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Submitted: December 7, 2005

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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the Matter of an Investigation into Pole  
Attachments

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**DOCKET NO. 04-999-03**  
**COMMENTS OF PACIFICORP TO THE**  
**DIVISION OF PUBLIC UTILITIES ON**  
**THE DIVISION'S STANDARD JOINT-**  
**USE AGREEMENT**

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At the technical conference convened by the Division of Public Utilities ("Division") on December 1, 2005, the Division requested that comments in support of credit assurance language be submitted by December 7, 2005, along with proposed language addressing self-build of make-

ready work by the licensee (“Self-Build”). PacifiCorp submits the following in response to the Division’s request.

### **I. Self-Build of Make-Ready Work**

PacifiCorp incorporates for the record the arguments it has previously made in this docket in relation to Self-Build.<sup>1</sup> If the Commission feels strongly that Self-Build should be an option for licensees, then there must be adequate safeguards, either in the rules or in the standard contract, to protect utility infrastructure and public safety. A potential incremental cost savings by the licensee does not justify compromised safety, reliability or customer service. Unlike licensees, the pole owner is best equipped to perform make-ready work and has a vested interest in ensuring that safety, reliability and customer service standards are considered and met. Therefore, the occurrence of any Self-Build should be rare or non-existent.

PacifiCorp is concerned that the Commission may remove from the process the appropriate “trigger” that previously provided some assurance to electric customers and pole owners that Self-Build would be rare. Specifically, PacifiCorp had proposed that the only circumstance justifying Self-Build would be a failure by the pole owner to provide a timely make-ready estimate in response to a permit application. This position accommodated the attaching entities’ stated concern that pole owners might fail to respond to an application. During the November 17, 2005, technical conference, however, it became apparent that the Commission may intend to allow licensees to self-build any time the licensee believes it can self-build at a cost lower than the pole owner’s estimate. PacifiCorp believes this approach may result in prolific Self-Build attempts that threaten to compromise safety, reliability and customer service.

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<sup>1</sup> Comments of PacifiCorp to the Proposed Rules, filed October 3, 2005, at 5-6; Reply Brief of PacifiCorp as to Terms and Provisions of the Standard Pole Attachment Contract, filed May 13, 2005, at 12-16; Brief of PacifiCorp as to Terms and Provisions of the Standard Pole Attachment Agreement, filed April 15, 2005, at 12.

As PacifiCorp understands the Self-Build option contained in the draft proposed rules circulated in advance of the November 17, 2005, technical conference, there are no limits on the scope of the Self-Build project a licensee could undertake in an effort to achieve incremental cost savings. As a result, a licensee could decide to undertake a very large project. The project could involve replacing entire pole lines, requiring re-conductoring of all the electric circuits. When the electric utility performs projects of this magnitude, it typically utilizes in-house expertise to manage competitively bid outside contractors to achieve the highest standards of safety, reliability and customer service, at a reasonable cost. Thus, if Self-Build is to be performed by licensees, provisions in the Standard Contract must be added to achieve the same result.

As the pole owner, PacifiCorp currently works with licensees who are attached below the electric facilities, to allow them to maintain their equipment on the utility poles. PacifiCorp will continue to support the licensees' operations under the rules currently proposed by the Commission. However, as the pole owner and the entity responsible for managing not only the facilities but the operation of the complex electric distribution network, PacifiCorp has significant concerns with the Commission's proposal that would allow licensees to take over a critical piece of the operations and maintenance work (e.g., replace the pole with a taller one) in order to accommodate their attachment. It is important that the Commission and the Division recognize how Self-Build relates to and can affect the operation of the electric distribution network.

Operation of the electric distribution network requires real-time monitoring and analysis to avoid interruptions of service and to maintain the safety of personnel and the public. Operation of the electric distribution network involves extensive coordination of multiple lines, substations, and on-going maintenance and construction projects. De-energizing electric

equipment may precipitate the need for an engineering study. At certain times, the ability to take a section of line out of service may be severely limited due to loading. When lines and other equipment are taken out of service, customer guarantees (like notification of a planned outage) must be adhered to. Detailed switching orders are necessary to maintain the safety of personnel. Switching orders for make-ready work are no different, and they must be put into the same queue with the pole owner's ongoing construction and maintenance work.

The Commission should be aware that make-ready work for licensees is not limited to working only within the communications work space. Complete pole replacement is often required. Contractors must be monitored to ensure they perform work within NESC rules and the pole owner's standards. Otherwise, they can create dangerous situations that can immediately jeopardize safety and reliability. Different requirements designed to prevent injury to personnel apply depending upon electric facility voltage and dictate differing clearance requirements. Contractors must be qualified for this work and adhere to these clearance requirements.

For the foregoing reasons, PacifiCorp offers the attached language addressing Self-Build as an attempt to mitigate these dangers. Exhibit A, Self-Build. An explanation of the proposed mitigating language follows. However, PacifiCorp reserves its right to object to the adoption of Self-Build rules in this docket that do not adequately protect PacifiCorp, its customers and the general public.

The standard contract provisions proposed by PacifiCorp add the following protections:

- \* The licensee is obligated to design the project in accordance with applicable standards, including the pole owner's construction standards.
- \* The licensee must obtain the pole owner's approval of the design before beginning construction.
- \* The licensee must use an approved contractor and must take responsibility for the work performed by that contractor and manage the contractor in every respect.

- \* The licensee must pay for all inspections and quality control.
- \* The licensee must provide lien waivers from its contractors to protect the pole owner.
- \* The licensee must provide adequate insurance coverage.
- \* The pole owner must be given the right of inspection during construction and prior to acceptance, which may be withheld until the work is properly completed.
- \* The licensee must properly account for the materials and work that goes into the Self-Build to allow the pole owner to properly update its accounting records upon taking title.
- \* The licensee must provide a minimum two-year warranty on the work performed equivalent to the warranty the pole owner would obtain from its own contractor.

Finally, the proposed provisions contain a placeholder for language to address operational concerns such as outage scheduling, customer notifications, and coordination with the pole owner's operations and maintenance activities.

The proposed provisions are designed to put the licensee in the shoes of a licensed electric contractor doing business with an electric utility pole owner. This is the only appropriate reference frame. In the event the Commission allows licensees a Self-Build option, PacifiCorp urges the Division to incorporate PacifiCorp's proposed Self-Build provisions in the Division's standard contract.

## **II. Credit Assurances**

PacifiCorp incorporates the arguments it has previously made in this docket in relation to credit assurances.<sup>2</sup> PacifiCorp had proposed language in Section 10.04 of its draft agreement filed on April 15, 2005, that provides reasonable credit assurances to the pole owner with respect

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<sup>2</sup> Reply Brief of PacifiCorp as to Terms and Provisions of the Standard Pole Attachment Agreement, filed May 13, 2005, at 37; Brief of PacifiCorp as to Terms and Provisions of the Standard Pole Attachment Agreement, filed April 15, 2005, at 10; Comments of PacifiCorp to the Division of Public Utilities on It's Modifications to PacifiCorp's Joint-Use Agreement, filed October 29, 2004, at 9.

to all amounts due under the agreement. The Division had not incorporated this language into its own April 15, 2005, filing, but noted that it took no position.<sup>3</sup> The Commission, in its Direction Concerning Ten Issues Regarding the Pole Attachment Standard Contract, issued September 6, 2005, indicated support for certain language proposed by PacifiCorp for Article X of the Standard Agreement, and left some technical conference participants with the impression that the credit-assurance provision was to be included; others disputed this inference. Thus, the Division requested comments addressing this language, including provision of the missing Material Adverse Change (“MAC”) definition.

PacifiCorp noted previously that the need for such assurances is somewhat reduced--but not eliminated--when prepayment of make-ready work is required. The Commission’s latest version of the proposed rules requires a 50% prepayment. This prepayment reduces credit risk associated with make-ready work by 50%, but does not eliminate it. Further, credit assurances are necessary with respect to contact rental. Annual prepayments provide a year’s worth of credit assurance upon receipt. However, as the billing cycle continues, that protection is continually and gradually eroded, ending with essentially no credit assurance in effect in the last month, prior to receipt of the next year’s payment.

The credit-assurances clause proposed by PacifiCorp and attached as Exhibit B, Credit Assurances, has three operative parts: (1) a triggering event, which is either a MAC or the loss of BBB- or better Standard and Poor’s credit rating for rated companies; (2) the performance assurance requirement; and (3) the default provision. Only when the trigger is activated is there a performance-assurance requirement.

The trigger is designed to indicate when a company is likely to have trouble paying its joint use bills. The trigger proposed by PacifiCorp is typical in commercial contracts. The

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<sup>3</sup> Initial Brief of the Division of Public Utilities, filed April 15, 2005, at 13 (Issue No. 10).

performance assurance required, upon triggering the obligation, includes four defined alternatives and any other mutually agreed arrangements. Once triggered, the assurance provisions reduce the risk of uncollectible receivables in the event the licensee declares bankruptcy or otherwise fails to pay its bills. Without these assurances, the pole owner and its customers risk being shorted as unsecured creditors in a bankruptcy proceeding. The default provision merely states that if the licensee fails to meet the credit assurance requirement once a triggering event occurs, then the licensee is in default and the pole owner can seek whatever remedies may be available. This should encourage licensees to fulfill their assurance obligation.

### **III. Conclusion**

PacifiCorp proposes the foregoing language in an effort to aid the Division in implementing the Commission's proposed rules in a manner that promotes safety, reliability, and customer service, while accommodating the licensees and reasonably protecting the financial interests of the pole owner and the electric or telephone rate payer. Therefore, for the reasons stated in these comments, PacifiCorp respectfully urges the Division to revise its Standard Agreement in the manner proposed herein.

Respectfully submitted this 7<sup>th</sup> Day of December 2005.

**PACIFICORP DBA UTAH POWER**

By \_\_\_\_\_

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**Exhibit A**  
**Self-Build**

[See attached mark-up of Sections 3.09 and 9.03 of the standard agreement.]

**Exhibit B**  
**Credit Assurances**

**Section 10.04 Credit Assurances**

Upon the occurrence of a Material Adverse Change, or, if Licensee has an S&P credit rating, upon the Licensee's credit rating dropping below BBB-, Pole Owner may require Licensee to provide to Pole Owner, at Licensee's option (but subject to Pole Owner's acceptance based upon reasonably exercised discretion), performance assurances in the form of either (a) the posting of a letter of credit, (b) a cash deposit, (c) the posting of other acceptable collateral or security by the Licensee, (d) a guarantee agreement executed by a creditworthy entity; or (e) some other mutually agreeable method of satisfying Owner. The magnitude of Licensee's obligations under this Section 10.04 shall be limited to a reasonable estimate of the sum of the rental charges and non-recurring charges expected to be due Pole Owner for the next twelve-month period. If the Licensee fails to provide such reasonably satisfactory assurances of its ability to perform hereunder within three (3) Business Days of demand therefore, that failure will be an event of default under this Agreement and Pole Owner shall have the right to exercise any of the remedies available under this Agreement or otherwise.

\* \* \*

“Material Adverse Change” means disclosed information which would adversely impact the Party's ability to meet its obligations under the Agreement. Such an event would include, but not be limited to significant financial losses; inability to make scheduled debt payments; disclosure of a possible bankruptcy; foreclosure of assets or sale of assets by secured creditors to fulfill secured debt obligations, and material changes in applicable law.

## Certificate of Service

I certify that I have served a copy of the foregoing **COMMENTS OF PACIFICORP TO THE DIVISION OF PUBLIC UTILITIES ON THE DIVISION'S STANDARD JOINT-USE AGREEMENT** by first-class mail or by e-mail attachment the following participants in the captioned proceeding, this 7<sup>th</sup> day of December 2005.

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