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State of Utah
Department of Commerce
Division of Public Utilities

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Action Request Response

To: Utah Public Service Commission

From: Utah Division of Public Utilities

Chris Parker, Director

Artie Powell, Energy Section Manager

Joni Zenger, Technical Consultant

Bob Davis, Technical Consultant

Date: March 19, 2019

Re: Docket No. 19-035-04, Application of Rocky Mountain Power for Approval of the Pole Attachment Agreement between Rocky Mountain Power and New Cingular Wireless PCS, LLC.

Recommendation (Approve)

Issue

On February 19, 2019, RMP filed an application with the Commission for approval of the Agreement between RMP and Cingular (collectively, Parties). In the application, RMP submitted a copy of the Agreement, Exhibit A – Electric Service Schedule No. 4, Exhibit

B – Small Cell Antenna Installation Guidelines, and Exhibit C – Wi-Fi Antenna Installation Guidelines.

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’s approved pole attachment agreement (Safe Harbor) in Docket No. 10-035-97.¹ However, an alternative contract must be submitted to and approved by the Commission.

Since the Agreement between RMP and Cingular differs from the Safe Harbor, RMP submitted its filing and requested that the Commission issue an order approving the Agreement and finding the terms and conditions of the Agreement to be just, reasonable, and in the public interest.²

On February 20, 2019, the Commission issued a Notice of Filing and Comment Period, whereby interested parties may file comments in this matter on or before March 21, 2019. Reply comments are due on or before April 5, 2019. In addition, the Commission issued an Action Request to the Division on February 19, 2019. This memorandum presents the Division’s response to the Commission’s request for comments and its Action Request to the Division.

Discussion

The Agreement represents the Parties’ agreed-to terms and conditions that will allow Cingular to attach certain equipment, such as antennas and Small Cell wireless communication devices, to RMP’s poles in Utah. The Agreement was negotiated voluntarily between the Parties and was signed by RMP on January 29, 2019, and by Cingular on December 6, 2018.³

The Division reviewed the application and found substantive differences between the Agreement and the Safe Harbor. The Division enumerates these substantive differences below:

- Article I. Definitions
 - The definitions of “Application,” “Cellular Communications Site Installation

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

² Docket No. 19-035-04, Application, p. 3.

³ Docket No. 19-035-04, Pole Attachment Agreement, p. 23.

Guidelines,” “Cost Estimate,” “Electric Facilities,” “Electric Service Requirements,” “Emergency Condition,” “Estimated Attachments,” “Inspection,” “Permitted Purpose,” “Security,” “Service Provider,” and “Wi-Fi Antenna Installation Guidelines” are added.

- The definition of “Attachment(s)” is modified to include “any Equipment used for the transmission of Small Cell or Wi-Fi technology communications installed upon any Pole.”⁴
- The definition of “Equipment” is modified to include “antennas and Small Cell wireless communication devices and all supporting equipment.”⁵
- Article II. Scope of Agreement
 - In addition to the Geographic Scope in Section 2.01, the issues of “Grant of License” and “Permits” are described in this section.
 - Section 2.03 “Compliance with Governmental Requirements,” Section 2.04 “Governmental Approvals,” and Section 2.05 “Rejection of Application” are added. Section 2.05 requires RMP to provide an explanation of the reasons for a Rejection of an Application.⁶
- Article III. Licensee’s Use of Poles
 - Modifications made in Section 3.01 “Application for Permission to Install Attachment” include procedures if RMP fails to respond within 45 days of receipt of the Application. In that event, Cingular may install Attachments as long as Licensee provides 10 days written notice to RMP before installation.⁷
 - Changes in Section 3.02 “Make-Ready Work” include minor edits to the timeframes within the Make-Ready Work section. For instance, Licensee must accept or reject RMP’s prepared cost estimate for Make-Ready Work within 30 days, or the Cost Estimate will be deemed as accepted by Cingular.⁸
 - Modifications made in Section 3.08 “Nonconforming Equipment” allow RMP to correct any nonconformance upon Cingular’s failure to do so after 30 days’ written notice from RMP.⁹

⁴ Id., p.1.

⁵ Id., p. 2

⁶ Id., p.4.

⁷ Id., p.5.

⁸ Id., p.7.

⁹ Id., pp.8-9.

- Changes in Section 3.09 “Interference with RMP’s Equipment” include Cingular removing its attachment from the pole within 30 days’ written notice by RMP if Cingular does not accept the cost to accommodate rearrangements or transfers of the attachment. Cingular must notify RMP of its removal within five business days of completion of the removal.¹⁰
- Article IV. Radio Frequency; Interference; Emergencies
 - Section 4.01 “Radio Frequency Emissions,” Section 4.02 “Interference Prohibited,” Section 4.03 “Preventing Interference,” Section 4.04 “RF Power cut- off Switch; Emergency Condition,” Section 4.05 “Emergency and Emergency After Hours Contact Information,” and Section 4.06 “Installation and Upkeep of Sign(s)” are added.
- Article V. Billing & Payments; Annual Rent
 - Section 5.05 “Interest on Late Payments” is added. All amounts payable under this Agreement should be paid within 45 days of the invoice date.¹¹
- Article VI. Indemnification; Limitation of Liability; Warranties
 - Sections 6.01 “Indemnification” and 6.02 “Warranty” are respectively added to further indemnify RMP, its directors, officers, employees, etc. from any and all claims and liabilities, lawsuits, and warranties that are not consistent with prudent utility practices related to the Agreement.¹²
- Article VII. Insurance and Security Requirements
 - Modifications in Section 7.01 “Insurance” require Cingular to acquire commercial general liability insurance on the most recently approved ISO policy form with a minimum limit of \$1,000,000 for each occurrence of bodily injury and property damage. Commercial automobile liability insurance includes a minimum limit of \$5,000,000 for each occurrence.¹³

¹⁰ Id., p. 9.

¹¹ Id., p. 15.

¹² Id., p. 16.

¹³ Id., p. 17.

- Other minor edits have been made to the Insurance and Security amounts and terms in Section 7.02 “Additional Insurance Requirements” and Section 7.03 “Security.”¹⁴
- Article VIII. Term, Default and Termination
 - Changes in Section 8.01 “Term and Termination” specify that the initial term will be for ten years from the effective date. The Agreement will automatically be extended on an annual basis thereafter unless and until either Party provides 90 days written notice to terminate the Agreement.¹⁵
 - Section 8.02 “Default” and Section 8.03 “Notice of Default/Cure Period” are added.
- Article IX. General Provisions
 - Section 9.01 “Confidentiality,” Section 9.02 “Entire Agreement,” Section 9.04 “Changes in Law,” 9.06 “Encumbrances,” Section 9.11 “Time is of Essence,” Section 9.13 “No Third-Party Beneficiaries,” Section 9.14 “Attorneys’ Fees,” and Section 9.15 “Waiver of Jury Trial” are added.
 - Section 9.09 “Assignments” allows assignment of the Agreement without approval or consent to affiliates, subsidiaries, or any entity which acquires substantially all of Licensee’s assets.¹⁶

After reviewing the substantive changes described above, the Division finds that the terms and conditions in the Agreement are reasonable and conform to R746-345-3(A). The changes were made in order to add, expand, or specify negotiated terms and conditions between RMP and Cingular, a wireless communication network business.

In addition to the Agreement, RMP’s filing includes Exhibit A, B, and C. The Agreement refers to Exhibit A, RMP’s Electric Service Schedule No. 4, for the annual rental rate (\$5.76 per foot of space used) and non-recurring fees. The Agreement requires conformity with the standards and specifications of the National Electrical Safety Code (NESC) and the Federal Communications Commission (FCC). Exhibit B, Cellular Communications Site Installation

¹⁴ Id., pp. 18-19.

¹⁵ Id., p. 19.

¹⁶ Id., p. 21.

Guidelines, and Exhibit C, Wi-Fi Antenna Installation Guidelines, are referenced in the Agreement¹⁷ as additional specifications.

Conclusion

After reviewing RMP's filing and accompanying documents, the Division finds that the Agreement between the Parties is reasonable and should be approved. The approval of this Application is in the public interest as this Agreement will allow Cingular to conduct its business in a number of areas within the state of Utah.

Cc: Jana Saba, RMP
Daniel E. Solander, RMP
Michele Beck, Office of Consumer Services

¹⁷ Id., p. 1 and p. 3, respectively.