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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Rocky Mountain Power for Approval of the Pole Attachment Agreement between Rocky Mountain Power and TDS Baja Broadband

DOCKET NO. 15-035-____

APPLICATION OF ROCKY MOUNTAIN POWER

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 TDS Baja Broadband, LLC (“TDS Baja” or “Licensee”), dated October 22, 2015, attached hereto as Exhibit A. Rocky Mountain Power and TDS Baja are referred to, individually, as a “Party” and together 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, 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 Utah Admin. Rule R.746-345. Rocky Mountain has previously submitted, and received Commission approval for, non-reciprocal pole attachment agreements with many parties, including Zayo Group, LLC, Beehive Broadband, LLC and New Path Networks LLC, in Dockets Nos. 12-035-114, 14-035-26, and 15-035-23, respectively.

2. Communications regarding this Application should be addressed to:

By e-mail (preferred): datarequest@pacificorp.com
bob.lively@pacificorp.com
megan.mckay@pacificorp.com

By mail: Data Request Response Center
Rocky Mountain Power
825 NE Multnomah St., Suite 2000
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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 TDS Baja and represents the Parties’ agreed-to terms and conditions for TDS Baja’s attachments to Rocky Mountain Power’s poles in Utah.

4. The Agreement is substantially the same as the pole attachment agreement with New Path Networks, LLC approved in Docket No. 15-035-23.

5. As with other pole attachment agreements approved by the Commission over the last several years, the Agreement negotiated between Rocky Mountain Power and TDS Baja contains terms that differ from the agreement approved by the Commission on November 21, 2012, in

Docket 10-035-97, known as the “Safe Harbor.” Those differences include, but are not limited to, the following:

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

b. The Agreement excludes Licensee pole-top attachments from the definition of Equipment.

c. 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 the Company may reject an application for attachments 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 3.06 – 180 days instead of 90 days indicated in section 3.08 of the Safe Harbor. In the Agreement section 3.10, if Licensee does not accept the cost to accommodate its continued attachment when requested to relocate, Licensee must remove the attachment within 30 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. The Safe Harbor provides one year from the receipt of notice for Licensee to remove attachments. Furthermore, the Agreement section 3.13 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.

d. Section 3.06 of the Agreement varies from Safe Harbor section 3.02 and requires the Licensee to submit an Application within ten 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.

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

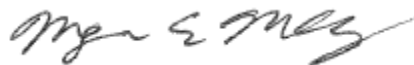
f. The Agreement contains negotiated terms regarding credit and insurance, limitations of liability and warranties, and assignment.

g. Some provisions of the Agreement 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 or are changes negotiated between the parties. 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 find the terms and conditions of the Agreement to be just and reasonable and in the public interest.

DATED this 12th day of November, 2015.

Respectfully submitted,



Megan McKay
Attorney for Rocky Mountain Power

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **APPLICATION for APPROVAL OF THE POLE ATTACHMENT AGREEMENT BETWEEN ROCKY MOUNTAIN POWER AND TDS BAJA BROADBAND, LLC** to be served upon the following by electronic mail to the addresses shown below on November 12, 2015:

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Cheryl Murray
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Carrie Meyer
Supervisor, Regulatory Operations