

ORDINANCE NO. 826

AN ORDINANCE GRANTING AN ELECTRIC UTILITY FRANCHISE TO PACIFICORP; PROVIDING THE TERMS AND CONDITIONS THEREOF AND REPEALING ORDINANCE NO. 689 IN ITS ENTIRETY.

WHEREAS, PacifiCorp is a regulated public utility that provides electric power and energy to the residents of the Town of Lakeview.

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 Town of Lakeview;

WHEREAS, the Town desires to set forth the terms and conditions by which PacifiCorp may use the public ways of the Town of Lakeview, and

WHEREAS, the passage of this Ordinance will constitute a franchise agreement authorizing PacifiCorp to utilize public ways within the Town of Lakeview for electric power and transmission purposes; now, therefore,

THE TOWN COUNCIL OF THE TOWN OF LAKEVIEW ORDAINS AS FOLLOWS:

Section 1. Definitions. For the purpose of this Ordinance the following definitions are hereby established:

(a) Electric Facilities. Collectively, the 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 owned or leased by PacifiCorp.

(b) Franchise. The authorization as contained in this Ordinance, or any renewal hereof,

issued by the Town of Lakeview as the franchising authority, which authorizes construction, reconstruction, maintenance and operation of Electric Facilities by PacifiCorp in the public ways located within the Town of Lakeview.

(c) Gross Revenues. All revenue that PacifiCorp derives from the retail sale and use of electric power and energy within the Town of Lakeview after adjustment for the net write-off of un-collectable accounts and corrections of bills previously rendered.

(d) Public Ways. The surface of, and the space above and below, any public street, highway, bridge, alley, sidewalk, drive, circle or other public right of way, including, but not limited to, existing public utility easements, and utility strips dedicated for compatible uses.

(e) Service Area. The present boundaries of the Town of Lakeview including any future additions thereto by annexation or by any other legal means. Service area does not include the areas outside the boundaries of the Town of Lakeview that PacifiCorp may currently operate or provide service within.

(f) Town. The Town of Lakeview, Oregon.

(g) Underground Electric Facilities. Electric Facilities located below the surface of the ground, exclusive of those facilities such as sub-stations, transformers, pole boxes, service terminals, pedestal terminals, splice closures, apparatus cabinets, and similar facilities which normally are located above the surface.

(h) Utility Service. Any electric, water, sewer, gas, geothermal or telecommunications service, whether belonging to the Town or other third party entity.

Section 2. Grant of Franchise. The Town hereby grants to PacifiCorp the non exclusive

right, privilege and authority to construct, maintain, operate, upgrade, and relocate its Electric Facilities in, under, along, over and across the present and future Public Ways within the Town, for the purpose of supplying and transmitting electric power and energy to the inhabitants of the Town and persons and corporations beyond the limits thereof.

Section 3. Term. The term of this Franchise is for ten (10) years commencing July 1, 2007 and ending on June 30, 2017.

Section 4. Acceptance by PacifiCorp. Within sixty (60) days after the passage of this Ordinance by the Town, PacifiCorp shall file an unqualified written acceptance hereof with the Town Recorder, otherwise this Ordinance and the rights granted herein shall be null and void and shall be repealed by the Town in all respects.

Section 5. Non-Exclusive Franchise. The right to use and occupy the Public Ways of the Town shall be nonexclusive and the Town reserves the right to use the Public Ways for itself or for any other entity that provides a Utility Service to the Town or its residents. However, any other such use of the Public Ways by the Town or otherwise shall not unreasonably interfere with PacifiCorp's Electric Facilities or the rights herein granted.

Section 6. Town Regulatory Authority. In addition to the provisions herein contained, the Town reserves the right to adopt such additional ordinances and restrictions as may be deemed necessary in the exercise of its police power or 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 or the laws of the State of Oregon or by Town Charter or ordinance.

Section 7. Compensation.

7.1 Franchise Fee. In consideration of the grant of this Franchise, PacifiCorp shall pay to the Town commencing July 1, 2007, the following percentages of its Gross Revenues derived from within the Service Area.

(a) Five percent (5%) of its Gross Revenues from July 1, 2007 through June 30, 2012; and

(b) Seven percent (7%) of its Gross Revenues from July 1, 2012 through June 30, 2017.

7.2 Limitation on Franchise Fee Actions. The period of limitation for recovery of any franchise fee payable hereunder shall be five (5) years from the date on which the payment by PacifiCorp was due. Unless the Town initiates a lawsuit for recovery of such franchise fee in a court of competent jurisdiction, within five (5) years from and after such payment due date, such recovery shall be barred and the Town shall be estopped from asserting any claims whatsoever against PacifiCorp relating to any such alleged deficiencies.

7.3 Inspection of Books of Records. PacifiCorp agrees that the Town, upon reasonable notice to PacifiCorp, may review such of its books and records as is reasonably necessary to insure proper payment of the franchise fee. Notwithstanding anything to the contrary as set forth above, PacifiCorp shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Town agrees to treat any information disclosed by PacifiCorp as confidential and only to disclose it to representatives and agents of the Town that have a need to know, or in order to enforce the provisions hereof.

7.4 Exclusiveness of Franchise Fee. The franchise fee shall not be in addition to any other license, occupation, franchise or excise taxes or charges which might otherwise be levied or collected by the Town from PacifiCorp with respect to PacifiCorp's electric business or the

exercise of this Franchise within the Service Area and the amount due to the Town under any such other license, occupation, franchise or excise taxes or other charge for corresponding periods shall be reduced by deducting therefrom the amount of the franchise fee paid hereunder.

Section 8. Insurance and Indemnification.

8.1 Liability Insurance. During the term of this Franchise, PacifiCorp shall maintain public liability and property damage insurance with a combined single limit of not less than one million dollars (\$1,000,000) for injury to persons and damage to property. Such insurance shall be written on an occurrence basis and shall cover all risks arising directly or indirectly out of PacifiCorp's activities under or pursuant to this Franchise. PacifiCorp shall have the right to self-insure for the public liability and property damage insurance coverage required in this Franchise.

8.2 Indemnification. The Town shall not 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. Additionally, PacifiCorp shall fully indemnify, defend and hold the Town 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 Town, and shall pay the costs of defense plus reasonable attorneys' fees for any claim, demand or lien brought thereunder. The Town shall: (a) give prompt written notice to PacifiCorp of any claim, demand or lien with respect to which the Town seeks indemnification hereunder; and (b) unless in the Town's judgment a conflict of interest exists between the Town 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 Town. 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 Town 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 Town or any of its officers or employees:

8.3 Scope of Indemnification. The obligation of PacifiCorp to indemnify, hold harmless, and defend the Town shall include the obligation to indemnify and defend the Town's employees, officers, agents and elected officials and such obligation to indemnify shall survive any termination of this Franchise for actions that occurred during the term of this Franchise.

Section 9. Annexation.

9.1 Extension of Town Limits. Upon the annexation of any territory to the Town, the rights granted herein shall extend to the annexed territory to the extent the Town has such authority. All Electric 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.

9.2 Annexation. When any territory is approved for annexation to the Town, the Town shall comply with the provisions of ORS 222.005(1) as now in effect or which may be amended from time to time. The notice required by ORS 222.005(1) 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
825 N.E. Multnomah, Suite 2000
Portland, OR 97232

Additional or increased fees or taxes, other than ad valorem taxes, imposed on PacifiCorp

as a result of an annexation of territory to the Town shall be governed by the provisions of ORS 222.005(2), as now in effect or which may be amended from time to time.

Section 10. Service Standards.

10.1 Compliance with Law. All Electric Facilities installed or used under authority of this Franchise shall be used, constructed and maintained in accordance with applicable federal, state and Town ordinances, codes and regulations and also specifically in compliance with the current edition of the National Electrical Safety Code.

10.2 Excavation and Construction Work. Except in the case of an emergency for which PacifiCorp shall not be obligated to obtain a permit to perform emergency repairs, PacifiCorp shall, prior to commencing new construction or major reconstruction work in the Public Ways or streets or other public places, comply with Sections 6 through 9, and Sections 11, 13 and 14 of Town Ordinance No. 814. The Town may inspect the manner of such work and require remedies as may be necessary to assure compliance.

10.3 Maintenance. All Electric Facilities shall be located so as to cause minimum interference with the Public Ways of the Town and shall be constructed, installed, maintained, cleared of vegetation, inspected and renovated or replaced in accordance with applicable rules, ordinances and regulations of the Town. All inspections of Electric Facilities shall be in compliance with OAR 860-024-011 or its successor rule and all vegetation removal or trimming shall be in compliance with OAR 860-024-0016 or its successor rule.

If, during the course of work on its Electric 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 Town, replace and restore the damaged area to a condition comparable

to that which existed before the work commenced and in compliance with Town Ordinance No. 814.

10.4 Joint Use of Poles. The Town shall have the right without cost to use all poles and suitable overhead structures owned by PacifiCorp within a Public Way for Town 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 Town 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 Town shall be in such a manner as to prevent safety hazards or interferences with PacifiCorp's use of the same. Nothing herein contained 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. Town attachments shall be installed and maintained in accordance with the reasonable requirements of PacifiCorp and the current edition of the National Electrical Safety Code pertaining to such construction. Further, Town attachments shall be attached or installed only after approval by PacifiCorp.

10.5 Joint Use of Trenches. Subject to compliance with Town Ordinance No. 814, PacifiCorp shall have the right to excavate in the Public Ways. Before installing new underground conduits or replacing existing underground conduits, PacifiCorp shall first notify the Town of such work and shall allow the Town, at its own expense, to share the trench of PacifiCorp to lay its own conduit therein, provided that such action by the Town will not

unreasonably interfere with PacifiCorp's Electric Facilities or delay project completion.

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

10.7 No Interference. No structures, buildings or signs shall be erected below PacifiCorp's facilities or in a location that prevents PacifiCorp from accessing or maintaining its facilities.

Section 11. Location and Relocation of Electric Facilities.

11.1 Temporary or Permanent Overhead Relocation. The Town reserves the right to require PacifiCorp to relocate, either on a temporary or permanent basis, overhead Electric Facilities within the Public Ways in the interest of public convenience, necessity, health, safety or welfare at no cost to the Town. Within sixty (60) days after receipt of written notice, PacifiCorp shall promptly commence the overhead relocation of its Electric Facilities. Before requiring a relocation of Electric Facilities, the Town shall, with the assistance and consent of PacifiCorp, identify a reasonable alignment for the relocated Electric Facilities within the Public Ways of the Town. If the relocation request is from a person unassociated with the Town, the Town shall assign or otherwise transfer to PacifiCorp all right it may have to recover the cost for the relocation work and shall support the efforts of PacifiCorp to obtain reimbursement.

11.2 Underground Location or Relocation at Request of Town. In cases of capital improvement projects undertaken by the Town, PacifiCorp shall, upon the request of Town, convert existing overhead Electric Facilities to underground or to install new Electrical Facilities underground, so long as PacifiCorp is allowed to collect its costs associated with forced

conversion from overhead to underground consistent with the provisions of OAR 860-022-0046 or its successor rule.

11.3 Underground Location or Relocation at Request of Third Person. PacifiCorp shall not be obligated to pay the cost of any location or relocation that is required or made a condition of a private development. If the removal, location or relocation of Electric 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. In such event, the Town shall require the developer to pay PacifiCorp for such relocation costs as part of its approval procedures.

11.4. Installation of Underground Facilities. 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 Town ordinance.

Section 12. Subdivision Plat Notification. Before the Town approves any new subdivision and before recordation of the plat, the Town shall mail notification of such approval and a copy of the plat to PacifiCorp:

PacifiCorp
Attn: Property Management/Right-of-Way Department
825 N.E. Multnomah, Suite 1700
Portland, Oregon 97232

Section 13. Vegetation Management. 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 14. Renewal. At least 120 days prior to the expiration of this Franchise, PacifiCorp and the Town 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 Town as set forth herein in the event an extension or replacement Franchise is not entered into upon expiration of this Franchise, subject to the payment of compensation at the same rate that was in effect on the date prior to expiration of this Franchise.

Section 15. Transfer of Franchise. PacifiCorp shall not transfer or assign any of its rights under this Franchise to another entity, except transfers and assignments by operation of law, unless the Town 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 mortgagee(s) shall not constitute a transfer or assignment.

Section 16. Amendment. At any time during the term of this Franchise, the Town, 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 the Town and PacifiCorp and formally adopted as an ordinance amendment. If no mutual agreement is reached as to a proposed amendment then this Franchise will continue in an unamended status.

Section 17. Non-Contestability. Neither the Town nor PacifiCorp will take any action for the purpose of securing modification of this Franchise before either the Oregon Public Utility Commission or any Court of competent jurisdiction. However, neither PacifiCorp nor the Town 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 Oregon Public Utility Commission orders, rules or regulations conflict with or make performance under the Franchise illegal.

Section 18. Jurisdiction and Venue. The Town and PacifiCorp agree that jurisdiction for any dispute between them regarding this Franchise shall lie with the circuit courts of the State of Oregon and that venue for any legal proceeding shall be in the Lake County Circuit Court.

Section 19. Remedies. In the event PacifiCorp or the Town fails to fulfill any of their respective obligations under this Franchise, the Town, 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, including that remedy of specific performance. However, 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 20. Notices. Unless otherwise specified herein, all notices from PacifiCorp to the Town pursuant to or concerning this Franchise shall be delivered to the Town Recorder's Office. Unless otherwise specified herein, all notices from the Town to PacifiCorp pursuant to or concerning this Franchise shall be delivered to the Customer Services Vice President, PacifiCorp, 201 South Main, Suite 2400, Salt Lake City, Utah 84111, and such other office as PacifiCorp may advise the Town of by written notice.

Section 21. Miscellaneous Provisions.

21.1 Action of Parties. In any action by the Town or PacifiCorp that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

21.2 Force Majeure. PacifiCorp shall not be in default hereunder, or in noncompliance with, the provisions of this Franchise, or suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, governmental, administrative or judicial order or regulation or other event that is reasonably beyond PacifiCorp's ability to anticipate and control. This provision also covers work delays caused by the unavailability of materials and/or qualified labor to perform the work necessary.

21.3 Attorney Fees. In the event any legal action, proceeding, or suit is filed regarding

the terms and provisions of this Franchise, then the prevailing party in such proceeding, whether on the trial or appellate level, shall be entitled to an award of reasonable attorney fees in addition to costs and disbursements incurred.

21.4 Public Use of Public Ways. Irrespective of the rights herein granted to PacifiCorp, PacifiCorp's rights to Public Ways shall be subordinate to the rights of the public to the free unimpeded use of said Public Ways.

21.5 No Waiver. Neither the Town 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.

21.6 As-Built Drawings. Annually, PacifiCorp shall provide an electronic copy of its map showing its Electric Facilities within the Town of Lakeview at no cost to Town. Town acknowledges that the maps provided by PacifiCorp are proprietary information and highly confidential. Town agrees to keep the maps confidential and agrees to protect the maps using the same degree of care, but no less than a reasonable degree of care, as Town uses to protect its own confidential information of a like nature. Notwithstanding the preceding sentence, Town may disclose the maps to those of Town's employees who need to know such information after informing such individuals of the confidential nature of the maps and securing the agreement of such individuals to a similar confidentiality obligation.

Section 22. 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 23. Effective Date. This Ordinance and the Franchise herein granted shall be effective after June 30, 2007.

This Ordinance was read by title only and no Council member requested that the Ordinance be read in full and thereafter was adopted by the following vote:

4 In Favor
0 Opposed

Adopted this 24th day of April, 2007.


Sandra Wenzel, Council President

Attest:



Christy Pavola, Town Recorder



Karen Gilmore
Vice President, Customer Services
825 NE Multnomah
Portland, Oregon 97232
karen.gilmore@pacificorp.com

May 01, 2007

To the Honorable Mayor and
Town Council
Lakeview, Oregon

Gentlemen/Ladies:

PACIFICORP, doing business as Pacific Power, hereby accepts ordinance No. 826 passed by your Honorable Body on the 24th of April, 2007, entitled:

"AN ORDINANCE GRANTING AN ELECTRIC UTILITY FRANCHISE TO PACIFICORP;
PROVIDING THE TERMS AND CONDITIONS THEREOF AND REPELLING
ORDINANCE NO.689 IN ITS ENTIRETY."

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
Pacific Power

By Karen M. Gilmore
Karen Gilmore
Vice President
Customer Services

WITNESS:

Michael S. Allen

our true strength is
our connection to you