

- 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	<p style="text-align: center;"><u>DOCKET NO. 15-035-82</u></p> <p style="text-align: center;"><u>ORDER</u></p>
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ISSUED: January 22, 2016

On November 12, 2015, PacifiCorp, doing business as Rocky Mountain Power (“PacifiCorp”) submitted its Application for Approval of the Pole Attachment Agreement between Rocky Mountain Power and TDS Baja Broadband (“Application”). On November 17, 2015, the Commission issued a Notice of Filing and Comment Period, allowing interested parties to submit comments on or before December 14, 2015 and reply comments on or before December 29, 2015. On December 8, 2015, the Division of Public Utilities (“Division”) submitted comments on the Application. On December 28, 2015, PacifiCorp submitted reply comments.

The Application explains the agreement is non-reciprocal and deviates in some respects from the standard contract the Commission approved on November 21, 2012, commonly referred to as the “Safe Harbor Agreement.”¹ The Application notes R746-345-3(B)(1) allows parties to voluntarily negotiate alternative terms, subject to Commission approval, and that the terms proposed in the Application are substantially similar to terms the Commission approved in another docket last year.²

¹ See Report and Order dated Nov. 21, 2012, Docket No. 10-035-97, *In the Matter of the Consolidated Applications of Rocky Mountain Power for Approval of Standard Reciprocal and Non-Reciprocal Pole Attachment Agreements*.

² See Order Approving Pole Attachment Agreement dated April 29, 2015, Docket No. 15-035-23, *In the Matter of the Application of Rocky Mountain Power for Approval of a Pole Attachment Agreement between Rocky Mountain Power and New Path Networks, LLC*.

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In its comments, the Division enumerates deviations in the agreement at issue as compared to the approved “Safe Harbor Agreement.” The Division states that these deviations are reasonable and emphasizes that the parties appear to have freely negotiated and agreed to them. The Division also points out that the rate established in the agreement is culled directly from Electric Service Schedule No. 4, on file with the Commission. The Division concludes the terms and conditions in the agreement are reasonable and balanced and recommends the Commission approve the Application.

The Division points out in its comments that the agreement relies on Utah Admin. Code § R746-310(13), which in turn refers to the 2007 edition of the National Electrical Safety Code (“NESC”). The Division observes the NESC is revised every five years. The Division requested PacifiCorp explain in its reply comments what protocols are in place to review and/or update each standard to meet the most current version of the NESC Code. The Division notes this should “not be a condition for approval of the Application ... because [PacifiCorp] is still in conformance with the current Utah code that references the 2007 NESC.”

In its reply comments, PacifiCorp explained that prior to 2014, individual users performed reviews in order to ensure the most recent NESC standards were being used but the review date was not documented. Since 2014, PacifiCorp has implemented a documentation process in order to document its reviews of its Construction Standards. If the new version of the NESC requires changes to PacifiCorp’s Construction Standards, the standards are issued a new “published and reviewed date.” If the NESC does not require a change, the document will be issued a new review date and no change will be

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made to the published date. PacifiCorp states it has completed a subsequent review of its Construction Standards and identified three minor items that require updating and represents they will be updated accordingly. PacifiCorp suggests the definition of “National Electrical Safety Code” in Utah Admin. Code R746-310-1(B)(13) be changed to refer to “the most current version of the NESC” as opposed to the 2007 version.

ORDER

Having reviewed PacifiCorp’s Application, the agreement at issue, the Division’s comments, PacifiCorp’s reply comments and there being no opposition to the Application, the Commission finds approval of the Application to be just, reasonable and in the public interest. Therefore, the Application is approved. The Commission will initiate a new docket to consider a change to Utah Admin. Code R746-310-1(B)(13).³

DATED at Salt Lake City, Utah, January 22, 2016.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary

DW#271442

³ Parties should note that Utah Code Ann. § 63G-3-201(7)(b) prohibits R746-310-1(B)(13) from referring generally to “the current version of the NESC.” The new docket will be to incorporate by reference the specific version of the NESC now in effect.

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 this written 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 CERTIFY that on January 22, 2016, a true and correct copy of the foregoing was served upon the following as indicated below:

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