



State of Utah
Department of Commerce
Division of Public Utilities

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To: Public Service Commission

From: Philip Powlick, Director
Artie Powell, Manager, Energy Section
Joni Zenger, Technical Consultant
Charles Peterson, Technical Consultant

Date: February 3, 2010

Re: Docket No. 10-035-01, Application for Approval of Pole Attachment Agreement between PacifiCorp and Leavitt Group Enterprises, Inc.

I. ISSUE

On January 7, 2010, PacifiCorp (dba Rocky Mountain Power) filed an Application with the Commission for Approval of a Pole Attachment Agreement between PacifiCorp and Leavitt Group Enterprises, Inc. (collectively, the Parties). Accompanying the Application, the Company submitted a copy of the contract that was negotiated and agreed to by the Parties as well as a copy of the Company's Joint Use Distribution Construction Standards. Inasmuch as the pole attachment contract agreed to by the Parties differs from the Commission-approved contract, the Company requests that the Commission issue an order approving the Agreement and finding the terms and conditions of the Agreement to be just and reasonable and in the public interest.

II. RECOMMENDATION (APPROVE)

Approve the Application and the negotiated contract between PacifiCorp (the Company) and Leavitt Group Enterprises, Inc. (Leavitt).

III. DISCUSSION

Rule 746-345 of the Commission's rules and regulations defines how, when, and where an entity can attach equipment to a pole owned by a public utility. According to the Commission rules, "a public utility must allow any attaching entity nondiscriminatory access to utility poles at rates, terms, and conditions that are just and reasonable."¹ This rule also requires the pole owner to submit a tariff and standard contract for Commission approval.

With respect to the tariff provision, the Company already has on file with the Commission, and also submitted with this Application, its Electric Service Schedule No. 4 Pole Attachments. However, rather than using the standard contract (also referred to as Standard Agreement or Safe Harbor) previously approved by the Commission in Docket No. 04-999-03, the Company in its Application filed a contract that was negotiated by the Parties and that differs from the Commission approved Standard Agreement. Rule R746-345-1(B)(2) requires parties to have Commission approval in the event that a negotiated contract is used.

Leavitt and PacifiCorp jointly negotiated the terms and conditions of the proposed contract. The Agreement was signed by Leavitt on December 7, 2009 and by PacifiCorp, apparently, on December 10, 2009. The Application was filed with the Commission on January 7, 2010.

The Division has reviewed the Company's Application, the negotiated contract signed by the Parties, and the Commission rules as they pertain to pole attachments. The Division notes that this Application was timely filed compared to the filing between the Company and TCG Utah in Docket No. 09-035-52. The previous problem with late or untimely filing appears to have been corrected.

The Division found that there are both substantive and nonsubstantive differences between the two documents. The minor changes consist of consolidation of sections and clarification of the Company's administrative processes that were agreed to mutually by the Parties. In all material

¹ Rule R746-345-1 (B) 2.

respects, the contract between the Parties is identical to the contract approved by the Commission in Docket No. 09-035-52 between PacifiCorp and the TCG Utah. The Application outlines the substantive and non-substantive changes from the safe harbor agreement approved by the Commission in Docket No. 04-999-03. As stated above, these are the same changes approved by the Commission in Docket No. 09-035-52.

All of the terms described above are reasonable and have been mutually agreed to by both Parties. Finally, the Company's Application and request for Commission approval includes the computation of the annual pole attachment rental rate and the Company's Distribution Construction Standards (EU), which provide engineering drawings covering joint use of poles. The Division reviewed both documents. First, it appears that the Company's Distribution Construction Standards (EU) is in conformance with the National Electrical Safety Code requirements. Second, the annual rental rate of \$7.02 per foot of space used is taken directly from Rocky Mountain Power's Electric Service Schedule No. 4 on file with the Commission.

IV. CONCLUSION AND RECOMMENDATION

After reviewing the Company's filing and accompanying documents, the Division finds that the Agreement among the Parties is reasonable and should be approved. The terms and conditions of the Agreement are for the most part consistent with the Commission-approved Standard contract. Where differences occur, they have been mutually agreed to by the Parties and are identical to the changes approved by the Commission in Docket No. 09-035-52. The proposed Agreement is clear, understandable, and provides benefits to both Leavitt and PacifiCorp.

The Division recommends the Commission approve the Application of Rocky Mountain Power and the accompanying Agreement with Leavitt. The mutually negotiated terms and conditions of the Agreement are reasonable and in the public interest.

cc: Dave Taylor, PacifiCorp
Barbara Ishimatsu, PacifiCorp
Michele Beck, Office of Consumer Services