

Heidi Gordon (#11655) ([hgordon@fabianvancott.com](mailto:hgordon@fabianvancott.com))  
FABIAN VANCOTT  
215 So. State Street, Suite 1200  
Salt Lake City, Utah 84111  
Telephone: 801-531-8900

Bret Reich (#9542) ([bret.reich@pacificorp.com](mailto:bret.reich@pacificorp.com))  
PACIFICORP, d/b/a ROCKY MOUNTAIN POWER  
1407 W. North Temple, Suite 320  
Salt Lake City, Utah 84116

*Attorneys for Petitioner Rocky Mountain Power*

**BEFORE THE UTAH UTILITY FACILITY REVIEW BOARD**

<p>PACIFICORP, doing business as ROCKY MOUNTAIN POWER,</p> <p>Petitioner</p> <p>vs.</p> <p>MIDWAY CITY,</p> <p>Respondent</p>	<p><b>DIRECT TESTIMONY OF JASON NORLEN</b></p> <p>Docket No. 20-035-03</p>
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1    **BACKGROUND OF WITNESS**

2    **Q:     Please state your name, business address and present position.**

3    A:     My name is Jason Norlen. I am the General Manager of Heber Light & Power Company.  
4         My business address is 31 South 100 West, Heber City, Utah.

6    **Q:     Please describe your education and business experience.**

7    A:     I have bachelor's degree in business administration from the University of Phoenix. I have  
8         been with Heber Power for 23 years and have been the General Manager for 7 years. Prior  
9         to taking the General Manager position, I was the Generation Manager for 14 years.

11   **Q:     What is your role with regard to the Jordanelle to Midway project?**

12   A:     As General Manager of Heber Power, I am involved in basically all aspects of the project  
13         from Heber Power's side. I was involved in the negotiation and drafting of the construction  
14         agreement between Heber Power and Rocky Mountain Power that provides for  
15         construction of the transmission line as a joint utility project. I have been involved in the  
16         both the preliminary design process and the permitting processes with Wasatch County,  
17         Heber City, and Midway City. I remain involved in all aspects of the project.

19   **Q:     What type of entity is Heber Light & Power?**

20   A:     Heber Light & Power is a Utah Energy Services Interlocal Agency that is organized by  
21         Heber City, Midway City, and Charleston Town. Heber Light & Power provides retail  
22         electric service to its member municipalities and some parts of unincorporated Wasatch  
23         County. The Governing Board is made up of six members, including one director from  
24         Midway City who is either the mayor or a council member appointed by the mayor. A copy  
25         of Heber Light & Power's Organizational Agreement is attached as Exhibit HLP-1.

27   **SUMMARY OF TESTIMONY**

28   **Q:     Please summarize your testimony.**

29   A:     My testimony will describe Heber Light & Power's need for the project, including the  
30         46 kV System Load Study that was done in 2018, as well as history of communications

1 with Midway City about the project. A copy of the 46 kV System Load Study is attached  
2 to the written testimony of Craig Michaelis as Exhibit ICPE-1.

3  
4 **HEBER LIGHT & POWER'S NEED FOR THE PROJECT**

5 **Q: Why was the 2018 46 kV System Load Study commissioned?**

6 A: Heber Power commissioned the 46 kV study to better understand the ability of the electrical  
7 system to handle increasing loads due to growth within Heber Power's service territory.  
8 We also commissioned a 12.47 kV study to analyze the distribution system for the same  
9 reason. The 46 kV study deals with our internal transmission system, which is the electrical  
10 infrastructure that allows electricity to flow to the various distribution substations  
11 throughout our service territory. Heber Power is constantly looking at this type of  
12 information and we commission this type of formal study every few years. This is  
13 necessary to stay ahead of system growth and to be prepared with adequate infrastructure  
14 to support that growth.

15  
16 **Q: Who from HLP provided the system information to ICPE?**

17 A: The data about Heber Power's electrical system used by ICPE generally came from Harold  
18 Wilson, Distributions Operations Manager, and Jake Parcell, Substation Manager. I was  
19 involved in the process as well.

20  
21 **Q: What was that information based on?**

22 A: The information provided to ICPE is from Heber Power's records about the electrical  
23 system.

24  
25 **Q: The study states that it is based on the assumption that the provided data are  
26 reflective of HLP's actual field conditions; is that assumption correct?**

27 A: Yes, that assumption is correct. Heber Power tracks all information about the electrical  
28 system via Supervisory Control and Data Acquisition system (SCADA), system maps that  
29 are constantly updated, and system meter data.

**Q: Why was the study for 2018 and 2022 – how or why was 2022 picked and not some other year (e.g., 2020)?**

A: The 46 kV study was commissioned during 2018, which is why 2018 was used for the current year. We commissioned a five-year study which made 2022 as the future year to analyze as the load growth model prepared in July 2018 by Utility Financial Solutions. Studies that cover a five-year period are common practice in the industry as that time period provides enough lead time to address any needs identified by the study. The UFS study identified 2022 as the year during which peak electrical load without our internal generation could reasonably be expected to meet or exceed the capacity of the existing interconnection with PacifiCorp's system, which is 49 MW.

**Q: Where did the “projected system peak load” data on page 2 of the study come from?**

A: Utility Financial Solutions performed a study in 2018 using statistical modeling to project system loads into the future. That study is available on our website. That study forecasted demand from 2018 through 2040 based on actual demand from 2007 to 2017. The study also projected demand at an upper confidence interval that is one standard deviation from the mean. The projected system peak load on page two of the 46 kV study is from the upper confidence interval from the UFS for the stated years. The UFS study projected system-wide load. Future load estimates for individual substations and circuits were based on historical circuit load data.

**Q: How do winter peaks in Heber Valley compare to summer peaks?**

A: The electrical demand for Heber Power generally peaks in the summer with a slightly smaller demand in the winter. The winter demand is driven in significant part by electric heat while the summer demand is driven by air conditioning usage. The shoulder months—meaning generally the spring and the fall—typically see demand lower than summer and winter months. In 2019, the summer peak demand was 43.2 MW in July and the winter peak demand was 33.7 MW in January. In 2018, the summer peak demand was 42.5 MW in July and the winter peak demand was 34.6 MW in December.

**Q: Describe HLP's internal generation – the sources, and how and when they operate.**

1 A: Heber Power operates three small hydroelectric plants—the upper and lower snake creek  
2 plants and the lake creek plant. The upper snake creek plant has a generation capacity of  
3 800 KW, the lower snake creek plant has a generation capacity of 1.2 MW, and the lake  
4 creek plant has a generation capacity of 1 MW. Heber Power also receives power from the  
5 Jordanelle dam, which is operated by Central Utah Water Conservancy District. Jordanelle  
6 output is 13 MW. Of course, these represent the maximum possible output from each of  
7 these plants. Being that these are hydroelectric plants, the actual output is dependent on  
8 water flows and can vary significantly from year to year and even through a single season.  
9 We also operate several natural gas-powered generators with a combined output of 13.2  
10 MW.

11  
12 **Q: Can HLP’s generation currently serve all of its load?**

13 A: No, our internal generation cannot generally serve all of the electrical load. The internal  
14 generation definitely cannot serve the full load in the summer or winter months. Internal  
15 generation cannot serve peak load during most shoulder months either. We rely on Rocky  
16 Mountain Power to serve Heber Power’s total load. The agreement we have with UAMPS  
17 requires Rocky Mountain Power to serve our entire load.

18  
19 **Q: Are there any other limitations with HLP’s generation?**

20 A: As mentioned previously, the hydroelectric generation is subject to variations in the water  
21 flow needed to produce electricity. Our natural gas generation relies on the availability of  
22 natural gas. All of these internal generation sources are subject to mechanical failures of  
23 some sort or another at various times. Some of the hydroelectric equipment is more than  
24 70 years old and repair parts sometimes have to be built from scratch by a machine shop.  
25 As to the natural gas generation, those engines are designed as “peaking” generators that  
26 run to handle some portion of the peak demand rather than being forced to buy expensive  
27 market power. The power produced by these generators is generally more expensive than  
28 power obtained from other sources and they are not designed to be run as baseload  
29 generation.

30  
31 **Q: When, how, or why might “loss of all generation” occur?**

1 A: Loss of all generation could occur under any number of circumstances. The most likely  
2 scenario for loss of all generation would be loss of transmission service from Rocky  
3 Mountain Power as Heber Power's internal generation cannot service the entire system  
4 load and would thus immediately be taken offline if we were to lose transmission service.  
5 While we do have internal generation, the system is not designed to "island," which means  
6 operating without a connection to the regional electric grid.

7  
8 **Q: What about distributed solar generation?**

9 A: We receive solar power from several utility-scale solar projects; that power is transmitted  
10 to Heber Power through Rocky Mountain Power's transmission system. We also have  
11 approximately 1.4 MW of distributed solar generation on our system, generally in the form  
12 of rooftop solar panels. A major issue with solar is that the power produced by distributed  
13 solar generation comes generally during times of day where overall demand is low and  
14 market power is relatively inexpensive. Our peak demand hours generally begin in the  
15 early evening, which is exactly when solar generation begins to decrease significantly. The  
16 problem is even more prevalent during the shorter days in winter months. Regardless of  
17 the amount of distributed solar generation, an electrical utility needs a connection to the  
18 larger electrical grid that is capable of handling its full load in order to provide reliable  
19 electrical service. Distributed solar generation does not help the system if we lose  
20 transmission service from Rocky Mountain Power.

21  
22 **Q: What did HLP do with the study when it was received? Who reviewed and analyzed**  
23 **it for HLP? What discussions were had?**

24 A: HLP Personnel discussed and clarified questions with ICPE. Harold Wilson, Jake Parcell  
25 and I did the review and analysis. We discussed that the need is still there to rebuild the  
26 south 46 KV line and we need to continue working with PacifiCorp and UAMPS for a new  
27 Point of Delivery for the system.

28  
29 **Q: Which of the recommended improvements in the study, if any, did HLP decide to**  
30 **implement?**

1 A: The study recommended that we rebuild the south 46 kV line and build a new Point of  
2 Delivery.

3  
4 **Q: How did HLP make those decisions?**

5 A: The recommendations were discussed internally and the most pressing issues that came  
6 from the study continued to remain a priority in the capital plan. The Board of Directors  
7 was briefed on the study and gave staff direction to continue with the conditional use permit  
8 process for getting the line and substation permitted.

9  
10 **Q: Why did HLP decide to implement those particular recommendations?**

11 A: HLP staff feel these recommendations are necessary for us to continue to provide safe and  
12 reliable energy to the customers. The south line rebuild and the new Point of Delivery are  
13 the most critical projects to maintain our ability to provide safe and reliable electrical  
14 service to our customers and to meet future demand. These projects need to be done before  
15 we can address the other needed projects.

16  
17 **Q: Is the north line being rebuilt? Why or why not?**

18 A: The north line is not being rebuilt at this time. The north line was rebuilt in 2004-2005 and  
19 is still in very good shape and was built at the time to 138 kV standards and thus has  
20 sufficient capacity to handle future load growth. The north line is newer than the south  
21 line and is in much better overall condition. Since the north line has adequate capacity and  
22 has significant service life remaining before needing any significant upgrades or  
23 replacement, we do not plan on rebuilding the north line in the near future. The south line  
24 was built in the 1970s and is in need of an entire rebuild.

25  
26 **Q: Why was the south line chosen instead of the north line?**

27 A: The south line is at or beyond the end of its useful life and is in dire need of replacement.  
28 The south line was built nearly fifty years ago and needs an entire rebuild. Heber Power  
29 would be rebuilding the south line even if we had no issues with transmission capacity that  
30 would necessitate an upgraded interconnection to the regional electrical grid. The south

1 line is simply at the end of its useful life and must be rebuilt. In addition, the south line as  
2 it currently exists cannot handle the full system load.

3  
4 **Q: What benefits does HLP expect to gain from implementing these projects?**

5 A: The primary benefit from these projects is simply a continued ability to provide electrical  
6 service throughout our service territory. Without the additional capacity provided by these  
7 projects we would very likely face situations in the next several years where we would be  
8 unable to meet the electrical demands of our customers. Heber Power has no desire and  
9 no motivation to construct unnecessary capital projects. No salaries at Heber Power are  
10 tied to financial performance. Our only goal with these projects is to meet the increasing  
11 demand for electrical service within the valley.

12  
13 **COMMUNICATIONS WITH MIDWAY CITY ABOUT THE PROJECT**

14 **Q: When was rebuilding one of the 46 kV lines first introduced to the HLP Board?**

15 A: This project has been in the works for a number of years. The first letter from UAMPS to  
16 Rocky Mountain requesting a new Point of Delivery was sent in 2012 at the request of  
17 Heber Power. That letter started the discussions that eventually led to this transmission  
18 line being constructed as a joint project.

19  
20 **Q: When was rebuilding the south line in particular first introduced to the Board?**

21 A: The first explicit mention of the south line rebuild project in the meeting minutes is for the  
22 May 2013 meeting. That said, the need to rebuild the south line was likely discussed in  
23 prior board meetings as well. The Board receives monthly staff reports as part of each  
24 board meeting.

25  
26 **Q: Why did HLP decide to jointly construct this project with Rocky Mountain Power?**

27 A: As mentioned previously, we requested a new Point of Delivery in order to handle future  
28 electrical loads in the Heber Valley. After studying their system, Rocky Mountain Power  
29 told us that they needed to complete their 138 kV loop from Midway to Jordanelle in order  
30 to provide redundancy and capacity for that second point of delivery. Through extensive  
31 negotiations, we decided that this could be a joint project that would result in one



1 transmission line through the valley in a location where a transmission line already exists  
2 rather than two separate transmission lines. The agreement with Rocky Mountain Power  
3 will also result in cost savings to Heber Power. This decision was made by the board of  
4 directors at the time.

5  
6 **Q: Who was the Midway City representative on the HLP Board during the time the**  
7 **project was first being discussed?**

8 A: Connie Tatton was mayor of Midway from 2006 through the end of 2013 and was  
9 Midway's director on the Heber Power Board throughout that time. Colleen Bonner was  
10 mayor of Midway from 2014 through the end of 2017 and was Midway's director on the  
11 Heber Power Board throughout that time. Celeste Johnson took office as mayor of Midway  
12 in 2018 and has been Midway's director on the Heber Power Board throughout her time as  
13 mayor.

14  
15 **Q: Under the 2014 Organizational Agreement, who is responsible for keeping your**  
16 **members informed about HLP's current operations and future plans?**

17 A: The Organizational Agreement states that "[t]he Parties agree that they are individually  
18 responsible for ensuring that their Director representative keeps them properly informed of  
19 the Company's business."

20  
21 **Q: Describe any meetings or contact HLP had directly with Midway City representatives**  
22 **about the need to obtain any permits for the project.**

23 A: There were meetings with Midway city planner Michael Henke and Mayor Bonner about  
24 the need for the project and HLP was told that Midway did not have a conditional use  
25 permit requirement in their code for this type of project, so no conditional use permit would  
26 be necessary. I don't recall exactly how many meetings there were, but at least two.  
27 Throughout the intervening years, there was an ongoing dialogue between Heber Power  
28 and Midway City—both among staff and with the Midway City Council. When this issue  
29 of a lack of any land use ordinance covering transmission lines arose, we told Midway city  
30 that HLP would work with Midway city so that they could get an ordinance in place for a  
31 CUP for transmission lines.

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**Q: Why did HLP agree to Midway City’s request to not file any land use application in January 2018?**

A: Midway City is one of the owners of Heber Power and we always want to keep good relations with the City. At the time, the City was concerned about their lack of any land use ordinance that would govern transmission line and was urgently working on drafting a new ordinance. Heber Power agreed to hold off on taking any action regarding the portion of the project in Midway to allow Midway sufficient time to prepare and adopt an ordinance.

**Q: Does this conclude your direct testimony?**

A: Yes.

# **EXHIBIT HLP-1**

# **HEBER LIGHT & POWER COMPANY ORGANIZATION AGREEMENT**

On October 9, 2014, Heber City, Utah, Midway City, Utah, and Charleston Town, Utah made and entered this organization agreement pursuant to the Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated 1953, as amended.

## **RECITALS**

WHEREAS Heber City, Midway City and Charleston Town had previously created the Heber Light & Power Company pursuant to an agreement for joint and cooperative action under the Act.

WHEREAS under the original agreement for joint and cooperative action, Heber City had a 75% interest in the Company, Midway City had a 12.5% and Charleston Town had a 12.5%.

WHEREAS Heber City, Midway City and Charleston Town have, from time to time, amended the original agreement for joint and cooperative action.

WHEREAS the Parties wish to amend, modify, and restate their agreement for joint and cooperative action as set forth in this Organization Agreement.

WHEREAS the Parties desire and intend for this Organization Agreement to replace and supersede all prior agreements among Heber City, Midway City and Charleston Town concerning the Company's creation, organization, management and powers, and concerning the Parties' respective rights and interests in the Company or its assets.

NOW THEREFORE, the Parties agree as follows:

**A. Definitions**

Capitalized terms in this Organization Agreement shall have the following meanings

1. “Act” shall mean the Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated 1953, as it may be amended from time to time.
2. “Alternate” shall mean a councilperson selected as provided in Paragraph H. 2, by the Heber Mayor, the Midway Mayor, the Charleston Mayor, or the Chairperson of the Wasatch County Council to serve for a Director who is temporarily unable to serve.
3. “Board” or “Board of Directors” shall mean the Company’s board of directors and governing body of the Company as provided in Paragraph H of this Organization Agreement.
4. “Chair” is defined in Paragraph H. 2.
5. “Charleston” shall mean Charleston Town, Utah.
6. “Company” shall mean Heber Light & Power Company, an interlocal entity created by the Parties under the Act to accomplish the purpose of their joint or cooperative action as set forth in this Organization Agreement.
7. “Designee” shall mean the councilperson selected as provided in Article H. 2. to serve in the place of the Midway City Mayor, the Charleston Mayor, or the Wasatch County Chairperson.
8. “Director” shall mean a member of the Company’s Board of Directors selected as provided in Article H.
9. “Distributable Income” is defined in Article J. 2.
10. “Heber” shall mean Heber City, Utah.
11. “Midway” shall mean Midway City, Utah.

12. “Organization Agreement” shall mean this agreement.

13. “Party” or “Parties” shall mean Heber, Midway and Charleston either individually or collectively.

14. “Party’s Company Share” shall mean for Heber City, a 75% interest; Midway City, a 12.5% interest; and Charleston Town, a 12.5% interest.

15. “Third Party” shall mean a public agency, as defined in the Act, that has been selected or approved by the remaining Parties to purchase the interest of the withdrawing Party and that has agreed to become a party to this Organization Agreement.

#### **B. Creation of Heber Light & Power Company**

1. The Parties hereby confirm: (a) that the Heber Light & Power Company is an interlocal entity and an energy services interlocal entity created by them under the Act to accomplish the purpose of their joint or cooperative action as set forth herein, (b) that, as an interlocal entity, it is a body politic and corporate and a political subdivision of the State of Utah, and (c) that it is a legal entity separate and distinct from the Parties.

2. Pursuant to the Act, the Parties have elected to make the Company an energy services interlocal entity.

3. The Company shall be named the Heber Light & Power Company. The Board may change the name of the Company.

4. From and after the effective date of this Organization Agreement, it shall supersede, in all respects, any prior agreements of the Parties concerning the creation, organization, management, or powers of the Company, and concerning the Parties’ respective rights and interests in the Company or its assets.

5. The Company shall be bound by each and every resolution, contract and agreement, enacted by the Company or executed by the Company prior to the effective date of this Organization Agreement, including, without limitation, all resolutions, bond resolutions and indentures, ownership agreements, participation agreements, transmission service contracts, transmission purchase contracts, power sales contracts and power purchase contracts. The Company's present rights and obligations under such resolutions, indentures, contracts and agreements shall in no way be affected by this Organization Agreement.

**C. Location**

The Company's offices will be in Heber City, Wasatch County, State of Utah, unless a different location is chosen by a majority of the Board.

**D. Franchise**

The Parties hereby confirm their grant to the Company of an exclusive franchise and right to provide electric power and energy to the Parties, their inhabitants, and others, during the term of this Organization Agreement. The franchise shall not terminate if a Party withdraws under Paragraph O.

**E. Purpose**

1. The purpose of this Organization Agreement and of the creation the Company is to permit the Parties to benefit from the efficiencies and economies of scale that result from the Company's operation, maintenance and acquisition of facilities, services, and improvements that are necessary or desirable for the acquisition, generation, transmission, management, and distribution of electric energy and related services for the use and benefit of the Parties, their citizens, and the inhabitants of surrounding areas.

2. The Company and its operation of an electric system for the distribution of electric energy and related services is necessary to provide services and facilities in a manner, and pursuant to a form of governmental organization, that will accord best with geographic, economic, population and other factors influencing the needs and development of the Parties hereto, and to provide the benefit of economies of scale, economic development and utilization of natural resources.

3. The Parties have determined that, in order to accomplish these purposes and realize the benefits set forth in *Utah Code Ann.* § 11-13-102, it may be necessary for the Company (upon the determination of the Board) to create, construct, or otherwise acquire facilities or improvements to render services or provide benefits in excess of those required to meet the Parties' needs or requirements.

#### **F. Company's Powers**

To accomplish the purposes set forth in Paragraph E, the Company shall have all powers conferred on an interlocal entity and on an energy services interlocal entity by the Act. In addition, the Parties hereby confirm their delegation to the Company of all powers possessed by the Parties: (1) to own and operate electric generation, transmission and distribution facilities that provide or deliver electric energy and related services to persons within the Parties' municipal boundaries and in the surrounding areas, and (2) to exercise, in furtherance of its purpose, the power of eminent domain. Without limiting the foregoing, the Company's powers include the power to:

1. adopt, amend, and repeal rules, bylaws, policies, and procedures for the regulation of its affairs and the conduct of its business;



2. set rates for services, charge fees (including impact fees), and assess penalties or deny service for violation of Company policies and rules,
3. sue and be sued;
4. have an official seal and alter that seal at will;
5. make and execute contracts and other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions;
6. acquire or dispose of real or personal property, or an undivided, fractional, or other interest in real or personal property, necessary or convenient for its purposes sell, lease, or otherwise dispose of that property;
7. directly or by contract with another: (a) own and acquire facilities and improvements or an undivided, fractional, or other interest in facilities and improvements; (b) construct, operate, maintain, and repair facilities and improvements; and (c) provide the services contemplated in this Organization Agreement;
8. borrow money, incur indebtedness, and issue revenue bonds, notes, or other obligations and secure their payment by an assignment, pledge, or other conveyance of all or any part of the revenues and receipts from the facilities, improvements, or services that the Company provides;
9. offer, issue, and sell warrants, options, or other rights related to the bonds, notes, or other obligations issued by the Company;
10. sell or contract for the sale of the services, output, product, or other benefits provided by the Company;
11. own, acquire, and, by itself or by contract with another, construct, operate, and maintain a facility or improvement for the generation, transmission, and transportation of electric energy or related fuel supplies;
12. enter into a contract to obtain a supply of electric power and energy and ancillary services, transmission, and transportation services, and supplies of natural gas and fuels necessary for the operation of generation facilities;
13. sell its services within the Parties' boundaries and in the surrounding areas, and
14. adopt and implement risk management policies and strategies and enter into transactions and agreements to manage the risks associated with the purchase and

sale of energy in competitive markets, including forward purchase and sale contracts, hedging, tolling and swap agreements, and other instruments.

**G. Assets**

1. The Company's assets shall include all real and personal property, whether tangible or intangible, used in any way in the Company's acquisition, generation, transmission, management, and distribution of electric energy and related services. These assets include: (a) generators, (b) transformers, (c) transmission lines, (d) water rights, storage facilities, and hydro plants with related real property, (e) office, (f) accounts receivable and cash, (g) fuel supplies, (h) easements, (i) distribution facilities, (j) equipment and inventory, (k) trade name, and (l) going concern value.

2. The Company's assets shall be held in the name of and owned by the Company. The Parties confirm their relinquishment and transfer to the Company of any ownership that they may have in the Company's assets.

**H. Board of Directors**

1. The Board of Directors shall manage the affairs of the Company, and shall exercise on behalf of the Company all of the powers provided by this Organization Agreement and the laws of the State of Utah.

2. The Board of Directors shall have six members selected as provided in this Paragraph H.

- a. The Heber Mayor shall be the chair ("Chair") and a Director of the Board.
- b. The Chair shall select two Heber councilpersons to serve as Directors.
- c. The Midway Mayor shall be a Director or shall select a Midway councilperson ("Designee") to serve as a Director.

- d. The Charleston Mayor shall be a Director or shall select a Charleston councilperson (“Designee”) to serve as a Director.
- e. The chairperson (“Chairperson”) of the Wasatch County Council shall be a Director or shall select a County councilperson (“Designee”) to serve as a Director. This Director position does not entitle Wasatch County to any ownership in or distributions from the Company.

Directors will serve at the pleasure of the Chair, Mayor, or Chairperson that selected them and may be removed by them without cause.

A Director may also designate an Alternate from the Director’s municipal or county councils to serve as a Director when the Director is temporarily unable to serve.

3. The Heber City Mayor shall be the permanent Chair of the Board. The Board will select the Board’s other officers including Vice Chair and Secretary, the latter of which need not be a Director.

4. Four (4) Directors shall constitute a quorum of the Board for the purpose of conducting the business of the Company and exercising its powers and for all other purposes. When a quorum is in attendance, action may be taken by the Board upon a vote of the majority of its Directors present except as otherwise provided in this Organization Agreement.

5. A Director representing a Party may call for a Party Only Vote on any issue. A Party Only Vote shall only occur when Heber’s three Directors, Charleston’s one Director, and Midway’s one Director are present. No other Directors may vote. If all of the Parties’ Directors are not present, then the Party Only Vote shall be continued until the next Board meeting at which all Party Directors are present.

In the event of a Party Only Vote, Directors’ votes will be weighted as follow: (a) the votes of the Heber City Directors shall each have a 25% weight, (b) the vote of the Midway City

Director shall have a 12.5% weight, and (c) the vote of the Charleston Town Director shall have a 12.5% weight. In the event of a Party Only Vote, the Board shall act based upon a greater than 50% vote, except as otherwise provided in this Organization Agreement.

In the event of a Party Only Vote, Alternates shall not vote nor be counted in determining the presence of a quorum under this Paragraph H.

6. The Board may adopt and amend Bylaws not inconsistent with this Organization Agreement or the laws of the State of Utah. The Bylaws may include rules governing regular and special meetings of the Board; quorum and voting requirements; the establishment of offices; the indemnification of Directors, officers, employees, representatives and agents; compliance with open meetings laws; and for such other matters as the Board may determine.

7. No Director shall be liable to the Company for breach of any fiduciary duty owed by such Director, except for damages arising out of: (a) a breach of the Director's duty of loyalty to the Company; (b) any act or omission not in good faith or which involves intentional misconduct or a knowing violation of law; or (c) any transaction from which the Director derived an improper personal benefit.

8. Meetings of the Board may be held through electronic communication, as provided for in written procedures adopted by the Board. A Director participating in a meeting through such means shall be considered present for purposes of a quorum and voting.

9. Each Director shall make diligent efforts to inform the governing body of the Party, that the Director represents, of the Company's business including, but not limited to, the Company's operations, long-term contracts, debts, and general financial condition. The Parties agree that they are individually responsible for ensuring that their Director representative keeps

them properly informed of the Company's business.

## **I. Budget and Financing**

1. The Company's operation and maintenance will be financed with revenue from the sale of electric energy and related services and other available moneys.

2. The Company may also finance improvements, such as new construction and upgrade of existing facilities, through the issuance of revenue bonds. Revenue bonds may be issued by the Company from time to time for any purpose permitted under the Act. Any bond issued by the Company is not a debt of any Party, and may be issued without the consent of the Parties' governing bodies.

3. Annually, on or before January 1, the Company shall adopt a budget for the ensuing year in accordance with the requirements of its bond resolutions or indentures. At a minimum, each annual budget shall set forth, in reasonable detail, estimates of:

- a. revenues and operating and maintenance expenses;
- b. debt service and reserve requirements;
- c. cost of upgrade and/or replacement of existing facilities; and
- d. amount of contingency reserves to pay unexpected energy price fluctuations and equipment failures or to provide rate stabilization.

The Company will send a copy of the annual budget to the clerk/recorder for each of the Parties.

4. The Company shall monthly provide the Parties' representatives on the Board with a monthly statement of revenue and expenses.

5. No Party to this Organization Agreement shall be liable for any bond, note, indebtedness or other obligation incurred by the Company, or be liable for the indebtedness of

any other Party to this Organization Agreement, or be liable for any indebtedness or contractual or other obligation with respect to the Company's operations.

**J. Distributable Income**

1. The Company may periodically pay its Distributable Income to the Parties as provided in this Paragraph J.

2. "Distributable Income" means the amount, if any, of the Company's net income that is available for distribution to the Parties after the payment of all operating expenses and debt service costs of the Company and the funding of all rate stabilization, surplus or similar funds established under the Company's bond indenture or resolution, or of any contingency reserves determined by the Board to be reasonably necessary to pay unexpected energy price fluctuations and equipment failures or to provide rate stabilization. The amount of Distributable Income shall not exceed the available amount on deposit in the rate stabilization, surplus or similar fund established under the Company's bond indenture or resolution.

3. At its first meeting after the end of a quarter, the Board shall determine: (a) whether the Company has Distributable Income and whether it will make a distribution from its Distributable Income, (b) when the distribution will be made, and (c) how much of the Company's Distributable Income will be available for distribution. The Board shall have the sole discretion to make distributions from Distributable Income, and the Parties shall have no right to a distribution unless the Board approves the distribution.

4. Nothing in this Organization Agreement is intended nor should be interpreted to prohibit the Board from permitting the Company to accumulate revenues from its operation that exceed its debt reserves and reasonable operation and contingencies reserves.

5. If the Board determines to make a distribution from Distributable Income, each Party shall be entitled to a pro rata portion of the distribution based on their Company Share.

**K. Distribution of Assets on Termination**

Upon the termination of this Organization Agreement, the Board will sell the Company's assets, pay its debts and obligations and distribute the balance to each Party pro rata based on each Party's Company Share.

**L. Transfer of Company Assets to a Party**

1. The Board may authorize the transfer of Company assets to a Party when the Board determines that the transfer is in the Company's best interest, and is in compliance with the provisions of this Paragraph L.

2. The sale of Company assets to a Party must be approved by an affirmative vote of four Directors, notwithstanding the provisions of Article H. 5.

3. Upon approval of the Board, the asset will be sold to the Party for its fair market value as determined by an independent appraisal prepared at the expense of the Party purchasing the asset. The Party purchasing the asset will pay the purchase price upon transfer of the asset, unless the Board unanimously agrees that payments may be made over time.

**M. Relationship and Liability of Parties**

1. Nothing in this Organization Agreement is intended nor should it be interpreted to make the Parties liable or responsible for the actions, debts, obligations, liabilities or defaults of the Company.

2. Nothing contained in this Organization Agreement is intended nor should it be interpreted to create an agency, partnership, joint venture, or any other relationship between or

among Heber City, Midway City, Charleston Town, the Company or any two or more of them that would in any way make one them liable for the actions, debts, obligations, liabilities or defaults of another.

3. The Company is not the agent for the Parties, either individually or collectively.

4. The Parties acknowledge and agree that the protection afforded to the Parties under the Utah Governmental Immunity Act, Title 63G, Chapter 7, Utah Code Annotated 1953, as amended (the “Immunity Act”), shall be extended to the Company and its Directors, officers and employees. It is the express intention of the Parties that all of the protection afforded to the Parties and their officers and employees under the Immunity Act shall be extended to the Company and its Directors, officers and employees. Each of the Parties hereby delegates to the Company and its Directors, officers and employees, to the extent permitted by law, all of the powers, privileges and immunities conferred by the Immunity Act.

5. The Company shall indemnify and defend the Directors and the Company’s employees as provided in the Immunity Act.

#### **N. Amendments**

1. As provided in this Paragraph N., this Organization Agreement may be amended in any way that does not jeopardize or adversely affect any existing contracts, notes, bonds or other evidence of indebtedness, provided that such amendment shall not subject any Party hereto to any dues, assessments or liability without its consent.

2. The Board shall approve any proposed amendment to this Organization through a resolution proposing the amendment to the governing bodies of the Parties for approval. The resolution shall only be approved by an affirmative vote of five Directors voting by a Party Only



Vote as provided in Paragraph H. 5. The voting shall be a Party Only Vote even if a Party does not call for a Party Only Vote.

3. Upon approval of at least two of the three Parties' governing bodies, the amendment shall become effective.

#### **O. Withdrawal from Organization Agreement**

A Party may withdraw from this Organization Agreement on the following terms and conditions:

1. The withdrawing Party shall give the Company and the remaining Parties twelve months written notice of the Party's intention to withdraw.

2. Within thirty days of receipt of the notice of withdrawal, the Board shall reject the notice of withdrawal only if: (a) the Parties' withdrawal would adversely affect the Company's contract rights and/or bond obligations, or (b) the withdrawal leaves only one remaining Party and no Third Party will purchase the withdrawing Party's interest and the remaining Party does not consent to the withdrawal.

3. If the Board accepts the notice of withdrawal, the remaining Parties or a Third Party may purchase the interest of the withdrawing Party on the following terms:

- a. Within sixty days of the Board's acceptance of the notice of withdrawal, the remaining Parties would notify the withdrawing Party: (i) of the remaining Parties' intent to purchase the withdrawing Party's interest or (ii) of a Third Party's intent to purchase the withdrawing Party's interest.
- b. The remaining Parties or the Third Party would pay the withdrawing Party an amount equal to the withdrawing Party's Company Share times the Company's net book value. For the purposes of this provision, net book value would equal the Owner's Equity as reflected on the Company's most recent audit report.

- c. The remaining Parties or Third Party would pay the purchase price in quarterly installments over a twenty year period. The purchase price would accrue interest at a reasonable rate not greater than the rate paid by the Utah State Treasury Pool during each year that a balance is due.

4. The withdrawing Party is prohibited from revoking or altering in any fashion the franchise of the Company to provide electrical service to the withdrawing Party, its residents, or the residents in the surrounding areas.

**P. Termination of Organization Agreement**

1. Except as provided in Paragraph P. 2 below, the Company shall have a perpetual existence.

2. If all the Parties agree, the Parties may terminate this Organization Agreement and dissolve the Company after the later of:

- a. five years after the Company has fully paid or otherwise discharged all of its indebtedness;
- b. five years after the Company has abandoned, decommissioned, or conveyed or transferred all of its interest in its facilities and improvements; or
- c. five years after the Company's facilities and improvements are no longer useful in providing the service, output, product, or other benefit of the facilities and improvements, as determined under the agreement governing the sale of the service, output, product, or other benefit.

**Q. Governing Law**

This Organization Agreement is made in the State of Utah, under the Constitution and laws of this State and is to be construed pursuant to such laws.

**R. Severability**

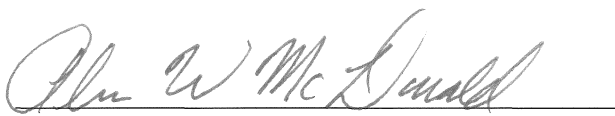
Should any part, term, or provision of this Organization Agreement be held by the Courts to be illegal or in conflict with any law of the State of Utah, or otherwise rendered unenforceable

or ineffectual, the validity of the remaining portions or provisions shall not be affected by such ruling.

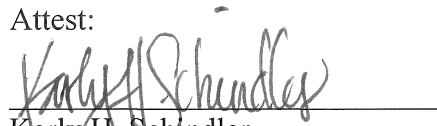
**S. Effective Date**

This Organization Agreement shall take effect upon: (1) approval of the Board and (2) review by each of the Parties' respective attorneys as provided in *Utah Code Ann.* § 11-13-202.5(3).

**The foregoing amendments to and restatement of the Organization Agreement were approved by the Board of Directors on October 9, 2014 by a unanimous Party Only Vote:**

  
Alan W. McDonald, Chair  
Board of Directors  
Heber Light & Power Company

Attest:

  
Karly H. Schindler  
Secretary, Board of Directors