



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 10, 2017

Re: Docket No. 17-035-10, Application for Approval of a Pole Attachment Agreement for Small Cells with Rocky Mountain Power and NewPath NG West, LLC.

RECOMMENDATION (APPROVAL WITH CONDITIONS)

The Division of Public Utilities (Division) recommends that the Public Service Commission (Commission) approve the Agreement for Small Cells between Rocky Mountain Power and NewPath NG West, LLC. The Division also recommends that the Commission consider 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.

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 NewPath NG West, LLC (NewPath 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 NewPath, 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

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.

with the Company on March 20, 2017, to obtain further information and clarification on questions pertaining to the filing.

The Division notes that the Company's Application was sparse—four paragraphs, one of which contained contact information. The Division requests that the Company provide more information in its future applications, including the approximate number of attachments being requested, the similarity or differences from previous Company pole attachment agreements, and a broader explanation of the terms of the agreement that differ from the Safe Harbor agreement.

The Division finds that the Agreement was voluntarily negotiated between the Company and NewPath, a New Jersey Limited Liability Corporation (Application at 3). NewPath signed the Agreement on December 15, 2016, and the Company signed it 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 NewPath to attach equipment to the Company's distribution poles to be used for the transmission of wireless technology communications in Utah (Application at 2).

The Division points out that the Company and NewPath have signed previous pole attachment agreements for wireline attachments in Docket No. 12-035-89⁴ and in Docket No. 15-035-23.⁵

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. 12-035-89, Application for Approval of a Pole Attachment Agreement for Rocky Mountain Power and NewPath Networks, July 12, 2012.

⁵ Docket No. 15-035-23 Application for Approval of a Pole Attachment Agreement for Rocky Mountain Power and NewPath Networks, March 5, 2015.

The most recent pole attachment agreement for small cells between the Company and New Path NG West LLC in Docket No. 17-035-08⁶ was filed the same day as this Application and is currently before the Commission.

The Division compared the Agreement to the Commission's Safe Harbor agreement, as well as to the NewPath 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 definitions in the Agreement state that "Attachments" will be for Equipment used for the transmission of wireless technology communications (Agreement, p. 1). The definition of "Equipment" excludes power supply equipment (Agreement, p. 2). The Agreement defines small cells as follows:

"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 NewPath 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

⁶ 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 NewPath NG West LLC, February 8, 2017.

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. 17-035-08.⁷

Unlike the Safe Harbor or the NewPath agreement in Docket No. 17-035-08, the Agreement contains a chapter on Radio Frequency (RF), Interference, and Emergencies (Article IV). The RF chapter in the Agreement provides specific guidelines for grounding, safety training, and emergency planning. The Company explained at the March 20, 2017 meeting referenced above⁸ that it has a Company-wide RF safety program in place that it complies with. The Company also and adheres to the Federal Communications Commission's (FCC) guidelines for human exposure to electromagnetic fields that, among other things, require individuals working near or in front of antennas to receive appropriate RF safety training.⁹ Exhibit B to the Agreement contains diagrams and explanations of the areas where antenna structures can be placed on the Company's distribution poles.

The Agreement contains specific sections that require clear and visible signs be placed in areas by 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). 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.

⁷ Docket No. 17-035-08, Comments from the Division of Public Utilities, March 27, 2017.

⁸ Small Cell Wireless Attachments, Joshua Jones and TJ Golo, handout at March 20, 2017 meeting with the Division.

⁹ FCC Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, ET Docket No. 93-62, August 1, 1996. www.Fcc.gov.

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 NewPath access to the Company's poles through the Agreement will allow NewPath to conduct its permitted purpose, which is defined as “. . . the transmission and reception of equipment” (Agreement, p. 3).

OTHER CONSIDERATIONS

The Division observes that the Application in this docket is the third small cell pole attachment application that has been filed before the Commission recently, one of which was approved on July 21, 2016.¹⁰ As previously mentioned, the Company filed another small cell application agreement between the Company and Crown Castle in Docket No. 17-035-09 concurrent with this Application.

The Division points to industry data outlining the upsurge in the use of small cells throughout the country. Small cell technology is advancing rapidly as wireless carriers seek small cells as a solution for advancing network management and increasing network capacity.¹¹ ABI Research, an enterprise industry researcher, estimated a 43 percent compound annual growth rate in 2015 for small cell technology.¹² Factors leading to this growth include the continued growth in wireless data consumption and the fact that small cells are relatively easy to install and are often more affordable than conventional cellular towers.¹³ Another industry analyst predicts that by 2019, global demand for outdoor small cell solutions is expected to grow exponentially, by a factor of six.¹⁴ Major wireless carriers are continuing to upgrade and enhance their networks through the use of small cells throughout the country.¹⁵ Crown Castle's parent company, Crown

¹⁰ Docket No. 16-035-23, Order on Rocky Mountain Power's Application for Approval of a Pole Attachment Agreement for Small Cell and Wi-Fi Antennas with Mobilitie LLC, July 21, 2016.

¹¹ Rethinking Technology Research, May, 2016, <http://rethinkresearch.biz/wp-content/uploads/2016/06/Small-cell-deployments-and-installed-base-May-2016.pdf>.

¹² <https://www.abiresearch.com/press/small-cells-surge-43-compound-annual-growth-rate-m/>.

¹³ FCC Small Cell Technology Overview, Milind Buddhikot, Rob Soni, March 13, 2013. <http://wireless.fcc.gov/workshop/OVERVIEW%20-%20Milind%20Buddhikot%20-%20Alcatel%20Lucent.pdf>.

¹⁴ <https://www2.deloitte.com/us/en/pages/technology-media-and-telecommunications/articles/small-cells-big-changes.html>.

¹⁵ “The Small Cell Sector is Growing Up, Carl Weinschenk, January 27, 2016. www.itbusinessedge.com.

Castle International Corp. (CCIC) states that AT&T, T-Mobile, Verizon Wireless, and Sprint, collectively accounted for 90 percent of CCI's site rental revenues in 2016.¹⁶ A leading small cell advocacy group reports that revenues in the small cell market of \$1.5 billion in 2016, are expected to grow by about 50 percent in 2021, reaching \$2.2 billion.¹⁷

At the Company's meeting with the Division, the Company's engineer, Mr. Joshua Jones, expressed similar views regarding the expected growth in wireless technologies and the noticeable increase of small cell devices attaching to other utility poles throughout the larger metropolitan areas in the country.¹⁸ Based on this information and the industry outlook noted above, the Division believes that small cell applications are in the incipiency stage in Utah.

The definition of small cells falls broadly within the Safe Harbor definition that defines a pole attachment, per Utah Admin. Code Rule R746-345-2.E; but the definition of small cells is not expressly defined in the Commission's Safe Harbor agreement. Pole attachments are defined in Utah Admin. Code Rule R746-345-2.E as follows:

All equipment, and the devices used to attach the equipment, of an attaching entity within that attaching entity's allocated attachment space. A new or existing service wire drop pole attachment that is attached to the same pole as an existing attachment of the attaching entity is considered a component of the existing attachment for purposes of this rule.¹⁹

The recent small cell agreements all contain a chapter on the safety, emergency procedures, and emissions pertaining to RF that is not contained in the Safe Harbor. In addition, the Company's small cell agreements have been accompanied with Cellular Communications Site Installation Guidelines, and Wi-Fi Antenna Installation Guidelines. The Division recognizes that the

¹⁶Crown Castle International Corp. Form 10-K, filed on February 22, 2017, p. 3.

<http://investor.crowncastle.com/phoenix.zhtml?c=107530&p=irol-SECText&TEXT=aHR0cDovL2FwaS50ZW5rd2l6YXJkLmNvbS9maWxpbnmcueG1sP2lwYWdlPTEExNDE0NjY3JkRTRVE9MCZTRVE9MCZTUURFU0M9U0VDVEIPTI9FTIRJUKUmc3Vic2lkPTU3>

¹⁷<http://www.smallcellforum.org/blog/scf-cannes-plenary-packed-agenda-small-cell-momentum-grows-apace/>.

¹⁸ Small Cell Wireless Attachments, Joshua Jones and TJ Golo, handout at March 20, 2017 meeting with the Division.

¹⁹ Docket No. 10-035-97, Revised Safe Harbor Pole Attachment Agreement, December 3, 2012. "Attachment(s)" means Pole Attachment(s) as defined in R746-345-2.E of the Utah Administrative Rules.

Company has not expressly requested approval of the guidelines in its filings, but they are an integral part of the safety and installation of these devices.

The Division recommends that, in the future, if the Commission continues to receive numerous pole attachment applications for small cell attachments, it would be wise to revisit the Safe Harbor and/or develop a separate Commission-approved contract for these types of wireless devices that attach to not only the Company's distribution poles, but to other utility poles in Utah (such as Century Link). This would potentially streamline the agreement process for the parties involved.

In the alternative, the Division recommends that Commission rules regarding pole attachments be revised to specify certain conditions pertaining to the nature of small cell and wireless attachments. The Division notes the complaint in Docket No. 16-035-41²⁰ and anticipates that there may be other potential entities requesting to attach devices to the Company's distribution poles. Clarity in the rule would hopefully obviate the need for future complaints and would provide greater specificity as to which type of attachments are allowed.

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 NewPath in Docket No. 17-035-08, with the noted exceptions for the different types of attachments.

The Division recommends the Commission consider developing a separate Safe Harbor agreement for wireless devices such as small cells that attach to the Company's distribution poles. This would facilitate and streamline the process of negotiating agreements between the pole attaching entity and the Company. In the alternative, the Division recommends revising the

²⁰ In the Matter of the Formal Complaint of Blynscy, Inc. against Rocky Mountain Power, September 26, 2016. This matter was dismissed on February 3, 2017 after parties stipulated to withdraw the complaint without prejudice.

Commission rules to clearly identify the types of wireless attachments that should be allowed to attach. With this memorandum, the Division requests that this Action Request be closed.

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