

A BILL FOR AN ORDINANCE GRANTING TO
CONSUMERS POWER, INC., A NON-EXCLUSIVE
FRANCHISE AND FIXING TERMS, CONDITIONS,
AND COMPENSATION OF SUCH FRANCHISE.

)
)
)
)

ORDINANCE BILL NO. 6
For 2003
ORDINANCE NO. 2342

THE CITY OF LEBANON ORDAINS AS FOLLOWS:

Section 1. The City of Lebanon, Linn County, Oregon, hereinafter called the City, hereby grants to Consumers Power, and to its successors and assigns, hereinafter called Grantee, a right and franchise for the period of twenty (20) years from and after the effective date of this ordinance, to construct, maintain, and operate in, on, and under the present and future streets, alleys, bridges and public places of the City, hereinafter referred to as "streets", electric light and power lines, with all the necessary or desirable appurtenances, and communication facilities for the purpose of supplying electricity and electric service to the City and to the inhabitants thereof, subject to the terms and conditions and to the making of payments hereinafter specified. However, within 180 days before a period of ten (10) years from the effective date of this ordinance, either party may notify the other of its intention to renegotiate or amend this ordinance prior to the tenth anniversary of the effective date of this ordinance. Notice shall be given of a party's intent to negotiate the terms of this ordinance by sending such notice by regular or certified mail to the other party, or its successor to this franchise, at such address which shall be indicated from time to time by the parties.

Section 2. The right and franchise hereby granted shall be nonexclusive. The City may at any time during the term of this franchise grant rights or franchises for uses consistent with this franchise and appropriate statutes, rules, and regulations.

Section 3. The location and methods of installation and maintenance of all poles, wires, fixtures, underground lines, and appurtenances thereto (hereinafter referred to as "facilities") shall be subject at all times to reasonable regulation by the Council of the City, and all such facilities shall be so constructed and maintained as to interfere as little as practicable with street or other traffic. When required by any City construction project, the Grantee shall relocate its underground facilities within forty-five (45) days of receiving written notice, by letter or by submission of final plans, from the City to relocate the private facility. Upon request, the City Engineer or designee may extend the deadline for good cause, determined solely by the City Engineer or designee. If the City incurs damages due to the Grantee's failure to promptly relocate its facilities, the Grantee will be responsible for all damages, including attorney fees, if any. All facilities shall be installed and at all times maintained by grantee in accordance with good electrical practice.

All new facilities installed by the Grantee shall be installed underground, unless the new facilities are within an area currently served above ground, in which case this provision shall not apply. Upon request, the City Engineer or designee may allow above ground construction for good cause, to be determined by the City Engineer or designee. If the removal or relocation of facilities is caused by an identifiable development of property in the area, or is made for the convenience of a customer, grantee may charge the expense of removal or relocation to the developer or customer.

Section 4. Grantee's service shall be continuous and shall be adequate for the requirements of the City and its inhabitants, subject to accidents, interferences, or interruptions beyond the reasonable control of Grantee, and shall be furnished under such reasonable rules and regulations as grantee may make from time to time for the proper conduct of its business. Such service and all rates and charges therefore and all rules and regulations pertaining thereto or to the making of necessary and proper extension of service shall be subject at all times to any rules, regulations and orders lawfully prescribed by the Oregon Public Utility Commission; or by any other governmental authority having jurisdiction.

Section 5. When necessary, to permit any duly authorized person to move any building or structure across or along any City streets, Grantee shall temporarily raise or remove its facilities, as necessary upon reasonable notice in advance from the Recorder of the City, and at such time and in such manner as may be reasonably required to accommodate such moving, consistent with the maintenance of proper service to Grantee's customers; provided, that the owner or mover of the building or structure shall first pay or satisfactorily secure Grantee's costs arising therefrom or related thereto, including any interruption of Grantee's service to its customers caused thereby.

Section 6. The City may, upon reasonable notice to Grantee and without payment or charge therefore, attach its fire alarm, police signal wires, data/cable wiring or traffic control systems for municipal purposes only to the poles of Grantee, but at its own risk and only in accordance with good electrical practice. If there is not sufficient space available thereon for said purposes, grantee's structures may be changed, altered, or rearranged at City's expense so as to provide proper clearance for such wires or appurtenant facilities. Such facilities shall be subject to interference by Grantee only when and to the extent necessary for the proper construction, maintenance, operation or repair of Grantee's facilities.

As additional consideration for the franchise and privileges granted to the Grantee by this ordinance, the City shall have the right and privilege to install, or affix and maintain street lights, wires, and equipment for municipal purposes upon the structures and installations of the Grantee. For the purposes of this provision, the term "municipal purposes" means all municipal purposes except the distribution of electric

power to the public.

Section 7. Grantee shall protect and save the City, its officers, employees and agents, harmless against and from any and all damage claims, and any and all loss, liability, cost or expense, occasioned by any negligent act or omission of Grantee in the construction, maintenance, operation, or repair of Grantee's property or any use thereof, and grantee shall at all times comply with any lawful present or future charter provisions, ordinances, rules or regulations of the City relating to the manner of occupation or use, or to the repair or improvement of said streets.

Section 8. Grantee may trim all trees and vegetation which overhang said City streets, whether such trees or vegetation originate within the streets or outside said streets, in such a manner and to such an extent as will prevent the branches or limbs or other parts of such trees or vegetation from touching or interfering with its facilities, so long as no trees and vegetation are trimmed or cut back further than may be reasonably necessary to prevent such interference and to allow the proper operation and maintenance of said facilities. Nothing contained in this section shall prevent Grantee, when necessary and with the approval of the owner of the property on which they may be located, from cutting down and removing trees and vegetation which overhang said streets.

Section 9. Payment of the franchise fee shall be made as follows:

- a) Grantee shall pay to the City a franchise fee or charge equivalent to five and 94/100's percent (5.94%) of Grantee's gross operating revenues as the same is defined herein.
- b) "Gross operating revenue" means Grantee's gross revenues from the sale and use of electricity and electric service within the corporate limits of the City; other than such revenues derived from business done with the government of the United States or any agency thereof, and after deducting therefrom any amounts paid by Grantee to the United States or to the State of Oregon as excise, occupation, or business taxes upon the sale or distribution of electric service in the City. Grantee also may at its option deduct uncollectible accounts of customers within the City.
- c) 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 City from Grantee with respect to grantee's electric business or the exercise of this franchise within the corporate limits of the City and the amount due to the City under any such other license, occupation, franchise or excise taxes or other charges for corresponding periods shall be reduced by deducting therefrom the amount of said

franchise fee paid hereunder.

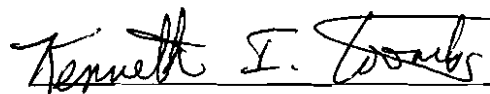
- d) The franchise fee shall be paid monthly on or before the 20th day of each month during the term hereof, and shall be computed upon the gross operating revenue accruing during the previous calendar month or portion thereof.

Section 10. This non-exclusive right and franchise is based upon the franchisee's providing electrical service to the citizens of the City of Lebanon. In the event that said franchisee shall, at a future time within the effective time of this ordinance, provide further utility services to the citizens of the City of Lebanon such as, but not limited to, telecommunications services, water services, or the leasing of its facilities to other utility providers, or other services not provided by the franchisee as of the date of this ordinance, the franchisee shall give prompt notice to the City of these changes. In the event additional services are provided to the City, the franchise shall be the subject of a separate franchise agreement between the City and the Grantee.

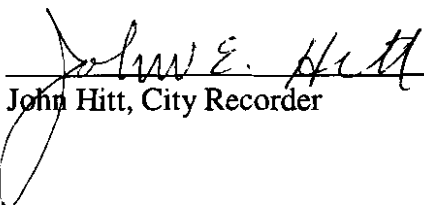
Section 11. Upon the effective date hereof, but not otherwise, Ordinance No. 1650 of the City of Lebanon passed and approved September 14, 1977 is repealed, in addition to any other ordinances which have been heretofore adopted and which are contrary to the provisions of this ordinance.

Section 12. This ordinance shall take effect thirty (30) days after its enactment by the Council and approval by the Mayor, but shall become null and void unless within sixty (60) days after such enactment Grantee shall file with the Recorder Grantee's written acceptance of the terms, conditions and obligations to be complied with or performed by it hereunder.

Passed by the Council of the City of Lebanon by a vote of 6 for and 0 against, and approved by the Mayor this 26th day of February, 2003.


Kenneth I. Toombs, Mayor []
Ron Miller, Jr., Council President []

ATTEST:


John Hitt, City Recorder

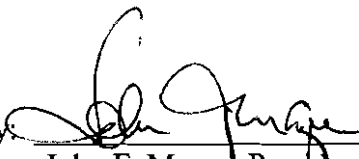
CONSUMERS POWER, INC.
6690 West Hills Rd.
PO BOX 1180
Philomath, Oregon 97370

Re: Consumer's Power, Inc. Franchise Agreement

ACCEPTANCE OF ORDINANCE NO. 2342, BILL NO. 6

BY CONSUMERS POWER, INC.

CONSUMERS POWER, INC. an Oregon corporation hereby accepts Ordinance No. 2342, Bill No. 6 of the City of Lebanon, Linn County, Oregon, and all the terms, provisions and conditions.

By: 

John F. Mayse, President/CEO

Date: 3/12/03