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IN THE EIGHTH JUDICIAL DISTRICT COURT

UINTAH COUNTY, STATE OF UTAH

DESERET GENERATION & TRANSMISSION CO-OPERATIVE, a Utah non-profit corporation,	)	**COMPLAINT**
Plaintiff,	)	
vs.	)	Civil No. ______________ Judge ______________
PACIFICORP, an Oregon corporation,	)	JURY DEMANDED
Defendant.	)	

Plaintiff Deseret Generation & Transmission Co-operative ("Deseret") complains against Defendant PacifiCorp and avers as follows:

PARTIES

1. Deseret is a Utah non-profit corporation with places of business in Uintah County and Salt Lake County, Utah. Deseret owns and/or operates interests in coal-fired electric generation and transmission facilities located in Uintah and other Counties in Utah through which it provides electric generation and transmission services to its members in primarily rural areas of Utah and elsewhere. Among other such resources, Deseret owns 25.108% of the Hunter Steam Electric Generating Unit No. 2, together with certain interests in common facilities and a site, located in Emery County, Utah ("Hunter II").

2. Defendant PacifiCorp, an Oregon Corporation with its principal place of business in Portland, Oregon, has an office and is doing business in Uintah County, Utah. PacifiCorp is the majority owner and the operator of Hunter II.

JURISDICTION AND VENUE

3. The claims made by Deseret in this Complaint arise under Utah statutory and common law.

4. This Court possesses jurisdiction over the parties to and subject matter of this Complaint pursuant to *Utah Code* § 78A-505-102.

5. Venue is proper in this Court pursuant to *Utah Code* §§ 78B-3-304, 306, 307.

BACKGROUND FACTS

Summary of Dispute.

6. This dispute centers around a series of decisions unilaterally taken by PacifiCorp to install over $200 million in capital improvements to the jointly-owned Hunter II power plant without Deseret's consent as a co-owner of that plant.

7. As a minority owner in Hunter II, Deseret depends on PacifiCorp to operate Hunter II in a fair and non-discriminatory manner for the joint benefit of the co-owners, and in accordance with the terms and conditions laid out by contract between Deseret and PacifiCorp for the ownership and management of the unit.

8. Some of PacifiCorp's coal-fired power plants, including Hunter II, were constructed with pollution control equipment that effectively satisfied the applicable environmental standard known as *best available control technology ("BACT")* at the time they were constructed. Others, such as those that predated the Clean Air Act requirements, were constructed with little or virtually no modern pollution control technology. However, these "grandfathered" units are typically required to upgrade with very expensive pollution control technology whenever a modification is made to the physical units or methods of operation.

9. Beginning in or about 2003, PacifiCorp came under investigation by the U.S. Environmental Protection Agency ("EPA") on account of PacifiCorp's conduct at various power plants, particularly its "grandfathered" plants. This investigation threatened to trigger the process by which pollution control upgrades may have been required of PacifiCorp at certain plants, at significant expense. On information and belief, PacifiCorp responded to these investigations by negotiating with EPA and

implementing a strategy of voluntary reductions in emissions to be implemented to varying degrees and at varying costs at a number of its generating units. These voluntary efforts particularly targeted jointly-owned units such as Hunter II, where a portion of the hefty costs for installing more stringent pollution control equipment could be passed on to minority owners such as Deseret.

10. In addition to its environmental strategy to avoid penalties and/or potential fines from EPA, in 2006 PacifiCorp's former parent, Scottish Power, PLC, sought to sell its ownership of PacifiCorp to MidAmerican Energy Holdings Company ("MidAmerican"). MidAmerican and PacifiCorp filed petitions with the state utility commissions in Utah, Oregon and several other states, as well as the Federal Energy Regulatory Commission, seeking approval of the acquisition. In an effort to persuade various stakeholders to support the acquisition and regulatory commissions to approve it, among other possible reasons, MidAmerican and PacifiCorp made a number of promises and commitments, referred to as "conditions" to the transaction, which were presumably perceived as benefiting the interests of various stakeholders and States in which PacifiCorp was doing business.

11. On information and belief, in order to appease environmental groups and others which could have opposed and potentially derailed the proposed acquisition, MidAmerican and PacifiCorp offered, as one of its acquisition conditions, to voluntarily invest enormous amounts of money – more than $800 million -- in upgrading pollution control equipment at PacifiCorp's coal-fired facilities before such upgrades were legally mandated and despite the fact that such upgrades were not otherwise required to maintain the units in operation.

12. Deseret had no particular corporate interest in supporting or opposing MidAmerican's proposed acquisition of PacifiCorp. Likewise, Deseret had done nothing to raise the ire of the EPA or violate environmental regulations at PacifiCorp's coal-fired facilities. Deseret thus protested the commitment to make voluntary investments in unnecessary environmental upgrades to the extent it might impact Deseret's interest in Hunter II. Deseret strongly contended that it should not bear any portion of the costs for PacifiCorp's voluntary decision to invest hundred of millions of dollars for business reasons unique to PacifiCorp in pursuit of its wider corporate objectives of acquiring an investor-owned utility for the profit of its shareholders.

13. Given Deseret's objections during the MidAmerican acquisition process, PacifiCorp modified its proposed commitments, and agreed to further condition its promise to spend money on environmental upgrades, by promising that it would do so only after obtaining necessary consents from its joint owners (the "Acquisition-Related Agreement").

14. In addition to its strategies to avoid EPA penalties and facilitate the MidAmerican acquisition, PacifiCorp also began to pursue, in or before 2007, an interest in constructing a fourth coal-fired generating unit at the site of the Hunter Units ("Hunter IV"). Given the difficult regulatory environment, pursuit of a possible fourth unit was extremely challenging, and would have required costly investments to reduce emissions at the existing Hunter units (including Hunter II) in order to offset additional emissions from a new unit, and thereby enable regulatory approval for the project.

15. In furtherance of PacifiCorp's objective to obtain permits for a possible Hunter IV, PacifiCorp unilaterally applied for a modification to the air permits under

which the existing Hunter Units were allowed to operate. PacifiCorp agreed to stricter emission standards on the three existing Hunter Units, which required extensive new investment in upgraded pollution control equipment, in order to facilitate PacifiCorp's intention to use the resulting voluntary reductions in emissions from Hunter Units I, II and III as an offset against potential emissions from a future Unit IV. By so doing, PacifiCorp succeeded in making its own interest in the Hunter Plant site much more valuable, at the expense of Deseret, by making a possible Hunter IV Unit a more viable option.

16. The Agreement governing the management and operation of Hunter II (the "O&M Agreement," a copy of which, as fully amended, is reflected in the attached Exhibits "A" and "B"), precludes PacifiCorp from making "Capital Improvements" (as defined therein) to the unit until PacifiCorp has first obtained Deseret's consent. In some circumstances, which do not apply here, PacifiCorp might had had an option to obtain the required approval through a timely arbitration demand available under the Agreement for limited types of projects, but most of the disputed investments at issue here go beyond the type of investments for which arbitration might have been available. Moreover, PacifiCorp chose not to invoke arbitration at the time it proceeded to make the investments.

17. In spite of the contractual prohibition against making Capital Improvements without Deseret's prior consent, and in complete disregard for the express commitment undertaken at the time of the 2006 MidAmerican acquisition, PacifiCorp legally committed itself to install expensive pollution control equipment at Hunter II to replace and modify the original design of the Unit.

18. PacifiCorp has further committed, without Deseret's required consent, to upgrade the plant's generating capacity and extend the anticipated life of the unit.

19. The total cost of Capital Improvements at Hunter II committed to by PacifiCorp without Deseret's consent (collectively, the "Disputed Capital Commitments"), is expected to exceed $200 million. The effect of these investments on emissions from Hunter II will be minimal. Particularly when compared to the proposed cost-per-ton of emission reductions which PacifiCorp intends to implement at its other generation facilities, and especially the facilities which it owns independent of minority interests, the Disputed Capital Commitments represent an astoundingly expensive, inefficient and unreasonable use and commitment of resources. PacifiCorp's unilateral decision to make these Disputed Capital Commitments for Hunter II discriminates against Deseret and Deseret's ownership interest in Hunter II, where adequate pollution control equipment has existed since commencement of operations.

20. PacifiCorp has demanded that Deseret pay a full share of these capital costs notwithstanding the breach of its agreements with Deseret, which expressly require Deseret's prior approval.

21. PacifiCorp has entirely disregarded Deseret's ownership rights in Hunter II and has violated its obligation to treat Deseret properly and fairly in Deseret's role as a joint owner. PacifiCorp has repeatedly and willfully refused to pay any heed to Deseret's rights as an equal participant on the Management Council. PacifiCorp has consistently refused to alter any key management decisions or proposals made unilaterally by PacifiCorp pertaining to Capital Improvements at Hunter II, regardless of Deseret's objections.

22. The improper conduct by PacifiCorp extends so far as to include intentional conversion by PacifiCorp of a portion of Deseret's output from the plant, without notifying Deseret or paying for electric power and energy belonging to Deseret. PacifiCorp has converted and retained a significant amount of Deseret's ownership entitlement share of Hunter II output for PacifiCorp's own use.

Hunter II – Background

23. In the mid to late 1970's, with a surge in demand for electricity and an urgent national energy policy that emphasized reduced reliance on foreign oil sources, electric utilities in Utah encountered a sharp need to quickly acquire electric generating resources. The scarcity of available units nearing completion created competition between the primary investor-owned utility, Utah Power & Light Company ("UP&L"), PacifiCorp's predecessor in interest, and the small rural cooperatives that served outlying areas, generally including those communities more sparsely populated and difficult to serve.

24. In light of the fierce need for resources, a group of Utah cooperatives formed Deseret as a vehicle to obtain long-term generation to meet anticipated growth in electricity demand for growing rural communities in which they served.

25. Deseret approached UP&L with a request to purchase one of its unfinished generating units, but UP&L refused. Through various appeals to the Utah Public Service Commission, Deseret succeeded in causing the investor-owned utility to enter into a contract by which Deseret would purchase a minority share of an unfinished generating facility, which eventually became Hunter II.

26. On or about October 24, 1980, Deseret and UP&L entered into an "Ownership and Management Agreement" ("Original O&M Agreement) relating to Hunter II, under which UP&L obligated itself to act as the operator of Hunter II for the benefit of its joint owners, including Deseret. The Original O&M Agreement was amended by Amendment Agreement No. 1, dated May 1, 1982, Amendment Agreement No. 2, dated May 1, 1982, and Amendment Agreement No. 3, dated September 1, 1992. Under the terms of Amendment No. 3, a portion of the ownership interest which Deseret had purchased was transferred to a group of Utah municipal utilities, the Utah Associated Municipal Power Systems ("UAMPS"), leaving Deseret with a residual ownership interest of 25.108% in Hunter II. True and correct copies of the Original O&M Agreement and its first three amendments are attached hereto as Exhibit "A".

Management Council and Capital Improvements

27. Under the terms of the Original O&M Agreement, the parties established a "Management Council," vested with the responsibility of "reviewing the management of Hunter II and the Common Facilities." *Original O&M Agreement § 4.1*. Under the terms of this agreement, Deseret is entitled to designate one of the representatives to the Management Council, and PacifiCorp designates the other member, each with equal rights to oversee key management decisions at Hunter II.[1] The agreement spells out actions to be taken by the Management Council and requires unanimous consent of all Council representatives, including Deseret, before the Council is deemed to have given its consent. *Id.*

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[1] UAMPS was later allowed to designate a representative to the Management Council, which currently consists of three equal representatives.

28. Under the O&M Agreement, the Management Council is to meet at least every six months, and any decisions relating to expenditures for Capital Improvements to Hunter II for each upcoming six-month period requires the consent of Deseret, as a member of the Management Council. *O&M Agreement § 4.1(a).*

29. Under the Original O&M Agreement, there was no provision whatsoever that would allow PacifiCorp, in its role as operator, to implement any decision relating to expenditures for Capital Improvements where Deseret had withheld its consent to such a project.

The 1999 Amendment

30. In or about January 1999, PacifiCorp and Deseret amended the Original O&M Agreement yet again (the "1999 Amendment"). This Amendment, negotiated in conjunction with settlement of certain disputes not related to the present litigation, clarified that, in addition to the rights established in the Original O&M Agreement, Deseret's consent is also required *any time* PacifiCorp contemplates implementing a decision related to any possible Capital Improvement involving total costs in excess of $1 million (a "Major Capital Improvement"), regardless of whether such decision involves expenditures during the upcoming six months or may occur many years later. The precise language of the 1999 Amendment in this regard is as follows:

> .... The following decisions shall be implemented only with the unanimous consent of the Management Council: (a) decisions relating to expenditures for ... any Capital Improvement requiring total expenditures in excess of $1,000,000.00 ("Major Capital Improvement") ....

O&M Agreement § 4.1(a)(ii) (as amended by 1999 Amendment). A true and correct copy of the 1999 Amendment, and the Settlement Agreement of which it formed a part, is attached hereto as Exhibit "B".

31. This addition, in 1999, of yet another restriction on PacifiCorp's ability to implement decisions relating to capital projects was intended to prevent PacifiCorp, beginning at the very earliest stages of any lengthy capital improvement planning process, from implementing any decision or making any commitments to expend money on a Major Capital Improvement until Deseret had been persuaded, in Deseret's sole discretion, that such a project should proceed.

32. The only alternative available to PacifiCorp under the 1999 Amendment should Deseret withhold its consent was a process outlined in Section 4.1(a)(ii) applicable to some, but not all, Capital Improvements, which contemplates negotiation and, failing agreement, a timely appeal to arbitration (the "Optional Arbitration Mechanism"). PacifiCorp is required to invoke the Optional Arbitration Mechanism (when available) prior to implementing any decision to proceed with a Major Capital Improvement. In no event is PacifiCorp allowed to unilaterally implement even preliminary decisions that could commit it to an eventual Major Capital Improvement at Hunter II.

33. Under the 1999 Amendment, PacifiCorp is not allowed to begin implementing decisions related to Major Capital Improvements without Deseret's consent except and solely "***during the pendency of arbitration***" timely invoked in accordance with the Optional Arbitration Mechanism, at which point it would be required

to proceed at its own risk and expense. *O&M Agreement § 4.1(a)(ii) (as amended by 1999 Amendment).*

34. The Optional Arbitration Mechanism is only available if PacifiCorp has *first* presented the proposed Major Capital Improvement to Deseret and the others on the Management Council, *then* proceeded to take a vote thereon thirty or more days thereafter, *and then*, assuming a non-unanimous consenting vote, *timely requested* arbitration *prior to implementing* any decisions related to the proposed Major Capital Improvements, and *in all events* after undertaking to resolve the issue through arbitration *no later than "one hundred twenty (120) days"* after the vote was to have been taken (which vote was required to have been taken *prior* to implementing any decision regarding the proposed Major Capital Improvement).

35. Moreover, the Optional Arbitration Mechanism is NOT applicable to, and is NOT available in any event as a means of circumventing Deseret's required consent on, Capital Improvements (whether or not they qualify as Major Capital Improvements) that fall into one of several other enumerated categories in the O&M Agreement (the "Proscribed Project Categories"), which are described more fully below.

36. As described in detail below, PacifiCorp has implemented decisions at Hunter II related to Capital Improvements governed by the O&M Agreement and Major Capital Improvements governed by the 1999 Amendment unilaterally, without ever presenting the projects for consideration by the Management Council and without even asking for a vote of that council. PacifiCorp has irrevocably committed itself to making Capital Improvements and Major Capital Improvements to such a degree that it is now required, by State-issued operating permit that was revised at PacifiCorp's own request,

to complete those improvements at Hunter II. Rather than request the consent of the Management Council prior to implementing its decision to seek a modification to the Hunter II permit, and instead of pursuing arbitration in a timely manner when no legal requirement existed to make these massive expenditures, PacifiCorp simply ignored the O&M Agreement and other agreements, ignored Deseret's ownership and interests, and proceeded with the projects in spite of Deseret's consistent, repeated, and vigorous objections.

PacifiCorp's Unilateral Disputed Capital Commitments

37. Beginning in or before 2003, PacifiCorp presented to Deseret and other joint owners its "environmental strategy" pursuant to which it proposed, and subsequently committed, to spend millions of dollars to remove, demolish and abandon certain environmental control equipment at Hunter II and replace that equipment with different technologies and/or more aggressive designs and functions than the pertinent regulatory requirements mandated.

38. Among the Major Capital Improvements that PacifiCorp intended to implement with its new proposed "strategy," PacifiCorp advocated: (i) scrapping the electrostatic precipitator devices ("ESPs") which are used to remove particulate matter from emissions at the Unit; (ii) installing fabric filtering components in a new baghouse ("Baghouse") which will replace, at much higher cost, the function of the ESPs; and (iii) modifying and adding supplemental capacity to the existing scrubber units ("Scrubber") at the Hunter II Unit which serve primarily to remove sulfur dioxide from the plant's emissions. The ESP/Baghouse will cost more than $82 million to install, and the

Scrubber project will exceed $52 million. Combined, the total cost of these projects will exceed $134 million.

39. Deseret never consented to PacifiCorp's environmental strategy or the Major Capital Improvements contemplated thereby. PacifiCorp nevertheless committed to demolish and abandon the ESPs and to construct the Baghouse, as well as to make changes and additions to the Scrubber. These commitments were not required by law when PacifiCorp made its decision to proceed, and would still not be legally required but for PacifiCorp's unauthorized and unilateral request for a modification of its air permit, the result of which was to effectively require completion of these projects no later than 2011.

40. In or before 2007, PacifiCorp made a voluntary application to the State of Utah's environmental regulator to modify the permit under which Hunter II is allowed to continue operations. In seeking this modification, PacifiCorp requested that the permissible emission limits under the permit be tightened to such a degree that it would be impracticable to achieve the revised, tightened limits without making PacifiCorp's proposed changes to the ESPs, adding the Baghouse, and modifying/adding the Scrubber (the "Voluntary Emission Reductions"). PacifiCorp volunteered and/or agreed to make the Voluntary Emission Reductions no later than its planned outage for Hunter II in 2011.

41. Upon information and belief, PacifiCorp would not have been required to submit or acquiesce to the Voluntary Emission Reductions to such a degree and/or under the proposed timetable laid out pursuant to the modified permit which PacifiCorp requested and agreed to, but PacifiCorp could have proposed other less stringent

alternatives, at much lower cost, that would have sufficed to satisfy legal requirements to permit Hunter II to continue operating well beyond 2011.

42. PacifiCorp has also decided and committed to install the Roter upgrade at Hunter II in 2011, at significant additional expense, exceeding $30 million. These commitments were also made without Deseret's required consent, and over its objections.

43. On information and belief, PacifiCorp would not have committed to undertake the Rotor project except for its Voluntary Emission Reduction commitments it had undertaken without Deseret's consent to reduce net emissions at Hunter II and other Hunter units.

44. PacifiCorp has not only committed to make further capital improvements, but has actually *completed* some of those projects without ever taking a vote from the Management Council. Among such projects, the specifics of which will be fully developed at trial, are those items identified on the attached Exhibit "C." All decisions pertaining to such projects were prohibited under the terms of the O&M Agreement from being implemented without Deseret's prior consent.

45. On information and belief Deseret alleges that PacifiCorp made the Disputed Capital Commitments in an effort, among other things: (i) to settle potential environmental fines or penalties that have been threatened against PacifiCorp by environmental regulators as a consequence of PacifiCorp's illegal or unauthorized actions as operator of various generating facilities (not limited to Hunter II); (ii) to avoid costly environmental upgrades and/or restrictions at or relating to other generating facilities owned by PacifiCorp (but not Deseret); (iii) to secure regulatory approval from state and federal utility/energy commissions for the acquisition of PacifiCorp by MidAmerican

from Scottish Power, PLC; and (iv) to facilitate and secure a viable option to permit and construct a possible fourth unit at the site of the Hunter Units. PacifiCorp has committed to the Disputed Capital Commitments for improper reasons and for the benefit of PacifiCorp, to the detriment and damage of Deseret.

46. In contravention of the O&M Agreement, PacifiCorp failed and refused to timely obtain the consent for its proposal to make the Disputed Capital Commitments from the Management Council, and otherwise failed and refused to obtain Deseret's required consent for the Disputed Capital Commitments.

47. PacifiCorp made Disputed Capital Commitments to Utah and federal regulators despite its knowledge of Deseret's opposition and objections to the same and in complete disregard for its contractual obligation to first obtain Deseret's consent to the same.

48. By making the Disputed Capital Commitments, PacifiCorp has committed itself to expend significantly higher amounts for Hunter II, per ton of emissions reduced, than PacifiCorp has expended on its wholly owned units or which PacifiCorp intends to spend on other jointly-owned units, including Hunter I. Accordingly, PacifiCorp has treated its other generating resources preferentially in comparison to Hunter II.

Proscribed Project Categories for which Arbitration is Never Available

49. As described in more detail below, PacifiCorp failed to satisfy the steps required by the O&M Agreement to invoke the Optional Arbitration Mechanism as to any Capital Improvements. In any event, however, this arbitration option is ***never*** available with respect to proposed Capital Projects that fall into one of several Proscribed Project Categories expressly described in the O&M Agreement.

50. The first of the Proscribed Project Categories for which arbitration is not available is any decision related to any expenditure for any Capital Improvement to be implemented "within six months from the date first reported to the Management Council by PacifiCorp." *O&M Agreement § 4.1(a)(i).*

51. Because PacifiCorp is required to present every proposed Capital Improvement to the Management Council prior to implementing any decision related to it, it necessarily follows that, at the very latest, the consent of the Council must be obtained within six months of the date when expenditures will first be incurred to begin implementing the proposed Capital Improvement.

52. On information and belief, a number of decisions related to expenditures for the Scrubber either were or are to be implemented by PacifiCorp within six months from October 12, 2009, the date the Scrubber project was first formally reported by PacifiCorp to the full Management Council in anticipation of a vote thereon, which vote was taken January 26, 2010.

53. On information and belief, a number of decisions related to expenditures for the ESP/Baghouse either were or are to be implemented by PacifiCorp within six months from October 12, 2009, the date the ESP/Baghouse project was first formally reported by PacifiCorp to the full Management Council in anticipation of a vote thereon, which vote has never occurred.

54. On information and belief, a number of decisions related to expenditures for the Rotor project either were or are to be implemented by PacifiCorp within six months from the date, if any, the Rotor project will be first formally reported by PacifiCorp to the full Management Council in anticipation of a vote thereon (if

PacifiCorp intends to ever seek such vote), which presentation and vote have never taken place nor been scheduled by PacifiCorp.

55. The second Proscribed Project Category for which arbitration is not available is for any expenditures for Capital Improvements that *may* have the effect of reducing "by an amount in excess of 5 MW the long-term capacity of Hunter II," unless such decision, at the time it is implemented, is required by law, regulation, or court decree. *O&M Agreement § 4.1(b).*

56. On information and belief, several decisions related to expenditures for the ESP/Baghouse and/or the Scrubber, especially if viewed in the absence of the Rotor project (which is intended to generate additional output from the Unit, but at significant risk should it fail to perform as intended), may have the ultimate effect of reducing the long-term capacity of Hunter II by more than 5 MW.

57. The third Proscribed Project Category for which arbitration is not available relates to any Capital Improvements for which "a decision with respect to the determination that an Event of Loss has occurred" is required as defined and set forth in the O&M Agreement. *O&M Agreement § 4.1(a)(i).*

58. PacifiCorp's unilateral decision to scrap the ESPs and not to continue to maintain various components of the Unit as they become worn or damaged is not permitted under the Agreement unless those ESP units are deemed to have suffered an "Event of Loss." Section 5.2(b) of the O&M Agreement expressly requires as follows:

> Except after the occurrence of an Event of Loss, the Operator shall, unless prohibited by applicable law or regulation promptly replace all necessary or useful appliances, parts, instruments, appurtenances, accessories and miscellaneous equipment of whatever nature, the replacement of which shall not be required to be capitalized under the Uniform System of

> Accounts … which have been or may from time to time be incorporated or installed in or attached to Hunter II … and which may from time to time fail to function in accordance with its intended use, or become worn out, destroyed, damaged beyond repair, lost …[etc.]

The routine repair and replacement of worn parts within the ESP units, although at times *permitted* to be capitalized under the Uniform System of Accounts, would not be *mandated*, thus the foregoing provisions applies to prohibit PacifiCorp from scrapping the ESPs absent Deseret's consent.

59. Under the O&M Agreement, the decision to scrap the ESPs is equivalent to, and indeed requires, a "determination that an Event of Loss" has occurred with regard to those parts and components.

60. The decision to scrap the ESPs was not mandated or required by law or by any court ordered decree at the time PacifiCorp implemented the decision to seek modification of the Hunter II air permit so as to commit it to replace the ESPs and install the Baghouse at Hunter II.

61. Because each of the disputed Capital Improvements identified in paragraphs 49 through 60 falls into the Proscribed Project Categories for which Deseret's consent is required prior to implementation of any decisions relating to the same, and because none of those categories of decisions is subject *at any time* to the Optional Arbitration Mechanism, PacifiCorp is prohibited from proceeding with such projects and/or charging any portion of the costs for the same to Deseret, regardless of whether, in light of the facts at the time the decision was first implemented, such a decision might have satisfied the standard of "Reasonable Utility Practice" as contemplated under the Optional Arbitration Mechanism, or any other standard under the O&M Agreement.

Acquisition-Related Agreement

62. Deseret intervened in the proceeding before the Utah Public Service Commission for approval of MidAmerican's proposed acquisition of PacifiCorp, Docket No. 05-035-54, and again alerted both PacifiCorp and MidAmerican of its objections to the Disputed Capital Commitments. To alleviate Deseret's concerns, and in consideration of Deseret's agreement not to oppose or seek additional conditions to the proposed acquisition, PacifiCorp and MidAmerican promised and agreed in the Acquisition-Related Agreement not to proceed with capital expenditures at Hunter II without first obtaining Deseret's consent.

63. In response to Deseret's concerns, language was inserted in the conditions/commitment made by PacifiCorp and MidAmerican in connection with the acquisition. The intent and effect of the added language was to commit to Deseret that in no event would the decision to commit to potential Major Capital Improvements at Hunter II be made without Deseret's consent. In written testimony filed before the Utah Public Service Commission, the Chief Executive Officer of PacifiCorp Energy stated exactly as much:

> "**Emission Reductions from Coal-Fueled Generating Plants**: Working with the affected generation plant joint owners and with regulators to obtain required approvals, MEHC and PacifiCorp commit to install the equipment likely to be necessary under future emissions control scenarios at a cost of approximately $812 million. These investments would commence as soon as feasible after the close of the transaction."

Direct Testimony of Gregory E. Able, filed July 15, 2005, Utah PSC Docket No. 05-035-54.

64. The Acquisition-Related Agreement did not contain any optional arbitration mechanism or procedure; rather, the commitment of PacifiCorp was to first

"obtain required approvals" prior to implementing any commitment to proceed. PacifiCorp failed to seek, let alone obtain, any approval from Deseret prior to implementing the decisions that now have irrevocably committed it to the disputed Major Capital Improvements at Hunter II.

PacifiCorp's Election Not to Pursue Arbitration

65. As described above, the Disputed Capital Commitments relating to the ESP/Baghouse as well as the Scrubber modification fall within the Proscribed Project Categories for which the Optional Arbitration Mechanism is not available.

66. Certain other capital improvements, such as the Rotor project, do not fall within the Proscribed Project Categories. Nevertheless, PacifiCorp elected not to timely invoke or pursue the Optional Arbitration Mechanism set forth in Section 4.1(a)(ii) of the 1999 Amendment with respect to that project.

67. To properly invoke the Optional Arbitration Mechanism, PacifiCorp was required to present a proposed Major Capital Improvement (that does not fall into the Proscribed Project Categories) to the Management Council at least 30 days prior to a vote on the same, and in all events prior to implementing any decision related to the same. In the event Deseret withheld its consent as part of the vote, the parties would have been required to attempt to negotiate a satisfactory resolution within 60 days. If such resolution could not be achieved, PacifiCorp would have been authorized, within 120 days after the date on which the vote was to have taken place, to submit the matter to binding arbitration pursuant to the procedures outlined in the 1999 Amendment.

68. PacifiCorp has never presented the Rotor for consideration or vote of the Management Council. Manufacture of the Rotor is now all but complete, due to the

unilateral decision of PacifiCorp to procure the Rotor for installation at Hunter II in 2011. Arbitration regarding the Rotor would thus be meaningless even if PacifiCorp could still timely invoke arbitration.

69. The ESP/Baghouse and the Scrubber projects are within the Proscribed Project Categories for which arbitration is never available. Even were that not the case, arbitration concerning these projects would also now be meaningless. PacifiCorp has fully implemented its decisions and commitment such that it is now effectively locked into completing these environmental projects at Hunter II.

70. PacifiCorp is well out of time to invoke the Optional Arbitration Mechanism with respect to its actions to unilaterally implement and bind itself to any of the Disputed Capital Commitments.

71. Were PacifiCorp permitted, under now-existing facts, to invoke the Optional Arbitration Mechanism after having already implemented the major components of each decision that will ultimately impact the Disputed Capital Commitments, Deseret would be severely damaged and prejudiced by PacifiCorp's intentional or reckless disregard for Deseret's rights under the O&M Agreement, including the following:

(i) PacifiCorp and Hunter II are now legally obligated, by virtue of the Voluntary Emission Reductions required as part of PacifiCorp's requested modification to the Hunter II operating permit, to remove the ESPs, install the Baghouse, and make additional modifications to the Scrubber; an arbitrator could not reasonably overlook this fact in determining whether to allow PacifiCorp to proceed at this late date;

(ii) PacifiCorp has not explored nor undertaken to make operational repairs and overhauls to the ESPs for a number of years since committing itself unilaterally to scrapping those units as early as 2011; an arbitrator will be unable to determine, to any reasonable degree, what alternatives PacifiCorp may have been able to pursue prior to 2003 when PacifiCorp apparently embarked on its unilateral commitment to do away with those units;

(iii) The cost of maintaining/overhauling the ESPs has escalated dramatically since 2003, when the choice whether to scrap the ESPs could have been weighed fairly and accurately by an arbitrator;

(iv) The alternatives available for achieving desired emission reductions in sulfur dioxide which could and should have been presented as early as 2003 to an arbitrator cannot now be judged or determined fairly; PacifiCorp has committed itself to one single method of achieving a small amount of emission reductions, namely the Baghouse/Scrubber, and once-available, potentially better, alternatives that have now evaporated can no longer be effectively identified, assessed, or implemented;

(v) PacifiCorp is required, as a condition to the acquisition by MidAmerican, to complete all of the disputed capital projects; it has neither the motive nor the intent or choice to realistically explore and present fairly for an aribtrator's judgment possible alternatives to the Disputed Capital Commitments.

72. Under the 1999 Amendment, absent Deseret's prior consent to any Major Capital Improvement, Deseret may be required to contribute a share of the cost for disputed capital projects only if: (i) PacifiCorp had complied with the requirements to

negotiate and/or submit the matter to binding arbitration in a timely manner prior to implementing decisions related to expenditures for the Major Capital Improvements; (ii) PacifiCorp had obtained a timely finding by an arbitrator that the proposed Major Capital Improvements were consistent with "Reasonable Utility Practice" and were otherwise authorized pursuant to the O&M Agreement; and (iii) the Major Capital Improvements do not otherwise fall under any of the Proscribed Project Categories specified in the O&M Agreement.

73. PacifiCorp first notified Deseret of its strategy to make several Major Capital Improvements relating to the Disputed Capital Commitments in or around 2003. Deseret refused to consent to and voiced disagreement with the Disputed Capital Commitments at that time, and has consistently refused to consent despite repeated attempts by PacifiCorp to persuade, coerce or force Deseret to give its consent and/or pay the entire proportionate share of the Disputed Capital Commitments.

74. PacifiCorp elected not to pursue the Optional Arbitration Mechanism prior to implementing the decisions to make the disputed Major Capital Improvements. It did not submit the matter to arbitration within 120 days of a vote by the Management Council preceding implementation of the decision to proceed with the projects, as required by Sections 4(a)(ii)(1-2) of the 1999 Amendment. Instead, PacifiCorp proceeded unilaterally during the years following 2003 to commit to the Disputed Capital Commitments without Deseret's consent and without proceeding to arbitration.

75. In consequence of PacifiCorp proceeding to implement the Major Capital Improvements without involving either Deseret, as a member of the Management

Council, or an Arbitrator (to the extent available), PacifiCorp cannot demand Deseret contribute to the cost of the Major Capital Improvements.

Conversion of Deseret's Hunter II Ownership Interest

76. In July 1996 Deseret and PacifiCorp entered into an agreement (the "Marketing Agreement") whereby Deseret permitted PacifiCorp, for a negotiated fee arrangement, to make use of or otherwise market and sell power and energy generated by Deseret's Hunter II Ownership Interest, among other Deseret assets, during hours when Deseret did not intend to make use of such energy for the needs of its own system requirements.

77. In 2003, PacifiCorp unilaterally exercised a right under the Marketing Agreement to terminate that Agreement.

78. Pursuant to the terms of the 1999 Amendment, the parties clarified that PacifiCorp had the right to make use of and retain the unused portion of Deseret's share of Power and Energy from Hunter II which constituted part of Deseret's Hunter II Ownership Interest, but that the right of PacifiCorp to use such Power and Energy would continue only so long as the Marketing Agreement remained in effect. *O&M Agreement, 1999 Amendment, Paragraph 2.*

79. Notwithstanding that PacifiCorp unilaterally terminated the Marketing Agreement and ceased paying the fees negotiated to be paid to Deseret thereunder sometime in or around 2003, on information and belief, PacifiCorp has continued to schedule, use, and retain electric power and energy belonging to Deseret pursuant to Deseret's Ownership Interest in Hunter II during those hours when Deseret does not schedule the full amount of its entitlement share to the output from the Unit.

80. PacifiCorp has not offered to pay nor has it made any payment to Deseret for its conversion of Deseret's entitlement share of output from Hunter II.

<u>First Claim for Relief</u>
(Breach of O&M Agreement – Capital Improvements)

81. Deseret hereby incorporates by reference the allegations set forth in paragraphs 1 through 80 of this Complaint.

82. PacifiCorp has breached the O&M Agreement by, among other things:

a. Implementing its decision to petition the Utah Department of Air Quality for a revised air permit requiring it to complete the ESP/Baghouse and Scrubber projects at Hunter II, and obtaining a revision to the Hunter II permit, without first obtaining unanimous consent of the Management Council.

b. Failing to submit to Deseret its proposal to make Capital Improvements at least 30 days prior to the vote thereon by the Management Council, which vote, in all events, must precede any implementation of any decision relating to expenditures for the Capital Improvements that were or are to be implemented within six months after the date first reported to the Management Council by PacifiCorp.

c. Failing to submit to the Management Council for a vote thereon the decision to commit to the Capital Improvements involving the Baghouse/ESPs and/or the Scrubber, which decisions have the potential and might have the effect of reducing the long-term capacity of the Unit by an amount in excess of 5 MW.

d. Failing to obtain the consent of Deseret prior to implementing decisions related to the Disputed Capital Commitments, including implementing decisions not to maintain the ESP units in violation of the O&M Agreement, which decisions are not permitted in the absence of, and amount to an unauthorized unilateral determination by PacifiCorp, that an Event of Loss has occurred with respect to those component parts.

e. Preparing and submitting invoices to Deseret demanding reimbursement for portions of the Disputed Capital Commitments without first obtaining the unanimous consent of the Management Council to make the Major Capital Improvements related thereto.

f. Committing to make some or all of the Disputed Capital Commitments despite Deseret's active and repeated objections to the same, in violation of Section 4.1(a) of the O&M Agreement and 1999 Amendment.

g. Purporting to assess the wrong legal interest rate as Late Payment Charges.

83. As a direct and proximate result of PacifiCorp's breach of the O&M Agreement, Deseret has been severely damaged and is entitled to recover from PacifiCorp any amounts on account of Disputed Capital Commitments heretofore or hereafter paid by Deseret, along with any other damages Deseret has incurred or may incur, and such other relief as may be appropriate, including Deseret's costs and attorneys' fees.

84. As a result of PacifiCorp's breach of the O&M Agreement by making the unilateral Disputed Capital Commitments, Deseret is entitled to declaratory judgment to

the effect that Deseret is not obligated to participate in arbitration proceedings under the O&M Agreement or to share in any portion of the cost and expense of installing or operating the ESPs, Baghouse and/or Scrubber in excess of the ordinary and necessary cost that would otherwise have been incurred to maintain the existing pollution control equipment at Hunter II at current levels.

85. Deseret is further entitled to judgment requiring PacifiCorp to indemnify and hold harmless Deseret and its entitlement share to output from Hunter II, without any diminishment whatsoever in any hour resulting from any of the Disputed Capital Commitments, both for any extended period of the 2011 outage that would have been unnecessary but for the installation of Disputed Capital Improvements, or at any future time when Hunter II is in operation.

Second Claim for Relief
(Breach of O&M Agreement – Major Capital Improvements)

86. Deseret hereby incorporates by reference the allegations set forth in paragraphs 1 through 85 of this Complaint.

87. PacifiCorp has breached the O&M Agreement by implementing decisions, the effect of which is to expend funds for, and/or commit to purchase and install, Major Capital Improvements without obtaining unanimous consent of the Management Council or invoking and commencing the Optional Arbitration Mechanism with respect to projects for which such mechanism was available.

88. As a direct and proximate result of PacifiCorp's breach of the O&M Agreement, Deseret has been severely damaged and is entitled to recover from PacifiCorp any amounts on account of Disputed Capital Commitments heretofore or

hereafter paid by Deseret, along with any other damages Deseret has incurred or may incur, and such other relief as may be appropriate, including Deseret's costs and attorneys' fees.

89. Deseret is further entitled to judgment requiring PacifiCorp to indemnify and hold harmless Deseret and its entitlement share to output from Hunter II, without any diminishment whatsoever in any hour resulting from any of the Disputed Capital Commitments, both for any extended period of the 2011 outage that would have been unnecessary but for the installation of Disputed Capital Improvements, or at any future time when Hunter II is in operation.

Third Claim For Relief
(Breach of Acquisition-Related Agreement)

90. Deseret hereby incorporates by reference the allegations set forth in paragraphs 1 through 89 of this Complaint.

91. PacifiCorp breached the Acquisition-Related Agreement by failing and refusing to obtain Deseret's required consent before committing to the Disputed Capital Commitments, in violation of its express oral and written commitments and promises to the contrary.

92. As a direct and proximate result of PacifiCorp's breach of the Acquisition-Related Agreement, Deseret has been severely damaged and is entitled to recover from PacifiCorp any Disputed Capital Commitments heretofore or hereafter paid by Deseret, along with any other damages Deseret has incurred or may incur, and such other relief as may be appropriate, including Deseret's costs and attorneys' fees.

93. Deseret is further entitled to judgment requiring PacifiCorp to indemnify and hold harmless Deseret and its entitlement share to output from Hunter II, without any diminishment whatsoever in any hour resulting from any of the Disputed Capital Commitments, both for any extended period of the 2011 outage that would have been unnecessary but for the installation of Disputed Capital Improvements, or at any future time when Hunter II is in operation.

Fourth Claim For Relief
(Breach of Implied Covenant of Good Faith and Fair Dealing)

94. Deseret incorporates herein by this reference the allegations set forth in paragraphs 1 through 93 above.

95. Under Utah law, PacifiCorp has contractual and equitable obligations to exercise its rights and privileges under the O&M Agreement and the Acquisition-Related Agreement reasonably and in good faith.

96. PacifiCorp has breached its implied covenants of good faith and fair dealing by, among other things:

a. Failing to act and proceed in good faith to honor the terms of the O&M Agreement and to permit the intent and purposes of that agreement to be realized by giving Deseret a timely, effective, and meaningful ability to alter, delay, or stop decisions relating to expenditures for Major Capital Improvements and Capital Improvements specified in the O&M Agreement with which Deseret may disagree;

b. Failing to timely inform Deseret of material, irrevocable, and legally binding actions that PacifiCorp intended to take to implement decisions

and render Hunter II subject to legal restrictions that effectively commit PacifiCorp to make disputed Capital Improvements at Hunter II;

c. Failing to recognize and honor Deseret's rights as a member of the Management Committee in reviewing and approving expenditures relating to Hunter II and reviewing the management of Hunter II;

d. Preferring and favoring PacifiCorp's other generating units in a manner that is discriminatory and unfair to Deseret's interest in Hunter II;

e. Taking actions that have effectively committed it to make the Disputed Capital Commitments without following the requirements of the O&M Agreement and in a manner that effectively moots the rights and procedures of Deseret under those agreements;

f. Failing to provide Deseret with all available documents and information relating to the Disputed Capital Commitments in a timely manner;

g. Refusing legitimate requests for information from Deseret pertaining to non-privileged conversations and communications between PacifiCorp and representatives of the U.S. Environmental Protection Agency pertaining to potential Capital Improvements at Hunter II, among other things;

h. Demanding that Deseret enter into a joint defense agreement with PacifiCorp for the defense of PacifiCorp against fines and/or penalties assessed or potentially threatened by environmental regulators for noncompliance at PacifiCorp's generating units other than Hunter II;

i. Voluntarily converting to its own use and enjoyment Deseret's Ownership Interest and entitlement share in the output of Hunter II during certain hours; and

j. Demanding payment from Deseret and invoking billing dispute provisions of the O&M Agreement in a manner and for a purpose not contemplated or sanctioned by the O&M Agreement.

97. PacifiCorp has failed to act or proceed in good faith, but rather has acted in bad faith and in violation of express and implied contractual obligations by paying or committing to pay for Disputed Capital Commitments and demanding payment by Deseret of a share of the same.

98. As a direct and proximate result PacifiCorp's breach of its implied covenants of good faith and fair dealing, Deseret has been severely damaged and is entitled to recover from PacifiCorp any Disputed Capital Commitments heretofore or hereafter paid by Deseret, along with any other damages Deseret has occurred or may occur, and such other relief as may be appropriate, including Deseret's costs and attorneys' fees.

99. Deseret is further entitled to judgment requiring PacifiCorp to indemnify and hold harmless Deseret and its entitlement share to output from Hunter II, without any diminishment whatsoever in any hour resulting from any of the Disputed Capital Commitments, both for any extended period of the 2011 outage that would have been unnecessary but for the installation of Disputed Capital Improvements, or at any future time when Hunter II is in operation.

Fifth Claim For Relief
(Declaratory and Injunctive Relief – Untimely Arbitration)

100. Deseret incorporates herein by this reference the allegations set forth in paragraphs 1 through 99 above.

101. PacifiCorp has acted improperly and in breach of the O&M Agreement and the Acquisition-Related Agreement by proceeding to implement its decisions to commit to the Disputed Capital Commitments without Deseret's consent and over its objections, and without invoking the Optional Arbitration Mechanism, as available, at the time required by, and following the procedures mandated pursuant to, the 1999 Amendment.

102. More than seven years have passed since PacifiCorp first presented its "strategy" to make the Major Capital Improvements at Hunter II. Deseret has at all times refused to give its consent to or vote in favor of the Major Capital Improvements associated with the Disputed Capital Commitments.

103. The Optional Arbitration Mechanism is not available to PacifiCorp under the terms of the 1999 Amendment for Disputed Capital Commitments that fall within the Proscribed Project Categories, or for any of the other Disputed Capital Commitments in light of PacifiCorp's election not to timely invoke the same.

104. The Optional Arbitration Mechanism is not available to PacifiCorp for any Disputed Capital Commitments because, among other reasons, PacifiCorp intentionally and knowingly altered the legal and regulatory framework under which a timely arbitration might otherwise have take place when it implemented its decision to apply to the Utah Department of Air Quality for a modification to the Hunter II Air Permit,

creating a legal requirement to complete the Disputed Capital Commitments on the ESP/Baghouse and the Scrubber no later than 2011, and thereby irrevocably voiding the possibility of a fair and meaningful arbitration proceeding to the prejudice of Deseret.

105. Deseret would be severely and unfairly damaged and prejudiced if PacifiCorp could invoke the Optional Arbitration Mechanism at this late date as to any of the Disputed Capital Commitments.

106. If PacifiCorp were permitted to invoke the Optional Arbitration Mechanism today, Deseret would be deprived of the anticipated benefits of the protections and procedures outlined in the 1999 Amendment, including a timely resolution of the dispute and timely knowledge as to potential costs and risks.

107. For all the reasons stated above, among others, arbitration at this late date would be severely prejudicial to Deseret, would further delay and extend resolution of the matter, and would result in permanent and irreparable damage to Deseret.

108. Deseret is entitled to declaratory and injunctive relief preventing and enjoining PacifiCorp from invoking or seeking to invoke the Optional Arbitration Mechanism as a means of avoiding the requirement to obtain Deseret's consent to any of the Disputed Capital Commitments.

109. Deseret is further entitled to judgment requiring PacifiCorp to indemnify and hold harmless Deseret and its entitlement share to output from Hunter II, without any diminishment whatsoever in any hour resulting from any of the Disputed Capital Commitments, both for any extended period of the 2011 outage that would have been unnecessary but for the installation of Disputed Capital Improvements, or at any future time when Hunter II is in operation.

Sixth Claim For Relief
(Conversion)

110. Deseret incorporates herein by this reference the allegations set forth in paragraphs 1 through 109 above.

111. PacifiCorp's actions in retaining and using Deseret's entitlement share of output from Hunter II in various hours following termination of the Marketing Agreement constitute unlawful conversion of Deseret's property.

112. As a direct and proximate result of PacifiCorp's conversion of Deseret's Hunter II ownership entitlement share, Deseret has been severely damaged and is entitled to recover from PacifiCorp the full market value of any output converted and unlawfully retained by PacifiCorp, which on information and belief exceeds $1 million, plus lost profits and special damages to be proved at trial, along with any other damages Deseret has incurred or may incur, together with interest thereon, and such other relief as may be appropriate, including treble damages pursuant to Utah Code Section 78-B-6-1001, and together with Deseret's costs and attorneys' fees.

113. Deseret is further entitled to judgment requiring PacifiCorp to cease and desist from retaining, using, or otherwise taking any output from Hunter II attributable to Deseret's ownership interest in Hunter II at any and all times in the future without Deseret's express written consent.

Seventh Claim For Relief
(Declaratory and Injunctive Relief)

114. Deseret incorporates herein by this reference the allegations set forth in paragraphs 1 through 113 above.

115. As a result of PacifiCorp's breaches of contract, waste and other improper conduct, Deseret is entitled to declaratory and injunctive relief that Deseret is not obligated to pay for any portion of any of the Disputed Capital Commitments, preventing and enjoining PacifiCorp from sending any invoices or bills or otherwise attempting to collect from Deseret any portion of costs or expenses for any of the Disputed Capital Commitments, and requiring PacifiCorp to indemnify and hold harmless Deseret and its entitlement share to output from Hunter II, without any diminishment whatsoever in any hour resulting from any of the Disputed Capital Commitments, both for any extended period of the 2011 outage that would have been unnecessary but for the installation of Disputed Capital Improvements, or at any future time when Hunter II is in operation.

Eighth Claim For Relief
(Punitive Damages)

116. Deseret incorporates herein by this reference the allegations set forth in paragraphs 1 through 115 above.

117. Because of its willful, wanton and reckless disregard for the rights and interests of Deseret as a co-owner of Hunter II, including its actions in committing waste in relation thereto, Deseret is entitled to recover punitive damages from PacifiCorp.

Jury Demand

Deseret hereby demands a trial by jury of all issues triable of right by jury.

Prayer for Relief

Wherefore, Deseret prays for judgment in its favor and against PacifiCorp as follows:

1. Under the First, Second, Third and Fourth Claims for Relief, for judgment for any portion of any expenses related to any Disputed Capital Commitments heretofore or hereafter paid by Deseret, along with any other damages Deseret has incurred or may incur, and such other relief as may be appropriate, including Deseret's costs and attorneys' fees.

2. Under the First, Fourth and Fifth Claims for Relief, for declaratory and injunctive relief preventing and enjoining PacifiCorp from attempting to invoke the Optional Arbitration Mechanism with respect to any of the Disputed Capital Commitments.

3. Under the Sixth Claim for Relief, for damages in an amount to be proved at trial, including the market value of all electric power and energy generated at Hunter II relating to Deseret's interest therein, together with lost profits and special damages, other damages to be proved at trial, interest thereon, costs and attorneys fees;

4. Under the Sixth Claim for Relief, for judgment requiring PacifiCorp to cease and desist from retaining, using, or otherwise taking any output from Hunter II attributable to Deseret's ownership interest in Hunter II at any and all times in the future without Deseret's express written consent.

5. Under the Seventh Claim for Relief, for declaratory and injunctive relief that Deseret is not obligated to pay for any portion of any of the Disputed Capital Commitments and preventing and enjoining PacifiCorp from sending any invoices or

bills or otherwise attempting to collect from Deseret any portion of any of the Disputed Capital Commitments.

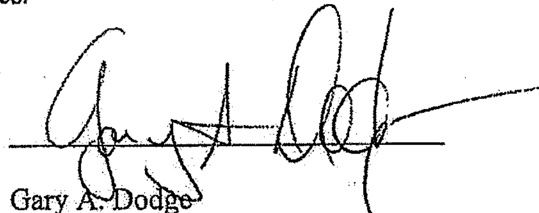
6. Under the First, Second, Third, Fourth, Fifth and Seventh Claims for Relief, for judgment requiring PacifiCorp to indemnify and hold harmless Deseret and its entitlement share to output from Hunter II, without any diminishment whatsoever in any hour resulting from any of the Disputed Capital Commitments, both for any extended period of the 2011 outage that would have been unnecessary but for the installation of Disputed Capital Improvements, or at any future time when Hunter II is in operation.

7. Under the Eighth Claim for Relief, for punitive damages in an amount determined to be appropriate.

8. Under all Claims for Relief, for all of Deseret's costs and attorneys' fees.

9. Under all Claims for Relief, for such other and further relief as may be determined to be appropriate under the circumstances.

DATED this 28th day of January, 2010.



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