State of Utah
Department of Commerce
Division of Public Utilities

FRANCINE GIANI
Executive Director

THAD LEVAR
Deputy Director

PHILIP J. POWLICK
Director, Division of Public Utilities

GARY HERBERT.
Governor

GREG BELL
Lieutenant Governor

To: Public Service Commission

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

Date: July 14, 2010

Re: Docket No. 10-035-61, Application for Approval of Pole Attachment Agreement between PacifiCorp and Manti Tele Communications Co., Inc. (Break Away Wireless)

I. ISSUE

On May 17, 2010, PacifiCorp (dba Rocky Mountain Power) filed an Application with the Commission for Approval of a Pole Attachment Agreement (Agreement) between PacifiCorp and Manti Tele Communications Co., Inc. (collectively, the Parties). Along with the Application, the Company submitted a copy of the Agreement that was negotiated and agreed to by the Parties as well as a copy of the Company's Joint Use Distribution Construction Standards and its Electric Service Schedule No. 4. Inasmuch as the Agreement 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)

Approve the Agreement between PacifiCorp (the Company) and Manti Tele Communications Co., Inc. (Break Away Wireless).

III. DISCUSSION

Rule 746-345 of the Commission's rules and regulations 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 already has on file with the Commission, and also 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.

As previously mentioned, the Parties jointly negotiated the terms and conditions of the proposed Agreement. The Agreement was signed by Break Away Wireless on April 27, 2010 and by PacifiCorp on May 11, 2010. The Application was filed with the Commission in a timely manner on May 17, 2010.

The Division has reviewed the Company's Application, Agreement, and the Commission rules as they pertain to pole attachments. The Division found that there are both substantive and nonsubstantive differences between the proposed Agreement and the Standard Agreement approved by the Commission in Docket No. 04-999-03. The minor changes consist of consolidation of sections and clarification of the Company's administrative processes that were agreed to mutually by the Parties.

[1] Rule R746-345-1 (B) 2.

The Agreement between the Parties is similar to the contract approved by the Commission in Docket No. 10-035-61 between PacifiCorp and the Leavitt Group with the exception of sections 6.01 and 6.02. Sections 6.01 and 6.02 of the proposed Agreement add additional insurance requirements; namely, that Break Away Wireless agrees to carry and maintain an A.M. Best Insurance Reports rating of A- or better. The coverage must include workers' compensation, employer's liability of $1 million, and commercial general liability in the amount of $1 million minimum and $2 million general aggregate coverage. Break Away Wireless must also obtain business automobile liability insurance in the amount of $1 million and an umbrella liability policy of $5 million. In signing this contract, Break Away Wireless agreed to provide proof of each policy throughout the term of the Agreement prior to installing any equipment on the Company's poles and to designate Rocky Mountain Power as the primary insured on these policies. Other than the additional insurance provisions, any deviations from the Standard Agreement are identical to the changes approved by the Commission in Docket No. 10-035-01.

All of the terms described above are reasonable and 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 (EU) is 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.

IV. 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 Agreement. Where differences occur, they have been mutually agreed to by the Parties and are similar to the changes approved by the Commission in Docket No. 10-035-01 with the exception of the additional insurance requirements. The proposed Agreement is clear, understandable, and provides benefits to both Break Away Wireless and PacifiCorp.

The Division recommends the Commission approve the Application of Rocky Mountain Power and the accompanying Agreement with Break Away Wireless. The mutually negotiated terms and conditions of the Agreement are reasonable and in the public interest.

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