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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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| In the Matter of the Consolidated Applications of Rocky Mountain Power for Approval of Standard Reciprocal and Non-Reciprocal Pole Attachment Agreements | DOCKET No. 10-035-97<br><br>**REPLY COMMENTS OF ROCKY MOUNTAIN POWER** |

PacifiCorp, doing business in Utah as Rocky Mountain Power ("Rocky Mountain Power" or "Company") respectfully submits these Reply Comments to the comments filed by Crown Castle NG West Inc. ("Crown") [1] and Comcast Cable Communications, LLC ("Comcast") in this docket. The comments submitted by Crown and Comcast fail to establish any basis for the Commission to disapprove the Stipulation filed by the Company in this Docket on August 6, 2012 (the "Stipulation"), which has been signed by the Company, the Division of Public Utilities, Citizens Telecommunications Company of Utah, Navajo Communications Company, Inc., CenturyLink, Utah Rural Telecom Association, and Electric Lightwave, LLC.

The Company would first like to restate a fundamental point made by the Company previously in Docket No. 10-035-43: "[T]he Company's posture in this matter should be noted. The Company is not a competitor of the cable and telecommunications companies that are parties in this case. Rather, a regulated electric utility has an obligation to operate and maintain a safe

[1] Crown does not appear to have requested nor been granted status of an intervening party.

and reliable electric system for its customers, as well as an obligation to accommodate pole attachments by cable and telecommunications companies. Certainly, the Company has obligations with respect to the reasonableness of the expenses it incurs in operating and maintaining its system, as well as obligations to its shareholders. In the context of pole attachments by other parties, the Company seeks to avoid unreasonable exposure to safety and reliability risks and costs, but also to have the costs related to those pole attachments borne by the pole attachers, not the Company's electric utility customers."

In the six years since the Commission's adoption of the Safe Harbor Agreement, the Company has found there are aspects of the Safe Harbor that, in practice, diminish the Company's ability to operate a safe and reliable electric system, are inconsistent with Commission Rules, are unclear, or have become outdated. It is within that framework that the Company makes these reply comments.

**Response to Crown's Comments**

Crown states that its concerns with the Company's proposed changes to the Safe Harbor include those raised in its comments submitted in Docket No. 10-035-43 on June 14, 2010, ("Crown's Comments"). Crown's Comments address the following issues: a) indemnification, limitation of liability, and warranties; b) pole-top attachments; and c) a provision of a previously submitted agreement regarding attachments below the communications space. The stipulated Safe Harbor agreement does not change the existing Safe Harbor regarding any of the issues commented on by Crown, and the Commission should accordingly disregard Crown's Comments in their entirety.

**Response to Comcast's Comments**

Comcast is the only party in this case that has filed comments directly applicable to the Company's proposed changes to the Safe Harbor agreement. At the outset, Comcast states that the Commission "should consider whether Rocky Mounts Power's proposed changes would increase the costs of deployment or delay access for companies desiring to attach to Rocky Mountain Power's poles, and whether the proposed changes are reasonable." Comcast Comments, p. 2. To the extent Comcast is suggesting that avoiding increased costs for pole attachers trumps Rocky Mountain Power's lawful right to full cost recovery, or that concerns over delayed access for pole attachers trumps safety and electric reliability considerations, Rocky Mountain Power strongly disagrees and urges the Commission to disregard Comcast's suggestion. By Statute, Rocky Mountain Power's rates for pole attachments, like its rates for other services, are to be based on costs. Therefore, even if it "would increase the costs of deployment," the Commission should certainly approve practices and procedures that are just and reasonable and in the interest of safety and reliability, even if those practices require additional time or expense.

**Overlashing**

The extremity of Comcast's position on overlashing is reflected in its statement that it "objects to *any* [emphasis added] permitting requirement for overlashing." Comcast Comments, p. 6. That is, Comcast seems to have the view that it should be able to install any overlashing without a pole owner's advance evaluation, even if safety violations occur as a result.[2] Comcast does not object to providing *prior notice* to the pole owner, but opposes the requirement to obtain prior approval from the pole owner. Comcast comments, pp. 4-6. Comcast references a

[2] It might also be noted that, not surprisingly, Comcast does not assert that it never fails to comply with all safety standards. Violations of safety standards likely occur for all cable, telecommunications and electric companies. Rocky Mountain Power simply wants to reduce the risks associated with such instances of non-compliance.

decision by the Federal Communications Commission ("FCC") to support the proposition that "an overlashing party is not required to obtain prior approval from a utility".[3] However, Comcast cites the FCC order out of context. The order states that no additional *approval* is necessary, but the FCC recognizes the need for pole owners to *evaluate* the proposed overlashing. A "utility pole owner has a right to know the character of, and the parties responsible for, attachments on its poles,"[4] and "if the addition of overlashed wires to an existing attachment causes an excessive weight to be added to the pole requiring additional support or causes the cable sag to increase to a point below safety standards, then the attacher must pay the make-ready charges to increase the height or strength of the pole."[5] In order to determine whether make-ready charges apply, the pole owner necessarily has to receive notice of the character of the overlashing *in advance*. Nowhere does Comcast object to this information in advance for the utility to evaluate the overlashing and recover applicable make-ready costs. Whether the process is called advance evaluation, or prior notice, the FCC decision supports requiring an overlashing attacher to provide information, in advance, sufficient for the pole owner to evaluate the proposal[6].

The decision by the FCC is certainly not binding on this Commission, which, unlike the FCC, is responsible for regulating the service quality of electric public utilities in Utah such as Rocky Mountain Power. However, the Stipulation imposes nothing more than the FCC allows.

Comcast objects to the Company's proposal to limit overlashing without submission of an application to no more than a 96-count fiber cable or coaxial cable of equivalent diameter and weight. Comcast refers with apparent approval, or "no objection," to a New York standard on

[3] New York Public Service Commission Order Adopting Policy Statement on Pole Attachments, Matter No. 03-00432, Appendix A (August 6, 2004), (the "Order").
[4] *Order* at ¶82.
[5] *Id*. at ¶77.
[6] Rocky Mountain Power refers to the process for providing information in advance for evaluation as an "application."

overlashing. Comcast Comments, pp. 5-6. Yet, that standard, stated in terms of pounds and percentages, has not been shown to be inconsistent with the Company's 96-count proposal. That is, the Commission would have no idea whether the New York standard might allow essentially the same thing as the Company's proposal, or instead, only a 48-count fiber overlashing.

Comcast's position is also fraught with practical problems. First, in order to know the actual impacts of any overlashing with respect to wind and ice loading, Comcast would need to know the specific characteristics of the poles, as well as the conductors and equipment already attached to the poles. Without specific information from all of the attaching entities, there would be no way for Comcast to assess accurately the impacts of its overlashing.[7]

Second, Comcast fails to consider the problem that exists in the field where existing attachments have marginal or non-compliant clearances to the ground or another attacher's conductors. Comcast's argument focuses solely on whether or not the poles have adequate strength to withstand the additional weight and wind. Consistent with the FCC Order, the New York Commission recognizes the need for evaluation, in advance, to "assure that the primary facilities and those overlashed are in compliance with the NESC."[8]

The Company's proposal, which has been agreed-to by the six other parties to the Stipulation, is consistent with the determination in the New York case that "[a] predetermined, limited amount of overlashing, that is not a substantial increase to the existing facilities, shall be allowed."[9] When the overlashing exceeds the predetermined weight, the attacher must provide an evaluation "to be sure the additional facilities will not excessively burden the pole

[7] Comcast asserts it has "vast construction experience" that makes it "perfectly capable of ensuring the integrity of Rocky Mountain Power's plant." Comcast Comments, p. 6. Rocky Mountain Power notes that Comcast's experience does not include constructing or operating a regulated electric distribution system.
[8] *Order* at p. 9.
[9] *Id*. at p. 8.

structures"[10] The Company's proposal would provide the Company with the opportunity to evaluate the overlashing for safety in higher risk situations, but recognizes that a 96-count fiber overlashing normally adds little to the existing facility's overall weight. The Company and the stipulating parties submit that the Company's proposal is reasonable.

**Service Drops**

Comcast does not state why Rocky Mountain Power's proposed changes to the Safe Harbor regarding service drops are not supported or are unreasonable, but merely alleges that the Company "has not fully explained why the service drop procedures in the Safe Harbor Agreement are no longer reasonable and why its proposed changes are reasonable." Comcast Comments, p. 7. On the contrary, Rocky Mountain Power has fully explained its support for the proposed changes regarding service drops. *See* Direct Testimony of Jeffrey M. Kent, pp. 6-8.

Moreover, Comcast's argument that "drop poles are treated differently than regular mainline attachments because cable operators must [emphasis added] meet customer service requirements to provide service to new customers within a very brief time from the date of request and because there are key physical differences between distribution and drop poles," is completely off-point.[11] The language in the Company's proposed change to the Safe Harbor continues to recognize differences between service drops and mainline attachments, but the Company drove the point home even more in its pre-filed testimony: "First and foremost, the Company's proposed language does not change a Licensee's ability to install a service drop to serve their customer prior to submitting an Application or making notification to the Company." Direct Testimony of Jeffrey M. Kent, p. 6.

[10] *Id*. at p. 9.

[11] The Company notes that any such "requirement" to provide cable TV service does not come from State law, but apparently if anywhere from the cable company's unregulated contract with its subscriber. Rocky Mountain Power urges the Commission to recognize the greater importance of electric service safety and reliability than the "requirement" of Comcast providing cable TV service "within a very brief time."

More significantly, whatever are the "key physical differences between distribution and drop poles," (which Comcast does not identify) there are key similarities that the Commission should consider, including the following: (a) attachments to both must comply with NESC Rule 235(C)(1)(b), vertical clearance between supply lines and communication lines, commonly known as the "40 inch" requirement, and (b) attachments to both must comply with NESC Rule 236, climbing space. Examples of service drop attachments violating these provisions of the NESC were provided by the Company in Exhibit JMK 6, filed with the Direct Testimony of Jeffrey M. Kent. Changes to the Safe Harbor to improve safety are reasonable.

Further, the changes proposed by the Company to clarify that service drops on poles not previously used or on existing poles but outside the existing space require an application will enable needed record keeping and allow for proper invoicing of rental fees, as described in Mr. Kent's prefiled testimony, ll. 141-181. It is unreasonable for the Company to forgo rental fees properly charged for using new space simply because the space is used by a service drop.

**When Rental Fees Apply**

In its Amended Application,[12] and as clarified in the Stipulation, the Company supported its position regarding the application of rental fees upon approval of an attachment application. That is, "the Parties wish to clarify that because rent is invoiced on a *forward-looking annual basis* [emphasis added] and is not prorated, rent does not actually 'begin' until the invoice date." Stipulation, p. 4. In other words, the use of the pole is recognized upon approval of an application but rent is not incurred until the invoice date. Comcast's argument that UAR R746-345-5 only allows rental charges to apply upon "use" of the space fails to recognize that "use" does not require a continuous physical occupation of space. The space is reserved upon approval for the licensee's immediate or future use and prevents other attachers from using that space.

[12] Direct Testimony of Jeffrey M. Kent, ll. 63-108.

The situation is comparable to a reserved parking space where payment is made to prevent other cars from parking in that spot, whether or not a vehicle ever actually occupies the space. Comcast's simple assertion that the Company has not fully justified its proposed change regarding the timing of rental fees is unfounded. Comcast does not dispute the need for improved recordkeeping and invoicing, nor provide an alternative mechanism to achieve the same ends.

**Fees**

With respect to the application and miscellaneous fees proposed by the Company, Comcast does not oppose the level of the fees, but asks the Commission to ensure that there are no double recoveries. Comcast Comments, pp. 10, 13. Regarding that concern, Rocky Mountain Power has explained that there will be no double-recovery (Direct Testimony of Jeffrey M. Kent, pp. 12-14). Further, the Division of Public Utilities, which has audit responsibilities over the Company (Utah Code Ann. §54-4a-1(1)(d), has agreed to the appropriateness of the Company's proposed fees by entering into the Stipulation. Thus, Comcast's asserted concern should be disregarded.

Comcast also raises an issue with respect to the Company's proposed unauthorized attachment fee of $100, that the fee should be applied to "unauthorized attachments going forward." Comcast Comments, p. 10.[13] Rocky Mountain Power has merely proposed the amount of the unauthorized attachment fee, nothing more, and nothing less. That is, the applicability of the fee as stated in the Safe Harbor is unchanged, "Pole Owner may charge License [*sic.*] the amounts contained in the Fee Schedule attached hereto as Exhibit __ upon the

[13] Inasmuch as Comcast is solely in control of whether it makes unauthorized attachments, one would think that Comcast should not be concerned with ever having installed such attachments. Nevertheless, mistakes happen, and when they do, penalties are appropriate.

discovery of unauthorized Attachments belonging to Licensee." (Safe Harbor, Section 5.02). The amount of the proposed unauthorized attachment fee is unopposed and should be approved.

Rocky Mountain Power respectfully requests that the Commission approve its proposed changes to the Safe Harbor, as clarified and revised in accordance with the Stipulation.

DATED this 27th day of August, 2012.

Respectfully submitted,

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