

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Excess PacifiCorp )  
Income Tax Cost Monies Collected ) DOCKET NO. 05-035-98  
in Rates ) REPORT AND ORDER  
)

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ISSUED: April 10, 2006

SHORT TITLE

**Settlement of Excess PacifiCorp Income Tax Cost Monies Collected in Rates**

SYNOPSIS

The Commission approves a Settlement Agreement which resolves all issues in this docket and dismisses the Committee of Consumer Service's Request for Agency Action with prejudice.

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**APPEARANCES:**

Mark C. Moench Senior Vice President - Law MidAmerican Energy Holdings Company	For	PacifiCorp
Edward A. Hunter, Jr. Attorney at Law Stoel Rives	"	PacifiCorp
Patricia E. Schmid Assistant Attorney General	"	Division of Public Utilities
Reed Warnick Assistant Attorney General	"	Committee of Consumer Services
F. Robert Reeder Vicki M. Baldwin Attorneys at Law Parsons Behle & Latimer	"	Utah Industrial Energy Consumers
C. Scott Brown Attorney At Law	"	Questar Gas Corporation

**I. PROCEDURAL HISTORY**

On October 6, 2005, the Committee of Consumer Services (“Committee”) filed a Request for Agency Action (“Request”) requesting that the Commission order PacifiCorp to return to Utah ratepayers the monies which PacifiCorp, since its 1999 merger with Scottish Power, collected in Utah rates. On November 4, 2005, PacifiCorp filed its Motion to Dismiss and Answer to the Request, denying the allegations in the Request. On November 18, 2005, the Utah Industrial Energy Consumers (“UIEC”) filed its Petition to File a Brief in Opposition to PacifiCorp’s Motion to Dismiss. On November 21, 2005, the Committee filed its Response to Motion, the Division of Public Utilities (“Division”) filed its Initial Response to PacifiCorp’s Motion to Dismiss and Answer and Motion for Enlargement of Time, and Questar Gas Company (“Questar”) filed a Petition to Intervene. On November 23, 2005, Questar filed a Motion for Extension of Time to file responsive pleadings until December 6, 2005.

On December 1, 2005, PacifiCorp filed its Reply Memorandum in Support of PacifiCorp’s Motion to Dismiss. On December 6, 2005, the Division filed its Response Memorandum. On December 7, 2005, the Commission issued a Notice of Scheduling Conference to be held on Wednesday December 14, 2005. On December 9, 2005, PacifiCorp filed a Motion for Protective Order and Request for Expedited Treatment and on December 13, 2005 the Commission issued a Protective Order. On December 13, 2005, Questar filed its Reply to Brief of UIEC and Response to Committee.

On January 9, 2006, the Utah School Boards Association filed a Petition to Intervene and on January 31, 2006, the Commission issued an Order Granting Intervention.

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On February 21, 2005, Brinton Burbidge, attorney for the Utah School Boards Association, filed a letter regarding settlement discussions.

On March 10, 2006, the Commission issued its Notice of Intervention Deadline and Notice of Status Conference, setting March 17, 2006, as the intervention deadline for this docket and April 3, 2006, as the date for a Status Conference. As of the expiration of the intervention deadline, petitions to intervene or responsive pleadings were filed by UIEC, Questar Gas Company, the Division and the Utah School Boards Association.

On March 24, 2006, PacifiCorp, MidAmerican Energy Holdings Company (“MEHC”), the Committee and UIEC filed a settlement agreement (“Settlement Agreement”) and Joint Motion for Approval of Settlement Agreement with the Commission. On March 24, 2006, the Commission issued a Notice of the Hearing on the motion to be held on April 3, 2006.

On April 3, 2006, pursuant to public notice, a hearing was held in which the Settlement Agreement was presented to the Commission. Witnesses for MEHC and PacifiCorp and the Committee presented testimony supporting the Settlement Agreement. A witness for the Division presented testimony explaining the Division’s conclusion that the Settlement Agreement is in the public interest. No party presented testimony opposing the Settlement Agreement. The Commission questioned the parties and witnesses regarding various aspects of the Settlement Agreement and the evidence presented.

## **II. SETTLEMENT AGREEMENT**

Without modifying the terms of the Settlement Agreement in any way, the following is a brief summary of the Settlement Agreement which is attached in its entirety as an Appendix. Parties to the Settlement Agreement include MEHC, the Committee, UIEC, and the Utah School Boards Association. The Settlement Agreement provides that, in return for the release and dismissal provisions of Paragraphs 1 and 2 of the Settlement Agreement, MEHC and PacifiCorp agree to a transfer of stock in the Intermountain Geothermal Company, an expansion of the Blundell Plant and negotiations with Scottish Power regarding a reduction in the non-fuel costs of the West Valley Lease.

## **III. DISCUSSION**

Settlement of matters before the Commission is encouraged at any stage of proceedings. Utah Code Ann. § 54-7-1. *See also Utah Dept. of Admin. Services v. Public Service Commission*, 658 P.2d 601, 613-14 (Utah 1983). The Commission may approve a settlement after considering the interests of the public and other affected persons if it finds the settlement is just and reasonable in result. Accordingly, we must determine whether the Settlement Agreement in this case is just and reasonable in result.

The witness for MEHC and PacifiCorp, provides evidence that PacifiCorp previously acquired steam for its Blundell Plant from Intermountain Geothermal Company (“IGC”) at market. IGC owns approximately 70% of the total rights to the steam resources that serve the Blundell Plant. Under Paragraph 3 of the Settlement Agreement, MEHC agrees to transfer 100% of the stock in IGC to PacifiCorp at no cost to PacifiCorp, with the result, as

specified in the Settlement Agreement, that steam will be provided at cost rather than market. Paragraph 4, MEHC agrees that PacifiCorp customers will not be harmed by that stock transfer and that PacifiCorp will be held harmless from any costs and expenses caused by the transfer and any liabilities arising from operations prior to the date of the transfer. As a result, the witness testifies, PacifiCorp will receive ownership of an unencumbered interest in a valuable steam resource. This transfer will reduce the cost of steam to the Blundell Plant and will provide PacifiCorp with new flexibility and opportunities for the expansion of the Blundell Plant.

Under Paragraph 3 of the Settlement Agreement, MEHC also commits, on behalf of itself and PacifiCorp, to the addition of an 11 megawatt heat recovery unit at the Blundell Plant by the fourth quarter of 2007 with capital and operation and maintenance costs as specified in the Settlement Agreement. Paragraph 3 also provides that PacifiCorp will use commercially reasonable efforts to expand the Blundell Plant by an additional 25 megawatts by the fourth quarter of 2009. Those efforts will include, as described in the Settlement Agreement, studying and verifying the economic feasibility of the 25 megawatt addition, pursuing agreements for the cost-effective development of the new unit, including agreements for the expansion of the field and construction of the unit.

The witness explains that the parties to the Settlement Agreement are not seeking in this docket Commission approval of the expansion of the Blundell Plant. MEHC, PacifiCorp and the other parties recognize that a Commission order approving this Settlement Agreement does not constitute approval of the reasonableness or prudence of the costs of the expansion

projects contemplated by the Settlement Agreement. Those issues can be heard by the Commission in an appropriate proceeding in the future.

Under Paragraph 5 of the Settlement Agreement, MEHC, through the date of closing of the transaction for the acquisition of PacifiCorp by MEHC, agrees to negotiate with Scottish Power to achieve an agreement to reduce the non-fuel costs of the West Valley lease. As the witness explains, the West Valley lease is a 15-year operating lease between PacifiCorp and West Valley Leasing Company, LLC, for the output of a 200 megawatt gas-fired, simple-cycle combustion turbine electric generating station located in West Valley, Utah near Salt Lake City. West Valley Leasing Company, LLC is a subsidiary of PPM Energy which is owned by ScottishPower. The witness testifies that, as a result of those negotiations, the price of PacifiCorp's option to purchase the West Valley generating station will be reduced by \$500,000. The witness testifies that the Settlement Agreement provides substantial potential benefits to customers by making possible the cost-effective expansion of PacifiCorp's generating resources, including its clean geothermal resources, during a period of increasing need for resources and is otherwise just and reasonable and in the public interest.

The witnesses for the Committee testify that the expansion of the Blundell Plant is the major feature of the Settlement Agreement and, based on the Committee's independent analysis, the Blundell Plant expansion has the potential to provide an estimated \$32 million net present value benefit to Utah customers by allowing the replacement of relatively expensive future market purchases with power generated from a renewable resource. The Committee



concludes that the Settlement Agreement results in a fair and reasonable settlement of the issues in this docket and is in the public interest.

The witness for the Division testifies that the Division has reviewed the provisions of the Settlement Agreement and performed its own preliminary analysis of the costs and benefits associated with the IGC Stock transfer and the expansion of the Blundell Plant, assuming the operating cost forecasts are reasonable. The Division quantifies the benefits to Utah at approximately \$7 million based on the proposed construction of a 11 megawatt heat recovery unit at the existing plant. This assumes a Utah share of 42 percent. Similarly, if the 25 megawatt expansion is built, based upon the MEHC assumptions, the Division estimates that the net Utah benefit is an additional approximately \$21 million. Based on its preliminary analysis, the Division concludes that there are net benefits associated with the terms of the Settlement Agreement and it supports the Settlement Agreement as being in the public interest.

Based upon the foregoing, the Commission approves the Settlement Agreement and makes the following findings of fact and conclusions of law.

#### **IV. FINDINGS OF FACT**

1. The Settlement Agreement provides a fair and reasonable resolution of the issues in this case and is just and reasonable in result and in the public interest.
2. The evidence contained in the record supports the finding that the Settlement Agreement is just and reasonable in result and in the public interest.

**V. CONCLUSIONS OF LAW**

1. The hearing on this Stipulation was appropriately held pursuant to proper notice.
2. Settlement of disputed issues is to be encouraged. Utah Code Ann. § 54-7-1. *See also Utah Dept. of Admin. Services v. Public Service Commission*, 658 P.2d 601, 613-14 (Utah 1983). After examining the Settlement Agreement and the evidence contained in the record, the Commission concludes that Settlement Agreement is just and reasonable in result and in the public interest.

**VI. ORDER**

Wherefore, pursuant to our discussion, findings and conclusions made herein, we order:

1. The Settlement Agreement executed on March 7, 2006 by MidAmerican Energy Holdings Company, the Utah Committee of Consumer Services, the Utah Industrial Energy Consumers and the Utah School Boards Association is approved.
2. The Committee of Consumer Service's Request for Agency Action in this docket is dismissed with prejudice.

This Report and Order constitutes final agency action in this docket. Pursuant to Utah Code Ann. §§ 63-46b-12 and 54-7-15, agency review or rehearing of this order may be obtained by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed

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within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 10<sup>th</sup> day of April, 2006.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary

G#48479

**APPENDIX: SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) by and between the Utah Committee Of Consumer Services, (“Committee”), the Utah Industrial Energy Consumers (“UIEC”), MidAmerican Energy Holdings Company (“MEHC”) (jointly referred to as “Parties”) is made and entered into this 7th day of March, 2006.

**RECITALS**

A. The Utah Committee of Consumer Services is a six member committee that, among other duties and responsibilities, is an advocate on its own behalf and in its own name, of positions most advantageous to a majority of residential consumers as determined by the committee and those engaged in small commercial enterprises. The Committee is authorized to bring original actions in its own name before the Utah Public Service Commission (“Commission”) or any court having appellate jurisdiction over orders or decisions of the Commission, as the committee may direct.

B. The Utah Industrial Energy Consumers is a group of electrical power customers whose standing in the proceedings described herein is acknowledged by all parties and who have individual and joint interests in the subject matter of the Committee’s Request for Agency Action and this Settlement Agreement.

C. MidAmerican Energy Holdings Company is an Iowa-based company that is privately held and engaged primarily in the production and delivery of energy. MEHC is in the process of acquiring from Scottish Power, all of the United States utility assets of PacifiCorp, a Scottish Power utility subsidiary (the “Transaction”). The Transaction is the subject matter of Utah Public Service Commission Docket No. 05-035-54. MEHC agrees for all purposes that upon close of the Transaction, it may be deemed to be a party to Docket No. 05-035-98 and bound by any Commission order entered in this Docket or by the entry of a judgment upon appeal. MEHC further agrees to cause PacifiCorp to be bound by all agreements, representations and covenants applicable to PacifiCorp in this Agreement upon close of the Transaction.

D. On October 6, 2005, the Committee filed a Request for Agency Action (“Request”), Utah Public Service Commission Docket No. 05-035-98, requesting relief as more fully described in the petition.

E. PacifiCorp denies the allegations in the Request and on November 4, 2005 answered and moved to dismiss. The Utah Public Service Commission has denied PacifiCorp’s Motion to Dismiss.

F. The Parties to this Agreement acknowledge that the outcome of the Request for Agency Action is not certain and that it is in the best interest of PacifiCorp and its Utah ratepayers to settle these claims and causes of action by securing advantageous regulatory and rate compromises as set forth below. Accordingly, the Parties have concluded that it is in the

public interest to settle the dispute which is the subject of Docket No. 05-035-98 in accordance with the terms specified herein.

NOW THEREFORE, IN CONSIDERATION of the mutual promises and covenants and conditions contained herein, the Parties agree as follows:

1. Release. The Committee, and UIEC agree to release and discharge PacifiCorp and its parent and affiliate companies from any and all claims, causes of action, liabilities, obligations, suits, losses, expenses, and costs, of whatever kind or nature, which now exist or which may hereafter accrue whether known or unknown, because of, for, or arising out of the claims made by the Committee in Docket No. 05-035-98 and related to the audit conducted by the SEC of the Scottish Power registered holding company system in 2003 and 2004 and refunds, facts and circumstances related thereto. Nothing in this paragraph or in this Settlement Agreement shall be asserted, inferred or applied as evidence that is relevant or admissible in any legal, administrative or legislative proceeding pertaining to the proper rate and regulatory treatment of income or other taxes collected from ratepayers in the future, nor shall this Settlement Agreement be asserted, inferred or applied to either collaterally estop or preclude claims or issues pertaining to the proper rate and regulatory treatment of income or other taxes collected from ratepayers in rates effective after March 1, 2006.

2. Dismissal. The Committee agrees to dismiss with prejudice its Request for Agency Action in Docket No. 05-035-98.

3. Agreements, Representations and Covenants.

a. MEHC provided to the Committee and the UIEC a confidential analysis of the revenue requirement impact ("MEHC Blundell Analysis") resulting from the transfer by MEHC to PacifiCorp of the stock ownership in Intermountain Geothermal Company ("IGC") and the associated steam rights. This analysis shows potential savings to PacifiCorp's customers resulting from PacifiCorp's ownership of IGC and control of the steam resources. The potential savings are based on an expansion of the Blundell plant and the resulting values that might potentially be realized from the addition of a heat recovery unit, the expansion of the geothermal field, and the expansion of the Blundell plant by adding generating facilities. MEHC provided this analysis intending that the Committee and the UIEC rely upon such analysis as a good faith estimate, for the purposes of this Settlement Agreement.

b. Representations of MEHC and PacifiCorp Relating to the Expansion of Blundell Geothermal Facility.

(i) MEHC represents that MEHC owns and has the right to convey to PacifiCorp without restriction or limitation, 100% of the stock in the IGC free from encumbrance.

(ii) MEHC represents that IGC has an existing contractual obligation to provide its proportionate share (approximately 70%) of the steam to serve the current Blundell Geothermal plant, which plant is owned and operated by PacifiCorp.

(iii) MEHC represents that IGC owns approximately 70% of the working interests in the geothermal field serving the Blundell Geothermal Plant including appropriate leases and permits to provide steam and can, subject to obtaining necessary agreements of the other working interest holders and governmental agencies expand the field to provide the additional steam resources for the expansion of the Blundell plant as contemplated by this Agreement.

(iv) MEHC represents that by transferring 100% of the stock of IGC to PacifiCorp, the steam from the field as developed which is attributable to the working interest of IGC, and as it may hereafter be developed, can be provided to PacifiCorp at cost rather than market so as to reduce the cost of steam to the Blundell plant, thereby reducing the plant's operating costs and charges to ratepayers.

(v) PacifiCorp represents that it can expand the capacity of the Blundell steam plant, without degrading existing capacity, as follows:

(A) To add an approximate 11 megawatt heat recovery unit to the existing 25 megawatt geothermal facility at Blundell not later than fourth quarter 2007, as described in paragraph c.(iii), subject to the terms and conditions of this Agreement.

(B) To add an approximate 25 megawatts of new geothermal based generating capacity at Blundell subject to the terms and conditions of this Agreement.

(C) To request that IGC and the other working interest holders drill new wells to recover additional steam for the new 25 megawatt expansion for the potential expansion of PacifiCorp subject to the terms and conditions of this Agreement.

(D) To add an approximate 11 megawatt heat recovery unit to the 25 megawatt new generating units so as to increase the production from that plant subject to the terms and conditions of this Agreement.

(vi) MEHC represents that they prepared in good faith the MEHC Blundell Analysis of the proposed IGC Transaction and expansions at the Blundell geothermal plant and related steam field facility which estimates (1) that the addition of an 11 megawatt heat recovery unit added to the existing 25 megawatt unit would produce a net present value in excess of \$17 million based on the assumptions therein, (2) that an additional 25 megawatts of new generation units would produce a net present value of \$50 million based upon the assumptions therein, and (3) that an additional approximate 11 megawatt heat recovery unit to the 25 megawatt new generation units would produce a net present value of \$17 million based upon the assumptions therein. The Blundell plant could then total 72 megawatts.

c. Respective Covenants of PacifiCorp and MEHC With Respect to the Blundell Plant.

(i) Promptly after the closing of the Transaction, MEHC shall transfer its stock ownership in IGC to PacifiCorp at no cost to PacifiCorp, free and clear of any encumbrances, and terminate all of MEHC's rights and obligations associated with IGC, except as provided in this Agreement.

(ii) Promptly after the closing of the Transaction, MEHC and PacifiCorp shall cause IGC to terminate its current steam supply contract providing for market pricing and replace it with a contract providing that PacifiCorp's future cost for the steam will be at cost for the remaining term of the agreement.

(iii) Promptly after the closing of the Transaction, PacifiCorp shall undertake the expansion of the Blundell plant by using commercially reasonable efforts to enter into an appropriate contract with appropriate contractors for the addition of an approximately 11 megawatt heat recovery unit at the facility which unit will add approximately 11 megawatts of production to the PacifiCorp system. The capital costs for the expansion should not exceed \$3,100 per kilowatt of installed capacity; provided, however, in the event the costs do exceed such amount and the economic benefit remains substantially similar, PacifiCorp can seek approval to recover the amount of reasonable exceedances. Completion will occur by the fourth quarter of 2007. The contract will contain appropriate liquidated damages to assure that the plant (a) performs as specified, (b) is completed timely © and completed at a cost no greater than \$3,100 per kilowatt of installed capacity; provided, however, in the event the costs do exceed such amount and the economic benefit remains substantially similar, PacifiCorp can seek approval to recover the amount of reasonable exceedances.

(iv) PacifiCorp and IGC shall operate and maintain the 11 megawatt heat recovery unit facility such that the operation and maintenance costs do not exceed the amounts reflected in the MEHC Blundell Analysis.

(v) Promptly after the closing of the transfer of IGC stock to PacifiCorp, PacifiCorp shall use commercially reasonable efforts to cause IGC to contract with an appropriate driller, subject to appropriate cost constraints and time commitments, to drill the additional wells for the steam necessary to support an expansion of the Blundell facility by approximately 25 megawatts of new generation capacity.

(vi) Within one year following the close of the Transaction, PacifiCorp shall use commercially reasonable efforts to enter into a contract with a suitable contractor for the expansion of the Blundell plant by the addition of a steam generator capable of a sustained output of at least 25 megawatts. The construction contract will contain covenants obligating the work to be completed at capital cost for no more than \$3,600 per kilowatt and the plant to be operational not later than fourth quarter 2009 and with appropriate liquidated damages for the

benefit of PacifiCorp and the benefit of the ratepayers if the construction is not satisfactorily completed in a timely manner.

(vii) PacifiCorp and IGC shall commit to performing the operations and maintenance of the 25 megawatt expansion or enter into an O&M contract for the operation and maintenance of the additional 25 megawatt facility.

(viii) The value of any governmental or regulatory renewable power generation credits or benefits associated with any expansion of the Blundell plant shall be assigned to PacifiCorp's customers for ratemaking purposes.

(ix) Promptly after closing of the Transaction, IGC and/or PacifiCorp shall diligently pursue agreements with necessary working interest holders and governmental agencies for the development, production and delivery of additional geothermal resources to the Blundell plant on terms that support the estimated net present value of an estimated 25 MW expansion of the Blundell geothermal plant, as referenced in paragraph 3(b)(vi) hereof. Such efforts may include taking administrative action with jurisdictional agencies and/or court action.

d. Economic. Promptly after the closing of the Transaction, PacifiCorp shall undertake a study to verify the economic feasibility of the 25 megawatt expansion project. The cost of the study shall be at the sole cost of PacifiCorp. The results shall be provided to the Parties in sufficient time to allow completion of the project as contemplated in this Agreement.

4. Hold Harmless/Indemnity. MEHC will hold PacifiCorp harmless from any costs and expenses caused by the transfer of the stock of IGC to PacifiCorp and any liabilities arising from operations prior to the date of the transfer of the stock of IGC to PacifiCorp. MEHC also commits that PacifiCorp customers will not be harmed from the contribution to PacifiCorp of the IGC stock.

5. West Valley Lease. Through the date of closing of the acquisition of PacifiCorp by MEHC, MEHC agrees to negotiate in good faith with Scottish Power to achieve an agreement to reduce for PacifiCorp customers the annual non-fuel costs of the West Valley lease, which reduction may be as great as \$5,000,000 over the remaining term of the lease. Absent such agreement, the remaining provisions of this Agreement will survive.

6. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Agreement and all of which together shall constitute one and the same instrument.

7. Conditions. This Agreement is expressly conditional and contingent on the following:

- a. Execution of this Agreement no later than March 7, 2006.



b. Entry of a final order by the Commission approving the Agreement. Any such order does not constitute approval of the reasonableness or prudence of the costs of the expansion projects contemplated by this Agreement.

c. The closing of the Transaction.

d. Expiration of the period for appeal of the Commission's order approving the Agreement or, if an appeal is filed, entry of a final order of the appellate court dismissing the appeal or affirming the Commission's order.

8. Press Release. MEHC, PacifiCorp and the Committee shall mutually agree upon a press release regarding this Agreement.

9. Force Majeure.

a. Delay Force Majeure. The delay in performance or failure to timely perform the obligations of PacifiCorp under this Agreement shall be excused upon the occurrence and continuation of an event of Delay Force Majeure. For purposes of this Agreement, "Delay Force Majeure" shall mean an event or circumstance which causes a delay or prevents either or both of MEHC and/or PacifiCorp from performing its obligations under this Agreement, which event or circumstance was not within the reasonable control of, either of MEHC or PacifiCorp, including but not limited to the following: (1) the failure of any contractor or subcontractor necessary to the development or construction of the proposed expansions to perform its obligations in any material respect; (2) as a result of the actions or inactions of any third party, the failure to obtain any governmental permit or agreement with working interest owners necessary to develop, construct or operate the proposed expansions; (3) any war, declared or not, hostilities, belligerence, blockade, revolution, insurrection, riot, or public disorder including general labor disturbances not specific to MEHC's or PacifiCorp's personnel; (4) expropriation, requisition, confiscation or nationalization; (5) export or import restrictions by any governmental authorities; (6) closing of harbors, docks, canals or other assistances to or adjuncts of the shipping or navigation of or within any place; (7) rationing or allocation, whether imposed by law, decree or regulation or by compliance of industry at the insistence of any governmental authorities; (8) fire, flood, unusually severe earthquake, volcano, tide, tidal wave or perils at sea; (9) unusually severe storms and other weather conditions; or (10) any other act of God. An event of Delay Force Majeure shall not include any event caused solely by PacifiCorp's fault and which could not be prevented or overcome with the exercise of reasonable diligence.

b. Performance Force Majeure. PacifiCorp shall be excused, released and discharged from performance of its obligations related to the applicable expansion of the capacity of the Blundell steam plant upon the occurrence of an event of Performance Force Majeure. For purposes of this Agreement, "Performance Force Majeure" shall mean any of the following events that result in a decline in the net present value of the proposed expansions, based on the assumptions contained in the confidential analysis of the proposed expansions

provided to the Parties pursuant to paragraph 3(d) hereof, such that on any date thereafter the net present value of the addition of either of the 11 megawatt heat recovery units is less than \$3.4 million or the net present value of the addition of the 25 megawatts of new generation is less than \$10 million caused by: (A) a material decrease in MEHC's reasonable forecast of future energy prices that would be applicable to the proposed expansions, (B) a material increase in interest rates, (C) any material increase in the cost of metals or other consumables necessary for the construction and operation of the proposed expansions, (D) a material change in the availability of the federal production tax credit with respect to the proposed expansions, (E) a material change in the availability of federal tax depreciation with respect to the proposed expansions and (F) any material increase in the third party costs necessary to develop, produce and deliver the steam required in connection with the proposed expansions.

c. Notice. If an event of Delay Force Majeure or Performance Force Majeure occurs, PacifiCorp shall promptly provide written notice to the other Parties of the occurrence and nature of such event. With respect to an event of Delay Force Majeure, PacifiCorp shall use commercially reasonable efforts to remedy or mitigate the effect of any such event, and advise the other Parties of its efforts.

10. The Parties acknowledge that the Agreements, Representations and Covenants in paragraph 3, and paragraphs 5 and 10, are each subject to the jurisdiction and authority of the Commission. Some or all may require the approval of the Commission by a certificate of convenience and necessity, a general rate order, a tariff, or other form of approval. The Parties agree that in the event the Commission disapproves, or materially conditions or modifies the terms and conditions of this Agreement, the Parties shall in good faith discuss, negotiate and consider substitute consideration.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

UTAH COMMITTEE OF CONSUMER SERVICES

By \_\_\_\_\_  
Name: Reed T. Warnick  
Title: Assistant Attorney General

THE UTAH INDUSTRIAL ENERGY CONSUMERS

By \_\_\_\_\_  
Name: F. Robert Reeder  
Title: Attorney for UIEC

MIDAMERICAN ENERGY HOLDINGS COMPANY

By \_\_\_\_\_  
Name: Mark C. Moench  
Title: Senior Vice President

The Utah School Boards Association acknowledges that it has reviewed this Agreement and approves the terms and conditions of this Agreement.

UTAH SCHOOL BOARDS ASSOCIATION

By: \_\_\_\_\_

Its: \_\_\_\_\_