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State of Utah
Department of Commerce
Division of Public Utilities

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ACTION REQUEST RESPONSE

To: Public Service Commission

From: Chris Parker, Director
Artie Powell, Energy Section Manager
Joni Zenger, Technical Consultant

Date: March 27, 2017

Re: Docket No. 17-035-08, Application for Approval of a Pole Attachment Agreement with Rocky Mountain Power and Crown Castle NG West, LLC.

RECOMMENDATION (APPROVAL)

The Division of Public Utilities (Division) recommends that the Public Service Commission (Commission) approve the Agreement between Rocky Mountain Power and Crown Castle NG West, LLC.

ISSUE

On February 8, 2017, PacifiCorp, dba Rocky Mountain Power, filed an Application with the Commission for Approval of a Pole Attachment Agreement (Agreement) between Rocky Mountain Power (Company) and Crown Castle NG West, LLC (Crown Castle or Licensee) (or collectively, "Parties"). On February 9, 2017, the Commission issued a Notice of Filing and Comment Period for interested parties to submit comments on or before March 13, 2017 and reply comments on or before March 28, 2017. Along with the Application, the Company submitted a copy of the Agreement that was negotiated and agreed to by the Parties, as well as a

copy of the Company's Joint Use Distribution Construction Standards and its Electric Service Schedule No. 4.

The Company's Application explains that the Agreement at issue in this docket deviates in some respects from the standard contract (commonly known as the "Safe Harbor" agreement) the Commission approved on November 21, 2012.¹ Under Utah Code Admin. § R746-345-3(B) (1), the parties to pole attachment contracts may voluntarily negotiate an agreement that differs from the Commission-approved Safe Harbor pole attachment agreement. However, an alternative contract must be submitted to, and approved by, the Commission. Since the Crown Castle Agreement differs from the Commission's Safe Harbor, 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 February 8, 2017, the Commission issued an Action Request to the Division to review the Application and make recommendations to the Commission based on the Division's findings. On March 10, 2017, the Division requested a 30-day extension of time to fully investigate this matter. On the same day, March 10, 2017, the Commission approved a 30-day extension and filed an amended notice of filing and comment period, extending public comments to April 10, 2017, with reply comments due on or before April 25, 2017. This memorandum is in response to the Commission's Action Request, as well as its March 10, 2017 request for comments in this matter.

DISCUSSION AND FINDINGS

The Division reviewed the Company's Application, the Agreement, and the Exhibits that accompany the Agreement, including Electric Service Schedule 4 (Exhibit A) and the Company's Distribution Construction Standards for Joint Use (Exhibit B).

The Division determined that the Agreement was voluntarily negotiated between the Company and Crown Castle (Application at 3). The Agreement represents the Parties' agreed-to terms and

¹ Docket No. 10-035-97, Report and Order, November 21, 2012. As a result of the Order, the Company filed its Revised Safe Harbor Pole Attachment Agreement on December 3, 2012.

conditions that will allow Crown Castle to attach telecommunications equipment to the Company's poles in Utah in order for Crown Castle, a Delaware Company, to conduct its telecommunications business in a number of areas in Utah (Application at 3).

The Agreement is non-reciprocal, as opposed to the reciprocal relationship reflected in the Safe Harbor (Agreement, p. 3). The Agreement was signed by both parties on January 18, 2017 (Agreement, p. 21).

The Division compared the Crown Castle Agreement to the Commission's Safe Harbor agreement. Some provisions of the Agreement have been relocated to other sections; other terms have been consolidated or clarified for stylistic purposes. A table of contents was added for convenience. Several other provisions were modified to reflect standard industry practices, regulatory requirements and updated National Electric Safety Code (NESC) requirements.

Other minor modifications from the Safe Harbor include non-substantive wording changes and terms that differ from the Safe Harbor, but that were mutually negotiated between the Parties. The Division did find numerous substantive differences in the Agreement and the Safe Harbor agreement. The Division enumerates these substantive differences below:

1. Unlike the Safe Harbor, the Agreement adds a definition for "antennas" and for "wireless telecommunications facility." The Agreement excludes "pole top attachments" in the definition of Attachments. Section 2.01 specifies that the Agreement does not apply to wireless telecommunications facilities, for which a separate agreement is required (Agreement, pp. 1-3).
2. The Agreement contains a three-part "Inspection" definition that is contained in part in Sections 3.23 and 3.24 in the Safe Harbor. According to the Agreement, there are three types of inspections: pre-construction, special, and audit (Agreement, p. 2). The inspections help the Company ensure the safety and integrity of its poles. Section 3.17 of the Agreement contains the terms for inspections and audits. The re-organization of these terms in the Agreement improves the ease and readability of the contract.

3. Section 2.01 of the Agreement describes circumstances where overlashing is permissible (Agreement, p. 3). Licensee can overlash one instance of up to 48 or less count fibers without submitting a permit, as opposed to Section 3.01 of the Safe Harbor that allows Licensee to overlash a single 96 or less count fiber without submitting an application.
4. Section 2.03 lists the grounds on which the Company may reject an application for attachments (Agreement, p. 4). This section makes the conditions concise and clear.
5. Section 3.02 includes a lengthy section on make-ready work, which apparently combines Section 3.09 of the Safe Harbor with other sub-parts with the intent of reducing uncertainty to the Licensee (Agreement, pp. 5-6). For example, Licensee is allowed twice as long--180 days instead of 90 days--to complete the installation of attachments in Section 3.06. On the other hand, Section 3.06 of the Agreement requires the Licensee to submit an Application within five, rather than 30, business days after installation of service drops in order to give the Company adequate time to review the installation for compliance with applicable construction standards.
6. Section 3.10 states that if the Licensee does not accept the cost to accommodate its continued attachment when requested to relocate, Licensee must remove the attachment within 30 days (Agreement, p. 9), rather than the 40 days allowed in the Safe Harbor, Section 3.12.
7. Section 3.13 adds termination of the permit for a 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 (Agreement, p. 10).

8. According to Section 4.04, the Licensee must pay all charges within 45 days of the invoice date (Agreement, pp. 13-14), as opposed to the 60 days found in Section 5.03 in the Safe Harbor agreement.
9. Section 5.02 of the Agreement includes express language in all caps and bold regarding the Company's disclaims on all warranties, express or implied, under all circumstances in which the Company will not be liable (Agreement, p. 15). This section takes the place of Section 7.12 in the Safe Harbor.
10. Section 7.03 allows a defaulting party additional time to cure a default if it is diligently pursuing a cure (Agreement, pp. 17-18).
11. Section 8.08 allows assignment of the Agreement without requiring the successor in interest to enter into a new agreement, as long as Licensee obtains prior written consent from PacifiCorp and Assignee agrees to comply with the insurance and bond requirements in the Agreement (Agreement, p. 19).

The Division finds that many of the changes in the Agreement that differ from the Safe Harbor appear to be designed to allow the Company to manage pole attachments more efficiently and to provide more certainty to the Licensee who desires to attach to the Company's poles. Where substantive changes to the Safe Harbor have been made, the changes have been balanced for the most part with the Licensee and the Company. The Division believes the terms described above are reasonable and, as previously stated, 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 of \$5.76 per foot of space, which is taken directly from the Company's First Revision to Electric Service Schedule No. 4 that is currently on file with the Commission² and is attached as Exhibit A to the Agreement. Besides the annual rental rate, the

² On November 25, 2014, the Company filed a first revision to Electric Schedule 4 in compliance with the Commission's Order issued in Docket No. 14-035-T13. The revision became effective on December 25, 2014.

tariff includes a schedule of non-recurring fees that were approved by the Commission in Docket No. 10-035-97.³

The Company's Distribution Construction Standards for Joint Use have been reviewed and/or revised as recently as June 29, 2016. In response to the Division's inquiry regarding the Company's procedures for documenting and updating its construction standards in Docket No. 15-035-82, the Company reported that it now has procedures in place to review, update, and document revisions to its Construction Standards.⁴ The joint use standards have varying dates of revision and appear to be in conformance with the most recent NESC requirements as well as the Company's own procedures for reviewing and documenting updates to its construction standards. The NESC standards are revised every five years to keep the code up-to-date and viable, and the 2017 NESC will be published in August of this year.⁵ The Division points out that the Company will need to review and update its Distribution Construction Standards later this year to ensure the latest engineering standards and best practices are in place for the safe operation of the Company's electric power lines and to protect those workers who access the lines to install pole attachments.⁶

The Division notes that the Company submitted its Application in a timely manner. The Division finds the terms and conditions in the Agreement itself to be reasonable and balanced. The approval of this Application is in the public interest, as granting Crown Castle access to the Company's poles through this Agreement will allow Crown Castle to conduct its telecommunications business in a number of areas within the state of Utah.

CONCLUSION

After reviewing the Company's filing and accompanying documents, the Division finds that the Agreement between the Parties is reasonable and should be approved. The terms and conditions

³ Docket No. 10-035-97, Report and Order, November 21, 2012.

⁴ Docket No. 15-035-82, Rocky Mountain Power Reply Comments, December 28, 2015.

⁵ <http://standards.ieee.org/about/nesc/index.html>.

⁶ For example, one of the NESC revisions from 2012 to 2017 includes requiring a 40" vertical clearance from communication cables in the communication space if a luminaire is not effectively grounded. http://standards.ieee.org/about/nesc/nesc_2017_brochure.pdf.

of the Agreement are, for the most part, consistent with the Commission approved Safe Harbor agreement. Where differences occur, they have been mutually agreed to by the Parties. With this memorandum, the Division requests that this Action Request be closed.

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