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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

<p>In the Matter of the Application of Rocky Mountain Power for Approval of Purchase and Transfer Agreement and Power Supply Agreement with Navajo Tribal Utility Authority and Amendment of Certificate of Public Convenience and Necessity</p>	<p>Docket No. 15-035-____</p> <p><b>APPLICATION FOR APPROVAL OF PURCHASE AND TRANSFER AGREEMENT AND POWER SUPPLY AGREEMENT WITH NAVAJO TRIBAL UTILITY AUTHORITY AND AMENDMENT OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY</b></p>
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PacifiCorp doing business as Rocky Mountain Power (“Rocky Mountain Power” or the “Company”), pursuant to Utah Code Ann. § 54-4-25 and Utah Admin. Code R746-100-3.A, respectfully requests that the Commission (1) approve the Purchase and Transfer Agreement (“PTA”) between Rocky Mountain Power and the Navajo Tribal Utility Authority (“NTUA”) attached as Confidential Exhibit RMP\_\_\_\_(LPM-1) to the testimony of Loren P. (“Lucky”) Morse

filed herewith, as amended by the First Amendment to the Purchase and Transfer Agreement (“First Amendment to PTA”), attached as Confidential Exhibit RMP\_\_\_(LPM-2) to Mr. Morse’s testimony, and the Second Amendment to the Purchase and Transfer Agreement (“Second Amendment to PTA”), attached as Confidential Exhibit RMP\_\_\_(LPM-3) to Mr. Morse’s testimony, (2) approve the Power Supply Agreement (“PSA”) between Rocky Mountain Power and NTUA, which is Exhibit N to the PTA, as amended by the First Amendment to the Power Supply Agreement (“Amendment to PSA”), attached as Confidential Exhibit RMP\_\_\_(LPM-4) to Mr. Morse’s testimony, (3) find the entire proposed transaction, including the PTA and PSA, prudent, and (4) amend Certificate of Public Convenience and Necessity No. 1118 (“Certificate”) issued to Rocky Mountain Power to remove the geographic area in San Juan County, Utah, within the boundaries of the Navajo Nation in which NTUA is responsible to provide electric service (known in the PTA as the “NTUA Assumed Service Territory”) as described and shown in Exhibit RMP\_\_\_(LPM-5) to Mr. Morse’s testimony.

## **I. INTRODUCTION**

1. PacifiCorp is an Oregon corporation that provides electric service to retail customers through its Rocky Mountain Power division in the states of Utah, Wyoming, and Idaho, and through its Pacific Power division in the states of Oregon, California, and Washington.

2. Rocky Mountain Power is a public utility in the state of Utah and is subject to the Commission’s jurisdiction with respect to its prices and terms of electric service to retail customers in Utah. The Company serves approximately 835,000 customers and has approximately 2,165 employees in Utah. Rocky Mountain Power’s principal place of business in Utah is 1407 West North Temple, Salt Lake City, Utah 84116.

3. Communications regarding this filing should be addressed to:

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In addition, Rocky Mountain Power requests that all data requests regarding this filing be sent in Microsoft Word or plain text format to the following:

By email (preferred): [datarequest@pacificorp.com](mailto:datarequest@pacificorp.com)

By regular mail: Data Request Response Center  
PacifiCorp  
825 NE Multnomah, Suite 2000  
Portland, Oregon 97232

Informal questions may be directed to Bob Lively, Utah Regulatory Affairs Manager at (801) 220-4052.

## II. BACKGROUND

4. Rocky Mountain Power has provided service to certain customers located within a portion of the Navajo Nation (“Nation” or “Navajo Nation”) in San Juan County, Utah, for many years. This service has been provided with the consent of the Nation and pursuant to the Company’s tariffs and regulations on file with and approved by the Commission and pursuant to the Certificate.

5. With the exception of service to the operator of the Aneth Oil Field, currently operated by Resolute Natural Resources Company, LLC (“Resolute”), the Company’s customers

within the Nation have generally been residential and small commercial customers in relatively small clusters, spread out over large geographical areas. The Company's line extension charges for extending service to new customers have been beyond the means of many individual customers. In some cases, the line extension charges have been satisfied through grants from the Nation, which must be obtained through a lengthy and complex process. As a result, the percentage of Navajo Nation residents that remain without electricity is relatively high.

6. Currently the Company provides service to 1,045 customers located within the Nation utilizing 29.79 miles of transmission lines, 335 miles of distribution lines and four substations. In 2014, the total load of these customers was 40.86 megawatts and their total consumption of electricity was 286,235 megawatt hours, with Resolute accounting for the substantial majority of the load and energy consumption.

7. In 1959, the Nation created NTUA and authorized it to provide utility services throughout the Nation. Since that time, NTUA has developed and acquired utility assets to provide electric, communication, natural gas, renewable energy, water and wastewater utility services within the Nation.

8. NTUA currently serves approximately 39,600 electric customers who are spread out over a 27,000 square mile service territory. It employs approximately 720 individuals, 97 percent of whom are of Navajo descent. NTUA is the largest multi-utility owned and operated by an American Indian Tribe. NTUA is eligible for loans from the Rural Utility Service of the United States Department of Agriculture ("RUS"). Thus, NTUA has access to available capital at reasonable costs and has secured financing for this acquisition.

9. In order to obtain easements from the Nation for the Company to provide service within the Nation, Rocky Mountain Power agreed in 1959 that the Nation would have an option

to purchase certain facilities serving customers within the Nation and negotiate to purchase other facilities. This agreement is memorialized in three letters exchanged between Rocky Mountain Power and the Nation's Council in 1959 ("Letter Agreement"). A copy of the Letter Agreement is Exhibit D to the PTA.

10. In 1973, 1981 and 1989, NTUA approached the Company regarding the possible exercise of its option to acquire facilities of the Company used to provide service to customers within the Nation pursuant to the terms of the Letter Agreement. None of these approaches resulted in NTUA's acquisition of any Company facilities, in part due to disagreements between the Company and NTUA regarding interpretation and application of the Letter Agreement.

11. Rocky Mountain Power has continued to provide electric service to customers within the Nation in accordance with the terms and conditions of its tariffs, schedules and regulations on file with and approved by the Commission and with the consent of the Nation.

12. In 2009, NTUA again commenced discussions with the Company regarding acquisition of the Company's facilities within the Nation. The parties pursued discussions and negotiations in good faith, addressing and ultimately resolving a number of difficult issues. On December 4, 2013, the parties entered into the PTA and PSA, subject to approval of the transaction by the Council and the Commission and other necessary approvals. Approval and closing of the agreements was subsequently delayed for a number of reasons, and the agreements were later amended. Some of the original dates and timelines contemplated in the agreements have passed, but the parties now intend to proceed to closing and implementation of the agreements upon Company receipt of Commission approval and other required approvals. The agreements as amended represent a difficult and delicate compromise and balancing process and should be viewed together and in their entirety.

### **III. PURCHASE AND TRANSFER AGREEMENT**

13. The PTA requires Rocky Mountain Power to sell and NTUA to purchase all of the Company's facilities within the Nation used to provide electric service to customers within the Nation. NTUA has agreed to accept Rocky Mountain Power's facilities and their associated easements in their current condition without any warranties of any kind. However, the Company has agreed to reimburse NTUA for certain costs it may incur as provided in the PTA and as described in the confidential testimony filed in support of this Application ("Confidential Testimony").

14. The facilities are to be sold and purchased for a value provided in the PTA and described in the Confidential Testimony.

15. As provided in the Navajo Nation Council Resolution ("Resolution"), attached as Confidential Exhibit RMP\_\_\_(WWH-1) to the testimony of Walter W. Haase, and the PTA and described more fully in the Confidential Testimony, the Nation has agreed to grant certain waivers to the Company and NTUA has agreed to bear certain costs associated with the transaction in consideration of the transaction. Among other things, NTUA has agreed to reimburse the Company for its expenses incurred in undertaking the transaction, including its costs of inventorying the facilities and easements and performing studies related to the transition of service, its transaction costs, costs incurred in separating the Company's facilities from NTUA's facilities, and costs, if any, required to upgrade the Company's facilities to meet the standards of the RUS. NTUA has also agreed to include in the purchase price a pro-rated share of property taxes to be paid by the Company, to reimburse the Company for any tax effects of the transaction and to pay any transfer fees associated with the transaction.

16. To accommodate continued service to Resolute by the Company through the expiration of its Master Electric Service Agreements ("MESAs") on June 29, 2017, the sale of

facilities and transfer of customers is planned to take place in up to three steps depending on when the first closing occurs in relation to Resolute's completion of a transmission line and related facilities enabling it to receive power from the Company at Resolute's Aneth, McElmo and Ratherford Substations and the expiration of the Company's MESAs with Resolute.

a. In the first step referred to in the PTA as the Closing, which will occur prior to or at the expiration of the Company's MESAs with Resolute, the Company will transfer facilities and related easements and rights of way to NTUA that are not used in providing service to Resolute as well as the customers served from the transferred facilities.

b. In the second step referred to in the PTA as the Interim Changeover, which will also occur prior to or at the expiration of the Company's MESAs with Resolute, the Company will transfer the facilities and related easements and rights of way currently used to serve Resolute (known in the PTA as the "Resolute Facilities") as well as the customers served from those facilities (known in the PTA as the "Resolute Facilities Customers") to NTUA if Resolute completes its transmission line and related facilities enabling it to receive power from the Company at Resolute's McElmo and Ratherford Substations prior to expiration of the Company's MESAs with Resolute. If Resolute does not complete its transmission line and related facilities prior to expiration of the MESAs, the Interim Changeover will take place at the same time as the Resolute Changeover.

c. In the third step referred to in the PTA as the Resolute Changeover, the Company will transfer any remaining facilities used to serve Resolute and other customers served off of Resolute's transmission line and the customers served from those

facilities (known in the PTA as the “Resolute Customers”) to NTUA at the expiration of the Company’s MESAs with Resolute.

d. As provided in the PTA and described in the Confidential Testimony, NTUA has an option under the PTA that could affect the timing of these steps.

17. Although Resolute intends to complete facilities that would enable it to take service directly from the Company outside the Nation for use within the Nation, Rocky Mountain Power has agreed in the PTA that it will not provide service to any customer for electric power to be used within the Nation. To facilitate this agreement, Rocky Mountain Power has agreed to allow NTUA to install metering facilities between the Company’s and Resolute’s facilities prior to the Resolute Changeover.

18. Fourteen customers located on lands adjacent to the Nation are served through facilities on the Nation that will be transferred to NTUA as part of the transaction. It is impractical at this time for the Company to install completely separate facilities to serve these customers and installation of limited facilities by the Company to serve them would require continued coordination with NTUA and the potential for confusion as to the responsible provider in the event of outages. Therefore, subject to approval of the Commission, these customers will be transferred to NTUA. NTUA agrees in the PTA that it will charge these customers the same rates, including refunds or rebates, and provide service to these customers on the same terms and conditions as it provides service to similarly situated customers within the Nation. NTUA also agrees in the Second Amendment to PTA that in the event the Company is able to provide service directly to these customers in the future, NTUA will transfer the customers back to the Company.



19. As provided in the PTA and described in the Confidential Testimony, NTUA will have certain options under the agreements.

20. Rocky Mountain Power has a 345 kV transmission line from the Pinto Substation in Monticello, Utah to the Four Corners Substation in New Mexico near the point at which the borders of Arizona, Colorado, New Mexico and Utah intersect. A portion of this line and a related easement are located within the Nation. This line does not directly provide service to customers within the Nation. The PTA provides that Rocky Mountain Power will retain this line and the associated easement.

21. In the PTA, NTUA grants a limited waiver of sovereign immunity and agrees to binding arbitration to resolve any disputes that arise under the PTA. Absent this waiver and agreement, it is NTUA's position that any dispute between the Company and NTUA under the PTA can only be resolved in an action commenced by NTUA. Presumably, NTUA would commence such an action in the Navajo Tribal Courts.

#### **IV. POWER SUPPLY AGREEMENT**

22. The PSA provides that PacifiCorp will provide a firm supply of power to NTUA sufficient to serve the customers being transferred from Rocky Mountain Power to NTUA under the PTA on terms essentially equivalent to Schedule 9 of Rocky Mountain Power's Utah tariff for a period of 10 years commencing on the Changeover Date as provided in the PSA. Because NTUA (and the transferred customers) will not be eligible to participate in the Company's Demand Side Management ("DSM") programs and incentives, NTUA will not be required to pay the DSM surcharge normally included for Schedule 9 customers or any successor or similar charges.

23. The PSA provides a maximum contract demand equal to the current demand of the transferred customers plus reasonably anticipated growth in the number of customers and of

Resolute's demand as already planned between the Company and Resolute. It obligates NTUA to pay for any transmission system studies and upgrades needed to accommodate increased demand that are not already being paid for by Resolute.

24. The Company has been in discussions with Resolute over the past several years regarding its plans to significantly increase the scope of its operations in the Aneth Oil Field. Resolute has anticipated that its demand would increase substantially in the future. It is not known at this time if or when Resolute may increase or decrease the scope of its operations in the Aneth Oil Field.

25. To the extent Resolute increases its demand during the period that the Company continues to serve Resolute, the Company will deal directly with Resolute under its existing MESAs and applicable regulations. To the extent an increase in load under the PSA results from other customers or from Resolute after NTUA assumes service to Resolute, the PSA provides that NTUA shall not interconnect any new large single load with a capacity greater than one megawatt, other than the transfer of Resolute's load to NTUA, without PacifiCorp's prior consent. In addition, NTUA is required to provide PacifiCorp with at least one-year's advance notice of any increase or decrease in demand greater than one megawatt. PacifiCorp is not obligated to serve any aggregated load over the present interconnection capacity, except that NTUA may increase the total aggregate load to an amount specified in the PSA, subject to completion of all necessary studies, agreements and transmission system improvements at NTUA's expense pursuant to the terms and conditions of Regulation 12. NTUA will pay for any transmission system studies and upgrades needed to accommodate increased demand that are not paid for by Resolute.

26. NTUA has certain options under the PSA that are described in the Confidential Testimony.

27. The Company and its customers will receive benefits from the Company's continued provision of power to NTUA to serve the transferred customers under the PSA following completion of the transaction.

#### **V. FIRST AMENDMENT TO PTA**

28. In the process of seeking approval of the Council to the transaction, it became apparent that the Council's specific approval of the PTA and PSA was not necessary to assure that they would be binding agreements and particularly that NTUA's limited waiver of sovereign immunity and agreement to participate in binding arbitration would be binding on NTUA. The Council had previously granted authority to the NTUA Management Board to grant waivers of sovereign immunity and agree to binding arbitration effective 30 days after providing written notice to the Speaker of the Council. *See* Navajo Nation Council Resolution No. CAP-18-10, Exhibit RMP\_\_\_(WWH-2) to the testimony of Walter W. Haase. The Resolution of the Management Board, Exhibit L to the PTA, already satisfied that requirement without the necessity of the Council including its approval of the PTA and PSA and the limited grant of waiver of sovereign immunity and agreement to binding arbitration in the Council Resolution. Thus, the parties entered into the First Amendment to PTA effective March 4, 2015. A copy of the First Amendment to PTA is Confidential Exhibit RMP\_\_\_(LPM-2) to Mr. Morse's testimony.

29. The First Amendment to PTA provides a substitute proposed resolution in place of the proposed resolution attached as Exhibit K to the PTA.

30. The First Amendment to PTA also makes conforming amendments to provisions of the PTA referring to the approval of the Council through the Resolution.

31. The Amendment to PSA dated March 4, 2015, was also executed by the parties making conforming amendments to provisions of the PSA. The Amendment to the PSA is Confidential Exhibit RMP\_\_\_(LPM-4) to Mr. Morse's testimony.

#### **VI. COUNCIL RESOLUTION**

32. On May 19, 2015, the Council adopted the Resolution in substantially the form of the resolution attached to the First Amendment to PTA. The Resolution as adopted was certified on May 27, 2015. A copy of the Resolution is provided as Confidential Exhibit RMP\_\_\_(WWH-1) to the testimony of Mr. Haase.

33. In the Resolution, the Council acknowledges that, upon completion of the transaction, the PTA and PSA fully satisfy the Letter Agreement and that the Company will retain ownership and use of the 345 kV transmission line and associated easement.

#### **VII. SECOND AMENDMENT TO PTA**

34. As a result of a number of factors and circumstances, the planned schedule for seeking approval of the transaction, closing of the PTA and completion of the separation plan, which is Exhibit J to the PTA, needed to be modified.

35. The parties executed the Second Amendment to PTA dated December 2, 2015. A copy of the Second Amendment to PTA is Confidential Exhibit RMP\_\_\_(LPM-3) to Mr. Morse's testimony.

36. The Second Amendment to PTA modifies the dates by which the parties must take certain actions.

37. The Second Amendment to PTA also clarifies how service to customers outside the Nation that the parties agree would currently be better served by NTUA will be handled. These provisions are similar to provisions in Utah law with regard to service by municipal power systems to customers located outside their jurisdictional boundaries.

38. Finally, the Second Amendment to PTA clarifies an option in the PTA consistent with the understanding of the parties.

### **VIII. REGULATORY APPROVALS**

39. Rocky Mountain Power's current sales of electricity to customers within the Nation have been treated for interjurisdictional cost allocation purposes like sales to other Utah customers. Revenues and distribution investment and expenses for serving such customers have been assigned to Utah on a situs basis.

40. The loads of customers within the Nation have been included in the Utah jurisdiction, impacting allocation factors and the allocation of system related costs.

41. The bulk of the sales of power to customers within the Nation are to Resolute under Schedule 9. Following Closing, the Company expects to continue to sell power to Resolute under Schedule 9 for a period of time, and then to NTUA under Schedule 9 equivalent service for a subsequent period of time.

42. During the term of the PSA, there will be no significant changes to current inter-jurisdictional cost allocations. Revenues, costs and loads associated with the sale of assets and transfer of customers to NTUA pursuant to the PTA and with the sale of power to Resolute or to NTUA pursuant to the PSA will be situs-assigned to Utah during the term of the PSA.

43. The agreements were negotiated in order to treat Utah customers and other Company customers in a fair and reasonable manner. For example, sales to NTUA under the PSA are at Schedule 9 equivalent rates and will continue to be treated as Utah revenues and loads. Therefore, Utah customers will not be harmed because this treatment will continue for the balance of the term of Resolute's MESAs and thereafter so long as Schedule 9 equivalent sales are made. NTUA may also share in some of the benefits through payments as provided in the PTA and described in the Confidential Testimony. Because these payments are part of the

consideration for the overall transaction, it is fair and reasonable to find the agreements together and in their entirety prudent and provide assurance to Rocky Mountain Power that it will be able to recover payments made to NTUA pursuant to the agreements in Utah rates if it is required to pay them.

44. The Company also agreed to reimburse NTUA for certain costs it may incur as provided in the PTA and described in the Confidential Testimony. To the extent the Company incurs costs associated with these matters, it is fair and reasonable to provide assurance to the Company that it will recover them in Utah rates, both because they are part of the consideration for the overall transaction and because they are costs that would be recoverable absent the transaction.

#### **IX. PUBLIC INTEREST**

45. Approval of the transaction is in the public interest for a number of reasons, including:

a. The agreements allow NTUA to provide service to customers within the Nation in accordance with the sovereignty, policies and wishes of the Nation. Because NTUA is an enterprise of the Nation, it is anticipated that it will be able to provide service to more residents of the Nation more promptly and economically than the Company could in light of the lengthy and expensive process required to obtain easements, permits and grants from the Nation, as well as the requirement that the Company comply with regulations of both the Nation and the Commission, including line extension policies in the Company's Utah tariff, which have prevented or delayed service to many customers within the Utah portion of the Nation.

b. The PTA allows service to current Company customers to be transitioned to NTUA in an orderly manner without significant disruption. The Council has

authorized NTUA to charge smaller customers rates comparable to those that would have been charged by Rocky Mountain Power for a reasonable transition period, until such time as NTUA adopts new rates in accordance with its regulatory authority under Navajo law, and to negotiate rates to be paid by large users.

c. The largest customer of Rocky Mountain Power within the Nation, Resolute, should continue to receive service from Rocky Mountain Power for the balance of the term of its MESAs. Moreover, Resolute can reasonably expect to continue to receive reliable service at rates below those that would be charged if the Company continued to provide service after transferring facilities to NTUA, considering necessary wheeling charges that would be imposed for the use of facilities that will be owned by NTUA.

d. The PSA assures that Rocky Mountain Power's customers within the Nation, including Resolute, will have the opportunity to have a reasonably priced power supply for many years following the transaction. It also provides a benefit to Rocky Mountain Power and its other customers by allowing the Company to have the opportunity to retain the load that has partially justified its investment in facilities outside of the Nation in the area for a reasonable period of time.

e. Through consummation of the transaction, the Letter Agreement will be satisfied without the necessity of litigation regarding its interpretation and application. It is the position of the Nation that this litigation and enforcement of the Letter Agreement could only be initiated by the Nation, which would presumably be filed in Navajo Tribal Courts.

f. Rocky Mountain Power retains the 345 kV line and associated easement located within the Nation.

## **X. SUPPORTING EVIDENCE**

46. In support of this Application, the Company is filing the testimony and exhibits of Loren P. (“Lucky”) Morse, Director of Customer and Community Management for Rocky Mountain Power; Paul H. Clements, Director, Commercial Services for Rocky Mountain Power; Steven R. McDougal, Director of Revenue Requirement for Rocky Mountain Power; and Walter W. Haase, General Manager for NTUA.

## **XI. RELIEF REQUESTED**

For the reasons set forth herein, Rocky Mountain Power respectfully requests that the Commission:

1. Grant this Application to (a) approve the PTA as amended, (b) approve the PSA as amended, (c) find the entire proposed transaction, including the PTA and PSA, prudent, and (d) amend the Certificate to remove the NTUA Assumed Service Territory. Rocky Mountain Power requests that the Commission’s order granting this Application and amending the Certificate acknowledge that the regulatory treatment contemplated by the agreements, as discussed herein, is approved, including treatment of costs, revenues and loads associated with transferred facilities and customers and power sales as Utah situs, and recovery from Utah customers of any payments made by the Company pursuant to the agreements. The Company also requests that the Commission’s order be expressly conditioned on: (a) the Commission’s order becoming a Final Order, (b) the Final Order not being reversed on appeal in a manner that the parties are unable to address in a mutually satisfactory manner that the Commission approves, and (c) Rocky Mountain Power and NTUA completing the transfers contemplated in the PTA as provided in the PTA. In the event the foregoing conditions are not satisfied, the




Company requests that the Commission's order modifying Rocky Mountain Power's Certificate be vacated.

2. Hold a scheduling conference as soon as possible to schedule a hearing at the earliest possible date and schedule such other proceedings as may be required, with a requested Order date within the next six months.

3. Grant any further relief necessary for Rocky Mountain Power to complete the transaction with NTUA and as may be just and reasonable.

DATED: December 21, 2015.

Respectfully submitted,



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