

Dayton Hall

WO #8299066

Transfer date  
11/1/23 or later  
page 7  
sec. 10.1

**ASSET PURCHASE AGREEMENT  
BETWEEN  
ROCKY MOUNTAIN POWER  
AND  
HURRICANE CITY**

This Asset Purchase Agreement (the "Agreement"), dated this 3rd day of August 2023 is between Hurricane City, a Utah municipal corporation ("Buyer"); and PacifiCorp, an Oregon corporation doing business in Utah as Rocky Mountain Power ("Rocky Mountain Power"). Rocky Mountain Power and Buyer are sometimes referred to collectively as "Parties" and individually as "Party."

WHEREAS, Rocky Mountain Power owns certain Assets located in Hurricane, Utah;  
and

WHEREAS, Buyer has agreed to purchase the Assets from Rocky Mountain Power and Rocky Mountain Power hereby agrees to sell the Assets to Buyer in accordance with and subject to all of the terms and conditions of sale as expressed herein; and

NOW, THEREFORE, for and in consideration of the mutual promises and covenants and conditions set forth in this Agreement, the sufficiency of which is hereby mutually acknowledged and accepted, the Parties hereto agree as follows:

1. Definitions.

For purposes of this Agreement, the following terms used herein but not otherwise defined herein shall have the following meaning when used with initial capitalization, whether singular or plural:

1.1 "Assets" means those assets owned by Rocky Mountain Power, as set forth in Exhibit A. A map showing the location of the Assets is attached as Exhibit B.

1.2 "Commission" means the Utah Public Service Commission.

1.3 "Purchase Price" means the price Buyer will pay to Rocky Mountain Power in exchange for the Assets, pursuant to Section 2 herein.

1.4 "Transfer Date" means the date upon which Rocky Mountain Power conveys to Buyer the bill of sale for the Assets.

2. Sale and Purchase of Assets.

2.1 Assets to Be Sold. Subject to all of the terms and conditions of this Agreement, Rocky Mountain Power agrees to sell and Buyer agrees to buy all of Rocky Mountain Power's right, title and interest in the Assets.

2.2 Purchase Price. The Purchase Price for the Assets shall be TWO HUNDRED & SIX THOUSAND DOLLARS (\$206,000).

2.3 Payment. The Purchase Price shall be paid to Rocky Mountain Power by Buyer within fifteen (15) days of the date this Agreement is executed by both Parties; such payment shall be by check.

2.4 Instruments of Conveyance and Transfer. Subject to the satisfaction of the conditions precedent set forth in Section 8 below, and pursuant to all of the terms and conditions of this Agreement, Rocky Mountain Power shall execute and deliver to Buyer a bill of sale to vest in Buyer good and marketable title to the Assets, subject to no security interests, liens or encumbrances, and substantially in the form of the unexecuted bill of sale attached hereto as Exhibit C.

2.5 Proration of Personal Property Taxes. Rocky Mountain Power shall be responsible for personal property taxes owed as of the Transfer Date. If Buyer, as a municipal corporation, is required to pay any personal property taxes, it shall be responsible all such taxes after the Transfer Date. Buyer shall reasonably cooperate with Rocky Mountain Power to account for any personal property taxes assessed and paid by Rocky Mountain Power for periods after the Transfer Date.

2.6 Sales, Transfer and Other Taxes. Any sales, excise, transfer, purchase, use, or similar tax which may be payable by reason of the sale of all or a portion of the Assets shall be borne and paid by Rocky Mountain Power.

3. Ownership; Disconnect and Reconnection Obligations; Operation and Maintenance; Risk of Loss

3.1 Ownership. Rocky Mountain Power shall own the Assets until the Transfer Date.

3.2 Operation and Maintenance; Risk of Loss. After the Transfer Date, Buyer shall own and be solely responsible for the operation and maintenance of the Assets and risk of loss of the Assets. Prior to the transfer date, Rocky Mountain Power shall be responsible for the operation and maintenance of the Assets. For the life of the Assets, Buyer shall at all times operate and maintain the Assets in accordance with prudent utility practice.

3.3 Disconnect and Reconnection Obligations. The Parties shall each be separately responsible for their own costs in effectuating the transfer of Assets to Buyer and the separation of the connections between Buyer's and Rocky Mountain Power's respective systems. Rocky Mountain Power shall be responsible for separating the connection between the Assets and Rocky Mountain Power's distribution system. Buyer shall be responsible to reconnect the Assets to Buyer's own distribution feeder. The Parties shall coordinate and cooperate to this end.

4. Representations and Warranties of Rocky Mountain Power.

Rocky Mountain Power represents and warrants as follows:

4.1 Organization and Powers of Rocky Mountain Power. Rocky Mountain Power is an Oregon corporation, duly organized and validly existing under the laws of the State of Oregon, and is duly qualified to do business in the State of Utah. Rocky Mountain Power has all requisite power and authority to own the Assets.

4.2 Authority Relative to Agreement; Governmental Authorization. Rocky Mountain Power has the power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly and validly authorized and constitutes the valid and binding obligation of Rocky Mountain Power enforceable in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and except that the availability of the equitable remedies of specific performance and injunctive relief are subject to the discretion of the court before which any proceeding may be brought. No declaration, filing or registration with, or notice to, or authorization, consent or approval of, any governmental or regulatory body or authority is necessary for the execution and delivery of this Agreement by Rocky Mountain Power or the consummation by Rocky Mountain Power of the transactions contemplated by this Agreement, provided that Rocky Mountain Power makes no representation or warranty with respect to approvals which may be required from the Utah Public Service Commission or the Federal Energy Regulatory Commission.

4.3 Non-Contravention: Approvals. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not violate, conflict with or result in a breach of any provision of, or constitute a default under, or result in the termination of any note, bond, mortgage, indenture, deed of trust, contract, lease or other instrument, obligation or agreement of any kind to which Rocky Mountain Power is now a Party or by which any of its assets may be bound or affected.

4.4 Title to the Assets. Rocky Mountain Power has good and marketable title to the Assets free and clear of all liens, mortgages, pledges, claims, charges, security interests or other encumbrances.

4.5 Condition of Assets. The Assets will be sold to Buyer "AS IS, WHERE IS." Rocky Mountain Power hereby disclaims and excludes herefrom, (a) any express or implied representation or warranty as to the value, condition, design, operation, or quality of the materials or workmanship in, or any defects in, the Assets, (b) any express or implied warranty of merchantability or fitness for use or for a particular purpose, or (c) any express or implied representation, guarantee, obligation, liability or warranty of Rocky Mountain Power, express or implied, of any kind, arising by law or from course of performance, course of dealing, or usage of trade.

## 5. Representations and Warranties of Buyer.

Buyer represents and warrants as follows:

5.1 Organization and Powers of Buyer. Buyer is a Utah municipal corporation duly qualified to do business in the State of Utah. Buyer has all requisite power and authority to own the Assets.

5.2 Authority Relative to Agreement; Governmental Authorization. Buyer has the power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly and validly authorized and constitutes the valid and binding obligation of Buyer enforceable in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and except that the availability of the equitable remedies of specific performance and injunctive relief are subject to the discretion of the court before which any proceeding may be brought. No declaration, filing or registration

with, or notice to, or authorization, consent or approval of, any governmental or regulatory body or authority is necessary for the execution and delivery of this Agreement by Buyer or the consummation by Buyer of the transactions contemplated by this Agreement, provided that Buyer makes no representation or warranty with respect to approvals which may be required from the Utah Public Service Commission or the Federal Energy Regulatory Commission.

5.3 Non-Contravention: Approvals. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not violate, conflict with or result in a breach of any provision of, or constitute a default under, or result in the termination of any note, bond, mortgage, indenture, deed of trust, contract, lease or other instrument, obligation or agreement of any kind to which Buyer is now a Party or by which any of its assets may be bound or affected.

5.4 Condition of Assets. The Assets will be purchased by Buyer "AS IS, WHERE IS." Buyer acknowledges that Rocky Mountain Power disclaims and excludes here from, (a) any express or implied representation or warranty as to the value, condition, design, operation, or quality of the materials or workmanship in, or any defects in, the Assets, (b) any express or implied warranty of merchantability or fitness for use or for a particular purpose, or (c) any express or implied representation, guarantee, obligation, liability or warranty of Rocky Mountain Power, express or implied, of any kind, arising by law or from course of performance, course of dealing, or usage of trade.

## 6. Covenants of Rocky Mountain Power.

Rocky Mountain Power covenants and agrees as follows:

6.1 Conduct of Business. Rocky Mountain Power shall own and operate the Assets for the time periods set forth in Section 3 herein in accordance with its past practices and shall engage in no material transactions relating to the Assets out of the ordinary course of business, including entering into any contract or financing arrangement that limits Rocky Mountain Power's ability to sell the Assets to Buyer.

6.2 Insurance. Until the Transfer Date, Rocky Mountain Power shall continue to self-insure or carry insurance currently in effect related to the Assets, adequate to insure the Assets against loss or damage by fire and other risks, and public liability consistent with and in accordance with its past practices.

6.3 Reasonable Efforts. Subject to the terms of this Agreement and fiduciary obligations under applicable law, Rocky Mountain Power shall use commercially reasonable efforts to effectuate the transactions contemplated by this Agreement and to fulfill all of the conditions of the Parties' obligations under this Agreement and shall do all such acts and things as reasonably may be required to carry out Rocky Mountain Power's obligations hereunder and to complete the transaction contemplated by this Agreement.

6.4 Notification. Rocky Mountain Power will give Buyer prompt written notice of any event, condition or fact arising prior to the Transfer Date that would cause any of its representations and warranties in this Agreement to be untrue in any material respect.

6.5 Access to Assets. Until the Transfer Date, Rocky Mountain Power shall allow Buyer and its authorized agents and representatives reasonable access to the Assets.

## 7. Covenants of Buyer.

Buyer covenants and agrees as follows:

7.1 Conduct of Business. Prior to the Transfer Date, Buyer shall operate the Assets for the time periods set forth in Section 3 herein in accordance with Rocky Mountain Power's instructions, if any, and Rocky Mountain Power's past practices. Prior to the Transfer Date, Buyer shall engage in no material transactions relating to the sale or disposition of the Assets in whole or in part.

7.2 Insurance. After the Transfer Date, Buyer shall carry insurance adequate to insure the Assets against loss or damage by fire and other risks, and public liability consistent with and in accordance with its past practices for like assets.

7.3 Reasonable Efforts. Subject to the terms of this Agreement and fiduciary obligations under applicable law, Buyer shall use commercially reasonable efforts to effectuate the transactions contemplated by this Agreement and to fulfill all of the conditions of the Parties' obligations under this Agreement and shall do all such acts and things as reasonably may be required to carry out Buyer's obligations hereunder and to complete the transaction contemplated by this Agreement.

7.4 Notification. Buyer will give Rocky Mountain Power prompt written notice of any event, condition or fact arising prior to the Transfer Date that would cause any of its representations and warranties in this Agreement to be untrue in any material respect.

7.5 Access to Assets. Until the Transfer Date, Buyer shall allow Rocky Mountain Power and its authorized agents and representatives reasonable access to the Assets.

7.6 Indemnity. Buyer shall defend, indemnify, and hold harmless Rocky Mountain Power, its officers, directors, employees, and agents, from and against any and all liability, loss, damage, claims, suit or cause of action arising out of or relating to Buyer's ownership, operation or maintenance of the Assets. This obligation shall survive the termination of this Agreement and completion of the transactions contemplated by this Agreement.

7.7 Rights-of-way. Buyer represents and warrants that it has secured all easements or other real property rights, licenses, or permissions ("rights-of-way") necessary to connect and provide power to the existing system comprised of the Assets. Rocky Mountain Power assigns and conveys to Buyer all rights-of-way occupied by the Assets, and Rocky Mountain Power agrees to execute additional documents as reasonably necessary to effectuate the transfer and confirmation of such rights-of-way.

7.8 Operation, Maintenance, Repair, or Replacement of the Assets. Buyer has or will arrange for qualified personnel to operate, maintain, and repair the Assets, and will in no way rely on Rocky Mountain Power for such services. Buyer has or is prepared to locate and procure on its own behalf, replacement components, including transformers, in the event of failure of any or all of the Assets at any time. Buyer takes full responsibility for the installation of such replacement components.

## 8. Conditions Precedent: Bill of Sale.

All of the obligations of Rocky Mountain Power under this Agreement, including its obligation to transfer title to the Assets to Buyer by providing Buyer with the bill of sale contemplated herein, are subject to the fulfillment, prior to and upon the Transfer Date, of each of the following conditions:

8.1 Representations, Warranties and Covenants of Buyer. All representations and warranties made in this Agreement by Buyer shall be true and correct in all material respects as of the Transfer Date as fully as though such representations and warranties had been made on and as of the Transfer Date, and as of the Transfer Date, Buyer shall have complied in all material respects with all covenants made by it in this Agreement.

8.2 Litigation. At the Transfer Date, there shall not be in effect any order, decree, or injunction of a court of competent jurisdiction restraining, enjoining, or prohibiting the consummation of the transactions contemplated by this Agreement (each Party hereby agreeing to use its reasonable efforts, including reasonable appeals to higher courts, to have any such order, decree or injunction set aside or lifted), and no action shall have been taken, and no statute, rule, or regulation shall have been enacted, by any state or federal government or governmental agency in the United States which would prevent the consummation of such transactions.

8.3 Payment of Purchase Price. Buyer shall have paid to Rocky Mountain Power the Purchase Price.

8.4 Termination of Load Service Contracts. (a) The Parties shall have agreed in writing to the termination of the following contracts: (i) that certain Load Service Contracts for PacifiCorp load on meters 82140348 and 51615022, dated January 31, 2023; and (ii) that certain Load Service Contract for City of Hurricane load on meters 82140348 and 66686456, dated January 31, 2023; and (b) with respect to the Load Service Contract described in (a)(ii) of this Section 8.4, the termination of such contract was accepted for filing by the Federal Energy Regulatory Commission.

8.5 Conveyance of Bill of Sale. No later than thirty (30) days after the date upon which all of the conditions in Sections 8.1 through 8.4 have been satisfied, Rocky Mountain Power shall convey to Buyer the bill of sale for the Assets.

#### 9. Survival of Representations and Warranties.

All representations and warranties of the Parties, and all liability therefor, shall survive for a period of one year past the Transfer Date, at which time the obligations under this agreement shall cease and expire. Notwithstanding the forgoing, obligations under Section 7.06 shall continue indefinitely.

#### 10. Termination.

10.1 Termination. This Agreement may be terminated and abandoned at any time prior to the Transfer Date if:

(a) The Parties agree in writing to terminate this Agreement by mutual consent; or

(b) Buyer delivers a written notice to Rocky Mountain Power to the effect that Rocky Mountain Power has defaulted in a material respect under one or more of its covenants and

agreements contained herein (which shall be specified in detail in such notice), and such condition or conditions have not been satisfied or such default or defaults have not been remedied (or waived by Buyer) within thirty (30) days after the date such notice is delivered by Buyer to Rocky Mountain Power; or

(c) Rocky Mountain Power delivers a written notice to Buyer to the effect that Buyer has defaulted in a material respect under one or more of its covenants and agreements contained herein (which shall be specified in detail in such notice), and such condition or conditions have not been satisfied or such default or defaults have not been remedied (or waived by Rocky Mountain Power) within thirty (30) days after the date such notice is delivered by Rocky Mountain Power to Buyer; or

(d) The Transfer Date shall not have occurred on or before November 1, 2023, or such later date to which the term of this Agreement may be extended pursuant to mutual agreement of the Parties, provided that one of the Parties gives notice to the other so terminating this Agreement and that the Party seeking such termination has not defaulted in a manner responsible for delaying the Transfer Date past November 1, 2023.

10.2 Effect of Termination. Except where specific terms and conditions of this Agreement provide that such terms and conditions survive termination of this Agreement, any termination pursuant to this Section 10 shall relieve both Parties hereto of their obligations set forth herein, and any such termination constitutes a failure of the conditions to the obligations of the Parties to implement this Agreement, except that nothing herein will relieve any Party from liability for any breach of this Agreement.

11. Termination of Load Service Contracts. The Parties agree that effective upon the Transfer Date, the service obligations of each Party under the following contracts shall cease and such contracts shall, subject to any required regulatory filings and approvals, terminate and be of no further force and effect: (i) that certain Load Service Contracts for PacifiCorp load on meters 82140348 and 51615022, dated January 31, 2023; and (ii) that certain Load Service Contract for City of Hurricane load on meters 82140348 and 66686456, dated January 31, 2023.

12. Assignment.

Neither Party may assign its rights under this Agreement to any third party without the written consent of the other Party.

13. Jurisdiction of Regulatory Authorities.

In the event that the Commission or any other state, federal, or municipal authority determines that any provision of this Agreement conflicts with or is in violation of applicable law, or issues any rules, regulations, or orders which require Rocky Mountain Power to alter or amend any of the provisions of this Agreement or to terminate this Agreement, or that otherwise preclude or materially interfere with or rescind the transfer of assets contemplated herein, this Agreement automatically shall be amended to comply with such determination, amendment, rule, regulation, or order; or, if so ordered, this Agreement shall terminate without effecting transfer of the Assets to Buyer, or the Assets and the purchase price shall be returned if transfer has already occurred; and in any of the foregoing events, Rocky Mountain Power shall not be liable to Buyer for damages or losses of any kind whatsoever, including consequential damages, which Buyer may sustain as a

result of such determination, amendment, rule, regulation, or order, or modification or termination of this transaction.

14. Miscellaneous.

14.1 Amendment. This Agreement may be amended only by an instrument in writing executed by the Parties which expressly refers to this Agreement and states that it is an amendment hereto.

14.2 Section and Paragraph Headings. The Section and Subsection headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

14.3 Waiver. Any of the terms or conditions of this Agreement may be waived at any time and from time to time, in writing, by the Party entitled to the benefit of such terms or conditions.

14.4 Notices. All notices, requests, demands, and other communications given by Buyer or Rocky Mountain Power shall be in writing and shall be deemed to have been duly given when telecopied, when delivered personally in writing or when deposited into the United States mail, to the following addresses:

If to Rocky Mountain Power:                      Rocky Mountain Power  
Attn: Renee Tuckett  
Business Analyst  
70 North 200 East  
American Fork, Utah 84003

With a copy to:    Rocky Mountain Power  
Attn: Jason Hoffman  
Customer & Regulatory Liaison  
825 NE Multnomah, Suite 800  
Portland, OR 97232

If to Buyer:    Hurricane Power  
Attn: Scott Hughes  
147 North 870 West  
Hurricane, Utah 84737

With a copy to:    Hurricane City Attorney's Office  
Attn: Dayton Hall  
147 North 870 West  
Hurricane, Utah 84737

or to such other address as Buyer or Rocky Mountain Power may designate in writing.

14.5 Integrated Agreement. This Agreement, when executed, constitutes the entire agreement between the Parties hereto, and supersedes and negates all prior line extension



agreements and understandings, oral and written, between the Parties hereto with respect to the Assets.

14.6 Counterparts. This Agreement may be executed in two counterparts, each of which shall for all purposes be deemed to be an original and both of which shall constitute one and the same instrument.

15. Jury Waiver. To the fullest extent permitted by law, each of the parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this Agreement. Each party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

16. Governing Law and Jurisdiction. This Agreement, and the application or interpretation thereof, shall be governed exclusively by its terms and by the laws of the State of Utah. The parties hereby agree to bring any such action before the Fifth Judicial District Court, Washington County, State of Utah and, in addition, to submit themselves to the jurisdiction of the Courts in the State of Utah.

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

**BUYER:**

By: Nanette Billings  
Name: Nanette Billings  
Title: Mayor

**ROCKY MOUNTAIN POWER**

By: [Signature]  
Name: Chris Spencer  
Title: Managing Director, T&D Operations