



State of Utah
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: July 8, 2010

Re: Docket No. 10-035-59, Application for Approval of Pole Attachment Agreement between PacifiCorp and Alliant Techsystems, Inc.

I. ISSUE

On May 11, 2010, PacifiCorp (dba Rocky Mountain Power) filed an Application with the Commission for Approval of a Pole Attachment Agreement between PacifiCorp (Company) and Alliant Techsystems, 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)

The Division recommends that the Commission approve the negotiated contract between PacifiCorp (the Company) and Alliant Techsystems, Inc. (ATK).

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 submitted with this Application, its Electric Service Schedule No. 4 Pole Attachments (Exhibit A). Exhibit B contains nonrecurring charges for various application and inspection fees. 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:

The pole owner and attaching entity may voluntarily negotiate an alternative contract incorporating some, all, or none of the terms of the standard contract or SGAT. The parties shall submit the negotiated contract to the Commission for approval.²

The Division reviewed the Company's Application, the negotiated contract signed by the Parties, and the Commission rules as they pertain to pole attachments. ATK and PacifiCorp jointly negotiated the terms and conditions of the proposed contract. The Agreement was signed on May 7, 2010 by both ATK and by PacifiCorp. The Application for approval of the contract was filed on May 11, 2010.

¹ Rule R746-345-1 (B) 2.

² Rule R746-345-3 Section (B) (1).

The contract is similar to two previously approved Commission pole attachment agreements between PacifiCorp and TCG Utah in Docket No. 09-035-22 and between PacifiCorp and the Leavitt Group Enterprises in Docket No. 10-035-01.

As with the TCG Utah and Leavitt Group Enterprises agreements, the Division notes that there are both substantive and nonsubstantive differences from ATK's Contract and the Standard Agreement. The minor changes consist of consolidation of sections and clarification of the Company's administrative processes.

In addition, the Agreement contains several changes that are substantive and differ from the Commission-approved standard contract. The Division finds that many of the substantive changes were made to reflect updated regulatory requirements and National Electric Safety code requirements. Other changes appear to be an improvement in clarity and simplicity. The Agreement adds additional language to Section 5.01 indemnifying both Parties from any special, indirect, incidental, punitive, exemplary or consequential economic losses, costs, and damages. All of these terms and conditions are reasonable and have been mutually agreed to by both Parties.

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 similar to the changes approved by the Commission in Docket Nos. 09-035-52 and 10-035-01, respectively. Approval of this application will allow necessary communication equipment to be attached to the Company's poles for ATK's information and communication needs.

The Division recommends the Commission approve the Application of Rocky Mountain Power and the accompanying Agreement with ATK. The mutually negotiated terms and conditions of the Agreement are reasonable and in the public interest. With this recommendation, the Division requests that the Commission accept the action request as being closed.

cc:

Dave Taylor, Rocky Mountain Power
Barbara Ishimatsu, Rocky Mountain Power
Mark Moench, PacifiCorp