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IDAHO PUBLIC
UTILITIES COMMISSION

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BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE JOINT)
APPLICATION OF IDAHO FALLS POWER)
AND PACIFICORP FOR AN ORDER)
APPROVING AN ELECTRIC CONSUMER)
EXCHANGE AGREEMENT.)

CASE NO. PAC-E-05-07¹

AMENDED JOINT APPLICATION BY
IDAHO FALLS POWER AND
PACIFICORP FOR APPROVAL OF
AN AMENDED ELECTRIC
CONSUMER EXCHANGE
AGREEMENT AND MOTION FOR
LEAVE TO WITHDRAW ORIGINAL
AGREEMENT

COMES NOW, Idaho Falls Power (“Idaho Falls” or the “City”) by and through its attorney of record, Peter Richardson, and PacifiCorp dba Utah Power & Light (“PacifiCorp”) by and through its attorney of record, Lisa Nordstrom, (“the Applicants”) and hereby lodges this

¹ This case number was changed by the Commission Secretary on July 7, 2005 from GNR-E-05-02.

Amended Application for approval of an Amended electric consumer exchange agreement between Idaho Falls and PacifiCorp. This Amended Application is filed pursuant to Rule 66 of the Rules of Procedure of the Idaho Public Utilities Commission and *Idaho Code* § 61-333. In support thereof, the Applicants state the following:

I. BACKGROUND

On June 20, 2005, the Applicants filed an Application (“Original Application”) seeking approval of an electric consumer allocation agreement between Idaho Falls and PacifiCorp dated May 27, 2005. Informal discussions with Staff indicated that Staff would not support the agreement as originally submitted due to concerns that possible duplication of service would occur in the event the City annexed property but did not serve all of the customers in the newly annexed parcel. See Staff comments lodged with the Commission on August 19, 2005. In response to Staff’s concerns, Idaho Falls and PacifiCorp have each approved an Amended version of the agreement originally filed in this docket. This new version dated the 26th day of August 2005, addresses Staff’s concerns by requiring Idaho Falls to either serve every customer in a newly annexed parcel or to serve no customer in the newly annexed parcel. The parties also made some additional minor changes that clarify their understanding of their respective relationship – all of which further the goals of the Electric Supplier Stabilization Act.

II. INCORPORATION OF REPRESENTATIONS

All representations and assertions made by the Applicants in the Original Application in this matter are incorporated herein by reference and made a part of this Amended Application.

III. PROCEDURE

It is the understanding of the Applicants that the Commission will consider this application as an Amended Application without having to open a new docket. Although the

Applicants acknowledge that a new notice and comment period will have to be initiated in light of the changes made to the initial agreement, we do not view this pleading as a new application but rather an amendment to the Original Application that initiated this docket.

IV. PRAYER FOR RELIEF

Based on the foregoing, Idaho Falls and PacifiCorp respectfully request this Commission to enter its order pursuant to *Idaho Code Section 61-333(1)* approving the Amended electric consumer exchange agreement attached hereto as Exhibit "A" and to formally withdraw the initial agreement from consideration.

DATED this 6th day of September, 2005.

Richardson & O'Leary P.L.L.C.

By 
Peter Richardson
Attorneys for Idaho
Falls Power

PacifiCorp

By 
Lisa Nordstrom
Attorneys for PacifiCorp

EXHIBIT A

IDAHO FALLS ALLOCATION AGREEMENT

THIS AGREEMENT is made and entered into this 26th day of August, 2005, by and between PacifiCorp, doing business as Utah Power & Light Company ("PacifiCorp") and the City of Idaho Falls ("City"). In this Agreement, PacifiCorp and City may be referred to individually as a "Party" and collectively as "Parties."

RECITALS

1. City owns and operates an electric power system, and in addition to providing electric service to customers within the boundaries of the City, it presently provides electric service to a number of customers outside the municipal boundaries of the City.
2. PacifiCorp operates as an electric corporation and public utility in the state of Idaho, and in addition to serving customers in the area surrounding Idaho Falls, it presently provides electric service to one or more customers located within the boundaries of the City.
3. PacifiCorp and the City desire to enter into an agreement, in accordance with Idaho Code § 61-333, to reduce duplication of service and promote stability in their respective service areas.

AGREEMENT

1. Definitions. As used in this Agreement, the following terms shall have the respective meanings set forth in this section.
 - 1.1 "Existing Customer" shall mean a customer that, as of the date of this Agreement, has a service entrance through which it receives Electric Service from PacifiCorp or the City as the case may be.
 - 1.2 "Service Entrance," "Consumer," "Electric Service," and "New Service Entrance" shall have the meanings set forth in Idaho Code § 61-332A.
2. The Existing Customer(s) of the City located outside the municipal boundaries of the City will continue to be served by the City, subject to Section 5.
3. The Existing Customer(s) of PacifiCorp located within the municipal boundaries of the City will continue to be served by PacifiCorp, subject to Sections 5 and 6.

4. Notwithstanding the provisions of Idaho Code § 61-332C, PacifiCorp will not provide Electric Service to a New Service entrance within the municipal boundaries of the City, and the City will not provide Electric Service to a New Service Entrance outside its municipal boundaries.
5. Transfers of Customers
 - 5.1 The City may provide Electric Service to an Existing Customer of PacifiCorp having a Service Entrance within the boundaries of the City if the customer requests in writing that the City provide such service and the City pays PacifiCorp in accordance with Section 7.
 - 5.2 PacifiCorp may provide Electric Service to an Existing Customer of the City having a Service Entrance outside the boundaries of the City if the customer requests in writing that PacifiCorp provide such service and PacifiCorp pays the City in accordance with Section 7.
 - 5.3 Subject to Section 6 and except as otherwise provided in this Agreement, the City and PacifiCorp may provide Electric Service to a Consumer previously or then receiving Electric Service from the other only upon mutual consent of the Consumer, and approval by the Idaho Public Utilities Commission pursuant to Idaho Code § 61-334B.
 - 5.4 Nothing in this Agreement shall be construed to affect the rights of any Consumer to petition the commission for relief under the Idaho Electric Supplier Stabilization Act (the "Act").
 - 5.5 The Parties shall work together in good faith to accomplish any Consumer transfer(s) pursuant to this Agreement.
6. Annexations. In order to avoid duplication of electric facilities, upon annexation into the City of property owned by a customer of PacifiCorp, if the City elects to provide service to any customer within the annexed area, the City shall provide Electric Service to all customers within the annexed area, and shall, prior to such service, make payment to PacifiCorp of just compensation in accordance with Section 7 hereof.
7. Payments Upon Transfer. If Electric Service to a customer is transferred from the City or PacifiCorp to the other (the "Acquiring Utility") pursuant to this Agreement, the Acquiring Utility shall pay the other Party just compensation for

the distribution facilities. The Parties agree that such just compensation shall be determined in accordance with the following.

- (a) The Acquiring Utility will pay the other utility an amount equal to 167% of the total of the respective customer's electric bills from the prior twelve months.
- (b) The Acquiring Utility will purchase, if no longer needed by the other utility and required for new service, poles, wires, cross arms, insulators, guys and other facilities. The purchase price for such items will be based on the current price levels, adjusted for age and service ability.

Provided, however, that if circumstances exist such that the foregoing cannot reasonably be applied to provide just compensation, the Parties will negotiate in good faith to arrive at a determination of such just compensation.

- 8. Term. This Agreement is subject to, and shall become effective only upon approval by the Commission. The duration of this Agreement shall be for Ten (10) years; provided, however, that this Agreement shall be extended automatically for successive periods of Ten (10) years upon the same terms and conditions set forth in this Agreement, unless one of the Parties notifies the other, not less than Sixty (60) days prior to the end of the initial, or renewal term of the intent not to renew the Agreement.
- 9. Breach; Non-Waiver. If either Party breaches any provision of this Agreement, the other Party shall have the right to terminate the Agreement, at its sole option, and/or pursue its remedies at law or equity. No waiver of any breach of this Agreement shall constitute a waiver of any other or subsequent breach. If any action is brought to enforce this Agreement or any provision thereof, to rescind the same, to collect damages for an alleged breach or for declaratory judgment there under, the prevailing Party in such action shall be entitled to reasonable attorney's fees.
- 10. Integration. This Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof and shall supersede that certain Idaho Falls Allocation Agreement dated May 27, 2005.

11. Notice. Notice allowed or required to be given under this Agreement shall be considered given by depositing such notice in the United States mail with postage prepaid and properly addressed to the Party. Notice shall be addressed to the following addresses until notice is give by the respective Party of a different address:

Idaho Falls Power
140 S. Capital
Box 50220
Idaho Falls, Idaho 83405

PacifiCorp
dba Utah Power & Light
Office of General Counsel
825 NE Multnomah, Ste. 2000
Portland, Oregon 97232

12. In consideration of the premises and the terms and conditions of this Agreement, PacifiCorp agrees not to challenge the City's legal authority to provide Electric Service to the Existing Customers outside the municipal boundaries of the City. However, nothing in this Agreement shall be construed as a recognition or acknowledgement by PacifiCorp of the City's or any other municipality's authority to provide Electric Service to customers located beyond municipal boundaries.



CITY OF IDAHO FALLS

BY: Linda Nilam

Its: Mayor

PACIFICORP

By: M. R. Wright

Its: EP, Power Delivery