

submitted to the Commission in a timely manner and before any pole attachments are installed...” The Company gave us the factual background for what led it to file its Motion. It stated as follows:

[T]he Company did research its contractual relationships with its joint use customers to determine which existing joint use customers (“Existing Customer”) had contracts, which contracts were not readily accessible by either party, and which had acquired another entity’s assets and service territory. The Company determined, of its Existing Customers:

1. Contracts with 13 entities (some are under common ownership and may or may not execute separate contracts) are missing or outdated. Some of these relationships date back to the 1950’s; some contracts may only need updated pricing, others may need to be memorialized in writing.
2. Contracts with approximately seven entities (some are affiliated with entities listed above) have not been properly assigned. These Existing Customers obtained assets and service territory from telecommunications, CATV, or broadband providers and have requested an assignment of contract or an entirely new contract. Unfortunately, many of those seller’s records of pole ownership and attachments on Rocky Mountain Power poles are missing or incorrect; as a result, Rocky Mountain Power and the Existing Customer assignee are unable to determine which poles are jointly used and affected by an assignment. In some instances, both parties have agreed upon an audit schedule whereby pole ownership and attachments can be determined prior to ratifying an assignment or executing a new contract.

The Company has prioritized for contract negotiation those Existing Customers in the two categories above where pole attachment records or past invoices are in greatest dispute, and where the Existing Customer has requested a new contract. Many of these prioritized Existing Customers serve rural areas of Utah. The Company is now preparing to submit its standard contract to the Commission for approval; however, negotiations currently underway with approximately five of the Existing Customers (and affiliated entities) may result in additional negotiated contracts being submitted for approval.

Based on these facts, the Company stated that our order could be interpreted as requiring it to cease permitting all pole attachments until we approved the governing pole attachment agreement, even when the request comes from existing customers, or even while negotiations were pending upon expiration of an existing contract. The Company contends such an action would unintendedly interfere in the normal business relationships between it and existing customers and offer no regulatory advantage.

The Company also notes that for the majority of its existing customers, a pole attachment relationship was in place before R746-345-3 was enacted in 2006 and therefore each attachment request would need to be approved. It also noted that it would not be able to comply with requests from governmental agencies to relocate poles used by an existing customer without having the governing agreement pre-approved.

The Company requested we use the Oregon Administrative Rules relevant to pole attachments as a guide in implementing the intent of paragraph 2 of our Order, while not imposing unintended consequences on the normal course of the Company's good faith and arms length dealings with its customers. It recommended we amend our Order as follows:

The Company respectfully suggests item two of the Order be amended to read as

follows (and the existing paragraph numbered "3" be renumbered as "4"):

2. the Company shall submit any future negotiated attachment agreements to the Commission in a timely manner;

3. the Company shall ensure that no pole attachments are permitted prior to the execution and commission approval of a pole attachment contract, with the exception of the following classes of Existing Customers:

a) those operating under a missing, expired or terminated contract and participating in good faith efforts to negotiate a

contract or engaged in formal dispute resolution, arbitration, or mediation regarding the contract;

b) those operating under a contract that is expired or unwritten if both pole owner and occupant are unaware that the contract is expired, and both carry on business relations as if the contract terms are mutually-agreeable and still applicable;

c) those operating under a contract that is unwritten or missing if both pole owner and occupant carry on business relations as if the contract terms are mutually-agreeable and applicable;

The Division did not oppose the Company's Motion. The Division did, however, suggest two additional requirements, namely that:

- a. As new contracts are negotiated with companies that Rocky Mountain Power has an existing relationship with, the Company should be required to submit those contracts under the Commission's rules immediately for Commission approval;
- b. That the Company file with the Commission and the Division a report detailing the status of the existing arrangements for each company Rocky Mountain Power contemplates as a qualifying exemption and a schedule for placing under contract those existing companies that have unclear contractual relationships with the Company that they have outlined as the exceptions. That report should be filed with the Division and Commission within 60 days.

As to the Division's first recommendation, we find the language proposed by the Company in its proposed paragraph 2 sufficiently addresses the requirement to timely file future pole attachment agreements. As to the Division's second proposed requirement, we decline to incorporate that into our Order. The Company stated that of the twenty agreements with existing customers, thirteen are missing or outdated, and seven have not been properly assigned. The Company has affirmed that it is in various stages of addressing these issues and correcting problems. We will assume that the parties to each agreement will engage in arms-length, good

faith, negotiations. Either party to the agreements may bring an action before the Commission if there are any disputes concerning the proposed agreement. *See R746-345-6*. Additionally, if the Division has any concerns with those pole attachment agreements, it has the power to commence an investigation concerning those agreements. *See e.g. Utah Code Ann. 54-4a-1(1)(c)*. We find it unnecessary to incorporate the second additional requirement proposed by the Division.

ORDER

Therefore, based on the moving and responding papers submitted to us, we order that paragraph two of the Order is amended to read as follows:

2. the Company shall submit any future negotiated attachment agreements to the Commission in a timely manner;
3. the Company shall ensure that no pole attachments are permitted prior to the execution and commission approval of a pole attachment contract, with the exception of the following classes of Existing Customers:
 - a) those operating under a missing, expired or terminated contract and participating in good faith efforts to negotiate a contract or engaged in formal dispute resolution, arbitration, or mediation regarding the contract;
 - b) those operating under a contract that is expired or unwritten if both pole owner and occupant are unaware that the contract is expired, and both carry on business relations as if the contract terms are mutually-agreeable and still applicable;

DOCKET NO. 09-035-52

-6-

c) those operating under a contract that is unwritten or missing if both pole owner and occupant carry on business relations as if the contract terms are mutually-agreeable and applicable.

Existing paragraph numbered “3” is renumbered as paragraph “4.”

Judicial review of the Commission’s final agency action may be obtained by filing a petition for review with the Utah Supreme Court within 30 days after final agency action. Any petition for review must comply with the requirements of Sections 63G-4-401 and 63G-4-403 of the Utah Code and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah this 5th day of October, 2009.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#63841