STAFF REPORT

TO: Summit County Council
FROM: Lisa Yoder, Sustainability Program Manager
DATE: Aug 7, 2019
SUBJECT: Net 100% Renewable Electrical Energy for Government Operations

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This staff report is being provided to facilitate a discussion regarding next steps toward achievement of Council's goal to transition to net 100% renewable electrical energy for government operations by 2032.

BACKGROUND

In October 2017 County Council passed Resolution 2017-16 that stated the following Renewable Energy Goals:

Summit County will implement strategies and policies to:

a. Transition to measured net 100% renewable electrical energy by 2032 for all of Summit County's government operations; goal includes 50% renewable electrical energy for Summit County government operations by 2025; and
b. Make renewable electrical energy obtainable, and adopted broadly, by all residents and businesses in Summit County by 2032.

Summit County executed a Joint Clean Energy Cooperation Statement (Cooperation Statement) with Rocky Mountain Power (RMP) in March 2018 that states the parties' intent to work together to support County's energy goals, specifically the pursuit of renewable energy for county operations.

County subsequently entered an Engineering and Professional Services Agreement (EPSA) with RMP to perform design, engineering, estimating, professional services and procurement work related to the acquisition and delivery of renewable resources. In accordance with the EPSA, RMP issued a Request for Proposal (RFP) for the combined operational loads of Summit County and its Service Districts, Salt Lake City, Park City, Vail, Deer Valley, and Utah Valley University.

The result of the competitively-bid RFP to meet Summit County's government operations load is favorable. In fact, if Council is agreeable to the terms of the selected renewable energy developer and the project timeline, **Summit County is poised to achieve its goal to transition to net 100% renewable electrical energy for government operations nearly ten (10) years ahead of the 2032 target date with minimal impact to county budget.**

More importantly, electricity-related emissions are second only to solid waste as the largest portion of the County government operation's greenhouse gas (GHG) emissions inventory, contributing 2,281 metric tons (MT) of carbon dioxide equivalent (CO_2e) in 2018. A transition to net 100% renewable electrical energy available is expected to contribute 13% to Council's goal to decrease GHG emissions from government operations 80% below 2016 level by 2040.

Since 2010, Summit County has decreased electricity related emissions from electricity usage in buildings by 30%, suggestive of the positive effect of the implementation of energy efficiency and renewable energy projects. This emissions decrease occurred despite a significant increase in the total square footage of county facilities, the addition of electric meters that were previously unreported, and installation of the first phase of electric vehicle charging stations.

The transition to electrified transportation will increase electricity related emissions, necessitating an ongoing supply of clean, renewable energy to maintain progress toward achievement of Council's emissions reduction goals for both county operations and countywide.

UPDATE

Since staff's update to council June 5, 2019, a renewable energy developer has been selected and the following concerns that impact the renewable energy price were resolved:

- Avoided cost is being calculated using the current 2017 Integrated Resource Plan.
- Estimated network and transmission upgrade costs have been confirmed, subject to possible modification upon completion of interconnection engineering by PacifiCorp to affirm the costs already reviewed by RMP.
- RMP's monthly bill administration cost has been determined.
- Cost impacts to county budget per the terms and conditions of the pending Renewable Energy Service Contract (RESC) and Power Purchase Agreement (PPA) are favorable.

PROBLEM

Time is of the essence. To ensure the renewable resource project gets built to deliver net 100% renewable energy at the kilowatt hour (kWh) price proposed by the selected developer, the following must occur within a tight time line (shown in 'Next Steps' below):

- The customers (Summit County, Park City, Salt Lake City, Utah Valley University, Deer Valley and Vail) must sign individual RESC(s) with RMP to take the power provided by selected developer through a PPA with RMP. The customers must remain aligned to obtain the project pricing.
- Council must execute a RESC with RMP. The RESC is in the draft/edit stage at this time. Staff has made first round edits and submitted to RMP. The red-line draft RESC is attached as Exhibit A for Council's review and discussion.
- RMP must prepare filing with the Public Service Commission (PSC) by Sept 2019 that includes the RSECs. RESCs to be contingent upon stated pricing, PSC approval, and completion of delivery (COD) by date specified.
- RMP must obtain PSC approval and the PPA with the selected renewable energy developer by year end to safe harbor the project and ensure the favorable price to the customers.

SOLUTION

Staff will continue to work closely with county manager, county attorney, and RMP to prepare a final RESC for Council's review and possible approval at the next county council meeting (Aug. 14, 2019).

NEXT STEPS

- Execute a RESC with RMP by Aug. 21, 2019.
- RMP filing with PSC (including customers' RESCs) by Sept. 2019.
- RMP negotiates PPA with renewable energy developer by Dec. 2019.
- PSC final, non-deniable approval of filing by Dec. 2019.
- Developer to start construction to safe harbor 30% Investment Tax Credit by Dec. 31, 2019.
- Construction of renewable resource to be completed by Dec 31, 2022.
- Receive net 100% renewable electrical energy Jan. 1, 2023.

STAFF RECOMMENDATION

Review the attached draft, redline RESC and commit to execute an agreeable RESC by Aug 22, 2019 that will enable RMP to file with PSC and prepare a PPA for the customers. The PPA will allow Summit County to transition to net 100% renewable electrical energy for government by 2023, years ahead of Council's target date.

DEPARTMENT REVIEW

Sustainability, Legal

FUNDING

No funding is required at this time.

ATTACHMENTS

Exhibit A – Draft, redline Renewable Energy Service Contract

EXHIBIT A

Commented [LY1]: *Effective 3/27/2019*
54-17-806. Qualified utility renewable energy tariff.

(1) ...

RENEWABLE ENERGY SERVICE CONTRACT

between

ROCKY MOUNTAIN POWER

and

[CUSTOMER]

EXHIBIT A

RENEWABLE ENERGY SERVICE CONTRACT

This RENEWABLE ENERGY SERVICE CONTRACT (this "Agreement"), effective this ___day of_____, 2019 ("Effective Date"), is entered into between Rocky Mountain Power, an unincorporated division of PacifiCorp, an Oregon corporation (the "Company"), and _____, a _____("Customer"), each sometimes referred to herein as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, Customer, an existing electric customer of Company, seeks to increase the renewable energy content of its existing energy supply to meet its sustainability goals within Company's service territory;

WHEREAS, Company is a public electric utility that provides electric power and energy to retail electric customers throughout its certificated service territory in accordance with regulatory governance by the Public Service Commission of Utah;

WHEREAS, the Parties desire to enter into this Agreement for renewable energy in accordance with the provisions of Utah Code § 54-17-806.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter contained, the receipt and sufficiency of which are hereby acknowledged, Customer and Company hereby agree to the following terms and conditions:

ARTICLE I
DEFINITIONS

Section 1.1 Definitions. Whenever used herein, the following terms shall have the respective meanings set forth below, unless a different meaning is plainly required by the context, and when the defined meaning is intended, the term is capitalized:

"Adequate Assurances of Performance" means sufficient security in the form, amount, by an issuer or guarantor, and for the term reasonably acceptable to Company, including, but not limited to, cash, a standby irrevocable letter of credit, a prepayment, an asset or a performance bond or guaranty.

"Affiliate" means an entity that is controlled by, under common control with, or has the ability to exercise control over, a Party.

"Agreement" means this Renewable Energy Service Contract and any renewals hereof and any appendix, exhibit or amendment hereto.

"Billing Period" means the period of approximately thirty (30) days intervening between regular successive meter readings.

"Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall begin at 8:00 a.m. and end at 5:00 p.m. local time.

"Commission" means the Public Service Commission of Utah.

"Company" has the meaning set forth in the Preamble.

EXHIBIT A

"Company Supply Charge" means the Customer's normal tariff rate per kWh as specified in the applicable Electric Service Schedule (which may include a special contract as described in Electric Service Regulation 3(3))..

"Confidential Information" means[, subject to 20.3,][1] any and all non-public proprietary written information, data, analyses, documents, and materials furnished or made available by a Party or its Representatives to the other Party or its Representatives in connection with this Agreement, and any and all analyses, compilations, studies, documents, or other material prepared by the receiving Party or its Representatives to the extent containing such information, data, analyses, documents, and materials. Confidential Information shall not include any information that: (a) is already in the public domain or which becomes public knowledge absent any violation of the terms of this Agreement; (b) was already in the possession of a Party prior to disclosure by the other Party; (c) a Party obtains from another Person which such Party reasonably believes was not under an obligation of confidentiality; (d) is or becomes generally available to, or is independently known to or has been or is developed by, any Party or any of its Representatives other than materially as a result of any disclosure of proprietary information by the disclosing Party to the receiving Party; or (e) information independently developed by either Party, without reliance on the Confidential Information.

"Contract Year" with respect to any Customer Renewable Resource means a twelve (12) consecutive month period commencing on the Delivery Start Date for such Customer Renewable Resource or on any anniversary date thereof during the Term of this Agreement. The unqualified term "Year" shall refer to a Contract Year.

"Cost and Benefit of Renewable Supply" has the meaning set forth in Section 4.6.

"Customer" has the meaning set forth in the Preamble.

"Customer Renewable Resource" means one or more renewable resources identified by or on behalf of the Customer to provide electric power and energy for use by Customer consistent with Utah Code § 54-17-806. A Customer Renewable Resource may be Company- or Customer-owned, procured through a contract between the Company and a third party, or procured through a separate contract between the Company and the Customer.

"Demand" means the rate in kilowatts at which Company delivers electricity to Customer as measured by meters at the Retail Point of Delivery. Demand measurements are averaged over the fifteen-minute period of Customer's greatest use during the month.

"Early Termination Payment" has the meaning set forth in Section 10.3.

"Electric Service Regulations" means Company's currently effective and applicable electric service regulations, on file with and approved by the Commission, as they may be amended or superseded from time to time with the approval of the Commission. To the extent of any inconsistency between this Agreement and the Electric Service Regulations, the terms of this Agreement shall prevail.

"Electric Service Requirements" means Company's currently effective and applicable electric service requirements as specified at http://www.rockymountainpower.net/con/esr.html. The Electric Service Requirements may be reasonably amended from time to time by Company.

[1]NTD For municipalities and university only

EXHIBIT A

"Energy" means electric energy expressed in kilowatt-hours.

"Excess Renewable Supply" means, as measured for each Contract Year, the positive difference, if any, between the Renewable Supply and the total amount of Energy actually consumed by the Customer. In the event the Energy consumed by the Customer exceeds the Renewable Supply, the Excess Renewable Supply shall equal zero (0).

"Excess Renewable Supply Adjustment" has the meaning set forth in Section 5.2(c).

"Firm Power and Energy" means Power expressed in kilowatts and associated Energy expressed in kilowatt-hours intended to have assured availability, as provided in Electric Service Regulation No. 4, entitled "Continuity of Service," to meet any agreed-upon portion of Customer's load.

"Force Majeure" has the meaning set forth in Article XI.

"kW" means kilowatt.

"kWh" means kilowatt hour.

"Load Factor" means a percentage that is derived from dividing the average load by the peak Demand during a calendar month.

"Moody's" means Moody's Investors Services, Inc.

"MW" means megawatt.

"MWh" means megawatt hour.

"On-Peak" shall have the same meaning as applicable to the Company's Commission-approved Utah Schedule 9, as the same may be amended or superseded from time to time; as of the Effective Date, On-Peak means Monday through Friday, except for Holidays, from 7:00 a.m. to 9 p.m. prevailing Mountain Time from October through April, and from 1:00 p.m. to 9 p.m. Prevailing Mountain Time from May through September.

"Party" and "Parties" have the meanings set forth in the Preamble.

"Person" means any individual, corporation, company, voluntary association, partnership, incorporated organization, trust, limited liability company, or any other entity or organization, including any governmental authority.

"Power" means electric power expressed in kilowatts.

"Power Factor" means the percentage determined by dividing Customer's average kilowatt-hours (real power) by Customer's average kilovolt-ampere hours (apparent power) in any given month.

"Power Quality Standards" means Company's currently effective and applicable power quality standards contained in the Company's Engineering Handbook as specified at https://www.rockymountainpower.net/con/pqs.html. The Power Quality Standards may be amended from time to time by Company.

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EXHIBIT A

"Records" has the meaning set forth in Article XIII.

"REC Charge" has the meaning set forth in Section 5.2(h).

"Renewable and Environmental Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever titled, attributable to the generation from a renewable energy generating unit, and its avoided emission of pollutants. Renewable and Environmental Attributes do not include (i) any energy, capacity, reliability, or other power attributes from the generating unit; (ii) production tax credits associated with the construction or operation of the generating unit and other financial incentives in the form of credits, reductions, or allowances associated with the generating unit that are applicable to a state, provincial, or federal income taxation obligation; or (iii) fuel-related subsidies or "tipping fees" that may be paid to the seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits.

"Renewable Energy Certificate" or "REC" means a document evidencing all Renewable and Environmental Attributes from one megawatt-hour of electricity generation from a renewable energy generating unit registered with WREGIS or a certificate imported from a compatible registry and tracking system and converted to a WREGIS certificate.

"Renewable Supply Charge" means a charge per kWh as provided in Section 5.2(b) to recover the total annual Cost and Benefit of Renewable Supply, to be delivered to Customer pursuant to this Agreement for a future Contract Year, as summarized in each Renewable Resource Appendix.

"Renewable Supply" means Energy in kWh produced by a Customer Renewable Resource for use by the Customer, as measured under the contract between the Company and the Customer Renewable Resource.

"Renewable Resource Appendix" means an agreement to be attached as an Appendix hereto to specify the terms and conditions applicable to acquiring a Customer Renewable Resource in connection with electric service for the Customer, substantially in the form of Exhibit E.

"Renewable Point of Delivery" means the point of delivery of the Customer Renewable Resource as defined in the agreement between the Company and the Customer Renewable Resource, as may be further specified in a Renewable Resource Appendix.

"Representatives" has the meaning set forth at Section 15.3.

"Retail Point of Delivery" means the point of delivery for all Firm Power and Energy delivered to Customer

"S&P" means Standard and Poor's Corporation.

"Schedule 9-Based Rates" means a rate per kWh for the delivered cost of power and energy under the Company's Commission-approved Utah Schedule 9, as the same may be amended or superseded from time to time, including all customer charges, facilities charges, energy charges and power charges, along with all surcharges and sur-credits applicable to Schedule 9 service, except for and excluding: (i) the Schedule 193 DSM Cost Adjustment or any successor schedule, charge or credit, including the combined line-item charge referenced in Utah Code Ann. § 54-7- 12.8(3); and (ii) any Schedule 91 Surcharge or STEP Charge (as both terms are defined in this Agreement), which charges will be paid as provided in Article V. Schedule 9-Based Rates will be calculated with respect to a

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hypothetical Schedule 9 customer with an 85% Load Factor evenly disbursed over all hours in a Contract Year. The Schedule 9-Based Rates shall be further adjusted to subtract the Use of Facilities Charge, which will be paid as provided in Article V.

"Schedule 91 Surcharge" means the surcharge specified in Section 5.2(f).

"STEP Charge" means the surcharge specified in Section 5.2(g).

"System Facilities Capital Charge" means the charge specified in Section 5.2(e).

"WREGIS" means the Western Renewable Energy Generation Information System or any successor renewable energy tracking and reporting system.

Section 1.2 Interpretation. Unless the context plainly indicates otherwise, words importing the singular number shall be deemed to include the plural number and the masculine includes the feminine and neuter (and vice versa); terms such as "hereof", "herein", "hereunder" and other similar compounds of the word "here" mean and refer to the entire Agreement rather than any particular part of the same. The words "includes" and "including" shall be deemed to mean "including, without limitation" or the correlative meaning. All references to any agreement, laws, rules and regulations are references to such agreement, laws, rules or regulations as amended, supplemented or modified from time to time in accordance with its terms or applicable law. All references to a particular entity shall include a reference to such entity's successors and permitted assigns. The headings of divisions, items or other parts of this Agreement are for convenience of reference only and do not define, limit, construe or otherwise affect the contents thereof. Certain other definitions, as required, appear in the following parts of this Agreement.

ARTICLE II
TERM; CONDITIONS PRECEDENT

Section 2.1 Term. The term of this Agreement shall begin on the Effective Date and shall continue for so long as a contract remains in place between the Company and the owner of a Customer Renewable Resource or for so long as the Company has a financial obligation under a contract that was entered into between the Company and the owner of a Customer Renewable Resource, whichever is longer ("Term"). Provided, however, that the Parties may extend the Term by mutual written agreement, as approved by the Commission.

Section 2.2 Conditions Precedent. Approval of the terms and conditions contained in this Agreement by the Commission is a condition precedent for the performance of the covenants in this Agreement.

ARTICLE III
SERVICE TO BE FURNISHED

Section 3.1 Scope of Service. Subject to the terms and conditions set forth below, and at the rates and charges provided below, Company agrees to supply to Customer and Customer agrees to accept and pay for, Firm Power and Energy in amounts required by this Agreement, as more specifically provided herein or as described in a Renewable Resource Appendix. Customer shall execute each Renewable Resource Appendix only after the Company signs a definitive agreement for a Customer Renewable Resource. Customer may, from time to time, request that the Company procure a Customer Renewable Resource to be incorporated into the provision of service by the Company to the Customer under the terms set forth herein.

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EXHIBIT A

Section 3.2 Commencement of Deliveries. The Company shall make initial deliveries of Firm Power and Energy to Customer as soon as practicable after the commercial operation date of a Customer Renewable Resource, consistent with Customer's needs.

Section 3.3 No Resale of Power. Customer shall not resell any Firm Power and Energy delivered under this Agreement to any other Person; provided that use of electric power or energy by a tenant pursuant to the terms of Electrical Service Regulation No. 4, shall not constitute a resale of power hereunder. Aggregation of multiple metered delivery locations by Customer or an Affiliate of Customer shall not be considered the resale of energy under this Agreement provided that Customer assigns the rights and obligations of this Agreement to the Affiliate in accordance with Article XIV.

ARTICLE IV
PROCUREMENT OF CUSTOMER RENEWABLE RESOURCE

Section 4.1 Customer Procurement Request. Customer may, from time to time, direct that the Company procure a Customer Renewable Resource on its behalf by giving written notice to Company. Customer may also identify a Customer Renewable Resource to supply renewable energy to the Customer, but the identified Customer Renewable Resource must contract directly with the Company prior to becoming a Customer Renewable Resource as defined by this Agreement. The Customer Renewable Resource must meet all of the requirements for a Renewable Energy Source in accordance with Utah Code § 54-17-601(10).

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Section 4.2 Terms of Procurement. As needed from time to time when a Customer Renewable Resource is sought, the Parties shall establish in writing the terms and conditions under which the Company will procure the resource, including but not limited to:

(a) the type of resource being sought (*e.g.*, solar, wind, geothermal, etc.);

(b) the desired size in megawatts;

(c) whether the desire is for one or multiple resources;

(d) specific direction on the acceptable location(s) for the resource;

(e) the desired online date; and

(f) whether the Company will issue a request for proposal.

Section 4.3 Company's Obligation to Procure Customer Renewable Resource.

(a) Upon Customer's written direction under Section 4.1, Company and Customer will identify and evaluate the potential new Customer Renewable Resource(s). Company and Customer will work collaboratively and in good faith using commercially reasonable efforts to complete the following actions after the Customer's written direction under Section 4.1. The time periods set forth below may be revised by mutual agreement of the Parties:

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(i) within sixty (60) days, identify and establish the terms of procuring a Customer Renewable Resource in accordance with Section 4.2;

(ii) within ninety (90) days, develop a request for proposals or other appropriate process for selecting a Customer Renewable Resource, which time period will be extended as necessary to accommodate any required Commission approval of the solicitation process; and

(iii) within one hundred and eighty (180) days (unless delayed by the Commission or the owner of a Customer Renewable Resource other than the Company, in which case the time for performance shall be extended on a day-for-day basis), enter into and complete negotiations to procure the Customer Renewable Resource and submit applications for any regulatory approvals required for the procurement, on terms reasonably acceptable to the Customer and Company.

(b) In the event Customer identifies a potential Customer Renewable Resource on its own, Customer shall provide Company a detailed term sheet or proposed definitive agreement. Company shall review such term sheet or agreement and provide a detailed explanation of any unacceptable terms or other concerns with the proposed material terms and conditions within fifteen (15) Business Days following receipt.

(c) The Customer shall pay all internal and external costs, less cost of benefit to Company, if any, reasonably incurred by Company and directly related to the Company's acquisition of the Customer Renewable Resource. Upon receipt of Customer's notice under Section 4.1, Company shall provide Customer with a good faith estimate of Company's costs for Customer's approval prior to Company commencing work to acquire the Customer Renewable Resource. The Company shall seek prior authorization from Customer prior to incurring any costs for which the Company intends to seek reimbursement from Customer.

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Section 4.4 Material Terms and Conditions. Prior to entering into any agreement with the owner of a Customer Renewable Resource, the Company and the Customer shall agree to the material terms and conditions to be included in the contract or other commercial arrangement between the owner of the Customer Renewable Resource and the Company. The terms shall include, but are not limited to:

(a) resource size in megawatts;

(b) resource online date;

(c) contract term;

(d) price for energy delivered;

(e) performance guaranty and other operational terms;

(f) credit provisions; and

(g) default and termination provisions.

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Notwithstanding any other provision of this Agreement, the Company shall not be permitted to require any terms or conditions that (i) cannot reasonably be considered market terms or conditions in the renewable energy industry, (ii) unreasonably impair the ability to finance the Customer Renewable Resource, or (iii) address or mitigate risks otherwise addressed or mitigated by Customer pursuant to Section 4.3(b) or assumed by Customer. Company is not obligated to enter into an agreement with any potential Customer Renewable Resource if the proposed agreement includes any terms unacceptable to the Company or if entering into such agreement raises other concerns for the Company, each only to the extent it is reasonably expected to materially adversely affect the Company. If the agreement with a potential Customer Renewable Resource is, to the Company's reasonable satisfaction, acceptable, then, Company shall enter into such definitive agreement with the owner of the proposed Customer Renewable Resource. If the Company has identified unacceptable terms or other concerns that Company has determined are reasonably likely to have a materially adverse effect on it; (i) it shall provide Customer prompt notice detailing the unacceptable

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terms or other concerns, and (ii) if Customer is able, to the Company's reasonable satisfaction, to mitigate the effects of such unacceptable terms or other concerns, then Company shall enter into a definitive agreement for a Customer Renewable Resource after the mitigation proposed by Customer is agreed to in writing by the Parties.

Section 4.5 No Liability for Performance of Customer Renewable Resource. The Company shall not be liable to the Customer for any partial or total failure to perform by a Customer Renewable Resource, nor shall the Company be obligated to locate or secure a replacement Customer Renewable Resource. The Company shall use commercially reasonable efforts to enforce the terms of any contract between the Company and the owner of a Customer Renewable Resource, consistent with the Company's enforcement of the terms of other contracts between Company and renewable energy providers.

Section 4.6 Cost and Benefit of Renewable Supply. The Customer shall be responsible for all costs and benefits associated with a contract with the owner of a Customer Renewable Resource for Renewable Supply, excluding any costs and benefits incurred by the Company to the extent caused by the Company's failure to comply with the terms of any such contract ("Cost of Renewable Supply"). The estimated Cost and Benefit of Renewable Supply shall be calculated in accordance with the methodology set forth in Exhibit B.

Section 4.7 Ownership of Renewable and Environmental Attributes. As described in a Renewable Resource Appendix, Company shall transfer to Customer all Renewable Energy Certificates (including all Renewable and Environmental Attributes) associated with Renewable Supply actually generated and delivered by Company to the Customer during a Billing Period within ninety (90) days after Customer has paid Company's invoice for such Renewable Supply. Company shall transfer all Renewable Energy Certificates acquired to Customer's WREGIS account in accordance with applicable WREGIS rules and requirements. Upon written request by Customer, Company shall retain the Renewable Energy Certificates in the Company's WREGIS account and retire them on Customer's behalf. Customer shall pay all costs incurred by Company in transferring the Renewable Energy Certificate(s) to Customer and/or retiring them on Customer's behalf.

ARTICLE V
SERVICE RATES AND CHARGES

Section 5.1 Rates for Power and Energy Delivered to Customer. The Rate for all Power and Energy delivered to Customer under this Agreement shall be made up of the following rate components summarized below, which components are described in more detail and further defined in Section 5.2.

(a) Company Supply Charge – applied to all kWh of Company Supply;

(b) Renewable Supply Charge – applied to all kWh of Renewable Supply;

(c) Excess Renewable Supply Adjustment – on an annual basis;

(d) Administrative Fees;

(e) Schedule 91 Surcharge;

(f) STEP Charge, when applicable;

(g) REC Charge, when applicable; and

(h) Any other surcharges or fees associated with the Customer's Company Supply

Commented [DT6]: This appears to be an attempt at a disclaimer of any warranty as to the renewable resource. Given that we are paying a premium for the renewable energy, why would we agree to such a provision? We will not have privity of contract with the Customer Renewable Resource, only Rocky Mountain Power has that. Company should have the obligation to seek specific performance of their contract. The use of "commercially reasonable efforts" worries me. What if Rocky Mountain Power decides it doesn't have the money to pay for a legal proceeding to enforce the contract?

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EXHIBIT A

Charge as may be applicable from time to time

Section 5.2 Description and Calculation of Rate Components. The Company shall calculate rates in compliance with Utah Code § 54-17-806. An example of the applicable calculation is included in Exhibit B.

(a) In any given Billing Period, Customer shall pay the Company Supply Charge.

(b) *Renewable Supply Charge*. The Renewable Supply Charge is equal to the difference between: (i) the cost to the Company to supply renewable generation to the Customer, as determined in connection with each contract for Customer Renewable Resources and to be established in each Renewable Resource Appendix; and (ii) the Company's avoided costs as defined in Utah Code Annotated § 54-2-1(1).

(c) *Excess Renewable Supply Adjustment*. The credit to the Customer for the Excess Renewable Supply shall be calculated and credited at the conclusion of each calendar year.[2]

(d) *Administrative Fees*. The cost based fees related to the Company's administration of the Customer Renewable Resources, including additional costs related to special billing, scheduling and other services (excluding overhead costs) solely resulting from this Agreement.

(e) *System Facilities Capital Charge*. This charge will be unique to each contract for Customer Renewable Resources and shall be established in each Renewable Resource Appendix. The System Facilities Capital Charge reimburses the Company of the costs and benefits associated with the modified use of its system facilities to ensure that costs are not shifted to other Company customers.

(f) *Schedule 91 Surcharge*. The Schedule 91 Surcharge is the Schedule 91 surcharge to help fund the low income residential lifeline program, equal to the amount paid each Billing Period by a Schedule 9 customer, as specified in Schedule 91.

(g) *STEP Charge*. The STEP Charge is a component of the line item surcharge referenced in Utah Code § 54-7-12.8(3) designed to recover the costs of the sustainable transportation and energy plan pursuant to Utah Code § 54-7-12.8(3)(b), which shall be calculated in the same manner as for Schedule 9 customers and charged to Customer under this Agreement through December 31, 2021, as a separate charge rather than a line-item surcharge as referenced in Utah Code § 54-7-12.8(3).

(h) *REC Charge*. The REC Charge is the Company's actual costs incurred in securing RECs as requested by Customer, pursuant to Section 5.3.

(i) Any other surcharges or fees associated with the Customer's Company Supply Charge as may be applicable from time to time.

Section 5.3 REC Procurement. The Customer may direct the Company to acquire unbundled RECs on behalf of the Customer by providing written notice to the Company. If so directed, Company will acquire Renewable Energy Certificates on a least-cost basis. Company shall transfer all Renewable Energy Certificates acquired to Customer's WREGIS account in accordance with applicable WREGIS rules and requirements. Upon written request by Customer, Company shall retain the Renewable Energy Certificates in the Company's WREGIS account and retire them on Customer's behalf. Any

[2] PAC NTD – we are still working on the wording and timing for this billing component to ensure it matches with the tariff, including a report that will track usage vs renewable production within the year

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Unless required and/or approved by PSC

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Commented [LY15]: Ensure STEP Charge is not double-billed on standard electricity rates as well as electricity delivered by RE

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cost associated with the acquisition of the Renewable Energy Certificates will be direct assigned to the Customer.

Commented [DT18]: Same question on costs as in 4.7 above

ARTICLE VI
BILLING & PAYMENT

Section 6.1 Calculation of the Total Amount Due. The total amount due from Customer to Company each month shall be the sum of the rate components outlined in Section 5.1 for the previous Billing Period.

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Section 6.2 Billing Statements. Company will present Customer with a single bill that contains all applicable rates, charges, taxes and fees under this Agreement, and Customer shall make a single monthly payment to Company[3]. All billing statements for service under this Agreement shall show the amount due for the type and quantity of power and energy delivered and all the associated charges. Each bill shall be transmitted to Customer both electronically and by U.S. Mail.

Commented [LY19]: Need to be able to aggregate meters to meet load requirement of Schedule 34 yet itemize energy usage and fees specific to each meter/building.

Section 6.3 Payments. All bills shall be paid within thirty (30) days of receipt by Customer. Customer may make payments by check, EDI or wire transfer to an account designated by Company. The Customer account number must be included with each payment. If Customer disputes any portion of Customer's bill, Customer shall give prompt notice to Company of and the basis for the dispute and shall pay the undisputed portion. Each of the Parties agrees to work in good faith to promptly rectify any disputed amounts. Late payments and any disputed amounts determined to be due to Company shall bear interest at the rate then specified by the Commission or, if no rate is specified, at the then-effective prime rate as specified in The Wall Street Journal.

Section 6.4 No Duplication. Customer shall not be liable under this Agreement to make any payment of amounts due (or for which Customer has paid in advance) if and to the extent that Company has otherwise actually received payment for such amounts under any insurance policy, contract, agreement or otherwise.

Section 6.5 Credit Requirements, Adequate Assurances. If Customer has failed to make a timely payment hereunder, and Company has reasonable grounds for insecurity regarding the performance of any obligation of Customer hereunder (whether or not then due), Company may demand Adequate Assurances of Performance. Such Adequate Assurances of Performance shall be provided within three business days after a written demand is made by Company.

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Deleted: "Adequate Assurances of Performance" means sufficient security in the form, amount, by an issuer or guarantor, and for the term reasonably acceptable to PacifiCorp, including, but not limited to, cash, a standby irrevocable letter of credit, a prepayment, an asset or a performance bond or guaranty.

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ARTICLE VII
METERING

Section 7.1 Metering Equipment. To the greatest extent practicable, the Company shall utilize existing metering equipment for billing purposes. Customer shall allow Company access to all such metering equipment without charge during regular business hours. Company shall maintain and periodically test all such meters and metering equipment in accordance with its policies and procedures and in accordance with its Electric Service Regulations. In exercise of the rights granted by this section, Company shall use commercially reasonable efforts not to materially interfere with the operation of Customer, shall schedule any activity to minimize any interference with Customer's operations, and shall comply with all safety and other reasonable requirements of Customer as provided by Customer to Company.

Commented [LY20]: Will we be required to install new meters? At what cost?

[3] PAC NTD – this section may need to be customized for each customer's situation

EXHIBIT A

Section 7.2 Telecommunications Facilities. At sites where there is mobile telephone coverage, the Company shall provide an external cell phone or Ethernet connection for remote data acquisition located at the meter. For sites where there is no cell coverage or Company-owned fiber, Customer shall provide a dedicated telephone line or other Company approved dedicated data access for meter interrogation. Customer shall provide the dedicated access without charge to Company.

Section 7.3 Secondary Metering. If any Retail Point of Delivery is on the primary side of Customer's transformers, Company may elect to install its meter on the secondary side of the transformers, whereupon transformer and other losses occurring between the Retail Point of Delivery and the meter shall be computed and added to the meter readings to determine Power and Energy consumption.

Section 7.4 Transformer Loss Curves. If Customer takes service at primary voltage and if Secondary Metering, as set forth in Section 7.3, is used, Customer shall, prior to commencement of service, provide Company with transformer loss curves and test data to allow Company to calculate transformer losses for billing purposes.

ARTICLE VIII
OPERATIONAL CONSTRAINTS

Section 8.1 Notification. Customer shall use commercially reasonable efforts to notify Company prior to increasing consumption of electric Power and Energy at its facilities in a manner that would reasonably be expected to significantly exceed Firm Power and Energy levels, and Customer shall provide sufficient time for Company to accommodate such loads. Customer shall also notify Company prior to any significant change in load characteristics or installation of devices (such as power factor correction capacitors, dynamic brakes, adjustable speed drives, etc.) that would reasonably be expected to materially impact the operation of Company's electric system or Customer's interaction with Company's electric system.

Section 8.2 Normal Operating Conditions. Customer shall comply with Company's Electric Service Requirements. Customer accepts and shall adhere to Company's Power Quality Standards, including the "Voltage Level and Range", "Voltage Balance", and "Voltage Disturbances" sections. All measurements of currents and voltages under this Section 8.2 shall be taken at the Retail Points of Delivery.

Section 8.3 Reactive Requirements. Customer shall control and limit the flow of reactive power between Company's and Customer's system so as to maintain a Power Factor of 90% lagging, or higher. If the average Power Factor is found to be less than 90% lagging, as recorded by the applicable meter, reactive power will be increased by 3/4 of 1% for every 1% that the Power Factor is less than 90%.

Section 8.4 Voltage Fluctuation and Light Flicker. In order to receive electric service from Company, Customer shall continuously comply with Company's "Voltage Fluctuation and Light Flicker" requirements set forth in the Power Quality Standards. If operation outside of these limits is desired, Customer must contact Company for engineering studies to be done prior to changing operations such that operation will stay within these limits.

Section 8.5 Harmonic Distortion. Customer shall operate their facilities in such a manner so that harmonic distortion and notching falls within Company's Harmonic Distortion section of the Power Quality Standards.

Commented [LY21]: Evaluate cost impact of this

Commented [DT22]: Define "primary side" and "secondary side"

Commented [LY23]: potential consequences of this???

Commented [DT24]: Define "primary voltage"

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Commented [LY25]: Investigate potential impact of this

Commented [LY26]: Presumably we conform. Need someone to confirm all these technical requirements.

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Commented [DT27]: Undefined. We are contracting to levels set forth in the "Firm Power and Energy". If we are exceeding it, we need to provide notice to the Company.

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Deleted: expected Supplementary Service

Commented [LY28]: OK, must coordinate w Facilities and PW and communicate with RMP

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Commented [DT29]: How is this impacted by 7.3?

Commented [DT30]: Define "reactive power" or state where it is defined in Power Quality Standards

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EXHIBIT A

Section 8.6 Current Imbalance. Customer shall operate their facilities in a manner such that the facilities steady-state load currents are reasonably balanced between each phase.

Section 8.7 Remediation.

(a) If the Customer's operations fall outside of the Electric Service Requirements or Power Quality Standards, or adversely affect the operations of Company's transmission or distribution system or other Company customers, Company shall give written notice of the corrective actions required, and Customer shall have the opportunity for a period of 15 Business Days to discuss Company's requirements. After such period, Company and Customer shall discuss Company's required corrective action in good faith; final determination of the corrective action required shall, subject to Commission resolution of any disputes, be made by Company, based on compliance with Company's Electric Service Requirements and Power Quality Standards.

(b) Should Customer fail to begin to take corrective action required by Company within 30 days after written notice from Company or fail to pursue completion of such corrective action with diligence, Company may perform such services or supply and install such equipment in a good and workmanlike manner in accordance with all applicable laws and Customer's security and safety requirements, and in a manner designed to minimize interference with Customer's operations, as it reasonably deems necessary to provide corrective action, whereupon Customer shall compensate Company for all sums expended, all materials utilized, and all services contracted or performed, by paying a sum equal to 110% of all costs, expenses, material, and labor charges reasonably incurred by Company, including Company's reasonable internal material and labor charges and standard overhead costs. Customer shall pay such sums within 30 days after Company has mailed an itemized statement of its charges therefor. If Customer desires to operate outside of applicable limits, Customer shall pay for studies done by Company to determine the impact on other Company customers and whether the proposed operation is acceptable to Company.

(c) Should Company at any time reasonably determine that Customer's operations pose a threat to the safety of Company's employees or the public, pose an imminent threat to the integrity of Company's electric system, or may materially interfere with the performance of Company's service obligations, Company shall attempt to provide notice to Customer that Customer must change its operations. If Customer fails to take corrective action on a timely basis, or if notice cannot be provided by Company to Customer, prior to the time when corrective action must occur, then Company may perform such work and/or take such corrective action that is necessary, including disconnection, without additional notice to Customer but in a good and workmanlike manner in accordance with all applicable laws and Customer's security and safety requirements, and in a manner designed to minimize interference with Customer's operations. As soon as practicable thereafter, Company will advise Customer in writing of the work performed or the action taken and will endeavor to arrange for the accommodation of Customer's operations, subject to the terms of this Agreement, the Electric Services Regulations, the Electric Service Requirements, and all other applicable rules or regulations. Customer shall be responsible for paying Company, upon demand, for all reasonable costs incurred by Company for all work, action, and accommodation performed by Company that is consistent with the terms of this paragraph.

Section 8.8 Conflict with Interconnection Agreement. To the extent terms and conditions in this Agreement conflict with terms and conditions of any other interconnection agreement between Customer and Company, the terms of the interconnection agreements shall control.

ARTICLE IX
REPRESENTATIONS AND WARRANTIES

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Commented [DT31]: Why 110% and not 100%. Overhead is included in the number. Is the Company allowed a 10% profit on Corrective Actions?

Commented [DT32]: While this is fine for a regular residential or commercial customer, it is not acceptable for an entity which provides emergency services and runs a jail (unless Rocky Mountain Power wants to indemnify us for a jail break).

Commented [DT33]: What kinds of interconnection agreements are we talking about? Are we comfortable with this provision?

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EXHIBIT A

Section 9.1 Mutual Representations and Warranties. On the Effective Date, each Party represents, warrants and covenants to the other Party that:

(a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(b) Except for the approval of the Commission, it has, or to its knowledge expects to timely acquire, all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

(c) The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

(d) This Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defenses;

(e) There is not pending, or to its knowledge, threatened against it or any of its Affiliates, any legal proceedings that could materially adversely affect its ability to perform under this Agreement;

(f) It is acting for its own account and its decision to enter into this Agreement is based upon its own judgment, not in reliance upon the advice or recommendations of the other Party, and it is capable of assessing the merits of and understanding, and understands and accepts the terms, conditions and risks of this Agreement; and

(g) It has not relied upon any promises, representations, statements or information of any kind whatsoever that are not contained in this Agreement in deciding to enter into this Agreement.

ARTICLE X
TERMINATION

Section 10.1 Termination. This Agreement may be terminated by Customer on sixty (60) days' written notice to Company, or as otherwise permitted under this Article, subject to payment of an Early Termination Payment pursuant to Section 10.3. If this Agreement is terminated for any reason in this Article, service to Customer shall be in accordance with the Company's Commission- approved Utah Schedule 9, subject to retroactive adjustment if the Commission later determines a different rate is applicable for the time period in question.

Section 10.2 Material Adverse Conditions. If any subsequent change in the law applicable to this Agreement contains any condition or otherwise modifies the provisions of this Agreement in a manner that is materially adverse to either Party, the Party adversely impacted by the condition or modification may terminate this Agreement by providing the other Party notice within ninety (90) days of the entry of the effective date of the change in law; provided, however, that the other Party may avoid termination under this provision by electing in its sole discretion to make the adversely impacted Party whole.

Section 10.3 Early Termination. If, after the satisfaction of the condition precedent in Section 2.2, this Agreement is terminated or caused to be terminated for any reason other than the fault of Company before the end of the Term, then Customer shall pay to Company an early termination payment

("Early Termination Payment"), which shall cover the actual Cost and Benefit of Renewable Supply. The methodology for determining the Early Termination Payment is set forth in Exhibit A. Company shall use all commercially reasonable efforts to mitigate any such financial obligations. Customer shall pay Company the Early Termination Payment in full within thirty (30) days after Customer receives notice from Company of the amount of the Early Termination Payment. In the event of an early termination payment due from Company to Customer, then Company shall pay the Early Termination Payment over the remaining life of the obligation to the Customer Renewable Resource as those revenues are realized by Company.

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Commented [LY34]: Must know exactly the RESA term, risk and cost of early termination

Commented [DT35]: Why does the Company get the benefit of paying the Early Termination over the life of the Renewable Resource, but the Customer must pay it in full within 30 days? Should not these be the same?

ARTICLE XI
FORCE MAJEURE

Neither Party shall be under obligation or subject to any liability or damages for any act or event that delays or prevents Company or Customer from timely performing its obligations under this Agreement or from complying with this Agreement if such act or event is beyond the reasonable control of, is not reasonably foreseeable, and could not have been prevented or mitigated with the exercise of reasonable due diligence by, the Party relying thereon as justification for such delay, nonperformance or noncompliance (such act or event, a "Force Majeure"). Force Majeure includes without limitation, (a) an act of God or the elements, explosion, fire, epidemic, landslide, mudslide, sabotage, lightning, earthquake, flood or similar cataclysmic event, an act of public enemy, war, terrorism, blockade, civil insurrection, riot, civil disturbance, boycott, strike or other labor difficulty caused or suffered by third parties beyond the reasonable control of Customer or Company, (b) the operation and effect of any law, rule, regulation, or other acts of governmental authorities, whether federal, state or local, not initiated or supported by the Party claiming the event of Force Majeure, or (c) failure, breakdown of or damage to the Company's or third-party's facilities (not including a Customer Renewable Resource). Force Majeure does not include changes in economic or market conditions that affect the cost of fuel or fuel transportation, the cost of transmission, the demand for products manufactured by Customer, the price of energy, or that otherwise render this Agreement uneconomic or unprofitable for a Party. Should an event of Force Majeure occur, and (1) Customer claims Force Majeure, then Customer shall have no liability for service until service is restored, except for any minimum monthly payments or termination charges designed to cover special facilities extension costs, or (2) the Company claims Force Majeure, then Customer shall have no liability for service until service is restored. The Party claiming Force Majeure shall make commercially reasonable efforts to remedy the cause thereof. Time periods for performance obligations of Parties herein shall be extended for the period during which Force Majeure was in effect. Notwithstanding this Article XI, Company's obligations to provide electric service under this Agreement shall be governed by the section of Electric Service Regulation No. 4, entitled "Continuity of Service."

Deleted: (whether such cause is similar or dissimilar to the foregoing or is foreseen, unforeseen, or foreseeable)

ARTICLE XII
LIABILITY

Subject to the limitations of liability contained herein and in Company's Electric Service Regulations, Customer will defend and indemnify and hold harmless the Company from and against any liability, damage, loss, costs and expenses, including, but not limited to, Customer's employees and Company's employees, occurring on or occasioned by facilities owned or controlled by Customer, to the extent such injury or damage resulted from the negligence or willful misconduct of the Customer.

ARTICLE XIII
RECORDS: AUDIT

Company shall create and keep accurate accounts of calculations, costs, expenses and liabilities

substantiating amounts due from Customer to Company under this Agreement, including accounts of Company costs under contracts entered into with owners of Customer Renewable Resources ("Records"). Company shall maintain the Records in a format sufficient to allow verification that same are complete, accurate, and up-to-date. Company shall keep and maintain the Records for a period of at least five (5) years after the respective records are created, and Customer may inspect and audit those records during normal business hours upon reasonable advance notice and with as little impact to Company's business as reasonably possible. At Customer's request, Company shall use commercially reasonable efforts to obtain similar records from its counterparties under any contracts entered into with owners of Customer Renewable Resources. The Parties shall bear their respective costs of such audits and inspections.

ARTICLE XIV
ASSIGNMENT

Section 14.1 Assignment by Customer. Customer may not assign this Agreement without Company's consent, which shall not be unreasonably withheld, conditioned or delayed. Any assignment is subject to (1) such successor's qualification as a customer under Company's policies and the Electric Service Regulations, and (2) the written agreement of such successor to be bound by this Agreement and the Electric Service Regulations and to assume the obligation of Customer from the date of assignment. If Company consents to any such sale, assignment, lease or transfer, Customer shall remain liable for any liabilities and obligation under this Agreement and the Electric Service Regulations through the date of assignment. Commission approval shall not be required for any assignment by Customer as permitted hereunder

Section 14.2 Assignment by Company. Company may at any time assign its rights and delegate its obligations under this Agreement, in whole or in part, including, without limitation, transferring its rights and obligations under this Agreement to any: (i) Affiliate; (ii) successor in interest, or (iii) corporation or any other business entity in conjunction with a merger, consolidation or other business reorganization to which Company is a party, upon approval of the same by the Commission.

ARTICLE XV
INFORMATION

Section 15.1 Furnishing Information. Upon Company's request, Customer shall submit its year- end financial statements to Company, certified to be true and correct and in accordance with GAAP; provided that public filings by Customer with the Securities and Exchange Commission shall be deemed to satisfy this requirement. Company will keep such information confidential.

Section 15.2 Accuracy of Information. Each Party represents that all information it has furnished or will furnish to the other Party in connection with this Agreement will be accurate and complete in all material respects. Each Party also represents that it has not omitted and will not knowingly omit any fact in connection with the information to be furnished under this Agreement, which materially and adversely affects the business, operations, property or condition of the Customer or the obligations of the other Party under this Agreement.

Section 15.3 Confidentiality.

Commented [LY36]: GRAMMA implications to confidentiality???

(a) [Subject to Section 20.3] Except as expressly provided in this Agreement or as agreed in writing by the other Party, each receiving Party will (a) keep strictly confidential and take reasonable precautions to protect against the disclosure of (i) the terms and conditions and other facts with respect to this Agreement and (ii) all Confidential Information, and (b) not knowingly use

EXHIBIT A

Confidential Information for any purposes other than performing its obligations under this Agreement; provided, a Party may disclose facts, terms and conditions referred to in clause (a) above and Confidential Information to those of its or its Affiliates' directors, officers, members, employees, representatives, agents, consultants, attorneys or auditors (collectively, "Representatives") who need to know such information for the purposes of performing the receiving Party's obligations under this Agreement if, prior to being told of such matters or being given access to Confidential Information, such Representatives are informed of the confidentiality thereof and the requirements of this Agreement and are directed to comply with the requirements of this Agreement. Each Party will be responsible for any breach of this Agreement by its Representatives.

(b) Either Party may disclose the substance or terms of this Agreement as required by the Government Records Access and Management Act, Utah Code Ann. Section 63G-2-101, et. seq., as amended ("GRAMA"), and other laws, orders, rules or regulations of any duly constituted governmental body or official authority having jurisdiction, subject to the condition that the disclosing Party give prompt notice to the other Party, so that a protective order or other protective arrangements may be sought by such other party.

Section 15.4 Publicity.

(a) No announcement or press release regarding the arrangement contemplated under this Agreement, including the existence hereof, shall be made by the Company without the prior written approval of the Customer. In addition, without obtaining the Customer's prior written consent, Company shall not, and shall cause its agents not to, engage in advertising, promotion or publicity containing non-public information concerning this Agreement, or make public use of the Customer's name, trade names, trademarks, service marks, insignias, symbols, logos or any other product, service or organization designation, or specifications or drawings.

(b) Each Renewable Resource Contract shall grant to Customer the exclusive right to advertise, market, and promote to the general public the benefits of all Renewable and Environmental Attributes and Renewable Energy Certificates generated under or as a result of this Agreement and delivered to, or retired on behalf of, Customer, including but not limited to the right, in any advertising, marketing or promotional material, to associate itself with any claimed or actual environmental or sociological benefits arising from the creation, sale or retirement of such Renewable and Environmental Attributes and Renewable Energy Certificates in whatever media, whether print, electronic, broadcast or otherwise, that are associated with advertising, marketing or promotional purposes.

ARTICLE XVI
DISPUTE RESOLUTION

Section 16.1 Administrative Remedies. In the event of a dispute arising under this Agreement regarding any matter for which the Commission has jurisdiction, the Party seeking a claim of breach shall first exhaust its administrative remedies in accordance with the Commission's administrative rules. In the event of any other dispute arising under this Agreement, for which the Commission does not have jurisdiction, the Parties shall first attempt to resolve the matter through direct negotiation between the representatives of the Parties. If the representatives are unable to resolve the issue within a reasonable period of time after presentation of the dispute, then the Parties agree to participate in non-binding mediation in good faith, using a mediator mutually agreeable to the Parties, prior to engaging in any arbitration or court proceeding or other legal action in connection with such dispute. The costs of mediation, including the costs of the mediator, if any, shall be shared equally between the Parties.

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Commented [LY37]: Allows for GRAMMA requests

Commented [LY38]: Must notify Company

Commented [LY39]: County needs ability to speak freely of our accomplishment/partnership w Company once agreement to purchase RE is executed. Co-author press releases, is agreeable but interviews, articles etc. will not ALL be run through Company.

Commented [LY40]: Is this adequate in regards to comment above?

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EXHIBIT A

Section 16.2 Governing Law; Jurisdiction; Venue. All provisions of this Agreement and the rights and obligations of the Parties shall in all cases be governed by and construed in accordance with the laws of the state of Utah applicable to contracts executed in and to be wholly performed in Utah by Persons domiciled in the state of Utah. Subject to the provisions of Section 16.1, each Party agrees that any dispute relating to this Agreement, the Electric Service Regulations or the transactions contemplated hereby or thereby shall be brought before the Federal courts located within the state of Utah, or state courts of the state of Utah, and each Party consents to the exclusive jurisdiction of such fora (and of the appellate courts therefrom) in any such suit, action or proceeding. Furthermore, each Party waives, to the extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such forum or that any such suit, action or proceeding which is brought in any such forum has been brought in any inconvenient forum. If for any reason service of process cannot be found in the state of Utah, process in any such suit, action or proceeding may be served on a Party anywhere in the world, whether within or without the jurisdiction of any such forum.

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Section 16.3 Waiver of 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 of any 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.

ARTICLE XVII
DEFAULT; REMEDIES; WAIVER

Subject to the provisions of Article XVI, either Party may exercise any or all of its rights and remedies under this Agreement, the applicable Electric Service Regulations and under any applicable laws, rules and regulations. Company's liability for any action arising out of its activities relating to this Agreement or Company's electric utility service shall be as specified by applicable Utah laws or regulations. Under no circumstances shall either Party be liable for any special, indirect, incidental, consequential, punitive, or exemplary damages. No provision of this Agreement or the Electric Service Regulations shall be deemed to have been waived unless such waiver is in writing signed by the waiving Party. No failure by any Party to insist upon the strict performance of any provision of this Agreement or the Electric Service Regulations or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach of such provision or of any other provision. No waiver of any provision of this Agreement or the Electric Service Regulations shall be deemed a waiver of any other provision of this Agreement or the Electric Service Regulations or a waiver of such provision with respect to any subsequent breach, unless expressly provided in writing.

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ARTICLE XVIII
COMMUNICATIONS AND NOTICE

Any notice required or desired to be given hereunder by one Party to the other Party shall be sent by hand-delivery, by courier service, electronic mail or by registered or certified mail, return receipt requested, to the other Party at the address set forth below:

If to Company:
To PacifiCorp:

PacifiCorp
825 NE Multnomah, Suite 600
Portland, Oregon 97232- 2315
Attn: Sr. Vice President, Commercial &

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EXHIBIT A

Trading
Telefacsimile (503) 813-6260
E-mail: _____

With a copy to:

PacifiCorp
825 NE Multnomah, Suite 600
Portland, Oregon 97232- 2315
Attn: Manager, Marketing & Trading Contracts, C&T
Telefacsimile (503) 813-6291
E-mail: cntadmin@pacificorp.com

with copies to:

PacifiCorp Energy Legal Department
825 NE Multnomah, Suite 600
Portland, Oregon 97232- 2315
Attn: Assistant General Counsel
Telefacsimile (503) 813-6761
E-mail: _____

and termination notices to PacifiCorp:

PacifiCorp
1407 West North Temple, Suite 320
Salt Lake City, Utah 84116
Attn: President
E-mail: _____

and to:

PacifiCorp
1407 West North Temple, Suite 320
Salt Lake City, Utah 84116
Attn: General Counsel
E-mail: _____

If to Customer:

With a copy to:

With a copy to:

EXHIBIT A

ARTICLE XIX
REGULATORY APPROVAL; INTENT; INTERJURISDICTIONAL ALLOCATION

Section 19.1 No Modification Request. This Agreement is subject to approval by the Commission as a condition precedent to performance. Both Parties agree that, during the term of this Agreement, they will not petition the Commission for or otherwise seek or support provisions in any order of the Commission that would cancel, terminate or modify the specific provisions of this Agreement or prejudice the other Party in the performance of this Agreement in any way without the prior written consent of the other Party.

Commented [LY41]: See any reason to petition the PSC?

Section 19.2 Regulatory Approval. If the Commission order approving this Agreement includes any condition that is materially adverse to either Party, the Party adversely impacted by the condition may terminate this Agreement by providing the other Party written notice within thirty (30) days of the entry of the Commission order, in which case the Parties will negotiate in good faith in an effort to reach agreement on revisions or an amendment to this Agreement with mutually acceptable rates, terms and conditions for service to Customer, which amendment or revised agreement shall be subject to Commission approval.

ARTICLE XX
MISCELLANEOUS

Section 20.1 Sole Purpose Agreement. This Agreement and the rates and provisions contained herein are based upon the specific load, operating and cost characteristics of the Customer, and on specific Utah laws, and are thus applicable only to the Customer.

Commented [LY42]: Lisa - Confirm load; Address potential load growth in relation to term of contract

Section 20.2 Jurisdiction of Regulatory Authorities. Company's currently applicable and effective Electric Service Regulations, are incorporated herein and by reference made a part hereof. Customer acknowledges that it is familiar with the Electric Service Regulations and agrees to abide by them and all applicable amendments and changes thereto as approved by the Commission.

Section 20.3 Customer a Governmental Entity of the State of Utah. Company acknowledges that Customer is a body politic and corporate of the State of Utah and a governmental entity under the Governmental Immunity Act of Utah, Utah Code Ann., Section 63G-7-101 et seq., as amended (the "Act"). Nothing in this Agreement shall be construed as a waiver by Customer of any protections, rights, remedies, or defenses applicable to Customer under the Act, including without limitation, the provisions of Section 63G-7-604 regarding limitation of judgments, or other applicable law. It is not the intent of Customer to incur by contract any liability for the operations, acts, or omissions of Company or any third party and nothing in this Agreement shall be so interpreted or construed. Without limiting the generality of the foregoing, and notwithstanding any provisions to the contrary in this Agreement, the obligations of Customer in this Agreement to defend, indemnify, and hold harmless are subject to the Act, are limited to the amounts established in Section 63G-7-604 of the Act, and are further limited only to claims that arise directly and solely from the negligent acts or omissions of Customer. Customer carries insurance through the Utah Local Governments Trust. Nothing in this Agreement shall require Customer to carry different or additional insurance. Any obligations of Customer contained in this Agreement to name a party as additional insured shall be limited to naming such party as additional insured with respect to the Customer's negligent acts or omissions, and no rights of subrogation are waived by Customer. Company acknowledges that: Customer is a governmental entity subject to GRAMA; that certain records within Customer's possession or control may be subject to public disclosure; and that Customer's confidentiality obligations in this Agreement shall be subject in all respects to compliance with GRAMA. Pursuant to Section 63G-2-309 of GRAMA, any confidential information provided to Customer that Company

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believes should be protected from disclosure must be accompanied by a written claim of confidentiality and a concise statement of reasons supporting such claim. A copy of Customer's standard business confidentiality claim form may be found at (http://fbs.admin.utah.edu/download/purchasing/Business_Confidentiality_Claim_Form.pdf). Non-specific statements of confidentiality (such as, but not limited to, designating or marking a document confidential or proprietary in a cover letter, header, footer or watermark) are insufficient to claim confidentiality under GRAMA. Amounts paid or received by Customer are generally not protected from disclosure under GRAMA. Notwithstanding any provision in this Agreement, Customer may disclose any information or records (including any Confidential Information) to the extent required by GRAMA or as otherwise required by law, provided Customer takes reasonable steps to give Company sufficient prior notice to contest such disclosure. In the event of any conflict between the provisions of this Section and any other section of this Agreement, the provisions of this Section shall prevail.[4]

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Section 20.4 Integration; Amendment. All terms and conditions heretofore made or agreed to with respect to the subject matter of this Agreement are merged into this Agreement, and no previous or contemporary representations or agreements made by any officer, agent or employee of Company or Customer shall be binding upon either Party unless contained herein. Except as otherwise expressly provided, this Agreement may be modified only by a subsequent written amendment or agreement executed by both Parties.

Section 20.5 Survival. The provisions of this Agreement that by their nature are intended to survive the termination, cancellation, completion, or expiration of this Agreement shall continue as a valid and enforceable obligation of the Party notwithstanding any such termination, cancellation, completion, or expiration.

Section 20.6 Good Faith Efforts. Company and Customer each agree that each Party shall, in good faith, take all reasonable actions necessary to permit each Party to fulfill its obligations under this Agreement. Where the consent, agreement or approval of either Party must be obtained hereunder, such consent, agreement or approval shall not be unreasonably withheld, conditioned or delayed. Where either Party is required or permitted to act or omit to act based on its opinion or judgment, such opinion or judgment shall not be unreasonably exercised.

Section 20.7 Severability. If, for any reason, any part, term, or provision of this Agreement is held by a court of competent jurisdiction to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid. Further, if it should appear that any provision hereof is in conflict with any statutory provision of the State of Utah, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform with such statutory provision.

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Section 20.8 Interpretation. The terms of this Agreement constitute the written expression of the mutual agreement of the Parties and shall be construed neutrally and not for or against either Party.

Section 20.9 Independent Contractor Relationship.

(a) The Parties intend that an independent relationship will be created by this Agreement. No agent, employee, or representative of the Company shall be deemed to be an employee, agent, or

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[4] NTD For municipal and university parties only

representative of the Customer for any purpose, and the employees of the Company are not entitled to any of the benefits the Customer provides for its employees. The Company will be solely and entirely responsible for its acts and for the act of its agents, employees, subcontractors or representatives during the performance of this Agreement.

(b) In the performance of the services herein contemplated the Company is an independent contractor with the authority to control and direct the performance of the details of the work, however, the results of the work contemplated herein must meet the approval of the Customer and shall be subject to the Customer's general rights of inspection and review as set forth herein.

Section 20.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, but all such counterparts will together constitute but one and the same instrument. Company and Customer may retain a duplicate copy of this Agreement, which will be considered an equivalent to this original.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by persons duly authorized as of the date first set forth above.

ROCKY MOUNTAIN POWER

By:	By:
Name:	Name:
Title:	Title:
Date:	Date:

EXHIBIT A

EXHIBIT A

EXHIBIT A
CALCULATION OF EARLY TERMINATION PAYMENT

The Early Termination Payment payable to one Party (the "Payee") by the other Party (the "Payer") shall be equal to the sum of the Contract Values, determined at the time of termination, for each procurement of a Customer Renewable Resource (a "Renewable Energy Procurement") then in effect, less any Proceeds and Transfer Value. If the resulting amount is a positive number, Customer shall pay the absolute value of amount to Company. If the resulting amount is a negative number, Company shall pay the absolute value of the amount to Customer. For the avoidance of doubt, the Parties intend that the Early Termination Payment should make the Company whole in the event of early termination, but not provide the Company with a windfall.[5]

The Company will calculate in good faith the Early Termination Payment in a commercially reasonable manner and will provide to Customer a statement (1) showing, in reasonable detail, such calculations (including any quotations, market data or information from internal sources used in making such calculations), (2) specifying any Early Termination Payment payable and (3) giving details of the relevant account to which any amount payable to it is to be paid.

"**Contract Value**" means the lesser of: (1) the present values of the product, for each year (or portion thereof) in the then remaining term (determined without reference to the early termination), of (A) the quantity of energy and RECs expected to be produced during such year (or portion thereof) times (B) the purchase price for such energy and RECs for such year; or (2) any early termination payment that Company must pay to the Seller pursuant to a power purchase agreement with the owner of a Customer Renewable Resource; or (3) the amount paid by Company to acquire ownership of a renewable energy facility that was the subject of a Renewable Energy Procurement. The present values of the monthly payments from their payment dates in the foregoing calculations shall be determined using a discount factor equal to the current yield for direct obligations of the United States Treasury with a maturity that is closest to, but not less than, the remaining Term of the Renewable Energy Service Contract.

"**Proceeds**" means payments and other benefits received by or credited to Company, including as a result of damages payments and insurance payments, in connection with the early termination of any power purchase agreement with the owner of a Customer Renewable Resource.

"**Transfer Value**" means: the Market Value of the Energy and RECs procured by Company under the power purchase agreement.

"**Market Value**" means the present values of the product, for each year (or portion thereof) in the then remaining term of the power purchase agreement (determined without reference to the early termination of the Renewable Energy Service Contract), of (A) the quantity of energy and RECs expected to be produced during such year (or portion thereof) times (B) the price at which Company is able to resell such energy and RECs for such year. The present values of the monthly payments from their payment dates in the foregoing calculations shall be determined using a discount factor equal to the current yield for direct obligations of the United States

Commented [LY43]: Establish method to determine agreeable termination and define it in this agreement.

Commented [DT44]: Undefined

Commented [LY45]: NO- Company's decision to acquire ownership of the project built for Customers is their own obligation.

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[5] PAC NTD – we still need to review this language to ensure fairness to all parties under this methodology

EXHIBIT A

Treasury with a maturity that is closest to, but not less than, the remaining Term of the Renewable Energy Service Contract.

EXHIBIT A

EXHIBIT B
METHODOLOGY FOR CALCULATING ESTIMATED COST OF RENEWABLE SUPPLY

EXHIBIT A

EXHIBIT E
FORM OF RENEWABLE RESOURCE APPENDIX

This Renewable Resource Appendix confirms the terms of the agreement made between Rocky Mountain Power, an unincorporated division of PacifiCorp, an Oregon corporation ("Rocky Mountain Power" or the "Company"), and _____, a _____ ("Customer") as of the effective date referenced below concerning the acquisition of the Customer Renewable Resource referenced below.

This Renewable Resource Appendix supplements, forms a part of, and is subject to, the terms of the Renewable Energy Service Contract, dated as of _____ , 2019, between Company and Customer (as modified from time to time, the "Renewable Energy Service Contract"). This Renewable Resource Appendix shall constitute a "Renewable Resource Appendix" within the meaning of the Renewable Energy Service Contract. In the event of any inconsistency between a provision of the Renewable Energy Service Contract and a provision of this Renewable Resource Appendix, the provision of this Renewable Resource Appendix shall control for purposes of acquiring the Customer Renewable Resource referenced below. Capitalized terms used in this Renewable Resource Appendix and not otherwise defined will have the respective meanings assigned in the Renewable Energy Service Contract. The terms of this Renewable Resource Appendix are as follows:

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Effective date:	[DATE]
Seller:	[TBD]
Buyer:	Company
Resource:	[Wind, Solar, Geothermal, etc.]
Project Name:	[TBD] ("Project")
Project Size:	[●] MW AC
Project In Service Date:	[TBD]
Product:	Energy and RECs
Start Date:	[DATE]
Termination Date	[DATE]
Price:	$[●] per MWh

EXHIBIT A

Point of Delivery:	[TBD]
Estimated Annual Production:	See Exhibit 1
Estimated Renewable Supply Charge:	See Exhibit 1. The Estimated Renewable Supply Charge under this Renewable Resource Appendix is calculated for example purposes only, and the actual charge shall be calculated in accordance with the Renewable Energy Service Contract and shall apply to Customer upon the supply of Energy from the Project.
System Facilities Capital Charge:	[TBD]
Performance Guarantee:	[TBD]
Credit Support:	[TBD]
	[TBD]
Events of Default:	Customer may, in its sole discretion, elect to cure any payment default by Company under the agreement with the owner of the Customer Renewable Resource. So that Customer may exercise this right, Company shall give written notice to Customer as soon as practicable after Company receives notice of such a default, but in no case later than ten (10) days prior to the end of the cure period applicable to such default.
Termination Rights:	[TBD]
Early Termination Payment	If the Customer no longer requires the supply provided by this Customer Renewable Resource, Customer may elect to terminate this Renewable Resource Appendix, subject to payment of the associated Contract Value, less any applicable Proceeds and Transfer Value, as those terms are defined in Exhibit A to the Renewable Energy Service Contract.

[*Signature Page Follows*]

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EXHIBIT A

IN WITNESS WHEREOF, the parties have executed this Renewable Resource Appendix on the respective dates specified below with effect as of the date set forth above.

ROCKY MOUNTAIN POWER

By: _____	By: _____
Name:	Name:
Title:	Title:
Date:	Date:

EXHIBIT A

EXHIBIT 1
TO RENEWABLE RESOURCE APPENDIX

Estimated Annual Production and Renewable Supply Charge

Year	Annual Production (MWh)	ble Supply Charge ($/kWh)
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
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EXHIBIT A