

HEBER LIGHT & POWER COMPANY ORGANIZATION AGREEMENT

On October 9, 2014, Heber City, Utah, Midway City, Utah, and Charleston Town, Utah made and entered this organization agreement pursuant to the Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated 1953, as amended.

RECITALS

WHEREAS Heber City, Midway City and Charleston Town had previously created the Heber Light & Power Company pursuant to an agreement for joint and cooperative action under the Act.

WHEREAS under the original agreement for joint and cooperative action, Heber City had a 75% interest in the Company, Midway City had a 12.5% and Charleston Town had a 12.5%.

WHEREAS Heber City, Midway City and Charleston Town have, from time to time, amended the original agreement for joint and cooperative action.

WHEREAS the Parties wish to amend, modify, and restate their agreement for joint and cooperative action as set forth in this Organization Agreement.

WHEREAS the Parties desire and intend for this Organization Agreement to replace and supersede all prior agreements among Heber City, Midway City and Charleston Town concerning the Company's creation, organization, management and powers, and concerning the Parties' respective rights and interests in the Company or its assets.

NOW THEREFORE, the Parties agree as follows:

A. Definitions

Capitalized terms in this Organization Agreement shall have the following meanings

1. “Act” shall mean the Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated 1953, as it may be amended from time to time.
2. “Alternate” shall mean a councilperson selected as provided in Paragraph H. 2, by the Heber Mayor, the Midway Mayor, the Charleston Mayor, or the Chairperson of the Wasatch County Council to serve for a Director who is temporarily unable to serve.
3. “Board” or “Board of Directors” shall mean the Company’s board of directors and governing body of the Company as provided in Paragraph H of this Organization Agreement.
4. “Chair” is defined in Paragraph H. 2.
5. “Charleston” shall mean Charleston Town, Utah.
6. “Company” shall mean Heber Light & Power Company, an interlocal entity created by the Parties under the Act to accomplish the purpose of their joint or cooperative action as set forth in this Organization Agreement.
7. “Designee” shall mean the councilperson selected as provided in Article H. 2. to serve in the place of the Midway City Mayor, the Charleston Mayor, or the Wasatch County Chairperson.
8. “Director” shall mean a member of the Company’s Board of Directors selected as provided in Article H.
9. “Distributable Income” is defined in Article J. 2.
10. “Heber” shall mean Heber City, Utah.
11. “Midway” shall mean Midway City, Utah.

12. “Organization Agreement” shall mean this agreement.

13. “Party” or “Parties” shall mean Heber, Midway and Charleston either individually or collectively.

14. “Party’s Company Share” shall mean for Heber City, a 75% interest; Midway City, a 12.5% interest; and Charleston Town, a 12.5% interest.

15. “Third Party” shall mean a public agency, as defined in the Act, that has been selected or approved by the remaining Parties to purchase the interest of the withdrawing Party and that has agreed to become a party to this Organization Agreement.

B. Creation of Heber Light & Power Company

1. The Parties hereby confirm: (a) that the Heber Light & Power Company is an interlocal entity and an energy services interlocal entity created by them under the Act to accomplish the purpose of their joint or cooperative action as set forth herein, (b) that, as an interlocal entity, it is a body politic and corporate and a political subdivision of the State of Utah, and (c) that it is a legal entity separate and distinct from the Parties.

2. Pursuant to the Act, the Parties have elected to make the Company an energy services interlocal entity.

3. The Company shall be named the Heber Light & Power Company. The Board may change the name of the Company.

4. From and after the effective date of this Organization Agreement, it shall supersede, in all respects, any prior agreements of the Parties concerning the creation, organization, management, or powers of the Company, and concerning the Parties’ respective rights and interests in the Company or its assets.

5. The Company shall be bound by each and every resolution, contract and agreement, enacted by the Company or executed by the Company prior to the effective date of this Organization Agreement, including, without limitation, all resolutions, bond resolutions and indentures, ownership agreements, participation agreements, transmission service contracts, transmission purchase contracts, power sales contracts and power purchase contracts. The Company's present rights and obligations under such resolutions, indentures, contracts and agreements shall in no way be affected by this Organization Agreement.

C. Location

The Company's offices will be in Heber City, Wasatch County, State of Utah, unless a different location is chosen by a majority of the Board.

D. Franchise

The Parties hereby confirm their grant to the Company of an exclusive franchise and right to provide electric power and energy to the Parties, their inhabitants, and others, during the term of this Organization Agreement. The franchise shall not terminate if a Party withdraws under Paragraph O.

E. Purpose

1. The purpose of this Organization Agreement and of the creation the Company is to permit the Parties to benefit from the efficiencies and economies of scale that result from the Company's operation, maintenance and acquisition of facilities, services, and improvements that are necessary or desirable for the acquisition, generation, transmission, management, and distribution of electric energy and related services for the use and benefit of the Parties, their citizens, and the inhabitants of surrounding areas.

2. The Company and its operation of an electric system for the distribution of electric energy and related services is necessary to provide services and facilities in a manner, and pursuant to a form of governmental organization, that will accord best with geographic, economic, population and other factors influencing the needs and development of the Parties hereto, and to provide the benefit of economies of scale, economic development and utilization of natural resources.

3. The Parties have determined that, in order to accomplish these purposes and realize the benefits set forth in *Utah Code Ann.* § 11-13-102, it may be necessary for the Company (upon the determination of the Board) to create, construct, or otherwise acquire facilities or improvements to render services or provide benefits in excess of those required to meet the Parties' needs or requirements.

F. Company's Powers

To accomplish the purposes set forth in Paragraph E, the Company shall have all powers conferred on an interlocal entity and on an energy services interlocal entity by the Act. In addition, the Parties hereby confirm their delegation to the Company of all powers possessed by the Parties: (1) to own and operate electric generation, transmission and distribution facilities that provide or deliver electric energy and related services to persons within the Parties' municipal boundaries and in the surrounding areas, and (2) to exercise, in furtherance of its purpose, the power of eminent domain. Without limiting the foregoing, the Company's powers include the power to:

1. adopt, amend, and repeal rules, bylaws, policies, and procedures for the regulation of its affairs and the conduct of its business;

2. set rates for services, charge fees (including impact fees), and assess penalties or deny service for violation of Company policies and rules,
3. sue and be sued;
4. have an official seal and alter that seal at will;
5. make and execute contracts and other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions;
6. acquire or dispose of real or personal property, or an undivided, fractional, or other interest in real or personal property, necessary or convenient for its purposes sell, lease, or otherwise dispose of that property;
7. directly or by contract with another: (a) own and acquire facilities and improvements or an undivided, fractional, or other interest in facilities and improvements; (b) construct, operate, maintain, and repair facilities and improvements; and (c) provide the services contemplated in this Organization Agreement;
8. borrow money, incur indebtedness, and issue revenue bonds, notes, or other obligations and secure their payment by an assignment, pledge, or other conveyance of all or any part of the revenues and receipts from the facilities, improvements, or services that the Company provides;
9. offer, issue, and sell warrants, options, or other rights related to the bonds, notes, or other obligations issued by the Company;
10. sell or contract for the sale of the services, output, product, or other benefits provided by the Company;
11. own, acquire, and, by itself or by contract with another, construct, operate, and maintain a facility or improvement for the generation, transmission, and transportation of electric energy or related fuel supplies;
12. enter into a contract to obtain a supply of electric power and energy and ancillary services, transmission, and transportation services, and supplies of natural gas and fuels necessary for the operation of generation facilities;
13. sell its services within the Parties' boundaries and in the surrounding areas, and
14. adopt and implement risk management policies and strategies and enter into transactions and agreements to manage the risks associated with the purchase and

sale of energy in competitive markets, including forward purchase and sale contracts, hedging, tolling and swap agreements, and other instruments.

G. Assets

1. The Company's assets shall include all real and personal property, whether tangible or intangible, used in any way in the Company's acquisition, generation, transmission, management, and distribution of electric energy and related services. These assets include: (a) generators, (b) transformers, (c) transmission lines, (d) water rights, storage facilities, and hydro plants with related real property, (e) office, (f) accounts receivable and cash, (g) fuel supplies, (h) easements, (i) distribution facilities, (j) equipment and inventory, (k) trade name, and (l) going concern value.

2. The Company's assets shall be held in the name of and owned by the Company. The Parties confirm their relinquishment and transfer to the Company of any ownership that they may have in the Company's assets.

H. Board of Directors

1. The Board of Directors shall manage the affairs of the Company, and shall exercise on behalf of the Company all of the powers provided by this Organization Agreement and the laws of the State of Utah.

2. The Board of Directors shall have six members selected as provided in this Paragraph H.

- a. The Heber Mayor shall be the chair ("Chair") and a Director of the Board.
- b. The Chair shall select two Heber councilpersons to serve as Directors.
- c. The Midway Mayor shall be a Director or shall select a Midway councilperson ("Designee") to serve as a Director.

- d. The Charleston Mayor shall be a Director or shall select a Charleston councilperson (“Designee”) to serve as a Director.
- e. The chairperson (“Chairperson”) of the Wasatch County Council shall be a Director or shall select a County councilperson (“Designee”) to serve as a Director. This Director position does not entitle Wasatch County to any ownership in or distributions from the Company.

Directors will serve at the pleasure of the Chair, Mayor, or Chairperson that selected them and may be removed by them without cause.

A Director may also designate an Alternate from the Director’s municipal or county councils to serve as a Director when the Director is temporarily unable to serve.

3. The Heber City Mayor shall be the permanent Chair of the Board. The Board will select the Board’s other officers including Vice Chair and Secretary, the latter of which need not be a Director.

4. Four (4) Directors shall constitute a quorum of the Board for the purpose of conducting the business of the Company and exercising its powers and for all other purposes. When a quorum is in attendance, action may be taken by the Board upon a vote of the majority of its Directors present except as otherwise provided in this Organization Agreement.

5. A Director representing a Party may call for a Party Only Vote on any issue. A Party Only Vote shall only occur when Heber’s three Directors, Charleston’s one Director, and Midway’s one Director are present. No other Directors may vote. If all of the Parties’ Directors are not present, then the Party Only Vote shall be continued until the next Board meeting at which all Party Directors are present.

In the event of a Party Only Vote, Directors’ votes will be weighted as follow: (a) the votes of the Heber City Directors shall each have a 25% weight, (b) the vote of the Midway City

Director shall have a 12.5% weight, and (c) the vote of the Charleston Town Director shall have a 12.5% weight. In the event of a Party Only Vote, the Board shall act based upon a greater than 50% vote, except as otherwise provided in this Organization Agreement.

In the event of a Party Only Vote, Alternates shall not vote nor be counted in determining the presence of a quorum under this Paragraph H.

6. The Board may adopt and amend Bylaws not inconsistent with this Organization Agreement or the laws of the State of Utah. The Bylaws may include rules governing regular and special meetings of the Board; quorum and voting requirements; the establishment of offices; the indemnification of Directors, officers, employees, representatives and agents; compliance with open meetings laws; and for such other matters as the Board may determine.

7. No Director shall be liable to the Company for breach of any fiduciary duty owed by such Director, except for damages arising out of: (a) a breach of the Director's duty of loyalty to the Company; (b) any act or omission not in good faith or which involves intentional misconduct or a knowing violation of law; or (c) any transaction from which the Director derived an improper personal benefit.

8. Meetings of the Board may be held through electronic communication, as provided for in written procedures adopted by the Board. A Director participating in a meeting through such means shall be considered present for purposes of a quorum and voting.

9. Each Director shall make diligent efforts to inform the governing body of the Party, that the Director represents, of the Company's business including, but not limited to, the Company's operations, long-term contracts, debts, and general financial condition. The Parties agree that they are individually responsible for ensuring that their Director representative keeps

them properly informed of the Company's business.

I. Budget and Financing

1. The Company's operation and maintenance will be financed with revenue from the sale of electric energy and related services and other available moneys.

2. The Company may also finance improvements, such as new construction and upgrade of existing facilities, through the issuance of revenue bonds. Revenue bonds may be issued by the Company from time to time for any purpose permitted under the Act. Any bond issued by the Company is not a debt of any Party, and may be issued without the consent of the Parties' governing bodies.

3. Annually, on or before January 1, the Company shall adopt a budget for the ensuing year in accordance with the requirements of its bond resolutions or indentures. At a minimum, each annual budget shall set forth, in reasonable detail, estimates of:

- a. revenues and operating and maintenance expenses;
- b. debt service and reserve requirements;
- c. cost of upgrade and/or replacement of existing facilities; and
- d. amount of contingency reserves to pay unexpected energy price fluctuations and equipment failures or to provide rate stabilization.

The Company will send a copy of the annual budget to the clerk/recorder for each of the Parties.

4. The Company shall monthly provide the Parties' representatives on the Board with a monthly statement of revenue and expenses.

5. No Party to this Organization Agreement shall be liable for any bond, note, indebtedness or other obligation incurred by the Company, or be liable for the indebtedness of

any other Party to this Organization Agreement, or be liable for any indebtedness or contractual or other obligation with respect to the Company's operations.

J. Distributable Income

1. The Company may periodically pay its Distributable Income to the Parties as provided in this Paragraph J.

2. "Distributable Income" means the amount, if any, of the Company's net income that is available for distribution to the Parties after the payment of all operating expenses and debt service costs of the Company and the funding of all rate stabilization, surplus or similar funds established under the Company's bond indenture or resolution, or of any contingency reserves determined by the Board to be reasonably necessary to pay unexpected energy price fluctuations and equipment failures or to provide rate stabilization. The amount of Distributable Income shall not exceed the available amount on deposit in the rate stabilization, surplus or similar fund established under the Company's bond indenture or resolution.

3. At its first meeting after the end of a quarter, the Board shall determine: (a) whether the Company has Distributable Income and whether it will make a distribution from its Distributable Income, (b) when the distribution will be made, and (c) how much of the Company's Distributable Income will be available for distribution. The Board shall have the sole discretion to make distributions from Distributable Income, and the Parties shall have no right to a distribution unless the Board approves the distribution.

4. Nothing in this Organization Agreement is intended nor should be interpreted to prohibit the Board from permitting the Company to accumulate revenues from its operation that exceed its debt reserves and reasonable operation and contingencies reserves.

5. If the Board determines to make a distribution from Distributable Income, each Party shall be entitled to a pro rata portion of the distribution based on their Company Share.

K. Distribution of Assets on Termination

Upon the termination of this Organization Agreement, the Board will sell the Company's assets, pay its debts and obligations and distribute the balance to each Party pro rata based on each Party's Company Share.

L. Transfer of Company Assets to a Party

1. The Board may authorize the transfer of Company assets to a Party when the Board determines that the transfer is in the Company's best interest, and is in compliance with the provisions of this Paragraph L.

2. The sale of Company assets to a Party must be approved by an affirmative vote of four Directors, notwithstanding the provisions of Article H. 5.

3. Upon approval of the Board, the asset will be sold to the Party for its fair market value as determined by an independent appraisal prepared at the expense of the Party purchasing the asset. The Party purchasing the asset will pay the purchase price upon transfer of the asset, unless the Board unanimously agrees that payments may be made over time.

M. Relationship and Liability of Parties

1. Nothing in this Organization Agreement is intended nor should it be interpreted to make the Parties liable or responsible for the actions, debts, obligations, liabilities or defaults of the Company.

2. Nothing contained in this Organization Agreement is intended nor should it be interpreted to create an agency, partnership, joint venture, or any other relationship between or

among Heber City, Midway City, Charleston Town, the Company or any two or more of them that would in any way make one them liable for the actions, debts, obligations, liabilities or defaults of another.

3. The Company is not the agent for the Parties, either individually or collectively.

4. The Parties acknowledge and agree that the protection afforded to the Parties under the Utah Governmental Immunity Act, Title 63G, Chapter 7, Utah Code Annotated 1953, as amended (the "Immunity Act"), shall be extended to the Company and its Directors, officers and employees. It is the express intention of the Parties that all of the protection afforded to the Parties and their officers and employees under the Immunity Act shall be extended to the Company and its Directors, officers and employees. Each of the Parties hereby delegates to the Company and its Directors, officers and employees, to the extent permitted by law, all of the powers, privileges and immunities conferred by the Immunity Act.

5. The Company shall indemnify and defend the Directors and the Company's employees as provided in the Immunity Act.

N. Amendments

1. As provided in this Paragraph N., this Organization Agreement may be amended in any way that does not jeopardize or adversely affect any existing contracts, notes, bonds or other evidence of indebtedness, provided that such amendment shall not subject any Party hereto to any dues, assessments or liability without its consent.

2. The Board shall approve any proposed amendment to this Organization through a resolution proposing the amendment to the governing bodies of the Parties for approval. The resolution shall only be approved by an affirmative vote of five Directors voting by a Party Only

Vote as provided in Paragraph H. 5. The voting shall be a Party Only Vote even if a Party does not call for a Party Only Vote.

3. Upon approval of at least two of the three Parties' governing bodies, the amendment shall become effective.

O. Withdrawal from Organization Agreement

A Party may withdraw from this Organization Agreement on the following terms and conditions:

1. The withdrawing Party shall give the Company and the remaining Parties twelve months written notice of the Party's intention to withdraw.

2. Within thirty days of receipt of the notice of withdrawal, the Board shall reject the notice of withdrawal only if: (a) the Parties' withdrawal would adversely affect the Company's contract rights and/or bond obligations, or (b) the withdrawal leaves only one remaining Party and no Third Party will purchase the withdrawing Party's interest and the remaining Party does not consent to the withdrawal.

3. If the Board accepts the notice of withdrawal, the remaining Parties or a Third Party may purchase the interest of the withdrawing Party on the following terms:

- a. Within sixty days of the Board's acceptance of the notice of withdrawal, the remaining Parties would notify the withdrawing Party: (i) of the remaining Parties' intent to purchase the withdrawing Party's interest or (ii) of a Third Party's intent to purchase the withdrawing Party's interest.
- b. The remaining Parties or the Third Party would pay the withdrawing Party an amount equal to the withdrawing Party's Company Share times the Company's net book value. For the purposes of this provision, net book value would equal the Owner's Equity as reflected on the Company's most recent audit report.

- c. The remaining Parties or Third Party would pay the purchase price in quarterly installments over a twenty year period. The purchase price would accrue interest at a reasonable rate not greater than the rate paid by the Utah State Treasury Pool during each year that a balance is due.

4. The withdrawing Party is prohibited from revoking or altering in any fashion the franchise of the Company to provide electrical service to the withdrawing Party, its residents, or the residents in the surrounding areas.

P. Termination of Organization Agreement

1. Except as provided in Paragraph P. 2 below, the Company shall have a perpetual existence.

2. If all the Parties agree, the Parties may terminate this Organization Agreement and dissolve the Company after the later of:

- a. five years after the Company has fully paid or otherwise discharged all of its indebtedness;
- b. five years after the Company has abandoned, decommissioned, or conveyed or transferred all of its interest in its facilities and improvements; or
- c. five years after the Company's facilities and improvements are no longer useful in providing the service, output, product, or other benefit of the facilities and improvements, as determined under the agreement governing the sale of the service, output, product, or other benefit.

Q. Governing Law

This Organization Agreement is made in the State of Utah, under the Constitution and laws of this State and is to be construed pursuant to such laws.

R. Severability

Should any part, term, or provision of this Organization Agreement be held by the Courts to be illegal or in conflict with any law of the State of Utah, or otherwise rendered unenforceable

or ineffectual, the validity of the remaining portions or provisions shall not be affected by such ruling.

S. Effective Date

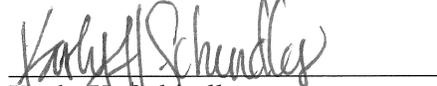
This Organization Agreement shall take effect upon: (1) approval of the Board and (2) review by each of the Parties' respective attorneys as provided in *Utah Code Ann.* § 11-13-202.5(3).

The foregoing amendments to and restatement of the Organization Agreement were approved by the Board of Directors on October 9, 2014 by a unanimous Party Only Vote:



Alan W. McDonald, Chair
Board of Directors
Heber Light & Power Company

Attest:



Karly H. Schindler
Secretary, Board of Directors