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Petition to Intervene of the Intermountain Power Project Unit 3 Development Committee

UTAH DEPARTMENT OF
ENVIRONMENTAL QUALITY
JAN 22 2008
DIVISION OF AIR QUALITY

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BEFORE THE UTAH AIR QUALITY BOARD

In Re Approval Order – PSD Major Modification to Add New Unit 3 at Intermountain Power Generating Station, Millard County, Utah Project Code: N0327-010 DAQE-AN0327010-04	)))))))	**PETITION TO INTERVENE OF THE INTERMOUNTAIN POWER PROJECT UNIT 3 DEVELOPMENT COMMITTEE**

Pursuant to Utah Admin. Code R307-103-6 and Utah Code Ann. § 63-46b-9, the Intermountain Power Project Unit 3 Development Committee on behalf of its member participants (the "Committee"), by and through its undersigned counsel, respectfully petitions the Utah Air Quality Board (the "Board") to intervene in this proceeding. In support of its Petition, the Committee states as follows:

I. INTRODUCTION

The Committee supports and desires to continue to defend Approval Order DAQE-AN0327010-04 (the "AO"), which was issued by the Utah Division of Air Quality ("UDAQ") in

regard to a third electrical generating unit, known as Unit 3, at the Intermountain Power Project ("IPP"). The AO's issuance has been challenged by the Utah Chapter of the Sierra Club.

Although the AO was issued in the name of the Intermountain Power Service Corporation ("IPSC") (the originally intended operator of Unit 3), the AO has always been held by IPSC on behalf of the Committee and its members (the owners of Unit 3). As a result, the outcome of Sierra Club's appeal will substantially affect the legal interests of the Committee, whose members have spent many years and millions of dollars on the planning and development Unit 3. The Committee's interests are intertwined with the AO and this proceeding. Moreover, the interests of justice and the orderly and prompt conduct of this proceeding will not be impaired, but instead will be advanced by the Committee's intervention. Therefore, the Board should grant the Committee's Petition to Intervene.

II. STATEMENT OF FACTS

The Committee is comprised of a group of entities which hold the exclusive contractual rights to develop and own IPP Unit 3. The Committee's members have authorized the Committee to file this Petition. The Committee's members include the Utah Associated Municipal Power Systems ("UAMPS") and PacifiCorp. UAMPS is a political subdivision of the State of Utah, formed pursuant to the Utah Interlocal Cooperative Act (Title 11, Chapter 13, Utah Code Ann. (1953)). UAMPS provides comprehensive wholesale electric energy on a non-profit basis to community-owned power systems in the Intermountain West. Its membership includes utility systems in Utah and six other western states. PacifiCorp is an Oregon corporation qualified to do business in the state of Utah and with a principal place of business in Salt Lake City. PacifiCorp is an integrated electric utility that provides electrical service to customers in

Utah through Rocky Mountain Power, one of its operating divisions, and also to customers in five other western states.

While the Committee's members have real and substantial interests in Unit 3, IPP[1] is owned by the Intermountain Power Agency ("IPA"), a political subdivision of the State of Utah organized pursuant to the Utah Interlocal Cooperation Act. The City of Los Angeles Department of Water and Power ("LADWP") acts as IPA's agent for the operation and maintenance of IPP Units 1 and 2. The actual operation of Units 1 and 2 is performed by IPSC, which is controlled by IPA and LADWP. IPSC was designated to hold the AO in its name, for the benefit of the Committee and its members, because of IPSC's originally anticipated role as the potential future operator of Unit 3. The AO continues to be held in the name of IPSC.

Disputes arose between the Committee and IPA, among others, and on or about July 20, 2007, IPSC's legal counsel of record in this proceeding[2] withdrew as legal counsel in the defense of the AO. Since then, IPSC has not actively participated in the case in defense of the AO.

In order to move this matter forward and to clarify the roles of IPSC and the Committee in this proceeding, the Committee made multiple requests of IPA and/or LADWP to sign, or to cause IPSC to sign, the UDAQ form entitled "Ownership Change/Company Name Change Notification" in regard to the AO. This would allow the Committee to follow UDAQ's stated process for changing the name of the permit holder on UDAQ's records, file the executed form with UDAQ, and take over defense of the AO. IPA and LADWP acknowledged that the Committee's members contractually own the rights to the AO, but IPA and LADWP refused to execute the form or to cause IPSC to execute the form.

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[1] IPP includes existing Units 1 and 2 and also the site and certain common facilities for Unit 3.
[2] Blaine Rawson and his firm of Holme Roberts and Owen LLP

Because IPSC, IPA, and/or LADWP have not executed the form, the Committee instead submits this Petition as a means to continue the active defense of the AO on behalf of its members.

By stipulated motion of the Sierra Club and the Executive Secretary, and upon unanimous vote of the Board, this proceeding was continued *sine die* on September 5, 2007. At the same time, the Board determined that "any party to the proceeding, or other interest group, could pursuant to the rules of the Board file appropriate papers to reopen the proceeding."[3] This Petition is the first step of that task.

There is no dispute that the Committee, of its own accord and through UAMPS and PacifiCorp, has participated in this proceeding from its very beginning in accordance with R307-103-14-4 and -5. As demonstrated herein, the Committee has the right to continue to do so now as an intervenor in its own name on behalf of its members. The Committee intends to continue defending the AO, and to address the issues and oppose the arguments raised by Sierra Club that may adversely affect the Committee's interests in Unit 3, the AO, and this proceeding.

III. INTERVENTION STANDARD

The Utah Code and Utah Administrative Code govern intervention in administrative proceedings. Utah Admin. Code R307-103-6(2)(a) requires that a petition to intervene "shall meet the requirements of 63-46b-9" of the Utah Administrative Procedures Act (the "UAPA"). The UAPA requires a petition to contain:

a. the agency's file number;

b. the name of the proceeding;

[3] Utah Air Quality Board Meeting Minutes, September 5, 2007, Item VI (available at http://www.airquality.utah.gov/Air-Quality-Board/minutes_agendas/2007/September/Final_Minutes09-05-07.pdf).

c. a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceeding, or that the petitioner qualifies as an intervenor under any provision of law;

d. a statement of the relief that the petitioner seeks from the agency.

Once a petitioner submits a petition to intervene, the presiding officer reviews the petition for completeness and legal sufficiency. According to Utah Code Ann. § 63-46b-9(2), the presiding officer "shall grant" the intervention if the petitioner has satisfied a two-part test:

a. the petitioner's legal interest may be substantially affected by the formal adjudicative proceeding; and

b. the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.

IV. STANDING REQUIREMENT

In addition to the intervention requirements above, Utah Admin. Code R307-103-6(3) states that "[n]o person may initiate or intervene in an agency action unless that person has standing. Standing shall be evaluated using applicable Utah case law." Standing is a jurisdictional doctrine, developed by Utah courts and serving as a "gatekeeper to the courthouse, allowing in only those cases that are fit for judicial resolution." *Terracor v. Utah Bd. of State Lands and Forestry*, 716 P.2d 796, 798 (Utah 1986). The standing requirement "preserve[s] the integrity of judicial adjudication by requiring that legal issues be adequately defined and crystallized so that judicial procedures focus on specific, well-defined legal and factual issues." *National Parks and Conservation Assn. v. Board of State Lands*, 869 P.2d 909, 913 (Utah 1993). Thus, the "parties must have both a sufficient interest in the subject matter of the dispute and a sufficient adverseness so that the issues can be properly explored." *Id.*

Under Utah law, there are two means by which a party can establish standing. *Utah Chapter of the Sierra Club v. Utah Air Quality Control Bd.*, 2006 UT 74, 148 P.3d 960 (Utah 2006). The "traditional test" requires the petitioning party to establish a "distinct and palpable injury." *Id.* However, if the petitioning party does not have standing under the traditional test, that party may still have standing under the "alternative test" if it can demonstrate that it is an appropriate party asserting a matter of great public importance. *Id.*

Under the traditional test for standing, the petitioning party must allege that it has suffered or will suffer "some distinct and palpable injury that gives [it] a personal stake in the outcome of the legal dispute." *Id.* at ¶ 19 (quoting *Jenkins v. Swan*, 675 P.2d 1145, 1148 (Utah 1983)). "When determining whether a party has suffered a distinct and palpable injury," a three-part inquiry is involved: (1) the petitioning party must claim it "has been or will be 'adversely affected by the [challenged] actions,'" *Id.*; (2) the party must "allege a causal relationship 'between the injury to the [party], the [challenged] actions and the relief requested,'" *Id.*; and (3) the requested relief must be "substantially likely to redress the injury claimed." *Id.* "If the party can satisfy these three criteria, [it] has standing to pursue its claims before the courts of this state." *Id.* The Utah Supreme Court clarified in 2006 that the "adverse effects" component can be satisfied even if those effects or grievances are the same or similar grievances suffered by other individuals or a group. *Id.* at ¶¶ 25, 26.

Under the alternative test, a party has standing if it is an appropriate party asserting an issue of public importance. *Id.* at ¶ 35. Under the alternative test, an intervenor qualifies as an appropriate party where it has "the interest necessary to effectively assist the [Board] in developing and reviewing all relevant legal and factual questions," and where the issues are

unlikely to be raised if the party is not given standing. *Id.* at ¶ 36 (quoting *Jenkins v. Swan*, *supra*, at 1150). Once a party satisfies the appropriate party requirement, it must then demonstrate that it seeks to raise issues that "are of sufficient public importance in and of themselves to warrant granting the party standing." *Id.* at ¶ 39 (quoting *Jenkins*, *supra*, at 1150). This requires that "the [Board] determine not only that the issues are of a sufficient weight but also that they are not more appropriately addressed by another branch of government." *Id.*

V. THE BOARD SHOULD PERMIT THE COMMITTEE TO INTERVENE

The Committee is an appropriate party to this proceeding and its Petition should be granted.

First, the Committee's members hold the ownerships right to the AO.

Second, the Committee's members have duly authorized the Committee to file this Petition and defend the AO.

Third, the Committee satisfies R307-103-6(2)(a) and UAPA § 63-46b-9. This Petition satisfies subsections (a) and (b) of § 63-46b-9(1) because the caption includes the UDAQ's and Board's file number and the name of the proceeding. Subsections (c) and (d) are satisfied because a statement of the required facts, including the relief sought by the Committee, is included herein.

Fourth, the Committee satisfies § 63-46b-9(2)(a) and (b). As set forth herein, whether the Board ultimately upholds or revokes the AO, the legal interests of the Committee and its members will certainly and substantively be affected. In addition, the interests of justice and the orderly and prompt conduct of this proceeding will not be impaired by granting intervention, but instead will be served and enhanced because the now stayed proceeding will be allowed to

proceed to a conclusion. Moreover, the Committee's members and their counsel have participated in this proceeding from the beginning and are well versed in its issues and status. The Committee and its counsel have submitted application materials for the AO, participated—and continue to participate—in fact and expert discovery and, having appeared before the Board and UDAQ, are fully familiar with their rules and procedures.

Fifth, the Committee clearly meets the traditional test of standing in accordance with *Sierra Club v. Sevier Power Co.,*. because, as explained below, the Committee's members own the AO and hold the exclusive rights to develop the IPP site for Unit 3. The withdrawal of IPSC's counsel in this proceeding, and IPSC's subsequent inaction, has brought this proceeding to a standstill and left the Committee members' interests unprotected.

A. Injury

Although the AO was issued in IPSC's name, the Committee, through its members, is the owner of the AO and has a direct financial stake in Unit 3,. A decision by the Board in favor of Sierra Club will dramatically and adversely affect the Committee. Committee members have financially committed to, and have expended, substantial sums of money in the development of Unit 3. The only way to realize that investment is by providing the anticipated Unit 3 power to their customers and to other power purchasers.

Finally, the Committee will be injured absent intervention because IPSC is no longer represented by counsel and is no longer actively defending the AO on behalf of the Committee. Unless the Committee is permitted to intervene as a party and assume the position of the only party who would request these proceedings to be started up again, it is powerless to defend the

AO and powerless to represent its interests in the AO and Unit 3—interests which will be eroded because of simple inaction.

B. Causal Relationship.

There is a clear causal relationship between the action the Sierra Club's positions before this Board and the adverse impact explained above on the Committee. If the Board agrees with Sierra Club and revokes the AO—or if the AO becomes stale through inaction—the Committee's interests in Unit 3 (and in any potential new or to-be-modified existing coal-fired power plants will be severely prejudiced.

C. Redressibility

If the Committee is not permitted to intervene as a party in this proceeding, its interests will be unfairly prejudiced because they will be denied any opportunity to defend against the Sierra Club's assertions or to defend the AO or their interests in Unit 3.

VI. CONCLUSION

For the foregoing reasons, the Committee respectfully requests that the Board grant its Petition to Intervene. As soon as that occurs, the Committee will petition this Board to: (i) lift the stay and/or continuance now in effect, (ii) establish a schedule for the completion of discovery and motions, if any, in the event the parties are unable to reach a mutually agreeable schedule, (iii) schedule a final hearing in this proceeding, and (iv) order such other and further relief as the Board deems just and proper. The Committee further requests that its Motion be placed on the Board's March 2008 agenda.

RESPECTFULLY SUBMITTED this 22nd day of January, 2008.

VAN COTT, BAGLEY, CORNWALL
& MCCARTHY, P.C.

By: _____
H. Michael Keller
Matthew F. McNulty, III

Attorneys for IPP Unit 3 Development Committee

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of January, 2008, I caused a copy of the foregoing to be served by U.S. Mail, postage prepaid, and by electronic mail to the following:

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B)

Affidavit of Doug Hunter

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Attorneys for Intermountain Power Project Unit 3 Development Committee

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BEFORE THE UTAH AIR QUALITY BOARD

In Re Approval Order – PSD Major Modification to Add New Unit 3 at Intermountain Power Generating Station, Millard County, Utah Project Code: N0327-010 DAQE-AN0327010-04	**AFFIDAVIT OF DOUG HUNTER**

STATE OF UTAH)
:ss.
COUNTY OF SALT LAKE)

DOUG HUNTER, having been first duly sworn upon his oath, hereby avers and states as follows:

1. I am a resident of Salt Lake County, am over the age of 18, and have personal knowledge of the facts set forth herein.

2. I am General Manager of Utah Associated Municipal Power Systems ("UAMPS"), a political subdivision of the State of Utah, formed pursuant to the Utah Interlocal Cooperative Act, Title 11, Chapter 13, Utah Code Ann. (Title 11, Chapter 13, Utah Code Ann. (1953)) ("Interlocal Act"). UAMPS is a member of the

Intermountain Power Project Unit 3 Development Committee (the "Development Committee"), of which I am the Chair. I serve as the Chairman of the Development Committee and have been authorized to submit this Affidavit for and on behalf of the Development Committee and its members in support of the Development Committee's Petition to Intervene.

3. The Intermountain Power Agency ("IPA"), a political subdivision of the State of Utah, organized and existing under the Interlocal Act, which is not a party to this proceeding, owns the Intermountain Power Project, located near Delta, Utah ("IPP"). IPP currently consists of two generation units ("Units 1 and 2").

4. The Los Angeles Department of Water and Power ("LADWP"), which is not a party to this proceeding, is contractually obligated to act as IPA's operating agent for Units 1 and 2.

5. The Intermountain Power Service Corporation, a Utah nonprofit corporation ("IPSC"), which is a party to this proceeding, is an agent of IPA and operates Unit 1 and 2 under the direction and control of LADWP, in its capacity as IPA's operating agent of Units 1 and 2.

6. Beginning in or around 2000, IPA proposed to add a third generation unit ("Unit 3") similar to Units 1 and 2 at IPP. To study and analyze the feasibility of constructing Unit 3, a steering committee comprised of representatives from UAMPS, IPA, and LADWP ("Steering Committee") was formed, and IPA and IPSC submitted to the Utah Department of Environmental Quality Division of Air

Quality ("UDAQ") a Notice of Intent to construct Unit 3, with IPSC as the initially designated operator. .

7. In October 2004, UDAQ issued to IPSC Approval Order DAQE-AN0327010-04 (the "AO") for construction of Unit 3. Following Sierra Club's challenge of the AO, the Steering Committee members became active in the defense of the AO.

8. The Steering Committee completed its designated work. In 2005, the Steering Committee's members negotiated and finalized two development agreements for proceeding with development of Unit 3: the Intermountain Power Project Unit Three Development Agreements (the "Development Agreement"), and the Intermountain Power Project Unit Three Development Coordination Agreement ("Development Coordination Agreement"), both dated May 1, 2005 (collectively, the "Development Agreements").

9. The Development Agreements provided for the formation of a Development Committee, the members of which were UAMPS, PacifiCorp, an Oregon corporation ("PacifiCorp"), the Southern Nevada Water Authority, a political subdivision of the State of Nevada ("SNWA"), and the City of Glendale, California a municipal corporation organized and existing under the Charter City of Glendale and the laws of the State of California ("Glendale"). Under the Development Agreements, IPA granted to the Development Committee members as the "Development Participants" an exclusive right to pursue and develop Unit 3.

10. Pursuant to the Development Agreements and a Bill of Sale and Assignment, dated May 1, 2005 ("Bill of Sale"), the Steering Committee members (which included IPA) transferred all of their right, title and interest in Unit 3, including the AO, to the Development Participants: UAMPS, PacifiCorp, SNWA, and Glendale.

11. Glendale withdrew as a Development Participant effective February 11, 2008. Under the Development Agreements and the Bill of Sale, UAMPS, PacifiCorp, and SNWA, as the remaining Development Participants and members of the Development Committee, hold the exclusive right to pursue and develop Unit 3 and hold all right, title, and interest in Unit 3, including the AO.

12. In or around 2007, a dispute arose between the Development Committee and IPA, among others. The Committee made multiple requests that IPA sign, or cause IPSC to sign, the UDAQ form entitled "Ownership Change/Company Name Change Notification". This form would allow the Committee to demonstrate the Development Participants' ownership of the AO and allow the Committee to take over defense of the AO in its own name, and on behalf of the Development Participants. However, IPA has refused to cause its agent, IPSC, to execute the form and has taken the position that because the Bill of Sale transferred to the Development Participants all rights to the AO, the execution of the form is not necessary. LADWP, as IPA's operating agent, also acknowledged the transfer of the AO to the Development Participants under the Bill of Sale but refused to cause IPSC to execute the form.

13. By letter dated August 30, 2007, IPA, through counsel, explained:

> IPA delivered to the Development Participants [UAMPS, PacifiCorp, SNWA, and, at that time, Glendale] an Assignment and Bill of Sale in connection with the execution and delivery of the [Development Coordination Agreement]. ... That document is sufficient to transfer any interest that IPA may have in the Air Permit subject to the terms of the Development Agreement.

A true and correct copy of the letter is attached as **Exhibit A**. Thus, IPA has acknowledged the Development Participants already own the AO by virtue of the Bill of Sale, but has refused to provide the executed "Ownership Change/Company Name Change Notification."

14. To date, the Development Committee's members have incurred significant development and other costs related to Unit 3.

15. IPSC is not presently represented by counsel in this proceeding, and has taken no action in months to defend the AO.

16. To protect its members' interests in Unit 3 and the AO, the Development Committee on behalf of its member Development Participants intends to continue defending the AO and to address the issues and oppose the arguments raised by Sierra Club in this proceeding.

17. The construction review period under Condition 8 of the AO, as extended, will expire in April 2008. Thus, the Development Participants will suffer real injury, unless the Development Committee is permitted to intervene in this proceeding on their behalf as requested in the Petition to Intervene.

DATED this 14th day of February, 2008

Doug Hunter

SUBSCRIBED and SWORN TO before me this 14th day of February, 2008.

Notary Public

NOTARY PUBLIC
PAMELA BECKSTEAD
2825 E. Cottonwood Pkwy., Ste. 200
Salt Lake City, Utah 84121
My Commission Expires
July 8, 2009
STATE OF UTAH

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of February, 2008, I caused a copy of the foregoing to be served by electronic mail to the following:

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Mary DeWitt

EXHIBIT A

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Brent V. Manning
bmanning@mc2b.com

August 30, 2007

Electronic Transmission and U.S. Mail

H. Michael Keller
Van Cott
36 South State Street, Suite 1900
Salt Lake City, UT 84111

Dear Michael:

Re: UAMPS

As you know we represent IPA with regard to UAMPS and Pacificorp's request that it assign certain rights and work product to them in its position as Development Manager under the Intermountain Power Project Unit 3 Development Agreement dated May 1, 2005 ("the Development Agreement"). Recently you requested that Intermountain Power Service Corporation assign its interests in the Air Permit related to Unit 3 and that IPSC complete a Change of Ownership form that you first supplied to us on August 21, 2007. IPA forwarded the request to IPSC because IPA cannot act on behalf of IPSC. We understand that IPSC will consider whether it will execute that document at a meeting in Los Angeles on September 4, 2007.

IPA delivered to the Development Participants an Assignment and Bill of Sale in connection with the execution and delivery of the Intermountain Power Project Unit 3 Development Coordination Agreement dated May 1, 2005 ("the Coordination Agreement"). I attach an additional copy of the Assignment and Bill of Sale for your reference. That document is sufficient to transfer any interest that IPA may have in the Air Permit subject to the terms of the Development Agreement. Under Section 3.4 of the Coordination Agreement, IPA and UAMPS agreed to assign to the Development Participants "all of their right, title and interest in and to the Steering Committee Work Product," which included all rights and interest relating to the Air Permit.

Section 3.4 of the Coordination Agreement also provides that:

> None of the Study Participants makes or will make any representation or warranty of any type or nature with respect to the Steering Committee Work Product, and each hereby disclaims any and all representations and warranties with the respect to the accuracy, veracity, completeness or usefulness of the Steering Committee

Work Product. It will be assigned and transferred, if at all, to the Development Participants in its "as is," "where-is" condition and the Development Participants and Development Committee will accept it in such condition and assume all risks of using or relying on the same.

Because IPA does not have title to the Air Permit, it has satisfied its obligation to transfer any interest that it has in the Air Permit "as is."

IPA will continue to cooperate in transferring Steering Committee Work Product and Development Committee Work Product to you. If there is anything more that you believe IPA can provide, please let me know.

Very truly yours,

Brent V. Manning

BVM:dc
Enclosure

cc: Ron Rencher
Reed Searle
Jim Hewlett
Lance Lee
Chad Derum

FAX

INTERMOUNTAIN POWER AGENCY
10653 South River Front Parkway
South Jordan, UT 84095
801-938-1333 Fax: 801-938-1330

TO: Brent Manning

FROM: Reed Searle

SUBJECT: Bill of Sale

DATE: 8/30/07

COMMENTS: This is the Bill of Sale attached to the Development Coordination Agreement.

BILL OF SALE AND ASSIGNMENT

THIS BILL OF SALE AND ASSIGNMENT (this "*Bill of Sale and Assignment*"), dated to be effective as of May 1, 2005, is entered into by INTERMOUNTAIN POWER AGENCY, a political subdivision of the State of Utah ("IPA"), and UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS, a political subdivision of the State of Utah ("UAMPS"), in their respective capacities as Study Participants (as that term is defined in the Development Agreement, as that term is defined below), in favor of the Development Participants (as that term is defined in the Development Coordination Agreement, as that term is defined below). Capitalized terms used but not defined in this Bill of Sale and Assignment shall have the meanings given to them in the Intermountain Power Project Unit 3 Development Agreement, dated of even date herewith (the "*Development Agreement*"), or if not defined in the Development Agreement, the Intermountain Power Project Unit 3 Development Coordination Agreement, dated of even date herewith (the "*Development Coordination Agreement*").

Recitals

A. Pursuant to the Study Agreement, the Steering Committee, consisting of a representative of each of the Study Participants, was established and has developed, prepared and obtained the Steering Committee Work Product with regard to the possible construction of Unit 3.

B. The Development Agreement was entered into by and among the Development Participants set forth in Exhibit A attached thereto (collectively, the "*Development Participants*") and IPA and establishes the Development Committee for the purposes of, among other things, directing and supervising Development Work with respect to Unit 3. IPA entered into the Development Agreement solely in its capacity as Development Manager thereunder.

C. Subject to the terms and conditions of the Development Coordination Agreement, and pursuant to Section 3.4 thereof, IPA and UAMPS have agreed to assign and transfer to the Development Participants all of their right, title and interest in and to the Steering Committee Work Product in consideration of the agreement by the Development Participants pursuant to the Development Agreement to reimburse the Study Participants for the Category 1 Study Expenses and the Category 2 Study Expenses. The IPA and UAMPS are entering into this Bill of Sale and Assignment to fulfill such agreement.

Bill of Sale and Assignment

In consideration of the agreement by the Development Participants to reimburse the Study Participants for the Category 1 Study Expenses and the Category 2 Study Expenses, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Assignment and Transfer of Steering Committee Work.** Subject to the terms and conditions of the Development Coordination Agreement and the conditions set forth in Section 1.1 below, IPA and UAMPS hereby assign and transfer all of their right, title and interest in and to the Steering Committee Work Product to the Development Participants, including,

without limitation, Persons who become Development Participants after the effective date of this Bill of Sale and Assignment, as tenants in common with each other Development Participant in proportion to their respective Development Cost Shares (as in effect from time to time).

1.1 Conditions to Assignment.

1.1.1 Automatic Re-Transfer of Steering Committee Work to IPA. Notwithstanding the provisions of Section 1 above and in addition to any other conditions set forth in the Development Coordination Agreement, all right, title and interest in and to the Steering Committee Work shall immediately and automatically revert to and become vested in and transferred, assigned and delivered to IPA without the payment by IPA of any consideration if: (i) the Development Agreement terminates other than pursuant to Section 16.1(b) thereof; (ii) the Development Agreement having terminated pursuant to Section 16.1(b) thereof, the construction of Unit 3 does not thereafter commence within the time period contemplated by the Project Agreements; (iii) the construction of Unit 3 having commenced, such construction is thereafter permanently abandoned prior to the completion of Unit 3; or (iv) the Development Participants fail to pay to the Study Participants the Category 1 Study Expenses or the Category 2 Study Expenses in accordance with the terms of the Development Coordination Agreement and the Development Agreement.

1.1.2 Prohibition against Assignments or Resales. The Development Participants shall not assign or resell the Steering Committee Work Product (or any portion thereof) to any Person that is not a Development Participant at the time of such assignment or resale.

1.1.3 Reservation of Non-Exclusive Rights. Each Study Participant individually hereby reserves and retains the non-exclusive right to use and apply, and to keep or retain copies of Media containing, Steering Committee Work Product.

1.1.4 Adjustment or Termination of Rights. If the Development Costs Share of any Development Participant is increased or decreased in accordance with the terms and conditions of the Development Agreement, the proportional interest of such Development Participant in and to the Steering Committee Work Product shall automatically be adjusted to correspond to such Development Participant's revised Development Costs Share. If any Person that obtained any right, title or interest in or to the Steering Committee Work Product under this Bill of Sale and Assignment ceases to be a Development Participant, then such right, title and interest held be such Person shall automatically terminate as of the date such Person ceases to be a Development Participant.

2. No Representations. None of the Study Participants makes any representation or warranty of any type or nature with respect to the Steering Committee Work Product, and each Study Participant hereby disclaims any and all representations and warranties with respect to the accuracy, veracity, completeness or usefulness of the Steering Committee Work Product. The parties hereto understand, acknowledge and agree that IPA and UAMPS are assigning and transferring their right, title and interest in and to the Steering Committee Work Product to the Development Participants in the "as-is," "where-is" condition of the Steering Committee Work Product, and the Development Participants and the Development Manager accept the Steering Committee Work Product in such condition and assume all risks of using or relying on the same.

3. **Miscellaneous.** This Bill of Sale and Assignment is effective as of the date first set forth above. The above Recitals are incorporated herein by reference and made a part hereof. The headings and captions in this Bill of Sale and Assignment are for convenience only and in no way define, limit or describe the scope or intent of any provision or section of this Bill of Sale and Assignment. This Bill of Sale and Assignment shall be interpreted, governed by and construed under the laws of the State of Utah.

IN WITNESS WHEREOF, IPA and UAMPS have caused this Bill of Sale and Assignment to be duly executed by their respective authorized signatories, all as of the date first set forth above.

INTERMOUNTAIN POWER AGENCY,
a political subdivision of the State of Utah

By: Reed T. Searle
Reed T. Searle, General Manager

UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS,
a political subdivision of the State of Utah

By: Douglas Hunter
Douglas G. Hunter, General Manager

EXHIBIT B

FORM OF
BILL OF SALE AND ASSIGNMENT

THIS BILL OF SALE AND ASSIGNMENT (this "*Bill of Sale and Assignment*"), dated to be effective as of May 1, 2005, is entered into by INTERMOUNTAIN POWER AGENCY, a political subdivision of the State of Utah ("IPA"), and UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS, a political subdivision of the State of Utah ("UAMPS"), in their respective capacities as Study Participants (as that term is defined in the Development Agreement, as that term is defined below), in favor of the Development Participants (as that term is defined in the Development Coordination Agreement, as that term is defined below). Capitalized terms used but not defined in this Bill of Sale and Assignment shall have the meanings given to them in the Intermountain Power Project Unit 3 Development Agreement, dated of even date herewith (the "*Development Agreement*"), or if not defined in the Development Agreement, the Intermountain Power Project Unit 3 Development Coordination Agreement, dated of even date herewith (the "*Development Coordination Agreement*").

Recitals

A. Pursuant to the Study Agreement, the Steering Committee, consisting of a representative of each of the Study Participants, was established and has developed, prepared and obtained the Steering Committee Work Product with regard to the possible construction of Unit 3.

B. The Development Agreement was entered into by and among the Development Participants set forth in Exhibit A attached thereto (collectively, the "*Development Participants*") and IPA and establishes the Development Committee for the purposes of, among other things, directing and supervising Development Work with respect to Unit 3. IPA entered into the Development Agreement solely in its capacity as Development Manager thereunder.

C. Subject to the terms and conditions of the Development Coordination Agreement, and pursuant to Section 3.4 thereof, IPA and UAMPS have agreed to assign and transfer to the Development Participants all of their right, title and interest in and to the Steering Committee Work Product in consideration of the agreement by the Development Participants pursuant to the Development Agreement to reimburse the Study Participants for the Category 1 Study Expenses and the Category 2 Study Expenses. The IPA and UAMPS are entering into this Bill of Sale and Assignment to fulfill such agreement.

Bill of Sale and Assignment

In consideration of the agreement by the Development Participants to reimburse the Study Participants for the Category 1 Study Expenses and the Category 2 Study Expenses, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Assignment and Transfer of Steering Committee Work.** Subject to the terms and conditions of the Development Coordination Agreement and the conditions set forth in Section 1.1 below, IPA and UAMPS hereby assign and transfer all of their right, title and interest in and to the Steering Committee Work Product to the Development Participants, including, without limitation, Persons who become Development Participants after the effective date of this Bill of Sale and Assignment, as tenants in common with each other Development Participant in proportion to their respective Development Cost Shares (as in effect from time to time).

1.1 Conditions to Assignment.

1.1.1 Automatic Re-Transfer of Steering Committee Work to IPA. Notwithstanding the provisions of Section 1 above and in addition to any other conditions set forth in the Development Coordination Agreement, all right, title and interest in and to the Steering Committee Work shall immediately and automatically revert to and become vested in and transferred, assigned and delivered to IPA without the payment by IPA of any consideration if: (i) the Development Agreement terminates other than pursuant to Section 16.1(b) thereof; (ii) the Development Agreement having terminated pursuant to Section 16.1(b) thereof, the construction of Unit 3 does not thereafter commence within the time period contemplated by the Project Agreements; (iii) the construction of Unit 3 having commenced, such construction is thereafter permanently abandoned prior to the completion of Unit 3; or (iv) the Development Participants fail to pay to the Study Participants the Category 1 Study Expenses or the Category 2 Study Expenses in accordance with the terms of the Development Coordination Agreement and the Development Agreement.

1.1.2 Prohibition against Assignments or Resales. The Development Participants shall not assign or resell the Steering Committee Work Product (or any portion thereof) to any Person that is not a Development Participant at the time of such assignment or resale.

1.1.3 Reservation of Non-Exclusive Rights. Each Study Participant individually hereby reserves and retains the non-exclusive right to use and apply, and to keep or retain copies of Media containing, Steering Committee Work Product.

1.1.4 Adjustment or Termination of Rights. If the Development Costs Share of any Development Participant is increased or decreased in accordance with the terms and conditions of the Development Agreement, the proportional interest of such Development Participant in and to the Steering Committee Work Product shall automatically be adjusted to correspond to such Development Participant's revised Development Costs Share. If any Person that obtained any right, title or interest in or to the Steering Committee Work Product under this Bill of Sale and Assignment ceases to be a Development Participant, then such right, title and interest held be such Person shall automatically terminate as of the date such Person ceases to be a Development Participant.

2. **No Representations.** None of the Study Participants makes any representation or warranty of any type or nature with respect to the Steering Committee Work Product, and each Study Participant hereby disclaims any and all representations and warranties with respect to the accuracy, veracity, completeness or usefulness of the Steering Committee Work Product. The

parties hereto understand, acknowledge and agree that IPA and UAMPS are assigning and transferring their right, title and interest in and to the Steering Committee Work Product to the Development Participants in the "as-is," "where-is" condition of the Steering Committee Work Product, and the Development Participants and the Development Manager accept the Steering Committee Work Product in such condition and assume all risks of using or relying on the same.

3. **Miscellaneous.** This Bill of Sale and Assignment is effective as of the date first set forth above. The above Recitals are incorporated herein by reference and made a part hereof. The headings and captions in this Bill of Sale and Assignment are for convenience only and in no way define, limit or describe the scope or intent of any provision or section of this Bill of Sale and Assignment. This Bill of Sale and Assignment shall be interpreted, governed by and construed under the laws of the State of Utah.

IN WITNESS WHEREOF, IPA and UAMPS have caused this Bill of Sale and Assignment to be duly executed by their respective authorized signatories, all as of the date first set forth above.

INTERMOUNTAIN POWER AGENCY,
a political subdivision of the State of Utah

By: _____
Reed T. Searle, General Manager

UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS,
a political subdivision of the State of Utah

By: _____
Its: _____

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C)

Utah Chapter of the Sierra Club's Opposition to the Development Committee's Petition to Intervene

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Attorney for Utah Chapter of the Sierra Club

FEB 19 2008

BEFORE THE UTAH AIR QUALITY BOARD

In Re: Approval Order – PSD Major Modification to Add New Unit 3 at Intermountain Power Generating Station, Millard County, Utah Project Code: N0327-010 DAQE-AN0327010-04	:	UTAH CHAPTER OF THE SIERRA CLUB'S OPPOSITION TO THE DEVELOPMENT COMMITTEE'S PETITION TO INTERVENE

The Utah Chapter of the Sierra Club (Sierra Club) respectfully opposes the Petition to Intervene filed by the Intermountain Power Project Unit 3 Development Committee (DC) on January 22, 2008.

INTRODUCTION

DC's Petition to Intervene must be rejected. DC has not provided an adequate basis for the facts that it claims warrant its intervention. Moreover, DC's own admissions and supporting materials prove the opposite – that DC **cannot** confirm the facts that serve as the foundation for its Petition to Intervene.

To establish it is entitled to intervene, DC must provide "a statement of facts demonstrating" that its "legal rights or interests are substantially affected by" this proceeding. Utah Code Ann. § 63-46b-9(1)(c). DC must also prove it has standing under Utah law. Utah Admin. Code Rule R307-103-6(3).

To this end, DC bases its petition on the assertion that it owns the IPSC Approval Order (AO). But in the same breath, DC admits that the Intermountain Power Service Corporation (IPSC) still owns that AO and has refused to sign the necessary Division of Air Quality (DAQ) "Ownership Change Form" that would prove a transfer in title in favor of DC. DC also bases its petition on vague claims that Intermountain Power Authority ("IPA") and Los Angeles Department of Water and Power ("LADWP") have "acknowledged" DC's right to the AO. However, the Bill of Sale, the supposed source of this concession, says nothing of the kind. DC states that the Development Agreements show it owns the AO, but does not produce these documents. Thus, DC fails to provide a basis for the facts upon which its petition depends and instead makes admissions and presents supporting documents that undermine these facts.

Other troubling matters come to light with close examination. For example, UAMPS and PacifiCorp have claimed in a Notice of Intent to Sue, and UAMPS in a lawsuit, that they are currently unable to build IPP Unit 3. In addition, PacifiCorp has publicly stated to the Utah Public Service Commission that PacifiCorp has abandoned IPP Unit 3, at least for the next ten years. Sierra Club also outlines a few of the many facts that establish that the AO was written only for IPSC and cannot be transferred to another entity without IPSC's full cooperation. This is because the AO is based on the use and modification of facilities that currently service existing IPP Units 1 and 2, units and facilities that IPSC manage.

Finally, DC's petition must be denied because it is apparent that the committee does not really seek intervention status. Rather, DC wants to substitute itself for IPSC and assume and defend the AO. But, instead of securing a change in ownership of the

AO, DC seeks to bypass proper DAQ procedure and inappropriately asks this Board to treat DC as the owner of the AO, when DC has failed to establish that it is.

STATEMENT OF FACTS

IPSC Owns the AO.

1. The Executive Secretary issued the October 15, 2004 Air Permit or AO to the Intermountain Power Service Company (IPSC). IPSC at 4332.
2. The first condition of that AO is that it "applies" to IPSC. IPSC at 4333-34.
3. DC agrees that IPSC owns the AO, stating as fact that: "The AO continues to be held in the name of IPSC." Petition at 3.

The Development Committee Does Not Own the AO.

4. DC states that it has repeatedly tried to get "IPA and/or LADWP to sign, or to cause IPSC to sign, the UDAQ form entitled 'Ownership Change/Company Name Change Notification' in regard to the AO." Petition at 3.
5. However, DC states, "IPA and LADWP refused to execute the form or to cause IPSC to execute the form." Id. Therefore, IPSC has not relinquished its ownership of the AO.
6. In the case of a sale or acquisition, the Division of Air Quality requires that its "Ownership Change/Company Name Change Notification" form be signed by both the buyer and the seller. Exhibit "1" attached.
7. This has not occurred. Petition at 3.
8. The Bill of Sale and Assignment is between IPA and UAMPS. IPSC is not a party to the Bill of Sale and Assignment. Exhibit A, attached to Hunter Aff.

9. Therefore, the Bill of Sale does not show that IPSC has relinquished its ownership of the AO.

IPA Does Not Own the AO

10. In the August 30, 2007 IPA Letter that DC attached to Doug Hunter's Affidavit, IPA states that "because IPA does not have title to the Air Permit, it has satisfied its obligation to transfer any interest that is has in the Air Permit 'as is.'"[1]

11. This means IPA does not own the AO. Id.

IPA Has Not Granted DC an Exclusive Right to Pursue and Develop Unit 3

12. In his affidavit, Mr. Hunter states that "[u]nder the Development Agreements, IPA granted to the Development Committee . . . an exclusive right to pursue and develop Unit 3." Hunter Aff. at ¶ 9.[2]

13. This conflicts directly with the IPA Letter. In that letter, IPA states that "because IPA does not have title to the Air Permit, it has satisfied its obligation to transfer **any interest** that is has in the Air Permit '**as is**.'" August 30, 2007 IPA Letter at 2 (emphasis added).

14. Transferring "any interest in" an AO "as is" that IPA does not own is a far cry from granting to DC "an exclusive right to pursue and develop Unit 3."

15. In the IPA Letter, IPA also states "IPA cannot act on behalf of IPSC."

16. This means that IPA cannot transfer IPSC's ownership of the AO to anyone, much less to DC.

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[1] August 30, 2007 Letter from Brent Manning, Attorney for IPA, to Michael Keller (the IPA Letter) at unnumbered 1, Exhibit A attached to Hunter Aff.

[2] In his affidavit, Mr. Hunter also states that IPSC "is an agent of IPA." Hunter Aff. at ¶ 5. This statement conflicts directly with the IPA's statement that "IPA cannot act on behalf of IPSC." IPA Letter at 1.

17. Mr. Hunter states that the "Development Agreements" show that IPA granted DC "an exclusive right to pursue and develop Unit 3." Hunter Aff. at ¶ 9.

18. The Development Agreements are not in the record. This means that neither the Board nor the parties can know what the Development Agreements say.[3]

19. Because the Development Agreements are not in the record, Mr. Hunter's statements about them are unreliable. Given the other factual inconsistencies in DC's Petition, the Board would be wise not rely on Mr. Hunter's statements without independent supporting evidence.[4]

Neither IPA nor LADWP Has Taken the Position that the Change of Ownership Form is Unnecessary.

20. Mr. Hunter states that IPA "has taken the position that because the Bill of Sale transferred to the Development Participants all rights to the AO, the execution of the [change of ownership] form is not necessary." Hunter Aff. at ¶ 12.

21. This statement unreliable, as Mr. Hunter is testifying as to IPA's position, making a legal conclusion and making a claim that is inconsistent with DC's supporting materials.

22. Mr. Hunter's statement directly conflicts with IPA's statement that "because IPA does not have title to the Air Permit, it has satisfied its obligation to transfer any interest that is has in the Air Permit 'as is.'" IPA Letter at 2.

23. Transferring an air permit that it does not own "as is" is not at all the same as saying that the execution of the change of ownership form is not necessary.

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[4] Here, presumably, the Development Agreements would speak directly to this matter. However, DC has failed to present these to the Board for review and independent assessment. Moreover, it is imprudent to rely on the statements of Mr. Hunter regarding the positions of IPA, IPSC and LADWP on such a critical matter and where DC is so plainly at odds with these same entities.

24. Mr. Hunter states that "LADWP, as IPA's operating agency, also acknowledged the transfer of the AO to the Development Participants under the Bill of Sale but refused to cause IPSC to execute the form." Hunter Aff. at ¶ 12.

25. This statement is unreliable, as Mr. Hunter is testifying as to LADWP's position. Moreover, there is nothing in the record to support this important claim. Given that DC is at odds with LADWP and has presented inconsistent factual allegations, the Board would not be wise to rely on his allegations without independent verification.

IPA Has Not Acknowledged that DC already owns the AO by virtue of the Bill of Sale.

26. Mr. Hunter states that in the IPA Letter, "IPA has acknowledged" that "the Development Participants already own the AO by virtue of the Bill of Sale . . . ." Hunter Aff. at ¶ 13.

27. Mr. Hunter's interpretation of the Letter is wrong.

28. What the letter actually says is that the Bill of Sale "is sufficient to transfer any interest that IPA may have in the Air Permit subject to the terms of the Development Agreement." IPA Letter at 1.[5]

29. This statement in no way suggests that DC "already own[s] the AO by virtue of the Bill of Sale" and indeed says nothing about who does own the AO.[6]

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[5] Again, DC did not provide the Development Agreements.

[6] The one section of one of the Development Agreements that we do get to see, as quoted in the IPA Letter states:

> It will be assigned and transferred, if at all, to the Development Participants in its "as is," "where-is" condition and the Development Participants and the Development Committee will accept it in such condition and assume all risks of using or relying on the same.

IPA Letter at 1-2. We can only assume that the work product and "it" are the Air Permit. This statement begs the question of whether the Air Permit has been transferred "if at all."

30. The IPA Letter says nothing about IPSC, which owns the AO.

Other Problematic Statements in the DC Petition

31. The only factual support DC provides for its Petition to Intervene is the Affidavit of Doug Hunter and attached exhibit.

32. In its Statement of Facts, DC states "IPSC was designated to hold the AO in its name[] for the benefit of the [Development] Committee and its members . . . ." Petition at 3. DC has offered no factual basis for this statement.

33. In its Statement of Facts, DC states "IPA and LADWP acknowledged that the Committee's members contractually own the rights to the AO . . . ." Id. As established above, this conflicts with IPA's statements in the IPA Letter.

34. There is also nothing else credible in the record that shows anything about what IPA and LADWP acknowledged.

35. In its Statement of Facts, DC states that "[t]here is no dispute that the Committee, of its own accord and through UAMPS and PacifiCorp, has participated in this proceeding from its very beginning . . . ." Id.

36. Sierra Club disputes this fact and DC has provided no factual support for its claim.

37. DC states that "Committee's members hold the ownership right to the AO." Petition at 7. There is no factual basis for this claim. Moreover, the record contradicts this statement. The record actually shows that IPSC owns the AO.

38. DC states that "the Committee's members own the AO and hold the exclusive rights to develop the IPP site for Unit 3." Petition at 8. The record actually shows that IPSC owns the AO.

39. DC states that it "has a direct financial stake in Unit 3." Petition at 8. DC has provided no factual basis for this claim.

PacifiCorp Has Abandoned IPP 3.

40. In its Petition to Intervene, DC refers to only two of its members to establish the basis for its interests in this proceeding – UAMPS and PacifiCorp. Petition at 2.[7]

41. PacifiCorp, one of the members of DC, has repeatedly stated that it has abandoned developing IPP Unit 3, at least until after 2012.

42. PacifiCorp (dba Rocky Mountain Power) stated to the Utah Public Service Commission that due to uncertainty and risk surrounding the regulation of greenhouse gases such as CO_2, "IPP 3, Bridger 5, and the IGCC option at Jim Bridger are no longer viable options for 2012 RFP [Request for Proposals] for the 2012 and 2014 timeframe respectively."[8] Exhibit "2" attached.

43. On December 8, 2007, the *Deseret Morning News* printed the following, attributed to David Eskelsen, spokesman for PacifiCorp:

> Eskelsen said PacifiCorp had considered building a power facility at the Intermountain Power Agency's site in Millard County, but those plans have been scratched.
>
> . . . .
>
> He said because of PacifiCorp's relatively short time-frame and high development costs for construction new power plants, building one that uses coal, solar or nuclear energy isn't feasible.

Exhibit "3" attached.

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[7] According to the affidavit of Mr. Hunter, UAMPS, PacifiCorp, and the Southern Nevada Water Authority (SNWA) are the only remaining members of DC. Hunter Aff. at ¶ 11.

[8] November 28, 2007 Notice of Withdrawal of Rocky Mountain Power's Motion to Amend Its 2012 Request for Proposals ("PacifiCorp Withdrawal") at ¶ 6.

44. The *Oregonian* likewise reported that "PacifiCorp has backed away from plans to build any new coal plants within the next 10 years, conceding that coal no longer can overcome tightening regulations and environmental opposition." Exhibit "X" attached.[9] Exhibit "4" attached.

45. In his affidavit, Doug Hunter states that "The construction review period under Condition 8 of the AO, as extended, will expire in April 2008." Hunter Aff. at ¶ 17.

UAMPS and PacifiCorp Claim They <u>Cannot</u> Build IPP Unit 3.

46. According to *The Salt Lake Tribune* and the *Deseret Morning News*, on November 13, 2007, UAMPS filed a lawsuit in Utah Third District Court against LADWP and IPA. According to Matthew McNulty, UAMPS' attorney, LADWP and IPA the lawsuit says that these entities should not have "veto power over a Utah project." Exhibit "5" and "6" attached.

47. As reported by the *Deseret News*, UAMPS states in its lawsuit that "Los Angeles Power decided precipitately and without justification that it would not allow UAMPS or the other project participants [to] develop the Delta site as planned." Exhibit "6" attached.

48. According to the *Tribune,* "UAMPS' complaint is asking for damages from the [IPA] and [LADWP] for lost profits" and according to the *Deseret News*, UAMPS incurred $6.4 million in development and other costs related to Unit 3. Exhibit "5" attached.

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[9] Moreover, in its Report and Order, the Public Service Commission has decided to not "acknowledge" PacifiCorp's 2007 Integrated Resource Plan ("IRP"), which covers the next 20 years. PacifiCorp's IRP included IPP 3 as a proposed resource addition. The Commission's decision means that if PacifiCorp proceeds with IPP 3, it does so with a great deal of cost recovery risk. The Commission's decision is another significant indicator that IPP 3 is not a viable resource addition for PacifiCorp. February 6, 2008 Public Service Commission of Utah Report and Order, available at http://www.psc.utah.gov/elec/documents/07203501RO.pdf.

49. In their July 18, 2007 Notice of Intent to Sue, UAMPS and PacifiCorp claim that IPA has refused to sign or negotiate the contracts necessary to allow development of Unit 3. Notice of Intent to Sue at 3, Exhibit "7" attached. UAMPS and PacifiCorp made the same claim about LADWP. Id.

50. In asserting that they are entitled to seven million dollars in damages and that IPA and LADWP are successfully preventing them from proceeding with the development of Unit 3, UAMPS and PacifiCorp admit that DC is not in a position to build Unit 3.

Only IPSC Can Operate Unit 3 Under the Current AO.

51. The AO for Unit 3 is fundamentally based on the condition that IPSC will operate IPP Units 1 and 2, as well as the proposed Unit 3. Without the use of common facilities and coordinated management of the three Units, the AO is invalid.

52. In addition, emissions calculations, modeling and emissions control are based on the three Units using common systems and on the location of these systems at particular sites – usually existing sites – at the facility. I.e. see IPSC at 612, 644-45, 647 (UTM coordinates for PM-10 modeling). Unless DC could show that the emission sources would be at the exact locations as those used in the modeling DC could not build its own facility with this AO as the modeling results would no longer be valid.

53. The following is a partial list of the ways in which the AO is founded on the presumption that IPSC will be managing Unit 3 and using Unit 1 and 2 facilities in a highly coordinated manner:

    a. The No. 2 fuel oil for Unit 3 will be stored in existing above ground tanks that currently serve Units 1 and 2, and an existing auxiliary boiler will be used for

all three Units, meaning that no increase in fuel oil consumption was requested in conjunction with Unit 3. IPSC at 1943.

b. The addition of Unit 3 will require changes to the existing coal handling systems that currently serve Units 1 and 2, so that the same, but modified system will function for all three Units. IPSC at 1949 ("In order to accommodate increase burn rate due to Unit 3, existing coal reclaiming and silo fill will require modification."). The emission points used to establish the AO for Unit 3 are based on this modified system for all three Units. IPSC at 1949; IPSC 1951-52; IPSC at 1958-59; IPSC at 1963-65;

c. Under the AO, the three Units will share an existing coal train unloading and stock out system. IPSC at 1951. In addition, the "[c]apacity of the existing reserve coal storage pile will be increased by approximately 624,000 tons to support Unit 3." IPSC at 1952.

d. Under the AO, all three units will share the existing limestone truck unloading and reclaiming system, but the capacity of the common limestone reserve storage pile will be increased to accommodate Unit 3. IPSC at 1953. As a result of the addition of Unit 3, the existing limestone handling system for Units 1 and 2 will be significantly modified. IPSC at 1953-55.

e. Unit 3 will also rely on existing disposal ponds. IPSC at 1955.

54. Finally, the AO is based on Unit 3 being a modification to an existing source, based on a common owner and/or operator. However, DC will be neither a common owner nor operator with IPSC.

ARGUMENT

The facts recited above establish that DC is not entitled to intervene in this matter. Moreover, the interests of justice and the orderly and prompt conduct of this adjudication would be materially impaired by allowing its intervention.

First, DC has not substantiated the facts upon which it relies to argue it should be allowed to intervene. DC has failed to show it owns the AO or is in a position to develop it. Second, the admissions it makes and the materials it uses to support its petition further establish that DC cannot prove the facts upon which its petition rests. DC cannot verify it owns the AO and confirms that IPSC refuses to relinquish its ownership of the air permit.

Third, DC can claim no interest in the IPSC AO, as the AO was issued based on the presumption that IPSC would manage the new Unit and that facilities currently serving Units 1 and 2 and run by IPSC would be used and modified to accommodate Unit 3. Finally, DC acknowledges that, pursuant to DAQ policy, this proceeding should go forward if and when DC has secured a proper declaration that it is indeed the owner of the AO and in a position to develop Unit 3 as prescribed by the AO. DC's attempt to circumvent this proper procedure is inappropriate, contrary to the interests of justice and a material impairment to appropriate conduct of this proceeding.

I. DC Has Completely Failed to Prove the Facts Upon Which it Relies in its Petition.

A. DC Has the Burden to Present Facts that Demonstrate it Meets the Tests for Intervention and Standing.

Utah law makes clear that the burden is on DC to prove it is entitled to intervene in this matter. The Utah Administrative Procedures Act ("Utah APA"), which governs DC's Petition to Intervene, states plainly that DC must provide "a statement of facts demonstrating that the petitioner's [DC's] legal rights or interests are substantially

affected by the" proceeding. Utah Code Ann. § 63-46b-9(1)(c). In addition, rules that govern an Air Quality Board proceeding require an entity seeking intervention to also establish it has standing under Utah law. Utah Admin. Code Rule R307-103-6(3) (No person may . . . intervene. . . unless that person has standing."). Recently, the Utah Supreme Court has reiterated that a party carries the burden of showing it has met a standing test. Utah Chapter of the Sierra Club v. Utah Air Quality Board, 2006 UT 74, ¶ 18, 148 P.3d 960, 967 (Utah 2006) (hereafter "Sierra Club v. Sevier Power Company") (confirming that "there are two means by which a party can establish standing"). Therefore, DC has the burden to show, among other things, that it will "suffer some distinct and palpable injury that gives it a personal stake in the outcome of the legal dispute." Id. at ¶ 19 (citations omitted).[10]

Thus, under both the Utah APA and Board regulations, DC must set forth facts to demonstrate that its legal interest are substantially affected by the IPSC proceeding. Yet, DC has completely failed to met this burden – DC has declared the facts it believes establish its right to intervene, but has provided nothing to substantiate these facts. What is more, the evidence DC did provide and the admissions it makes serve only to further undermine the committee's assertions. As a result of this fatal deficiency, DC's petition must be denied.

[10] To meet this prong of the three part "traditional" standing, a party must show first, "it has been or will be adversely affected by the challenged actions," second, there is "a causal relationship between the injury to the to the party, the challenged actions and the relief requested," and third "the relief requested must be substantially likely to redress the injury claimed." Id. (citations omitted).

B. DC's Admissions and Supporting Materials Refute DC's Factual Claims.

On January 22, 2008, when it first filed the document, DC did not even bother to provide a basis for the facts it asserted in its Petition to Intervene. Then, fifteen days later, on February 6th, DC filed the affidavit of Doug Hunter and the attached exhibit – a letter to DC from IPA and the Bill of Sale and Assignment between IPA and UAMPS – as the only foundation for the facts asserted in the petition. Examination of these documents shows that DC has not, and cannot provide a basis for the facts upon which it relies in its Petition.

DC bases its right to intervene on various reiterations of the fact that "the Committee's members hold the ownership[] right[s] to the AO," i.e. Petition at 7, such as: 1) "the AO has always been held by IPSC on behalf of the Committee and its members;" Petition at 2, 2) "the Committee, through its members, is the owner of the AO;" Petition at 8, 3) "the Committee's members own the AO and hold the exclusive rights to develop the IPP site for Unit 3;" id. 4) "the Committee, through its members, is the owner of the AO: id. However, rather than supporting its allegations, DC's own admissions and its supporting submissions only prove that IPSC owns the AO and DC cannot show otherwise.

First, the petition and supporting materials affirm that DC does **not** own the AO and that IPSC does. Petition at 3 ("The AO continues to be held in the name of IPSC.") According to DC's submissions, neither IPA, LADWP nor IPSC has or will relinquish IPSC's ownership of the AO or transfer that ownership to DC. Hunter Aff. ¶ 12 ("IPA has refused to cause its agency, IPSC, to execute the [Ownership Change] form"); id. ("LADWP . . . also . . . refused to cause IPSC to execute the form."). DC also

acknowledges that IPSC has **not** signed the DAQ's requisite Ownership Change Form. Therefore, DAQ records also do **not** show DC as the permit holder.[11] Rather, they show that IPSC owns the AO.

Second, the supporting documents show that IPA has **not** granted DC an exclusive right to pursue and develop Unit 3, as DC contends. Actually, IPA states that it "does **not** have title to the Air Permit" and "cannot act on behalf of IPSC." IPA Letter at 1-2 (emphasis added). IPA further asserts that because it does not hold title to the AO, it "has satisfied its obligation to transfer any interest that is has in the Air Permit 'as is.'" Id.

Despite IPA's own statements to the contrary, Mr. Hunter contends that IPA "has taken the position that . . . the Bill of Sale transferred to [DC] **all** rights to the AO," Hunter Aff. at ¶ 12, and that, under the Development Agreements, DC "hold[s] all right, title, and interest in Unit 3, including the AO." Id. at ¶ 11. Mr. Hunter also says LADWP has "acknowledged the transfer of the AO to [DC] under the Bill of Sale . . . ." Id. at ¶ 12. Similarly, DC states "IPA and LADWP acknowledged that the Committee's members contractually own the rights to the AO . . . ." Petition at 3.

In addition to conflicting with IPA's own statements, Mr. Hunter's statements completely lack foundation. To the extent to which he purports to speak for IPA and

[11] Without basis and contrary to it own admissions, DC also states that "Committee's members hold the ownership right to the AO." Petition at 7. Similarly, DC states that "the Committee's members own the AO and hold the exclusive rights to develop the IPP site for Unit 3." Petition at 8. The record actually shows that IPSC owns the AO. Moreover, the record shows that IPSC has not signed the Ownership Change form that would be necessary to show that IPSC no longer owns the AO.

LADWP, his statements are unreliable.[12] In the Bill of Sale, IPA transfers only its interests in the AO, and then only "as is," and not "exclusively." Bill of Sale at 2; IPA Letter at 1. IPSC is not a party to the Bill of Sale and accordingly the Bill of Sale does not purport to transfer any interest IPSC may have in the AO. IPA states it cannot act for IPSC and therefore does not purport to transfer any interest IPSC may have in the AO. IPA Letter at 1. LADWP is not a party to the Bill of Sale and accordingly the Bill of Sale does not purport to transfer any interest LADWP may have in the AO.[13]

Third, Mr. Hunter states that IPA "has taken the position that . . . the execution of the [change of ownership] form is not necessary."[14] Hunter Aff. at ¶ 12. There is nothing in the record to support this claim. Mr. Hunter's testimony about IPA's position is unreliable. Moreover, what IPA does state is that "it has satisfied its obligation to transfer any interest that is has in the Air Permit 'as is.'" IPA Letter at 2. Thus, IPA is not making any statement about forms or who owns the AO – other than to say IPA transferred any ownership it had (versus ownership IPSC has) to UAMPS.

Fourth, DC states that "IPSC was designated to hold the AO in its name[] for the benefit of the [Development] Committee and its members . . . ." Petition at 3. DC has offered no factual basis for this statement. This statement also conflicts with DC's

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[12] The importance of producing the underlying documents for this Board's review is further underscored by the Bill of Sale's reference to a "Project Agreement" Bill of Sale at 2. According to the Bill of Sale, the AO is to be reverted to IPA if "the construction of Unit 3 does not thereafter commence within the time period contemplated by the Project Agreements." Id.

[13] While Mr. Hunter purports to speak for IPA and LADWP, no documents support his statements, and indeed, they contradict his claims. Mr. Hunter also fails to produce the Development Agreements. Therefore, nothing in the record shows that IPA granted DC an exclusive right to pursue and develop Unit 3.

[14] Of course, what IPA thinks about this matter is irrelevant. What matters, for the purposes of the Ownership Change form who owns the AO, particularly as reflected in DAQ's records. As it now stands, IPSC owns the AO.

statement that IPSC owns the AO and the IPSC has specifically refused to relinquish that ownership.

Finally, DC states that it "has a direct financial stake in Unit 3." Petition at 8. DC has provided no factual basis for this claim.

Thus, DC has not provided a sufficient basis for the facts it relied on to argue it is entitled to intervene in this matter. DC's own admissions and supporting documents undermine the facts DC relies upon to claim it is entitled to intervention. As a result, DC's petition fails to meet its burden to provide facts that demonstrate it satisfies the criteria for both intervention and standing.

C. Because it Is Undisputed that IPSC Owns the AO, DC Cannot Prove the Facts It Asserts to Petition for Intervention.

It is important to make a crucial distinction at this juncture – DC has failed to substantiate the very facts upon which it bases its Petition to Intervene. In addition, the materials DC did produce in an effort to verify its claims actually undermine DC's assertions. This situation is very different than the one this Board faced when addressed whether Sierra Club had standing to initiate this proceeding. Then, the facts upon which Sierra Club based its standing were the statements made by members of which they had personal knowledge. At issue was whether these uncontested facts were sufficient to establish standing.

In contrast, in the present inquiry, it is DC's failure to support the facts upon which it relies that is at issue. Also at issue is that DC's own admissions and supporting materials undermine these same facts and therefore invalidate DC's petition. In other words, on the face of its own submission and in light the committee's failure to support

its facts, DC's petition falls short of the requirements to establish intervention and standing.

In Sierra Club v. Sevier Power Company, the Utah Supreme Court recognized that "some cases require more extensive fact-finding in order to assess whether the plaintiff's interest in the dispute is sufficient to give rise to an adverse impact." 2006 UT at ¶ 28, fn. 3 (citing Washington County water Conservancy District v. Morgan, 2003 UT 58, 82 P.3d 1125 ("Because the plaintiff's interest in the dispute depended upon whether the plaintiff's water originated from the same source as the defendant's water, the district court required the plaintiff to show a 'measurable connection' between its water source and the defendant's water source.")). This case too, is different from DC's petition. That is because DC's own admissions and supporting materials undermine the facts DC relies upon to carry its petition. Therefore no fact finding is necessary – DC admits that IPSC owns the AO and has not signed the Ownership Change from. DAQ records still show that IPSC owns the AO. However, should it deem necessary, the Board could initiate a fact-finding proceeding to determine whether IPSC owns the AO.

II. DC Has Failed to Meet Its Burden of Showing it Has a Legal Interest In this Matter.

In the same way that it has failed to substantiate the facts it relies on to show it is entitled to intervene in this proceeding, DC has also failed to provide "a statement of facts demonstrating that" its "legal rights or interest are substantially affected by" this proceeding. Utah Code Ann. § 63-46b-9(1)(c). That is because DC has not demonstrated it has any interest in the AO.

First, DC does not own the AO. Indeed, according to DAQ records, IPSC owns the AO. Moreover, IPSC refuses to transfer its ownership of the AO to DC.

Second, both UAMPS and PacifiCorp have asserted that they are prevented from developing IPP Unit 3. In their Notice of Intent to Sue and UAMPS' lawsuit, these DC members assert that IPA and LADWP are preventing them from developing Unit 3, for example, by refusing to sell DC the necessary "Common Facilities." Notice of Intent to Sue at 3. This means that DC is currently in no position to develop IPP Unit 3 and therefore has not established a sufficient interest in any challenge to the AO.

Third, PacifiCorp has publicly stated to the Utah Public Service Commission that it has abandoned IPP Unit 3, at least for the next ten years. Thus, it is even more evident that PacifiCorp cannot establish any interest in the Unit 3 AO, permitted in 2004 and due to expire in 2008, when it has publicly renounced the facility.

III. DC Cannot Have an Interest In AO Permit.

As the recitation of facts above confirms, the AO DAQ issued to IPSC is based fundamentally on IPSC managing Unit 3 in close coordination with its management of Units 1 and 2. Moreover, as the AO makes plain, the permitting of Unit 3 is highly dependent upon the use and modification of existing facilities currently under the supervision of IPSC and presumably, the ownership of IPA. This means that DC cannot simply assume ownership of the AO and develop Unit 3. Rather, either the permit must be redone or DC and IPSC must agree upon and make evident in what way the intent of the AO will be preserved. It is likely that the only way this can be done is guaranteeing that IPSC will manage the new Unit.

However, DC is far away from reaching anything like this sort of agreement. It is plain that DC is feuding with IPA and LADWP. It is also clear that there is in place no contract or similar accord. Indeed, DC provides absolutely no explanation as to how an

AO issued to IPSC as manager, and dependent on IPP facilities can be claimed by DC without the full consent and cooperation of IPSC, IPP, IPA and perhaps even LADWP. Without an agreement and explanation, DC cannot claim it has an interest in the IPSC AO.

Thus, the current circumstances prevent DC from taking over the IPSC permit. The AO is a permit for a modification to an existing source – IPP Units 1 and 2. To own and operate Unit 3, DC would need a permit for a new source. By the same token, DC could not rely on the existing AO to build Unit 3 because the new source would be different. For example, the coal handling equipment would be in different locations and the modeling for PM increment and NAAQS demonstration would be different. Therefore, as things stand now, DC cannot have an interest in the IPSC AO.

IV. The Interests of Justice and the Orderly Conduct of this Proceeding Will be Significantly Frustrated Should DC's Intervention be Allowed.

Even DC understands that the proper way to proceed in this matter would be for IPSC sign the "Ownership Change" Form. This, in turn, would allow DC to "take over defense of the AO:"

> In order to move this matter forward and to clarify the roles of IPSC and the Committee in this proceeding, the Committee made multiple requests of IPA and/or LADWP to sign, or to cause IPSC to sign, the UDAQ form entitled "Ownership Change/Company Name Change Notification" in regard to the AO. This would allow the Committee to follow UDAQ's stated process for changing the name of the permit holder on UDAQ's records . . . and take over defense of the AO.

Petition at 3.

Yet, it is also evident that, through its Petition to Intervene, DC is trying to sidestep this necessary and proper procedure. As DC explains its motives further: "[b]ecause IPSC, IPA, and/or LADWP have not executed the form, the Committee

instead submits this Petition as a means to continue the active defense of the AO on behalf of its members." Petition at 4 (emphasis added). Having failed in its attempt to get IPSC to convey ownership of the AO, DC now asks this Board to declare that DC is the owner of the AO and the proper party to defend issuance of the AO. In essence, DC's Petition seeks a substitution of parties, not intervention by a third party. This Board proceeding is not the proper forum to decide whether DC's legal maneuvering has effectuated a change of ownership in the AO. Moreover, a Petition to Intervene is decidedly not the appropriate way to proceed with such a determination.

DC should not be permitted to circumvent proper procedure and to attempt to substitute itself for IPSC as owner and defender of the AO, while DAQ records show IPSC as the proper owner of the AO. At a minimum, to allow this incorrect procedure would to subvert the interests of justice and materially impair the conduct of this proceeding in a manner prohibited under Utah law. See Utah Code Ann. § 63-46b-9(2)(b)

In addition, should DC be allowed to "take over defense of the AO," it would be defending a permit it does not own, which it cannot develop, which PacifiCorp has abandoned, and that is contingent upon IPSC management, IPP facilities and coordination with Units 1 and 2, none of which DC has secured. Through its backdoor tactics, DC will be forcing this Board, DAQ and the parties to expend considerable resources, time and effort toward a completely spurious aim. In effect, DC will be hijacking these proceedings for its own ends which, at the present time, have nothing to do with a credible claim to the AO.

Rather than seeking to dodge the correct procedure, DC must settle its disputes with IPSC, IPA, IPP and LADWP and come back to this Board with, at a minimum, a valid Ownership Change Form in hand. Without such a confirmation of its interests in the AO and therefore, in this proceeding, justice will not be served and the proper conduct proceeding will be subverted. This Board should reject DC's attempt to have this Board declare DC the owner of the AO. Given the contested facts regarding current ownership of the AO, the Board should deny DC's Petition and allow the parallel litigation to proceed to determine who is the owner of the AO. Only after that litigation is completely resolved, or IPSC signs a change of ownership form, should this Board allow a substitution of parties as requested by DC.

CONCLUSION

Based on the above, the Sierra Club respectfully requests that this Board deny DC's Petition to Intervene. DC is improperly attempting to co-opt this Board into ruling that DC is the current owner of the AO. Moreover, examined from every angle, DC's petition is factually inadequate and legally inappropriate. DC has not met its burden to substantiate the evidentiary basis upon which its petition relies. DC's admissions and supporting documents confirm that DC does not own the AO and that IPSC has not chosen to transfer ownership of the AO to DC. DC members UAMPS and PacifiCorp contend they cannot develop the AO, and PacifiCorp has publicly abandoned Unit 3. In the midst of legal wrangling and without explanation or agreement with IPSC, DC asserts ownership of an AO designed to be managed by IPSC and to use and modify facilities that currently serve Units 1 and 2. Finally, DC admits that the correct way to proceed is with a properly executed Ownership Change form, and then concedes that it is

circumventing this process by making its petition to intervene. For these reasons, DC's petition falls well short of the legal requirements for intervention.

Dated this 19th day of February, 2008

/s/
JORO WALKER
Attorney for Utah Chapter of
the Sierra Club

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of February 2008, I caused a copy of the foregoing Sierra Club's Opposition to the Development Committee's Petition to Intervene to be emailed to the following:

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_____/s/_____
JORO WALKER
Attorney for Utah Chapter of the Sierra Club

EXHIBIT “1”

Ownership Change/Company Name Change Notification

The following information is necessary before the Division will be able to make the name change you have requested. Please return this document within 30 days of receipt.

Please be aware that all records associated with this company will change to the new name unless you specifically indicate otherwise. The fee assessed for making these changes is authorized by the legislature for the actual time spent by the reviewer.

Note: If this name change is the result of a sale or acquisition, **both the buyer & the seller must sign this document** as proof of the closure of the agreement.

Reason for Ownership Change/Company Name Change _____

Company Name

Current	Previous
Parent Company:	Parent Company:

Company Address

Current	Previous

Approval Orders Affected and Sites For Each Approval Order

Approval Order # (DAQE-xx-xxxx)	Site Name & Address (for each Approval Order)

The undersigned, as an authorized representative of the company, acknowledges that the above information is correct, and requests that the company name change be made in all Air Quality records. Title V Responsible Officer?

Present Owner _____

_____
Signature

_____
Name (please print)

_____
Title

Previous Owner _____

_____
Signature

_____
Name (please print)

_____
Title

Contact Name & Phone #:

Return to:
State of Utah
Division of Air Quality
Attn: NSR - Name Change Notification
150 North 1950 West
PO Box 144820
Salt Lake City, Utah 84114-4820

EXHIBIT “2”

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Attorney for Rocky Mountain Power

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of PacifiCorp for Approval of a 2009 Request for Proposals for Flexible Resource	)	DOCKET NO. 05-035-47 **NOTICE OF WITHDRAWAL OF ROCKY MOUNTAIN POWER'S MOTION TO AMEND ITS 2012 REQUEST FOR PROPOSALS**

PacifiCorp, by and through its Rocky Mountain Power division ("Rocky Mountain Power" or the "Company"), hereby provides notice that it is withdrawing its motion to amend its 2012 request for proposals that was filed with the Public Service Commission of Utah ("Commission") October 2, 2007 and is presently scheduled for hearing November 29, 2007 ("Motion").

1. The Company's Motion requested Commission authorization to amend the 2012 request for proposals (that requested proposals for the 2012 to 2014 timeframe) ("2012 RFP") with respect to the following: (1) to modify the proposal response date, thus permitting new and existing bidders an opportunity to submit new bids or refresh their existing bids; (2) to eliminate the request for qualifications procedure and to modify the qualification requirements; and (3) to

permit the inclusion of a Company benchmark resource at the Company's Currant Creek plant site and/or the Lake Side plant site.

2. The Company filed the Motion to address and mitigate the Company's concerns regarding the rapidly changing conditions impacting the selection of generation options nationwide and the absence of a viable company own/operate option in the 2012 RFP without an amendment.

3. The current 2012 RFP benchmark options included: (i) the 2012 Company benchmark, 340MW Intermountain Power Project 3 ("IPP 3"), and (ii) (a) the 2014 Company benchmark 500MW Jim Bridger Integrated Gasification Combined Cycle ("IGCC") plant, or (b) 527MW Jim Bridger 5 super critical pulverized coal plant ("Bridger 5").

4. Since the Company's submission of IPP 3 as a 2012 benchmark resource, actions and statements have been made by Intermountain Power Agency and the Los Angeles Department of Water and Power indicating that they would no longer support the development of IPP 3. On July 18, 2007, the Company sent notices of intent to sue to the Intermountain Power Agency and the Los Angeles Department of Water and Power, claiming that both entities breached contracts and otherwise violated the law as their public statements and actions indicated that they would no longer support the development of IPP 3, which puts at risk the timeliness and viability of the construction of this 2012 RFP benchmark.

5. Furthermore, Bridger 5 as an IGCC unit is also not a viable option for 2014 at this time because the federal government has not yet appropriated any funding to the Company for the construction of the unit as an IGCC pursuant to Section 413 of the Energy Policy Act of 2005. Federal funding for higher altitude Western coal based IGCC development has not been appropriated. In October, Xcel, a competitor with Bridger 5 for Federal IGCC funding,

announced that it was postponing its IGCC for at least two years. On November 13, 2007, Southern Companies announced it was terminating its IGCC project – which had received federal funding.

6. Furthermore, due to the current uncertainty in the ability to quantify in any meaningful way the cost of compliance with potential federal CO_2 legislation, Bridger 5 as a supercritical unit is no longer a viable option for 2014. Within the last few months, it has become apparent that Congress will enact some restriction upon carbon emissions, but the projected cost impact upon new coal generation is currently within such a wide range as to make meaningful risk assessment futile. On November 13, 2007, the National Association of Regulatory Utility Commissioners adopted its first resolution acknowledging that climate change legislation addressing carbon emissions will occur. Within the last few months, most of the planned coal plants in the United States have been cancelled, denied permits, or been involved in protracted litigation. Accordingly, the Company submits that IPP 3, Bridger 5, and the IGCC option at Jim Bridger, are no longer viable options for 2012 RFP for the 2012 and 2014 time frame, respectively.

7. While the Company is not excluding new coal generation ownership from its 20 year options, absent some change in conditions, it cannot be determined at this time whether new coal generation ownership will satisfy the least cost, least risk standards that would enable us to consider it as a viable option within our ten year plans.

8. The absence of a viable Company own/operate option in the 2012 RFP not only concerned the Company from the standpoint of having an option to compare against bids, it also was potentially in conflict with the Company's merger commitments. Commitment 39 obligates the Company to "submit as part of any commission approved RFPs for resources with a

dependable life greater than 10 years and greater than 100 MW – including renewable energy RFPs – a 100 MW or more utility 'own/operate' alternative for the particular resource." In addition, Commitment 39 further states that "It is not the intent or objective that such alternatives be favored over other options. Rather, the option for PacifiCorp to own and operate the resource which is the subject of the RFP will enable comparison and evaluation of the option against other viable alternatives." This commitment was supported by all settlement parties presumable so parties would have the ability to compare and evaluate the Company option to other viable alternatives. As such, implicit in this commitment was the concept that the Company's own/operate option would be a viable option.

9. As a result, the Company's Motion was intended to address the concerns the Company had regarding whether or not the 2012 RFP would yield a resource acquisition that meets the public interest criteria set forth in the Energy Resource Procurement Act, including, that the process and schedule will ultimately result in the acquisition, production, and delivery of low risk and reliable electricity at the lowest reasonable cost to retail customers. Unfortunately, none of the Utah interested parties agreed with the Company's proposal as it was set forth in the Motion.

10. In response to the Company's Motion, all Utah interested parties filed comments and objections to the Motion listing a variety of concerns.[1] The overriding concern seemed to be with the potential for delay associated with an in-service date of 2012 for a new resource and the integrity of the request for proposal process and the perception that bidders may have as a result of the Company being permitted to amend the 2012 RFP and include additional Company owned/operated resource options.

[1] Parties in Oregon objected as well.

11. In light of the overwhelming opposition to the Company's Motion, the Company arranged meetings with the Utah interested parties (the Utah Division of Public Utilities, the Utah Committee of Consumer Services, and the Utah Association of Energy Users) who filed objections to the Motion to further discuss the reasons why the Company filed the Motion and to discuss potential alternatives to amending the 2012 RFP. As a result, the Company has decided to withdraw its Motion, and instead, the Company intends to proceed with the 2012 RFP and to seek expedited approval for a new incremental request for proposal that will further the Company's efforts to obtain all needed resources for the timeframe 2012 and beyond. This approach was supported by the Division and UAE. The CCS also supports the withdrawal of the Motion, but expressly reserved its right to challenge the Company's resource selection during the preapproval process, a right that is available to all parties in this proceeding.

12. Following the withdrawal of its Motion, the Company will continue processing its 2012 RFP, which shall include completing the evaluation of all bids (except bids that present significant risk due to the pendency of bankruptcy proceedings); the identification of a final shortlist; negotiation with the bidders who presented the most beneficial bids after all bidders have had the opportunity to cure any credit or minimum eligibility requirements, consistent with what the Utah Independent Evaluator has previously recommended.

13. However, even if the Company can successfully negotiate with bidders from the 2012 RFP for new resources, given the potential bids that have been submitted, the Company will still have a need for additional capacity in the 2012 through 2017 time frame. Notably, no bids were received for 2013 or 2014 in the 2012 RFP. As a result, the Company intends to issue a new system-wide all-source (with the exception of renewable energy resources, which will be the subject of a separately issued request for proposal by the Company at a later date)

incremental request for proposal to address these needs, as well as protect customers against the risk that no bids are selected in the 2012 RFP. This new incremental request for proposals will not be duplicative of the 2012 RFP, but separate and distinct.

14. In order to accomplish these objectives, the new request for proposal will need to be expedited by the Company, something the Utah interested parties have agreed to support within the constraints of work load from other dockets. Accordingly, the Company anticipates filing this new request for proposal no later than January 31, 2008 and will request that the Commission approve the solicitation within 60 days instead of 90 days and that the Commission approve the resource within 120 days instead of 180 days.

15. Based upon the foregoing, the Company hereby withdraws its Motion and requests that the Commission vacate the hearing on the Motion that is presently scheduled for November 29, 2007.

DATED this 28 day of November 2007.

Respectfully submitted,

ROCKY MOUNTAIN POWER

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Attorney for Rocky Mountain Power

CERTIFICATE OF SERVICE

I hereby certify that on this 20 day of November 2007, I caused to be e-mailed a true and correct copy of the foregoing Notice of Withdrawal of Rocky Mountain Power's Motion to Amend its 2012 Request for Proposals and Request for Expedited Treatment, as follows.

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EXHIBIT “3”

DESERET
Morning News

PacifiCorp to fuel plant with wind, gas — not coal

By Jasen Lee
Deseret Morning News

Published: December 8, 2007

After opposition to its plans to put another coal-fired power plant in the state, PacifiCorp, Utah's top electricity provider, has decided to focus on developing a power plant fueled by wind or natural gas rather than coal.

The company, owned by MidAmerican Energy Holdings, has withdrawn its filing for the development of a coal-fired power plant in Millard County.

"Because of the time-frame and the uncertainty around coal, based on climate change issues, (the company is) looking at a combination of natural gas and wind power projects," PacifiCorp spokesman David Eskelsen said Friday.

He said the company is hoping to develop a project that will go online by the year 2014. By the end of January, PacifiCorp will seek requests for proposal to build the facility, he added.

Eskelsen said PacifiCorp had considered building a power facility at the Intermountain Power Agency's site in Millard County, but those plans had to be scratched.

The coal-fired plant "was one of the company's benchmark options," said Eskelsen. "But that is not a viable option because that project is encumbered pending litigation."

That litigation includes a lawsuit filed last month by the Utah Associated Municipal Power Systems against the Los Angeles Department of Water & Power and the Intermountain Power Agency, due to their refusal to support construction of a third coal-power unit of the Intermountain Power Project station. The plant's two existing units are about 15 miles northeast of Delta.

He said because of PacifiCorp's relatively short time-frame and high development costs for constructing new power plants, building one that uses coal, solar or nuclear energy isn't feasible.

Eskelsen said in the near term, and for the size of the project the company wants, wind and natural gas are currently the only realistic options.

Those comments drew praise from local environmental advocates.

"It's good news," said Tim Wagner, director of the Utah Smart Energy campaign for the Sierra Club's Utah chapter.

"There are numerous advantages for them for doing that," Wagner said. "A natural gas plant has half the carbon footprint of a coal plant, and natural gas plants are much easier to modulate when combining energy from a resource like wind."

He said the ability to ramp up natural-gas supplies when wind power is low and decrease supplies when wind energy is plentiful can be of great benefit to PacifiCorp in terms of efficiency.

"Coal is much more difficult to scale down and bring back up," he said.

PacifiCorp said it eventually wants to develop a 1,700-megawatt facility in Utah, Idaho or Wyoming in the next five to six years. With its options somewhat limited, Eskelsen said, the

challenge will be locating the plant near already existing transmission lines to facilitate distribution.

Wherever the company chooses to build, the Sierra Club said it will be pleased with the switch to a less environmentally harmful energy resource.

"It's better for the long term," Wagner said.

E-mail: jlee@desnews.com

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EXHIBIT “4”

[E64] Pacificorp drops coal for new plants

ehrbar ehrbar at lists.econ.utah.edu
Fri Dec 7 22:53:05 MST 2007

- Previous message: [E63] "Note from Bali: Please Pay Attention to the Man Behind the Curtain"]
- Next message: [E65] Alter Eco #3 online now - The Bali Climate Justice Newsletter
- **Messages sorted by:** [date] [thread] [subject] [author]

http://www.oregonlive.com/business/oregonian/index.ssf?/base/business/119700331683500.xml&coll=7

PacifiCorp labels coal a no-go for new plants
Going green - The utility says its long-range plans will look elsewhere for resources to
generate electric power
Friday, December 07, 2007
TED SICKINGER
The Oregonian

PacifiCorp has backed away from plans to build any new coal plants within the next 10 years, conceding that coal no longer can overcome tightening regulations and environmental opposition.

In recent filings and communications with regulators in Utah and Oregon, the Portland-based company said three coal plants included earlier this year in long-range resource plans and subsequent requests for proposals were "no longer viable options."

PacifiCorp cited as reasons for its decision: The likelihood of national carbon emissions legislation, which it said makes accurate cost projections and risk assessment for coal plants "futile," and the fact that most of the coal plants proposed around the United States recently have been canceled, denied permits or been involved in protracted litigation.

In a filing with the Utah Public Service Commission, the company said it wasn't excluding coal from its 20-year planning options. But "absent some change in conditions, it cannot be determined at this time whether new coal generation ownership will satisfy the least-cost, least-risk standards that would enable us to consider it as a viable option in our 10 year plans."

Ratepayer advocates and environmentalists called the utility's decision a victory.

"We're encouraged that they seem to be moving away from coal," said Bob Jenks, executive director of the Citizen's Utility Board. "It's a good sign. I also think it's a sign of the reality that they're not going to get approval for it."

The move away from coal is an about-face for a company that generates nearly 65 percent of its electricity from coal.

Until recently, there was a distinct difference in receptivity to new coal plants on the two sides of the company's service territory. In Utah, where customers make up more than 40 percent of the company's total electricity consumption, regulators and state authorities have been far more willing to consider coal plants.

By contrast, regulators and lawmakers in Oregon, Washington and California have sent a clear signal that they don't want any more.

Earlier this year, Oregon passed a law requiring utilities to serve 25 percent of customer demand with renewable resources such as wind and geothermal by 2025, with interim targets. California and Washington have their own standards in place.

PacifiCorp's decision to drop coal from its near-term resource plans came after that legislation passed. It also came after Utah's

decision to join the Western Climate Initiative, a group of Western states working on a regional plan to curb carbon emissions, said Marc Krasnowsky, a NW Energy Coalition spokesman.

David Eskelsen, a PacifiCorp spokesman, said there was no connection between Utah's action and its decision, though the company is certainly aware of increasing state pressures to go green. The question now, he said, is "if not coal, then what?"

The cost factor

Coal-fueled electricity, he said, has been less expensive, and the company's decision to invest in it allowed it to become one of the nation's lowest cost providers of electricity. Uncertainty around coal will push the company toward more gas-fired generators and as much wind power as it can round up, he said.

"If policies change, we'll comply," Eskelsen said, "but we want policymakers to be informed about the consequences on reliability and price. The price impact is unescapable."

Consumers advocates disagree. They contend that climate legislation will dramatically increase the cost of coal power. Moreover, they say, the capital costs for adding a gas plant are low compared with coal, so if a utility is forced to back off using a gas plant or shut it down, it doesn't cost ratepayers as much. By contrast, once utilities sink capital into a coal plant with a 60-year useful life, they want to use it.

Steve Weiss, an analyst with the NW Energy Coalition, also points out that gas-fired power plants, which can be cycled up and down rapidly, are more compatible with the intermittent renewable resources such as wind and solar, which are becoming a larger part of utilities' generation mix.

Natural gas emissions

Burning gas to make electricity still creates carbon dioxide, but at about half the level of an equivalent amount of electricity from a coal-powered plant, Weiss said.

PacifiCorp forecast in May that its overall customer demand would grow by 2.4 percent per year between 2007 and 2016. Most of that growth was skewed toward the east side of its six-state territory, particularly Utah and Wyoming.

By 2012, the company is projecting the need for an additional 1,700 megawatts of generation capacity. Consequently, it is hoping state regulators will expedite their review of a new request for a proposal it hopes to issue to suppliers in January. That call for bids will exclude coal.

- -
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EXHIBIT "5"

UAMPS Files Lawsuit

By Steven Oberbeck, The Salt Lake Tribune

Nov. 24--A simmering dispute that has threatened to pit California's concerns about global warming against the growing demand for more electricity in Utah is erupting into a full-scale conflict.

The Utah Associated Municipal Power System (UAMPS), which represents 23 Utah cities that operate their own electric utilities, is squaring off against the Los Angeles Department of Water and Power over its refusal to allow a third generating unit to be built at the Intermountain Power Project in Utah.

In a lawsuit in Utah's 3rd District Court, the municipalities contend that Los Angeles Power initially approved development of another unit at the massive coal-fired facility near Delta but now is exerting its control over the plant's operator -- the Intermountain Power Agency -- to block its development.

"Los Angeles Power initially was involved in helping plan for the development of a third unit," said Matthew McNulty, an attorney with VanCott Bagley, Cornwall and McCarthy in Salt Lake City who is representing UAMPS. "Now that they don't want to be involved, we don't think they should have veto power over a Utah project."

UAMPS estimates it spent more than $6.4 million pursuing the development of the third generating unit before L.A. Power figuratively pulled the plug.

Los Angeles and five other California cities take 75 percent of the electricity generated at the Intermountain Power Project. As a result, their votes at the Intermountain Power Agency far outweigh those of the 23 Utah municipalities.

UAMPS' complaint may not be the only lawsuit that emerges from the dispute.

Rocky Mountain Power, which takes about 4 percent of the electricity generated at the Intermountain Power Project and favors the development of a third generating unit, in July notified Los Angeles Power and the Intermountain Power Agency that it might file a lawsuit if the project wasn't allowed to go forward.

At that time, the utility that provides most Utahns with the electricity to operate the appliances in their homes indicated that it considered it improper for those California cities -- Los Angeles, Pasadena, Anaheim, Burbank, Glendale and Riverside -- to block needed generating capacity in Utah to satisfy California environmental laws.

"We're continuing to weigh our options, and filing a lawsuit against the Los Angeles Department of Water and Power and IPA remains a viable possibility," said Rocky Mountain Power spokesman Jeff Hymas.

Los Angeles Power spokesman Joe Ramallo declined to comment on pending litigation. However, in July he noted that the Southern California department announced in 2003 that it wasn't going to buy any more electricity generated from coal.

"We're committed that 20 percent of the power we provide will come from renewable resources by 2010 and 35 percent by 2025," Ramallo said at that time. "Right now, we're at 9 percent and climbing."

The Utah municipalities believe that California's Global Warming Solutions Act of 2006, which set up a statewide program to cap all greenhouse gas emissions from major industries in California, played a role in Los Angeles throwing up barriers against the development of a third unit at the Intermountain Power Project.

"Although neither Los Angeles Power nor IPA has ever cited the California Act formally or in writing as a roadblock to the development of Unit 3, the California Act has been a palpable, albeit inconsistent, undercurrent since late 2006," UAMPS' lawsuit states.

UAMPS' complaint is asking for damages from the Intermountain Power Agency and Los Angeles Power for lost profits and an order requiring Los Angeles Power to negotiate in good faith toward the completing a development agreement.

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EXHIBIT “6”

DESERET
Morning News

Power agencies file suit over project

Group challenges California's stance on global warming

By Joe Bauman
Deseret Morning News

Published: November 22, 2007

California's power officials may find themselves in a Utah courtroom defending their position on global warming.

On Nov. 13, the Utah Associated Municipal Power Systems (UAMPS) filed suit against the Los Angeles Department of Water & Power and the Intermountain Power Agency because of a refusal to support construction of a third unit of the Intermountain Power Project generating station. The plant's two existing units are located near Lynndyl, Millard County, about 15 miles northeast of Delta. Together they are capable of producing nearly 1,800 megawatts of electricity.

However, the department has torpedoed the third unit, apparently because California is concerned about carbon dioxide releases that could contribute to global warming, according to the suit.

The civil suit, filed in 3rd District Court, Salt Lake City, claims that earlier this year "Los Angeles Power decided precipitately and without justification that it would not allow UAMPS or the other project participants develop the Delta site as planned."

Los Angeles may be planning to build a nuclear power plant at the site, according the the suit. "Among other things, developing the site for a nuclear plant would comply with emissions requirements of the California Act (aimed at curbing greenhouse gases) and also avoid the potential political and public outcry that would surely ensue if Los Angeles Power proposed a nuclear plant in its home state."

A spokesman for the Los Angeles Department of Water & Power refused to respond to the suit's allegations. "We don't comment on any legal issue, so our statement is 'No comment,'" said the spokesman, Walter Zeisel.

The department is not a participant in the third unit and has no vested interest in it, says the suit. But it "publicly renounced its association with coal-fired power plants and attempted to distance itself from the Intermountain Power Project."

The Los Angeles agency is the largest owner of the two units already constructed, and is entitled to 44.617 percent of the power generated, according to Intermountain Power Agency. Including electricity deliveries to California cities of Anaheim, Riverside, Pasadena, Burbank and Glendale, 74.943 percent of the plant's power is earmarked for that state.

About 14 percent of the plants' power goes to Utah cities and towns including Price, Fillmore, Beaver and others. Utah electrical cooperatives are entitled to a little more than 7 percent, and PacifiCorp gets 4 percent.

Through its "continuing unjustified actions," the water and power department shows itself "to be little more than a hijacker bent on appropriating the project for itself. IPA (Intermountain Power Agency), likewise, has allowed the project site and facilities to be co-opted by the power agency, it adds.

The IPA was formed in 1977 to build a four-unit, 3,000-megawatt facility burning coal to generate power, says the suit. Only two units were completed. The IPA purchased land, equipment, a switch yard, water rights, transformers, mining interests, a coal-transportation system, transmission systems and obtained government permits, the action notes.

The plant's operating agent and power project manager is the Los Angeles Department of Water and Power.

Around 2000, IPA proposed the addition of a 900-megawatt unit at the same site as the other units, says the suit. Participants included UAMPS, a group of mostly-Utah municipal power suppliers.

"For more than six years, Los Angeles Power encouraged UAMPS, IPA and other project participants to work and invest on every level, from operational to regulatory to political, to make the third unit a reality," the action says. The other participants include PacifiCorp, the Southern Nevada water Authority and the city of Glendale, Calif.

UAMPS says it alone incurred more than $6.4 million in development and other costs related to Unit 3.

In the fall of 2006, California Gov. Arnold Schwarzenegger signed a state assembly bill, the "California Global Warming Solutions Act of 2006," which set a statewide framework for reducing that state's greenhouse gas emissions by 25 percent by 2020, the suit notes. "No portion of the California Act or any related bill expressly prohibits or restricts coal-burning power plants per se," it adds.

Any fuel can be burned as long as it emits greenhouse gases at the same rate as natural gas, says the suit.

But in March participants in Unit 3 sent their proposals for the project to the power department for review and comment. "Curiously, Los Angeles Power and IPA broke off negotiations shortly thereafter, refusing to provide substantive feedbacks or any other comments — positive or negative — about the drafts."

The suit says Los Angeles Power and California electricity purchasers "have acted out of political expediency by publicly distancing themselves from IPP and coal-fired power plants," but they want to "commandeer" the IPP site for other uses.

On July 30, IPA said it was resigning as development manager of Unit 3, the action says. While UAMPS accepted that resignation, IPA said the Los Angeles city attorney would not allow a transfer of work approvals to Unit 3 participants, it adds.

"We see the lawsuit as a way to get all the parties to the table, to see if the problems can be worked out," said Reed Searle, the soon-to-retire director of IPA. "I believe that's why UAMPS decided to file the lawsuit."

E-mail: bau@desnews.com

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EXHIBIT “7”

July 18, 2007

VIA CERTIFIED MAIL

The City of Los Angeles
Attn: Office of the City Clerk
200 North Spring Street
Room 395, City Hall
Los Angeles, CA 90012

VIA CERTIFIED MAIL AND ELECTRONIC MAIL

Los Angeles Department of Water & Power
P.O. Box 51111, Room 342
Los Angeles, CA 90051-0100

Re: Claim for Damages

Dear Sir or Madam:

This letter shall serve as a Claim for Damages by the Utah Associated Municipal Power Systems, a Utah energy services interlocal entity and political subdivision of the State of Utah ("UAMPS"), and PacifiCorp Energy, a division of PacifiCorp, an Oregon corporation ("PacifiCorp") (collectively, the "Development Participants")[1] against the City of Los Angeles, a municipal corporation organized and existing under the Charter of the City of Los Angeles and the laws of the State of California, acting by and through its Department of Water and Power ("LADWP"), and Intermountain Power Agency, a Utah interlocal entity and political subdivision of the State of Utah ("IPA") (collectively "Defendants").

The claims and damages described herein arise in connection with the Defendants', including LADWP's, intentional disregard for and interference with the Development Participants' exclusive right to develop a third generating unit (hereafter, "Unit 3") at the Intermountain Power Project ("IPP") site, located within the State of Utah. This Claim for Damages relates to LADWP; the Development Participants have submitted a similar notice against IPA.

I. Notices. Each of the above named Development Participants is a "claimant", within the meaning of the Act. The address to which all notices pertaining to this Claim for Damages should be sent to is

For UAMPS:

UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS
ATTN: DOUG HUNTER
2825 East Cottonwood Parkway, #200
Salt Lake City, Utah 84121

[1] For purposes of this Claim for Damages, Development Participants means UAMPS (50%) and PacifiCorp (37%) only in regard to their individual interests in the Unit 3 development.

For PacifiCorp:

Nick Rahn
Vice President
PacifiCorp Energy
1407 W. North Temple, Suite 320
Salt Lake City, Utah 84116

II. Summary of Facts.

A. Background /IPP Agreements.

IPP is a power plant located in Millard County, Utah. IPP, as originally planned, included four coal-fired generating units, but only two of the generating units were built (referred to herein as "Units 1 and 2"). As a result, IPP includes the land, common facilities, water rights, feasibility studies, and other resources necessary to build additional generating units.

IPA was formed pursuant to the IPA Organization Agreement, dated May 1977. IPA members are comprised of 23 Utah Municipalities. IPP is solely owned by IPA. IPP therefore is solely owned by the 23 Utah municipal members of IPA.

In 1978 IPA adopted the Power Bond Resolution ("Bond Resolution"), pursuant to which IPA financed the construction of Units 1 and 2 through tax-exempt bonds. The principal and interest owed on those bonds are paid for pursuant to a series of substantially similar Power Sales Contracts IPA entered into with California Purchasers (i.e., California municipalities) and Utah Purchasers (i.e., Utah entities, including Utah municipalities) in 1978 and 1980. Section 707 of the Bond Resolution allows IPA to sell IPP facilities for the construction of additional units including, for example, common facilities to Unit 3 provided such sale does not adversely affect its ability to meet its bond payment obligations.

To build and operate Units 1 and 2, IPA entered into the Construction Management & Operating Agreement ("CM&OA") with LADWP in September 1980. Pursuant to the CM&OA, as then in effect and as has been amended, LADWP is appointed as the Project Manager (charged with building Units 1 and 2), and the Operating Manger (charged with operating and maintaining Units 1 and 2). IPA also entered into the Personnel Service Contract in June 1982 with the Intermountain Power Service Corporation ("IPSC"), a Utah non-profit corporation, to provide the Operating Agent with personnel to operate and maintain IPP on behalf of IPA.

The Power Sales Contracts provide for the formation of the IPP Coordinating Committee. The purpose of the IPP Coordinating Committee is to provide for coordination of the construction and operation of Units 1 and 2 between IPA, on the one hand, and the California Purchases (including LADWP) and the Utah Purchasers, on the other. Members of the IPP Coordinating Committee include representative(s) of IPA, the California Purchasers, and the Utah Purchasers. Section 36 of the Power Sales Contracts provides IPA may sell IPP facilities for the construction of additional units, including common facilities to Unit 3, provided that the IPP Coordinating Committee approves of such sale and that IPA receives

"fair value" for the Common Facilities. By resolution dated November 21, 2005, the IPP Coordinating Committee approved the sale of certain IPP common facilities for Unit 3.

Neither the IPA Organization Agreement, the Bond Resolution, the Power Sales Contracts, the Lay-off Power Purchase Contract, the Personnel Service Contract, nor the Excess Power Sales Agreement (collectively the "IPP Project Agreements"), provide LADWP or the California Purchasers with any right, title or interest to IPP or with the right to control or veto development of additional generating units at IPP, including Unit 3. The ownership of IPP is vested solely in IPA, and thus in 23 Utah municipalities.

B. Unit 3.

Sometime in or about 2000, the early development of Unit 3 began. Unit 3 has always been intended as a nominal 900 megawatt ("MW") coal-fired generating unit, similar in size and function to Units 1 and 2.

Pursuant to a resolution of the IPP Coordinating Committee under the Intermountain Power Project Unit Three Participation Agreement, a Steering Committee was formed for the purpose of, among other things, studying and analyzing the feasibility of constructing Unit 3. Steering Committee members included IPA, UAMPS, and LADWP.

The Steering Committee met regularly over a four year period and, upon completion of its work, disbanded in October 2004. Prior to the dissolution of the Steering Committee, LADWP withdrew as a participant in the Unit 3 project.

When the steering phase ended, the current participants in Unit 3, including UAMPS and PacifiCorp, entered into the Development Coordination Agreement, dated May 1, 2005, and the Development Agreement, dated May 1, 2005 (hereafter, the "Development Agreements"). LADWP is not a signatory to the Development Agreements and has no right under the Development Agreements to interfere with, or cause IPA or others to interfere with, the Development Participants' right to develop Unit 3 at IPP.

In March 2007, pursuant to the Development Agreements, the Development Participants provided IPA and LADWP with draft Unit 3 Project Agreements. Before finalizing those drafts, the Development Participants communicated that they did not intend for LADWP to be included as a signatory because IPA was the sole owner of IPP. IPA and LADWP, however, told the Development Participants that having LADWP as a signatory was necessary. The Development Participants, upon the advice of IPA and LADWP, then included LADWP as a signatory to the drafts, but the Development Participants continue to maintain that LADWP's signature is not required under either the Development Agreements, the IPP Project Agreements or otherwise.

Less than two weeks after sending the draft Unit 3 Project Agreements to IPA and LADWP, IPA and LADWP informed the Development Participants that neither IPA nor LADWP would negotiate or approve of the contracts. IPA, in a memorandum of March 21, 2007 to the IPA Board of Directors and the IPP Coordinating Committee members, stated:

> The sale of the Common Facilities to Unit 3 participants and other Unit 3 contracts must be approved by 80% of Coordinating Committee members. Several of the Unit 3 contracts must also be approved by Los Angeles City Council. IPA has been notified the California IPP Purchasers do not plan to

> approve the contracts nor does the Los Angeles City Council plan to approve the required contracts. **The current desire of the California participants is to reserve the site and facilities to potentially be developed to meet carbon compliant clean coal projects for current IPP participants.**[2] The Unit 3 Development Participants have been informed of this situation.
>
> (Emphasis added.)

Since the date of this memorandum, the Development Participants have made efforts to continue the development of Unit 3 as is their exclusive right under the Development Agreements. LADWP, however, has actively opposed and unlawfully interfered with the Development Participant's development efforts.

As a result of IPA and LADWP actions, the Development Participants have been damaged in an amount which exceeds more than $7 million which represents expenditures thus far in development costs.

Furthermore, pursuant to the Development Agreements, UAMPS, as a Development Participant, has entered into Unit 3 Power Sales Contracts for sale of Unit 3 capacity. Unlike Units 1 and 2, most of the capacity of Unit 3 will not be sold to California consumers. Any power that may be sold to California consumers will not violate the California GHG Law.

Under Section 301(1) of the Utah Interlocal Cooperation Act (the "Interlocal Act"), a project entity (i.e., IPA) must "offer to sell at least 50% of the generation output of or electric energy produced by the project" before undertaking the construction of facilities to provide additional project capacity. This output or energy can be in the form of long-term power sales agreements or an undivided ownership interest in the project. Subsection (2) of Section 301 provides that at least a majority of the generation capacity, generation output, or electrical energy production facilities providing additional project capacity must be made available to meet the "estimated electric requirements of entities or consumers within the state". The development and ownership arrangements for Unit 3 satisfy this and other requirements of the Interlocal Act. IPA's and LADWP's actions to block this development and ownership arrangement, therefore, are inconsistent with the Interlocal Act. Moreover, IPA's and LADWP's indicated intent to reserve the Unit 3 site, and the common facilities of Units 1 and 2, for the exclusive use of the California Purchasers violates the requirements of the Interlocal Act because that arrangement will not result in a majority of generation being used to meet the electric requirements with the state of Utah.

III. Claims.

The Development Participants have the exclusive right to develop Unit 3 at the IPP site. Neither LADWP, nor any California Purchaser (or their representative on the IPP Coordinating Committee), has a legal or lawful right to interfere with or divest the Development Participants of their exclusive right to develop Unit 3.

LADWP has no right, title, or interest in IPP or in additional generating units which may be built at IPP. LADWP is merely IPA's agent. Pursuant to the Bond Resolution, IPA—

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[2] California's Global Warming Solutions Act ("California GHG Law"), was enacted in late 2006. Under the California GHG Law, beginning as early as June 2007, all new California energy procurement must be from sources whose emissions are as clean or cleaner than natural gas power plants.

not LAWPD—has the right to determine whether or not to sell IPP facilities. And any approval needed by the IPP Coordinating Committee for the sale of IPP Common Facilities has already been given, by the IPP Coordinating Committee's adoption of its November 21, 2005, resolution, which identifies the Common Facilities to be sold and assigns a fair value to each. Furthermore, the California GHG Law, upon which LADWP relies to justify its unlawful interference with the Development Participants' exclusive right to develop Unit 3, has no application to Unit 3. LADWP therefore has no legal or factual basis to take the actions it has taken.

The claims the Development Participants intend to pursue against LADWP for its unlawful actions include, but are not necessarily limited to the following: (i) breach of the IPP Project Agreements; (ii) breach of implied contract; (iii) promissory estoppel for the Development Participants' reliance on LADWP's express and implied approval of the sale of IPP Common Facilities; (vi) tortious interference with the Development Participants' contractual rights; (v) violations the dormant commerce clause of the United States Constitution; and (vi) a declaratory judgment that any purported delegation by IPA to LADWP, any California Purchasers or the IPP Coordinating Committee to approve or block development of Unit 3 is outside the scope of authority grated IPA under the Interlocal Act and therefore is void.

IV. LADWP and Immunity. LADWP is not entitled to governmental immunity because LADWP's actions with regard to (i) IPP, generally, and (ii) Unit 3, specifically, are proprietary in nature and are not taken pursuant to any governmental duty or governmental authority. Nevertheless, the Development Participants submit this Claim for Damages to preserve their right to claim damages and to provide LADWP with an opportunity to resolve this matter.

V. Damages.

As a result of LADWP's unlawful and wrongful conduct, the Development Participants claim more than $7 million in development costs, as well compensatory and lost opportunity damages, in an amount in excess of $100 million, as will be adjusted upon further investigation, plus attorney fees and costs.

Respectfully submitted,

By: _____
Matthew F. McNulty, III
VAN COTT BAGLEY CORNWALL & McCARTHY
Attorneys for Utah Associated
Municipal Power Systems

By: _____
Michael G. Jenkins
Assistant General Counsel PacifiCorp Energy

D)

Reply Memorandum in Further Support of the Intermountain Power Project Unit 3 Development Committee's Petition to Intervene

UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY
FEB 29 2008
DIVISION OF AIR QUALITY

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Attorneys for Intermountain Power Project Unit 3 Development Committee

BEFORE THE UTAH AIR QUALITY BOARD

In Re Approval Order – PSD Major Modification to Add New Unit 3 at Intermountain Power Generating Station, Millard County, Utah Project Code: N0327-010 DAQE-AN0327010-04	))))))	**REPLY MEMORANDUM IN FURTHER SUPPORT OF THE INTERMOUNTAIN POWER PROJECT UNIT 3 DEVELOPMENT COMMITTEE'S PETITION TO INTERVENE**

The Intermountain Power Project ("IPP") Unit 3 Development Committee on behalf of its member participants ("Committee"), by and through its undersigned counsel, respectfully submits this Reply Memorandum in Further Support of the Intermountain Power Project Unit 3 Development Committee's Petition to Intervene ("Reply").

I. INTRODUCTION

The Committee members owns (i) the exclusive right to develop and pursue Unit 3 ("Unit 3 Exclusive Right") and (ii) the Approval Order DAQE-AN0327010-04 ("AO") issued by the Utah Division of Air Quality ("UDAQ") for construction of Unit 3. The Committee members have at all times acted, and continue to act, to preserve their legal rights in and to the AO and the Unit 3 Exclusive Right so they can develop, construct, and use Unit 3.

In its long-winded Opposition, Sierra Club deploys a number of arguments in an apparent attempt to create some kind of factual dispute on irrelevant issues and cloud the real issue of the Committee's right to intervene. No amount of posturing can hide the fact that Sierra Club's Opposition is riddled with misrepresentations and non sequiturs that are irrelevant to and in no way detract from the Committee's ability—and its right—to intervene and protect its interests. Sierra Club has failed to controvert Doug Hunter's sworn affidavit with any evidence of its own. Because the members of the Committee own the AO and the Unit 3 Exclusive Right, and they are enforcing those rights, it is clear that the intervention standards of Utah Admin. Code R307-103-6 and Utah Code Ann. § 63-46b-9 are satisfied.

II. ARGUMENT

A. The Members of the Committee Own the Unit 3 Exclusive Right

It is undisputed that IPA owns IPP. Pursuant to the Development Coordination Agreement,[1] IPA granted to the members of the Committee the exclusive right to develop and pursue Unit 3 at the IPP site, *i.e.*, the Unit 3 Exclusive Right. *See* Affidavit of Doug Hunter ("Hunter Aff.") at ¶ 9; Exhibit A, p.8, § 3.1(a).[2] Pursuant to the Development Agreement,[3] the Committee was formed and

[1] Capitalized terms not defined herein shall have the meanings ascribed to them in the Committee's Petition to Intervene. True and correct copies of the Development Coordination Agreement and Development Agreement, exclusive of exhibits, are attached hereto as Exhibits A and B, respectively.

[2] The members of the Committee, referred to as "Development Participants" in the Development Agreements, currently consist of Utah Associated Municipal Power Systems ("UAMPS"), PacifiCorp, and the Southern Nevada Water Authority ("SNWA"). The City of Glendale of the State of California withdrew as a Development Participant in February 2008.

[3] The Development Coordination Agreement and the Development Agreement are referred to collectively herein and within the Committee's Petition as the "Development Agreements".

is authorized to act on behalf of its members, and thus is the proper party to petition to intervene in this proceeding for and on behalf of its members. *See* Hunter Aff. at ¶¶ 8-10; Exhibit B, Article III and Article IV. Contrary to Sierra Club's contentions, IPA expressly granted the members of the Committee the Unit 3 Exclusive Right.

B. The Members of the Committee Own the AO

During 2000, a Steering Committee, then comprised of representatives from UAMPS, IPA and the Department of Los Angeles Water and Power ("LADWP"), was formed to study the feasibility of building Unit 3 at the IPP site. The Steering Committee engaged in a vast array of tasks, including coordinating the AO application. In May 2005, the Steering Committee, then comprised of IPA and UAMPS, completed its work and negotiated and finalized the Development Agreements. The Steering Committee work, referred to in the Development Agreements as "Steering Committee Work Product", was transferred to the members of the Committee pursuant to that certain Bill of Sale and Assignment attached to the Committee's Petition to Intervene ("Bill of Sale") and the Development Agreements. The term "Steering Committee Work Product" is defined as including "all right, title and interest of any Study Participant in the Air Permit." *See* Exhibit A, § 1.1. There is no question, therefore, that IPA transferred all its right, title, and interest in the AO to the members of the Committee, who have been active in the AO's defense since Sierra Club's initial challenge. *See* Hunter Aff. at ¶¶ 6-7. As the Board is well aware, IPSC's counsel withdrew its appearance in this proceeding. Although IPSC is nominally a party, it has not participated for months. IPSC has not taken issue with the facts described in the Petition or the accompanying affidavit of Doug Hunter, or objected to the Committee's intervention.

Sierra Club, however, appears to dispute that IPA had any interest in the AO which it could transfer or assign to the Committee, and on that basis, disputes that the Committee has any right to intervene in this proceeding. But as the Committee explained in its Petition, when IPA assigned and transferred its rights and interests in and to the AO to the Committee, it transferred all the interests in the AO held by IPSC, its agent. That position is supported by a letter to counsel for UAMPS from LADWP, dated September 20, 2007, attached hereto as Exhibit C.

In that letter, LADWP states:

> Although the initial approval order for the air permit is in the name of IPSC, **that entity has no right, title or interest in said permit** ...
>
> About two and one-half years ago, your client, along with the other [members of the Committee], executed the [Development] Coordination Agreement. As part of that [Development] Coordination Agreement, the [members of the Committee] acquired the "Steering Committee Work Product," including the [AO] ... The [AO] was assigned and transferred in its then "as-is" and "where-is" condition ...

Exhibit C (emphasis added).

The Committee's position that IPA transferred all right, title, and interests in and to the AO, including any interest IPSC may have, to the members of the Committee pursuant to the Bill of Sale is consistent with the terms of that certain Personnel Service Contract entered into by and between IPSC and IPA, attached hereto as Exhibit D. Under that contract, IPSC is required to provide personnel to LADWP for the operation and maintenance of IPP. As the agent of IPA, LADWP administers the Personnel Service Contract on behalf of IPA. *Id.* at ¶ 1. Under the Personnel Service Contract, any property IPSC acquires for IPP immediately vests with and in IPA. *Id.* at § 12. Thus, when IPA executed the Bill of Sale it transferred its interest and any interest IPSC may have had in the AO to the members of the Committee.

In sum, IPSC does not own the AO; the members of the Committee own the AO.

C. The Members of the Committee Are Enforcing Their Legal Right to the AO and the Unit 3 Exclusive Right

UAMPS and PacifiCorp, in separate legal actions, are enforcing their legal rights in and to the Unit 3 Exclusive Right. The members of the Committee have actively participated in the enforcement and defense of the AO since its issuance in 2004. Thus, the Sierra Club's assertion that the Committee (and/or one or more of its members) have "abandoned" Unit 3 (and therefore the AO) is illogical and unsupported.[4]

D. The Intervention Standards Are Satisfied

There is no question that the Committee has satisfied the intervention standards found at Utah Admin. Code R307-103-6(2)(a) and Utah Code Ann. § 63-46b-9. The members of the Committee own the Unit 3 Exclusive Right and the AO. Counsel for IPSC has withdrawn from these proceedings and if the Committee is not allowed to intervene in this proceeding, the Committee members' interests will go undefended and therefore will be substantially affected. That will not serve the interests of justice. *Id.* Further, these proceedings will not be impaired if the Committee is allowed to intervene because the Committee is well versed in its issues and status and will continue to defend the AO as was previously done by counsel for IPSC. As explained in the Committee's Petition, the Committee clearly meets the traditional and/or alternative tests of standing in accordance with *Utah Chapter of Sierra Club v. Utah Air Quality Control Bd.,* 2006 UT 74, 148 P.3d 960

[4] Sierra Club's allegation that PacifiCorp has "repeatedly stated that it has abandoned developing IPP Unit 3," Sierra Club Opposition at 8, mischaracterizes PacifiCorp's representations to the Utah Public Service Commissions, ignores the fact that PacifiCorp still has real and transferable interests in Unit 3, and is completely irrelevant to the Committee's Petition.

(Utah 2006). That is, if the Committee is not allowed to intervene, the members of the Committee will suffer a distinct and palpable injury because their interests will go undefended. And, the Committee has "the interest necessary to effectively assist the [Board] in developing and reviewing all relevant and factual questions", because its members own the AO and the Unit 3 Exclusive Right. *Id.* at ¶ 35.

III. THE BOARD SHOULD PERMIT THE COMMITTEE TO INTERVENE

For the foregoing reasons, the Committee respectfully requests that the Board grant its Petition to Intervene and the relief requested therein.

RESPECTFULLY SUBMITTED this 29th day of February, 2008.

VAN COTT, BAGLEY, CORNWALL
& MCCARTHY, P.C.

By: _____
H. Michael Keller
Matthew F. McNulty, III

Attorneys for IPP Unit 3 Development Committee

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of February, 2008, I caused a true and correct copy of the foregoing, with exhibits, to be served by electronic mail to the following:

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EXHIBIT A

Intermountain Power Project

Unit Three Development Coordination Agreement

Dated as of May 1, 2005

Among

Intermountain Power Agency

and each of the Development Participants
set forth in Exhibit A hereto

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Intermountain Power Project
Unit Three Development Coordination Agreement

This Unit Three Development Coordination Agreement, dated May 1, 2005 (this "*Agreement*"), is by and among Intermountain Power Agency ("IPA") in its capacity as owner of the Intermountain Power Project ("IPP"), and each Development Participant set forth in Exhibit A hereto, as it may be modified from time to time in accordance with this Agreement. Capitalized terms used but not defined in this Agreement shall have the meanings given to them in the Intermountain Power Project Unit Three Development Agreement, dated of even date herewith (the "*Development Agreement*"), to which the Development Participants and IPA, in its capacity as Development Manager and not as owner of IPP, are parties.

Recitals

IPA is the owner of IPP, which consists of Units 1 and 2, related transmission facilities and various rights, titles and interests in and to other tangible and intangible property.

The Department of Water and Power of the City of Los Angeles (the "*Department*") serves as the Unit 1 and 2 Operating Agent.

IPP was originally designed to include four generating units for a total project design capacity of 3000 MW. For a variety of reasons, the IPP was scaled back in 1983 to consist of Units 1 and 2 only. Before the IPP was scaled back, certain rights, property, facilities and appurtenances were acquired and/or constructed as a part of IPP in excess of those required to support Units 1 and 2. The Unit 1 and 2 Power Sales Contracts and the IPA Bond Resolution provide that IPA may, under certain conditions specified therein, sell, lease or otherwise make available Common Facilities for the construction or operation of other generating units at the IPP Site.

Pursuant to the Study Agreement, the Steering Committee, consisting of a representative of each of the Study Participants, was established. The Steering Committee has conducted studies and taken preliminary actions incorporated in the Steering Committee Work Product with regard to the possible construction of Unit 3, which would incorporate portions of the Common Facilities and has recommended that further development of Unit 3 be pursued to determine whether Unit 3 should go forward to the construction stage and to prepare for construction if it does go forward.

The Development Agreement establishes the Development Committee for the purposes of, among other things, directing and supervising Development Work, which, in general, consists of feasibility and planning work beyond that included in the Steering Committee Work Product. Pursuant to the Development Agreement, each Development Participant has reserved or will reserve certain rights to participate as an owner in Unit 3.

IPA, as owner of IPP, and the Unit 1 and 2 Operating Agent, have certain contractual and legal obligations with respect to IPP that require them to be integrally involved in various aspects of the Development Work and the Unit 3 Project. Additionally, the

Development Committee will need the assistance and cooperation of IPA and the Unit 1 and 2 Operating Agent in order to successfully complete the Development Work.

Based upon the Steering Committee Work Product, the development of Unit 3 is presently expected to produce substantial benefits for IPA, the Unit 1 and 2 Participants and the Development Participants, and the Development Participants have committed to expend substantial amounts in furtherance of the Development Work under the Development Agreement. Accordingly, IPA and the Development Participants (individually, a "*Party*", and collectively, the "*Parties*") desire to enter into this Agreement in order to:

- provide the Development Participants with an exclusive right and license to pursue and prosecute the development of Unit 3 during the Development Period,

- provide that IPA and the Unit 1 and 2 Operating Agent will provide their assistance and cooperation to the Development Participants and the Development Manager in connection with the Development Work, and

- provide that the Parties will cooperate, negotiate and deal with one another in good faith so as to accomplish the development of Unit 3 and to realize the anticipated benefits of Unit 3,

all upon the terms and provisions, and subject to the limitations, contained in this Agreement.

Agreement

In consideration of the mutual covenants of the Parties under this Agreement, and in exchange for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Article I

Definitions

Section 1.1 Definitions. In addition to the definitions of terms set forth elsewhere in this Agreement or in the Development Agreement, definitions for certain terms used in this Agreement are provided as follows:

"*Access Rights*" has the meaning set forth in Section 3.2(d).

"*Cooperation Work*" means the making available to the Development Committee for use in connection with the Unit 3 Project of systems, processes, procedures, strategies, plans, techniques, methods, technologies, know-how, experience, ideas, research, software, source codes, object codes, designs, layouts, information, specifications, data, formulas, patterns, compilations, programs, devices and performance history or other information that is not confidential reasonably requested by the Development Committee within the possession and control of IPA, the Unit 1 and 2 Operating Agent or IPSC and which is related to, connected with or constitutes a part of Units 1 and 2. "*Cooperation Work*" does not include, among other things,

the performance of ministerial tasks or the providing of labor or manpower to apply or implement the foregoing after it has been made available for the use of the Development Committee.

"*Department*" has the meaning set forth in the Recitals.

"*Development Agreement*" has the meaning set forth in the Heading.

"*Development Coordination Agreement Effective Date*" means the date set forth in the Heading, provided that the Development Agreement shall become effective on such date in accordance with its terms.

"*Development Manager*" means the entity then serving as Development Manager under the Development Agreement, and in the case of IPA acting in its capacity as Development Manager, it shall be acting in such capacity as an independent contractor and not as the owner of IPP or a party to the IPP Agreements.

"*Development Participant Confidential Information*" means information and materials pertaining to a Development Participant that such Development Participant designates as confidential by describing such information or materials on *Schedule 1* of this Agreement, as in effect from time to time, so long as (i) such Development Participant has made reasonable efforts to maintain the confidentiality thereof, (ii) such information or materials are not public information through the action of the Development Participant, and (iii) such information or materials have not been obtained independently by IPA from a source that is lawfully entitled to disclose the same. Any Development Participant may, from time to time, revise *Schedule 1* to include descriptions of additional information or materials owned or provided by it to IPA. A Development Participant may revise *Schedule 1* to remove the description of any information or materials owned or provided by it set forth therein. Upon the providing of each such revised *Schedule 1* by a Development Participant to the Development Manager and to IPA, such revised *Schedule 1* shall replace, for all purposes of this Agreement, the *Schedule 1* previously in effect.

"*Development Participant Entity*" has the meaning set forth in Section 5.1(b).

"*Development Participants*" means, as of any particular time the Initial Development Participants and the Future Development Participants, as then set forth in Exhibit A hereto (as modified from time to time as provided in this Agreement).

"*Development Period*" means the period beginning on the Development Coordination Agreement Effective Date and ending on the date the Development Agreement terminates pursuant to Section 16.1 thereof.

"*Development Work Product*" means all documents, materials, schematics, drawings, reports or other information on any type of Media generated, compiled or created in connection with the Development Work.

"*Future Development Participant*" means any Development Participant that executes and delivers the Development Agreement pursuant to the terms hereof after the Development Coordination Agreement Effective Date.

"*Governmental Entity*" means any federal, state, interstate or local governmental entity, authority, agency, board, commission, council, county, municipality, department, district, division, political subdivision, court or officer.

"*Initial Development Participant*" means any Development Participant that executes and delivers the Development Agreement on or before the Development Coordination Agreement Effective Date.

"*IPA*" has the meaning set forth in the Heading.

"*IPA Bond Resolution*" means the Power Supply Revenue Bond Resolution adopted by the IPA Board of Directors on September 28, 1978, as amended and supplemented from time to time.

"*IPA/Unit 1 and 2 Operating Agent Project Documents*" means all contracts, agreements, deeds, leases, assignments, bills of sale, other transfer documents and other documents or instruments of any type or nature establishing or defining the rights, duties and obligations of IPA and/or the Unit 1 and 2 Operating Agent relative to one or more of the Unit 3 Participants with respect to Unit 3 or the Unit 3 Project.

"*IPP*" has the meaning set forth in the Recitals.

"*IPP Agreements*" means the Unit 1 and 2 Power Sales Contracts, and the other Project Agreements as defined in the Construction Management and Operating Agreement, together with the resolution or other action of the Unit 1 and 2 Coordinating Committee authorizing IPA to enter into and perform this Agreement and providing other terms and conditions relating to IPA's association or involvement with or performance of Unit 3 matters or activities.

"*IPP Confidential Information*" means all information and materials pertaining to IPP that IPA designates as confidential by describing such information or materials on *Schedule 2* of this Agreement, as in effect from time to time, so long as (i) IPA and/or the Unit 1 and 2 Operating Agent have made reasonable efforts to maintain the confidentiality thereof, (ii) such information or materials are not public information and (iii) such information or materials have not been obtained independently by the Development Committee or any Development Participant from a source that is lawfully entitled to disclose the same. IPA may, from time to time, revise *Schedule 2* to include descriptions of additional information or materials owned by it or provided by it to the Development Manager, the Development Committee or any Development Participant. IPA may revise *Schedule 2* to remove the description of any information or materials set forth therein. Upon the providing of each such revised *Schedule 2* by IPA to the Development Manager and each Development Participant, such revised *Schedule 2* shall replace, for all purposes of this Agreement, the *Schedule 2* previously in effect.

"*IPP Coordinating Committee*" means the Coordinating Committee established pursuant to Section 6.1 of the Unit 1 and 2 Power Sales Contracts.

"*IPP Facility*" includes any and all real property and personal property that constitutes IPP or any portion thereof.

"*IPP Participants*" means each entity that is a party to a Unit 1 and 2 Power Sales Contract with IPA as of the Effective Date.

"*IPP Site*" means any and all locations at which any IPP Facility is located.

"*IPSC*" means Intermountain Power Service Corporation, a Utah non-profit corporation that provides personnel to operate and maintain IPP.

"*Laws*" means any and all constitutional provisions, statutes, regulations, rules, ordinances, resolutions, orders and requirements, including, without limitation, the provisions of the Utah Government Records Access and Management Act and the regulations and requirements applicable to any public or investor owned utility or other Development Participant, including, without limitation regulations and requirements of the Utah Public Service Commission, of any Governmental Entity having jurisdiction over all or part of the Unit 3 Project or the activities or functions of any of the Parties to this Agreement.

"*Media*" means all techniques, means and mechanisms for storing, preserving, memorializing or displaying information, including, without limitation, documents, notes, papers, magnetic tape, disks, ready access memory, recordings, photographs and other media of any type or nature.

"*Party*" or "*Parties*" has the meaning set forth in the Recitals.

"*Permit*" means any permit, license, consent, approval or authorization of or issued by any Governmental Entity.

"*Person*" means a natural person, corporation, partnership, limited liability company, trust, association, Governmental Entity or any other person or entity.

"*Possessing Party*" has the meaning set forth in the definition of "Strategic Confidential Information."

"*Qualified Electric Entity*" means any Governmental Entity or any corporation, partnership, limited liability company, trust or association, including any wholly owned subsidiary (which subsidiary may be a corporation, partnership, limited liability company, trust or association) of any such entity whose financial obligations are guaranteed by its parent entity, that, in each case, (i) provides electric services at wholesale or retail, (ii) has been assigned, or in the case of such a wholly owned subsidiary whose financial obligations are so guaranteed, its guaranteeing parent entity has been assigned, a long-term senior debt rating of, or has outstanding debt obligations rated (without regard to any credit enhancement) at least, "Baa1" by Moody's Investors Service or "BBB+" by Standard & Poor's Credit Market-Services, or the creditworthiness of which is otherwise approved by IPA, which approval shall not be unreasonably withheld and shall be based on IPA's reasonable judgment as to the financial ability of such Person to pay its share as a Unit 3 Participant of the future capital and operating payment obligations that will become payable to IPA by the Unit 3 Participants as estimated by

IPA, and (iii) provides an opinion of counsel, which opinion shall be in form and substance, and which counsel shall be, acceptable to IPA, in its reasonable discretion, that the rights acquired by such entity pursuant to this Agreement or the Development Agreement do not constitute a "security" for purposes of the Federal Securities Act of 1933, as amended.

"*Site Visit*" has the meaning set forth in Section 5.1(a).

"*Strategic Confidential Information*" means all information and materials within the possession or control of a Party or the Unit 1 and 2 Operating Agent (the "*Possessing Party*") that such Party or the Unit 1 and 2 Operating Agent has maintained as confidential and that specifically relates to the Possessing Party's legal and negotiating strategies, plans and positions with respect to any other Party (the "*Subject Party*"), the disclosure of which to the Subject Party would give the Subject Party an unfair or improper advantage in negotiating contracts and relationships with the Possessing Party or result in a waiver by the Possessing Party of its attorney/client privilege with respect to such information or materials.

"*Subject Party*" has the meaning set forth in the definition of "Strategic Confidential Information."

"*Subscription Materials*" means the IPP Unit 3 Subscription Material for Development prepared by the Steering Committee.

"*Unit 3 Confidential Information*" means all information and materials developed under the Development Agreement as part of the Development Work that the Development Committee designates as confidential by describing such information or materials on *Schedule 3* of this Agreement, as in effect from time to time, so long as: (i) the Development Committee has made reasonable efforts to maintain the confidentiality thereof, (ii) such information or materials are not public information and (iii) such information or materials have not been obtained independently by IPA or the Unit 1 and 2 Operating Agent from a source that is lawfully entitled to disclose the same. The Development Committee may from time to time revise *Schedule 3* to include descriptions of additional information or materials developed under the Development Agreement as part of the Development Work or to remove descriptions of information or materials included in *Schedule 3*, and, upon the providing of each such revised *Schedule 3* by the Development Manager to IPA and the Unit 1 and 2 Operating Agent, such revised *Schedule 3* shall replace, for all purposes of this Agreement, the *Schedule 3* previously in effect.

"*Unit 3 Project*" means the planning, development and construction of, and all other activities or actions to facilitate, further, promote or pursue, Unit 3.

The following capitalized terms used herein are defined in the Development Agreement:

"Augmented Development Costs Share"	"Interlocal Act"
"Category 1 Study Expenses	"Joint Operating Agreement"
"Category 2 Study Expenses"	"Project Agreements"
"Common Facilities"	"Steering Committee"
"Common Facilities Agreement"	"Steering Committee Work Product"
"Construction Management and Operating Agreement"	"Study Agreement"
	"Study Participants"
"Development Committee"	"Subscription Notice"
"Development Contract"	"UAMPS"
"Development Contractor"	"Unit 1 and 2 Operating Agent"
"Development Costs Share"	"Unit 1 and 2 Power Sales Contracts"
"Development Costs Limit"	"Unit 3"
"Development Manager"	"Unit 3 Participants"
"Development Work"	"Units 1 and 2"

Article II

Representations and Warranties; Performance by Unit 1 and 2 Operating Agent

Section 2.1 *Representations and Warranties of Development Participants.* Each of the representations and warranties of the Development Participants pursuant to Section 16.3 of the Development Agreement are incorporated herein by this reference and are hereby restated and remade by each Development Participant to and for the benefit of IPA and the Unit 1 and 2 Operating Agent. In each instance in which a Development Participant has made a representation or warranty in Section 16.3 of the Development Agreement that specifically references the Development Agreement, such representation or warranty shall be deemed, for purposes of this Agreement, to specifically reference this Agreement as well.

Section 2.2 *Representations and Warranties of IPA.* IPA hereby represents and warrants to each Development Participant that, as of the Effective Date, each of the following is true and correct in all material respects and is not materially misleading:

(a) It is duly organized and validly existing and has full power and authority to enter into this Agreement and to fully perform its duties and obligations hereunder.

(b) Its execution, delivery and performance of this Agreement have been duly authorized and approved by all requisite action of its board of directors and by all other Persons to the extent the approval of such body, council, commission, board, authority or Person is required by applicable Law or the IPP Agreements or in order for the representation and warranty set forth in the immediately following subsection (c) to be true and correct.

(c) This Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, subject to the effects of bankruptcy, insolvency and other statutes or rules of law affecting creditors' rights generally and by general equitable principles.

(d) Neither its execution, delivery nor performance of this Agreement violates, or is contrary to, in any material way: (i) any provision of applicable Law; (ii) any provision of its governing documents, such as its charter, articles, bylaws or other organizational agreement, filing, decree or action; or (iii) any provision of any contract, instrument, agreement or other document to which it is a party or by which it is legally bound, including, but not limited to, the IPP Agreements.

Section 2.3 Performance by Unit 1 and 2 Operating Agent. The Parties recognize that pursuant to the Unit 1 and 2 Power Sales Contracts, IPA has appointed the Department as Project Manager and Operating Agent under the Construction Management and Operating Agreement under which the Department is responsible for the planning, negotiating, designing, constructing, insuring, contracting for, administering, operating and maintaining IPP. Accordingly, IPA shall cause the Department to perform, as the Unit 1 and 2 Operating Agent, all the duties and responsibilities set forth in this Agreement to be performed by the Unit 1 and 2 Operating Agent, all of which duties and responsibilities shall be performed under and in accordance with the Construction Management and Operating Agreement.

Article III

Development Rights and Assistance and Cooperation of IPA and Unit 1 and 2 Operating Agent

Section 3.1 Development Participants; Exclusive Development Rights.

(a) IPA hereby grants to the Development Participants the exclusive right to pursue during the Development Period the development of Unit 3 in accordance with the Development Agreement. Neither IPA nor the Unit 1 and 2 Operating Agent shall, during the Development Period, seek, solicit or negotiate with any Person to become an owner, purchaser or participant with respect to the Unit 3 Project.

(b) Each Future Development Participant shall become a Party to this Agreement by executing and delivering a counterpart of this Agreement (together with delivery of the opinion and other evidences and documentation referred to in Section 8.12), and Exhibit A hereto shall be modified to include such Future Development Participant. Exhibit A shall also be modified so that at any time, it sets forth only the Development Participants that are also set forth in Exhibit A of the Development Agreement.

Section 3.2 Cooperation. In addition to any other undertakings either of them has made under this Agreement, and subject to the limitations therein, during the Development Period, IPA and the Unit 1 and 2 Operating Agent shall, upon request, provide the following cooperation and assistance to the Development Participants:

(a) Negotiate for the consummation of the definitive Common Facilities Agreement, Joint Operating Agreement and all other IPA/Unit 1 and 2 Operating Agent Project Documents that are reasonably necessary for the Development Participants who become Unit 3 Participants to undertake Unit 3.

(b) Provide, or cause to be provided, to the Development Participants reasonable access to all documents and records in the possession or control of IPA, the Unit 1 and 2 Operating Agent or IPSC with respect to the planning, design, construction or operation of Units 1 and 2.

(c) Provide, or cause to be provided, to the Development Participants reasonable access to and the cooperation and assistance of the respective staffs of IPA, the Unit 1 and 2 Operating Agent and IPSC to assist the Development Participants in the conduct of Development Work; provided, however, such cooperation and assistance shall: (i) be subject to the time requirements of such staffs to perform their ordinary duties and obligations to IPA, the Unit 1 and 2 Operating Agent and IPSC, as applicable; (ii) be reasonable as to the time and days upon which, and the places at which, such cooperation and assistance is given; (iii) not require IPA, the Unit 1 and 2 Operating Agent, any Development Participant or IPSC to divulge Strategic Confidential Information; (iv) not include any activities, work or assistance that is the subject of or is to be provided under any Development Contract; and (v) not be required to the extent it is outside the scope of Cooperation Work.

(d) Provide the Development Participants and each Development Contractor access (the "*Access Rights*") to any IPP Facility for the purpose of conducting, at the Development Participants' expense, engineering and environmental studies and preparing physical plans and specifications in connection with the Unit 3 Project. The exercise of the Access Rights shall be at the sole risk of the Development Participants and Development Contractor, and, in using such Access Rights, each of them shall waive all claims that it may acquire against IPA or the Unit 1 and 2 Operating Agent as a result of any damage or injury that it may suffer in connection with the exercise of such Access Rights. In addition, the Development Participants shall provide to IPA and the Unit 1 and 2 Operating Agent, at the request of either, a waiver, in form and substance reasonably acceptable to IPA and the Unit 1 and 2 Operating Agent, pursuant to which each Person accessing any IPP Facility pursuant to this Section 3.2(d) waives all claims which he, she or it may acquire against IPA, the Unit 1 and 2 Operating Agent or IPSC in connection therewith.

(e) Provide support and assistance to the Development Participants in providing information with respect to the Unit 3 Project, and the future development thereof, to potential participants and Governmental Entities having jurisdiction or oversight with respect thereto.

(f) Cause the appropriate IPA and Unit 1 and 2 Operating Agent personnel to attend meetings of the Development Committee held at times and places that shall be reasonably agreeable to such personnel or to participate by telephone conferencing at times reasonably agreeable to such personnel.

(g) Provide such other assistance and support to the Development Committee and any Development Contractors as may be reasonably necessary to expedite and facilitate the performance and completion of the Development Work.

Section 3.3 *Subscription Notice.*

(a) If the Development Participants determine to proceed to the construction phase of the Unit 3 Project, IPA shall, at the request of the Development Committee and subject to Section 5.1(l), (n) and (o), make an offer by giving the Subscription Notice as provided in Section 10.1(b) of the Development Agreement that satisfies, with respect to participation in the Unit 3 Project, the requirements of Section 11-13-301 of the Interlocal Act. The form and substance of the Subscription Notice and the manner in which it will be given will be subject to the approval of the Development Committee.

(b) Neither IPA nor any of the other Parties shall have any liability to any other Party if the Subscription Notice fails to comply with Section 11-13-301 of the Interlocal Act, nor any responsibility to defend or pay the cost of defending any action or proceeding brought to challenge the adequacy of the Subscription Notice.

Section 3.4 *Assignment of Steering Committee Work Product.* Subject to the terms and conditions of this Agreement, IPA and UAMPS shall assign and transfer to the Development Participants all of their right, title and interest in and to the Steering Committee Work Product in accordance with this Section 3.4 in consideration of the agreement pursuant to the Development Agreement by the Development Participants to pay Category 1 Study Expenses and Category 2 Study Expenses. Promptly following the Development Coordination Agreement Effective Date, IPA and UAMPS shall execute and deliver to the Development Committee, on behalf of the Development Participants, a Bill of Sale and Assignment in the form of *Exhibit B* attached hereto. Thereupon, IPA and UAMPS shall deliver or cause to be delivered to the Development Committee upon its request, Media or copies of all Media containing Steering Committee Work Product. The assignment and transfer of the Steering Committee Work Product to the Development Participants pursuant to this Section 3.4 shall be subject to the condition, in addition to any other conditions set forth in this Agreement or the above-referenced Bill of Sale and Assignment, that all right, title and interest in and to the Steering Committee Work Product shall immediately and automatically be vested in and transferred, assigned and delivered to IPA if: (i) the Development Agreement terminates other than pursuant to Section 16.1(b) thereof; (ii) the Development Agreement having terminated pursuant to Section 16.1(b) thereof, the construction of Unit 3 does not thereafter commence within the time period contemplated by the Project Agreements; (iii) the construction of Unit 3 having commenced, such construction is thereafter permanently abandoned prior to the completion of Unit 3; or (iv) the Development Participants fail to pay to the Study Participants the Category 1 Study Expenses or Category 2 Study Expenses in accordance with this Agreement and the Development Agreement. None of the Study Participants makes or will make any representation or warranty of any type or nature with respect to the Steering Committee Work Product, and each hereby disclaims any and all representations and warranties with respect to the accuracy, veracity, completeness or usefulness of the Steering Committee Work Product. It will be assigned and transferred, if at all, to the Development Participants in its "as-is," "where-is" condition, and the Development Participants and Development Committee will accept it in such condition and assume all risks of using or relying on the same. The Study Participants will reserve and retain non-exclusive rights to use and apply, and to keep or retain copies of Media containing, Steering Committee Work Product as set forth in *Exhibit B*.

Section 3.5 Limitations. The Parties acknowledge and agree that the proposed development of Unit 3 will be a substantial and challenging undertaking and that no assurance can be given by any Party that the Unit 3 Project will be determined to be feasible or that it will proceed to construction, completion and commercial operation. The Parties further acknowledge and agree that while they will each use their best efforts and will negotiate to reach agreement on the terms and provisions of the Project Agreements, nothing in this Agreement obligates any Party or the Unit 1 and 2 Operating Agent to enter into or approve any Project Agreement or otherwise take any action that it determines is contrary to its, or its rate payers', best interests or its legal or contractual duties or obligations. In particular, the Development Participants acknowledge and agree that (i) all agreements, responsibilities and undertakings of IPA and the Unit 1 and 2 Operating Agent under this Agreement are and shall be subject to their existing obligations and responsibilities under the existing IPP Agreements and (ii) neither IPA nor the Unit 1 and 2 Operating Agent is obligated to take any action that is inconsistent with its existing obligations under the IPP Agreements or which it reasonably determines will have a material adverse effect upon IPP or the IPP Participants.

Section 3.6 Payment of Expenses of IPA and the Unit 1 and 2 Operating Agent. Except as otherwise set forth in this Agreement, IPA, the IPP Coordinating Committee and the Unit 1 and 2 Operating Agent (subject to its right to reimbursement from IPA under the Construction Management and Operating Agreement) shall each pay their own expenses in performing their duties and obligations, or exercising their rights, under this Agreement. The Development Committee, however, shall, within 30 days after receiving an invoice therefor, reimburse or cause the Development Manager to reimburse IPA, the IPP Coordinating Committee, the Unit 1 and 2 Operating Agent and IPSC for expenses incurred by it in connection with any of the following:

(a) Any fee or charge that may be imposed upon it by any third party contractor for the release or providing of any information or the providing of any assistance requested by or on behalf of the Development Committee; and

(b) Expenses for travel of IPA, Unit 1 and 2 Operating Agent or IPSC personnel requested by or on behalf of the Development Committee so that such personnel may meet with or assist any Development Contractor in connection with the Development Work.

Article IV

IPA and Unit 1 and 2 Operating Agent Participation in Development Work

Section 4.1 Development Committee Meetings. The Development Committee shall cause the Chair of the Development Committee to give IPA and the Unit 1 and 2 Operating Agent written notice of each meeting of the Development Committee at the same time and in the same manner as notices of such meetings are given to the members of the Development Committee. IPA and the Unit 1 and 2 Operating Agent shall be entitled to attend, either in person or by telephone conferencing, all Development Committee meetings and to participate therein as a non-voting participant. The Development Participants shall consider, in good faith, any and all input IPA or the Unit 1 and 2 Operating Agent may provide at or in connection with

such meetings. Notwithstanding the foregoing, however, the Development Committee may exclude IPA and the Unit 1 and 2 Operating Agent from the portion of any Development Committee meeting during which Strategic Confidential Information with respect to which IPA or the Unit 1 and 2 Operating Agent is the Subject Party is to be discussed or considered. The exclusion of IPA or the Unit 1 and 2 Operating Agent from any such portion of such meeting shall not be construed as extinguishing or diminishing its right, pursuant to this Agreement or otherwise to approve or disapprove any matter relating to the Unit 3 Project, including, without limitation, any matter which is the subject of any such meeting.

Section 4.2 Development Committee Information. The Development Committee shall provide or cause the Chair of the Development Committee to provide to IPA and the Unit 1 and 2 Operating Agent any and all information that is provided by the Development Manager to the Development Participants, including, without limitation, meeting agendas, background materials for meeting agenda items and any and all other information provided for discussion or consideration by the Development Committee at any meeting thereof but excluding Strategic Confidential Information with respect to which IPA or the Unit 1 and 2 Operating Agent is the Subject Party. Such information shall be provided to IPA and the Unit 1 and 2 Operating Agent no later than the time it is provided to the Development Participants. Additionally, the Development Committee shall provide or cause to be provided to IPA and the Unit 1 and 2 Operating Agent, upon reasonable advance request and during working hours, full access to all Development Work Product.

Section 4.3 Development Committee Activities. With respect to each of the matters listed in subsections (a) through (f) of this Section 4.3, the Development Committee, subject to Section 6.1, shall keep IPA or cause IPA to be kept fully informed, on a current basis, of the Development Committee's plans, strategies and actions, permit IPA and the Unit 1 and 2 Operating Agent to attend all meetings with third parties in which the Development Committee, any Development Participant acting on behalf of the Development Committee or the Development Manager will participate, provide IPA reasonable advance notice of all such meetings, and consider, in good faith, any and all input IPA may have with respect to such matters. IPA may object to any aspect of the Development Participants', Development Committee's or Development Manager's activities, plans or proposals in connection with any such matter and, so long as such objection is based upon a reasonable good faith determination by IPA that the activity, proposal or plan would have a material adverse affect on any IPP Facility, including Units 1 and 2, or the IPP Participants, in their capacities as such, neither the Development Participants nor the Development Manager shall proceed in such matter until the objection of IPA is resolved in a mutually acceptable manner. If any such objection is given, IPA and the Development Committee shall cooperate to make mutually acceptable modifications to the matter in issue. Such matters shall include, without limitation, each of the following:

(a) The application for and obtaining of all Permits, or any amendment to or modification of any existing IPP Permit, required or desirable in connection with the Unit 3 Project, including, without limitation, all air and other environmental Permits and conditional use permits.

(b) The preparation, proposal and lobbying of any and all federal, state or local legislation necessary or desirable in connection with the Unit 3 Project.

(c) All substantial community and public relations activities, including the issuance of press releases, material meetings with state and local community officials and leaders and the negotiation of all community impact alleviation agreements and payments with respect to the Unit 3 Project.

(d) The proposal, negotiation and consummation of all agreements or arrangements with respect to taxes or fees in lieu of taxes with respect to the Unit 3 Project.

(e) The formulation of physical plans and specifications for the Unit 3 Project.

(f) The formulation and establishment of the payment obligation structure for the Unit 3 Project.

Section 4.4 IPA Development Contract. It is the intention of the Parties that IPA be provided the opportunity to serve as a Development Contractor under the Development Agreement for the purposes of providing, if needed, various accounting, management and administrative services. The Development Committee shall negotiate, in good faith, a Development Contract with IPA for such purposes. As such a Development Contractor, it is understood that IPA shall be acting as an independent contractor and not in its capacity as the owner of IPP and shall not incur any liabilities payable from IPP revenues or funds. Any Development Contract retaining IPA as a Development Contractor is subject to Section 5.3 and Section 16.13 of the Development Agreement.

Section 4.5 IPA Financial and Financing Services. IPA has developed considerable expertise in capital markets transactions from its experience since 1981 in financing the costs of Units 1 and 2. IPA desires to make this expertise available to the Development Committee in connection with the financing of the costs of Unit 3. During the term of this Agreement, the Development Committee shall investigate, and negotiate and consult with IPA regarding, the various financial or financing services that could be provided by IPA to facilitate and achieve the lowest practicable costs for the financing of the costs of Unit 3.

Section 4.6 Certain Items Requiring IPA Approval. IPA shall have the right to approve any matter regarding material designs, specifications, configurations, plans, construction methods and schedules and other similar matters with respect to the Unit 3 Project or the construction of Unit 3 which would or may have, in the reasonable judgment of IPA or the Unit 1 and 2 Operating Agent, a material adverse affect on any IPP Facility, including, without limitation, Units 1 and 2. Each such approval, if given, shall be given within a reasonable time after IPA obtains or is provided the necessary information to enable it to make a reasonable decision of whether or not to approve such matter. If such approval is withheld, IPA and the Development Committee shall cooperate to make mutually acceptable modifications to the matter in issue. Nothing in this Section 4.6 shall be construed as otherwise limiting the rights of IPA, the IPP Coordinating Committee or the Unit 1 and 2 Operating Agent in matters described in Section 3.5 or Section 4.3 of this Agreement.

Article V

Additional Covenants of Development Participants

Section 5.1 *Covenants of the Development Participants.* In addition to their other covenants and undertakings pursuant to this Agreement, each Development Participant shall instruct its representative on the Development Committee to cast such votes or otherwise take such actions as are necessary on such representative's part to direct, cause and authorize the Development Committee to:

(a) Provide IPSC and the Unit 1 and 2 Operating Agent reasonable advance notice of each site visit in connection with their exercise of the Access Rights (a "*Site Visit*"), and to conduct all Site Visits in accordance with such requirements as IPSC or the Unit 1 and 2 Operating Agent may impose for safety purposes, to protect each IPP Facility from damage, to minimize disruption to ongoing IPP operations or to coordinate such visits with the availability of appropriate IPSC or Unit 1 and 2 Operating Agent personnel to oversee such visits.

(b) Comply, and cause the Development Manager, all Development Contractors and any other Persons acting on behalf of the Development Committee *(a "Development Participant Entity")* to comply, with all Laws applicable to activities of or on behalf of the Development Committee in connection with the Unit 3 Project or at or in the vicinity of any IPP Facility.

(c) Promptly, at the request of the Unit 1 and 2 Operating Agent, repair, at the Development Committee's expense, any damage caused by the Development Committee or any Development Participant Entity to any IPP Facility, or, at the option of the Unit 1 and 2 Operating Agent, promptly reimburse IPA for any expenses incurred by it in repairing any such damage.

(d) In connection with the exercise of the Access Rights, to not, and to not permit any Development Participant Entity to: (i) install any permanent improvements or structures at or on any IPP Facility; (ii) materially alter, disturb, damage or remove any portion of any IPP Facility, except that the Development Participants may take reasonable soil samples for environmental soils analysis; or (iii) create any unsafe or hazardous condition at any IPP Facility.

(e) In connection with any and all activities at any IPP Facility, other than inspections not involving the use of tools, machinery or equipment, to use only reputable, appropriately licensed contractors.

(f) Promptly pay all contractors, vendors, material suppliers and laborers retained by it or the Development Manager to perform any Development Work and, if any such contractor, vendor, material supplier or laborer files any mechanics', material providers' or other lien on any IPP Facility, to promptly take such action as may be necessary to remove such lien.

(g) Prior to the commencement of work, provide all Development Participant Entities performing any work at or in the vicinity of any IPP Facility written notice that the

Development Committee or Development Manager, as applicable, are retaining the contractor, and that neither IPA nor the Unit 1 and 2 Operating Agent shall have any duty or obligation with respect to any amounts that may become due and payable to any such Development Participant Entity.

(h) Within five days after providing any notice referenced in clause (g) to provide a copy thereof to IPA and the Unit 1 and 2 Operating Agent.

(i) Obtain and maintain in force, and to cause each Development Participant Entity to obtain and maintain in force, in connection with all activities at or in the vicinity of any IPP Facility, commercial general liability insurance with minimum policy limits of at least $1,000,000.00 per occurrence, which insurance shall be in forms and with insurers acceptable to IPA and the Unit 1 and 2 Operating Agent, in their reasonable discretion.

(j) Without the prior written consent of IPA (which consent shall not be unreasonably withheld), not file any application or make any request for any Permit relating to or in connection with the Unit 3 Project, or to modify or supplement any existing Permit relating to Units 1 and 2.

(k) Not cause or allow any amendment, modification or supplement to the Development Agreement, or written or express waiver of any right or remedy of any party thereunder without first providing IPA a copy of the proposed amendment modification, supplement or waiver and providing it a reasonable time period to review and disapprove the same; provided, however, no such disapproval shall be given unless the item for which such disapproval is given would adversely affect, or may have an adverse effect on, any right or protection IPA or the Unit 1 and 2 Operating Agent may have under the Development Agreement or have a material adverse affect on any IPP Facility, including Units 1 and 2.; and further provided that if any such disapproval is given, IPA and the Development Committee shall cooperate, in good faith, to make the necessary modifications to the matter that is disapproved so that such matter is mutually acceptable.

(l) Not allow any Person to become a Development Participant or a Unit 3 Participant, or to succeed, whether by assignment or otherwise, to any interest of any Development Participant or Unit 3 Participant, under the Development Agreement, unless such Person shall then be a Qualified Electric Entity (unless IPA gives its written consent otherwise).

(m) Before the IPA/Unit 1 and 2 Operating Agent Project Documents are executed and delivered, obtain the written approval of IPA of the scope and nature of the Unit 3 Project as determined by the Development Committee.

(n) Negotiate in good faith for the consummation of the definitive Common Facilities Agreement, Joint Operating Agreement and all other IPA/Unit 1 and 2 Operating Agent Project Documents that are reasonably necessary for the Development Participants who become Unit 3 Participants to undertake the Unit 3 Project. No party to this Agreement shall be required to enter into any such agreement or document unless all such agreements and documents are in form and substance acceptable to such party. Without limiting the generality of the foregoing, IPA shall not enter into the definitive Common Facilities Agreement or the Joint

Operating Agreement unless any adverse effect on the Federal tax exempt status of interest on IPA bonds or other debt securities resulting from entering into or performance under such Agreements shall have been remediated in accordance with the Internal Revenue Code and the regulations thereunder or provision shall be made for such remediation, and any and all additional payments of debt service or other amounts with respect to IPA bonds or other debt securities and other costs and expenses incurred or to become payable by IPA due to such remediation shall be paid or payment thereof provided for by one or more of the Development Participants or Unit 3 Participants in such amounts and in such manner as shall be reasonably acceptable to IPA so that IPA shall be fully indemnified and held harmless from all such payments, amounts, costs and expenses.

(o) If IPA determines that the election of any Development Participant or other entity to become a Unit 3 Participant would adversely affect the federal tax exempt status of any IPA bonds or other debt securities, prior to the effectiveness of such election, provide and make provision for remediation of the adverse effect on such tax exempt status so that IPA shall be indemnified and held harmless as a result of such remediation, all with the same effect and as provided for in Section 5.1(n) above.

Section 5.2 IPA Rights to Development Work. As further consideration to IPA for its undertakings pursuant to this Agreement, all right, title and interest in and to the Development Work and Development Work Product (other than any equipment to be sold pursuant to Section 16.1(d) of the Development Agreement) shall immediately and automatically be vested in and transferred, assigned and delivered to IPA if: (i) the Development Agreement terminates other than pursuant to Section 16.1(b) thereof; (ii) the Development Agreement having terminated pursuant to Section 16.1(b) thereof, the construction of Unit 3 does not thereafter commence within the time period contemplated by the Project Agreements; or (iii) the construction of Unit 3 having commenced, such construction is thereafter permanently abandoned prior to the completion of Unit 3. Each of the Development Participants shall retain for a period of 3 years following such termination of this Agreement a non-exclusive license to use such Development Work and Development Work Product or any right, title or interest therein acquired by IPA pursuant to this Section 5.2 in connection with matters unrelated to Unit 3.

Article VI

Access to Information

Section 6.1 Confidential Information.

(a) The Development Participants will keep confidential and not use, reveal, provide or transfer to any third party any IPP Confidential Information it obtains or has obtained except to Development Contractors as necessary for purposes of performing Development Work or to the extent that disclosure to a third party is required by Law. Prior to disclosing IPP Confidential Information to any Development Contractor, the Development Committee shall cause the Development Contractor to execute, for the benefit of IPA a confidentiality agreement with respect to such Information in form and substance reasonably satisfactory to IPA. Copies of each such confidentiality agreement shall be promptly provided to IPA by or on behalf of the

Development Committee. Prior to disclosing IPP Confidential Information to a third party where such disclosure is required by Law, the Development Participant subject to such requirement shall (A) promptly notify IPA in writing of the existence, terms and circumstances of such requirement so IPA may seek any appropriate protective order or waive compliance with the confidentiality terms of this Agreement; and (B) cooperate fully with IPA to seek whatever order or assurance is necessary to ensure that confidential treatment will be accorded to the IPP Confidential Information.

(b) If any Development Participant, inadvertently or otherwise, makes an unauthorized disclosure of IPP Confidential Information to a third party, the violating Development Participant shall immediately take reasonable action to recover the improperly disclosed IPP Confidential Information, execute a retroactive protective agreement with the unauthorized third party if possible, and immediately notify IPA about the unauthorized disclosure and the corrective measures taken. The Parties agree that monetary damages are inadequate for any breach involving an unauthorized disclosure when IPA reasonably believe(s) it will suffer material harm from the unauthorized disclosure. If IPA reasonably believe(s) that it will suffer material harm from the unauthorized disclosure, and the corrective measures taken by the violating Development Participant are inadequate to mitigate this harm, the Parties agree that IPA shall be entitled to prompt injunctive relief. The Parties' other legal and equitable remedies and defenses remain unchanged by this provision except that each Party specifically agrees that any damages shall be limited to direct actual damages and in no event shall such damages include any indirect, consequential, or punitive damages.

(c) IPA will keep confidential and not use, reveal, provide or transfer to any third party any Unit 3 Confidential Information or Development Participant Confidential Information it obtains or has obtained except to the extent disclosure to a third party is necessary to perform its duties and obligations under this Agreement or the IPP Agreements, or to the extent that disclosure to a third party is required by Law. Prior to disclosing Unit 3 Confidential Information or Development Participant Confidential Information to any third party (except where the disclosure is required by Law), IPA shall notify the Development Committee or, in the case of Development Participant Confidential Information, the affected Development Participant, of such proposed disclosure and shall cause the third party to whom such disclosure is to be made to execute, for the benefit of the affected Development Participant or Participants, a confidentiality agreement with respect to such Information in form and substance reasonably satisfactory to the Development Committee or, in the case of Development Participant Confidential Information, reasonably satisfactory to the affected Development Participant. A copy of each such confidentiality agreement shall be promptly provided by IPA to the Development Committee or the affected Development Participant, as the case may be. Prior to disclosing Unit 3 Confidential Information or Development Participant Confidential Information to a third party where such disclosure is required by Law, IPA and/or the Unit 1 and 2 Operating Agent subject to such requirement shall (A) promptly notify the Development Committee, or in the case of Development Participant Confidential Information, the affected Development Participant, in writing of the existence, terms and circumstances of such requirement so the Development Committee or affected Development Participant may seek any appropriate protective order or waive compliance with the confidentiality terms of this Agreement; and (B) cooperate fully with the Development Committee or affected Development Participant to seek

whatever order or assurance is necessary to ensure that confidential treatment will be accorded to the Unit 3 Confidential Information or Development Participant Confidential Information, as the case may be. The Development Agreement, and not this Agreement, shall govern the disclosure by IPA, when acting in its capacity as Development Manager, Unit 3 Confidential Information or Development Participant Confidential Information.

(d) If IPA inadvertently or otherwise, makes an unauthorized disclosure of Unit 3 Confidential Information or Development Participant Confidential Information to a third party, IPA shall immediately take reasonable action to recover the improperly disclosed Unit 3 Confidential Information or Development Participant Confidential Information, execute a retroactive protective agreement with the unauthorized third party if possible, and immediately notify the Development Committee or affected Development Participant about the unauthorized disclosure and the corrective measures taken. The Parties agree that monetary damages are inadequate for any breach involving an unauthorized disclosure when the Development Committee or affected Development Participant reasonably believes it will suffer material harm from the unauthorized disclosure. If the Development Committee or affected Development Participant reasonably believes that it will suffer material harm from the unauthorized disclosure, and the corrective measures taken by IPA are inadequate to mitigate this harm, the Parties agree that the Development Committee or affected Development Participant shall be entitled to prompt injunctive relief. The Parties' other legal and equitable remedies and defenses remain unchanged by this provision except that each Party specifically agrees that any damages shall be limited to direct actual damages and in no event shall such damages include any indirect, consequential, or punitive damages.

Section 6.2 *Use of Work Product.* Each Party shall have a non-assignable license to use Media or reproductions of Media containing any or all Development Work Product, other than Development Participant Confidential Information, in connection with any other project in which that Party is involved so long as any such use is not to the detriment of the Unit 3 Project and does not breach such Party's obligations under Section 6.1 of this Agreement. Upon receipt of reasonable advance notice, each Party shall make available for inspection or copying by any other Party any and all Media containing Development Work Product within its possession or control which such other Party is entitled to use under this Section 6.2.

Article VII

Indemnification; Limitation of Liability; Survival

Section 7.1 *Indemnification.* Subject to Section 7.5, the Development Participants shall indemnify, defend and hold harmless IPA and the Unit 1 and 2 Operating Agent from and against all costs and expenses, including reasonable attorneys' fees and court costs, incurred by IPA, the Unit 1 and 2 Operating Agent or IPSC in defending or protecting itself or its interests in connection with any lawsuit or other action that the board of directors of IPA or IPP Coordinating Committee determine, in good faith, was or is directly or indirectly initiated or pursued by any Person primarily to stop, limit, modify or impose additional requirements on the Unit 3 Project or any aspect thereof. Upon the initiation of any such lawsuit or other action, IPA, the Unit 1 and 2 Operating Agent and the Development Committee shall, in good faith, negotiate

a litigation reserve which shall be funded by the Development Participants, the amount of which shall take into account the Development Costs Limit established by the Development Agreement on the payment obligations of the Development Participants. The obligations of the Development Participants under this Section 7.1 shall not require them to pay amounts in excess of the amount of such litigation reserve.

Section 7.2 *Limitation of Liability and Indemnification of Parties.* Except for a breach arising from a Party's failure to make any payment it is required to make under this Agreement or as provided in Section 7.3, below, no Party hereto nor the Unit 1 and 2 Operating Agent, nor IPSC, nor any of their respective officers, employees or agents shall be liable for damages to any other Party for any act or failure to act, whether by negligence or otherwise, arising out of or pertinent to this Agreement.

Section 7.3 *Exclusions.* The provisions set forth in Section 7.2 shall apply to all types of claims or actions including, but not limited to, claims or actions based on contract, tort, patent or trademark, except that such provisions shall not relieve any Party or its officers, employees or agents from liability for direct damages resulting from acts of intentional wrongdoing or acts of gross negligence. For purposes of this Section 7.3, direct damages shall include, in addition to any other elements of damage included in such term under applicable Law, any profit received by a Party as a result of its intentional wrongdoing or gross negligence, but otherwise shall not include loss of profits or revenues or any other indirect, special, incidental or consequential damages.

Section 7.4 *Insurance.* The provisions of this Article VII shall not be construed so as to relieve any insurer of its obligation to pay any insurance proceeds in accordance with the terms and conditions of any insurance policy.

Section 7.5 *Responsibility of Individual Development Participants.* The obligations of the Development Participants to make any payment to IPA or the Unit 1 and 2 Operating Agent or to any third party on behalf of IPA or the Unit 1 and 2 Operating Agent shall constitute the several obligations of each Development Participant, with each Development Participant being liable only for the portion of such payment obligation that corresponds to its Development Cost Share (or its Augmented Development Cost Share during the Transition Period, if applicable). Notwithstanding any other provision of this Agreement, no Development Participant shall be liable for any obligation under this Agreement arising after it shall no longer be a Development Participant under the terms of the Development Agreement or in excess of its pro rata share of the Development Costs Limit, as set forth in the Development Agreement.

Section 7.6 *Survival Clause.* The following shall survive the termination of this Agreement: (i) all claims, causes of action, rights and remedies that may arise in favor of any Party as the result of any breach or default on the part of any other Party; (ii) any provision of this Agreement governing, related to or applicable to any such claim, cause of action, right or remedy; and (iii) Section 3.6 and Articles VI and VII of this Agreement.

Article VIII

Miscellaneous

Section 8.1 Effective Date and Termination. Upon the Development Agreement becoming effective this Agreement shall become effective on the Development Coordination Agreement Effective Date when it is duly executed and delivered by all of the Parties (other than Future Development Participants) and shall terminate immediately upon the termination of the Development Agreement in accordance with its terms.

Section 8.2 Amendments. This Agreement may be amended only by a written amendment signed by all of the Parties hereto.

Section 8.3 Entire Agreement. This Agreement, including, without limitation, the portions of the Development Agreement incorporated or referenced herein contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes any and all prior agreements, understandings and negotiations with respect to such subject matter.

Section 8.4 Relationship of Parties. The covenants, obligations and liabilities of the Parties under this Agreement are several and not joint or collective and nothing herein contained shall ever be construed to create an association, joint venture, trust, partnership or other legal entity or to impose a trust or partnership covenant, obligation of liability on or with regard to any one or more of the Parties. Each Party shall be individually responsible for its own covenants, obligations and liabilities under this Agreement. No Party shall be under the control of or shall be deemed to control any other Party. Except as otherwise provided in this Agreement, no Party shall be the agent of or have a right or power to bind any other Party without its express written consent.

Section 8.5 Rights in Third Parties Created. Each of the Study Participants, in its capacity as Study Participant, shall be a third party beneficiary of the provisions of Section 3.4. The Unit 1 and 2 Operating Agent shall be a third party beneficiary of any and all provisions of this Agreement that, by their terms, expressly mention the Unit 1 and 2 Operating Agent. Except as provided in this Section 8.5, this Agreement does not create any rights in or grant remedies to any third party as a beneficiary of this Agreement or create for the benefit of any third party any duty or standard of care by any covenant, obligation or undertaking established herein.

Section 8.6 Arbitration; Attorneys Fees and Other Costs. (a) If a dispute arises between any of the Parties under this Agreement, all of the disputing Parties may submit the dispute to such form of arbitration as they may agree.

(b) In any dispute between or among the Parties under this Agreement, each Party shall pay its own attorney fees and costs.

(c) If the Parties to the dispute do not agree to arbitrate the matter, then each Party shall have all rights and remedies available to it at law or in equity and may enforce such rights and remedies in any court of competent jurisdiction.

Section 8.7 Notices. (a) Any notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given, or made if delivered in person or sent by registered or certified mail, postage prepaid, or by facsimile or other electronic transmission to the applicable Party at the address set forth below its signature hereto.

(b) Any Party may, at any time, by written notice to the other Parties, designate different persons or different addresses for the giving of notices hereunder.

Section 8.8 Headings Not Binding. The headings and captions in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 8.9 Severability. If any provision of this Agreement shall be determined to be invalid or unenforceable in any respect, such determination shall not affect any other provision hereof, which shall remain in full force and effect.

Section 8.10 Governing Law. This Agreement shall be interpreted, governed by and construed under the laws of the State of Utah, provided that the laws of the State under which a Party was created, shall determine the authority of such Party to execute and perform its obligations under this Agreement.

Section 8.11 Independent Decision of Parties. (i) Each Party is acting for its own account, has been represented by attorneys selected by it in connection with the negotiation and execution of this Agreement, and has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment and upon advice from such attorneys and other advisers as it has deemed necessary, (ii) such Party is not relying on any communication (written or oral) of any other Party as advice or as a recommendation to enter into this Agreement; it being understood that information and explanations related to the terms and conditions of this Agreement shall not be considered advice or a recommendation to enter into this Agreement, (iii) no communication (written or oral) received by a Party from any other Party shall be deemed to be an assurance or guarantee as to the expected results of this Agreement, (iv) such Party is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of this Agreement and it is also capable of assuming, and assumes, the risks of this Agreement, and (v) none of the Parties is acting as a fiduciary for or an adviser to any other Party in respect of this Agreement.

Section 8.12 Opinions of Counsel and Other Documentation. The execution and delivery of this Agreement, including any counterpart hereof, by each Development Participant shall be accompanied by an opinion of counsel in form and substance satisfactory, and addressed, to IPA, together with such other evidences and documentation as IPA shall reasonably request.

Section 8.13 IPP Agreements. Nothing in this Agreement shall be construed as changing, waiving or otherwise affecting any rights or obligations of any party to any of the IPP Agreements.

Section 8.14 Execution in Counterparts. This Agreement may be executed in multiple counterparts (by original or facsimile signature), each of which shall constitute one and the same agreement.

[Signature Page Follows]

In Witness Whereof, the Parties have caused this Agreement to be executed by their respective authorized signatories, all as of the date first written above.

INTERMOUNTAIN POWER AGENCY

By: Reed T. Searle
Reed T. Searle, General Manager

Address: 10653 South River Front
Parkway Suite 120
South Jordan, Utah 84095
Attention: General Manager
Telephone: (801) 938-1333
Facsimile: (801) 938-1330

UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS

By: Douglas Hunter
Print Name: Douglas O. Hunter
Title: General Manager
Date: May 9, 2005
Address: 2825 East Cottonwood Parkway, Suite 200
Salt Lake City, Utah 84121
Attention: General Manager
Telephone: (801) 566-3938
Facsimile: (801) 561-2687

SEMPRA GENERATION

By: _____
Print Name: _____
Title: _____
Date: _____
Address: 101 Ash Street HQ14D
San Diego, California 92101-3017
Attention: _____
Telephone: _____
Facsimile: _____

CITY OF GLENDALE

By: _____
Print Name: Ignacio R. Troncoso
Title: Director of Glendale *Water & Power*
Date: 5/26/05
Address: 141 North Glendale Avenue, Level 4
Glendale, California 91206
Attention: Director of Glendale *Water & Power*
Telephone: 818-548-2107
Facsimile: 818-552-2852

APPROVED AS TO FORM
_____
Senior Assistant City Attorney
DATE 5/26/05

PACIFICORP

By: _____
Print Name: _____
Title: _____
Date: _____
Address: 201 South Main Street, Suite 2200
Salt Lake City, Utah 84111
Attention: _____
Telephone: _____
Facsimile: _____

CITY OF GLENDALE

By:_____
Print Name:_____
Title:_____
Date:_____
Address: 141 North Glendale Avenue, Level 4
Glendale, California 91206
Attention: _____
Telephone: _____
Facsimile: _____

PACIFICORP

By: B G Cunningham
Print Name: Barry G. Cunningham
Title: Sr. Vice President
Date: May 19, 2005
Address: 201 South Main Street, Suite 2200
Salt Lake City, Utah 84111
Attention: Barry G. Cunningham
Telephone: 801.220.4589
Facsimile: 801.220.4589

CITY OF GLENDALE

By:_____
Print Name:_____
Title:_____
Date:_____
Address: 141 North Glendale Avenue, Level 4
Glendale, California 91206
Attention: _____
Telephone: _____
Facsimile: _____

PACIFICORP

By:_____
Print Name:_____
Title:_____
Date:_____
Address: 201 South Main Street, Suite 2200
Salt Lake City, Utah 84111
Attention: _____
Telephone: _____
Facsimile: _____

SOUTHERN NEVADA WATER AUTHORITY

By: P Mulroy
Print Name: PATRICIA MULROY
Title: General Mgr.
Date: 1-5-05
Address: 1900 East Flamingo Road
Las Vegas, Nevada 89119
Attention: Scott Krantz
Telephone: (702) 691-5240
Facsimile: (702) 691-5220

CITY OF GLENDALE

By:_____
Print Name:_____
Title:_____
Date:_____
Address: 141 North Glendale Avenue, Level 4
Glendale, California 91206
Attention: _____
Telephone: _____
Facsimile: _____

PACIFICORP

By:_____
Print Name:_____
Title:_____
Date:_____
Address: 201 South Main Street, Suite 2200
Salt Lake City, Utah 84111
Attention: _____
Telephone: _____
Facsimile: _____

SOUTHERN NEVADA WATER AUTHORITY

By: P Mulroy
Print Name: PATRICIA MULROY
Title: General Mgr.
Date: 7-5-05
Address: 1900 East Flamingo Road
Las Vegas, Nevada 89119
Attention: Scott Krantz
Telephone: (702) 691-5240
Facsimile: (702) 691-5220

EXHIBIT B

INTERMOUNTAIN POWER PROJECT UNIT THREE
DEVELOPMENT AGREEMENT

DATED AS OF MAY 1, 2005

AMONG

DEVELOPMENT PARTICIPANTS
SET FORTH IN EXHIBIT A HERETO

AND

INTERMOUNTAIN POWER AGENCY,
AS DEVELOPMENT MANAGER

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INTERMOUNTAIN POWER PROJECT UNIT THREE
DEVELOPMENT AGREEMENT

This Development Agreement, dated as of May 1, 2005 (this *"Agreement"*), among the Development Participants set forth in *Exhibit A* hereto, as it may be modified from time to time in accordance with this Agreement (collectively, the *"Development Participants"*), and Intermountain Power Agency ("*IPA*"), in its capacity as Development Manager hereunder (the *"Development Manager"*), is made with reference to the following:

RECITALS

Pursuant to the provisions of the Study Agreement, the Study Participants have formed the Steering Committee which has caused initial studies and analyses to be conducted with respect to the feasibility of constructing Unit 3 at the IPP site.

The Steering Committee produced, and completed in January, 2003, its IPP Unit 3 Summary Package and Subscription Material, which summarizes the results of these studies and analyses and calls for interested parties to indicate their interest in participating in the development of Unit 3.

Development Participants have indicated their interest in participating in the development of Unit 3 and now desire to enter into this Agreement in order to:

- describe the scope and provide for the performance of the Development Work by the Development Manager,

- establish the Development Committee to supervise and direct the Development Work and the undertakings of the Development Manager and the Development Participants under this Agreement,

- provide for the funding of Development Costs through the payment by the Development Participants of their Development Costs Shares (or Augmented Development Costs Shares, if applicable),

- describe the process under which the Development Participants may elect to become Unit 3 Participants, and

- provide for the negotiation and preparation of Project Agreements for Unit 3 that are acceptable to the Unit 3 Participants.

Therefore, in consideration of the terms of this Agreement and the mutual covenants and agreements contained in this Agreement, the Development Participants and the Development Manager agree as follows:

ARTICLE I

DEFINITIONS AND CONSTRUCTION

Section 1.1. Definitions. The following terms when used in this Agreement have the following meanings:

"*Air Permit*" means the Approval Order issued for Unit 3 by the Division of Air Quality of the Utah Department of Environmental Quality.

"*Air Permit Incurred Costs*" means those costs incurred by the Study Participants in connection with or related to the Air Permit, and which costs are identified as Air Permit Incurred Costs on *Schedule 1*, which costs include, without limitation, costs incurred by the Study Participants to apply for, obtain or defend any lawsuit or other procedure challenging the Air Permit. Air Permit Incurred Costs constitute Category 1 Study Expenses.

"*Air Permit Prosecution Agreement*" means an agreement among the Development Committee Participants to prosecute the Air Permit as referenced in Section 3.7.

"*Augmented Development Costs Share*" means, as to a particular Development Participant and as of any particular time, such Development Participant's Development Costs Share as then set forth in *Exhibit A* plus such Development Participant's Incremental Development Costs Share at such time.

"*Category 1 Study Expenses*" means those expenses incurred in connection with the initial investigation and analysis of the development of Unit 3 pursuant to the Study Agreement which (i) constitute items of "Development Work Costs" under (and as defined in) the Study Agreement, (ii) have been classified by the Steering Committee as "category 1 expenses" in accordance with its Statement of Policy and (iii) are listed on *Schedule 1*. Category 1 Study Expenses constitute Development Costs under this Agreement and shall be reimbursed to the Study Participants by the Development Participants as and to the extent provided in Section 2.1.

"*Category 2 Study Expenses*" means those expenses incurred in connection with the initial investigation and analysis of the development of Unit 3 pursuant to the Study Agreement which (i) constitute items of "Development Work Costs" under (and as defined in) the Study Agreement, (ii) have been classified by the Steering Committee as "category 2 expenses" in accordance with its Statement of Policy and (iii) are listed on *Schedule 2*. Category 2 Study Expenses do not constitute Development Costs under this Agreement and shall be reimbursed to the Study Participants only by Unit 3 Participants as and to the extent provided in Section 10.6.

"*Common Facilities*" means those facilities, rights and interests acquired or constructed as a part of Units 1 and 2 that will be utilized, together with certain additions thereto and modifications thereof, in the construction and operation of Unit 3.

"*Common Facilities Agreement*" means the agreement or agreements providing for the acquisition of interests in the Common Facilities (or other rights to the use of the Common

Facilities) by the Unit 3 Participants, and the utilization and operation of these interests and rights in connection with Unit 3.

"Construction Management and Operating Agreement" means the Construction Management and Operating Agreement dated as of September 12, 1980, as amended, between IPA and the Unit 1 and 2 Operating Agent relating to the construction and operation of Units 1 and 2 and the other facilities and assets comprising IPP.

"Department" means The City of Los Angeles by and through the Department of Water and Power.

"Development Committee" means the committee established under Section 3.1.

"Development Committee Participants" means each Development Participant, each Development Manager serving from time to time and IPA in its capacity as owner of Units 1 and 2.

"Development Contract" means a contract between the Development Participants or the Development Manager, as the case may be, and a Development Contractor.

"Development Contractor" means any person retained by the Development Participants or the Development Manager, as the case may be, to perform any part of the Development Work pursuant to a Development Contract.

"Development Coordination Agreement" means the Development Coordination Agreement of even date herewith among IPA and the Development Participants providing for the development of Unit 3 in coordination with the existing ownership and operation of Units 1 and 2.

"Development Costs Share" means each Development Participant's percentage share of Development Costs as set forth on *Exhibit A*, as such shares may be adjusted pursuant to Sections 9.3, 9.4, 9.5, 9.7, 13.4, 14.2 and 15.2.

"Development Costs" means (1) Category 1 Study Expenses, plus (2) all costs and expenses necessary or desirable to complete Development Work as described in Section 6.4.

"Development Costs Limit" is defined in Section 6.1(a).

"Development Manager" means IPA in its capacity as Development Manager as provided in Section 5.1 and any entity appointed by the Development Committee to replace the Development Manager.

"Development Participants" means, as of any particular time, the parties then set forth in *Exhibit A* and their respective successors and assigns in accordance with Article XIV of this Agreement.

"Development Work" means all work and activities undertaken for the benefit of the Development Participants that is necessary or desirable in connection with the development of Unit 3.

"Effective Date" is defined in Section 16.1.

"Full Subscription Period" means the period commencing on the Effective Date and ending on the date of termination of this Agreement pursuant to Section 16.1(b) or (c).

"Governmental Entity" means any federal, state, interstate or local governmental entity, authority, agency, board, commission, council, county, municipality, department, district, division or political subdivision.

"Incremental Development Costs Share" means, as to a particular Development Participant and as of any particular time, such Development Participant's Relative Development Costs Share at such time multiplied by the sum of the Unsubscribed Development Costs Shares (stated as a percentage) at such time. A Development Participant's Incremental Development Costs Share shall be adjusted to reflect changes pursuant to this Agreement in such Development Participant's Relative Development Costs Share and the Unsubscribed Development Costs Shares.

"Initial Budget" is defined in Section 6.2.

"Interlocal Act" means the Utah Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated 1953, as amended.

"IPA" means Intermountain Power Agency as the owner of IPP and a party to the IPP Agreements, except that when express reference in this Agreement is made to IPA acting in its capacity as Development Manager, *"IPA"* means Intermountain Power Agency acting only in its capacity as an independent contractor and not as the owner of IPP or a party to the IPP Agreements.

"IPP" means the Intermountain Power Project.

"IPP Agreements" means the Units 1 and 2 Power Sales Contracts and the other Project Agreements as defined in the Construction Management and Operating Agreement, together with the resolution or other action of the Unit 1 and 2 Coordinating Committee authorizing IPA to enter into and perform its obligations under the Development Coordination Agreement and providing other terms and conditions relating to IPA's association or involvement with or performance of Unit 3 matters or activities.

"Joint Operating Agreement" means the agreement or agreements providing for the operation of Unit 3 in coordination with Units 1 and 2.

"Joint Ownership Agreement" means the agreement that provides for multiple ownership interests in Unit 3 and the respective rights and obligations of the co-owners with respect to Unit 3.

"Joint Powers Agency" means (i) an interlocal entity created pursuant to the Interlocal Act, or (ii) any other separate public body, agency or entity created by agreement of two or more public bodies, agencies or entities that become members thereof which agreement is entered into for purposes which include developing, purchasing, constructing or operating any project that consists of electric generation or transmission facilities or capacity entitlements or any interest therein on behalf of such member public bodies, agencies or entities that participate in such project.

"JPA Participant" means a public body, agency or entity that is a member of a Joint Powers Agency and a party to a JPA Participant Agreement with such Joint Powers Agency.

"JPA Participant Agreement" means, with respect to a JPA Participant and the Joint Powers Agency of which it is a member, (i) an agreement or other arrangement entered into by the JPA Participant with such a Joint Powers Agency that is a Development Participant which provides for the JPA Participant to pay its share of the Development Costs Share (or Augmented Development Costs Share during the Transition Period, if applicable) of such Joint Powers Agency, or (ii) an agreement entered into by the JPA Participant with such Joint Powers Agency that provides for an unconditional obligation of the JPA Participant to pay its share of such Joint Powers Agency's share of its costs as a Unit 3 Participant including all capital costs, debt service, operating and maintenance expense and renewal and replacement costs.

"JPA Participant Share" means, with respect to a JPA Participant, the share that such JPA Participant is obligated to pay under a JPA Participant Agreement with a Joint Powers Agency of which it is a member of the costs of such Joint Powers Agency payable by it as a Development Participant or as a Unit 3 Participant under the Project Agreements, as the case may be.

"Project Agreements" means the Common Facilities Agreement, the Joint Ownership Agreement, the Joint Operating Agreement, the agreements providing for the construction and operation of Unit 3 and any other agreement or agreements designated as a Project Agreement by the Development Committee. *"Project Agreements"* does not include the Study Agreement or any JPA Participant Agreement.

"Qualified Electric Provider" means any Governmental Entity or any corporation, partnership, limited liability company, trust or association, including any wholly owned subsidiary (which subsidiary may be a corporation, partnership, limited liability company, trust or association, of any such entity, whose financial obligations are guaranteed by its parent entity) that, in each case, (i) provides electric services at wholesale or retail, (ii) has been assigned, or in the case of such a wholly owned subsidiary whose obligations are so guaranteed, its guaranteeing parent entity has been assigned, a long-term senior debt rating of, or has outstanding debt obligations rated (without regard to any credit enhancement), at least "Baa1" by Moody's Investors Service or "BBB+" by Standard & Poor's Credit Market-Services, or the

creditworthiness of which is otherwise approved by the Development Committee, and (iii) has met the requirements of Section 5.1(l) of the Development Coordination Agreement.

"Reimbursement Rate" means, at any particular time, the per annum interest rate equal to the cost of IPA funds (net of any credit for investment earnings) calculated with respect to its outstanding debt as set forth in IPA's most recent monthly report submitted to the IPA Board of Directors as shall be furnished to the Development Manager at its request and made available to the Development Committee.

"Reimbursement Share" means, as to a particular Transition Development Participant and as of any particular time, the decimal amount (stated as a percentage), obtained by dividing (i) the Unsubscribed Development Costs Share assigned to such Transition Development Participant by (ii) the aggregate of all then outstanding Unsubscribed Development Costs Shares including the Unsubscribed Development Costs Share assigned to such Transition Development Participant.

"Relative Development Costs Share" means, as to a particular Development Participant and as of any particular time, the decimal amount (stated as a percentage) that is obtained by dividing (i) such Development Participant's Development Costs Share by (ii) the aggregate Development Costs Shares of all of the Development Participants including such Development Participant, all as then set forth in *Exhibit A*.

"Requesting Unit 3 Participants" has the meaning assigned to it in Section 10.3(a)(1).

"Steering Committee" means the committee by that name established by the Study Participants under the Study Agreement.

"Steering Committee Work Product" means: (a) all definitive studies, reports, subscription materials, memoranda, plans, specifications, meeting minutes and other work product developed, or tangible or intangible property obtained, under the Study Agreement; and (b) all right, title and interest of any Study Participant in the Air Permit. Steering Committee Work Product shall not include any document or item prepared by any Study Participant for its own use nor any document containing a communication between a Study Participant and its attorney unless such communication was provided to each of the other Study Participants.

"Study Agreement" means the Unit Three Study Participation Agreement effective October 12, 2001 among the Study Participants.

"Study Cost Participation Share" means with respect to Category 1 Study Expenses the following percentage shares: Department 41.666%, IPA 16.6667%, and UAMPS 41.6666%.

"Study Participants" means the Department, IPA and UAMPS.

"Subscription Notice" is defined in Section 10.1(b).

"Transition Development Participant" means each Development Participant executing and delivering this Agreement after the Transition Effective Date. If a Development Participant subscribes to an Unsubscribed Development Costs Share after it acquires its initial Development Costs Share, it shall be treated as a Transition Development Participant with respect to such Unsubscribed Development Costs Share.

"Transition Effective Date" is defined in Section 16.1.

"Transition Period" means the period commencing on the Transition Effective Date (if applicable) and ending upon the earlier of (i) the commencement of the Full Subscription Period, or (ii) the termination of this Agreement pursuant to Section 16.1(c).

"UAMPS" means Utah Associated Municipal Power Systems.

"Unapplied Credit" is defined in Section 2.1(b)(ii).

"Unit 1 and 2 Coordinating Committee" means the Coordinating Committee organized under the Unit 1 and 2 Power Sales Contracts.

"Unit 1 and 2 Operating Agent" means the Department, in its capacity as Project Manager and Operating Agent under the Construction Management and Operating Agreement.

"Unit 1 and 2 Participants" means the power purchasers under the Unit 1 and 2 Power Sales Contracts.

"Unit 1 and 2 Power Sales Contracts" means the Power Sales Contracts entered into by IPA providing, among other things, for the sale of the output of Units 1 and 2.

"Unit 3" means the coal-fired electric generating unit to be constructed at the site of the Intermountain Generating Station, the development of which is provided for pursuant to this Agreement and the Development Coordination Agreement.

"Unit 3 Development Account" means the special account established and held by or under the direction of the Development Manager as provided in Section 7.2(b).

"Unit 3 Participants" has the meaning assigned to it in Section 10.2.

"Units 1 and 2" means the existing generating units nos. 1 and 2 at the Intermountain Generating Station.

"Unreimbursed Incremental Development Costs" means, as to any particular Development Participant and as of any particular time, the aggregate amount of Development Costs theretofore paid from time to time by such Development Participant that are attributable to such Development Participant's Incremental Development Costs Share as in effect at the time of such payment, less the aggregate amount thereof, exclusive of interest, for which such Development Participant has been theretofore reimbursed pursuant to Section 15.3. For purposes

of determining a Development Participant's Unreimbursed Incremental Development Costs, Development Costs paid by such Development Participant shall first be allocated to such Development Participant's Development Costs Share as then set forth in *Exhibit A* of the Development Costs then payable by such Development Participant and the remainder, if any, shall be allocated to such Development Participant's Incremental Development Costs Share.

"Unsubscribed Development Costs Shares" means, as of any particular time, the cost shares (stated as percentages) equal in the aggregate to the difference, (stated as a percentage) at such time between the aggregate percentage of the Development Costs Shares then set forth in *Exhibit A* and 100 percent.

"Willful Action" has the meaning assigned to it in Section 12.4.

Section 1.2. Construction. Except where the context otherwise requires:

(1) words importing the singular number includes the plural number and vice versa,

(2) the term "person" includes any of the Development Participants, individuals, corporations, firms, associations, trusts and federal, state and local governments and agencies, and

(3) the term "include" and its derivations are not limiting.

References to Sections, Articles, Exhibits and Schedules are references to the Sections and Articles of and the Exhibits and Schedules to this Agreement.

ARTICLE II

DEVELOPMENT OF UNIT 3

Section 2.1. Development of Unit 3.

(a) Based upon, among other things, the Steering Committee Work Product, the Development Participants have determined to continue with the investigation and the development of Unit 3.

(b) (i) The Development Participants shall reimburse the Study Participants for the Category 1 Study Expenses in accordance with this subsection (b).

(ii) During the ten day period beginning on the 120th day after the Effective Date (if the same shall occur as provided in Section 16.1(a)), or, if earlier, at the time specified in subsection (vi) below, the Development Manager shall prepare (or shall cause to be prepared) and submit to each Development Participant an accounting statement and invoice showing the net amount due from it in respect of its Development Costs Share of Air Permit Incurred Costs,

plus, if there occurs a Transition Period, interest thereon at the Reimbursement Rate from the Transition Effective Date to the due date of such invoices, after credit for any amounts previously paid in respect of Category 1 Study Expenses by such Development Participant if it was also a Study Participant, provided that such credit shall not exceed such Development Participant's Study Cost Participation Share as a Study Participant of the amount of such Air Permit Incurred Costs. If the amount previously paid in respect of Category 1 Study Expenses by any Development Participant that was also a Study Participant exceeds such Development Participant's Development Costs Share of the Air Permit Incurred Costs, then such amount previously paid reduced by the amount of the credit applied pursuant to the next preceding sentence on account of Air Permit Incurred Costs and further reduced by the amount of any payment, other than interest, that has then been made to such Study Participant pursuant to subsection (iv) below (an "*Unapplied Credit*") shall be applied toward amounts billed to such Development Participant pursuant to subsection (iii) below.

(iii) During the ten day period beginning on the 180th day after the Effective Date (if the same shall occur as provided in Section 16.1(a)), or, if earlier, at the time specified in subsection (vi) below, the Development Manager shall prepare (or shall cause to be prepared) and submit to each Development Participant an accounting statement and invoice showing the net amount due from it in respect of its Development Costs Share of Category 1 Study Expenses other than Air Permit Incurred Costs, plus, if there occurs a Transition Period, interest thereon at the Reimbursement Rate from the Transition Effective Date to the due date of such invoices, after application of any Unapplied Credit with respect to such Development Participant if it was also a Study Participant.

(iv) Each Development Participant shall pay promptly, but in no event more than 20 days after receipt of each invoice referenced in subsection (ii) or (iii) above, the amount so billed to it by the Development Manager. The Development Manager shall promptly pay from the proceeds of such invoices all reimbursements and, if applicable, interest owed to each Study Participant in respect of Category 1 Study Expenses to the extent such amounts are not credited to such Study Participant against amounts owed by it as a Development Participant pursuant to subsection (ii) or (iii) above, as applicable. Such payments shall be made to the Study Participants on a pro rata basis, in accordance with their respective Study Cost Participation Shares; provided, however, in determining the amount of each such payment to be made to any Study Participant that has received any credit referenced in the prior sentence, such credit shall be treated as though it were a payment made to such Study Participant as reimbursement for Category 1 Study Expenses paid by it.

(v) If the Full Subscription Period shall not commence, the Development Participants shall have no obligation to reimburse the Study Participants for the Category 1 Study Expenses.

(vi) Notwithstanding anything in subsection (ii), (iii) or (iv) above to the contrary, and subject to subsection (v) above, if the entire amount owed by any Development Participant to the Study Participants as reimbursement for the Category 1 Study Expenses has not otherwise become due and payable in full prior to the date upon which this Agreement terminates pursuant to Section 16.1 (b) or (c), then such amount shall be paid in full on the date of such

termination of this Agreement. In such event, the Development Manager shall prepare and submit to each Development Participant all accounting statements and invoices referenced in subsection (ii) or (iii) above that have not previously been so prepared and submitted promptly after it appears, in the reasonable judgment of the Development Manager, that the due date of such reimbursements will be established as set forth in the preceding sentence.

(c) The Development Participants shall obtain the right to the use of all of the Steering Committee Work Product pursuant to Section 3.4 of the Development Coordination Agreement.

(d) The Development Participants have entered into this Agreement to provide for their joint and cooperative action with respect to the development of Unit 3. Pursuant to this Agreement, each of the Development Participants (i) agrees to pay its Development Costs Share (or Augmented Development Costs Share during the Transition Period, if applicable), of all Development Costs and (ii) shall have the right to elect to become a Unit 3 Participant with a percentage ownership interest in Unit 3 that is up to its Development Costs Share, or may, subject to compliance with the terms of this Agreement, otherwise elect to participate indirectly through a Joint Powers Agency, in Unit 3, all as more fully provided in Sections 10.2, 10.3, 10.4 and 14.2.

(e) The Development Participants agree to cooperate together with respect to the development of Unit 3. Each Development Participant shall, at the request of the Development Committee or any Development Contractor, promptly furnish the information reasonably available to such Development Participant that the Development Committee may need in order to perform Development Work, to obtain the licenses, permits and other regulatory approvals required for Unit 3 and/or to meet the requirements of regulatory agencies having jurisdiction over the Development Participants or over Unit 3 or any part thereof. The cost of furnishing such information by any Development Participant shall be the sole responsibility of such Development Participant and shall not constitute Development Costs. Nothing in this Agreement shall be construed as prohibiting a Development Participant from, imposing upon a Development Participant any duties, fiduciary or otherwise, to any other Parties hereto respecting, or otherwise imposing any restriction upon any Development Participant with respect to, developing, constructing or operating, either by itself or with other entities, an electric generation facility other than Unit 3.

(f) Concurrently with its execution and delivery of this Agreement, each Development Participant shall execute and deliver a Confidentiality Agreement in the form of *Exhibit C* attached hereto.

Section 2.2. Development Work. The Development Work to be undertaken pursuant to this Agreement shall include all work determined to be necessary or desirable by the Development Committee for the benefit of the Development Participants in connection with the development of Unit 3, as more specifically set forth in the initial budget and the initial schedule provided for in Sections 6.2 and 6.3 (as the same may be modified or revised from time to time by the Development Committee). The Development Work shall include:

(1) all activities approved by the Development Committee as necessary or advisable to maintain milestone completion dates, including incurring costs to facilitate the timely and cost-effective completion of Unit 3 and procurement of goods, assets, rights or services for Unit 3,

(2) the development of the definitive budget and schedule for construction of Unit 3,

(3) obtaining licenses, permits and approvals necessary for the construction and operation of Unit 3,

(4) the preparation of all plans, studies and reports for submission to the Development Participants,

(5) providing information and recommendations to better enable those Development Participants that elect to become Unit 3 Participants to coordinate the planning for their own financing or funding, as applicable, for their respective shares of the cost of construction of Unit 3,

(6) the preparation and negotiation of definitive Project Agreements,

(7) government affairs (including the development of any impact alleviation plan required under the Interlocal Act), legislative support and lobbying,

(8) public relations, information and communication,

(9) legal and tax support services, including tax and payment in-lieu-of tax matters relating to Unit 3,

(10) legal and other services in connection with the defense or prosecution of any action, suit or regulatory proceeding relating to any license, permit or approval obtained or to be obtained as part of Development Work or otherwise arising out of Development Work,

(11) administrative support, fiscal management, invoicing and related services necessary or desirable in connection with the Development Work, and

(12) the performance of all other activities related to Unit 3 for the benefit of the Development Participants as determined by the Development Committee consistent with this Agreement.

ARTICLE III

ORGANIZATION OF THE DEVELOPMENT COMMITTEE

Section 3.1. Organization. In order to provide for the development of Unit 3 and the performance, management and direction of the Development Work and to secure the effective cooperation and interchange of information among the Development Participants in connection with various administrative, technical, legal, contractual and other matters that may arise from time to time in connection with the Development Work, the Development Committee is hereby established under this Agreement. The Development Committee shall consist of representatives appointed by the Development Participants as provided in Section 3.2.

Section 3.2. Representatives; Chair. (a) Each Development Participant shall appoint one representative to the Development Committee and shall designate such representative within 10 days after its execution and delivery of this Agreement (or within 10 days of any assignment of this Agreement pursuant to Section 14.2) by giving notice to the other Development Participants of such designation. Each Development Participant may, by giving notice to the other Development Participants, designate an alternate to act as its representative on the Development Committee in the absence of the regular member or to act on specified occasions with respect to specified matters (as shall be set forth in such notice); such notice to be effective, however, only if given not later than the first meeting of the Development Committee at which such alternate shall act as the representative of the Development Participant.

(b) Each Development Participant shall promptly give notice to the other Development Participants of any change in the designation of its representative or alternate representative on the Development Committee and any other committee. Any such notice shall be effective when given.

(c) A Development Participant that serves as Development Manager shall not, during the period it serves as Development Manager, be the Development Participant whose representative is the Chair of the Development Committee. The Chair of the Development Committee shall be the representative appointed by UAMPS, so long as UAMPS is a Development Participant; provided, however, if any Development Participant whose representative is Chair of the Development Committee ceases for any reason to be a Development Participant or becomes the Development Manager, then the Chair of the Development Committee shall be the representative of the Development Participant that is not then serving as the Development Manager with the largest Development Costs Share (without taking into account the Development Costs Share, if any, of the Development Manager). If two or more Development Participants have the same Development Costs Share, then the Development Participant whose representative serves as the Chair of the Development Committee shall be determined by a coin toss or other random means agreed to by such Development Participants. The Chair shall be responsible for calling and presiding over meetings of the Development Committee and shall cause minutes of all meetings to be kept.

Section 3.3. Meetings. (a) At its first meeting, the Development Committee shall establish a schedule of regular meeting dates for the Development Committee for the ensuing

calendar quarter. The Development Committee will from time to time revise and extend this schedule to provide at least 30 days' notice to all Development Participants of the regular meeting dates of the Development Committee.

(b) The Chair may call a special meeting of the Development Committee at his own initiative or upon the request of any other representative on the Development Committee. The Chair shall promptly call a special meeting of the Development Committee at the request of representatives of Development Participants with Development Costs Shares totaling more than 20%. At least 48 hours' notice shall be given of special meetings of the Development Committee.

(c) The Development Committee may meet in an assembled meeting at any location selected by it or may hold and conduct any meeting entirely by conference call. Any Development Participant may participate by conference call in any assembled meeting of the Development Committee.

(d) IPA, apart from its role as Development Manager, and the Department, as Unit 1 and 2 Operating Agent, shall be entitled to attend and participate on a non-voting basis in Development Committee meetings, as provided in the Development Coordination Agreement.

Section 3.4. Voting. (a) Except as provided in Sections 3.4(b), 3.4(c) or 6.1(c), all actions or decisions by the Development Committee shall be by the affirmative vote of Development Participants with Development Costs Shares (or in the event of the occurrence of a Transition Period, Augmented Development Costs Shares during the Transition Period) totaling at least 80%. Any vote of the Development Committee may be taken in an assembled meeting or by telephone, facsimile or electronic transmission, letter or by any combination thereof. A written record of each vote of the Development Committee shall thereafter be made as soon as possible by the Chair of the Development Committee or his designee.

(b) The voting rights of any Development Participant that is 10 days or more in default in its payment of Development Costs shall be suspended for so long as such default continues. For all meetings held and votes taken while the voting rights of any Development Participant are suspended, the percentage of Development Costs Shares (or Augmented Development Costs Shares during the Transition Period, if applicable) required for an action of the Development Committee as specified in Section 3.4(a) shall be proportionately adjusted to disregard the voting rights attributable to the Development Costs Share (or Augmented Development Costs Share) of the Development Participant in default.

(c) Any Development Participant that believes that the Development Manager should be removed for cause pursuant to Section 5.1(c) shall prepare and present to the Development Committee a written statement of the reason or reasons cause exists for such removal. The Development Committee shall consider such written statement and shall thereupon proceed to determine whether such reason or reasons constitute due cause for the removal of the Development Manager and whether to remove the Development Manager. The voting rights of any Development Participant that is then serving as the Development Manager shall be suspended with respect to any vote to determine whether to remove the Development Manager,

and the percentage of Development Costs Shares (or Augmented Development Costs Shares during the Transition Period, if applicable) required for an action of the Development Committee as specified in Section 3.4(a) shall be proportionately adjusted to disregard the suspended voting rights. The removal of the Development Manager shall require the affirmative vote of Development Participants with Development Costs Shares (or Augmented Development Costs Shares during the Transition Period, if applicable) sufficient for an action of the Development Committee as set forth in the preceding sentence or, if greater the affirmative vote of Development Participants with Development Costs Shares (or Augmented Development Costs Shares during the Transition Period, if applicable) totaling at least 50 percent. If a Development Manager that is removed pursuant to this Section 3.4(c) is also a Development Participant and refuses to vote in favor of a Development Manager of its choice, other than itself, to replace it, the vote of such Development Participant shall be suspended in connection with such matter and the percentage of Development Costs Shares (or Augmented Development Costs Shares during the Transition Period, if applicable) required for an action of the Development Committee as specified in Section 3.4(a) shall be proportionately adjusted to disregard the suspended voting rights.

(d) A Development Participant that is a Joint Powers Agency may, in its discretion, permit one or more of its JPA Participants to vote on Development Committee matters such portion of the Joint Powers Agency's Development Costs Share as corresponds to the JPA Participant's JPA Participant Share. Such Joint Powers Agency shall only be entitled to vote with respect to any such matters the portion of its Development Costs Share that it has not permitted to be voted by its JPA Participants. In order to permit a JPA Participant to so vote a portion of its Development Costs Share or to revoke such permission, the representative to the Development Committee of such Joint Powers Agency shall give written notice to the Development Committee and the Development Manager specifying the identity of each JPA Participant (and the name of its representative) to which it is granting such voting permission, the specific portion of its Development Costs Share that such JPA Participant will be entitled to vote, and the remaining portion of its Development Costs Share that the Joint Powers Agency will be entitled to vote, or if the Joint Powers Agency is revoking the voting permission it has given to any such JPA Participant, the identity of the JPA Participant as to which such permission is being revoked. Each such granting or revocation of voting permission shall be effective immediately upon the giving of the applicable written notice. Each JPA Participant to which such voting permission has been granted shall be entitled to attend Development Committee meetings so long as such permission is in effect. No such granting by a Joint Powers Agency to any of its JPA Participants of such voting permission shall release, either in whole or in part, such Joint Powers Agency from any of its duties or obligations under this Agreement, including, without limitation, its obligation under this Agreement to pay its entire Development Costs Share of Development Costs.

Section 3.5. Written Records to be Kept. All actions, resolutions, determinations and reports made by the Development Committee shall be set forth in the minutes of its meetings. The Chair of the Development Committee shall cause such minutes and records to be maintained and to be made available to any Development Participant for inspection upon request, subject to Section 3.7.

Section 3.6. Establishment of Subcommittees. The Development Committee may establish one or more subcommittees, including engineering, environmental, permitting, auditing, legal, financial, operating, insurance, and public information subcommittees. The authority, membership, rules and duties of each subcommittee shall be established by the Development Committee, and each such subcommittee shall be subject to the provisions of this Agreement. Each such subcommittee shall be responsible to the Development Committee.

Section 3.7. Confidential Information Regarding Litigation. Notwithstanding anything in this Agreement to the contrary, no Development Committee Participant shall be entitled to receive, or participate in meetings in which there is discussed, confidential information regarding any pending, threatened or anticipated litigation involving Development Work unless such Development Committee Participant first executes a confidentiality or Air Permit Prosecution Agreement, as applicable, in form and substance acceptable to the Development Committee. Such agreements shall accommodate any disclosure requirements imposed by law on a Development Committee Participant. Among other matters with respect to which the Development Committee may require such agreements, it is contemplated that the Development Committee Participants would be required to enter into an Air Permit Prosecution Agreement.

ARTICLE IV

POWERS, DUTIES AND RESPONSIBILITIES OF THE DEVELOPMENT COMMITTEE

Section 4.1. Powers, Duties and Responsibilities of the Development Committee. During the term of this Agreement, the powers, duties and responsibilities of the Development Committee include, in addition to those described in Sections 3.3(a), 3.4(c), 3.6, 3.7, 5.1(b), 5.3(a), 5.3(c), 6.1(a), 6.1(b), 6.1(c), 6.2, 6.3, 6.4(a), 6.6(a), 6.6(b), 6.6(c), 7.5, 8.2, 9.1(b), 9.3, 9.4(a), 9.5, 10.1(a), 10.1(b), 10.3(a), 11.1(a), 11.1(b), 13.1, 13.2(b), 13.4(b), 13.4(c), 14.2(b), 14.2(c), 14.2(d), 15.5, 16.1(c), 16.1(d) and elsewhere in this Agreement, the following:

(1) Directing and supervising the Development Work and the performance of it by the Development Manager; reassigning Development Work initially assigned to the Development Manager if the Development Manager is to be replaced as provided in Section 5.1.

(2) Approving Development Contracts as and to the extent provided in Section 5.3.

(3) Approving all expenditures, commitments of funds, costs, liabilities and obligations with respect to the Development Costs and the Development Work in accordance with the then-current budget provided for in Section 6.2.

(4) Arranging for periodic audits of the books and cost records of the Development Manager and any Development Contractor relating to the performance of Development Work or the incurrence of Development Costs.

(5) Reviewing and approving any recommendations made by the Development Manager with respect to modifications to or amendments of the Initial Budget and the initial schedule for the Development Work attached as *Exhibit B*.

(6) Approving the development and refinement of the description of Unit 3, including the determination of its design capacity and projected reliability, availability and efficiency, and review and approval of the plans, cost estimates and schedules for construction of Unit 3.

(7) Reviewing and approving all applications for the permits, licenses and approvals necessary for the construction and operation of Unit 3.

(8) Reviewing and approving fuel supply matters for Unit 3.

(9) Reviewing and approving of all plans and Project Agreements for the construction and operation of Unit 3 in coordination with the existing facilities, infrastructure and operations of Units 1 and 2 so as to make the most efficient utilization of Common Facilities and existing assets.

(10) Monitoring and analyzing, and directing the Development Manager to act to address factors or events which may affect, or have affected, Development Work, Development Costs, the schedule, the budget and other matters affecting Unit 3.

(11) Providing liaison among the Development Participants and resolving any disputes among them with respect to Unit 3 or any part of the Development Work.

(12) Directing and supervising subcommittees established pursuant to Section 3.6.

(13) Causing the Development Manager or any Development Contractor to prepare reports, records and information with respect to the Development Work.

(14) Reviewing and providing each of the Project Agreements and considering and recommending to the Development Participants any necessary amendments to this Agreement.

(15) Reviewing and providing for the prosecution of or the defense against any litigation or potential litigation, including the settlement thereof, relating to Development Work or Unit 3, subject, however, in the case of any Development Participant, to the provisions of Section 8.1.

(16) Reviewing and approving any impact alleviation plan for Unit 3 under the Interlocal Act.

(17) Reviewing the monthly invoicing of Development Costs by the Development Manager as provided in Section 7.1.

(18) Subject to Section 3.7 and any applicable confidentiality agreement, promptly responding to any requests for assistance or information by a Development Participant that pertains to Development Work or to Development Costs.

(19) Providing for and distributing to each Development Participant the written notice and report and the other documents, materials, studies and information described in Section 10.1(a).

(20) Taking the necessary actions required to cause the Development Committee to perform its covenants under Section 5.1 of the Development Coordination Agreement.

(21) Conducting all other activities deemed necessary or desirable to complete Development Work and performing such other functions and duties as it may deem necessary to accomplish the purposes of this Agreement.

Section 4.2. No Authority of Development Committee to Amend Agreement. Neither the Development Committee nor any of its appointed subcommittees shall have authority to amend this Agreement. This Agreement may be amended only as provided in Section 16.2; provided, however, that *Exhibit A* shall be amended as provided in Sections 9.3, 9.4, 9.5, 9.7, 13.4, 14.2 and 15.2, and *Exhibit B* shall be amended by the Development Committee to the extent provided in Sections 6.3 and 15.5, respectively.

Section 4.3. No Joint Venture or Partnership. The Development Committee does not constitute a joint venture or partnership of the Development Participants.

ARTICLE V

DEVELOPMENT MANAGER AND DEVELOPMENT COORDINATION AGREEMENT

Section 5.1. Development Manager. (a) IPA hereby agrees to act as Development Manager under and subject to the terms and conditions of this Agreement.

(b) The Development Manager, under the direction of the Development Committee, shall perform or cause to be performed the following items of the Development Work:

(1) Performing or assigning, contracting, delegating and otherwise arranging for the performance of Development Work by or through one or more Development Contractors.

(2) Administering and enforcing all Development Contracts and enforcing all claims against Development Contractors and others arising out of Development Work, subject, however, in the case of any Development Participant, to the provisions of Section 8.1.

(3) Preparing and submitting monthly invoices to the Development Participants for the payment of the Development Costs and administering the Unit 3 Development Account as provided in Sections 7.1, 7.2 and 15.3.

(4) Preparing and submitting to the Development Committee for its review and approval any modifications or amendments to the budget for Development Costs or the schedule for the Development Work that it deems necessary or desirable.

(5) Maintaining, updating and revising as necessary a schedule and a status report to reflect the progress of Development Work and the incurrence of Development Costs, recommending to the Development Committee any revisions that it deems necessary to the initial budget and the initial schedule (attached as *Exhibit B*) for the Development Work and furnishing such other reports, plans, studies and information as may be requested by the Development Committee.

(6) Keeping and maintaining, or causing to be kept and maintained, records of all moneys received and expended, obligations incurred and credits accrued with respect to Development Costs, and making such records, together with books of original entry, ledgers, work papers and source documents, available for auditing pursuant to Section 6.6.

(7) Preparing and submitting to the Development Committee for its review, comment and approval such Project Agreements as shall be assigned to it by the Development Committee.

(8) Making application and incurring costs for and proceeding to obtain licenses, permits and approvals necessary for the construction and operation of Unit 3 (or causing such application and obtaining to occur).

(9) Procurement of goods, assets, rights or services for Unit 3.

(10) Preparation of definitive plans, budgets and schedules for the construction of Unit 3.

(11) Performing such other duties as provided in this Agreement or performing any other duties as shall be assigned by the Development Committee and accepted by the Development Manager.

Notwithstanding anything to the contrary herein, the Development Manager cannot bind any Development Participant without the written consent of the Development Participant for that specific instance.

(c) The Development Manager may resign at any time upon 30 days' written notice to the Development Participants. The Development Manager may be removed for cause at any time by the Development Committee as provided in Section 3.4(c). Upon any resignation or removal of the Development Manager, (i) subject to the requirement in the first sentence of Section

3.2(c), the Development Committee shall as soon as practicable appoint a replacement Development Manager, (ii) the Development Manager shall turn over all records, documents and other materials relating to Development Work held by it as Development Manager to the replacement Development Manager appointed by the Development Committee or to such other person as may be designated by the Development Committee, (iii) except as set forth below, the Development Manager shall turn over the Unit 3 Development Account and all amounts on deposit therein, together with an accounting statement showing, in reasonable detail, the receipts to and expenditures from such Account to the date of the replacement of the Development Manager, and (iv) the Development Manager shall execute and deliver such documentation, in form and substance acceptable to the Development Committee, as may be necessary to become a party to this Agreement in its capacity as Development Manager. Notwithstanding the foregoing, upon any resignation or removal of IPA as Development Manager, any funds set aside as provided in Section 5.3(d)(ii) to pay amounts thereafter payable by IPA under Development Contracts entered into by IPA as Development Manager shall either, in IPA's discretion: (i) not be turned over but shall be retained to the extent necessary to make such payments and IPA as Development Manager shall furnish appropriate documentation in support of such payments, or (ii) if the replacement Development Manager enters into an agreement in form and substance acceptable to IPA whereby it assumes IPA's duties and obligations to make each such payment and IPA is otherwise, in its discretion, satisfied with such assumption agreement and the probability that the replacement Development Manager will perform its duties thereunder, IPA may turn such funds over to the replacement Development Manager and the replacement Development Manager shall apply such funds to payments due under such Development Contract. The Development Manager shall be entitled to reimbursement for all Development Costs incurred by it to the date of such replacement *provided however,* that if the Development Manager is then in arrears in the payment of amounts owed by it as a Development Participant under this Agreement, then any such reimbursement shall be net of the amount in arrears. The Development Manager may enter into one or more Development Contracts for the performance of any part of the Development Work as provided in Section 5.3.

(d) In its capacity as Development Manager, no Development Manager shall have any of the rights, duties and obligations of a Development Participant under this Agreement or any obligation to pay any part of the Development Costs. Subject to Section 8.1, the Development Manager shall be reimbursed for all costs, expenses and overheads incurred by it in performing its obligations under this Agreement (as an item of Development Costs payable by the Development Participants). The Development Manager shall not derive any profit from its activities or services as Development Manager.

Section 5.2. Development Coordination Agreement. (a) Pursuant to the Development Coordination Agreement, IPA has agreed (i) that the Development Participants shall have the exclusive right to proceed with the development of Unit 3 as provided in this Agreement, (ii) to cooperate with the Development Committee to facilitate the development of Unit 3, and (iii) in the case of IPA, to give the Subscription Notice described in Section 10.1(b), all upon the terms and conditions and for the consideration set forth in the Development Coordination Agreement. Simultaneously with its execution and delivery of this Agreement, each Development Participant shall execute and deliver a counterpart of the Development Coordination Agreement.

(b) The costs, expenses and liabilities paid or incurred by the Development Manager and the Development Participants under the Development Coordination Agreement shall constitute Development Costs and each Development Participant shall be severally liable for its Development Costs Share (or Augmented Development Costs Share during the Transition Period, if applicable) of all such costs, expenses and liabilities.

Section 5.3. Development Contracts and Contractors. (a) The Development Manager is hereby authorized to negotiate and enter into one or more Development Contracts for the performance of any part of the Development Work. The amounts payable under each such Development Contract shall constitute Development Costs. Subject to the obligation of the Development Participants to reimburse the Development Manager pursuant to this Agreement, any such Development Contract entered into by the Development Manager in its own name shall constitute the obligation of the Development Manager and not of any Development Participant. If the amount payable under any such Development Contract (or the increase in the amount payable as a result of any amendment of or change to a Development Contract) exceeds or is reasonably expected to exceed $50,000, the Development Manager shall submit such contract to the Development Committee for its approval prior to executing the same. Each Development Contract entered into by the Development Manager shall provide that it is fully assignable to any entity appointed by the Development Committee to replace the Development Manager. The Development Manager shall not be required to enter into any Development Contract in its own name.

(b) If the Development Manager, in its sole discretion, determines that it is not willing to enter into any Development Contract or any amendment to a Development Contract in its own name, or if the Development Manager is otherwise precluded by the terms of this Agreement from entering into any Development Contract: (i) the Development Manager shall include in such Development Contract, or in the case of an amendment to a Development Contract that does not otherwise include the provisions required under Section 5.3(c) shall include in such amendment, the provisions required under Section 5.3(c); and (ii) submit such Development Contract or amendment thereto, after it has been approved by the Development Committee to each Development Participant for execution. No Development Participant shall be required to execute any such Development Contract or amendment; provided, however, if any Development Participant refuses to do so, the Development Manager may either, in its sole discretion: (i) unless precluded by the terms of this Agreement, enter into such Development Contract in its own name on behalf of the Development Committee and all amounts due and payable thereunder shall constitute Development Costs; or (ii) not allow such Development Contract to become effective by either not delivering it to the other party thereto or any other legal means.

(c) The amounts payable under each Development Contract shall constitute Development Costs. In the case of each Development Contract or amendment thereto executed by the Development Participants, each Development Participant shall be severally liable for its Development Costs Share (or Augmented Development Costs Share during the Transition Period if applicable) of all costs, expenses and liabilities payable or incurred thereunder and such Development Contract shall contain provisions limiting the liability of each Development Participant that executes and delivers the same consistent with this Section 5.3(c) and Sections 6.1 and 8.1 In the case of Development Contracts executed by the Development Manager (but

not by the Development Participants), each such Development Contract: (i) shall recite that it is entered into by the Development Manager under the authority of this Agreement and is subject to the terms and provisions hereof; (ii) shall provide that the amounts due to the Development Contractor thereunder shall be payable solely from the Unit 3 Development Account; (iii) shall contain such standard contract terms and provisions as may be established by the Development Committee; and (iv) require, to the extent appropriate, maintenance of confidentiality by the counterparty.

(d) (i) Notwithstanding anything to the contrary in this Agreement, no assets or revenues of the Development Manager, other than the payments made to the Development Manager with respect to Development Costs Shares, shall be subject to any claim or available to satisfy any liability that the Development Manager may have in its capacity as Development Manager to any Development Participant or any third party. Recourse for any liability of any type or nature of the Development Manager to any Development Participant or third party shall be limited to funds held by the Development Manager that are derived from payments made to it by Development Participants with respect to their Development Costs Shares. Each Development Participant hereby waives and releases the Development Manager, and each of its members, directors, officers, employees or affiliates, from and against, any claim, cause of action, statutory or common law right of recovery, or any other legal or equitable duty, obligation, liability or responsibility of any type or nature whatsoever to the extent arising out of, or resulting from any act, negligence or omission in connection with, the Development Manager's service as Development Manager, except claims that are limited to payments actually received by the Development Manager with respect to Development Costs Shares that have not been expended by the Development Manager for any purpose permitted under this Agreement, have not been committed to any such purpose or are not otherwise required for the Development Manager to meet any contractual or other obligation or liability it has incurred in its role as Development Manager.

(ii) Notwithstanding anything to the contrary in this Agreement, IPA as Development Manager shall not enter into any Development Contract unless funds are then on deposit in the Unit 3 Development Account sufficient to: (A) satisfy the Development Manager's total payment obligations thereunder and each other Development Contract then outstanding (which payment obligations, in the case of any Development Contract that provides that the Development Manager shall only be obligated to pay fees, compensation, reimbursements and other amounts under such Development Contract that shall be authorized by the Development Committee by work order or otherwise, shall then be limited to the amounts that have been so authorized); and (B) all other then outstanding payment obligations of IPA as Development Manager. IPA as Development Manager shall not incur and the Development Committee shall not authorize any payment obligation, whether under any Development Contract or otherwise, that would cause the aggregate payment obligations of IPA as Development Manager to exceed the amount then on deposit in the Unit 3 Development Account when such obligation is incurred which is determined by IPA to be available to satisfy such payment obligations as the same become due.

(iii) Upon any replacement of the Development Manager, the Development Manager that is replaced shall, upon the transfer to the replacement Development Manager of the

Unit 3 Development Account pursuant to Section 5.1(c)(iii), be released of all liability under each Development Contract then outstanding and the replacement Development Manager shall assume all duties, obligations and liabilities of the Development Manager under such Development Contracts; provided, however, if IPA is replaced as Development Manager, it shall remain liable for the application of any funds set aside pursuant to clause (ii) above and retained by it pursuant to Section 5.1(c)(iii) to the Development Contracts for which such funds were set aside.

(iv) If the Development Manager enters into any Development Contract or amendment thereto, in its capacity as Development Manager, the Development Manager may include in such Development Contract provisions that, to its reasonable satisfaction, effect the concepts set forth under clauses (i) and (iii) above.

(e) Development Contractors selected by the Development Committee may include IPA or any Development Participant.

ARTICLE VI

DEVELOPMENT WORK LIMIT; INITIAL BUDGET; INITIAL SCHEDULE; DEVELOPMENT COSTS; AND AUDITS

Section 6.1. Limit on Development Costs. (a) The Development Costs shall not exceed $13,043,000, unless the Development Committee shall approve an increase in such amount pursuant to Section 6.1(b) (such amount, as it may be so increased is referred to herein as the *"Development Costs Limit"*). The Development Committee shall not incur, and shall not authorize the Development Manager, any Development Participant or any Development Contractor to incur, any Development Costs in excess of the Development Costs Limit.

(b) If and when Development Costs equal or exceed 80% of the Development Costs Limit or at such other time as it deems advisable in light of prevailing circumstances, the Development Manager shall consider such facts or circumstances and shall make such recommendations to the Development Committee as it deems appropriate, including revising the scope of the Development Work or increasing the Development Costs Limit. Any such revision or increase shall be subject to the approval of the Development Committee. The Development Committee may, at any time and with or without the recommendation of the Development Manager, revise the scope of the Development Work or increase the Development Costs Limit. If the Development Committee, at any time, adopts a budget in a total aggregate amount that would require an increase in the Development Costs Limit, the Development Committee shall be deemed to have approved the necessary increase. In no event shall any increase of the Development Costs Limit exceed 15% of the original Development Costs Limit specified in Section 6.1(a) nor shall any such increase cause the Development Costs Limit to exceed $14,999,450, except as provided in Section 6.1(c).

(c) At any time or from time to time, the Development Costs Limit may also be increased by any amount in excess of the increases provided for under Section 6.1(b) upon

approval by unanimous vote all members of the Development Committee and, where required, upon receipt of any authorization, approval or consent with respect to such increase by the governing body of or any board or agency having jurisdiction over any Development Participant or Participants.

Section 6.2. Initial Budget. The Development Committee shall adopt and approve an initial budget (the "*Initial Budget*") for Development Costs that is consistent with Section 6.1. Any increase in or modification of such budget or any subsequently revised budget shall be subject to Section 6.1 and except as otherwise provided in Section 15.5, shall be made only upon the recommendation of the Development Manager and the approval of the Development Committee.

Section 6.3. Initial Schedule. The Development Participants hereby approve the initial schedule for Development Work as set forth in *Exhibit B*. Such schedule specifies the overall schedule agreed to by the Development Participants with the major elements of the Development Work indicated therein. Except as otherwise provided in Section 15.5, any modification of such schedule or any subsequently revised schedule shall be made only upon the recommendation of the Development Manager and the approval of the Development Committee.

Section 6.4. Development Costs; Audits. (a) Development Costs shall be set forth in the Initial Budget (as revised from time to time) and shall include:

(1) All costs of work, services and studies performed by or under the supervision of the Development Manager and approved by the Development Committee.

(2) Payroll and other expenses of the employees of the Development Manager and, as and to the extent specifically provided in a Development Contract, any Development Contractor while performing work in connection with this Agreement, including but not limited to applicable overhead costs and labor loading charges, time off allowances, payroll taxes, workers' compensation insurance, retirement and death benefits and other employee benefits. In the case of a Development Contractor, labor loading shall be in conformance with the Development Contractor's in-house rates as adjusted from time to time.

(3) Costs of materials, supplies, goods, property, rights, services and apparatus used in connection with this Agreement or acquired for Unit 3.

(4) Federal, state, and local taxes, payments in lieu of taxes, and permit, license and approval-related fees of any character arising out of the performance of this Agreement.

(5) All costs for insurance in connection with the Development Work, in such form and amounts as determined by the Development Committee.

(6) All costs of defense or prosecution of any action, suit or regulatory proceeding relating to any license, permit or approval obtained or to be obtained as part of

Development Work or otherwise arising out of Development Work, including all costs of discharging or paying any liability and loss, damage and expense, including, without limitation, costs and expenses for attorneys' fees, and other costs of defending, settling or otherwise administering claims, liabilities or losses arising out of workers' compensation or employers' liability claims or by reason of property damage or injuries to or death of any person or persons or by reason of claims of any and every character resulting from, arising out of or connected with the performance of the Development Work, whether wholly or partially by the negligence of the Development Manager or the negligence (other than gross negligence, if such is determined by a court of competent jurisdiction) of any Development Contractor, except as may otherwise be provided in Section 8.1.

(7) Administrative and general expenses to cover services in the performance of Development Work by the Development Manager or any Development Contractor that is also a Development Participant in such amounts or at such rates as may be approved by the Development Committee.

(8) The Category 1 Study Expenses, including interest thereon payable as provided in Section 2.1(b).

(9) Costs, expenses and liabilities incurred by the Development Participants under the Development Coordination Agreement.

(10) Costs of the final accounting and reconciliation conducted pursuant to Section 6.6.

(11) Any other costs designated in this Agreement as Development Costs.

(b) Cost and expenses of officers, employees and agents of the Development Manager that constitute Development Costs as set forth above shall consist of those costs and expenses of the Development Manager properly allocable in accordance with generally accepted accounting principles to the performance of Development Work by such officers, employees and agents of the Development Manager under this Agreement.

(c) Any Development Participant may at any time by written notice to the Development Manager and the other Development Participants request that any or all of the Development Costs be audited. The Development Manager shall cause such audit to be conducted promptly after its receipt of such notice and shall cause a written audit report to be prepared and provided to all of the Development Participants. The costs of such audit, including all costs incurred by the Development Manager in connection with the audit, shall not be Development Costs and shall be invoiced to and paid directly by the Development Participant that requested the audit.

Section 6.5. Certain Costs Not Part of Development Costs. Costs incurred by any Development Participant which are not attributable to Development Work, and which shall not be shared by the Development Participants, include, without limitation, the following:

(1) Costs of studies conducted by any Development Participant to determine for that Development Participant the usefulness, economics, and feasibility of proceeding with Unit 3.

(2) Costs incurred by each Development Participant associated with the negotiation of the Project Agreements.

(3) Costs incurred by each Development Participant in connection with any JPA Participation Agreement to which it is a party.

(4) Costs incurred by each Development Participant in all functions of the Development Committee, or any other committees established pursuant to this Agreement.

Section 6.6. Final Accounting, Reconciliation and Audit of Development Costs. (a) Upon its determination that the Development Work (or substantially all of the Development Work) is complete or upon termination of this Agreement, the Development Committee shall cause the Development Manager to make a final accounting and reconciliation of all Development Costs. Upon completion of such accounting and reconciliation, the Development Manager shall prepare and submit to the Development Committee a final accounting statement showing in reasonable detail the receipts to and the expenditures from the Unit 3 Development Account. The Development Committee shall review such accounting statement and shall either approve the same or shall require that a final audit of all Development Costs be conducted by an appointed audit committee or an outside auditing firm or an individual. Costs incurred for any such audit shall constitute Development Costs.

(b) Upon completion of the final accounting and reconciliation of the Development Costs, or the audit of the Development Costs if one is made as provided in paragraph (a) above, the Development Committee shall cause the Development Manager to make a final report of the Development Costs. Such final report shall identify the major categories of the Development Costs (*e.g.*, engineering, permitting, project management, political and governmental affairs, legal, finance, etc.) and shall list and contain reasonable detail regarding the items of Development Costs within each category. Such report shall also contain a copy of the results of any audit conducted pursuant to paragraph (a) above and such additional information as the Development Committee may deem necessary or appropriate. Such final report shall be provided to the Development Participants within 60 days of the determination of the Development Committee of the completion (or substantial completion) of the Development Work.

(c) Each Development Participant shall settle any balance of any amount owed within 30 days of the receipt of the final report pursuant to paragraph (b) above, or be reimbursed by or at the direction of the Development Committee from moneys received from Development Participants for any credit, in accordance with such final report.

ARTICLE VII

BILLING AND PAYMENT OF DEVELOPMENT COSTS

Section 7.1. Billing and Invoicing of Costs. The Development Manager shall cause an invoice to be given to each Development Participant within 10 days after the Effective Date, or the Transition Effective Date, as the case may be, of this Agreement and thereafter as soon as practicable after the end of each calendar month, but not later than the 10th day of the succeeding month. The notice and invoice shall show the Development Participant's Development Costs Share (or the Augmented Development Costs, Share during the Transition Period, if applicable) of the Development Costs, other than Category 1 Study Expenses, which shall be invoiced and paid in accordance with Section 2.1(b), and Category 2 Study Expenses, which shall be payable in accordance with Section 10.6, paid during the preceding month and of any adjustments to reflect variations between Development Costs previously invoiced to and amounts received from the Development Participants. The first invoices pursuant to this Section 7.1, in addition to the required amounts, shall include and provide for the pre-funding of each Development Participant's share of a working capital amount of Development Costs sufficient to pay two months average of the estimated Development Costs. If, at any time during the Development Period, the working capital amount held by the Development Manager for Development Costs is less than two months average of the estimated Development Costs, or if the Development Committee shall increase such working capital amount, the Development Manager shall include in the next invoices to be submitted to Development Participants pursuant to this Section 7.1, the amount required to restore the working capital amount to two months average of Development Costs or to increase the working capital amount to such increased level, as applicable.

Section 7.2. Payment of Costs. (a) Within 20 days after receipt of an invoice for Development Costs furnished pursuant to Section 7.1, each Development Participant shall pay its Development Costs Share (or Augmented Development Costs Share during the Transition Period, if applicable) of such Development Costs.

(b) All amounts collected from the Development Participants shall be deposited into a separate and segregated account to be established by the Development Manager and designated as the "Unit 3 Development Account". The Unit 3 Development Account shall be held by or under the direction of the Development Manager and shall be used solely for the receipt of the Development Costs Share (or Augmented Development Costs Share during the Transition Period, if applicable) payments and the payment of Development Costs, as the same shall become due and payable, in accordance with this Agreement.

Section 7.3. Payment of Invoices. Each Development Participant shall make payment of invoices for the account of the Development Manager as follows:

Unit 3 Development Manager
c/o Intermountain Power Agency
10653 South River Front Parkway, Suite 120
South Jordan, Utah 84095

or to such other address as may be specified in writing by the Development Manager.

Section 7.4. Interest on Late Payments. Invoices not paid in full by the due date shall thereafter bear an additional charge on the unpaid portion at the "reference rate" of interest, plus 2%, established by the Bank of America, N.A., or its successor, or the rate of 1.5% per month, whichever is less, or the maximum interest rate allowable by law, if it is less, and shall be computed based on the actual number of days elapsed from the due date to the date payment is received.

Section 7.5. Disputed Invoices. If any portion of an invoice is disputed by a Development Participant, the total invoice, including the disputed amount, shall be paid when due and under protest by the Development Participant. The Development Committee shall review the disputed amount at its next regular meeting and if it determines that such amount was properly disputed, it shall direct the Development Manager to cause such amount to be refunded to the protesting, and any other affected, Development Participant, including interest at the reference rate of interest established by the Bank of America, N.A., or its successor, or the rate of 1.5% per month, whichever is less, but in either case, no more than the maximum interest rate allowable by law, and shall be computed based on the actual number of days elapsed from the date paid to the date refunded. Such interest shall constitute a Development Cost. Payments not made under protest shall be deemed to be correct, except to the extent that audits may reveal overpayments or underpayments by a Development Participant.

ARTICLE VIII

OBLIGATIONS OF THE DEVELOPMENT PARTICIPANTS

Section 8.1. Development Participants' Obligations Several, Limited and Unconditional. The obligation of each Development Participant to make payments under this Agreement is (i) a several obligation and not a joint obligation with the other Development Participants, and (ii) limited to an amount equal to the product of its Development Costs Share (or Augmented Development Costs Share during the Transition Period, if applicable) and the Development Costs Limit. This obligation is absolute and unconditional, irrespective of any rights of setoff or counterclaim each Development Participant might otherwise have against any other Development Participant or against the other Development Participants. No Development Participant shall fail or refuse to make such payments. This provision shall not be construed to release any Development Participant from the performance of any of its obligations or undertakings contained in this Agreement or to release any Development Contractor from any of its obligations or undertakings. Notwithstanding anything to the contrary in this Agreement, nothing in the Agreement shall prevent or restrict any Development Participant, at its own cost and expense, from prosecuting or defending any claim or action with respect to its rights, interests or liabilities under this Agreement, or from entering into a settlement of any such claim or action, or taking any other action to secure or protect its rights under this Agreement. Any costs incurred by the Development Committee or the Development Manager in prosecuting or defending any such action or proceeding or taking any other action to secure or protect its rights under this Agreement shall be Development Costs which shall be paid by the Development

Participants based upon their respective Development Costs Shares (or Augmented Development Costs Shares during the Transition Period, if applicable).

Section 8.2. Enforcement of this Agreement; Payment of Expenses. The Development Committee shall at all times cause the Development Manager to take all reasonable measures permitted by law or in equity (i) to collect and enforce prompt payment of all payments required to be made under this Agreement and (ii) to otherwise enforce the provisions of this Agreement; provided that amounts shall have been set aside in the Unit 3 Development Account sufficient in the Development Manager's opinion to pay for its costs of taking such measures. All costs and expenses (including attorneys' fees) incurred by the Development Manager with respect to the preceding sentence shall be Development Costs and shall be paid or reimbursed by the Development Participants based upon their respective Development Costs Shares (or Augmented Development Costs Shares during the Transition Period, if applicable).

ARTICLE IX

WITHDRAWAL OF DEVELOPMENT PARTICIPANTS; REDUCTION OF DEVELOPMENT COSTS SHARE

Section 9.1. Withdrawal of Development Participant. (a) Each Development Participant shall have the right to withdraw from this Agreement at any time upon written notice to the other Development Participants. The written notice shall specify the effective date of such withdrawal, which shall be at least 30 days after the date of such notice.

(b) As soon as practicable, but in no event more than 10 days, after written notice of withdrawal has been given by a Development Participant pursuant to Section 9.1(a), the Development Committee shall meet to discuss the withdrawal, its impact upon Unit 3 and the potential assumption by the non-withdrawing Development Participants of the withdrawing Development Participant's Development Costs Share.

Section 9.2. Termination of Rights of Withdrawing Development Participant. As of the effective date of withdrawal, a withdrawing Development Participant shall no longer be considered to be a Development Participant under this Agreement and (i) shall no longer have any rights under this Agreement, except as may be provided in Sections 10.5 and 16.1(d) and (ii) shall no longer have any obligations under this Agreement except that any outstanding payment obligations of the withdrawing Development Participant due to Development Costs incurred or liabilities arising as a result of Development Work performed prior to the effective date of withdrawal shall continue until satisfied. The withdrawing Development Participant shall be entitled to access and, upon request, receive copies of documents relating to Development Work and the incurrence of Development Costs dated not later than the date of such Development Participant's withdrawal.

Section 9.3. Voluntary Assumption of Development Costs Shares. Each non-withdrawing Development Participant may request, within 60 days (or such longer period as may be authorized by the Development Committee) after written notice of withdrawal has been

given by the withdrawing Development Participant, to assume all or a portion of the Development Costs Share of the withdrawing Development Participant. Each non-withdrawing Development Participant agrees that it will (i) use its best efforts to make its determination of whether to assume all or some portion of the withdrawing Development Participant's Development Costs Share as soon as practicable after its receipt of a notice of withdrawal and (ii) give prompt notice of such determination to the Development Committee. If more than all of the Development Costs Share of the withdrawing Development Participant is requested to be assumed by non-withdrawing Development Participants, the withdrawing Development Participant's Development Costs Share shall be allocated pro rata (based upon the amounts requested) to the requesting Development Participants, and such allocation shall be deemed to be effective as of the date of withdrawal of the withdrawing Development Participant. Notwithstanding the foregoing, the increase in the Development Costs Share of each Development Participant that would receive such an allocation from the withdrawing Development Participant's Development Costs Share shall be subject to compliance with Section 5.1(n) of the Development Coordination Agreement. In the event any such increase in the Development Costs Share of a Development Participant fails to comply with Section 5.1(l), (n) or (o) of the Development Coordination Agreement, such increase shall then be reallocated pro rata (based upon the amounts requested) to the Development Participants requesting an allocation of such increase.

Section 9.4. Transfer of Development Costs Share by Withdrawing Development Participant. (a) If the amount of the withdrawing Development Participant's share voluntarily assumed by the non-withdrawing Development Participants is less than 100% of the withdrawing Development Participant's Development Costs Share, the Development Committee shall cause notice of such fact to be given to the withdrawing Development Participant. For such period as shall be designated in such notice, which period shall be not less than 40 days, the withdrawing Development Participant shall have the option to arrange for the transfer to and assumption by a Qualified Electric Provider of the unassumed balance of the withdrawing Development Participant's Development Costs Share. Any such transfer and assumption of the withdrawing Development Participant's Development Costs Share shall be deemed to be effective as of the date of withdrawal of the withdrawing Development Participant. Immediately following any such transfer and assumption of a withdrawing Development Participant's Development Costs Share, *Exhibit A* shall be deemed to be amended without further action to reflect such transfer.

(b) A withdrawing Development Participant that exercises its option under Section 9.4(a) may arrange for the transfer of the unassumed balance of its Development Costs Share on such terms and for such consideration as it and the transferee may agree upon, including the reimbursement of the Development Costs paid by the withdrawing Development Participant to the date of its withdrawal and not reimbursed pursuant to Section 15.3. From and after the effective date of the transfer, the withdrawing Development Participant shall have no rights or obligations under this Agreement and shall have no right to receive reimbursement of any Development Costs paid by it to the date of its withdrawal.

(c) A withdrawing Development Participant may transfer the unassumed balance of its Development Costs Share only to another entity that is then a Qualified Electric Provider. Any Qualified Electric Provider that assumes the Development Costs Share of a withdrawing

Development Participant shall execute a counterpart of this Agreement, shall be a Development Participant hereunder and shall be bound by the terms and provisions of this Agreement, all from and after the effective date of the assumption.

Section 9.5. Incomplete Allocation of Development Costs Shares. If, following the procedures set forth in Sections 9.3 and 9.4, less than 100% of the withdrawing Development Participant's Development Costs Share has been voluntarily assumed by non-withdrawing Development Participants or transferred to a Qualified Electric Provider, then the Chair of the Development Committee shall promptly call a meeting of the Development Committee to determine what actions shall be taken in light of the circumstances. Such actions may include additional efforts to obtain a full allocation of the withdrawing Development Participant's Development Costs Share, one or more changes to Unit 3 or the recommendation of amendments to this Agreement. In the event that such withdrawal shall occur during the Full Subscription Period and the Development Committee is unable to obtain a full allocation of the withdrawing Development Participant's Development Costs Share by the effective date of such withdrawal, this Agreement will terminate as provided in Section 16.1(c) unless the Development Committee determines that this Agreement should continue in effect for an additional period not to exceed 180 days and the remaining Development Participants agree to a temporary allocation of the withdrawing Development Participant's Development Costs Share during such period.

Section 9.6. Reimbursement of Costs to Withdrawing Development Participant. Except as provided below, a withdrawing Development Participant shall not be entitled to reimbursement from any non-withdrawing Development Participant of Development Costs paid by the withdrawing Development Participant. A withdrawing Development Participant that does not transfer any unassumed balance of its Development Costs Share to a Qualified Electric Provider under Section 9.4 may receive reimbursement for Development Costs paid by it as and to the extent provided in Sections 10.5 and 16.1(d).

Section 9.7. Reduction of Development Costs Share. (a) In addition to its withdrawal rights under this Article IX, each Development Participant may elect to reduce its Development Costs Share under this Agreement at any time upon written notice to the other Development Participants. The written notice shall specify the amount of the reduction in the Development Costs Share and the effective date of such reduction, which shall be at least 30 days after the date of such notice.

(b) The provisions of Section 9.1 through 9.6 (inclusive) shall apply to any reduction in a Development Participant's Development Costs Share, *provided that:*

(1) The provisions of Section 9.3 shall not apply to a JPA Participant electing to withdraw from the Joint Powers Agency.

(2) The references to a withdrawing Development Participant and its Development Costs Share in such Sections shall be deemed to refer, respectively, to the Development Participant that has elected to reduce its Development Costs Share and to the amount of its Development Costs Share that it has elected to reduce;

(3) The references to the non-withdrawing Development Participants shall be deemed to refer to the Development Participants other than the Development Participant making the election under Section 9.7(a); and

(4) The provisions of Section 9.2 shall apply only to the amount of the Development Costs Share that the Development Participant has elected to reduce.

ARTICLE X

ELECTION TO PARTICIPATE IN UNIT 3; DISPOSAL OF NON-ELECTED AMOUNTS; REIMBURSEMENT OF DEVELOPMENT COSTS AND CERTAIN STUDY COSTS

Section 10.1. Notification of Results of Development Work; Subscription Notice. (a) During the Full Subscription Period, based upon the results of Development Work and a determination of the Development Committee that the Development Work (or substantially all of the Development Work) is complete and that construction of Unit 3 should proceed, and in accordance with the permits, licenses, approvals and regulatory matters, the Development Committee shall review as soon as practicable and approve (i) the description of Unit 3, (ii) the proposed schedule and initial cost estimate for the construction of Unit 3 and (iii) final drafts of the Project Agreements. The Development Committee shall give formal written notice to each Development Participant of the completion (or substantial completion) of the Development Work. Such written notice shall be accompanied by a complete report of the results of the Development Work, the final drafts of the Project Agreements (which shall be complete except for the names of the Unit 3 Participants and the amounts of their participation in Unit 3, dates and other nonsubstantive matters) and such other materials, studies, documents and information as the Development Committee shall deem to be necessary or appropriate.

(b) Pursuant to the Development Coordination Agreement, IPA has agreed to (i) act as the "project entity" (as defined in the Interlocal Act) with respect to Unit 3 for purposes of making the offer of the generation output or electric energy production of Unit 3 in such form and manner as is necessary to comply with the requirements of Section 301(1) of the Interlocal Act as then in effect, and (ii) offer to each Development Participant the opportunity to acquire an undivided ownership interest in Unit 3 equal to its Development Costs Share (such offer by IPA is referred to herein as the *"Subscription Notice"*). The Development Committee shall, at the time it gives notice to the Development Participants pursuant to Section 10.1(a), also give notice to IPA of the completion (or substantial completion) of the Development Work and shall request that IPA issue the Subscription Notice to the Development Participants.

Section 10.2. Exercise of Right to Participate in Unit 3. After its receipt of the Subscription Notice from IPA, each Development Participant shall be required to elect whether or not it wishes to participate in Unit 3 as an owner of an undivided ownership interest in it. Each Development Participant shall have the right to elect to so participate in Unit 3 in an amount up to its Development Costs Share, subject, however, to the provisions of Section 10.7. Written notification of such election shall be sent by each Development Participant to IPA and the Development Committee within 120 days (or such longer period as may be authorized by IPA

and the Development Committee) after the Subscription Notice has been sent to each Development Participant. Development Participants that elect to participate in Unit 3 shall be referred to hereinafter as *"Unit 3 Participants"*.

Section 10.3. Procedure For Disposal of Non-Elected Amounts. (a) In the event that one or more Development Participants elect not to participate in Unit 3 or elect to participate in an amount less than their respective Development Costs Shares, the aggregate amount remaining (the *"Non-Elected Amount"*) shall be disposed of as follows:

(1) Within 10 days after receipt of the notices of election specified in Section 10.2, the Development Committee shall give written notification to each Unit 3 Participant that it may request to increase its elected participation in Unit 3 by an amount which shall not exceed such Non-Elected Amount, provided that such increase shall comply with Section 5.1(l), (n) and (o) of the Development Coordination Agreement. Such notice shall also describe any limitations or requirements resulting from the matters described in Section 10.7. Unit 3 Participants that request to increase their elected participation in Unit 3 shall be known as *"Requesting Unit 3 Participants"*.

(2) If such requests from Requesting Unit 3 Participants do not exceed the Non-Elected Amount, then each such Requesting Unit 3 Participant shall have its elected participation in Unit 3 increased by its requested amount. If the aggregate of the requests exceeds the Non-Elected Amount, then each such Requesting Unit 3 Participant shall have its elected participation in Unit 3 increased by its pro rata share (based upon the amount it requested as compared to all requests for the Non-Elected Amount) of the Non-Elected Amount.

(b) A request to take any Non-Elected Amount shall be communicated by written notice to the Development Committee within 120 days (or such longer period as may be approved by the Development Committee) after notice has been sent by the Development Committee of the availability of such Non-Elected Amount.

(c) Failure to elect, request or to notify in the manner provided in Sections 10.2 and 10.3 shall be deemed for all purposes an irrevocable determination not to exercise a right of election.

Section 10.4. Disposal of Remaining Non-Elected Amount. In the event that the Non-Elected Amount is not disposed of completely pursuant to Section 10.3, a special committee comprised of Unit 3 Participants only shall determine what action shall be taken. Each Unit 3 Participant's representative on this special committee shall be entitled to vote based on its elected participation in Unit 3, as adjusted to disregard the voting percentage attributable to the remaining portion of the Non-Elected Amount. All actions or decisions relating to the remaining portion of the Non-Elected Amount shall be agreed to by Unit 3 Participants holding Unit 3 participation shares (after any elected increase in Unit 3 participation pursuant to Section 10.3(a)(1)) totaling at least 80% in interest, provided that such action or decisions shall comply with the requirements of Section 5.1(l), (n) and (o) of the Development Coordination Agreement. Any Unit 3 Participant that does not vote in favor of such action or decision may, by written

notice given to each of the other Unit 3 Participants within 60 days after such vote, terminate its participation in Unit 3.

Section 10.5. Reimbursement of Development Costs. (a) Reimbursement of Development Costs shall be made as and to the extent provided in this Section 10.5. The Development Participants and former Development Participants that are eligible for such reimbursement are:

(1) Entities that withdrew as Development Participants pursuant to Section 9.1(a) and did not transfer their unassumed Development Costs Shares as provided in Section 9.4 (*"Former Development Participants"*);

(2) Development Participants that reduced their Development Costs Shares pursuant to Section 9.7(a) and did not transfer their unassumed Development Costs Shares as provided in Section 9.4 (*"Reduced Development Participants"*);

(3) Development Participants that elect not to participate in Unit 3 in any amount pursuant to Section 10.2 (*"Non-Electing Development Participants"*); and

(4) Development Participants that elect to participate in Unit 3 pursuant to Section 10.2, but with participation interests in Unit 3 that are less than their Development Costs Shares (*"Reduced Unit 3 Participants"*).

(b) Reimbursement of Development Costs paid by Former Development Participants, Reduced Development Participants, Non-Electing Development Participants and Reduced Unit 3 Participants shall be subject to all of the following conditions:

(1) The Unit 3 Participants agree to proceed with construction of Unit 3;

(2) Definitive Project Agreements are executed; and

(3) The Unit 3 Participants, individually or through one or more entities acting on their behalf, successfully issue bonds or other obligations to finance the initial costs of construction of Unit 3 (or otherwise obtain appropriations or allocations of funds sufficient to pay such costs of construction).

(c) The amount of Development Costs for which reimbursement shall be provided to any Former Development Participant, any Reduced Development Participant, any Non-Electing Development Participant and any Reduced Unit 3 Participant shall be as follows:

(1) Any Former Development Participant shall be entitled to reimbursement for 100% of the Development Costs paid by it and not reimbursed pursuant to Section 15.3.

(2) Any Reduced Development Participant shall be entitled to reimbursement for 100% of the product of (i) the positive difference between its Development Costs

Share (or Augmented Development Costs Share, if applicable) prior to the reduction and its reduced Development Costs Share (or Augmented Development Costs Share, if applicable) and (ii) the Development Costs that were paid by it while its Development Costs Share (or Augmented Development Costs Share, if applicable) was in effect prior to the reduction and that were not reimbursed pursuant to Section 15.3 .

(3) Any Non-Electing Development Participant shall be entitled to reimbursement for 100% of the Development Costs paid by it.

(4) Any Reduced Unit 3 Participant shall be entitled to reimbursement for 100% of the product of (i) the positive difference between its Development Costs Share and its percentage participation interest in Unit 3 and (ii) the Development Costs paid by it.

The aggregate amount to be reimbursed to any Former Development Participants, any Reduced Development Participants, any Non-Electing Development Participants and any Reduced Unit 3 Participants is referred to in paragraph (d) below as the *"Development Costs Reimbursement"*. The parties to whom the Development Costs Reimbursement is owed are referred to in paragraph (d) below as the *"Development Costs Payees"*.

(d) After the execution and delivery of the Project Agreements as provided in Section 11.1(b), the Development Costs Payees shall be reimbursed by the Unit 3 Participants for the Development Costs Reimbursement as provided in this paragraph (d). Each of the Unit 3 Participants shall include an amount equal to its pro rata share of the Development Costs Reimbursement (based on its Unit 3 participation share) in its initial financing or other funding arrangements for its share of the costs of construction of Unit 3 and shall cause such amount to be deposited into the construction fund for Unit 3 under the Project Agreements. The total amount of the Development Costs Reimbursement shall be reimbursed to the Development Costs Payees out of the amounts so deposited into the Unit 3 construction fund within 30 days after the completion of the Unit 3 Participants' initial financing or other funding arrangements for the costs of construction of Unit 3. The Project Agreements shall contain a provision obligating the Unit 3 Participants to reimburse or cause to be reimbursed to the Development Costs Payees the Development Costs Reimbursement as provided in this Section 10.5, and the Development Costs Payees shall be stated to be third party beneficiaries of this provision.

(e) No defaulting Development Participant as described in Section 13.4 shall be entitled to receive any reimbursement under this Section 10.5.

Section 10.6. Reimbursement of Category 2 Study Expenses. After the execution and delivery of the Project Agreements as provided in Section 11.1(b), the Study Participants shall be reimbursed by the Unit 3 Participants for Category 2 Study Expenses as provided in this Section 10.6. Each of the Unit 3 Participants shall include an amount equal to its pro rata share of the Category 2 Study Expenses (based on its Unit 3 participation share) in its initial financing or other funding arrangements for its share of the costs of construction of Unit 3 and shall cause such amount to be deposited into the construction fund for Unit 3 under the Project Agreements. The total amount of the Category 2 Study Expenses shall be reimbursed to the Study Participants

out of the amounts so deposited into the Unit 3 construction fund within 30 days after the completion of the Unit 3 Participants' initial financing or other funding arrangements for the costs of construction of Unit 3. The Project Agreements shall contain a provision obligating the Unit 3 Participants to reimburse or cause to be reimbursed to the Study Participants the Category 2 Study Expenses as provided in this Section 10.6, and the Study Participants shall be third party beneficiaries of this provision.

Section 10.7. Compliance With Utah Interlocal Act. All Parties shall take or shall cause to be taken all actions necessary on their respective parts to ensure that their participation in Unit 3 complies with the requirements of the Interlocal Act.

ARTICLE XI

NEGOTIATION AND EXECUTION OF PROJECT AGREEMENTS

Section 11.1. Negotiation and Execution of Project Agreements. (a) The Development Participants acknowledge and agree that the development of definitive Project Agreements is a key component of the Development Work that will require negotiations between and among the Development Participants, IPA, the Unit 1 and 2 Operating Agent and the Unit 1 and 2 Participants acting through the Unit 1 and 2 Coordinating Committee. The Development Committee shall have the responsibility for making arrangements for developing the terms of the Project Agreements other than those to which IPA and/or the Unit 1 and 2 Operating Agent shall be parties, all in accordance with assignments made by the Development Committee. The terms of the Project Agreements to which IPA and/or the Unit 1 and 2 Operating Agent shall be parties shall be initially proposed by IPA or the Unit 1 and 2 Operating Agent.

(b) As soon as practicable after the election procedures pursuant to Article X have been completed, the Development Committee shall cause definitive Project Agreements to be completed (by the insertion of the names of the Unit 3 Participants and their participation interests, dates and other nonsubstantive information) and delivered for execution by the Unit 3 Participants and the other parties thereto, reflecting (i) the ownership interest of each Unit 3 Participant and (ii) such other matters as shall be necessary or desirable to complete said Project Agreements including, without limitation, a detailed description of Unit 3 as then proposed. The Development Committee shall, as soon as practicable after such completion for execution, deliver to each Unit 3 Participant two execution copies of the Project Agreements to which they are parties and as many counterpart signature pages of such Project Agreements as there are Unit 3 Participants. Each Unit 3 Participant shall be required to execute and deliver to the Development Committee or its designee one executed copy and the transmitted number of counterpart signature pages within 20 days (or such other period as shall be authorized by the Development Committee) after receipt thereof. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement obligates any Development Participant to execute any Project Agreement.

ARTICLE XII

LIABILITY

Section 12.1. Limitation on Liability. Except for damage or loss resulting from Willful Action or breach of fiduciary obligation in connection with the performance or nonperformance of this Agreement and subject to the provisions of Section 12.3, a Development Participant shall not be liable to any other Development Participant for any loss or damage resulting from Development Work or the performance or nonperformance of its obligations under this Agreement, other than obligations of each Development Participant to pay its Development Costs Share of Development Costs. It is hereby recognized and agreed that the members, directors, governing body members, officers and employees of each Development Participant shall not be individually liable with respect to any loss or damage resulting from Development Work or the performance or nonperformance of any obligation under this Agreement.

Section 12.2. Allocation of Costs to Discharge Liability. The costs and expenses of discharging liability of the Development Manager or a Development Participant to a person or entity other than a Development Participant resulting from Development Work, the incurrence of Development Costs or the performance or nonperformance of any obligation under this Agreement and for which payment is not made by insurance, shall be allocated, subject to the Development Costs Limit, among all Development Participants in proportion to their respective Development Costs Shares (or Augmented Development Costs Shares during the Transition Period, if applicable). To the extent a Development Participant pays more than its Development Costs Share (or Augmented Development Costs Share) for costs and expenses under this Section 12.2, such Development Participant shall have a right to receive such excess payment from those Development Participants which have not paid their full Development Costs Shares (or Augmented Development Costs Shares) of such costs and expenses to ensure allocation of costs and expenses as required by this Section 12.2.

Section 12.3. Indemnification for Willful Action. Each Development Participant shall be responsible for the consequences of its own Willful Action and breach of fiduciary obligation in connection with the performance or nonperformance of this Agreement and Development Work, and shall indemnify and hold harmless the other Development Participants, their members, directors, members of their governing body or bodies, officers and employees from the consequences thereof to the extent allowed by law.

Section 12.4. Willful Action. (a) For the purpose of Article XII, "Willful Action" means action taken or not taken by or on behalf of the Development Manager or a Development Participant at the direction of its members, directors, members of its governing body or bodies, officers or employees having management or administrative responsibility affecting its performance under this Agreement, which is any of the following:

(1) Action which is knowingly or intentionally taken or not taken with conscious indifference to the consequences thereof or with intent or knowledge that injury or damage would result or would probably result therefrom;

(2) Action which has been determined by final arbitration award or final judgment or judicial decree to be a material default under this Agreement and which action occurs or continues beyond the time specified in such arbitration award, judgment or judicial decree for curing such default or, if no time to cure is specified therein, occurs or continues thereafter beyond a reasonable time to cure such default; or

(3) Action which is knowingly or intentionally taken or not taken with the intent or knowledge that such action taken or not taken is a material default under this Agreement.

(b) The phrase "employees having management or administrative responsibility" as used in this Section 12.4 means the employees of a Development Participant who are responsible for one or more of the executive functions of planning, organizing, coordinating, directing, controlling or supervising such Development Participant's performance under this Agreement with responsibility for results, but does not include any independent contractor.

(c) Willful Action does not include any act or failure to act which is merely involuntary, accidental or negligent.

Section 12.5. No Relief of Insured Obligations. The provisions of this Article XII shall not be construed so as to relieve any insurer of its obligation to pay any insurance proceeds in accordance with the terms and conditions of a valid and collectible insurance policy. All policies of insurance obtained with respect to the performance of the Development Work shall contain a waiver of subrogation.

Section 12.6. Liability of Development Manager. Except as provided below, neither the Development Manager, in its capacity as Development Manager, nor any of its respective officers, employees or agents shall be liable for damages to any Development Participant for any act or failure to act, whether by negligence or otherwise, arising out of or pertaining to this Agreement. The Development Participants shall indemnify and hold harmless the Development Manager from all liability and expense on account of any and all damages, claims or actions, whether based on contract or tort, including injury to or death of persons or damage to property arising from any act or failure to act by the Development Manager, acting in its capacity as such, and its respective officers, employees and agents, whether by negligence or otherwise, arising out of or pertaining to this Agreement. Nothing in this Section 12.6 shall, however, be construed to: (i) exculpate or indemnify the Development Manager or any of its respective officers, employees and agents for damages resulting from Willful Action in connection with the performance or non-performance of the Development Work; provided, however, any such damages resulting from or attributable to the service of a Development Manager shall be limited to, and paid solely out of, payments actually received by such Development Manager with respect to Development Costs Shares that have not been expended by the Development Manager for any purpose permitted under this Agreement, have not been committed to any such purpose or are not otherwise required for the Development Manager to meet any contractual or other obligation or liability it has incurred in its role as Development Manager, nor (ii) exculpate or indemnify the Development Manager for any liability arising from its capacity, if any, as a Development Participant under this Agreement.

ARTICLE XIII

DEFAULT

Section 13.1. Notice of Default. The failure of any Development Participant to pay any amount as and when due as provided in Section 7.2 shall constitute a default on the part of such Development Participant. The Development Committee shall cause written notice of such default to be given to the defaulting Development Participant by certified mail and shall cause copies of such notice to be sent to each non-defaulting Development Participant. Said notice shall include a demand to immediately cure the default. For purposes of the vote of the Development Committee to provide such a notice, the voting rights of the Development Participant alleged to be in default shall be suspended in connection with such matter and the percentage of Development Costs Shares (or Augmented Development Costs Shares during the Transition Period, if applicable) required for an action of the Development Committee as specified in Section 3.4(a) shall be proportionately adjusted to disregard the suspended voting rights.

Section 13.2. Obligation to Cure Default; Payment of Defaulted Amount. (a) Subject to Section 13.3, a defaulting Development Participant to which notice was sent shall take all steps necessary to cure such default as promptly as possible by the payment of all amounts owed by it.

(b) The amount not paid timely by the defaulting Development Participant shall constitute an item of Development Costs and shall be payable by the nondefaulting Participants, pro rata in accordance with their Development Costs Shares (or Augmented Development Costs Shares during the Transition Period, if applicable). Amounts subsequently recovered from the defaulting Development Participant shall be deposited into the Unit 3 Development Account and shall, at the direction of the Development Committee, be reimbursed to the nondefaulting Development Participants (in proportion to the payments made by them in respect of the defaulted amount) or retained therein for the payment of Development Costs.

Section 13.3. Dispute of Default. In the event that any Development Participant shall dispute the existence or nature of a default asserted in the notice given by the Development Committee pursuant to Section 13.1, such Development Participant shall pay the disputed payment under protest as provided in Section 7.5. Any such protest shall be promptly made in writing to the Development Committee and shall specify the ground on which the protest is based. Copies of such protest shall be mailed at the same time by the protesting Development Participant to all the other Development Participants.

Section 13.4. Termination of Rights of Defaulting Development Participant. (a) In the event a Development Participant does not take all steps necessary to cure a default in accordance with Section 13.3, then, 30 days after the mailing of notice to such Development Participant in accordance with Section 13.1 if no cure has occurred, the defaulting Development Participant shall no longer be considered to be a Development Participant under this Agreement and all rights (including but not limited to any rights to reimbursement that may be provided in Section Sections 10.5 and 15.3) and obligations of the defaulting Development Participant shall terminate, except that the outstanding payment obligations, including its obligation to pay its

Development Costs Share of Developments Costs incurred prior to the effective date of such termination, of such defaulting Development Participant due to Development Costs incurred prior to the date of termination shall continue until satisfied, and the defaulting Development Participant shall not be entitled to access to or to receive copies of documents relating to Development Work after the date of such Development Participant's termination.

(b) On or prior to the effective date of the termination of a Development Participant's rights and obligations, the Development Committee shall meet to discuss the termination, its impact upon Unit 3 and the potential assumption by the non-defaulting Development Participants of the defaulting Development Participant's Development Costs Share. Within 10 days of any such termination, the Development Committee shall give written notification of such termination to each non-defaulting Development Participant.

(c) Each non-defaulting Development Participant may request, within 30 days (or such longer period as may be authorized by the Development Committee) after the Development Committee has sent the notification pursuant to Section 13.4(b), to assume all or a portion of the defaulting Development Participant's Development Costs Share. If more than the total amount of the defaulting Development Participant's Development Costs Share is requested to be assumed by non-defaulting Development Participants, the defaulting Development Participant's Development Costs Share shall be allocated pro rata (based upon the amounts requested) to the requesting Development Participants, and such allocation shall be deemed to be effective as of the date of termination of the defaulting Development Participant's rights and obligations hereunder. Notwithstanding the foregoing, the increase in the Development Costs Share of such Development Participant as a result of such an assignment shall be subject to compliance with Section 5.1(l), (n) and (o) of the Development Coordination Agreement. In the event any such increase in the Development Costs Share of a Development Participant fails to comply with Section 5.1(l), (n) or (o) of the Development Coordination Agreement, such increase shall then be allocated to the other Development Participants that request such increase, and, if more than such increase shall be so requested, then such increase shall be allocated among them based upon their Development Costs Shares then in effect.

(d) In the case of such a default during the Full Subscription Period, if the amount of the defaulting Development Participant's share voluntarily assumed by the non-defaulting Development Participants is less than 100% of the defaulting Development Participant's Development Costs Share, each non-defaulting Development Participant that is able to comply with Section 5.1(l), (n) and (o) of the Development Coordination Agreement shall assume its respective portion of the balance of the defaulting Development Participant's Development Costs Share, in an amount proportionate to that which its Development Costs Share (prior to any increase thereof as a result of Section 13.4(c)) bears to the total Development Costs Shares of such other complying non-defaulting Development Participants, and such assumption shall be deemed to be effective as of the date of termination of the defaulting Development Participant's rights and obligations hereunder.

(e) Immediately following the completion of the procedures described above that result in any adjustment in Development Costs Shares, *Exhibit A* shall be amended without further action to reflect such adjustment.

(f) The defaulting Development Participant shall not be entitled to reimbursement from any non-defaulting Development Participant of Development Costs paid by the defaulting Development Participant.

Section 13.5. Waiver Not to Affect Subsequent Defaults. A waiver at any time by any Development Participant of its rights with respect to a default or any other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any other or subsequent default or matter.

ARTICLE XIV

ASSIGNMENT

Section 14.1. Binding Obligations. All of the obligations set forth in this Agreement shall bind the Development Participants and their successors and assigns.

Section 14.2. Assignment. (a) A Development Participant, prior to the date it is required to give notice of its election to become a Unit 3 Participant in accordance with Section 10.2, may assign all or part of its rights, interests and obligations under this Agreement to a Qualified Electric Provider. Prior to making any such assignment, the assigning Development Participant shall first offer to assign all or such part of its rights and obligations to the other Development Participants; provided, however, no such offer shall be required in the case of such an assignment: (i) by a Development Participant to a Qualified Electric Provider that (A) is directly or through one or more other entities wholly owned by such Development Participant, (B) directly or through one or more other entities wholly owns such Development Participant, or (C) directly or through one or more other entities is wholly owned by an entity that directly or through one or more entities wholly owns such Development Participant, or (ii) that is described in subsection (b) or (c) of this Section 14.2. Such offer shall be made in writing and shall indicate the extent of the assigning Development Participant's interest to be assigned (expressed as a Development Costs Share). Such offer shall be given to all of the other Development Participants, shall set forth the proposed terms and conditions for the assignment and shall provide the other Development Participants with at least 60 days to accept such offer. In the event that the other Development Participants agree to accept an assignment of more than all of the Development Costs Share to be assigned, then such Development Costs Share shall be allocated among them based upon their Development Costs Shares in effect at the time of such offer. In the event, however, that none or less than all of the Development Costs Share is accepted by or otherwise allocated to the other Development Participants, then the assigning Development Participant may proceed to assign its rights and obligations hereunder to the Qualified Electric Provider.

(b) Any Development Participant, in lieu of directly exercising its rights under this Agreement, may, prior to the date it is required to give notice of its election to become a Unit 3 Participant in accordance with Section 10.2, assign all or part of its rights, interests and obligations under this Agreement and the corresponding Development Costs Share to a Joint Powers Agency of which it is a member if such Development Participant shall or has become a

JPA Participant under a JPA Participant Agreement with such Joint Powers Agency with respect to its participation in the Development Committee, the Development Work and Unit 3. Such Development Participant shall deliver written notice to the other Development Participants of such assignment to such Joint Powers Agency, together with a copy of the written instrument that assigns to such Joint Powers Agency its rights under this Agreement. Thereupon, the Joint Powers Agency may exercise such rights in the same manner and subject to the same terms and conditions as though such Joint Powers Agency had itself been such Development Participant; provided that, unless the Development Committee shall unanimously otherwise approve, the Development Costs Share of such Joint Powers Agency resulting from its exercise of such rights shall be payable in full from the JPA Participant Share of such Development Participant that has become the JPA Participant under such JPA Participant Agreement. Any right to participate in Unit 3 that is assigned as above provided shall not constitute a Non-Elected Amount under Section 10.3. No such assignment shall be treated as an assignment that is subject to Section 14.2(a) or 14.3.

(c) Any Development Participant that is a Joint Powers Agency, in lieu of directly exercising its rights under this Agreement, may, prior to the date it is required to give notice of its election to become a Unit 3 Participant in accordance with Section 10.2, assign all or any portion of such rights and the corresponding Development Costs Share to any JPA Participant under its JPA Participant Agreement. Such Joint Powers Agency shall deliver a written notice to the other Development Participants of such assignment, together with a copy of the written instrument or instruments that assigns such rights to such JPA Participant. Thereupon, such JPA Participant may exercise such rights in the same manner and subject to the same terms and conditions as though such JPA Participant had been a Development Participant (i) with a Development Costs Share equal to such Joint Powers Agency's Development Costs Share multiplied by the percentage of the JPA Participant Share of such JPA Participant or (ii) with a different Development Costs Share that shall be approved unanimously by the Development Committee. Any right to participate in Unit 3 that is transferred as above provided shall not constitute a Non-Elected Amount under Section 10.3. No such assignment shall be treated as an assignment that is subject to Section 14.2(a) or 14.3.

(d) No assignment made pursuant to subsection (a), (b) or (c) of this Section 14.2 shall become effective unless and until (i) the assignee assumes the assignor's rights, interests and obligations under this Agreement and pays any amount (or the applicable portion thereof) then due and owing by the assignor under this Agreement (unless the assignor has agreed pursuant to the applicable assignment agreement to pay all such amounts then due and owing by the assignor), (ii) if such assignment shall take place during the Full Subscription Period, assuming such assignment is consummated, Utah entities hold Development Costs Shares which will enable them to elect to become Unit 3 Participants with participation interests that comply with any applicable requirements of the Interlocal Act, as determined by the Development Committee, (iii) the assignee executes and delivers to the Development Committee a counterpart of this Agreement, together with the opinion and other evidences and documentation referred to in Section 16.14, (iv) the assignee executes and delivers to IPA a counterpart of the Development Coordination Agreement, together with the opinion and other evidences and documentation referred to in Section 16.14, and (v) the assignee delivers to the Development Committee an original counterpart or certified copy of such assignment. Upon any such assignment and

execution of this Agreement, the assignee shall become a party to, and a Development Participant under, this Agreement as of the effective date of the assignment. Immediately following such assignment and execution of this Agreement, the Development Committee promptly shall distribute to each Development Participant (i) a copy of the counterpart of this Agreement signed by the assignee, and (ii) a revised *Exhibit A* that reflects such assignment, including, without limitation, sets forth the name, Development Costs Share and address for purposes of Section 16.8 of the assignee and the reduction or elimination of the Development Costs Share of the assignor, as applicable.

(e) Upon any assignment by a Development Participant of all or any portion of its Development Costs Share in accordance with the terms and conditions of this Agreement and the Development Coordination Agreement, and the assumption of such Development Participant's rights, interests and obligations with respect to such Development Costs Share or portion thereof by the assignee pursuant to the immediately preceding subsection (d), such assigning Development Participant shall be automatically released of all of its duties and obligations under this Agreement with respect to such assigned Development Costs Share or portion thereof, other than any such duties or obligations due, payable or performable prior to, or with respect to any period prior to, the date such assignment becomes effective.

ARTICLE XV

TRANSITION PERIOD

Section 15.1. Occurrence of Transition Period. If a Transition Period occurs, the Development Agreement shall immediately become effective, notwithstanding that the Development Costs Shares of the Development Participants that executed and delivered the Development Agreement on or prior to the Transition Effective Date aggregate less than 100 percent, provided that the provisions of this Article (other than the next to the last sentence of Section 15.3, which shall continue into the Full Subscription Period) shall be in effect only during the Transition Period. If the Transition Period does not occur, then the provisions of this Article shall not become effective.

Section 15.2. Transition Development Participants. A person or entity shall be allowed to become a Transition Development Participant only upon the following terms and conditions:

(a) Subject to compliance with Sections 5.1(l), (n) and (o) of the Development Coordination Agreement, the Initial Development Participants shall unanimously approve the Transition Development Participant as a Development Participant.

(b) Each Transition Development Participant shall, as a condition to becoming a Development Participant and subject to compliance with Sections 5.1(l), (n) and (o) of the Development Coordination Agreement, duly execute and deliver a counterpart of this Agreement (together with the opinion and other evidences and documentation referred to in Section 16.14), and the Development Coordination Agreement, and *Exhibit A* of this Agreement shall be updated to include such Transition Development Participant as a Development Participant and the Unsubscribed Development Costs Share to which it subscribed as its Development Costs Share

(or in the case of a then existing Development Participant that also becomes a Transition Development Participant, to increase its Development Costs Share by the Unsubscribed Development Costs Share to which it subscribed). Concurrently with such execution and delivery, such Transition Development Participant shall pay in full the amounts it is required to pay pursuant to Section 15.3.

(c) Neither the Development Manager, IPA, the Unit 1 and 2 Operating Agent, any Study Participant nor any Development Participant shall have any liability to any Development Participant or other party to this Agreement as a result of a failure of the Full Subscription Period to occur.

(d) Notwithstanding anything else in this Agreement to the contrary, the Initial Development Participants may, in their sole discretion and by their unanimous vote increase, subject to the availability of Unsubscribed Development Costs Shares, any of their respective Development Costs Shares under this Agreement at any time upon providing written notice to the other Development Participants of such increase, which notice shall specify the amount of the increase in the Development Costs Share of such Initial Development Participant and the effective date thereof.

Section 15.3 Reimbursement of Incremental Development Costs. Upon entering into the Development Agreement, each Transition Development Participant shall pay to each of the then existing Development Participants (or pay to the Development Manager under arrangements whereby the Development Manager shall pay to each of the then existing Development Participants) such Transition Development Participant's Reimbursement Share of (i) the Unreimbursed Incremental Development Costs paid by such Development Participant, together with interest at the Reimbursement Rate that has accrued thereon, and (ii) in the event of any outstanding invoice of such Development Participant not yet due and payable, the amount of Development Costs set forth therein that are attributable to such Development Participant's Incremental Development Costs Share. Additionally, in the case of any invoice pursuant to Section 7.1 containing adjustments relating to Development Costs with respect to which payment was made as set forth above, such adjustments in the invoices to such Transition Development Participant and each of such Developmental Participants shall be further adjusted as necessary to provide for a settlement of accounts between such Transition Development Participant and each such Development Participant so as to give effect to the provisions of the next preceding sentence. Notwithstanding the forgoing, no defaulting Development Participant as described in Section 13.4 shall be entitled to receive any reimbursement under this Section 15.3.

Section 15.4 Payment Obligations of Development Participants. During the Transition Period the Augmented Development Costs Share of each Development Participant shall be deemed to be its Development Costs Share for the purpose of calculating the share of Development Costs due and payable by such Development Participant under this Agreement.

Section 15.5 Initial Budget and Initial Schedule. Promptly following the commencement of the Transition Period, the Development Committee shall adopt the Initial Budget, as referenced in Section 6.2, and consider the initial schedule, as referenced in Section 6.3, in light of the then existing circumstances and participation by Development Participants,

and the Development Committee may vote to revise either or both of such Initial Budget or initial schedule, in which case such revised initial schedule shall then be set forth in *Exhibit B*. Thereafter the budget and the schedule shall be revised as provided in Section 6.2 and Section 6.3, respectively.

Section 15.6 Voting on Development Committee Matters. During the Transition Period the Augmented Development Costs Share of each Development Participant shall be deemed to be its Development Costs Share for the purpose of calculating its voting rights percentage with respect to all actions or decisions by the Development Committee.

ARTICLE XVI

GENERAL AND MISCELLANEOUS PROVISIONS

Section 16.1. Effective Date and Termination.

(a) This Agreement shall become effective on the first date upon which it has been duly executed and delivered by Development Participants that shall be assigned Development Costs Shares equal to or greater than 60 percent as shall be set forth in *Exhibit A* and by the Development Manager and the Development Coordination Agreement shall have been duly executed and delivered in accordance with its terms; provided, however, if this Agreement has not become effective on or before December 31, 2005, or such later date as determined by the Development Participants that have then executed and delivered this Agreement, it shall not become effective and shall not, thereafter, be subject to acceptance by additional Development Participants. For purposes of this Agreement: (i) the first date upon which this Agreement has been duly executed and delivered by Development Participants that shall be assigned Development Costs Shares equal to 100 percent as shall be set forth on *Exhibit A* and by the Development Manager and the Development Coordination Agreement shall have been duly executed and delivered in accordance with its terms is referred to as the *"Effective Date"*; and (ii) if this Agreement becomes effective pursuant to the first sentence of this subsection (a) based on its due execution and delivery by Development Participants that shall be assigned Development Costs Shares that equal or exceed 60 percent, but that are less than 100 percent, as shall be set forth in *Exhibit A*, then the date upon which this Agreement becomes effective is referred to as the *"Transition Effective Date"*.

(b) Unless terminated earlier pursuant to Section 16.1(c), this Agreement shall terminate upon the execution of the Project Agreements; *provided, however,* that any payment obligation hereunder (whether pursuant to Section 6.6, Article VII or another provision of this Agreement and regardless of whether a billing statement has been received by the date of termination) and any right to receive reimbursement pursuant to Sections 2.1(b), 10.5, 10.6 and 16.1(d) shall survive until satisfied. Upon execution of the Project Agreements, all rights and interests of the Development Participants in all the contracts, licenses, permits, studies, documents, materials, matters and things acquired under this Agreement shall vest in and become the property of the Unit 3 Participants and any amount remaining in the Unit 3 Development Account that is not required to pay any outstanding Development Costs shall be paid over to the

Development Participants that received the Subscription Notice pursuant to Section 10.1(b), *pro rata* in accordance with their Development Costs Shares.

(c) This Agreement shall terminate on the first to occur of the following:

(1) The Full Subscription Period shall not have commenced by a date as shall be determined from time to time by the Development Committee;

(2) 90 days following the date on which the Development Costs equal or exceed 95% of the Development Costs Limit unless, on or before such 90th day, the Development Committee shall determine that the Development Work can be completed within the then-effective budget or shall have voted to increase the Development Costs Limit as provided in Section 6.1(b) or the Development Costs Limit has been increased as provided in Section 6.1(c);

(3) The third anniversary of the Effective Date or the Transition Effective Date, as the case may be;

(4) The failure during the Full Subscription Period of Utah entities to hold Development Costs Shares which exceed 50%, unless the Development Committee shall determine that all requirements of the Interlocal Act are expected to be met upon completion of the election process under Article X for participation in Unit 3;

(5) The failure during the Full Subscription Period of the Development Committee to obtain a full allocation of the Development Costs Share of a Development Participant that has elected to withdraw from this Agreement by the effective date of such withdrawal (as specified in the written notice given by the withdrawing Development Participant pursuant to Section 9.1(a)) or by such later date as may be determined by the Development Committee pursuant to Section 9.5;

(6) The failure during the Full Subscription Period of the Development Committee to obtain a full allocation of the reduction in Development Costs Share that has been elected by a Development Participant by the effective date of such reduction (as specified in the written notice given by the electing Development Participant pursuant to Section 9.7(a)) or by such later date as may be determined by the Development Committee pursuant to Section 9.5;

(7) A failure of the electing Unit 3 Participants' representatives to effect complete allocation of any remaining Non-Elected Amount pursuant to Section 10.4 within 90 days or such longer period as shall be agreed to by Unit 3 Participants holding Unit 3 participation shares totaling at least 80% in interest; and

(8) The date on which all Development Participants agree in writing to terminate this Agreement.

Upon such termination of this Agreement, (i) the Development Committee shall terminate all Development Work in an orderly manner, (ii) the Development Participants shall fulfill all obligations hereunder to pay for the Development Costs that have been incurred, and (iii) any payment obligation hereunder (whether or not a billing statement has been received by the date of termination) and any right to receive reimbursement pursuant to Sections 2.1(b), 10.5, 15.3 and 16.1(d) shall survive until satisfied.

(d) Except as provided in Section 16.1(b), upon termination of this Agreement, the Development Committee shall (i) sell any and all equipment relating to Unit 3 (including options to purchase any of same) the costs of which were Development Costs and (ii) promptly distribute the proceeds thereof (less any costs incurred in connection with the sale thereof) to all of the Development Participants (other than any defaulting Development Participant as described in Section 13.4), including any Development Participants that have withdrawn as provided in Section 9.1(a) (other than a withdrawn Development Participant that exercised its option under Section 9.4(a)), in proportion to the amount of Development Costs paid by each such Development Participant and not reimbursed pursuant to Section 15.3.

(e) Unless this Agreement terminates as provided in Section 16.1(b), upon termination of this Agreement, the Development Manager or its designee shall retain for a period of 3 years from the date this Agreement is terminated in a reasonably accessible location all original accounting statements, reports, records and other accounting data relating to the incurrence and payment of Development Costs. Upon termination of this Agreement, and for a period of 3 years thereafter, each Development Participant shall have full access to accounting statements, reports, records and other accounting data with respect to the Development Costs retained by the Development Manager or its designee and upon reasonable notice may, at the requesting Development Participant's sole expense, reproduce any or all of such accounting statements, reports, records and other accounting data. In addition, any amount remaining in the Unit 3 Development Account that is not required to pay any outstanding Development Costs shall, upon such termination, be paid over to the Development Participants *pro rata* in accordance with their Development Costs Shares (or Augmented Development Costs Shares if such termination shall occur during the Transition Period, if applicable).

Section 16.2. Amendments. Except as otherwise provided in Section 4.2, this Agreement may be amended only by a written amendment signed by the Development Participants and if such amendment shall adversely affect the rights and interests of the Study Participants as set forth in Section 16.6, such amendment shall be subject to the approval of the Study Participants, and, if such amendment shall adversely affect the rights and interests of IPA or the Unit 1 and 2 Operating Agent as set forth in Section 16.6, such amendment shall be subject to the approvals of IPA and the Unit 1 and 2 Operating Agent.

Section 16.3 Representations and Warranties. (a) Each of the Development Participants represent and warrant to one another as follows:

(1) It is duly organized and a validly existing Qualified Electric Provider with full power and authority to enter into this Agreement and to perform its obligations hereunder;

(2) This Agreement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable in accordance with the terms hereof (except as enforceability of this Agreement may be affected by bankruptcy, insolvency and similar laws affecting creditors' rights generally and by the application of general principles of equity); and

(3) Its execution, delivery or performance of this Agreement does not materially violate or materially conflict with (A) any provision of applicable law, (B) any provision of its governing charter, articles, bylaws, interlocal cooperation or joint powers agreement, or other organizational agreement, filing, decree or action applicable thereto, or (C) any provision of any material contract, instrument, agreement or other document to which it is a party. or by which it is legally bound.

(b) The parties to the Development Coordination Agreement shall be entitled, and are hereby authorized, to rely upon the foregoing representations and warranties.

Section 16.4. Entire Agreement. This Agreement, together with the Development Coordination Agreement and any confidentiality agreements or Air Permit Prosecution Agreement entered into concurrently with the execution and delivery of this Agreement, contains the entire understanding of the Development Participants with respect to Development Work and Unit 3 and supersedes any and all prior agreements, understandings and negotiations with respect to Development Work and Unit 3. Nothing in this Section 16.4 shall affect or limit the validity and enforceability of any agreement entered into by any Development Participant with respect to Development Work or Unit 3 after the Transition Effective Date or Effective Date, as applicable.

Section 16.5. Relationship of Development Participants. The covenants, obligations and liabilities of this Agreement are several and not joint or collective and nothing herein contained shall ever be construed to create an association, joint venture, trust, partnership or other legal entity or to impose a trust or partnership covenant, obligation of liability on or with regard to any one or more of the Development Participants. Each Development Participant shall be individually responsible for its own covenants, obligations and liabilities under this Agreement. No Development Participant shall be under the control of or shall be deemed to control any other Development Participant. No Development Participant shall be the agent of or have a right or power to bind any other Development Participant without its express written consent.

Section 16.6. Rights in Third Parties Created. Each of the Study Participants, in its capacity as a Study Participant, shall be a third party beneficiary of the provisions of Sections 2.1(b) with respect to the payment of Category 1 Study Expenses and Section 10.6 with respect to Category 2 Study Expenses. All payment obligations to the Study Participants under this Agreement shall survive the termination hereof; provided, however, this sentence shall not be interpreted to override any conditions to any such payment obligation that otherwise would apply under this Agreement. Each Study Participant, in its capacity as a Study Participant, IPA, in its capacity as the owner of Units 1 and 2, and the Department, as Unit 1 and 2 Operating Agent, shall be third party beneficiaries of each provision of this Agreement that states that it shall have any right, control, authority or entitlement or that provides for any party hereto to perform any duty or obligation for its benefit. Except as provided in this Section 16.6, this Agreement does

not create any rights in or grant remedies to any third party as a beneficiary of this Agreement or create for the benefit of any third party any duty or standard of care by any covenant, obligation or undertaking established herein.

Section 16.7. Arbitration; Attorneys Fees and Other Costs. (a) If a dispute arises between any of the Development Participants under this Agreement, all of the disputing Development Participants may submit the dispute to such form of arbitration as they may agree.

(b) In any dispute between or among the Development Participants under this Agreement, each Development Participant shall pay its own attorney fees and costs.

Section 16.8. Notices. (a) Any notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given, or made if delivered in person or sent by registered or certified mail, postage prepaid, or by facsimile or other electronic transmission to the persons specified below:

If to IPA, in its capacity as Development Manager:

Intermountain Power Agency
10653 South River Front Parkway, Suite 120
South Jordan, Utah 84095
Attention: General Manager
Telephone: (801) 938-1333
Facsimile: (801) 938-1330

If to any Development Participant, to such person and pursuant to such contact information as set forth for such Development Participant on *Exhibit A* attached hereto.

(b) Any Development Participant may, at any time, by written notice to the other Development Participants, designate different persons or different addresses for giving of notices hereunder.

Section 16.9. Headings Not Binding. The headings and captions in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 16.10. Severability. In the event that any provision of this Agreement shall be determined to be invalid or unenforceable in any respect, such determination shall not affect any other provision hereof, which shall remain in full force and effect.

Section 16.11. Governing Law. This Agreement shall be interpreted, governed by and construed under the laws of the State of Utah, provided that the laws of the State under which a party hereto was created shall determine the authority of such party to execute and perform its obligations under this Agreement.

Section 16.12. Independent Decision of Development Participant. (i) Each Development Participant is acting for its own account, has been represented by attorneys selected by it in connection with the negotiation and execution of this Agreement, and has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment and upon advice from such attorneys and other advisers as it has deemed necessary, (ii) such Development Participant is not relying on any communication (written or oral) of any other Development Participant or the Development Manager as advice or as a recommendation to enter into this Agreement; it being understood that information and explanations related to the terms and conditions of this Agreement shall not be considered advice or a recommendation to enter into this Agreement, (iii) no communication (written or oral) received from any other Development Participant or the Development Manager shall be deemed to be an assurance or guarantee as to the expected results of this Agreement, (iv) such Development Participant is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of this Agreement and it is also capable of assuming, and assumes, the risks of this Agreement, and (v) neither the Development Manager nor any Development Participant is acting as a fiduciary for or an adviser to such Development Participant in respect of this Agreement.

Section 16.13. IPP Obligations of IPA. Each of the Development Participants recognizes that IPA as the owner of IPP and as a party to the IPP Agreements has obligations, duties and responsibilities to the Unit 1 and 2 Participants under the Unit 1 and 2 Power Sales Contracts and to the Unit 1 and 2 Operating Agent and the other parties to the IPP Agreements, and agrees that IPA's performance of such obligations, duties and responsibilities under the IPP Agreements and its observance of the rights and interests of the parties thereto and of all the other terms and provisions thereof shall not constitute or otherwise be deemed a conflict of interest or a breach or default under this Agreement.

Section 16.14. Opinion of Counsel and Other Documentation. The execution and delivery of this Agreement, including any counterpart hereof, by each party to this Agreement, shall be accompanied by an opinion of counsel in form and substance reasonably satisfactory to the Development Manager together with such other evidences and documentation as the Development Manager shall reasonably request. Such opinion rendered on behalf of a party to this Agreement shall be for the benefit of and may be relied upon by each of the other parties to this Agreement, including, in the case of Development Participants, any entity thereafter becoming a Development Participant, and by third party beneficiaries under Section 16.6.

Section 16.15. Execution in Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute one and the same agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Development Participants and the Development Manager have caused this Agreement to be executed by their respective authorized signatories, all as of the date first written above.

INTERMOUNTAIN POWER AGENCY, as
General

By: Reed T. Searle
Reed T. Searle, General Manager

Address: 10653 South River Front
Parkway Suite 120
South Jordan, Utah 84095
Attention: General Manager
Telephone: (801) 938-1333
Facsimile: (801) 938-1330

UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS

By: Douglas Hunter
Print Name: Douglas O. Hunter
Title: General Manager
Date: May 9, 2005
Address: 2825 East Cottonwood Parkway, Suite 200
Salt Lake City, Utah 84121
Attention: General Manager
Telephone: (801) 566-3938
Facsimile: (801) 561-2687

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SEMPRA GENERATION

By:_____
Print Name:_____
Title:_____
Date:_____
Address: 101 Ash Street HQ14D
San Diego, California 92101-3017
Attention: _____
Telephone: _____
Facsimile: _____

CITY OF GLENDALE

By: [signature]
Print Name: Ignacio R. Troncoso
Title: Director of Glendale *Water & Power*
Date: 5/26/05
Address: 141 North Glendale Avenue, Level 4
Glendale, California 91206
Attention: Director of Glendale *Water & Power*
Telephone: 818-548-2107
Facsimile: 818-552-2852

APPROVED AS TO FORM
[signature]
Senior Assistant City Attorney
DATE 5/26/05

PACIFICORP

By:_____
Print Name:_____
Title:_____
Date:_____
Address: 201 South Main Street, Suite 2200
Salt Lake City, Utah 84111
Attention: _____
Telephone: _____
Facsimile: _____

#182113 v9

CITY OF GLENDALE

By:_____
Print Name:_____
Title:_____
Date:_____
Address: 141 North Glendale Avenue, Level 4
Glendale, California 91206
Attention: _____
Telephone: _____
Facsimile: _____

PACIFICORP

By: B Cunningham
Print Name: Barry G. Cunningham
Title: Sr. Vice President
Date: May 19, 2005
Address: 201 South Main Street, Suite 2200
Salt Lake City, Utah 84111
Attention: Barry G. Cunningham
Telephone: 801.220.4589
Facsimile: 801.220-4615

EXHIBIT C

OFFICE OF THE CITY ATTORNEY
ROCKARD J. DELGADILLO
CITY ATTORNEY

RICHARD M. BROWN
GENERAL COUNSEL
FOR WATER AND POWER

DEPARTMENT OF WATER AND POWER
LEGAL DIVISION
P.O. BOX 51111 - SUITE 340
LOS ANGELES, CALIFORNIA 90051-0100

TELEPHONE (213) 367-4500
FAX (213) 367-4658

September 20, 2007

VIA FAX AND U.S. MAIL
Matthew F. McNulty, III
Van Cott, Bagley, Cornwall & McCarthy
36 South State Street, Suite 1900
Salt Lake City, Utah 84111

Re: Air Permit for a Proposed Unit 3 at IPP

Dear Mr. McNulty:

The Intermountain Power Service Corporation (IPSC) provides certain personnel and operating functions for the Intermountain Power Project (IPP). IPSC's corporate purpose and authority are limited to operating and maintenance work at the IPP facilities owned by the Intermountain Power Agency. Under the IPP project agreements, IPSC can only provide services for the existing units owned by IPA and cannot provide services for a proposed new unit.

As the IPP Operating Agent, the Los Angeles Department of Water and Power (LADWP) was informed that your client, UAMPS, requested that IPSC furnish an assignment and name change relating to the air permit for the proposed Unit 3 at the IPP site. Although the initial approval order for the air permit is in the name of IPSC, that entity has no right, title or interest in said permit. Additionally, IPSC was not a party to the Intermountain Project Unit Three Development Coordination Agreement (Coordination Agreement).

About two and one-half years ago, your client, along with the other Unit 3 Development Participants, executed the Coordination Agreement. As a part of that Coordination Agreement, the Unit 3 Development Participants acquired the "Steering Committee Work Product," including the Air Permit. (See e.g. Exhibit B to the Coordination Agreement.) The Unit 3 Air Permit was assigned and transferred in its then "as-is" and "where-is" condition. (See page 10, Section 3.4)

At that time, the Unit 3 Development Participants specifically requested that the name of the Unit 3 Air Permit not be changed because they feared that there would be permitting delays and extra paperwork. Pursuant to that request, the Steering Committee Work Product", including the Unit 3 Air Permit, were transferred "as is."

Your client is requesting that IPSC execute a new assignment and name change relating to the Unit 3 air permit which would not be placed in the name of all of the Unit 3 development participants. Based on the foregoing history relating to this "as is" sale, I see no reason why IPSC should comply with this request.

I am also concerned about the legal authority or other legal basis that would enable IPSC to comply with your client's request because this is beyond IPSC's corporate capacity which is limited to units 1 and 2. It also appears that the request has material inaccuracies and compliance with that request might create liability to the other Unit 3 development participants.

If you believe there is some other legal basis or reason to support this request or if I have failed to understand the situation, please inform me.

Very truly yours,

STAN SNYDER
Assistant City Attorney

EXHIBIT D

COPY

Agreement # 113

PERSONNEL SERVICE CONTRACT

BETWEEN

INTERMOUNTAIN POWER AGENCY

AND

INTERMOUNTAIN POWER SERVICE CORPORATION

PERSONNEL SERVICE CONTRACT

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PERSONNEL SERVICE CONTRACT

1. PARTIES: This contract is entered into effective as of the _____ day of _____ between INTERMOUNTAIN POWER SERVICE CORPORATION, a nonprofit corporation, hereinafte designated "Service," created under the provisions of the Utah Nonprofit Corporation and Cooperative Association Act, and the INTERMOUNTAIN POWER AGENCY, a political subdivision of the State of Utah, hereinafter designated "Owner," created under the provisions of the Utah Interlocal Co-operation Act. The Operating Agent for the Intermountain Power Project is the Department of Water and Power of the City of Los Angeles, hereinafter designated "Operating Agent." This Contract shall be administered by the Operating Agent on behalf of the Owner. Hereafter, Service and Owner are often collectively referred to as "Parties" and singularly as "Party."

2. DEFINITIONS: The following terms, whether in the singular or in the plural, when used herein and initially capitalized shall have the meaning specified in the Construction Management and Operating Agreement, Power Sales Contracts or defined within the body of this contract, unless otherwise specified below:

2.1 Annual Budget: The budget approved by the Coordinating Committee and adopted by the Owner pursuant to the Power Sales Contracts, not less than 30 days prior to the beginning of each Fiscal Year, including any amendments to such budget, which shall show a detailed estimate of the Monthly Power Costs and all revenues,

income, or other funds to be applied to such costs, for and applicable to such Fiscal Year.

2.2 Authorized Representative of the Operating Agent: The person or persons designated to act on behalf of the Operating Agent, as appropriate, by written certificate furnished to the Owner and Service containing the specimen signature of such person and signed on behalf of the Operating Agent, as appropriate, by its General Manager and the Secretary of the Board of Water and Power Commissioners, City of Los Angeles.

2.3 Bond Resolution: The resolution entitled "Power Supply Revenue Bond Resolution," adopted on September 28, 1978, by the Intermountain Power Agency, as from time to time amended and supplemented in conformity with its provisions and the provisions of the Power Sales Contracts.

2.4 Coordinating Committee: The Committee established pursuant to Section 6.1 of the Power Sales Contracts.

2.5 Construction Management and Operating Agreement: The agreement entered into between the Department of Water and Power of the City of Los Angeles and the Intermounta Power Agency relating to the contruction and operation of the Project as from time to time amended and supplemented in conformity with the provisions of the Power Sales Contracts.

2.6 Depositary: A bank holding the fund designated herein as the Owner Trust Fund.

2.7 Excess Power Sales Agrements: Agreements entered into

by Project power purchasers whereby one power purchaser or group of power purchasers agrees to sell, for a limited period, a portion of its available capacity and energy as defined in the Power Sales Contracts, to another Project power purchaser or group of purchasers.

2.8 Fiscal Year: The twelve-month period commencing at 12:01 a.m. on July 1 of each year and ending at 12:00 p. of the following June 30.

2.9 General Service Requirements: The electrical capacity and electrical energy required for operation of all generating unit auxiliaries and other equipment and systems used or required at the Generating Station in connection with the operation and maintenance of the Generating Station.

2.10 Monthly Power Costs: All of Owner's costs to the extent not paid from the proceeds of Bonds, notes, or other evidence of indebtedness issued in anticipation of Bonds, resulting from ownership, operation and maintenance of and renewals and replacements to the Project, as further defined in Section 4.33 of the Construction Management and Operating Agreement.

2.11 Operating Fund: The Operating Fund established pursuant to Section 502 of the Bond Resolution.

2.12 Owner Trust Fund: The fund against which designated representatives of Service may write checks for procureme of various items, services, and expenses within certain guidelines provided by the Operating Agent.

2.13 Plant: Fixed assets, including land, buildings,

structures, circuits, machinery, furniture and other equipment employed at Intermountain Generating Station, Intermountain Converter Station and the Railroad Service Center.

2.14 Power Sales Contracts: The Power Sales Contracts, together with amendments thereto, entered into by the Intermountain Power Agency and the Purchasers for the sale of the entire output of the Project.

2.15 Project: The Generating Station, the Railroad Service Center, the Southern Transmission System, the Northern Transmission System and Capital Improvements as set forth in Appendix C of The Power Sales Contracts.

2.16 Property: All tangible items, including Plant, fuel, water, vehicles, tools, office equipment and supplies.

2.17 Railroad Service Center: The Project facility at which the Project's railroad coal cars are inspected and maintained.

3. GENERAL AGREEMENT: The Parties hereto agree that Service shall furnish all necessary on-site managers, supervisors, and other workers necessary for supporting the Operating Agent in the performance of operation and maintenance work for the Intermountain Generating Station, the Intermountain Converter Station and the Railroad Service Center in accordance with the terms and conditions set forth in this Contract. The Operating Agent shall have ultimate control of the operation and maintenance of all Project facilities on which Service performs operation and maintenance work. Notwithstanding any other provisions of the Contract,

Service shall perform its operation and maintenance function described herein, as directed by the Operating Agent.

4. SCOPE OF WORK: Service shall as directed by the Operating Agent furnish the necessary personnel to accomplish the work set forth below. The Authorized Representative of the Operating Agent shall have exclusive right to interpret the scope of work assigned to Service in Section 4.

4.1 OPERATING AND MAINTENANCE SERVICE: Service shall provide necessary staff to perform the operation and maintenance work at the Intermountain Generating Station Intermountain Converter Station, and Railroad Service Center, exclusive of (1) the Intermountain Microwave Communication System beginning at the interface terminal located in the main frame of the station side of the multiplex equipment, (2) the Transmission Lines beginnin at the deadends in the switchrack and (3) major overhaul work not capable of being completed by on-site permanent staff.

4.2 TECHNICAL SERVICE: Service shall provide necessary staff to provide on-site engineering, computer, controls and laboratory support services for operating and maintaining the Intermountain Generating Station, the Intermountain Converter Station and the Railroad Service Center.

4.3 PURCHASING AND STORES SERVICE: Service shall provide necessary staff to provide on-site purchasing and stores support services for operating and maintaining the Intermountain Generating Station, the Intermountain

Converter Station and the Railroad Service Center.

4.4 ADMINISTRATIVE AND OFFICE SERVICE: Service shall provide necessary staff to provide on-site administrative personnel, accounting support, contract administration support, safety, medical, training and clerical support services for supporting the operation and maintenance of the Intermountain Generating Station, the Intermountai Converter Station, and the Railroad Service Center.

5. REQUIRED REPORTS: Service shall promptly prepare and submit all reports requested by the Operating Agent concerning the activities and operations of Service. Such reports shall be prepared in the format and contain information as specified by the Operating Agent and shall be subject to review, modification and approval of the Operating Agent. The Operating Agent shall submit any reports prepared in conforman with this Section to Owner, if so requested by the Owner. These reports shall include, but not be limited to:

5.1 REPORTS SUBMITTED UPON OCCURRENCE OF ACTIVITY OR UPON DEMAND:

5.1.1 Abnormal operation

5.1.2 Accident

5.1.3 Progress on major maintenance and betterment work

5.2 REPORTS SUBMITTED DAILY:

5.2.1 Coal deliveries, including quality analyses

5.2.2 Coal burn

5.3 REPORTS SUBMITTED WEEKLY:

5.3.1 Summary of operating activity

5.3.2 Summary of major maintenance activity

5.4 REPORTS SUBMITTED MONTHLY:

5.4.1 Unit efficiency, availability and reliability data

5.4.2 Cooling water consumption and storage

5.4.3 Energy scheduled/delivered to power purchasers

5.4.4 Personnel activity including number of hires, terminations, promotions and accidents

5.4.5 Progress on capital improvements, including completion items and betterments

5.4.6 Coal in storage

5.5 REPORTS SUBMITTED SEMIANNUALLY:

5.5.1 Major component performance test results

6. CONTROL DOCUMENTS: Service shall comply with all policies, criteria, rules, orders, instructions, and procedures established by the Operating Agent to govern the activities and operations of Service whether provided to Service orally or in writing. These policies, criteria, rules, orders, instructions, and procedures shall include, but not be limited to the following documents:

6.1 SYSTEM OPERATIONS PROCEDURES: These procedures shall include all necessary orders, bulletins, instructions, rules, and procedures to safely, reliably, and economically operate the bulk power system.

6.2 STATION OPERATING PROCEDURES: These procedures shall include the necessary limitations and instructions for safe and proper operation of Plant systems and equipment, including fuel and cooling water storage and supply

systems and other plant support systems.

6.3 EQUIPMENT MAINTENANCE INSTRUCTIONS: These instructions shall include, where applicable, disassembly and assembly procedures, adjustments and lubrication requirements, and recommended procedures for, scope of and schedules for inspection and overhaul.

6.4 PROCUREMENT PROCEDURES: These procedures shall include the requirements and guidelines governing procurement of equipment, material, supplies, parts, nonboiler fuel, demineralized water, drinking water, office equipment and supplies, tools, vehicles, services and other items.

6.5 BUDGET AND COST CONTROL PROCEDURES: These procedures shall include the necessary instructions governing the preparation and processing of data for monitoring of budget, cost control, and other related management information systems.

7. SERVICE BUDGET: The budget which provides for capital and expense expenditures incurred by Service in connection with the operation and maintenance of Intermountain Generating Station, Intermountain Converter Station and the Railroad Service Center shall be in accordance with the following provisions:

7.1 CONFORMANCE TO PROCEDURES: All budget activities shall conform to the Budget and Cost Control Procedures referenced in Section 6.5 herein unless otherwise directed by the Operating Agent.

7.2 PREPARATION: Service shall prepare the budget in the

format prescribed by the Operating Agent for the forthcoming Fiscal Year and for each subsequent year in the budget planning period as determined by the Operati Agent. Such budget shall be subject to review, modification and approval by the Operating Agent.

7.3 SUBMITTAL DEADLINE: Service shall annually submit the budget to the Operating Agent 300 days prior to the forthcoming Power Supply Year, unless otherwise directe by the Operating Agent.

7.4 COMPLIANCE TO LIMITS: Service shall charge all work performed, procurements and other expenditures against work orders. These work orders shall in turn accumulate charges to appropriate budget line items identified specifically by the Operating Agent as limits to Service's expenditure authority. If such a budget line item does not exist in the current budget to provide funds for a needed expenditure or if the needed expenditure will cause an overrun of such a budget line item, Service shall obtain approval of the Operating Agent prior to making such expenditure except in emergency situations. Service shall promptly notify the Operating Agent whenever it becomes apparent that a budget line item may be, or in the case of an emergency situation, has been exceeded.

8. PLANT IMPROVEMENTS: All Plant improvements which modify design and/or require alteration of drawings or other records shall be done only in accordance with the following provisions:

8.1 APPROVAL: Service shall obtain the approval of Operati Agent prior to progressing any such proposed improvemen beyond the preliminary engineering phase of the project except in an emergency situation. If an emergency situation necessitates immediate implementation of an improvement, Service shall promptly notify the Operating Agent of the required improvement made and the reasons for implementation on an emergency basis and shall act as directed by the Operating Agent with respect thereto.

8.2 IMPLEMENTATION: The Operating Agent, at its sole discretion, shall determine with respect to implementati of an improvement, who shall plan, design, acquire (by purchase, condemnation or otherwise), secure requisite permits, licenses, approvals and certificates, mitigate impacts, construct, install, engineer, monitor and control cost, investigate site, negotiate and administer contracts, purchase, monitor environment, schedule, protect, erect, supervise, expedite, inspect, control quality, test, start-up and prepare control documents.

8.3 DOCUMENTATION: All improvements implemented by Service shall be completely and accurately documented in all affected drawings and other records. Service shall promptly furnish the Operating Agent a copy of all such documentation for review, modification and approval.

9. PURCHASING: Service shall, under the direction of the Operating Agent, conduct purchasing functions associated with Intermountain Generating Station, Intermountain Converter Station and the Railroad Service Center in accordance with

the following provisions:

9.1 CONFORMANCE TO PROCEDURES: All purchasing activities shall conform to the Procurement Procedures referenced in Section 6.4 herein unless otherwise directed by the Operating Agent.

9.2 SMALL PURCHASES: Service's purchasing authority, unless otherwise directed by the Operating Agent in writing, shall be limited only to categories and amounts (maximum allowed expenditure for a single purchase transaction with a single supplier or for an annual contract with a single supplier) listed below:

9.2.1 Spare Parts: $20,000

9.2.2 Insurance and services, including personal, professional, legal, consulting and maintenance: $200,000

9.2.3 Plant Equipment: $100,000

9.2.4 Utilities, including gas, electric, water, communications: $100,000

9.2.5 Material and Supplies, including nonboiler fuel: $50,000

9.2.6 Construction Equipment and Transportation Vehicles: $50,000

9.2.7 Tools and Miscellaneous Small Equipment: $10,000

9.2.8 Office Equipment, Furniture and Accessories: $5,000

9.2.9 Meeting and Training Expenses, including travel, lodging, meals, meeting or training

fees and other related expenses: $5,000 ($20,000 if for group)

9.3 LARGE PURCHASES: Operating Agent shall purchase all items and services which Service is not authorized to procure for itself. If Service perceives a need for procurement of such items and services for which it does not have procurement authority, Service shall promptly so notify the Operating Agent.

9.4 PRICE AND TIME CONTRACTS: Unless the Operating Agent otherwise directs, it will prepare and administer all price and time contracts for service and items frequently procured for the Project. When needed services and items are readily available to Service under such contracts, Service shall make procurements through the issuance of subpurchase orders drawn on these contracts.

10. PERSONNEL: The following provisions shall apply to employees of Service.

10.1 CONFORMANCE TO LAW: Service employment practices shall comply with all applicable Federal and State of Utah laws.

10.2 COMPENSATION: Service shall determine all salaries, wages, and benefits.

10.3 WORKING TERMS AND CONDITIONS: Service shall determine and administer all terms, and conditions of employment, including employment policy, rules, and procedures.

10.4 BUSINESS EXPENSE: Service may provide for reimbursements, where appropriate, in connection with reasonable

expenses incurred by employees in connection with Service business activities, including business travel. Nothing in this Section shall be deemed to prevent Service from providing cash advances to employees to provide for anticipated business expenses where appropriate.

10.5 TRAINING, SAFETY AND HEALTH PROGRAMS: Service shall establish and administer necessary training, safety programs and health precautionary practice programs. Such programs shall be consistent and conform with Control Documents established by the Operating Agent as provided for in Section 6.

10.6 EQUAL EMPLOYMENT OPPORTUNITY: Service shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, or sex. Service will comply with all applicable laws and regulations prohibiting discrimination based on age and physical handicap.

11. PERFORMANCE INCENTIVE PROGRAM: The following sets forth the provisions of a performance incentive program which may be implemented by the Operating Agent for employees of Service.

11.1 IMPLEMENTATION: The Operating Agent, at its sole discretion, may elect to implement a performance incentive program for any given Fiscal Year providing sufficient funds have been allocated therefor in the Annual Budget. If the Operating Agent so elects, it shall provide the goals described in Section 11.3

to Service in writing prior to commencement of such Fiscal Year.

11.2 MERIT BONUS: The Operating Agent, at its sole discretion, may elect to recommend to the Coordinating Committee that funds be provided in the Annual Budget for payment of merit bonuses in an amount to be determined by the Operating Agent but not to exceed five (5) percent of the annual labor budget.

11.3 GOALS: The Operating Agent, at its sole discretion, may establish one or more goals for Service to meet or exceed over a Fiscal Year. Such goals shall be readily quantifiable, measurable, reportable, and auditable. Goals may apply to any aspect of Service's activities and operations including, but not limited to, heat rate, capacity factor, equivalent availability, employee lost workday incident rate due to accidents, employee turnover ratio, and expenditures within budgeted amount. The Operating Agent shall also determine for each such goal established the percentage of the merit bonus fund to be paid to Service if the goal is met or exceeded.

11.4 PAYMENT: At the end of the applicable Fiscal Year, the Operating Agent shall determine the extent of Service's compliance to the established goals and the total percentage of the merit bonus fund payable to Service. Such findings shall be made and authorization of merit bonus payments given, if appropriate to Service by the Authorized Representative of the

Operating Agent no later than 45 calendar days following the end of the applicable Fiscal Year. Service shall determine the allocation of the merit bonus payments among Service's employees.

12. PROPERTY TITLE: Service shall not hold title to any Property purchased by it. Upon the purchase of any Property by Service, title shall immediately vest in Owner.

13. ACCOUNTING: The accounting functions associated with Intermountain Generating Station, Intermountain Converter Station and the Railroad Service Center shall be performed under the direction of the Operating Agent in accordance with the following provisions unless otherwise directed by Operating Agent:

13.1 CONFORMANCE TO PROCEDURES: All accounting activities shall conform to the Budget and Cost Control Procedures referenced in Section 6.5 unless otherwise directed by the Operating Agent.

13.2 PURCHASES MADE BY SERVICE: Service shall promptly notify the Operating Agent, in the manner prescribed by the Operating Agent, of expenditures made by Service, together with work order charged and description of the item or service involved in each such transaction. Service shall subsequently forward to the Operating Agent, as prescribed by the Operating Agent, associated documentation for retention by the Operating Agent.

13.3 PURCHASES MADE BY OPERATING AGENT: Service shall prepare purchase requisitions, in the form prescribed by the Operating Agent, to provide the notices required

in Section 9.3 and to inform the Operating Agent of the need to make other payments to parties which Service is not otherwise authorized to make directly. Such requisitions shall describe the items or services and shall include statements of purpose and necessity. For those purchases effected by the Operating Agent, Service shall promptly notify the Operating Agent, in the manner prescribed by the Operating Agent, of all purchas items or services received by Service in an acceptable condition for which payment is due. Service shall subsequently forward to the Operating Agent, as prescrib by the Operating Agent, associated documentation includi receipts or record of delivery for retention by the Operating Agent.

13.4 TIMEKEEPING AND OTHER PERSONNEL ACCOUNTING RECORDS: Service shall promptly provide the Operating Agent, in the manner prescribed by the Operating Agent, all data necessary for cost accounting and preparation of other related management information and regulatory reports by Operating Agent and printing by Owner of employee payroll checks and other required labor-related fund disbursements checks. Service shall subsequently forward to the Operating Agent associated documents for retention by the Operating Agent, as prescribed by the Operating Agent.

13.5 EQUIPMENT USAGE: Service shall promptly provide the Operating Agent, in the manner prescribed by the Operating Agent, equipment usage operational data

necessary for cost accounting and preparation of Monthly Power Cost billings, and other related management information and regulatory reports, including scheduled and metered energy and power production, metered General Service Requirement, metered fuel consumption, metered intertie energy and power exchange, and other data requested by the Operating Agent. Service shall subsequently forward to the Operating Agent for its retention such records, as prescribed by the Operating Agent.

13.6 MATERIAL AND SPARE PARTS INVENTORY: Service shall maintain a current inventory of material, supplies and spare parts. Service shall promptly provide, in the manner prescribed by the Operating Agent, all data necessary for cost accounting and preparation of other related management information and regulatory reports by the Operating Agent. Service shall subsequently forward to the Operating Agent associated records for retention by the Operating Agent, as prescribed by the Operating Agent.

13.7 FUEL INVENTORY: Service shall maintain a current inventory of plant boiler fuel supplies. Service shall promptly provide the Operating Agent, in the manner prescribed by the Operating Agent, all data necessary for cost accounting, fuel management, Monthly Power Cost billing and for preparation of other related management information and regulatory reports to be prepared by the Operating Agent. Service shall subsequen:

forward to the Operating Agent associated records for retention by the Operating Agent, as prescribed by the Operating Agent.

13.8 WORK ORDER NUMBERS: Operating Agent shall furnish Service with work order numbers to be used in accounting for all activities and functions performed by Service.

13.9 ACCOUNTING REPORTS: Operating Agent shall provide Service with necessary cost control and other related management information reports for Service to effectively perform its operation and maintenance work.

14. PAYMENT: All costs of any nature incurred by Service which are in any way related to Service's performance under this Contract shall be paid by Owner. Such costs shall be paid by Owner at the request of the Operating Agent in accordance with the following provisions:

14.1 CONFORMANCE TO PROCEDURES: All payment activities shall conform to the Budget and Cost Control Procedures referenced in Section 6.5 herein unless otherwise directed by the Operating Agent.

14.2 OWNER TRUST FUND WORKING CAPITAL: The Owner shall establish within the Construction Fund and when applicable within the Operating Fund a separate account for the Owner Trust Fund. The maximum allowed funding level at any one time of the Owner Trust Fund shall be $250,000. Service may request a revision of this limit by written notice to the Operating Agent and the Owner. Upon request by the Operating Agent, the initial funding of $250,000 and any increments thereto approved by Owner

shall be deposited by the Owner in this Owner Trust Fund to be held by a Depositary. Such Depositary shall honor checks or drafts drawn on the Owner Trust Fund by persons authorized by the Owner.

14.3 OWNER TRUST FUND SIGNATURE AUTHORITY: Service shall provide, as appropriate, by written certificate, signed by the duly elected Chairman or by either Vice Chairman of the Board of Directors of Service, to the Operating Agent and Owner a list of persons, together with specimen signatures of such persons, Service desires to be authorized to sign checks on behalf of the Owner drawn on the Owner Trust Fund. The Owner shall furnish necessary authorization to the Depositary holding the Owner Trust Fund.

14.4 OWNER TRUST FUND: The following shall apply to deposits into and withdrawals from the Owner Trust Fund:

14.4.1 DEPOSITS: The Operating Agent will request the Owner, as necessary, to make payment to replenish the Owner Trust Fund for expenditures made directly by Service resulting in withdrawals from the Owner Trust Fund and accounted for in accordance with Section 13.2 herein.

14.4.2 WITHDRAWALS: Service shall prepare, as necessary checks drawn on the Owner Trust Fund for payment to (1) suppliers providing services and items procured

directly by Service, exclusive of such services and items procured by means of subpurchase orders under contracts administered by the Operating Agent, (2) employees of Service as cash advances for anticipated business expenses in accordance with Section 10.4, (3) governmental agencies for expenses which Service is required to pay pursuant to governmental authority, including, but not limited to, taxes, assessments, duties, excise, fees, imports, tolls, fines and penalties and (4) parties for expenses incurred by Service for judgments and settlements of claims. Service shall secure the approval of the Operating Agent in the manner prescribed by the Operating Agent, prior to making any payment from the Owner Trust Fund over $10,000 in amount. The Operating Agent may revise this authority limit by providing written notice signed by the Authorized Representative of the Operating Agent to Service.

14.5 OPERATING FUND: Upon notice of acceptance by Service of an item or service procured in accordance with Sections 9.3 or 9.4 herein or that requires payment to be made to a party which Service is not otherwise authorized to make directly, the Operating Agent will

request the Owner to make such payment directly from the Construction Fund or Operating Fund as appropriate.

14.6 SERVICE EMPLOYEE PAYROLL AND RELATED DISBURSEMENTS: The Operating Agent shall forward to the Owner Service's requests for payment of Service's employees for labor services rendered and business expenses incurred in connection with performance of duties and for payment to other required labor-related disbursement fund recipients. Payments shall be made by Owner on behalf of Service in accordance with all applicable Utah and Federal laws and regulations.

15. AUDITS: The Operating Agent and the Owner shall have the right to initiate, at any time, audits of the records and activities of Service, at the sole discretion of either the Operating Agent or the Owner, in accordance with the following provisions:

15.1 FINANCIAL: Financial audits shall be conducted in compliance with the Construction Management and Operating Agreement and the Bond Resolution. Records to facilitate this audit shall be kept by Service in accordance with directives from the Operating Agent.

15.2 GENERAL: General audits shall be conducted by an independent firm or the employees of the Operating Agent or the Owner. Such audits shall be for the purpose of determining compliance of Service with the provisions of this Contract, Control Documents referenced in Section 6 herein or other directives issued by the Operating Agent.

16. INSURANCE: Unless otherwise directed by the Operating Agent, Service shall arrange for and maintain in full force and effect insurance policies for the term of this Contract as set forth below. All such policies shall be subject to approval of the Operating Agent.

16.1 DIRECTORS AND OFFICERS LIABILITY INSURANCE: Directors and Officers Liability Insurance with a limit of not less than $25,000,000.

16.2 FIDELITY BOND: Fidelity Bond (Comprehensive 3-D Policy) with a limit of not less than $250,000 or as may be required by law.

16.3 FIDUCIARY LIABILITY INSURANCE: Fiduciary Liability Insurance with a limit of not less than $5,000,000.

16.4 WORKERS' COMPENSATION AND EMPLOYERS LIABILITY INSURANCE: Workers' Compensation and Employers Liability Insurance as necessary to comply with the Workers' Compensation law of Utah and shall contain the Voluntary Workers' Compensation Endorsement and the Allstate's Endorsement; the Employers Liability limit shall be not less than $1,000,000.

16.5 PRIMARY COMPREHENSIVE GENERAL LIABILITY INSURANCE: Primary Comprehensive General Liability Insurance with a limit of not less than $1,000,000. Such insurance shall include, Contractual Liability, Completed Operations and Products Liability Insurance and shall not contain the X, C and U, nor Errors and Omissions exclusions.

16.6 EXCESS LIABILITY INSURANCE: Excess Liability Insurance,

of the following form type as provided in Section 16.5 above, with limits of not less than $50,000,000.

17. UNCONTROLLABLE FORCES: Neither party shall be in default under this Contract if its inability to perform is due to any cause beyond the control of either Party, and which by the exercise of due diligence such Party is unable to prevent or overcome, including but not limited to, failure or refusal of any other person or entity to comply with then existing contracts, an act of God, fire, flood, explosion, strike, other labor dispute, sabotage, pestilence, an act of the public enemy, civil or military authority including court orders, injunctions, and orders of governmental agencies with proper jurisdiction, insurrection or riot, an act of the elements, failure of equipment, inability of either Party or any person or entity engaged in work or furnishing supplies, material or equipment for the Project to obtain or ship such materials or equipment because of the effects of similar causes on suppliers or carriers. Nothing in this section shall require a party to settle a strike or labor dispute in order to comply with its obligations under this Contract. In the event of strike or other labor disputes which renders Service unable to perform its functions under this Contract, the Operating Agent may designate another party to perform such functions.

13. LIABILITY: The following shall apply to liability:

18.1 INDEMNIFICATION: Except as provided in Section 18.2, below, neither party hereto nor its officers, employees

or agents, shall be liable for damages to the other for any act or failure to act, whether by negligence or otherwise, arising out of or pertinent to this Contract, and the Owner shall indemnify and save harmless Service, and its officers, employees or agents from all liability and expense on account of any and all damages, claims or actions including injury to or death of persons or damage to property arising from any act or failure to act, by Service, its officers, employees or agents, whether by negligence or otherwise, arising out of or pertinent to this Contract.

18.2 EXCLUSIONS: The exculpation and indemnification provisions set forth in the preceding paragraph shall apply to all types of claims or actions including, but not limited to, claims or actions based on contract, tort, patent or trademark, except that such provisions shall not exculpate or indemnify Service or its officers, employees or agents for direct damages resulting from acts of intentional wrongdoing or acts of gross negligence. For purposes of this Section 18.2, direct damages shall not include indirect, incidental or consequential damages, including, but not limited to, loss of profits or revenues, loss of use of the Project or any part thereof, cost of capital, cost of purchased or replacement power, claims of others for service interruptions.

18.3 LIMITATIONS ON LIABILITY: In no event shall the total

liability of Service to Owner, however caused, exceed the total collectable insurance procured pursuant to Section 16.

18.4 INSURERS NOT RELIEVED. The provisions of this Section shall not be construed so as to relieve any insurer of its obligation to pay any insurance proceeds in accordance with the terms and conditions of Project insurance policies.

19. PROJECT AGREEMENTS: It is recognized that the operation and maintenance of Intermountain Generating Station, Intermountain Converter Station and the Railroad Service Center must be in compliance with the requirements of the Bond Resolution, Construction Management and Operating Agreement, Power Sales Contracts, and Excess Power Sales Agreements, and all licenses, permits and regulatory approvals necessary for such operation and maintenance, and it is therefore agreed that this Contract is made subject to the provisions of all such documents.

20. SEVERABILITY: In the event that any of the terms, covenants or conditions of this Contract or any of the Project Agreements, or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction in the premises, all other terms, covenants or conditions of this Contract and Project Agreements and their application shall not be affected thereby, but shall remain in force and effect unless a court holds that the provisions are not separable from all other provisions of this Contract.

21. GOVERNING LAW: This Contract shall be interpreted, governed by and construed under the laws of the State of Utah.

22. NO PROFITS: Service shall receive no profits under this Contract.

23. NOTICES: Except as set forth elsewhere herein, any notice, demand or request provided for in this Contract shall be in writing and shall be deemed properly served, given, or made if delivered in person or sent by registered or certified mail, postage prepaid, to the appropriate person specified below. Any party listed below may at any time by written notice to all other parties designate different or additional persons or different addresses for giving notices hereunder. Informal communications of a routine nature, including requests for funds and related matters, shall be given in such a manner as the Operating Agent shall prescribe. Formal notices are to be provided as follows:

23.1 NOTICES TO OWNER:

Intermountain Power Agency
c/o Executive Officer
5250 South 300 West
Suite 101
Murray, Utah 84107

23.2 NOTICES TO OPERATING AGENT:

Department of Water and Power
of the City of Los Angeles
c/o Chief Electrical Engineer and
Assistant Manager
P.O. Box 111

Los Angeles, California 90051

23.3 NOTICES TO SERVICE:

Intermountain Power Service Corporation
c/o President and Chief Operations Officer
P.O. Box 836
Delta, Utah 84624

24. EFFECTIVE DATE AND TERM: This Contract shall become effective when it has been duly executed on behalf of the Owner and Service. The term of this Contract shall begin and this Contract shall constitute a binding obligation of the Parties hereto from and after the effective date and the term of this Contract shall end on June 15, 2027, unless terminated prior to said date by Owner. Owner may terminate this Contract by providing 30 days prior written notice to Service. In the event of such termination or in the event of dissolution of Service, Owner shall pay all obligations incurred by Service to date of such termination and obligations of Service resulting from dissolution.

25. EXECUTION:

IN WITNESS WHEREOF the Parties have caused this Contract to be executed in several counterparts effective the date and year first above written.

Approved

ATTEST:

OWNER: Intermountain Power Agency

By:

Title: EXECUTIVE OFFICER

SERVICE: Intermountain Power Servic
Corporation

ATTEST:

By: Raymond C. Burt

Arthur S Buchanan
Secretary

Title: Chairman of the Board

CONSENT AND RECOMMENDATION
OF
OPERATING AGENT

The Department of Water and Power of the City of Los Angeles, the Operating Agent pursuant to the Construction Management and Operating Agreement between the Owner and the Operating Agent, consents to the designation of Service to perform as herein set forth, and recommends the execution of this Contract by the Owner.

By: Jane H. Anthony

Title: PROJECT DIRECTOR
Authorized Representative

ATTEST:

John G. Rogacz

Reviewed:

Charles W Teale
Attorney for Operating Agent