

## ORDINANCE NO. 170

### **AN ORDINANCE GRANTING TO CENTRAL LINCOLN P.U.D., A MUNICIPAL CORPORATION, A FRANCHISE TO CONSTRUCT, OPERATE, AND MAINTAIN BOTH OVERHEAD POLE LINES AND UNDERGROUND POWER LINES ALONG THE STREETS AND PUBLIC WAYS WITHIN DUNES CITY, LANE COUNTY, OREGON; SETTING THE CONSIDERATION FOR SUCH FRANCHISE AND REPEALING ORDINANCE NOS. 7, 68, AND 85; AND DECLARING AN EMERGENCY.**

THE CITY OF DUNES CITY ORDAINS AS FOLLOWS:

**Section 1. Granting Clause.** The City of Dunes City, Oregon, hereinafter called the "City," does hereby grant to Central Lincoln P.U.D., a municipal corporation and People's Utility District existing and operating under the provisions of ORS Chapter 261, its subsidiaries, affiliates and their successors and assigns, hereinafter called "Grantee," the right and franchise for the period of twenty (20) years from and after the effective date of this ordinance, to locate, construct, reconstruct, 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 relating thereto including, but not limited to, all wires, cables, conduit, underground lines, manholes, splicing boxes and all other like facilities for the purpose of supplying electricity and electric service to the City and to the inhabitants thereof; together with all necessary and desirable facilities used for the purpose of transmitting, signaling and controlling electric power and all other like telecommunications system facilities of Grantee, subject to the terms and conditions and to the making of payments hereinafter specified.

**Section 2. PUC Grant of Authority.** The City acknowledges that Grantee has been granted exclusive service territories within the city limits of the City by the Public Utilities Commission of Oregon ("PUC") for the purpose of supplying electricity and electric service to the City and to the inhabitants thereof. The City further acknowledges and hereby agrees that during the term of the franchise granted by this ordinance that it will not compete in any way with Grantee's supplying electricity and electric service to the City and to its inhabitants.

**Section 3. Continuing Rights of City.** The locations and methods of installation and maintenance of all Grantee's poles, wires, fixtures, underground lines, and appurtenances thereto (hereinafter referred to as "facilities") shall be subject at all times to regulation by the City, and all such facilities shall be so constructed and maintained as to interfere as little as practicable with street or other traffic. Nothing herein however shall be construed to change or modify Oregon law regarding Grantee's ability to recover costs for any relocation of its facilities. All of such facilities shall be installed and at all times maintained by Grantee in accordance with good electrical practice. Grantee shall change

the location of or remove any pole, conduit, structure or facility within the public right of way when the City determines that the public convenience requires such changes or removal. The expense of said change shall be paid by Grantee unless Grantee's pole, conduit, structure or facility existed prior to the particular public right of way, in which case the City shall pay the expense for such removal or change.

**Section 4. Standards of Service.** 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 rules and regulations as Grantee may institute from time to time for the proper conduct of its business.

**Section 5. Removal of Facilities.** 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 City, and at such time and in such manner as may be reasonably necessary 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. Nothing contained in this Section shall preclude the City from requiring Grantee to remove or relocate its facilities when required in accordance with Section 3 of this franchise.

**Section 6. Restoration of Streets.** Whenever the Grantee shall disturb any public way in the City for any purpose, it shall restore the public way to as close to the same condition as existed prior to commencement of such work as is reasonably possible, and shall do so as soon as practicable after completion of the work. If the Grantee fails to do so, then the City may, upon giving the Grantee twenty (20) days written notice of its intention to do so, cause such repairs to be made and immediately collect payment of the costs of such repairs from the Grantee.

**Section 7. Rights of City.** The City shall have the right, 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 the standards of the National Electric Safety Code and the pole attachment laws and regulations of the State of Oregon. If there is not sufficient space available thereon for said purposes, Grantee's structures may be changed, altered, or rearranged only by Grantee 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 8. Indemnification.** Only to the extent and limits as provided by the Oregon Tort Claims Act, as it may be amended from time to time, 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 act or omission of Grantee in the construction, maintenance, operation or repair of Grantee's property or any use thereof; except such claims, loss, liability, cost or expense which may result from the negligent acts or omissions of the City.

**Section 9. Tree Trimming.** Grantee shall have the right and privilege of trimming all trees which overhang said streets, in ~~any such~~ a manner and to such an extent as it sees fit. 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 and with the approval of the City, from cutting down and removing any trees which overhang said streets.

**Section 10. Franchise Fee**

(a) Grantee shall pay to the City a franchise fee or charge equivalent equal to three and one-half percent (3 1/2%) of Grantee's gross operating revenue as the same is defined herein.

(b) The City reserves the right to, by resolution, raise the franchise fee to a maximum of five percent (5%) of Grantee's gross operating revenue. The City shall not raise the franchise fee without providing the Grantee with at least sixty (60) days notice prior to the effective date of this change.

(c) For purposes herein, "gross operating revenue," shall mean Grantee's gross revenues from the sale and use of electricity and electric service within the corporate limits of the City and including revenue from the use, rental or lease of operating facilities of Grantee relating to the sale or use of electricity, other than revenues derived from business done with the government of the United States or any agency thereof. At the election of Grantee, Grantee may also deduct uncollectible accounts of customers within the City from gross operating revenue.

(d) The franchise fee shall be offset against the sum total of the license fee required by City ordinance and any other occupation or excise taxes levied by the City against Grantee with respect to Grantee's electric business within the corporate limits of the City. It is agreed, however, that this section shall not be interpreted or construed in any manner as exempting the Grantee from paying any building code inspection fees, utility user or connection fees and charges, or local improvement special benefit assessments against parcels of real property owned by the Grantee, or from paying any usual or normal *ad valorem* taxes due any and all taxing bodies within the boundaries of which the Grantee functions, operates and owns property which the Grantee would otherwise be subject to pay if this franchise were not in existence. It is further agreed that the normal taxes and charges listed in the previous sentence shall not be considered to be a license fee that can be used to offset the franchise fee.

(e) The Grantee shall make at least two (2) franchise fee payments per year to the City. These payments shall be as follows:

(1) On or before February 15, based on the six-month period ending the preceding December 31.

(2) On or before August 15, based on the six-month period ending the preceding June 30.

(f) In the event the Grantee shall no longer be the direct service provider of electric energy to customers located within the City, the franchise fee imposed on Grantee shall be converted to a volumetric-based fee. Said fee shall be calculated using a base volumetric rate determined using the amount of electric energy included in the Grantee's Gross Revenue sales as defined herein, and including any other proper deductions or offsets which otherwise apply to that calculation. Said base volumetric rate in any year shall be equal to the same percentage of that total as would otherwise apply to the Gross Revenue payment calculation under this section.

(g) Acceptance by the City of any payment due hereunder shall not be deemed to be a waiver by the City of any breach of this franchise occurring prior thereto, nor shall the acceptance by the City of any payments be deemed to preclude the City from later establishing that a larger amount was actually due under the terms of this franchise, or from collecting the balance due thereon.

**Section 11. Right to Audit.** The City shall have the right to annually inspect the books and records of the Grantee to verify that the franchise fee has been correctly computed and paid for by the Grantee.

**Section 12. Default.** Grantee hereby agrees to comply with all City ordinances relating to the conduct of Grantee's business. Grantee shall be in default of this franchise if it fails to comply with any term or condition or fulfill any obligation of the franchise within 30 days after written notice by the City specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 30-day period, this provision shall be complied with if Grantee begins correction of the default within the 30-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. If Grantee is in default of this franchise, the City may revoke this franchise whereupon all rights of Grantee shall immediately be divested without a further act upon the part of Grantor.

**Section 13. Governmental Regulations.** The Grantee shall comply with all applicable rules and regulations covering the operation of cooperative electrical utilities.

**Section 14. Remedies.** The City expressly reserves the right to impose any penalties, avail itself of any and all remedies available, either at law or in equity, to enforce the provisions of this Ordinance.

**Section 15. Acceptance.** The Grantee shall, within thirty (30) days of the date hereof, file in the office of the City Recorder of the City its written acceptance of the franchise, rights and privileges by this Ordinance granted, as well as obligations herein imposed on

said Grantee, and the failure of said Grantee to file written acceptance within said period of time shall be held to be an abandonment and rejection of all franchise rights and privileges granted by this Ordinance and this Ordinance shall thereon be null and void.

**Section 16. Repealing Clause.** Ordinance No. 85 and any and all other ordinances or parts thereof in conflict with this ordinance are hereby repealed.

**Section 17. Emergency Clause.** Whereas, the proper regulation of utilities operating within Dunes City is essential to the public safety and to the health and welfare of the citizens of Dunes City and whereas the current franchise between the City and the Grantee shall expire on July 12, 2004, an emergency is hereby declared to exist and this ordinance shall take effect and be in full force and effect from and after its adoption by the Council and approval thereof by the Mayor.

PASSED BY THE COUNCIL of the City of Dunes City this 8th day of July, 2004.

*Council President*

APPROVED AND SIGNED BY THE MAYOR of the City of Dunes City this 8th day of July, 2004.

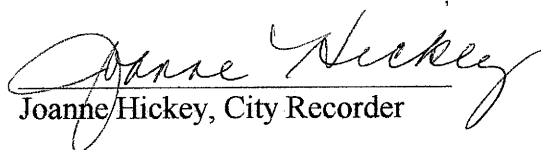
The vote of the Council was as follows:

Aye 6      Nay 0      Abstain          Absent    



Sheldon Meyer, Council President

ATTEST:

  
Joanne Hickey, City Recorder

**ACCEPTANCE OF DUNES CITY ORDINANCE NO. 170**


The Central Lincoln People's Utility District, a municipal corporation, owning and operating an electric system in the City of Dunes City, Oregon, accepts the franchise terms and conditions as set forth in Ordinance No. 170 adopted the 8<sup>th</sup> day of July, 2004, by the City Council of Dunes City, Oregon, entitled:

**ORDINANCE NO. 170**

**AN ORDINANCE GRANTING TO CENTRAL LINCOLN P.U.D., A PEOPLE'S UTILITY DISTRICT, A FRANCHISE TO CONSTRUCT, OPERATE, AND MAINTAIN BOTH OVERHEAD POLE LINES AND UNDERGROUND POWER LINES ALONG THE STREETS AND PUBLIC WAYS WITHIN DUNES CITY, LANE COUNTY, OREGON; SETTING THE CONSIDERATION FOR SUCH FRANCHISE AND REPEALING ORDINANCE NOS. 7, 68, AND 85; AND DECLARING AN EMERGENCY.**

Accepted this 21<sup>st</sup> day of July, 2004.

  
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President

  
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Secretary