

ORDINANCE NO. 171

AN ORDINANCE GRANTING TO CENTRAL LINCOLN PEOPLE'S UTILITY DISTRICT, A MUNICIPAL CORPORATION, ITS SUCCESSORS AND ASSIGNS (HEREINAFTER DISTRICT), AN EXCLUSIVE FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE AN ELECTRIC UTILITY ALONG STREETS AND OTHER PUBLIC WAYS IN THE CITY OF LAKESIDE; SETTING THE PRICE OF SUCH FRANCHISE; AND REPEALING ORDINANCES 9 AND 66.

WHEREAS, the District is an operating utility engaged in the distribution of electric power in the City of Lakeside and other adjoining areas; and

WHEREAS, the future growth and expansion of that portion of the system of said District lying within the City of Lakeside is of great value to the City; because of the direct monetary gain to the City through increased electric revenues; and because adequate utility services are necessary for the general growth and development of a city;

NOW, THEREFORE,

THE CITY OF LAKESIDE DOES ORDAIN AS FOLLOWS:

SECTION 1: GRANT OF FRANCHISE

The City of Lakeside, in Coos County, Oregon (hereinafter City), grants to District an exclusive franchise of scope and description as follows:

The right and privilege to operate in City and to locate, construct, reconstruct, operate and maintain pole lines with all necessary poles, wires and other appurtenances, telecommunications, signal or other control circuits with all necessary lines, wires, cables, conduit and other appurtenances, underground power lines with all necessary cable, conduit, manholes, splicing boxes and other appurtenances, and all other necessary facilities used for the purpose of transmitting, distributing, delivering, signaling and controlling electric power and all necessary telecommunications on, over, along and under, the public streets, alleys and public grounds of City, including the right to lay all or any part of such electric power and necessary telecommunications system underground if District so elects. In the event City abandons, through vacation or otherwise, whether voluntarily or involuntarily, any public street, alley or other public place or way, City shall, notify District of hearings upon proposed street vacations or public places under City jurisdiction in the manner required by ordinance or statute the same as if the District were an abutting property owner.

District has the exclusive right and authority, during the term of the franchise granted by this ordinance, to construct, maintain and operate a distribution system for furnishing electric power to all consumers, public and private, within the corporate limits of City. The exclusive aspect of this franchise may be revoked unilaterally by City upon

one year's notice to District and shall not, in any event, limit City's ability to form a municipal electric utility under ORS Chapter 225.

For the above-stated purpose, District has the right to erect or construct, equip and maintain along, over or under present or future streets, alleys and other public places or ways such other facilities in addition to or conjunction with District's utility poles and overhead transmission lines, underground transmission lines, and other apparatus and facilities as are reasonably necessary for furnishing electric service, including the right to clear trees and brush from such public ways and places.

District has the right to purchase, erect, equip, maintain, own, lease and operate machinery, equipment, structures and other facilities necessary to generate, transmit, signal and control an adequate supply of electric power; and the right to buy, hold, own or lease any real estate necessary to conduct such activities.

For the purpose of carrying into effect the privileges granted under and pursuant to this ordinance, District is authorized to make all necessary excavations in the streets, alleys, sidewalks and public ways and grounds within the corporate limits of City. The excavations shall be carried out with reasonable dispatch and with as little interference with or inconvenience to the rights of the public as may be feasible.

District shall restore all streets, alleys, sidewalks and public grounds to their original condition of safety and utility after excavation.

In case any obstruction caused by District shall remain longer than a reasonable time after notice to remove it, or in case of neglect by District to safeguard any dangerous places, City may remove the obstruction or safeguard dangerous places at the expense of District.

District has the right to allow attachment to its poles and facilities by others such other equipment, lines and other facilities as District's rules and regulations may allow.

City's police and/or fire department signal wires may be attached to the District's poles and fixtures to the extent that space is available for same as determined by the District. No such installation shall be made except on written request from the City, and any such installation, maintenance or repair of same shall be at the expense of the City.

District, at its expense, shall protect, support, temporarily disconnect, relocate along, under or over any street, alley or public place, or remove from any street, alley or public place, any equipment or facilities when required by City by reason of traffic conditions, public safety, street excavation, freeway or street construction, change or establishment of street grade, installations of sewers, drains, water pipes, power lines or tracks, or any other type of structures or improvements by City or other public agencies when acting in a governmental or in a proprietary capacity, or for any public improvement, not limited to the foregoing, of any character whatever.

SECTION 2: TERM

The franchise is granted for a term of twenty (20) years commencing with the date on which it is accepted. Thereafter, the franchise may be renewed on such terms and conditions as may be mutually acceptable to City and District. In the event District agrees to pay another city a franchise fee greater than that provided in Section 6 below, District agrees to give City the option to receive the same amount as franchise fee provided City agrees to the identical terms and conditions which said greater franchise fee entails. It is understood by both parties that any amounts above the amounts provided in Section 6 will entail a separate line item for additional tax to residents of City.

SECTION 3: ACCEPTANCE

District shall file a written acceptance of the franchise with the City Recorder of City within thirty (30) days after the date of this ordinance. The franchise shall go into effect only when the acceptance has been filed.

SECTION 4: INDEMNITY

District shall indemnify and defend City, its boards, commissions, officers, agents and employees, and any and all other public agencies, and their members, officers, agents and employees, against any and all liabilities for injury or death of any person or any damage to any property caused by District, District's officers, agents or employees, in the construction, operation or maintenance of its property, or arising out of the exercise of any right or privilege under the franchise.

SECTION 5: ADDITIONS

District shall, on subsequent additions of areas to City, either by annexation, consolidation or otherwise, be subject to the provisions of the franchise granted by this ordinance as to all such areas.

Any facilities and appurtenances in streets, alleys and public places, incidental to the franchised system, that have been, or are at any future time acquired, leased or utilized in any manner by District are to be deemed authorized by and shall be subject to all the provisions of the franchise, including, but not limited to the duty of payment of compensation as required under this ordinance.

SECTION 6: CONSIDERATION

Beginning thirty (30) days after the date of this ordinance, District shall pay to City monthly as a franchise fee and as compensation for the rights and privileges granted under this ordinance, a sum equal to three-quarters of one percent ($3/4\%$) of the gross industrial revenue from electric service rendered within the corporate limits of City during each District billing month, and, in addition, three and one-half percent ($3\frac{1}{2}\%$) of all other revenues from electric service rendered within the corporate limits of City during each

such billing month. Such basis of computation has been set as a convenient and proper method of measuring the amount that District should pay as a franchise fee for the enjoyment of the franchise granted by this ordinance, or of any or all rights or privileges granted under this ordinance. No other license, privilege or occupation tax or fee shall be required of District during the term of this franchise.

In the event of holding over after expiration or other termination of this franchise, District shall render compensation pursuant to the provisions of this ordinance until the effective date of any new franchise.

SECTION 7: EFFECT OF INVALIDITY

This franchise is granted pursuant to the laws of the State of Oregon relating to the granting of such rights and privileges. If any section, sentence, clause or phrase of this ordinance is for any reason held illegal, invalid or unconstitutional, the invalidity shall not affect the validity of the ordinance or any of the remaining portions. The invalidity of any portion of this ordinance shall not abate, reduce or otherwise affect any consideration or other obligation required of District.

SECTION 8: REPEAL OF ORDINANCES IN CONFLICT

Ordinances 9 and 66 are hereby repealed.

Passed and approved on October 11, 1994 [date].

Peter S. Schomover

Bingell