

Randall C. Budge, ISB No. 1949  
RACINE, OLSON, NYE, BUDGE &  
BAILEY, CHARTERED  
P.O. Box 1391; 201 E. Center Street  
Pocatello, Idaho 83204-1391  
Telephone: 208-232-6101  
Fax: 208-232-6109

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IDAHO PUBLIC  
UTILITIES COMMISSION

Attorneys for Monsanto Company

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

In the Matter of the Application of PacifiCorp )  
d/b/a Utah Power & Light Company for )  
Approval of Interim Provisions for the Supply )  
of Electric Service to Monsanto Company )  
)  
)  
\_\_\_\_\_ )

**CASE NO. PAC-E-01-16**

**AFFIDAVIT OF JAMES R. SMITH  
ON BEHALF OF MONSANTO**

STATE OF IDAHO )  
: ss  
County of Bannock )

JAMES R. SMITH, being first duly sworn, deposes and states as follows:

1. I am employed by Monsanto. I am currently the Purchasing Supervisor for Monsanto's Soda Springs Plant. This Affidavit is submitted in support of Monsanto's Answer and Cross-Petition to PacifiCorp's Petition for Reconsideration and Clarification of Order No. 29157.

2. It is my understanding that the Commission expects the parties to submit for approval a new Electric Service Agreement ("Agreement") within sixty days of the Final Order No. 29157 ("Final Order") issued January 27, 2003. Accordingly, Monsanto prepared a proposed draft Agreement based upon the 1995 Contract which was updated to incorporate the findings of the Final Order, a true and correct copy of which is attached as Exhibit 1. To move forward and permit this

matter to be finally brought to a conclusion, Monsanto presents its proposed Agreement for the Commission's approval in the event the Petition for Reconsideration is rejected.

3. Monsanto's proposed Agreement was transmitted electronically to PacifiCorp on February 7, 2003. A copy of the transmittal letter from Monsanto's counsel to PacifiCorp's counsel is attached as Exhibit 2. As expressed in that letter, as well as other letters and e-mails I have sent, Monsanto proposed to meet with PacifiCorp for the purpose of reviewing the proposed Agreement and addressing and resolving any issues or concerns. Additionally, we requested written comments in advance of any face-to-face meeting so that the issues could be identified and focused upon. To date, PacifiCorp has not provided any comments on our proposed Agreement. Nor, has Monsanto received any proposed Electric Service Agreement from PacifiCorp which incorporates the terms of the Final Order.<sup>1</sup>

4. I also wish to address the temporary outage of Furnace No. 9 discussed on pages 5 and 6 of the Petition for Reconsideration and Mr. Griswold's Affidavit. As soon as the Final Order of January 27, 2003 was received, efforts were undertaken by Monsanto to implement and comply with the Order on an interim basis pending a final Electric Service Agreement being negotiated between the parties and approved by the Commission. For implementation purposes, it was agreed that the new rates specified in the Final Order would go into effect for billing purposes as of January 1, 2003. Additionally, the parties agreed that the same operating procedures used in the past for purposes of PacifiCorp interrupting Monsanto, would continue to be utilized until such time as the new Agreement was approved. These arrangements were agreed upon through e-mails between our attorney and PacifiCorp's on January 27, 2003.

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<sup>1</sup> PacifiCorp did provide a proposed agreement by e-mail on the afternoon of February 20, 2003; however, it does not reflect the Final Order and instead reflects PacifiCorp's positions which the Commission has rejected.

Thereafter, on January 29, 2003, I had a discussion with PacifiCorp's Account Manager, Brent Barker for the purpose of implementing Order No. 29157 on an interim basis pending the Commission's approval of a new Agreement. At that time, Mr. Barker and I agreed that we need not develop a temporary plan for Economic Curtailments, because PacifiCorp did not expect to take Economic Curtailments until sometime next summer. Accordingly, those details could be addressed in the new Agreement. To enable immediate utilization of the 300 hours of Operating Reserves at 95 MW on a temporary basis until the new Agreement was approved, we agreed to utilize the last Operating Reserve Agreement, which was dated July 9, 2002, for all issues except pricing. Accordingly, I instructed Monsanto's operators to follow those procedures for purposes of handling Operating Reserve requests from PacifiCorp.

6. On January 30, 2003, the Number 9 Furnace unexpectedly went down requiring maintenance work completed February 16, 2003. Monsanto operators notified PacifiCorp dispatchers of the unexpected outage and when the furnace went back in service, per the agreement as they have always done under similar circumstances for the past 50 years. During the time of this shutdown, Mr. Griswold began sending letters incorrectly claiming a right to interrupt both remaining furnaces (in addition to No. 9) for operating reserves. In accordance with the July 9, 2002 Operating Agreement which Monsanto and PacifiCorp both agreed to operate under on a temporary basis, Monsanto was entitled to keep one furnace operating under Section 9, which states as follows:

“PacifiCorp acknowledges that the electric furnaces at P4 will be removed from service from time to time during the terms of this agreement for maintenance and overhauls. P4 will provide PacifiCorp notice by telephone with followup by fax of expected maintenance schedules and delays, including scheduled time of interruption, duration, and electrical load of corresponding furnace. P4 will also inform PacifiCorp by telephone or fax prior to restoring electric power to a furnace after such a delay. If two of P4's furnaces are simultaneously unavailable due to maintenance or overhaul and/or interruption by PacifiCorp due to other agreements,

P4 shall have no obligation to curtail load, and PacifiCorp shall be relieved of its obligations to pay during such maintenance period.” (emphasis added)

All this language may or may not be included in the new Agreement, but it is what PacifiCorp and Monsanto both agreed to use until the new Agreement is in place. Attached as Exhibit 3 is a true and correct copy of the letter I sent to Mr. Griswold on February 4, 2003, addressing this issue. Accordingly, PacifiCorp’s inference that Monsanto did not comply with the Final Order with respect to providing 95 MW of operating reserves is not accurate.

7. I further wish to correct PacifiCorp’s misunderstandings of Monsanto’s firm load, an issue PacifiCorp raises for the very first time in its Petition. Previously, there has never been an issue raised by PacifiCorp regarding the size nor billing of Monsanto’s firm load. Statements made in Mr. Griswold’s Affidavit and in the Petition clearly show that PacifiCorp does not understand how the interruption of Monsanto works. PacifiCorp does not interrupt Monsanto directly and never has. Instead, PacifiCorp dispatcher calls Monsanto operators requesting interruption. Monsanto operators then interrupt the load.

Electric service is delivered to Monsanto over two transmission lines. The “109 line” or “South line” only serves Monsanto’s furnaces, which are subject to interruption. The “106 line” or “North line” provides Monsanto with 9 MW of firm load and also provides auxiliary load for such things as generators, fans, motors and other equipment associated with the operation of the furnaces.

This auxiliary load is also interrupted whenever Monsanto’s furnaces are expected to be interrupted for one hour or longer. In fact, only the first 9 MW delivered on the North line are firm load and have always been billed as such. There is no need for any clarification on this issue or for the Commission to revise its Final Order. Had PacifiCorp contacted us on this issue, we would have easily clarified their misunderstanding.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 24<sup>th</sup> day of February, 2003.

*James R. Smith*  
JAMES R. SMITH

SUBSCRIBED AND SWORN TO before me this 2<sup>th</sup> day of February, 2003.

**KAREN L. MAYNARD**  
Notary Public  
State of Idaho

*Karen L. Maynard*

NOTARY PUBLIC FOR IDAHO,  
Residing at Pocatello.  
My Commission Expires

State of Idaho  
County of Lyon

On this 24<sup>th</sup> day of February, ~~19~~ <sup>2003</sup>, James R. Smith personally  
appeared before me,  
 whose identity I verified on the basis of \_\_\_\_\_,  
 who is personally known to me,  
 whose identity I verified on the oath/affirmation of \_\_\_\_\_,  
a credible witness,  
to be the signer of the foregoing document, and he/she acknowledged that he/she signed it.

**KAREN L. MAYNARD**  
Notary Public  
State of Idaho

*Karen L. Maynard*  
Notary Public  
My Commission expires: 11-12-08

Attribution Clause: This Acknowledgment Certificate is prepared for, and exclusively belongs to, the accompanying document entitled  
Affidavit for PAC-E-01-16, which consists of 6 page(s) and is dated Feb. 24, 2003.  
If this Certificate is appropriated to any document other than the one described herein, it shall be deemed null and void.

Copyright 1995 by the Notary Law Institute. Unauthorized reproduction of any kind of this form is strictly prohibited.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25<sup>th</sup> day of February, 2003, I served a true, correct and complete copy of the foregoing document by U.S. Mail, postage prepaid, to the following:

Scott Woodbury  
Deputy Attorney General  
Idaho Public Utilities Commission  
472 W. Washington Street  
Boise, Idaho 83702-5983

James F. Fell  
John M. Eriksson  
Stoel Rives  
900 S.W. Fifth Avenue, Suite 2600  
Portland, Oregon 97204

Eric L. Olsen  
Racine, Olson, Nye, Budge &  
Bailey, Chartered  
P.O. Box 1391  
Pocatello, Idaho 83204-1391

James R. Smith  
Monsanto Company  
P.O. Box 816  
Soda Springs, Idaho 83276



RANDALL C. BUDGE

# **MONSANTO ATTACHMENT 1**

**ELECTRIC SERVICE AGREEMENT  
BETWEEN  
PACIFICORP  
AND  
MONSANTO COMPANY**

THIS ELECTRIC SERVICE AGREEMENT ("Agreement"), dated as of the 1st day of January, 2003, is by and between PacifiCorp, an Oregon corporation that provides electric service in the State of Idaho (hereinafter referred to as "PacifiCorp") and Monsanto Company, a Delaware corporation that owns and operates an elemental phosphorus plant at a site near Soda Springs City in Caribou County, Idaho (hereinafter referred to as "Monsanto"),

**WITNESSETH:**

WHEREAS, PacifiCorp and Monsanto have entered into a Power Supply Agreement dated November 1, 1995 for a retail electric service to the Soda Springs Plant (hereinafter "1995 Contract");

WHEREAS, PacifiCorp and Monsanto are engaged in litigation in the United States District Court for the District of Idaho, Case No. CIV-01-0607-E-BLW, regarding the termination date of the 1995 Contract; and

WHEREAS, the Idaho Public Utilities Commission (hereinafter "Commission") by Order No. 28918 issued December 21, 2001, determined that the existing rate under the 1995 Contract would remain in effect subject to a true-up mechanism retroactive to the termination date of the 1995 Contract based upon the difference between the existing rate and the new rate; and

WHEREAS, the Commission by Final Order No. 29157 issued January 27, 2003, established new rates and other terms to be incorporated in this new Electric Service Agreement; and

WHEREAS, the new rate and terms provided for in the Commission's Final Order No. 29157 are incorporated in this Agreement, which shall be effective as of January 1, 2003, subject to said true-up mechanism when the Federal District Court has determined the termination date of the 1995 Contract.

NOW, THEREFORE, the parties hereto agree as follows:

### **Section 1: Definitions**

As used in this Agreement, the following terms have the following meanings:

1.1 **Billing Demand** means for Firm Power in any Billing Period for this Agreement the Measured Demand up to and equal to 9,000 kW. Billing Demand means for interruptible power the Measured Demand is in excess of the Firm Power.

1.2 **Billing Period** means the period of approximately thirty (30) days intervening between regular successive meter reading dates.

1.3 **Contract Demand** means the specified Demand in kilowatts that Monsanto contracts with PacifiCorp to supply and that PacifiCorp agrees to have available for delivery to Monsanto. Monsanto may require the delivery of such amounts of Firm and Interruptible Power as Monsanto may require to meet Monsanto's load requirements up to, but not in excess of, the applicable Contract Demand. The applicable Firm Power Contract Demand in this Agreement shall be 9,000 kW, and the applicable Interruptible Power Contract Demand shall be 206,000 kW.

1.4 **Demand** means the rate in kilowatts at which electric energy is delivered by PacifiCorp to Monsanto at a given instant or averaged over any designated period of time.

1.5 **Firm Power and Energy** means electric power expressed in kilowatts and associated energy expressed in kilowatt-hours intended to have assured availability to Monsanto to meet all or any agreed upon portion of Monsanto's load requirements. In this Agreement, Firm Power shall be the Measured Demand in any Billing Period in amounts

up to and equal to the Contract Demand of 9,000 kW. Firm Energy supplied by PacifiCorp to Monsanto during any Billing Period shall be the amount of energy, in kilowatt-hours, delivered to Monsanto equal to the number of hours in the Billing Period multiplied by the Firm Power.

1.6 Interruptible Power and Energy means electric power expressed in kilowatts and associated energy expressed in kilowatt-hours made available to Monsanto to meet the portion of Monsanto's load requirements subject to interruption of delivery at PacifiCorp's option under the conditions and at the times set forth in Exhibits A and B attached to this Agreement. Interruptible Power shall be the Measured Demand in any Billing Period in excess of the Firm Power. Interruptible Energy delivered to Monsanto during any Billing Period shall be the total energy in kilowatt-hours, in that Billing Period, less the Firm Energy, and less any Replacement Energy.

1.7 Measured Demand means the Demand in kilowatts supplied by PacifiCorp as shown by or computed from the readings of PacifiCorp's Power (Demand) meter for the 15-minute period of Monsanto's greatest use during the Billing Period.

1.8 Monsanto Facilities means all facilities and equipment within Monsanto's 138 kV substation at its Soda Springs Plant except for PacifiCorp's metering equipment, under-frequency relays, capacitors and any other equipment owned by PacifiCorp and installed in Monsanto's substation under the terms and conditions of this Agreement.

1.9 Point of Delivery for all power and energy delivered to Monsanto means the termination of PacifiCorp's two 138 kV transmission lines at Monsanto's substation located approximately eight miles from PacifiCorp's Soda (Idaho) hydroelectric station in Caribou County, Idaho.

1.10 Prudent Electrical Practices means those practices, methods and equipment, as changed from time to time, that are commonly used in prudent electrical engineering and operations to operate electric equipment lawfully and with safety, dependability, efficiency and economy and that are in accordance with the National Electrical Safety Code or the National Electric Code or any other applicable government code in effect during the term of this Agreement.

1.11 Replacement Energy means the measured energy for any Curtailment Hour.

1.12 Retail Customer means a PacifiCorp customer who purchases electric power and energy for its own consumption (i.e., not for resale).

1.13 System Integrity means the ability of PacifiCorp's electric generation or transmission system to continue to operate at a high degree of reliability and with relatively constant voltage levels. PacifiCorp may temporarily physically interrupt service to Monsanto when PacifiCorp's system providing service has actually become out of balance through inadvertent or unplanned sudden occurrences and interruption is necessary to maintain firm service to those retail customers receiving from service from PacifiCorp.

### **Section 2: Term; Reopeners**

2.1 Term. This Agreement shall become effective on January 1, 2003, subject to the true-up mechanism in accordance with the Commission's Order Nos. 28918 and 29157. This Agreement shall terminate on December 31, 2006.

2.2 Reopeners. The payment rate set forth in Section 3 cannot be changed during the term of the Agreement, unless the Commission finds that the change in rates is necessary to prevent an adverse affect on the public interest as set forth in the case of *Agricultural Products vs. Utah Power & Light Co.*, 98 Idaho 23, 557 P.2d 617 (1976). This Agreement may be reopened by either party in the event the WECC amends the quantity and requirements of both contingency reserves and frequency response reserves by petition filed with the Commission.

### **Section 3: Purchase and Sale of Power**

3.1 Scope of Deliveries. PacifiCorp shall deliver such amounts of Power and Energy to the Point of Delivery as Monsanto requires to meet its load requirements up to, but not in excess of, Contract Demand, subject to the provisions of Exhibits "A" and "B" attached hereto and incorporated herein by reference.

3.2 Character of Power. PacifiCorp shall deliver Power and Energy at the Point of Delivery in the form of three-phase, alternating current at a nominal frequency of 60 cycles per second, and at a nominal voltage of 138,000 volts. Except during temporary emergency conditions, PacifiCorp shall maintain voltage within the limits of 5 percent

above and 5 percent below a normal operating voltage, such normal voltage to be established by PacifiCorp from time to time upon reasonable notice to Monsanto, between the limits of 120,000 volts and 138,000 volts.

3.3 Restricted Service. PacifiCorp shall make every best reasonable effort to supply Monsanto's Power and Energy requirements, but at any time PacifiCorp may interrupt service to Monsanto only in accordance with Exhibits "A" and "B".

3.4 Phase Balance. Monsanto shall balance its loads among phases to the extent practicable. If the difference between maximum and minimum phase loads regularly or frequently exceeds 10 percent, PacifiCorp may require that Measured Demands be determined on the basis of three times the load in the maximum phase.

3.5 Wave Form. In the design, selection, and operation of equipment using electric power, Monsanto shall observe due precautions to avoid distortion of wave form that, reacting through the system of PacifiCorp, may result in interference to operation of telephone systems or in other injurious effects. If difficulties result at any time from distortion of wave form by causes originating in Monsanto's facilities, upon notice thereof Monsanto shall take the necessary measures to remove such causes.

3.6 Cooperation in Operation.

3.6.1 Monsanto shall endeavor to supply PacifiCorp in advance with information as to conditions affecting Monsanto's power load that may aid PacifiCorp in load dispatching and in planning PacifiCorp's power system operation, such as the probable times and durations of substantial daily load changes. Following an unexpected furnace outage, Monsanto shall notify PacifiCorp's dispatcher as quickly as possible of the expected duration of such outage. Such estimates or advance information shall not be binding on either party.

3.6.2 PacifiCorp shall hold in reserve sufficient generating capacity to supply Monsanto's anticipated load requirements for a period not to exceed thirty (30) minutes beyond Monsanto's estimated time of load increase. If Monsanto's load requirements have not begun to increase within such thirty (30) minute period, PacifiCorp may sell or otherwise dispose of such reserve capacity to another utility as surplus energy until such times as Monsanto is ready to increase load; provided, that if such a sale is

made, Monsanto may not increase load until such sale can be terminated or PacifiCorp is able to obtain additional capacity through some other means. Such restriction to Monsanto's load shall not be accounted for as curtailment, but shall not extend more than one (1) hour beyond the time Monsanto is ready to increase load.

3.6.3 In order to administer the terms and conditions of this Agreement, PacifiCorp and Monsanto shall each designate from time to time in writing their respective representatives for the purpose of giving and receiving notices required under this Agreement.

3.6.4 PacifiCorp acknowledges that Monsanto's electric furnaces require shutdowns for maintenance and overhauling, and it is the intent of the parties hereto that such shutdowns and consequent reduction of power requirements be predetermined insofar as possible by agreement between the parties.

#### **Section 4: Payment for Power and Energy**

##### **4.1 Determination of Billing Amounts.**

4.1.1 Power and Energy delivered under this Agreement shall be recorded by appropriate metering devices mutually acceptable to the parties.

4.1.2 All payments to PacifiCorp under this subsection shall be delivered by wire transfer as follows:

Account Name: PacifiCorp

Bank Name: Bank ONE

Account Number: 5547458

ABA Routing Number: 071000013

4.1.3 The following monthly charges apply to all Firm Power and Energy delivered to Monsanto under this Agreement:

Energy Charge: 16.31 mills per kilowatt hour

Customer Charge: \$283 per month

Demand Charge: \$8.81 per kw of Firm Billing Demand

4.1.4 The following monthly charges apply to all Interruptible Power and Energy delivered to Monsanto under this Agreement:

Energy Charge:	16.31 mills per kilowatt hour
Demand Charge:	\$4.09 per kw of Interruptible Billing Demand

4.2 Payments. In the event that all or a portion of Monsanto's bill, or of any other claim or adjustment arising hereunder, is disputed, Monsanto shall pay the undisputed portion of the bill when due and shall provide PacifiCorp with a written explanation of any disputed portion withheld. If it is determined that the disputed portion is due PacifiCorp, Monsanto shall pay such to PacifiCorp within 15 days following such determination, together with interest from the date the bill was originally due at the current prime rate of interest charged at CitiBank N.A.

### **Section 5: Operations and Maintenance**

5.1 Licenses. At no additional cost to PacifiCorp, Monsanto hereby licenses to PacifiCorp for its use in connection with this Agreement and during the term of this Agreement, and any extensions hereof, sufficient space in Monsanto's 138 kV substation to be used solely by PacifiCorp's metering equipment and associated facilities required to serve Monsanto, which license shall include reasonable rights of ingress and egress necessary for PacifiCorp's exercise of such license.

5.2 138 kV Substation. Except as may otherwise be provided herein, Monsanto shall be responsible for the operation and maintenance of all facilities and equipment within Monsanto's existing 183 kV substation.

5.3 Operation of Customer Facilities.

5.3.1 In order to minimize the hazards to both PacifiCorp's and Monsanto's 138 kV systems, protective devices and other Customer Facilities shall be operated by qualified Monsanto personnel only upon prior notification to, and receipt of permission from, PacifiCorp's System Dispatcher, except as provided in Paragraph 5.4 hereof. PacifiCorp's System Dispatcher shall honor Monsanto's verbal requests for permission to operate Monsanto's protective devices and other Customer Facilities if such operation will not, in the opinion of PacifiCorp, impair such facilities and the reliable operation of PacifiCorp's system or impair service to other Retail Customers of PacifiCorp; provided,

that Monsanto may operate Monsanto's circuit breakers and other Customer Facilities without prior notification when Monsanto deems it necessary to protect persons or property at its Soda Springs Plant. In such event, Monsanto shall assume full and sole liability for injury or damages to persons or property at Monsanto's plat resulting from such operation of the circuit breakers.

5.3.2 Monsanto shall provide potential and current transformers for use in connection with its own relaying and metering operations and PacifiCorp may use such transformers to any reasonable extent for PacifiCorp's metering, relaying, and communication requirements. Should Monsanto's potential and current transformers not meet PacifiCorp's requirements, Monsanto shall install any potential and current transformers required by PacifiCorp that are supplied by PacifiCorp. Any equipment supplied by PacifiCorp shall remain the property of PacifiCorp.

5.3.3 PacifiCorp may operate Monsanto's circuit breakers to accommodate operation of PacifiCorp's and Monsanto's systems in a manner consistent with Prudent Electrical Practices; provided, that, except as provided in Paragraph 5.4, PacifiCorp shall notify Monsanto prior to operating such circuit breakers and shall keep Monsanto informed as to the operating status of such breakers.

5.3.4 Upon notice to Monsanto, PacifiCorp shall have reasonable access to Monsanto's substation control building. PacifiCorp personnel shall comply with all health, safety, and confidentiality rules, regulations and practices that Monsanto has provided to PacifiCorp.

5.3.5 Any failure of Monsanto's Facilities to operate adequately or properly shall not subject PacifiCorp to liability to Monsanto for any resulting loss or damages, or consequential damages of any kind, and Monsanto hereby releases PacifiCorp from any such liability.

5.4 Emergency Conditions. In the event of an emergency resulting in danger to persons or property, or potential danger to Monsanto's and/or PacifiCorp's systems, either PacifiCorp or Monsanto may open Monsanto's circuit breakers without notice to the other party. Whenever possible, the parties shall notify the other party prior to opening any such device, and notification shall be made as soon as possible after the device has been

opened. When corrective actions have been completed, PacifiCorp shall restore service upon receiving notice and being satisfied that all necessary corrections have been made.

5.5 Substation Space. Monsanto shall provide suitable space at its substation for installation by PacifiCorp of static capacitors, not to exceed 30,000 kilovars, as PacifiCorp may require.

5.6 Metering Equipment. PacifiCorp shall provide and install suitable metering equipment, including panels, to obtain measurements needed for its operating purposes and in connection with settlements hereunder. The metering equipment shall be installed in an appropriate space in Monsanto's substation made available by Monsanto without charge. Such equipment shall be and remain the property of PacifiCorp.

5.7 Relays. PacifiCorp may provide and install on Monsanto's relay panel under-frequency relays for the purpose of tripping Monsanto's power circuit breakers at such under-frequencies as may be specified by PacifiCorp.

5.8 Maintenance of Facilities.

5.8.1 Monsanto shall be solely responsible for the operation and maintenance of Monsanto's Facilities. Monsanto shall inspect its Facilities on a regularly scheduled basis and maintain them in safe operating condition.

5.8.2 PacifiCorp may, but is not required to, inspect Monsanto's Facilities during reasonable business hours and if, in the sole judgment of PacifiCorp, Monsanto's Facilities are not maintained in safe operating condition, thereby creating a hazard to persons or property or to the operation of PacifiCorp's system, PacifiCorp shall notify Monsanto promptly stating the required maintenance, replacement, or repair necessary to put Monsanto Facilities in safe operating condition and specifying a reasonable period in which to make repair. Monsanto shall make such or equivalent repairs, replacement or maintenance within a reasonable time. In the event specified corrective procedures are not completed as required by the notice, PacifiCorp may, without further notice to Monsanto, discontinue service to Monsanto. In the event PacifiCorp discontinues service under this Subparagraph 5.8.2, PacifiCorp shall not be liable to Monsanto for any resulting loss or damage, including, but not limited to, lost profits or consequential damages of any kind, and Monsanto hereby releases PacifiCorp from any such liability.

## **Section 6: Metering**

6.1 **PacifiCorp Obligations.** PacifiCorp shall provide, maintain, and test meters and metering equipment required for purposes of settlement hereunder, except any potential transformers and current transformers owned by Monsanto under Paragraph 5.3.2. Maintenance and periodic testing procedures with respect to meters and metering equipment shall be in accordance with generally accepted practices and the rules and standards established by the Idaho Public Utilities Commission. In addition to PacifiCorp's periodic tests, special tests shall be made if requested by Monsanto, which special tests shall be conducted at the expense of Monsanto. Monsanto shall furnish without charge reasonable incidental service, such as removal of tapes and charts, and shall communicate to PacifiCorp the meter readings necessary for operation. PacifiCorp's designated agents shall have access to such metering equipment at all reasonable times and shall be permitted to install and operate from time to time any testing equipment needed in connection with operations or settlements hereunder.

6.2 **Obligations.** If either Monsanto or PacifiCorp provides check metering equipment, information with respect to registrations thereof will be provided.

6.3 **Meter Testing.** Representatives of PacifiCorp and Monsanto may be present at all routine or special tests of meters and metering equipment and upon occasions when any readings are taken for purpose of settlements.

6.4 **Adjustments to Bills.** If, at any test of any meter or metering equipment, an inaccuracy is disclosed exceeding two percent, the account for service theretofore supplied shall be adjusted to correct for such inaccuracy for a period of 90 days prior to the date of such test, or for the period during which such inaccuracy may be determined to have existed, whichever period is the shorter. Should any meter at any time fail to register, or should the registration be so erratic as to be meaningless, the quantities shall be determined from check meters, if installed, or otherwise from the best available data.

### **Section 7: Force Majeure**

Neither PacifiCorp nor Monsanto shall be subject to any liability or damages for inability to provide or receive service to the extent that such failure shall be due to causes beyond the control of either PacifiCorp or Monsanto, including, but not limited to the following: (a) the operation and effect of any rules, regulations and orders promulgated by any commission, municipality, or governmental agency of the United States, or subdivision thereof; (b) restraining order, injunction or similar decree of any court; (c) war; (d) explosion; (e) fire; (f) major breakage or failure of equipment; (g) flood; (h) earthquake; (i) act of God; (j) sabotage; or (k) strikes or boycotts. Should any of the foregoing occur, Monsanto shall have no liability for service until such time as Monsanto is able to resume service except for any term minimum guarantees designed to cover special facilities extension costs, if any. Performance of this Agreement is subject to all laws, rules and regulations, including those involving priorities, allocations, or restrictions of materials and the furnishing of electric service, now or hereafter promulgated by lawful authority. The party claiming Force Majeure under this provision shall make every reasonable attempt to remedy the cause thereof as diligently and expeditiously as possible.

### **Section 8: Resale of Power**

Electric power purchased by Monsanto pursuant to this Agreement may not be resold directly or indirectly by Monsanto to any party, except as the parties may otherwise agree in writing.

### **Section 9: Liability**

9.1 **Liability**. Each party hereto (the "liability causing party") shall defend, indemnify and hold harmless the other party from and against any liability, damage, loss, costs and expenses, including but not limited to attorneys' fees, on account of injury to or death of persons including, but not limited to, Monsanto's employees and PacifiCorp's employees, or damage to property to the extent caused by or arising from the negligent acts or omissions of the liability-causing party.

9.2 Limitation of Liability. PacifiCorp shall endeavor at all times to provide steady and continuous service to Monsanto and shall make reasonable efforts to prevent irregularities and interruptions. PacifiCorp shall use its best efforts to notify Monsanto prior to or, in any event, immediately after an interruption or irregularity in order that Monsanto may attempt to mitigate its damages resulting therefrom. In the event of interruption of electricity, or its supply be irregular, defective, or fail from causes beyond control of PacifiCorp, PacifiCorp shall not be liable therefor.

### **Section 10: Successors and Assigns**

Neither PacifiCorp nor Monsanto shall assign this Agreement without the written consent of the other party hereto, which consent shall not be unreasonably withheld, except Monsanto may assign this Agreement without any such consent to the acquirer of the majority of the value of Monsanto's Soda Springs plant, provided that Monsanto as assignor shall continue to guarantee the performance by the assignee of the Monsanto obligations under this Agreement. If assigned with such consent, this Agreement shall inure to the benefit and be binding upon the assignee, its agents and assigns; provided, that nothing herein shall prevent either party from assigning this Agreement to its parent corporation or to its survivor in connection with a corporate reorganization, provided that such assignee is solvent and is able to meet its obligations hereunder.

### **Section 11: Jurisdiction of Regulatory Authorities**

11.1 Regulatory Authorities. This Agreement is subject to the approval of the Idaho Public Utilities Commission. Execution of this Agreement by PacifiCorp and Monsanto shall not constitute a waiver of PacifiCorp's right or Monsanto's right to petition the Idaho Public Utilities Commission.

11.2 Electric Service Regulations. PacifiCorp's currently applicable, effective Service Regulations are incorporated herein and by reference made a part hereof. Monsanto acknowledges and agrees that it is familiar with such existing regulations and agrees to abide by them and all amendments and changes thereto so approved by the Idaho Public Utilities Commission. In the event that the Idaho Public Utilities Commission

or any other state, federal, or municipal authority having jurisdiction issues any rules, regulations, or orders that require PacifiCorp to alter or amend any of the terms and conditions of this Agreement or to terminate or curtail the delivery of power and energy to Monsanto, neither party hereto shall be liable for damages or losses of any kind whatsoever which the other party hereto may sustain as a result of such rule, regulation or order, including consequential damages.

### **Section 12: Remedies**

Notwithstanding anything to the contrary in this Agreement, each party retains all common law rights and remedies in the event of a breach of this Agreement, including but not limited to (i) the right to recover any power required to be delivered but not yet received under this Agreement, and (ii) the right to receive payment for power delivered.

### **Section 13: Representatives and Notices**

For the purpose of Formal notice under this Agreement, the following authorized representatives are designated:

Representatives of Monsanto:

Plant Manager  
Monsanto Company  
P.O. Box 816  
Soda Springs, Idaho 83276  
Tel: (208) 546-4300, ex 201  
Fax: (208) 547-3312

Vice President - Procurement  
Monsanto Company  
800 N. Lindbergh Blvd.  
St. Louis, MO 63167  
Tel: (314) 694-5756  
Fax: (314) 694-2169

Representatives of PacifiCorp:

Strategic Account Director  
PacifiCorp  
105 Commerce Drive  
Evanston, WY 82930  
Tel: (307) 783-5201  
Fax: (307) 783-5301

General Business Manager  
PacifiCorp  
105 Commerce Drive  
Evanston, WY 82930  
Tel: (307) 783-5211  
Fax: (308) 783-5301

This notice requirement does not apply to regular and ordinary business and operation communications between the parties' employees.

**Section 14: Other Contracts**

This Agreement constitutes and contains the entire Agreement of the parties hereto and supersedes any and all prior negotiations, correspondence, understanding, and agreements between the parties respecting the subject herein. This Agreement may not be modified, altered, or changed in any manner whatsoever except pursuant to Section 11.2 of this Agreement or obey written agreement between the parties hereto, subject to Idaho Public Utilities Commission approval.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized officers or representatives as of the date first hereinabove written.

**PACIFICORP**

**MONSANTO COMPANY**

By \_\_\_\_\_  
Its Vice President

By \_\_\_\_\_  
Its Vice President

**EXHIBIT "A"**

**Contingency Operating Reserve and System Integrity Interruption Agreement**  
**Between**  
**PacifiCorp**  
**And**  
**Monsanto**

**1. Definitions**

Operating Reserve shall mean a specific amount of electrical resources that all control areas must have available at all times to ensure the reliable operation of the interconnected electrical system.

Contingency Operating Reserve shall mean the non-spin component of Operating Reserve that may include interruptible load and is an amount of reserve necessary to reduce Area Control Error (ACE) to zero within ten minutes of a loss of energy associated with a transmission or generation contingency.

**2. Amount of Interruption.**

PacifiCorp recognizes that each of Monsanto's electric phosphorus furnaces operates at different electrical rates. Upon a notification by PacifiCorp for Contingency Operating Reserves or System Integrity Interruption, Monsanto, at its sole discretion, shall determine which of its furnaces to interrupt. Monsanto shall curtail 46, 49 or 67 MW of electric service. Monsanto's operators shall inform PacifiCorp's dispatcher at the time of the notification of the amount of service it will be curtailing. While the amount of interruption provided by this Agreement is dependent on the furnace Monsanto chooses to curtail, Monsanto will stand ready to supply a minimum 95 MW per curtailment event, except as provided in Section 7, Force Majeure, of the Agreement and Section 8 below.

**3. Purpose of Interruption.**

PacifiCorp may direct such interruption at any time it concludes in its sole reasonable discretion, that PacifiCorp needs to utilize the Contingency Operating Reserves or System Integrity Interruption as provided by Monsanto, subject to the terms of this Exhibit.

**4. Interruption of Monsanto**

(a) Operating Reserve:

Monsanto shall take action as needed to curtail the electrical supply to one or two of its electric phosphorus furnaces within (6) minutes after receipt of telephone notice from PacifiCorp's dispatcher, requesting such interruption of electrical service for Operating Reserve. The interrupted service shall be restored at the earlier of: 1) notice from PacifiCorp's Dispatcher or, 2) sixty (60) Minutes after interruption of the furnace load. PacifiCorp will provide Monsanto with as much notice as possible for any interruption for system integrity.

(b) System Integrity:

Monsanto shall take action as needed to curtail the electrical supply to one or two of its electric phosphorus furnaces within (1) minute after receipt of telephone notice from PacifiCorp's dispatcher, requesting such interruption of electrical service for System Integrity. The interrupted service shall be restored when no longer needed to maintain System Integrity.

**5. Number of Interruptions**

The maximum number of Operating Reserve interruptions that PacifiCorp may direct shall be

- (1) Three hundred (300) hours per year
- (2) Twenty-five (25) interruptions for each month
- (3) Three (3) interruptions in any four (4) hour period
- (4) Up to one (1) hour per interruption

Each hour of System Integrity interruption shall count against the three hundred (300) hours per year maximum.

Any interruption shall count as a minimum of one (1) hour.

**6. Maintenance of Dedicated Telephone Line**

Monsanto and PacifiCorp shall maintain a dedicated telephone line at their own cost in their respective control rooms. This line shall be solely dedicated for communications between Monsanto furnace operators and PacifiCorp dispatchers. Each party shall have an authorized employee available at all

times to immediately respond interruption notices or interruption of operations.

**7. Communication of Maintenance Scheduling**

PacifiCorp acknowledges that the electric phosphorus furnaces at Monsanto will be removed from service from time to time during the terms of this Agreement for maintenance and overhauls. Monsanto will provide PacifiCorp notice by telephone or fax, of expected maintenance schedules and delays, including scheduled time of interruption, duration, and electrical load of corresponding furnace. Monsanto will also inform PacifiCorp by telephone or fax prior to restoring electrical power to a furnace after such a delay.

If two of Monsanto's furnaces are simultaneously unavailable due to maintenance or overhaul and/or interruptions by PacifiCorp due to Economic Curtailment, under provisions of Exhibit B. Monsanto shall have no obligation to curtail the remaining furnace. However, if requested by PacifiCorp for Operating Reserves or System Integrity, Monsanto will not resume operation of the unavailable furnaces until the earlier of: 1) notice from PacifiCorp Dispatcher or, 2) sixty (60) minutes after the notification of Monsanto to resume service.

## EXHIBIT "B"

### Economic Interruption Agreement Between PacifiCorp And Monsanto

#### **1. Definitions**

Interruption Hour is the consecutive hours designated by PacifiCorp for Economic Interruption during each calendar day.

Economic Interruption shall mean PacifiCorp's right to interrupt Monsanto for economic reasons, exercisable when PacifiCorp's cost of delivering energy to Monsanto exceeds the strike price, subject to Monsanto's right to buy through as provided in Section 5 below.

Path C: The particular high voltage transmission corridor comprised of the Borah-Ben Lomond 345 kV, Brady-Treasureton 230 kV, Goshen-Grace 161 kV and American Falls-Malad 138 kV lines, located in northern Utah and southern Idaho. In accordance with the WECC criteria for rating paths, its transfer capability is based on a simultaneous loss of both the Borah-Ben Lomond 345 kV and the Brady-Treasureton 230 kV lines, which share common right-of-way for approximately 50 miles.

Replacement Energy is the measured energy for any Curtailment Hour.

Strike Price is the fixed price of \$16.31/MWH at which PacifiCorp may exercise its right to curtail.

#### **2. Amount of Economic Interruption.**

Monsanto will stand ready to supply 67 MW of Economic Interruption up to a maximum of 500 hours per year upon not less than two (2) hours of telephone notice.

#### **3. Purpose of Interruption.**

PacifiCorp may direct such interruption at any time the cost of supplying energy to Monsanto exceeds the strike price, subject to the terms of this Exhibit.

**4. Interruption of Monsanto**

PacifiCorp may interrupt Monsanto, upon not less than two (2) hours of telephone notice from PacifiCorp's dispatcher to Monsanto's control operator, requesting interruption of electric service for economic purposes and providing the amount and duration, start and end time, and buy-through price for each hour of interruption.

Monsanto shall take action as needed to interrupt the electrical supply to its 67 MW Number 9 electric phosphorus furnace at the designated interruption time. The interrupted service shall be restored at the end of the duration of the interruption.

**5. Buy-Through Replacement Energy**

Monsanto shall have the option to buy-through Economic Interruption by paying PacifiCorp for replacement power costs at PacifiCorp's lowest possible actual cost at the time the transaction is made. Monsanto may exercise its right to buy-through the interruption by telephone notice to PacifiCorp's dispatcher requesting such buy through at any time up to 15 minutes prior to the time the designated Economic Interruption is to commence.

Lowest possible actual costs means the lowest price after PacifiCorp serves all its other retail and wholesale loads. During those hours when PacifiCorp's ability to utilize to transmission on Path C is not constrained, Monsanto will pay PacifiCorp the lower of the appropriate (on peak or off peak) Dow Jones Mid-Columbia, or Palo Verde Index price for firm power, shaped hourly, in accordance with the shaping factors set forth in PacifiCorp's Exhibit 16, as attached to this Exhibit "B". For all other hours, Monsanto will pay for Replacement Energy at the Palo Verde Index prices, shaped hourly in according with the shaping factors.

**6. Number of Interruptions**

The total interruptions will not exceed 500 hours per year.

**7. Maintenance of Dedicated Telephone Line**

Monsanto and PacifiCorp shall maintain a dedicated telephone line at their own cost in their respective control rooms. This line shall be solely dedicated for communications between Monsanto furnace operators and PacifiCorp dispatchers. Each party shall have an authorized employee available at all times to immediately respond to interruption notices or interruption of operations.

**8. Communication of Maintenance Scheduling**

PacifiCorp acknowledges that the electric phosphorus furnaces at Monsanto will be removed from service from time to time during the terms of this Agreement for maintenance and overhauls. Monsanto will provide PacifiCorp notice by telephone or fax, of expected maintenance schedules and delays, including scheduled time of interruption, duration, and electrical load of corresponding furnace. Monsanto will also inform PacifiCorp by telephone or fax prior to restoring electrical power to a furnace after such a delay.

If Monsanto's 67 MW Number 9 furnace is unavailable due to maintenance or overhaul and/or interruptions by PacifiCorp for Operating Reserves or System Integrity pursuant to Exhibit A, no furnace shall be considered available for Economic Interruption during that time.

**9. Reporting**

Simultaneous with PacifiCorp's monthly invoice to Monsanto for power and energy purchased, PacifiCorp shall provide Monsanto with a report detailing all interruptions during the previous month, including the following information:

- 1) Type of interruption (system emergency, operating reserves, or economic)
- 2) Date
- 3) Beginning and end time
- 4) Duration
- 5) Megawatts interrupted
- 6) Year-to-date total hours of each type of interruption
- 7) Buy through charges, rate, source and energy purchased

**10. Schedule**

In order to enable Monsanto to anticipate possible interruption, to plan furnace operations and make buy-through decisions in accordance herewith, PacifiCorp shall submit to Monsanto on the first day of each calendar month a schedule showing the estimated amount, time and duration of interruption, if any, expected during the following calendar month. PacifiCorp shall prepare such schedule using best information available, but it is understood that it shall reflect only an estimate of expected conditions and, therefore, shall not be binding upon PacifiCorp.

# **MONSANTO ATTACHMENT 2**

LAW OFFICES OF

**RACINE, OLSON, NYE, BUDGE & BAILEY  
CHARTERED**

LOUIS F. RACINE, JR.  
WILLIAM D. OLSON  
W. MARCUS W. NYE  
RANDALL C. BUDGE  
JOHN A. BAILEY, JR.  
JOHN R. GOODELL  
JOHN B. INGELSTROM  
DANIEL C. GREEN  
BRENT O. ROCHE  
KIRK B. HADLEY  
FRED J. LEWIS  
MITCHELL W. BROWN  
ERIC L. OLSEN  
DAVID E. ALEXANDER  
LISA M. CHRISTON  
RICHARD A. HEARN, M.D.  
LANE V. ERICKSON  
PATRICK N. GEORGE  
SCOTT J. SMITH  
LISA A. WOOD, CPA

CENTER PLAZA-CORNER FIRST & CENTER  
POST OFFICE BOX 1391  
POCATELLO, IDAHO 83204-1391

TELEPHONE (208) 232-6101  
FACSIMILE (208) 232-6109

SENDER'S E-MAIL ADDRESS: [rcb@racinelaw.net](mailto:rcb@racinelaw.net)

**BOISE OFFICE**

CONRAD J. AIKEN  
THEODORE C. PETERS  
DEBORAH L. LEHOSIT

101 SOUTH CAPITOL  
BOULEVARD  
U.S. BANK PLAZA, SUITE 202  
BOISE, IDAHO 83702  
TELEPHONE: (208) 395-0011  
FACSIMILE: (208) 433-0167

February 7, 2003

John M. Eriksson  
Stoel Rives LLP  
201 S. Main St., Ste 1100  
Salt Lake City, Utah 84111  
*Transmitted Via E-Mail*

*Re: PacifiCorp - Monsanto: New Electric Service Agreement*

Dear John:

Enclosed please find Monsanto's proposed draft Electric Service Agreement, together with attached Exhibits A and B. The Agreement is based upon the 1995 Contract which has been updated to incorporate the Commission's Final Order No. 29157 issued January 27, 2003.

Monsanto representatives are prepared to meet with PacifiCorp representatives at your earliest convenience for the purpose of reviewing the proposed Agreement and addressing and resolving any issues or concerns. In advance of any face-to-face meeting, please provide written comments so that we might identify and focus upon an issue list.

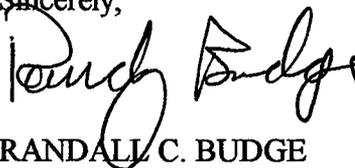
It is my understanding that PacifiCorp is also working on its own proposed form Electric Service Agreement. Please provide this to us electronically as soon as possible and we will also review and comment on the same. Other than from a technical perspective, we have not undertaken a review of PacifiCorp's 1/20/03 draft Agreement since it preceded the Commission's Final Order, the terms of which need to be incorporated to permit a productive review.

John Eriksson  
February 7, 2003  
Page 2

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Monsanto looks forward to working with PacifiCorp diligently and in good faith to arrive at a new Electric Service Agreement to be submitted to the Commission for final approval as soon as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Randall C. Budge". The signature is written in a cursive style with a large initial "R".

RANDALL C. BUDGE

RCB:rr

Enclosures

cc: Daniel R. Schettler (w/encl.)  
James R. Smith (w/encl.)