

DOCKET NO. 04-999-03

**COMMENTS OF PACIFICORP TO THE DIVISION OF PUBLIC UTILITIES ON THE
DIVISION'S STANDARD JOINT-USE AGREEMENT**

Filed December 7, 2005

**Exhibit A
Self-Build**

Section 3.09 Make-ready Work

If in the reasonable judgment of Pole Owner the accommodation of any of Licensee's Attachments necessitates Make-ready Work, in the response to Licensee's application Pole Owner will indicate the Make-ready Work that will be necessary to accommodate the Attachments requested and the estimated cost thereof within the application processing time period identified in Section 3.02. If Licensee is willing to bear the cost of all Make-ready Work necessary, as determined by Pole Owner, Licensee shall so indicate via ENS or in writing within thirty (30) days of the date of Pole Owner's response to Licensee's initial application. Pole Owner will provide Licensee an estimated completion date for any Make-ready Work, taking into account the overall scope of the Licensee's project, the volume of applications received from other licensees, as well as the availability of crews to perform the work. The Licensee and the Pole Owner shall negotiate solutions in good faith when the estimated time to perform the Make-ready Work does not meet the Licensee's project requirements. ~~At Licensee's option, Licensee may request either assistance with the work by Licensee or by qualified contractors hired by the Licensee, payment of premium rates for Pole Owner's employees to be dedicated to perform work solely on Licensee's project, or similar measures designed to augment the Pole Owner's capabilities.~~⁶

Pole Owner will perform such Make-ready Work as may be required and Licensee will reimburse, upon demand, Pole Owner for the entire expense thereby actually and reasonably incurred. Licensee shall pay the costs of all Make-ready Work undertaken by Pole Owner where such work is initiated as a result of the proposed installation of Attachments on any poles without regard to whether Licensee elects not to use the pole or poles after Make-ready Work has commenced. An itemized statement detailing the actual material, hours, equipment costs, and any other associated costs will be provided to Licensee for payment of Make-ready Work.

To the extent Licensee is permitted by Utah Administrative Rule 746-345-3(C) to self-build the required Make-ready Work and elects to self-build such Make-ready Work, Licensee shall perform all such Make-ready Work in accordance with the following "Self-build Requirements" and at Licensee's sole risk and expense.

Self-Build Requirements

(a) Construction Specifications

Licensee shall prepare Construction Specifications for the necessary Make-ready Work identified by the Pole Owner in accordance with good utility practice and all of the terms and conditions of this Agreement, including but not limited to the requirements and specifications referred to in Section 3.04 and the warranty obligations of Section 9.03. The Construction

⁶ Issue No. 2 –Timeframes

Specifications shall include, without limitation, design drawings, construction practices, and material specifications, and all other documentation necessary to properly construct the Make-ready Work identified in the Pole Owner's response to Licensee's application. Licensee shall obtain Pole Owner's written acceptance of the Construction Specifications prior to beginning construction of the Make-ready Work; such acceptance shall not be unreasonably withheld. Licensee shall provide Pole Owner with two complete sets of as-built drawings upon completion of the Make-ready Work, including at least one printed set with Contractor's stamp and certification statement on such drawing indicating that, as submitted, such as-built drawings are true and correct.

(b) Contractor, Vendors, Inspection

Licensee shall use only a contractor selected from the Approved Contractor list attached hereto as Exhibit ___ (the "Contractor"). Licensee shall be responsible for the performance of the Contractor and the Contractor's subcontractors and vendors of every tier to the same extent as if performed by Licensee on a direct basis. The Pole Owner may designate, at Pole Owner's discretion, a particular vendor or vendors for particular items in the Construction Specifications. Pole Owner, at Pole Owner's discretion, and at Licensee's expense, may provide a full-time line inspector at any time during every phase of construction of the Make-ready Work. None of (i) the designation by Pole Owner of vendor(s), (ii) the provision of the Approved Contractor List, nor (iii) the presence of Pole Owner's inspector, shall relieve Licensee of its supervisory responsibilities for the provision of materials or performance of the work under this Agreement, but the designation of vendors and the provision of the Approved Contractor List shall operate as a waiver of any claim that any such vendor or contractor was negligently or otherwise improperly selected. Licensee shall require Contractor and subcontractors of every tier to comply with any stop work directive of Pole Owner or Pole Owner's inspectors, and work shall cease until such time as permitted by Pole Owner, in Pole Owner's reasonable discretion. Licensee shall pay for all necessary third-party quality control testing and inspections. All certificates of testing, inspection or approvals issued by all independent testing companies or governmental authorities shall be promptly delivered to Pole Owner.

(c) Coordination of the Work; Outages

[--RECOMMEND DISCUSSION OF DEVELOPMENT OF THIS SECTION WITH UTILITY TECHNICAL STAFF--]

(d) Completion of the Work; Acceptance

1. Licensee's Notice of Final Completion.

"Final Completion" means that stage in the progress of the Make-ready Work when Pole Owner determines that the Make-ready Work has been properly completed and equipped by Licensee in accordance with this Agreement, including (i) completion of all punch list items, (ii) the submittal to Pole Owner of all documentation as described in this Agreement, (iii)

completion in compliance with all applicable Laws, and (iv) all obligations of Licensee under this Agreement (except for those obligations which are intended to be satisfied after Final Completion) are fully satisfied, and the Make-ready Work is otherwise satisfactory to Pole Owner. When Licensee considers that the Make-ready Work is finally complete, Licensee shall so notify Pole Owner in writing requesting a Certificate of Final Completion. Such notice shall be accompanied by, and it shall be a condition to Final Completion that Licensee deliver to Pole Owner, the following:

(A) Unconditional Final Lien Waivers from Licensee and all subcontractors and vendors and all other persons providing any services, labor or materials in relation to the Make-ready Work, in the form included in Appendix , including certified copies of waivers of all liens filed during the course of the Make-ready Work and not previously provided to Pole Owner, and no liens, claims or other encumbrances have been filed or are outstanding with respect to the whole or any part of or interest in either the site or the Make-ready Work.

(B) All written guarantees and warranties under this Agreement for Licensee and subcontractors and vendors, all required operation and maintenance manuals for major equipment required under this Agreement all in form and substance satisfactory to Pole Owner; and assignment documentation assigning to Pole Owner in form and substance satisfactory to Pole Owner any remaining warranties and guarantees pertaining to the Make-ready Work and not previously provided and assigned to Pole Owner, and Licensee agrees to assist Pole Owner in the prosecution and enforcement of all such assigned warranties and guarantees.

(C) An affidavit certifying that Licensee shall maintain insurance in amounts required by this Agreement for a period of two (2) years after Final Completion and a certificate of the insurer evidencing that insurance required by this Agreement to remain in force after Final Completion is currently in effect and will not be cancelled or allowed to expire until at least 60 days' prior written notice has been given to Pole Owner.

(E) A complete and accurate set of as-built drawings pursuant to Section 3.09(a).

2. Pole Owner's Inspection for Final Completion.

Upon receipt of Licensee's request for a Certificate of Final Completion and all submittals that comply with Section 3.09(d)(1), Pole Owner shall promptly make appropriate evaluations and inspections as follows:

(A) If Pole Owner considers that the Make-ready Work is fully completed in accordance with this Agreement, Pole Owner shall promptly so advise Licensee.

(B) In the event that Pole Owner does not agree that Final Completion has been achieved, Pole Owner shall promptly so advise the Licensee in writing of the remaining items to be completed for purposes of Final Completion.

(C) After Licensee satisfies all remaining items necessary for Final Completion, Licensee may submit a further written notice to Pole Owner stating that the Make-ready Work is ready for re-inspection. All re-inspections to determine if the Make-

ready Work is acceptable for purposes of Final Completion shall be jointly made by Pole Owner and Licensee.

(D) Pole Owner shall have the final decision as to whether Licensee has achieved Final Completion. When Pole Owner agrees that the Make-ready Work is finally complete, which agreement Pole Owner agrees not too unreasonably delay, Pole Owner shall prepare and issue a "Certificate of Final Completion," which shall set forth the date of Final Completion.

(e) Transfer Of Title; Risk Of Loss; Energization

1. Transfer of Title

No earlier than upon receipt of a Certificate of Final Completion from Pole Owner, and no later than fourteen (14) days thereafter, Licensee shall convey good and marketable title to the Make-ready Work to Pole Owner, free and clear of all liens or other encumbrances, by executing and presenting to Pole Owner a Bill of Sale substantially in the form of the bill of sale attached hereto as Appendix ____.

2. Risk of Loss

Until such time as Pole Owner has received from Licensee a Bill of Sale, properly executed and conveyed to Pole Owner pursuant to all the terms and conditions of this Agreement, Licensee shall bear all risk of loss from damage to or destruction of the Make-ready Work. Until such time as Pole Owner has received from Licensee a Bill of Sale, properly executed and conveyed to Pole Owner pursuant to all the terms and conditions of this Agreement, Licensee shall bear all liability in any way related to the Make-ready Work and brought by third-parties, and Licensee shall indemnify and hold Pole Owner harmless for any such third-party claims.

Section 9.03 Warranties of Licensee

(a) Generally.

Licensee warrants to Pole Owner that its exercise of its rights and performance of its obligations under this Agreement shall be consistent with prudent utility practices.

~~Article X.~~

(b) Licensee's Limited Warranty for Self-Built Make-ready Work

Licensee guarantees and warrants to Pole Owner for the Limited Warranty Period, that (a) all construction services relating to the self-built Make-ready Work (hereafter in this Section 9.03 the "Work"), whether performed by Licensee's own personnel or by any contractors, subcontractors or vendors, shall be of the quality specified or of the best grade if no quality is specified, free from all defects in workmanship, not inherent in the quality required or permitted, and of sufficient quality to meet the requirements of this Agreement, including without limitation, the Construction Specifications, and to conform with the standards for construction practices and quality applicable to projects associated with electric utility construction in the State of Utah, and (b) all materials, appliances, mechanical devices, equipment and supplies incorporated into the Work shall be new, free from defects in the materials and workmanship, not inherent in the quality required or permitted, and of sufficient quality to meet the requirements of this Agreement, including without limitation, the Construction Specifications. If requested by Pole Owner at any time and from time to time, Licensee will furnish satisfactory evidence to Pole Owner as to the kind and quality of materials, appliances, mechanical devices, equipment and supplies. All Work not conforming to the requirements of this Section 9.03(b) (including substitutions or deviations not properly approved and authorized by Pole Owner in writing), shall be considered defective.

(c) Licensee's Limited Repair Warranty for Self-Built Make-ready Work

Upon receipt of Pole Owner's written notice at any time during the course of the Work or during the Licensee's Limited Repair Warranty Period, Licensee (at no cost to Pole Owner) shall at Licensee's sole cost promptly perform all corrective services (including furnishing all labor, materials, equipment and other services for the Work) to Pole Owner's reasonable satisfaction as may be reasonably necessary to remedy any defective workmanship or omissions in the Work, including promptly correct or replace any Work rejected by Pole Owner or which is incomplete, defective or fails to conform to this Agreement, whether observed before or after Final Completion of the Work and whether or not fabricated, installed, or completed. Licensee's compliance with its obligations as stated in this Section 9.03(c), and Pole Owner's acceptance of such corrective services, shall at all times be determined by ascertaining whether Licensee has achieved compliance to Pole Owner's

reasonable satisfaction with both the written and inferable requirements contained in this Agreement, including without limitation, the Construction Specifications. This Repair Warranty shall be in addition to and not in lieu of other warranties given by Licensee, including Licensee's Limited Warranty under Section 9.03(b).

(d) Licensee's Limited Repair Warranty Periods for Self-Built Make-ready Work

The "Limited Warranty Period" and "Limited Repair Warranty Period" shall commence upon the issuance of a Certificate of Completion for the Work as a whole pursuant to Section 3.09 (d)(2) and shall extend for a period of twenty-four (24) months from the Completion Date.

(e) Warranty Costs for Self-Built Make-ready Work

All cost incurred by Licensee in fulfilling Licensee's warranty obligations shall be solely Licensee's responsibility which Licensee shall pay, including additional testing and inspections and compensation for the services of any professional or consultant made necessary thereby. Licensee shall also, as part of Licensee's warranty obligations at Licensee's own expense, repair or replace any other damaged components, material, finishes, furnishings and other Work or portions of the Work or other property damaged, affected or otherwise made necessary by or resulting from such defective, non-conforming or incomplete Work, to return the same to the extent possible to its original condition.

(f) Timeliness of Corrective Services for Self-Built Make-ready Work

Licensee shall use its best efforts to perform all warranty and repair obligations to Pole Owner's satisfaction within fifteen (15) calendar days of the receipt of Pole Owner's written notice. If such services require more than ten (10) calendar days for completion, Licensee shall submit, within fifteen (15) calendar days of receipt of Pole Owner's written notice, a comprehensive written proposal itemizing all corrective actions necessary which Licensee is prepared to and shall immediately undertake and diligently pursue to enable the Work to achieve compliance with this Agreement, including without limitation the Construction Specifications. In performing such corrective Work, Licensee shall perform its Work so as to cause the least inconvenience and disruption to Pole Owner's business, which may require performance of Work at hours when Pole Owner's electric system is least utilized. Licensee shall not be entitled to reimbursement of the extra cost, if any, incurred in connection with performing corrective Work at off-peak hours. No corrective work shall be required to be performed on energized facilities, unless such work can be performed safely.

(g) Warranty Survival for Self-Built Make-ready Work

Licensee's warranty obligations shall apply to Work done by the Contractor and subcontractors and vendors of every tier, as well as to Work done by direct employees of Licensee, and such provisions shall survive acceptance of the Work by Pole Owner. Pole

Owner shall have the right at any time during the Limited Warranty Period to require Licensee to assign to Pole Owner all warranties provided to Licensee by its vendors and subcontractors related to the Work, and within ten (10) business days of receipt of Pole Owner's written notice, Licensee shall assign such warranties to Pole Owner.

(h) Pole Owner's Right to Correct Self-Built Make-ready Work

In the event Licensee fails to timely correct incomplete, nonconforming or defective Work following Pole Owner's written notice, Pole Owner shall have the right to reasonably correct or arrange for the correction of any defects or omissions in the Work at the Licensee's sole cost and expense. Licensee shall bear all reasonable cost incurred by Pole Owner in correcting such defective Work, including additional cost for redesigns by design consultants, replacement contractors, materials, equipment and all services provided by Pole Owner's personnel. Pole Owner shall be entitled to withhold and offset all reasonable cost incurred during any such corrective work against any funds which are otherwise due or which may become payable to the Licensee. If payments then or thereafter due Licensee are not sufficient to offset such amount, Licensee shall pay the difference to Pole Owner immediately upon demand.