

May 4, 2018

***VIA ELECTRONIC FILING***

Public Utility Commission of Oregon  
201 High Street SE, Suite 100  
Salem, OR 97301-3398

Attn: Filing Center

**RE: UP \_\_\_ —PacifiCorp's Application for Approval of the Sale of Property**

PacifiCorp d/b/a Pacific Power encloses for filing its Application for Approval of the Sale of Property in Taylorsville, Utah.

PacifiCorp respectfully requests that all information requests regarding this matter 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 Street, Suite 2000  
Portland, Oregon, 97232

Please direct any informal inquiries regarding this filing to me at (503) 813-6583.

Sincerely,



Natasha Siores  
Manager, Regulatory Affairs

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UP \_\_\_\_\_

In the Matter of

PACIFICORP, d/b/a/ PACIFIC POWER

Application for Approval of the Sale of  
Certain Assets in Taylorsville, Utah.

**PACIFICORP'S APPLICATION  
FOR APPROVAL**

Under ORS 757.480(1)(a) and in accordance with OAR 860-027-0025, PacifiCorp, d/b/a/ Pacific Power, seeks approval from the Public Utility Commission of Oregon (Commission) of the asset sale transaction described in the Purchase and Sale Agreement (PSA), between PacifiCorp and the City of Taylorsville, Utah (Taylorsville). Under the PSA, PacifiCorp proposes to sell to Taylorsville certain street-lighting facilities located within Taylorsville's annexed boundaries for a total asset purchase price of \$649,786. The assets proposed to be sold under the PSA are classified as Utah situs distribution, which means the Oregon allocation is zero and these assets are not included in Oregon rates. PacifiCorp files this Application in accordance with Order No. 14-254, following the Commission's directive to interpret ORS 757.480 as applying to the total value of an asset disposition rather than the Oregon-allocated value. A copy of the PSA is attached hereto as Attachment A. In support of this Application, PacifiCorp states the following:

**I. Background**

PacifiCorp owns streetlight facilities, including poles, towers, fixtures, conductor, and street lighting and signal systems in Taylorsville, Utah. Taylorsville has requested to purchase the streetlight facilities throughout the city so they may own, maintain, and upgrade the streetlight facilities for the city.

Under the PSA, PacifiCorp proposes to sell to Taylorsville certain street-lighting facilities located within Taylorsville’s annexed boundaries for a total asset purchase price of \$649,786. The assets proposed to be sold to Taylorsville are classified as Utah situs distribution and are not included in Oregon rates. As more fully explained below, this transaction will not affect PacifiCorp’s ability to perform its public duties.

**II. Compliance with OAR 860-027-0025(1) Filing Requirements**

**A. Name and Address**

PacifiCorp’s exact name and address of its principal business office are:

PacifiCorp  
825 NE Multnomah Street  
Portland, OR 97232

**B. State in which incorporated; date of incorporation; other states in which authorized to transact utility business**

PacifiCorp is a corporation organized and existing under and by the laws of the State of Oregon. PacifiCorp’s date of incorporation is August 11, 1987. PacifiCorp is authorized to provide retail electric service in Oregon, California, Washington, Idaho, Wyoming and Utah.

**C. Communications and notices**

All notices and communications with respect to this Application should be addressed to:

Robert Betcone Jr.  
Senior Attorney  
825 NE Multnomah Street, Suite 1800  
Portland, OR 97232  
Telephone: 503.813.5620  
Email: [bob.betconejr@pacificorp.com](mailto:bob.betconejr@pacificorp.com)

PacifiCorp Oregon Dockets  
825 NE Multnomah Street, Suite 2000  
Portland, OR 97232  
Email: [OregonDockets@pacificorp.com](mailto:OregonDockets@pacificorp.com)

In addition, PacifiCorp respectfully requests that all data requests regarding this matter 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 2000  
Portland, OR 97232

Informal inquires may also be directed to Natasha Soares, Manager, Regulatory Affairs at (503) 813-6583.

**D. Principal officers**

NAME	TITLE
William H. Fehrman	Chairman of the Board & Chief Executive Officer of PacifiCorp
Cindy A. Crane	President & Chief Executive Officer, Rocky Mountain Power
Stefan Bird	President & Chief Executive Officer, Pacific Power
Nikki L. Kobliha	Vice President, Chief Financial Officer & Treasurer

**E. Description of business; designation of territories served**

PacifiCorp engages in the generation, purchase, transmission, distribution and sale of electric energy in Benton, Clackamas, Clatsop, Coos, Crook, Deschutes, Douglas, Gilliam, Hood River, Jackson, Jefferson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Marion, Morrow, Multnomah, Polk, Sherman, Tillamook, Umatilla, Wallowa, Wasco, and Washington Counties in Oregon. PacifiCorp also engages in the generation, purchase, transmission, distribution and sale of electric energy in the states of California, Idaho, Utah, Washington, and Wyoming.

**F. Statement showing for each class and series of capital stock: brief description; amount authorized; amount outstanding; amount held as required securities; amount pledged; amount owned by affiliated interests; amount held in any fund**

Not applicable. This transaction does not involve the sale of financial instruments or PacifiCorp stock.

**G. Statement showing for each class and series of long-term debt and notes: brief description of amount authorized; amount outstanding; amount held as required securities; amount pledged; amount held by affiliated interests; amount in sinking and other funds**

Not applicable. This transaction does not involve the sale of financial instruments.

**H. Purpose of application; description of consideration and method of arriving at amount thereof**

The purpose of this application is to satisfy ORS 757.480 and OAR 860-027-0025.

PacifiCorp files this application to obtain Commission approval of the sale of certain street-light facilities, including poles, towers, fixtures, and street lighting and signal systems to Taylorsville. The total transaction price is \$649,786.00. The transaction price was determined from the net book value of the assets (\$589,794), plus income tax (\$57,493), and legal/transaction costs (\$2,500). Refer to Exhibit C in Attachment A for a breakdown of the asset purchase price. All of the distribution assets proposed to be sold to Taylorsville under the PSA are situs-assigned to PacifiCorp's Utah jurisdiction. PacifiCorp files this application in accordance with Order No. 14-254, following the Commission's directive to interpret ORS 757.480 as applying to the total value of an asset disposition rather than the system-allocated value.

**I. Statement of facilities to be disposed of; description of present use and proposed use; inclusion of all operating facilities of parties to the transaction**

PacifiCorp will sell street light facilities to Taylorsville that include fiberglass poles, steel poles, wood poles, luminaires, overhead conductor, and underground cable. Refer to Exhibit B in Attachment A for a breakdown of the facilities. PacifiCorp has determined that selling the facilities sought by Taylorsville will not impair PacifiCorp's ability to provide reliable and safe electric service.

**J. Statement by primary account of cost of the facilities and applicable depreciation reserve**

The book value (cost) included in the Distribution Asset account, FERC accounts 364-373, of the street light facilities sold is \$589,794.

**K. Required filings with other state or federal regulatory bodies**

This transaction for the sale of Utah distribution property does not require approvals from the Public Service Commission of Utah or any other state or federal regulatory bodies.

**L. Facts relied upon by applicant to show transaction is within the public interest**

ORS 757.480 requires Commission approval for sales of property necessary and useful in the performance of public service with a value in excess of \$100,000. See ORS 757.480(1)(a). OAR 860-027-0025(1)(l) requires that the utility show that such a proposed sale is “consistent with the public interest.” The Commission has previously held that this standard requires only a “no harm” showing.<sup>1</sup>

The proposed transaction will not harm customers. PacifiCorp will maintain necessary easements to continue to operate and maintain safe and reliable electric service to its customers. The assets proposed to be sold to Taylorsville under the PSA are Utah situs and are not included in Oregon rates. PacifiCorp does not need to retain ownership of the street light facilities to continue to provide electric service. The transaction will result in

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<sup>1</sup> See, e.g., *In the Matter of a Legal Standard for Approval of Mergers*, Docket No. UM 1011, Order No. 01-778 (Sept. 4, 2001) (“The remainder of the statutory scheme, those statutes governing transfer, sale, affiliated interest transactions, and contracts, either expresses no standard (for instance, ORS 757.480, .485) and has been read to require a no harm standard, or contains a ‘not contrary to the public interest’ standard (ORS 757.490, .495.)”) (emphasis added); *In the Matter of the Application of PacifiCorp*, Docket No. UP 168, Order No. 00-112, at 6 (Feb. 29, 2000) (regarding the sale of the Centralia generating plant); *In the Matter of Portland General Electric*, Docket No. UP 158, Order No. 00-111, at 2 (Feb. 29, 2000) (regarding the sale of the Colstrip generating units); *In the Matter of the Application of Portland General Electric*, Docket Nos. UP 165/UP 170, Order No. 99-730, at 7 (Nov. 29, 1999) (regarding the sale of the Centralia generating plant).

lower maintenance costs for PacifiCorp, as Taylorsville will own, maintain, and upgrade the streetlight facilities for the city.

**M. Reasons relied upon for entering into the proposed transaction; benefits to customers**

Please refer to sections I. and L., and the Background Section, above.

**N. Amount of stock, bonds, or other securities, now owned, held or controlled by applicant, of the utility from which stock or bonds are proposed to be acquired**

Not applicable. This transaction does not involve the sale of stock or other financial instruments.

**O. Statement of franchises held; date of expiration; facilities of transferees**

Not applicable. This transaction will not affect PacifiCorp's service territory.

**III. Compliance with OAR 860-027-0025(2) Filing Requirements**

**A. Exhibit A—Articles of Incorporation**

Not applicable. Review of the Articles of Incorporation would not advance the Commission's analysis of this Application because the subject transaction involves the conveyance of utility property and does not affect PacifiCorp's corporate structure or governance.

**B. Exhibit B—Bylaws**

Not applicable. Review of PacifiCorp's bylaws would not advance the Commission's analysis of this Application because the subject transaction involves the conveyance of utility property and does not affect the company's corporate structure or governance.

**C. Exhibit C—Resolution of directors authorizing transaction**

Not applicable. This transaction did not require approval from the PacifiCorp's board of directors.

**D. Exhibit D—Mortgages, trust, deeds or indentures securing obligation of each party**

The majority of PacifiCorp's real property is subject to a lien under the Mortgage and Deed of Trust, dated as of January 9, 1989, from PacifiCorp to The Bank of New York Mellon Trust Company, N.A. (as successor to The Bank of New York Mellon) as Trustee, as amended and supplemented. PacifiCorp will either obtain a partial release of the corporate mortgage obligation against the property or will account for the disposition in the annual reconciliation of assets provided to the mortgagee in accordance with the disposition obligations section of the mortgage agreement.

**E. Exhibit E—Balance sheet showing booked amounts, adjustments to record the proposed transaction and pro forma, with supporting fixed capital or plant schedules in conformity with the forms in the annual report**

This transaction will not materially affect the company's balance sheet.

**F. Exhibit F—Known contingent liabilities**

There are no known contingent liabilities associated with this transaction.

**G. Exhibit G—Comparative income statements showing recorded results of operations, adjustments to record the proposed transaction and pro forma, in conformity with the form in the annual report**

Not applicable. The transaction will not materially affect the company's income statement.

**H. Exhibit H—Analysis of surplus for the period covered by income statements referred to in G**

Not applicable. The transaction will not materially affect the company's income statement.



**I. Exhibit I—Copy of contract for transaction and other written instruments**

Included with this Application as Attachment A is a copy of the Purchase and Sale Agreement by and between PacifiCorp and the City of Taylorsville.

**J. Exhibit J—Copy of each proposed journal entry to be used to record the transaction**

Please see Attachment B to this Application for the proposed journal entries to be used to record this transaction.

**K. Exhibit K—Copy of each supporting schedule showing the benefits, if any, which each applicant relies upon to support the facts required by (1)(l) of this rule and reasons as required by (1)(m).**

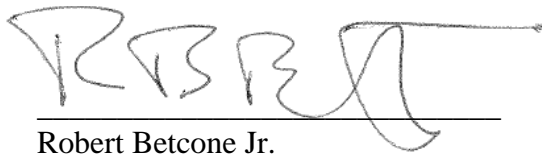
This Application and attachments contain the necessary information to demonstrate the benefits of this transaction and for the Commission to base its decision. However, the company is prepared to provide additional information as requested by the Commission.

**IV. Prayer for Relief**

PacifiCorp respectfully requests a Commission order (1) finding that the sale of street light facilities in the annexed boundary of Taylorsville will not harm PacifiCorp's customers and is consistent with the public interest; and (2) granting other such relief as the Commission deems necessary and proper.

Respectfully submitted this 4<sup>th</sup> day of May, 2018,

By:



Robert Betcone Jr.  
Senior Attorney  
PacifiCorp

**ATTACHMENT A**

**Agreement for Sale and Purchase of Distribution Assets**

**CITY OF TAYLORSVILLE, UTAH STREETLIGHTING FACILITIES  
PURCHASE AND SALE AGREEMENT**

This CITY OF TAYLORSVILLE, UTAH STREETLIGHTING FACILITIES PURCHASE AND SALE AGREEMENT (the "Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2017 ("Effective Date") by and between Rocky Mountain Power, an unincorporated division of PacifiCorp, ("Seller" or "Rocky Mountain Power"), and City of Taylorsville, a body corporate and politic of the State of Utah ("Buyer"), with reference to the following facts:

A. Seller is engaged in the business of generating, transmitting and distributing electric energy and in connection therewith owns certain streetlighting facilities located within Buyer's annexed boundaries, as more fully described on Exhibit B, attached hereto (the "Assets").

B. Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, Seller's right, title and interest in and to the Assets upon the terms and subject to the conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

**ARTICLE 1. DEFINITIONS**

**1.1 Certain Defined Terms.** For purposes of this Agreement, the following terms shall have the following meanings:

**1.1.1** "Asset Purchase Price" means the sum of Rocky Mountain Power's net depreciated book cost of the Assets, plus Separation Costs, plus Transactional Costs.

**1.1.2** "Separation Costs" means all reasonable costs, charges, and expenses incurred by Rocky Mountain Power to inspect and inventory the Assets, update all inventory and real estate records, and change pole number plates in the field where necessary to delineate Buyer ownership, all as conclusively determined by Rocky Mountain Power's SAP accounting system.

**1.1.3** "Transactional Costs" means all other reasonable costs, charges, and expenses incurred by Rocky Mountain Power including without limitation: costs to obtain regulatory approval, reasonable attorney fees, appraisal costs, overheads, expenses, and supplies and all other direct costs all as conclusively determined by Rocky Mountain Power's SAP accounting system.

**1.1.4** "Business Day" means a day that is not a Saturday, a Sunday, or a day on which banking institutions in the State of Utah are not required to be open.

**1.1.5** “Governmental Body” means any federal, state, local, municipal, or other government; any governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal; but does not include Buyer, any Buyer subsidiary, or any of their respective successors in interest or any owner or operator of the Assets (if otherwise a Governmental Body).

**1.1.6** “Knowledge” of a party shall mean with respect to such party, the extent of the actual knowledge of any Person listed on Exhibit A with respect to such party.

**1.1.7** “Laws” shall mean all applicable statutes, rules, regulations, ordinances, orders, common law and their legal and equitable principles, and codes of federal, state and local governmental and regulatory authorities having jurisdiction.

**1.1.8** “Licenses” shall mean registrations, licenses, permits, authorizations and other consents or approvals of Governmental Bodies.

**1.1.9** “Person” means any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union, or other entity or Governmental Body.

**1.1.10** “Taxes” shall mean (i) all federal, state, county and local sales, use, property, recordation and transfer taxes, and (ii) any interest, penalties and additions to tax attributable to any of the foregoing, but shall not include income and other taxes.

**1.1.12** “Affiliate” shall mean any entity that substantially controls, is substantially controlled by, or is under common control with, Seller.

## **ARTICLE 2. BASIC TRANSACTION**

**2.1 Ownership.** Rocky Mountain Power shall own the Assets until the Closing Date.

**2.2 Operation and Maintenance.** From and after the Closing Date, Buyer shall own and be solely responsible for the operation and maintenance of the Assets and shall bear all risk of loss of the Assets. Prior to the Closing Date, Rocky Mountain Power shall be responsible for the operation and maintenance of the Assets. For the life of the Assets, Buyer shall at all times operate and maintain the Assets in accordance with prudent utility practice.

**2.3 Purchased Assets.** On the terms and subject to the conditions contained in this Agreement, at the Closing, Buyer shall purchase, and Seller shall sell, convey, assign, transfer and deliver to Buyer all its right, title and interest in and to all streetlighting facilities located within Buyer’s annexed boundaries by way of a Bill of Sale in substantially the same form as Exhibit E attached hereto.

**2.4 Actual Asset Purchase Price.** The Asset Purchase Price for the Assets is Six Hundred Forty Nine Thousand Seven Hundred Eighty Six and no/100 Dollars (\$649,786), as more fully described on Exhibit C, attached hereto (“Break Down of Asset Purchase Price”).

The parties agree and acknowledge that separate from the Asset Purchase Price, Buyer has previously paid to Seller the amount of Thirteen Thousand Five Hundred and no/100 Dollars (\$13,500), which amount represents reimbursement for field assessment costs.

**2.5 Excluded Liabilities and Excluded Receivables.** The parties agree that liabilities and obligations of Seller not described herein as assumed liabilities are not part of the assumed liabilities, and Buyer shall not assume or become obligated with respect to any other obligation or liability of Seller or any Affiliate of Seller (collectively, “Excluded Liabilities”), including, without limitation, the liabilities and obligations described in this Section, all of which shall remain the sole responsibility of Seller. In particular, Buyer shall not have any liability or obligation with respect to any of the following liabilities or obligations of Seller as the same may exist at the Closing:

**2.5.1** Liabilities or obligations of Seller or its Affiliates arising from Seller’s ownership, operation or use of the Assets prior to the Closing Date.

**2.5.2** Subject to Section 6.2 respecting certain expenses incurred in connection with the transactions contemplated hereby, any of Seller’s or its Affiliates’ liabilities or obligations with respect to franchise foreign, federal, state or local taxes imposed upon or measured, in whole or in part, by the income for any period of Seller or any member of any combined or consolidated group of companies of which Seller is, are, or was at any time, a part, or with respect to interest, penalties or additions to any of such taxes, and any income, franchise, tax recapture, transfer tax, sales tax or use tax that may arise upon consummation of the transactions contemplated hereby and be due from or payable by Seller, it being understood that Buyer shall not be deemed to be Seller’s transferee with respect to any such tax liability.

**2.5.3** Liabilities of Seller for third party claims where the injury or damage occurred prior to the Closing.

**2.5.4** Liabilities of Seller incurred in connection with Seller obtaining any consent, authorization or approval necessary to sell, convey, assign, transfer or deliver the Assets to Buyer hereunder.

**2.5.5** Any liability of Seller representing indebtedness for money borrowed, the deferred portion of the purchase price for any of the Assets (and any refinancing thereof), or money owed for materials and/or labor relating to the Assets. With respect to such indebtedness or obligation that constitutes a lien or encumbrance upon any Asset, Seller agrees that on or prior to the Closing it shall either pay or discharge such indebtedness or obligation in full or otherwise cause such lien or encumbrance to be removed from the Asset, so that such Asset is sold, conveyed, assigned, transferred and delivered to Buyer at the Closing free and clear of such lien or encumbrance.

**2.5.6** That streetlighting and joint-use-attachment revenue, due the Seller, that was earned prior to the close of the sale, whether billed or not billed, remains a receivable of the Seller and the right to receive said revenue is not transferred to the Buyer by this agreement.

**2.6 Third-Party Facilities Attached to Seller’s Assets.** Seller has represented to Buyer that certain of the Assets have attachments owned by third parties, as more particularly set

forth in Exhibit F. Seller makes no representation, warranty nor guaranty as to the compliance of such attachments with applicable regulations. Following Closing, Buyer shall be responsible for negotiating third-party attachment rights directly with the owner(s) of the attachments.

### **ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller hereby represents and warrants to Buyer, as of the date hereof, as follows:

**3.1 Organization and Corporate Power.** Seller is an Oregon corporation, duly organized and validly existing under the laws of the State of Oregon, and is duly qualified to do business in the State of Utah. Seller has all requisite power and authority to own the Assets and to perform the transaction on its part contemplated by this Agreement.

**3.2 Authority and Enforceability.** The execution, delivery and performance of this Agreement and the consummation of the transaction contemplated hereby has been duly authorized by the board of directors or other applicable governing body of Seller; no other corporate act or proceeding on the part of Seller is necessary to authorize this Agreement. This Agreement has been and shall, as of the Closing, have been duly executed and delivered by Seller, and this Agreement constitutes, and when executed and delivered, shall constitute, a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as it may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws now or hereafter in effect relating to creditors' rights generally and that the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding may be brought.

**3.3 No Breach or Conflict.** The execution, delivery and performance by Seller of this Agreement do not: (a) conflict with or result in a breach of any of the provisions of the Articles of Incorporation or Bylaws or similar charter documents of Seller; (b) to Seller's Knowledge, contravene any Law presently in effect or cause the suspension or revocation of any License presently in effect, which affects or binds Seller or any of its properties, except where such contravention, suspension or revocation shall not have a Material Adverse Effect (as defined below) on the Assets and shall not affect the validity or enforceability of this Agreement; or (c) conflict with or result in a breach of or a default (with or without notice or lapse of time or both) under any material agreement or instrument to which Seller is a party or by which it or any of its properties applicable to the Assets may be affected or bound, the effect of which conflict, breach, or default, either individually or in the aggregate, would be a Material Adverse Effect on the Assets. As used herein, a "Material Adverse Effect": (a) when used with respect to the Assets, means any adverse effect on the Assets, or on the operation thereof, when taken as a whole, but only to the extent such adverse effect would be deemed material by a reasonably prudent person under the circumstances; and (b) when used with respect to an entity, such as a Seller or Buyer, means any adverse effect on the business, condition (financial or otherwise) or results of operations of such entity, when taken as a whole, or on the ability of such entity to consummate the transaction contemplated hereby, but only to the extent such adverse effect would be deemed material by a reasonably prudent person under the circumstances.

**3.4 Approvals.** The execution, delivery and performance by Seller of this Agreement does not require the authorization, consent or approval of any non-governmental third party of such a nature that the failure to obtain the same would have a Material Adverse Effect on the Assets or the Assets substantially as they have heretofore operated.

**3.5 Compliance with Law.** To Seller's Knowledge, Seller is in compliance in all material respects with all pertinent Laws and Licenses related to the ownership and operation of the Assets, other than violations that would not, individually or in the aggregate, have a Material Adverse Effect on the ownership, use or operation of the Assets or on the ability of Seller to execute and deliver this Agreement or any other agreements contemplated hereby and consummate the transactions contemplated hereby and thereby.

**3.6 Title to Property.** Seller has good and defensible title to all tangible personal property included in the Assets to be sold, conveyed, assigned, transferred and delivered to Buyer by Seller, free and clear of all liens, charges, claims, pledges, security interests, equities and encumbrances of any nature whatsoever suffered or created by Seller, except for the following (individually and collectively, the "Permitted Encumbrances"): (i) the lien of current taxes not delinquent, (ii) existing licensed pole attachments of third parties, (iii) liens, charges, claims, pledges, security interests, equities and encumbrances to be discharged or released either prior to, or substantially simultaneously with, the Closing and other liens and possible minor matters that in the aggregate are not substantial in amount and do not materially detract from or interfere with the present or intended use of such property.

**3.7 Litigation.** Except for (a) ordinary routine claims and litigation incidental to the businesses represented by the Assets (including, without limitation, actions for negligence, workers' compensation claims and the like), and (b) proceedings before regulatory authorities there are no actions, suits, claims or proceedings pending, or to Seller's Knowledge, threatened against or affecting the Assets or relating to the operations of the Assets, at law or in equity, or before or by any Governmental Body. There is no condemnation proceeding pending or, to Seller's Knowledge, threatened against any of the Assets.

**3.8 Brokers.** No broker, finder, or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with this Agreement or the transactions contemplated hereby based upon any agreements or arrangements or commitments written or oral, made by or on behalf of Seller.

**3.9 Condition of Assets.** Seller sells the Assets to Buyer "AS IS, WHERE IS, WITH ALL FAULTS." Seller hereby disclaims and excludes herefrom, (a) any express or implied representation or warranty as to the value, condition, design, operation, or quality of the materials or workmanship in, or any defects in, the Assets, (b) any express or implied warranty of merchantability or fitness for use or for a particular purpose, or (c) any express or implied representation, guarantee, obligation, liability or warranty of Seller, express or implied, of any kind, arising by law or from course of performance, course of dealing, or usage of trade.

#### **ARTICLE 4. REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer hereby represents and warrants to Seller, as of the date hereof, as follows:

**4.1 Organization and Power.** Buyer is a municipal government entity, and is authorized to exercise its powers, rights and privileges and is in good standing in, the State of Utah and has full power to carry on its business as presently conducted and to own or lease and operate its properties and assets now owned or leased and operated by it and to perform the transaction on its part contemplated by this Agreement.

**4.2 Authority and Enforceability.** The execution, delivery and performance of this Agreement and the consummation of the transaction contemplated hereby have been duly authorized by the applicable governing body of Buyer; no other governmental act or proceeding on the part of Buyer is necessary to authorize this Agreement. This Agreement has been and shall, as of the Closing, have been, duly executed and delivered by Buyer, and this Agreement, when executed and delivered, shall constitute a valid and binding obligation of Buyer, enforceable against Buyer, in accordance with its terms, except as it may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws now or hereafter in effect relating to creditors' rights generally and that the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding may be brought.

**4.3 No Breach or Conflict.** The execution, delivery and performance by Buyer of this Agreement do not: (a) conflict with or result in a breach of any of the provisions of the organizational documents of Buyer, (b) contravene any Law or cause the suspension or revocation of any License presently in effect, which affects or binds Buyer or any of its material properties; (c) conflict with or result in a breach of or default under any material agreement or instrument to which Buyer is a party or by which it or any of its properties may be affected or bound; or (d) conflict with, violate any provision of or result in a breach of or default of any financial obligations of Buyer including, without limitation, bonding covenants to which Buyer is subject.

**4.4 Approvals.** The execution, delivery and performance by Buyer of this Agreement do not require the authorization, consent or approval of any non-governmental third party.

**4.5 Condition of Assets.** Buyer agrees that except for the representations and warranties expressly set forth in this agreement, the assets shall be purchased by Buyer on an "AS IS, WHERE IS" basis and in "WITH ALL FAULTS" condition. Buyer acknowledges that Seller disclaims and excludes herefrom, (a) any express or implied representation or warranty as to the value, condition, design, operation, or quality of the materials or workmanship in, or any defects in, the assets, (b) any express or implied warranty of merchantability or fitness for use or for a particular purpose, and (c) any express or implied representation, guarantee, obligation, liability or warranty of Seller, express or implied, of any kind, arising by law or from course of performance, course of dealing, or usage of trade.

**4.6 No Knowledge of Seller's Breach.** Buyer has no Knowledge of any breach of any representation or warranty by Seller or of any other condition or circumstance that would excuse Buyer from its timely performance of its obligation hereunder. Buyer shall notify Seller as promptly as practicable if any such information comes to its attention prior to Closing.



**4.7 Qualified for Licenses.** To Buyer's Knowledge, Buyer is either (a) qualified to obtain any Licenses necessary for the operation by Buyer of the Assets as of the Closing in the same manner as the Assets are presently operated; or (b) exempt from any Laws requiring Licenses for the operation by Buyer of the Assets as of the Closing in the same manner as the Assets are presently operated.

## **ARTICLE 5. COVENANTS OF EACH PARTY**

**5.1 Efforts to Close; Reasonable Efforts.** Subject to the terms and conditions herein provided including, without limitation, Articles 8 and 9 hereof, each of the parties hereto agrees to take all reasonable actions and to do all reasonable things necessary, proper or advisable under any Laws to consummate and make effective, as soon as reasonably practicable, the transaction contemplated hereby, including the satisfaction of all conditions thereto set forth herein. Such action shall include, without limitation, exerting their reasonable efforts to obtain the consents, authorizations and approvals of all private parties and other Governmental Bodies whose consent is reasonably necessary to effectuate the transaction contemplated hereby, and effecting all other necessary registrations and filings, including, without limitation, filings under Laws relating to the transfer, re-issuance or otherwise obtaining of necessary Licenses, and all other necessary filings with any other Governmental Bodies. Seller shall cooperate with Buyer's efforts to obtain the requisite Licenses and regulatory consents, provided Seller shall not be obligated to incur any liabilities or assume any obligations in connection therewith. Other than Buyer's and Seller's obligations under Section 11.3, no party shall have any liability to the other party if, after using its reasonable commercial efforts, it is unable to obtain any consents, authorizations or approvals necessary for such party to consummate the transaction contemplated hereby. As used herein, the terms "reasonable efforts" or "reasonable actions" do not include the provision of any consideration to any third party or the suffering of any material economic detriment to a party's ongoing operations for the procurement of any such consent, authorization or approval.

**5.2 Notification.** Each party shall give the other prompt written notice, not later than five Business Days prior to the Closing, of any event, condition or fact arising prior to the Closing that would cause any of its representations and warranties in this Agreement to be untrue in any material respect.

## **ARTICLE 6. ADDITIONAL COVENANTS OF BUYER**

**6.1 Resale Certificate.** Buyer agrees to furnish to Seller a Utah Tax Exemption Certificate Form TC-721 or other similar documents reasonably requested by Seller to comply with pertinent sales and use tax Laws.

**6.2 Expenses.** Whether or not the transaction contemplated hereby is consummated, except as otherwise provided in this Agreement, all Separation Costs and Transactional Costs shall be paid by Buyer. Notwithstanding the foregoing, any unforeseen costs not covered by the Separation Costs and Transactional Costs, shall be negotiated between the Buyer and Seller. All charges and expenses shall be settled between the parties at the Closing or promptly upon termination or expiration of further proceedings under this Agreement, or with respect to such charges and expenses not determined as of such time, as soon thereafter as is reasonably practicable.

**6.3 Insurance.** After the Effective Date, Buyer shall carry insurance, or shall self-insure, adequate to insure the Assets against loss or damage by fire and other risks, and public liability consistent with its past practices for like assets, subject to the limitations set forth in Utah Code Ann. §63G-7-604, as that statute may be applicable.

**6.4 Ongoing Maintenance, Repair, or Replacement; Training of Workers.** After the Closing, Buyer shall be solely responsible for the maintenance of the Assets and to perform all maintenance subject to the National Electrical Safety Code (NESC), which shall include (but not limited to), NESC Rules 410A1&2, 411A3, 411E, 420A, 420B,420C, 420D, 420H, 420I, and 421A. Buyer has located and procured or is prepared to locate and procure on its own behalf, replacement components in the event of failure of any or all of the Assets at any time. Buyer takes full responsibility for the installation of such replacement components.

**6.4.1** Buyer has arranged or shall arrange for personnel qualified under Occupational Safety and Health Administration (OSHA) and NESC requirements to operate, maintain, and repair the Assets, and shall in no way rely on Rocky Mountain Power for such services. Buyer acknowledges the need to only utilize workers qualified as per requirements in OSHA 29 C.F.R. 1910.268 and 29 C.F.R. 1910.269 to perform maintenance on the Assets.

**6.5 Energy Only Rate Schedule.** The Assets purchased shall be placed on an energy-only rate schedule shown in Exhibit D, upon Closing. Buyer shall ensure that all future street lights added to Buyer's system have a means of disconnect suitable to Seller and the electrical inspection authority having jurisdiction. Buyer agrees that all connections and disconnections of the Assets from Seller's overall system shall be handled exclusively by Seller. Buyer shall provide Seller with notice of any changes to the Assets after the Closing that would affect Seller's billing arrangement with Buyer. Buyer shall comply with all of Seller's rules, regulations and requirements with respect to altering facilities and/or adding new facilities.

**6.6 Notification of Change in Ownership.** Within thirty (30) days following the Closing Date, Buyer shall notify all owners of real property located within Buyer's annexed town limits of Buyer's acquisition of the Assets. Such notification shall clearly: a) state that Buyer assumes all responsibilities and liabilities in and to the Assets; and b) provide contact information to report outages or other problems. Notice need not be provided by direct mail.

## **ARTICLE 7. ADDITIONAL COVENANTS OF SELLER**

**7.1 Conduct Pending Closing.** Prior to consummation of the transactions contemplated hereby or the termination or expiration of this Agreement pursuant to its terms, unless Buyer shall otherwise consent in writing, which consent shall not be unreasonably withheld or delayed, and except for actions taken which are required by Law or arise from or are related to the anticipated transfer of the Assets or as otherwise contemplated by this Agreement, Seller shall:

**7.1.1** Operate and maintain the Assets only in the usual and ordinary course, materially consistent with practices followed prior to the execution of this Agreement;

**7.1.2** Not (i) sell, lease, transfer or dispose of, or make any contract for the sale, lease, transfer or disposition of, any assets or properties which would be included in the Assets,

other than sales in the ordinary course of business which would not individually, or in the aggregate, have a Material Adverse Effect upon the operations or value of Assets; (ii) incur, assume, guaranty, or otherwise become liable in respect of any indebtedness for money borrowed which would result in the Buyer assuming such liability hereunder after the Closing; (iii) delay the payment and discharge of any liability which, upon Closing, would be an assumed liability, because of the transactions contemplated hereby; (iv) encumber or voluntarily subject to any lien any Asset (except for Permitted Encumbrances); or (v) sell, lease, transfer or dispose of, to any Affiliate of Seller, any assets or properties which would be included in the Assets, or remove any such assets or property to or for the benefit of Seller or any Affiliate of any Seller;

**7.1.3** Maintain in force and effect the existing material property and liability insurance policies related to the Assets;

**7.1.4** Subject to Section 5.2, not take any action which would cause any of Seller's representations and warranties set forth in Article 3 to be materially false as of the Closing;

**7.2 Conduct Following Closing.** Seller shall take the following actions following Closing, as specified in this Section 7.2.

**7.2.1 Renumbering of Purchased Poles.** Within 90 days following the Closing, Seller shall physically renumber all sale poles via Seller-owned pole plates so as to indicate Buyer ownership for future tracking and billing purposes.

**7.2.2 Notice to Third-Party Attachers of Change of Pole Ownership.** Seller shall give abandonment notice to all known third-party attachers within thirty (30) days following Closing. A list of all known third party attachments is attached hereto as Exhibit F. Except as specifically set forth in this Section 7.2.2, Seller's responsibility with respect to the third party attachments shall conclude at Closing.

## **ARTICLE 8. BUYER'S CONDITIONS TO CLOSING**

The obligations of Buyer to consummate the transaction contemplated with respect to the Assets shall be subject to fulfillment at or prior to the Closing of the following conditions, unless Buyer waives in writing such fulfillment.

**8.1 Performance of Agreement.** Seller shall have performed in all material respects its agreements and obligations contained in this Agreement required to be performed on or prior to the Closing.

**8.2 Accuracy of Representations and Warranties.** The representations and warranties of Seller set forth in Article 3 of this Agreement shall be true in all material respects as to the Assets in question and as of the date of this Agreement (unless the inaccuracy or inaccuracies which would otherwise result in a failure of this condition have been cured as of the Closing) and as of the Closing.

**8.3 Approvals.** All approvals, consents, authorizations and waivers from other Governmental Bodies and all approvals, consents, authorizations and waivers from other third

parties (collectively “Approvals”) required for Buyer to operate the Assets materially in accordance with the manner in which it was operated by Seller prior to the Closing, shall have been obtained in form and substance satisfactory to Buyer in its reasonable discretion.

**8.4 No Restraint.** There shall be no:

**8.4.1** Injunction, restraining order or order of any nature issued by any court of competent jurisdiction or Governmental Body which directs that the transaction contemplated hereby shall not be consummated as herein provided or compels or would compel Buyer to dispose of or discontinue, or materially restrict the operations of, the Assets or any significant portion of the Assets with respect thereto as a result of the consummation of the transaction contemplated hereby;

**8.4.2** Suit, action or other proceeding by any Governmental Body pending or threatened (pursuant to a written notification), wherein such complainant seeks the restraint or prohibition of the consummation of the transaction contemplated hereby or seeks to compel, or such complainant’s actions would compel, Buyer to dispose of or discontinue, or materially restrict the operations of, the Assets as a result of the consummation of the transaction contemplated hereby; or

**8.4.3** Action taken, or Law enacted, promulgated or deemed applicable to the transaction contemplated hereby, by any Governmental Body which would render the purchase and sale of the Assets illegal or which would threaten the imposition of any penalty or material economic detriment upon Buyer if such purchase and sale were consummated; provided that the Parties shall use their reasonable efforts to litigate against, and to obtain the lifting of, any such injunction, restraining or other order, restraint, prohibition, action, suit, Law or penalty.

**8.5 Casualty; Condemnation.**

**8.5.1 Casualty.** If any part of the Assets is damaged or destroyed (whether by fire, theft, vandalism or other casualty) in whole or in part prior to the Closing, and the fair market value of the damaged, lost or destroyed Assets or the cost of repair of the Assets that were damaged or destroyed is less than 15 percent of the aggregate Asset Purchase Price, the Seller shall, at its option, either (i) reduce the Asset Purchase Price by the lesser of the fair market value of the Assets damaged or destroyed (such value to be determined as of the date immediately prior to such damage or destruction), or the estimated cost to repair or restore the same, (ii) upon the Closing, transfer the proceeds or the rights to the proceeds of applicable insurance to Buyer, provided that the proceeds or the rights to the proceeds are obtainable without delay and are sufficient to fully restore the damaged Assets, or (iii) repair or restore such damaged or destroyed Assets. If any part of the Assets related to the Assets are damaged or destroyed (whether by fire, theft, vandalism or other cause or casualty) in whole or in part prior to the Closing and the lesser of the fair market value of such Assets or the cost of repair is greater than 15 percent of the aggregate Asset Purchase Price, then Buyer may elect to terminate this Agreement or require Seller upon the Closing to transfer the proceeds (or the right to the proceeds) of applicable insurance to Buyer and Buyer may restore or repair the Assets.

**8.5.2 Condemnation.** From the date hereof until the Closing, in the event that any material portion of the Assets becomes subject to or is threatened with any condemnation or eminent domain proceedings, then Buyer may, (i) if such condemnation, if successful, would not practically preclude the operation of the balance of the Assets for the purposes for which they were intended, elect to terminate this Agreement with respect only to that part which is condemned or threatened to be condemned with a reduction in the Asset Purchase Price, or (ii) if such condemnation, if successful, would practically preclude the operation of the balance of the Assets for purposes for which it is intended, elect to terminate this Agreement.

**8.6 Receipt of Other Documents.** Buyer shall have received all other documents, instruments and writings reasonably required to be delivered to Buyer at or prior to Closing pursuant to the Agreement and such other certificates of authority and documents as Buyer reasonably requests.

**8.7 Material Adverse Effect.** There shall not have been an impairment of any Asset, as a result of a degradation of its physical condition, a change in Law, or provision of any approval that could reasonably be expected to have a Material Adverse Effect on the Buyer's ability to operate the Assets.

## **ARTICLE 9. SELLER'S CONDITIONS TO CLOSING**

The obligations of Seller to consummate the transaction contemplated hereby with respect to the Assets related thereto shall be subject to the fulfillment at or prior to the Closing of the following conditions, unless Seller waives in writing such fulfillment.

**9.1 Performance of Agreement.** Buyer shall have performed in all material respects its agreements and obligations contained in this Agreement required to be performed on or prior to the Closing.

**9.2 Accuracy of Representations and Warranties.** The representations and warranties of Buyer set forth in Article 4 of this Agreement shall be true in all material respects as of the date of this Agreement (unless the inaccuracy or inaccuracies which would otherwise result in a failure of this condition have been cured by the Closing) and as of the Closing as if made as of such time.

**9.3 Approvals.** All Approvals required for Seller to consummate the transaction contemplated shall have been obtained in form and substance satisfactory to Seller affected by such Approval in its reasonable discretion.

**9.4 No Restraint.** There shall be no:

**9.4.1** Injunction, restraining order or order of any nature issued by any court of competent jurisdiction or Governmental Body which directs that the transaction contemplated hereby shall not be consummated as herein provided;

**9.4.2** Suit, action or other proceeding by any Governmental Body pending or threatened (pursuant to a written notification), wherein such complainant seeks the restraint or

prohibition of the consummation of the transaction contemplated hereby or otherwise constrains consummation of such transaction on the terms contemplated herein; or

**9.4.3** Action taken, or law enacted, promulgated or deemed applicable to the transaction contemplated hereby, by any Governmental Body which would render the purchase and sale of the Assets illegal or which would threaten the imposition of any penalty or material economic detriment upon Seller if such transaction were consummated;

Provided that the Parties shall use their reasonable efforts to litigate against, and to obtain the lifting of, any such injunction, restraining or other order, restraint, prohibition, action, suit, law or penalty.

**9.5 Receipt of Other Documents.** Seller shall have received all documents, instruments and writings required to be delivered to Seller at or prior to Closing pursuant to the Agreement and such other certificates of authority and documents as Seller reasonably requests.

## ARTICLE 10. CLOSING

**10.1 Closing.** Subject to the terms and conditions hereof, the consummation of the transaction contemplated herein (the "Closing") shall occur at the offices of Rocky Mountain Power, 1407 West North Temple, Salt Lake City, UT, or a mutually agreeable place or places, within five Business Days after all of the conditions set forth in Article 8 and Article 9 hereof have been satisfied or waived or at such other time as the parties may agree, but in no event later than March 15, 2018 unless earlier terminated pursuant to Article 11. The date on which the Closing actually occurs is referred to herein as the "Closing Date." At the Closing and subject to the terms and conditions hereof, the following shall occur:

**10.1.1 Deliveries by Seller.** Seller shall deliver to Buyer such instruments of transfer and conveyance properly executed and acknowledged by Seller in customary form mutually agreed to by the Seller and Buyer necessary to transfer to and vest in Buyer all of Seller's right, title and interest in and to the Assets including, without limitation:

- (a) Bills of Sale and assignment in respect of the Assets;
- (b) Possession of the Assets.

**10.1.2 Deliveries by Buyer.** No less than two (2) Business Day prior to the Closing Date, Buyer shall deliver to Seller immediately available funds in U.S. dollars, by way of wire transfer to an account to be designated by Seller, in an aggregate amount equal to the Asset Purchase Price.

**10.2 Prorations.** Items of expense and income (if any) affecting the Assets and the Assumed Liabilities that are customarily pro-rated, including, without limitation, real and personal property taxes, utility charges, charges arising under leases, insurance premiums, and the like, shall be pro-rated between Seller and Buyer.

## ARTICLE 11. TERMINATION

**11.1 Termination.** Any transactions contemplated hereby that have not been consummated may be terminated:

**11.1.1** At any time, by mutual written consent of the Seller and Buyer; or

**11.1.2** By either Buyer or the Seller, as the case may be, upon 30 days written notice given any time after (i) the issuance of an order by a Governmental Body in a manner that fails to meet the conditions of the terminating party set forth in Sections 8.4 or 9.4, as the case may be, or (ii) all necessary applications for approval of this Agreement by Governmental Bodies have been filed and a final order, not including any period after such order during which applications for rehearing or modification or judicial appeals or remedies are pending, has not been obtained with respect to each such Application by the Termination Date.

**11.1.3** By one Party upon written notice to the other if there has been a material default or breach under this Agreement by another party which is not cured by the earlier of the Closing Date or the date 30 days after receipt by the other party of written notice from the terminating party specifying with particularity such breach or default; or

**11.1.4** By either Buyer or the Seller upon written notice to the other Party, if (i) the Closing shall not have occurred by the Termination Date; or (ii) (A) in the case of termination by the Seller, the conditions set forth in ARTICLE 9 for the Closing cannot reasonably be met by the Termination Date and (B) in the case of termination by Buyer, the conditions set forth in ARTICLE 8 for the Closing cannot reasonably be met by the Termination Date, unless in either of the cases described in clauses (A) or (B), the failure of the condition is the result of the material breach of this Agreement by the party seeking to terminate. The Termination Date for the Closing shall be one year from the date of this Agreement. Such date, or such later date as may be specifically provided for in this Agreement, or agreed upon by the parties, is herein referred to as the "Termination Date." Each Party's right of termination hereunder is in addition to any other rights it may have hereunder or otherwise.

**11.2 Non-Funding.** If necessary, Buyer shall request an appropriation of funds to make payments under this Agreement. If funds are not available to Buyer beyond the 30 days after the Closing Date, that immediately follows the Effective Date, this Agreement shall terminate. Said termination shall not be construed as a breach of this Agreement or any event of default under this Agreement by either party and said termination shall be without any penalty, whatsoever, and no right of action for damages or other relief shall accrue to either party. If funds are not appropriated, Buyer shall, within ten (10) days of the date on which the event giving rise to the non-funding occurs, notify Seller in writing of said non-funding and the termination of this Agreement.

**11.3 Effect of Termination.** If there has been a termination pursuant to Section 11.1, then this Agreement shall be deemed terminated and all further obligations of the parties hereunder shall terminate, except that the obligations set forth in ARTICLE 12 shall survive. In the event of such termination of this Agreement, there shall be no liability for damages on the part of a party to another under and by reason of this Agreement or the transaction contemplated

hereby except as set forth in ARTICLE 12 and except for intentionally fraudulent acts by a party, the remedies for which shall not be limited by the provisions of this Agreement. The foregoing provisions shall not, however, limit or restrict the availability of specific performance or other injunctive or equitable relief to the extent that specific performance or such other relief would otherwise be available to a party hereunder.

## **ARTICLE 12. SURVIVAL AND REMEDIES; INDEMNIFICATION**

**12.1 Survival.** Except as may be otherwise expressly set forth in this Agreement, the representations, warranties, covenants and agreements of Buyer and Seller set forth in this Agreement, or in any writing required to be delivered in connection with this Agreement, shall survive the Closing Date.

**12.2 Damages.** Absent intentional fraud or unless otherwise specifically provided herein, in no event shall either party be liable to the other party for consequential damages, indirect damages, punitive damages, lost profits, damage to reputation, lost data, exemplary damages, or the like. Damages shall be limited to actual out-of-pocket losses actually suffered and to an aggregate limit of 100% of the Asset Purchase Price. The amount of damages shall be computed net of any related recoveries to which the damaged party is entitled under insurance policies, or other related payments received or receivable from third parties, and net of any tax benefits actually received by the party or for which it is eligible.

**12.3 Indemnity by Seller.** Seller shall defend, indemnify, and hold harmless Buyer, its officers, directors, employees, agents, contractors, affiliates and successors from and against any and all liability, loss, damage, claim, suit or cause of action arising out of or relating to (1) Seller's ownership, operation or maintenance of the Assets prior to Closing; or (2) Seller's failure to perform any of its obligations under this Agreement; or (3) any representation or warranty of Seller in this Agreement being untrue or inaccurate in any material respect; or (4) if the Closing occurs, the failure of Seller to pay, discharge or perform, as and when due, any of the Excluded Liabilities. Buyer shall have the right to enter into the action and assume the defense thereof with legal counsel selected by Buyer for any such claim, suit or action which is subject to this indemnity. This obligation shall survive the termination of this Agreement and completion of the transactions contemplated by this Agreement.

**12.4 Indemnity by Buyer.** Buyer shall defend, indemnify, and hold harmless Seller, its officers, directors, employees, agents, contractors, affiliates and successors from and against any and all liability, loss, damage, claim, suit or cause of action arising out of or relating to (1) Buyer's ownership, operation or maintenance of the Assets following Closing; or (2) Buyer's failure to perform any of its obligations under this Agreement; or (3) any representation or warranty of Buyer in this Agreement being untrue or inaccurate in any material respect. Seller shall have the right to enter into the action and assume the defense thereof with legal counsel selected by Seller for any such claim, suit or action which is subject to this indemnity. This obligation shall survive the termination of this Agreement and completion of the transactions contemplated by this Agreement.

**12.5 Limitations on Indemnities.** The indemnification obligations of Seller and Buyer shall be subject to the following limitations and qualifications:



**12.5.1** The party requesting indemnification shall promptly (but in no event less than sixty (60) days) upon its discovery of facts or circumstances giving rise to a claim for indemnification, including receipt by it of notice of any demand, assertion, claim, action or proceeding, judicial, governmental or otherwise, by any third party, give written notice thereof to the indemnifying party. The written notice shall include a copy of any third-party claim and other documents received.

**12.5.2** The written notice of a claim for which indemnification is requested must be made before the second anniversary of the earlier to occur of the Closing Date or the date on which this Agreement is terminated, as the case may be.

### **ARTICLE 13. GENERAL PROVISIONS**

**13.1 Notices.** All notices, requests, demands, waivers, consents and other communications hereunder shall be in writing, shall be delivered either in person, by overnight air courier or by mail, and shall be deemed to have been duly given and to have become effective (a) upon receipt if delivered in person, (b) one (1) Business Day after having been delivered to an air courier for overnight delivery or (c) three (3) Business Days after having been deposited in the U.S. mails as certified or registered mail, return receipt requested, all fees prepaid, directed to the parties or their permitted assignees at the following addresses (or at such other address as shall be given in writing by a party hereto):

If to Seller, addressed to:	If to Buyer, addressed to:
Brent Dewsnup Rocky Mountain Power 1469 West North Temple Salt Lake City, UT 84116 Telephone: (801) 220-2649	Scott Harrington City of Taylorsville 2600 West Taylorsville Blvd Taylorsville, UT 84129 Telephone: (801) 963-5400

With a copy to :
Rocky Mountain Power Legal Dept. 1407 West North Temple, Suite 320 Salt Lake City, Utah 84116

**13.2 Attorney's Fees.** In any litigation or other proceeding relating to this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees.

**13.3 Successors and Assigns.** Buyer may assign the Agreement, and Buyer's assignee shall succeed to all rights and obligations of Buyer as if identified as Buyer in the preamble of this Purchase and Sale Agreement. In addition, Buyer may grant to its lenders a security interest

in its rights under this Agreement; provided that neither the grant of any such interest, nor the foreclosure of any such interest, shall in any way release, reduce or diminish the obligations of Buyer to Seller hereunder. The rights under this Agreement shall not be assignable or transferable nor the duties delegable by Seller without the prior written consent of Buyer. Nothing contained in this Agreement, express or implied, is intended to confer upon any Person, other than the parties hereto, their permitted successors-in-interest and permitted assignees and any Person who or which is an intended beneficiary of the indemnities provided herein, any rights or remedies under or by reason of this Agreement unless so stated to the contrary.

**13.4 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**13.5 Captions and Paragraph Headings.** Captions and paragraph headings used herein are for convenience only and are not a part of this Agreement and shall not be used in construing it.

**13.6 Entirety of Agreement; Amendments.** This Agreement (including the Exhibits hereto) contains the entire understanding between the parties concerning the subject matter of this Agreement except as expressly provided for herein, supersede all prior understandings and agreements, whether oral or written, between them with respect to the subject matter hereof and thereof. There are no representations, warranties, agreements, arrangements or understandings, oral or written, between the parties hereto relating to the subject matter of this Agreement and such other documents and instruments which are not fully expressed herein or therein. This Agreement may be amended or modified only by an agreement in writing signed by each of the parties hereto. All Exhibits attached to or delivered in connection with this Agreement are integral parts of this Agreement as if fully set forth herein.

**13.7 Construction.** This Agreement and any documents or instruments delivered pursuant hereto shall be construed without regard to the identity of the Person who drafted the various provisions of the same. Each and every provision of this Agreement and such other documents and instruments shall be construed as though the parties participated equally in the drafting of the same. Consequently, the parties acknowledge and agree that any rule of construction that a document is to be construed against the drafting party shall not be applicable either to this Agreement or such other documents and instruments. Whenever in this Agreement the context so suggests, references to the masculine shall be deemed to include the feminine, references to the singular shall be deemed to include the plural, and references to "or" shall be deemed to be disjunctive but not necessarily exclusive.

**13.8 Waiver.** The failure of a party to insist, in any one or more instances, on performance of any of the terms, covenants and conditions of this Agreement shall not be construed as a waiver or relinquishment of any rights granted hereunder or of the future performance of any such term, covenant or condition, but the obligations of the parties with respect thereto shall continue in full force and effect. No waiver of any provision or condition of this Agreement by a party shall be valid unless in writing signed by such party or operational by the terms of this Agreement. A waiver by any party of the performance of any covenant, condition, representation or warranty of any other party shall not invalidate this Agreement, nor

shall such waiver be construed as a waiver of any other covenant, condition, representation or warranty. A waiver by any party of the time for performing any act shall not constitute a waiver of the time for performing any other act or the time for performing an identical act required to be performed at a later time.

**13.9 Governing Law.** This Agreement shall be governed in all respects, including validity, interpretation and effect, by the Laws of the State of Utah applicable to contracts made and to be performed wholly within the State of Utah. Any action or proceeding arising under this Agreement shall be adjudicated in Salt Lake City, Utah.

**13.10 Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid, binding and enforceable under applicable Law, but if any provision of this Agreement is held to be invalid, void (or voidable) or unenforceable under applicable Law, such provision shall be ineffective only to the extent held to be invalid, void (or voidable) or unenforceable, without affecting the remainder of such provision or the remaining provisions of this Agreement.

**13.11 Consents Not Unreasonably Withheld.** Wherever the consent or approval of any party is required under this Agreement, such consent or approval shall not be unreasonably withheld, unless such consent or approval is to be given by such party at the sole or absolute discretion of such party or is otherwise similarly qualified.

**13.12 Jury Trial.** To the fullest extent permitted by law, each of the parties hereto waives any right it may have to a trial by jury in respect to litigation directly or indirectly arising out of, under or in connection with this agreement. Each party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

*Signature Page Follows*

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first above written.

**BUYER:**

City of Taylorsville, a body corporate and politic of the State of Utah

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

Name: \_\_\_\_\_

Scott Harrington

Title: Chief Financial Officer/Assistant City Administrator

STATE OF UTAH )  
 : ss.  
\_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me \_\_\_\_\_, who being duly sworn, did say that (s)he is the \_\_\_\_\_ of \_\_\_\_\_, Office of Mayor, and that the foregoing instrument was signed on behalf of \_\_\_\_\_, by authority of law.

[SEAL]

\_\_\_\_\_  
NOTARY PUBLIC  
Residing in \_\_\_\_\_

**SELLER:**

PACIFICORP, an Oregon corporation, dba  
ROCKY MOUNTAIN POWER

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

Name: R. Jeff Richards

Title: Vice President and General Counsel

**CITY OF TAYLORSVILLE  
Streetlighting Facilities  
PURCHASE AND SALE AGREEMENT**

**Exhibit A**

**Persons With Knowledge**

“Knowledge” of a party shall mean with respect to such party, the extent of the actual knowledge of the following Persons with respect to such party:

For Seller:

Brent Dewsnup, Regional Business Manager

For Buyer:

Scott Harrington, Chief Financial Officer/Assistant City Administrator

**CITY OF TAYLORSVILLE**  
**Streetlighting Facilities**  
**PURCHASE AND SALE AGREEMENT**

**Exhibit B**

**Assets**

<b>Asset Description</b>	<b>FERC ACCOUNT</b>	<b>Vintage</b>	<b>QUANTITY</b>	<b>Sales Price</b>
Luminaires	373	2016	6	1,956
Luminaires	373	2015	6	2,980
Luminaires	373	2014	6	2,514
Luminaires	373	2013	6	3,650
Luminaires	373	2012	6	3,370
Luminaires	373	2011	6	4,039
Luminaires	373	2010	3	2,359
Luminaires	373	2009	3	2,011
Luminaires	373	2008	3	1,619
Luminaires	373	2007	3	1,369
Luminaires	373	2005	6	1,884
Luminaires	373	2004	3	803
Luminaires	373	2003	3	602
Luminaires	373	2002	3	741
Luminaires	373	2001	3	686
Luminaires	373	2000	11	1,836
Luminaires	373	1999	11	1,647
Luminaires	373	1998	12	1,491
Luminaires	373	1997	11	1,315
Luminaires	373	1996	11	1,316
Luminaires	373	1995	11	1,207
Luminaires	373	1994	11	1,157
Luminaires	373	1993	11	1,053
Luminaires	373	1992	11	983
Luminaires	373	1991	16	1,306
Luminaires	373	1990	76	5,704
Luminaires	373	1989	76	5,269
Luminaires	373	1988	76	4,803
Luminaires	373	1987	76	4,546
Luminaires	373	1986	75	4,443
Luminaires	373	1985	76	4,428
Luminaires	373	1984	77	4,149
Luminaires	373	1983	73	3,499
Luminaires	373	1982	76	3,345

**CITY OF TAYLORSVILLE**  
**Streetlighting Facilities**  
**PURCHASE AND SALE AGREEMENT**

**Exhibit B (Cont.)**

**Assets**

<b>Asset Description</b>	<b>FERC ACCOUNT</b>	<b>Vintage</b>	<b>QUANTITY</b>	<b>Sales Price</b>
Luminaires	373	1981	76	2,954
Luminaires	373	1980	376	12,159
Wood Poles	364	2010	2	7,013
Wood Poles	364	2009	2	7,623
Wood Poles	364	2005	2	5,466
Wood Poles	364	2003	1	2,252
Wood Poles	364	1998	3	1,495
Wood Poles	364	1997	1	559
Wood Poles	364	1991	5	1,001
Wood Poles	364	1990	1	189
Wood Poles	364	1989	6	1,066
Wood Poles	364	1988	10	1,711
Wood Poles	364	1987	4	658
Wood Poles	364	1986	1	162
Wood Poles	364	1985	6	953
Wood Poles	364	1984	55	8,721
Wood Poles	364	1983	5	782
Wood Poles	364	1982	2	302
Wood Poles	364	1981	15	2,090
Wood Poles	364	1980	119	14,961
Overhead Conductor	365	2016	250	1,834
Overhead Conductor	365	2015	250	1,317
Overhead Conductor	365	2014	150	1,104
Overhead Conductor	365	2013	100	556
Overhead Conductor	365	2012	100	438
Overhead Conductor	365	2011	150	442
Overhead Conductor	365	2008	50	185
Overhead Conductor	365	2007	100	319
Overhead Conductor	365	2005	250	608
Overhead Conductor	365	2003	50	138
Overhead Conductor	365	1998	300	100
Overhead Conductor	365	1997	450	143
Overhead Conductor	365	1996	250	77
Overhead Conductor	365	1992	250	60

**CITY OF TAYLORSVILLE**  
**Streetlighting Facilities**  
**PURCHASE AND SALE AGREEMENT**

**Exhibit B (Cont.)**

**Assets**

<b>Asset Description</b>	<b>FERC ACCOUNT</b>	<b>Vintage</b>	<b>QUANTITY</b>	<b>Sales Price</b>
Overhead Conductor	365	1990	350	76
Overhead Conductor	365	1989	400	83
Overhead Conductor	365	1988	1,300	259
Overhead Conductor	365	1987	1,700	332
Overhead Conductor	365	1986	1,050	213
Overhead Conductor	365	1985	2,350	475
Overhead Conductor	365	1984	3,800	745
Overhead Conductor	365	1983	1,350	252
Overhead Conductor	365	1982	1,650	300
Overhead Conductor	365	1981	1,750	291
Overhead Conductor	365	1980	12,600	1,876
Underground Cable	367	2016	50	253
Underground Cable	367	2015	50	262
Underground Cable	367	2014	150	493
Underground Cable	367	2013	200	780
Underground Cable	367	2012	200	743
Underground Cable	367	2011	150	598
Underground Cable	367	2010	150	567
Underground Cable	367	2009	150	518
Underground Cable	367	2008	100	340
Underground Cable	367	2007	50	120
Underground Cable	367	2005	50	114
Underground Cable	367	2004	150	338
Underground Cable	367	2003	100	199
Underground Cable	367	2002	150	274
Underground Cable	367	2001	150	349
Underground Cable	367	2000	550	666
Underground Cable	367	1999	550	425
Underground Cable	367	1998	250	185
Underground Cable	367	1997	100	71
Underground Cable	367	1996	300	206
Underground Cable	367	1995	550	349
Underground Cable	367	1994	550	325
Underground Cable	367	1993	550	307



**CITY OF TAYLORSVILLE**  
**Streetlighting Facilities**  
**PURCHASE AND SALE AGREEMENT**

**Exhibit B (Cont.)**

**Assets**

<b>Asset Description</b>	<b>FERC ACCOUNT</b>	<b>Vintage</b>	<b>QUANTITY</b>	<b>Sales Price</b>
Underground Cable	367	1992	300	156
Underground Cable	367	1991	550	269
Underground Cable	367	1990	3,450	1,597
Underground Cable	367	1989	3,400	1,484
Underground Cable	367	1988	2,500	1,046
Underground Cable	367	1987	2,100	855
Underground Cable	367	1986	2,750	1,156
Underground Cable	367	1985	1,450	597
Underground Cable	367	1983	2,450	912
Underground Cable	367	1982	2,150	775
Underground Cable	367	1981	2,050	662
Underground Cable	367	1980	6,600	1,901
Steel	364	2003	2	23,709
Steel	364	2002	3	34,359
Steel	364	2001	3	33,189
Steel	364	2000	2	21,367
Fiberglass	364	2016	1	1,161
Fiberglass	364	2015	1	1,124
Fiberglass	364	2014	3	3,265
Fiberglass	364	2013	4	4,213
Fiberglass	364	2012	4	4,076
Fiberglass	364	2011	3	2,958
Fiberglass	364	2010	1	954
Fiberglass	364	2009	1	923
Fiberglass	364	2008	2	1,785
Fiberglass	364	2007	1	863
Fiberglass	364	2005	1	806
Fiberglass	364	2004	3	2,338
Fiberglass	364	2000	9	6,108
Fiberglass	364	1999	11	7,209
Fiberglass	364	1998	5	3,163
Fiberglass	364	1997	2	1,221
Fiberglass	364	1996	6	3,536
Fiberglass	364	1995	11	6,254

**CITY OF TAYLORSVILLE**  
**Streetlighting Facilities**  
**PURCHASE AND SALE AGREEMENT**

**Exhibit B (Cont.)**

**Assets**

<b>Asset Description</b>	<b>FERC ACCOUNT</b>	<b>Vintage</b>	<b>QUANTITY</b>	<b>Sales Price</b>
Fiberglass	364	1994	11	6,034
Fiberglass	364	1993	11	5,819
Fiberglass	364	1992	6	3,060
Fiberglass	364	1991	6	2,950
Fiberglass	364	1990	69	32,701
Fiberglass	364	1989	64	29,232
Fiberglass	364	1988	48	21,122
Fiberglass	364	1987	42	17,803
Fiberglass	364	1986	55	22,453
Fiberglass	364	1985	29	11,398
Fiberglass	364	1983	49	17,845
Fiberglass	364	1982	42	14,719
Fiberglass	364	1981	41	13,824
Fiberglass	364	1980	117	37,939
Total				589,794

**CITY OF TAYLORSVILLE**  
**Streetlighting Facilities**  
**PURCHASE AND SALE AGREEMENT**

**Exhibit C**

**Breakdown of Asset Purchase Price**

<u>Description</u>	<u>Sales Price</u>
<u>Plant In Service</u>	
364 Poles, Towers and Fixtures	\$458,487
365 Overhead Conductors & Devices	\$12,223
367 Underground Conductors and Devices	\$19,893
373 Street Lighting and Signal Systems	\$99,192
Plant In Service	\$589,794
Income Taxes	\$57,493
<b>Sale Price - Existing Assets</b>	\$647,286
Expenses	
Separation Costs	\$0
Estimated Sales Tax @ 0.00%	\$0
Legal/Transaction Costs	\$2,500
<b>Total Expenses</b>	\$2,500
<b>Total Sale Price</b>	\$649,786

**CITY OF TAYLORSVILLE  
Streetlighting Facilities  
PURCHASE AND SALE AGREEMENT**

**Exhibit D**

**Energy Only Rate Schedule**

Rocky Mountain Power, Electric Service Schedule No. 12, State of Utah for Street Lighting: Customer-Owned System, currently available at [http://www.rockymountainpower.net/content/dam/rocky\\_mountain\\_power/doc/About\\_Us/Rates\\_and\\_Regulation/Utah/Approved\\_Tariffs/Rate\\_Schedules/Street\\_Lighting\\_Customer\\_Owned\\_System.pdf](http://www.rockymountainpower.net/content/dam/rocky_mountain_power/doc/About_Us/Rates_and_Regulation/Utah/Approved_Tariffs/Rate_Schedules/Street_Lighting_Customer_Owned_System.pdf) , as the same may be modified, amended, or superseded.

**CITY OF TAYLORSVILLE**  
**Streetlighting Facilities**  
**PURCHASE AND SALE AGREEMENT**

**Exhibit E**  
**BILL OF SALE**

SELLER: ROCKY MOUNTAIN POWER

BUYER: CITY OF TAYLORSVILLE

FOR VALUABLE CONSIDERATION totaling Six Hundred Forty Nine Thousand Seven Hundred Eighty Six and no/100 Dollars (\$649,786), the receipt of which is hereby acknowledged, Rocky Mountain Power (“Seller”), hereby grants, bargains, sells and delivers to City of Taylorsville, Utah (“Buyer”), pursuant to an Asset Purchase Agreement dated as of the \_\_\_\_ day of \_\_\_\_\_, 2017, all of its right, title, and interest in and to all of the Assets listed on Exhibit B, attached to said Asset Purchase Agreement, and presently in the possession of Seller.

THE ASSETS ARE SOLD AND DELIVERED TO BUYER “AS IS, WHERE IS, WITH ALL FAULTS.”

ROCKY MOUNTAIN POWER HEREBY DISCLAIMS AND EXCLUDES HEREFROM, (A) ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY AS TO THE VALUE, CONDITION, DESIGN, OPERATION, OR QUALITY OF THE MATERIALS OR WORKMANSHIP IN, OR ANY DEFECTS IN, THE ASSETS, (B) ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR USE OR FOR A PARTICULAR PURPOSE, OR (C) ANY EXPRESS OR IMPLIED REPRESENTATION, GUARANTEE, OBLIGATION, LIABILITY OR WARRANTY OF SELLER, EXPRESS OR IMPLIED, OF ANY KIND, ARISING BY LAW OR FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE OTHER THAN THOSE EXPRESSLY SET FORTH IN SAID ASSET PURCHASE AGREEMENT.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2017.

PACIFICORP, an Oregon corporation, dba  
ROCKY MOUNTAIN POWER

By: \_\_\_\_\_  
Name: R. Jeff Richards  
Title: Vice President and General Counsel

**CITY OF TAYLORSVILLE**  
**Streetlighting Facilities**  
**PURCHASE AND SALE AGREEMENT**

**Exhibit F**

**Third-Party Attachments**

<b>STREET</b>	<b>Joint Use Attachment</b>
<b>N/A</b>	<b>NONE</b>

**ATTACHMENT B**

**Proposed Journal Entries**

**Estimated Journal Entries for the Sale of Distribution Assets to the City of Taylorsville**

<b>FERC Acct</b>	<b>FERC Account Description</b>	<b>Debit</b>	<b>Credit</b>
131	Cash	\$647,286.00	
101	Electric plant in service - distribution		\$ 393,924.00
108	Accumulated provision for depreciation of electric utility plant		\$ 253,362.00
		\$647,286.00	\$ 647,286.00