

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Consolidated)	
Applications of Rocky Mountain Power for)	
Approval of Standard Reciprocal and Non-)	<u>DOCKET NO. 10-035-97</u>
Reciprocal Pole Attachment Agreements)	
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)	<u>REPORT AND ORDER</u>
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ISSUED: November 21, 2012

SYNOPSIS

The Commission approves a settlement stipulation and authorizes changes to Electric Service Schedule 4 and the “Safe Harbor” pole attachment agreement previously approved in Docket No. 04-999-03.

By The Commission:

This matter is before the Commission on the application of PacifiCorp, doing business in Utah as Rocky Mountain Power, for approval of proposed changes to the uniform pole attachment agreement adopted by the Commission in Docket No. 04-999-03, referred to as the “Safe Harbor.” In addition, PacifiCorp seeks approval of a schedule of non-recurring fees to be incorporated into Electric Service Schedule 4 (“Schedule 4”).

PROCEDURAL BACKGROUND

On April 26, 2010, PacifiCorp submitted for Commission approval a proposed standard non-reciprocal pole attachment agreement in Docket 10-035-43. Later that application was consolidated into this docket upon PacifiCorp’s application for approval of a reciprocal pole attachment agreement. PacifiCorp submitted an amended application in this docket on February 9, 2012, proposing changes to the Safe Harbor and Schedule 4, supported by testimony and accompanying exhibits. A

technical conference was held April 26, 2012, in which PacifiCorp explained the amended application and answered questions.

On June 7, 2012, the Commission issued a scheduling order calling for comments by July 25, 2012 and response comments by August 13, 2012. According to PacifiCorp, the parties conducted settlement negotiations after the technical conference and met in a settlement conference on June 25, 2012. On July 20, 2012, PacifiCorp, CenturyLink, and the Utah Rural Telecom Association (“URTA”) filed a motion to extend the comment period by two weeks to facilitate preparation of a settlement stipulation.

On August 6, 2012, PacifiCorp, CenturyLink, URTA, and Electric Lightwave, LLC filed a settlement stipulation (“Settlement”) recommending the Commission accept various changes to the Safe Harbor and to Schedule 4. Two days later PacifiCorp informed the Commission of three additional signatories to the Settlement: the Division of Public Utilities (“Division”), Citizens Telecommunications Company of Utah, and Navajo Communications Company, Inc. The Settlement includes exhibits reflecting the proposed changes to the Safe Harbor and Schedule 4 in “redline” format.

On August 8, 2012, Crown Castle NG West Inc. filed comments stating it declines to join the Settlement and will pursue an agreement with PacifiCorp that is separate from the Safe Harbor.¹ Also on August 8th, Comcast Cable Communications, LLC (“Comcast”) filed comments expressing various objections and concerns regarding the changes to the Safe Harbor advocated in the Settlement. Comcast is the only party opposing the Commission’s

¹ AT&T Mobility PCS filed a similar statement on August 31, 2012.

acceptance of the Settlement. On August 27, 2012, PacifiCorp filed comments responding to Comcast's objections. On October 30, 2012, the Commission held a hearing on the Settlement.

DISCUSSION, FINDINGS AND CONCLUSIONS

We approach review of this Settlement mindful of Utah Code Ann. § 54-7-1 which encourages the informal resolution of matters before the Commission by agreement of the parties. With the exception of Comcast's limited objections to certain aspects of the Settlement, no other party opposes its approval. Notably, the Division and CenturyLink joined PacifiCorp in testifying at the hearing that the Settlement is in the public interest and will result in just and reasonable charges. In particular, CenturyLink notes the perspective it brings to this proceeding includes its roles as both a pole owner and a pole attacher (i.e., a licensee). CenturyLink believes its support of the Settlement represents a balanced perspective. As noted earlier, the Settlement is also supported by various other pole owners and licensees. We now examine Comcast's objections in light of this broad support for the Settlement's approval. Comcast did not present a witness at the Settlement hearing but did offer the comments it filed on August 8, 2012 as evidence. They were received without objection.

I. Overlapping

Comcast objects to a Safe Harbor revision that would restrict a licensee's overlapping in the absence of an application and fee to the pole owner. Under the revision overlapping without an application and fee would be limited to a single 96 (or fewer) count fiber cable or coaxial cable of equivalent diameter and weight. Comcast argues the proposed limit is contrary to the Federal Communications Commission's ("FCC") position that permits, without restriction, overlapping by a party with a primary attachment already in place. Comcast asserts

various state commissions also promote less restrictive overlashing. Comcast specifically references the New York Public Service Commission which has adopted pre-determined load limits under which virtually all of Comcast's overlashes could be placed without PacifiCorp's prior approval.

PacifiCorp argues the revised Safe Harbor language addresses safety and reliability concerns, while at the same time allowing licensees to perform most overlashings without prior evaluation or approval from the pole owner. PacifiCorp maintains the requirements for advance evaluation of overlashings under the revised Safe Harbor are limited to high-risk situations involving high-voltage transmission lines, un-guyed spans, and conductors that are likely to cause ground clearance issues or pole loading issues. Similarly, CenturyLink testifies the 96-fiber threshold is a reasonable approach to balancing safety concerns of the pole owner with the need of the licensee to reinforce facilities in a timely manner. Furthermore, CenturyLink asserts pole owners incur costs to verify that facilities larger than a 96 fiber cable do not necessitate make-ready costs to assure pole lines remain safe. According to CenturyLink, it is reasonable for a licensee to pay an application fee to cover such costs, as the revised Safe Harbor requires. The arguments presented by PacifiCorp and CenturyLink are persuasive. The restriction on overlashing in the revised Safe Harbor reasonably balances safety concerns with the interest of the licensee in accomplishing timely facilities reinforcements.

II. Service Drops

The Safe Harbor revisions would extend to service drops the application and fee requirements currently applicable to various other types of attachments, except that the application and fees may be filed and paid after installation. The revisions also would require

licensees to notify PacifiCorp of the service drop within 30 days after installation. Comcast believes attachers should be permitted to install service drops from an existing pole attachment or an adjacent pole without submitting an application and fee. In Comcast's view, service drops have been, and should continue to be, treated differently than mainline attachments because cable operators have a very brief time in which to install service drops for new customers and because there are key physical differences between distribution and drop poles. Comcast's comments, however, do not identify any such differences. Comcast acknowledges the importance of pole safety and expresses its belief that adequate provisions exist to assure safety in the current Safe Harbor. Comcast does not believe PacifiCorp has proven the need for the new application and fee procedures specified in the revised Safe Harbor.

PacifiCorp, joined by the parties to the Settlement, believes service drops occupying usable space on a pole not previously occupied by the licensee should be subject to rental fees and an after-the-fact application. PacifiCorp argues it is not reasonable for PacifiCorp to be deprived of rental fees simply because the pole space being used is on a drop pole instead of a mainline pole. The parties to the Settlement note the revised Safe Harbor provision does not impede the licensee's ability to provide timely service because no pre-installation application or fee is required. The parties also believe service drops can impact the safety of utility workers, communications workers, and the public. A requirement for timely post-installation notice gives the pole owner an important opportunity to perform safety checks and to follow up on any conditions requiring remediation.

We recognize the importance of licensees being able to respond quickly to requests for service. It is clear, however, the revised Safe Harbor provision will not adversely

affect a licensee's ability to complete a timely service drop attachment. Post-attachment notice to the pole owner through an application is reasonable. We also agree it is appropriate for PacifiCorp to receive a rental fee from the attacher because pole space is being occupied. Finally, it is important the new provisions will provide PacifiCorp a better opportunity to assure the safety of service drops.

III. Rental Charges

Under Section 3.01 of the Safe Harbor, rental fees do not apply until the attachment specified in an application is physically in place. The revised Safer Harbor would apply rental fees from the date PacifiCorp approves the application. Comcast asks the Commission to reject this change as contrary to Utah Admin. Code R746-345-5 which states the pole attachment rental rate shall be "charged as an annual per attachment rental rate for each attachment space *used* by an attaching entity." (Emphasis added.) Comcast argues "use" does not occur until the attachment is physically in place.

PacifiCorp argues once the application has been approved, the space has been reserved for the licensee's immediate or future use. PacifiCorp implies it is appropriate for fees to begin at that time. We find PacifiCorp's interpretation of the rule to be reasonable. PacifiCorp also points out rental fees are only invoiced once per year, on a forward-looking basis and are not pro-rated. Because of this practice, the rental fee will not become due under the revised Safe Harbor until the annual invoice is issued, following the approval of the application. This invoicing practice adds further support for this Safe Harbor revision.

IV. Fees

A. Application Fee

Comcast expresses concern PacifiCorp's proposed application fee of \$55.64 per pole may include double recovery of certain unspecified administrative costs. Comcast, citing a FERC order, asserts if PacifiCorp books the administrative costs of providing application services to a FERC account that is factored into the fully allocated rental rate, PacifiCorp may not recover those same administrative costs in an application fee. While making no specific allegations of double recovery, Comcast urges the Commission to examine closely PacifiCorp's proposed per pole application fee to ensure no double recovery occurs.

PacifiCorp testifies there is no double recovery and asserts the Division's support of the Settlement corroborates this position. Moreover, CenturyLink testifies it investigated the potential for double recovery and is satisfied PacifiCorp's rental rates do not recover the same costs as its application fee. CenturyLink reached this conclusion after studying how PacifiCorp allocates various pertinent costs to FERC accounts. This evidence provides adequate assurance of proper cost recovery, particularly in the absence of any specific allegation to the contrary by Comcast.

B. Unauthorized Attachment Fee

The revised Schedule 4 would increase the fee for unauthorized attachments from \$25 to \$100. The provision for five years back rent remains unchanged. Comcast does not directly oppose the increase, although it expresses the position the current fee is an adequate deterrent. Comcast, however, asks "that the Commission accept the \$100 unauthorized

attachment fee for unauthorized attachments going forward from the date of the Commission's order changing the fee.”²

As to the date from which the fee will apply, PacifiCorp argues a provision of the Safe Harbor, which remains unchanged in the revision, should govern. This provision states the pole owner may charge the licensee the fee specified in the applicable fee schedule, upon discovery of an unauthorized attachment belonging to the licensee. Under this provision, the new higher fee would apply to all unauthorized attachments discovered after the new fee becomes effective. This outcome is appropriate. Comcast offers no reason to insulate an existing unauthorized attachment from the higher fee that is applicable when it is discovered.

PacifiCorp also notes the revised Schedule 4 includes new language excusing the \$100 fee for unauthorized attachments when the attacher presents credible evidence of: 1) rent payments to a putative pole owner, 2) good faith belief of pole ownership, or 3) existence of the unauthorized attachment before January 1, 2007. PacifiCorp, CenturyLink and the Division each testify the new fee waiver provision will not produce controversy among pole owners and attachers working together in good faith. Rather, it will be used to assure those attachers who willfully ignore pole ownership will be subject to the new higher fee.

C. Other Miscellaneous Fees

As with application fees, Comcast urges the Commission to assure PacifiCorp's miscellaneous fees do not recover costs that are already included in the rental or application fees. PacifiCorp testifies the only fees assessed as “miscellaneous” are for costs that are directly recoverable from the attacher. In fact, revised Schedule 4 states miscellaneous fees

² Comments of Comcast Cable Communications, LLC, August 8, 2012, p. 11.

consist of PacifiCorp's actual costs for work necessitated by licensee requests, "not otherwise recovered in the Annual Charge or other fee categories." Consequently, on its face revised Schedule 4 excludes any possible double recovery. We approve the miscellaneous fee as defined in Schedule 4, based upon the tariff language and PacifiCorp's assurance no double recovery of costs will occur.

In conclusion, based upon the evidence presented in support of the Settlement, we find it is in the public interest and will result in just and reasonable charges.

ORDER

The Settlement is approved, including the revisions to Schedule 4 and the Safe Harbor agreement, as presented in the exhibits to the Settlement, effective as of the date of this Report and Order. The revised Safe Harbor shall be available for use prospectively, in lieu of the Safe Harbor previously approved in Docket No. 04-999-03. To facilitate future use of the revised Safe Harbor, PacifiCorp shall file in this docket, within ten days, the revised Safe Harbor agreement approved herein with a notation in the upper right hand corner of each page: "Safe Harbor Pole Attachment Agreement, PSC approved: 11/21/2012." That notation shall be included on all future executed copies of the agreement.

DATED at Salt Lake City, Utah, this 21 day of November, 2012.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg

Commission Secretary

DW# 239036

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of November, 2012, a true and correct copy of the foregoing Notice of Scheduling Conference was served upon the following as indicated below:

By Hand-Delivery:

Division of Public Utilities
160 East 300 South, 4th Floor
Salt Lake City, Utah 84111

Office of Consumer Services
160 East 300 South, 2nd Floor
Salt Lake City, Utah 84111

By Electronic-Mail:

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