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PUBLIC  
UTILITIES COMMISSION

Attorneys for Nu-West Industries, Inc.  
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**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF THE APPLICATION OF  
PACIFICORP DBA UTAH POWER & LIGHT  
COMPANY FOR APPROVAL OF CHANGES  
TO ITS ELECTRIC SERVICE SCHEDULES

CASE NO.: PAC-E-02-1  
COMMENTS OF NU-WEST  
INDUSTRIES, INC.

Nu-West Industries, Inc. ("Nu-West"), by and through its attorneys Givens Pursley LLP, submits the following Comments in response to the Idaho Public Utilities Commission's ("Commission") Notice of Stipulation and Proposed Settlement in the above entitled case.

Nu-West operates a phosphate fertilizer production facility near Soda Springs, Idaho. Nu-West is PacifiCorp's second largest Idaho customer with a peak demand of approximately 22,000 kilowatts. Although the Nu-West facility has been through a number of ownership changes over the years, it has been a PacifiCorp customer for at least three decades.

On June 9, 1998, Nu-West and PacifiCorp entered into a Master Electric Service Agreement ("1998 Agreement"), in which PacifiCorp agreed to supply Nu-West's electric power and energy up to a peak contract demand of 22,000 kilowatts for approximately three and one half years, through December 31, 2001. The price for this power was fixed for the term of the 1998 Agreement at \$.033/kwh if Nu-West exceeded the stated minimum annual consumption figures, and \$.034339/kwh if Nu-West's consumption fell below the minimum. The 1998 Agreement contained no provisions permitting the Commission to alter Nu-West's rate the life of the contract. A copy of the 1998 Agreement is attached as Exhibit A.

Through an oversight, PacifiCorp neglected to immediately file the 1998 A

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for Commission approval. On March 17, 2000, PacifiCorp belatedly filed for approval of the 1998 Agreement, and approval was granted with a retroactive effective date of July 1, 1998. Order No. 28399, Case No. PAC-E-00-3 (June 13, 2000) (Copy attached as Exhibit B).

Shortly before the expiration of the 1998 Agreement, PacifiCorp and Nu-West entered into a new Electric Service Agreement dated December 10, 2001 (“2001 Agreement”). A copy of the 2001 Agreement is attached as Exhibit C. Unlike the prior 1998 Agreement, the 2001 Agreement specifically addresses the Commission’s ratemaking authority. Section 8.3 of the 2001 Agreement states:

The parties agree that the Commission has the authority to modify the rates for service under this Agreement under the same standard that applies to tariff customers generally. Accordingly, surcharges or credits that apply to service to tariff customers generally will also apply to service under this Agreement.

However, the Agreement also contains a provision in Section 4.2, which provides that Nu-West’s rates shall be adjusted annually according to a prescribed formula that constitutes “the sole and exclusive means of adjustment.”

In its Comments on the 2001 Agreement, Staff questioned the apparent conflict between Sections 4.2 and 8.3, and requested clarification from PacifiCorp. According to the Commission’s order,

PacifiCorp replied that Section 8.3 of the submitted Agreement controls. If the Commission were to find that some particular rate is the just and reasonable rate to be charged Nu-West, that determination would apply notwithstanding the rate calculated under the other terms of the Agreement. If however, there were not a specific Commission determination of the rates for Nu-West (for instance, if a general rate increase were spread by stipulation), the Company contends that the rates for Nu-West would be established pursuant to Section 4.2.

Order No. 28984 at 4, Case PAC-E-01-17 (March 27, 2002) (emphasis added). A copy of Order No.28984 is attached as Exhibit D. With this clarification, the Commission approved the contract, finding “the remaining contract terms, as clarified, to be acceptable.” *Id.*

Shortly after PacifiCorp filed the 2001 Agreement with the Commission, PacifiCorp filed its Application in the present case on January 7, 2002, seeking authority to recover \$38 million in excess net power costs incurred from November 1, 2000 through October 31, 2001. The Commission initially authorized the deferral of these costs for possible later recovery in an order dated November 1, 2000. As filed, the Application did not seek any recovery of any of the extraordinary power costs from Nu-West.

It was not until the Commission issued its Notice of Stipulation and Settlement in this case on April 22, 2002, that Nu-West had any notice that its contract rates were at issue in this proceeding. Attachment B to the Stipulation and Settlement now proposes to impose a \$936,000 power cost surcharge on Nu-West. After giving effect to a rate mitigation adjustment to Nu-West of \$777,000, the net effect is a \$159,000 per year rate increase for Nu-West in each of the next two years.

This unannounced attempt to shift nearly \$1,000,000 a year in power cost surcharges to Nu-West is unreasonable and unlawful in several respects. In the first place, the attempt to recover from Nu-West for excess power costs incurred during 2000 and 2001 is clearly at odds with the terms of the 1998 Agreement that was in effect during that period. The 1998 Agreement provided for fixed rates during the term of the Agreement, and neither PacifiCorp nor the Commission was authorized to alter those rates except upon an extraordinary showing that the rate “is so low as to adversely affect the public service—as where it might impair the financial ability of the public utility to continue its service, cast upon other consumers an excessive burden, or be unduly discriminatory.” *Agricultural Products Corporation v. Utah Power & Light Co.*, 98 Idaho 23, 29, 557 P.2d 617 (1976). No such showing has been made, or even attempted, in this case.

The fact that PacifiCorp was allowed to defer recovery of its excess power supply costs until after the expiration of the 1998 Agreement does not change the applicability of the *Agricultural Products* rule. The Commission cannot do indirectly what it is prohibited from doing directly. If an authorized deferral of costs could be used to skirt the *Agricultural Products*

rule, the rule would be a dead letter because the Commission could circumvent it at will. There is no basis in law or equity for an attempt to do so in this case. The simple fact is that PacifiCorp contractually agreed to specific rates for the period from 1998 through 2001 irrespective of its cost of service. If costs had decreased during the contract rate period, Nu-West clearly would not now be allowed to recover the difference as an alleged overpayment.

The Stipulation and Settlement's treatment of Nu-West is likewise a breach of Nu-West's existing contract and a violation of the Commission order approving the 2001 Agreement. As Order No. 28984 makes clear, the 2001 Agreement contemplated that Nu-West would not be subject to general rate proceedings as a matter of course. The parties intended the contract rates to apply unless and until the Commission specifically determines that the Nu-West contract rates are unjust and unreasonable. PacifiCorp's initial application in the present case, filed less than a month after the 2001 Agreement was signed and while the 2001 Agreement was awaiting approval, is compelling evidence that PacifiCorp understood that Nu-West was contractually excluded from rate adjustments in cases such as this. Moreover, the Commission's order approving the 2001 Agreement explicitly approved the clarification of the parties intent and acknowledged that Nu-West would not be subject to "a general rate increase. . . spread by stipulation."

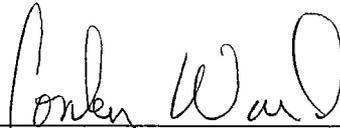
All of PacifiCorp's and the Commission Staff's actions during the Agreement approval process were consistent with the understanding that Nu-West's contract rates would be exempt from the pending surcharge. Nu-West justifiably relied on those actions and representations in seeking approval of the Agreement, and it had every reason to believe this understanding was confirmed by the Commission order approving the 2001 Agreement. Under these circumstances, PacifiCorp and the Commission Staff cannot be allowed to now reverse course and argue for a Nu-West charge that they knew, or should have known, was barred by the 2001 Agreement. This is precisely the type of inequitable change of position that is forbidden by the doctrine of estoppel.

Finally, the Stipulation and Settlement clearly deprives Nu-West of due process of

law. Nu-West had no notice that any party was seeking to include it in the surcharge case until the Commission issued its Notice of Stipulation and Settlement on April 22, 2002. That Notice provided Nu-West with only eight days to prepare comments or file testimony. While Nu-West has managed to meet this filing deadline with its comments, it obviously cannot adequately prepare for evidentiary proceeding or provide testimony in the short time allowed by the Commission's filing deadline.

For the above and foregoing reasons, Nu-West requests that the Commission order the amendment of the Stipulation and Settlement prohibit any power supply surcharge on Nu-West's existing rates.

RESPECTFULLY SUBMITTED this 30th day of April, 2002.



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Conley Ward  
GIVENS PURSLEY LLP  
Attorneys for Nu-West Industries, Inc.



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MASTER ELECTRIC SERVICE AGREEMENT
between
PACIFICORP
and
NU-WEST INDUSTRIES INC.

This MASTER ELECTRIC SERVICE AGREEMENT ("Agreement"), entered into on this 9th day of June, 1998, is by and between PacifiCorp, an Oregon corporation that provides retail electric service and Nu-West Industries Inc. ("Nu-West"), a wholly owned subsidiary of Agrium U.S. Inc., a Delaware corporation conducting business through facilities for the production of phosphate fertilizer located at Soda Springs, Idaho.

Handwritten initials and date: 7's 9th

WHEREAS, PacifiCorp is a provider of retail electric energy and power, hereinafter referred to as "Firm Power and Energy," and

WHEREAS, Nu-West and PacifiCorp have entered into a power purchase and sales agreement for its Soda Springs, Idaho, facilities (hereinafter referred to as "Facilities"), under which agreement PacifiCorp is the exclusive provider of electric power and energy to the Facilities, and

WHEREAS, under the existing agreement the relationship between the parties would terminate on August 16, 1998, and under this Agreement the parties wish to extend their business relationship for an additional three and one-half (3 1/2) years, and

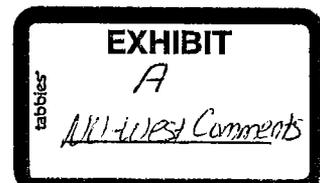
WHEREAS, PacifiCorp desires to be the exclusive provider of all Firm Power and Energy to the Facilities as described above.

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1: DEFINITIONS

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

- 1.1 Agreement: This Electric Service Agreement and any renewals thereof.
1.2 Billing Period: The period of approximately thirty (30) days intervening between regular successive meter readings.
1.3 Commission: The Public Utilities Commission of the state of Idaho.
1.4 Contract Demand: The specified Demand in kW that Nu-West agrees to purchase and that PacifiCorp agrees to supply and have available for delivery to Nu-West.
1.5 Contract Year: A twelve (12)-month period commencing on July 1 annually and ending on midnight of June 30 of the year following.
1.6 Customer Choice Availability Date: The date upon which Idaho state law, the Commission, or PacifiCorp by voluntary tariff filing, allows other suppliers of electric power and energy open access to serve Nu-West's Facilities.



1.7 Demand: The rate in kW at which PacifiCorp delivers electric energy to Nu-West either at a given instant or averaged over any designated period of time.

1.8 Electric Service Regulations: PacifiCorp's currently effective electric service regulations, on file with and approved by the Commission.

1.9 Electric Service Schedule: PacifiCorp's currently effective electric service schedule, on file with and approved by the Commission.

1.10 Firm Power and Energy: Electric power expressed in kilowatts ("kW") and associated energy expressed in kilowatt-hours ("kWh") intended to have assured availability to Nu-West to meet all or any agreed-upon portion of Nu-West's load requirements

1.11 Measured Demand: The Demand in kW as shown by or computed from the readings of PacifiCorp's power (Demand) meter for the 15-minute period of Nu-West's greatest use during the Billing Period, adjusted for Power Factor as specified in the applicable Electric Service Schedule.

1.12 Power Factor: The percentage determined by dividing Nu-West's average power use in kW (real power) by the average kilovolt-ampere power load (apparent power) Nu-West imposes upon PacifiCorp.

## SECTION 2: TERM AND TERMINATION; EARLY TERMINATION CHARGE

2.1 Term: This Agreement shall be in full force and effect commencing upon July 1, 1998 ("Effective Date"). This Agreement shall remain in full force and effect until December 31, 2001, and shall automatically be renewed from year to year subject to the same terms and conditions thereafter unless either party submits written termination notice to the other party not less than thirty (30) nor more than sixty (60) days prior to expiration of the initial term or any renewal term.

2.2 Extension of Agreement: Ninety (90) days prior to the termination of this Agreement the parties shall meet in a good faith attempt to negotiate an extension of this Agreement under mutually satisfactory terms and conditions.

## SECTION 3: DELIVERY OF AND CHARGES FOR FIRM POWER AND ENERGY

3.1 Contract Demand and Request for Additional Contract Demand: The Contract Demand for deliveries under this Agreement is twenty-two thousand kilowatts (22,000 kW). PacifiCorp shall deliver such amounts of Firm Power and Energy as Nu-West requires to meet its load requirements up to, but not in excess of, such Contract Demand. Upon PacifiCorp's receipt of Nu-West's written request for additional Firm Power and Energy, PacifiCorp shall make all reasonable attempts to supply such additional Firm Power and Energy under terms and conditions acceptable to both parties. Within fifteen (15) days of the request PacifiCorp shall advise Nu-West in writing whether the additional Firm Power and Energy is or can be made available. If PacifiCorp does provide Nu-West with Firm Power and Energy in excess of the Contract Demand commitments, such deliveries shall trigger a Contract Demand superseding that specified in this section.

3.2 Purchase Prices: Nu-West shall pay the prices specified for the periods and quantities set forth below:

<u>Period</u>	<u>Quantity in kWh</u>	<u>Price</u>
Contract Years 1998 through 2001	0 to 114,572,379 114,572,380 and above	\$.034339/kWh \$.033000/kWh
July 1, 2001 through December 31, 2001	0 to 55,865,999 55,866,000 and above	\$.034339/kWh \$.033000/kWh

PacifiCorp shall compute Nu-West's bills for each Billing Period using the price of thirty-three mills per kilowatt-hour (\$.033/kWh). In the event that Nu-West has not consumed the minimum amount to qualify for such price by the end of each Contract Year of applicable period, PacifiCorp shall recalculate Nu-West's bills using the higher price per kWh, including interest at the rate then specified by the Commission or, if no rate is specified, the then-effective prime rate as established by the Morgan Guaranty Trust Bank of New York; provided, that in the event PacifiCorp is unable to supply Firm Power and Energy for reasons specified in section 8 of this Agreement, the amount of energy required to qualify for the lower price shall be reduced by 31,390 kWh for each full day of such inability. Nu-West shall pay all bills, including recalculated bills, within thirty (30) days of receipt.

3.3 Commencement of Deliveries: PacifiCorp shall make initial deliveries under this Agreement on July 1, 1998.

3.4 Point of Delivery: The Point of Delivery for all Firm Power and Energy delivered to Nu-West shall be at the existing points of interconnection between PacifiCorp and Nu-West.

3.5 Delivery Voltage: PacifiCorp shall deliver Firm Power and Energy at the Point of Delivery in the form of three-phase, alternating current at a nominal frequency of 60 Hertz, and at a nominal voltage of 46,000 volts.

3.6 Reactive Requirements: Nu-West shall control and limit the flow of reactive power between PacifiCorp's and Nu-West's system so as to maintain a Power Factor of between eighty-five percent (85%) lagging and eighty-five percent (85%) leading. If Nu-West's Power Factor adversely affects operation of PacifiCorp's facilities or adversely affects PacifiCorp's other customers, Nu-West shall install at Nu-West's expense switched capacitors, synchronous condensers, or such other devices and equipment as PacifiCorp may reasonably require to eliminate that portion of unscheduled reactive power flow which causes the Power Factor below or above the limits established herein. Should Nu-West fail to take requested corrective action requested by PacifiCorp within one hundred eighty (180) days after written notice from PacifiCorp, PacifiCorp may perform such services or supply and install such equipment as it deems reasonably necessary to provide corrective action, whereupon Nu-West shall compensate PacifiCorp for all reasonable sums expended and all services contracted or performed, including PacifiCorp's standard overhead costs plus ten (10%) percent of all expenditures. Nu-West shall pay such sums within thirty (30) days after PacifiCorp has mailed to Nu-West an itemized statement of its charges therefor.

#### SECTION 4: PRICES OF AND PAYMENT FOR POWER AND ENERGY

4.1 Statements: All billing statements shall show the amount due for the type and quantity of power and energy purchased.

4.2 Price for Power and Energy: Nu-West shall pay the following prices for all deliveries of

### Firm Power and Energy under this Agreement:

4.2.1 From the Effective Date of this Agreement until the Customer Choice Availability Date, Nu-West shall pay the prices specified in section 3.2 for all kWh delivered hereunder.

4.2.2 By providing PacifiCorp written notice at least thirty (30) days prior to the Customer Choice Availability Date, Nu-West may elect to have prices for power and energy under this Agreement based upon market conditions commencing upon the Customer Choice Availability Date. In the event of such election, the monthly price shall be based upon the monthly spot market index determined by the daily average of the California-Oregon border ("COB") prices as published in the Wall Street Journal ("DJ COB prices") during the Billing Period and weighted by the firm index for heavy load hours (between 6:00 a.m. and 10:00 p.m.) and by the non-firm index for light load hours (daily between 10:00 p.m. and 6:00 a.m. and on Sundays and Holidays), plus all transmission charges and applicable line losses, to which sum PacifiCorp shall add four mills per kWh (\$.004/kWh). Nu-West may elect to retain such prices for the duration of this Agreement.

4.2.2.1 To establish daily DJ COB on-peak firm prices for current deliveries, PacifiCorp shall use for billing purposes the average of the daily on-peak firm prices from the previous month.

4.2.2.2 Until Dow Jones publishes prices for firm off-peak deliveries, to establish monthly prices for current deliveries for Nu-West's firm off-peak usage PacifiCorp shall use for billing purposes the average of the daily non-firm off-peak prices. In the event that Dow Jones begins publishing a DJ COB off-peak firm price index, such DJ COB off-peak firm index shall replace the off-peak non-firm index in computing Nu-West's off-peak prices.

4.3 Payments and Dispute Resolution: All bills shall be paid by the due date of the bill, and late charges shall be imposed upon any delinquent amounts. If Nu-West disputes any portion of Nu-West's bill, Nu-West shall pay the total bill and shall designate the disputed portion, whereupon the dispute shall successively be forwarded to the next higher level of management in each of the companies until the dispute is resolved or the highest levels of management are unable to resolve such dispute, in which case the matter shall be submitted to binding arbitration pursuant to the provisions of Title 7, Chapter 9, of the Idaho Code, "Uniform Arbitration Act." Any refund PacifiCorp determines Nu-West is due shall bear interest at the rate then specified by the Commission or, if no rate is specified, the then-effective prime rate as established by the Morgan Guaranty Trust Bank of New York.

### SECTION 5: METERING

5.1 Metering Equipment: PacifiCorp shall provide, maintain, and test meters and metering equipment required for billing purposes. The parties shall specify the locations for PacifiCorp's installation of metering equipment in Nu-West's premises, and Nu-West shall allow PacifiCorp access to such locations without charge during reasonable business hours.

5.2 Telecommunications Facilities: Upon PacifiCorp's request, Nu-West shall install a

dedicated telephone line for meter reading purposes without charge to PacifiCorp. PacifiCorp shall pay all recurring charges related to line operation.

5.3 Secondary Metering: If the Point of Delivery is on the primary side of Nu-West's transformers, PacifiCorp may install its meter on the secondary side of the transformers, whereupon transformer and other losses occurring between the Point of Delivery and the meter shall be computed and added to the meter readings to determine the monthly demand and energy consumption.

5.4 Transformer Loss Curves: If Nu-West takes service at primary voltage and if secondary metering is used, Nu-West shall, prior to commencement of service, provide PacifiCorp with transformer loss curves and test data to allow PacifiCorp to calculate transformer losses for billing purposes.

#### SECTION 6: INTEGRATION

This Agreement replaces and supersedes in their entirety all prior agreements between the parties related to the same subject matter, including without limitation that certain agreement between the parties dated August 17, 1987, and all subsequent amendments.

#### SECTION 7: JURISDICTION OF REGULATORY AUTHORITIES

Nu-West acknowledges that it is familiar with the Electric Service Schedule and Electric Service Regulations and agrees to abide by them and all amendments and changes thereto so approved by the Commission. In the event that the Commission or any other state, federal, or municipal authority issues any rules, regulations, or orders which require PacifiCorp to alter or amend any of the provisions of this Agreement or to terminate or curtail the delivery of Firm Power and Energy to Nu-West, PacifiCorp shall not be liable to Nu-West for damages or losses of any kind whatsoever which Nu-West may sustain as a result of such rule, regulation, or order, including consequential damages.

#### SECTION 8: FORCE MAJEURE

Neither Party 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 Nu-West, 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) flood; (e) earthquake; (f) sudden and accidental operating event including, but not limited to, fire or explosion; (g) act of God; (h) sabotage, or (i) strikes or boycotts. Should any of the foregoing occur, the price for power that would otherwise be applicable under this Agreement under section 3.2 shall be adjusted to reflect the existence of the force majeure event; provided, the party claiming force majeure shall make every reasonable attempt to remedy the cause thereof as diligently and expeditiously as possible.

#### SECTION 9: MISCELLANEOUS

9.1 Execution in Counterparts: This agreement may be executed in counterparts, and each one taken together shall constitute one in the same instrument.

9.2 Modification: This Agreement may not be amended, modified or supplemented, except in writing signed by both parties.

9.3 Nonwaiver: No delay on the part of either party in exercising any right or remedy under this Agreement shall operate as a waiver thereof. No prior waiver on the part of either Party, nor any single or partial exercise of any right under this Agreement shall preclude any other further exercise thereof of any other right under this Agreement.

9.4 Illegality: Except with respect to those material provisions, the absence of which would render this Agreement impossible to perform, any section, paragraph or provision declared or rendered unlawful by a court of law or regulatory agency with jurisdiction over the parties or subject matter hereof, or deemed unlawful because of a statutory change, shall not otherwise affect the lawful obligations that arise under this Agreement. In the event any provisions of this Agreement is declared invalid, the Parties shall promptly negotiate in good faith to restore this Agreement to its original intent and effect to the maximum extent possible, consistent with the relevant regulatory or judicial decision.

9.5 Assignment: This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, partners and/or legal representatives. This Agreement may not be assigned by either Party without the prior written authorization of the non-assigning party; provided, either Party may voluntarily transfer its rights and obligation hereunder as an incident to any sales, merger, or other transfer of all or substantially all of its assets without the prior written authorization of the non-assigning Party.

9.6 Choice of Law: This Agreement shall be subject to and construed under the laws of the state of Idaho.

9.7 Notice: Any notice required to be given hereunder shall be deemed to have been given when it is sent, with postage prepaid, by registered or certified mail, return receipt requested, to the parties hereto at their respective addresses as follows:

If to Nu-West:

Agrium U. S. Inc.  
Suite 426, 10333 Southport Rd, SW  
Calgary, Alberta, Canada T2W 3X6  
Attention: Dave DeBiasio

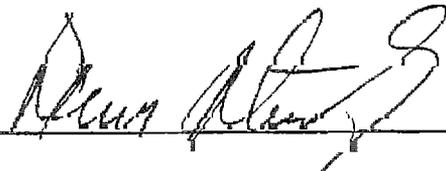
If to PacifiCorp:

PacifiCorp  
105 Commerce Drive  
Evanston, Wyoming 82930  
Attention: Mike Pommarane

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by persons duly authorized as of the date first above written.

PACIFICORB

NU-WEST INDUSTRIES INC.

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

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

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION OF )  
PACIFICORP DBA UTAH POWER & LIGHT )  
COMPANY FOR APPROVAL OF A SPECIAL )  
CONTRACT FOR SERVICE TO NU-WEST )  
INDUSTRIES, INC. )  
\_\_\_\_\_ )**

**CASE NO. PAC-E-00-3**

**ORDER NO. 28399**

On March 17, 2000, PacifiCorp dba Utah Power and Light Company (PacifiCorp; Company) filed an Application with the Idaho Public Utilities Commission (Commission) requesting approval of a Special Contract, a Master Electric Service Agreement (Agreement) dated June 9, 1998, with Nu-West Industries, Inc. (Nu-West).

Nu West is a producer of phosphate fertilizer in Soda Springs, Idaho. Nu-West's electric load exceeds 15 MW, which requires a Special Contract in Idaho. Reference Utah Power Tariff Schedule 9; Schedule 400. Rates in the new Agreement are 3.3 ¢/kWh for all kWh if Nu-West uses a minimum amount of energy. If Nu-West uses less than the minimum on an annual basis, it pays 3.4339 ¢/kWh for all kWh.

The submitted Agreement was negotiated in 1998 for a three and one-half year minimum term that ends December 31, 2001. Thereafter, the Agreement is automatically renewed from year to year subject to the same terms and conditions ... unless either party submits written termination notice... (Section 2.1) An oversight on the Company's part resulted in the Agreement not being filed for Commission approval until this time.

On April 25, 2000, the Commission issued a Notice of Application and Modified Procedure in Case No. PAC-E-00-3. The deadline for filing written comments was May 16, 2000. Timely comments were filed by Commission Staff and Solutia Inc.

Based on its analysis, Staff concludes that the proposed contract rates cover the Company's costs and provide the Company with a reasonable return. Staff recommends that the Agreement be approved as filed, for an effective date of July 1, 1998. Staff recommends that the Company include language in future contracts requiring Commission approval to make the contract rates effective. Staff also recommends that upon approval the Commission require the Company to file a schedule summarizing the contact rates.



Solutia, also a special contract customer, files no substantive comments regarding the Application.

### **COMMISSION FINDINGS**

The Commission has reviewed and considered the filings of record, submitted contract and comments in Case No. PAC-E-00-3. We continue to find it reasonable to process this case pursuant to Modified Procedure, i.e., by written submission rather than by hearing. Reference IDAPA 31.01.01.204.

The Nu-West service contract is dated June 9, 1998, and its initial term expires December 31, 2001. We limit our approval in this case to the rates only. To encourage better special contract management practice by the Company, the Commission finds it reasonable to adopt Staff's recommendation and require that all special contracts for PacifiCorp's Idaho service territory include language requiring Commission approval to make the contract rates effective.

We find the Nu-West contract rates to be fair and reasonable and further find it reasonable to approve same for effective date July 1, 1998. The Company is directed to file a schedule with the Commission summarizing the contract rates approved.

### **CONCLUSIONS OF LAW**

The Commission has jurisdiction over PacifiCorp dba Utah Power & Light Company, an electric utility, and its Application in Case No. PAC-E-00-3 pursuant to the authority and power granted under Title 61 of the Idaho Code and the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq.*

### **ORDER**

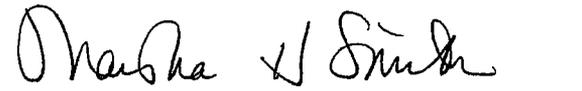
In consideration of the foregoing and as more particularly described and qualified above, IT IS HEREBY ORDERED and the Commission does hereby approve the rates set forth in the Company's June 9, 1998, service contract with Nu-West Industries, Inc. for effective date July 1, 1998.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7)

days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this *12<sup>th</sup>* day of June 2000.

  
DENNIS S. HANSEN, PRESIDENT

  
MARSHA H. SMITH, COMMISSIONER

  
PAUL KJELLANDER, COMMISSIONER

ATTEST:

  
Myrna J. Walters  
Commission Secretary

vid/O:PAC-E-00-3\_sw2

Office of the Secretary  
Service Date  
March 27, 2002

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION  
OF PACIFICORP DBA UTAH POWER &  
LIGHT COMPANY FOR APPROVAL OF  
AN ELECTRIC SERVICE AGREEMENT  
WITH NU-WEST INDUSTRIES.**

) CASE NO. PAC-E-01-17

) ORDER NO. 28984

On December 26, 2001, PacifiCorp dba Utah Power & Light Company (PacifiCorp; Company) filed an Application with the Idaho Public Utilities Commission (Commission) requesting approval of an Electric Service Agreement (Agreement) with Nu-West Industries (Nu-West) dated December 10, 2001. The Agreement, along with a separate agreement, entered into under Electric Service Schedule No. 9, replaces an electric service agreement (prior Agreement) dated June 9, 1998, approved by the Commission in Case No. PAC-E-00-3.

Nu-West is engaged in the production of phosphate fertilizer at facilities located in Soda Springs, Idaho.

The Prior Agreement governing electric service to Nu-West terminated on December 31, 2001. Rates under the Prior Agreement were 03.3¢ per kilowatt-hour for all kilowatt-hours if Nu-West used a specific minimum amount of energy. However, if Nu-West used less than the minimum amount on an annual basis, it paid 03.4339¢ per kilowatt hour for all kilowatt hours.

Rates for service to Nu-West under the Agreement submitted are based, the Company contends, on the cost of serving Nu-West. Accompanying the Company's Application is a summary of the cost-of-service study results for service to Nu-West. Due to the size of its load (approximately 20,000 kW), a special agreement applies instead of an electric service schedule. The Agreement, the Company contends, is effectively a customer-specific tariff schedule. By its terms the Agreement is effective January 1, 2002, subject to approval by the Commission, and will terminate on December 31, 2004, unless renewed in accordance with the Agreement's terms.

As reflected in Section 4 of the Agreement, the following monthly charges will apply to Nu-West:

ORDER NO. 28984

**EXHIBIT**  
0  
tabbes  
Nu-west Comments

Customer Charge	\$\$ Per Month	<u>May-October</u>	<u>November-April</u>
Demand Charge	\$\$ Per kW-Month	\$282.89	\$282.89
Energy Charge	\$\$ Per MWh	\$ 11.00	\$ 8.89
Heavy Load Hours (HLH)	Monday - Friday HE0800-HE2300 MPT	\$ 22.71	\$ 18.92
Light Load Hours (LLH)	All other hours and holidays	\$ 17.03	\$ 17.03

These Agreement charges will result in an effective rate of 3.384¢/kWh.

The demand and energy charges identified in the Agreement are to be uniformly adjusted annually effective January 1, 2003 and each January 1 thereafter in accordance with the formula set out in the Agreement. Agreement Section 4.2.

A separate agreement under electric service Schedule No. 9 has been entered into for service to Nu-West's Mountain Fuel Substation. The effective rate for that part of Nu-West's service under Schedule 9 will be 4.232¢/kWh. The overall effective rate for all of Nu-West's service (Agreement and Schedule 9) is 3.48¢/kWh.

Regarding jurisdiction of regulatory authorities, Section 8 of the Agreement includes the following language:

### 8.1

This Agreement is subject to approval of the Commission. In the event the Commission Order approving this Agreement either requires imputation of revenue to PacifiCorp. or provides for possible future imputation of revenues to PacifiCorp, PacifiCorp may terminate this Agreement by providing Nu-West notice within 30 days of entry of the Commission's Order. In the event the Commission Order approving this Agreement does not provide for the direct assignment of the revenues and costs of this Agreement to the Idaho jurisdiction for ratemaking purposes, PacifiCorp may terminate this Agreement by providing Nu-West notice within 30 days of the entry of the Commission's Order. In the event that the Commission Order approving this Agreement contains any condition that is materially adverse to either party, the party adversely impacted by the condition may terminate this Agreement by providing the other party notice within 30 days of the entry of the Commission's Order.

### 8.3

The parties agree that the Commission has the authority to modify the rates for service under this Agreement under the same standard that applies to

tariff customers generally. Accordingly, surcharges or credits that apply to service to tariff customers generally will also apply to service under this Agreement.

Commission Notices of Application and Modified Procedure in Case No. PAC-E-01-17 were issued on January 17, 2002. The deadline for filing written comments was February 8, 2002. The Commission Staff was the only party to file comments. Reply comments were filed by PacifiCorp on February 27, 2002. The comments can be summarized as follows:

#### Staff Comments

The proposed agreement between PacifiCorp and Nu-West contains rates based upon a cost of service study provided by the Company in conjunction with its filing. The study submitted is based on an unaudited 1999 test year and incorporates critical assumptions such as situs/system treatment of large special Agreement customers, treatment of the irrigation interruptability credit and allocators used to assign revenue requirement among the customer classes.

A general comparison of contract rates previously approved by the Commission for service to Nu-West and a comparison of cost of service studies used to generally develop both rates leads the Staff to conclude that the proposed rates are reasonable. Staff recognizes that the proposed rates represent a reasonable 5.5% increase over the previous rates that expired in December 2001 and that the rates proposed are acceptable to both parties.

While Staff recommends approval of the changes proposed, it does not recommend approval at this time of the specific assumptions used by the Company in its cost of service study filed in this case. Staff maintains that cost of service issues will be fully addressed in other cases currently pending before the Commission and need not be decided in order to approve the proposed Nu-West rates. Should the Commission, Staff contends, ultimately establish cost of service that is different than that used by the Company to justify these rates, the Commission may modify contract rates under its continuing authority. Staff does not oppose a Commission finding that allocated costs and revenues subsequently established for service to Nu-West be assigned to Idaho for ratemaking purposes.

Staff believes that the Commission retains full jurisdiction over contract rates despite Agreement language in Section 4.2 to the contrary. Staff recommends that the Company be directed to either eliminate the section or clarify in the Agreement exactly what is intended by

Section 4.2 and explain why it is not contradictory to full Commission jurisdiction over contract rates as provided for in Section 8.3.

### Company Reply

PacifiCorp replied that Section 8.3 of the submitted Agreement controls. If the Commission were to find that some particular rate is the just and reasonable rate to be charged Nu-West, that determination would apply notwithstanding the rate calculated under the other terms of the Agreement. If however, there were not a specific Commission determination of the rates for Nu-West (for instance, if a general rate increase were spread by stipulation), the Company contends that the rates for Nu-West would be established pursuant to Section 4.2.

### COMMISSION FINDINGS

The Commission has reviewed and considered the filings of record and comments in Case No. PAC-E-01-17. The submitted PacifiCorp/Nu-West Agreement provides for adjustment of rates under the tariff standard with an affirmative Commission Order. The Company has supported the reasonableness of the Nu-West contract rates with a cost-of-service study that incorporates critical assumptions and is based on a non-audited 1999 test year. We make no findings in this Order regarding the cost-of-service study and related assumptions. We find it more appropriate for these matters to be considered in other cases currently pending before this Commission. We note, however, that the present Agreement, as did the prior Nu-West contract, treats Nu-West as an Idaho situs customer, allocating costs and revenues to the Idaho jurisdiction for ratemaking purposes. To the extent that the submitted Agreement is contingent on our approval of this ratemaking treatment, we continue to find this treatment acceptable. We find the rates set forth in the Agreement, based on information available today, to be fair, just and reasonable. We also find the remaining contract terms, as clarified, to be acceptable.

### CONCLUSIONS OF LAW

The Idaho Public Utilities Commission has jurisdiction over PacifiCorp dba Utah Power & Light Company, an electric utility, and the issues presented in Case No. PAC-E-01-17 pursuant to the authority granted in Idaho Code Title 61 and the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq.*

### ORDER

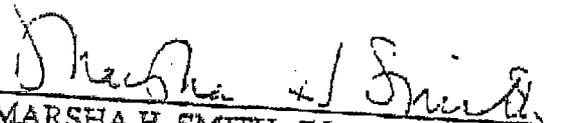
In consideration of the foregoing and as more particularly described and qualified above, IT IS HEREBY ORDERED and the Commission does hereby approve the Electric

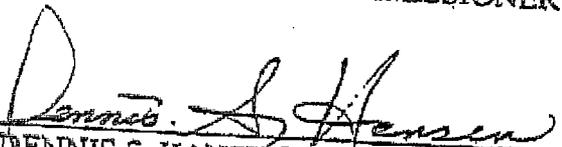
Service Agreement between PacifiCorp and Nu-West Industries, Inc., dated December 10, 2001 for an effective date of January 1, 2002.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this order with regard to any matter decided in this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See Idaho Code § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 25<sup>th</sup> day of March 2002.

  
PAUL KJELLANDER, PRESIDENT

  
MARSHA H. SMITH, COMMISSIONER

  
DENNIS S. HANSEN, COMMISSIONER

ATTEST:

  
Jean D. Jewell  
Commission Secretary

vi/O:PACE0117-SW

**GIVENS PURSLEY LLP**

*WR King*

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LAW OFFICES  
277 North 6th Street, Suite 200  
PO Box 2720, Boise, Idaho 83701  
TELEPHONE: 208 388-1200  
FACSIMILE: 208 388-1300  
WEBSITE: www.givenspursley.com

Direct Dial: (208) 388-1219  
E-Mail: [cew@givenspursley.com](mailto:cew@givenspursley.com)

Gary G. Allen	Franklin G. Lee	Patrick J. Miller
Christopher J. Beeson	David R. Lombardi	Judson B. Montgomery
Michael C. Creamer	D. David Lorello, Jr.	Angela K. Nelson
Jeffrey A. DeVoe	Kevin T. Maloney	W. Hugh O'Riordan
Emily MacMaster Durkee	Kimberly D. Maloney	Kenneth L. Pursley
Thomas E. Dvorak	John M. Marshall	Brad V. Sneed
Roy Lewis Eiguren	Kenneth R. McClure	Conley E. Ward
Timothy P. Fearnside	Kelly Greene McConnell	Robert B. White
Jeffrey C. Fereday	Cynthia A. Melillo	Raymond D. Givens
Karl T. Klein	Christopher H. Meyer	James A. McClure
Debora K. Kristensen	Kendall L. Miller	Stephanie C. Westermeier
Anne C. Kunkel	L. Edward Miller	OF COUNSEL

May 1, 2002

**VIA HAND DELIVERY**

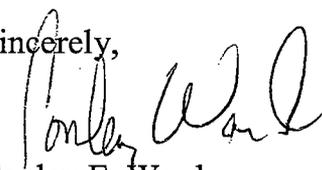
Jean Jewell  
Idaho Public Utilities Commission  
472 W. Washington  
P.O. Box 83720  
Boise, ID 83720-0074

Re: Case No.: PAC-E-02-1

Dear Jean:

Exhibit C Was inadvertently omitted from Nu-West's Comments filed yesterday in the above-entitled case. Please add the attached Exhibit C to Nu-West's filing.

Thank you for your help.

Sincerely,  
  
Conley E. Ward

CEW/tns  
Enclosure  
cc: Service list w/attachments  
S:\MACS\CEW\Nu-West\Corr\2002-5-1 Jewell Exhibit C.doc

cc: JL  
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DES  
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IDAHO PUBLIC  
UTILITIES COMMISSION

**ELECTRIC SERVICE AGREEMENT**  
between  
**PACIFICORP**  
and  
**NU-WEST INDUSTRIES, INC.**

This ELECTRIC SERVICE AGREEMENT (this "Agreement"), entered into on this 10<sup>th</sup> day of December, 2001, is by and between PacifiCorp, an Oregon corporation ("PacifiCorp"), and Nu-West Industries Inc., a Delaware corporation ("Nu-West") having a place of business within the State of Idaho, located at Soda Springs, Idaho within the county of Caribou. PacifiCorp and Nu-West are sometimes referred to separately as a "Party" and collectively as "Parties".

WHEREAS, PacifiCorp is currently the provider of retail electric energy and power to Nu-West's phosphate fertilizer production facilities served by Nu-West's El Paso Substation located at Soda Springs, Idaho, and

WHEREAS, Nu-West desires to purchase all firm power and energy requirements for the Facilities under this Agreement, and

WHEREAS, PacifiCorp desires to be the exclusive provider of all firm power and energy to Nu-West's facilities, and

NOW, THEREFORE, the parties hereto agree as follows:

**SECTION 1: DEFINITIONS**

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

- 1.1 Adjustment Percentage: Adjustment Percentage ("AP") for following calendar year means the overall annual percent change in PacifiCorp's Idaho base rates for all non-special contract classes of customers, as approved by the Commission to be effective for the period from July 1st of the previous year to June 30th of the current year, as measured by the percent change, relative to the previous year, in the PacifiCorp revenue requirement attributable to such non-special customer classes in Idaho.
- 1.2 Agreement: This Electric Service Agreement and any renewals thereof.
- 1.3 Billing Demand: The Demand in kilowatts ("kW") which is used to determine the Demand (power) charges in accordance with the provisions of this Agreement.

**EXHIBIT**

tabbles

*C*  
*Nu-West Comments*

- 1.4 Billing Period: The period of approximately thirty (30) days intervening between regular successive meter readings.
- 1.5 Commission: The Public Utilities Commission of the state of Idaho.
- 1.6 Contract Demand: The specified Demand in kW that Nu-West requires to meet its load requirements and that PacifiCorp agrees to supply and have available for delivery to Nu-West, which shall be 20,000 kW unless otherwise agreed in writing in accordance with the terms of this Agreement.
- 1.7 Demand: The rate in kW at which PacifiCorp delivers electric energy to Nu-West either at a given instant or averaged over any designated period of time.
- 1.8 Electric Service Regulations: PacifiCorp's currently effective electric service rules and regulations, on file with and approved by the Commission, as they may be amended or superseded from time to time with the approval of the Commission.
- 1.9 Facilities: Those operating facilities including the El Paso Substation owned by Nu-West to which PacifiCorp shall provide electric power and energy pursuant to this Agreement, located at or near Soda Springs, Idaho
- 1.10 Firm Power and Energy: Electric power expressed in kW and associated energy expressed in kWh intended to have assured availability to Nu-West to meet all or any agreed-upon portion of Nu-West's load requirements.
- 1.11 Heavy Load Hours ("HLH"): Hours of the day from the hour ending 0800 through the hour ending 2300 each Monday through Friday except Holidays. Light Load Hours ("LLH") means all other times not included in HLH.
- 1.12 Holidays: Holidays include only New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. When a holiday falls on a Saturday or Sunday, the Friday before the holiday (if the holiday falls on a Saturday) or the Monday following the holiday (if the holiday falls on a Sunday) will be considered a Holiday and consequently off peak (Light Load Hours).
- 1.13 Measured Demand: The Demand in kW as shown by or computed from the readings of PacifiCorp's power (Demand) meter representing Nu-West's greatest use during the Billing Period, adjusted for Power Factor as specified in Section 4.3.
- 1.14 Point of Delivery: The point of delivery for all Firm Power and Energy delivered to Nu-West shall be at the existing point of interconnection between PacifiCorp and Nu-West at the El Paso substation.
- 1.15 Power Factor: The percentage determined by dividing Nu-West's power use in kW (real

power) by the kilovolt-ampere power load (apparent power). Nu-West's specific Power Factor and metering criteria can be obtained from PacifiCorp upon request.

- 1.16 Prudent Electrical Practices: Prudent Electrical Practices shall mean 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 with safety, and that are in accordance with the IEEE Standards utilized in the Company's Engineering Handbook ("Handbook"), the National Electrical Safety Code, the National Electric Code or any other applicable government code in effect during the term of this Agreement.
- 1.17 Termination Date: This Agreement terminates on December 31, 2004.

## SECTION 2: TERM AND TERMINATION

This Agreement shall become effective on January 1, 2002 ("Effective Date"), subject to Commission approval, and shall remain in full force through the Termination Date following PacifiCorp's initial delivery of electric power and energy to Nu-West in accordance with this Agreement. This Agreement shall automatically be renewed from year to year for no more than two (2) annual renewal terms, subject to the same terms and conditions unless either party submits written termination notice to the other party not less than thirty (30) nor more than sixty (60) days prior to expiration of the initial term or any renewal term.

## SECTION 3: DELIVERY OF AND CHARGES FOR FIRM POWER AND ENERGY

- 3.1 Scope of Deliveries: PacifiCorp shall deliver such amounts of Firm Power and Energy to the Point of Delivery as Nu-West requires to meet its load requirements up to, but not in excess of, Contract Demand, subject to the provisions of Section 3.2.
- 3.2 Request for Additional Contract Demand: Upon PacifiCorp's receipt of Nu-West's written request for power and energy above the Contract Demand, PacifiCorp shall use commercially reasonable efforts to attempt to supply such additional power under terms and conditions acceptable to both parties. Within fifteen (15) days of the request PacifiCorp shall advise Nu-West in writing whether the additional power and energy is or can be made available and the terms on which it can be made available. If PacifiCorp and Nu-West agree that PacifiCorp shall provide Nu-West with Firm Power and Energy in excess of the Contract Demand commitments, the amount of agreed deliveries shall become the new Contract Demand amending and superseding the Contract Demand specified in this Agreement. This new Contract Demand shall be subject to the same pricing and adjustments as defined in Section 4, unless otherwise agreed upon in writing.
- 3.3 Commencement of Deliveries: PacifiCorp shall make initial deliveries upon the Effective Date.

- 3.4 Delivery Voltage: PacifiCorp shall deliver Firm Power and Energy at the Point of Delivery in the form of three-phase, alternating current at a nominal frequency of 60 Hertz, and at a nominal voltage of 138,000 volts. For additional information on the delivery voltage, see the section "Voltage Level and Range" in the PacifiCorp Engineering Handbook.
- 3.5 Resale of Power. Nu-West shall not resell any electric power and energy delivered under this Agreement to any other person or entity.

SECTION 4: BILLING, PRICES AND PAYMENT FOR POWER AND ENERGY

- 4.1 Billing: All billing statements for power and energy shall show the amount due for the type and quantity of power and energy purchased and charged in accordance with this Agreement and any charges permitted or required under the applicable Electric Service Regulations. The following charges apply.

MONTHLY CHARGES:

		<u>May – October</u>	<u>November – April</u>
Customer Charge	\$ per Month	\$ 282.89	\$ 282.89
Demand Charge	\$ per kW-month	\$ 11.00	\$ 8.89
Energy Charge	\$ per MWh		
HLH	Monday through Friday HE0800 to HE2300 MPT	\$ 22.71	\$ 18.92
LLH	All other hours and Holidays	\$ 17.03	\$ 17.03

- 4.2 Annual Adjustment: The demand and energy charges specified in this Section shall be uniformly adjusted annually effective January 1, 2003 and each January 1 thereafter, as follows. This shall be the sole and exclusive means of annual adjustment to the unit charges contained herein:

$$NC = CYC * (1 + AP)$$

Where: NC means new charge or charge after adjustment

CYC means current year charge as defined in Section 4.1

A further adjustment shall be made effective each January 1<sup>st</sup> using the above formula but with CYC equal to NC as determined for the previous year. In the event that this Agreement is renewed beyond

the Termination Date per Section 2, NC and CYC will be adjusted each year to reflect the renewal term.

The Customer Charges referred to in Section 4.1 shall remain at the same level throughout the term of this Agreement and any renewals thereof.

- 4.3 Power Factor: The charges are based on Nu-West maintaining at all times a Power Factor of 85% lagging, or higher, as determined by measurement. If the average Power Factor for the Billing Period is found to be less than 85% lagging, the Measured Demand as recorded by PacifiCorp's meter for that Billing Period will be increased by  $\frac{3}{4}$  of 1% for every 1% that the Power Factor is less than 85%.
- 4.4 Payments: All bills shall be paid by the date specified on the bill, or in the event no date is specified on the bill, 15 days after receipt of the bill for the month, and late charges shall be imposed upon any delinquent amounts. Nu-West must pay all payments by EDI or wire transfer to an account designated by PacifiCorp. The Nu-West account number must be included with each wire transfer. In the event that a portion of the bill or adjustment arising hereunder is disputed, payment of the portion not in dispute shall be made when due. Nu-West and PacifiCorp shall seek to make a determination on any disputed amount within sixty (60) days after issuance of Nu-West's notice of dispute. If it is determined that the disputed amount is due PacifiCorp, Nu-West shall pay PacifiCorp within 15 days following the determination, together with interest from the date the bill was originally due at the rate then specified in the Electric Service Regulations on late payments or, if no rate is specified, the then effective prime rate as established by the Morgan Guaranty Trust Bank of New York. Initially, the bank account shall be designated as follows:

WIRE TRANSFER PAYMENTS

Bank:	Bank ONE
ABA Routing #:	071000013
To Credit:	PacifiCorp
Account #:	5547458

- 4.5 Deposits: If at any time Nu-West publicly discloses information which PacifiCorp believes will impact Nu-West's ability to pay its electric service bills, PacifiCorp may request deposits to the extent permitted under the applicable Electric Service Regulations. Such an event would be limited to public disclosure of significant financial losses; inability to make scheduled debt payments; foreclosure of assets, or disclosure that the company is considering filing for bankruptcy. In the event Nu-West defaults in any of its obligations under this Agreement or the applicable Electric Service Regulations, PacifiCorp may exercise any or all of its rights and remedies under this Agreement, the applicable Electric Service Regulations, and under any applicable laws, rules and regulations.

## SECTION 5: METERING

- 5.1 Metering Equipment: PacifiCorp shall provide, maintain and test meters and metering equipment required for billing purposes. The parties shall specify the locations for PacifiCorp's installation of metering equipment in Nu-West's premises, and Nu-West shall allow PacifiCorp access to such locations without charge during reasonable business hours.
- 5.2 Telecommunications Facilities: Upon PacifiCorp's request, Nu-West shall install a dedicated telephone line for meter reading purposes without charge to PacifiCorp. Nu-West shall pay all recurring charges related to line operation.
- 5.3 Secondary Metering: If the Point of Delivery is on the primary side of Nu-West's transformers, PacifiCorp may elect to install its meter on the secondary side of the transformers, whereupon transformer and other losses occurring between the Point of Delivery and the meter shall be computed and added to the meter readings to determine the monthly demand and energy consumption.
- 5.4 Transformer Loss Curves: If Nu-West takes service at primary voltage and if secondary metering is used, Nu-West shall, prior to commencement of service, provide PacifiCorp with transformer loss curves and test data to allow PacifiCorp to calculate transformer losses for billing purposes.

## SECTION 6: OPERATIONAL CONSTRAINTS

- 6.1 For details on the operational constraints and power quality, refer to the PacifiCorp Engineering Handbook, Section – Power Quality. All measurements of currents and voltages under this Section shall be taken at the Point of Delivery.
- 6.2 Reactive Requirements: Nu-West shall control and limit the flow of reactive power between PacifiCorp's and Nu-West's system so as to maintain a Power Factor in accordance with the Section 4.3. PacifiCorp's Billing Demands shall be increased in accordance with Section 4.3 for excessive reactive flow.
- 6.3 Voltage Drops: In order to receive electric service from PacifiCorp, Nu-West shall continuously comply with PacifiCorp's flicker guidelines and with the operating criteria set forth in the PacifiCorp Engineering Handbook, Section "Voltage Fluctuation and Flicker". If operation outside of these limits is desired, Nu-West must contact PacifiCorp for engineering studies to be done prior to changing operations.
- 6.4 Harmonic Distortion: Nu-West shall operate the Facilities in such a manner so that the harmonic distortion and notching falls within PacifiCorp's adopted guidelines and standards as described in the PacifiCorp Engineering Handbook, Section "Harmonic Distortion".
- 6.5 Voltage Balance: Nu-West shall operate the Facilities in such a manner so that the

PacifiCorp system voltage balance falls within PacifiCorp's adopted guidelines and standards as described in the PacifiCorp Engineering Handbook in the Power Quality Section.

- 6.6 Voltage Transients: Nu-West shall operate the Facilities in such a manner so that the PacifiCorp system does not experience transient magnification issues, such as those outlined in PacifiCorp's adopted guidelines and standards as described in the PacifiCorp Engineering Handbook - Power Quality Section.
- 6.7 Remediation: In the event that the Nu-West's operations fall outside of the technical requirements of this contract, or the requirements set forth in the Electric Service Regulations, or adversely affects the operations of PacifiCorp's transmission or distribution system, or other PacifiCorp customers, PacifiCorp shall give Nu-West written notice of the corrective actions required, and Nu-West shall have the opportunity for a period of fourteen (14) days to discuss PacifiCorp's requirements. Although PacifiCorp will discuss the corrective action with Nu-West, any final determination of the corrective action required shall be based on compliance with PacifiCorp's Engineering Handbook, guidelines and standards. After such fourteen- (14) day period, PacifiCorp shall give Nu-West its final determination of PacifiCorp's required corrective action. Should Nu-West fail to begin to take corrective action required by PacifiCorp within thirty (30) days after written notice from PacifiCorp or fail to pursue completion of such corrective action with diligence, PacifiCorp may perform such services or supply and install such equipment as it deems necessary to provide corrective action, whereupon Nu-West shall compensate PacifiCorp for all sums expended, all materials utilized, and all services contracted or performed, by paying a sum equal to 110% of all costs, expenses, material, and labor charges incurred by PacifiCorp, including PacifiCorp's internal material and labor charges and standard overhead costs. Nu-West shall pay such sums within fifteen (15) days after PacifiCorp has mailed Nu-West an itemized statement of its charges therefore. If Nu-West desires to operate outside of these limits, Nu-West shall pay for studies done by PacifiCorp to determine the impact on other PacifiCorp customers and if the proposed operation is acceptable.
- 6.8 Notification. Nu-West shall notify PacifiCorp prior to increasing its consumption of electric power and energy that will exceed the normal operating limits of the Facilities and Nu-West shall provide sufficient time for PacifiCorp to accommodate such loads. Nu-West shall also notify PacifiCorp prior to any significant change in load characteristics or installation of a significant number of devices (such as power factor correction capacitors, dynamic brakes, adjustable speed drives, etc.) that could impact the operation of the PacifiCorp system and the interaction with Nu-West's system. Please refer to the Power Quality Section in the PacifiCorp Engineering Handbook for additional information and guidelines.

## SECTION 7: INTEGRATION; AMENDMENT

This Agreement contains the entire agreement of the parties with respect to the subject matter, and replaces and supercedes in their entirety all prior agreements between the parties related to the same subject matter. Except pursuant to Sections 8 and 11 below, this Agreement may be modified only by a subsequent written amendment or agreement executed by both parties.

## SECTION 8: JURISDICTION OF REGULATORY AUTHORITIES

- 8.1 This Agreement is subject to approval of the Commission. In the event the Commission order approving this Agreement either requires imputation of revenue to PacifiCorp, or provides for possible future imputation of revenue to PacifiCorp, PacifiCorp may terminate this Agreement by providing Nu-West notice within 30 days of the entry of the Commission's Order. In the event the Commission order approving this Agreement does not provide for the direct assignment of the revenues and costs from this Agreement to the Idaho jurisdiction for rate making purposes, PacifiCorp may terminate this Agreement by providing Nu-West notice within 30 days of the entry of the Commission's Order. In the event that the Commission Order approving this Agreement contains any condition that is materially adverse to either party, the party adversely impacted by the condition may terminate this Agreement by providing the other party notice within 30 days of the entry of the Commission's Order.
- 8.2 The Electric Service Regulations of PacifiCorp, together with all changes and amendments thereto as approved by the Commission, are incorporated herein and made a part of the agreement. Once the Commission approves the Agreement, the provisions of the Agreement shall take precedence over any conflicting provisions of PacifiCorp's Electrical Service Regulations.
- 8.3 The parties agree that the Commission has the authority to modify the rates for service under this Agreement under the same standard that applies to tariff customers generally. Accordingly, surcharges or credits that apply to service to tariff customers generally will also apply to service under this Agreement.
- 8.4 In the event that the statutes of the state of Idaho are amended to provide Nu-West with the ability to choose an electric supplier other than PacifiCorp, either party may terminate the Agreement within 90 days of the effective date of the legislation by written notice delivered to PacifiCorp.

## SECTION 9: FORCE MAJEURE

Neither Party 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 Nu-West, 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 (so long as the claiming party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such government action); (b) restraining order, injunction or similar decree of any court; (c) war; (d) flood; (e) earthquake; (f) act of God; (g) civil disturbance; or (h) strikes or boycotts. Should any of the foregoing occur, the minimum charges and early termination charges that would otherwise be applicable under this Agreement shall be waived and Nu-West shall have no liability for service until Nu-West is able to resume service; provided, the party claiming Force Majeure shall make every reasonable attempt to remedy the cause thereof as diligently and expeditiously as possible. Time periods for performance obligations of parties herein shall be extended for the period during which Force Majeure was in effect. In the event that a Force Majeure event occurs, and Nu-West does not resume service at pre-event levels within six (6) months of the beginning of the event, the contract will be treated as terminated, pursuant to Section 2 above.

#### SECTION 10: ASSIGNMENT

Neither Company nor Nu-West shall assign this Agreement without the written consent of the other party hereto, which shall not be unreasonably withheld; provided, Nu-West may assign this Agreement without such consent to an entity that acquires the majority of the value of Nu-West's operating facilities, in which event Nu-West as assignor shall guarantee the assignee's performance of Nu-West's obligations under this Agreement and further provided that Company may assign this Agreement without any such consent to an entity that acquires the majority of the value of Company's facilities, in which event Company as assignor, shall guarantee the assignee's performance of Company's obligations. Any assignee or successor of Nu-West shall remain subject to such any assignee or successor's qualification as a customer under Company's policies and the Electric Service Regulations, and shall be bound by this Agreement, the Electric Service Regulations, and assume the obligations of Nu-West from the date of assignment. This Agreement shall inure to the benefit and be binding upon any authorized 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 so long as such assignee is solvent and is able to meet its obligations hereunder for the Agreement and the Electric Service Regulations.

#### SECTION 11: INFORMATION

- 11.1 Furnishing Information. Upon PacifiCorp's request, Nu-West shall submit its year-end financial statements to PacifiCorp, certified to be true and correct and in accordance with GAAP. Furthermore, Nu-West shall submit additional information as PacifiCorp may reasonably request from time to time in furtherance of the purposes of this Agreement. This information will be considered confidential by PacifiCorp.

- 11.2 Accuracy of Information. Nu-West represents that all information it has furnished or will furnish under this section to PacifiCorp will be accurate and complete in all material respects. Nu-West also represents that Nu-West has not omitted and will not knowingly omit any fact in connection with the information to be furnished under this section which materially and adversely affects the business, operations, property or condition of the Facilities or the obligations of PacifiCorp under this Agreement. Should PacifiCorp base its willingness to enter into any portion of this Agreement or any decision with respect to credit, deposits or any other material matter, on inaccurate information furnished under this section by Nu-West for any reason, PacifiCorp shall have the right to revoke its decision with respect to such matter and modify this Agreement and/or its decision to reflect the determination which PacifiCorp would have applied had PacifiCorp received accurate information.

#### SECTION 12: REPRESENTATIVES AND NOTICES

For the purposes of this Agreement, any notices required to be given hereunder shall be sent postage prepaid, by registered or certified mail, return receipt requested (or alternately by facsimile or any other method acceptable by both parties) to the parties at the respective addresses below and shall be deemed to have been given when received as evidenced by the appropriate receipt verifying delivery:

Representatives of Nu-West:

Nu-West Industries, Inc.  
13131 Lake Fraser Drive SE  
Calgary, Alberta  
T2J 7E8 Canada  
Attn: Vice President Supply Management

Fax: (405) 225-7616

Representatives of PacifiCorp:

PacifiCorp  
Director, Energy Contracts  
825 NE Multnomah Street  
Portland, OR 97232

Fax: (503) 813-7190

#### SECTION 13: REMEDIES; WAIVER

Either party may exercise any or all of its rights and remedies under this Agreement, the

applicable Electric Service Regulations and under any applicable laws, rules and regulations. PacifiCorp's liability for any action arising out of its activities relating to this Agreement or PacifiCorp's electric utility service shall be limited to repair or replacement of any non-operating or defective portion of PacifiCorp's electric utility facilities. Under no circumstances shall PacifiCorp be liable for any economic losses, costs or damages, including but not limited to special, indirect, incidental, consequential, punitive, or exemplary damages. No provision of this Agreement or the Electric Service Regulations shall be deemed to have been waived unless such waiver is in writing signed by the waiving party. No failure by any party to insist upon the strict performance of any provision of this Agreement, the Electric Service Regulations or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach of such provision or of any other provision. No waiver of any provision of this Agreement or the Electric Service Regulations shall be deemed a waiver of any other provision of this Agreement, the Electric Service Regulations or a waiver of such provision with respect to any subsequent breach, unless expressly provided in writing.

#### SECTION 14: GOVERNING LAW; JURISDICTION; VENUE

All provisions of this Agreement and the rights and obligations of the parties hereto shall in all cases be governed by and construed in accordance with the laws of the State of Idaho applicable to contracts executed in and to be wholly performed in Idaho by persons domiciled in the State of Idaho. Each party hereto agrees that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement, the Electric Service Regulations or the transactions contemplated hereby or thereby, may only be brought before the Commission, the Federal courts located within the State of Idaho, or state courts of the State of Idaho, and each party hereby consents to the exclusive jurisdiction of such forums (and of the appellate courts therefrom) in any such suit, action or proceeding. Furthermore, each party hereto waives, to the extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such forum or that any such suit, action or proceeding which is brought in any such forum has been brought in any inconvenient forum. If, for any reason, service of process cannot be found in the state of Idaho, process in any such suit, action or proceeding may be served on a party anywhere in the world, whether within or without the jurisdiction of any such forum.

#### SECTION 15: WAIVER OF JURY TRIAL

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE ELECTRIC SERVICE REGULATIONS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

#### SECTION 16: HEADINGS

The descriptive headings contained in this Agreement are included for reference only and shall

not affect in any way the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by persons duly authorized as of the date first above written.

**PACIFICORP**

**NU-WEST INDUSTRIES, INC.**

By: *ETA. Kle.*  
Name:     
Title:   

By: *[Signature]*  
Name: Chris Tworek  
Title: VP, Supply Management

Address:

Address:

825 NE Multnomah Street  
Portland, OR 97232  
  
Fax: (503) 813-7190

*[Signature]*  
Nu-West Industries, Inc.  
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Calgary, Alberta  
T2J 7E8 Canada  
  
Fax: (40<sup>3</sup>) 225-7616