

**CONTRACT
TRANSMITTAL**

Contract No. _____

Original
Prepare in triplicate
Forward in duplicate

Date: 15-Mar-05

Mail To: 
RECORDS MANAGEMENT
1050 LCT

From: Alene Bentley
OUC 2300
801.220-4437

Attached is original contract or contract amendment, correspondence or cancellation as attachment indicates.

PURPOSE OF TRANSMITTAL


- Original signed contract (or certified copy of original signed contract)
- Amendment, modification, and/or pertinent correspondence to original contract
- Cancellation of contract

**COMPLETE FOR EACH ORIGINAL CONTRACT OR CONTRACT AMENDMENT,
CORRESPONDENCE OR CANCELLATION:**

Company/Name Contracting with	<u>San Juan County, UT</u>
Purpose	<u>franchise renewal</u>
Date of Execution	<u>Oct. 27, 2004</u>
Type of Contract	<u>Franchise Ordinance</u>
Term of Contract	<u>20 yrs 10/27/2024</u>
Cross References	_____

Cancellation of Contract: _____
Date _____
Reason _____

Department Initiating Contract: _____ **D. Dull** **Cost Center:** _____

Signed:  _____

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**COMPLETE FOR EACH ORIGINAL CONTRACT OR CONTRACT AMENDMENT,
CORRESPONDENCE OR CANCELLATION:**

Company/Name Contracting with San Juan County, UT
Purpose franchise renewal
Date of Execution Oct. 27, 2004
Type of Contract Franchise Ordinance
Term of Contract 20 yrs 10/27/2024
Cross References _____

Cancellation of Contract: _____
Date _____
Reason _____

Department Initiating Contract: _____ **D. Dull** **Cost Center:** _____

Signed:  _____

White-Original Yellow-Duplicate Pink-Office Copy

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

WHEREAS, PacifiCorp, an Oregon corporation, d.b.a. Utah Power ("PacifiCorp"), is a regulated public utility that provides electric power and energy to the citizens of San Juan County (the "County ") and other surrounding areas;

WHEREAS, 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 the County;

WHEREAS, the County desires to set forth the terms and conditions by which PacifiCorp shall use the public ways of the County;

NOW, THEREFORE, be it ordained by the County:

SECTION 1. Grant of Franchise and General Utility Easement. The County 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 the County, for the purpose of supplying and transmitting electric power and energy to the inhabitants of the County and persons and corporations beyond the limits thereof.

SECTION 2. Term. The term of this Franchise and General Utility Easement is for twenty (20) years commencing on the date of acceptance by the Company as set forth in Section 3 below.

SECTION 3. Acceptance by Company. Within sixty (60) days after the passage of this ordinance by the County, PacifiCorp shall file an unqualified written acceptance thereof, with the County Clerk, otherwise the ordinance and the rights granted herein shall be null and void.

SECTION 4. Non-Exclusive Franchise. The right to use and occupy the Public Ways of the County shall be nonexclusive and the County reserves the right to use the Public Ways for itself or any other entity that provides water or sewerage service to County residences; provided, however, that such use shall not unreasonably interfere with PacifiCorp's Electric Facilities or PacifiCorp's rights and granted herein.

SECTION 5. County Regulatory Authority. In addition to the provision herein contained, the County 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 law of Utah or County Ordinance.

SECTION 6. Indemnification. The County 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 the County 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 the County, and shall pay the costs of defense plus reasonable attorneys' fees for any claim, demand or lien brought thereunder. The County shall: (a) give prompt written notice to PacifiCorp of any claim, demand or lien with respect to which the County seeks indemnification hereunder; and (b) unless in the County's judgment a conflict of interest exists between the County 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 County. If such defense is not assumed by PacifiCorp, PacifiCorp shall not be subject to liability for any settlement made without its consent. Notwithstanding any provision hereof to the contrary, PacifiCorp shall not be obligated to indemnify, defend or hold the County 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 the County or any of its officers or employees.

SECTION 7. Plan, Design, Construction and Installation of Company Facilities.

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

7.2 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 the County 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 the County, and the County 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.

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

7.4 If, during the course of work on its Electrical Facilities, PacifiCorp causes damage to or alters the Public Way or public property, PacifiCorp shall (at its own cost and expense and in a manner approved by the County) replace and restore it in as good a condition as existed before the work commenced.

7.5 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 County ordinance.

7.6 The County shall have the right without cost to use all poles and suitable overhead structures owned by PacifiCorp within Public Ways for County 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 the County 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 the County 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. County 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, County attachments shall be attached or installed only after written approval by PacifiCorp.

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

7.8 Before commencing any street improvements or other work within a Public Way that may affect PacifiCorp's Electric Facilities, the County shall give written notice to PacifiCorp.

SECTION 8. Relocations of Electric Facilities.

8.1 The County 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 the County. Within a reasonable period of time after written notice, PacifiCorp shall promptly commence the relocation of its Electrical Facilities. Before requiring a relocation of Electric Facilities, the County shall, with the assistance and consent of PacifiCorp,

identify a reasonable alignment for the relocated Electric Facilities within the Public Ways of the County. The County 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.

8.2 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.

SECTION 9. Subdivision Plat Notification. Before the County approves any new subdivision and before recordation of the plat, the County shall mail notification of such approval and a copy of the plat to PacifiCorp:

PacifiCorp
Attn: Right-of-Way Department
1407 West North Temple
Salt Lake County , UT 84106

SECTION 10. Trees and Trimming. PacifiCorp or its contractor may prune all trees and vegetation which overhang the Public Ways, whether such trees or vegetation originate within or outside the Public Ways to prevent the branches or limbs or other part of such trees or vegetation from interfering with PacifiCorp's Electrical Facilities. Such pruning shall comply with *the American National Standard for Tree Care Operation (ANSI A300)* and be conducted under the direction of an arborist certified with the International Society of Arboriculture. A growth inhibitor treatment may be used for trees and vegetation species that are fast-growing and problematic. Nothing contained in this Section shall prevent PacifiCorp, when necessary and with the approval of the owner of the property on which they may be located, from cutting down and removing any trees which overhang streets.

SECTION 11. Renewal. At least 120 days prior to the expiration of this Franchise, PacifiCorp and the County 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. PacifiCorp shall have the continued right to use the Public Ways of the County as set forth herein in the event an extension or replacement Franchise is not entered into upon expiration of this Franchise.

SECTION 12. No Waiver. Neither the County 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.

SECTION 13. 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 the County 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.

SECTION 14. Amendment. At any time during the term of this Franchise, the County through its County Commission, 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 the County and PacifiCorp and formally adopted as an ordinance amendment.

SECTION 15. Non-Contestability--Breach of Contract.

15.1 Neither the County 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.

15.2 In the event PacifiCorp or the County fails to fulfill any of their respective obligations under this Franchise, the County, 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.

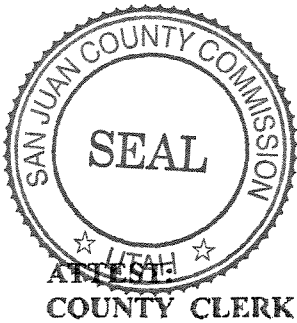
SECTION 16. Notices. Unless otherwise specified herein, all notices from PacifiCorp to the County pursuant to or concerning this Franchise shall be delivered to the County Clerk's Office. Unless otherwise specified herein, all notices from the County to PacifiCorp pursuant to or concerning this Franchise 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 the County of by written notice.

SECTION 17. 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.

SECTION 18. Effective date. This ordinance shall become effective as soon as it shall be published or posted as required by law, deposited and recorded in the office of the County Clerk, and accepted as required herein.

PASSED by the San Juan County Commission this 18 day of October, 2004.



Lynn H. Stevens

Lynn H. Stevens, Chairman
San Juan County Commission

Norman L. Johnson

Norman L. Johnson, Clerk-Auditor



October 22, 2004

To the Honorable Mayor and
City Council of
Smithfield, Utah

Gentlemen/Ladies:

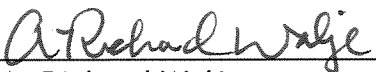
PacifiCorp, doing business as Utah Power, hereby accepts the ordinance passed by your Honorable Body on the 22nd day of September 2004 entitled:

"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
Executive Vice President

WITNESS:

