

ORDINANCE NO. 163

AN ORDINANCE GRANTING TO PACIFICORP, DOING BUSINESS AS PACIFIC POWER AND LIGHT COMPANY, AN OREGON 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 PUBLIC PLACES OF THE CITY OF COOS BAY, COOS COUNTY, OREGON, ELECTRIC LIGHT AND POWER LINES AND APPURTENANCES FOR THE PURPOSE OF SUPPLYING ELECTRICITY AND ELECTRIC SERVICE TO THE CITY OF COOS BAY, THE INHABITANTS THEREOF AND OTHERS, SUBJECT TO THE TERMS AND CONDITIONS AND TO THE MAKING OF PAYMENTS SPECIFIED IN THE ORDINANCE; AND PROVIDING FOR THE REPEAL OF ORDINANCE NO. 2477.

The City of Coos Bay Ordains as follows:

Section 1. The City of Coos Bay, Coos County, Oregon, hereinafter called the City, does hereby grant to PacifiCorp, doing business as Pacific Power and Light Company, an Oregon corporation, and to its successors and assigns, hereinafter called Grantee, a right and franchise for the period of twenty (20) years from and after the effective date of this ordinance, to construct, maintain, and operate in, on and under the present and future streets, alleys, bridges and public places of the City, hereinafter referred to as "streets," electric light and power lines, with all the necessary or desirable appurtenances, for the purpose of supplying electricity and electric service to the City and to the inhabitants thereof, subject to the terms and conditions and to the making of 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 this franchise, 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 Grantee in furnishing service hereunder, no value or damage of any kind shall be claimed by or allowed to Grantee in respect to the unexpired term of the franchise hereby granted.

Section 3. The locations 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 of the City; and all such facilities shall be so constructed and maintained as to interfere as little as practicable with

street or other traffic. All of such facilities shall be installed and at all times maintained by Grantee in accordance with good electrical practice. If the removal or relocation of facilities is caused by an identifiable development of property in the area, or is made for the convenience of a customer, this agreement shall not preclude the Grantee from charging the expense of removal or relocation to the developer or customer.

Section 4. The service to be furnished hereunder by Grantee 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 Grantee, and shall be furnished under such reasonable rules and regulations as Grantee may make from time to time for the proper conduct of its business. Such service and all rates and charges therefore and all rules and regulations pertaining thereto or to the making of necessary and proper extension of service shall be subject at all times to any rules, regulations and orders lawfully prescribed by the Oregon Public Utility Commission, or by any other governmental authority having jurisdiction thereof.

Section 5. When necessary, in order to permit any duly authorized person to move any building or structure across or along any of said streets, Grantee shall temporarily raise or remove its facilities upon such streets, upon reasonable notice in advance from the Recorder of the City, and at such time and in such manner as may be reasonably required 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 or traffic control systems to the poles of Grantee, but at its own risk and only in accordance with good electrical practice. If there is not sufficient space available thereon for such 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 protect and save the City, its officers, employees and agents, harmless against and from any and all damage claims, and any and all loss, liability, cost or expense, occasioned by any negligent act or omission of Grantee in the construction, maintenance, operation or repair of Grantee's property or any use thereof; and Grantee shall at all times comply with any lawful present or future charter provisions, ordinances, rules or regulations of the City relating to the manner of occupation or use, or to the repair or improvement of said streets.

Section 8. 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 9.

(a) Grantee shall pay to the City a franchise fee or charge equivalent to four and three-quarter percent (4 3/4%) of Grantee's gross operating revenue as the same is defined herein during the first ten (10) years of the right and franchise hereby granted, and five percent (5%) of Grantee's gross operating revenue as the same is defined herein during the second ten (10) years of the right and franchise hereby granted.

(b) "Gross operating revenue," means Grantee's gross revenues from the sale and use of electricity and electric service within the corporate limits of the City, other than such revenues 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 to 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 accounts of customers within the City.

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

(d) Said franchise fee shall be paid monthly on or before the 20th of each month during the terms hereof, and shall be computed upon the gross operating revenue accruing during the previous calendar month or portion thereof.

Section 10. Upon the effective date hereof, but not otherwise, Ordinance No. 2477 of the City of Coos Bay passed and approved October 11, 1971 is repealed.

Section 11. This ordinance shall take effect thirty (30) days after its enactment by the Council and approval by the Mayor, but shall become null and void unless within sixty (60) days after such enactment Grantee shall file with the Recorder Grantee's written acceptance of the terms, conditions and obligations to be complied with or performed by it hereunder.

Passed by the Council and approved by the Mayor July 24, 1990.