

Attachment W

**FILING AGREEMENT FOR ELECTRIC SERVICE BY MUNICIPALITY
TO EXISTING CUSTOMERS AS OF JUNE 15, 2013 OUTSIDE OF
MUNICIPAL BOUNDARY**

This Filing Agreement for Electric Service by Municipality to Existing Customers as of June 15, 2013 Outside of Municipal Boundary (“Agreement”) is made and entered into between Provo City Corporation, a municipal corporation organized under the laws of the state of Utah (the “Municipality”), and PacifiCorp, an Oregon corporation d/b/a in Utah as Rocky Mountain Power (“Rocky Mountain Power”). The Municipality and Rocky Mountain Power each may be referred to as a “Party” or collectively as the “Parties.”

RECITALS

A. The Legislature of the State of Utah passed Senate Bill 180 (the “Bill”) during the 2013 General Session of the Legislature amending Utah Code Ann. § 10-8-14 regarding electric service by a municipal utility outside its municipal boundaries. The Bill became law on May 13, 2013.

B. On or before June 15, 2013, the Municipality was providing electric service to customers located within its municipal boundary and to those certain customers located outside its municipal boundary (the customers outside the municipal boundary are individually a “Customer” and collectively, the “Customers”).

C. Rocky Mountain Power is a public utility and an electrical corporation in the state of Utah authorized by a certificate of public convenience and necessity issued by the Public Service Commission of Utah (“Commission”) to provide electric service to the Customers and to other customers in areas outside the municipal boundary of the Municipality.

D. Pursuant to Utah Code Ann. § 10-8-14(3), the Municipality provided Rocky Mountain Power with an accurate and complete verified written notice, on or before December 15, 2013, identifying each such Customer, which is attached hereto as Appendix 1 (the “Written Notice of Existing Customers”).

E. The Parties enter into this Agreement subject to the Commission’s approval, in compliance with Utah Code Ann. §§ 10-8-14 and 54-4-40 to allow the Municipality to continue to provide electric service to the Customers, subject to, and in accordance with, the terms and conditions of this Agreement.

TERMS AND CONDITIONS

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

1. **Service to Customers.** Unless otherwise agreed by the Parties in writing as provided in Utah Code Ann. § 10-8-14(4):

a. The Municipality shall provide electric service to each of the Customers identified in Exhibit A subject to, and in accordance with, the terms and provisions of this Agreement and as provided in Utah Code Ann. § 10-8-14(4).

b. Rocky Mountain Power shall not provide electric service to the Customers unless the Municipality and Rocky Mountain Power subsequently agree in writing that Rocky Mountain Power will provide service to the Customers, as provided in Utah Code Ann. § 10-8-14(4).

2. **Service to Additional Customers Outside Municipal Boundary.** The Municipality shall not provide any service to any customer located outside the municipal boundary other than the Customers identified in Exhibit A except pursuant to the procedures and in accordance with a written agreement as provided in Utah Code Ann. §§ 10-8-14(4) and 54-4-40.

3. **Application; Effective Date.**

a. Within 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. § 54-4-40 seeking the Commission’s approval of this Agreement. Rocky Mountain Power shall and upon request by Rocky Mountain Power the Municipality shall, support approval of the Application before the Commission, 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 an order of the Commission approving the Application (“Order”) or any petition for review in court of the Order.

b. This Agreement shall be effective from and after the date the Commission approves the Application (the “Effective Date”). In the event, however, that the Commission issues an order disapproving the Application, this Agreement shall terminate and be of no further force or effect.

c. As provided to Utah Code Ann. § 10-8-14(5) the Municipality or Rocky Mountain Power may terminate the Agreement if the Utah Public Service Commission imposes a material change to the Agreement.

d. Notwithstanding the foregoing, as provided in Utah Code Ann. § 10-8-14(8) the Municipality is relieved of any obligation under this paragraph 2 to transfer an Additional Customer, and the facilities used by the Municipality to serve the Additional Customer, if the Municipality annexes and incorporates the area within which the Additional Customer is being served.

4. **Cooperation.** In providing material written information to any third party or government entity or in obtaining any approval of any government entity in connection with this Agreement, the Parties agree to mutually support each other in obtaining regulatory approvals of the Agreement and in gaining any required franchise, providing information to regulators and parties in regulatory proceedings and to other government entities required to issue franchises, and cooperating in responding to parties that may oppose approval of the

Agreement or issuance of any required franchises. 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, 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.

5. **Miscellaneous.**

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

b. **Each Party to Bear Own Expenses.** 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.

c. **Waiver of Jury Trial and Limitation on Damages.** THE PARTIES EXPRESSLY WAIVE THEIR RIGHT TO TRIAL BY JURY ON ANY CLAIM ARISING UNDER THIS AGREEMENT AND AGREE THAT ANY SUCH CLAIM MAY NOT BE JOINED OR CONSOLIDATED IN ANOTHER ACTION BEING TRIED TO A JURY. 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.

d. **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 registered first class United States mail, postage prepaid; or (3) upon delivery if delivered by a commercial courier service.

ii. **Contact Information.**

Municipality:

Energy Director
Provo City Corporation
351 West Center Street
Provo, Utah 84603

Rocky Mountain Power:

Service Area Manager
Rocky Mountain Power
201 South Main Street, 23rd Floor
Salt Lake City, UT 84111-4904

cc: Office of the General Counsel
Rocky Mountain Power
201 South Main Street, 24th Floor
Salt Lake City, UT 84111-4904

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 5.d.i, above.

e. **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.

f. **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.

g. **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.

h. **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.

i. **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.

j. **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.

k. **Severability.** If any provision of this Agreement or the application thereof 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.

l. **Counterparts.** This Agreement may be executed in counterparts which, taken together, shall constitute one and the same Agreement and shall not be effective unless and until the Commission approves the Application in accordance with the provisions of paragraph 2.

m. **Entire Agreement.** This Agreement, including the recitals stated above and the appendices attached hereto which are incorporate herein by this reference, 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.

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

Provo City, a
municipal corporation organized under the
laws of the State of Utah

**PACIFICORP, an Oregon corporation
doing business in Utah as ROCKY
MOUNTAIN POWER**

Signature: [Handwritten Signature]

Print Name: John R. Curtis

Title: Mayor

Date: 4-21-14

Signature: [Handwritten Signature]

Print Name: R. Jeff Richards

Title: Vice President and General Counsel

Date: 6/9/14

ATTEST:

Signature: [Handwritten Signature]

Print Name: Janene Weiss

Title: Recorder



APPENDIX 1

WRITTEN NOTICE OF EXISTING CUSTOMERS

(see attached)

**THIS APPENDIX IS CONFIDENTIAL
AND IS PROVIDED UNDER
SEPARATE COVER**