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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Rocky Mountain Power for Authority to Increase its Retail Electric Utility Service Rates in Utah and for Approval of its Proposed Electric Service Schedules and Electric Service Regulations	Docket No. 10-035-124 QWEST CORPORATION'S RESPONSE AND NON-OPPOSITION TO THE UTAH RURAL TELECOM ASSOCIATION'S MOTION TO DISMISS
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Qwest Corporation (“Qwest”)¹ submits this Response and Non-Opposition (“Response”) to the Motion to Dismiss, Motion to Strike, or Alternatively, Motion to Open a Separate Rulemaking Docket filed by the Utah Rural Telecom Association (“URTA”). This Response is filed in accordance with Utah Admin. Code § R746-100-3.I and the Order Shortening Time for Response to Motion issued by the Public Service Commission of Utah (“Commission”) on May 4, 2011, indicating that the due date for filing written responses to URTA’s motion is shortened to May 10, 2011.

Qwest supports URTA’s motion on the basis that the Commission has already addressed issues with respect to the pole attachment rate formula and the recovery of administrative costs. URTA correctly identifies the proceedings where these issues have been addressed. Rocky

¹ Qwest is a subsidiary of CenturyLink, Inc.

Mountain Power (“RMP”) alleges that it “is requesting deviation from the rental rate formula set forth in R746-345.A.1 as allowed in R746.345-5.B.”² However, RMP’s request for deviation is not appropriate; this is simply an attempt by (“RMP”) to once again seek an increase in its pole attachment rates. Further, the arguments that RMP proffers in testimony--that RMP’s administrative costs should be included as part of the rate formula-- simply do not appear to differ significantly from arguments that RMP previously made to the Commission regarding the recovery of costs associated with servicing pole attachments.

In a brief that RMP filed as part of Docket No. 04-999-03, in discussing fees associated with servicing pole attachments, RMP stated “this topic is about the recovery of costs incurred by the pole owner that would not have been incurred but for the obligation to grant access to the poles by attaching entities and which are not otherwise recovered by the pole owner.”³ RMP goes on in the brief to state that it “believes that the pole owner should be reimbursed for out-of-pocket costs incurred to serve pole attachments. These costs include the cost to process applications for pole attachment permits, to evaluate poles and determine whether any make-ready construction is necessary in order to accommodate the proposed attachments and to inspect the attachments for compliance with proper installation standards.”⁴ This argument made by RMP in 2005 is strikingly similar to Mr. Kent’s direct testimony in this proceeding where he states “[t]he Company is proposing this change to better match the pole attachment rental fee with the cost of providing that service. This will ensure that pole occupants who are causing the costs to be incurred are responsible for paying those costs.”⁵ After considering the arguments set

² Testimony of Jeffrey M. Kent in Docket No. 10-035-124 at page 2, lines 35-37.

³ Brief of Pacific Corp as to Terms and Provisions of the Standard Pole Attachment Agreement, Docket No. 04-999-03, page 5.

⁴ *Id.*

⁵ Testimony of Jeffrey M. Kent in Docket No. 10-035-124 at page 3, lines 51-53.

forth by RMP in its April 2005 brief, the Commission issued the letter dated September 6, 2005, cited by URITA in its Motion, which addresses these issues.

Further, even though Utah Admin. Code § R746 345-5-5.B. permits a pole owner to *petition* the Commission to review the rate formula, the rule specifically requires that the *petition* “must include a factual showing that a rental rate, rate formula or rebuttable presumption is unjust, unreasonable or otherwise inconsistent with the public interest.”⁶ RMP’s testimony does not set forth a factual showing that the current pole attachment rate formula is unjust, unreasonable or otherwise inconsistent with the public interest. It is inappropriately presumptuous on the part of RMP to include the increased revenue based on a new pole attachment formula for a future test year without even petitioning the Commission (much less receiving a decision on such a petition) with respect to a request for deviation of the rate formula.

Moreover, there is no indication that the petition contemplated by Utah Admin. Code § R746 345-5-5.B would permit such a proceeding to be included as part of a rate case. *If* the Commission were to reconsider the pole attachment formula it is more suitably addressed in a rulemaking proceeding as suggested by URITA. The Commission previously resolved issues surrounding the pole attachment rate formula in a generic rulemaking proceeding, and that is where any further change should be made as well. The generic rulemaking proceeding correctly resulted in a consistent formula for all pole attachments, and any future changes to the underlying formula should be addressed in a rulemaking to ensure consistency. However, opening another rulemaking docket to once again address issues that were recently addressed is unnecessary.

⁶ Utah Admin. Code § R746-345-5-5.B

Based on the foregoing, Qwest requests that the Commission dismiss portions of RMP's rate case that relate to pole attachment issues, and strike the applicable testimony.

DATED this 10th day of May, 2011.

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A handwritten signature in cursive script that reads "Torry Somers".

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