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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

In the Matter of the Application of PacifiCorp)
dba Utah Power & Light Company for) Case No. PAC-E-01-16
Approval of Interim Provisions for the Supply)
of Electric Service to Monsanto Company.)

MOTION TO DISMISS OR STAY

COMES NOW Monsanto Company (“Monsanto”), through counsel, and pursuant to Rules 56 and 256 of the Rules of Procedure of the Idaho Public Utilities Commission, and hereby moves the Commission for the entry of an Order dismissing PacifiCorp’s Application seeking to establish a new tariff pricing electric service to Monsanto. Alternatively, Monsanto moves the Commission for an Order staying any further action on PacifiCorp’s Application until the termination date of the existing Power Supply Agreement between PacifiCorp and Monsanto dated November 1, 1995, approved by Commission Order No. 26282 has been established by the Court and expired. This motion is made upon the grounds and for the reason that the Commission lacks jurisdiction to establish any new rate for Monsanto, because the existing Power Supply Agreement has not expired.

For some time a dispute has existed between PacifiCorp and Monsanto regarding the termination date of the Agreement. The dispute involves the interpretation of the Agreement, a

matter which lies in the jurisdiction of the Courts and not in the Commission as established by the Idaho Supreme Court in *Afton Energy, Inc. v. Idaho Power Company*, 111 Idaho 925, 928, 729 P.2d 400, 403 (1986) and most recently in *Idaho Power Company v. Cogeneration, Inc.*, 134 Idaho 749, 748, 9 P.3d 1204 (2000), to be discussed in greater detail in Monsanto's supporting brief.

Monsanto filed on November 16, 2001, a Complaint for Declaratory Judgment against PacifiCorp for the purpose of obtaining a Court interpretation of the Contract determining the date of termination, copy of which is attached to Monsanto's supporting brief. Said lawsuit was removed by PacifiCorp from State District Court to Federal District Court and is now pending in the United States District Court for the District of Idaho as Case No. CIV-01-0607-E-BLW.

Monsanto's Contract with PacifiCorp and the rates established therein remain in full force and effect until such time as the Federal Court establishes the termination date. Until such time, this Commission lacks jurisdiction to establish any new or different rate for Monsanto.

Monsanto is prepared for oral argument and/or hearing on this Motion.

This Motion will be further supported by Monsanto's supporting brief to be filed herein.

RESPECTFULLY SUBMITTED this 14th day of December, 2001.

**RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED**

By _____
RANDALL C. BUDGE

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 14th day of December, 2001, I served a true, correct and complete copy of the foregoing document, to each of the following, in the manner indicated:

Jean D. Jewell, Secretary	<input type="checkbox"/>	Hand Delivery
Idaho Public Utilities Commission	<input type="checkbox"/>	U.S. Mail/Postage Prepaid
P.O. Box 83720	<input checked="" type="checkbox"/>	Overnight Mail
472 W. Washington Street	<input checked="" type="checkbox"/>	Facsimile
Boise, Idaho 83720-0074		
Fax: 208-334-3762		
John M. Eriksson	<input type="checkbox"/>	Hand Delivery
Stoel Rives LLP	<input type="checkbox"/>	U.S. Mail/Postage Prepaid
201 S. Main St., Ste 1100	<input checked="" type="checkbox"/>	Overnight Mail
Salt Lake City, Utah 84111	<input type="checkbox"/>	Facsimile
Mary S. Hobson	<input type="checkbox"/>	Hand Delivery
Stoel Rives LLP	<input type="checkbox"/>	U.S. Mail/Postage Prepaid
101 South Capitol Blvd, Suite 1900	<input checked="" type="checkbox"/>	Overnight Mail
Boise, Idaho 83702-5958	<input type="checkbox"/>	Facsimile
Doug Larson	<input type="checkbox"/>	Hand Delivery
PacifiCorp	<input type="checkbox"/>	U.S. Mail/Postage Prepaid
201 South Main, Suite 2300	<input checked="" type="checkbox"/>	Overnight Mail
Salt Lake City, Utah 84140-0023	<input type="checkbox"/>	Facsimile

RANDALL C. BUDGE