

passed 8/11/77
Expires 8/11/97

ORDINANCE BILL NO. ~~37~~

ORDINANCE NO. 39

AMENDED
By 194

AN ORDINANCE GRANTING AN ELECTRIC UTILITY FRANCHISE TO CONSUMERS POWER, INC., A CORPORATION, AND FIXING TERMS, CONDITIONS AND COMPENSATION OF SUCH FRANCHISE, AND DECLARING AN EMERGENCY.

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

Section 1. Definitions and Explanations

(1) As used in this ordinance:

- (a) "City" means the City of Detroit, Oregon, and the area within its boundaries, including its boundaries as extended in the future.
- (b) "Council" means the legislative body of the City.
- (c) "Grantee" means Consumers Power, Inc., a corporation.
- (d) "Gross Revenue" means revenues received by Grantee from operations with the City less net uncollectibles. Gross revenues shall not include proceeds from the sale of bonds, mortgages or other evidences of indebtedness, securities or stocks, sales at wholesale by one public utility to another when the utility purchasing the service is not the ultimate consumer, revenue from joint pole use, or revenue paid directly by the United States of America or any of its agencies.
- (e) "Industrial Consumption" means electrical energy consumption by a customer with a demand of one hundred (100) kilowatts or more and who is billed by Grantee under Grantee's rate schedule No. 42 as approved by the United States Rural Electrification Administration.
- (f) "Public Place" includes any city-owned park, place or grounds within the City that is open to the public but does not include a street

3 1/2% not shown... = Rate base
 signed as for tax
 11-15 at 50%
 # customers
 Community #
 Paul Rumpca
 800 872-9036
 # 2550

or bridge.

- (g) "Street" includes a street, alley, avenue, road, boulevard, thoroughfare, public way or public highway within the City, but does not include a bridge.
- (h) "Bridge" includes a structure erected within the City to facilitate the crossing of a river, stream, ditch, ravine, street, railroad, or other public place, but does not include a culvert.
- (i) "Person" includes an individual, corporation, association, firm, partnership and joint stock company.
- (j) "Facilities" includes all transmission and distribution facilities, except house drops and service connections to individual customers, located on, over or under any street, bridge or public place within the City.

(2) When not inconsistent with the context, words used in the present tense include the future, the words in the plural number include the singular number and words in the singular number include the plural number.

(3) Unless otherwise specified in this ordinance, any action authorized or required to be taken by the City may be taken by the Council or by an official or agent designated by the Council.

Section 2. Grant of Rights. Subject to the conditions and reservations contained in this ordinance, the City hereby grants to Grantee the right, privilege and franchise to:

(1) Construct, maintain and operate an electric utility system within the City;

(2) Install, maintain and operate on, over and under the streets, bridges and public places, facilities for electric light and power lines, with all the necessary or desirable appurtenances, for the purpose of supplying electricity and electric service to the City and its inhabitants and to other persons and territory

beyond the limits of the City.

Section 3. Nonexclusive Grant. This franchise is not exclusive and shall not be construed as a limitation on the City in:

(1) Granting rights, privileges and authority to other persons similar to or different from those granted by this ordinance.

(2) Constructing, installing, maintaining or operating any city-owned utility business.

Section 4. Term of Franchise. This franchise is granted for a period of twenty (20) years from and after the effective date of this ordinance unless sooner terminated as provided in this franchise. X

Section 5. Conditions on Street, Bridge and Public Place Occupancy.

(1) Location. All facilities of Grantee shall be so located as to cause minimum interference with any water hydrant, water main, sewer line or other uses by the City and the public of the streets, bridges and public places, and in accordance with any reasonable specifications adopted by the Council governing the location of facilities.

(2) Construction. Prior to the commencement of any construction extension or relocation of any of Grantee's facilities, Grantee shall advise the City of the location relative to property lines of such proposed construction, extension or relocation and shall obtain from the City approval to undertake such work. The location of all such facilities shall be at places approved by the City.

(3) Relocation. When, by reason of concentration of business and traffic on any street, bridge or public place, it is, in the opinion of the Council, essential to public safety and convenience that poles and overhead wires be removed from said street, bridge or public place, the Council shall call a hearing as to the necessity of removal of facilities located in the business district of the City at points where there is heavy concentration of business and traffic and after such hearing may, by resolution, declare such condition to exist, and thereupon Grantee shall promptly proceed to cause poles and overhead wires and facilities to be removed from said street, bridge or public place and place

same upon some other street, bridge or public place, or cause said facilities to be buried beneath the surface of said street, bridge or public place, as the Council may direct.

(a) In the event that at any time during the period of this franchise the Council may elect to alter, place sewers, drains or water mains in, or change the grade, line or width of any street, bridge or public place, Grantee, upon receiving written notice from the Council, shall, within a reasonable period of time, remove, relay and relocate its facilities at its own expense. The City's work shall be done, if possible, so as not to obstruct or prevent the free use of said facilities; provided, that if Grantee fails to comply with any requirement of the Council made pursuant to this section, within a reasonable time, the City may remove or relocate the facilities at the expense of the Grantee.

(4) Excavations and Restorations:

(a) Subject to the provisions of this ordinance, Grantee may make necessary excavations for the purpose of installing, maintaining and operating its facilities. Except in emergencies, prior to making an excavation on any street, bridge or public place, Grantee shall obtain from the City approval of the excavation and of its location.

(b) When any excavation is made by Grantee, Grantee shall promptly restore the affected portion of the street, bridge or public place to the same condition in which it was prior to the excavation. The restoration shall be done in strict compliance with City specifications, requirements and regulations in effect at the time of such restoration. If Grantee fails to restore promptly the affected portion of a street, bridge or public place to the same condition in which it was prior to the excavation, the City may make the restoration, and the cost of making the restoration, including the cost of inspection, supervision and administration, shall be paid by Grantee.

(5) Tree Trimming. Grantee may, at its own expense, trim trees which overhang the streets, bridges and public places in the manner and to the extent necessary to provide adequate clearance and safety for its facilities. However, except in an emergency, no trimming shall be undertaken without giving the adjacent property

owner notice. All trimming shall be carried on in strict conformity with such reasonable regulations heretofore or hereafter established by the City.

(6) Rearrangement of Facilities to Permit Moving of Buildings and Other Objects.

(a) Upon seven (7) days' notice in writing from any person desiring to move a building or other object, Grantee shall temporarily raise, lower or remove its facilities upon any street, bridge or public place within the City when necessary to permit the person to move the buildings or other object across or along such street, bridge or public place. The raising, lowering or removal of the facilities of Grantee shall be in accordance with all applicable ordinances and regulations of the City.

(b) The notice required by subsection (a) of this section shall bear the approval of such official as the Council shall designate, shall detail the route of movement of the building or other object and shall provide that the actual expense incurred by Grantee in making the temporary rearrangement of its facilities, including the cost to Grantee of any interruption of service to its customers caused thereby, will be borne by the person giving the notice, and shall further provide that the person giving said notice will indemnify and save Grantee harmless of and from any and all damages or claims of whatsoever kind or nature caused directly or indirectly by such temporary arrangement of Grantee's facilities.

(c) Grantee, before making the temporary rearrangement of its facilities, may require the person desiring the temporary rearrangement to deposit cash or adequate security, at the option of the person, to secure payment of the costs of rearrangement as estimated by Grantee.

Section 6. Reservation of Statutory Authority. Incorporation of Charter Provisions. The City reserves the right to exercise, with regard to this franchise and Grantee, all authority now or hereafter granted to the City by state statutes. All rights of the City under the City Charter are reserved to the City and provisions of the City Charter applicable hereto hereby are incorporated by reference and made a part of this franchise.

Section 7. Indemnification. Grantee hereby agrees and covenants to indemnify and save harmless said City, its officers,

agents and employees from any damages, costs and expenses arising from any injury to person or property caused in whole or in part by any negligent act or omission of Grantee, its agents or employees, in exercising the rights or privileges granted herein.

Section 8. Safety Standards and Work Specifications.

(1) The facilities of Grantee shall at all times be maintained in a safe, substantial and workmanlike manner.

(2) The location, construction, extension, installation, maintenance, removal and relocation of the facilities of Grantee shall conform to the requirements of state and federal statutes, and regulations adopted by the City pursuant thereto, in force at the time of such work.

Section 9. Service Standards and Rates. Grantee shall use due diligence to maintain continuous and uninterrupted 24-hour day service, subject to accidents, interferences or interruptions beyond the reasonable control of Grantee, which shall at all times conform at least to the standards common in the business and to the standards adopted by the City and the Public Utility Commissioner of the State of Oregon. Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable Grantee to exercise its rights and perform its obligations under this franchise and to assure an uninterrupted service to each and all of its customers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or of laws of the State of Oregon and shall be subject to approval by the Public Utility Commissioner of the State of Oregon.

Section 10. Supplying Maps Upon Request. Grantee shall maintain on file, at an office in Oregon, maps pertaining to its operations in the City. The City may inspect said maps at any time during business hours. If requested so to do, Grantee shall furnish to the City, at reasonable charge and within a reasonable time, maps showing the location of the facilities of Grantee in specified areas of the City.

Section 11. Compensation.

(1) As full compensation for this franchise, Grantee shall pay to the City annually during the term of this franchise an amount equal to three and one-half percent (3½%) of the gross revenue received by Grantee from its operations other than industrial consumption operations during the calendar year next preceding for electric energy consumed within the City. Such

annual compensation shall be paid in four installments due April 15, July 15, October 15 and January 15. Grantee shall pay nothing on account of revenue received from its operations to service industrial consumption customers.

(2) Grantee shall furnish to the City not later than fifteen (15) days from the effective date of this ordinance an accounting of the net taxable billings for the preceding calendar year as set forth in this section. Thereafter, Grantee shall furnish said accounting not later than February 1 each year for the preceding calendar year.

(3) If Grantee fails to pay the entire amount of compensation due the City through error or otherwise, the difference due the City shall be paid by Grantee within 30 days from discovery of the error or determination of the correct amount. Any overpayment to the City through error or otherwise shall be offset against the next payment due from Grantee.

(4) Acceptance by the City of any payment due under this section 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 such payments preclude the City from later establishing that a larger amount was actually due or from collecting any balance due to the City.

(5) The compensation required by this section shall be a credit against all license, occupation, business, privilege or excise taxes which the City may now or hereafter impose upon Grantee. However, nothing contained in this franchise shall give Grantee any credit against any ad valorem property tax now or hereafter levied against real or personal property within the City or against any local improvement assessment.

Section 12. Review. The rights, privileges and franchise herein granted shall continue in force for the period as set forth in Section 4 hereof from and after the date this ordinance becomes effective; provided that the City may, at any time or times after the expiration of the first five year period of this franchise, request a review of said franchise fee; then the City and Grantee shall, in good faith, renegotiate said fee and the fee as then mutually reestablished shall thereafter be paid during the remaining years of said franchise term.

Section 13. Use of System by City. The City shall have the right, without payment or charge therefor, to attach its fire

alarm or police signal sign or other alarm or signal wires owned and operated by the City 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 facilities may be changed, altered or rearranged at the expense of the City so as to provide proper clearance for such wires. Such fire alarm or police signal wires 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 14. Records and Reports. Grantee shall keep accurate books of account at an office in Oregon for the purpose of determining the amounts due to the City under Section 11 of this ordinance. The City may inspect the books of account at any time during business hours and may audit the books from time to time. The Council may require periodic reports from Grantee relating to its operations within the City.

Section 15. Acquisition by City. At any time during the term of the franchise granted by this ordinance, the Council shall have the right, pursuant to City Charter or state law, to acquire all or part of the property and facilities of Grantee situated within the City, by purchase, condemnation or otherwise, as permitted by law, but these methods shall not be mutually exclusive to the City. In the event of purchase, whether by agreement, condemnation or otherwise, of the property and facilities of Grantee by the City, no value or damages shall be allowed Grantee on account of the unexpired term of this franchise.

Section 16. Assignments of Franchise. This franchise shall be binding upon and inure to the benefit of the successors, legal representatives and assigns of Grantee, and no transfer hereof shall be made unless the Council consents thereto by resolution; provided, that such consent shall not be required in connection with the execution of mortgages or trust indentures or mergers, consolidations or sales, covering and including the entire system of Grantee, if such transaction is approved by regulatory bodies having jurisdiction over such transactions.

Section 17. Termination of Franchise for Cause. If, after ninety (90) days' notice and demand in writing, Grantee fails to remedy any default in the performance of any term, condition or obligation imposed upon it under or pursuant to this ordinance, the Council may, at its option and in its sole discretion, by ordinance or resolution, terminate this franchise.

Section 18. Rights and Obligations After Expiration or Termination of Franchise. Upon expiration or termination of this franchise, Grantee shall, within one year or such further time as may be allowed by the Council, remove from the streets, bridges and public places all of its property and equipment, and forthwith shall replace and restore the streets, bridges and public places to as good a condition as before said work was commenced. If Grantee removes its property and equipment but fails to replace and restore the streets to as good a condition as before said work was commenced, the City may do so at the expense of Grantee. If Grantee fails to remove all its property and equipment within the required time, the City may remove the property and equipment and replace and restore the streets, bridges and public places to as good a condition as before said work, all at the expense of Grantee; or, the Council may elect by ordinance to take title to or interest in the property and equipment or portions thereof and title thereto shall thenceforth be vested in the City, and thereafter Grantee shall not remove the property or equipment or exercise dominion over it, except that the portion, if any, of the property and equipment to which the City has not elected to take title may be removed by the City and the streets, bridges and public places replaced and restored to as good a condition as before said work, all at the expense of Grantee.

Section 19. Remedies Not Exclusive. When Requirement Waived. All remedies and penalties under this ordinance, including termination of the franchise, are cumulative, and the recovery or enforcement of one is not a bar to the recovery or enforcement of any other such remedy or penalty. The remedies and penalties contained in this ordinance, including termination of the franchise, are not exclusive, and the City reserves the right to enforce the penal provision of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon Grantee by or pursuant to this ordinance. A specific waiver of a particular breach of any term, condition or obligation imposed upon Grantee by or pursuant to this ordinance shall not be a waiver of any other or subsequent or future breach of the same or of any other term, condition or obligation, or as a waiver of the term, condition or obligation itself.

Section 20. Acceptance. Grantee shall, within sixty (60) days from the date this ordinance takes effect, file with the City its written unconditional acceptance of this franchise; and if Grantee fails so to do, this ordinance shall be void.

Section 21. Emergency Clause. That inasmuch as the provisions of this ordinance are necessary for the immediate preservation of the peace, health and safety of the people of the City of Detroit, an emergency is hereby declared to exist, and this ordinance shall be in full force and effect immediately upon its passage by the Council and approval by the Mayor.

Passed by the Council by a vote of 4 for and 0 against, and approved by the Mayor this 8 day of Nov -, 1977.

Henry G. Seccombe
Mayor

ATTEST:

Carolyn T. Kramer
Recorder