



Pacific Power  
Rocky Mountain Power  
825 NE Multnomah Street  
Portland, OR 97232

UTAH PUBLIC  
SERVICE COMMISSION

November 18, 2010 2010 NOV 24 P 1:30

2815641

The Honorable Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

RECEIVED

RE: *PacifiCorp*  
Docket No. ER11-\_\_\_-000

*Docket No. 10-999-01*

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d (2006), Part 35 of the Federal Energy Regulatory Commission's ("Commission") regulations, 18 C.F.R. Part 35 (2010), and Order No. 714<sup>1</sup> regarding electronic filing of tariff submittals, PacifiCorp hereby tenders for filing the following jurisdictional agreement:

1. Project Construction Agreement ("Construction Agreement"), dated November 3, 2010, between Helper City ("Helper") and PacifiCorp, to be designated as PacifiCorp Service Agreement FERC No. 663 under PacifiCorp's Volume No. 11 Open Access Transmission Tariff ("OATT").

**1. Background and Reason for Filing**

PacifiCorp owns and operates certain transmission facilities in Utah. Helper recently requested an additional interconnection at or near Morgantown to reliably serve its loads. Helper also requested that PacifiCorp perform certain work to accommodate its interconnection request. PacifiCorp determined that upgrades to the existing Helper-Martin #11 circuit are required in order to accommodate this request. Under the Construction Agreement, PacifiCorp agrees to perform, and Helper agrees to pay for, such upgrades identified as necessary to accommodate Helper's upgraded interconnection with PacifiCorp's transmission system. Thus, PacifiCorp respectfully requests that the Commission accept the Construction Agreement, attached as Enclosure 1 hereto, for filing.

**2. Effective Date**

Under the Commission's prior notice and filing requirements, service agreements may be tendered for filing with FERC within 30 days after service has commenced. 18 C.F.R. § 35.3(a)(2). The Construction Agreement is being filed within 30 days of service

<sup>1</sup> *Electronic Tariff Filings*, Order No. 714, 124 FERC ¶ 61,270 (2008).

commencing. Accordingly, PacifiCorp requests that the Commission establish an effective date of November 3, 2010 for the Construction Agreement.

**3. Designation**

PacifiCorp respectfully requests that the Construction Agreement be designated as PacifiCorp Service Agreement FERC No. 663.

**4. Enclosure**

The following enclosure is attached hereto:

Enclosure 1 Construction Agreement between Helper City and PacifiCorp, to be designated as PacifiCorp Service Agreement FERC No. 663.

**5. Communications**

All communications and correspondence regarding this filing should be forwarded to the following persons:

Mary M. Wiencke  
PacifiCorp  
825 N.E. Multnomah, Suite 1800  
Portland, OR 97232  
(503) 813-5058  
(503) 813-7252 (facsimile)  
[mary.wiencke@pacificorp.com](mailto:mary.wiencke@pacificorp.com)

Mark M. Rabuano  
PacifiCorp  
825 N.E. Multnomah, Suite 1800  
Portland, OR 97232  
(503) 813-5744  
(503) 813-7252 (facsimile)  
[mark.rabuano@pacificorp.com](mailto:mark.rabuano@pacificorp.com)

If you have any questions, or if I can be of further assistance, please do not hesitate to contact me.

Respectfully Submitted,

/s/ Mary M. Wiencke  
Mary M. Wiencke  
Mark Rabuano

*Attorneys for PacifiCorp*

**PROJECT CONSTRUCTION AGREEMENT**  
**PROJECT TITLE: Helper City new point of delivery near Morgantown**

This Project Construction Agreement (the "Agreement") made and entered into this 3rd day of November, 2010, between Helper City hereinafter called "Helper" or "Customer", and PacifiCorp, hereinafter called "PacifiCorp" or "Company", is for work to be performed by Company for Customer (hereinafter referred to as the "Project"). Hereinafter, helper and PacifiCorp may be individually referred to as a "Party" or collectively referred to as the "Parties".

RECITALS:

- A. WHEREAS, PacifiCorp is a transmission provider which owns and operates certain facilities for the transmission of electric power and energy located in Utah; and
- B. WHEREAS, Helper is a municipal electric utility serving load in and around Carbon County, Utah; and
- C. WHEREAS, PacifiCorp and Helper have agreed to certain network transmission to Helper City by a Network Transmission Service Agreement; and
- D. WHEREAS, Helper has requested additional interconnection at or near Morgantown to reliably serve its loads and has requested that PacifiCorp perform certain work to accommodate Customer's request;
- E. WHEREAS, PacifiCorp has determined that to accommodate Helper's request, certain upgrades will be required to the Helper-Martin # 11 circuit (the "Project"), as further described and detailed in this Agreement; and
- F. WHEREAS, PacifiCorp has agreed to perform the work required to complete the upgrades according to the terms set forth herein;

NOW THEREFORE, the Parties enter into this Agreement with the understanding that each mutually benefits from this Agreement. The parties further agree to the following:

1. TERM & TERMINATION

The term of this Agreement shall commence on the 3<sup>rd</sup> day of Nov., 2010, subject to another date being designated by the Federal Energy Regulatory Commission ("Commission"), ("Effective Date") and shall terminate ninety (90) days following the completion of construction of the Project and payment by Customer of Direct Assigned Facilities costs.

## 2. SCOPE AND PERFORMANCE OF WORK:

- a. **Project Description and Scope.** The Project shall consist of the construction and installation of facilities to serve Customer's new interconnection as indicated in Exhibit A and as specified by PacifiCorp. (the "Project Facilities").
- b. Project Facilities shall include a one span tap to the existing Helper-Martin #11 12.47 kV circuit including tap and meter structures, cell phone enabled primary metering, fuses, and modifications to structures on PacifiCorp's existing Helper-Martin #11 circuit.
- c. **Company Responsibilities.** Company agrees to survey, engineer, procure, and install the Project Facilities as depicted in the attached Exhibit A.
- d. **Customer Responsibilities.**
  - i. **Site Preparation.** Customer will provide rights of way, easements, permits, and site preparation for all of PacifiCorp owned facilities
  - ii. **Access.** Customer shall provide for access for company crews to construct facilities necessary for this interconnection.

## 3. OWNERSHIP/RESPONSIBILITY FOR COSTS:

Customer shall be responsible for costs of facilities from Point of Interconnection to point of Change of Ownership (Direct Assigned Facilities).

Ownership of the Project facilities shall be as follows:

Company shall own all facilities on the PacifiCorp side of the Point of Interconnection to the Point of Change of Ownership. Customer shall own all facilities on the Helper side of the Point of Change of Ownership.

The estimated cost of the Project Facilities to be designed, purchased and installed by Company is \$68,191.00 which includes \$42,195.00 in Direct Assigned Facilities and \$25,996.00 in Network Upgrades. Customer shall reimburse Company for the actual cost to complete the Direct Assigned Facilities. Following completion of the Project, Company shall calculate its actual costs of the Direct Assigned Facilities. Company's actual costs shall include all direct costs plus applicable overheads. Company will forward a copy of the calculation to Customer along with an invoice for the actual cost within 90 days after completion of construction.

Company shall keep accurate and complete accounting records in support of all cost billings and claims in accordance with generally accepted accounting principles. Customer, or its audit representative, shall have the right at any reasonable time or times

to examine, audit, and copy the records, vouchers, and their source documents which relate to any claim or compensation other than pricing elements, if any, which are fixed in amount by this Agreement. Such documents shall be available for examination, audit, and copying for three (3) years after the completion or termination of this Agreement.

#### 4. OPERATION AND MAINTENANCE:

The Parties agree that operation and maintenance of the Direct Assigned Facilities shall be as described and set forth in a future agreement between the Parties. The Parties agree to work diligently and in good faith to negotiate and execute a Facilities Maintenance Agreement on or before the completion of construction of the Project.

#### 5. STANDARD OF WORK:

All work performed pursuant to this Agreement by either Party or their agents shall be performed in a good and workmanlike manner in accordance with Good Utility Practice and with any and all prudent and applicable safety and reliability standards. As used in this Agreement, Good Utility Practice shall mean 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. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

#### 6. CHANGES:

The Parties may at any time in writing mutually agreed to changes and/or additions within the general scope of this Agreement or any amendment hereto, direct the omission of or variation in Work, or alter the schedule. If such direction results in a material change in the amount or character of the Work, an equitable adjustment in estimated costs and other such provisions of this Agreement as may be affected shall be made and this Agreement shall be modified in writing accordingly.

No change shall be binding upon the Parties until a change order is executed by each Party which EXPRESSLY STATES THAT IT CONSTITUTES A CHANGE ORDER TO THIS AGREEMENT. THE ISSUANCE OF INFORMATION, ADVICE, APPROVALS, OR INSTRUCTIONS VERBALLY OR BY AN EXCHANGE OF E-MAIL OR IN ANY OTHER MANNER SHORT OF A WRITING EXECUTED BY BOTH PARTIES SHALL NOT CONSTITUTE AN AUTHORIZED CHANGE ORDER PURSUANT TO THIS PROVISION.

7. INSPECTION:

Helper may, at its discretion, inspect Company construction work in progress upon reasonable notice and with supervision by Company.

8. TESTING:

Before the new facilities required for the Project are energized, such new facilities shall be tested by Company to ensure their safe and reliable operation in accordance with Good Utility Practice, all applicable Federal Energy Regulatory Commission, North American Electric Reliability Corporation and Western Electricity Coordinating Council criteria and requirements, and all applicable federal, state, and local law, regulations, and requirements. If testing indicates that modifications are required, Customer shall bear the cost of all such modifications in accordance with the cost allocation in Section 3 above, except to the extent that any such modifications are required as a result of Company's or its agent's or its subcontractors' negligence, willful misconduct, or failure to comply with Good Utility Practice.

9. ACCESS:

Company shall grant Customer and their designees reasonable escorted access to the Project Facilities consistent with such access rights as are established in prior agreements between the Parties, provided that Customer provides Company with reasonable notice and complies with Company's safety and security rules.

10. GOVERNING LAW:

Enforcement or interpretation of this Agreement shall be in the state court of the State of Utah and all parties hereby submit to the jurisdiction of said court for the stated purpose. Furthermore, this Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

11. NO PARTNERSHIP:

This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

12. NON-ASSIGNABILITY:

Neither this Agreement, nor any part thereof, may be assigned, without the express written consent of the other Party which consent will not be unreasonably withheld. Any attempt to assign this Agreement will be deemed voidable.

13. PROVISIONAL REMEDIES:

Either party may seek provisional legal remedies, if in such party's judgment such action is necessary to avoid irreparable damage or preserve the status quo.

14. ENTIRE CONTRACT:

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and there are no oral or written understandings, representations or commitments of any kind, express or implied, which are not expressly set forth herein.

15. NOTICES:

Any correspondence regarding this work shall be directed to the appropriate party as shown below:

Helper City

Attn: City Recorder  
73 S, Main St.  
Helper, Utah 84526  
Phone: (435) 472-5391  
Fax: (435) 472-5530  
e-mail: jonaskerl@helpercity.net

PacifiCorp:

Director, Transmission Services  
PacifiCorp  
825 NE Multnomah Street, Suite 1600  
Portland, OR 97232  
Phone (503) 813-6712  
Fax (503) 813-6893

## 16. BILLING AND PAYMENT:

Billings and payments shall be sent to the addresses set out below:

Customer:

Attention: City Recorder  
Address: 73 S. Main St.  
Helper, Utah 84526  
Fax No.: (435) 472-5530

with a copy by e-mail to: [jonasker1@helpercity.net](mailto:jonasker1@helpercity.net)

## 17. INDEMNIFICATION:

Customer ("Indemnifying Party") agrees to protect, defend, indemnify and hold harmless the Company, its officers, employees and agents (collectively the "Indemnified Party") against and from any and all liability, suits, loss, damage, claims, actions, costs and expenses of any nature, including court costs and attorney's fees, even if such actions or claims are completely groundless, growing out of injury to or death of the Indemnifying Party or its subcontractors of any tier, their employees, agents or guests, or any other person or persons, or any and all destruction, loss or damage to property arising in any way in connection with, or related to, the Indemnifying Party's performance of any Work or any of its obligations under the Agreement, except as to injury to persons or damage to property on the Work site caused by the sole negligence of the Indemnified Party.

The indemnification obligations set forth herein shall not be limited by amounts or types of damages, compensation or benefits payable by or for the Indemnifying Party, contractors, subcontractors, sub-subcontractors, material suppliers or any person or entity for which any of them may be liable, under workers compensation acts, or any disability or employee benefit acts, in the event claims are asserted against persons or entities indemnified under this Paragraph 18 by an employee of the Indemnifying Party, a contractor, a subcontractor, a sub-subcontract or, a material supplier, anyone directly or indirectly employed by any of them or anyone (or for whose acts they may be liable.)

Moreover, at the request of the Indemnified Party, the Indemnifying Party shall defend any action, claim or suit asserting a claim that might be covered by this indemnity. The Indemnifying Party shall pay all costs and expenses that may be incurred by the Indemnified Party in enforcing this indemnity and defense agreement, including attorney's fees actually paid by the Indemnified Party.

## 18. LIMITATION OF LIABILITY:

Except as otherwise expressly provided in this Agreement, each Party's liability to the other Party for any loss, cost, claim, injury, damage, liability, or expense, including



reasonable attorney's fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred. In no event shall either Party be liable to the other Party for any indirect, special, consequential, or punitive damages, except as specifically authorized by this Agreement.

#### 19. FORCE MAJEURE:

A Party shall not be subject to any liability or damages for inability to meet its obligations under this Agreement to the extent that such failure shall be due to causes beyond the control of the Party, including, but not limited to the following: (a) the operation and effect of any new or modified rules, regulations and orders promulgated by the Federal Energy Regulatory Commission, any applicable state public utility commission, any municipality, or any governmental agency of the United States, or subdivision thereof (so long as the claiming party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such government action); (b) restraining order, injunction or similar decree of any court; (c) any Force Majeure event.

Force Majeure shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure event does not include acts of negligence or intentional wrongdoing by the Party claiming Force Majeure.

Provided, the Party claiming Force Majeure shall make every reasonable attempt to remedy the cause thereof as diligently and expeditiously as possible. Except for the obligation to pay amounts owed when due, time periods for performance obligations of either Party herein shall be extended for the period during which Force Majeure was in effect.

#### 20. SUCCESSORS:

This Agreement will be binding upon the Parties and will inure to the benefit of their successors.

#### 21. SEVERABILITY:

If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Authority, (1) such portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable

the benefits to each Party that were affected by such ruling, and (3) the remainder of this Agreement shall remain in full force and effect.

22. MULTIPLE COUNTERPARTS:

This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

23. CONTRACTORS AND SUBCONTRACTORS:

Nothing in this Agreement shall prevent Company from utilizing the services of any third party contractor or subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that Company shall require its third party contractor and subcontractor to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such third party contractor and subcontractor.

24. NO THIRD-PARTY BENEFICIARIES:

This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement effective as of the day and year first herein above written.

PACIFICORP

Helper City

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

L.H. Bahls

Dean Armstrong

\_\_\_\_\_  
Printed Name of Signor

\_\_\_\_\_  
Printed Name of Signor

Director, Transmission Customer Accounts

Mayor

\_\_\_\_\_  
Title of Signor

\_\_\_\_\_  
Title of Signor

3 Nov. 2010

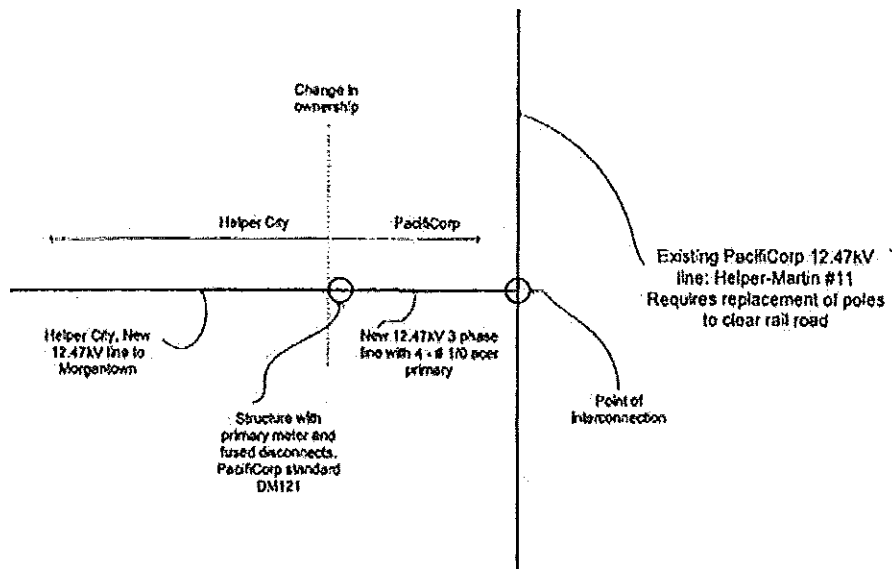
10/27/2010

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

# Exhibit A Helper Morgantown point of Interconnection

Helper City, Morgantown  
Exhibit A  
Interconnection



**PROJECT CONSTRUCTION AGREEMENT**  
**PROJECT TITLE: Helper City new point of delivery near Morgantown**

This Project Construction Agreement (the "Agreement") made and entered into this 3<sup>rd</sup> day of NOVEMBER 2010, between Helper City hereinafter called "Helper" or "Customer", and PacifiCorp, hereinafter called "PacifiCorp" or "Company", is for work to be performed by Company for Customer (hereinafter referred to as the "Project"). Hereinafter, Helper and PacifiCorp may be individually referred to as a "Party" or collectively referred to as the "Parties".

**RECITALS:**

- A. WHEREAS, PacifiCorp is a transmission provider which owns and operates certain facilities for the transmission of electric power and energy located in Utah; and
- B. WHEREAS, Helper is a municipal electric utility serving load in and around Carbon County, Utah; and
- C. WHEREAS, PacifiCorp and Helper have agreed to certain network transmission to Helper City by a Network Transmission Service Agreement; and
- D. WHEREAS, Helper has requested additional interconnection at or near Morgantown to reliably serve its loads and has requested that PacifiCorp perform certain work to accommodate Customer's request; and
- E. WHEREAS, PacifiCorp has determined that to accommodate Helper's request, certain upgrades will be required to the Helper-Martin # 11 circuit (the "Project"), as further described and detailed in this Agreement; and
- F. WHEREAS, PacifiCorp has agreed to perform the work required to complete the upgrades according to the terms set forth herein.

NOW THEREFORE, the Parties enter into this Agreement with the understanding that each mutually benefits from this Agreement. The parties further agree to the following:

## 1. TERM & TERMINATION

The term of this Agreement shall commence on the 3<sup>rd</sup> day of Nov., 2010, subject to another date being designated by the Federal Energy Regulatory Commission ("Commission"), ("Effective Date") and shall terminate ninety (90) days following the completion of construction of the Project and payment by Customer of Direct Assigned Facilities costs.

## 2. SCOPE AND PERFORMANCE OF WORK:

- a. **Project Description and Scope.** The Project shall consist of the construction and installation of facilities to serve Customer's new interconnection as indicated in Exhibit A and as specified by PacifiCorp. (the "Project Facilities").
- b. Project Facilities shall include a one span tap to the existing Helper-Martin #11 12.47 kV circuit including tap and meter structures, cell phone enabled primary metering, fuses, and modifications to structures on PacifiCorp's existing Helper-Martin #11 circuit.
- c. **Company Responsibilities.** Company agrees to survey, engineer, procure, and install the Project Facilities as depicted in the attached Exhibit A.
- d. **Customer Responsibilities.**
  - i. **Site Preparation.** Customer will provide rights of way, easements, permits, and site preparation for all of PacifiCorp owned facilities
  - ii. **Access.** Customer shall provide for access for company crews to construct facilities necessary for this interconnection.

## 3. OWNERSHIP/RESPONSIBILITY FOR COSTS:

Customer shall be responsible for costs of facilities from Point of Interconnection to point of Change of Ownership (Direct Assigned Facilities).

Ownership of the Project facilities shall be as follows:

Company shall own all facilities on the PacifiCorp side of the Point of Interconnection to the Point of Change of Ownership. Customer shall own all facilities on the Helper side of the Point of Change of Ownership.

The estimated cost of the Project Facilities to be designed, purchased and installed by Company is \$68,191.00 which includes \$42,195.00 in Direct Assigned Facilities and \$25,996.00 in Network Upgrades. Customer shall reimburse Company for the actual cost to complete the Direct Assigned

Facilities. Following completion of the Project, Company shall calculate its actual costs of the Direct Assigned Facilities. Company's actual costs shall include all direct costs plus applicable overheads. Company will forward a copy of the calculation to Customer along with an invoice for the actual cost within 90 days after completion of construction.

Company shall keep accurate and complete accounting records in support of all cost billings and claims in accordance with generally accepted accounting principles. Customer, or its audit representative, shall have the right at any reasonable time or times to examine, audit, and copy the records, vouchers, and their source documents which relate to any claim or compensation other than pricing elements, if any, which are fixed in amount by this Agreement. Such documents shall be available for examination, audit, and copying for three (3) years after the completion or termination of this Agreement.

#### 4. OPERATION AND MAINTENANCE:

The Parties agree that operation and maintenance of the Direct Assigned Facilities shall be as described and set forth in a future agreement between the Parties. The Parties agree to work diligently and in good faith to negotiate and execute a Facilities Maintenance Agreement on or before the completion of construction of the Project.

#### 5. STANDARD OF WORK:

All work performed pursuant to this Agreement by either Party or their agents shall be performed in a good and workmanlike manner in accordance with Good Utility Practice and with any and all prudent and applicable safety and reliability standards. As used in this Agreement, Good Utility Practice shall mean 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. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

#### 6. CHANGES:

The Parties may at any time in writing mutually agreed to changes and/or additions within the general scope of this Agreement or any amendment hereto, direct the omission of or variation in Work, or alter the schedule. If such direction results in a material change in the amount or character of the Work, an equitable adjustment in estimated costs and other such provisions of this

Agreement as may be affected shall be made and this Agreement shall be modified in writing accordingly.

No change shall be binding upon the Parties until a change order is executed by each Party which EXPRESSLY STATES THAT IT CONSTITUTES A CHANGE ORDER TO THIS AGREEMENT. THE ISSUANCE OF INFORMATION, ADVICE, APPROVALS, OR INSTRUCTIONS VERBALLY OR BY AN EXCHANGE OF E-MAIL OR IN ANY OTHER MANNER SHORT OF A WRITING EXECUTED BY BOTH PARTIES SHALL NOT CONSTITUTE AN AUTHORIZED CHANGE ORDER PURSUANT TO THIS PROVISION.

7. INSPECTION:

Helper may, at its discretion, inspect Company construction work in progress upon reasonable notice and with supervision by Company.

8. TESTING:

Before the new facilities required for the Project are energized, such new facilities shall be tested by Company to ensure their safe and reliable operation in accordance with Good Utility Practice, all applicable Federal Energy Regulatory Commission, North American Electric Reliability Corporation and Western Electricity Coordinating Council criteria and requirements, and all applicable federal, state, and local law, regulations, and requirements. If testing indicates that modifications are required, Customer shall bear the cost of all such modifications in accordance with the cost allocation in Section 3 above, except to the extent that any such modifications are required as a result of Company's or its agent's or its subcontractors' negligence, willful misconduct, or failure to comply with Good Utility Practice.

9. ACCESS:

Company shall grant Customer and their designees reasonable escorted access to the Project Facilities consistent with such access rights as are established in prior agreements between the Parties, provided that Customer provides Company with reasonable notice and complies with Company's safety and security rules.

10. GOVERNING LAW:

Enforcement or interpretation of this Agreement shall be in the state court of the State of Utah and all parties hereby submit to the jurisdiction of said court for the stated purpose. Furthermore, this Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

11. NO PARTNERSHIP:

This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

12. NON-ASSIGNABILITY:

Neither this Agreement, nor any part thereof, may be assigned, without the express written consent of the other Party which consent will not be unreasonably withheld. Any attempt to assign this Agreement will be deemed voidable.

13. PROVISIONAL REMEDIES:

Either party may seek provisional legal remedies, if in such party's judgment such action is necessary to avoid irreparable damage or preserve the status quo.

14. ENTIRE CONTRACT:

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and there are no oral or written understandings, representations or commitments of any kind, express or implied, which are not expressly set forth herein.

15. NOTICES:

Any correspondence regarding this work shall be directed to the appropriate party as shown below:

Helper City

Attn: City Recorder  
73 S, Main St.  
Helper, Utah 84526  
Phone: (435) 472-5391  
Fax: (435) 472-5530  
e-mail: jonaskerl@helpercity.net



PacifiCorp:

Director, Transmission Services  
PacifiCorp  
825 NE Multnomah Street, Suite 1600  
Portland, OR 97232  
Phone (503) 813-6712  
Fax (503) 813-6893

**16. BILLING AND PAYMENT:**

Billings and payments shall be sent to the addresses set out below:

Customer:

Attention: City Recorder  
Address: 73 S. Main St.  
Helper, Utah 84526  
Fax No.: (435) 472-5530

with a copy by e-mail to: [jonaskerl@helpercity.net](mailto:jonaskerl@helpercity.net)

**17. INDEMNIFICATION:**

Customer ("Indemnifying Party") agrees to protect, defend, indemnify and hold harmless the Company, its officers, employees and agents (collectively the "Indemnified Party") against and from any and all liability, suits, loss, damage, claims, actions, costs and expenses of any nature, including court costs and attorney's fees, even if such actions or claims are completely groundless, growing out of injury to or death of the Indemnifying Party or its subcontractors of any tier, their employees, agents or guests, or any other person or persons, or any and all destruction, loss or damage to property arising in any way in connection with, or related to, the Indemnifying Party's performance of any Work or any of its obligations under the Agreement, except as to injury to persons or damage to property on the Work site caused by the sole negligence of the Indemnified Party.

The indemnification obligations set forth herein shall not be limited by amounts or types of damages, compensation or benefits payable by or for the Indemnifying Party, contractors, subcontractors, sub-subcontractors, material suppliers or any person or entity for which any of them may be liable, under workers compensation acts, or any disability or employee benefit acts, in the event claims are asserted against persons or entities indemnified under this Paragraph 18 by an employee of the Indemnifying Party, a contractor, a subcontractor, a sub-subcontract or, a material supplier, anyone directly or indirectly employed by any of them or anyone (or for whose acts they may be liable.)

Moreover, at the request of the Indemnified Party, the Indemnifying Party shall defend any action, claim or suit asserting a claim that might be covered by this indemnity. The Indemnifying Party shall pay all costs and expenses that may be incurred by the Indemnified Party in enforcing this indemnity and defense agreement, including attorney's fees actually paid by the Indemnified Party.

#### 18. LIMITATION OF LIABILITY:

Except as otherwise expressly provided in this Agreement, each Party's liability to the other Party for any loss, cost, claim, injury, damage, liability, or expense, including reasonable attorney's fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred. In no event shall either Party be liable to the other Party for any indirect, special, consequential, or punitive damages, except as specifically authorized by this Agreement.

#### 19. FORCE MAJEURE:

A Party shall not be subject to any liability or damages for inability to meet its obligations under this Agreement to the extent that such failure shall be due to causes beyond the control of the Party, including, but not limited to the following: (a) the operation and effect of any new or modified rules, regulations and orders promulgated by the Federal Energy Regulatory Commission, any applicable state public utility commission, any municipality, or any governmental agency of the United States, or subdivision thereof (so long as the claiming party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such government action); (b) restraining order, injunction or similar decree of any court; (c) any Force Majeure event.

Force Majeure shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure event does not include acts of negligence or intentional wrongdoing by the Party claiming Force Majeure.

Provided, the Party claiming Force Majeure shall make every reasonable attempt to remedy the cause thereof as diligently and expeditiously as possible. Except for the obligation to pay amounts owed when due, time periods for performance obligations of either Party herein shall be extended for the period during which Force Majeure was in effect.

20. SUCCESSORS:

This Agreement will be binding upon the Parties and will inure to the benefit of their successors.

21. SEVERABILITY:

If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Authority, (1) such portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (3) the remainder of this Agreement shall remain in full force and effect.

22. MULTIPLE COUNTERPARTS:

This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

23. CONTRACTORS AND SUBCONTRACTORS:

Nothing in this Agreement shall prevent Company from utilizing the services of any third party contractor or subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that Company shall require its third party contractor and subcontractor to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such third party contractor and subcontractor.

24. NO THIRD-PARTY BENEFICIARIES:

This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement effective as of the day and year first herein above written.

PACIFICORP

Len Bae  
Signature

L. U. BAELS  
Printed Name of Signor

DIRECTOR, TRANSMISSIONS  
Title of Signor CUSTOMER ACCOUNTS

3 Nov 2010  
Date

Helper City

[Signature]  
Signature

Dean Armstrong  
Printed Name of Signor

Mayor  
Title of Signor

10/27/2010  
Date

# Exhibit A Helper Morgantown point of Interconnection

## Helper City, Morgantown Exhibit A Interconnection

