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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of ROCKY MOUNTAIN POWER for Approval of a Standard Reciprocal Pole Attachment Agreement	DOCKET No. 10-035-___ **APPLICATION OF ROCKY MOUNTAIN POWER**

PacifiCorp, doing business in Utah as Rocky Mountain Power ("Rocky Mountain Power" or "Company") respectfully requests an order under Utah Admin. Code R746-345-3 approving its proposed standard reciprocal pole attachment agreement (the "Agreement") submitted herewith.

In support of its Application, Rocky Mountain Power states as follows:

1. Rocky Mountain Power is a public utility in the state of Utah and is subject to the jurisdiction of the Commission with regard to its rates and service. As a public utility that permits attachments to its poles by an attaching entity, Rocky Mountain Power is obligated to provide that service pursuant to the requirements in Utah Admin. Rules, R.746-345 governing pole attachments. Rocky Mountain has previously submitted for Commission approval a proposed standard non-reciprocal pole attachment agreement in Docket No. 10-035-43. In its August 3, 2010 Amended Scheduling Order in that Docket, the Commission ordered the

Company to file its proposed standard reciprocal pole attachment agreement with the Commission by August 31, 2010. The Agreement is attached hereto as Exhibit A.

2. Communications regarding this Application should be addressed to:

By e-mail (preferred): datarequest@pacificorp.com
Dave.taylor@pacificorp.com
Barbara.ishimatsu@pacificorp.com

By mail: Data Request Response Center
Rocky Mountain Power
825 NE Multnomah St., Suite 800
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201 South Main, Suite 2300
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3. The terms of the Agreement are largely the same or similar in substance to the terms of the safe harbor agreement ("Safe Harbor") approved by the Commission in Docket 04-999-03. Before describing specific differences between the Agreement and the Safe Harbor, the Company will briefly describe in general terms various differences between the Agreement and the Safe Harbor. Some provisions of the Safe Harbor have been relocated in the Agreement, consolidated or otherwise clarified. Minor differences between the Agreement and the Safe Harbor agreement are simply non-substantive wording changes. The Company believes that there are aspects of the Safe Harbor that in practice diminish the Company's ability to operate a safe and reliable electric system, or are inconsistent with Commission Rules. Further, several

provisions of the Agreement (e.g., approval process, commencement of rent, longer time for licensee to pay) are written to accommodate standardized, and thus more efficient, management of the joint use administrative functions from one office for the six states served by Rocky Mountain Power and Pacific Power. These changes allow the Company to reduce the cost of administering pole attachment contracts (compared to having to administer a multitude of vastly different contracts); a benefit shared by all attaching companies. In addition, centralized contract administration is a benefit to both parties when the licensee has pole attachments with PacifiCorp in one or more of its other operating areas.

4. The Agreement has additional definitions that are not in the Safe Harbor. For instance, Cost Estimates is defined to include the possibility of flat fees in the fee schedule, Exhibit B. As reflected in the definition of Fee Schedule, those flat fees would need to be approved in accordance with Rule R746-345-3.A. In the definition of Electronic Notification System, the Company has defined it as a system that may be designated by the Pole Owner or mandated by the Commission, rather than one that would necessarily have to be approved first by the Commission. A definition of Inspections is also included to describe and clarify the different types of inspections that the Pole Owner may perform. (The different types of inspections, and cost reimbursement for them, are provided for in Section 6.09.[1] Section 3.25 of the Safe Harbor does not have such terms.) Definitions for Credit Requirements and Security have also been added, as those terms are used in the Company's proposed security requirements. Similarly, Engineering Handbook is defined, as that handbook is referred to in Exhibit D with respect to wireless attachments.

[1] References to Section numbers are with respect to the Agreement, while references to "SH Section" numbers are with respect to the Safe Harbor.

5. Section 2.02 of the Agreement provides for the specification of the licensee's "permitted purpose," which is a provision not contained in the Safe Harbor. Inclusion of the permitted purpose is not intended to *limit* any entity, but rather to *identify* the entity's particular communications business sector. Identification of the licensee's business is reasonable, and it is not burdensome for the licensee to inform the utility of the types of facilities that will be placed on the utility's poles, whether they are telecommunication lines, cable TV lines, or both. For example, the information can facilitate field inspections. If there is a safety violation on a pole with both a telephone line and a CATV line attached without adequate labeling (which is not uncommon), knowing which licensee operating in the area has which type of facilities will facilitate the Company's ability to resolve the safety violation. Similarly if a pole has telecommunications and CATV facilities attached, with the CATV line lacking ownership information, and the telephone company (properly labeled) has listed telecommunications as the only permitted purpose in its pole attachment agreement, the Company will have an indication that it should be looking for another licensee to rectify the labeling violation. Further, identifying the purpose may give an up-front indication whether a different rental rate may be applicable, such as for wireless facilities, under the rental rate formula. For example, if a regulated telecommunications company expands into providing cable TV service, it typically provides such service through a separate unregulated business entity. In such cases, Rocky Mountain Power needs such separate legal entity to be contractually bound through a new or amended contract.

6. Section 2.03 of the Agreement, allowing the Pole Owner to reserve space on its poles necessary for its core utility service, does not require that the reservation be "consistent with a development plan that reasonably and *specifically* projects and identifies a need for *that space* in

the provision of its core utility service." (SH Section 2.03, emphasis added). The Company does not believe it would be reasonable or feasible to have to base every pole attachment denial on such a detailed, ever changing, pole-specific "development plan." (A reference to the "development plan" also is not included in Section 6.01, addressing attachments which interfere with the pole owner's equipment or the installation of necessary additional equipment, while Safe Harbor Section 3.12 contains such a reference.)

7. Section 2.05 of the Agreement, requiring the licensee to acquire any necessary rights-of-way, etc. from third parties, adds that the pole owner may require the licensee to provide evidence of compliance with the provision based on instances where licensees attached without securing proper permission. Section 3.11 of the Safe Harbor is silent on providing evidence of compliance.

8. Section 3.02 of the Agreement adds provisions for clarification with respect to additional attachments, which terms are not within the Safe Harbor. Another provision not in the Safe Harbor appears in Section 3.03 of the Agreement, allowing a licensee to avoid unauthorized attachment fees by self-disclosing the unauthorized attachments. Section 3.04 of the Agreement extends the rental payment due date from 30 days (SH Section 5.03) to 45 days, as well as extending the payment due date with respect to disputed payments. All of these provisions are reasonable or even benefit the licensee.

9. In Section 4.01 of the Agreement, the Company did not include the provision contained in the Safe Harbor (SH Section 3.01) which allows overlashing to be installed without submitting an application to the pole owner. Because overlashing can result in excessive loading on poles, it is appropriate to require an application. Requiring that a licensee obtain prior permission from the Company to overlash the licensee's equipment to any existing attachments

or other equipment already attached to the Company's poles is by no means unreasonable. To the contrary, not requiring prior permission could likely result in overloaded poles. A licensee intending to overlash has no ability to determine that a pole is already at (or in excess of) its maximum loading (which can occur especially if prior unapproved overlashings exist). The additional weight of overlashed equipment can cause the pole to break or result in dangerous sagging of the power lines. The Company should not be denied the opportunity to take reasonable measures to protect its system and *avoid* unsafe conditions, as opposed to repairing unsafe conditions after a licensee has overlashed. Nor should the Commission condone an end-run around the make-ready requirements.

10. The Agreement provides for rental charges to commence as of the date of the Company's approval of an application (Section 4.02), while the Safe Harbor appears to trigger rent based on the date of installation of attachments (SH Section 5.01). The Company has specified the approval date because on this date, the licensee has effectively reserved space on the pole in priority to subsequent licensees that may submit applications for attachments. This provision is also necessary because the Company finds that Licensees often fail to notify the Company when their equipment has been installed.

11. The Agreement (Section 4.03) requires that a licensee must submit and pay for an application for attachments of service drops, as opposed to Section 3.02 of the Safe Harbor, under which a licensee need not file or pay for an application. However, the Agreement is consistent with Rule R746-345, and the Safe Harbor is inconsistent in this regard. There is no general exception from the application process for attachments to "secondary poles" as defined by the Rule, except that, as specified in the Rule's definition of "Pole Attachment," "A new or existing service wire drop pole attachment that is attached to the same pole as an existing

attachment of the attaching entity is considered a component of the existing attachment for purposes of this rule." R746-345-2(E). The Agreement, by adopting the Rule's definition of Pole Attachment (see Agreement's definition of "Attachment"), likewise has this exception. More importantly, the Company's experience is that a very large percentage of safety clearance violations are due to improper service drop installations.

12. Licensees are granted a much longer time under the Agreement than under the Safe Harbor to complete installation of Attachments – 180 days instead of 90 days (Section 4.04; SH Section 3.08). Section 4.04 also includes a notification requirement once installation of an attachment is complete. In Section 4.05, the Company added clarifications of the parties' responsibilities regarding make-ready work.

13. In Section 5.04, addressing conformance with the NESC and other requirements, the Company includes a reference to the Utah Department of Transportation clearance requirements, and in Section 5.05, dealing with nonconforming equipment, the Company includes terms to clarify what will be considered "timely."[2]

14. The Agreement's provisions dealing with pole replacements differ somewhat from the Safe Harbor, with terms providing additional clarity as to responsibilities, as well as elimination of the reference standard of a "basic 40 foot Class 5 pole," which will likely not be the type of pole that the Company would use and specifying a particular height in advance is arbitrary and administratively unworkable.. (Sections 6.02, 6.04, 6.06; SH Sections 3.13; 3.15, 3.18). In Section 6.05, addressing relocation of licensee attachments, the Agreement has terms providing for pole owner coordination and timeliness of work, which terms are not in the Safe Harbor (SH Section 3.17).

[2] The Company did not include a provision from the Safe Harbor regarding unused equipment (SH Section 3.21), as the provision simply mirrored NESC requirements, with which licensees are required to comply, and regarding which the Company has not experienced a significant problem.

15. Section 7.06 addresses the lowering and hauling of poles abandoned by a pole owner, an issue omitted from the Safe Harbor.

16. Section 8.08 of the Agreement specifies equipment breakdown or failure as a force majeure event to be consistent with the Company's tariffs, while it is not included in the Safe Harbor (SH Section 11).

17. The Agreement's insurance requirements (Section 9.02) specify different coverage limits than the Safe Harbor (SH Section 9), to be consistent with the insurance provisions the Company experiences in the market for commercial transactions presenting levels of risk similar to those that might be experienced under the Agreement. The Agreement includes a specific Workers Compensation coverage requirement, an increased limit for Commercial General Liability coverage, and a requirement to carry Umbrella Liability insurance.

18. The Company's credit and security provisions in the Agreement (Sections 9.03-9.04) differ from the security provision in Section 10.03 of the Safe Harbor again, to be consistent with the credit and security requirements the Company seeks in other commercial transactions, yet tailored to the particular circumstances of pole attachment agreements. The Company believes the requirements are not unduly burdensome and that they provide a reasonable and appropriate level of protection for the Company and its customers from the risk of licensees' inability to meet their financial obligations under the Agreement. Under the Agreement, licensees are able to avoid security requirements entirely by meeting reasonable credit requirements. The Company has experienced examples of non-payment of rent by licensees, bankruptcy, and sales of full or partial systems to parties who were not creditworthy. Some of these situations have resulted in abandoned plant remaining on PacifiCorp's poles, safety violations with no party taking responsibility, and confusion over the ownership of attachments. Certainly, in the current

economic climate, the Company can reasonably expect more licensees to have financial difficulties. It is reasonable for the Company to take steps to protect it and its customers from the risks associated with the potential of increased licensee defaults.

WHEREFORE, Rocky Mountain Power respectfully requests that the Commission issue an order approving the Agreement submitted herewith and finding the terms and conditions of the Agreement to be just and reasonable and in the public interest.

DATED this 31st day of August, 2010.

Respectfully submitted,

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Daniel Solander
Barbara Ishimatsu
Yvonne Hogle
Rocky Mountain Power

Attorneys for Rocky Mountain Power

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **APPLICATION OF ROCKY MOUNTAIN POWER** to be served upon the following by electronic mail or U.S. mail, postage prepaid, to the addresses shown below on August 31, 2010:

Linda Wallace Utility Administration Manager NextG Networks, Inc. 2216 O'Toole Avenue San Jose, CA 95131 lwallace@nextgnetworks.net	Jerold G. Oldroyd, Esq. Sharon M. Bertelsen, Esq. Theresa A Foxley, Esp Ballard Spahr LLP 201 South Main Street, Suite 800 Salt Lake City, Utah 84111-2221 oldroydj@ballardspahr.com bertelsens@ballardspahr.com foxleyt@ballardspahr.com
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