

**ORDINANCE NO. 601-94**

**AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO PORTLAND GENERAL ELECTRIC COMPANY; FIXING THE TERMS AND CONDITIONS THEREOF; REPEALING ORDINANCE NO. 414-0 AND PRIOR GRANTS AND EXTENSIONS OF FRANCHISE; ESTABLISHING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.**

**BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF TROUTDALE:**

**Section 1. Grant of Franchise.**

A. The City of Troutdale, Oregon (hereinafter "City"), grants to Portland General Electric Company, an Oregon corporation (hereinafter "Company"), subject to the terms, conditions, and limitations contained in this ordinance, a nonexclusive franchise, right and privilege (hereinafter "franchise") to: erect, construct, maintain and operate an electric light and power system within the current and future corporate limits of the City; erect, construct, maintain and operate poles, wires, fixtures, equipment, underground circuits and other property necessary or convenient for the transmission and distribution of electric energy to the City and its inhabitants and to other customers and territory beyond the limits of the City; and transmit, distribute and sell electric energy for light, power and other purposes, upon, over, along, under and across the streets, alleys, roads and other public ways and places, including, but not limited to, private property on which a preliminary subdivision or partition plat has been approved by the City for the provision of public utilities (hereinafter collectively referred to as "public place") within the current and future corporate limits of the City.

B. All poles, wires, fixtures, equipment, underground circuits and other property owned or in possession of the Company, directly used in connection with the distribution of electricity (hereinafter collectively referred to as "facilities") and located within the current and future corporate limits of the City shall be subject to this ordinance. Property owned or controlled by the Company which is not "facilities" is not subject to the terms of this ordinance unless the context otherwise requires.

C. Unless otherwise specified in this ordinance, any action authorized or required to be taken by the City may be taken by the City Council of the City of Troutdale or by an official or agent designated by the City Council.

## **Section 2. Duration.**

A. The franchise is effective as of January 1, 1994. Unless earlier terminated under subsection B of this section, the franchise terminates on December 31, 2003.

B. If the Company fails for thirty (30) days after the sending of demand in writing by the City to Company, to perform any of the obligations set forth in this ordinance to be performed by the Company, the franchise may be terminated by the City Council. This termination remedy is not the City's exclusive remedy. If the City chooses to terminate this franchise, it does not waive other remedies. If the City fails to terminate the franchise after a default, it does not waive any other remedy.

## **Section 3. Construction Plans and Drawings.**

A. Before the Company undertakes any excavation or construction in any public place, the Company must notify the City and provide the Public Works Director maps or sketches of the proposed work. The Company shall comply with any conditions relating to the scheduling and coordination of the construction with the City and other utilities that the City reasonably imposes. The provision of a map or sketch is excused if any emergency exists and is so certified by the Company. Except in an emergency, all construction and excavation work in any public place must be approved by the Public Works Director prior to commencement of the work. If, for any reason, the site of any excavation or construction is unacceptable to the City, the Public Works Director shall designate an alternative acceptable site.

B. The Company shall, as soon as reasonably possible after completion of the work but in any case no more than thirty (30) days thereafter, file final maps and drawings with the Public Works Director showing the location of any construction, extension or relocation of its facilities and services in any public place. The Company shall provide City with any updates of the maps and drawings that it makes. It is the intent of this provision for the City to have records of the location of the Company's facilities in the public places.

C. Any proposed construction or excavation work shall be performed in a reasonably safe manner and comply with applicable State laws and City ordinances and regulations.

## **Section 4. Installations, Excavations and Restorations.**

A. The Company may make necessary excavations in any street, alley, road or other public way or place for the purpose of erecting, constructing, repairing, maintaining, removing, relocating and operating its facilities. Except in an emergency, the Company shall notify the Public Works Director not less than forty-eight (48) hours prior to the commencement of any work by the Company which involves excavation in any public place. The minimum notice method shall be by telephone communication or in person prior to any work, followed by notice in writing as soon as practical. Company shall exercise its best effort in providing advance notice so as not to disrupt services of the City or any other person or utility using any public

place in the City and allow City to place any inspector it may deem necessary at the site of the project. Assuming sufficient right-of-way, all poles of the Company shall be erected at the outside edge of the sidewalk unless otherwise directed by the proper City authorities. The location of all Company's facilities within the public right-of-way and public easements shall be at places approved by the City. The City may require the Company to obtain a permit and pay a permit fee before commencing work on construction, extension or relocation of Company's facilities, in accordance with the City's adopted ordinances and regulations. Any permit fee shall be in addition to the franchise fee under this ordinance in accordance with State regulations.

B. Whenever work is performed in any public place, the Company shall take all reasonable precautions to minimize interruption to traffic flow, damage to property or creation of a hazardous condition.

C. When any excavation shall be made pursuant to the provisions of this ordinance, the Company shall as soon as practical remove all surplus material in compliance with specifications, requirements and regulations of the City in effect at the time of such restoration and restore the portion of the public place to at least the same condition in which it was prior to the excavation thereof. If the Company fails to restore promptly the affected portion of the public place, within 10 days following written notice to Company, the City may make the restoration in a manner satisfactory to City and all costs incurred for such restoration, whether done with City work forces and equipment or otherwise, shall be paid by the Company, including the cost of any inspector(s) the City may assign to the project. If an affected portion of the public place, following restoration by Company, exhibits defects as a result of faulty workmanship or use of faulty materials by Company, the City may repair the restored area to correct the defect in the same manner as provided in this paragraph, except City shall provide at least ten (10) days' written notice to Company prior to taking such corrective action.

#### **Section 5. Location and Relocation of Facilities.**

A. All facilities of the Company shall be placed so that they do not interfere with the use by the City and the public of any public place and in accordance with any specifications adopted by the City governing the location of facilities. The City reserves the right to construct, install, maintain and operate any public improvement, work or facility and to do any work that the City may find desirable on, over, or under any public place. All this work shall be done, if possible, in such a manner as not to prevent free use and operation of the Company's facilities. The City reserves the right to vacate, alter or close any public place, but will provide an easement for those Company facilities.

B. The City has the right to require, in the public interest, the removal or surface relocation of distribution facilities maintained by the Company in any public place of the City, and the Company shall remove and relocate such facilities forthwith following notice to do so from the City. Prior to any such relocation, the City agrees to provide for suitable location for such relocated facilities sufficient to maintain service. The cost of such removal or relocation

of its facilities in the public interest shall be paid by the Company. Where the relocation is temporary, the City and the Company agree to cooperate to minimize the economic impact of such temporary relocation on each party. If the Company fails to relocate its facilities after the provision of ten (10) days' written notice by the City to do so, the City may relocate the facilities at the expense of Company.

C. Subject to ORS 221.420, where the City, acting through itself, an agent, contractor or permit holder, proposes to improve a street, waterline, storm sewer or sanitary sewer within a public place under its jurisdiction or control, and such improvements include: (1) excavation and (2) the placement of underground vaults and conduits as are sufficient for Company's power distribution purposes, by and at the expense of someone other than the Company, then upon notification by the City and upon such reasonable scheduling as agreed between the City and the Company, the Company shall replace such overhead distribution facilities as are then within the affected right-of-way with underground distribution facilities within the provided vaults and conduits. The conversion from overhead to underground shall be conditioned upon the City requiring the undergrounding in the area in which both the existing and new facilities are and will be located and the City requiring: (1) that all existing overhead communication and electric distribution facilities in such area be removed; (2) that each customer served from such existing electric overhead distribution facilities shall, in accordance with the Company's rules for underground service, at the customer's expense, make all electrical facility changes on customer's premises necessary to receive service from the underground facilities of the Company as soon as it is available; and (3) that the Company is authorized to discontinue its overhead service on completion of the underground facilities. This replacement of overhead with underground distribution facilities shall be paid for by the Company.

D. In the absence of any utility improvement in a public place, City may require Company to replace overhead distribution facilities within the affected right-of-way with underground distribution facilities. The conditions on conversion from overhead to underground applicable to utility improvements set out in subsection C of this section apply in this situation as well.

E. The City may require that all future distribution facilities be located underground and the costs allocated according to applicable state and local laws.

#### **Section 6. Public Works and Improvements.**

Whenever the City excavates or performs any other work in any public place of the City, or contracts for this work, and the work might disturb but not require removal or relocation of Company's facilities, the City shall notify the Company sufficiently in advance of the work to enable the Company to take measures deemed necessary to protect its facilities from damage and protect against inconvenience or injury to the public. In such case, the Company, upon request, shall furnish field markings to the City or contractor showing the approximate location of all its facilities in the area involved in the proposed excavation or other work.

## **Section 7. Moving of Buildings.**

Whenever it becomes necessary to rearrange, remove, lower or raise the aerial cables or wires or other apparatus of the Company temporarily to permit the passage of any building, machinery or other object, the Company shall perform such rearrangement upon the receipt of written notice from the person or persons desiring to move said building, machinery or other objects. Such rearrangement for a building shall not be required unless the City Building Official has approved the structural relocation. The written notice shall detail the route of movement of the building, machinery or other object. The costs incurred by the Company in making such rearrangements of its aerial plant shall be borne by the person or persons seeking such rearrangement, unless the aerial plant is placed or maintained in violation of applicable rules of the Public Utility Commission or this ordinance, and thereby interferes with the movement, in which case the Company shall bear the cost of rearrangement. The person or persons desiring such rearrangement shall agree to indemnify and save Company harmless of and from any and all damages or claims of whatsoever kind or nature caused directly or indirectly from such temporary rearrangement of the aerial plant of the Company unless the aerial plant is placed or maintained in violation of applicable rules of the Public Utility Commission or this ordinance and thereby interferes with the movement.

## **Section 8. Continuous Service, Safety Standards.**

A. The Company shall furnish adequate and safe service for the distribution of electrical energy in the City. The Company shall use due diligence to maintain continuous 24-hour a day service which shall at all times conform at least to the standards common in the business and to the standards adopted by State authorities or the City pursuant to ORS 221.420(2)(c) and any other authority. Under no circumstances shall the Company be liable under this ordinance for an interruption or failure of service caused by an act of God, unavoidable accident, or other circumstances beyond the control of the Company.

B. The facilities of the Company shall at all times be constructed, operated and maintained so as to protect and safeguard the health and safety of the public and to this end Company shall observe all rules pertaining thereto prescribed by the Public Utility Commission of the State of Oregon including without limitation, any revision or edition of the National Electric Safety Code, approved by the American National Standards Institute, which the Public Utility Commission may adopt by rule as the standard for the construction, operation and maintenance of the facilities.

C. The Company shall render the service hereby authorized to be supplied upon equal terms without unjust discrimination or undue preference to any users within the City and in accordance with the rules and regulations adopted by the Public Utility Commission.

## **Section 9. Conditions and Franchise Fee.**

A. As compensation for the franchise granted by this ordinance, the Company shall pay to the City an amount equal to 3.5 percent of the gross revenue collected by the Company as defined herein. "Gross revenue," as used in this ordinance, means revenues received by Company from the sale of electric energy within the City. "Gross revenue" includes revenues from the use, rental or lease of operating facilities of the Company other than residential-type space and water heating equipment. Gross revenues shall not include proceeds from the sale of bonds, mortgage or other evidence of indebtedness, securities or stocks, or sales at wholesale prices by one public utility to another when the utility purchasing the service is not the ultimate consumer, and revenue from joint pole use. A "public utility" means any individual, partnership, cooperative, corporation, or government agency buying electric energy and distributing such electric energy to other customers or users.

B. The duration of this agreement being ten (10) years, in the event the Company shall either (1) agree to pay a franchise fee of more than 3.5 percent to any city or municipal corporation, or (2) be permitted by the Public Utility Commission or other empowered administrative authority to pay any municipality a percentage rate of compensation exceeding 3 1/2 percent as an operating expense of the Company, then Company shall inform the City of the same and City shall have the right to require and shall receive, if it shall so elect, the same percentage fee of the Company's gross revenues within the City as shall be charged by said other city or municipal corporation or an increase in the percentage fee equal to any increase above 3 1/2 percent allowed as an operating expense. The City shall retain the right to increase the compensation set forth in this section to any amount not prohibited by law and authorized by state law or authority as an operating expense of the Company. Subject to the regulation of the PUC, the franchise fee amount shall not be charged pro rata to users of the utility within the City, nor be separately stated on the regular billings to such users of the utility within the City. The effective date of the new rate of compensation shall be consistent with the effective date of any applicable enactment establishing or affecting the new rate and shall be subject to approval by the City Council.

C. Except as provided in this section, in consideration of the agreement of the Company to make such franchise payments, the City agrees that no license, tax, permit fee or charge on the business, or occupation, or franchise of the Company shall be imposed upon or required of the Company by the City during the term of this ordinance unless the tax, permit fee or charge is not based on the Company's right to conduct its business in the City and is also imposed upon a very broad class of businesses, individuals, or entities, which class includes the Company. This provision shall not exempt the property of the Company from lawful ad valorem taxes and local improvement district assessments. Moreover, this provision shall not exempt the Company from conditions, exactions, fees and charges which are generally applicable to the Company's real property ownership, development or use as required by the City's ordinances and regulations. The City retains the authority to impose a privilege tax upon the Company or its customers measured by sales or consumption of electricity.

D. The compensation required by this section shall be paid annually and shall be due for each calendar year or fraction thereof, on or before the first day of April, beginning in the calendar year of 1994. Because annual payments are paid on or before the first day of April of the calendar year for which they are due, the payment shall be based on the previous year's gross revenues.

E. The Company shall furnish to the City with each payment of compensation required by this section a written statement, showing the amount of gross revenue of the Company within the City for the period covered by the payment computed on the basis set forth in subsection A of this section. The compensation for the period covered by the statement shall be computed on the basis of the gross revenue so reported. If the Company fails to pay the entire amount of compensation due the City through error or otherwise, the difference due the City shall be paid by the Company within fifteen (15) days from discovery of the error or determination of the correct amount. Any overpayment to the City through error or otherwise shall be offset against the next payment due to the City.

F. Acceptance by the City of any payment due under this section shall not be deemed to be a waiver by the City of any breach of this franchise occurring prior thereto, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due, or collecting any balance due to the City. Upon receipt of such payment, the City Finance Director shall issue a receipt therefor. If controversy arises as to the amount of gross revenue within the meaning of this ordinance, the amount of such gross revenue shall be determined by the Public Utility Commission of Oregon or upon subsequent appeal or review, or other method agreeable to the parties, or, in the event the PUC remedy is not available, by a declaratory judgment proceeding in Circuit Court.

G. Company grants to the City the right at City's own expense to suspend and maintain wires and necessary control boxes for fire, police, cable, emergency or other municipal purposes on poles placed by the Company in the public places, or if such wires are placed underground, to place and maintain in the pipes or conduits of Company, so long as, in the reasonable judgment of Company, space therein is available and no safety hazard would be created. All such wires shall be placed on the poles or in the conduits so as not to interfere with the electrical power and light service of the Company and not pose a danger to the Company's equipment, facilities, customers, or customers' property. They shall further be subject to the provisions of the National Electric Safety Code, in effect at the time City proposes to use Company's poles. Company's costs incurred to provide City personnel access and to provide safety overview will be reimbursed to the Company by the City. Without limitation to Company's rights to contribution, City agrees, in consideration of the establishment of this service and the furnishing of such facilities, to hold the Company entirely free and harmless from any and all claims or liability for damage or personal injury which may arise out of any wrongful or negligent act or omission of the City in the operation of such wires and control boxes.

H. The compensation paid by the Company for this franchise includes compensation for the use of any public place located within the City as authorized.

I. The City shall retain the right to enact a general tax on public utilities as permitted by Oregon law so long as the combined fee pursuant to this agreement and the tax so imposed do not exceed City fees and taxes assessed against any competitive supplier of electric power within the City.

J. 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.

#### **Section 10. Books of Account and Reports.**

The Company shall keep and maintain accurate books of account at an office in Oregon for the purpose of determining the amounts due to the City under Section 9 of this ordinance. The City may inspect the books of account, including computer retrieval information, at any time during Company's business hours and may audit the books from time to time. The City Council may require periodic reports from the Company relating to its operations and revenues within the City, not more frequently than semi-annually.

#### **Section 11. Supplying Maps Upon Request.**

Company shall maintain on file, at an office in Oregon, maps and operational data pertaining to its operations in the City. The City may inspect the maps and data at any time during business hours. Upon request of the City, the Company shall furnish to the City within thirty (30) days current maps either in a "hard copy" printed form, or with the permission of the Company and if the City maintains compatible data base capability, then by electronic data transfer, showing only the location of any electrical system facilities, but not other proprietary information, used in operating the Company's transmission and distribution facilities within the City of Troutdale Urban Growth Boundary area served by the Company. The supplying of maps and operational data as provided herein shall be without charge by Company to the City.

#### **Section 12. Rates.**

The rates to be charged by the Company for electric energy shall be such as may be fixed or approved by the Public Utilities Commission of Oregon, or any other governmental official, commission or body having authority for ratemaking under State law.

**Section 13. Franchise not Exclusive.**

The franchise hereby granted shall not be exclusive and shall not be construed as any limitation on the City to grant rights, privileges and authority to other persons or corporations similar to or different from those herein set forth to construct, install, operate or maintain a public utility.

**Section 14. Limitation on Privileges.**

All rights conferred by this ordinance are conditioned upon the understanding that these privileges in the public 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 15. Assignment of Franchise.**

This franchise shall be binding upon and inure to the benefit of the successors, legal representatives and assigns of the Company; provided, however, that the Company shall not during the term of this franchise sell, assign, transfer or convey this franchise without first obtaining the consent of the City Council through resolution.

**Section 16. Indemnification.**

The Company shall indemnify, defend and save harmless the City and its officers, agents and employees from any and all loss, cost and expense, including without limitation attorney fees, arising from damage to property or injury or death of persons or any other damage resulting in whole or in part from any wrongful or negligent act or omission of the Company, its agents or employees in exercising the rights, privileges and franchise hereby granted.

**Section 17. Remedies and Penalties not Exclusive.**

All remedies and penalties under this ordinance, including termination of the franchise, are cumulative and not exclusive, and the recovery or enforcement by one available remedy or imposition of any penalty is not a bar to recovery or enforcement by any other such remedy or imposition of any other penalty. The City reserves the right to enforce the penal provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon the Company by or pursuant to this ordinance. A specific waiver of a particular breach of any term, condition or obligation imposed upon the Company by or pursuant to this ordinance shall not be a waiver of any other or subsequent or future breach of the same or of any other term, condition or obligation, or a waiver of the term, condition or obligation itself.

**Section 18. Acceptance.**

The Company shall, within thirty (30) days after its adoption by the City Council, file with the City Recorder its written, unconditional acceptance of this franchise and if the Company fails so to do, this ordinance shall be void.

**Section 19. Effective Date, Repeal of Prior Ordinances.**

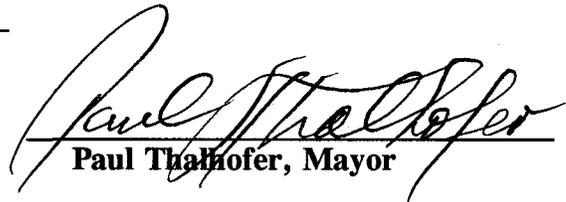
The effective date of this franchise granted by this ordinance is January 1, 1994. It is necessary that this ordinance take effect earlier than thirty (30) days after passage so that continuity of a franchise relationship can be maintained. Therefore, an emergency exists and upon acceptance of this franchise by Company, this ordinance goes into effect and repeals Ordinance No. 414, adopted on December 13, 1983.

**Section 20. Severability Clause.**

If any section, subsection, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance.

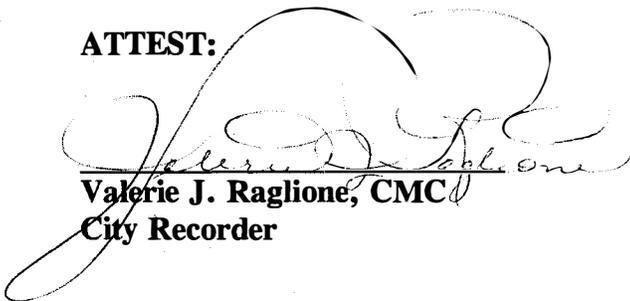
**PASSED BY THE COMMON COUNCIL OF THE CITY OF TROUTDALE THIS 25th DAY OF JANUARY, 1994.**

<b>YEAS:</b>	<u>5</u>
<b>NAYS:</b>	<u>0</u>
<b>ABSTAINED:</b>	<u>0</u>

  
Paul Thalhoffer, Mayor

Dated: Jan. 25<sup>th</sup> 1994

**ATTEST:**

  
Valerie J. Raglione, CMC  
City Recorder