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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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In the Matter of the Application of  
ROCKY MOUNTAIN POWER for Approval  
of the Pole Attachment Agreement between  
PacifiCorp and NEWPATH NETWORKS,  
LLC

DOCKET No. 12-035-\_\_\_\_

**APPLICATION OF ROCKY  
MOUNTAIN POWER**

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PacifiCorp, doing business in Utah as Rocky Mountain Power (“Rocky Mountain Power” or “Company”) respectfully requests an order under Utah Admin. Code R746-345-3 approving a Pole Attachment Agreement (the “Agreement”) between Rocky Mountain Power and NewPath Networks, LLC (“NewPath” or “Licensee”), dated June 15, 2012, and included as Exhibit A. Each of Rocky Mountain Power and NewPath are referred to as a “Party” and together referred to as the “Parties.”

In support of its Application, Rocky Mountain Power states as follows:

1. Rocky Mountain Power is a public utility in the state of Utah and is subject to the jurisdiction of the Commission with regard to its rates and service. As a public utility that permits attachments to its poles by an attaching entity, Rocky Mountain Power is obligated to provide that service pursuant to the requirements in Utah Admin. Rules, R.746-345 governing pole attachments. Rocky Mountain has previously submitted, and received Commission approval for, non-reciprocal pole attachment agreements with TCG Utah and Leavitt Group Enterprises

(Docket Nos. 09-035-52 and 10-035-01, respectively), as well as with Alliant Techsystems, Break Away Wireless, CentraCom Interactive, First Digital Telecom, and Trappers Loop (Docket Nos. 10-035-59, 10-035-61, 11-035-05 and 11-035-198, 11-035-197, respectively).

2. Communications regarding this Application should be addressed to:

By e-mail (preferred): [datarequest@pacificorp.com](mailto:datarequest@pacificorp.com)  
[Dave.taylor@pacificorp.com](mailto:Dave.taylor@pacificorp.com)  
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Rocky Mountain Power  
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3. Under R746-345-3(B)(1), the parties to pole attachment contracts “may voluntarily negotiate an alternative contract . . . [and] shall submit the negotiated contract to the Commission for approval.” The Agreement was voluntarily negotiated between Rocky Mountain Power and NewPath. The Agreement represents the parties’ agreed-to terms and conditions for NewPath’s attachments to Rocky Mountain Power’s poles in Utah.

4. The Agreement negotiated between Rocky Mountain Power and NewPath is similar to the pole attachment agreements with Trappers Loop and First Digital recently approved in Docket Nos. 11-035-197 and 11-035-198, respectively. Various differences exist that reflect the

particular desires of the respective parties. While the Agreement contains numerous verbiage and clarification differences, substantive differences include the following:

a. The Agreement is limited to 100 Attachments, restricting the applicability of the security requirements.

b. In section 2.01 a provision is added regarding Licensee's overlappings, consistent with the Company's proposal regarding changes to the Safe Harbor agreement in Docket No. 10-035-97.

c. Section 3.01 is revised to be consistent with the Company's practice of invoicing annually.

d. Section 3.02 provides additional terms regarding mid-span poles.

e. Section 3.03 contains different terms regarding service drops.

f. Article VI is revised to address NewPath's particular business structure and business plans.

5. As with other pole attachment agreements approved by the Commission over the last several years, and in addition to the differences described above, the Agreement negotiated between Rocky Mountain Power and NewPath contains terms that differ from the agreement approved by the Commission in Docket 04-999-03 known as the "Safe Harbor." Those differences include the following:

a. The contact rental set forth in the Agreement was calculated using Rocky Mountain Power's Tariff approved as Electric Service Schedule No. 4.

b. The Agreement reflects the non-reciprocal relationship between the Parties in contrast to the reciprocal relationship contemplated by the Safe Harbor agreement.

c. The Agreement excludes Licensee pole top antennas from the definition of Equipment.

d. Rocky Mountain Power modified the sections governing the application process to match its existing business practices in exchange for certain benefits to Licensee. To reduce uncertainty for Licensee, the Agreement section 2.03 enumerates the grounds upon which it may reject an application for attachment and section 7.02 delineates specific events of default. Licensee is allowed a longer period to pay outstanding invoices, from 30 days, per the Safe Harbor Section 5.03, to 45 days in the Agreement, Section 4.04. Furthermore, Licensee receives a much longer time to complete installation of Attachments in Section 3.03 – 180 days instead of 90 days. In the Agreement Section 3.07, if Licensee does not accept the cost to accommodate its continued attachment when requested to relocate, Licensee must remove the attachment within 75 days, rather than the 40 days provided in the Safe Harbor Section 3.12. In addition, the Agreement Section 7.01 modified the Safe Harbor Termination requirements in Article VIII, allowing each Party to terminate the Agreement upon ninety (90) days written notice to the other, within which time Licensee must remove its attachments. Furthermore, the Agreement Section 3.10 adds termination of the permit for any Pole as a remedy for Licensee's failure to timely provide evidence of third party consents, permits, licenses or grants for access to or use of the land upon which a Pole is situated.

e. Section 3.03 of the Agreement varies from Safe Harbor section 3.02 and requires the Licensee to submit an Application within five business days after installation of service drops. This change provides Rocky Mountain Power adequate opportunity to review the installation for compliance with applicable construction standards, and provides a mechanism for Rocky Mountain Power to assess rent for the additional space used.

f. Several provisions were modified to reflect regulatory requirements, industry practice, or National Electric Safety code requirements.

g. The Agreement contains negotiated terms regarding credit and insurance, limitations of liability and warranties, and assignment.

h. Some provisions of the Safe Harbor have been relocated to another place in the agreement, consolidated or otherwise clarified for stylistic purposes. Minor changes from the Safe Harbor agreement are simply non-substantive wording changes. A table of contents was added for convenience.

WHEREFORE, Rocky Mountain Power respectfully requests that the Commission issue an order approving the Agreement submitted herewith and finding the terms and conditions of the Agreement to be just and reasonable and in the public interest.

DATED this 18<sup>th</sup> day of July 2012.

Respectfully submitted,

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Barbara Ishimatsu

*Attorney for Rocky Mountain Power*