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Attorney for the Commission Staff

## **BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF THE APPLICATION OF</b>	)	
<b>PACIFICORP DBA UTAH POWER &amp; LIGHT</b>	)	<b>CASE NO. PAC-E-05-11</b>
<b>COMPANY FOR APPROVAL OF AN</b>	)	
<b>ELECTRIC SERVICE AGREEMENT WITH</b>	)	<b>COMMENTS OF THE</b>
<b>NU-WEST INDUSTRIES.</b>	)	<b>COMMISSION STAFF</b>
	)	

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**COMES NOW** the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Scott Woodbury, Deputy Attorney General, and in response to the Notice of Application, Notice of Modified Procedure and Notice of Comment/Protest Deadline issued on December 6, 2005 in Case No. PAC-E-05-11, submits the following comments.

### **BACKGROUND**

On December 2, 2005, 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 October 31, 2005. The Agreement replaces an Electric Service Agreement (Prior Agreement) dated December 10, 2001, approved by the Commission in Case No. PAC-E-01-17.

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 terminates on December 31, 2005. The submitted Agreement will become effective January 1, 2006, subject to approval by the Commission, and will terminate on December 31, 2010.

In compliance with Commission Order No. 29833 approving the Stipulation in Case No. PAC-E-05-1, the Company on October 26, 2005 submitted 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.

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

#### **MONTHLY CHARGES**

		<u><b>May-October</b></u>	<u><b>November-April</b></u>
Customer Charge	\$ Per Month	\$282.89	\$282.89
Demand Charge	\$ Per kW-Month	\$ 11.19	\$ 9.03
Energy Charge	\$ Per MWh		
(HLH)	Monday – Friday	\$ 23.11	\$ 19.22
	HE0800-HE2300 MPT		
(LLH)	All other hours and holidays	\$ 17.33	\$ 17.33

The demand and energy charges identified in the Agreement are to be uniformly adjusted semi-annually effective July 1, 2006 and January 1, 2006 and each July 1 and January 1 thereafter, so that they equal the tariff rates. Agreement Section 4.2.

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 ratemaking purposes.

Section 8.3 of the Agreement provides that the 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 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.

## **STAFF REVIEW**

The proposed Agreement closely mirrors the current agreement approved in Order No. 28984, Case No. PAC-E-01-17. The notable changes are in the revised rates and the adjustment schedule of the contracted rates detailed in Section 4.2.

Staff has evaluated the proposed rates for service to Nu-West and finds that the rates comply with the approved Stipulation and the Commission's Order No. 29833 in Case No. PAC-E-05-1. The proposed rates represent a 1.7 % increase over the present agreement rates that went into effect January 1, 2002 and expire in December 2005.

With respect to the contract rates going forward, Section 8.3 of the Agreement provides that the Commission has the authority to modify the rates for service under the Agreement using the same standard that applies to tariff customers. Commission-authorized tariff rate changes, including surcharges or credits that apply to service to tariff customers, 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. Staff believes this is appropriate.

Section 4.2 of the Agreement allows for Semi-annual Adjustments in the charges on July 1 and January 1 as required by tariff rate changes authorized by the Commission. The Prior Agreement only allows for annual adjustments in the charges on January 1. The Staff supports this proposed modification to the adjustment schedule to implement on a more timely basis any rate changes approved by the Commission. Staff notes that Service Schedule 400, sheet No. 400.2 still includes a reference to "Annual Adjustments". If the Commission approves the proposed change to Semi-annual Adjustments this language should be revised to reflect that change. Staff has discussed this with the Company and it concurs.

Service Schedule 400, Sheet No. 400.2 defines how rate adjustments will be made. Specifically it states that the demand and energy charges shall be uniformly adjusted and the customer charge shall remain at the same level throughout the term of the Agreement. Staff's

primary concern is that the necessary revenue requirement of the Company is met, and that no subsidy of Nu-West is required from other Idaho customers. The tariff sheet language, however, seems to be inconsistent with the language in Agreement Section 8.3 that establishes that this Agreement is subject to the same standard that applies to tariff customers generally. Staff believes the language in Tariff Schedule 400, which places limitations on how future rate changes will be made, is ultimately subject to the Commission authority under the Tariff Standard.

In the Prior Agreement, Section 4.2 provides a detailed formula that stipulates how adjustments in rates are to be calculated. Those adjustments are based on changes in the base rates for all non-special contract customers. The proposed language in Section 4.2 states, "The charges specified in this Section shall be adjusted.... so that they equal the Tariff Rates." In Section 1.16 Tariff Rates are defined as "The Commission approved rates applicable to Nu-West.... as specified in Idaho Electric Service Schedule No. 400 or its successor."

Often times Commission Orders do not directly address the rates of Special Contract Customers. This was not a particular problem with the Prior Agreement because adjustments were tied to changes in base rates. Therefore, if the Order did not specifically address special contracts it was still clear how changes would be made. With the proposed change, future Commission Orders will have to directly address how any change in rates or surcharges will affect the rates and charges to Nu-West. Presently, both Monsanto and Nu-West are included on Tariff Schedule 400. To avoid confusion Staff proposes that Nu-West rates and charges be placed on a separate tariff as is required for all other tariffed customer classes. A revised tariff must be filed each time there is a change in Nu-West tariff rates or charges.

The Company agrees that they must refile Schedule 400 with the corrections noted, providing for Semi-annual Adjustments. However, because Monsanto is also on Schedule 400, the Company would like to separate the tariffs in their general rate case filing which is expected this spring.

Finally, the Company's Application and the attached Agreement Section 8.1 conditions the Agreement on a Commission finding in this case that revenues and costs related to service under the Agreement must be assigned to the state of Idaho for ratemaking purposes. Section 8.1 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

customer for ratemaking purposes within the state of Idaho. Nu-West was treated as an Idaho situs customer in the Prior Agreement, Case No. PAC-E-01-17, Order No. 28984. Staff agrees that it is reasonable to continue to include Nu-West as an Idaho jurisdictional customer and directly assign revenues and allocate costs to the Idaho jurisdiction for ratemaking purposes.

## RECOMMENDATION

The proposed rates and charges are consistent with the Commission's Order No. 29833 in Case No. PAC-E-05-1. Staff notes that the proposed rates represent a 1.7% increase over rates that expire December 31, 2005 and that the rates proposed are acceptable to both parties. Staff recommends that the Commission approve the proposed rates and charges.

Staff believes, and the contract parties seem to agree, that the Commission retains full jurisdiction over Nu-West contract rates under the Tariff Standard.

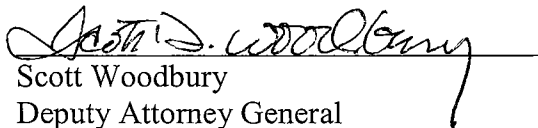
Proposed changes to Agreement Section 4.2 eliminates the annual rate adjustment in favor of a semi-annual tariff related adjustment. Staff believes this is an improvement over the previous contract between PacifiCorp and Nu-West and recommends approval.

Staff recommends that the Company be directed to file a separate tariff sheet for Nu-West each time tariff rates change and references to "Annual adjustment" be changed to "Semi-annual adjustments".

Staff supports continued use of previously approved agreement language that treats Nu-West as a situs customer for purposes of jurisdictional allocation.

Staff recommends that the PacifiCorp/Nu-West Electric Service Agreement be approved.

Respectfully submitted this 16<sup>th</sup> day of December 2005.

  
Scott Woodbury  
Deputy Attorney General

Technical Staff: Dave Schunke  
Bryan Lanspery

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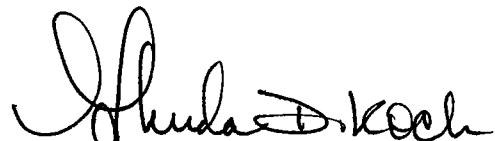
## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 16<sup>TH</sup> DAY OF DECEMBER 2005, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. PAC-E-05-11, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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SECRETARY

CERTIFICATE OF SERVICE