

BEFORE THE
PUBLIC SERVICE COMMISSION OF UTAH

InSite Towers Development, LLC,)	
)	
v.)	Docket No. 15-066-01
)	
Dixie-Escalante Rural Electric)	
Association, Inc .)	
)	

PREPARED DIRECT TESTIMONY
OF TODD FUSON

June 4, 2015

1 **Q. Please state our name, business address and current position.**

2 A. Todd Fuson. 8822 Arroyo Azul Street, Las Vegas, NV 89131. I am a Principal
3 of IntelliSites, LLC.

4 **Q. What is your professional background?**

5 A. I have more than 21 years of experience in the telecom industry, most
6 recently as regional Director of Project Development and Operational Manager in
7 areas of Nevada, Arizona and Utah for Mountain Union Telecom. Prior to joining
8 Mountain Union Telecom, I was with Communication Engineering Inc., which later
9 became Nextel Communications. I also have a background in construction man-
10 agement that contributes to ensuring each site is built to the highest standards
11 possible while maintaining the company's tower development costs at a minimum.
12 I also provide support for all daily operational and business activities of IntelliSites
13 projects.

14 **Q. Debbie DePompei has testified concerning the general scope of InSite**
15 **Tower Development's Dixie Drive Cell Tower project. What are your**

areas of responsibility for the project?

A. I am responsible for coordinating with the local power and telephone providers to bring the necessary services to the tower site for InSite's customers. I also work with the general contractors and oversee the construction process.

Q. What is the scope of your testimony?

A. I will describe the type of electric service that the project needs in order to support the level of services that carriers who contract with InSite will require. I will also give an account of the efforts that InSite has made in order to obtain the type of electric service necessary to operate the proposed tower.

Q. What electric service will be required for the effective and efficient operation of the proposed telecommunications facility at the Tower Site?

A. InSite Tower's power requirements for its customers at the Tower Site are 600-amp, 3-meter, single-phase 120/240 volt service, with a disconnect meter bank that can service individual tenants at 200 amps per meter. A second 600-amp meter panel service may be required later as demand for service from the tower facility increases. Initially, the single 600-amp service will be adequate.

Q: What has InSite done in an attempt to secure this level of electric service?

A: We first sought service from the City of St. George through its Energy Services Department. We were told both informally and through formal exchanges of letters between InSite and St. George counsel that it will not provide the requested service unless and until the property on which the tower is to be located is annexed into the City. This was essentially confirmed by St. George's failure to respond to a formal application for service submitted on January 29, 2015.

1 **Q. Please identify Exhibit ITD 2.1 and explain its significance.**

2 A. Exhibit ITD 2.1 is a collection of InSite's communications with employees of
3 the City of St. George in connection with InSite's inquiries about obtaining the
4 necessary electric service for the tower project. These emails indicate that St.
5 George would not provide the service unless the land on which the tower will be
6 located is annexed into the City of St. George.

7 **Q. Could InSite have satisfied St. George's annexation condition?**

8 A. No. InSite was told that the City would only consider service if all of the
9 Guber property of which the Tower Site was a portion were to be annexed.

10 **Q. Please identify Exhibit ITD 2.2 and explain its significance.**

11 A. This exhibit is an August 8, 2014, letter sent at InSite management's request
12 by InSite's counsel to St. George and Dixie Power more formally seeking the electric
13 service InSite needs at the Tower Site.

14 **Q. Please identify Exhibit ITD 2.3 and explain its significance.**

15 A. This exhibit is the September 8, 2014, letter from the St. George City
16 Attorney stating that the City will not provide the service unless the property on
17 which the tower will be located is annexed into the city. The letter claims that,
18 under Utah law, the City is not required to provide the requested service and that it,
19 therefore, declines to do so.

20 **Q. Please identify Exhibit ITD 2.4 and explain its significance.**

21 A. This exhibit is the January 29, 2015, application for electric service sub-
22 mitted to the City of St. George by InSite, accompanied by a letter from InSite's
23 counsel, once again seeking the electric service required for the project.

Q: Has the City of St. George responded to the application in Exhibit ITD 2.4?

A: No.

Q: Did InSite seek to obtain service from Dixie-Escalante Rural Electric Association?

A: Yes. I had several phone conversations with Chad Reynolds at Dixie about obtaining service. He first indicated that the Tower Site was not in Dixie's service territory. Exhibit ITD 2.5 consists of emails between representatives of Dixie and InSite in which we were trying to determine if Dixie had the authority to provide the needed service and, if so, whether it was feasible to do so.

In my conversations with Mr. Reynolds, he stated that the closest Dixie services were three miles away and that he thought it would be cost-prohibitive to install a new line extension. We also discussed the related problems of obtaining easements from private landowners and the corresponding fees.

This was further confirmed by Dixie's response to an InSite interrogatory on the subject that Ms. DePompei discusses in her testimony. Exhibit ITD 1.0, pages 6-7.

Q: Has InSite or any InSite affiliate sought to become a member of the Dixie-Escalante Rural Electric Association?

A: No. Given the information provided to InSite in the various emails and phone discussions concerning InSite's responsibility for all line extension costs, as verified in the discovery information provided by Dixie, it would have been futile to seek such membership.

Q. Does that conclude your direct testimony?

A. Yes.

EXHIBIT ITD 2.1

Docket No. 15-066-01

From: "Todd Fuson" <todd@intellisitesllc.com>
To: "Rich Rial" <stfrich@lvcoxmail.com>
Date: 01/16/2014 04:13:35 EST
Subject: UT051 Dixie
Attachments:  image.png (34KB),
 InSite Towers Site Plans (UT051 Dixie) FINAL 9-24-2013.pdf (2134KB)

I Rich!

We received zoning approval for a site in St George so I'm in need for your services to coordinate power and Telco. The power, I think, it St George Power and Telco is Century Link. Let me know what additional information/files you need once you make contact.

Thanks!

Todd Fuson

8822 Arroyo Azul St.
Las Vegas, NV 89131

Office: 702-430-8369
Direct: 702-339-8689
Fax: 702-995-7004

From: "Sonja Dodenbier" <sonja.dodenbier@sgcity.org>
To: "Rich Rial" <stfrich@lvcoxmail.com>
Date: 01/29/2014 11:22:22 EST
Subject: RE: Insite Towers, Dixie UT-051

Call Dennis Wright - he's the power department inspector, he would be able to let you know what is needed or get you in touch with the power department people that make those decisions. 703-0914

Sonja Dodenbier

From: Rich Rial <stfrich@lvcoxmail.com>
Sent: Wednesday, January 29, 2014 8:53 AM
To: Development
Subject: Insite Towers, Dixie UT-051

I have been calling the City of St. George for two weeks in an attempt to find out how I need to make application to run power to a new cell site. It is located off Dixie Dr. behind the Dixie Applied Tech. College. We have been approved by St George Planning.

When I first called in we were told to talk to Electric Customer Service for information. The Rep transferred me to Terry Nicholson and I left a message. After 3 days I call back and left another message. After two days I called back to Electric Customer Service and after I explained the story the Clerk recommenced I talk to the Building Dept. I was transferred to a number and I left a message. After no response I call back again last Friday and left another message.

After reading through you Web Site I thought I would try to email this office instead of leaving more messages. Could you please give me a name of a contact or a number of someone to call to initiate a power design to feed a new cell tower. I am in Las Vegas but I can drive to you if necessary but I need to know who to see if I can not do this on the phone and email.

Any help would be appreciated.

Thank YOU!
Rich Rial
702-376-0527

435

From: "Rich Rial" <stfrich@lvcoxmail.com>
To: barb.berrett@sgcity.org
Date: 01/29/2014 05:09:08 EST
Subject: Insite Towers -- UT051 Dixie
Attachments:  InSite Towers Site Plans (UT051 Dixie) FINAL 9-24-2013.pdf (2131KB)

Barb, so good to talk with you. Attached is a copy of our plans package. When we were up at the site the closest address we could find on South Dixie Dr. was 1071. We will install 1 - 600 Amp main with 3 meter in our first phase. Ultimately we will set a second 600 Amp main with 3 meters. In you design we would like accommodated the future panel with the conduit infrastructure.

Please let me know if you need any additional information.

Thanks!
Rich Rial
376-0527

Zack, We are doing all the Utility Coordination work for Todd Fuson (Insite Towers). He asked me to contact you and let you know about this project. We have submitted to St. George (Barb Barrett). I believe we worked together on the Dixie site.

Can you please let me know if you need any other information to provide your design. I will forward you a copy of the power design as soon as we receive.

<https://email.coxbusiness.com/cloud-lzmail/viewmessage?r=%3Crequest%3E%3Cmail%...> 12/11/2014

From: "Barb Berrett" <barb.berrett@sgcity.org>
To: "Rich Rial" <stfrich@lvcoxmail.com>
Cc: "Matt Loo" <matt.loo@sgcity.org>, "Brett Bingham" <brett.bingham@sgcity.org>
Date: 01/30/2014 03:52:43 EST
Subject: RE: Insite Towers -- UT051 Dixie

Rich,

Thank you for sending me the drawings for the subject project. I will work on a power design per your request below. I am assuming that the power requirements for the facility is single phase 120/240 Volt. Is that correct?

In addition, I was discussing the project with the Development Services Department and they indicated that they have questions regarding the proposed project and would like to review a set of plans. Please contact Brett Bingham with the Development Services Department at 435-627-4123 to find out what they will need from you.

If you have any questions please call.

Thanks

Barb Berrett
Engineer III
City of St. George
Energy Services Department
(435) 627-4896

-----Original Message-----

From: Rich Rial [mailto:stfrich@lvcoxmail.com]
Sent: Wednesday, January 29, 2014 3:09 PM
To: Barb Berrett
Subject: Insite Towers -- UT051 Dixie

Barb, so good to talk with you. Attached is a copy of our plans package. When we were up at the site the closest address we could find on South Dixie Dr. was 1071. We will install 1 - 600 Amp main with 3 meter in our first phase. Ultimately we will set a second 600 Amp main with 3 meters. In you design we would like accommodated the future panel with the conduit infrastructure.

Please let me know if you need any additional information.

Thanks!
Rich Rial
376-0527

From: "Mathews, Zach" <Zach.Mathews@CenturyLink.com>
To: "Rich Rial" <stfrich@lvcoxmail.com>
Date: 02/04/2014 01:36:37 EST
Subject: RE: Insite Towers -- UT051 Dixie

I'll review and let you know any changes. Are you going to be required to bring this thru the St George Joint Utility Committee??

Zach

-----Original Message-----

From: Rich Rial [mailto:stfrich@lvcoxmail.com]
Sent: Monday, February 03, 2014 2:14 PM
To: Mathews, Zach
Subject: Insite Towers -- UT051 Dixie

Zach, We are doing all the Utility Coordination work for Todd Fuson (Insite Towers). I have been calling and leaving messages for you since last week.

Todd asked me to contact you and let you know about this project. We have submitted to St. George (Barb Barrett). I believe we worked together on the Dixie site.

The site has received zoning approval from St George.

Can you please let me know if you need any other information to provide your design. I will forward you a copy of the power design as soon as we receive.

Thanks!
Rich Rial
702-376-0527

Thanks!
Rich Rial
702-376-0527

From: "Barb Berrett" <barb.berrett@sgcity.org>
To: "Rich Rial" <stfrich@lvcoxmail.com>
Cc: "Phillip Solomon" <phillip.solomon@sgcity.org>, "Matt Loo" <matt.loo@sgcity.org>, "Brett Bingham" <brett.bingham@sgcity.org>
Date: 02/27/2014 05:26:49 EST
Subject: Insite Towers UT051 Dixie

Rich,

I was just informed that because the proposed cell tower is located within the County and not the City, by law, the St. George Energy Services Department cannot serve outside the city boundaries and you will need to work with Dixie Power to provide service to the site.

Barb Berrett
Engineer III
City of St. George
Energy Services Department
(435) 627-4896

Chad, so good to talk with you. Attached is a copy of our plans package. When we were up at the site the closest address we could find on South Dixie Dr. was 1071. We will install 1 - 600 Amp main with 3 meter in our first phase. Ultimately we will set a second 600 Amp main with 3 meters. Both services will be 120 / 240, single phase. In you design we would like accommodated the future panel with the conduit infrastructure.

Thanks!
Rich Rial
702- 376-0527

From: "Rich Rial" <stfrich@lvcoxmail.com>
To: "Todd Fuson" <todd@intellisitesllc.com>
Date: 03/04/2014 11:14:35 EST
Subject: Dixie Site UT-051

Todd, as we discussed yesterday, St George power has advised that they can not serve this site because the property the site is to be located on within the County. The County is not their service territory. They referred me to Dixie Power. The contacts and adventures as follows:

1-16-14 -- made first call to City of St. George to initiate power design. Tried repeatedly to get a return call.

1-29-14 -- made contact Design Engineer Barb Berrett (435-627-4896). Discussed project and Emailed drawings to her.

1-30-14 -- Barb Berrett sent email and advised that she was discussing the project with the Development Services Department and they indicated that they have questions regarding the proposed project and would like to review a set of plans. Please contact Brett Bingham with the Development Services Department at 435-627-4123 to find out what they will need from you.

1-30-14 -- called Brett Bingham left message.

2-4-14 -- called Brett Bingham left message.

2-7-14 -- called Brett Bingham left message.

2-12-14 -- called Brett Bingham left message.

2-19-14 -- left message for Barb Berrett that Brett was not returning call. She called back and I advised we need to get design, she advised that she would go talk Brett and she if she could release design.

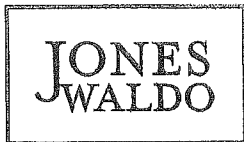
2-27-14 -- informed by Barb Berrett that because the proposed cell tower is located within the County and not the City, by law, the St. George Energy Services Department cannot serve outside the city boundaries and you will need to work with Dixie Power to provide service to the site.

3-1-14 -- made contact with Chad Reynold (435-673-3297) at Dixie power. Discussed site and emailed drawings for review and design. Chad called back and advised that the site was 3.5 from there closest facilities. He suggested the we call City of St. George Development Services to see if there is something we could work out.

Thanks!
Rich Rial
376-0527

EXHIBIT ITD 2.2

Docket No. 15-066-01



Attorneys Est. 1875

TEL: 801-521-3200
FAX: 801-328-0537

170 SOUTH MAIN ST, SUITE 1500
SALT LAKE CITY, UTAH 84101

WWW.JONESWALDO.COM

AFFILIATED FIRM
LEAR & LEAR LLP

August 8, 2014

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Phillip Solomon, P.E.
Energy Services Department Director
City of St. George
811 East Red Hills Parkway
St. George, UT 84770

Mr. Colin W. Jack, P.E.
Chief Operating Officer/Engineering Manager
Dixie Power
145 West Brigham Road
St. George, UT 84790

Re: InSite Towers, LLC –
Provision of Electrical Service to Location on Parcel 7516-A
Our File 26629.0001

Gentlemen:

This office has been retained by InSite Towers, LLC, a telecommunications company doing business out of Alexandria, VA. InSite has secured a land lease on property owned by Velda and Orwin Gubler, forming part of parcel 7516-A. (A map and diagram are enclosed for your reference, indicating the location of the proposed site.) The purpose of the lease is to permit the construction of a telecommunications tower on which telecommunications providers leased tower space. As the property is located outside of St. George City's municipal boundaries, a conditional use permit for the proposed use of the property was sought and obtained from Washington County. The permit issued in January of this year.

Following issuance of the conditional use permit, InSite made application to the City of St. George for electrical power connection – which seemed logical, given that landlords Orwin and Velda Gubler have received electrical service from St. George for many years. InSite was notified, however, that due to recent legislative enactment, St. George could not furnish power

Mr. Phillip Solomon, P.E.

Mr. Colin W. Jack, P.E.

August 8, 2014

Page 2

service to the proposed tower site, which is located outside of St. George's municipal boundaries.

InSite then contacted Dixie Power, whose service area includes the location. Dixie Power responded that, by agreement entered into in February of 1981, it had abandoned service to the area including parcel 7516-A, ceding the same to St. George.

St. George, for its part, has suggested that the problem must be solved by annexation of the location; however, St. George has insisted that the entire Gubler property – not simply the telecommunications site – be annexed (which Gublers are unwilling to agree to). It was at this point that my office became involved.

I have had an opportunity to review the 1981 agreement, which was clearly entered into in settlement of a legal dispute between St. George and Dixie Power (then known as Dixie-Escalante REA). On its face, the agreement does not expressly delegate to St. George the obligation to provide power to any unincorporated areas of Dixie-Escalante's service area, nor am I aware of any order of the PSC authorizing or approving such delegation. The agreement only provided in pertinent part as follows:

1. Dixie-Escalante REA transfers and delivers title to the City of all its existing utility poles, wires and other electrical transmission equipment and distribution system and facilities now located north of the Virgin River and north of the Bloomington North property line and within the City of St. George, with the exception of the 69 KV transmission line and all system transformers.
2. Dixie-Escalante REA will not oppose or object to the construction, maintenance and operation of such electrical transmission and distribution facilities upon and across those territories included in the certificate of convenience and necessity issued by the Utah Public Service Commission as may be reasonable and necessary to deliver electrical energy to any part of the City of St. George and to those power generating and water treatment facilities located outside of the City of St. George but comprising a part of or reasonably related to the development operation and activities of the reservoir and power generating facility commonly known as the Warner Valley Project. Prior to the construction of the facilities contemplated in this paragraph the City shall consult and confer with Dixie-Escalante REA in order to promote mutual cooperation between the parties.

Mr. Phillip Solomon, P.E.

Mr. Colin W. Jack, P.E.

August 8, 2014

Page 3

3. The City of St. George shall pay to Dixie-Escalante REA the sum of Sixty-Five Thousand Dollars (\$65,000) as consideration for the system and facilities referred to in paragraph 2, above.

In other words, Dixie-Escalante sold its transmission facilities north of Bloomington and the Virgin River to St. George for \$65,000, and agreed to let St. George construct and maintain such transmission facilities outside the St. George municipal boundaries as were necessary to furnish power to Warner Valley. St. George, though, has apparently been servicing the Gublers since that time – which has been necessitated by the fact that Dixie-Escalante (now Dixie Power) no longer has the capacity to do so, having sold its plant to St. George.

Since reviewing the agreement, I have been in touch with representatives of Dixie Power who have (1) confirmed that the Utah Public Service Commission never authorized the withdrawal of the area covered by the 1981 agreement from Dixie Power's service area, (2) acknowledged that St. George has furnished electrical service to the area covered by the 1981 agreement solely pursuant to the agreement itself, and (3) notified me that Dixie Power could not extend electrical service to the telecommunications site without exorbitant expense – which would be imposed 100 percent on my client. I have not yet spoken with St. George representatives, but understand that their position is as stated in the accompanying letter from Gary Esplin (i.e., that St. George would not service the site unless annexation occurs, that annexation would need to encompass the entire Gubler property, and that no meeting would alter this).

The recent legislation relied upon by St. George in its refusal of electrical power to the site is found at Utah Code Ann. § 10-8-14. That section limits a municipal power plant (which is not answerable to the Public Service Commission) to service within its municipal boundaries unless an agreement is stricken between the PSC-certified provider and the municipality, and approved by the PSC:

“(3)(a) Except as provided in Subsection (3)(b), (5), or (9), a municipality may not sell or deliver the electricity produced or distributed by its electric works constructed, maintained, or operated in accordance with Subsection (1) to a retail customer located beyond its municipal boundary...

(4) (b) If a customer who is located outside the municipal boundary and who is not identified in accordance with Subsection (3)(b)(i) requests service from the municipality after June 15, 2013, the municipality may not provide that customer electric service unless the municipality submits a request to and enters into a written agreement with the electric corporation in accordance with Subsection (5).

Mr. Phillip Solomon, P.E.

Mr. Colin W. Jack, P.E.

August 8, 2014

Page 4

(5)(a) A municipality may submit to the electrical corporation a request to provide electric service to an electric customer described in Subsection (4)(b).

(b) If a municipality submits a request, the electrical corporation shall respond to the request within 60 days.

(c) If the electrical corporation agrees to allow the municipality to provide electric service to the customer:

(i) the electrical corporation and the municipality shall enter into a written agreement;

(ii) the municipality shall agree in the written agreement to subsequently transfer service to the customer described in Subsection (4)(b) if the electrical corporation notifies, in writing, the municipality that the electrical corporation has installed a facility capable of providing electric service to the customer; and

(iii) the municipality may provide the service if the Public Service Commission approves the agreement in accordance with Section 54-4-40.

In short, it appears that St. George may request from the Utah Public Service Commission authority to service the telecommunications site pursuant to agreement with Dixie Power. Why St. George and Dixie Power are unwilling to entertain this option, I have not yet learned.

Regarding the imposition of all costs associated with the furnishing of electrical power to the telecommunications site upon InSite Towers, regulated public utilities in the state of Utah may not impose rates or charges which unduly favor, or which unduly prejudice, any given ratepayer – Utah Code Ann. § 54-7-16 (see *Mountain States Legal Foundation v. Utah Public Service Commission*, 636 P.2d 1047 (Utah 1981)).

InSite Towers, LLC is entitled, as a member of the public, to electrical service on the proposed telecommunications site. That service cannot be conditioned either upon the delivery of an annexation agreement from parties over which InSite Towers has no control, or on an agreement to simply “foot the bill” for the extension of electrical power from a remote location. The solution would seem to be an inter-agency agreement of the sort contemplated by Utah Code Ann. § 10-8-14(5).

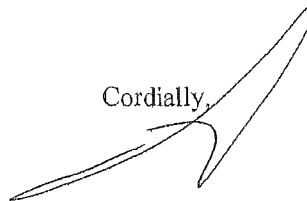
My office would like the opportunity to meet with both of you to discuss the foregoing at your earliest convenience. Our preference would be to get this resolved by the end of August in

Mr. Phillip Solomon, P.E.
Mr. Colin W. Jack, P.E.
August 8, 2014
Page 5

order to permit InSite to commence construction and operations on its leased location. If an agreement can be reached and approved by the Public Service Commission, my client can complete construction and begin operations within the time contemplated by its pending conditional use permit from Washington County. If a resolution cannot be reached by agreement, the matter will need to be brought to the attention of the Utah Division of Public Utilities for further action.

I look forward to hearing from you.

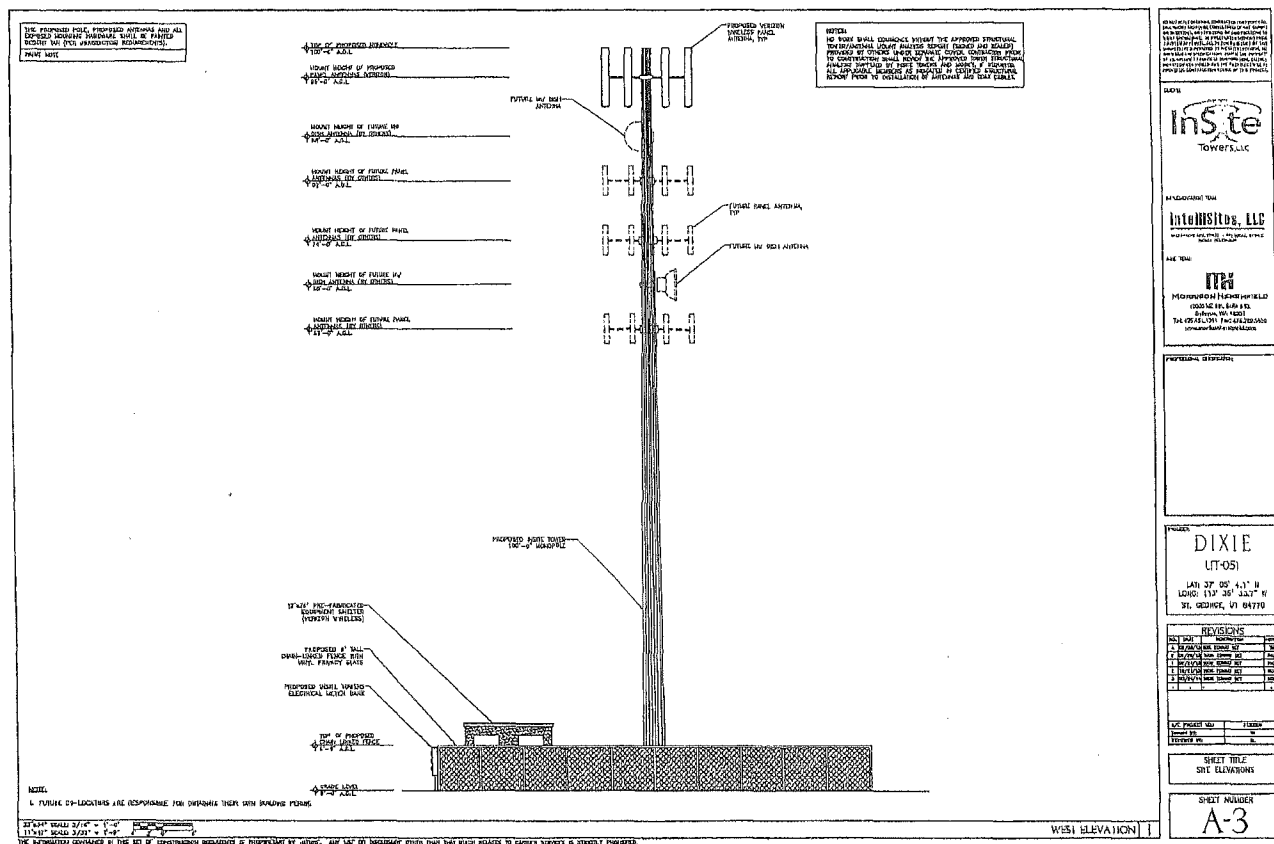
Cordially,

A handwritten signature in black ink, appearing to read "Vincent C. Rampton". The signature is stylized with a large, sweeping loop at the end.

Vincent C. Rampton

Enclosure

cc: Insite Towers



AGREEMENT

and in consideration of the mutual covenants herein contained, and other good and valuable consideration, Dixie-Escalante Rural Electric Association, a Utah corporation, and the City of St. George, a municipal corporation of the State of Utah, do hereby agree as follows:

1. The City of St. George gives Dixie-Escalante R.E.A. a non-exclusive franchise to provide energy in certain areas of the City for a period of twenty years, as referred to in City Ordinance No. 1980-12.
2. Dixie-Escalante R.E.A. transfers and delivers title to the City of all its existing utility poles, wires and other electrical transmission equipment and distribution system and facilities now located north of the Virgin River and north of the Bloomington North property line and within the City of St. George, with the exception of 69KV transmission line and all system transformers.
3. Dixie-Escalante R.E.A. will dismiss with prejudice those lawsuits filed in the Fifth Judicial District Court, Washington County, Utah, and designated as civil suits 5571 and 5576.
4. Dixie-Escalante R.E.A. will not oppose or object to the construction, maintenance and operation of such electrical transmission and distribution facilities upon and across those territories included in the certificate of convenience and necessity issued by the Utah Public Service Commission as may be reasonable and necessary to deliver electrical energy to any part of the City of St. George and to those power generating and water treatment facilities located outside of the City of St. George but comprising a part of or reasonably related to the development, operation and activities of the reservoir and power generating facility commonly known as the Warner Valley project. Prior to the construction of the facilities contemplated in this paragraph the City shall consult and confer with Dixie-Escalante R.E.A. in order to promote mutual cooperation between the parties.
5. The City of St. George shall pay to Dixie-Escalante R.E.A. the sum of Sixty-Five Thousand Dollars (\$65,000) as consideration for the system and facilities referred to in Paragraph 2, above.

In witness whereof, the parties have hereunto set their hands as of February 7, 1981.

CITY OF ST. GEORGE

BY

James G. Larkin, Mayor

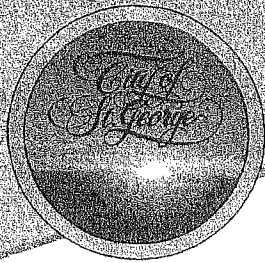
DIXIE-ESCALANTE R.E.A.

BY

Richard B. Shurtliff, Chairman

EXHIBIT ITD 2.3

Docket No. 15-066-01



CITY OF ST. GEORGE

175 East 200 North
St. George, Utah 84770

September 8, 2014

Vincent C. Rampton
Jones Waldo Holbrook & McDonough
170 South Main, Suite 1500
Salt Lake City, UT 84101

Re: InSite Towers, LLC Provision of Electrical Service to Location on Parcel 7516-A

Dear Mr. Rampton:

I am in receipt of your letter dated August 8, 2014, to Mr. Phillip Solomon, Energy Services Director for the City of St. George (the "City"). In that letter, you request on behalf of your client, InSite Towers LLC, that the City provide electrical service outside the municipal boundaries and service area of the City. The City declines to do so for the reasons set forth by City Manager Esplin in his e-mail to Ms. Pompei dated April 9, 2014 which you reference in your letter.

As you may be aware, the properties surrounding the unincorporated Gubler parcel, including property owned by the Gublers (the "Property Owners"), have been annexed and developed in accordance with the City's zoning ordinances and State law, creating the unincorporated area where the Property Owners have maintained ownership. This unincorporated area exists because the Property Owners have chosen not to annex into the City and the City has respected their wishes.

The City's position has been, and the Property Owners have understood, that any development on their property requiring additional municipal services would require the property to be annexed into the City. Utah law encourages development requiring municipal services to occur within the municipal boundaries of a city whenever possible. We disagree that your Client, as a member of the public, is entitled to electrical service on any site they propose without paying for the extension of electrical power to the location. You have provided no evidence that any proposed rates or charges by Dixie Power are not charges that are uniformly applied to any party requesting service from Dixie Power, however any such claim is between your client and Dixie Power.

If the Property Owners seek to develop their property in a manner that requires additional municipal services, they are welcome to apply for annexation into the City (as they have in the past with the development of an adjacent subdivision), and follow all of the zoning regulations and processes within the City to gain approval for such development.

To force the City to provide municipal services to the unincorporated Gubler

CITY OF ST. GEORGE
175 East 200 North, St. George, Utah 84770
Phone: (435) 827-4000
www.sgcity.org

MAYOR
Jonathan T. Pike

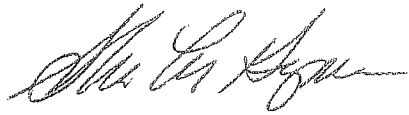
CITY MANAGER
Gary S. Esplin

CITY COUNCIL
Gil Almquist
Jimmie Hughes, Michele Randall
Joe Bowcutt, Bette Arja

property for the piecemeal development of their property is viewed by the City as a clear attempt to circumvent State law and City zoning ordinances to erect a structure while forcing the tax payers and rate payers of the City to provide those extra- territorial services.

In order to provide for the orderly development of the City and to prevent the incremental development of unincorporated property adjacent to the City, we decline to provide extra-territorial utility services to the Gubler parcel.

Sincerely,

A handwritten signature in black ink, appearing to read "Shawn M. Guzman", written in a cursive style.

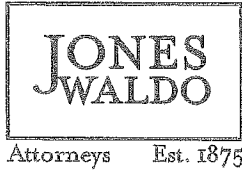
Shawn M. Guzman
City Attorney

SMG/dh

cc: Gary Esplin, City Manager
Phillip Solomon, Energy Services Director
Colin Jack, Dixie Power

EXHIBIT ITD 2.4

Docket No. 15-066-01



TEL: 801-521-3200
FAX: 801-328-0537

170 South Main Street, Suite 1500
Salt Lake City, UT 84101

www.joneswaldo.com

Affiliated firm Lear & Lear, LLP

January 29, 2015

Energy Services Department
City of St. George
175 East 200 North
St. George, UT 84770

Re: *InSite Towers, LLC – Business Application for Utility Service*
Our File 26629.0001

To Whom It May Concern:

Accompanying this letter please find a Business Application for Utility Service, seeking electrical service to a telecommunication tower site under lease to the applicant, InSite Towers, LLC (“InSite Towers”). The purpose of this letter is to address the unique circumstances surrounding the accompanying application, and urge its careful consideration notwithstanding the fact that the location of the requested utility service is outside the municipal boundaries of the City of St. George.

As the City is aware from my letter of August 8, 2014 to Phillip Solomon, InSite Towers leases the proposed location (shown on the accompanying map) from Irwin and Velda Gubler, who own a significant parcel of ranch property adjacent to the St. George City boundary, but within unincorporated Washington County. The Gubler ranch property, however, has received electrical service from the City of St. George for many years. This was the apparent result of an agreement entered into between Dixie-Escalante REA (doing business as Dixie Power) and St. George in 1981 (“1981 Agreement”), under which Dixie Power purportedly transferred all of its electrical utility power plant north of the Virgin River and Bloomington to the City of St. George, in exchange for a payment of \$65,000, in partial settlement of a pending lawsuit. By reason of this transfer, Dixie Power lost the ability to service the Gubler ranch property, but the City of St. George (clearly as a result of implied obligations arising from the 1981 agreement) began to supply service to the property, and continues to do so to this day. We have reason to believe that Dixie Power’s transfer of property and the related abandonment of service under the 1981 agreement was not presented to or approved by the Utah Public Service Commission, which exercises jurisdiction over Dixie-Escalante as a public utility.

Following entry into its lease agreement with the Gublers, and upon receiving a conditional use permit for the construction of a telecommunications tower on the leased site from Washington County, InSite Towers made inquiry of St. George regarding the extension of utility service to the tower site, only to be told that St. George has adopted the policy that it will not service any new applications outside its municipal boundaries, and that in order to obtain service, InSite Towers would have to make application for annexation into the City of St. George – not only of the leased property, but of the entire Gubler ranch property. As the Gublers are unwilling to annex their entire ranch property into the City of St. George, InSite Towers found itself at an impasse with the City.

InSite Towers then approached Dixie Power with a request for service to the site in accordance with its Certificate of Convenience and Necessity issued by the Utah Public Service Commission. Dixie Power's position is that it abandoned the site as part of the 1981 Agreement, and ceded service thereto to the City of St. George.

As noted above, I communicated by letter dated August 8, 2014, both to Phillip Solomon (on behalf of St. George) and Colin W. Jack (on behalf of Dixie Power), laying out the dilemma in which InSite Towers finds itself. Dixie Power did not respond at all. The City of St. George responded on September 8, 2014 by letter from Shawn W. Guzman, as City Attorney, effectively restating the City's position that if InSite Towers wished electrical service from the City, it would need to prevail upon the Gublers to annex their property into the City boundaries; otherwise, InSite Towers must deal with Dixie Power. For its part, Dixie Power has notified this office orally that it will not service the location unless InSite Towers funds the cost of running service from one of Dixie Power's remote locations, including not only the cost of extending transmission facilities, but the acquisition of power line easements.

InSite Towers thus has limited options available to it. It cannot deliver the annexation petition which St. George demands as the price of utility service; neither can it meet Dixie Power's demand that In Site front the prohibitive cost of duplicating service through significant transmission line extensions from remote locations operated by Dixie Power. It seems clear from the record, however, that the 1981 Agreement contemplated transfer of utility service provision from Dixie Power to St. George for this location – an interpretation consistent with St. George's conduct over the past 24 years.

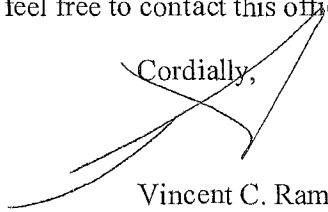
We therefore urge the City of St. George, as a matter of simple equity and fairness, to reconsider its position and grant InSite Towers' application for electrical service on the telecommunication tower site. To do so would be consistent with the clear intent of the 1981 Agreement; it would likewise be consistent with St. George's practices with respect to the Gubler ranch property generally since that time. As I stated in my August 8 letter, to the extent that the City deems itself bound by recent legislation confining municipal power systems to the

Energy Services Department
City of St. George
January 30, 2015
Page 3

provision of service within the municipal boundaries, a simple agreement between St. George and Dixie Power, with the approval of the Public Service Commission, would resolve the issue. We have every reason to believe that the Commission would be receptive to such a request and would promptly approve it.

If you have any questions, please feel free to contact this office.

Cordially,



Vincent C. Rampton

Enclosure

cc: Insite Towers

BUSINESS APPLICATION FOR UTILITY SERVICE

City of St. George 175 E 200 N St George, UT 84770 (435) 627-4700 FAX(435)627-4731

OFFICE USE ONLY

Acct number _____
EL w/o number _____
WA w/o number _____



DRIVERS' LICENSE INFORMATION

Name as it appears _____
On Driver's License _____
Driver's License Number _____
State _____ Exp. _____
Date of Birth _____

Full Name of Business InSite Towers Development, LLC

Address to be Served Unaddressed - Parcel 7516-A

Requested Connection Date (At Least Two Business Days From Application Date) TBD

Is Applicant Sole Owner of the Business X YES NO If not, Give the Names of Other Owners
(or if Corporation or Partnership, Other Officers or General Partners) _____

 OWN RENT Business Manager's Name Todd Fuson Phone 702-430-8369

Bank Reference _____

City Business License # Yes - City File Federal Tax ID # 46-2847559

Person to Notify in Case of Emergency Todd Fuson Phone 702-430-8369

Applicant's Mailing Address 1199 N Fairfax Street #700 Alexandria, VA 22314-2231

CONSUMER RESPONSIBILITY

PAYMENT The applicant agrees to pay monthly for the utility services rendered by the City of St. George. Charges for services will be made at the regular established rates for the class of service applicable to the applicant.

DELINQUENCY Payment for services is due immediately upon billing and shall become delinquent if not paid by the due date reflected on such billing. A late charge of 5% per month of the unpaid balance will be added to delinquent accounts. The applicant agrees to pay reasonable expenses of collection including attorney's fees and court costs should it become necessary to use such measures to collect the charges. The City shall terminate service on delinquent accounts not paid after notice. In order to restore service the customer must bring current all delinquent charges. In addition, the City will charge a reconnection fee.

SECURITY DEPOSIT The applicant may be required to pay a deposit in order to receive service. The City will pay interest on the deposit at the rate set by the City Council. It is agreed by the applicant that the deposit is not considered as prepayment of any bill. Unpaid accounts will be considered delinquent notwithstanding the existence of a security deposit. The City may apply the amount of the security deposit (including interest earned) to the applicant's final bill and any balance remaining will be refunded to the applicant.

REASONABLE ACCESS The applicant shall permit the City's authorized representatives to enter onto the customer's premises at all reasonable times for purposes connected with rendering, billing, or disconnecting utility services. Service may be terminated if reasonable access is not permitted.

TERMINATION OF SERVICE The applicant agrees to be responsible for the payment of utility charges incurred at these premises until their responsibility is terminated in one of the following ways:

1. By mutual agreement evidenced in writing and signed by the City and the applicant.
2. By a two day written notice from the customer to have services disconnected and the City physically terminating the service.
3. By the proper assumption of the payment responsibility by a party acceptable to the City and upon completion of an application for service by the other party.

The applicant warrants that all the information provided by them in this application is true and correct and understands that false or misleading information shall be cause for the City to deny or cancel service and demand immediate payment on any amounts which are due.

Applicant's Signature, Title Project mgr.

Date 2/2/15

St George City Representative _____

Date _____

Transferred from Acct # _____

Date Deposit Paid _____

Transfer from Service Address _____

Deposit Amount _____

Disconnect Date _____

Deposit Number _____

EXHIBIT ITD 2.5

Docket No. 15-066-01

Subject: Parcel 7516-A
Date: Monday, March 10, 2014 11:09 AM
From: Chad Reynolds <chadr@dixiepower.com>
To: Todd Fuson <todd@intellisitesllc.com>

Todd,

I have been contacted by your office to look into what it would take for Dixie Power to serve a cellular tower site that is located in Parcel 7516-A which is a portion of land that is adjacent to Dixie Drive in St George. This property is not within Dixie Power service territory and subsequently cannot be fed by us due to our franchise area agreement with St George City. Dixie Power would have to have our franchise area amended in order to be able to make an agreement to serve this site. Also, the costs to extend a power line from Dixie Power's service territory would be very cost prohibitive due to the length and also the property owners that we would have to acquire easements from.

I would suggest talking with a local land surveyor regarding annexing the parcel into St George City since the city has services adjacent to the parcel. I would recommend Scott Woolsey from Alpha Engineering or Roger Bundy with R & B Surveying, Inc. to discuss the possibilities of annexing the parcel into St George City. Let me know if you have any further questions. Thanks.

CHAD REYNOLDS
DIXIE POWER

Subject: RE: Parcel 7516-A
Date: Monday, December 15, 2014 at 1:56 PM
From: Chad Reynolds <chadr@dixiepower.com>
To: Todd Fuson <todd@intellisitesllc.com>

I don't know for sure whose service territory your parcel is in due to it being in the County but in the St George City Service Territory area that they negotiated with us a long time ago. I know that the parcel is not in our current service territory.

Chad Reynolds
Dixie Power
435-673-3297
chadr@dixiepower.com <mailto:chadr@dixiepower.com>

From: Todd Fuson [mailto:todd@intellisitesllc.com]
Sent: Monday, December 15, 2014 1:30 PM
To: Chad Reynolds
Subject: Re: Parcel 7516-A

Chad,

Thank you for your email. I found this email that you sent to be back beginning of the year and it stated that this is outside of you service area. If this is still the case then there would be no reason for me to submit an application to you. If I remember correctly, this area is Rocky Mountain. Is there any way you can reconfirm this? Thanks again for all your help.

Todd Fuson



8822 Arroyo Azul St.

Debbie DePompei

From: Colin Jack [colinj@dixiepower.com]
Sent: Friday, April 25, 2014 10:23 AM
To: 'Debbie DePompei'
Cc: Chad Reynolds; Russ Condie
Subject: RE: Power Services for Parcel #7516-A
Attachments: Agreement w SGC 1981.jpg

Debbie,

Attached is a scan of our agreement from 1981 in which Dixie gave up that territory to St. George City and sold them all of our facilities north of Bloomington.

Colin W Jack, PE
Chief Operating Officer/
Engineering Manager
Dixie Power
435-673-3297

From: Debbie DePompei [mailto:debbie@intellisitesllc.com]
Sent: Tuesday, April 22, 2014 12:46 PM
To: colinj@dixiepower.com
Cc: "Todd Fuson"; 'Mark Gubler'; 'Scott Gubler'
Subject: Power Services for Parcel #7516-A

Good Afternoon Colin,

Chad Reynolds referred me to you thinking you may be able to provide us with some assistance in our efforts to obtain power services to parcel #7516-A (owned by Orwin & Velda Gubler) to serve a wireless communication tower facility that will be owned and operated by InSite Towers, LLC. I represent InSite Towers for this project.

The primary obstacle has been the fact that this parcel is located in the County and not the city. When we called St. George Energy Services (SGES) (the closest power utility provider to the parcel) we were told that they cannot provide service because of a new bill (S.B. 180) that was passed June 15, 2013, which enacts language related to the service territory of an electrical corporation. The following is a link, which provides an overview of the bill: <http://openstates.org/ut/bills/2013/SB180/documents/UTD00022488/>. SGES has stated that they could provide service if we annexed the parcel into the city, which the property owners are not willing to do.

The problem is that this county parcel is an island surrounded by city. Please find attached an aerial of the parcel for further reference along with the property owner information. The property was served by Dixie many, many years ago (prior to all the annexation of parcels surrounding this parcel to the city). When that occurred, Dixie abandoned service to this parcel and SGES took over serving the parcel.

With that said, I was hoping that you could provide us with some documentation stating when and/or why Dixie relinquished their rights to serve this property to SGES. With this information, we are hoping that SGES will agree to provide the property with additional power to serve the new communication tower site since they are already serving it presently. I know this all happened quite a long time ago and would greatly appreciate any assistance you can provide.

Best Regards,



Debbie Adams DePompei, *Principal*



8822 Arroyo Azul Street

Las Vegas, NV 89131

(702) 430-8369 (Office)

(702) 501-0882 (Mobile)

(702) 995-7004 (Fax)

debbie@IntelliSitesLLC.com

71 E. Highway 56
Beryl, UT 84714-5197
Phone: 435-439-5311
Fax: 435-439-5352



145 W. Brigham Rd.
St. George, UT 84790
Phone: 435-673-3297
Fax: 435-673-3315

*Date 12/5/14

*Name InSite Towers, LLC / Todd Fuson

*Mailing Address 8822 Arroyo Azul St

*City Las Vegas *State NV *Zip 89131

*Phone #: 702-430-8369 *Cell #: 702-339-8689 *Email: todd@intellisitesllc.com

*Type of Service: Small Commercial *Phase: Single *Volts: 120/240 *Amps: 600 Sq Ft: 300

Site location where work is to be done:

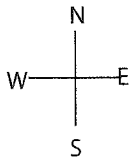
*Assessors Parcel No. 7516-A

*Address Unaddressed *City St George *State NV

Subdivision N/A Lot # N/A

Any Additional Helpful Info: See attached

Attach Map Here:



*** ITEMS MARKED WITH AN ASTERISK ARE REQUIRED FIELDS**