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IDAHO PUBLIC
UTILITIES COMMISSION

February 21, 2023

VIA ELECTRONIC DELIVERY

Jan Noriyuki
Commission Secretary
Idaho Public Utilities Commission
11331 W Chinden Blvd
Building 8 Suite 201A
Boise, ID 83714

Re: CASE NO. PAC-E-23-02

**IN THE MATTER OF THE APPLICATION FOR APPROVAL OF THE ASSET
TRANSFER AGREEMENT BETWEEN ROCKY MOUNTAIN POWER AND THE
CITY OF IDAHO FALLS – BELLIN ROAD**

Dear Ms. Noriyuki:

On February 9th, 2023, Rocky Mountain Power submitted the Joint Application of Rocky Mountain Power and the city of Idaho Falls for approval the asset purchase agreement and the transfer of electric service for the customer as described in the application.

Enclosed for electronic filing in the above-mentioned matter is an Amended Confidential Attachment No. 1. After discussions with Idaho Public Utilities staff, it has come to our attention that a portion of the confidential redactions included public information. The Amended Confidential Attachment No. 1 is identical to Confidential Attachment No. 1 with the previously public redacted information now unredacted. The confidential attestation included with the application still applies for the remaining confidential information since the customer's address is not relevant to the public in this matter.

Informal inquiries related to Amended Confidential Attachment No. 1 or the Joint Application should be directed to Mark Alder, Idaho Regulatory Affairs Manager, at (801) 220-2313.

Very truly yours,

Joelle Steward

Senior Vice-President of Regulation and Customer Solutions

Enclosures

Amended Redacted Attachment No. 1

**ASSET TRANSFER AGREEMENT
BETWEEN
ROCKY MOUNTAIN POWER
AND
CITY OF IDAHO FALLS, IDAHO**

This Asset Transfer Agreement (the "Agreement"), dated this ____ day of January 2023, is between City of Idaho Falls, Idaho, a municipal corporation of the State of Idaho d/b/a Idaho Falls Power ("City"); and PacifiCorp, an Oregon corporation, d/b/a in Idaho as Rocky Mountain Power ("Rocky Mountain Power"). Rocky Mountain Power and City are sometimes referred to collectively as "Parties" and individually as "Party."

WHEREAS, Rocky Mountain Power owns certain distribution assets located on or near [REDACTED] South Bellin Road, Idaho Falls, Idaho, and more particularly described in Exhibit A to this Agreement ("Assets"); and

WHEREAS, City has agreed to purchase the Assets from Rocky Mountain Power and Rocky Mountain Power hereby agrees to sell the Assets to City in accordance with and subject to all of the terms and conditions of sale as expressed herein, and in accordance with the Service Allocation Agreement entered into by Rocky Mountain Power and City, dated October 9, 2017, which was approved by the Idaho Public Utilities Commission on December 5, 2017; and

WHEREAS, City has agreed to serve the customers after purchasing the facilities currently serving these customers, in accordance with and subject to all of the terms and conditions of sale as expressed herein.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants and conditions set forth in this Agreement, the sufficiency of which is hereby mutually acknowledged and accepted, the Parties hereto agree as follows:

1. Definitions.

For purposes of this Agreement, the following terms used herein but not otherwise defined herein shall have the following meaning when used with initial capitalization, whether singular or plural:

1.01 "Assets" means those facilities currently owned by Rocky Mountain Power, as described in Exhibit A.

1.02 "Commission" means the Idaho Public Utilities Commission.

1.03 "Transferred Customers" means the Customers that will be transferred to Idaho Falls Power as a result of this transaction and whose meter number is 344552420.

1.04 "Transfer Date" means the date upon which all of the Transferred Customers shall become the customers of Idaho Falls Power. The Transfer Date shall be agreed to in writing by

4. Representations and Warranties of Rocky Mountain Power.

Rocky Mountain Power represents and warrants as follows:

4.01 Organization and Powers of Rocky Mountain Power. Rocky Mountain Power 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 Idaho. Rocky Mountain Power has all requisite power and authority to provide electric service to the Assets.

4.02 Authority Relative to Agreement: Governmental Authorization. Rocky Mountain Power has the power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly and validly authorized and constitutes the valid and binding obligation of Rocky Mountain Power enforceable in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and except that the availability of the equitable remedies of specific performance and injunctive relief are subject to the discretion of the court before which any proceeding may be brought. No declaration, filing or registration with, or notice to, or authorization, consent or approval of, any governmental or regulatory body or authority is necessary for the execution and delivery of this Agreement by Rocky Mountain Power or the consummation by Rocky Mountain Power of the transactions contemplated by this Agreement, provided that Rocky Mountain Power makes no representation or warranty with respect to approvals which may be required from the Idaho Public Utilities Commission or the Federal Energy Regulatory Commission.

4.03 Non-Contravention; Approvals. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not violate, conflict with or result in a breach of any provision of, or constitute a default under, or result in the termination of any note, bond, mortgage, indenture, deed of trust, contract, lease or other instrument, obligation or agreement of any kind to which Rocky Mountain Power is now a Party or by which any of its assets may be bound or affected.

5. Representations and Warranties of City.

City represents and warrants as follows:

5.01 Organization and Powers of City. City is duly qualified to do business in the State of Idaho. City has all requisite power and authority provide service to the Transferred Customers.

5.02 Authority Relative to Agreement: Governmental Authorization. City has the power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly and validly authorized and constitutes the valid and binding obligation of City enforceable in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and except that the availability of the equitable remedies of specific performance and injunctive relief are subject to the discretion of the court before which any proceeding may be brought. No declaration, filing or registration with, or notice to, or authorization, consent or approval of, any governmental or

regulatory body or authority is necessary for the execution and delivery of this Agreement by City.

5.03 Non-Contravention: Approvals. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not violate, conflict with or result in a breach of any provision of, or constitute a default under, or result in the termination of any note, bond, mortgage, indenture, deed of trust, contract, lease or other instrument, obligation or agreement of any kind to which City is now a Party or by which any of its assets may be bound or affected.

6. Covenants of Rocky Mountain Power.

Rocky Mountain Power covenants and agrees as follows:

6.01 Conduct of Business. Rocky Mountain Power shall provide service to the Transferred Customers for the time periods set forth in Section 3 of this Agreement in accordance with its past practices and shall engage in no material transactions relating to the Transferred Customers out of the ordinary course of business, including entering into any contract or financing arrangement that limits Rocky Mountain Power's ability to transfer the Transferred Customers to City.

6.02 Reasonable Efforts. Subject to the terms of this Agreement and fiduciary obligations under applicable law, Rocky Mountain Power shall use commercially reasonable efforts to effectuate the transactions contemplated by this Agreement and to fulfill all of the conditions of the Parties' obligations under this Agreement and shall do all such acts and things as reasonably may be required to carry out Rocky Mountain Power's obligations hereunder and to complete the transaction contemplated by this Agreement.

6.03 Notification. Rocky Mountain Power will give City prompt written notice of any event, condition or fact arising prior to the Transfer Date that would cause any of its representations and warranties in this Agreement to be untrue in any material respect.

7. Covenants of City.

City covenants and agrees as follows:

7.01 Reasonable Efforts. Subject to the terms of this Agreement and fiduciary obligations under applicable law, City shall use commercially reasonable efforts to effectuate the transactions contemplated by this Agreement and to fulfill all of the conditions of the Parties' obligations under this Agreement and shall do all such acts and things as reasonably may be required to carry out City's obligations hereunder and to complete the transaction contemplated by this Agreement.

7.02 Notification. City will give Rocky Mountain Power prompt written notice of any event, condition or fact arising prior to the Transfer Date that would cause any of its representations and warranties in this Agreement to be untrue in any material respect.

7.03 Indemnity. City shall defend, indemnify, and hold harmless Rocky Mountain Power, its officers, directors, employees, and agents, from and against any and all liability, loss, damage, claims, suit or cause of action arising out of or relating to City's service to the Transferred Customers. This obligation shall survive the termination of this Agreement and completion of the transactions contemplated by this Agreement.

7.04 Rights-of-way. Prior to the Transfer Date, City shall independently obtain at City's own expense, all easements or other real property rights, licenses or permissions, ("rights-of-way") necessary for City to lawfully serve the Transferred Customers.

8. Conditions Precedent: Bill of Sale.

All of the obligations of Rocky Mountain Power under this Agreement are subject to the fulfillment, prior to and upon the Transfer Date, of each of the following conditions:

8.01 Representations, Warranties and Covenants of City. All representations and warranties made in this Agreement by City shall be true and correct in all material respects as of the Transfer Date as fully as though such representations and warranties had been made on and as of the Transfer Date, and as of the Transfer Date, City shall have complied in all material respects with all covenants made by it in this Agreement.

8.02 Litigation. At the Transfer Date, there shall not be in effect any order, decree, or injunction of a court of competent jurisdiction restraining, enjoining, or prohibiting the consummation of the transactions contemplated by this Agreement (each Party hereby agreeing to use its reasonable efforts, including reasonable appeals to higher courts, to have any such order, decree or injunction set aside or lifted), and no action shall have been taken, and no statute, rule, or regulation shall have been enacted, by any state or federal government or governmental agency in the United States which would prevent the consummation of such transactions.

9. Survival of Representations and Warranties.

All representations and warranties of the Parties, and all liability therefor, shall survive for a period of one year past the Transfer Date, at which time the obligations under this agreement shall cease and expire. Notwithstanding the forgoing, obligations under Section 7.04 of this Agreement shall continue indefinitely.

10. Termination.

10.01 Termination. This Agreement may be terminated and abandoned at any time prior to the Transfer Date if:

(a) The Parties agree in writing to terminate this Agreement by mutual consent; or

(b) City delivers a written notice to Rocky Mountain Power to the effect that Rocky Mountain Power has defaulted in a material respect under one or more of its covenants and agreements contained herein (which shall be specified in detail in such notice), and such condition or conditions have not been satisfied or such default or defaults have not been

remedied (or waived by City) within thirty (30) days after the date such notice is delivered by City to Rocky Mountain Power; or

(c) Rocky Mountain Power delivers a written notice to City to the effect that City has defaulted in a material respect under one or more of its covenants and agreements contained herein (which shall be specified in detail in such notice), and such condition or conditions have not been satisfied or such default or defaults have not been remedied (or waived by Rocky Mountain Power) within thirty (30) days after the date such notice is delivered by Rocky Mountain Power to City; or

(d) The Transfer Date has not occurred on or before January 31, 2023 or such later date to which the term of this Agreement may be extended pursuant to mutual agreement of the Parties, provided that one of the Parties gives notice to the other so terminating this Agreement and that the Party seeking such termination has not defaulted in a manner responsible for delaying the Transfer Date past April 30, 2023.

10.02 Effect of Termination. Except where specific terms and conditions of this Agreement provide that such terms and conditions survive termination of this Agreement, any termination pursuant to this Section 10 shall relieve both Parties hereto of their obligations set forth herein, and any such termination constitutes a failure of the conditions to the obligations of the Parties to implement this Agreement, except that nothing herein will relieve any Party from liability for any breach of this Agreement.

11. Assignment.

Neither Party may assign its rights under this Agreement to any third party without the written consent of the other Party.

12. Jurisdiction of Regulatory Authorities

In the event that the Commission or any other state, federal, or municipal authority determines that any provision of this Agreement conflicts with or is in violation of applicable law, or issues any rules, regulations, or orders which require Rocky Mountain Power to alter or amend any of the provisions of this Agreement or to terminate this Agreement, or that otherwise preclude or materially interfere with or rescind the transfer of assets contemplated herein, this Agreement automatically shall be amended to comply with such determination, amendment, rule, regulation or order; or, if so ordered, this Agreement shall terminate without effecting transfer of the Transferred Customers to City; and in any of the foregoing events, Rocky Mountain Power shall not be liable to City for damages or losses of any kind whatsoever, including consequential damages, which City may sustain as a result of such determination, amendment, rule, regulation, or order, or modification or termination of this transaction.

13. Miscellaneous.

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

13.02 Section and Paragraph Headings. The Section and Subsection headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

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

13.04 **JURY WAIVER. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF 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.**

13.04 **LIMITATION OF REMEDIES. UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, EXEMPLARY, PUNITIVE, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES OR ECONOMIC LOSSES ARISING OUT OF ANY CLAIM, DEMAND, OR ACTION BROUGHT WITH RESPECT TO THIS AGREEMENT.**

13.05 Notices. All notices, requests, demands, and other communications given by City or Rocky Mountain Power shall be in writing and shall be deemed to have been duly given when telecopied, when delivered personally in writing or when deposited into the United States mail, to the following addresses:

If to Rocky Mountain Power:	Rocky Mountain Power Timothy Solomon 127 East Main Rexburg, ID 83440
With a copy to:	Rocky Mountain Power Office of General Counsel 1407 N. West Temple Suite 320 Salt Lake City, Utah 84116
If to City:	Idaho Falls Power Bear Prairie 140 South Capital Avenue Box 50220 Idaho Falls, ID 83405

or to such other address as City or Rocky Mountain Power may designate in writing.

13.06 Integrated Agreement. This Agreement, when executed, constitutes the entire agreement between the Parties hereto with respect to the Assets defined in this Agreement, and supersedes and negates all prior line extension agreements and understandings, oral and written, between the Parties hereto with respect to the Assets.

13.07 Counterparts. This Agreement may be executed in counterparts, each of which shall for all purposes be deemed to be an original and which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the date first above written.

IDAHO FALLS POWER

By: 

Name: Bear Prairie

Title: General Manager

ROCKY MOUNTAIN POWER

By: 

Name: Justin Allen

Title: Distribution Manager

EXHIBIT A
DESCRIPTION AND VALUE OF ASSETS
SERVING TRANSFERRED CUSTOMERS
LOCATED AT ■■■ S BELLIN ROAD, IDAHO FALLS, IDAHO

Rocky Mountain Power
Proposed Sale in Place, Idaho Falls, Idaho - ■■■ S Bellin Road
Value of Inventory

<u>Description</u>		<u>Sales Price</u>
<u>Plant in Service</u>		
364	Poles, Towers and Fixtures	\$3,132
365	Overhead Conductors & Devices	\$1,338
368	Underground Conduit	\$463
367	Underground Conductors and Devices	\$883
368	Line Transformers	\$1,229
Plant in Service		\$6,834
Income Taxes		\$745
Sale Price - Existing Assets		\$7,580
<u>Expenses</u>		
Separation/Estimator Costs		\$2,760
12 Months Revenue @ 167%		\$1,772
Legal/Transaction Costs		\$1,500
Total Expenses		\$6,032
Total Sale Price		\$13,631

Property Valuation
Sale in Place - Distribution Facilities
For: Idaho Falls, ■■■ S Bellin Road
Asset Valuation

<u>Asset Description</u>	<u>FERC</u> <u>ACCOUN</u>	<u>Vintage</u>	<u>QTY</u>	<u>Sales</u> <u>Price</u>
OH #2-AS	365	2005	490	1,338
45' pole	364	2015	1	2,692
45' pole	364	1994	1	440
riser	366	2005	30	453
UG #2-AL	367	1994	450	827
25kva pad xfmr	368	1994	1	1,229
UG #2-TX	367	1994	40	86
Total				6,834

PRIOR 12 MONTHS' REVENUE

Revenue	Oct-22	Sep-22	Aug-22	Jul-22	Jun-22	May-22	Apr-22	Mar-22	Feb-22	Jan-22	Dec-21	Nov-21	Total
	\$73.89	\$108.89	\$150.37	\$102.42	\$69.70	\$69.91	\$68.38	\$82.23	\$101.83	\$101.41	\$69.16	\$64.80	\$1,060.99

167%*Total \$1,771.85

EXHIBIT B
BILL OF SALE

Seller: Rocky Mountain Power
Buyer: City of Idaho Falls

For valuable consideration, of which the undersigned acknowledges receipt, totaling \$13,631, PacifiCorp, doing business as Rocky Mountain Power ("Company"), hereby grants, bargains, sells and delivers to the City of Idaho Falls ("Buyer") pursuant to an Asset Transfer Agreement dated as of TBD all of its rights, title and interest in and to all of the Assets listed on Exhibit A, attached to said Asset Transfer Agreement, and presently in the Possession of Company.

THE ASSETS ARE SOLD AND DELIVERED TO BUYER "AS IS, WHERE IS."

PACIFICORP 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 COURSE OF PERFORMANCE, DEALING, OR USAGE OF TRADE.

Dated this 24th day of January 2023

PacifiCorp

By: 
Justin Allen
Distribution Manager