

**ORDINANCE NO. 1078**

**AN ORDINANCE GRANTING TO PACIFICORP, AN OREGON CORPORATION, DOING BUSINESS AS PACIFIC POWER & LIGHT COMPANY, AND TO ITS SUCCESSORS AND ASSIGNS, A NONEXCLUSIVE RIGHT AND FRANCHISE FOR A PERIOD OF FIVE (5) YEARS TO CONSTRUCT, MAINTAIN AND OPERATE, IN, ON, AND UNDER THE PRESENT AND FUTURE STREETS, ALLEYS, BRIDGES AND PUBLIC PLACES IN THE CITY OF PRINEVILLE, CROOK COUNTY, OREGON, ELECTRIC LIGHT AND POWER LINES AND APPURTENANCES AND COMMUNICATION FACILITIES FOR THE PURPOSE OF SUPPLYING ELECTRICITY AND ELECTRIC SERVICE TO THE CITY OF PRINEVILLE, 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. 822 OF THE CITY OF PRINEVILLE, PASSED AND APPROVED NOVEMBER 13, 1979.**

**THE CITY OF PRINEVILLE ORDAINS AS FOLLOWS:**

**Section 1.** The City of Prineville, Crook County, Oregon, hereinafter called the City, hereby grants to PacificCorp, an Oregon corporation doing business as Pacific Power & Light Company, and to its successors and assigns, hereinafter called Grantee, a right and franchise for the period of five (5) 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, and communication facilities 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 the right and franchise hereby granted, to grant rights and franchises for such purpose 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.

**Section 3.** The location 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 facilities shall be installed and at all times maintained by Grantee in accordance with good electrical practice.

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 safety or necessity, and the expense thereof shall be paid by the Grantee. In any such relocation of facilities, the Grantee shall be permitted to replace the relocated facilities with like facilities.

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, Grantee may charge the expense of removal or relocation to the developer or customer.

**Section 4.** Grantee’s service 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.

**Section 5.** When necessary, to permit any duly authorized person to move any building or structure across or along any City streets, Grantee shall temporarily raise or remove its facilities, as necessary 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, that the owner or mover of the building or structure shall first pay or satisfactorily secure Grantee's costs arising therefrom or related thereto, including any interruption of Grantee's service to its customers caused thereby.

**Section 6.** The City may, upon reasonable notice to Grantee and without payment or charge therefore, 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 said purposes, Grantee's structures may be changed, altered, or rearranged at City's expense 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 may trim all trees and vegetation which overhang said City streets, whether such trees or vegetation originate within the streets or outside said streets, in such a manner and to such an extent as will prevent the branches or limbs or other parts of such trees or vegetation from touching or interfering with its facilities, so long as no trees and vegetation 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 and vegetation which overhang said streets.

**Section 9.**

(a) Grantee shall pay to the City a franchise fee or charge equivalent to five percent (5.0%) of Grantee's gross operating revenue as the same is defined herein unless within six months following the adoption of this ordinance the City negotiates a fee or charge less than five percent (5.0%) paid by any other electric service providers doing business within the City, Grantee shall reduce franchise fee or charge equivalent to any other service providers doing business within the City.

If the City fails to negotiate a franchise fee or charge with any other electric service providers doing business within the City within six months following the adoption of this ordinance, Grantee's franchise fee or charge will be decreased to three and one-half percent (3.5%) of Grantee's gross operating revenue as the same is defined herein for the remainder of the franchise term.

(b) "Gross operating revenue" means Grantee's gross revenues from the sale and use of electricity within the corporate limits of the City; 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. Grantee also may at its option deduct uncollectible accounts of customers within the City.

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

**Section 10.** 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 11.** 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 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 providing 60 days written notice to the City.

**Section 14.** The Company and the City recognize that many aspects of the electric utility industry are currently the subject of discussion, examination and inquiry by different segments of the industry and affected regulatory authorities and that these activities may ultimately result in fundamental changes in the way the Company conducts its business and meets its service obligations. In recognition of the present state of uncertainty respecting these matters, the Company and the City each agree, on request of the other during the term of this Franchise, to meet with the other and discuss in good faith whether it would be appropriate, in view of developments of the kind referred to above during the term of this Franchise, to amend this Franchise or enter into separate, mutually satisfactory arrangements to effect a proper accommodation of any such developments.

**Section 15.** Upon the effective date hereof, but not otherwise, Ordinance No. 822 of the City of Prineville passed and approved November 13, 1979 is repealed.

**Section 16.** 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 compiled with or performed by it hereunder.

Passed by the Council this 14<sup>th</sup> day of March, 2000.

Approved:   
Mayor of the City of Prineville, Oregon

Date: 3-14-00

Attest:

By:   
Recorder of the City of Prineville, Oregon

Date: 3-14-00

**EXTRACT FROM MINUTES OF THE MEETING OF THE COUNCIL OF THE  
CITY OF PRINEVILLE HELD ON THE 22<sup>ND</sup> DAY OF February, 2000**

A form of ordinance entitled:

**AN ORDINANCE GRANTING TO PACIFICORP, AN OREGON CORPORATION, DOING BUSINESS AS PACIFIC POWER & LIGHT COMPANY, AND TO ITS SUCCESSORS AND ASSIGNS, A NONEXCLUSIVE RIGHT AND FRANCHISE FOR A PERIOD OF FIVE (5) YEARS TO CONSTRUCT, MAINTAIN, AND OPERATE, IN, ON AND UNDER THE PRESENT AND FUTURE STREETS, ALLEYS, BRIDGES AND PUBLIC PLACES OF THE CITY OF PRINEVILLE, CROOK COUNTY, OREGON, ELECTRIC LIGHT AND POWER LINES AND APPURTENANCES, AND COMMUNICATIONS FACILITIES FOR THE PURPOSE OF SUPPLYING ELECTRICITY AND ELECTRIC SERVICE TO THE CITY OF PRINEVILLE, 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. 822 OF THE CITY OF PRINEVILLE, PASSED AND APPROVED NOVEMBER 13, 1979.**

was submitted to the Council.

After discussion, Councilman Dragich moved that said ordinance be given its first reading; Councilman Reid seconded said motion, and the ordinance was thereupon distinctly read in full for the first time.

Upon motion of Councilman Dragich, seconded by Councilman Comini, 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 14<sup>th</sup> DAY OF March, 2000**

A form of ordinance entitled:

**AN ORDINANCE GRANTING TO PACIFICORP, AN OREGON CORPORATION, DOING BUSINESS AS PACIFIC POWER & LIGHT COMPANY, AND TO ITS SUCCESSORS AND ASSIGNS, A NONEXCLUSIVE RIGHT AND FRANCHISE FOR A PERIOD OF FIVE (5) YEARS TO CONSTRUCT, MAINTAIN, AND OPERATE, IN, ON AND UNDER THE PRESENT AND FUTURE STREETS, ALLEYS, BRIDGES AND PUBLIC PLACES OF THE CITY OF PRINEVILLE, CROOK COUNTY, OREGON, ELECTRIC LIGHT AND POWER LINES AND APPURTENANCES AND COMMUNICATIONS FACILITIES FOR THE PURPOSE OF SUPPLYING ELECTRICITY AND ELECTRIC SERVICE TO THE CITY OF PRINEVILLE, 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. 822 OF THE CITY OF PRINEVILLE, PASSED AND APPROVED NOVEMBER 13, 1979.**

was brought on for further consideration, having been read in full at a regular meeting of the Council on the 14<sup>th</sup> day of March, 2000.

After discussion, Councilman Dragich moved that said ordinance be given its second reading. Councilman Reid seconded said motion, and the same was thereupon read in full by the Recorder.

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

Brenda Comini

none

Scott Cooper

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Gerald Blank

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Hugh Dragich

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Dorless Reid

Absent: Councilmen

Mayor Ann Graf

none

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The Mayor announced that said ordinance had been duly passed by the affirmative vote of 6 Councilmen, being a majority of all the members of the Council, as shown by the "Ayes" and "Nays." The ordinance was then duly attested by the Recorder and submitted to the Mayor. The Mayor duly approved and signed said ordinance on the 14<sup>th</sup> day of March, 2000, and it was thereupon numbered Ordinance No. 1078.

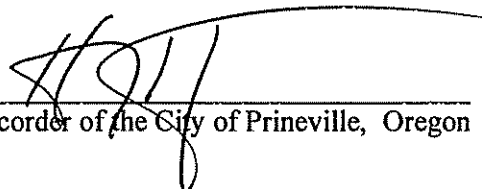
**CERTIFICATION BY RECORDER OF  
CITY OF PRINEVILLE**

STATE OF OREGON                    )  
  ) ss.  
County of CROOK                    )

I, Henry Hartley, Recorder of the City of Prineville, Crook County, State of Oregon, do hereby certify: That the foregoing extracts of minutes of meeting of the Council of the City of Prineville held on the 22<sup>nd</sup> day of February, 2000, and on the 14<sup>th</sup> day of March, 2000, respectively, are full, true and correct copies of that portion of the minutes of said meeting which relate to the introduction, consideration, and passage of Ordinance No. 1078 of said City. I further certify that the foregoing copy of said Ordinance 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, that said Ordinance was duly passed by the affirmative vote of 6 Councilmen at a regular meeting of the Council of said City duly and regularly called and held at which 6 Councilmen, being a quorum, were present and acting: that said Ordinance was duly attested by me as Recorder, and was presented to and duly approved by the Mayor, within three days of the passage thereof.

WITNESS my hand and the Seal of the City of Prineville this 14<sup>th</sup> day of  
March, 2000.

(SEAL)

  
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Recorder of the City of Prineville, Oregon