



DOCKET NOS. 11-035-198

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Since the Agreement differs from the “safe harbor” pole attachment agreement in Docket 04-999-03 and re-circulated in Docket No. 10-035-97, the Company seeks Commission approval of the Agreement, which pursuant to the Utah Admin. Code requires “rates, terms and conditions that are just and reasonable.” Utah Admin. Code R746-345-1(B)(2).

On January 5, 2012, the Division of Public Utilities (the “Division”) submitted its recommendation to approve the application. The Division states it reviewed the application, the Agreement (along with a comparable agreement in a previously approved docket)<sup>3</sup>, and the Commission’s rules on pole attachments. As set forth in the Application,<sup>4</sup> the Division notes this Agreement is nearly identical to the Centracom Interactive agreement approved in Docket No. 11-035-05. According to the Company, “[m]inor differences exist, such as addition of a table of contents for convenience of the reader and the inclusion of [certain] definitions....” Application at 2, ¶ 2.

The Company also notes that it “modified the sections governing the application process to match its existing business practices in exchange for certain benefits to [First Digital].” Id. 3, ¶ 5(d). For example, Section 2.03 (Reservation of Rights) now explains the conditions under which the Company may reject a pole attachment application, including “default,” and Section 7.02 defines “default.” Agreement at 4, 17. In addition, rents begin to accrue sooner under the Agreement than under the safe harbor agreement; however, the Agreement allows a longer period to pay outstanding invoices (i.e., 45 days compared to 30 days under the safe harbor agreement). See Application at 3, ¶ 5(d). First Digital is also allowed up

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<sup>3</sup> The docket referred to is Docket No. 11-035-05, which involved a pole attachment agreement between the Company and CentraCom Interactive.

<sup>4</sup> See Application, filed December 6, 2011, at 2, ¶ 2.

to 180 days to complete a pole attachment installation; whereas the safe harbor agreement restricts this period to 90 days. See id.

The Division notes other changes -- such as (1) a provision (Section 3.07) that requires First Digital to remove the attachment 10 days sooner than under the safe harbor agreement, if First Digital does not accept the cost of continued attachment; (2) a 90-day written termination period (Section 7.01) during which time First Digital must remove its attachment; and (3) (Section 3.10) which requires First Digital to obtain the necessary public or private permits and licenses for access or use of land upon which the pole being accessed is located. The Division notes these changes “appear to be designed to allow the Company to manage pole attachments more efficiently.” Division’s Recommendation at 3.

The Agreement (Section 3.01) requires First Digital to apply for prior overlashing permission. This is in contrast to the safe harbor agreement. The Company asserts “[t]his change [will] allow[] [the Company] the opportunity to evaluate pole loading prior to overlashing.” Application at 4.

According to the Company, “[t]he Agreement contains . . . updated terms regarding indemnification, credit and insurance, as well as limitations on liabilities and warranties....” Id. First Digital is also required to maintain commercial general liability at limits of \$1,000,000/\$2,000,000, and carry an umbrella policy with limits of \$5,000,000/\$5,000,000. The Company maintains “[t]hese increased requirements reflect changes to economic conditions since 2004.” Id. at 5.

The Division notes that the contract rental rate was calculated using the Company's approved Electric Service Schedule No. 4, which the Company submitted with the Application and which is on file with the Commission. See Division's Recommendation at 4. The Electric Service Schedule No. 4 sets the annual rental rate at \$7.02 per foot of space used.

As opposed to the reciprocal relationship contemplated by the safe harbor agreement, the Division asserts "[t]he . . . Agreement is a non-reciprocal agreement." Division Recommendation at 4. The Company asserts "First Digital . . . is not an [e]xisting [c]ustomer pursuant to the Commission's Order . . . in Docket 09-035-52. As required by that Order, [the Company] has not begun processing applications from First Digital." Application Letter, filed December 6, 2011.

The Division's contends the terms and conditions of the Agreement, including the differences from the safe harbor agreement are reasonable and balanced, but believes the Application should have been filed in a timelier manner. "The Division believes it is in the public interest of providing nondiscriminatory access to the Company's poles to file the application for approval with the Commission in a timelier manner." Division's Recommendation at 4.

The Division finds the Agreement is reasonable and should be approved. "The terms and conditions of the Agreement are, for the most part, consistent with the Commission-approved [s]tandard [a]greement. Where differences occur, they have been mutually agreed to by the [p]arties and are similar to the changes approved by the Commission in Docket No. 11-035-05." Id. at 5.

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ORDER

Having reviewed the application and attachments, and the Division recommending approval, and finding approval of the application and the Agreement to be just and reasonable, and in the public interest, the Commission approves the application and the Agreement. Further, the Commission reminds the Company of its obligation to timely file its applications as discussed herein and as previously ordered by the Commission in Docket No. 09-035-52.

DATED at Salt Lake City, Utah, this 19<sup>th</sup> day of January, 2012.

/s/ Melanie A. Reif  
Administrative Law Judge

Approved and confirmed this 19<sup>th</sup> day of January, 2012, as the Order Approving Pole Attachment Agreement issued by the Public Service Commission of Utah.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg  
Commission Secretary  
D#213771

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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 19<sup>th</sup> day of January, 2012, a true and correct copy of the foregoing was delivered upon the following as indicated below:

By Electronic-Mail:

Rocky Mountain Power  
Attention: Ms. Barbara Ishmatsu ([Barbara.Ishimatsu@pacificorp.com](mailto:Barbara.Ishimatsu@pacificorp.com))  
Mr. Daniel E. Solander ([Daniel.Solander@pacificorp.com](mailto:Daniel.Solander@pacificorp.com))  
*Counsel for Rocky Mountain Power*

By U.S. Mail:

First Digital Telecom LLC  
Attention: Brandon Balmforth  
90 South 400 West  
Salt Lake City, UT 84101

By Hand-Delivery:

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

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

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Administrative Assistant