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**MEMORANDUM**

To: Public Service Commission

From: Division of Public Utilities  
Philip Powlick, Director  
Artie Powell, Manager, Energy Section  
Joni Zenger, Technical Consultant

Date: April 27, 2010

Re: Action Request/Error in PacifiCorp's Application for Approval of Pole Attachment Agreement with TCG Utah, Docket No. 09-035-52

**RECOMMENDATION:** (1) The Division recommends accepting the revised confidential Exhibit A to the PacifiCorp/TCG Pole Attachment Application and filing a confidential and redacted version of the contract; (2) We recommend replacing the Division's July 29, 2009 Memo to the Commission with a confidential and redacted public version as attached to this Memo (3) The Division recommends that the Commission issue an Errata Order as proposed by the Company that deletes the confidential reference contained in the Commission's February 23, 2010 Order.

**DISCUSSION**

On June 29, 2009, PacifiCorp filed an Application for Approval of Pole Attachment with TCG Utah. The Commission issued a protective order in this matter on June 24, 2009. On July 29, 2009, the Division filed a Memo to the Commission recommending approval of the Application and the negotiated contract (Exhibit A) between PacifiCorp (the Company) and TCG Utah. The Commission issued an Order approving the contract on February 23, 2010.

On April 6, 2010, the Company notified the Division that the Company neglected to file Exhibit A to its Application as a confidential document and thus had not properly filed a confidential and redacted copy of the TCG contract in its initial Application. On April 7, 2010, the Company filed a letter to the Commission regarding this error.

As a result, one of the words in the Division's July 29, 2009 Memo to the Commission recommending approval of the agreement contained a reference to what is now a confidential provision relating to the shortened time to remedy a default in the TCG Utah contract. The Division treated the contract as a public document, as it was filed, when we prepared our July 29, 2009 Memo to the Commission. We have no objections to the Company's suggestion to remedy its error by simply retracting the confidential words from our original memo and filing a revised public version. The change does not substantively affect the meaning of the sentence, but merely refers to the time period in more general terms.

In addition, the Commission's February 23, 2010, Order Approving the Agreement contains a confidential reference to the same section of the contract. As the Company discovered this error after the fact (and a protective order was previously issued in this case), the Company attached to its Error in Application letter a proposed draft order that strikes the confidential reference contained in its (now confidential) Exhibit A. The Division recommends that the Commission issue an Errata Order, as suggested by the Company, with the small change to the affected sentence on page two of the Commission's February 23, 2010 Order.

The Division wishes to point out that, even if the Commission accepts the newly filed confidential and redacted versions of these documents, the (now considered) confidential versions have been on the Commission's docket index page for approximately 10 months for the public to download or view. Therefore, there is no way to assure the confidentiality of the documents that were previously filed and posted. The Commission can choose to take reasonable steps to deal with the issue going forward by filing the attached revised confidential

and redacted versions of the Division's prior memo. The Division believes this is the best way to remedy the error.

## **CONCLUSION**

In order to accommodate the error in the Company's Application for Approval of its Pole Attachment Agreement with TCG Utah, the Division does not object to the Company's proposed remedies for its error. We submit with this memo the Division's Revised July 29, 2009 memo, both in public and redacted versions. Finally, the Division recommends that the Commission issue an Errata Order as described above and accept the filed contract as a confidential document under the previously filed protective order. With these changes, the confidentiality of the Company's Exhibit A will be maintained going forward, and the Company's error will be remedied from this point on.

cc:

Michael Ginsberg  
Patricia Schmid  
Dave Taylor  
Barbara Ishimatsu  
Mark Moench