

STANDARD FRANCHISE AGREEMENT - ORDINANCE NO. 1735

An ordinance granting Portland General Electric Company, an Oregon corporation, its successors and assigns, for a period of ten 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 the City of Milwaukie, 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, and repealing all ordinances and parts of ordinances in conflict herewith.

IT IS ORDAINED BY THE COUNCIL OF THE CITY OF MILWAUKIE, OREGON.

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 the City of Milwaukie, 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 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.

Section 2. That all rights and privileges hereby granted shall be effective as of January 1, 1993 and shall terminate at the expiration of ten years from said date, except that 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.

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. In

emergencies such filings shall occur within thirty (30) days of completion of emergency construction work.

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 wires, conductors, lights or street lights; and laying, repairing and maintaining its underground 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.

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 relocate 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, relocate 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 relocate the same at the expense of the Company. Prior to any such relocation the City agrees to provide for suitable location for such relocated facilities sufficient to maintain services.

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 borne 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 effective date of this ordinance, file with the City Recorder 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 for each full calendar year during the life of this franchise beginning with the year 1993 an annual fee of three and one-half (3-1/2) percent of the gross revenue as defined herein for the immediately preceding calendar year.

"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. Gross revenue shall include revenues from the use, rental or lease of operating facilities of the utility 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, sales at wholesale to a public utility when the utility purchasing the service is not the ultimate consumer, revenue from joint pole use, or revenue paid directly by the United States of America or any of its agencies. 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 on or before the first day of March, 1993, and on or before said day of each year thereafter during the term of this franchise, the Company shall file with the City Recorder

a sworn statement showing the amount of gross revenue of the Company within the City 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. The franchise fee shall be payable annually on or before the first day of April, beginning in the year 1993. The City shall issue a receipt to the Company for the annual payment, 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 Utility Commission 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.

(d) That in consideration of the agreement of the Company to make such payments, and except as otherwise provided

herein, 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.

(e) That 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.

(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 to the top of 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 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.

(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.

(i) Subject to Oregon law, the City shall retain the right to charge a privilege tax in addition to the franchise fee set forth herein in an amount not to exceed one and one half percent (1 1/2%), based on the gross revenues of the Company.

(j) If the State of Oregon or the PUC amends or adopts a state statute or administrative rule that would affect a material term, condition, right, or obligation under this agreement, either party may reopen the Franchise at any time only with regard to such material term, condition, right or obligation in order to address the change required or allowed by the new or amended state statute or administrative rule.

Section 11. That the rates to be charged by the Company for electric energy shall be such as may be fixed or approved by the Public Utility Commission 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 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.

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 City and the Grantee agree that this ordinance shall be effective as of January 1, 1993 and shall replace and repeal the prior franchise with Portland General Electric Company, Ordinance No. 1275, adopted on April 3, 1973, and any amendments thereto. The City and the Grantee further agree that the terms of Ordinance No. 1275 remained in effect from January 1, 1993 until the effective date of this ordinance.

Section 16. The City Council determines that the fee imposed by this franchise is not a tax subject to the property tax limitations of Article XI, Section 11(b) of the Oregon

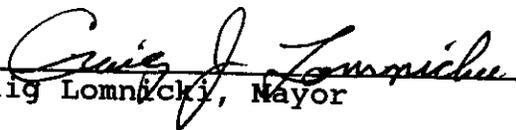
Constitution.

Section 17. 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.

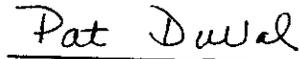
Read for the first time on April 6, 1993 and moved to a second reading by unanimous vote of the City Council.

Read for the second time and adopted by the City Council on April 6, 1993.

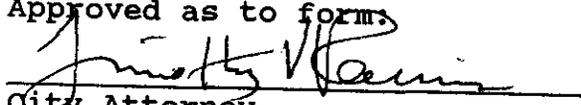
Signed by the Mayor on April 6, 1993.


Craig Lomnicki, Mayor

Attest:



City Recorder

Approved as to forms


City Attorney

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