

ORDINANCE NO. 293

AN ORDINANCE GRANTING TO OREGON TRAIL ELECTRIC CONSUMERS COOPERATIVE, INC. THE RIGHT TO PLACE, ERECT AND MAINTAIN POLES, WIRES, AND OTHER APPLIANCES AND CONDUCTORS FOR THE TRANSMISSION AND DISTRIBUTION OF ELECTRICITY IN, UPON AND UNDER THE STREETS, ALLEYS, AVENUES, THOROUGHFARES AND PUBLIC HIGHWAYS IN THE CITY OF CANYON CITY, OREGON, AND TO EXERCISE THE PRIVILEGE OF ENGAGING IN THE GENERAL BUSINESS OF GENERATING, TRANSMITTING AND DISTRIBUTING ELECTRICAL ENERGY, FOR A TERM OF TWENTY YEARS.

BE IT ORDAINED BY THE TOWN OF CANYON CITY:

SECTION 1. Grant of franchise. The Town of Canyon City, hereinafter referred to as the City, hereby grants to Oregon Trail Electric Consumers Cooperative, Inc., hereinafter referred to as the Grantee, the right and privilege to place, erect, lay, maintain, and operate in and over the streets, alleys, avenues, thoroughfares, and public places within the City, poles, wires, and other appliances and conductors for the generation, transmission and distribution of electricity.

SECTION 2. Location of facilities. Before constructing any facilities in the streets, alleys or public places of the City under this franchise, Grantee shall secure approval of the location of such facilities from the City Council of the City or from an officer of said City authorized by the City Council to grant such approval. No such facilities shall be constructed at locations not so approved.

SECTION 3. Excavations/Restoration. If Grantee makes any excavation, or in any manner interferes with any street, alley, sidewalk, crosswalk, pavement, or other public places within the City, Grantee shall, as soon as possible, put the same in as good condition as it was before such excavation or interference, and if Grantee fails to do so, said City may perform the necessary work and Grantee, by the acceptance of this franchise, agrees to pay the expense of the same. Grantee agrees to pay all costs and expenditures required for a period of two years thereafter as a consequence of the settling or any other need for repair or maintenance resulting from excavations made by Grantee.

SECTION 4. Indemnification. The City shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation or maintenance by Grantee of its generation, transmission or distribution facilities, and the acceptance of this franchise shall be deemed an agreement on the part of Grantee, to indemnify said City and hold it harmless against any and all liability, loss, cost, damage or expense which may accrue to said City by reason of the neglect, default, or misconduct of Grantee in the construction, operation or maintenance of its generation, transmission or distribution facilities under this franchise.

SECTION 5. Franchise not exclusive. This franchise shall not be exclusive and the granting of said franchise shall not be considered as any limitation on the right of said City to grant a similar franchise or similar franchises to other persons or corporations for furnishing electricity to said City and its inhabitants.

SECTION 6. Term of franchise. The term of the franchise hereby granted shall commence on January 14, 2011, and shall continue in effect for a period of twenty years from and after said date.

SECTION 7. Franchise fee. In further consideration of the rights, privileges and franchise hereby granted, said Grantee shall pay to the City a franchise fee based on the "*gross revenues*" of the Grantee from its sale and distribution of electrical energy within the corporate limits of the City, less

net uncollectibles. Gross revenues shall include revenues from the use, rental, or lease of operating facilities of the Grantee. Gross revenues shall not include proceeds from the sale of bonds, mortgages, securities or stocks, sales at wholesale to another utility when the utility purchasing the service is not the ultimate consumer, revenue from joint pole use, revenue paid by the United States of America or any of its agencies or revenue paid by the City. Payments are to be made during the term of this franchise which commences January 14, 2011. Said payments to be made 30 days after the close of each six month period. A sworn statement of the gross revenues of the Grantee from the sale of electrical energy within the corporate limits of the City shall be filed with the City Recorder of the City by the Grantee at the time of the payment of said franchise fee. Such franchise fee payment made by the Grantee will be accepted by the City from the Grantee if the Grantee accepts this franchise in lieu of any further license, privilege, or occupation tax, or fee for revenue or regulation of the City which may now or hereafter be imposed by ordinance of the City during the term of this franchise.

Effective January 14, 2011, the franchise fee shall be five percent (5%). Upon six months advance notice, the City may change the franchise fee provided such changed fee shall not exceed that provided by ORS 221.450 as it may be amended from time to time.

SECTION 8. The City may require the Grantee to relocate or remove any of its facilities on public right of way whenever the relocations or removal thereof is, in the judgment of the City, for the public convenience and necessity, and the expense thereof shall be borne by the Grantee. If the Grantee fails to relocate or remove the facilities within a reasonable time designated by the City, the City may relocate or remove the facilities at the Grantee's expense. If any relocation work is done for the benefit of a private party, the cost of the relocation work shall be borne by the private party.

SECTION 9. The privilege of assignment shall be binding upon and inure to the benefit of the successors, legal representatives and assigns of the Grantee, but this privilege and the rights granted under this ordinance either by sale, merger, consolidation, operation of law, or otherwise cannot be assigned by the Grantee without first obtaining the consent of the City thereto in writing as expressed by an ordinance.

However, the Grantee, without securing approval of the City, may execute mortgages or trust indentures upon the properties of the Grantee if given to secure bonds or other bona fide indebtedness of the Grantee.

SECTION 10. The Grantee shall at all times keep an accurate record of all accounts pertaining to the sale of electricity at its office in Baker City, Oregon. For the purpose of determining the amounts due under Section 7 of this ordinance, the City may inspect the books of account and other data and records at any time during business hours, and may audit them from time to time, and may require the Grantee to make available to it all records.

SECTION 11. The Grantee may trim trees which overhang the streets, alleys and other public places in the manner and to the extent necessary to provide adequate clearance for the Grantee's facilities. All trimming shall be done in strict conformity with any regulations heretofore or hereto after promulgated by the City and all applicable laws, regulations and codes regarding the safe operation of electrical distribution and transmission facilities.

SECTION 12. Upon the Grantee's willful failure, after 30 days' notice and demand, to perform with reasonable dispatch each and every term, condition or obligation imposed upon it under or pursuant to this ordinance, the City Council may at its option and in its sole discretion, terminate this privilege and permit by ordinance. Such termination shall not in any way relieve, release or discharge the Grantee from any liability or obligation in favor of the City theretofore incurred by Grantee under

this ordinance. The remedies contained in this section are not exclusive and the parties reserve any and all remedies available either at law or in equity to enforce any and all liabilities hereunder.

SECTION 13. The Grantee shall maintain and operate a system for the distribution of electricity in the City so as to provide a 24-hour a day service. The Grantee shall use due diligence to maintain continuous and uninterrupted service, which shall at all times be up to the standards common in the business. However, the Grantee does not guarantee continuous and uninterrupted service, and under no circumstances is the Grantee liable to the City for any interruption or failure to service caused in whole or in part by any cause beyond the reasonable control of the Grantee, including but not limited to acts of God or the public enemy, fires, floods, earthquakes, or other catastrophes, severe weather, strikes or failure or breakdown of generating, transmission or distribution facilities. The Grantee shall maintain emergency repair service available on a 24-hour a day basis.

SECTION 14. Severability. If any section, subsection, sentence, clause, or paragraph of this ordinance is for any reason held to be unconstitutional, void or unlawful, such decision shall not affect the remaining portions of this ordinance.

SECTION 15. Acceptance. This franchise shall become effective on January 14, 2011 and this ordinance shall become effective 30 days after its passage if the Grantee shall, within said 30-day period, file its written acceptance thereof with the City Recorder of Canyon City, and in the event that Grantee shall fail to so file its acceptance within said period, then this ordinance shall not become effective.

PASSED by the City Council of Canyon City, Oregon, and approved by the Mayor of Canyon City, Oregon this 14th day of January, 2011.

Approved: 
Mayor

Attest: 
City Recorder/Manager