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Attorneys for Rocky Mountain Power

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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In the Matter of the Application of  
ROCKY MOUNTAIN POWER for Approval  
of Pole Attachment  
Agreement between PacifiCorp  
and TCG Utah

DOCKET No. 09-035-92

**APPLICATION OF ROCKY  
MOUNTAIN POWER**

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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 PacifiCorp and TCG Utah (“TCG”) dated October 22, 2008. Each of Rocky Mountain Power and TCG are referred to as a “Party” and together referred to 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 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.

2. Under R.746-345-3(B)(1), the parties to pole attachment contracts which differ from the terms in a commission-approved contract “shall submit the negotiated contract to the Commission for approval.” The Agreement negotiated between Rocky Mountain Power and TCG Utah contains terms which differ from the safe harbor agreement approved by the Commission in Docket 04-999-03. There are both stylistic and substantive changes which are discussed below.

3. Communications regarding this Application should be addressed to:

By e-mail (preferred): [datarequest@pacificorp.com](mailto:datarequest@pacificorp.com)

By fax: (503) 813-6060

By mail: Data Request Response Center  
Rocky Mountain Power  
825 NE Multnomah St., Suite 800  
Portland, OR 97232

Dave Taylor  
Rocky Mountain Power  
201 South Main, Suite 2300  
Salt Lake City, UT 84111  
Telephone: (801) 220-2923  
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Barbara Ishimatsu  
201 South Main Street, Suite 2300  
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Telephone: (801) 220-4640  
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Email: [Barbara.ishimatsu@pacificorp.com](mailto:Barbara.ishimatsu@pacificorp.com)

4. Minor changes from the “Safe Harbor” agreement reflect clarifications of Rocky Mountain Power’s administrative processes, or are simply non-substantive wording changes. Some provisions of the Safe Harbor have been relocated to another place in the agreement, consolidated or otherwise clarified for stylistic purposes or to represent a mutually acceptable compromise between the Parties.

a. The Agreement contains a provision requiring TCG to provide assurances of posting of security, collateral or a cash deposit in the event TCG's credit rating drops below a rating of CCC which is consistent with the Safe Harbor section 10.03 allowing Pole Owner to request a bond from Licensee.

b. The Agreement consolidates the Safe Harbor provisions relating to wood decay, tree trimming and brush cutting in a single vegetation management section.

c. The Agreement has been modified to reflect the non-reciprocal relationship between the Parties in contrast to the reciprocal relationship contemplated by the Safe Harbor. Inasmuch as there will be no jointly used poles, all provisions relating to joint pole use in the Safe Harbor have been removed. Likewise, the provisions pertaining to pole replacement for the pole owner's benefit and for the joint benefit of the parties have been removed.

d. The Agreement has a shorter cure period for default than the Safe Harbor. This is a bilateral provision.

5. Unless otherwise noted herein, the substantive provisions of the Agreement are in harmony with those of the Safe Harbor. The Agreement was jointly negotiated between the Parties and represents the agreed-to terms and conditions. The substantive differences between the Safe Harbor and the Agreement are noted below.

6. Several provisions were modified to reflect regulatory requirements, or National Electric Safety code requirements.

a. The contact rental set forth in the Agreement was calculated using Rocky Mountain Power's Tariff approved as Electric Service Schedule No. 4.

b. TCG is required to mark its attachments with suitable identification as required by R746-345-5.

c. Reference to unused equipment is removed since the NESC standards adequately address the treatment of such equipment and the Agreement requires compliance with NESC standards.

d. TCG is required to have an acceptable facility inspection program in place, which is a standard industry practice.

7. Several provisions were changed to accommodate standardized management of the joint use administrative functions from one office for the six states served by Rocky Mountain Power and Pacific Power.

a. The application procedure to install attachments is consolidated and summarized. This change benefits TCG in that it allows TCG to receive either an approval or denial in writing within 45 days of Rocky Mountain Power's receipt of the application.

b. Rocky Mountain Power may reject an application for attachment under limited circumstances to protect its infrastructure and for the safety of both Rocky Mountain Power and other attachers.

c. Rent begins to accrue sooner than under the Safe Harbor. However, TCG is allowed a longer period of time to pay outstanding invoices, from 30 days, per the Safe Harbor, to 45 days. Furthermore, TCG is granted a much longer time to complete installation of Attachments – 180 days instead of 90 days and may extend this time frame.

d. TCG must maintain commercial general liability insurance at a higher limit than the Safe Harbor, maintain umbrella liability insurance to cover any shortfalls in other coverage, and maintain business interruption insurance.

e. If TCG does not accept the cost to accommodate its continued attachment, TCG must remove the attachment 10 days sooner than in the Safe Harbor.

8. The Parties have negotiated mutually agreeable terms regarding indemnification, limitations of liability and warranties, which terms are reflected throughout the Agreement.

9. The Agreement modified Termination requirements, allowing each party to terminate the Agreement upon ninety (90) days written notice to the other, within which time Licensee must remove its attachments. The Agreement adds specific events of default, including the insolvency of Licensee.

10. The Agreement allows TCG to assign its contract without the consent of Rocky Mountain Power, within certain parameters.

11. The Agreement removes the express prohibition on TCG as to easements and rights of way, but may require TCG to provide written documentation of compliance with third party consents, permits, licenses or grants.

12. The Agreement contains a mutual confidentiality provision to the General Terms.

WHEREFORE, Rocky Mountain Power respectfully request 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 29th day of June, 2009.

Respectfully submitted,

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Mark Moench  
Barbara Ishimatsu  
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 **MOTION FOR APPROVAL OF POLE ATTACHMENT AGREEMENT BETWEEN PACIFICORP AND TCG UTAH** to be served upon the following by electronic mail or U.S. postage to the addresses shown below on June 29, 2009:

TCG Utah Attn: Legal Dept Room 3A118a One AT&T Way Bedminster New Jersey 07921 Attn: Legal Department Room A118A	TCG Utah One AT&T Way Bedminster New Jersey 07921 Attn: ROW Manager Room 4B129F
Cheryl Murray Dan Gimble Michele Beck Office of Consumer Services 160 East 300 South, 2 <sup>nd</sup> Floor Salt Lake City, UT 84111 <a href="mailto:cmurray@utah.gov">cmurray@utah.gov</a> <a href="mailto:dgimble@utah.gov">dgimble@utah.gov</a> <a href="mailto:mbeck@utah.gov">mbeck@utah.gov</a>	Paul Proctor Office of Consumer Services Heber M. Wells Bldg., Fifth Floor 160 East 300 South Salt Lake City, UT 84111 <a href="mailto:pproctor@utah.gov">pproctor@utah.gov</a>
Michael Ginsberg Patricia Schmid Assistant Attorney General Utah Division of Public Utilities Heber M. Wells Bldg., Fifth Floor 160 East 300 South Salt Lake City, UT 84111 <a href="mailto:mginsberg@utah.gov">mginsberg@utah.gov</a> <a href="mailto:pschmid@utah.gov">pschmid@utah.gov</a>	Dennis Miller William Powell Philip Powlick Division of Public Utilities Heber M. Wells Building 160 East 300 South, 4 <sup>th</sup> Floor Salt Lake City, UT 84111 <a href="mailto:dennismiller@utah.gov">dennismiller@utah.gov</a> <a href="mailto:wpowell@utah.gov">wpowell@utah.gov</a> <a href="mailto:philippowlick@utah.gov">philippowlick@utah.gov</a>

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