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Submitted: August 9, 2006

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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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	)	<b>DOCKET NO. 04-999-03</b>
<b>In the Matter of an Investigation into</b>	)	
<b>Pole Attachments</b>	)	<b>RESPONSIVE COMMENTS OF ROCKY</b>
	)	<b>MOUNTAIN POWER ON PROPOSED</b>
		<b>CHANGE TO RULE</b>
		<b>R746-345-3</b>

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On August 1, 2006, Comcast Cable Communications, LLC (“Comcast”), and the Utah Rural Telecom Associations (“URTA”) filed comments with the Commission in the captioned proceeding. Their comments addressed proposed changes to the Commission’s Rules R746-345-2 and -3 (Utah Admin. Code §§ R746-345-2, -3) that were published in the July 1, 2006, Utah State Bulletin (the “July 1 Proposal”). Rocky Mountain Power, a Division of PacifiCorp (formerly PacifiCorp, dba Utah Power) respectfully submits the following responsive comments.

**Background.** In the December 15, 2005, edition of the *Utah State Bulletin*, the Commission published

extensive changes to the rules governing attachments to poles owned by utility companies “to clarify the intent and result of the rule modification previously proposed” and make changes to “areas of possible confusion and ambiguity.”

In the May 1, 2006, publication of the *Utah State Bulletin*, the Commission proposed further modifications to Utah Admin. Code § R746-345-3.C, concerning alternative make-ready work bids by the pole owner; and to § R746-345-3.C.8, concerning access to the electrical utility space in connection with the “self-build option” (the “May 21 Proposal”).

The Commission’s July 1 Proposal primarily addresses the self-build, make-ready issues in § R746-345-3.C. Rocky Mountain Power addresses briefly the issues raised by URTA and Comcast.

**The electrical utility space.** In the May 21 Proposal, the Commission had proposed to recognize Rocky Mountain Power’s (then PacifiCorp’s) concern over the overriding safety considerations of allowing attaching entities such as Comcast to self-build the make-ready work in the electrical utility space of a pole by incorporating this sentence in subsection 3.C.8: “The self-build option is available only for make-ready work outside of the electrical utility space.”

The July 1 Proposal removed this sentence, but effected a similar result by modifying subsection 3.C to require that the pole owner concur with an attachers’ request to self-build the make-ready work related to its attachment request:

Applicants that wish to consider self-building shall inform the pole owner at the time of application that they are considering the self-build option, *if available*, and they would like a two-alternative make-ready bid. *The pole owner and each existing attaching entity are responsible to determine what portion, if any, of the make-ready work their facilities require which may be performed through a self-build option and what conditions, if any, are associated with such self-build option.* In the first alternative, the pole owner and attaching entities would be responsible for all necessary make-ready work. For the second alternative, the pole owner and attaching entities will identify what make-ready work they will perform, *if any*, with an associated cost estimate, and also identify what make-ready work, *if any*, the owner is agreeable to have performed through a self-build option and the conditions, *if any*, for such self-build option.

(Emphasis added.)

Rocky Mountain Power regards this proposed change as a reasonable alternate to the May 1 Proposal. As before, Rocky Mountain Power believes it is absolutely necessary for the electric company to have exclusive control of the electric utility space on electric poles. As Rocky Mountain Power reads the Commission’s July 1 Proposal, it leaves

the decision to allow self-build of make-ready work in the electrical space on electric poles in the hands of the electric utility. This appropriately reflects concern for the electric customers where considerations of safety, quality control and adherence to National Electric Safety Code (NESC) requirements and standards on electric poles necessitate the limitation that the Commission has proposed.

**Comcast Cable Communications.** Comcast's comments are largely not related to the changes published on July 1. Rather, they consist of a reprise of issues that Comcast had raised in previous rounds of rulemaking comments on issues that the Commission has already decided. For example, on page 2 of its comments, Comcast takes issue with the provision that permits the pole owner to modify the specific make-ready dates detailed in § R746-345-3.C if it provides an appropriate explanation of its need to do so. *This Commission had already adopted this provision; it was not part of the Commission's proposed July 1 rule changes.*

In its comments, Comcast, in effect, creates a straw man by attaching the inapposite term "open-ended" to the detailed procedure that the Commission has adopted to deal with the oftentimes complicated make-ready process. It then attempts to bring the straw man down by painting the picture of a predatory pole owner who will openly flout the Commission's carefully crafted regulatory structure in this area, twist the Commission's rules to its own competitive advantage, thwart Comcast's ability to serve its potential customers, and leave the Commission powerless to take remedial action against the pole-owner's hypothetical misbehavior.

The Commission has gone to considerable length to arrive at a balanced pole-attachment system that (a) accommodates the efforts of non-pole-owners who wish to provide non-utility services to the public and to use utility property in doing so, (b) allows the public utility to operate and control its utility property with the primary mission of providing safe and reliable service to its utility customers, and (c) provides a regulatory mechanism under which the Commission has the tools to remedy any abuse or misuse of the system by the utility pole-owner. To suggest, as does Comcast in its most recent comments, that the Commission will be besieged with a constant stream of requests to sort out endless bickering between owners and attachers assumes the most nefarious of motives on the part of the electric utility, the purest of intentions and actions on the part of the attaching party, and the inability of the Commission to

cope in a timely and effective fashion with any problem that might arise between the two protagonists in such a drama.

There is, of course, no evidence to support this hypothetical parade of horrors. Comcast continues to base its arguments on the somewhat paranoid expectation that the electric utility will try to sabotage its business plans. The electric utility in this case is focused on electric utility service for Utah customers. It is ready and willing to accommodate other service providers who wish to make attachments to its facilities, but it must have the flexibility and control to provide safe utility service first. The Commission's make-ready framework provides a reasonable trade-off between the interests of the utility customers and the communications customers of a non-utility enterprise. Comcast should—in the absence of any evidence to the contrary—assume that the Commission will properly enforce the rules that it adopts.

Under the reasonable conclusion that the electric utility must, as a matter of providing safe service to customers, have direct responsibility for the electric space, the Commission has, since its February 8, 2006, "Order Granting Temporary Exemption" in this docket,  implemented that conclusion. The July 1 Proposal did not change that perspective, and Comcast's comments are merely retreads of its comments to the Commission in the previous proposed rule changes. Indeed, the July 1 proposal takes the somewhat more flexible view that, while the electric utility is responsible for the electrical space on a pole in the first instance, there might be mutually agreeable circumstances where it could agree to allow applicant attachers to self-build make-ready work in the electrical space. But, the fundamental principle is that such an arrangement must be agreeable to the party responsible for the safety of the installations—the electric utility pole owner.

**Utah Rural Telecom Association.** URTA's comments would have the Commission step backward and resurrect the approved-contractor-list approach to self-build situations. The Commission concluded as early as February 8 of this year, in its Order Granting Temporary Exemption that electric utilities would not be required to permit self-build make-ready work by others in the utility's electrical space. The Commission's May 1 proposal incorporated this provision directly, and the July 1 Proposal embodies the same concept in modified form. The Commission has concluded that the electric company's responsibilities to its customers do not allow it to cede its safety and quality-control responsibilities

to other attachers. The Commission has previously both directly and implicitly rejected the essence of URTA's proposal, and it should do so again.

**Clarification.** Comcast has suggested a minor modification to the last two sentences of the first paragraph of subsection 3.C to distinguish between existing and prospective attachers. Rocky Mountain Power agrees with Comcast that the language should be clarified, but Comcast's proposed changes don't quite do the trick. The following perhaps better captures Comcast's suggestion:

In the first alternative, the pole owner and ~~attaching~~ entities with existing attachments would be responsible for performing all necessary make-ready work. For the second alternative, the pole owner and ~~attaching~~ entities with existing attachments will identify what make-ready work they will perform, if any, with an associated cost estimate, and also identify what make-ready work, if any, the owner is agreeable to have performed through a self-build option and the conditions, if any, for such a self-build option.

WHEREFORE, Rocky Mountain Power supports the Commission's July 1 Proposal, as slightly modified in the foregoing paragraph, as the final rule on self-building of make-ready work on electric poles.

SUBMITTED this 9<sup>th</sup> day of August 2006.

ROCKY MOUNTAIN POWER,  
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### Certificate of Service

I certify that on August \_\_\_\_, 2006 a copy of the foregoing **COMMENTS OF ROCKY MOUNTAIN POWER ON PROPOSED CHANGE TO RULE R746-345-3** 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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