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IDAHO PUBLIC  
UTILITIES COMMISSION



December 1, 2005

**VIA OVERNIGHT MAIL**

Idaho Public Utilities Commission  
472 West Washington  
Boise, ID 83702-5983

PAC-E-05-11

Attention: Jean D. Jewell  
Commission Secretary

Re: Application of PacifiCorp for Approval of an Electric Service Agreement  
with Nu-West Industries

PacifiCorp (d.b.a. Utah Power & Light Company), hereby submits for filing an original and eight (8) copies of PacifiCorp's Application for approval of an electric service agreement with Nu-West Industries dated October 31, 2005. The Agreement replaces an electric service agreement dated December 10, 2001, approved by the Idaho Public Utilities Commission in Case No. PAC-E-01-17.

It is respectfully requested that all formal correspondence and Staff requests regarding this material be addressed to:

By e-mail (preferred): [datarequest@pacificorp.com](mailto:datarequest@pacificorp.com)

By regular mail: Data Request Response Center  
PacifiCorp  
825 NE Multnomah, Suite 800  
Portland, Oregon, 97232

By fax: (503) 813-6060

Sincerely,

D. Douglas Larson  
Vice President, Regulation

cc: Service List

Enclosures

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UTILITIES COMMISSION

James M. Van Nostrand, ISB# 7323  
STOEL RIVES LLP  
900 SW Fifth Avenue, Suite 2600  
Portland, OR 97204-1268  
Telephone: (503) 294-9679  
Fax: (503) 220-2480

Attorney for PacifiCorp dba Utah  
Power & Light Company

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-05-11

APPLICATION OF PACIFICORP

This Application is filed by PacifiCorp dba Utah Power & Light Company ("Utah Power" or the "Company") for approval of an electric service agreement with Nu-West Industries ("Nu-West") dated October 31, 2005 ("Agreement"). The Agreement replaces an electric service agreement ("Existing Agreement") dated December 10, 2001, approved by the Idaho Public Utilities Commission ("Commission") in Case No. PAC-E-01-17.

1. Utah Power is a public utility doing business in the state of Idaho and subject to the jurisdiction of the Commission.
2. Nu-West is a Delaware corporation conducting business at facilities for the production of phosphate fertilizer located at Soda Springs, Idaho.
3. Communications regarding this Application should be addressed to:

APPLICATION OF PACIFICORP - 1

PortInd2-4541666.1 0020017-00047

Bob Lively  
PACIFICORP  
201 South Main, Suite 2300  
Salt Lake City, Utah 84140-0023  
Telephone: (801) 220-4052  
Fax: (801) 220-3116

James M. Van Nostrand  
STOEL RIVES LLP  
900 SW Fifth Avenue, Suite 2600  
Portland, OR 97204-1268  
Telephone: (503) 294-9679  
Fax: (503) 220-2480

4. A copy of the Agreement is attached to this Application.
5. The Existing Agreement governing electric service to Nu-West terminates effective December 31, 2005. The Agreement will become effective January 1, 2006, subject to approval by the Commission, and will terminate on December 31, 2010.
6. On October 26, 2005, in compliance with Commission in Order No. 29833, approving the Stipulation in Case No. PAC-E-05-1, the Company submitted the Revised Tariff Sheet No. 400.2, reflecting new rates for Nu-West pursuant to the Stipulation. The Company requested an effective date of January 1, 2006.
7. Section 8.1 of the Agreement provides that PacifiCorp may terminate the Agreement if the order approving the Agreement does not provide for the direct assignment of the revenues and costs from the Agreement to the Idaho jurisdiction for rate making purposes. Accordingly, the Company requests that the order approving the Agreement include an acknowledgement that the revenues and costs related to service under the Agreement are properly assigned to the state of Idaho for rate making purposes.

8. Section 8.3 of the Agreement provides that Commission has the authority to modify the rates for service under the Agreement under the same standard that applies to tariff customers generally. Commission-authorized tariff rate changes, including surcharges or credits that apply to service to tariff customers generally, will also apply to service under the Agreement. Accordingly, the Company requests that, except as provided in Section 4.2 of the Agreement, the order approving the Agreement include an acknowledgement that rates for service to Nu-West are subject to modification by the Commission under the same standard that applies to tariff customers generally.

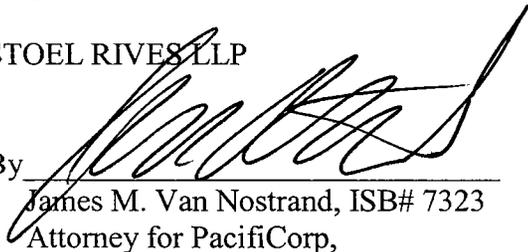
9. Utah Power requests that this Application be processed under modified procedure pursuant to Rules 201 through 204 of the Commission's Rules of Procedure.

WHEREFORE, Utah Power respectfully requests that the Commission process this Application under modified procedure and approve the new electric service agreement dated October 31, 2005 for service to Nu-West's El Paso substation.

DATED: December 1, 2005.

Respectfully submitted,

STOEL RIVES LLP

By 

James M. Van Nostrand, ISB# 7323  
Attorney for PacifiCorp,  
dba Utah Power & Light Company

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

This ELECTRIC SERVICE AGREEMENT (this "Agreement"), entered into on this 21<sup>ST</sup> day of October, 2005 is by and between PacificCorp, an Oregon corporation ("PacificCorp"), 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. PacificCorp and Nu-West are sometimes referred to separately as a "Party" and collectively as "Parties".

WHEREAS, PacificCorp 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, PacificCorp 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 Agreement: This Electric Service Agreement and any renewals thereof.
- 1.2 Billing Demand: The Demand in kilowatts ("kW") which is used to determine the Demand (power) charges in accordance with the provisions of this Agreement.
- 1.3 Billing Period: The period of approximately thirty (30) days intervening between regular successive meter readings.
- 1.4 Commission: The Public Utilities Commission of the state of Idaho.
- 1.5 Contract Demand: The specified Demand in kW that Nu-West requires to meet its load requirements and that PacificCorp 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.

- 1.6 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.
- 1.7 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.
- 1.8 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
- 1.9 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.
- 1.10 Heavy Load Hours ("HLH"): Hours of the day from the hour ending 0800 through the hour ending 2300 Mountain Prevailing Time ("MPT") each Monday through Friday except Holidays. Light Load Hours ("LLH") means all other times not included in HLH.
- 1.11 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).
- 1.12 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.
- 1.13 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.
- 1.14 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.
- 1.15 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.

1.16 Tariff Rates: The Commission approved rates applicable to Nu-West, including, but not limited to, customer charges, demand charges, energy charges, surcharges, and credits, as specified in Idaho Electric Service Schedule No. 400 or its successor.

1.17 Termination Date: This Agreement terminates on December 31, 2010.

## SECTION 2: TERM AND TERMINATION

This Agreement shall become effective on January 1, 2006 ("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.

## 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	\$ 11.19	\$ 9.03
Energy Charge	\$ per MWh		
HLH	Monday through Friday HE0800 to HE2300 MPT	\$ 23.11	\$ 19.22
LLH	All other hours and Holidays	\$ 17.33	\$ 17.33

- 4.2 **Semi-Annual Adjustment:** The charges specified in this Section shall be adjusted semi-annually effective July 1, 2006 and January 1, 2007 and each July 1 and January 1 thereafter, so that they equal the Tariff Rates. This shall be the sole and exclusive means of adjustment to the unit charges contained herein.
- 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 ¾ 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.

- 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 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**

By: 

Name: Stan K. Watters  
Title: SVP, Commercial & Trading

Address:

825 NE Multnomah Street  
Portland, OR 97232

Fax: (503) 813-7190

**NU-WEST INDUSTRIES, INC.**

By: 

Name: Chris Tworck  
Title: VP, Supply Management

Address:

Nu-West Industries, Inc.  
13131 Lake Fraser Drive SE  
Calgary, Alberta  
T2J 7E8 Canada

Fax: (405) 225-7616

**CERTIFICATE OF SERVICE**

I hereby certify that on this 1st day of December, 2005, I caused to be served, via U.S. mail, a true and correct copy of the foregoing document to the following:

Chris Tworek  
Nu-West Industries, Inc.  
13131 Lake Fraser Drive SE  
Calgary, Alberta  
T2J 7E8 Canada

  
\_\_\_\_\_  
Peggy Ryan  
Supervisor Regulatory Administration