

STANDARD FRANCHISE AGREEMENT - ORDINANCE NO. 414-0

AN ORDINANCE GRANTING PORTLAND GENERAL ELECTRIC COMPANY, AN OREGON CORPORATION, ITS SUCCESSORS AND ASSIGNS, FOR A PERIOD OF TEN YEARS FROM AND AFTER THE EFFECTIVE DATE OF THIS ORDINANCE, THE RIGHT AND PRIVILEGE TO ERECT, CONSTRUCT, MAINTAIN AND OPERATE WITHIN THE CORPORATE LIMITS OF TROUTDALE, OREGON, AS SUCH LIMITS NOW EXIST OR MAY BE HEREAFTER CONSTITUTED, AN ELECTRIC LIGHT AND POWER SYSTEM WITH THE POLES, WIRES, FIXTURES, UNDERGROUND CIRCUITS AND EQUIPMENT NECESSARY OR CONVENIENT TO SUPPLY SAID CITY AND THE INHABITANTS THEREOF AND OTHERS WITH ELECTRIC ENERGY FOR LIGHT, POWER AND OTHER PURPOSES, UPON, OVER, ALONG, UNDER AND ACROSS THE STREETS, ALLEYS, ROADS AND OTHER PUBLIC WAYS AND PLACES WITHIN THE CORPORATE LIMITS OF SAID CITY, FIXING THE TERMS AND CONDITIONS THEREOF, AND PROVIDING FOR THE MANNER OF DETERMINATION OF THE EFFECTIVE DATE THEREOF.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF TROUTDALE, OREGON.

Section 1.

Portland General Electric Company, an Oregon corporation, hereinafter sometimes referred to as the "Company," is hereby granted, subject to the terms and conditions hereof, the franchise right and privilege to erect, construct, maintain and operate an electric light and power system within the corporate limits of Troutdale, Oregon herein sometimes referred to as the "City," as the same now exists, or may be hereafter constituted, and the franchise right and privilege to erect, construct, maintain and operate poles, wires, fixtures, equipment, underground circuits and other property necessary or convenient to supplying the City and the inhabitants thereof and other persons and territory with electric energy for light, power and other purposes, upon, over, along, under and across the streets, alleys, roads and other public ways and places within the corporate limits of the City as the same now are or may be hereafter constituted.

All poles, wires, fixtures, equipment, underground circuits and other property owned or in possession of the Company now located within the corporate limits of the City shall be deemed to be covered by the terms of this ordinance and the location of existing installed facilities is approved, but all future facilities installation locations are subject to the approval of the Director of Community Services or other properly designated authority therewith. Further, the Common Council of the City of Troutdale reserves the right to regulate the location of all poles, wires, fixtures, equipment, underground circuits and other property owned or in the possession of the Company.

Section 2.

All rights and privileges hereby granted shall be effective as of **January 1, 1984**, and shall terminate at the expiration of **Ten (10)** years from said date, except that in the event the Company shall fail, neglect or refuse for thirty (30) days after demand in writing by the City to perform any or all of the obligations or requirements set forth in this ordinance to be performed by the Company, then the rights and privileges herein granted may be terminated and

annulled by the Common Council or other legislative body of the City.

**Section 3.**

The Company shall file with the Director of Community Services, or other City official designated by the City, maps or sketches showing any proposed construction work to be done by the Company within the corporate limits of the City. The City may, however, waive this requirement. Such construction work shall be done in a reasonably safe manner subject to the approval of the official designated by the Council of the City and in accordance with requirements of applicable State laws and City ordinances.

**Section 4.**

The Company, may make all necessary excavations in any street, alley, road or other public way or place for the purpose of erecting, constructing, repairing, maintaining, removing and relocation poles and other supports for its wires, conductors, lights or street lights; and laying repairing and maintaining its underground conduits and pipes; and for placing, maintaining and operating its wires and conductors. All poles of the Company shall be erected at the curbside edge of the sidewalk, or that edge of the sidewalk closest to the street unless otherwise directed by local standards, ordinances, codes or proper City authorities. The City of Troutdale may require that permits be obtained for any of the activities enumerated in this section and provide for a reasonable permit fee, not to be included in the franchise agreement, to be paid by the Company to the City. The Company hereby acknowledges that this franchise agreement shall be subject to and that the Company shall be required to comply with all rules and regulations set forth in the City of Troutdale right-of-way excavation code and other ordinances of the City of Troutdale regulating the use of or construction within the City of Troutdale right-of-ways, streets and roads.

**Section 5.**

When any excavation shall be made pursuant to the provisions of this ordinance, the Company shall restore the portion of the street, alley, road or public way or place to the same condition to which it was prior to the excavation thereof, and all work shall be done in strict compliance with the rules, regulations, ordinances or orders which may be adopted from time to time during the continuance of this franchise by the Common Council of the City or as may be otherwise provided by law.

**Section 6.**

The City, by its properly constituted authorities, shall have the right to cause the Company to move the location of any poles, wires, standards, or any other equipment owned by the Company, whenever the relocation thereof shall be for public necessity, and the expense thereof shall be paid by the Company.

**Section 7.**

Nothing in this ordinance shall be construed as in any way to prevent the City from sewerage, grading, paving, planking, repairing, widening, altering or doing any work that may be desirable on any of the streets, alleys, roads or public

ways or places or to prevent the City from placing, or authorizing the placement of any television cables, telephone lines, or any other public facilities upon public ways; but all such work shall be done, if possible, in such manner as not to obstruct, injure or prevent free use and operation of the said electric light and power system of the Company.

**Section 8.**

Whenever it shall be necessary in sewerage, grading, or in making any other improvement in any street, alley, road or other public way or place, or in constructing any public work, to remove any pole, underground conduit or equipment belonging to the Company or on which any light, wire or circuit of the Company shall be stretched or fastened, the Company shall, upon ten (10) days' written notice from the City, or its properly constituted authorities, remove or relocate such pole, underground conduit, equipment, light, wire or circuit, and if Company fails, neglects or refuses so to do, the City, by its properly constituted authorities, may remove the same at the expense of the Company.

**Section 9.**

Whenever it becomes necessary to temporarily rearrange, remove, lower or raise the aerial cables or wires or other apparatus of the grantee to permit the passage of any building, machinery or other object, the said grantee will perform such rearrangement on seven (7) days' written notice from the person or persons desiring to move said building, machinery or other objects. Said notice shall bear the approval of such official as the Common Council may designate, shall detail the route of movement of the building, machinery or other objects, shall provide that the costs incurred by the grantee in making such arrangements of its aerial plant will be borne by the person or persons giving said notice and shall further provide that the person or persons giving said notice will indemnify and save said grantee harmless of and from any and all damages or claims of whatsoever kind or nature caused directly or indirectly from such temporary arrangement of the aerial plant of the grantee, and if required by grantee, shall be accompanied by a cash deposit or a good and sufficient bond to pay any and all such costs as estimated by grantee.

**Section 10.**

When it becomes necessary for the Company to construct or erect any new pole, equipment or other such facility upon any public way or property the Director of Community Services shall approve the site to be used. If, for good reason, the site is not acceptable to the City, the Director of Community Services shall provide the reasons therefore and shall designate an alternative site.

**Section 11.**

The Company is hereby empowered to cut and trim any ornamental tree in any of the streets, alleys, or public highways and on private property which interferes with any light, pole, wire or other such facility used in connection with or as a part of the electric power system. Where the owner or occupant is unwilling or unable to give his consent in writing, no such tree shall be cut or trimmed by the Company before the Company shall have sent written or printed notice, to the owner or occupant of the property containing the tree, of the intent to cut such

a tree. The notice shall be sent at least ten (10) days prior to the date set for cutting or trimming the tree. The Company shall bear the expense of such cutting or trimming of trees. The Company shall not have the power to cut or trim any shrub, bush or tree of the City without the City's approval unless the City had planted the shrub, bush or tree subsequent to the placement of the pole by the Company.

**Section 12.**

To preserve the visual aesthetics of the City, except as prohibited by law, the City reserves the right to adopt ordinances to provide that all users of poles, including but not limited to telephone, telegraph, power, and cable television companies shall use the same, existing, poles or standards.

**Section 13.**

That the rights and privileges granted by this ordinance are granted upon the conditions herein contained and also upon the following considerations and conditions to wit:

(a) That Portland General Electric Company shall, within thirty (30) days from the date of this ordinance, file with the City its written acceptance of this ordinance, subject to all the terms, obligations, restrictions and provisions of this ordinance, and upon the expiration of the allotted time for the acceptance of this ordinance, the same not having been accepted unconditionally, then this ordinance shall become wholly void, inoperative and of no effect.

(b) That in consideration of the rights and privileges herein granted, the Company shall pay to the City for each full calendar year during the life of this franchise beginning with the year 1984 an annual franchise fee of three and one half percent (3½) of the gross revenue as defined herein for the immediately preceding calendar year. It is understood and agreed that the aforesaid percentage rate of compensation is the standard franchise fee paid by the Grantee to other cities it serves for the right, privileges and franchises of the nature contemplated herein. In the event that during the term hereof Grantee shall agree in a negotiated franchise to pay any city in Oregon a percentage rate of compensation exceeding that provided for herein, grantee, shall, within thirty (30) days thereof, notify grantor of such increase and said increased rate of compensation shall thereafter be payable to the City of Troutdale and this ordinance and franchise amended accordingly, if the grantor, in its discretion, shall so desire. Such increase shall be effective upon the date that the increase in the other city is effective.

Gross revenue as used in this ordinance shall be deemed to include any revenue earned within the City from the sale of electric energy after adjustment for the net write-off of uncollectible accounts computed on the average annual rate for the entire Company and excluding sales of electric energy to large industrial customers with nominal demands of three thousand (3,000) kw or greater and also excluding sales of electric energy sold by the Company to any public utility when the public utility purchasing such electric energy is not the ultimate consumer. A public

utility as defined herein is any individual, partnership, cooperative, corporation or government agency buying electric energy and distributing such electric energy to those utilizing such service.

(c) That in consideration of the agreement of the Company to make such payments, the City agrees that no license, tax or charge on the business, occupation or franchise of the Company shall be imposed upon, exacted from or required of the Company by the City during the term of this ordinance, but this provision shall not exempt the property of the Company from lawful ad valorem taxes. This provision shall apply only to existing activities and business enterprises carried on by the Company. The City specifically reserves the right to impose a license fee or tax, as allowed by law, on any new business undertaking of the Company if operated within the City including the sale, within the City, of any new types of business undertaken by the Company. The City shall also reserve the right to levy ad valorem taxes on the property of the Company.

(d) That on or before the first day of March 1984, and on or before said day of each year thereafter during the term of this franchise, the Company shall file with the City a statement under oath showing the amount of gross revenue of the Company within the City on the basis outlined in paragraph (b) hereof for the calendar year immediately preceding the year in which the statement is filed. The annual franchise fee for the year in which the statement is filed shall be computed on the gross revenue so reported. Such franchise fee shall be payable annually on or before the first day of April beginning in the year 1984. If controversy arises as to the amount of gross revenue within the meaning of this ordinance, the amount of such gross revenue as determined by the Public Utilities Commissioner of Oregon after examination of the Company's records shall be deemed the correct amount. Any difference of payment due whether the City or the Company through error or otherwise shall be payable within fifteen (15) days of discovery of such error. Should the Company fail or neglect to pay any of said annual payments provided for in this Section for thirty (30) days after any annual payment shall become due and payable and after thirty (30) days' written notice from the City, the City, by its properly constituted authority, may at its option either continue this franchise in force and/or proceed by suit or action to collect said payment or declare a forfeiture of this franchise because of the failure to make such payment but without waiving the right to collect earned franchise payments.

(e) That the City reserves the right to cancel this franchise at any time upon one year's written notice to the Company in the event that the City decides to engage in public ownership of light and power facilities and the public distribution of electric energy. The City shall not be obligated to include the value of this franchise in the value of property being taken in the event the City exercises its rights under this Section. This franchise shall be non-exclusive and shall not operate to limit the City from granting to persons or corporations, other than Portland General Electric, rights privileges or authority similar to or different than the rights, privileges or authority set forth in this franchise or applicable permits.

(f) That the Company shall permit the City to string wires on poles of the Company for municipal fire, police and water departments, and for municipal telephone, telegraph and traffic signal systems and to attach to any pole, city fire alarm and police signals, provided that such wires and signals shall be strung so as to interfere as little as possible with the wires of the Company and to conform to the provisions of the National Electrical Safety Code; and further, that the City shall indemnify and hold the Company harmless from loss or damage resulting from damage to property or injury or death to City employees or the public arising from or connected with the use of said poles by the City.

(g) That the Company shall not during the term of this franchise sell, assign, transfer or convey this franchise without the consent of the Common Council of the City expressed by ordinance first obtained, and that upon obtaining such consent all of the provisions shall inure to and bind the successors and assigns of the Company; and whenever the Portland General Electric Company shall be mentioned in this ordinance, it shall be understood to include such successors or assigns in interest of the Portland General Electric Company as shall have been so consented to by the Common Council.

**Section 14.**

That the Company hereby agrees and covenants to indemnify and save harmless the City and the officers thereof against all damages, costs and expenses whatsoever to which it or they may be subjected in consequence of negligence of the Company, or its agents or servants, in any manner arising from the rights and privileges hereby granted.

**Section 15.**

That all rights, authority and grants herein contained or conferred are also conditioned upon the understanding and agreement that these privileges in the streets, alleys, roads and other public ways and places of the City are not to operate in any way so as to be an enhancement of the Company's properties or values or to be an asset or item of ownership in any appraisal thereof.

**Section 16.**

The preservation of the health, welfare and protection of the citizens and residents of the City being necessary, the City hereby specifically reserves the right to exercise the police power of the City as the City finds necessary.

**Section 17.**

This franchise is subject to the provisions of ORS 221.420.

**Section 18.**

Upon acceptance by the Company of the franchise herein granted, all rights and obligations arising under Ordinance No. 199 shall terminate.

Section 19.

Inasmuch as this ordinance is necessary for the immediate preservation of the public health, peace and safety of the people of the City of Troutdale in the judgment of the Common Council, now, therefore, an emergency is hereby declared to exist and this ordinance shall be in full force and effect from and after its passage by the Common Council of the City of Troutdale, and its signing by the Mayor.

PASSED BY THE COMMON COUNCIL THIS 13th DAY OF December, 1983.

YEAS- 6

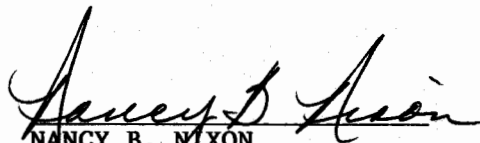
NAYS 1

ABSTAINED 0

Signed by the Mayor this 14th day of December, 1983 .

  
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Sam K. Cox, MAYOR

ATTEST:

  
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NANCY B. NIXON  
FINANCE DIRECTOR/CITY RECORDER