

ORDINANCE NO. 37

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 Dundee, 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 city 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 City of Dundee, fixing the terms and conditions thereof,

THE PEOPLE OF THE CITY OF DUNDEE DO 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 City of Dundee, Oregon, as the same now exists, 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 City of Dundee 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 road, streets, alleys and other public ways and places within the corporate limits of the said City of Dundee, 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 city shall be deemed to be covered by the terms of this ordinance and to be located therewith, and the location and placing thereof is hereby approved.

Section 2. That all rights 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 (30) days after demand, in writing, from the City, 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 City of Dundee, and the said Portland General Electric Company shall forfeit all right and privileges hereby granted.

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

Section 4. That the said grantee, under the direction of the City of Dundee, 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, light 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 city 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 city, or as may be otherwise provided by law. It is further provided that the city 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 city authorities, and the cost thereof, including the cost of inspection and supervision, shall be paid by said grantee, and the city authorities may require a deposit with the City 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 City of Dundee, 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 City of Dundee 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 lights 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 City of Dundee, or its properly constituted authorities, remove such pole or poles, and if failing, neglecting or refusing so to do, the said City of Dundee, 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 City of Dundee, 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 (\$10.00) Dollars or more than One Hundred (\$100.00) Dollars, or by imprisonment in the City Jail not less than five (5) days or more than ninety (90) 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 (30) days from the effective date of this ordinance, file with the Recorder of the City of Dundee 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, unoperative 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 City of Dundee, on or before the 15th day of January of each and every year during the term of this franchise the sum of Forty-five (\$45.00) Dollars. In consideration of the agreement of the company to make such payments, the city 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 city. Each of the annual payments of money required by this section shall be made by said Portland General Electric Company to the Treasurer of the City of Dundee, and the said Treasurer 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 City of Dundee to pay any of said annual payments provided for in this section, the City of Dundee, 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 City of Dundee reserves the right to cancel this franchise at any time upon one year's written notice to the grantee, in the event that the City of Dundee

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 City of Dundee to have the right to string wires on poles of the said grantee for municipal fire, police and water departments, and for municipal telephones, 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 so strung so 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 City or injuries to persons, resulting from the using of its said poles by the City.

(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 City of Dundee, 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 City of Dundee 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 City of Dundee; and at all times the power and right to regulate reasonably the exercise of the rights and privileges of the franchise hereby granted shall be vested in the common council of said city, 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 City of Dundee 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 City of Dundee 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 city 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 City of Dundee, and it is necessary for the peace, health, and safety of the people of Dundee that an arrangement be made immediately with said Company,

governing the existing use of public property within the said city, 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 5 day of May, 1941.

Approved by the Mayor this 6 day of May, 1941.

Morris D. Parker  
Mayor of the City of Dundee.

ATTEST:

Ellen Allan  
Recorder of the City of Dundee

Dundee, Oregon

Date May 6, 1941.

This is to certify that this is a true and correct copy of Ordinance No. 37, which was regularly passed by the City Council of Dundee at their regular meeting held May 5, 1941.

Signed: Ellen Allan  
City Recorder.