

ORDINANCE NO. 822

AN ORDINANCE GRANTING TO PACIFIC POWER & LIGHT COMPANY, A CORPORATION, AND TO ITS SUCCESSORS AND ASSIGNS, A NONEXCLUSIVE RIGHT AND FRANCHISE FOR A PERIOD OF 20 YEARS TO CONSTRUCT, MAINTAIN AND OPERATE IN, ON AND UNDER THE PRESENT AND FUTURE STREETS, ALLEYS, BRIDGES AND AUTHORIZED PUBLIC PLACES OF THE CITY OF PRINEVILLE, CROOK COUNTY, OREGON, ELECTRIC LIGHT & POWER LINES AND APPURTENANCES FOR THE PURPOSE OF SUPPLYING ELECTRICITY AND ELECTRIC SERVICE TO THE CITY, THE INHABITANTS THEREOF AND OTHERS, SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED IN THIS ORDINANCE; AND PROVIDING FOR THE REPEAL OF ORDINANCES NO. 291 OF THE CITY OF PRINEVILLE, PASSED DECEMBER 2, 1930, AND APPROVED DECEMBER 3, 1930, AND NO. 551, PASSED AND APPROVED JANUARY 8, 1964.

THE PEOPLE OF THE CITY OF PRINEVILLE ORDAIN AS FOLLOWS:

Section 1. The City of Prineville, Crook County, Oregon, a municipal corporation, hereinafter called the City, does hereby grant to Pacific Power & Light Company, a corporation, and to its successors and assigns, hereinafter called P.P.&L. or Grantee, a nonexclusive right and franchise for a period of 20 years from and after the 1ST day of JULY, 1979, to construct, maintain and operate in, on and under the present and future streets, alleys, bridges and authorized public places within the corporate limits of the City, as the same now exists or may be hereafter constituted, electric light and power lines and appurtenances for the purpose of supplying electricity and electric service to the City and the inhabitants thereof, and to others, subject to the terms and conditions and to the making of the payments hereinafter specified.

Section 2. The right and franchise hereby granted shall not be exclusive, and the City expressly reserves the right at any time during the term of the right and franchise hereby granted to grant rights or franchises for such purposes to other persons or corporations, as well as the right in its own name as a municipality to use said Streets for such purposes in the event that the City shall hereafter decide to engage in the business of supplying electricity and electric service for municipal or other uses. If, during the term hereof, the City shall decide to engage in such business and shall elect to acquire

by condemnation or otherwise the property used by P.P.&L. in furnishing service hereunder, no value or damages of any kind shall be claimed by or allowed to P.P.&L. due to the unexpired term of the right and franchise hereby granted.

Section 3. The locations, relocations 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; and all such facilities shall be constructed so as to not unreasonably interfere with the public and other utilities. All such facilities shall be installed and at all times maintained by P.P.&L. in safe order and condition and in accordance with the laws of the State of Oregon and of the United States of America.

Section 4. The service to be furnished hereunder by P.P.&L. 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 P.P.&L., and shall be furnished under such reasonable rules and regulations as P.P.&L. may make from time to time for the proper conduct of its business. Such service and all rates and charges therefor and all rules and regulations pertaining thereto or to the making of necessary and proper extensions of service shall be subject at all times to any rules, regulations and orders lawfully prescribed by the Public Utility Commissioner of Oregon or by any other authority having jurisdiction in the premises.

Section 5. When necessary, in order to permit any duly authorized person to move any building or other structure across or along any of said streets or related public ways as hereinbefore defined, Grantee shall temporarily raise or remove its facilities upon such streets or other related public ways upon reasonable notice in advance from the Administrator-Recorder of the City and at such time and in such manner as may be reasonably necessary to accommodate such moving, consistent with the maintenance of proper service to Grantee's customers, provided, however, that the cost to Grantee of such temporary raising or removal and of any

interruption of Grantee's service to its customers caused thereby shall first be paid or satisfactorily secured to Grantee by the owner or mover of such building or other structure.

Section 6. The City shall have the right, upon reasonable notice to Grantee and without payment or charge therefor, to attach its fire alarm, police signal wires for traffic control systems or like devices reasonably necessary for the operation of the City to the poles of the 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 the expense of the City 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.

Section 7. Grantee shall defend, indemnify and hold harmless the City, its officers, employees and agents against and from any and all damage claims and any and all loss, liability cost or expense occasioned by any act or omission of Grantee in the construction, maintenance, operation or repair of Grantee's facilities or any use thereof or in any manner arising from the rights hereby granted.

Section 8. Grantee shall pay to the City a franchise fee or charge equivalent to three and one-half percent ($3\frac{1}{2}\%$) of Grantee's gross operating revenue as the same is defined herein, provided that, if at any time the Public Utility Commissioner of Oregon increases the aggregate amount of exactions which may be imposed upon electric utilities without charge to the users as presently set forth in the Commissioner's Order No. 43946, dated November 6, 1967 (3.5% of gross revenues), then the City and Grantee shall renegotiate said fee.

(a) "Gross operating revenue," as used herein, shall be defined as the gross revenue from the sale and use of electricity and electric service within the corporate limits of the City, other than such revenues which are 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 the State of Oregon as excise, occupation or business taxes upon the sale or distribution of electric service in the City. At the election of Grantee, Grantee may also deduct uncollectible revenues from customers within the City in computing gross operating revenues.

(b) Said franchise fee shall not be in addition to any other like occupation, franchise or excise taxes 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 like occupation, franchise or excise taxes for corresponding periods shall be reduced by deducting therefrom the amount of said franchise fee paid hereunder.

(c) The franchise fee due hereunder shall be paid monthly on or before the 20th day of the month next following the end of each calendar month during the term hereof and shall be computed upon the gross operating revenue accruing during the previous calendar month or portion thereof.

Section 9. Upon willful failure of Grantee, after 90 days notice and demand in writing, to perform as promptly as reasonably able and as completely as reasonably possible each and every term, condition or obligation imposed upon it under or pursuant to this ordinance, the Council may, after hearing explanatory testimony from Grantee's designated representative, at its option and sole discretion, by ordinance or resolution, terminate this franchise.

Section 10. In the event a dispute arises in connection with the terms of this franchise and if such dispute is resolved in a court of law, then attorneys' fees shall be awarded to the prevailing party.

Section 11. The City by its properly constituted authority shall have the right to cause the Grantee to move any facility located on municipally controlled property whenever the relocation thereof shall be for public necessity, and the expense thereof shall be paid by the Grantee.

Section 12. The Grantee shall render the service hereby authorized to be supplied upon equal terms without unjust discrimination or undue preference to any user within the City.

Section 13. The Grantee shall not during the term of this franchise sell, assign, transfer or convey any interest herein without first obtaining the written consent of the City.

Section 14. On or before the 1st day of March of each year during the term of this franchise the Grantee shall file with the City a sworn statement showing the amount of gross revenue of the Grantee within the City for the calendar year immediately preceding the year in which the statement is filed.

Section 15. Upon the effective date hereof, but not otherwise, Ordinances No. 291 of the City of Prineville, passed December 2, 1930, and approved December 3, 1930, and No. 551 passed and approved January 8, 1964, are hereby repealed.

Section 16. With the owner's permission Grantee shall have the right and privilege of trimming all trees which overhang said streets in such a manner and to such an extent as will prevent the branches or limbs or other parts of such trees from touching or interfering with its facilities, providing no such trees 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 any trees which overhang said streets.

Section 17. This ordinance shall be in full force and effect on the 30th day after the date of its final passage by


the Council and its approval by the Mayor of the City but shall become null and void unless, within sixty (60) days after such effective date, Grantee shall file with the Administrator-Recorder Grantee's written acceptance of the terms, conditions and obligations to be complied with or performed by it hereunder.

Passed and enacted by the Council of the City of Prineville on the 13th day of November 1979, by the following vote:

First Reading:	October 23, 1979
Second Reading and Passed:	November 13, 1979

AYES 4

NAYES Ø


NELLO GIOVANINI, MAYOR

ATTEST:


ARNOLD R. EVANS
CITY ADMINISTRATOR-RECORDER

EXTRACT FROM MINUTES OF THE MEETING OF THE COUNCIL OF
THE CITY OF PRINEVILLE HELD ON THE 23rd DAY OF OCTOBER, 1979

A form of ordinance entitled:

AN ORDINANCE GRANTING TO PACIFIC POWER & LIGHT COMPANY, A CORPORATION, AND TO ITS SUCCESSORS AND ASSIGNS, A NONEXCLUSIVE RIGHT AND FRANCHISE FOR A PERIOD OF TWENTY (20) YEARS TO CONSTRUCT, MAINTAIN AND OPERATE IN, ON AND UNDER THE PRESENT AND FUTURE STREETS, ALLEYS, BRIDGES AND AUTHORIZED PUBLIC PLACES OF THE CITY OF PRINEVILLE, CROOK COUNTY, OREGON, ELECTRIC LIGHT & POWER LINES AND APPURTENANCES FOR THE PURPOSE OF SUPPLYING ELECTRICITY AND ELECTRIC SERVICE TO THE CITY, THE INHABITANTS THEREOF AND OTHERS, SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED IN THIS ORDINANCE; AND PROVIDING FOR THE REPEAL OF ORDINANCES NO. 291 OF THE CITY OF PRINEVILLE, PASSED DECEMBER 2, 1930, AND APPROVED DECEMBER 3, 1930, AND NO. 551, PASSED AND APPROVED JANUARY 8, 1964.

was submitted to the Council.

After discussion, Councilman John Jackson moved that said ordinance be given its first reading, Councilman David Asher seconded said motion, the motion duly carried and the same was thereupon fully and distinctly read by the Recorder.

Further action upon said ordinance was deferred until the next regular meeting of the Council.

EXTRACT FROM MINUTES OF THE MEETING OF THE COUNCIL OF
THE CITY OF PRINEVILLE HELD ON THE 13TH DAY OF NOVEMBER, 1979

A form of ordinance entitled:

AN ORDINANCE GRANTING TO PACIFIC POWER & LIGHT COMPANY, A CORPORATION, AND TO ITS SUCCESSORS AND ASSIGNS, A NONEXCLUSIVE RIGHT AND FRANCHISE FOR A PERIOD OF TWENTY (20) YEARS TO CONSTRUCT, MAINTAIN AND OPERATE IN, ON AND UNDER THE PRESENT AND FUTURE STREETS, ALLEYS, BRIDGES AND AUTHORIZED PUBLIC PLACES OF THE CITY OF PRINEVILLE, CROOK COUNTY, OREGON, ELECTRIC LIGHT & POWER LINES AND APPURTENANCES FOR THE PURPOSE OF SUPPLYING ELECTRICITY AND ELECTRIC SERVICE TO THE CITY, THE INHABITANTS THEREOF AND OTHERS, SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED IN THIS ORDINANCE; AND PROVIDING FOR THE REPEAL OF ORDINANCES NO. 291 OF THE CITY OF PRINEVILLE, PASSED DECEMBER 2, 1930, AND APPROVED DECEMBER 3, 1930, AND NO. 551, PASSED AND APPROVED JANUARY 8, 1964.

was brought on for further consideration, the same having been previously submitted to the Council and read once at a regular meeting of the Council on the 23rd day of October, 1979.

After discussion, Councilman John Jackson moved that said ordinance be given its second reading, Councilman Gerald Blank seconded said motion and by unanimous consent the same was thereupon fully and distinctly read by the Recorder.

The question then being upon the passage of said ordinance, the Council President put the question, and a vote was taken which resulted as follows:

<u>Voting Aye: Councilmen</u>		<u>Voting Nay: Councilmen</u>
John Jackson	Dale Bannon	N/A
Gerald Blank	Dennis Davis	
		<u>Absent Mayor:</u>
		Nello Giovanini
		<u>Absent Councilmen:</u>
		David Asher
		Stuart Shelk

The Council President Dale Bannon announced that said ordinance had been duly passed by the affirmative vote of four (4) Councilmen, being a majority of all the Councilmen present, and constituting a quorum, as shown by the "ayes" and "nays". The ordinance was then duly signed by the Recorder and submitted to the Mayor for his signature. The Mayor duly signed said ordinance within three (3) days of its passage, to wit, on the 15th day of November, 1979, and it was thereupon numbered Ordinance No. 822.

CERTIFICATION BY RECORDER OF

CITY OF PRINEVILLE

STATE OF OREGON)
) ss.
County of Crook)

I, ARNOLD R. EVANS, Recorder of the City of Prineville, Crook County, State of Oregon, do hereby certify: That the foregoing extracts of minutes of meetings of the Council of the City of Prineville held on the 23RD day of OCTOBER, 1979, and on the 13TH day of NOVEMBER, 1979, respectively, are full, true and correct copies of that portion of the minutes of said meetings which relates to the introduction, consideration, and passage of Ordinance No. 822 of said City. I further certify that the foregoing copy of said Ordinance No. 822 is a full, true and correct copy of the original thereof, as the same is in my custody as Recorder of said City of Prineville and that said Ordinance was duly enacted at a regular meeting of the Council of said City, duly and regularly called and held, and at which a majority of all the members of said Council was present and acting. Said Ordinance was duly signed by me, as the Recorder of said City, was duly signed by the Mayor within three (3) days after the passage thereof.

WITNESS my hand and the Seal of said City of Prineville this 15TH day of NOVEMBER, 1979.

(SEAL)

Arns
Recorder