

COTTONWOOD HEIGHTS

ORDINANCE NO. 276

AN ORDINANCE GRANTING TO ROCKY MOUNTAIN POWER, A D/B/A OF PACIFICORP, AN ELECTRIC DISTRIBUTION SYSTEM FRANCHISE

WHEREAS, Rocky Mountain Power (“*Franchisee*”), a d/b/a of PacificCorp, desires to construct, maintain, and operate an electric distribution system within the corporate limits (“*City Limits*”) of the city of Cottonwood Heights (“*City*”); and

WHEREAS, Franchisee is a regulated public utility that provides electric power and energy within City Limits and other surrounding areas; and

WHEREAS, providing electrical power and energy requires the installation, operation and maintenance of power poles and other related facilities to be located within City's public ways; and

WHEREAS, pursuant to UTAH CODE ANN. § 10-8-21, City has the authority to regulate power line facilities within public ways and to grant to Franchisee the right to use the public ways for electric distribution system purposes; and

WHEREAS, City's city council (the “*Council*”) met in regular session on 25 July 2017 to consider, among other things, adopting an ordinance granting an electric distribution system franchise to Franchisee; and

WHEREAS, after careful consideration, the Council, in the exercise of City's police power, ownership, or use rights in, to, over and under the public roads, streets, alleys and public places within City Limits and pursuant to its other regulatory authority, believes it to be in the best interests of the health, safety and welfare of City's residents to grant to Franchisee a non-exclusive franchise to operate an electric distribution system within City Limits; and

WHEREAS, City desires to set forth the terms and conditions by which Franchisee shall use City's public ways;

NOW, THEREFORE, BE IT ORDAINED by the city council of the city of Cottonwood Heights as follows:

Section 1. **Grant of Franchise**. City hereby grants to Franchisee the franchise, right, privilege and authority (“*Franchise*”) 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 “*Facilities*”) in, under, along, over and across the present and future streets, alleys, and rights-of-way (collectively referred to herein as “*Public Ways*”) within City Limits, for the purpose of supplying and transmitting electric power and energy to City's inhabitants and persons and corporations beyond the limits

thereof. Public Ways shall not, however, include City parks, realty, buildings or other spaces not constituting City-owned public rights-of-way.

Section 2. **Term.** The term of the Franchise is for 10 (ten) years commencing on the date of acceptance by Franchisee as set forth in Section 3 below.

Section 3. **Acceptance by Franchisee.** Within sixty (60) days after the passage of this ordinance (this "*Ordinance*") by City, Franchisee shall file with City's recorder an unqualified written acceptance thereof, declaring its acceptance of the Franchise and its intention to be bound by the terms and conditions of this Ordinance. Absent such timely acceptance by Franchisee, this Ordinance and the rights granted herein shall be null and void.

Section 4. **Non-Exclusive Franchise.** Franchisee's right to use and occupy City's Public Ways shall be nonexclusive, and City reserves the right to use the Public Ways for itself, for any other entity that provides service to City residences, or for any other public purpose; provided, however, that such use shall not unreasonably interfere with Franchisee's Facilities or Franchisee's rights as granted herein.

Section 5. **City Regulatory Authority.** In addition to the provisions contained in this Ordinance, City 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 United States, the Constitution of the State of Utah, the laws of the United States or of the state of Utah, or City ordinance.

Section 6. **Indemnification.** City 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 Franchisee of its Facilities or Franchisee's other activities within City Limits pursuant to the Franchise. Franchisee shall indemnify, defend and hold City harmless from and against any and all claims, demands, liens, liabilities, damages, actions and proceedings of whatsoever kind(s) on account of, in connection with, or arising from Franchisee's use of the Public Ways and operations within City Limits pursuant to the Franchise, whether or not any such use, act or omission complained of is authorized, allowed or prohibited by the Franchise and shall pay the costs of defense plus reasonable attorneys' fees for any claim, demand or lien brought thereunder. City shall: (a) give prompt written notice to Franchisee of any claim, demand or lien with respect to which City seeks indemnification hereunder; and (b) permit Franchisee to assume the defense of such claim, demand, or lien at Franchisee's cost utilizing counsel reasonably acceptable to City. If such defense is not assumed by Franchisee, Franchisee shall not be subject to liability for any settlement made without its consent. Notwithstanding any provision hereof to the contrary, Franchisee shall not be obligated to indemnify, defend or hold City 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 City or any of its officers or employees.

Section 7. **Annexation.**

7.1 **Extension of City Limits.** Upon the annexation of any territory to City, the rights and obligations herein shall extend to the annexed territory to the extent City has such

authority. All Facilities owned, maintained, or operated by Franchisee located within any public ways of the annexed territory shall thereafter be subject to all of the terms hereof.

7.2 Notice of Annexation. When any territory is approved for annexation to City, City shall, not later than ten (10) working days after passage of an ordinance approving the proposed annexation, use its diligent best efforts to provide by certified mail to Franchisee: (a) a legal description of the proposed boundary change; (b) each site address to be annexed as recorded on Salt Lake County's assessment and tax rolls; and (c) a copy of City's ordinance approving the proposed annexation. The notice shall be mailed to:

Rocky Mountain Power Customer Contact Center
Attn: Annexations
P.O. Box 400
Portland, Oregon 97207-0400

With a copy to:

Rocky Mountain Power
Attn: Office of the General Counsel
1407 West North Temple, Room 320
Salt Lake City, UT 84116

Franchisee shall have no liability to City for any sales taxes or municipal energy taxes not included on customer billings and collected by Franchisee for the annexation area due to Franchisee's ignorance of such annexation as a result of City's failure to provide to Franchisee the information specified above in this Section 7.2.

Section 8. **Plan, Design, Construction and Installation of Company Facilities.**

8.1 Compliance with Laws. All Facilities installed or used under authority of this Franchise shall be used, constructed and maintained in accordance with applicable federal, state and City laws, codes and regulations.

8.2 Permits and Inspections. Except in the case of an emergency, Franchisee and/or its agents, contractors, etc. shall, prior to commencing new construction or major reconstruction work in the Public Ways, apply for any permit from City as may be required by City's ordinances, which permit shall not be unreasonably withheld, conditioned, or delayed. Franchisee will abide by all applicable ordinances and all rules, regulations and requirements adopted by City, and City may inspect the manner of such work and require remedies as may be reasonably necessary to assure compliance. Notwithstanding the foregoing, Franchisee shall not be obligated to obtain a permit to perform emergency repairs.

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

8.4 Damage. If Franchisee causes damage to or alters the Public Way or public property, Franchisee shall (at its own cost and expense and in a manner reasonably

approved by City) replace and restore it in as good a condition as existed before the work commenced.

8.5 Undergrounding. In addition to the installation of underground electric distribution lines as provided by applicable state law and regulations, Franchisee 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 City ordinance. Further, Franchisee shall, upon payment of its cost, relocate underground existing overhead electric distribution lines as specified from time to time by City.

8.6 Attachments. City shall have the right without cost to temporarily attach flags, banners and seasonal decorations to all poles owned by Franchisee within the Public Ways, provided that such poles are not harmed by reason of such attachment. City also shall have the right without cost to use all poles and suitable overhead structures owned by Franchisee within Public Ways for City 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 City for a public purpose and shall not include the provision of CATV, internet, or similar services to the public for profit. Provided further, that Franchisee 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 City shall be in such a manner as to prevent safety hazards or interferences with Franchisee's use of same. Nothing herein shall be construed to require Franchisee to increase pole size, or alter the manner in which Franchisee attaches its equipment to poles, or alter the manner in which it operates and maintains its Facilities. City attachments shall be installed and maintained in accordance with the reasonable requirements of Franchisee and the current edition of the National Electrical Safety Code pertaining to such construction. Further, City attachments shall be attached or installed only after written approval by Franchisee in conjunction with Franchisee's standard pole attachment application process, provided that Franchisee shall either approve or deny an attachment request by City within ten business days after receipt of City's written request. Franchisee shall have the right to inspect, at City's expense, such attachments to ensure compliance with this Section 8.6 and to require City to remedy any defective attachments.

8.7 Excavations. Franchisee shall have the right to excavate the Public Ways subject to City's enacted ordinances and other reasonable conditions and requirements, including any concerning required restoration of surfaces. Franchisee shall maintain on deposit with City throughout the term of the Franchise a cash deposit, irrevocable letter of credit, or self bond in the initial amount of \$10,000 to guaranty Franchisee's faithful performance of Franchisee's obligations under Chapter 14.16 of the COTTONWOOD HEIGHTS CODE OF ORDINANCES. Further, except in emergency situations, before installing new underground conduits or replacing existing underground conduits, Franchisee shall first notify City of such work by written notice given at least 30 days in advance of the commencement of such work and shall allow City, at its own expense, (to include a pro rata share of the trenching costs), to share the trench of Franchisee to lay its own conduit therein, provided that such action by City will not unreasonably interfere with Franchisee's Facilities or materially delay project completion.

8.8 City Notice. Before commencing any street improvements or other work within a Public Way that may affect Franchisee's Facilities, City shall give written notice to Franchisee; provided, however, that City's negligent failure to so notify Franchisee shall not give rise to a claim for damages.

8.9 *Removal.* From and after any termination of the Franchise, Franchisee shall be (a) entitled to remove from the Public Places any or all of its Facilities; and (b) obligated to remove from the Public Places any or all of its Facilities which would interfere with a public project planned and approved within three years after the date of such termination for the protection of the health, safety or welfare of City's residents or for another legitimate, permitted governmental purpose. Any such removal shall be at Franchisee's sole cost or otherwise at no cost to City, and, upon any such removal, City may require Franchisee promptly to restore the Public Ways affected by such removal to as near as reasonably practicable their same condition as immediately prior to such removal.

8.10 *Annual Plan.* Upon request by either City or Franchisee not more often than once each calendar year, Franchisee and City shall meet for the purpose of exchanging information and documents regarding construction and other similar work within City Limits, with a view towards coordinating their respective activities in those areas where such coordination may prove mutually beneficial. Any information regarding future capital improvements that may involve land acquisition shall be treated with confidentiality upon request.

Section 9. **Relocations of Facilities.**

9.1 *Public Purpose.* City reserves the right to require Franchisee to relocate its Facilities within the Public Ways in the interest of public convenience, necessity, health, safety or welfare (such as the placement, widening or realignment of streets; the placement or realignment of curb, gutter and/or sidewalks; the creation of a public park or plaza; or the placement, relocation, etc. of traffic signals, street lighting or the like), at no cost to City. Within a reasonable time after written notice, Franchisee shall promptly commence the relocation of its Facilities and thereafter shall diligently prosecute such relocation to completion. Before requiring a relocation of Facilities, City shall, with the assistance and consent of Franchisee, identify a reasonable alignment for the relocated Facilities within the Public Ways of City. City shall assign or otherwise transfer to Company all right it may have to recover the cost for the relocation work from third parties such as private developers, contractors or other governmental entities and shall support the efforts of Franchisee to obtain reimbursement.

9.2 *Private Purpose.* Franchisee 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 private property in the area, or is made for the convenience of a customer, Franchisee may charge the expense of removal or relocation to the developer or customer.

Section 10. **Subdivision Plat Notification.** Before City approves any new subdivision and before recordation of the plat, City shall obtain Franchisee's approval of Facilities, including underground facilities to be installed by the developer, and associated rights of way depicted on the plat. A copy of the plat shall be mailed or submitted to Franchisee:

Rocky Mountain Power
Attn: Estimating Department
12840 Pony Express Road,
Draper, UT 84020

Section 11. **Vegetation Management.** Franchisee or its contractor may prune all trees and vegetation (collectively, "Trees") which overhang the Public Ways, whether such Trees originate within or outside the Public Ways to prevent the branches or limbs or other part of such Trees from interfering with Franchisee's Facilities. Such pruning shall be conducted under the direction of an arborist certified with the International Society of Arboriculture and shall comply with the *American National Standard for Tree Care Operation (ANSI A300)*; provided, however, that if, at any time during the term of the Franchise, ANSI A300 ceases to be published or ceases to be the standard for arboriculture techniques, then Franchisee reasonably shall designate a substitute, generally-recognized standard which, if feasible, is no less protective to the appearance and health of Trees in City Limits than ANSI A300 absent a legitimate public safety concern of Franchisee to the contrary. Franchisee shall use reasonable efforts to notify owners of property on which the Trees to be pruned are located at least 72 hours prior to doing the work. A growth inhibitor treatment may be used for species of Trees that are fast-growing and problematic. Nothing contained in this Section shall prevent Franchisee, 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 Public Ways.

Section 12. **Renewal.** At least six months prior to the expiration of the Franchise, Franchisee and City either shall agree to extend the term of the Franchise for a mutually acceptable period of time or the parties shall use best faith efforts to renegotiate a replacement Franchise. Franchisee shall have the continued right to use the Public Ways of City as set forth herein if an extension or replacement Franchise is not entered into upon expiration of this Franchise, provided that Franchisee shall timely negotiate in good faith with City concerning such extension or replacement.

Section 13. **No Waiver.** Neither City nor Franchisee shall be excused from complying with any of the terms and conditions of the 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 14. **Transfer of Franchise.** Franchisee shall not transfer or assign any rights under the Franchise to another entity, except transfers and assignments by operation of law, or to affiliates, parents or subsidiaries of Franchisee which assume all of Franchisee's obligations hereunder, unless City shall first give its approval in writing, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, that Franchisee may assign, mortgage, pledge, hypothecate or otherwise transfer without consent its interest in the Franchise to any financing entity, or agent on behalf of any financing entity to whom Franchisee (a) has obligations for borrowed money or in respect of guaranties thereof, (b) has obligations evidenced by bonds, debentures, notes or similar instruments, or (c) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof. No assignment or transfer of Franchise, whether or not with City's consent, shall relieve the original Franchisee from the obligation to either perform, or to assure the performance of, all of the obligations of the Franchisee under this Ordinance, unless (y) the assignee has assumed in writing all of the Franchisee's obligations under this Ordinance and such writing has been first provided to and reasonably approved by City, and (z) the assignee is at least as qualified to be the franchisee hereunder as the original Franchisee, including, without limitation, its experience in the industry and its financial resources; provided that a decision by the Utah Public Service

Commission finding such assignee to be a suitable successor-in-interest to Franchisee shall be deemed controlling.

Section 15. **Amendment.** At any time during the term of this Franchise, City, through its Council, or Franchisee may propose amendments to this Franchise by giving at least thirty (30) days' prior written notice to the other party 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 City and Franchisee and formally adopted by the Council as an ordinance amendment, which is accepted in writing by Franchisee.

Section 16. **Notices.** Unless otherwise specified herein, all notices from Franchisee to City pursuant to or concerning this Franchise shall be delivered to City Recorder's office at 2277 East Bengal Blvd., Cottonwood Heights, UT 84121, with a copy to Wm. Shane Topham, JONES WALDO, 170 South Main Street, #1500, Salt Lake City, UT 84101, and to such other address(es) as City may specify in written notice to Franchisee. Unless otherwise specified herein, all notices from City to Franchisee pursuant to or concerning this Franchise shall be delivered to the Regional Business Management Director, Rocky Mountain Power, 70 North 200 East, Room 122, American Fork, Utah, 84003, and such other office as Franchisee may specify in written notice to City.

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. **Waiver of Jury Trial.** To the fullest extent permitted by law, City and Franchisee each waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this Ordinance. Each such party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

Section 19. **Insurance.** Franchisee shall maintain in full force during the entire term of the Franchise commercial general liability insurance in an amount or not less than \$3 Million per occurrence insuring against claims for bodily injury, death or property damage occurring as a result of the construction, maintenance or operation of the Facilities or Franchisee's other activities within the City Limits pursuant to the Franchise. Franchisee may elect to assume such liabilities and risk of loss through deductibles and/or a qualified self-insurance program.

Section 20. **Severability.** All parts of this Ordinance are severable, and if any portion of this Ordinance shall, for any reason, be held or found to be invalid or unenforceable, the invalidity or unenforceability of any such portion shall not affect the validity of any remaining portion of this Ordinance.

Section 21. **Terms of Service.** Franchisee shall furnish electrical service within the City Limits without preference or discrimination among customers of the same service class at reasonable rates, in accordance with all applicable tariffs of Franchisee approved by and on file with regulatory bodies having jurisdiction over Franchisee, including revisions made during the term of the Franchise, and in conformity with all applicable constitutional and statutory requirements. Franchisee may make and enforce reasonable rules and regulations in the conduct of its business and may require applicants for electric service (“Customers”) to execute an electrical service agreement as a condition to receiving service. Franchisee shall have the right to contract with each Customer regarding the installation of service lines and a meter on such Customer’s premises. To secure safe and reliable service to the Customers, and in the public interest, Franchisee shall have the right to prescribe (in a uniform and non-discriminatory manner) the sizes and kinds of electric lines and related Facilities to be used by each Customer.

This Ordinance, assigned no. 276, shall take immediate effect as soon as it shall be published or posted as required by law, deposited and recorded in the office of the City Recorder, and accepted as required herein.

PASSED AND APPROVED this 25th day of July 2017.

ATTEST:

COTTONWOOD HEIGHTS CITY COUNCIL

By: 
Paula Melgar, Recorder




Kelvyn H. Cullimore, Jr., Mayor

VOTING:

Kelvyn H. Cullimore, Jr.	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael L. Shelton <i>absent</i>	Yea <input type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael J. Peterson	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Tee W. Tyler	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

DEPOSITED in the Recorder’s office this ^{4th} 25 day of July 2017.

POSTED this ^{4th} 25 day of July 2017.