

ORDINANCE BILL NO. 57 FOR 1949

ORDINANCE NO. 738

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO MOUNTAIN STATES POWER COMPANY, AND TO ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, MAINTAIN AND OPERATE IN AND UPON THE PRESENT AND FUTURE STREETS, HIGHWAYS, BRIDGES AND OTHER PUBLIC PLACES WITHIN THE CORPORATE LIMITS OF THE CITY OF LEBANON, OREGON, WATER UTILITY PROPERTY AND FACILITIES FOR SUPPLYING WATER AND WATER SERVICE TO THE CITY, THE INHABITANTS THEREOF, AND OTHERS FOR A TERM OF 20 YEARS; SUBJECTING SUCH WATER SERVICE AT ALL TIMES TO REGULATION BY PUBLIC AUTHORITY; SPECIFYING OTHER LIMITATIONS, TERMS AND CONDITIONS GOVERNING THE EXERCISE OF SAID FRANCHISE.

THE CITY OF LEBANON ORDAINS AS FOLLOWS:

Section I. The City of Lebanon, hereinafter called the "City", hereby grants to Mountain States Power Company, a corporation, and to its successors and assigns, hereinafter called the "Grantee", the right, privilege and franchise for a period of twenty years from the date when this ordinance become effective to construct, maintain and operate in, under and upon the present and future streets, highways, bridges and other public places within the corporate limits of the City, water utility property and facilities for supplying water and water service to the City, and the inhabitants thereof, subject to the terms and conditions hereinafter specified. All such water utility property and facilities now maintained by the Grantee within the corporate limits of the City shall be deemed covered by this ordinance, and the present location thereof hereby is ratified and approved.

Section 2. All of the Grantee's water property and facilities shall be constructed and at all times maintained in good order and condition, and in accordance with standard engineering practice and all applicable safety codes and lawful governmental regulations. The City shall have authority at all times, in furtherance of the safety, convenience and

welfare of the public, to control by appropriate regulations the location, elevation, depth and manner of construction and maintenance of the Grantee's water property and facilities in, under and upon the City streets, highways, bridges and public places, subject to the provisions of any state laws applicable thereto; and the Grantee shall promptly conform with all such regulations.

Section 3. It shall be lawful for the Grantees, its successors or assigns, to make all needful or convenient excavations in any of the streets, alleys, avenues, boulevards and thoroughfares of the City for the purpose of constructing, laying, maintaining and operating canals, pipes, hydrants and other fixtures in, on or under ground for the purpose aforesaid or to repair and improve such water system and to extend the same as the growth of said City or the needs of the inhabitants thereof may require; provided, that when the said Grantee, its successors and assigns, or any person or corporation under the authority of this franchise, shall disturb any of said streets, alleys, avenues, boulevards or thoroughfares for the purpose aforesaid, he, it or they shall comply with the ordinances of the City applicable thereto, and shall restore the same to as good order and condition as it was before the work was commenced and shall remove the surplus earth, rocks, rubbish and other debris from the street, highways, bridges or other public places occasioned by the doing of said work, as soon as practicable and without unnecessary delay and failing to do so after five days notice from the street superintendant or street committee of the Council of said City, the said street superintendant or street committee may remove said surplus earth, rocks, rubbish and other debris and may place the said street, alley, avenue, boulevard or thoroughfare in such condition at the expense of the City and the City may recover from the person or corporation enjoying this franchise the amount of the cost thereof.

Section 4. This grant and franchise is made and given unto the Grantee, its successors and assigns, upon the express condition, and for the consideration that the Grantee, its successors and assigns, shall at all times during the period of this franchise furnish to the City, free and without charge therefor, all the water that may be necessary for the use of said City in the City Hall and fire station and such other offices as may be maintained by the City, the City to furnish the necessary pipes, hydrants and fixtures for the convenient use of said water in said City Hall and fire station, and other offices.

A refusal or neglect on the part of the grantee, its successors and assigns, after reasonable demand therefore, to furnish said water and fixtures of said City purposes, shall, at the option of the City exercised by ordinance, work a forfeiture of this grant and franchise and all rights thereunder.

Section 5. The Grantee shall at all times indemnify and hold the City, its officers, employees and agents, harmless from any and all expense or liability arising from or by reason of any negligent act or omission of the Grantee, its representatives or employees, in the construction, operation or maintenance of any of the Grantee's water utility property or facilities.

Section 6. The water service to be furnished to the public hereunder, and all rates and charges therefor, and all regulations of the Grantee applicable thereto, shall at all times be subject to all rules, regulations and orders that may be lawfully prescribed by the Public Utilities Commissioner of the State of Oregon, or by any other governmental authority now or hereafter having jurisdiction over such matters. During the term of this franchise, the Grantee shall continuously

maintain facilities in the City for convenience to its customers for the payment of bills for water service during the usual office hours.

Section 7. The Grantee, its successors and assigns, shall maintain and operate a system for the distribution of water in the City so as to furnish what shall be known as twenty-four hour service but the Grantee does not guarantee continuous and uninterrupted service under the terms hereof and under no circumstances shall the Grantee be held liable to or responsible for by the City on account of interruption or failure of service caused by storms, washouts, accidents, floods, acts of God or the public enemy, war, strikes, damages by the elements or damage to plant or equipment on account of any circumstances beyond the control of the Grantee, nor in any event for consequential damages; however, the Grantee does agree to use due diligence to maintain continuous and uninterrupted service.

The rates to be charged consumers for water service hereunder shall at all times be subject to the approval of the Public Service Commission of Oregon, or other duly constituted regulatory body or authority having jurisdiction.

Section 8. The Grantee by its acceptance of this Ordinance expressly agrees that the City shall have the right, at any time during the term of this franchise and until its expiration to acquire all of the water utility property and facilities of the Grantee situated within the corporate limits of the City in the manner provided by law, provided, however, that no value of this franchise shall be taken into account in fixing the price to be paid by the City for such property and facilities.

That at the expiration of the term or period for which this franchise is granted the City shall have the right upon the payment therefore of the fair valuation to purchase and take over to itself the property of said Grantee and all equipment

thereto connected with operation of the Grantee in its entirety and which may be situated upon, in, above, or under the streets and other places aforesaid or used in connection therewith.

Said valuation shall be agreed upon by the City and the Grantee, or in case they cannot agree, then by arbitration, whereby each party shall select one person to act as arbitrator and the two so selected shall select a third person to act with them, and the three so selected, after hearing all of the evidence desired to be submitted by either party, shall thereupon make and fix a fair valuation of said property.

Said decision or award shall be in writing in duplicate and signed by said arbitrators or a majority of them and one copy thereof shall be filed with the City Recorder and the other copy thereof with the Grantee, and the decision of the majority shall be binding upon the parties; but in no case shall the valuation of this franchise be considered or taken into account in fixing such valuation, but such valuation shall be based upon the costs of construction and of replacing such plant and property.


The plant as well as the property, if any, of the Grantee situated on, in, above or under the places, streets and avenues and other places aforesaid and used in connection therewith shall thereupon be and become the property of the City of Lebanon upon an ordinance duly enacted authorizing the same, and upon the City of Lebanon paying to said Grantee said valuation.

Section 9. The franchise hereby granted may be revoked and forfeited by the City, by duly enacted ordinance thereof, in the event that the Grantee shall failt after reasonable notice or demand to comply with any of the terms, conditions, or obligations imposed upon the Grantee hereunder.

Section 10. Within sixty (60) days from and after the effective date of this ordinance, the Grantee shall file with the Recorder of the City its unconditional written acceptance of this ordinance, and, in the event the Grantee shall fail so to file such acceptance, this ordinance shall become null and void.

Section 11. This ordinance shall be and remain in full force and effect from thirty days after its passage by the Council and its approval by the Mayor

Passed by the Council and approved by the Mayor this 16th day of August, 1949.



Mayor

ATTEST:



City Recorder