

RIGHT OF FIRST REFUSAL

This Right of First Refusal (“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.” This Agreement shall be effective as of the effective date of the Settlement Agreement and General Release (“Settlement Agreement”) between the Parties (“Effective Date”).

RECITALS

A. Heber Light & Power owns and operates an electric power system for the retail sale of electric power to its customers.

B. Rocky Mountain Power owns and operates an electric power system for the retail sale of electric power to its customers.

C. Heber Light & Power and Rocky Mountain Power have entered into the Settlement Agreement in which they have agreed that, subject to the Public Service Commission of Utah (“Commission”) approving the Settlement Agreement and amending Rocky Mountain Power’s certificate of public convenience and necessity to remove the area in Wasatch County described in Appendix 5 to the Settlement Agreement (“HLP Service Area”) from the area served by Rocky Mountain Power, Heber Light & Power will provide retail electric service to customers in the HLP Service Area and Rocky Mountain Power will provide retail electric service to customers outside the HLP Service Area. The recitals in the Settlement Agreement are incorporated in this Agreement.

D. In consideration of the Settlement Agreement, the Parties enter into this Agreement.

TERMS AND CONDITIONS

Based upon the foregoing recitals and in consideration of the following agreements and conditions, the Parties agree as follows:

1. **Condition to Agreement.** Heber Light & Power’s obligations under this Agreement are conditioned on completion of the facility and customer transfers contemplated in the Agreement for the Transfer of Distribution Facilities and Customers (“Transfer Agreement”) attached as Appendix 7 to the Settlement Agreement.

2. **Right of First Refusal.** In the event Heber Light & Power proposes during the term of this Agreement to accept a bona fide offer from a third party, other than the Town of Independence, to purchase, directly or indirectly, any material part of its distribution system in a transaction in which the third party agrees to undertake responsibility to provide service to customers in a portion of Heber Light & Power’s service territory proposed to be purchased, it shall provide notice of the offer to Rocky Mountain Power, and Rocky Mountain Power shall

have a right of first refusal to acquire the portion of the distribution system that Heber Light & Power proposes to sell subject to the following:

a. The right of first refusal is not applicable to transactions involving only internal changes in the structure of Heber Light & Power, changes in its form of organization, or changes in its members, so long as it remains a governmental entity. The right of first refusal is not applicable to sales of property by Heber Light & Power in the ordinary course of business that do not involve a material transfer of customers to a new provider, provided that Heber Light & Power may not disaggregate a material transfer of customers to another provider into multiple transactions to avoid this right of first refusal.

b. Rocky Mountain Power must notify Heber Light & Power within 60 days after receipt of the notice that it intends to exercise the right of first refusal.

c. The purchase price and payment terms shall be materially the same as those in the offer except that the purchase price shall be adjusted if, after receiving the offer, (i) Heber Light & Power encumbers its property to be sold, (ii) liens are placed against the property to be sold; or (iii) the property to be sold is damaged or lost.

d. Rocky Mountain Power shall have the longer of (i) 180 days or (ii) the time provided in the offer to close the purchase. If Rocky Mountain Power is required to obtain regulatory approvals for the purchase, Rocky Mountain Power shall proceed expeditiously to obtain approvals, and the foregoing time frames will commence upon issuance of the approvals in a form reasonably satisfactory to Rocky Mountain Power.

e. If Rocky Mountain Power fails to exercise the right of first refusal and Heber Light & Power fails to close the transaction with the third party in accordance with the terms of the offer, this right of first refusal shall continue in full force and effect.

f. If Rocky Mountain Power fails to exercise the right of first refusal and the terms or conditions of the purchase by the third party thereafter are materially modified, Rocky Mountain Power shall be given a right of first refusal with respect to the modified offer as provided herein as if it were a new offer.

g. This right of first refusal shall remain in effect with respect to any material portion of the distribution system or business of Heber Light & Power not sold pursuant to the offer.

h. Any decision or action by Heber Light & Power to convert any material part of its distribution system to ownership by a non-governmental entity however accomplished shall be regarded as a proposal by Heber Light & Power to accept an offer to sell that part of its distribution system to a third party for purposes of this paragraph.

3. **Term.** The term of this Agreement shall commence on the Effective Date and shall end on the 25th anniversary of that date. If Heber Light & Power proposes during the term of this Agreement to accept a bona fide offer as provided in paragraph 2 of this Agreement, the remaining provisions of paragraph 2, except subparagraph 2.e, shall remain in force even if the events specified occur after the end of the term.

4. **Miscellaneous.** The provisions of paragraph 15 of the Settlement Agreement are incorporated in this Agreement as if fully set forth herein. If there is any conflict between any provision of this Agreement and a provision of paragraph 15 of the Settlement Agreement, the provision of this Agreement shall govern. As part of this incorporation, paragraph 15.n of the Settlement Agreement is amended to refer to paragraph 2 of this Agreement rather than to the paragraphs referenced in paragraph 15.n of the Settlement Agreement.

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

**HEBER LIGHT & POWER, 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:_____