

# DRAFT OF PROPOSED ORDER

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Application of Rocky )  
Mountain Power for Approval of Pole ) DOCKET NO. 09-035-52  
Attachment Agreement between PacifiCorp )  
and TCG Utah ) REPORT AND ORDER  
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ISSUED: August 11, 2009

By The Commission:

This matter is before the Commission on Rocky Mountain Power's application for approval of a pole attachment agreement (Agreement) between PacifiCorp (Company) and TCG Utah (TCG). TCG and PacifiCorp jointly negotiated the terms and conditions of the proposed contract. The Agreement was signed by TCG Utah on September 12, 2008 and by PacifiCorp on October 22, 2008. The Company filed its application on June 29, 2009. The Division of Public Utilities (Division) submitted its recommendation July 29, 2009 recommending approval of the Agreement.

The Division detailed its analysis of and reasons for approving the Agreement. It recognized that Utah Admin. Code R746-345 governs pole attachments, and that pursuant to R746-345-1(B)(2) it must allow access to ITS utility poles to an attaching entity under certain conditions. It must also submit a tariff, standard contract, or Statement of Generally Available Terms (SGAT) to the Commission for approval, *Utah Admin. Code* R746-345-3(A), by which an attaching entity may know the terms under which it may access utility poles.

The Division noted that the Company already has filed with the Commission its Electric Service Schedule No.4 Pole Attachments and has an SGAT approved by the Commission in Docket No. 04-999-03. However, in this docket, the Company filed an

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Agreement that was negotiated by it and TCG and which differs from the standard contract. The Commission, pursuant to R746-345-3(B)(1) must approve the Agreement.

The Division noted the differences between the Agreement and the standard contract were both substantive and minor differences. The minor differences included gathering provisions related to vegetation management under a single section, renumbering a provision related to bonding and gathering related language in the same provision, removing references to joint use and benefit of poles as the Company will not use TCG poles, and shortening the time contained in the standard contract for curing of default ~~from 90 days to 30 days~~. Substantive differences included updating regulatory requirement and National Electric Safety code requirements. The parties also made substantive changes “that accommodated standardized management of the joint use administrative function”, being as this Agreement applies only to attachments in Utah, and not generally to the Company’s six-state service territory.

Additionally, the parties negotiated other changes that consolidated the terms and provisions of the standard contract. The Division opined that these changes lent the Agreement greater clarity and simplicity than the standard contract. The changes included provisions for: 1) simplifying the application procedure for attachment; 2) allowing the Company to reject an application for safety reasons; 3) earlier deadline for payment of rent; 4) greater time to allow for attachment installation; 5) expansion of time to pay invoices; 6) increased and expanded levels of insurance by TCG; 7) dealing with interferences with the Company’s equipment by TCG equipment; 8) termination of the Agreement and removal of TCG’s equipment in the event of termination; 9) dealing with default, bankruptcy, insolvency, and material breach; 10) assignment of the Agreement by TCG; 11) access to easements and rights-of-way and TCG’s maintenance of

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consents, permits, licenses or grants; and 12) maintaining mutual confidentiality of the Agreement. The Application also included the calculation of the annual pole attachment rental rate and the Company's Distribution Construction Standards which provide engineering drawings covering joint use of poles.

The Division concluded:

After reviewing the Company's filing and accompanying documents, the Division finds that the Agreement among the Parties is reasonable and should be approved. The terms and conditions of the Agreement are for the most part consistent with the Commission-approved Standard contract. Where differences occur, they have been mutually agreed to by the Parties. The proposed Agreement is clear, understandable, and provides benefits to both TCG and PacifiCorp.

*Division Recommendation, pp.6-7.*

The Division was concerned that the Agreement was filed about eight months after both parties finalized it. The Division recommended:

. . . the Company should file these agreements immediately after they have been signed and not many months later. The Division recommends that the Commission require the Company to report to the Commission once internal control processes have been put in place that ensure future negotiated contracts are approved by the Commission in a timely manner and before any pole attachments are installed.

## ORDER

Having reviewed the Company's Agreement and Application, and based on the Division's recommendation, the Commission finds that it is in the public interest to approve the Agreement. It finds that the Agreement provides TCG nondiscriminatory access to the Company's utility poles at rates, terms, and conditions that are just and reasonable. The Commission orders as follows:

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1. the Agreement submitted is approved and the Application granted;
2. the Company shall ensure that any future negotiated attachment agreements shall be submitted to the Commission in a timely manner and before any pole attachments are installed;
3. Pursuant to Sections 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing within 30 days after issuance of this Order by filing a written request with the Commission. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission does not grant a request for review or rehearing within 20 days after the filing of the request, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a petition for review with the Utah Supreme Court within 30 days after final agency action. Any petition for review must comply with the requirement of Sections 63G-4-401 and 63G-4-403 of the Utah Code and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 11<sup>th</sup> day of August, 2009.

/s/ Ruben H. Arredondo  
Administrative Law Judge

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Approved and confirmed this 11<sup>th</sup> day of August, 2009 as the Report and Order of  
the Public Service Commission of Utah.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary  
G#63138