

2016

CITY OF CONNELL, STATE OF WASHINGTON

In the Matter of the)
Application of)
)
THE WASHINGTON WATER POWER)
COMPANY for a franchise to)
locate, construct, operate and)
maintain plants and works, and)
all necessary or desirable)
appurtenances thereto for the)
purchase, transmission)
and distribution of gas)
along and across rights)
of way and present and)
future public properties.)
)

Ordinance No. 580
GRANTING A FRANCHISE TO
THE WASHINGTON WATER POWER
COMPANY FOR THE
CONSTRUCTION, OPERATION AND
MAINTENANCE OF NATURAL GAS
FACILITIES WITHIN THE
CITY OF CONNELL

WHEREAS, The Washington Water Power Company, a corporation organized under the laws of the State of Washington (hereinafter referred to as "Grantee"), has heretofore filed with the City of Connell, State of Washington, (hereinafter referred to as "Grantor" or the "City") its written application for a Franchise to locate, construct, operate and maintain such plants and works and all necessary or desirable appurtenances thereto for the purchase, transmission and distribution of gas under, along and across all city rights of way and public property in the City of Connell, State of Washington; and

WHEREAS, the City duly fixed the time and place for hearing said application and due and timely notice of said hearing on such application was given pursuant to statute and ordinance, and hearing on said application having been held as prescribed by law, and the City having been fully advised in the premises and having determined that it is in the public interest to grant such Franchise in the manner herein set forth,

NOW, THEREFORE, IT IS ORDERED, that The Washington Water Power Company, its successors and assigns, is hereby granted a Franchise for the purposes identified below and subject to the following terms and conditions:

I.

GRANT

Grantor hereby grants to Grantee, its successors and assigns, the right, power, privilege and authority to construct, or otherwise acquire, and to own, maintain, equip, and operate natural gas facilities, and all necessary or desirable appurtenances thereto, for the purchase, transmission and distribution of gas, including the right to construct, lay, maintain, operate, extend, renew, remove, replace, repair, use and operate a gas distribution system, in, under, upon, over, across, and along the present and future public properties within the present or any future corporate limits of the Grantor, including streets, rights of way, bridges and other structures, for the purpose of transporting, distributing and selling gas (with the right and privilege to make such connections with said pipes as will enable the Grantee to supply gas) for heating, lighting, power and any and all domestic, commercial, and industrial purposes, and other reasons and purposes within the City and to the City and its inhabitants, and persons, firms, associates, municipal corporations, and corporations therein. All gas transmission or distribution pipes shall be underground unless Grantor gives permission to locate above ground.

II.

TERM

The rights, privileges and franchise hereby granted to, and transferred upon the Grantee shall, unless this Franchise be sooner terminated as herein provided, extend for a term of 25 years from the date of written acceptance hereof by the Grantee.

III.

RIGHT OF EXCAVATION

For the purpose of carrying into effect the privileges granted hereunder, Grantee is authorized at any time to make all

necessary excavations in the streets, alleys, roads, rights of way and public grounds within the franchised area, but such excavation shall be carried out with reasonable dispatch and with as little interference with or inconvenience to the rights of the public as may be feasible. Grantee shall restore all streets, alleys, roads, rights of way and public grounds to standards approved by the City for conditions of safety and use after excavation. In all events, City streets, alleys, roads and public grounds shall be restored to same condition existing prior to Grantee's excavation. In case any obstruction caused by Grantee shall remain longer than seven (7) days after notice to remove it, or in case of neglect by Grantee to safeguard any dangerous places, Grantor may remove such obstruction or safeguard such dangerous places at the expense of Grantee. Grantee, its agents and contractors, shall be liable for any damages, including any consequential damages to third parties caused by Grantee's work and excavation.

IV.

NON-INTERFERENCE WITH EXISTING FACILITIES

All construction, installation, repair or relocation of lines and appurtenances performed by Grantee along or under the roads, rights of way or properties subject to this Franchise shall be done in such a manner as not to interfere with the construction and maintenance of other utilities, public or private, drains, drainage ditches and structures, irrigation ditches and structures located therein, nor with the grading or improvement of such roads, rights of way or other public property subject to this Franchise.

V.

NECESSARY CONSTRUCTION/MAINTENANCE BY GRANTOR

The laying, construction, operation and maintenance of Grantee's lines and appurtenances authorized by this Franchise shall not preclude the Grantor, its agents or its contractors, from blasting, grading, excavating, or doing other necessary road work contiguous to the said lines and facilities of Grantee, provided that Grantee shall be given not less than forty-eight (48) hours notice of said blasting or other work, and provided

further that the Grantor, its agents and contractors shall be liable for any damages, including any consequential damages to third parties, caused by said work to any installations belonging to Grantee.

VI.

CONDUCT OF GRANTEE'S BUSINESS

The Grantor shall have the right to make and enforce reasonable rules and regulations pertaining to the conduct of the Grantee's business. Service shall be supplied to the Grantor and its inhabitants in accordance with the Grantee's rules and regulations and tariffs filed or hereafter filed with the appropriate regulatory body of this State having jurisdiction over the Grantee.

VII.

RIGHTS OF INGRESS/EGRESS

The Grantee, its agents and employees, shall have the right and power of ingress and egress upon the City of Connell's properties for the purpose of installing, servicing and maintaining its facilities, including the testing and reading of service meters.

VIII.

VACATION OF PROPERTIES BY GRANTOR

If, at any time, the Grantor shall vacate any road, right of way or other public property which is subject to rights granted by this Franchise, such vacation shall be subject to the granting of a perpetual easement with the Grantee retaining those easement rights granted to Grantee pursuant to this Franchise by adjacent owners in favor of the Grantee, its successors and assigns, for underground transmission and distribution lines and installations in place at the time of vacation and for the purpose of operating and maintaining such facilities. Such vacation shall, by its terms, expressly prohibit any use of the vacated properties which will interfere with Grantee's full enjoyment of rights under said easement.

IX.

PRESERVATION OF GRANTOR'S RIGHTS TO CONTROL

The Grantor, in granting this Franchise, does not waive any

rights which it may now have or may hereafter acquire with respect to road rights of way or other property of Grantor under this Franchise, and this Franchise shall not be construed to deprive the Grantor of any such powers, rights or privileges which it now has or may hereafter acquire to regulate the use of and to control the Grantor's roads, rights of way and other public property covered by this Franchise.

X.

EMERGENCY REMOVAL BY GRANTOR

The Grantor reserves the right to remove any such distribution lines, equipment and related appurtenances ("Grantee's facilities") herein provided for in case of general conflagration or in other cases of extreme emergency, where there is neither the time nor the opportunity for Grantee to perform such work. Grantor shall use reasonable care in the exercise of such emergency powers.

XI.

NON-EXCLUSIVE FRANCHISE

This Franchise shall not be deemed to be an exclusive Franchise. It shall in no manner prohibit the Grantor from granting other franchises of a like nature or franchises to other public or private utilities under, along, across, over and upon any of Grantor's roads, rights of way or other property of Grantor subject to this Franchise and shall in no way prevent or prohibit the Grantor from constructing, altering, maintaining or using any of said roads, rights of way, drainage structures or facilities, irrigation structures or facilities, or any other property of Grantor or affect its jurisdiction over such property to make all necessary changes, relocations, repairs, maintenance, etc., insofar as the Grantor may deem fit.

XII.

FORFEITURE

If Grantee shall willfully violate or fail to comply with any of the provisions of this Franchise through willful and unreasonable neglect or willful and unreasonable failure to heed or comply with any notice given Grantee under the provisions of

this grant, then Grantee shall forfeit all rights conferred hereunder and this Franchise may be revoked or annulled by the Grantor; provided, however, the Grantor shall give ninety (90) days' written notice of its intention to revoke or annul the Franchise during which period Grantee shall have the opportunity to remedy any breach.

XIII.

EXPANSION OF GRANTEE'S FACILITIES

Any facilities and appurtenances in streets, alleys, rights of way and public places, incidental to the franchise system, that have been, or are at any future time acquired, leased, or utilized in any manner by Grantee are thereupon to be deemed authorized by and shall be subject to all provisions of this Franchise.

XIV.

CHANGE OF BOUNDARIES OF GRANTOR

Any subsequent additions or modifications of the boundaries of the Grantor, whether by annexation, consolidation or otherwise, shall be subject to the provisions of this Franchise as to all such areas.

XV.

PRIOR FRANCHISES SUPERSEDED

This Franchise shall update and supersede all prior franchises heretofore granted to The Washington Water Power Company or its predecessors, by Grantor, or its predecessors, and shall affirm, authorize and ratify all prior installations authorized by permits or other action not previously covered by this Franchise.

XVI.

ASSIGNMENT OF FRANCHISE

Grantee, its successors and assigns, shall have the right to sell, transfer or assign this Franchise upon giving written notice to Grantor sixty (60) days in advance of the date of any proposed transfer. The Grantor maintains the right to review the assignment of this Franchise. All provisions, conditions, regulations and requirements herein contained shall be binding upon

and inure to the benefit of the successors and assigns of the parties hereto.

XVII.

EFFECT OF INVALIDITY

The Franchise is granted pursuant to the laws of the state of Grantor relating to the granting of such rights and privileges by Grantor. If any article, section, sentence, clause, or phrase of this Ordinance is for any reason held illegal, invalid, or unconstitutional, such invalidity shall not affect the validity of the Ordinance or any of the remaining portions. The invalidity of any portion of this Ordinance shall not abate, reduce, or otherwise affect any obligation required of Grantee.

XVIII.

FRANCHISE ORDINANCE AS CONTRACT

This Ordinance shall have the effect of and shall be a contract between Grantor and Grantee and shall be the measure of the rights and liabilities of the Grantor as well as of Grantee.

XIX.

INDEMNITY

A. Grantee and Grantor shall indemnify, defend and hold harmless one another, against any and all liabilities for injury to or death of any person or any damage to any property caused by Grantee or Grantor, their respective officers, agents, or employees, in the negligent construction, operation or maintenance of their property, or arising out of the negligent exercise of any right or privilege under the Franchise. As between themselves, Grantor and Grantee shall remain fully liable for any injury, damage or loss caused to each by the negligent acts or omissions of each. Where such claim or loss is caused by the concurrent negligence of Grantor and Grantee, their agents or employees, each party agrees to indemnify, defend and save the other harmless from all claims and losses to the extent that any such claim or loss was caused by the indemnifying party's, its agents or employees, concurrent negligence.

B. Grantee hereby waives immunity under Title 51 RCW. The City and the Grantee have specifically negotiated this provision,

as required by RCW 4.24.115, to the extent it may apply.

C. Whenever any judgment is recovered against either party or any other indemnitee for any such liability, costs, or expenses, such judgment shall be conclusive, not only as to the amount of such damages, but as to its liability, provided the indemnitor has reasonable notice or actually knew, or should have known, of the pendency of such suit.

D. It is not the intent of this Franchise to acknowledge, create, imply, or expand any duty or liability of the City with respect to its role as franchising authority, in the exercise of its police power or for any other purpose. Any City duty, nonetheless deemed created, shall be a duty to the general public and not to any specific part, group or entity.

XX.

ABANDONMENT OF FRANCHISE

Grantee may at any time abandon the rights and authorities granted hereunder, provided that six (6) months' written notice of intention to abandon is given to Grantor.

XXI.

ACCEPTANCE OF FRANCHISE

Grantee shall notify Grantor in writing of its acceptance of this Franchise within thirty (30) days of the approval of this Franchise by Grantor.

PASSED AND APPROVED on this 14th day of OCTOBER, 1991.

City of Connell, Washington

By [Signature]

Title: Mayor

ATTEST:

By [Signature]

Title: Clerk/Treasurer