



RECEIVED  
RECORDS  
05 APR -1 AM 11:33

900 S.W. Fifth Avenue, Suite 2600  
Portland, Oregon 97204  
main 503.224.3380  
fax 503.220.2480  
www.stoel.com

JAMES C. PAINE  
Direct (503) 294-9246  
jcpaine@stoel.com

March 31, 2005

**OVERNIGHT DELIVERY**

Ms. Carole Washburn, Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Drive S.W.  
Olympia, WA 98504-7250

**Re: Application of PacifiCorp for Determination Under Chapter 480-143 WAC in  
Connection With Sale of Former Service Center and Real Estate in Yakima:  
Docket No. \_\_\_-05-\_\_**

Dear Ms. Washburn:

Pursuant to RCW 80.12.020 and WAC 480-143-180, enclosed please find an original and twelve copies of the above-referenced application. An electronic copy of this filing is being sent to the Commission's record center.

Please feel free to contact me if you have any questions or concerns regarding this filing.

Very truly yours,

James C. Paine

Enclosure

Oregon  
Washington  
California  
Utah  
Idaho

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of  
PACIFICORP for Determination Under  
Chapter 480-143 WAC in Connection with  
the Sale of its Interest in Its Former Service  
Center and Associated Real Property In  
Yakima, Washington

Docket No. \_\_\_\_\_

**APPLICATION**

RECORDED  
05 APR - 1 10 11 AM '03  
UTILITY AND TRANSPORTATION COMMISSION

Pursuant to RCW 80.12.020 and WAC 480-143-180, PacifiCorp (or the "Company") hereby requests an order from the Washington Utilities and Transportation Commission (the "Commission") declaring that certain real property described herein (the "Property") is not necessary or useful. In the alternative, PacifiCorp requests an order authorizing the sale of the Property pursuant to RCW 80.12.020 and WAC 480-143-120 finding the sale to be consistent with the public interest pursuant to WAC 480-143-170. In support of its Application the Company states as follows:

**1. The Parties**

**A. The Applicant: PacifiCorp**

PacifiCorp is a public service company within the meaning of RCW 80.12.020 and serves approximately 1.5 million retail customers in six western states. In Washington, the Company provides electric service to approximately 120,000 customers in Columbia, Garfield, Kittitas, Walla Walla and Yakima counties. The full and correct name and business address for PacifiCorp are as follows:

PacifiCorp  
825 NE Multnomah Street  
Portland, OR 97232

PacifiCorp requests that all notices, correspondence and pleadings with respect to this Application be sent to:

For PacifiCorp:  
Christy Omohundro  
Managing Director of Regulatory Policy  
PacifiCorp  
825 NE Multnomah Street, Suite 800  
Portland, OR 97232  
Telephone: (503) 813-6092  
Facsimile: (503) 813-6060  
christy.omohundro@pacificorp.com

With a copy to:  
James F. Fell  
James C. Paine  
Stoel Rives LLP  
900 SW Fifth Avenue, Suite 2600  
Portland, OR 97204  
Telephone: (503) 294-9343  
Facsimile: (503) 220-2480  
jffell@stoel.com / jcpaine@stoel.com

Please also send electronic copies of data requests to [datarequest@pacificorp.com](mailto:datarequest@pacificorp.com).

**B. The Buyers**

Doug and Connie Bettarel have operated an automobile dealership in Yakima, Washington for many years and will be utilizing the property for their automobile operations.

**2. The Property**

The Property is PacifiCorp's former service center and associated real property located at 1101 North 16<sup>th</sup> Avenue, Yakima, Washington. The Buyers will be purchasing approximately 3.64 acres under the contemplated sale. The main service center building was constructed in the early 1950's and has approximately 24,237 square feet including office and warehouse space. The facility has an industrial crane and back-up generator that will be conveyed with the sale. The service center has been vacant for 2.5 years and is no longer necessary for PacifiCorp operations because local employees and equipment have been consolidated into operations at the Keys Avenue facility in Yakima. PacifiCorp retains

possession of a substation sited on tax lots contiguous to the Property. The land that is retained by the Company located to the west of the existing substation will be utilized for future substation expansion. A boundary line adjustment has been completed and recorded to facilitate this future use. Easements will also be retained on the east end of the Property for existing distribution and transmission lines.

### **3. The Proposed Transaction**

PacifiCorp proposes to sell to Doug and Connie Bettarel the Company's former service center located at 1101 North 16<sup>th</sup> Avenue, Yakima, Washington and approximately 3.64 acres of real property upon which the former service center is located. The real property is more fully described in Exhibit A to the Agreement for Sale and Purchase of Real Property, submitted herein and identified as Application Exhibit 1. The sale price for the real property, former service center facility and miscellaneous assets is \$735,000. PacifiCorp's approximate book value on the property to be sold is \$659,000. After costs incurred for the above-described boundary line adjustment, demolition costs, broker's commissions, closing costs and excise taxes (approximately \$70,000), PacifiCorp anticipates recording a small gain of approximately \$6,000 as a result of this transaction.

### **4. Benefits of the Transaction**

The real estate market in Yakima has been relatively flat for some time. Nevertheless, the sale will result in PacifiCorp receiving full value for the Property resulting in a small net gain for the Company. The property is no longer necessary or useful to PacifiCorp in providing retail electric service in Washington.

### **5. Transfer of Utility Property**

A public service company must receive Commission approval for any transaction to sell

property that is necessary or useful in the company's performance of its duties to the public.

Specifically, RCW 80.12.020 provides:

“No public service company shall sell, lease assign or otherwise dispose of the whole or any part of its franchises, properties or facilities whatsoever, which are necessary or useful in the performance of its duties to the public, and no public service company shall, by any means whatsoever, directly or indirectly, merge or consolidate any of its franchises, properties or facilities with any other public service company, without having secured from the commission an order authorizing it so to do: . . . .”

**A. Not Necessary or Useful**

Necessary or useful property would include most property owned by the utility. An exception, however, is for property that is substituted with or replaced by items of equal or greater value or usefulness. *See* WAC 480-143-180(1). The contemplated sale involves the Company's former service center that has been replaced by the newer, more highly valued Keys Avenue facility in Yakima. Another exception is property that is surplus for which full value is received which is the case with the contemplated sale. *See* WAC 480-143-120(2).

Although Commission approval is not required for the sale or transfer of such items, a determination by the Commission as to necessity or usefulness is required if the property to be sold or transferred exceeds certain value thresholds. PacifiCorp respectfully seeks an order of the Commission pursuant to WAC 480-143-180 determining that the Property is not necessary or useful.

**B. Alternative Request for Sale Approval**

The standard for approval of a sale is whether the proposed transaction is consistent

with the public interest. Even if the Commission were to conclude that the Property is necessary or useful, it should nonetheless approve the proposed sale as consistent with the public interest. *See* WAC 480-143-170. The proposed sale is consistent with the public interest because PacifiCorp will receive full value for the Property and the former service center is no longer necessary or useful to the Company in providing retail electric service in Washington.

**6. Exhibits to Application**

The exhibits that accompany this Application are:

1. Application Exhibit No. 1: a copy of the Agreement for Sale and Purchase of Real Property between PacifiCorp and Buyers;

2. WAC 480-143-120 requires property transfer applicants to submit recent financial statements. On or about February 11, 2005 PacifiCorp filed its Financial and Operating Reports for the Quarter Ending December 31, 2004. The submittal was assigned Docket No. UE-050229 and includes PacifiCorp financial statements; specifically Company balance sheet, income statement, statement of retained earnings and statement of capitalization. PacifiCorp respectfully requests that the Commission, pursuant to the provisions of WAC 480-09-750, take official notice of PacifiCorp's financial statements submitted in UE-050229.

//

//

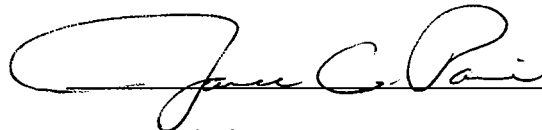
//

**7. Request**

PacifiCorp requests a Commission order determining that the Property is not necessary or useful or, in the alternative, that the proposed sale of the Property is in the public interest. .

DATED: March 31<sup>st</sup>, 2005.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James C. Paine". The signature is fluid and cursive, with a large initial "J" and a long horizontal stroke.

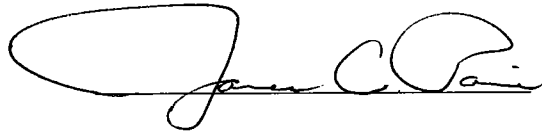
James C. Paine  
Stoel Rives LLP  
900 SW Fifth Avenue, Suite 2600  
Portland, OR 97204-1268  
Telephone: (503) 294-9246  
Facsimile: (503) 220-2480

Of Attorneys for PacifiCorp

**VERIFICATION**

The undersigned hereby certifies that the information set forth in the foregoing Application is true and correct to the best of the signer's information and belief under penalty of perjury as set forth in RCW 9A.72.085.

Dated: March 31<sup>st</sup>, 2005.

A handwritten signature in black ink, appearing to read "James C. Rai". The signature is written in a cursive style with a large, looped initial "J".







BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of  
PACIFICORP for Determination Under  
Chapter 480-143 WAC in Connection with  
the Sale of its Interest in Its Former Service  
Center and Associated Real Property In  
Yakima, Washington

Docket No. \_\_\_\_\_

**EXHIBIT 1**  
**AGREEMENT FOR SALE AND PURCHASE OF REAL PROPERTY**

**AGREEMENT FOR SALE AND PURCHASE  
OF REAL PROPERTY**

This Agreement for the Sale and Purchase of Real Estate (the "Agreement") is entered into as of the 24th day of November 2004, by and between PacifiCorp, an Oregon corporation ("Seller"), and Doug & Connie Bettarel ("Buyers").

**RECITALS**

A. Seller owns that certain 3.64 acre parcel of land ; also known as 1101 North 16<sup>th</sup> Avenue (referred to herein as the "Property") located in Yakima County, State of Washington, as more particularly described in Exhibit "A" attached to and by this reference made a part hereof.

B. Seller desires to sell the Property to Buyer and Buyer desires to purchase the Property from Seller in accordance with and subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the amounts to be paid and the mutual promises contained herein, Buyer and Seller agree as follows:

**ARTICLE I  
AGREEMENT TO PURCHASE AND SELL; PURCHASE PRICE**

1.1 Purchase and Sale. Upon the terms and conditions set forth in this Agreement, Seller agrees to convey to Buyer, and Buyer agrees to purchase and take from Seller, fee title interest in and to the Property, together with all appurtenances, rights, privileges and easements belonging thereto.

1.2 Purchase Price. The purchase price for the Property (the "Purchase Price") shall be Seven Hundred Thirty-Five Thousand Dollars (\$735,000.00).

1.3 Payment of Purchase Price. Buyer shall pay the Purchase Price to Seller as follows:

(a) Upon execution of this Agreement by Buyer, Buyer shall pay an earnest money deposit of Fifteen Thousand Dollars (\$15,000.00) (the "Earnest Money Deposit"), delivered to Fidelity Title, Yakima, Washington (the "Title Company"), to be held in its trust account and credited toward the Purchase Price on the Closing Date. The Earnest Money Deposit shall be non-refundable except as specifically stated herein.

(b) The balance of the Purchase Price shall be paid by Buyer at Closing as set forth in Article V contingent on Buyer's ability to obtain commercial financing.

## ARTICLE II TITLE INSURANCE AND DUE DILIGENCE PERIOD

### 2.1 Commitment of Title Insurance.

(a) On or before the date of this Agreement, Seller shall deliver or cause to be delivered to Buyer a commitment for title insurance covering the Property on the standard form prescribed by the American Land Title Association (the "Commitment"), issued by the Title Company and dated on or before the date of this Agreement. Buyer shall have the option, at its sole cost and expense to obtain an Extended Owners Coverage policy. Seller hereby represents and warrants to Buyer that Seller has not recorded nor caused to be recorded nor permitted the recording of any encumbrances against the Property between the date of the Commitment and the date of this Agreement, inclusive.

(b) Buyer shall have ten (10) days after receipt of the Commitment to provide any written objections to any matter set forth on Schedule B of the Commitment ("Buyer's Notice of Objections"). If Buyer does not timely deliver a written notice of objection to Seller, Buyer shall be deemed to have approved of all matters set forth in the Commitment. Any encumbrances or other title exceptions to which Buyer does not object or waives any objection pursuant to Section 2.1 (c) shall be deemed to be "Permitted Exceptions" and shall not be considered objections to any matter contained in the Commitment.

(c) If Buyer provides a timely written notice of objections in accordance with Section 2.1 (b), then Seller shall have the option to (i) delay Closing for a reasonable period of time as may be mutually agreed upon by Buyer and Seller and cure such objections at Seller's sole cost; or (ii) notify Buyer in writing within ten (10) days after receipt of Buyer's Notice of Objections, that Seller is unable to or elects not to eliminate such objections ("Seller's Notice

Regarding Objections"). If Seller does not timely deliver any Seller's Notice Regarding Objections, Seller will be deemed to have elected not to eliminate any of Buyer's objections. If Seller does timely deliver a Seller's Notice Regarding Objections, Buyer may, in its sole discretion, either waive any objection that Seller does not agree to cure or terminate this Agreement by giving written notice to Seller within five (5) days of the due date of Seller's Notice Regarding Objections ("Buyer's Termination Notice"). If Buyer does not timely deliver any Buyer's Termination Notice, Buyer shall be deemed to have waived its prior objections and any exception to which an objection was previously made shall then be a Permitted Exception at Closing.

2.2 Delivery of Title Insurance. On the Closing Date, the Title Company shall commit to issue to and in favor of Buyer, a Standard Coverage Owner's Policy of title insurance with respect to the Property in the amount of the Purchase Price, effective as of the Closing Date, containing no exceptions other than the Permitted Exceptions (the "Title Policy"). Seller shall cause Title Company to deliver the Title Policy to Buyer within ten (10) days after the Closing Date.

2.3 Due Diligence Deadline. Buyer's shall have the right to review and inspect the Property to determine the feasibility of converting the Property into an automobile sales/repair and service facility ("Buyer's Due Diligence"), which investigation shall be completed on or before January 31st, 2005 ("Due Diligence Deadline"). Seller shall provide a Phase 1 environmental site assessment conducted according to ASTM standards at its expense within ten (10) days after the execution of this Agreement by both parties. If the Phase I site assessment discloses the presence or likely presence of any hazardous waste or other environmental contamination and recommends further investigation and/or testing with respect thereto, the Seller may elect, at its sole discretion to either (a) complete a Phase 2 environmental site assessment at its own expense, or (b) terminate this Agreement and provide Buyer with a full refund of the Earnest Money Deposit.

If the Seller elects to conduct a Phase 2 environmental site assessment which discloses facts concerning the property that are not acceptable to Buyer, Buyer shall have the right to terminate this Agreement by giving written notice to Seller prior to the Due Diligence Deadline in which event Buyer shall receive a full refund of the Earnest Money Deposit. Except as set forth in Section 2.1 or Section 5.1, Buyer's failure to give Seller written notice of termination on or before the Due Diligence Deadline for any contingency or condition shall be deemed acceptance by Buyer that such contingency or condition has been satisfied or waived.

### ARTICLE III REPRESENTATIONS AND WARRANTIES

---

3.1 Representations and Warranties of Seller. Seller makes the following representations and warranties to Buyer, as of the date of this Agreement and as of the Closing Date, each of which representations and warranties shall extend beyond the Closing Date and delivery of the Special Warranty Deed.

(a) Seller is the owner of fee title to the Property, subject to the exceptions set forth in the Commitment.

(b) Seller has the right, power and authority to execute, deliver, and perform this Agreement.

(c) Except as specifically disclosed to Buyer, there are no contracts, leases, licenses, commitment or undertakings relating to the Property and to which Seller is a party.

(d) Seller shall indemnify, defend, and hold harmless Buyer from and against any and all claims, losses, or damages relating to or arising out of any claim for compensation by any broker, person, or entity claiming by or through Seller.

(e) To Seller's knowledge, without investigation, there are no underground storage tanks located on the Property, which are, or have been previously used for storage or containment of any hazardous materials.

3.2 Representations and Warranties of Buyer. Buyer makes the following representations and warranties to Seller, as of the date of this Agreement and as of the Closing Date, each of which representation and warranty shall survive the Closing and delivery of the Special Warranty Deed.

(a) Buyer has the right, power and authority to execute, deliver and perform this Agreement.

(b) Buyer shall indemnify, defend, and hold harmless Seller from and against any and all claims, losses, or damages relating to or arising out of any claim for compensation by any broker, person, or entity claiming by or through Buyer.

3.3 Acknowledgment by Buyer Regarding Seller's Representations and Warranties. Except as expressly set forth in other portions of this Agreement, Buyer hereby affirms that neither Seller nor its agents, employees or attorneys have made, nor has Buyer relied upon any representation, warranty, or promise (either express or implied) with respect to the Property or any other subject matter of this Agreement including, without limitation, the following:

(a) The general plan designation, zoning, value, use, tax status or physical condition of any part of the Property or the improvements to the Property.

(b) The flood elevations, drainage patterns and soil and subsoils composition and compaction levels and other conditions at the Property.

(c) The existence or nonexistence of any hazardous or toxic substance, waste or material (as defined or regulated by any federal, state or local law or regulation).

(d) The accuracy of any soils reports or any other plans or reports regarding the Property.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING AND EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, BUYER ACCEPTS THE PROPERTY FROM THE SELLER "AS IS", SUBJECT TO "ALL FAULTS" INCLUDING, BUT NOT LIMITED TO, BOTH LATENT AND PATENT DEFECTS, AND THE ENVIRONMENTAL CONDITION OR DEFECTS THEREOF. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, BUYER HEREBY WAIVES ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE CONDITIONS AND THE USE OF THE SUBJECT PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

#### ARTICLE IV

#### SELLER'S USE OF THE PROPERTY PRIOR TO CLOSING

~~From and after Seller's execution of this Agreement and except in the ordinary course of administering its general mortgage, Seller shall not grant or convey any easement, lease, license, permit or any other legal or beneficial interest in or to the Property or engage in any contract with any party other than Buyer regarding the purchase or sale of the Property, without the prior written consent of Buyer. Further, except as otherwise provided for herein, Seller agrees to pay, as and when the same are due, all payments on any encumbrances presently affecting the Property and any and all taxes, assessments and levies in respect of the Property through the Closing Date. Seller shall perform ordinary maintenance on the Property, including all improvements, as the same presently exists until the Closing Date.~~

#### ARTICLE V CLOSING



5.1 Conditions Precedent to Closing. Buyer's obligation to close hereunder shall be conditioned on Seller providing the following:

- (a) Sale of the property is contingent on PacifiCorp's internal investment committee approval(s)
- (b) Sale of the facility is contingent on approval of the sale from the State of Washington's Public Utility Commission.

If any of the foregoing conditions is not satisfied or waived prior to Closing, Buyer may terminate this Agreement and receive a refund of the Earnest Money Deposit.

5.2 Time and Place of Closing. The purchase and sale transaction contemplated by this Agreement shall be consummated through a closing conference (the "Closing") to be held at the Title Company on or before fifteen (15) days after the approval of the State of Washington's PUC hearing.

5.3 Deliveries at Closing. At or prior to the Closing, the following events shall occur and each being declared to have occurred simultaneously with the other:

(a) All documents to be recorded and funds to be delivered hereunder shall be delivered to the Title Company in escrow, to hold, deliver, record and disburse in accordance with supplemental escrow instructions, the form and content of which shall be agreed to by the parties prior to Closing.

(b) Seller shall deliver or cause to be delivered in accordance with the escrow instructions:

(i) Special Warranty Deed conveying the Property to Buyer, subject only to Permitted Exceptions, duly executed and acknowledged by Seller and in proper form for recording.

(ii) Any other funds, instruments or documents as may be reasonably requested by Buyer or the escrow agent or reasonably necessary to affect or carry out the purposes of this Agreement (which funds, instruments or documents are subject to Seller's prior approval, which approval may not be unreasonably withheld or delayed).

(iii) A commission of 7% shall be due and payable by Seller to

Prudential Almon Realty upon Closing, and any commission payable to Buyer's broker shall be paid by Seller's broker from such amount.

(c) Buyer shall deliver or cause to be delivered in accordance with the escrow instructions:

(i) The balance of the Purchase Price.

(ii) Any other funds, instruments or documents as may be reasonably requested by Seller or the escrow agent or reasonably necessary to effect or carry out the purposes of this Agreement (which funds, instruments or documents are subject to Buyer's prior approval, which approval may not be unreasonably withheld or delayed).

(d) Buyer and Seller shall each deliver to the other and to the escrow agent, two executed copies of the Buyer's and Seller's Statement of Settlement setting forth all prorations, credits provided in this Agreement, disbursements of the Purchase Price, and expenses of the Closing.

(e) Seller and Buyer shall split all Closing costs, and escrow charges of the Title Company; provided that Seller shall pay the premium for an ALTA standard owner's policy of title insurance in the amount of the Purchase Price and Buyer will pay any additional premium required for an ALTA extended owner's policy of title insurance and the cost of any endorsements requested by Buyer.

5.4 Seller's Remedies. In the event this transaction fails to close due to Buyer's fault or inability to close, Seller's sole remedy will be to terminate this Agreement upon notice to Buyer and retain the amounts paid or to be paid as Earnest Money Deposit, which shall be forfeited by Buyer and retained by Seller as liquidated damages for Buyer's failure to close. The parties agree that the amount of the Earnest Money Deposit is reasonable compensation for Buyer's failure to close since the precise amount of such failure would be difficult to determine.

5.5 Buyer's Remedies. Buyer's sole remedy for Seller's inability to convey title subject only to the Permitted Exceptions or to cure Buyer's objections in accordance with Section 2.1 (c) shall be to terminate this Agreement and receive a refund of the Earnest Money Deposit. In that case, Seller shall have no other obligation to Buyer in connection with this Agreement or the Property.

5.6 Escrow Cancellation Charges. If the escrow established in connection with this Agreement fails to close because of Seller's default, Seller will be liable for any cancellation charges by the escrow agent. If the escrow fails to close because of Buyer's default, Buyer will be

liable for any cancellation charges by the escrow agent. If the escrow fails to close for any other reason, Buyer and Seller must split any cancellation charges equally, except that Seller must bear the entire cost of the Commitment and any amendments thereto.

## **ARTICLE VI PRORATIONS BETWEEN BUYER AND SELLER**

6.1 Proration. Real property taxes and assessments on the Property for the year of Closing shall be prorated between Seller and Buyer based on the number of days each owned or will own the Property. In the event the Property constitutes some portion of a larger tract of land, (i) the proration of real property taxes and assessments shall be based upon the acreage of the Property divided by the acreage of the entire tract expressed as a percentage and (ii) the parties shall enter into a mutually acceptable agreement regarding the parties responsibilities for timely paying such property taxes and assessments. If, as of the Closing Date, the actual tax bills for the year or years in question are not available and the amount of taxes to be prorated cannot be ascertained, then the most recent known rates, millages and assessed valuations (which amounts shall relate to the same tax year) shall be used, and such proration shall be repeated when the final tax bill is available and either Buyer and Seller, as the case may be, shall promptly pay to the other the net amount owing as a result of such redetermination.

6.2 Greenbelt/Rollback Taxes. In the event the Property is specially assessed for property taxes (e.g. farm, forest, or other) in a way which may result in the levy of additional or retroactive payment of taxes in the future as a result of Buyer's actions or the Closing of this transaction, the Property either is disqualified from special use assessment or loses its deferred property tax status, Buyer shall be responsible for and shall pay when due, any deferred and/or additional taxes and interest which may be levied against the Property and shall hold Seller completely harmless therefrom.

## **ARTICLE VII RELEASE, ASSUMPTION AND INDEMNITY**

7.1 Environmental. Buyer, its successors and assigns, hereby assumes as of the Closing Date any and all liability relating to any environmental contamination which may at the time of Closing or may in the future exist on or under the Property and hereby releases Seller from any claims Buyer and/or its successors and assigns may have relating to the environmental condition of the Property.

7.2 Indemnification. Seller shall indemnify, hold harmless and defend Buyer against all claims, suits, losses and damages made against or incurred by Buyer relating to the condition

of the Property prior to the Closing Date and caused by the intentional acts or omissions of Seller. Buyer shall indemnify, hold harmless and defend Seller against all claims, suits, losses and damages incurred by Seller relating to the condition of the Property after the Closing Date or any activity in connection with the Property which occurs after the Closing Date, except to the extent caused by the intentional acts or omissions of Seller.

## ARTICLE VIII MISCELLANEOUS

8.1 Entire Agreement. This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements, whether written or oral, between the parties respecting such matters.

8.2 Amendments. This Agreement may be amended or modified only by mutual written agreement.

8.3 Survival. All warranties, representations, covenants and agreements contained in this Agreement shall survive the execution and delivery of this Agreement and all documents delivered in connection with this Agreement shall survive the Closing of the transactions contemplated by this Agreement and all performances in accordance with this Agreement.

8.4 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, administrators, and assigns; provided, however, that notwithstanding the foregoing, neither party's interest under this Agreement may be assigned, encumbered, or otherwise transferred, whether voluntarily, involuntarily, by operation of law or otherwise, without the consent of the other party.

8.5 Notices. Any notice, demand or document which any party is required or any party desires to give or deliver to or make upon any other party shall be in writing, and may be personally delivered or given or made by recognized overnight courier service or by United States registered or certified mail, return receipt requested, with postage prepaid or by facsimile transmission, addressed as follows:

To Seller:

PacifiCorp  
c/o Katherine Hill  
825 NE Multnomah  
Portland, OR 97232  
Fax No.: 503/813-6214

---

To Buyer:

Doug & Connie Bettarel  
C/O Prudential Almon Realty  
111 South 33<sup>rd</sup> Street  
Suite 100, Yakima, WA 98901

Any party may designate a different address for itself by notice similarly given. Unless provided herein, any such notice, demand or document so given shall be effective upon delivery of the same to the proper address or facsimile number of the party or parties to whom the same is to be given.

8.6 Time of Essence. Time is of the essence in the performance of each and every term, condition, and covenant of this Agreement.

8.7 Counterparts. This Agreement may be executed in any number of counterparts which together shall constitute the contract of the parties.

8.8 Paragraph Headings. The paragraph headings herein contained are for purposes of identification only and shall not be considered in construing this Agreement.

8.9 Attorneys' Fees. The prevailing party in any legal proceeding brought to enforce rights hereunder shall recover from the other party its reasonable attorneys' fees and costs. As used herein in the term "prevailing party" means the party entitled to recover the costs in any suit, whether or not brought to judgment, and whether or not incurred before or after the filing of suit.

8.10 Waiver. Except as herein expressly provided, no waiver by a party of any breach of this Agreement or any warranty or representation under this Agreement by another party shall be deemed to be a waiver of any other breach of any kind or nature (whether preceding or succeeding and whether or not of the same or similar nature) and no acceptance of payment or performance by a party after any such breach by another party shall be deemed to be a waiver of any further breach of this Agreement or of any representation or warranty by such other party whether or not the first party knows of such a breach at the time it accepts such payment or performance. No failure on the part of a party to exercise any right it may have by the terms of this Agreement or by law upon the default of another party, and no delay in the exercise of any such right by the first party at any time when such other party may be in default, shall operate as a waiver of any default, or as a modification in any respect of the provision of this Agreement.

8.11 Exhibits. Any and all exhibits attached or to be attached hereto are hereby incorporated and made a party of this Agreement by reference.

8.12 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Washington. The venue for any action arising under this Agreement shall lie in Yakima County, Washington.

8.13 No Recording. This Agreement shall not be recorded in the real property records.

8.14 Further Instruments. Each party hereto shall from time to time execute and deliver such further documents or instruments as the other party, its counsel or the Title company may reasonably request to effectuate the intent of this Agreement, including without limitation documents necessary for compliance with the laws, ordinances, rules and regulations of any applicable governmental authorities.

8.15 Confidentiality. The purchase price and terms of this Agreement are intended by both parties to be confidential. Therefore, except as directed by a court, administrative authority or required by subpoena, neither party shall disclose the purchase price or terms of this Agreement or any other non-public information related thereto; provided that the parties may also disclose the terms of this Agreement to third parties who are necessary to consummate the transaction contemplated by this Agreement, including without limitation, the parties' attorneys and Title Company personnel.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date and year first above written.

PACIFICORP

By: 

Its: EVP

Date Signed: 12/6/04

BUYER

  
Doug Bettarel

  
Connie Bettarel

Date Signed: 11/29/04

**EXHIBIT A**

Tracts 7 and 8, J.H. HATHAWAY'S FIVE ACRE TRACTS, according to the plat thereof recorded in Volume "A" of Plats, Page 26, records of Yakima County, Washington.

Except that portion thereof described as follows:

Beginning at the southwest corner of said Tract 8;  
Thence North 01 40' 52" West along the west line thereof 287.73 feet;  
Thence North 88 32' 48" East 552.93 feet;  
Thence South 01 38' 47" East parallel with the east line of said Tract 7 a distance of 286.86 feet to the south line of said Tract 7;  
Thence South 88 27' 23" West along the south line of said Tracts 7 and 8 a distance of 552.75 feet to the Point of Beginning.

Situate in Yakima County, Washington