senate Bill 227, 1st Substitute, as amended (“SB 227”) was passed in the 2010 General Session of the Utah Legislature and became law on May 10, 2010. SB 227 amended Utah Code Ann. § 11-13-204 to provide that an energy services interlocal entity and public utility may agree that the energy services interlocal entity shall supply retail electric service to customers outside the municipal boundaries of its members provided that: (1) the energy services interlocal entity obtains a franchise for service in the area and (2) the Commission approves the agreement and withdraws the area from the public utility’s certificated service area.

H. On September 28, 2010, the Wasatch County Council adopted and approved a new franchise for Rocky Mountain Power authorizing Rocky Mountain Power to use public rights-of-way in Wasatch County to provide electric service to customers in designated portions of Wasatch County, effective when the Commission approves this Agreement in an Order that becomes a Final Order as defined in paragraph 8 of this Agreement (“RMP Franchise”). A copy of the RMP Franchise when issued will be attached to this Agreement as Appendix 1 and is incorporated herein.

I. On September 28, 2010, the Wasatch County Council adopted and approved an amended franchise for Heber Light & Power authorizing Heber Light & Power to use public rights-of-way in Wasatch County to provide electric service to customers in designated portions of Wasatch County, effective when the Commission approves this Agreement in an Order that becomes a Final Order (“HLP Wasatch County Franchise”). A copy of the HLP Wasatch County Franchise when issued will be attached to this Agreement as Appendix 2 and is incorporated herein.

J. On October 4, 2010, Daniel granted Heber Light & Power an amended franchise authorizing Heber Light & Power to use public rights-of-way in Daniel to provide electric service to customers in Daniel, effective when the Commission approves this Agreement in an Order that becomes a Final Order (“Daniel Franchise”). A copy of the Daniel Franchise is attached to this Agreement as Appendix 3 and is incorporated herein.

K. The Town of Independence (“Independence”) is scheduled to grant Heber Light & Power a franchise authorizing Heber Light & Power to use public rights-of-way in Independence to provide electric service to customers in Independence (“Independence Franchise”). A copy of the Independence Franchise when issued will be attached to this Agreement as Appendix 4 and is incorporated herein.

L. The Parties enter this Agreement in compliance with Utah Code Ann. § 11-13-204(7) to settle the Disputes.

M. The situation and circumstances underlying the Disputes are unique. The Agreement is expressly designed to address this unique situation and circumstances and would not be applicable to other disputes or circumstances arising as a result of the provision of electric service to customers outside the boundaries of other municipal or interlocal electric service providers.

TERMS AND CONDITIONS

In consideration of the following agreements and conditions, the Parties agree as follows:

1. **HLP Service Area.** If an Order of the Commission approving this Agreement becomes a Final Order and no judicial review is sought of the Order or judicial review of the Order is sought and the Parties elect, pursuant to paragraph 9 of this Agreement, to proceed with the transfers contemplated in paragraph 4 of this Agreement pending the judicial review, Heber Light & Power agrees to assume responsibility for providing electric service to customers located outside of its Member Cities' municipal boundaries in the portion of Wasatch County described in Appendix 5 attached hereto and incorporated herein ("HLP Service Area") on the terms and conditions in the Agreement for the Transfer of Distribution Facilities and Customers, which is Appendix 7 to this Agreement. Appendix 6 attached hereto and incorporated herein is a map of the HLP Service Area and is provided for illustrative purposes only. The legal description of the HLP Service Area in Appendix 5 shall control. Heber Light & Power agrees to comply with Utah Code Ann. § 11-13-204(7)(c).

2. **Application.** Within forty-five (45) days of execution of this Agreement or such longer time as the Parties may mutually agree, Rocky Mountain Power shall file an application ("Application") with the Commission pursuant to Utah Code Ann. § 11-13-204(7)(a)(ii) seeking the Commission's approval of this Agreement and amendment of its Current Certificate to exclude the HLP Service Area from the area in Wasatch County in which Rocky Mountain Power is authorized and required to provide service. Rocky Mountain Power shall and, upon request by Rocky Mountain Power, Heber Light & Power shall use their Best Efforts to support approval of the Application before the Commission and in any court proceeding, including responding to discovery requests, providing written and oral testimony and other evidence, and providing written and oral argument. Neither Party shall directly or indirectly oppose the Application or support any petition for review, rehearing or reconsideration in the Commission of the Order or any petition for review in court of the Order. For the purposes of this Agreement, "Best Efforts" means the efforts, time and costs that a prudent person desirous of achieving a result would use, expend, or incur in similar commercial circumstances to ensure that such result is achieved within a reasonable period of time and subject to reasonable conditions.

3. **Cooperation.** In providing material written information to any third party or government entity or in obtaining any material permit, consent, approval and authorization of any third party or government entity in connection with the transactions contemplated by this Agreement:

a. Each Party shall have the right, to the extent practicable, to review in advance and to consult with the other Party, in each case subject to applicable laws relating to the exchange of information. In exercising the foregoing right, each of the

Parties agrees to act reasonably and as promptly as practicable in the circumstances and to keep the other Party apprised of the status of material matters relating to completion of the transactions contemplated by this Agreement.

b. The Parties agree to mutually support each other in obtaining regulatory approvals of the Agreement and the associated facility and customer transfers and in gaining any required permits or franchises, including developing a coordinated customer communications plan, providing information to regulators and parties in regulatory proceedings and to other government entities required to issue permits or franchises, and cooperating in responding to parties that may oppose approval of the Agreement or issuance of any required permits or franchises.

c. Notwithstanding the foregoing, neither Party shall be required to disclose to the other Party information that is privileged or is competitively sensitive and confidential, including internal analyses underlying the Disputes or a Party's decision to settle the Disputes, even if the Party is required to disclose the information subject to the terms of a protective order or rule to another government entity or third party.

4. **Transfers.** If the Order becomes a Final Order and no judicial review is sought of the Order or judicial review of the Order is sought and each Party elects, pursuant to paragraph 9 of this Agreement, to proceed with the transfers contemplated in this paragraph pending the judicial review:

a. Rocky Mountain Power shall transfer to Heber Light & Power, and Heber Light & Power shall accept the transfer from Rocky Mountain Power of, the distribution facilities owned by Rocky Mountain Power that are used to provide retail electric service to customers currently served by Rocky Mountain Power located within the HLP Service Area on the terms and conditions set forth in Appendix 7 attached hereto and incorporated herein. After the transfer, Rocky Mountain Power shall not provide electric service within the HLP Service Area, and Heber Light & Power shall provide service within the HLP Service Area.

b. Heber Light & Power shall transfer to Rocky Mountain Power, and Rocky Mountain Power shall accept the transfer from Heber Light & Power of, the distribution facilities owned by Heber Light & Power that are used to provide retail electric service to customers currently served by Heber Light & Power located outside the HLP Service Area on the terms and conditions set forth in Appendix 7. After the transfer, Heber Light & Power shall not provide electric service outside the HLP Service Area, and Rocky Mountain Power shall provide service outside the HLP Service Area in its certificated area.

c. The transfers contemplated by the foregoing subparagraphs will include any assignments or apportionment of easements necessary for the Parties to use the transferred facilities to provide service in their respective service areas.

d. The Parties shall use their Best Efforts to support the permitting by any governmental entity with jurisdiction of any facilities of Heber Light & Power or Rocky Mountain Power necessary to provide service in their respective service areas.

e. The Power Sale Agreement shall be terminated as provided in Appendix 7. This termination shall release both Parties of any continuing obligation of any kind or nature under the Power Sale Agreement except for any obligation of Rocky Mountain Power to pay Heber Light & Power for electricity delivered prior to termination. Heber Light & Power agrees that Rocky Mountain Power's agreement in Confidential Appendix 11 satisfies all claims of Heber Light & Power that Rocky Mountain Power is obligated to pay any impact fee related to the Power Sale Agreement.

f. Within ten days of the Order becoming a Final Order, Heber Light & Power shall either: (i) grant Rocky Mountain Power an easement on or across Heber Light & Power's property for Rocky Mountain Power's existing transmission and distribution line proceeding south from Rocky Mountain Power's Jordanelle Substation on the east side of Highway 40 in the form of Rocky Mountain Power's standard power line easement or (ii) acknowledge in writing that the line does not cross or encroach on Heber Light & Power's property.

5. **Actions Prior to Transfers.** Prior to the transfers contemplated in paragraph 4, Rocky Mountain Power and Heber Light & Power shall continue to provide retail electric service to the customers they currently serve and to new customers requesting service from them in accordance with applicable tariffs, rules and regulations, except that the Parties may agree to other temporary service arrangements or may terminate service to any individual customer in accordance with the provisions of their tariffs or rules and regulations for nonpayment or misuse of service.

6. **Future Modifications of Service Areas.** The service areas provided in this Agreement may be modified in the future in the following circumstances:

a. If any of the Member Cities lawfully annexes territory outside the HLP Service Area and the Member City and Heber Light & Power comply with all provisions of law applicable to providing electric service following an annexation, including the provisions of Utah Code Ann. § 10-2-421, Heber Light & Power will not be required to comply with subparagraph 6.c prior to providing retail electric service to customers in the lawfully annexed territory. For the purposes of this Agreement, any future lawfully annexed territory shall be considered as within the municipal boundaries of the municipality annexing the territory.

b. When any territory is approved for annexation to any of the Member Cities or to any city or town for which Heber Light & Power holds a franchise, Heber Light & Power shall provide notice to Rocky Mountain Power not later than 15 business days after the municipality provides notice to Wasatch County of the annexation pursuant to Utah Code Ann. § 10-2-408.

c. If (1) a customer within the HLP Service Area requests service from Rocky Mountain Power or a customer outside of the municipal boundaries of the Member Cities and the HLP Service Area requests service from Heber Light & Power, (2) the Party requested to provide service to the customer is willing to provide the service, and (3) the Party in whose service area the customer is located is willing to agree to provision of service to the customer by the other Party:

i. The Parties shall cooperate in good faith to enter into a written agreement amending the HLP Service Area to permit such service. The new agreement may provide for an amendment to the HLP Service Area to include or exclude a specified geographic area that is broader than the customer location and shall provide for the transfer of any facilities used by the transferring Party to provide service to the customer. The customer requesting service and any other customer in the geographic area to be transferred shall be a party to a new service agreement in which the customer waives any claim against the Parties.

ii. To the extent required by law or their franchises, the Parties shall request any amendment to their respective franchises to accommodate the new service.

iii. Rocky Mountain Power shall file an application with the Commission for approval of the agreement and to obtain an amendment to its certificate of public convenience and necessity consistent with the amended HLP Service Area. Except to the extent the rights and obligations of the Parties under paragraphs 2 and 3 of this Agreement relate exclusively to the Application, they shall apply to the application filed under this subparagraph.

iv. Service to the customer in accordance with the customer's request shall be provided only upon approval of the application by the Commission.

7. **Confidential Temporary Power Supply Contract.** Heber Light & Power and Rocky Mountain Power have entered into a Temporary Power Supply Contract, attached hereto as Appendix 8 and incorporated herein, which provides an option for Rocky Mountain Power to obtain power from Heber Light & Power to provide temporary service to new customers in the area Rocky Mountain Power is authorized to serve under the Current Certificate requesting service from Rocky Mountain Power during the period from the effective date of the Temporary Power Supply Contract until the Temporary Power Supply Contract terminates. Appendix 8 contains confidential information and is therefore a protected record under Utah Code Ann. § 63G-2-305 and may only be disclosed other than to the Parties in accordance with Utah Admin. Code R746-100-16 or a nondisclosure agreement satisfactory to each of the Parties in its sole discretion.

8. **Order and Final Order.** For purposes of this Agreement:

a. The "Order" means an order of the Commission on the Application approving this Agreement, including Heber Light & Power's service within the HLP Service Area and amending Rocky Mountain Power's Current Certificate to exclude the

HLP Service Area from the area in which Rocky Mountain Power is authorized and required to provide service, in a form satisfactory to each of the Parties in its sole discretion. An order of the Commission approving the Application shall be deemed to be in a form satisfactory to a Party unless the Party provides notice to the other Party that the order is not satisfactory within 15 days of the date the order is issued.

b. If the Commission issues an order that is not satisfactory to either of the Parties, the Parties shall attempt in good faith to negotiate modifications to the Agreement that would be acceptable to the Commission and which could be approved in an Order. These good faith negotiations shall be undertaken consistent with the requirements and conditions of paragraph 15.a.ii of this Agreement. If the Parties are successful, they shall seek entry of the Order. If not, this Agreement shall terminate.

c. The Order shall become a “Final Order” on the earlier to occur of the following:

i. the time period prescribed by law for any person to seek review, rehearing or reconsideration of the Order by the Commission and to file a petition for review of the Order by a court has expired and no person has requested review, rehearing or reconsideration of the Order by the Commission or filed a petition for review of the Order by a court;

ii. the Commission has denied a request for review, reconsideration or rehearing of the Order and the time period prescribed by law for any person to file a petition for review of the Order by a court has expired without any person filing a petition for review;

iii. a person has sought judicial review of the Order without being granted a stay of the effectiveness of the Order pending review; or

iv. any stay of the effectiveness of the Order pending review, rehearing or reconsideration by the Commission or review by a court has terminated.

d. The Order shall be deemed vacated if:

i. the transfers contemplated by paragraph 4 are not completed as provided in Appendix 7 and the Party that has not received any transfer to which it is entitled elects termination of this Agreement under subparagraphs 14.b or 14.d of this Agreement;

ii. the Order does not become a Final Order for any reason other than that the Order is stayed pending review by the Commission or a court; or

iii. a Final Order is reversed on judicial review and the Commission does not approve this Agreement or a modification of this Agreement satisfactory to each of the Parties in its sole discretion.

9. **Judicial Review or Challenge.**

a. **Judicial Review.**

i. **Election to Proceed.** If any person seeks judicial review of the Order and the Order has become a Final Order, the Parties may, in their sole discretion, elect to proceed with the transfers and construction and installation of facilities contemplated in paragraph 4 and Appendix 7 pending the judicial review on such terms and conditions as the Parties may agree. If either Party does not elect to proceed with the transfers or the Parties are unable to agree on terms and conditions for proceeding with the transfers, the Parties' obligations under paragraph 4 of this Agreement and Appendix 7 following the Order becoming a Final Order shall be suspended pending the judicial review.

ii. **Affirmance on Judicial Review.** If the Order is affirmed on judicial review, the Parties shall proceed to complete the transfers and construction and installation of facilities as contemplated in Appendix 7.

iii. **Reversal on Judicial Review.** If the Order is reversed on judicial review:

A. the Parties shall use their Best Efforts to:

(1) have the Commission approve this Agreement on remand consistent with the court's decision, or

(2) negotiate in good faith, in accordance with the provisions of subparagraph 15.a.ii of this Agreement, modifications to this Agreement that the Commission could approve on remand consistent with the court's decision; and

B. if the transfers and construction and installation of facilities contemplated in Appendix 7 have commenced but have not been completed and it is not inconsistent with any agreement the Parties have made to proceed under subparagraph 9.a.i, either Party may, in its sole discretion, elect to stop the process of making further transfers and construction or installation of facilities pending the outcome of the efforts specified in subparagraph 9.a.iii.A by providing notice to the other Party or the Parties may, in their sole discretion, elect to proceed with the transfers and construction and installation of facilities contemplated in Appendix 7 pending the outcome of such efforts on such terms and conditions as the Parties may agree. If either Party elects to stop the transfers and construction and installation of facilities or the Parties are unable to agree upon terms and conditions for proceeding, the Parties' obligations under this Agreement following the Order becoming a Final Order shall be suspended pending the completion of the efforts. If the efforts are successful, the transfers and construction and installation of

facilities as contemplated in Appendix 7, as they may be modified by agreement of the Parties, shall proceed to completion.

C. If the Parties are unsuccessful in obtaining Commission approval of this Agreement on remand or in negotiating a modification of this Agreement acceptable to each Party in its sole discretion that is approved by the Commission, the Parties shall unwind any transfers that have taken place in accordance with their agreement under subparagraph 9.a.1 or the provisions of subparagraph 14.b of this Agreement and this Agreement shall terminate as provided in subparagraph 14.b.

b. Other Judicial Challenge.

i. **Defense and Cooperation.** If any person threatens or commences litigation (other than a petition for judicial review) that challenges either Party's service area or other provisions of this Agreement or seeks damages or injunctive relief, the Party complained against shall use its Best Efforts to defend against the claim and shall promptly notify the other Party of the claim. The other Party may attempt to intervene in the proceeding on the claim, and the Party complained against shall support any such intervention. The other Party shall have no obligation to defend against the claim, but shall cooperate with the Party complained against in providing information reasonably requested by the Party complained against and shall not, directly or indirectly, support the claim. The Party complained against shall not settle the claim in a manner that would affect the rights of the other Party under this Agreement without providing prior notice to the other Party and without the written consent of the other Party, which shall not be unreasonably withheld, conditioned or delayed.

ii. **Claims Prior to Commencement of Transfers.** If the claim is asserted prior to commencement of the transfers and construction and installation of facilities contemplated in Appendix 7, the Parties may, in their sole discretion, elect to proceed with the transfers and construction and installation of facilities contemplated in Appendix 7 pending resolution of the judicial challenge on such terms and conditions as the Parties may agree. If either Party does not elect to proceed with the transfers or the Parties are unable to agree on terms and conditions for proceeding with the transfers, the Parties' obligations under this Agreement following the Order becoming a Final Order shall be suspended pending resolution of the claim.

iii. **Claims Prior to Completion of Transfers.** If the claim is asserted prior to completion of the transfers and construction and installation of facilities contemplated in Appendix 7, either Party may, in its sole discretion, elect to stop the transfers and construction and installation of facilities by providing notice to the other Party, or the Parties may, in their sole discretion, elect to proceed with the transfers and construction and installation of facilities contemplated in Appendix 7 pending resolution of the claim on such terms and conditions as the Parties may agree. If either Party elects to stop the transfers and

construction and installation of facilities or the Parties are unable to agree upon terms and conditions for proceeding, the Parties' obligations under this Agreement following the Order becoming a Final Order shall be suspended pending resolution of the claim.

iv. **Consistent Resolution of Claim.** If the claim is resolved in a manner that is consistent with the terms and conditions of this Agreement, the Parties shall proceed to complete the transfers and construction and installation of facilities as contemplated in Appendix 7.

v. **Inconsistent Resolution of Claim.** If the claim is resolved in a manner that is inconsistent with the terms and conditions of this Agreement:

A. The Parties shall use their Best Efforts to attempt to negotiate in good faith, in accordance with the provisions of subparagraph 15.a.ii of this Agreement, modifications to this Agreement that the Commission could approve consistent with the resolution of the claim.

B. If the Parties are unsuccessful in negotiating modifications to this Agreement or obtaining Commission approval of such modifications, they shall unwind any transfers that have taken place in accordance with the provisions of subparagraph 14.b of this Agreement and this Agreement shall terminate as provided in subparagraph 14.b.

10. **Survey.** In defining the HLP Service Area, the Parties have done so using section, half section or quarter section lines or existing recorded property boundary descriptions. In the event there is any change to the HLP Service Area which is acceptable to each Party in its sole discretion and the legal description of the HLP Service Area as revised cannot be described without a survey, Heber Light & Power and Rocky Mountain Power agree to have the applicable portion of the boundary defined by survey and each shall pay one-half of the cost of the survey. Appendix 5 shall be modified when the necessary survey is completed to include the metes and bounds description for the portion of the boundary defined by survey.

11. **Other Agreements.** Heber Light & Power and Rocky Mountain Power have entered into agreements attached as Appendices 9, 10 and 11 and incorporated herein as part of the consideration for settlement of their dispute. Appendices 9 and 11 contain confidential information and are therefore protected records under Utah Code Ann. § 63G-2-305 and may only be disclosed other than to the Parties in accordance with Utah Admin. Code R746-100-16 or a nondisclosure agreement satisfactory to each of the Parties in its sole discretion.

12. **Compromise.** The Parties agree and acknowledge that the terms and conditions of this Agreement are a compromise of their positions and are entered into in settlement of their Disputes. If (i) no Order is issued by the Commission, (ii) the Order does not become a Final Order, (iii) the Order is reversed on judicial review and the Commission does not approve this Agreement or a modification of this Agreement satisfactory to each of the Parties in its sole discretion on remand, or (iv) the transfers contemplated in paragraph 4 of this Agreement are not completed as provided in Appendix 7, the Parties shall be free to advocate any position in any

judicial or administrative proceeding in which any aspect of the Disputes between the Parties is at issue (“Litigation”). Neither this Agreement nor the negotiation, execution or performance of this Agreement shall be offered or entered into evidence, referenced or used in the Litigation. Without limiting the generality of the foregoing and by way of illustration only, the Parties agree:

a. The Parties enter into this Agreement solely to facilitate the settlement of their Disputes without in any way strengthening, waiving or prejudicing their positions in the event of Litigation.

b. Neither Party may use the negotiation, execution or performance of this Agreement as evidence in the Litigation or to strengthen their position or to prejudice the other Party in any way.

c. This Agreement and the negotiation, execution or performance of this Agreement is not intended nor should it be interpreted to preclude either Party from asserting any legal or factual contention in the Litigation.

d. This Agreement does not preclude either Party from asserting any legal or factual contention not directly based upon the negotiation, execution or performance of this Agreement, but based on any other facts including the facts and circumstances that gave rise to this Agreement, including without limitation customers’ requests for service and Rocky Mountain Power’s and Heber Light & Power’s respective capacity and facilitates to provide service to the customers.

13. **Release.** Except for any promises or obligations made or undertaken in this Agreement which survive termination of this Agreement and subject to (a) the Commission issuing the Order that becomes a Final Order (i) which is not reversed on judicial review or (ii) which is reversed on judicial review and the Commission issues a Final Order approving this Agreement or a modification of this Agreement in a manner consistent with the court’s ruling and satisfactory to each of the Parties in its sole discretion on remand, and (b) the transfers contemplated in paragraph 4 of this Agreement being completed as provided in Appendix 7, each Party, on behalf of itself and its respective principals, successors and assigns, hereby covenants not to sue and releases the other Party and its current and former officers, directors, shareholders, employees, affiliates (including parents, subsidiaries, and other entities with any degree of common ownership, and their current and former officers, directors, shareholders, employees, representatives, and agents), representatives, and agents from any and all claims, demands, and causes of action of any kind whatsoever, whether or not now known, suspected or claimed, which the Party ever had, now has, or claims to have had relating or connected to, or arising out of, the matters raised or that could have been raised in the lawsuit filed by Rocky Mountain Power against Wasatch County in the Fourth Judicial District Court in and for Wasatch County, State of Utah, Case No. 070500152 and Docket No. 07-035-22 before the Commission or that arise out of the Disputes and any and all relief related to such claims whether in the form of damages, injunctive relief or any other form of relief whether at law or in equity. These mutual covenants not to sue and releases apply and extend to all rights, causes of action, or claims which arise out of the Parties’ Disputes and which have been asserted, or could have been asserted, by a

Party as of the date of this Agreement, irrespective of the theory of recovery that could have been asserted.

14. Remedies.

a. If, through no fault of a Party, the Commission does not issue the Order or the Order does not become a Final Order, this Agreement shall terminate. Such termination shall relieve both the Parties of all of their obligations set forth in this Agreement, constitute a failure of the conditions to the obligations of the Parties to implement this Agreement, and relieve each Party from liability under this Agreement. The Parties shall thereafter be free to resolve their Disputes through Litigation.

b. If the Order becomes a Final Order, but, through no fault of a Party, (i) the Order is thereafter reversed on judicial review and the Commission does not approve this Agreement or a modification of this Agreement satisfactory to each of the Parties in its sole discretion on remand or (ii) the transfers contemplated by paragraph 4 are not completed as provided in Appendix 7, even if the reason the transfers are not completed is Force Majeure that cannot reasonably be terminated, and the Party not receiving any transfer to which it is entitled under Appendix 7 elects to terminate this Agreement:

i. Any transfers that have taken place shall be unwound in accordance with the procedures in subparagraph 15.a of this Agreement. In determining how to unwind the transfers, if the Parties are unable to reach agreement otherwise, the arbitrator shall apply the following principles:

A. Rocky Mountain Power shall transfer the Transferred Heber Light & Power Facilities back to Heber Light & Power.

B. Heber Light & Power shall transfer the Transferred Rocky Mountain Power Facilities back to Rocky Mountain Power.

C. Heber Light & Power shall resume serving the Transferred Heber Light & Power Customers.

D. Rocky Mountain Power shall resume serving the Transferred Rocky Mountain Power Customers.

E. In dealing with facilities constructed or installed by each Party under Appendix 7 and the costs incurred by each Party in connection with those facilities, the arbitrator shall consider the potential future uses of the facilities by each Party, the costs incurred by each Party in constructing or installing the facilities and the costs and benefits of all of the transactions to be undertaken under this Agreement as a whole and shall attempt to fairly and equitably divide the costs and benefits associated with the facilities based on those considerations. The arbitrator may determine to apportion facilities or to award joint ownership of facilities with usage dependent on future developments or may require a

Party to reimburse all or part of the costs incurred by the other Party in constructing or installing any facility constructed or installed in compliance with Appendix 7 if the same is necessary to achieve an equitable result in unwinding. If a Party is required to reimburse all or part of the costs incurred by the other Party in constructing or installing any facility, the Party shall be awarded an ownership interest in the facility commensurate with the reimbursement.

ii. Upon completion of the arbitration, this Agreement shall terminate. Such termination shall relieve both the Parties of all of their obligations set forth in this Agreement; constitute a failure of the conditions to the obligations of the Parties to implement this Agreement, and relieve any Party from liability under this Agreement. The Parties shall thereafter be free to resolve their Disputes through Litigation.

c. Subject to the limitations in paragraph 15.c, the non-defaulting Party may seek any remedy available at law or equity through the dispute resolution process provided in paragraph 15.a of this Agreement for any Default by the other Party:

i. prior to the time the events provided in subparagraphs 14.a and 14.b occur,

ii. if the events provided in subparagraphs 14.a and 14.b do not occur,
or

iii. if the Order becomes a Final Order but the transfers contemplated by paragraph 4 are not completed as provided in Appendix 7 as a result of a Default and the non-defaulting Party does not elect to terminate the Agreement and to receive liquidated damages from the Defaulting Party as provided in subparagraph 14.d.

d. If either Party is in Default for failure to timely perform its obligation to transfer facilities or customers or construct or install facilities as provided by paragraph 4 and Appendix 7 of this Agreement, the non-defaulting Party may elect, in lieu of the remedy provided in subparagraph 14.c, to unwind any transfers of facilities or customers that have been completed in accordance with subparagraph 14.b and recover from the Defaulting Party liquidated damages in the amount of \$300,000, which amount the Parties agree is reasonable compensation for the Defaulting Party's failure to perform because the precise amount of damages resulting from such failure would be difficult to determine. If the non-defaulting Party elects this remedy, the Parties shall be free to resolve their Disputes through Litigation following the unwinding and the payment of liquidated damages.

15. **Miscellaneous.**

a. **Dispute Resolution.** Any dispute, claim, question, or disagreement arising from or relating to a Party's performance of its duties arising under this

Agreement or a Party's Default, except any request for injunctive relief in emergency circumstances which makes resort to the following procedures unreasonable, shall be resolved through the procedures set forth in this paragraph 15.a.

i. **Claim.** Unless otherwise specifically provided in this Agreement, any Default, dispute, claim, question, or disagreement must be raised within one year of the date the Default, dispute, claim, question, or disagreement arose or be forever barred. The Party claiming that there is a Default, dispute, claim, question, or disagreement shall provide notice of the Default, dispute, claim, question, or disagreement to the other Party.

ii. **Good Faith Negotiations.**

A. For a period of 30 days following the notice, or such different period to which the Parties may mutually agree, the Parties shall use their Best Efforts to settle the dispute by consulting and negotiating with each other in good faith and by attempting to reach a just and equitable solution satisfactory to both Parties. Unless the dispute is resolved sooner, representatives of senior management for both of the Parties shall meet at least once during the good-faith-negotiation period.

B. Although the Parties intend to negotiate in good faith, they agree that no Party can be held liable in damages for an alleged breach of an obligation to negotiate in good faith. The Parties further agree that no Party can be held liable for expenses incurred or opportunities foregone by the other Party in reliance on the Party's agreement to negotiate in good faith.

iii. **Mediation.**

A. If the Parties are unable to resolve the dispute, claim, question, or disagreement through good faith negotiation within the good-faith-negotiation period, then either Party may submit the matter to mediation by providing the other Party notice of intent to mediate. The notice of intent to mediate must be delivered to the other Party within 10 days of the date on which the good-faith-negotiation period concludes. Within three business days of notice of intent to mediate, the other Party shall provide notice to the Party providing notice of intent to mediate whether it consents to mediate.

B. If both parties consent to mediation, the mediation shall be conducted in accordance with Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association (except for the rules requiring American Arbitration Association administration). The Parties shall bear equally the costs of the mediation. The Parties will jointly appoint a mutually acceptable mediator, seeking assistance from the American Arbitration Association, if they are unable to agree upon a

mediator within three business days of receipt of the notice of consent to mediate.

C. The Parties agree to participate in good faith in the mediation for a period of 30 days or such additional time as the Parties may mutually agree.

D. Although the Parties intend to mediate in good faith, they agree that no Party can be held liable in damages for an alleged breach of an obligation to mediate in good faith. The Parties further agree that no Party can be held liable for expenses incurred or opportunities foregone by the other Party in reliance on the Party's agreement to mediate in good faith.

E. The Parties may, but are not required to, retain the American Arbitration Association to administer the meditation proceedings.

iv. **Condition to Arbitration.** Completion of good faith negotiations under subparagraph 15.a.ii is a condition precedent to a Party's right to pursue arbitration under subparagraph 15.a.v.

v. **Arbitration.** If the Parties are unable to resolve the dispute through good faith negotiations or mediation, either Party may submit the dispute for private, confidential, binding arbitration in the principal place of business in Utah of the other Party. The arbitration must be commenced by notice from one Party to the other Party within 20 days of the later of (1) conclusion of the good-faith-negotiation period or (2) conclusion of the mediation, if mediation is pursued. The arbitration shall be conducted before a single arbitrator agreed upon between the Parties and in accordance with the then-current Commercial Arbitration Rules of the American Arbitration Association except insofar as the provisions of this subparagraph deviate from those rules and except insofar as those rules may call for the American Arbitration Association to administer the arbitration. In the event the Parties are unable to agree upon a single arbitrator, each Party shall select a qualified arbitrator and the selected arbitrators shall select a third qualified arbitrator and the decision of two or more of the arbitrators shall be binding. The award may include equitable remedies of injunction and specific performance. Judgment upon the award rendered in the arbitration may be entered in any court of competent jurisdiction.

vi. **Commission.** If Rocky Mountain Power cannot legally take an action or omit to take an action as ordered in an arbitration order without the approval of the Commission, the arbitration order shall be binding on Rocky Mountain Power with respect to such action or omission to take the action only if the Commission approves Rocky Mountain Power taking the action or omitting to take the action. Nothing in this subparagraph shall preclude Heber Light & Power from challenging the Commission's jurisdiction over the action or omission to

take the action or Rocky Mountain Power's obligation to obtain Commission approval of the action or omission to take the action.

b. **Default.** Each of the following events or circumstances shall constitute a "Default" by the responsible Party ("Defaulting Party"):

i. **Payment Default.** Failure by either Party to pay any amount when due under this Agreement which is not cured within 20 business days after receiving written notice thereof from the other Party.

ii. **Performance Default.** Failure by any Party to perform any of its duties or obligations under this Agreement, when and as due (other than the failure to make any payment), which is not cured within 30 days after receipt of written notice thereof from the other Party. If the nature of the alleged failure is such that it cannot reasonably be cured within such 30-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 30-day period. If the Default is cured, then no Default shall exist and the noticing Party shall take no further action.

c. **Limitation on Remedies.**

i. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, PROVIDED BY STATUTE, OR IN TORT OR CONTRACT.

ii. In any litigation or arbitration to resolve any dispute under this Agreement or to enforce an arbitration decision, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing Party, and the non-prevailing Party shall be responsible to pay all costs of the litigation or arbitration, including the fee of the arbitrator or arbitrators.

iii. Notwithstanding the limitations in subparagraphs 15.b and 15.c of this Agreement, either Party may seek equitable relief to enforce the negotiation, mediation and arbitration provisions of subparagraph 15.a.

d. **Force Majeure.**

i. Neither Party hereto shall be considered to be in Default in the performance of any of its obligations under this Agreement when the failure of performance shall be due to Force Majeure despite commercially reasonable efforts of such Party to prevent or mitigate its effects. A Party which is not able to perform its obligations under this Agreement as a result of Force Majeure shall give prompt, written notice, including a detailed description of the Force Majeure, to the other Party, which notice shall include information with respect to the

nature, cause and date of commencement of such event, and the anticipated scope and duration of the delay. The Party providing such notice shall be excused from fulfilling its obligations under this Agreement to the extent and until such time that the Force Majeure has ceased to prevent performance or other remedial action is taken, at which time the Party shall promptly notify the other Party of the resumption of its performance under this Agreement. Any Party whose performance under this Agreement is affected by Force Majeure shall make all reasonable efforts to remove and cure the Force Majeure and perform its obligations under this Agreement and to mitigate the effects of the Force Majeure.

ii. The term “Force Majeure” means causes or events beyond the reasonable control of, and without the fault or negligence of the Party claiming Force Majeure, including, without limitation, acts of God, sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes; high winds of sufficient strength or duration to materially damage a facility or significantly impair its operation; lightning; fire; ice storms; sabotage; vandalism beyond that which could reasonably be prevented by the Party claiming Force Majeure; terrorism; war; fire; riot; explosion; blockade; insurrection; strike; slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group); actions or inactions by any governmental authority taken after the date hereof (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by such governmental authority) but only if such requirements, actions, or failures to act prevent or delay performance; and inability, despite due diligence, to obtain any licenses, permits, or approvals required by any governmental authority. A Force Majeure does not include (1) an act of negligence or wrongdoing by a Party; (2) events arising from the failure by the Party claiming Force Majeure to operate and maintain a facility in accordance with Prudent Utility Practices and the standards set forth in this Agreement; (3) an increase in the variable and fixed costs of operation and maintenance of a facility; (4) failure of third parties to provide goods or services essential to a Party’s performance, unless such failure is caused by a Force Majeure; (5) delays in or an inability of a Party hereto to obtain financing or (6) economic hardship.

iii. The term “Prudent Utility Practices” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent utility practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be practices, methods or acts generally accepted in the region. Prudent Utility Practices includes meeting at a minimum the laws and regulations applicable to the facilities or decisions involved and the National Electric Safety Code, as last revised.

e. **General Representations and Warranties.** Each of the Parties represents and warrants to the other Party that:

i. the Party has the power and authority to enter into this Agreement and to perform its obligations under this Agreement and that the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by the governing body of the Party, and no other actions or proceedings on the part of the Party are necessary to authorize this Agreement and the transactions contemplated by this Agreement;

ii. this Agreement constitutes the valid and binding obligation of the Party, enforceable against the Party in accordance with its terms, except as limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally or (ii) laws relating to the availability of specific performance, injunctive relief or other equitable remedies and principles of public policy;

iii. the person signing this Agreement in behalf of the Party has express authority from the governing body of the Party to sign this Agreement for that Party and the Agreement will be binding on the Party by virtue of her or his signature;

iv. no assignment of claims, demands or causes of action relating to the subject matter of this Agreement has been made;

v. the execution, delivery, and performance of this Agreement by the Party and the consummation by the Party of the transactions contemplated by this Agreement do not (1) violate the Party's articles of incorporation, other binding organizational documents or bylaws or laws applicable to the Party or (2) result in any breach or violation of, or constitute a default under, any agreement, loan, mortgage, lease, bond, obligation, license, permit, franchise, judgment, decree, order, or other instrument or restriction of any kind to which the Party is a party or by which its assets or property is bound; and

vi. no consent, approval, order or authorization of, or registration, declaration or filing with, any governmental or regulatory authority is required in connection with the execution, delivery or performance of this Agreement by the Party or the consummation by the Party of the transactions contemplated by this Agreement, except as specifically provided in this Agreement.

f. **Each Party to Bear Own Expenses.** Except as otherwise expressly provided in this Agreement, all expenses incurred by or on behalf of the Parties in connection with the authorization, preparation, execution and consummation of this Agreement, including, without limitation, all fees and expenses of agents, representatives, counsel, and accountants employed by the Parties, shall be borne solely by the Party that incurred the expenses.

g. **Notices.**

i. **Permitted Methods of Notice.** Any notice, or other communication required under this Agreement shall be in writing, shall be delivered as per the contact information provided below, and shall be deemed properly given: (1) upon delivery if delivered in person; (2) three days after deposit in the mail, if sent by first class United States mail, postage prepaid; or (3) upon delivery if delivered by a commercial courier service.

ii. **Contact Information.**

Heber Light & Power:

Blaine Stewart
General Manager
Heber Light & Power
31 South 100 West
Heber City, UT 84032

cc: Joseph T. Dunbeck, Jr.
General Counsel
Heber Light & Power
31 South 100 West
Heber City, UT 84032

Rocky Mountain Power:

Mark C. Moench
Senior Vice President and General Counsel
Rocky Mountain Power
201 South Main Street, 24th Floor
Salt Lake City, UT 84111-4904

cc: Paul Radakovich
Vice President Operations
Rocky Mountain Power
1407 West North Temple Street
Salt Lake City, UT 84116

iii. **Change of Contact Information.** Either Party may change its contact person or address specified above by giving the other Party notice of the change in accordance with subparagraph 15.g.i, above.

h. **Assignments.** Except as otherwise provided below, neither Party may, without the other Party's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, assign, pledge, or transfer all or any part of this Agreement or any right or obligation under this Agreement, whether voluntarily or by operation of law;

provided, however, that either Party may, without the other Party's consent, assign its rights and obligations under this Agreement to an entity with which the Party is merged or consolidated, so long as the assignor consents in writing to be bound by all obligations of the assignee under this Agreement.

i. **Binding on Successors.** This Agreement shall inure to the benefit of the Parties hereto, their respective successors and permitted assigns, and shall be binding upon the successors and permitted assigns of each.

j. **Waivers.** Any waiver of a Party's rights with respect to any breach of this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not constitute a waiver with respect to any other breach or matter arising in connection with this Agreement. All waivers must be in writing and signed by an authorized representative of the Party granting the waiver.

k. **Governing Law.** This Agreement is made under and will be governed by and construed in accordance with the internal laws of the state of Utah.

l. **Headings and Construction.** The headings and subtitles in this Agreement are for the convenience of the Parties and are not to be used for its construction or interpretation. Any use of the singular in this Agreement also includes the plural, and any use of the plural also includes the singular.

m. **Not Construed Against Either Party.** This Agreement was entered into by the Parties after consultation with counsel, and shall be considered to have been drafted by both Parties. The language of this Agreement shall be construed as a whole according to its fair meaning, and not strictly for or against either of the Parties.

n. **Severability.** If any provision of this Agreement or the application thereof, other than paragraphs 1 through 5, is held invalid, the invalidity shall not affect other provisions or applications of the Agreement that can be given effect without the invalid provisions or applications and to this end the provisions of this Agreement are declared to be severable. If any of paragraphs 1 through 5 is held invalid or is modified in a manner unacceptable to either Party, that invalidity or modification shall cause this Agreement in its entirety to be null, void, and of no force or effect.

o. **Relationship of Parties; No Third-Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create an agency relationship, association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to either of the Parties. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability or inference of liability to any third party.

p. **Counterparts.** This Agreement may be executed in counterparts which, taken together, shall constitute one and the same Agreement and shall be effective as of the later of the dates last written below.

q. **Entire Agreement.** This Agreement, including the appendices, constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all prior negotiations and agreements, whether written or oral. This Agreement may not be altered or amended except by an instrument in writing executed by both Parties.

r. **Defined Terms.** Defined terms in this Agreement or in any of the appendices to this Agreement shall apply to this Agreement and all of its appendices.

s. **No Reliance.** In entering into this Agreement, each Party acknowledges that it has not relied upon the statements or advice of the other Party, its agents, counsel or employees.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates indicated below.

HEBER LIGHT & POWER COMPANY, an energy services interlocal entity of the state of Utah

ROCKY MOUNTAIN POWER, a Division of PACIFICORP, an Oregon corporation

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTEST:

Signature: _____

Print Name: _____

Title: _____

APPENDIX 1

**CONDITIONAL FRANCHISE AGREEMENT BETWEEN WASATCH COUNTY AND
ROCKY MOUNTAIN POWER**

APPENDIX 2

**CONDITIONAL FRANCHISE AGREEMENT BETWEEN WASATCH COUNTY AND
HEBER LIGHT & POWER**

APPENDIX 3

**CONDITIONAL FRANCHISE AGREEMENT BETWEEN TOWN OF DANIEL AND
ROCKY MOUNTAIN POWER**

APPENDIX 4

**FRANCHISE AGREEMENT BETWEEN TOWN OF INDEPENDENCE
AND HEBER LIGHT & POWER**

APPENDIX 5

**LEGAL DESCRIPTION OF HEBER LIGHT & POWER SERVICE AREA IN
WASATCH COUNTY**

APPENDIX 6

**ILLUSTRATIVE MAP OF HEBER LIGHT & POWER SERVICE AREA
IN WASATCH COUNTY**

APPENDIX 7

**AGREEMENT FOR THE TRANSFER OF DISTRIBUTION FACILITIES
AND CUSTOMERS**

APPENDIX 8

CONFIDENTIAL TEMPORARY POWER SUPPLY CONTRACT

APPENDIX 9
CONFIDENTIAL OPTION

APPENDIX 10
RIGHT OF FIRST REFUSAL

APPENDIX 11
CONFIDENTIAL AGREEMENT FOR STUDY