

Stephen F. Mecham (4089)
Callister Nebeker & McCullough
10 East South Temple, Suite 900
Salt Lake City, Utah 84133
Telephone: 801 530-7300
Fax: 801 364-9127
Email: sfmecham@cnmlaw.com
Attorneys for the Utah Rural Telecom Association

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Rocky Mountain Power for Authority to Increase its Retail Electric Utility Service Rates in Utah and for Approval of its Proposed Electric Service Schedules and Electric Service Regulations	DOCKET NO. 10-035-124 Motion to Dismiss, Motion to Strike, or Alternatively, Motion to Open a Separate Rulemaking Docket filed by the Utah Rural Telecom Association
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Pursuant to Utah Admin. Rule § R746-100-3H, the Utah Rural Telecom Association (“URTA”) moves the Public Service Commission (“Commission”) to dismiss the pole attachment issue from this proceeding and to strike the testimony of Jeffrey M. Kent and Steven R. McDougal filed on behalf of Rocky Mountain Power (“RMP”) insofar as it addresses pole attachments and amendments to Utah Admin. Code § R746-345. Alternatively, if the Commission believes RMP has appropriately raised this issue again and the Commission should address it a third time, URTA moves the Commission to remove it from this docket to a rulemaking docket as required by Utah Code Ann. § 63G-3-101 et. seq. URTA further requests that the Commission schedule these motions for oral argument on five days written notice, but not later than May 12, 2011, in accordance with Rule § R746-100-3H and decide them on an expedited basis so that URTA can avoid filing testimony May 16, 2011 and withdraw if the motions are granted. If there is insufficient time for the Commission to decide these motions before testimony is due, URTA requests that the date for filing testimony be postponed until the

motions can be resolved.

Respectfully submitted this 3rd day of May, 2011.

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	Memorandum in Support of Motion to Dismiss, Motion to Strike, or Alternatively, Motion to Open a Separate Rulemaking Docket filed by the Utah Rural Telecom Association

INTRODUCTION

For the first time in a rate case, Rocky Mountain Power (“RMP”) is proposing to change “...the Company’s Schedule 4 pole attachment rate to reflect the Administrative Support cost for managing the joint use of the Company’s poles and to include a fee schedule of non-recurring charges as part of Schedule 4.”¹ This is RMP’s second attempt to increase its pole attachment rates following the Commission’s protracted efforts in Docket No. 04-999-03 to resolve the disputes that arose when RMP unilaterally increased its annual cable rental rate from \$4.65 to \$9.20 and its annual telecommunications rate from \$12.50 to \$27.40. URТА believes RMP’s attempt to increase its pole attachment rates again in this proceeding is wasteful of the Commission’s and the parties’ limited resources, reflective of the electric industry’s effort to make attachments a profit center, contrary to precedent set by the Federal Communications

¹ Testimony of Jeffrey M. Kent in Docket No. 10-035-124 at lines 24-27.

Commission (“FCC”), and harmful to the public interest.

ARGUMENT

1. The Commission has Addressed and Resolved the Pole Attachment Issues RMP Raises; the Issues Should Be Dismissed and RMP’s Testimony Should be Struck

In the Docket 04-999-03 the Commission spent more than two years developing a pole attachment rule and a “Safe Harbor” pole attachment agreement to resolve the disputes among the parties. The Commission established a rate formula and uniform attachment rates. RMP’s prior insistence on imposing separate, cumulative fees for pre- and post-construction inspections and unreasonable unauthorized attachment fees required the Commission to step in and settle the parties’ differences. In a letter dated September 6, 2005 issued in Docket No. 04-999-03, the Commission wrote:

Commission Direction: Pole owners may charge an application fee, actual cost for make ready work (after accepted), and unauthorized attachments fees. Application fees should cover the expected cost of doing the survey and engineering work required to determine what make ready work must be done to accommodate the application. It may be a per pole fee, or it may be charged according to groups of quantities contained in the application. The unauthorized attachment fee shall be the back rent to the last audit plus \$25 per pole. The proposed post construction and removal verification inspection fees cover activities the costs of which the commission believes are to be recovered through the pole attachment rental charge.

The Commission made clear that inspection fees were to be recovered either in the application fee or in the annual rental rate, not in separate, cumulative fees as RMP proposes again in this rate case. In addition, the Commission determined a just and reasonable unauthorized attachment rate to include actual back rent to the last audit and \$25 per pole. Now RMP, without any supporting data or evidence, wants to impose a \$100 per pole fine and assume five years of back rent as the penalty.

When RMP made virtually the same proposals in Docket No. 10-035-97, the Commission suspended the proceeding in an order dated October 5, 2010, stating:

On October 4, 2010, the Commission convened a duly noticed technical conference to consider issues pertaining to the Company's proposed standard non-reciprocal pole attachment agreement. Following the Company's presentation and a lengthy discussion of the issues, the Company expressed a desire to reassess and clarify its objectives in this docket. Accordingly, the Commission, with the parties' agreement, hereby suspends the remaining schedule in this docket, previously ordered on September 20, 2010. The suspension will be in effect until further order of the Commission.

If RMP has reassessed and clarified its objectives, it is not clear from its filings in this case. They make the same request as before except that now they propose to change the rate formula in the pole attachment rule and increase the annual attachment rate from \$7.02 to \$8.10 for "administrative support costs" they allegedly are not recovering. RMP has provided no evidence that the current rate is not compensatory. It boils down to RMP simply wanting more money. While that is understandable, it is not appropriate. URITA therefore urges the Commission to dismiss the pole attachment issue from this case and to strike all testimony addressing it. The Commission has ruled on these issues and to go through another proceeding again wastes the limited resources of the Commission and of all the parties who intervened just for this issue. That is not in the public interest.

2. RMP's Request is Contrary to the Precedent and Direction of the FCC

On April 7, 2011, the FCC released an order in FCC 11-50 in which it reformed its pole attachment rules and reduced its pole attachment rates. Although the FCC does not regulate pole attachments in Utah, its order indicates the trends and direction in the industry in 30 other states. The FCC determined that existing rates were too high and began imposing the cable rate formula for non-cable attachers, similar to what the Commission did in Docket No. 04-999-03. FCC Chairman Julius Genachowski remarked that the FCC considered action the Commission

took in that docket when he wrote: “Our rules incorporate best practices from Oregon, Utah, New York, and other states.”² Following RMP’s recommendation at this point would be a significant step backward.

Like RMP, electric utilities argued to the FCC they could not recover their costs under the new rates and the new rates would be subsidized by the electric utilities’ customers.³ The FCC rejected that argument just as the Commission has done and URITA urges the Commission to do so again. This issue has been adjudicated and should be dismissed.

3. In the Alternative, Pole Attachments Should Be Addressed in Rulemaking

URITA urges the Commission to dismiss the pole attachment issue and strike all testimony referring to it. Alternatively, if the Commission believes it must consider RMP’s testimony a third time, URITA recommends that it be moved to a new rulemaking docket or returned to Docket No. 10-035-97 which, as noted above, was suspended and left open for that purpose. Even RMP acknowledges that its proposal is a rulemaking, not an issue for ratemaking.⁴ Though this alternative motion is not URITA’s desired solution, pole attachments do not belong in a rate case. If the Commission is inclined to pursue this issue further, it should be done in the context of rulemaking, particularly since RMP is attempting to alter the rate formula established by rule.

CONCLUSION

NOW THEREFORE, based on the foregoing, URITA respectfully requests that the Commission enter an Order granting URITA’s Motion to Dismiss and Motion to Strike.

² *In the Matter of Implementation of Section 224 of the Act, A National Broadband Plan for Our Future*, Order Released April 7, 2011, FCC 11-50 at p.139.

³*Id.* at ¶ 184.

⁴ Testimony of Jeffrey M. Kent in Docket No. 10-035-124 at lines 73-75.

Alternatively, URTA moves the Commission to remove the pole attachment issue to a new rulemaking docket or to Docket No. 10-035-97. URTA requests that the Commission set this matter for oral argument on five days written notice pursuant to Rule § R746-100-3H, but not later than May 12, 2011, and decide the motions on an expedited basis so that URTA need not file testimony if they are granted. If there is insufficient time for the Commission to decide these motions before testimony is due May 16, 2011, URTA requests that the date for filing testimony be postponed until the motions are resolved.

Dated this 3rd day of May, 2011.

Callister Nebeker & McCullough

Stephen F. Mecham

Certificate of Service

I hereby certify that on May 3, 2011, I caused a true and correct copy of the Motion to Dismiss, Motion to Strike, or Alternatively Motion to Open a Separate Rulemaking Docket and Memorandum in Support of the Utah Rural Telecom Association filed in Docket No. 10-035-124 to be emailed to the following:

Paul Proctor
pproctor@utah.gov

Stephen J. Baron
sbaron@jkenn.com

Chris Parker
William Powell
ChrisParker@utah.gov
wpowell@utah.gov

Holly Rachel Smith
holly@raysmithlaw.com

Ryan L. Kelly
ryan@kellybramwell.com

Gary A. Dodge
gdodge@hjdllaw.com

Steve W. Chriss
stephen.chriss@wal-mart.com

Cheryl Murray
Michele Beck
cmurray@utah.gov
mbeck@utah.gov

Charles R. Dubuc, Jr.
rdubuc@westernresources.org

Patricia Schmid
pschmid@utah.gov

Steven S. Michel
smichel@westernresources.org

Gary A. Dodge
gdodge@hjdllaw.com

Mike Legge
mlegge@usmagnesium.com

F. Robert Reeder
William J. Evans
Vicki M. Baldwin
bobreeder@parsonsbehle.com
bevans@parsonsbehle.com
vbaldwin@parsonsbehle.com

Bruce Plenk
bplenk@igc.org

Peter J. Mattheis
Eric J. Lacey
pjm@bbrslaw.com
elacey@bbrslaw.com

Gloria D. Smith
gloria.smith@sierraclub.org

Sonya L. Martinez
Betsy Wolf
smartinez@slcap.org
bwolf@slcap.org

Gerald H. Kinghorn
Jeremy R. Cook
ghk@pkhlawyers.com
jrc@pkhlawyers.com

Jerold G. Oldroyd
Sharon M. Bertelsen
Theresa A. Foxley
OldroydJ@ballardspahr.com
BertelsenS@ballardspahr.com
FoxleyT@ballardspahr.com

Randy N. Parker
Leland Hogan
rparker@fbfs.com
leland.hogan@fbfs.com

Shayla L. McNeill
Karen S. White
Shayla.mcneill@tyndall.af.mil
Karen.white@tyndall.af.mil

Kurt J. Boehm
kboehm@BKLawfirm.com

Arthur F. Sandack
asandack@msn.com

Sophie Hayes
Sarah Wright
sophie@utahcleanenergy.org
sarah@utahcleanenergy.org

Alex M. Duarte
Torry Somers
Alex.Duarte@qwest.com
torry.r.somers@centurylink.com

Mark C. Moench
Yvonne R. Hogle
mark.moench@pacificorp.com
yvonne.hogle@pacificorp.com

Paul J. Hickey
phickey@hickeyevans.com

/s/Stephen F. Mecham