

Ordinance 2023-36

SHORT TITLE:

AN ORDINANCE GRANTING ROCKY MOUNTAIN POWER A
NONEXCLUSIVE FRANCHISE TO INSTALL, MAINTAIN, AND OPERATE
POWER POLES AND OTHER RELATED FACILITIES IN PROVO, UTAH.
(23-039)

I

PASSAGE BY MUNICIPAL COUNCIL

ROLL CALL

DISTRICT	NAME	FOR	AGAINST	OTHER
CW 1	KATRICE MACKAY	✓		
CW 2	DAVID SHIPLEY	✓		
CD 1	BILL FILLMORE	✓		
CD 2	GEORGE HANDLEY	✓		
CD 3	SHANNON ELLSWORTH	✓		
CD 4	TRAVIS HOBAN	✓		
CD 5	RACHEL WHIPPLE	✓		
TOTALS		7	0	

This ordinance was passed by the Municipal Council of Provo City, on the 22nd day of August 2023, on a roll call vote as described above. Signed this 31st day of August 2023.

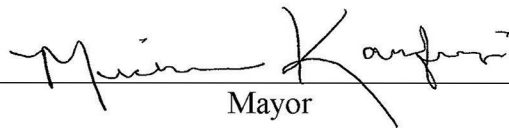


Chair

II

APPROVAL BY MAYOR

This ordinance is approved by me this 4th day of September 2023.


Mayor

Ordinance 2023-36

III

CITY RECORDER'S CERTIFICATE AND ATTEST

This ordinance was signed and recorded in the office of the Provo City Recorder on the 5th day of September 2023 and was published on the Utah Public Notice Website on the 23rd day of August 2023. I hereby certify and attest that the foregoing constitutes a true and accurate record of proceedings with respect to Ordinance Number 2023-36.



City Recorder

ORDINANCE 2023-36

AN ORDINANCE GRANTING ROCKY MOUNTAIN POWER A
NONEXCLUSIVE FRANCHISE TO INSTALL, MAINTAIN, AND OPERATE
POWER POLES AND OTHER RELATED FACILITIES IN PROVO, UTAH.
(23-039)

WHEREAS, Rocky Mountain Power, a public utility, desires to obtain a nonexclusive franchise to have the right and privilege to install, maintain, and operate power poles and other related facilities in Provo, Utah; and

WHEREAS, Provo City and Rocky Mountain Power have negotiated a nonexclusive franchise agreement ("Franchise Agreement") setting forth Rocky Mountain Power's rights and duties with respect to its installation, maintenance, and operations in Provo, Utah, as set forth in the attached Exhibit A; and

WHEREAS, on August 22, 2023, the Provo Municipal Council met to ascertain the facts regarding this matter and receive public comment, which facts and comments are found in the public record of the Council's consideration; and

WHEREAS, after considering the facts presented to the Municipal Council, the Council finds: (i) the attached Franchise Agreement should be approved, thereby granting Rocky Mountain Power a franchise in Provo, Utah, on the terms set forth in the Franchise Agreement; and (ii) such action furthers the health, safety, and welfare of the citizens of Provo.

NOW, THEREFORE, be it ordained by the Municipal Council of Provo City, Utah, as follows:

PART I:

The attached Franchise Agreement between Provo City and Rocky Mountain Power is hereby approved and Rocky Mountain Power is hereby granted a franchise in Provo, Utah, pursuant to the Franchise Agreement. The Mayor is hereby authorized to execute the Franchise Agreement, as set forth in the attached Exhibit A; provided, however, that the Mayor is also hereby authorized to amend the Franchise Agreement as may be needed to meet the requirements of applicable law.

The franchise granted herein shall be effective upon the date on which all parties have signed the Franchise Agreement. If the Franchise Agreement has not been fully executed within

one hundred twenty (120) days after the passage of this ordinance by the City, this ordinance and the rights granted herein shall be null and void.

PART II:

- A. If a provision of this Ordinance conflicts with a provision of a previously adopted ordinance concerning the same franchising act as described herein, this Ordinance shall prevail.
- B. This ordinance and its various sections, clauses and paragraphs are hereby declared to be severable. If any part, sentence, clause or phrase is adjudged to be unconstitutional or invalid, the remainder of the ordinance shall not be affected thereby.
- C. The Municipal Council hereby directs that this Ordinance remain uncodedified.
- D. This ordinance shall take effect immediately after it has been posted or published in accordance with Utah Code 10-3-711, presented to the Mayor in accordance with Utah Code 10-3b-204, and recorded in accordance with Utah Code 10-3-713.

END OF ORDINANCE.

Exhibit A

PROVO CITY AND ROCKY MOUNTAIN POWER FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT is made and entered into on September 19, 2023 by and between the City of Provo, Utah, (hereinafter "the City") and Rocky Mountain Power, a public utility.

WITNESSETH:

WHEREAS, Rocky Mountain Power is a regulated public utility that provides electric power and energy to customers in communities adjacent to Provo City (the "City") 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 City;

WHEREAS, the City, pursuant to the provisions of Utah Code Ann. § 10-8-21 has the authority to regulate power line facilities within public ways and to grant to Rocky Mountain Power a general utility easement for the use thereof;

WHEREAS, the City desires to set forth the terms and conditions by which Rocky Mountain Power shall use the public ways of the City;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, and other good and valuable consideration, the City and Rocky Mountain Power agree as follows:

SECTION 1. Grant of Franchise.

1.1 Grant of Franchise. The City hereby grants to Rocky Mountain Power 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, and rights-of-way, not including City parks, buildings or other spaces not associated with City-owned rights-of-way (collectively referred to herein as "Public Ways") within the City, for the purpose of supplying and transmitting electric power and energy to persons and corporations beyond the limits thereof. Rocky Mountain Power shall not acquire any rights to furnish power to inhabitants of the City, without the express consent of the Provo City Council.

1.2 Fees. Compensation for Rocky Mountain Power's use of the Public Ways will be through the collection of the Municipal Energy Sales and Use Tax, provided for in Provo City Code Chapter 5.04 and passed pursuant to Utah Code 10-1-305, or any successor City ordinance

establishing a municipal energy tax in compliance with state law. All amounts paid shall be subject to review by the City, provided that the only payments which occurred during thirty-six (36) months before the date the City notifies Rocky Mountain Power of its intent to conduct a review shall be subject to such review.

SECTION 2. 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 3 below.

SECTION 3. Acceptance by Company. Within sixty (60) days after the passage of this ordinance by the City, Rocky Mountain Power shall file an unqualified written acceptance thereof with the City Recorder, 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 City shall be nonexclusive and, subject to Section 9.1 of this agreement, shall not interfere with the City's right to use the Public Ways to provide electric, water, sewage, or any other service to City residences; provided, however, that the City's use of Public Ways shall not unreasonably interfere with Rocky Mountain Power's Electric Facilities or Rocky Mountain Power's rights as granted herein.

SECTION 5. City Regulatory Authority. In addition to the provision herein contained, the 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 State of Utah, the laws of Utah or City Ordinance.

SECTION 6. Indemnification, Insurance, and Bonds.

6.1 Indemnification. The 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 Rocky Mountain Power of its Electric Facilities. Rocky Mountain Power shall indemnify, defend and hold the City harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of Rocky Mountain Power's use of the Public Ways within the City, and shall pay the costs of defense plus reasonable attorneys' fees for any claim, demand or lien brought thereunder. The City shall: (a) give prompt written notice to Rocky Mountain Power of any claim, demand or lien with respect to which the City seeks indemnification hereunder; and (b) permit Rocky Mountain Power to assume the defense of such claim, demand, or lien. If such defense is not assumed by Rocky Mountain Power, the City shall notify Rocky Mountain Power of any settlement terms for any claim, demand, or lien the City is seeking indemnification prior to agreeing to any such settlement terms. Notwithstanding any provision hereof to the contrary, Rocky Mountain Power shall not be obligated to indemnify, defend or hold the 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 the City or any of its officers or employees.

6.2 Insurance. The certificate of self-insurance attached hereto as Exhibit A is accepted and approved by the City as meeting the requirements of Provo City Code 15.11.130, as authorized in Subsection (1) of that Section. Rocky Mountain Power shall for the duration of this Franchise maintain self-insurance meeting or exceeding the limits set forth in Exhibit A or shall comply with the insurance requirements of Provo City Code 15.11.130.

6.3 Bonds. Pursuant to Provo City Code 15.11.140(2), Rocky Mountain Power shall not be required to file any security to comply with Provo City Code 15.11.140.

SECTION 7. Annexation.

7.1 Extension of City Limits. Upon the annexation of any territory to the City, the rights granted herein shall extend to the annexed territory to the extent the City has such authority. All Electrical Facilities owned, maintained, or operated by Rocky Mountain Power 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 the City, the City shall, not later than thirty (30) working days after passage of an ordinance approving the proposed annexation, provide by certified mail to Rocky Mountain Power: (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 the 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

SECTION 8. Plan, Design, Construction and Installation of Company Facilities.

8.1 All Electrical 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 Access to, and construction or reconstruction in, City's Public Ways shall be in compliance with the requirements of Provo City Code Chapter 15.11. Rocky Mountain Power will abide by all applicable ordinances and all reasonable rules, regulations and requirements of

the City, and the City may inspect the manner of such work and require remedies as may be reasonably necessary to assure compliance.

8.3 All Electric Facilities shall be located so as to cause minimum interference with the Public Ways of the City and shall be constructed, installed, maintained, cleared of vegetation, renovated or replaced in accordance with applicable rules, ordinances and regulations of the City. Rocky Mountain Power's Electric Facilities located, constructed, installed, maintained, cleared, renovated, or replaced in a manner that violates this paragraph shall be, upon the request of the City, repaired, replaced, or removed by Rocky Mountain Power at its own expense in order to correct or remove such violation.

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

8.5 In addition to the installation of underground electric distribution lines as provided by applicable state law and regulations, Rocky Mountain Power 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.

8.6 The City shall have the right without cost to use all poles and suitable overhead structures owned by Rocky Mountain Power within Public Ways for City wires used in connection with its fire alarms, police signal systems, or other public safety communication lines used for governmental purposes; provided, however, any such uses shall be for activities owned, operated or used by the City for a public purpose and shall not include the provision of CATV, internet, or similar services to the public. Provided further, that Rocky Mountain Power 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 City shall be in such a manner as to prevent safety hazards or interferences with Rocky Mountain Power's use of same. Nothing herein shall be construed to require Rocky Mountain Power to increase pole size, or alter the manner in which Rocky Mountain Power attaches its equipment to poles, or alter the manner in which it operates and maintains its Electric Facilities. City attachments shall be installed and maintained in accordance with the reasonable requirements of Rocky Mountain Power 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 Rocky Mountain Power in conjunction with Rocky Mountain Power's standard pole attachment application process. Rocky Mountain Power shall have the right to inspect such attachments to ensure compliance with this Section 8.6 and to require the City to remedy any defective attachments. If attachments are not in compliance, the City will pay the expense of the inspection.

8.7 Rocky Mountain Power shall have the right to excavate the Public Rights of Ways subject to reasonable conditions and requirements of the City. Before installing new underground conduits or replacing existing underground conduits, Rocky Mountain Power shall first notify the City of such work by written notice and shall allow the City, at its own expense, (to include a pro rata share of the trenching costs), to share the trench of Rocky Mountain Power

to lay its own conduit therein, provided that such action by the City will not unreasonably interfere with Rocky Mountain Power's Electrical Facilities or delay project completion.

8.8 Before commencing any street improvements or other work within a Public Way that may affect Rocky Mountain Power's Electric Facilities, the City shall give written notice to Rocky Mountain Power.

SECTION 9. Relocation of Electric Facilities.

9.1 The City reserves the right to require Rocky Mountain Power 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 City. Within one hundred twenty (120) days, or a mutually agreed to commercially feasible duration after written notice, Rocky Mountain Power shall promptly commence the relocation of its Electrical Facilities. Any such relocation shall be coordinated with, and done in a manner approved by, the City Energy and Engineering Departments. Before requiring a relocation of Electric Facilities, the City shall, with the assistance and consent of Rocky Mountain Power, identify a reasonable alignment for the relocated Electric Facilities.

The City shall support the efforts of Rocky Mountain Power to obtain reimbursement. In the event of a relocation arising out of a decision of the City Engineer under Provo City Code 15.11.100, this Section 9.1 of this Agreement shall apply.

9.2 Neither the City nor Rocky Mountain Power shall 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, Rocky Mountain Power may charge the expense of removal or relocation to the developer or customer. For example, the City and Rocky Mountain Power shall not be required to pay relocation costs in connection with a road widening or realignment where the road project is made a condition of a private development.

SECTION 10. Vegetation Management. Rocky Mountain Power or its contractor may, and shall be responsible to, 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 Rocky Mountain Power'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 Rocky Mountain Power, 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. This franchise may be renewed by the parties if, between thirty (30) and 120 days prior to the expiration of this Franchise, Rocky Mountain Power has filed with the City Recorder a written statement of a desire to renew the franchise on the same terms and conditions as set forth herein. If upon receipt of said notice from Rocky Mountain Power the

Mayor does not object to the renewal of this franchise by providing written notice of such objection to Rocky Mountain Power within thirty (30) days of the receipt of Rocky Mountain Power's written statement, this franchise will, without any further action on the part of the City or Rocky Mountain Power, renew for an additional term. If the Mayor objects to renewal or if either the City or Rocky Mountain Power provides notice to the other, within the 30-to-120-day time period, that it desires to enter into a new franchise with different terms and conditions that contained herein, the City and Rocky Mountain Power will negotiate in good faith for the adoption of a new franchise. Subject to the provisions of Section 12, the terms and conditions of this Franchise will govern until a new franchise is executed by the City and Rocky Mountain Power.

SECTION 12. Early Termination or Revocation. The City may terminate or revoke this Franchise and all rights and privileges herein if: (i) Rocky Mountain Power, by act or omission, materially violates a duty or obligation herein set forth. If the City determines that such a violation has occurred, it shall provide written notice to Rocky Mountain Power. Rocky Mountain Power shall, within sixty (60) days of such notice, commence efforts to remedy the conditions identified in the notice and shall have one hundred twenty (120) days or a mutually agreed to commercially feasible duration to remedy the violation. After the expiration of one hundred twenty (120) days, the City may declare this Franchise forfeited, and thereupon Rocky Mountain Power shall have no further rights or authority hereunder; or (ii) Rocky Mountain Power becomes insolvent, unable or unwilling to pay its debts, is adjudged bankrupt, or all or part of its facilities should be sold under an instrument to secure a debt and is not redeemed by Rocky Mountain Power within sixty (60) days.

SECTION 13. No Waiver. Neither the City nor Rocky Mountain Power 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 14. Transfer of Franchise. Rocky Mountain Power shall not transfer or assign any rights under this Franchise to another entity, except transfers and assignments by operation of law, or to affiliates, parents or subsidiaries of Rocky Mountain Power which assume all of Rocky Mountain Power's obligations hereunder, unless the City shall first give its approval in writing, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, with the City's approval and consent, Rocky Mountain Power may assign, mortgage, pledge, hypothecate or otherwise transfer without consent its interest in this Franchise to any financing entity, or agent on behalf of any financing entity to whom Rocky Mountain Power (1) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.

SECTION 15. Amendment. At any time during the term of this Franchise, the City through its City Council, or Rocky Mountain Power may propose amendments to this Franchise by giving thirty (30) days 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 the City and Rocky Mountain Power and formally adopted as an ordinance amendment, which is accepted in writing by Rocky Mountain Power.

SECTION 16. Notices. Unless otherwise specified herein, all notices from Rocky Mountain Power to the City pursuant to or concerning this Franchise shall be delivered to the City Recorder's Office. Unless otherwise specified herein, all notices from the City to Rocky Mountain Power 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 Rocky Mountain Power may advise the City 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. Waiver of Jury Trial. To the fullest extent permitted by law, each of the parties hereto 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 agreement. Each 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.

IN WITNESS WHEREOF, this Franchise Agreement is executed in duplicate originals as of the date first set forth above, to become effective on that date.

Provo City

By:

Michelle Kaufusi
Michelle Kaufusi, Mayor

ATTEST:

Heidi Allman
Heidi Allman, City Recorder



Rocky Mountain Power

By:

Lisa Romney
Lisa Romney

Director of Commercial Accounts and Community Relations.

STATE OF UTAH)

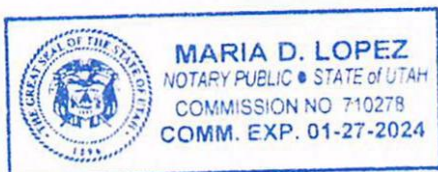
)ss.

COUNTY OF UTAH)

On the 18th day of September, 2023, personally appeared before me

Lisa Renee Romney, and _____,

who being by me duly sworn did each respectively say that he/she is the Director of Commercial Accounts and Community Relations. Rocky Mountain Power, and that the foregoing instrument was signed in behalf of said Company by authority of a resolution of its [board of directors]/[Managers]; and he/she each acknowledged to me that said Company executed the same.



Maria D. Lopez
Notary Public