

CITY OF SHERWOOD, OREGON

ORDINANCE NO. 623

AN ORDINANCE GRANTING PORTLAND GENERAL ELECTRIC COMPANY, AN OREGON CORPORATION, ITS SUCCESSORS AND ASSIGNS, FOR A PERIOD OF TWENTY 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 SHERWOOD, 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.

NOW, THEREFORE, THE CITY OF SHERWOOD DOES ORDAIN AS FOLLOWS:

Section 1: That 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 Sherwood, Oregon, herein sometimes referred to as the "City", as the same now exist, 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 the 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 to be located in accordance therewith, and the location and placement thereof is hereby approved. The City reserves the right to vacate, alter, or close any street, bridge or public place.

Section 2: That all rights and privileges hereby granted shall be effective as of May 1, 1972, and shall terminate at the expiration of twenty (20) years from said date unless sooner terminated as provided in this ordinance, but the Council of the City of Sherwood may terminate this franchise at any time after ten (10) years from the effective date hereof upon one (1) year's notice in writing to the Company. 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 Council or other legislative body of the City, and the Company shall forfeit all rights and privileges hereby granted.

Revised

Section 3: That the Company shall, if requested so to do, file with the City Engineer, 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, and 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: That the Company, under the direction of the City or its properly constituted authorities, 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 relocating poles and other supports for its wire, conduits and pipes; and for placing, maintaining and operating its wires and conductors. All poles of the Company shall be erected at the outside edge of the sidewalk unless otherwise directed by the proper City authorities.

Section 5: That 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 Council of the City or as may be otherwise provided by law. The City, at its option, may require that any opening in any hard surface pavement in any street, alley, or public highway, may be filled in and the surface replaced by the City, and the cost therefor, including inspection and supervision, shall be paid by the Company, and the City may require the prior deposit with the City Treasurer of a sum estimated to be sufficient to pay the cost to be borne by the Company prior to the excavation of said street, alley, or public highway.

Section 6: That the City, by its properly constituted authorities, shall have the right to cause the Company to move the location of any pole whenever the relocation thereof shall be for public necessity, and the expense thereof shall be paid by the Company.

Section 7: That 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; 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: That 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, 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 such pole, underground conduit, equipment, light, wire or circuit, and if it 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 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 rearrangements of its aerial plant will be born 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: 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 a franchise fee of 3-1/2% of the gross revenue for the period from May 1, 1972, to December 3, 1972, both days inclusive and for each full calendar year during the life of this franchise beginning with the year 1973, an annual fee of three and one-half per cent (3-1/2%) of the gross revenue as defined herein for the immediately preceding calendar year. The franchise fee for any part of a calendar year shall be determined by pro-rating the annual fee determined as hereinabove set forth.

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 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.

(d) That on or before the first day of March, 1973, 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 1973. Upon receipt of such annual payment the City shall issue its receipt therefor, which shall be full acquittance of the Company for the payment. 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 either 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 years' 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.

(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 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 the 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 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 Council of the City.

(h) That 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.

Section 11: That the rates to be charged by the Company for electric energy shall be such as may be fixed and/or approved by the Public Utilities Commissioner of Oregon, or any other governmental official, commission or body having jurisdiction.

Section 12: 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 13: That the franchise hereby granted supplements the Public Utility Commissioner's order of January 21, 1963, under Chapter 757, Oregon Revised Statutes.

Section 14: 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 15: The grantee shall maintain facilities in the City where its customers may pay their bills for electric service during normal business hours.

Section 16: The City reserves the right to exercise, with regard to this franchise and the grantee, all authority now or hereafter granted to the City by state statutes. All rights of the City under any City charter hereafter adopted are reserved to the City, and provisions of the City Charter applicable hereto shall be deemed incorporated by reference and made a part of this franchise. In the event a City charter is adopted, the terms of which are not acceptable to the Company, the Company may cancel and terminate this franchise upon ninety (90) days' written notice to the City Council.

Section 17: Upon acceptance by the Company of the franchise herein granted within the time set forth in Section 10 (a), hereinabove, Ordinance No. 414 heretofore enacted with respect to the same subject matter shall be repealed and suspended hereby.

Section 18: That because it is necessary for the peace, health, and safety of the people of the City that an arrangement be made immediately with the Company governing the continued use of public property within the City, an emergency is hereby declared to exist, and this ordinance shall be in full force and effect upon its passage by the Council and approval by the Mayor.

PASSED: By the Council by Unanimous vote of all Council members present, after being read by caption three times and in body once, this 12th day of April, 1972.

Marjorie Stewart
Recorder - City of Sherwood

APPROVED: By the Mayor, this 12th day of April, 1972.

[Signature]
Mayor - City of Sherwood