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September 16, 2015

Oregon Public Utility Commission  
Attn: Filing Center  
3930 Fairview Industrial Drive SE  
PO Box 1088  
Salem, OR 97308

Re: In the Matter of PacifiCorp dba Pacific Power and Umatilla Electric Cooperative  
Docket No. UA 167

Filing Center:

Enclosed please find revised Attachment A to the Joint Application filed by PacifiCorp and Umatilla Electric Cooperative on August 20, 2015 in Docket UA 167. This revised Exhibit A is filed on behalf of the joint applicants and is to replace the originally filed Exhibit A in its entirety.

Thank you for your assistance with this filing. Should you have any questions, please feel free to contact me.

Very truly yours,



Thomas M. Grim

TMG:sk  
Enclosure

4822-3848-8104, v. 1

## CUSTOMER ALLOCATION AGREEMENT

This Customer Allocation Agreement (the "Agreement") is entered into by and between PacifiCorp d/b/a/ Pacific Power ("PacifiCorp"), an Oregon corporation, and Umatilla Electric Cooperative ("UEC") an Oregon cooperative corporation, each hereinafter sometimes referred to as a "Party" or together as the "Parties."

### RECITALS

A. PacifiCorp and UEC are each engaged in the retail sale of electricity to customers within defined service territories approved by the Public Utility Commission of Oregon (the "Commission"). PacifiCorp's and UEC's respective service territories include areas located adjacent to each other in Umatilla County, Oregon.

B. UEC provides retail electric service to a data center facility ("Facility") owned and operated by [REDACTED] through its subsidiary [REDACTED]. The Facility is located on Tax Lot No. 5N-28-14-2500 in Umatilla County, Oregon. The majority of the Facility is located within UEC's service territory. For purposes of this Agreement, the term [REDACTED] shall mean [REDACTED] and any of its subsidiaries (including [REDACTED]), assignees or successors in interest.

C. The Facility includes an existing building, the majority of which is located within UEC's service territory, but partially extends into PacifiCorp's service territory ("Existing Building"). UEC provides electric service to the Existing Building.

D. [REDACTED] desires to construct an expansion of the Existing Building ("Expansion Building") that will utilize the northern wall as a common wall of the Existing Building and the Expansion Building. The planned Expansion Building will be located within PacifiCorp's service territory. The Existing Building and the planned Expansion Building are shown on Exhibit A to this Agreement. That portion of the Existing Building that extends into PacifiCorp's service territory and the Expansion Building shall be referred to herein as the "Allocated Buildings".

E. UEC desires to serve the Allocated Buildings via its [REDACTED] which UEC constructed for the sole purpose of serving the Facility. The [REDACTED] [REDACTED] has sufficient capacity to serve the Allocated Buildings.

F. [REDACTED] desires to receive retail electric service for the Allocated Buildings from UEC.

G. The Parties believe that the customer allocation provided for in this Agreement will eliminate or avoid unnecessary duplication of facilities, and will promote the efficient and economic use and development and the safety of operation of the utility systems of the Parties, while providing adequate and reasonable service to all affected customers.

H. Therefore, PacifiCorp and UEC hereby desire to enter into this Agreement to seek Commission approval for the proposed customer allocation and to complete the transactions contemplated by this Agreement on the terms and conditions set forth herein.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants, promises and releases set forth herein, the Parties agree as follows:

### **SECTION I CUSTOMER ALLOCATION**

1.01 Effective Date. This Agreement shall become effective upon the execution of this Agreement by both Parties ("Effective Date"); Provided, however, that Section 1.02 (a) and Section 1.02 (b) of this Agreement shall be enforceable only upon approval of this Agreement by the Commission in accordance with ORS 758.415.

1.02 Allocation of Rights and Obligations. Subject to all terms and conditions of this Agreement:

(a) UEC shall have the right and obligation to provide retail electric service to the Allocated Buildings.

(b) PacifiCorp shall have no right or obligation to provide retail electric service to the Allocated Buildings.

(c) This Agreement does not provide for a permanent adjustment to PacifiCorp's or UEC's respective service territories. Instead, this Agreement allocates the obligation to provide retail electric service to the Allocated Buildings to UEC consistent with the terms and conditions herein.

(d) This Agreement shall not increase, decrease, alter, or transfer the service territories, assets or liabilities of either Party.

1.03 Release of Claims. PacifiCorp and UEC mutually agree to release and discharge one another, including their respective successors in interest, assignees, and their officers, directors, employees, shareholders, members and agents from all claims, demands, causes of action, suits, damages, liabilities, compensation, costs, expenses and losses, whether known or unknown, that arise from or are related to the customer allocation herein, including UEC's provision of retail electric service to the Allocated Buildings.

1.04 Term. The term of this Agreement will continue for as long as [REDACTED] or any of its subsidiaries, assignees, or successors in interest use or occupy the Allocated Buildings and desire retail electric service from UEC. This Agreement will automatically terminate once the Allocated Buildings are no longer used or occupied by [REDACTED] or any of its subsidiaries, assignees, or successors in interest.

1.05 Reservation. Nothing in this Agreement shall constitute an admission of liability or waiver of rights of either Party and each Party reserves all rights under applicable law to provide retail electric service in accordance with applicable Oregon law upon termination of this Agreement.

## **SECTION II PACIFICORP REPRESENTATIONS AND WARRANTIES**

PacifiCorp represents and warrants as follows:

2.01 Organization and Powers of PacifiCorp. PacifiCorp is an Oregon corporation, duly organized and legally existing under the laws of the State of Oregon. PacifiCorp has all necessary corporate power and authority to own, lease and operate its properties and assets and to carry on its business as now conducted and as proposed to be conducted.

2.02 Authority Relative to Agreement. PacifiCorp has the power and authority to execute and deliver this Agreement and to consummate the transaction contemplated herein. This Agreement has been duly and validly authorized, executed and delivered in accordance with the requirements of applicable law and constitutes the valid and binding obligation of PacifiCorp enforceable in accordance with its terms, except as enforcement may be limited by Commission approval pursuant to ORS 758.415, applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and except that the availability of the equitable remedies of specific performance and injunctive relief are subject to the discretion of the court before which any proceeding may be brought.

2.03 Governmental Authorization. Except for the approval of the Commission pursuant to ORS 758.415, no declaration, filing or registration with, or notice to, or authorization, consent or approval of, any governmental or regulatory body or authority is necessary for the execution and delivery of this Agreement by PacifiCorp or the consummation by PacifiCorp of the transactions contemplated by this Agreement.

2.04 Non-Contravention; Approvals. The execution and delivery of this Agreement and the consummation of the customer allocation contemplated hereby will not violate, conflict with or result in a breach of any provision of, or constitute a default under, or result in the termination of any note, bond, mortgage, indenture, deed of trust, contract, lease or other instrument, obligation or agreement of any kind to which PacifiCorp is now a party.

**SECTION III  
REPRESENTATIONS AND WARRANTIES OF UEC**

3.01 Organization and Powers of UEC. UEC is an Oregon cooperative corporation duly organized and legally existing under the laws of the State of Oregon. UEC has all necessary corporate power and authority to own, lease and operate its properties and assets and to carry on its business as now conducted and as proposed to be conducted.

3.02 Authority Relative to Agreement. UEC has the power and authority to execute and deliver this Agreement and to consummate the transaction contemplated herein. This Agreement has been duly and validly authorized, executed and delivered in accordance with the requirements of applicable law and constitutes the valid and binding obligation of UEC enforceable in accordance with its terms, except as enforcement may be limited by Commission approval pursuant to ORS 758.415, applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and except that the availability of the equitable remedies of specific performance and injunctive relief are subject to the discretion of the court before which any proceeding may be brought.

3.03 Governmental Authorization. Except for approval of the Commission pursuant to ORS 758.415, no declaration, filing or registration with, or notice to, or authorization, consent or approval of, any governmental or regulatory body or authority is necessary for the execution and delivery of this Agreement by UEC or the consummation by UEC of the transactions contemplated by this Agreement.

3.04 Non-Contravention; Approvals. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not violate, conflict with or result in a breach of any provision of, or constitute a default under, or result in the termination of any note, bond, mortgage, indenture, deed of trust, contract, lease or other instrument, obligation or agreement of any kind to which UEC is now a party.

**SECTION IV  
MUTUAL COVENANTS**

4.01 Press Releases. No press releases or other public announcements concerning the transactions contemplated by this Agreement shall be made by either Party without the consent of the other Party, which consent shall not be unreasonably withheld; provided, however, that nothing herein shall operate to prevent a Party from supplying such information or making statements as required by governmental authority or in order for a Party to satisfy its legal obligations (prompt prior notice of which shall in any such case be given to the other Party).

4.02 Conditions and Best Efforts. Subject to the terms of this Agreement and fiduciary obligations under applicable law, PacifiCorp and UEC shall each use commercially reasonable efforts to effectuate the transactions contemplated by this Agreement and to fulfill all of the conditions of its obligations under this Agreement and will do all such acts and things as

Customer Allocation Agreement Between PacifiCorp and Umatilla Electric Cooperative

reasonably may be required to carry out its obligations hereunder and to consummate and complete this Agreement, including, without limitation of the foregoing, promptly making application for approval by the Commission in accordance with ORS 758.415 to 758.425. Each Party acknowledges and agrees to represent to the Commission that this Agreement will eliminate or avoid unnecessary duplicating of facilities and will promote the efficient and economic use and development and the safety of operation of the utility systems of the Parties while providing adequate and reasonable service to [REDACTED] and the Allocated Buildings. Notwithstanding the foregoing, neither Party shall be required in connection with the Commission's approval to agree to any payment or agree to any conditions of approval that are unacceptable to such Party.

## **SECTION V TERMINATION**

5.01 Termination. In addition to the automatic termination provided for in Section 1.04, this Agreement may be terminated and abandoned at any time:

- (a) if the Parties agree in writing to terminate this Agreement by mutual consent;
- (b) by either Party if the Commission determines in a final order not to grant its approval of this Agreement pursuant to ORS 758.425; or
- (c) by either Party if any court of competent jurisdiction in the United States or any state will have issued an order, judgment or decree (other than a temporary restraining order) restraining, enjoining or otherwise prohibiting the transactions contemplated in this Agreement.

5.02 Effect of Termination. Any termination pursuant to this Section V will relieve both the Parties hereto of all of their obligations set forth herein and any liability with respect thereto; provided that termination of this Agreement does not relieve either Party of liability for breach of this Agreement.

## **SECTION VI ASSIGNMENT**

6.01 Assignment. Neither party shall assign its rights under this Agreement to any third party without the written consent of the other Party to this Agreement, which consent shall not be unreasonably withheld.

6.02 No Discharge. No assignment of this Agreement shall operate to discharge the assignor of any duty or obligation hereunder without the written consent of the other Party.

## SECTION VII MISCELLANEOUS

### 7.01 Indemnification.

From and after the Effective Date, PacifiCorp shall defend, hold harmless, and indemnify UEC and its directors, officers, employees, members, agents, successors and assigns, from and against any third-party allegation or claim, or any loss, damage, settlement, cost, expense and any other liability (including reasonable attorneys' fees incurred) arising from PacifiCorp's performance of its obligations under this Agreement, except to the extent caused by the negligent act or omission or willful misconduct of UEC or its employees, contractors and agents.

From and after the Effective Date, UEC shall defend, hold harmless, and indemnify PacifiCorp and its directors, officers, employees, members, agents, successors and assigns, from and against any third-party allegation or claim, or any loss, damage, settlement, cost, expense and any other liability (including reasonable attorneys' fees incurred) arising from UEC's performance of its obligations under this Agreement, except to the extent caused by the negligent act or omission or willful misconduct of PacifiCorp or its employees, contractors and agents.

7.02 Jury Waiver. PacifiCorp and UEC hereby irrevocably waive, to the fullest extent possible, all right of trial by jury in any action, proceeding, or counterclaim arising out of or in connection with this Agreement.

7.03 Amendment. This Agreement may be amended only by an instrument in writing executed by the Parties which expressly refers to this Agreement and states that it is an amendment hereto.

7.04 Section and Paragraph Headings. The section and paragraph headings contained in this Agreement are for reference purposes only and will not in any way affect the meaning or interpretation of this Agreement.

7.05 Waiver. Any of the terms or conditions of this Agreement may be waived at any time and from time to time, in writing, by the Party entitled to the benefit of such terms or conditions.

7.06 Choice of Law. This Agreement will be subject to and be construed under the laws of the State of Oregon, exclusive of conflict of law provisions.

7.07 Prevailing Party Costs. If a Party commences an action against the other Party because of a breach by that Party of its obligations under this Agreement or any documents executed in consummation with the transaction contemplated by this Agreement, the prevailing party in any such action shall be entitled to recover from the losing Party its expenses, including reasonable attorneys' fees, incurred in connection with the prosecution or defense of such action, and any appeal thereof.

7.08 Notices. All notices, requests, demands and other communications given by UEC or PacifiCorp will be in writing and will be deemed to have been given when telecopied with confirmed transmission, when hand delivered, or four business days after deposit into the United States mail, to the following addresses:

<p>If to PacifiCorp:</p> <p>Oregon Dockets PacifiCorp 825 NE Multnomah Street, Suite 2000 Portland, OR 97232 Phone: 503.813.5542 Email: <a href="mailto:oregondockets@pacificorp.com">oregondockets@pacificorp.com</a></p> <p>With a copy to:</p> <p>PacifiCorp Legal Department 825 NE Multnomah Street, Suite 2000 Portland, OR 97232 Attn: Oregon Regulatory Attorney Fax: 503.813.7252</p>	<p>If to UEC:</p> <p>Umatilla Electric Cooperative Attn: General Manager and CEO 750 W. Elm Ave. P.O. Box 1148 Hermiston, OR 97838 Phone: 541.567.6414</p> <p>With a copy to:</p> <p>Cable Huston LLP Attn: Thomas M. Grim 1001 SW Fifth Ave, Suite 2000 Portland, OR 97204 Email: <a href="mailto:tgrim@cablehuston.com">tgrim@cablehuston.com</a> Fax: 503.224.3176</p>
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7.09 Integrated Agreement. This Agreement, and the exhibits hereto, when executed, constitute the entire agreement between the Parties hereto and supersedes all prior agreements and understandings, oral and written, between the Parties with respect to the subject matter hereof.

7.10 Counterparts. This Agreement may be executed in two or more counterparts, each of which will for all purposes be deemed to be an original and both of which will constitute one and the same instrument.

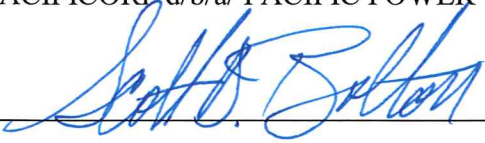
7.11 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be construed as nearly as possible to give effect to the original intent of the Parties.

7.12 Third Party Beneficiaries. [REDACTED] shall be an express third party beneficiary to Section 1.02 of this Agreement. Nothing express or implied in this Agreement is intended or shall be construed to confer upon or give to a person, firm, corporation or municipality other than [REDACTED] and the parties hereto any rights or remedies under or by reason of this Agreement or any transaction contemplated herein.



7.13 No Admission. Nothing express or implied in this Agreement is intended or shall be construed to be an admission of any fact concerning the PacifiCorp service territory or the UEC service territory.

PACIFICORP d/b/a/ PACIFIC POWER



By: SCOTT D. BOLTON

Its: VP External Affairs

Date: 7/15/15

UMATILLA ELECTRIC COOPERATIVE



By: M. Steven Eldrige

Its: General Manager & CEO

Date: 7/21/15

