



State of Utah
Department of Commerce
Division of Public Utilities

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To: Public Service Commission

From: Philip Powlick, Director
Artie Powell, Manager, Energy Section
Joni Zenger, Technical Consultant
Hsienming Liu, Utility Analyst

Date: June 17, 2010

Re: Docket No. 10-035-42, Application for Approval of Pole Attachment Agreement between Rocky Mountain Power and South Central Communications, Inc. and South Central Utah Telephone Association, Inc.

I. ISSUE

On April 22, 2010, PacifiCorp (dba Rocky Mountain Power) filed an Application with the Commission for Approval of a Pole Attachment Agreement between PacifiCorp and South Central Communications, Inc. and South Central Utah Telephone Association, Inc. (collectively, the Parties). Accompanying the Application, the Company submitted a copy of the contract that was negotiated and agreed to by the Parties as well as a copy of the Company's Joint Use Distribution Construction Standards. Inasmuch as the pole attachment contract agreed to by the Parties differs from the Commission-approved contract, the Company requests that the Commission issue an order approving the Agreement and finding the terms and conditions of the Agreement to be just and reasonable and in the public interest.

II. RECOMMENDATION (APPROVE)

The Division recommends that the Commission approve the Application and the negotiated contract between PacifiCorp (the Company) and South Central Communications, Inc. and South Central Utah Telephone Association, Inc. (South Central).

III. DISCUSSION

Utah Administrative Rule 746-345 defines how, when, and where an entity can attach equipment to a pole owned by a public utility. According to the Commission rules, “a public utility must allow any attaching entity nondiscriminatory access to utility poles at rates, terms, and conditions that are just and reasonable.”¹ This rule also requires the pole owner to submit a tariff and standard contract for Commission approval.

With respect to the tariff provision, the Company submitted with this Application its Electric Service Schedule No. 4 Pole Attachments. However, rather than using the standard contract (also referred to as Standard Agreement or Safe Harbor) previously approved by the Commission in Docket No. 04-999-03, the Company in its Application filed a contract that was negotiated by the Parties and that differs from the Commission approved Standard Agreement. Rule R746-345-1(B)(2) requires parties to have Commission approval in the event that a negotiated contract is used that differs from the terms in the Standard Agreement.

PacifiCorp and South Central jointly negotiated the terms and conditions of the proposed contract.² The Agreement was signed by South Central on February 23, 2010 and by PacifiCorp on March 11, 2010. The Application was filed in a timely manner with the Commission on April 20, 2010.

IV. FINDINGS

The Division has reviewed the Company’s Application, the jointly negotiated contract signed by the Parties, and the Commission rules as they pertain to pole attachments. The Division notes that this pole attachment agreement is the first reciprocal pole agreement to be filed since the Commission’s revisions to rule R746-345 in 2008.³ Therefore, this contract varies from the Standard Agreement in that it specifies agreed-to terms and conditions for South Central’s

¹ Rule R746-345-1 (B) 2.

² South Central Communications, Inc. is a wholly-owned subsidiary of South Central Utah Telephone Association, Inc.

³ The Commission recently approved two non-reciprocal pole attachment agreements: PacifiCorp/TCG Utah (Docket No. 09-035-52) and PacifiCorp/Leavitt Group Enterprises (Docket No. 10-035-01).

attachments to PacifiCorp’s poles and for PacifiCorp’s attachments to South Central’s poles. Other than the fact that the Standard Agreement is a non-reciprocal contract and the application for approval of the South Central agreement is a reciprocal contract, the South Central contract is similar to the Standard Agreement that has been approved by the Commission in Docket No. 04-999-03. The Company recently received Commission approval for pole attachment agreements between PacifiCorp and TCG Utah (Docket No. 09-035-52) and Leavitt Group Enterprises (Docket No. 10-035-01) that were non-reciprocal agreements. The Division found that there are both substantive and nonsubstantive differences between the Standard Agreement and the South Central agreement that is before the Commission in this docket. The minor changes consist of consolidation of sections and clarification of the Company’s administrative processes that were agreed to mutually by the Parties. The Division found the following differences in the terms of the two agreements:

	Safe Harbor/Standard Contract	South Central
	Docket No. 04-999-03	Docket No. 10-035-42
	1/9/2006	4/20/2010
Terms & Conditions	Non-reciprocal	Reciprocal
When rent begins	30 days from invoice date; 60 days for disputed invoices	45 days from invoice date; 90 days for disputed invoices
How long to complete installation	90 days	180 days
Business Interruption Insurance	none	\$1 million
Employer's Liability Insurance	none	\$1 million

In addition, there are significant portions added within Article III (Use of Poles) of the South Central contract that accommodate the joint use of the poles. In addition to minor consolidations or relocation of sections of the agreement, the changes listed below are substantive variations from the Commission-approved Standard Agreement, as well as differences in the TCG Utah agreement:

1. Section 3.25 Inspections. Although this section is contained in the Standard Agreement, the South Central agreement includes additional verbiage regarding owner charging the Licensee (the party that has been granted access to the pole owner's pole) for safety inspections. According to this section, the pole owner may charge the Licensee for the expense of inspections that include make-ready work, pre-construction inspections, post construction inspections, and any other inspections requested by the Licensee or deemed reasonable necessary by the pole owner. The rates for these inspections are contained in Exhibit B, described below. In the TCG Utah Agreement Inspections and Audits are consolidated into Section 3.16.⁴

2. Section 4.06 Lower and Haul by Licensee.

This section was listed as Section 4.02 Abandonment of Jointly Used Poles in the Standard Agreement but is revised in the South Central Agreement. In brief, on a pole that is abandoned, the party that is granted access to a pole owner's pole may lower and haul the abandoned pole if all other attaching entities are off the pole and the Licensee has received written notification. The Licensee accepts all liability for the pole and environmental restoration. The Licensee may charge the owner the cost to lower, haul, dispose of the pole, and for all environmental restoration expenses. The section also provides for a second notification period of 30 days that is not contained in the Standard Agreement. The section states that South Central's rates shall be based on actual cost and shall not exceed RMP's published rates in its Fee Schedule (Exhibit B Schedule 1).

3. Section 5.02 Unauthorized attachments. This section was listed in the Standard Agreement under Section 5.02 and under Section 4.02 in the TCG Utah agreement. However, this is the first time the unauthorized attachment charge is published in RMP's Exhibit B. The unauthorized attachment charge in RMP's fee schedule is \$100, plus back rent, per pole.

⁴ Docket No. 09-035-52, Application of Rocky Mountain Power for Approval of Pole Attachment Agreement Between PacifiCorp and TCG Utah, June 29, 2009.

4. Exhibit B. Exhibit B lists the fee schedule for non-recurring charges. With the exception of the topping fee and the return trip fee (see item 5), these inspection fees are identical to those filed in the TCG Utah Application. The fees are listed below:
- Application processing fee \$26.65 + \$4.00 per pole;
 - No fee for desktop inspection, only for Electronic Notification System (ENS);
 - Pre- and Post Inspection Fees:
 - Level 1 Visual inspection or drive by: \$31.30 for first pole, then \$17.65 thereafter;
 - Level 2 Measured inspection: \$41.20 for first pole, \$30.40 thereafter;
 - Level 3 Pole analysis for strength: \$88.55 for first pole, \$75.90 thereafter;
 - Level 4 Visual inspection: 31.30 for first pole, then \$17.65 thereafter;
 - Level 5 Measured inspection: \$41.20 for first pole, \$30.40 thereafter
 - Level 6: Pole analysis inspection: \$88.55 for first pole, \$75.90 thereafter.
5. Topping fee and Return trip fee: In the TCG Utah Agreement, Section 3.13 contains provisions for removal of the top of the pole or pole relocation, as well as a return trip fee. However, no specific charges are stated in the TCG Agreement or Exhibits. In the South Central Agreement a topping fee of \$60 per pole is listed in PacifiCorp's Fee Schedule Exhibit B. In addition, the return trip fee is assessed at the rate of \$255 per pole.

In the Standard Agreement “non-recurring charges” are defined as “legally authorized and identifiable amounts payable by [the] Licensee under the Agreement other than rental charges.” Non-recurring charges are not defined in the South Central agreement, but are listed in Exhibit B as noted above.

Exhibit C contains inventory completion dates, and Exhibit D lists criteria for resolving joint pole ownership disputes. Changes to Section 12 are administrative. There is no confidentiality clause in this agreement.

Where changes have been made to this Agreement, the modifications reflect the reciprocal relationship between the Parties. The changes outlined above comply with the Utah Administrative rules inasmuch as the contract explicitly includes a description of the permitting process, the inspection process, the joint audit process, and nonrecurring fees or charges that differ from the Standard Agreement. All of the terms described above have been mutually agreed to by both Parties.

Finally, the Company's Application and request for Commission approval includes the computation of the annual pole attachment rental rate and the Company's Distribution Construction Standards (EU), which provide engineering drawings covering joint use of poles. The Division reviewed both documents. First, it appears that the Company's Distribution Construction Standards are in conformance with the National Electrical Safety Code requirements. Second, the annual rental rate of \$7.02 per foot of space used is taken directly from Rocky Mountain Power's Electric Service Schedule No. 4 on file with the Commission.⁵

V. CONCLUSION AND RECOMMENDATION

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 and are in compliance with Utah Administrative Rules. The proposed Agreement is clear, understandable, and provides benefits to both South Central and PacifiCorp.

The Division recommends that the Commission approve the Application of Rocky Mountain Power and the accompanying Agreement with South Central. The mutually negotiated terms and conditions of the Agreement are reasonable and in the public interest. It is also in the public

⁵ South Central will adopt PacifiCorp's Fee Schedule (Schedule 1) of this Agreement until it received approval of its applicable fees from the Commission. At that time it will provide notice of its approved new rate per this Agreement. (See Exhibit B).

interest to facilitate the common, nondiscriminatory access to utility poles as demonstrated in this Application.

cc: Dave Taylor, PacifiCorp
Barbara Ishimatsu, PacifiCorp
Michele Beck, Office of Consumer Services