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Department of Commerce
Division of Public Utilities

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MEMORANDUM

To: Public Service Commission

From: Division of Public Utilities
Philip Powlick, Director
Artie Powell, Manager, Energy Section
Joni Zenger, Technical Consultant
Hsienming Liu, Utility Analyst

Date: June 24, 2010

Re: PacifiCorp's Application for Approval of Standard Non-reciprocal Pole Attachment Agreement, Docket No. 10-035-43

RECOMMENDATION: The Division believes that more evidence and investigation in this matter is needed. Therefore, the Division requests that the Commission issue a Scheduling Order to set dates for testimony, rebuttal, and a hearing involving all interested parties.

BACKGROUND

On April 26, 2010, PacifiCorp (dba Rocky Mountain Power) filed an Application for Approval of Standard Non-reciprocal Pole Attachment Agreement. The Division made a preliminary determination that the proposed Agreement contains several major changes that are likely to affect those seeking to attach equipment to the Company's poles, and therefore on April 29, 2010 filed comments requesting that the Commission issue a scheduling order so that interested parties would have an opportunity to file comments. The Commission issued an Order in this matter on May 17, 2010, in which it requested comments from interested parties, and on May 25, 2010, the Commission extended the deadline for parties to file comments until June 15, 2010. Comments

were filed by Comcast Phone of Utah (Comcast), the Utah Rural Telecom Association (URTA), Frontier Communications Corporation (Frontier), and NextG Networks of California (collectively, the parties).

ISSUE

The Company's application requests that its proposed non-reciprocal standard form Pole Attachment Agreement (Agreement) be used when cable and/or telecommunications companies want to attach facilities to the Company's distribution poles rather than the Commission-approved standard (Safe Harbor or Standard Agreement) pole attachment agreement that was negotiated by many interested parties in Docket No. 04-999-03. The Safe Harbor agreement was crafted to be used as either a joint-use of pole (reciprocal) or a non-reciprocal agreement.

Under Rule R746-345-3 (A), a pole owner must petition the Commission for any changes, modification, or conditions of its standard contract. The petition for change or modification must include a showing why the rate, term or condition is no longer just and reasonable.

DISCUSSION

In its Application, the Company states that the proposed Agreement is substantially similar to the pole attachment agreements that the Company jointly negotiated with TCG Utah and Leavitt Group Enterprises, respectively.¹ The Company briefly describes these differences. The Company makes no comparison to, and fails to describe any changes in its proposed Agreement that differ from, the Commission-approved Standard Agreement. Further, the Division maintains that the Company has not adequately explained why the changes or modifications in the proposed agreement that differ from the Standard Agreement are justified, or why the current Standard Agreement is no longer just and reasonable.

Finally, all parties identified above submitted comments expressing strong concerns with the Company's proposed pole attachment agreement. The Division reviewed parties' comments and

¹ Docket No. 09-035-22 and Docket No. 10-035-01, respectively.

finds that these changes do affect those parties seeking to attach equipment to the Company's poles. The Company has not provided sufficient evidence to justify the proposed Standard Agreement, and the parties unanimously oppose the Company's Application.

CONCLUSION

The Division requests a Scheduling Conference to be set by the Commission, establishing a date for the Company to file evidence in the form of comments or testimony justifying why its changes to the Standard Agreement are needed, as well as to respond to specific concerns expressed by the parties in this docket. In the Scheduling Order, the Commission should set a date for parties to file responsive testimony or comments based on the Company's testimony, and establish a hearing date. The Division requests that the Commission notify all local exchange communications corporations, cable companies, electric utility companies, and any other pole owner or user in Utah of the existence of this docket and the Scheduling Conference.

cc:

Michael Ginsberg
Patricia Schmid
Michele Beck
Paul Proctor
Dave Taylor
Barbara Ishimatsu
Mark Moench