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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Rocky Mountain Power for Approval of the Pole Attachment Agreement between Rocky Mountain Power and Zayo Group, LLC

DOCKET No. 12-035-____

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 a Pole Attachment Agreement (the “Agreement”) between Rocky Mountain Power and Zayo Group, LLC (“Zayo Group” or “Licensee”), dated October 31, 2012, attached hereto as Exhibit A. Rocky Mountain Power and Zayo Group are referred to, individually, as a “Party” and together as the “Parties.”

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

1. Rocky Mountain Power is a public utility in the state of Utah, 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 Utah Admin. Rule R.746-345. Rocky Mountain has previously submitted, and received Commission approval for, non-reciprocal pole attachment agreements with many parties, including Trappers Loop and First Digital Telecom in Docket Nos. 11-035-197 and 11-035-198, respectively.

2. Communications regarding this Application should be addressed to:

By e-mail (preferred): datarequest@pacificorp.com
dave.taylor@pacificorp.com
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By mail: Data Request Response Center
Rocky Mountain Power
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3. Under R746-345-3(B)(1), the parties to pole attachment contracts “may voluntarily negotiate an alternative contract . . . [and] shall submit the negotiated contract to the Commission for approval.” The Agreement was voluntarily negotiated between Rocky Mountain Power and Zayo Group and represents the Parties’ agreed-to terms and conditions for Zayo Group’s attachments to Rocky Mountain Power’s poles in Utah.

4. The Agreement is similar to the pole attachment agreements with Trappers Loop and First Digital approved in Docket Nos. 11-035-197 and 11-035-198, respectively. Various differences exist that reflect the particular desires of the respective parties. While the Agreement contains numerous verbiage and clarification differences, substantive differences include the following:

a. In section 2.01 a provision is added regarding Licensee's overlappings, consistent with the Safe Harbor agreement approved by the Commission on November 21, 2012 in Docket No. 10-035-97.

b. In section 3.14, a sentence is added to indicate that to the extent there is a joint audit, and parties request items to be added to the Audit beyond the scope that is covered by the carrying charge, the additional costs for such items will be the sole responsibility of the party requesting the addition of such items to the Audit.

c. Section 8.14 is added to indicate that the Parties waive any right to a jury trial related to any dispute arising from the Agreement.

5. As with other pole attachment agreements approved by the Commission over the last several years, and in addition to the differences described above, the Agreement negotiated between Rocky Mountain Power and Zayo Group contains terms that differ from the agreement approved by the Commission on November 21, 2012, in Docket 10-035-97, known as the "Safe Harbor." Those differences include the following:

a. The contract rental set forth in the Agreement was calculated using Rocky Mountain Power's then-effective Tariff, Electric Service Schedule No. 4.

b. The Agreement reflects the non-reciprocal relationship between the Parties in contrast to the reciprocal relationship contemplated by the Safe Harbor.

c. The Agreement excludes Licensee pole-top attachments from the definition of Equipment.

d. Rocky Mountain Power modified the sections governing the application process to match its existing business practices in exchange for certain benefits to Licensee. To reduce uncertainty for Licensee, the Agreement section 2.03 enumerates the grounds upon which

the Company may reject an application for attachments and section 7.02 delineates specific events of default. Licensee is allowed a longer period to pay outstanding invoices, from 30 days, per the Safe Harbor section 5.03, to 45 days in the Agreement, section 4.04. Furthermore, Licensee receives a much longer time to complete installation of Attachments in section 3.03 – 180 days instead of 90 days indicated in section 3.08 of the Safe Harbor. In the Agreement section 3.07, if Licensee does not accept the cost to accommodate its continued attachment when requested to relocate, Licensee must remove the attachment within 30 days, rather than the 40 days provided in the Safe Harbor section 3.12. In addition, the Agreement section 7.01 modified the Safe Harbor Termination requirements in Article VIII, allowing each Party to terminate the Agreement upon ninety (90) days written notice to the other, within which time Licensee must remove its attachments. Furthermore, the Agreement section 3.10 adds termination of the permit for any Pole as a remedy for Licensee’s failure to timely provide evidence of third party consents, permits, licenses or grants for access to or use of the land upon which a Pole is situated.

e. Section 3.03 of the Agreement varies from Safe Harbor section 3.02 and requires the Licensee to submit an Application within five business days after installation of service drops. This change provides Rocky Mountain Power adequate opportunity to review the installation for compliance with applicable construction standards, and provides a mechanism for Rocky Mountain Power to assess rent for the additional space used.

f. Several provisions were modified to reflect regulatory requirements, industry practice, or National Electric Safety code requirements.

g. The Agreement contains negotiated terms regarding credit and insurance, limitations of liability and warranties, and assignment.

h. Some provisions of the Safe Harbor have been relocated to another place in the agreement, consolidated or otherwise clarified for stylistic purposes. Minor changes from the Safe Harbor agreement are simply non-substantive wording changes. A table of contents was added for convenience.

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

DATED this 30th day of November, 2012.

Respectfully submitted,

Yvonne R. Hogle

Attorney for Rocky Mountain Power

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **APPLICATION for APPROVAL OF THE POLE ATTACHMENT AGREEMENT BETWEEN ROCKY MOUNTAIN POWER AND ZAYO GROUP NETWORKS LLC** to be served upon the following by electronic mail or U.S. postage to the addresses shown below on November 30, 2012:

Michele Beck
Cheryl Murray
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160 East 300 South, 2nd Floor
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