

- 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 Crown Castle NG West, LLC	<u>DOCKET NO. 17-035-08</u>
In the Matter of the Application of Rocky Mountain Power for Approval of the Pole Attachment Agreement for Small Cells between Rocky Mountain Power and Crown Castle NG West, LLC	<u>DOCKET NO. 17-035-09</u>
In the Matter of the Application of Rocky Mountain Power for Approval of the Pole Attachment Agreement for Small Cells between Rocky Mountain Power and NewPath Networks, LLC	<u>DOCKET NO. 17-035-10</u> <u>ORDER</u>

ISSUED: May 16, 2017

BACKGROUND

On February 8, 2017, PacifiCorp, doing business as Rocky Mountain Power (PacifiCorp), submitted the above filings (Applications) with the Public Service Commission of Utah (PSC). PacifiCorp's Applications request the PSC to approve the pole attachment agreement, dated January 18, 2017, between PacifiCorp and Crown Castle NG West, LLC (Docket No. 17-035-08); the pole attachment agreement for small cells, dated December 21, 2016, between PacifiCorp and Crown Castle NG West, LLC (Docket No. 17-035-09); and the pole attachment agreement for small cells, dated December 21, 2016, between PacifiCorp and NewPath Networks, LLC (Docket No. 17-035-10).

On February 9, 2017, the PSC issued a notice, allowing interested parties to submit comments on or before March 13, 2017 and reply comments on or before March 28, 2017. On

March 10, 2017, the Division of Public Utilities (DPU) requested to extend the comment deadline to April 10, 2017. The PSC thereafter extended the comment deadline to April 10, 2017 and reply comments to April 25, 2017.

On March 27, 2017, the DPU recommended approval of the pole attachment agreement in Docket No. 17-035-08. The DPU observes the agreement excludes any pole top attachments and specifically requires a separate agreement for such attachments. The DPU outlined several substantive changes in the agreement from the PSC-approved Safe Harbor Agreement in Docket No. 10-035-97. The DPU concludes these changes appear to be designed to allow PacifiCorp to manage pole attachments more efficiently and to provide more certainty to Crown Castle NG West, LLC, thus balancing the interests of both parties involved. The DPU believes the agreement is both reasonable and, for the most part, consistent with the Safe Harbor Agreement. Accordingly, the DPU recommends approval of the agreement.

On April 7, 2017, the DPU recommended approval of the pole attachment agreement in Docket No. 17-035-09. The DPU asserts the agreement is substantially similar to the agreement in Docket No. 17-035-08, with exception that in this docket there are small cell and Wi-Fi antenna attachments rather than wireline attachments. The agreement in this docket excludes wireline attachments and states small cell attachments do not supercede the existing agreement between the parties for wireline or other types of attachments other than small cell attachments. The DPU concludes the agreement's terms and conditions are generally consistent with the changes noted in Docket No. 17-035-08 discussed above with the addition of sections on Radio Frequency (RF), Interference, and Emergencies; signage for RF equipment; and required government approvals. Accordingly, the DPU recommends approval of the agreement.

In addition to its recommendation above, the DPU notes in meeting with PacifiCorp regarding these applications, PacifiCorp described plans to develop a common application guideline for Berkshire Hathaway Energy (BHE) companies, including PacifiCorp, by the end of 2017.

On April 10, 2017, the DPU filed a recommendation in Docket No. 17-035-10. The DPU contends the agreement is reasonable and is mutually agreeable to the parties and recommends its approval.

The DPU further explains that while this is PacifiCorp's third small cell pole attachment application to come before the PSC, these kinds of attachments are expected to grow as wireless technologies and small cell devices increase. The DPU notes that the recent small cell agreements all contain provisions addressing safety, emergency procedures, and radio frequency emissions not contained in the Safe Harbor Agreement. Additionally, the DPU notes the small cell agreements have included cellular communications site installation guidelines, and Wi-Fi antenna installation guidelines. The DPU notes PacifiCorp has not expressly requested approval of these guidelines in its filing, but expresses they are an integral part of the safety and installation of these devices.¹ In addition, the DPU recommends that the PSC consider

¹ The Division recommends that, in the future, if the PSC continues to receive numerous pole attachment applications for small cell attachments, it revisit the Safe Harbor Agreement and/or develop a separate PSC-approved contract for these types of wireless devices that attach to PacifiCorp's and other utility poles.

In the alternative, the DPU recommends the PSC amend the pole attachment rule to specify certain conditions pertaining to the nature of small cell and wireless attachments. The DPU contends that clarity in the pole attachment rule (Utah Admin. Code R746-345-2.E) may provide greater specificity as to which type of attachments are allowed and possibly obviate future complaints such as the one that arose in Docket No. 16-035-41.

See Division's Action Request Response at 8, filed April 10, 2017.

developing a separate Safe Harbor agreement for wireless devices or amend the pole attachment rules to clarify what types of devices should be allowed to be attached.

No party filed reply comments.

DISCUSSION, FINDINGS, AND CONCLUSIONS

The Applications explain the pole attachment agreements are non-reciprocal and they deviate in some respects from the standard agreement the PSC approved on November 21, 2012 in Docket No. 10-035-97, commonly referred to as the Safe Harbor Agreement.² The Applications note Utah Admin. Code R746-345-3(B)(1) allows parties to voluntarily negotiate alternative terms, subject to PSC approval.

In its comments, the DPU enumerates all substantive deviations in the agreements at issue as compared to the Safe Harbor Agreement. The DPU states that these deviations are reasonable, emphasizing the parties freely negotiated and agreed to the terms. The DPU also points out that the rental rates established in the agreements are calculated directly from, and comply with Electric Service Schedule No. 4, on file with the PSC. The DPU concludes the terms and conditions in the agreements are reasonable and recommends approval of the Applications.

Regarding the small cell and Wi-Fi attachments the DPU anticipates will increase in the future, the DPU recommends PacifiCorp file, with the PSC, its standardized plan, which should be available by the end of 2017.

² See *In the Matter of the Consolidated Applications of Rocky Mountain Power for Approval of Standard Reciprocal and Non-Reciprocal Pole Attachment Agreements* (Report and Order, issued November 21, 2012), Docket No. 10-035-97.

ORDER

Having reviewed PacifiCorp's Applications, the agreements at issue, the DPU's comments and recommendations, and there being no opposition to the Applications, we find approval of the Applications to be just, reasonable and in the public interest. Therefore, we approve the Applications.

Further, we direct PacifiCorp to keep the DPU informed of its progress towards developing a common application within the Berkshire Hathaway Energy companies.

DATED at Salt Lake City, Utah, May 16, 2017.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DW#294020

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 PSC 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 PSC 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 PSC'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 May 16, 2017, a true and correct copy of the foregoing was delivered upon the following as indicated below:

By Electronic-Mail:

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