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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: April 7, 2017

Re: Docket No. 17-035-09, Application for Approval of a Pole Attachment Agreement for Small Cells 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 Pole Attachment Agreement for Small Cells 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) for Small Cells 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. In its Application, the Company submitted a copy the Agreement that was signed by the Parties, the Company's Electric Service Schedule No. 4, the Company's Cellular Communications Site Installation Guidelines, and the Company's Wi-Fi Antenna Installation Guidelines.

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) that the Commission approved on November 21, 2012.¹ However, pursuant to the Utah Code Admin. § R746-345-3, 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. The Company points out in its Application that pursuant to Utah Code Admin. § R746-345, the Company is obligated to provide the service requested by Crown Castle, and that the Commission has previously approved similar agreements that the Company has filed with other parties that differ from the Safe Harbor.

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 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 following exhibits that accompany the filing: the Company's Electric Service Schedule 4 (Exhibit A), the Company's Cellular Communications Site Installation Guidelines (Exhibit B), and the Company's Wi-Fi Antenna Installation Guidelines (Exhibit C). In addition, the Division met with the Company on March 20, 2017, to obtain further information and clarification on questions pertaining to the filing.

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.

The Division finds that the Agreement was voluntarily negotiated between the Company and Crown Castle, a New Jersey Limited Liability Corporation (Application at 3). The Agreement was signed by Crown Castle on December 15, 2016 and by the Company on December 21, 2016 (Agreement, p. 22). The Division notes that the Agreement was filed in a timely manner.

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 Commission.² Besides the annual rental rate, the tariff includes a schedule of non-recurring fees that were approved by the Commission in Docket No. 10-035-97.³

The Agreement is non-reciprocal, as opposed to the reciprocal relationship reflected in the Safe Harbor (Agreement, p. 3). The Agreement spells out the terms and conditions that will allow Crown Castle to attach equipment to the Company's distribution poles to be used for the transmission of wireless technology communications in Utah (Application at 4).

The Division points out that the Company and Crown Castle signed a separate pole attachment agreement for wireline attachments in Docket No. 17-035-08,⁴ which was filed on the same date as this Application and is also before the Commission. The Division compared the Agreement to the Commission's Safe Harbor agreement, as well as to the Crown Castle wireline agreement in Docket No. 17-035-08.

The Agreement itself is substantially similar to the wireline agreement in Docket No. 17-035-08, with exceptions for differences in the nature of the attachments—small cell and wi-fi antenna attachments rather than wireline attachments.

The Agreement defines small cells as follows:

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.

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

⁴ Docket No. 17-035-08, 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, February 8, 2017.

"Small Cells" mean Licensee-controlled installation of low-powered radio frequency access nodes on Rocky Mountain Power Poles that sends and/or receives radio frequency signals, including those that operate in licensed and unlicensed spectrum. Small Cells may include, but are not limited to, technologies such as distributed antenna systems (Agreement, p. 3).

The Docket No. 17-035-08 agreement excludes antennas and pole-top attachments in its definition of attachments and expressly states that all wireless attachments must be handled through a separate agreement (Section 2.02). Similarly, the Agreement in this Application expressly excludes Licensee wireline attachments (Agreement, p. 4). Section 9.01 states that the Agreement for attachments of small cells does not supersede existing agreements between the Parties for wireline or other types of attachments other than small cells (Agreement, p. 19).

Portions of the Agreement that differ from the Safe Harbor are similar to the changes that were agreed to and filed in the Crown Castle wireline docket. The relocation and consolidation of the sections are the same in the Agreement in this docket, including the addition of the table of contents. The same sections were modified here to match the Company's current business practices. The installation terms, insurance and liability provisions, and other changes from the Safe Harbor are similar to those the Division outlined in Docket No. 17-035-08.⁵

Unlike the Safe Harbor or the Crown Castle agreement in Docket No. 17-035-08, the Agreement contains an additional chapter on Radio Frequency (RF), Interference, and Emergencies (Article IV). The Company explained, at the March 20, 2017 meeting referenced above, that it has a Company-wide RF safety program in place.⁶ The Company also adheres to the Federal Communications Commission's (FCC) guidelines for human exposure to electromagnetic fields, known as General Population Maximum Permissible Exposure (MPE) limits.⁷ The Company explained that a person standing on the ground below Crown Castle's attachment site would be exposed to RF emission levels below the FCC's MPE limit. However, Crown Castle employees

⁵ Docket No. 17-035-08, Comments from the Division of Public Utilities, March 27, 2017.

⁶ Small Cell Wireless Attachments, Joshua Jones and TJ Golo, handout at March 20, 2017 meeting with the Division.

⁷ FCC Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, ET Docket No. 93-62, August 1, 1996. www.Fcc.gov.

or contractors installing the attachments will most likely be directly in front of the antennas, in the Hot Zone, where RF exposure exceeds FCC safety limits. The Company adheres to guidelines that require individuals working near or in front of antennas to receive appropriate RF safety training. The RF chapter in the Agreement provides specific guidelines for grounding, safety training, and emergency planning.

At the meeting, the Company provided pictures and examples of small cell attachments with diagrams of possible antenna locations on distribution poles.⁸ This information, as well as detailed site installation guidelines identifying the Hot Zone (a.k.a. High Energy Field) is contained in Exhibit B to the Agreement.

In addition, the Agreement contains specific sections that require clearly visible signage for RF equipment (Section 4.06), as well as terms that ensure that the Licensee has obtained all required governmental approvals before attaching small cells or antennas to the Company's poles (Section 2.04). In order to account for the additional risk associated with small cell attachments, the Agreement contains more stringent terms than the Safe Harbor with respect to the following: the Insurance and Bonding Requirements (Agreement, p. 16), and the Security Indemnification, and Assignment Requirements (Agreement, pp. 15-18). These terms protect the Company for obligations borne by the Licensee and in the event of negligence by the Licensee. The Division believes these measures are appropriate and necessary in circumstances where RF emitting technologies, like small cells, are attached to the Company's distribution poles.

At the Company's meeting with the Division, the Company's engineer, Mr. Joshua Jones, described plans to develop a common application guideline for Berkshire Hathaway Energy (BHE) Companies, including Rocky Mountain Power, Pacific Power, NV Energy, and MidAmerican Energy Company.⁹ The Company plans to align its handbook by August of 2017 and integrate the handbook across the BHE Companies by the end of 2017. The Division

⁸ Id.

⁹ Id. at p. 19.

recommends that the Company provide copies of the standardized BHE guidelines to the Commission upon completion.

The Division believes the terms described above in the Agreement are generally reasonable and, as previously stated, have been mutually agreed to by both Parties. The approval of the Application is in the public interest, as granting Crown Castle access to the Company's poles through the Agreement will allow Crown Castle to conduct its 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 of the Agreement are generally consistent with the Commission approved Safe Harbor agreement and with the Parties' agreement with Crown Castle in Docket No. 17-035-08, with the noted exceptions for the different types of attachments. The Division recommends that the Company provide copies of its standardized BHE guidelines upon completion. 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