

ORDINANCE NO. 439

An Ordinance granting to the 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 Town of Milwaukie, Oregon, as such limits now exist or may be hereafter constituted, an electric light and power system with the right and privilege to erect, maintain and operate poles, wires, fixtures and equipment necessary to supply the said Town and inhabitants thereof, and others, with electric energy for light, power and other purposes, upon, over, along and across the streets, roads, alleys and other public ways and places within the corporate limits of the said Town of Milwaukie fixing the terms and conditions thereof, and declaring an emergency.

MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1. That the Portland General Electric Company, an Oregon corporation, 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 limits of the Town of Milwaukie 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 and other property necessary or convenient to supply the said Town of Milwaukie and the inhabitants thereof, and other persons and territory, with electric energy for light, power and other uses and purposes over, upon, along and across the roads, streets, alleys and other public ways and places within the corporate limits of the said Town of Milwaukie as the same now are or may be hereafter constituted. All poles, wires, fixtures, equipment and other property owned or in possession of the said grantee now located within the corporate limits of the said Town shall be deemed to be covered by the terms of this ordinance and to be located in accordance therewith, and the location and placing thereof is hereby approved.

Section 2. That all right and privileges hereby granted shall terminate at the expiration of ten years from and after the effective date of this ordinance, and in the event that the said

Portland General Electric Company shall, for thirty days after demand, in writing, from the Town, fail or neglect or refuse to perform all or any of the obligations and requirements called for by this ordinance to be performed by it, this grant and privilege may be terminated and annulled by the common council or other legislative body of the Town of Milwaukie and the said Portland General Electric Company shall forfeit all rights and privileges hereby granted.

Section 3. That the said grantee, shall, if requested so to do, file with the official designated by the Town of Milwaukie maps showing any construction work proposed to be done by the grantee, within the corporate limits of the said Town, and such construction work shall be done in a reasonably safe manner, subject to the approval of said official designated by the Council of said Town, and in accord with requirements of applicable state laws or city ordinances.

Section 4. That the said grantee, under the direction of the Town of Milwaukie or its properly constituted authorities, may make all necessary excavations, in any street, alley or public highway, for the purpose of erecting, constructing and maintaining, poles and other supports for its wires, conductors, lights or arc lights, and for repairing the same, and for laying, repairing and maintaining its underground conduits and pipes, and for placing, repairing, maintaining and operating its wires and other conductors therein. All poles of the said grantee shall be erected at the outside edge of the sidewalk, unless otherwise directed by the proper Town authorities.

Section 5. That when any excavation shall be made, pursuant to the provisions of this ordinance, the said grantee shall restore the portion of the street, alley or public highway to the same condition to which it was prior to the opening 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 Town, or as may be otherwise provided

by law. It is further provided that the Town authorities may require that any opening in any hard surface pavement in any street, alley or public highway, shall be filled in, and the pavement replaced by the Town authorities and the cost thereof, including the cost of inspection and supervision, shall be paid by said grantee, and the Town authorities may require a deposit with the Town Treasurer of a sum of money sufficient to pay said cost by said grantee before the opening of said street, alley or public highway shall be begun.

Section 6. That the Town of Milwaukie by its properly constituted authorities, shall have the right to cause said grantee to move the location of any pole whenever the removal thereof shall be deemed for the public convenience, and the expense thereof shall be paid by the said grantee.

Section 7. That nothing in this ordinance shall be construed as in any wise to prevent the Town of Milwaukie from sewerage, grading, paving, planking, repairing, altering, or doing any work that may be desirable on any of the streets, alleys, or public highways, but all such work shall be done, if possible, in such manner as not to obstruct, injure or prevent the free use and operation of the said electric light and power system of said grantee.

Section 8. That whenever it shall be necessary in grading or sewerage, or in making any other improvements in any streets, alley or public highway, to remove any pole or poles or underground conduits or equipment belonging to said grantee, or on which any line or lines, wire or wires, of said grantee shall be stretched or fastened, the said grantee shall, upon ten days' notice from the Town of Milwaukie or its properly constituted authorities, remove such pole or poles, and if failing, neglecting or refusing so to do, the said Town of Milwaukie by its properly constituted authorities, may remove the same at the expense of the said grantee.

Section 9. That it shall be unlawful for any person or persons, unless authorized by the grantee or by the Town of Milwaukee through its properly constituted authorities, to interfere with, meddle with, injure or remove any of the poles, wires or underground conduits or pipes, or any insulator, instrument, light or apparatus used in or as a part of the electric light or power system herein provided for, and any person or persons violating any of the provisions of this section shall, upon conviction thereof in the municipal court, be punished by a fine of not less than Ten Dollars (\$10.00) or more than One Hundred Dollars (\$100.00) or by imprisonment in the Town Jail not less than five days or more than ninety days, or by both said fine and imprisonment.

Section 10. 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 the said Portland General Electric Company shall, within thirty days from the effective date of this ordinance, file with the Recorder of the Town of Milwaukee its written acceptance of this ordinance, subject to all of 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, this ordinance shall become wholly void, inoperative and of no effect.

(b) That in consideration of the rights and privileges herein granted, and as compensation for the franchise, the said Portland General Electric Company shall pay to the Town of Milwaukee on or before the 15th day of January of each and every year during the term of this franchise the sum of Seven Hundred and Fifty Dollars (\$750.00). In consideration of the agreement of the company to make such payments, the Town agrees that no special license, tax or charge on the business, occupation or franchise of the said Portland General Electric Company,

shall, during the term of this ordinance, be imposed upon, exacted from or required of the said Portland General Electric Company, but this provision shall not exempt the property of the said Portland General Electric Company from lawful taxation, or exempt said company from an occupational tax, if such tax is generally levied in said Town. Each of the annual payments of money required by this section shall be made by said Portland General Electric Company to the Recorder of the Town of Milwaukie and the said Recorder shall issue his receipt therefor, which shall be full acquittance of said Portland General Electric Company for such payments. Should said Portland General Electric Company fail or neglect for thirty (30) days after the same shall become due and payable and after written notice from the Town of Milwaukie to pay any of said annual payments provided for in this section, the Town of Milwaukie by its properly constituted authorities, may at its option, either continue this franchise in force and 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 its right to collect earned franchise payments.

(c) That the Town of Milwaukie reserves the right to cancel this franchise at any time upon one year's written notice to the grantee, in the event that the Town of Milwaukie decides to engage in public ownership of light and power facilities, and the public distribution of electrical power.

(d) That the said Portland General Electric Company shall permit the Town of Milwaukie to have the right to string wires on poles of the said grantee 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 fire alarm and police signals, provided that such wires and signals shall be so strung as to interfere as little as possible with the wires of said grantee, and further that the said grantee shall not be responsible for any damage to the wires or property of the Town or injuries to persons, resulting from the using of its said poles by the Town.

(e) That the said Portland General Electric Company shall not, during the term of this franchise, sell, assign, transfer, or convey this franchise without the consent of the common council of the Town of Milwaukie 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 said Portland General Electric Company; and whenever the said Portland General Electric Company shall be mentioned in this ordinance, it shall be understood to include such successor or assigns in interest of the Portland General Electric Company as shall have been so consented to by the common council.

(f) That the said Portland General Electric Company shall erect, maintain and use poles, wires, cables, ducts, appliances and apparatus in accordance with the general laws of the Town of Milwaukie governing the erecting and maintenance of the same, now or hereafter provided.

(g) That the Portland General Electric Company shall render the service hereby authorized to be supplied upon equal terms without unjust discrimination or undue preference to any users within the Town of Milwaukie and at all times the power and right to regulate reasonably the exercises of the rights and privileges of the franchise hereby granted shall be vested in the common council of said Town, subject to the general laws of the State of Oregon.

Section 11. That the rates to be charged by the grantee 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 said grantee hereby agrees and covenants to indemnify and save harmless the Town of Milwaukie and the officers thereof, against all damages, cost and expenses whatsoever to which it or they may be subjected in consequence of the acts or neglect of said grantee, 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 Town of Milwaukie 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 or ways of the Town are not to operate in any way so as to be an enhancement of said Portland General Electric Company's properties or values or to be an asset or item of ownership in any appraisal thereof.

Section 15. That inasmuch as the said Portland General Electric Company is now operating in the Town of Milwaukie without any franchise, and it is necessary for the peace, health, and safety of the people of the Town of Milwaukie that an arrangement be made immediately with said company governing the existing use of public property within the said Town, 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 this *28* day of *June*, 1943.

APPROVED by the mayor this *28* day of *June*, 1943.

*Fred O. Rolufs*  
Mayor of the Town of Milwaukie

ATTEST:

*Ellen Martini*  
Recorder of the Town of Milwaukie