

ORDINANCE NO. 128

AN ORDINANCE GRANTING TO CLEARWATER POWER COMPANY A CORPORATION ORGANIZED UNDER THE LAWS OF THE STATE OF IDAHO AND ITS SUCCESSORS AND ASSIGNS A FRANCHISE TO LOCATE, CONSTRUCT, OPERATE, AND MAINTAIN POLES, WIRES, UNDERGROUND CABLES, AND APPURTENANCES OVER, UNDER, ALONG, AND ACROSS ALL CITY RIGHTS OF WAY AND PUBLIC PROPERTY OF THE CITY OF PECK, STATE OF IDAHO, FOR PURPOSES OF TRANSMITTING AND DISTRIBUTING ELECTRICITY FOR HEAT, LIGHT, AND POWER TO THE INHABITANTS OF THE CITY OF PECK

WHEREAS, the City Council, after considering the statutory requirements and the need to allow Clearwater Power Company to provide electrical services to the City of Peck; and

WHEREAS, the City has duly fixed the time and place for a hearing on Clearwater Power Company having an electrical franchise and the City having concluded that it is in its best public interest to grant a franchise.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the City of Peck, Nez Perce County, State of Idaho as follows:

Section I GRANT. The City of Peck, Grantor hereby grants to Clearwater Power Company, Grantee, its successors and assigns, the right, power, privilege and authority to enter upon all roads, rights of way, streets, alleys, public places or structures lying within the incorporated limits of the City, to locate, construct, operate and maintain poles, wires, underground cables and appurtenances for the purpose of transmitting and distributing electricity. This Franchise shall allow for the placement of such facilities as may be necessary to provide service within the City and surrounding areas.

Section II TERM. The rights, privileges and franchise hereby granted to, and conferred 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.

Section III TRIMMING/REMOVAL OF TREES. The right of Grantee to maintain its lines, facilities and appurtenances shall include the right, as exercised in Grantee's sole discretion, to cut, trim or remove any and all trees, brush or shrubs growing in, on, or hanging over any City roads, rights of way, streets, alleys or City property that interfere with or may interfere with Grantee's installations, including wires, poles, conduits or other apparatus of Grantee, its successors and assigns.

Section IV 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 a standard as agreed upon for conditions of safety and use after 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.

Section V 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.

Section VI NECESSARY CONSTRUCTION/MAINTENANCE BY GRANTOR. The laying, construction, operation and maintenance of Grantees' 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 five (5) days' 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.

Section VII EMERGENCY REMOVAL BY GRANTOR. The Grantor reserves the right to remove any such wires, poles, or apparatus ("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. Grantor shall indemnify and hold harmless the Grantee, its successors and assigns, against any and all property damage, personal injury, death, or other liability to third parties sustained as a result of the negligent exercise of such reserved emergency powers.

Section VIII 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 rates filed or hereafter filed with the appropriate regulatory body of this State having jurisdiction over the Grantee.

Section IX RIGHTS OF INGRESS/EGRESS. The Grantee, its agents

and employees, shall have the right and power of ingress and egress upon its customers' properties for the purpose of installing, servicing and maintaining its facilities, including the testing and reading of service meters.

Section X 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 in favor of Grantee, its successors and assigns, for overhead and 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.

Section XI 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.

The Clearwater Power Company upon request of the City Council shall remove or raise its transmission wires and lines to permit the removal of any house or building along the streets, alleys, or public highways of the City of Peck provided that a permit has been issued for the removal of any such building. The cost of which will include reimbursement to Clearwater Power Company for its costs incurred in removing, changing, or raising its wires to permit the removal of a building.

Any use of the poles, wires, or transmission apparatus of The Clearwater Power Company for the placement of facilities by third parties shall, to the extent required by law, be the subject of a separate franchise or permit between the Grantor and such third party.

Section XII 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.

Section XIII 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 right 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.

Section XIV 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.

Section XV FRANCHISE FEE. This Franchise ordinance does include the payment of a franchise fee of one percent (1%) of the Grantee's gross revenues as provided for in Idaho Code Section 50-329A as presently stands or may be amended. For purpose of this ordinance "gross revenues" shall mean the amount of money billed by the Grantee for the sale, transmission and/or distribution of electricity within the City to customers less uncollectibles. This franchise fee may be increased to not greater than three percent (3%) on the approval of a majority of voters of the City voting on the question at an election held in accordance with chapter 4, title 50, of the Idaho Code.

Section XVI 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. Grantor shall notify Grantee of the precise scope of any change of boundaries not less than sixty (60) days prior to such change becoming effective.

Section XVII 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. 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.

Section XVIII 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.

Section XIX 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.

Section XX INDEMNITY. 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.

Section XXI 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.

Section XXII 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.

Section XXIII EFFECTIVE DATE. This ordinance shall be in effect upon its passage, approval, and publication subject to the acceptance of the Grantee.

DATED this 6th day of August, 1997.

CITY OF PECK:

By: Robert D. Walker
Mayor

ATTEST: _____

By: Sharon K. Micham
Clerk