



State of Utah
Department of Commerce
Division of Public Utilities

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ACTION REQUEST RESPONSE

To: Public Service Commission

From: Division of Public Utilities
Chris Parker, Director
Artie Powell, Energy Section Manager
Justin Christensen, Utility Analyst

Date: October 5, 2017

Re: Docket No. 17-035-47, Rocky Mountain Power Pole Attachment Agreement with Strata Networks.

RECOMMENDATION (APPROVAL)

The Division of Public Utilities (Division) recommends that the Public Service Commission (Commission) approve the Pole Attachment Agreement (Agreement) between Rocky Mountain Power and Strata Networks.

ISSUE

On August 31, 2017, PacifiCorp, dba Rocky Mountain Power, filed an Application with the Commission for Approval of the Agreement between Rocky Mountain Power (Company) and Strata Networks (collectively, Parties). 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.

Under Utah Administrative Rule R746-345-3(B)(1), the parties to pole attachment contracts may voluntarily negotiate an alternative contract that differs from the Commission-approved

pole attachment agreement in Docket No. 10-035-97 (Safe Harbor Agreement).¹ However, an alternative contract must be submitted to, and approved by the Commission. Since the Strata Networks Agreement differs from the Commission's Safe Harbor Agreement, 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 August 31, 2017, the Commission issued an Action Request to the Division for a review of the Application for Approval of the Agreement. This memorandum is in response to the Commission's Action Request.

DISCUSSION

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 D).

The Division determined that the Agreement was voluntarily negotiated between the Company and Strata Networks (Application at 3). The Agreement represents the Parties' agreed-to terms and conditions that will allow Strata Networks to attach telecommunications equipment to the Company's poles in Utah in order for Strata Networks, a Utah Corporation, to conduct its telecommunications business in a number of areas in Utah (Application at 3).

The reciprocal Agreement was signed by the Company on August 4, 2017 and by Strata on July, 28 2017. (Agreement, p. 23).

The Division compared the Strata Agreement to the Commission's Safe Harbor agreement. The Division did find numerous substantive differences in the Agreement and the Safe Harbor agreement. The Division enumerates these substantive differences below:

¹ Report and Order, 10-035-97, November 21, 2012.

First, several changes were made to Article I, the portion of the agreement that contains the contract definitions. In this section the revised contract adds, modifies, or clarifies definitions for the following items that are particular to this specific agreement:

- Application- establishes a process for adding or modifying attachments.
- Attachment – the definition refers directly to the definition contained in Utah Admin. Code in R746-345-2(E).
- Carrying Charge- refers directly to the definition contained in Utah Administrative Rule R746-345-5(A)(2)(a).
- Cost Estimate- refers to anticipated costs on each individual piece of work or flat rates. Rocky Mountain Power reserves the right to choose when flat rates are applicable.
- Distribution Construction Standards- refers to the Company’s exhibit of its Distribution Construction Standards.
- Inspection- the definition is expanded to include pre-construction, special inspections, audits, and periodic safety inspections.
- Pole- the definition refers directly to the definition of pole as contained in Utah Administrative Rule R746-345-2C and 2G.
- Rental Rate- refers to the annual rent amount for each attachment at rates set forth in Exhibit A for RMP and Exhibit B for Strata
- Service Drop- refers to a connection from distribution facilities to the building or structure being served.

Under Article II, Scope of Agreement, the following change was made;

- Poles; Geographic Scope, Section 2.01- to make clear the agreement does not apply to wireless communications equipment.

Under Article III, Use of Poles, the following changes were made;

- Application for Permission to Install Attachment Section 3.01- minor edits that clarifies fees and process.

- Licensee's Right to Install Equipment Section 3.02- changes that clarify fees and process.
- Conformance to Requirements and Specifications Section 3.04- clarifies installation requirements and standards. Any conflict between the requirements and specifications of the NESC, the UAR, and the Pole Owner, the more stringent requirements and specifications shall be met.
- Make-Ready Work Section 3.09- contains a new provision stating that rejecting Make-ready cost estimates will be deemed as a revocation of the Application.
- Changes were made to pole replacement provisions that clarify that Licensee will bear the risk for pole replacements needed to complete requested attachments.

Under Article IV, Maintenance of Poles, an additional section was created that is called

- Lower and Haul by Licensee. This new section is found in Section 4.06 and specifies terms and conditions regarding removal of vacated poles.

The Division finds that many of the changes in the Agreement that differ from the Safe Harbor that are identified above, 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 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 Company represents that all construction will meet or exceed the requirements of the latest edition of the National Electrical Safety Code (NESC). All work will be performed in a safe manner that complies with the rules of the NESC, the Occupational Safety and Health Administration (OSHA) and the rules of any state agencies having jurisdiction. (Agreement, pg. 33).

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 Strata Networks access to the Company's poles through this Agreement will allow Strata Networks 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, 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.

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

CC: Bob Lively, RMP

Jeffrey K. Larsen RMP

Michele Beck, OCS