

ORDINANCE NO 279

AN ORDINANCE granting a non-exclusive operating permit to Mountain States Power Company, and its successors and assigns, to construct, maintain and operate in and upon the present and future streets, highways, bridges and other public places within the corporate limits of the Town of Stayton, Oregon, electric utility property and facilities for supplying electricity and electric service to the Town, the inhabitants thereof, and others for a term of 20 years; subjecting such electric service at all times to regulation by public authority; providing for payment to the Town of compensation for the exercise of said operating permit, specifying other limitations, terms and conditions governing the exercise of said franchise. *operating permit*

THE TOWN OF STAYTON ORDAINS AS FOLLOWS:

Section 1. The Town of Stayton, hereinafter called the "City", hereby grants to Mountain States Power Company, a corporation, and to its successors and assigns, hereinafter called the "Grantee", the right, privilege and permission for a period of twenty years from the date when this ordinance becomes effective to construct, maintain and operate in and upon the present and future streets, highways, bridges and other public places within the corporate limits of the City, electric utility property and facilities for supplying electricity and electric 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 hereinafter specified. All Such electric utility property and facilities now maintained by the Grantee within the corporate limits of the City shall be deemed covered by this ordinance, and the present location thereof hereby is ratified and approved.

Section 2. All of the Grantee's electric property and facilities shall be constructed and at all times maintained in good order and condition, and in accordance with standard engineering practice and all applicable safety codes and lawful governmental regulations. The City shall have authority at all times, in furtherance of the safety, convenience and welfare of the public, to control by appropriate regulations the location, elevation and manner of construction and maintenance of the Grantee's electric property and facilities on the City streets, highways, bridges and public places, subject to the provisions of any state laws applicable thereto; and the Grantee shall promptly conform with all such regulations.

Section 3. It shall be lawful for the Grantee, its successors or assigns, to make all needful or convenient excavations in any of the streets, alleys, avenues, boulevards and thoroughfares of the City for the purpose of erecting and maintaining the posts, poles, towers or other supports for the said wires or for the purpose of laying, maintaining and operating wires and other conductors under ground for the purpose aforesaid or to repair and improve such electric power and light system and to extend the same as the growth of said City or the needs of the inhabitants thereof may require; provided, that when the said Grantee, its successors or assigns, or any person or corporation under the authority of this operating permit, shall disturb any of said streets, alleys, avenues, boulevards or thoroughfares for the purposes aforesaid, he, it or they 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 failing to do so after five days notice from the street superintendent or street committee of the Council of said City, the said street superintendent or street committee may place the said street, alley, avenue, boulevard or thoroughfare in such condition at the expense of the City and the City may recover from the person or corporation enjoying this operating permit the amount of the cost thereof.

Section 4. The City shall have the free right and privilege to string and maintain wires for its municipal police and fire alarm systems upon the poles and other facilities erected and maintained by the Grantee hereunder. The City shall string, maintain and operate such wires at its own expense, risk and responsibility, and in accordance with all legal requirements and good engineering practice, and in such manner as not to impose any additional expense upon the Grantee, or interfere with the safe and convenient use by the Grantee of its said poles and facilities. Any such wires of the City shall be subject to interference by the Grantee only when necessary in the maintenance,

operation or repair of the Grantee's own fixtures, wires and appurtenances.

Section 5. The Grantee shall at all times indemnify and hold the City, its officers, employees and agents, harmless from any and all expense or liability arising from or by reason of any negligent act or omission of the Grantee, its representatives or employees, in the construction, operation or maintenance of any of the Grantee's electric utility property or facilities.

Section 6. The electric service to be furnished to the public hereunder, and all rates and charges therefor, and all regulations of the Grantee applicable thereto, shall at all times be subject to all rules, regulations and orders that may be lawfully prescribed by the Public Utilities Commissioner of the State of Oregon, or by any other governmental authority now or hereafter having jurisdiction over such matters. During the term of this operating permit the Grantee shall continuously maintain facilities in the City for convenience to its customers for the payment of bills for electric service during the usual office hours.

Section 7. When necessary, in order to permit any duly authorized person to move any building or other structure across or along any street, highway, bridge or public place within the City, the Grantee shall temporarily raise or remove its wires, fixtures and appurtenances upon such streets, highways, bridges or public places, upon forty-eight hours written notice in advance from such person, such notice to bear the approval of such official as the City may designate, and at such time and in such manner as may be necessary reasonably to accommodate such moving, consistent with the maintenance of proper service to the Grantee's customers; provided, however, that the cost to the Grantee of such temporary raising or removal, and of any interruption of the Grantee's service to its customers caused thereby, shall first be paid or satisfactorily secured to the Grantee by the owner or mover of such building or other structure.

Section 8. As compensation for the right, privilege and permission here-

by granted, the Grantee shall pay to the City, on or before the 20th day of each month during the term hereof, an amount equivalent to three per cent (3%) of the Grantee's "Gross Revenues" as defined herein. The term "Gross Revenues" as used herein shall mean and be construed as the amount of money actually collected by the Grantee from its customers for light, heat and power consumed during the preceding month within the corporate limits of the City; provided, however, that there shall not be included in said amount any revenue derived by the Grantee for light, heat or power furnished or provided the City or any other municipal corporation or any public taxing body within the corporate limits of the City. The Grantee shall keep accurate books of account and the City shall have the right to inspect the same at all times during business hours and from time to time audit the same for the purpose of determining such "Gross Revenues".

In the event during the term of this operating permit, the City may impose upon all utilities operating within the City, a tax levied for occupation, license, sales, corporation, excise, gross earnings, privileges, franchise or any other taxes or charges of whatsoever kind or character, except upon real or personal property, the payment of the tax upon "Gross Revenues" as referred to in this section, payable by the Grantee, shall be taken into consideration by the City as full or partial payment of such taxes so levied upon the Grantee.

Section 9. The Grantee shall have the right and privilege of trimming all trees which overhang the streets in such a manner and to such an extent as will prevent the branches or limbs or other parts of such trees from touching or interfering with its wires, poles and other fixtures and equipment; providing no such trees are trimmed or cut back farther than may be necessary to prevent said interference and to allow the proper operation and maintenance of said lines, poles and fixtures.

Section 10. The Grantee, its successors and assigns, shall maintain and operate a system for the distribution of electricity in the City so as to furnish what shall be known as a twenty-four hour service but the Grantee does

not guarantee continuous and uninterrupted service under the terms hereof and under no circumstances shall the Grantee be held liable to or responsible for by the City on account of interruption or failure of service caused by storms, washouts, accidents, floods, acts of God or the public enemy, war strikes, damages by the elements or damage to plant or equipment on account of any circumstances beyond the control of the Grantee, nor in any event for consequential damages; however, the Grantee does agree to use due diligence to maintain continuous and uninterrupted service.

Section 11. The Grantee by its acceptance of this ordinance expressly agrees that the City shall have the right, at any time during the term of the permit granted by this ordinance, to acquire all of the electric utility property and facilities of the Grantee situated within the corporate limits of the City in the manner provided by law, provided, however that no value of this operating permit shall be taken into account in fixing the price to be paid by the City for such property and facilities.

Section 12. The operating permit hereby granted may be revoked and forfeited by the City, by duly enacted ordinance thereof, in the event that the Grantee shall fail after reasonable notice or demand to comply with any of the terms, conditions, or obligations imposed upon the Grantee hereunder.

Section 13. Within sixty (60) days from and after the effective date of this ordinance, the Grantee shall file with the Recorder of the City its unconditional written acceptance of this ordinance, and in the event the Grantee shall fail so to file such acceptance, this ordinance shall become null and void.

Section 14. If at any time during the life of this operating permit, the City of Stayton engages in the business of operating its own municipal electric system, then upon two year's notice to the Grantee this operating permit may be terminated and thereafter be null and void.

Section 15. Inasmuch as the Grantee has constructed and now is maintaining and operating electric utility property and facilities in and upon the streets, highways, bridges and other public places in the City without an

operating permit, it hereby is adjudged and declared that this ordinance is necessary for the immediate preservation of the public peace, health and safety; and by reason thereof this ordinance shall take effect and be in full force and effect from and after its passage by the council and approval by the Mayor.

PASSED by the Council this 5 day of May 1952.

APPROVED by the Mayor this 5 day of May 1952.

M. J. Martin  
Mayor of the Town of Stayton, Oregon.

ATTEST:

W. J. Hughes  
Recorder of the Town of Stayton, Oregon