

ORDINANCE NO. 823

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, WATER UTILITY PROPERTY AND FACILITIES FOR THE PURPOSE OF SUPPLYING WATER AND WATER 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 ORDINANCE NO. 290 OF THE CITY OF PRINEVILLE, PASSED SEPTEMBER 11, 1930, AND APPROVED SEPTEMBER 12, 1930.

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, water utility property and facilities for the purpose of supplying water and water 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 water and water 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 pipes, pipelines, mains, laterals, conduits, feeders, valves,

meters, fixtures, connections, attachments and appurtenances thereto (hereinafter referred to as "facilities") shall be subject at all times to reasonable regulation by the Council of the City or by such committee of 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 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. It shall be lawful for Grantee to make all needful or convenient excavations in any of the streets, alleys, avenues, boulevards and thoroughfares of the City for the purpose of constructing, laying, maintaining and operating canals, pipes, hydrants and other fixtures in, on or underground for any of the purposes aforesaid or to repair and improve such water systems and to extend the same as the growth of said City or the needs of the inhabitants thereof may require, provided that Grantee shall comply with the ordinances of the City applicable thereto and shall restore ^{said} public ways to good order and condition as soon as practicable and without unnecessary delay. If Grantee fails to do so after five (5) days' written notice from the street superintendent or street committee of the Council of said City, said street superintendent or street committee may place said street, alley, avenue, boulevard or thoroughfares in such condition at the City's expense, and the City may recover from Grantee the amount of the costs thereof.

Section 6. 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 7. Grantee shall pay to the City a franchise fee or charge equivalent to three and one-half percent (3½%) of Grantee's gross operating revenue as the same is defined herein, provided that, if at any time the Public Utility Commissioner of Oregon establishes a higher aggregate amount of exactions which may be imposed upon water utilities, 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 water and water 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 water 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 water 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 8. 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 9. Grantee shall make available to and file with the City maps drawn to scale showing all current water facilities placed by the Grantee within the corporate limits of the City and shall update said maps on an annual basis.

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 the location of any water 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. Grantee shall make all use records available to the City upon reasonable demand and at the City's expense.

Section 16. Upon the effective date hereof, but not otherwise, Ordinance No. 290 of the City of Prineville, passed September 11, 1930, and approved September 12, 1930, is hereby repealed.

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.

**FIRST READING:
SECOND READING AND**

OCTOBER 23, 1979.

Passed by the City Council this 13TH day of NOVEMBER, 1979.

Approved by the Mayor this 15TH day of NOVEMBER, 1979.


NELLO GIOVANINI, Mayor

ATTEST:



ARNOLD 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, WATER UTILITY PROPERTY AND FACILITIES FOR THE PURPOSE OF SUPPLYING WATER AND WATER SERVICE TO THE CITY, THE INHABITANTS THEREOF AND OTHERS, SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED IN THIS ORDINANCE; AND PROVIDING FOR THE REPEAL OR ORDINANCE NO. 290 OF THE CITY OF PRINEVILLE, PASSED SEPTEMBER 11, 1930 AND APPROVED SEPTEMBER 12, 1930.

was submitted to the Council.

After discussion, Councilman DALE BANNON moved that said ordinance be given its first reading, Councilman STUART SHELK seconded said motion, the motion duly carried and the same thereupon was fully and distinctly read by the Recorder.

~~Upon motion of Councilman _____, seconded by Councilman _____,~~ 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, WATER UTILITY PROPERTY AND FACILITIES FOR THE PURPOSE OF SUPPLYING WATER AND WATER SERVICE TO THE CITY, THE INHABITANTS THEREOF AND OTHERS, SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED IN THIS ORDINANCE; AND PROVIDING FOR THE REPEAL OR ORDINANCE NO. 290 OF THE CITY OF PRINEVILLE, PASSED SEPTEMBER 11, 1930 AND APPROVED SEPTEMBER 12, 1930.

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 DENNIS DAVIS seconded said motion and by unanimous consent the same was thereupon fully and distinctly read by the Recorder.

**COUNCIL
PRESIDENT**

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

Voting Aye: Councilmen

Voting Nay: Councilmen

JOHN JACKSON

N/A

DALE BANNON

GERALD BLANK

DENNIS DAVIS

ABSENT: MAYOR

NELLO GIOUANINI

Absent: Councilmen

DAVID ASHER

STUART SHELK

COUNCIL PRESIDENT DALE BANNON

The ~~Mayor~~ announced that said ordinance had been duly passed by the affirmative vote of 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. 823.

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. 823 of said City. I further certify that the foregoing copy of said Ordinance No. 823 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

ACCEPTANCE OF ORDINANCE NO. 823

by

PACIFIC POWER & LIGHT COMPANY

Pacific Power & Light Company hereby unconditionally accepts Ordinance No. 823 of the City of Prineville, Crook County, Oregon, and all the terms, provisions, and conditions thereof, said Ordinance being 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 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, WATER UTILITY PROPERTY AND FACILITIES FOR THE PURPOSE OF SUPPLYING WATER AND WATER 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 ORDINANCE NO. 290 OF THE CITY OF PRINEVILLE, PASSED SEPTEMBER 11, 1930, AND APPROVED SEPTEMBER 12, 1930.

which said Ordinance was submitted at a regular meeting of the Council of the City of Prineville and read fully and distinctly by the Recorder for the first time on October 23, 1979 and was read fully and distinctly by the Recorder for the second time on November 13, 1979 and duly passed at that regular meeting of the Council of said City of Prineville, was duly attested by the Recorder, and was submitted to and duly approved and signed by the Mayor of said City of Prineville on the 15th day of November, 1979.

IN WITNESS WHEREOF said Pacific Power & Light Company has caused this acceptance to be signed by one of its Vice Presidents, and its corporate seal to be hereunto affixed, attested by one of its Assistant Secretaries, on this 6TH day of DECEMBER, 1979.

PACIFIC POWER & LIGHT COMPANY

By *R. L. Bartholomew*
Senior Vice President

Attest: *R. A. Sampson*
Assistant Secretary

I, ARNOLD R. EVANS, Recorder of the City of Prineville, do hereby certify the foregoing is a fully, true and correct copy of Acceptance of Ordinance No. 823, and that the original of said acceptance was filed in my office as such Recorder on DECEMBER 7, 1979.

WITNESS my hand and the seal of the City of Prineville this 7TH day of DECEMBER, 1979.

Arms
Recorder of the City of Prineville