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Division of Public Utilities

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## ACTION REQUEST RESPONSE

**To:** Public Service Commission

**From:** Chris Parker, Director  
Artie Powell, Energy Section Manager  
Lori Shelton, Utility Analyst

**Date:** July 4, 2016

**Re:** **Docket No. 16-035-22**, Rocky Mountain Power's Application for Approval of a Pole Attachment Agreement with Mobilitie LLC.

### RECOMMENDATION (APPROVAL)

The Division of Public Utilities ("Division") recommends that the Public Service Commission ("Commission") approve the Pole Attachment Agreement (the "Agreement") between Rocky Mountain Power and Mobilitie LLC.

### ISSUE

On June 2, 2016, PacifiCorp, dba Rocky Mountain Power, filed an Application with the Commission for Approval of the Agreement between Rocky Mountain Power ("Company") and Mobilitie LLC ("Mobilitie" or "Licensee"). Along with the Application, the Company submitted a copy of the Agreement that was negotiated and agreed to, individually, as a "Party" and together as the "Parties," as well as a copy of the Company's Joint Use Distribution Construction Standards and its Electric Service Schedule No. 4.

Under Utah Admin. § R746-345-3(B)(1), the parties to pole attachment contracts may voluntarily negotiate an alternative contract that differs from the Commission-approved pole attachment agreement in Docket No. 10-035-97 (“Safe Harbor Agreement”).<sup>1</sup> However, an alternative contract must be submitted to, and approved by, the Commission. Since the Mobilitie Agreement differs from the Commission’s Safe Harbor Agreement, the Company requests that the Commission issue an order approving the Agreement and finding the terms and conditions of the Agreement to be just and reasonable and in the public interest.

On June 2, 2016, the Commission issued an Action Request to the Division for a review of the Application for Approval of the Agreement. This memorandum is in response to the Commission’s Action Request.

## **DISCUSSION AND FINDINGS**

The Division reviewed the Company’s Application, the Agreement, and accompanying exhibits. The Agreement was voluntarily negotiated between the Company and Mobilitie (Application at 3). The Agreement represents the Parties’ agreed-to terms and conditions for Mobilitie’s attachments to the Company’s poles in Utah (Application at 3). The Agreement is non-reciprocal, as opposed to the reciprocal relationship reflected in the Safe Harbor (Application at 5). The Agreement was signed by Mobilitie on May 17, 2016, and by the Company on May 23, 2016 (Agreement, p. 23). The Company states that the Agreement is substantively the same as the pole attachment agreement negotiated between the Company and New Path Networks, LLC approved in Docket No. 15-035-22<sup>2</sup> and Beehive Broadband, LLC, approved in Docket No. 14-035-26<sup>3</sup> (Application at 4).

The Division notes that the contract rental rate for Mobilitie’s pole attachments, as contained in the Agreement (Exhibit A) was calculated using the Company’s Commission-approved Electric

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<sup>1</sup> Report and Order, 10-035-97, November 21, 2012.

<sup>2</sup> Order Approving Pole Attachment Agreement, 15-035-23, April 29, 2015.

<sup>3</sup> Order Approving Pole Attachment Agreement, 14-035-26, May 7, 2014.

Service Schedule No. 4 First Revision.<sup>4</sup> Per Electric Service Schedule No. 4, the annual rental rate is \$5.76 per foot of space used.

The Division compared the Mobilitie Agreement to the New Path Network Agreement and to the Commission's Safe Harbor Agreement. The Mobilitie Agreement is substantively the same as the New Path Network Agreement. The substantive differences between the New Path Network and Mobilitie Agreements, as compared to the Safe Harbor, include the following:

(1) Significant changes in the Article I Definitions section:

- a. The brief definitions for "Antenna" and "Wireless Telecommunications Facility" were removed and terms with brief definitions were added for "Overlash," "Permitted Purpose," "Security" and "Service Drop."
- b. The "Attachment(s)" definition changed the exception to "...wireless equipment which will be governed under a separate joint use agreement."
- c. The definition for "Cost Estimate" removed the previous statement "Rocky Mountain Power reserves the right to determine when flat rates are applicable according to the specific situation."
- d. The statement "... which have been pre-approved in writing by Rocky Mountain Power in accordance with this Agreement" was added to the "Equipment" definition.
- e. "Periodic Safety Inspection" was removed from the "Inspection" definition.
- f. The "Make-ready Work" definition was reworded adding "Make-ready Work costs are nonrecurring costs and are not contained in carrying charges as defined in the UAR 746345-5-2 (A)(2)(a)."

(2) Significant changes in the Article II Scope of Agreement section:

- a. Section 2.01 Grant of License; Geographic Scope; Permits added two paragraphs to the section documenting the space increments and rental fees consistent with UAR 746-345-5.

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<sup>4</sup> On November 25, 2014, the Company filed a first revision of Electric Schedule 4 and Safe Harbor pole attachment agreement in compliance with the Commission's approve issued in Docket No. 14-035-T13.

- b. Section 2.03 Rejection of Application removed the reason for rejection, “Licensee’s account with Rocky Mountain Power is not current.”
- (3) Significant changes in the Article III Licensee’s Use of Poles section include:
- a. Section 3.01 Application for Permission to Install Attachment added “Licensee may modify, replace, enhance, maintain, and upgrade its Attachments and Equipment without submitting a new Application...” and “...Licensee shall mount the Equipment on the ground or Rocky Mountain may approve and replace the Pole, such Pole replacement in accordance with Section 3.03.”
  - b. Section 3.02 Make-ready Work Process added “Licensee must reimburse Rocky Mountain Power ... Make-ready Work Cost Estimate, regardless of whether Licensee accepts or rejects the Make-ready Work.”
  - c. Section 3.03 Poles Replacement for Licensee’s Benefit added “Rocky Mountain Power may also charge return trip costs to Licensee in accordance with the Fee Schedule (Exhibit A)...”
  - d. Section 3.04 Mid-span Poles added “Nothing herein shall prohibit Licensee from erecting and owning poles in the vicinity of Poles provided ...”
  - e. Section 3.06 Licensee’s Installation Responsibilities requirement changed from five business days to ten.
  - f. Section 3.08 Conformance to Requirements and Specifications removed the Rocky Mountain Power Engineering Handbook as a governing document and added Occupational Safety and Health Administration (OSHA).
  - g. Section 3.10 Interference with Rocky Mountain Power’s Facilities added instructions on accepting or rejecting cost estimates.
  - h. Section 3.11 Expense of Situating Pole Attachment adding licensees’ requirements when using third party entities.
  - i. Section 3.13 Third –party Consents, Permits, Licenses, or Grants adding the licensees’ responsibility for obtaining from public authorities and private owners approval and holds harmless Rocky Mountain Power for all loss and expense that results from Licensee's continued use of the Pole or Pole(s).

- j. Section 3.15 Removal of Attachments by Licensee requirement for submitting notice of removal was changed from five days to ten days.
  - k. Section 3.16 Pole Abandonment requires at least ninety days prior to the date on which it intends to abandon the Pole, instead of the previous thirty days.
  - l. Section 3.20 Emergency Access is a new section added. The section documents the active emergency policy.
- (4) Article IV Billing & Payments; Annual Rent
- a. Previous section 4.02 Attachment Spaces was replaced with Section 4.02 Fee Schedule (Exhibit A) setting flat rates for work or activities performed by Rocky Mountain Power.
- (5) Article V Indemnification; Limitations of Liability; Warranties
- a. Section 5.01 Indemnification/Release added “Further, Licensee hereby releases Rocky Mountain Power ... damages caused by Rocky Mountain Power's ordinary negligence.”
  - b. Section 5.02 Warranty changed the first sentence from “... prudent utility practices.” to “... consistent with industry standard utility practices.”
- (6) Article VI Insurance and Security Requirements
- a. Section 6.01 Insurance - Workers’ Compensation paragraph was replaced with “Rocky Mountain Power does not represent that the insurance coverages specified herein (whether in scope or amounts of coverage) are adequate...”
  - b. Section 6.02 Additional Insurance Requirements added “ii) In the event Licensee receives notice of cancellation of any policy ... Rocky Mountain Power must be notified immediately...”
  - c. Section 6.03 Security the section replaced the previous 6.03 Bonding section.

All of the terms and conditions described above are reasonable and have been mutually agreed to by both Parties. The Company’s Application and request for Commission approval includes the computation of the annual pole attachment rental rate and the Company’s Distribution Construction Standards (EU) that appear to be in conformance with the National Electrical Safety Code requirements. As previously mentioned, the pole attachment rental rate of \$5.76 per

foot of space that was filed with the Application is taken directly from Rocky Mountain Power's Revised Electric Service Schedule No. 4 that is on file with the Commission. Besides the annual rental rate, the tariff includes a schedule of non-recurring fees. The revised Schedule No. 4 fees were previously approved by the Commission, in Docket No. 14-035-T13.

The Division has reviewed the Company's Application, including comparing the Agreement to the previously-approved New Path Network's agreement in Docket No. 15-035-23 and the Commission-approved Safe Harbor pole attachment agreement in Docket No. 10-035-97. As stated previously, each of the terms and conditions of the Agreement, including the changes outlined above and in the Company's Application, were negotiated and agreed to by the Parties. The Division notes that the Company submitted the Application in a timely manner. The Division finds the terms and conditions in the Agreement itself to be reasonable.

## **CONCLUSION**

After reviewing the Company's filing and accompanying documents, the Division finds that the Agreement among the Parties is reasonable and should be approved. The terms and conditions of the Agreement are, for the most part, consistent with the Commission's May 7, 2014 standard Safe Harbor agreement. Where differences occur, they have been mutually agreed to by the Parties and are similar to the changes approved by the Commission in previous dockets. With this memorandum, the Division requests that this action request be closed.

CC Bob Lively, Rocky Mountain Power  
Michele Beck, Office of Consumer Services  
Yvonne Hogle, PacifiCorp