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Submitted: May 31, 2006

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of an Investigation into Pole Attachments	)))))	**DOCKET NO. 04-999-03** **COMMENTS OF PACIFICORP ON PROPOSED STANDARD CONTRACT**

Pursuant to the Procedural Notice issued by the Commission on May 1, 2006, PacifiCorp, dba Utah Power, respectfully submits the following comments in the captioned rule-making proceeding.

On February 10, 2006, the Division of Public Utilities ("Division") submitted to the Commission a proposed Utah Pole Attachment Agreement ("Division Contract") that it has proposed to serve as the "standard contract" under Utah Admin. Code § R746-345-3. PacifiCorp recognizes that the Division Contract represents the distillation of untold hours that the various participants in this rulemaking—including, at times, individual Commissioners—committed to numerous workshops, drafts, filings and discussions in an attempt to reach consensus.

Nevertheless, a 21-page, single-spaced contract created by a "committee of the whole" to apply to a variety of facts and circumstances will of necessity contain elements that do not fit the requirements of all who might use it. PacifiCorp numbers itself among those for whom the Division Contract does not meet its concerns in some respects. In these Comments, PacifiCorp will, however, focus primarily on major areas that are of particularly fundamental concern: (a) rentals and fees applicable to service drops and (b) various self-build considerations.

Sections 3.01, 3.02. **Charges for Service Drops** PacifiCorp's fundamental position is that the use by other entities of any facility or property that PacifiCorp owns and operates in carrying out its public service obligations to its Utah customers is subject to just and reasonable charges. For, otherwise, PacifiCorp's customers will be subsidizing the operations of entities that are not part of the utility operations for which the Commission has set rates, terms and conditions for the benefit of that utility's customers. Neither Utah nor American utility law takes the approach that an outside party may use utility property at no cost merely because that use involves no incremental cost or burden to the utility or its customers.

It is from this perspective that PacifiCorp is concerned that the provisions in §§ 3.01 and 3.02 of the Division Contract may be read—or even intended—to permit pole attachers to benefit from the value of being able to attach communications facilities to public utility property without compensating the owner and—indirectly—the utility's customers.

The problem arises primarily in the following sentence of § 3.02 of the Division Contract: "However, when Licensee installs service drops, Licensee must follow all procedures applicable to Attachments generally, *except for filing applications and payment of fees*, and shall submit notification to Pole Owner on a quarterly basis." To the extent that this is intended to mean, or could be construed to mean, that the licensee would not pay the rental rate for occupying space on a drop pole, PacifiCorp is vigorously opposed to this treatment.

First, the term "fee" in this context must not be interpreted to include the "rental rate" that is established by Commission rule for *all* space that is occupied by attachments. Rule 746-345-5 explicitly addresses this issue: "A pole attachment *rental rate* shall be calculated and charged as an annual per attachment rental rate for *each attachment* used

by an attaching entity." (Utah Admin. Code § R746-345–5.A, emphasis added.) It does not exempt facilities that are attached to drop poles.

This is the only interpretation that is consistent with the pole owner's and the Commission's responsibility to provide protection to the pole owners and their customers. If a non-pole owner is using any part of a Commission-regulated utility's facilities, it must be allocated responsibility for a fair share of the costs of those facilities. In that regard, drop poles are indistinguishable from any other form of the utility's property. Merely because the Commission has established an abbreviated procedure where the drop-pole attachment may not require a full application-and-approval procedure does not abrogate the provisions of Rule 746-345-5.A nor the underlying principles of cost allocation to those who use and obtain value from the utility's property.

In summary, the rental rate required under Rule 746-345-5 should apply to drop poles and service drops made separately from an existing attachment in the same way as it would apply to any other pole. Section 3.02 of the Division Contract should be modified, as shown below, to clarify this point.

It is also important for attachments that can be made under these abbreviated notification procedures to be subject to unauthorized-attachment charges if the required notification is not complied with. Were the licensee not subject to unauthorized-attachment fees, there would be no incentive for it to follow the quarterly notice requirement. For example, chances of the pole owner knowing who is attached to its secondary poles in the event of an emergency would be nearly non-existent. In that case, the potential for safety concerns is high, as the pole owner no longer has any control over managing its assets with respect to this issue.

In addition, attachments made separately from the original messenger attachments can prevent other licensees from making attachments in the communications space (that they would be paying rent for), which in turn also precludes the pole owner from receiving full rental value of its utility property.

Further, the abbreviated procedure for drop poles and separate service-drop attachments should not relieve an attacher from paying for the costs of any inspection that is necessary by the pole owner in the event that the attacher has improperly installed attachments to drop poles. For the same reasons just cited, the abbreviated procedure of providing

post-installation quarterly notification should not provide a free pass to the pole attacher for any incremental costs that are incurred by the pole owner in performing necessary inspections related to safety violations.

PacifiCorp proposes that this issue be clarified by indicating that, for service-drop installations under § 3.02 (6th paragraph), the fees referred to are the application fees, and that rental rates, unauthorized-attachment fees and inspection/remediation fees and costs provided for in the pole owner's tariff are applicable to service-drop attachments:

> **3.02** [6th paragraph] Licensee shall have the right to install service drops without prior approval by Pole Owner. This would include service drops made from poles on which the attaching entity may not originally have had an attachment, as long as the pole is adjacent to poles on which the attaching entity does have authorized attachments. Prior notification is not required for the attachment of service drops where the attacher has an existing pole attachment. However, when Licensee installs service drops, Licensee must follow all procedures applicable to Attachments generally, except for filing applications and payment of application fees, and shall submit notification to Pole Owner on a quarterly basis. Notwithstanding the above, no notification shall be required for service drops that are self-supporting wire or wires that do not require the use of messenger strand and a lashed cable. Required notifications of service drop installations shall contain information identifying the pole to which the service drop was added.
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> All attachments for which quarterly notification is required under the previous paragraph are subject to (a) the rental rates required under Section 5.01 and established by UAR 746-345-5.A, (b) the unauthorized attachment fee set forth in Section 5.02, if the attachment is subject to a quarterly notification to the Pole Owner that was not timely made, and (c) any charges or fees assessed pursuant to tariff by the Pole Owner to remediate attacher's installations under this Section 3.02 that are not in compliance with NESC standards.

Finally, the language in § 3.01 is ambiguous on this issue. The first paragraph of that section should be modified to clarify, as discussed above, that the abbreviated procedures for customer service-drop attachments do not serve to forgive or waive the rental rates and other charges and costs that the pole owner incurs in connection with the attachments. Accordingly, PacifiCorp proposes that the first paragraph of § 3.01 be modified as follows:

> With the exception of customer service drops as set forth in the 6th paragraph of Section 3.02, before Licensee places an Attachment upon any of Pole Owner's poles, Licensee shall request permission from Pole Owner in writing. ~~[and submit payment for all applicable fees, pursuant to the Fee Schedule (attached as Exhibit __) and the Rental Rate Schedule (attached as Exhibit __) upon]~~Upon receipt of an invoice from Pole Owner, ~~and~~ Licensee shall submit payment for all applicable fees, pursuant to the Fee Schedule (attached as Exhibit __) and the Rental Rate Schedule (attached as Exhibit __). Rental ~~[Fees]~~rates shall not apply until the attachment identified on the application or on the quarterly notification required under Section 3.02 for service drops is physically in place.

One final point on this issue: Even where an attacher already has an authorized attachment in place and no notification is required under § 3.02, the attacher is using space on a facility installed and paid for by the pole owner for the benefit of its utility customers. Free use of the space by an outside attacher is inconsistent with basic utility law and the provisions of Rule 746-234-5.A. Further, in this case, if it is necessary for the attacher to install an additional

facility such as a J-hook that uses more than the one foot of space provided under Utah Admin. Code § 746-345-5.A.3.d.ii, -iii and -iv, PacifiCorp would intend to bill the attacher for the extra space used as an appropriate allocation of costs between pole owner and attacher.

Section 3.05. Access to Electric Utility Space. To comport with the Commission's proposed modification to Utah Admin. Code § R746-345-3.C.8, "The self-build option is available only for make-ready work outside of the electrical utility space," PacifiCorp recommends that § 3.05 be modified as follows:

> Unless Licensee is an electric utility~~[or is using a qualified electrical contractor pre-approved by electric utility]~~, Licensee shall not enter the electric utility space on Pole Owner's poles for any purpose. When the Equipment sought to be installed on a pole bearing electric facilities is a wireless antenna, which is to be installed at the pole top or otherwise in or above the electric utility space, Licensee shall make special arrangements with the Pole Owner for installation of the wireless antenna~~[by electric utility employees or qualified electric contractors approved by the electric utility. The electric utility shall provide a list of qualified electric contractors. A Licensee may request an electric contractor be added to the list. The electric utility shall respond to such request within 30 days. Installation work in the electric utility space to be performed by employees of the Pole Owner shall be performed pursuant to a separate installation agreement]~~.

This modification is necessary in recognition that only the electric company may enter the electric utility space.

Section 3.07. Nonconforming Equipment. PacifiCorp believes that any remedial work required of a licensee under § 3.07 should be done promptly. Most such work is required in connection with a particular safety consideration under the National Electric Safety Code (NESC). The Division Contract only requires "timely" compliance, a term that the licensee and the pole owner are likely to have diverging concepts about. Thirty days should be adequate time either to comply fully with a requirement that should have been complied with in the attacher's initial installation or to present to and agree on a compliance plan with the pole owner. To effect this modification, PacifiCorp proposes the following change to § 3.07:

> If any Attachment is not placed and maintained in accordance with the Requirements and Specifications of Section 3.04, upon notice by Pole Owner, Licensee shall ~~[timely]~~within 30 days (a) perform all work necessary to correct conditions of Licensee's noncompliance, or (b) submit to and negotiate with the Pole Owner a satisfactory compliance plan. ~~[For purposes of this paragraph, compliance shall be deemed timely if performed during Licensee's regularly scheduled maintenance activities or under a plan approved by Pole Owner, unless such noncompliance creates an immediate safety or other threat as described below.]~~Any such work will be performed at Licensee's sole risk and expense. Pole Owner reserves the right to perform or authorize work necessary to bring Licensee's Attachments into compliance upon Licensee's failure to timely do so. Pole Owner will attempt to notify Licensee electronically or in writing prior to performing such work whenever practical.

Section 3.09. Make-ready Work. The first sentence of the second paragraph of § 3.09 reads: "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." Rule 746-345-3.C.6, on the other hand, provides: "If [applicant] accepts the make-ready estimate and make-ready construction time line, the work must be done by the pole owner on schedule and for the estimated make-ready amount, or less, and the applicant will be billed for actual charges up to the bid amount." PacifiCorp recommends that the Division Contract be modified to comport with the Commission's Rule 746-345-3.C.6, as follows:

> 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]~~ in accordance with UAR 746-345-3.C.6.

Section 3.13. Pole Replacement for Pole Owner's Benefit. The Division Contract would require the pole owner to absorb all costs of replacing a pole for its own benefit, including the extra cost of making a return trip to the pole after a licensee has transferred its attachments to the new pole. The return trip is an incremental cost to the pole owner—and indirectly to its utility customers—that has been directly caused by an outside user of the utility's property. But for the presence of an attachment, the pole owner would not have to make another trip to lower and haul a pole after a new pole has been set; the only reason the pole owner has to make the return trip is to allow the attacher to transfer its communications facilities. If not for the attachment transfer, the pole owner would not incur the additional return-trip costs. In PacifiCorp's case, it is not fair to its electric customers to pay, through their electric rates, a cost beyond the normal cost of conducting PacifiCorp's utility operations. This is not a trivial matter, as PacifiCorp replaces hundreds of poles each year at an average cost of at least $250 per return trip.

The Commission should not condone this form of subsidization any more than it would condone the more direct forms of subsidization that it regularly proscribes. Section 3.13 should be modified to require an attacher to bear the incremental costs that the presence of its attachments directly causes:

> Where an existing pole is changed out solely for the Pole Owner's benefit, the Pole Owner will bear the total cost of the pole replacement including the labor for the lower and haul of the old pole but not including (a) the cost to transfer Licensee's attachments to the new pole, and (b) the cost incurred by the Pole Owner in making an extra trip to the pole site after the Licensee has transferred its attachments. After Pole Owner has completed its work it shall notify Licensee, and Licensee shall, at its own expense, transfer its attachments to the new pole within thirty (30) days after the time specified in the notice given by the Pole Owner indicating that the pole is ready Licensee to transfer its equipment (which time shall not begin until after the parties located above the Licensee on the pole have removed or moved their

facilities).

Section 3.24. Audits of Existing Attachments. In connection with an audit of a pole owner's attachments, the Division Contract provides that all attachers on the pole owner's system should participate in a meeting concerning various aspects of the audit. To the extent that § 3.24 appears to contemplate joint selection of the auditor, PacifiCorp strongly disagrees with such a procedure. Although the attachers may provide suggestions and recommendations concerning the choice of auditor, it is ultimately the utility company that has the responsibility to make an appropriate choice consistent with good management and concern for the interests of its utility operations and its customers. There may be significant efficiencies in utilizing one contractor for multiple purposes, most of which have nothing to do with joint use, and joint selection would limit the pole owner's ability to choose a contractor that is most qualified in all respects. Accordingly, the third sentence of § 3.24 should be modified to read:

> At such meeting, Pole Owner, Licensee and all other pole attachers in attendance in person or by representative shall participate in, among other things, ~~[the selection of an independent contractor for conducting the Audit, as well as the]~~ scheduling, scope, extent and reporting of the Audit results.

Section 4.02. Relocation of Joint-Use Poles. Section 4.02 of the Division Contract should be modified to reflect the principle set forth in Rule 746-345-3.C.8, which allows only the electric utility to enter the electric utility space:

> If the Licensee performs any work for the Pole Owner to facilitate Pole Owner's responsibilities in completion of the above work or in cases of emergency work, including without limitation transferring other equipment, setting or lowering poles, digging holes, or hauling poles, the Pole Owner shall pay to Licensee, upon receipt of an invoice, the cost of such work. When setting a pole requires entering the electric utility space, ~~[the setting of the pole must be performed by a qualified electric contractor approved by the electric utility pursuant to Section 3.05, or may be performed by a licensed electrical engineer employed by Licensee upon prior approval of]~~the electric utility shall have full responsibility for setting the pole.

WHEREFORE, PacifiCorp respectfully requests that the Commission adopt the foregoing modifications to the standard pole-attachment agreement that the Division of Public Utilities has filed with the Commission in this proceeding.

SUBMITTED this 31st day of May 2006.

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Certificate of Service

I certify that a copy of the foregoing **COMMENTS OF PACIFICORP ON PROPOSED STANDARD CONTRACT** was sent by U.S. Mail or by e-mail in pdf format to the following participants in PSCU Docket No. 04-999-03:

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