

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO PORTLAND GENERAL ELECTRIC COMPANY; FIXING THE TERMS AND CONDITIONS THEREOF; REPEALING ORDINANCE NO. 601-94; 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.

1           **Section 2.    Duration.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1                   **Section 7.    Moving of Buildings.**

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

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

19                   A.       The Company shall furnish adequate and safe service for the distribution of  
20 electrical energy in the City. The Company shall use due diligence to maintain continuous  
21 24-hour a day service which shall at all times conform at least to the standards common in the  
22 business and to the standards adopted by State authorities or the City pursuant to ORS  
23 221.420(2)(c) and any other authority. Under no circumstances shall the Company be liable  
24 under this ordinance for an interruption or failure of service caused by an act of God,  
25 unavoidable accident, or other circumstances beyond the control of the Company.

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

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

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

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

13           B.     The duration of this agreement being ten (10) years, in the event the Company  
14 shall either (1) agree to pay a franchise fee of more than 3.5 percent to any city or municipal  
15 corporation, or (2) be permitted by the Public Utility Commission or other empowered  
16 administrative authority to pay any municipality a percentage rate of compensation exceeding  
17 3 1/2 percent as an operating expense of the Company, then Company shall inform the City of  
18 the same and City shall have the right to require and shall receive, if it shall so elect, the same  
19 percentage fee of the Company's gross revenues within the City as shall be charged by said other  
20 city or municipal corporation or an increase in the percentage fee equal to any increase above  
21 3 1/2 percent allowed as an operating expense. The City shall retain the right to increase the  
22 compensation set forth in this section to any amount not prohibited by law and authorized by  
23 state law or authority as an operating expense of the Company. Subject to the regulation of the  
24 PUC, the franchise fee amount shall not be charged pro rata to users of the utility within the  
25 City, nor be separately stated on the regular billings to such users of the utility within the City.  
26 The effective date of the new rate of compensation shall be consistent with the effective date of  
27 any applicable enactment establishing or affecting the new rate and shall be subject to approval  
28 by the City Council.

29           C.     Except as provided in this section, in consideration of the agreement of the  
30 Company to make such franchise payments, the City agrees that no license, tax, permit fee or  
31 charge on the business, or occupation, or franchise of the Company shall be imposed upon or  
32 required of the Company by the City during the term of this ordinance unless the tax, permit  
33 fee or charge is not based on the Company's right to conduct its business in the City and is also  
34 imposed upon a very broad class of businesses, individuals, or entities, which class includes the  
35 Company. This provision shall not exempt the property of the Company from lawful ad valorem  
36 taxes and local improvement district assessments. Moreover, this provision shall not exempt the  
37 Company from conditions, exactions, fees and charges which are generally applicable to the  
38 Company's real property ownership, development or use as required by the City's ordinances  
39 and regulations. Notwithstanding any language in this section to the contrary, the City retains  
40 the authority to impose a privilege tax not to exceed 1 1/2% upon the Company based on gross  
41 revenues as defined in Section 9A.

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

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

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

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

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

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

7 J. The City reserves the right to cancel this franchise at any time upon one year's  
8 written notice to the Company in the event that the City decides to engage in public ownership  
9 of light and power facilities and the public distribution of electric energy.

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

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

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

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

27 **Section 12. Rates.**

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



1           **Section 13. Franchise not Exclusive.**

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

6           **Section 14. Limitation on Privileges.**

7           All rights conferred by this ordinance are conditioned upon the understanding that these  
8 privileges in the public places of the City are not to operate in any way so as to be an  
9 enhancement of the Company's properties or values or to be an asset or item of ownership in  
10 any appraisal thereof.

11           **Section 15. Assignment of Franchise.**

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

16           **Section 16. Indemnification.**

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

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

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

1           **Section 18. Acceptance.**

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

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

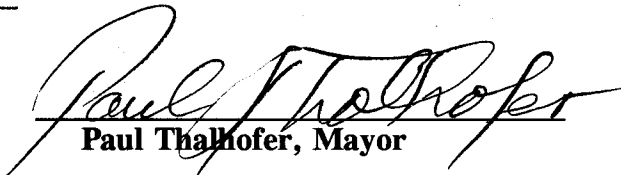
6           The effective date of this franchise granted by this ordinance is January 1, 1994. It is  
7 necessary that this ordinance take effect earlier than thirty (30) days after passage so that  
8 continuity of a franchise relationship can be maintained. Therefore, an emergency exists and  
9 upon acceptance of this franchise by Company, this ordinance goes into effect and repeals  
10 Ordinance No. 601-94, adopted on January 25, 1994.

11           **Section 20. Severability Clause.**

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

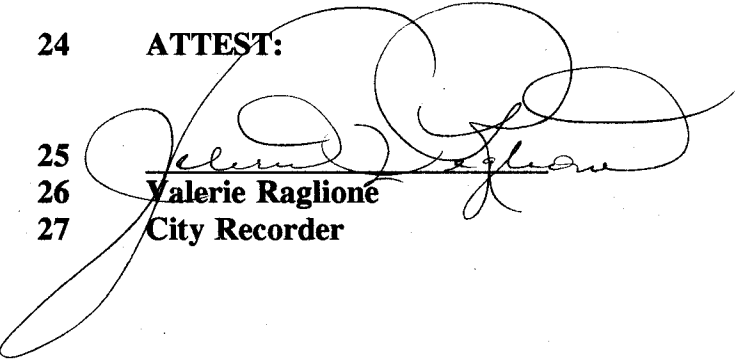
16 **PASSED BY THE COMMON COUNCIL OF THE CITY OF TROUTDALE THIS 8TH**  
17 **DAY OF MARCH, 1994.**

18	YEAS:	<u>5</u>
19	NAYS:	<u>0</u>
20	ABSTAINED:	<u>0</u>

21   
22 **Paul Thalhoffer, Mayor**

23 **Dated:** March 8, 1994

24 **ATTEST:**

25   
26 **Valerie Raglione**  
27 **City Recorder**

ACCEPTANCE OF FRANCHISE

WHEREAS, the CITY OF TROUTDALE, OREGON, under date of March 8, 1994, passed ORDINANCE NO. 605, entitled as follows, to-wit:

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO PORTLAND GENERAL ELECTRIC COMPANY; FIXING THE TERMS AND CONDITIONS THEREOF; REPEALING ORDINANCE NO. 601-94; ESTABLISHING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

NOW, THEREFORE, the undersigned, Portland General Electric Company, the grantee named in said ordinance, does for itself and its successors and assigns accept the terms, conditions and provisions of Ordinance No. 605 and agrees to be bound thereby and comply therewith.

IN WITNESS WHEREOF, the Portland General Electric Company has caused this instrument to be executed by its officers as below subscribed this 30<sup>th</sup> day of March, 1994.

Received by the City of Troutdale, this 4 day of April, 1994.

PORTLAND GENERAL ELECTRIC COMPANY

By: Peggy G. Fowler

Jalena D. Gylone