

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 TEN (10) YEARS TO CONSTRUCT, MAINTAIN AND OPERATE IN, ON AND UNDER THE PRESENT AND FUTURE STREETS, ALLEYS, BRIDGES AND PUBLIC PLACES OF THE CITY OF ALBANY, LINN 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 THE ORDINANCE; AND PROVIDING FOR THE REPEAL OF ORDINANCE NO. 2773 OF THE CITY OF ALBANY, PASSED AND APPROVED MARCH 12, 1958, AND ORDINANCE NO. 3542, PASSED AND APPROVED MARCH 31, 1971.

THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: The City of Albany, Linn County, Oregon, hereinafter called the City, does hereby grant to Pacific Power & Light Company, a corporation, and to its successors and assigns, hereinafter called Grantee, a right and franchise for the period of ten (10) 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," water utility property and facilities for the purpose of supplying water and water service to the City and the inhabitants thereof, and to persons and corporations beyond the limits of the City, 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 franchise 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 Grantee in furnishing service hereunder, no value or damages of any kind shall be claimed by or allowed to Grantee on account of the unexpired term of the right and franchise hereby granted.

Section 3: The locations 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 or such official of the City as may be designated by the Council; and all such facilities shall be so constructed and maintained as to interfere as little as practicable with street or other traffic. All such facilities shall be installed and at all times maintained by Grantee in safe order and condition and in accordance with good water service.

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 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 the purpose aforesaid or to repair and improve such water system and to extend the same as the growth of said City or the Needs of the inhabitants thereof may require; provided, that when Grantee shall disturb any of said streets, alleys, avenues, boulevards or thoroughfares for the purposes aforesaid, Grantee shall comply with the ordinances of the City applicable thereto, and shall restore the same to good order and condition

as soon as practicable and without unnecessary delay; and 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 thoroughfare in such condition at the expense of the City, and the City may recover from Grantee the amount of the cost thereof.

Section 6: 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 facilities or any use thereof.

Section 7: Grantee shall pay to the City a franchise fee or charge equivalent to three and one-half (3½%) percent of Grantee's gross operating revenue, as the same is defined herein; provided, that if within sixty (60) days prior to the end of the initial five (5) years of the term of franchise hereby granted and to the end of each five (5) year period thereafter, the City requests a review of said franchise fee, the City and Grantee shall in good faith renegotiate said fee and said fee, as then mutually reestablished, shall thereafter be paid during all the remaining years of the franchise term or until said fee is again reestablished as hereinabove provided.

(a) "Gross operating revenue," as used herein, shall be defined as the gross revenue from the sale 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 revenue.

(b) The amounts so payable by Grantee hereunder shall be in lieu of 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 water business or of the exercise of this franchise within the corporate limits of the City.

(c) The franchise fee due hereunder shall be paid quarterly on or before the 15th day of the month next following the end of each calendar quarter during the term hereof, and shall be computed upon the

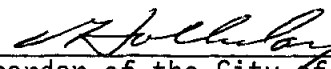
gross operating revenue accruing during the previous calendar quarter or portion thereof.

Section 8: Upon the effective date hereof, but not otherwise, Ordinance No. 2773 of the City of Albany, passed and approved March 12, 1958, and Ordinance No. 3542, passed and approved March 31, 1971, is repealed.

Section 9: 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, but shall become null and void unless within sixty (60) days after such effective date 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 this 13th
of September, 1978.

Signed on the 13th day of September.
1978.



Recorder of the City of Albany

Signed on the 13th day of September.
1978.



Mayor of the City of Albany

Effective Date: October 13, 1978

Accepted this _____ day of Sept. 1978.

Pacific Power & Light

ACCEPTANCE OF ORDINANCE NO. 4179

by

PACIFIC POWER & LIGHT COMPANY

Pacific Power & Light Company hereby unconditionally accepts Ordinance No. 4179 of the City of Albany, Linn 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 TEN (10) YEARS TO CONSTRUCT, MAINTAIN AND OPERATE IN, ON AND UNDER THE PRESENT AND FUTURE STREETS, ALLEYS, BRIDGES AND PUBLIC PLACES OF THE CITY OF ALBANY, LINN 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 THE ORDINANCE; AND PROVIDING FOR THE REPEAL OF ORDINANCE NO. 2773 OF THE CITY OF ALBANY, PASSED AND APPROVED MARCH 12, 1958, AND ORDINANCE NO. 3542, PASSED AND APPROVED MARCH 31, 1971.

which said Ordinance, by a unanimous vote of all members of the Council of the City of Albany present at a regular meeting of said Council held on the 13th day of September, was introduced, read twice, once in full and once by title only, and put on its final passage, and was then duly passed at said meeting held on the 13th day of September, was duly signed by the Recorder, and was then submitted to and signed by the Mayor of said City of Albany on the 13th day of September, 1978.

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 13 day of September, 1978.

PACIFIC POWER & LIGHT COMPANY

By A. G. Berthelme
Senior Vice President

Attest: R. C. Thompson
Assistant Secretary

I, D. Gary Holliday Recorder of the City of Albany, do hereby certify that the foregoing is a full, true and correct copy of Acceptance of Ordinance No. 4179 and that the original of said acceptance was filed in my office as such Recorder on 13 September, 1978.

WITNESS my hand and the seal of the City of Albany this 19 day of October, 1978.

D. Gary Holliday
City Recorder of the City of Albany

PACIFIC POWER & LIGHT COMPANY

236 SOUTH LYON STREET / POST OFFICE BOX 248 / ALBANY, OREGON 97321

November 1, 1978

Mr. Gary Holliday
City Finance Director
City of Albany
P. O. Box 490
Albany, Oregon 97321


Dear Gary:

Attached is one copy of Ordinance #4179 providing Pacific with a ten year franchise for water service within the city which is signed and sealed by the city. Also attached is an acceptance of the Ordinance #4179 by Pacific Power & Light, formally completed and sealed.

You will note on page 4 of the Ordinance, there is a space for signing by Pacific of acceptance of the Ordinance which has been signed. Our attorneys advised it was not necessary to sign that one since we have already signed the acceptance which is binding.

These originals are for the city's records. Your cooperation in completing this matter is appreciated.

Very truly yours,


H. A. Hurlbut, Jr.
District Manager

HAH:sg