

ORDINANCE NO. 2005-3-O

AN ORDINANCE GRANTING AN ELECTRIC UTILITY FRANCHISE AND
GENERAL UTILITY EASEMENT TO PACIFICORP

Be it ordained by the Legislative Body of the Township of Apple Valley, Utah as follows:

1. Statutory Authority
2. Purpose
3. Findings
4. Grant of Franchise and General Utility Easement
5. Term
6. Acceptance by PacifiCorp
7. Non-Exclusive Franchise
8. Apple Valley Regulatory Authority
9. Indemnification
10. Annexation
11. Plan, Design, Construction and Installation of Company Facilities
12. Relocations of Electric Facilities
13. Subdivision Plat Notification
14. Trees and Trimming
15. Renewal
16. No Waiver
17. Transfer of Franchise
18. Amendment
19. Non-Contestability - Breach of Contract
20. Notices
21. Severability
22. Effective Date

1. Statutory Authority.

The statutory authority for enacting this ordinance is Utah Code Annotated Sections 10-3-701, 10-3-702, 10-1-302 (6) and 10-8-21(1953, as amended).

2. Purpose.

The purpose of this ordinance is to grant to PacifiCorp, an Oregon corporation, d.b.a. Utah Power ('PacifiCorp'), a non-exclusive franchise granting to PacifiCorp the right, privilege and authority to construct, maintain, operate, upgrade, and relocate its electrical distribution and transmission lines and related appurtenances in, under, along, over and across the public ways within the Township of Apple Valley, for the purpose of supplying and transmitting electrical power and energy to the inhabitants of the Township of Apple Valley ('Apple Valley'), subject to the terms and restrictions contained therein, being granted by Apple Valley.

3. Findings.

A. Apple Valley was incorporated by the State of Utah on the 14th day of October 2004.

B. PacifiCorp is a regulated public utility that provides electric power and energy to the citizens of Apple Valley and other surrounding areas.

C. Providing electrical power and energy requires the installation, operation and maintenance of power poles and other related facilities to be located within the public ways of Apple Valley.

D. Apple Valley has the authority, pursuant to the provisions of Utah Code Annotated, § 10-8-21 (1953, as amended) to regulate power line facilities within the public ways and to grant to PacifiCorp a general utility easement for the use thereof.

E. It is in the best interest of the residents of Apple Valley that Apple Valley set forth the terms and conditions by which PacifiCorp shall use the public ways of Apple Valley.

4. Grant of Franchise and General Utility Easement.

Apple Valley hereby grants to PacifiCorp the right, privilege and authority to construct, maintain, operate, upgrade, and relocate its electrical distribution and transmission lines and related appurtenances, including underground conduits and structures, poles, towers, wires, guy anchors, vaults, transformers, transmission lines, and communication lines (collectively referred to herein as "Electric Facilities") in, under, along, over and across the present and future streets, alleys, public ways and public places (collectively referred to herein as "Public Ways") within Apple Valley, for the purpose of supplying and transmitting electric power and energy to the inhabitants of Apple Valley and persons and corporations beyond the limits thereof.

5. Term.

The term of this Franchise and General Utility Easement is for ten (10) years commencing on the date of acceptance by the Company as set forth in Section 6 below.

6. Acceptance by PacifiCorp.

Within sixty (60) days after the passage of this ordinance by Apple Valley, PacifiCorp shall file an unqualified written acceptance thereof, with Apple Valley Clerk, otherwise the ordinance and the rights granted herein shall be null and void.

7. Non-Exclusive Franchise.

The right to use and occupy the Public Ways of Apple Valley shall be nonexclusive and Apple Valley reserves the right to use the Public Ways for itself or any other entity that provides utility service to Apple Valley residences; provided, however, that such use shall not unreasonably interfere with PacifiCorp's Electric Facilities or PacifiCorp's rights as granted herein.

8. Apple Valley Regulatory Authority.

In addition to the provision herein contained, Apple Valley reserves the right to adopt such additional ordinances and regulations as may be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties or exercise any other rights, powers, or duties required or authorized, under the Constitution of the State of Utah, the laws of Utah or Apple Valley Ordinance.

9. Indemnification.

Apple Valley shall in no way be liable or responsible for any loss or damage to property or any injury to, or death of, any person that may occur in the construction, operation or maintenance by PacifiCorp of its Electric Facilities. PacifiCorp shall indemnify, defend and hold Apple Valley harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of PacifiCorp's use of the Public Ways within Apple Valley, and shall pay the costs of defense plus reasonable attorneys' fees for any claim, demand or lien brought thereunder. Apple Valley shall: (a) give prompt written notice to PacifiCorp of any claim, demand or lien with respect to which Apple Valley seeks indemnification hereunder; and (b) unless in Apple Valley's judgment a conflict of interest exists between Apple Valley and PacifiCorp with respect to such claim, demand or lien, permit PacifiCorp to assume the defense of such claim, demand, or lien with counsel satisfactory to Apple Valley. If such defense is not assumed by PacifiCorp, PacifiCorp shall not be subject to liability for any settlement made without its consent, which consent shall not be unreasonably withheld. Notwithstanding any provision hereof to the contrary, PacifiCorp shall not be obligated to indemnify, defend or hold Apple Valley harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or willful act or failure to act of Apple Valley or any of its officers or employees.

10. Annexation.

A. Extension of Apple Valley Limits. Upon the annexation of any territory to Apple Valley, the rights granted herein shall extend to the annexed territory to the extent Apple Valley has such authority. All Electrical Facilities owned, maintained, or operated by PacifiCorp located within any public ways of the annexed territory shall thereafter be subject to all of the terms hereof.

B. Notice of Annexation. When any territory is approved for annexation to Apple Valley, Apple Valley shall, not later than ten (10) working days after passage of an

ordinance approving the proposed annexation, provide by certified mail to the Grantee: (a) each site address to be annexed as recorded on county assessment and tax rolls; (b) a legal description of the proposed boundary change; and (c) a copy of Apple Valley's ordinance approving the proposed annexation. The notice shall be mailed to:

PacifiCorp Customer Contact Center
P.O. Box 400
Portland, Oregon 97202-0400

With a copy to:

PacifiCorp
Attn: Office of the General Counsel
201 South Main Street, Suite 2200
Salt Lake Apple Valley, UT 84111

11. Plan, Design, Construction and Installation of Company Facilities.

A. All Electric Facilities installed or used under authority of this Franchise shall be used, constructed and maintained in accordance with applicable federal, state and Apple Valley laws, codes and regulations.

B. Except in the case of an emergency, PacifiCorp shall, prior to commencing new construction or major reconstruction work in the public way or street or other public places, apply for a permit from Apple Valley which permit shall not be unreasonably withheld, conditioned, or delayed. PacifiCorp will abide by all applicable ordinances and all reasonable rules, regulations and requirements of Apple Valley, and Apple Valley may inspect the manner of such work and require remedies as may be necessary to assure compliance. Notwithstanding the foregoing, PacifiCorp shall not be obligated to obtain a permit to perform emergency repairs.

C. All Electric Facilities shall be located so as to cause minimum interference with the Public Ways of Apple Valley and shall be constructed, installed, maintained, cleared of vegetation, renovated or replaced in accordance with applicable rules, ordinances and regulations of Apple Valley.

D. If, during the course of work on its Electrical Facilities, PacifiCorp causes damage to or alters the Public Way, public property, or private property, including, but not limited to, any street or dedicated easement or sewer, electric facility, water main, fire alarm, police communication or traffic control, PacifiCorp shall (at its own cost and expense and in a manner approved by Apple Valley) replace and restore it in as good a condition as existed before the work commenced.

E. In addition to the installation of underground electric distribution lines as provided by applicable state law and regulations, PacifiCorp shall, upon payment of all charges provided in its tariffs or their equivalent, place newly constructed electric distribution lines underground as may be required by Apple Valley ordinance.

F. Apple Valley shall have the right without cost to use all poles and suitable overhead structures owned by PacifiCorp within Public Ways for Apple Valley wires used in connection with its fire alarms, police signal systems, or other communication lines used for governmental purposes; provided, however, any such uses shall be for activities owned, operated or used by Apple Valley for a public purpose and shall not include the provision of CATV, internet, or similar services to the public. Provided further, that PacifiCorp shall assume no liability nor shall it incur, directly or indirectly, any additional expense in connection therewith, and the use of said poles and structures by Apple Valley shall be in such a manner as to prevent safety hazards or interferences with PacifiCorp's use of same. Nothing herein shall be construed to require PacifiCorp to increase pole size, or alter the manner in which PacifiCorp attaches its equipment to poles, or alter the manner in which it operates and maintains its Electric Facilities. Apple Valley attachments shall be installed and maintained in accordance with the reasonable requirements of PacifiCorp and the current addition of the National Electrical Safety Code pertaining to such construction. Further, Apple Valley attachments shall be attached or installed only after written approval by PacifiCorp, which approval shall not be unreasonably withheld.

G. PacifiCorp shall have the right to excavate the Public Ways subject to reasonable conditions and requirements of Apple Valley. Before installing new underground conduits or replacing existing underground conduits, PacifiCorp shall first notify Apple Valley of such work and shall allow Apple Valley, at its own expense, to share the trench of PacifiCorp to lay its own conduit therein, provided that such action by Apple Valley will not unreasonably interfere with PacifiCorp's Electric Facilities or delay project completion.

H. Before commencing any street improvements or other work within a Public Way that may affect PacifiCorp's Electric Facilities, Apple Valley shall notify PacifiCorp.

12. Relocations of Electric Facilities.

A. Apple Valley reserves the right to require PacifiCorp to relocate its Electric Facilities within the Public Ways in the interest of public convenience, necessity, health, safety or welfare at no cost to Apple Valley. Within a reasonable period of time after written notice, PacifiCorp shall promptly commence and complete the relocation of its Electrical Facilities. Before requiring a relocation of Electric Facilities, Apple Valley shall, with the assistance and consent of PacifiCorp, identify a reasonable alignment for the relocated Electric Facilities within the Public Ways of Apple Valley. Apple Valley shall assign or otherwise transfer to Company all right it may have to recover the cost for the relocation work and shall support the efforts of PacifiCorp to obtain reimbursement.

B. PacifiCorp shall not be obligated to pay the cost of any relocation that is required or made a condition of a private development. If the removal or relocation of facilities is caused directly or otherwise by an identifiable development of property in the

area, or is made for the convenience of a customer, PacifiCorp may charge the expense of removal or relocation to the developer or customer. For example, PacifiCorp shall not be required to pay relocation costs in connection with a road widening or realignment where the road project is made a condition or caused by a private development.

13. Subdivision Plat Notification.

Before Apple Valley approves any new subdivision, Apple Valley shall submit the plat for review to PacifiCorp. Upon approval of the plat, Apple Valley shall mail notification of such approval and a copy of the plat to PacifiCorp:

Utah Power
455 N Old Highway 91
Hurricane, UT 84737

14. Trees and Trimming.

Prior to removing, trimming, cutting and/or pruning any trees, shrubs, or vegetation in a Public Way that interferes with PacifiCorp's Electrical Facilities, PacifiCorp shall obtain Apple Valley's permission, which permission shall not be unreasonably withheld. PacifiCorp shall comply with all Apple Valley ordinances or regulations regarding the removing, trimming, cutting and/or pruning of trees, shrubs, or vegetation in Apple Valley Public Ways.

15. Renewal.

At least 120 days prior to the expiration of this Franchise, PacifiCorp and Apple Valley shall agree to either extend the term of this Franchise for a mutually acceptable period of time or the parties shall use best faith efforts to renegotiate a replacement Franchise.

16. No Waiver.

Neither Apple Valley nor PacifiCorp shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

17. Transfer of Franchise.

PacifiCorp shall not transfer or assign any rights under this Franchise to another entity, except transfers and assignments by operation of law, unless Apple Valley shall first give its approval in writing, which approval shall not be unreasonably withheld; provided, however, inclusion of this Franchise as property subject to the lien of PacifiCorp's mortgage(s) shall not constitute a transfer or assignment.

18. Amendment.

At any time during the term of this Franchise, Apple Valley through its Town Council, or PacifiCorp may propose amendments to this Franchise by giving thirty (30) days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). No amendment or amendments to this Franchise shall be effective until mutually agreed upon by Apple Valley and PacifiCorp and formally adopted as an ordinance amendment.

19. Non-Contestability - Breach of Contract.

A. Neither Apple Valley nor PacifiCorp will take any action for the purpose of securing modification of this Franchise before either the Public Service Commission or any Court of competent jurisdiction; provided, however, that neither shall be precluded from taking any action it deems necessary to resolve difference in interpretation of the Franchise nor shall PacifiCorp be precluded from seeking relief from the Courts in the event Public Service Commission orders, rules or regulations conflict with or make performance under the Franchise illegal.

B. In the event PacifiCorp or Apple Valley fails to fulfill any of their respective obligations under this Franchise, Apple Valley, or PacifiCorp, whichever the case may be, will have a breach of contract claim and remedy against the other in addition to any other remedy provided by law, provided that no remedy which would have the effect of amending the specific provisions of this Franchise shall become effective without such action which would be necessary to formally amend the Franchise.

20. Notices.

Unless otherwise specified herein, all notices from PacifiCorp to Apple Valley pursuant to or concerning this Franchise shall be delivered to Apple Valley Clerk's Office, or home, if the Apple Valley Clerk does not have an office. Unless otherwise specified herein, all notices from Apple Valley to PacifiCorp pursuant to or concerning this Franchise shall be delivered to the Executive Vice President of Utah Power & Light Company at 201 South Main, 23rd Floor, Salt Lake City, Utah 84111 and such other office as PacifiCorp may advise Apple Valley of by written notice.

21. Severability.

If any section, sentence, paragraph, term or provision hereof is for any reason determined to be illegal, invalid, or superseded by other lawful authority including any state or federal regulatory authority having jurisdiction thereof or unconstitutional, illegal or invalid by any court of common jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

23. Effective Date.

This ordinance takes effect ten (10) days after its passage. Following its passage but prior to the effective date, a copy of the Ordinance shall be deposited with the Town Clerk and a complete copy of the Ordinance shall be posted in three (3) public places within the boundaries of Apple Valley as required by law.

APPROVED AND ADOPTED this 3rd day of March 2005.

APPLE VALLEY TOWNSHIP


MARY REEP
Mayor

ATTEST:


ALICE BAUGH
Apple Valley Clerk

Council Member Evan Brown voted AYE
Council Member Kathy Pugmire voted AYE
Council Member Jan Hirschi voted AYE
Council Member Dale Kingsley voted AYE
Mayor Mary Reep voted AYE



March 30, 2005

To the Honorable Mayor and
City Council
Apple Valley, Utah

Gentlemen/Ladies:

PacifiCorp, doing business as Utah Power, hereby accepts the ordinance passed by
your Honorable Body on the 3rd of March, 2005, entitled:

"AN ORDINANCE GRANTING AN ELECTRIC UTILITY FRANCHISE
AND GENERAL UTILITY EASEMENT TO PACIFICORP"

according to all its terms and conditions and files this, its written acceptance, in
accordance with the requirements of said ordinance.

Very truly yours,

PACIFICORP, doing business as
UTAH POWER

By A. Richard Walje
A. Richard Walje
Executive Vice President

WITNESS:

Julie K. Blair

