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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: June 22, 2017

Re: Docket No. 17-035-33, Application for Approval of a Pole Attachment Agreement with Rocky Mountain Power and MCI metro Transmission Access Services Corporation.

RECOMMENDATION (APPROVAL)

The Division of Public Utilities (Division) recommends that the Public Service Commission (Commission) approve the Agreement between Rocky Mountain Power and MCI metro Transmission Access Services Corporation.

ISSUE

On May 18, 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 MCI metro Transmission Access Services Corporation (MCI metro or Licensee) (or collectively, "Parties"). On May 18, 2017, the Commission issued an Action Request to the Division to review and make a recommendation to the Commission on the Company's Application. The Commission also issued a Notice of Filing and Comment Period on May 23, 2017 for interested parties to submit comments on the Company's Application by June 22, 2017 and reply comments on or before July 7, 2017. The Company

included in its Application a copy of the Agreement that was negotiated and agreed to by the Parties, a copy of the Company's Joint Use Distribution Construction Standards, and a copy of the Company's Electric Service Schedule No. 4 that is currently on file with the Commission.

The Company's Application explains that the Agreement at issue in this docket deviates in some respects from the Commission-approved standard contract (commonly known as the "Safe Harbor" agreement).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 as long as the alternative contract is filed with and approved by the Commission. Since the MCImetro Agreement differs from the Commission's Safe Harbor, the Company requests that the Commission issue an order approving its Application and finding the terms and conditions of the Agreement to be just and reasonable and in the public interest. This memorandum is in response to the Commission's Action Request, as well as its May 23, 2017 request for comments in this matter.

DISCUSSION AND FINDINGS

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

The Division compared the MCImetro Agreement to the Commission's Safe Harbor agreement and identified the differences, as well as the materiality of the differences between the two contracts. The Division identified similarities in the MCImetro Agreement that contained deviations from the Safe Harbor that were also found in other pole attachment agreements that have been approved by the Commission from time to time. The most recent example was the Application for Approval of the Pole Attachment Agreement between the Company and Crown Castle NG West LLC (Crown Castle West) that was approved by the Commission on May 16, 2017, in Docket No. 17-035-08. The Crown Castle and the MCImetro Agreements are

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.

somewhat similar. They are both non-reciprocal agreements and contain the same contract consolidation and relocation of sections, as well as the table of contents that was added for convenience and ease of use.

As with other pole attachment agreements before this Commission, the Agreement was voluntarily negotiated between the Company and MCImetro (Application at 3). The Agreement represents the terms and conditions agreed to by the Parties that will allow MCImetro to attach its telecommunications equipment to the Company's poles in Utah for the sole purpose of providing communications services (Agreement, p. 4). The Agreement clearly spells out that wireless, Wi-Fi, and pole-top attachments do not apply to this Agreement (Agreement, p. 4). The Agreement was signed by MCImetro on April 17, 2017 and by the Company on April 19, 2017 (Agreement, p. 21). Additionally, the Application was filed in a timely manner.

There are minor definitional changes contained in Article I to the MCImetro Agreement that differ from the Commission's Safe Harbor agreement. These changes are:

- Unlike the Safe Harbor, the Agreement adds a definition for "Credit Requirements," specifying how the Company reasonably determines creditworthiness (Agreement, pp. 2-3.)
- The definition of "Inspection" has been expanded to include a subsection called "Periodic Safety Inspection" that pertains to the integrity of the Company's distribution poles (Agreement, p. 2).
- The definition of "Security" has also been updated to reflect the cost, including labor, to remove and dispose of Licensee attachments should the need occur (Agreement, p. 3).
- The Agreement adds a definition for "Material Adverse Change" that is not found in the Safe Harbor definitions (Agreement, pp. 2-3).

In addition to the changes in definitions described above, there are several material terms and conditions contained within the Agreement that differ from the Safe Harbor, but were mutually negotiated and agreed to by the Parties. These changes are summarized below:

1. Section 3.02 includes changes to the make-ready work process. Among other things, the Company will determine if any make ready work is required before Licensee is permitted to attach its equipment to the Company's poles. If make-ready work is deemed necessary, the Company will then provide the cost estimate to Licensee, who must either accept or reject the cost estimate within 30 days of the notice. The Licensee has the option of having the Company perform the work or employing a self-build option that must be approved by the Company. This section also states that the Parties will negotiate solutions in good faith to try to accommodate Licensee's project requirements (Agreement, pp. 5-6).
2. Section 3.08 contains important updates with respect to safety requirements. Licensee must place and maintain its equipment in strict conformity with various safety requirements, including those found in the National Electrical Safety Code (NESC) and requirements contained in the Company's current Distribution Construction Standards (Exhibit B) to the Agreement (Agreement, p. 7). According to Section 3.08, Licensee agrees to indemnify the Company and hold the Company harmless in certain situations, such as claims resulting from a power outage caused by Licensee. The section also contains specifications for where and how to properly place attaching equipment to ensure the safety of employees and contractors at large (Agreement, pp. 7-8).
3. Sections 6.01 through 6.03 contain additional insurance and bonding requirements that are more stringent than similar terms contained in the Safe Harbor agreement (Agreement, pp. 15-16).

4. Section 7.03 allows a defaulting party additional time to cure a default if it is diligently pursuing a cure (Agreement, p. 17).

5. Section 8.08 prohibits Licensee from assigning the Agreement without the Company's prior written consent. The section further defines terms that may be required should the Company approve a successor assignee. (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, between the Parties and tend to reflect stricter safety and industry standards. The Division believes the terms described above are generally reasonable.

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 tariff includes a schedule of non-recurring fees that were approved by the Commission in Docket No. 10-035-97.³ The rental payments and fees for the Licensee's attachments are also described in Section 4.01 to the Agreement (Agreement, p. 12).

The Company's Distribution Construction Standards for Joint Use are regularly reviewed and revised to be in conformance with the most recent NESC requirements. The 36 pages of the Company's Joint Use Distribution Construction Standards are cross-referenced above in Section 3.08 (Agreement, p. 7) and are also attached as Exhibit B to the Agreement.

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.

The Division commends the Company for submitting 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 MCImetro access to the Company's poles through this Agreement will allow MCImetro to conduct communications business in 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, 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