

- 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
)	DPU Exhibit 5.0
)	Direct Testimony of
)	Casey J. Coleman
)	
)	

DIVISION OF PUBLIC UTILITIES
DEPARTMENT OF COMMERCE

May 18, 2011

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1 **I. IDENTIFICATION OF WITNESS**

2 **Q. PLEASE STATE YOUR NAME, EMPLOYER, AND BUSINESS**
3 **ADDRESS.**

4 A. My name is Casey J. Coleman. I am employed by the Division of Public
5 Utilities (“Division”) for the State of Utah. My business address is 160 East
6 300 South Salt Lake City, UT 84114.

7 **Q. BRIEFLY OUTLINE YOUR EMPLOYMENT BACKGROUND.**

8 A. Before working for the Division, I was employed by a telecommunications
9 consulting firm as a Financial Analyst. Then for approximately three years I
10 worked for the Division as a Utility Analyst and now work as a Technical
11 Consultant for the Division.

12 **Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?**

13 A. I received a Bachelor of Science degree from Weber State University in 1996
14 and a Masters of Business Administration from Utah State University in 2001.

15 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE UTAH PUBLIC**
16 **SERVICE COMMISSION?**

17 A. Yes. I testified before the Commission as an expert witness in Docket Nos. 01-

18 2383-01, 02-2266-02, 02-049-82, 03-049-49, 03-049-50, 05-053-01, 05-2302-01,
19 07-2476-01, 08-2469-01, 09-2511-01, 10-049-16, 10-2521-01, and 10-2526-01.

20 **II. SUMMARY**

21 **Q. PLEASE SUMMARIZE AND DESCRIBE THE PURPOSE OF YOUR**
22 **TESTIMONY.**

23 A. The purpose of my testimony is to discuss the application of Rocky Mountain
24 Power (“RMP”) for a rate increase in Docket No. 10-035-124. Specifically, I
25 will look at the issue of pole attachments and if the proposed rate increase
26 suggested by RMP is just and reasonable. My testimony will touch on the
27 historical background of the Pole Attachment Rule and the policy
28 considerations implied by the Commission when adopting that rule. I also
29 discuss my analysis of just and reasonable rates and how RMP’s petition does
30 not factually show that the rental formula used by the Commission produces
31 rates that are unfair or unjust.

32 In Mr. Kent’s testimony for RMP he discusses how not allowing an increase
33 in rates for Joint Use Administrative Fees would create a situation where a
34 subsidy by utility pole owners could exist. My testimony refutes this
35 position. Finally, my testimony discusses RMP’s request to deviate from the

36 rental formula and the policy issues accepting such a premise would create
37 for all pole owners and attachers.

38 At the conclusion of my testimony the Division recommends the Commission
39 adjust the revenue requirements of RMP down by \$313,094, require RMP to
40 file a standard contract as contemplated by the Pole Attachment Rule with
41 penalties for failure to file a standard contract in a timely manner, and
42 basically reaffirm that the methodology established in 2006 in Docket No. 04-
43 999-03 produces rates that fairly compensate pole owners for attaching to
44 their poles.

45 **III. HISTORICAL BACKGROUND OF THE POLE ATTACHMENT RULE**

46 **Q. WHAT IS THE YOUR UNDERSTANDING OF THE HISTORICAL**
47 **BACKGROUND OF RULE R746-345 POLE ATTACHMENTS?**

48 A. On October 2, 2003, PacifiCorp filed with the Commission Advice Filing 03-
49 09, Docket No. 03-035-T11, proposing to increase its cable pole attachment
50 rate from \$4.65 to \$9.20. As a result of this rate increase and complaints
51 filed by Comcast and other parties, the Division filed on March 11, 2004 a
52 request to open an investigative docket.

53 The request for the investigative docket was the genesis of Docket No. 04-
54 999-03, which was opened by the Commission to address the following pole
55 attachment issues:

- 56 ▪ Pole attachment regulation:
 - 57 ○ Consider whether there should be an adoption of a statewide
 - 58 methodology for calculating pole attachment rates
 - 59 ○ Explore application of methodology to all providers/attachers
 - 60 ○ Determine whether wireless attachments should be treated
 - 61 differently due to physical differences in attachment configuration
 - 62 ○ Determine what costs should be allowed to be recovered in the pole
 - 63 attachment rate
 - 64 ○ Evaluate who should bear the burden of pole costs (fully allocated
 - 65 or incremental costs)
 - 66 ○ Assess use of the FCC formula for pole attachment rates, including
 - 67 the allocation of usable space and unusable space
 - 68 ○ Evaluate rebuttable presumptions in FCC's formula
 - 69 ▪ Amount of space used
 - 70 ▪ Pole height
 - 71 ▪ Number of attachers
 - 72 ○ Determine whether differences for rural versus urban attachments
 - 73 should be considered
 - 74 ○ Consider exempting rural electric cooperatives from pole
 - 75 attachment regulation
 - 76 ○ Identify and consider other issues relating to pole attachments
- 77 ▪ Conduit Regulation (if exploration is deemed appropriate here):
 - 78 ○ Explore potential regulatory treatment of conduit
- 79 ▪ General Terms and Conditions included in contracts used to execute pole
80 attachment
 - 81 ○ Consider audit issues
 - 82 ▪ Burden of costs, who should pay
 - 83 ▪ Access to records
 - 84 ○ Discuss additional fees and charges
 - 85 ○ Explore unauthorized pole attachment charges
 - 86 ○ Identify and consider other issues relating to general terms and
 - 87 conditions

88 Through that process and various meetings the Commission established the
89 general framework for the pole attachment rental formula and outlined some

90 specific terms and conditions that must be accepted as the minimum
91 standard parties could accept. The result of the technical conferences and
92 comments filed by numerous parties is the rule we have today which is R746-
93 345 Pole Attachments.

94 **IV. POLICY CONSIDERATIONS WITH R746-345**

95 **Q. WHEN THE COMMISSION PUBLISHED R746-345 POLE**
96 **ATTACHMENTS DO YOU BELIEVE THERE WERE SOME POLICY**
97 **CONSIDERATIONS INVOLVED WITH THE ADOPTION OF THE**
98 **RULE?**

99 A. Yes. As indicated above there were many different issues discussed in the
100 multi-year process. Specifically, the Commission had to consider if they
101 wanted to use a methodology that would allow for fully allocated costs (as
102 argued by RMP) or incremental costs. Another policy consideration made
103 by the Commission with the proposed formula is which costs should be
104 allowed to be recovered in the pole attachment rate and which costs are
105 better suited to be recovered in application fees. In choosing one formula
106 that is applicable to all pole owners, the Division feels the Commission sent
107 a clear message that a preference for a concise, simple and transparent
108 methodology applicable to all pole owners is the desired policy. This policy
109 had many different benefits, first, was to provide fixed timelines and
110 decrease the potential for delay which eliminated uncertainty that could

111 deter infrastructure investment. A second benefit was to provide specific
112 and enforceable remedies to a party requesting access if a pole owner did
113 not comply with the applicable requirements. This eliminated the situation
114 that could surface where, because of time constraints, cost, or the need to
115 maintain a working relationship with pole owners, requesting parties may
116 not wish to pursue an ambiguous enforcement process. Third, by using a
117 single rate formula applicable to all pole owners in the state, any disparity
118 in pole rental rates that distorted service providers' decisions regarding
119 deployment and offering of advanced services was eliminated. The
120 Commission set a policy that promotes the availability of broadband
121 services and efficient competition for those services while responding to the
122 needs of utility pole owners, including the need to protect safety of life and
123 the reliability of their own critically important networks.

124 The Division believes by establishing one formula the Commission has
125 realized many of the benefits described by the FCC in their Pole
126 Attachment Order when discussing the benefits of a lowered telecom rental
127 rate.

128 "In sum, we conclude that there are substantial benefits that will be
129 derived from adoption of the revised telecom rate, and that these
130 benefits substantially outweigh any costs associated with the rule.
131 Although it is not possible to quantify with precision the benefits and

132 costs based on the information we have before us, and although some
133 of the benefits are not subject to quantification, several sources of
134 gain stand out. For one, largely eliminating the difference in prices
135 charged to cable operators and telecommunications carriers will
136 significantly reduce the extent to which investment and deployment
137 choices by such providers, and competition more generally, are
138 distorted based on regulatory classifications. Reducing the telecom
139 rate to make it closer to uniform with the cable rate will enable more
140 efficient investment decisions in network expansion and upgrades,
141 most notably in the deployment of modern broadband networks. In
142 addition, the change reduces the uncertainty facing third party
143 attachers, and in particular cable companies, as to what charges they
144 are likely to face when they engage in the provision of new advanced
145 services or network upgrades. The new telecom rate also will
146 substantially reduce the incentives for costly disputes by
147 substantially reducing the potential gains that a party can claim by
148 arguing for a favorable attachment definition. At the same time, in
149 defining the new telecom rate we have been mindful of the potential
150 burden of reform on utility ratepayers and the incentives of utilities
151 to continue investing in pole infrastructure, and have accounted for
152 that in setting the new telecom rate.”¹

153 **Q. CAN YOU EXPAND ON THE RATIONALE BEHIND WHY THE**
154 **DIVISION BELIEVES CLEAR POLICIES REGARDING COST**
155 **RECOVERY AND OTHER ISSUES ARBITRATED IN THE POLE**

¹ See Federal Communications Commission Report and Order on Reconsideration In the Matter of Implementation of Section 224 of the Act WC Docket No. 07-245 (Released April 7, 2011) (FCC Report) Page 81

156 **ATTACHMENT DOCKET IS PRESENT IN THE POLE**
157 **ATTACHMENT RULE ADOPTED BY THE COMMISSION?**

158 A. Yes. To understand the clear policy decisions established by the
159 Commission, it is helpful to understand what has happened on the federal
160 level when dealing with pole attachments and how those decisions mesh
161 with the rule we have today.

162 “In section 224 of the Communications Act of 1934, as amended
163 (“Act”), Congress directed the Federal Communications Commission
164 (“FCC”) to “regulate the rates, terms, and conditions of pole
165 attachments to provide that such rates, terms, and conditions are
166 just and reasonable, and . . . adopt procedures necessary and
167 appropriate to hear and resolve complaints concerning such rates,
168 terms, and conditions.” When Congress granted the FCC authority to
169 regulate pole attachments, it recognized the unique economic
170 characteristics that shape relationships between pole owners and
171 attachers. Congress concluded that “[o]wing to a variety of factors,
172 including environmental or zoning restrictions” and the very
173 significant costs of erecting a separate pole network or entrenching
174 cable underground, “there is often no practical alternative [for
175 network deployment] except to utilize available space on existing
176 poles.” Congress recognized further that there is a “local monopoly in
177 ownership or control of poles,” observing that, as found by a FCC
178 staff report, “public utilities by virtue of their size and exclusive
179 control over access to pole lines, are unquestionably in a position to
180 extract monopoly rents . . . in the form of unreasonably high pole

181 attachment rates.” Given the benefits of pole attachments to
182 minimize “unnecessary and costly duplication of plant for all pole
183 users,” Congress granted the FCC authority to ensure that pole
184 attachments are provided on **just and reasonable rates, terms,**
185 **and conditions.**²

186 For almost the last half century, the FCC has been involved in setting rates
187 that meet the standard and objectives outlined by Congress which is to
188 establish just and reasonable rates, terms, and conditions.

189 In 1978, Congress first directed the FCC to ensure that the rates, terms and
190 conditions for pole attachments by cable television systems were just and
191 reasonable when Congress added section 224 to the Communications Act.
192 Although section 224 relied on “cost” as the foundation for determining just
193 and reasonable attachment rates, it is recognized the range of ways that
194 “cost” could be interpreted. In particular, section 224(d)(1) defines a just
195 and reasonable rate as ranging from a statutory minimum based on the
196 additional costs of providing pole attachments to a statutory maximum
197 based on fully allocated costs.

198 As the FCC further explained:

² (FCC Report) page 3.

199 “The additional, or incremental, costs that form the basis for the
200 statutory minimum are the costs that would not be incurred by the
201 utility “but for” the pole attachments. These costs include
202 preconstruction survey, engineering, make-ready, and change-out
203 costs incurred in preparing the pole for attachments. Congress
204 expected a pole attachment rate based on incremental costs to be
205 minimal since most of those costs would have been fully recovered in
206 the make-ready charges already paid by the attacher. The maximum
207 rate for attachments under section 224(d)(1), identified as a
208 percentage of fully allocated costs, reflects a portion of operating
209 expenses and capital costs that a utility incurs in owning and
210 maintaining poles; the percentage is equal to the portion of space on
211 a pole occupied by an attacher”.

212 In a series of orders, the [FCC] implemented a formula that cable
213 television system attachers and utilities could use to determine a
214 maximum allowable just and reasonable pole attachment rate –
215 referred to as the cable rate formula – and procedures for resolving
216 rate complaints. In 1987, the U.S. Supreme Court found that the
217 cable rate formula adopted by the [FCC] provides pole owners with
218 adequate compensation, and thus did not result in an
219 unconstitutional “taking”.³

220 The cable rate was the foundation for the formula used in the current pole
221 attachment rule. By adopting this methodology we believe the Commission
222 was not seeking to define precisely the costs associated with pole

³ (FCC Report) See page 57

223 attachments and have each individual cost evaluated and analyzed allowing
224 for full allocated cost recovery. Rather, in establishing a rental rate the
225 Commission adopted an approach that seeks to define “costs” in a manner
226 that fully compensates the utility for the **marginal cost** of attachment.
227 This balancing of the pole owners needs against attachers desire to have
228 access to the utility owners infrastructure is accomplished in a way that is
229 just and reasonable.

230 Another area where the Commission was clear in their policy and how
231 costs would be recovered by the pole owners was in application fees and
232 make-ready work. In a letter from the Commission dated September 5,
233 2006 clarification was given on which fees are appropriate to be charged in
234 addition to the annual pole attachment rental charge. The Commission
235 direction was as follows:

236 “Pole owners may charge an application fee, actual cost for make ready
237 work (after accepted), and unauthorized attachment fees. Application
238 fees should cover the expected cost of doing the survey and engineering
239 work required to determine what make ready work must be done to
240 accommodate the application. It may be a per pole fee, or it may be
241 charged according to groups of quantities contained in the application.
242 The unauthorized attachment fee shall be the back rent to the last
243 audit plus \$25 per pole. The proposed post construction and removal
244 verification inspection fees cover activities the costs of which the

245 commission believes are to be recovered through the pole attachment
246 rental charge.”

247 Under the cost causation principle, if a customer is causally responsible for
248 the incurrence of a cost, then that customer—the cost causer—pays a rate
249 that covers this cost. For example, if rearrangement or bracketing is
250 performed to accommodate a new attachment, the new attacher is
251 responsible for those costs. Likewise, a pole owner recovers the entire capital
252 cost of a new pole through make-ready charges from the new attacher when a
253 new pole is installed to enable the attachment. By adopting a policy where
254 an application fee is charged that includes the actual costs for the make
255 ready work plus expected costs of doing the survey and engineering to
256 determine what make ready work must be done, the Commission established
257 a policy that follows the cost causation principle of requiring the cost causer
258 to pay for the necessary work. The Division believes this is a sound policy
259 that ensures fair treatment to the pole owners as well as all attachers.

260 Another clear policy determination the Commission adopted with the rental
261 formula is to establish a rate that is just and reasonable in compensating pole
262 owners for the space used by attachers. The FCC in their *Report and Order*
263 *and Order on Reconsideration In the Matter of Implementation of Section 224*
264 *of the Act* released April 7, 2011, is very detailed in explaining the analysis
265 and reasoning behind the upper and lower bound established in determining

266 the new telecom rental rate. Although the Commission did not adopt the
267 telecom rate and instead used the cable rate, the analysis done by the FCC
268 regarding costs is informative and applicable to our Pole Attachment rule.
269 The FCC states specifically, that “the new telecom rate generally will recover
270 the same portion of pole costs as the current cable rate”.⁴ With this new rate
271 the FCC believes the definition of cost used will establish just and reasonable
272 rates. The new telecom rate adopted by the FCC originates from a proposal
273 by Time Warner Telecommunications which asserted that the FCC’s prior
274 telecom rate included costs that bear no relation to the cost of providing space
275 for an attachment. The basic premise is that none of the costs in the telecom
276 rate has anything to do with actually providing space on a pole attachment
277 because a utility would incur those costs regardless of the presence of pole
278 attachments. Time Warner contends to the FCC that those costs should be
279 eliminated from the rate and instead regulatory agencies should determine
280 how much extra a utility must incur to provide non-usable and usable space
281 on poles for pole attachments. Drawing on this conceptual framework, the
282 FCC adopted a revised form of the Time Warner proposal.

283 The revised framework established an upper and lower bound that fit within
284 a zone of reasonableness. For rates to fall within the zone of reasonableness,

⁴ (FCC Report) Page 5

285 the rate order must undertake a reasonable balancing of the investor interest
286 in maintaining financial integrity and access to capital markets and the
287 consumer interest in being charged non-exploitative rates. The FCC defined
288 the upper and lower bound as follows:

289 *Upper-Bound Rate.* To begin identifying the range of reasonable rates
290 that could result from the telecom rate formula, [the FCC] first identify
291 the present telecom rate as a reasonable upper bound. The FCC's
292 current telecom rate formula is based on a fully allocated cost
293 methodology, which recovers costs that the pole owner incurs
294 regardless of the presence of attachments. It includes a full range of
295 costs, some of which...do not directly relate to or vary with the
296 presence of pole attachments. For this reason, this interpretation of the
297 statutory telecom rate formula serves as the upper end of the range of
298 reasonable rates.

299
300 *Lower-Bound Rate.* As the FCC observed in the *Further Notice*, "a rate
301 that covers the pole owners' incremental cost associated with
302 attachment would, in principle, provide a reasonable lower limit." The
303 Eleventh Circuit, in addressing a takings challenge, has held that a
304 pole attachment rate above marginal cost can provide just
305 compensation, and marginal or incremental cost pricing can be an
306 appropriate approach to setting regulated rates more generally.
307 Indeed, section 224(d) establishes such an approach as the low end of
308 permissible rates under the cable rate formula. However, the section
309 224(e) formulas allocate the relevant costs in such a way that simply

310 defining “cost” as equal to incremental cost, would result in pole rental
311 rates *below* incremental cost.

312 In developing the lower bound there were considerations given for including,
313 certain operating expenses mainly maintenance and administrative expenses
314 and usable space, while excluding capital costs, taxes, and costs of unusable
315 space in the definition of “cost”. After a lengthy analysis of why it was
316 applicable to either include or exclude these costs, the FCC reasserted the
317 claim that the telecom rate was just and reasonable.

318 **V. JUST AND REASONABLE RATES**

319 **Q. WHY IS THE FINDING OF JUST AND REASONABLE SO**
320 **IMPORTANT IN THIS CASE?**

321 A. In my opinion just and reasonable is the entire crux of this issue. RMP in
322 its application stated a need to increase rates as allowed by the Pole
323 Attachment Rule. In directly referencing R746-345-5(4)b the rule states:

324 Commission Relief -- A pole owner or attaching entity may
325 petition the Commission to review a pole attachment rental
326 rate, rate formula, or rebuttable presumption as provided
327 for in this rule. The petition must include a factual
328 showing that a rental rate, rate formula or rebuttable
329 presumption is unjust, unreasonable or otherwise
330 inconsistent with the public interest.

331 For RMP to qualify for a rate increase, it must provide factual evidence
332 showing that a rental rate, rate formula, is unjust and unreasonable. Mr.
333 Kent in lines 30-38 of his testimony outlines that RMP is “proposing an
334 additional component to the pole attachment rental rate formula to include
335 the Administrative Support costs the Company incurs to accommodate the
336 joint use of its poles. Second the Company proposes to include as part of
337 Schedule 4, a fee schedule of non-recurring joint use charges that have been
338 in place in contracts since 2002, including contracts recently approved by
339 the Utah Public Service Commission”.

340 Without a specific statement from RMP, the Division is only able to surmise
341 by a brief reference in Mr. Kent’s testimony to the Pole Attachment Rule
342 and the “Commission Relief” section that RMP is alleging that “the rental
343 rate, rate formula or rebuttable presumption is unjust, unreasonable or
344 otherwise inconsistent with the public interest.”

345 Mr. Kent further attempts to illustrate this example by stating “[t]he rate in
346 effect since 2006 does not include Administrative Support costs incurred by
347 the Company for managing joint use attachments to its poles. To the extent
348 joint use fees are less than the costs, electric rate payers unfairly subsidize
349 joint use. If the proposed revision is approved by the Commission, the

350 Company can properly recover the costs from those who are causing the costs,
351 the pole occupants.”

352 **Q. DOES THE DIVISION AGREE WITH MR. KENT’S ANALYSIS ABOUT**
353 **THE JOINT ADMINISTRATIVE COSTS BEING UNRECOVERED IN**
354 **THE RENTAL RATES?**

355 A. It is plausible that joint costs as outlined by Mr. Kent may not be fully
356 recovered in the rental rate used by the Commission, but that is by design with
357 the Pole Attachment Rental Rate. It is quite clear from the approach of the
358 Commission and the adoption of the Pole Attachment Rule that a blended
359 approach was going to be used and applied. Fully allocated cost recovery was
360 never adopted. In fact, it is the opinion of the Division that the Commission
361 never intended to have fully allocated cost recovery included in the rental rate
362 used in the Pole Attachment Rule. As indicated above, one of the
363 considerations when Docket No. 04-999-03 was opened was whether to use a
364 methodology that used fully recoverable costs versus an incremental cost
365 approach. When dealing with pole attachments and the rental rate, the
366 Commission adopted an approach that averages the costs that would be
367 recovered. This averaging means there are some costs included in the formula
368 that could be argued do not result from pole attachers like attorney's fees,
369 human resources amounts, and others, while other costs like Joint Use
370 Administrative Fees may not be recovered through the rental rate. The
371 important distinction is that because some costs may not be fully recovered
372 does not rise to the level of unjust or unreasonable because of the averaging

373 approach adopted by the Commission with the Pole Attachment Rental
374 Formula. If the Commission were to accept the position presented by RMP it
375 would undermine the carefully crafted policy established by the Commission
376 when it adopted the Pole Attachment Rule reverting back to a policy that more
377 closely resembled fully allocated cost recovery. Again let me re-emphasize that
378 it does not appear that RMP is making the argument that the rates are unjust
379 or unreasonable, but instead are suggesting that some costs may not be
380 recovered in the rental rate as calculated by the Commission. Unrecovered is
381 not necessarily unjust when dealing with the Pole Attachment Formula.

382 **Q. IF ROCKY MOUNTAIN POWER IS NOT ARGUING THAT THE RATES**
383 **ARE UNJUST OR UNREASONABLE WHAT JUSTIFICATION DO**
384 **THEY HAVE FOR ASKING FOR A RATE INCREASE?**

385 A. None. According to my reading of the Pole Attachment Rule, RMP has to make
386 a factual petition to the Commission showing how the rates or formula is
387 unjust or unreasonable. If RMP is not arguing that rates are unreasonable,
388 then under the Pole Attachment Rule there is no need to make any
389 adjustments to the rates or formula.

390 **Q. PUTTING ASIDE THE ARGUMENT THAT ROCKY MOUNTAIN**
391 **POWER HAS NOT EXPLICITLY INDICATED RATES ARE UNJUST**
392 **OR UNREASONABLE, DO YOU FEEL THEY HAVE MET THE**
393 **REQUIREMENT OUTLINED IN THE POLE ATTACHMENT RULE?**

394 A. No. Rocky Mountain Power is required to provide a factual showing of why the

395 calculation is not appropriate. Instead of providing an analysis of how the
396 incremental costs for attachments which RMP contends are caused by the
397 attachers exceed the operating costs for a pole that attachers bear with the pre-
398 existing rate, RMP just listed accounts that do not settle to FERC 588. In
399 addition the pole owner did not provide any evidence that separated the joint
400 administrative costs from the administrative costs already included in the rate
401 formula calculation. Instead of data to verify their claims, RMP instead uses
402 theories and possible situations to confirm their point. While it is true you can
403 take one example, “Joint Use Administrative Costs” and make a case that cost
404 causers are not paying for those costs. This narrow approach does not
405 encompass the broad and comprehensive elements included in the rental rate
406 attempting to satisfy the needs of all interested parties. Because RMP’s
407 request lacks any factual evidence to support its claims the Division
408 recommends the Commission adjust out the requested increase amount of
409 \$198,778 plus an additional \$114,316 revenue reduction to reflect the
410 appropriate rental calculation with the information provided by RMP of \$7.02
411 to \$6.34. The total reduction would be \$313,094.

412 The premise the Commission should be looking at to determine if costs are
413 unreasonable or unjust is whether the rate established by the Commission will
414 not allow for the additional costs created by attachers. The Division is not
415 persuaded by the claim that the existing rate will not enable RMP to recover
416 its costs. The rate formula is compensatory and is designed so that utilities
417 will not be cross-subsidizing attachers, as it ensures that utilities will recover
418 more than their incremental costs of making attachments. RMP has provided

419 no evidence indicating that there is any category or type of costs that are
420 caused by the attacher that were not considered when the Commission
421 established the rental formula. Instead it seems that RMP is arguing again for
422 additional costs to be included in the rental formula that the Commission did
423 not include when establishing pole attachment rates before.

424 **VI. POLE OWNERS SUBSIDIZING POLE ATTACHERS**

425 **Q. IN MR. KENT'S TESTIMONY LINES 55-59 HE SUGGESTS A**
426 **SITUATION WHERE ROCKY MOUNTAIN POWER'S RATE PAYERS**
427 **ARE SUBSIDIZING POLE ATTACHERS. DO YOU AGREE WITH HIS**
428 **SCENARIO?**

429 A. No. It is definitely possible to create a scenario where costs could be higher
430 than the rents received, but RMP does not provide any evidence to support that
431 claim. The Division agrees with the conclusion of the FCC when they flatly
432 stated:

433 *No Evidence of Utility Subsidy.* We find no evidence in the record that
434 supports the utilities' assertions that the lower-bound telecom formula
435 results in rates so low that it forces electric ratepayers to subsidize
436 third-party attachment rates. Under economic and legal principles, a
437 given service is not subsidized by other services if the rate for the
438 service produces revenues that cover all of the costs caused by the
439 service. In this case, neither the firm that provides the given service
440 and other services, nor the customers of those other services, are made
441 worse off by the firm incurring costs to supply the service. The given
442 service (*e.g.*, access to poles) does not subsidize other services (*e.g.*,

443 electric service) if its rate produces revenues that cover the
444 incremental costs of providing the service.⁵

445 The rental rate used by the Commission to determine rates, by design, was
446 established to ensure that pole owners are getting revenues higher than the
447 costs of providing that service. It is interesting to note that in the FCC's order
448 utility companies were given opportunities to provide factual information to
449 support the claims of a subsidy and even in that environment with many more
450 companies than just RMP there was "no evidence" to support a claim of
451 subsidization. The Commission should reject the premise that by not
452 allowing the "Administrative Support Costs" as suggested by Mr. Kent, rate
453 payers are subsidizing pole attachers. In this case and in the future, utility
454 owners should be required to provide more than speculation to prove a subsidy
455 exists.

456 **VII. ROCKY MOUNTAIN POWER'S DEVIATION TO THE RENTAL**
457 **FORUMLA USED IN R746-345**

458 **Q. ROCKY MOUNTAIN POWER IS SUGGESTING A CHANGE IN THE**
459 **CALCULATION WHICH SHIFTS REVENUES FROM APPLICATION**
460 **FFES TO AN ADDITIONAL COMPONENT OF THE RENTAL**
461 **FORMULA. DO YOU AGREE WITH THIS CHANGE?**

462 **A.** No. If the Commission accepted these changes as proposed by RMP, a
463 fundamental shift in the policies adopted would be created. First, the

⁵ (FCC Report) Pg 83

464 Commission adopted a policy where make-ready work would be part of the
465 application process. This requirement was important to ensuring, as asked by
466 RMP, that the cost causers are paying for the services required. By requiring
467 RMP to collect these payments and fees for make ready work through
468 application fees instead of rental rates, the Commission is ensuring that the
469 appropriate customers are paying the costs, instead of spreading those make
470 ready costs to all pole attachers. It would seem that if RMP truly wanted to
471 “justly” recover costs, it would have developed better methods to determine the
472 make-ready costs and charge those costs to the appropriate customers in
473 application fees. Instead it appears that RMP does not want to deal with the
474 Commission requirements of attributing the costs to the appropriate party, but
475 instead shift those costs into the rate formula. This would be a bad policy
476 decision that moves away from the cost causation principles adopted in the
477 Pole Attachment Rule. The Commission should reject the proposal by RMP to
478 allow “Administrative Support Costs” in the calculation of the rental rate
479 eliminating the need for Application and Per Pole Fees.

480 **Q. ROCKY MOUNTAIN POWER HAS ALLEGED THAT THEIR**
481 **PROPOSED CHANGES ARE NOT APPROPRIATE FOR A RULE**
482 **MAKING PROCEEDING AND JUST A DEVIATION FROM THE**
483 **RULE AS ALLOWED BY THE POLE ATTACHMENT RULE. DO**
484 **YOU AGREE?**

485 A. No, A basic understanding of mathematics would leave the conclusion that
486 $A+B+C=D$ would not be the same as $A+B+C+Z=D$. The only way to make
487 those two situations possible would be to change the “inputs” for A, B, and

488 C. To put it another way, the Pole Attachment Rule as adopted for the
489 Commission allows for a Space Used, Usable Space, Cost of Bare Pole and a
490 Carrying Charge Rate. The rule does not allow for another “component”
491 which would be the “Joint Use Administrative Rate” component as
492 suggested by RMP. To have that “Joint Use” component added to the
493 formula appears to be a major change to the rule. Such a significant change
494 to the rule would need to be completed within the context of a rule making
495 proceeding and not in a utility rate case.

496 **VIII. ISSUES WITH CHANGING THE POLE ATTACHMENT FORMULA**

497 **Q. WOULD ALLOWING A CHANGE TO THE POLE ATTACHMENT**
498 **FORMULA WITHIN A RATE CASE AS SUGGESTED BY ROCKY**
499 **MOUNTAIN POWER CREATE POLICY ISSUES?**

500 A. Yes. The Pole Attachment Rule is applicable to more utility companies that
501 just RMP. If the Commission (and as discussed before the Division believes
502 there is no reason to include the costs into the calculation) agreed with
503 RMP that the Joint Use Administrative Costs should be included and
504 allowed such a change to occur within a rate case, the Commission would
505 have created a scenario where the applicable rule would only impact RMP
506 and not the other utility companies. To make the changes applicable to all,
507 the Commission would have to open a rule making proceeding to allow

508 comments from all interested parties. Instead of having one formula that
509 clearly applies to all parties, the Commission would have created a
510 situation where regulatory ambiguity exists. Creating this uncertainty
511 seems like bad policy and precedent to be setting. Therefore, if the
512 Commission believes the costs suggested by RMP need to be considered, the
513 Division would recommend the Commission open a rule making to address
514 the additional costs and if they are just and reasonable.

515 IX. OTHER CONCERNS

516 **Q. DOES THE DIVISION HAVE OTHER CONCERNS WITH THE**
517 **APPLICATION OF ROCKY MOUNTAIN POWER?**

518 A. Yes, the Division is disappointed that almost four years after Docket No.
519 04-999-03 RMP has not filed or provided to the Commission what would be
520 the “Standard Contract” as contemplated in the Pole Attachment Rule. The
521 Commission should require RMP to submit a contract that would
522 encompass all the direction and rulings provided by the Commission.

523 A simple example will illustrate why this step is vital. The Division
524 reviewed the tariffs filed by RMP in Dockets No. 10-035-42, 10-035-59, and
525 10-035-61 in addition to Mr. Kent’s Testimony lines 76-88. In each of those
526 dockets and in Mr. Kent’s testimony the “Unauthorized Attachment” fee

527 was set at \$100 in addition to back rent. Generally, the Division feels that
528 terms and conditions agreed upon between two parties in a negotiation can
529 involve a variety of give and take. Companies may determine to pay more
530 for a fee that they believe will not be applicable to their company for a
531 concession that is more important in another part of the contract. With
532 that general understanding of contract negotiation, the Division finds it
533 difficult to believe that a rational company who is negotiating from close to
534 an equal level of power would agree to a 300% increase to a fee ordered by
535 the Commission as a minimum acceptable level. A more plausible answer
536 to the increase is that the companies negotiating did not realize that the
537 Commission had directed rates for Unauthorized Attachments to be \$25
538 plus back rent.

539 The Division is confident that if RMP had provided to the Commission and
540 attaching parties a Standard Contract that incorporated all of the direction
541 and suggestions provided by the Commission, the disparity in pole
542 attachment contracts would not exist.

543 As a remedy to the above situation, where companies are unfamiliar with
544 all the terms and conditions agreed upon in Docket No. 04-999-03 the
545 Commission should require RMP to file a Standard Contract that embodies
546 all the items discussed by the Commission by a specific date. Additionally,

547 the Division recommends the Commission place a monetary penalty to RMP
548 for failure to file a Standard Contract by the specific date chosen by the
549 Commission. Past history has shown RMP has either been unwilling or
550 indifferent to following the Pole Attachment Rule, so accepting on good
551 faith that a contract will be filed seems hopeful at best.

552 **Q. IS THERE ANOTHER REASON THE DIVISION FEELS A**
553 **STANDARD CONTRACT IS NECESSARY FOR THE POLE**
554 **ATTACHMENT RULE TO WORK EFFECTIVELY?**

555 A. Yes, because of the changing telecommunications marketplace, access to
556 poles is vital for a number of companies. Broadband providers may be
557 unable to reach customers, cable companies' business plans would be
558 drastically impacted and wireless companies service quality would suffer
559 without access to poles. Because utility pole owners are monopoly owners,
560 companies may be unwilling or for smaller firms financially unable to
561 litigate the terms and conditions of pole attachment contracts. Because
562 pole access is vital companies may not negotiate vigorously and risk costly
563 delays or outright denial of access to poles. Because of this dynamic,
564 negotiations could easily be done where the utility owner sets the terms and
565 conditions with a "take it or leave it" proposition. With a Standard
566 Contract the negotiating party would know there is an acceptable starting

567 point that the Commission has deemed appropriate, minimizing the “take it
568 or leave it” posture of pole owners.

569 **X. CONCLUSION**

570 **Q. WHAT IS THE DIVISION’S RECOMMENDATION FOR THIS**
571 **PETITION?**

572 A. The Division recommends the Commission adjust out the revenues requested
573 by RMP by \$313,094. RMP has made no factual showing that the current
574 rental calculation is unjust or unfair, therefore there is no basis for adjusting
575 the formula.

576 If the Commission believes that RMP has shown that Joint Use Administrative
577 Costs should be included within the Pole Attachment Formula, the Division
578 believes the subsequent costs and impact to the formula should be moved to a
579 separate docket where the appropriate level of costs can be determined.

580 The Division recommends the Commission require RMP to file a Standard
581 Contract with the Commission no later than 60 days after the final order in
582 Docket No. 10-035-124. This filing would meet the requirement as
583 contemplated at the conclusion of Docket No. 04-999-03 and in the Pole
584 Attachment Rule. Additionally, the Commission should impose monetary
585 penalties if RMP does not meet the filing deadline suggested above.

586 The Commission should not accept the current contract filed by RMP as the
587 Standard Contract. There are fees and charges that do not reflect the
588 decisions of the Commission. Additionally, RMP has indicated that the
589 changes it proposed are ones that its customers have shown an interest in
590 having included. While the Division does not believe it is wrong for elements
591 of a contract to be negotiated according to the needs of a company, using that
592 changed and negotiated contract as the “Standard Contract” is bad policy.

593 The Commission spent numerous years dealing with the rental formula and
594 drafting a rule that would balance the needs of the investors of utilities against
595 the need of pole attachers for rates that are fair and just. In the opinion of the
596 Division the Commission crafted a rule that strikes the appropriate balance
597 between allowing pole owners to recover their costs of providing the service
598 while allowing for more certainty in the costs and fees attachers would pay for
599 using the infrastructure of the utility company. Accepting the proposals by
600 RMP to shift costs away from application fees and including those into the Pole
601 Attachment Formula is diverging away from the crafted policy embarked upon
602 by the Commission four years ago. The Commission has adopted a
603 methodology that is just and reasonable and should continue to adhere to that
604 policy by rejecting the petition of RMP for a rate increases.

605 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

606 A. Yes it does.