

ORDINANCE NO. 182

AN ORDINANCE OF THE CITY OF PECK, IDAHO GRANTING A FRANCHISE TO CLEARWATER POWER COMPANY FOR THE CONSTRUCTION, OPERATION, AND MAINTENANCE OF ELECTRIC FACILITIES WITHIN THE CITY OF PECK; AND PROVIDING FOR AN EFFECTIVE DATE.

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

WHEREAS, The City of Peck having concluded that it is in the best interest to continue to grant a Franchise Agreement to Clearwater Power Company; and

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of PECK, Idaho, as follows:

Section 1: GRANT

The City of Peck (hereinafter "Grantor") grants to Clearwater Power Company (hereinafter "Grantee"), its successors and assigns, a Franchise for the purposes identified herein. In addition, Grantor hereby grants to 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 boundaries of Grantor and owned or maintained by Grantor, to locate, construct, operate and maintain poles, wires, underground cables and all necessary or desirable 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 2: 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 3: 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 utilize an integrated vegetation management program, including the right 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 facilities, including wires, poles, conduits or other apparatus of Grantee, its successors and assigns.

Section 4: 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, road, 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 the Grantee.

Section 5: 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 6: 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, 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 indemnify Grantee as against any damages or claims for damages by third parties, caused by said work to any installations belonging to the Grantee.

Section 7: 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 approved rules, regulations and policies filed or hereafter filed with the appropriate regulatory body of this State having jurisdiction over the Grantee.

Section 8: RIGHTS OF INGRESS/EGRESS

The Grantee, its agents and employees, shall have the right and power to 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 9: 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, to the extent permitted by law, such vacation shall be subject to the reservation of a perpetual easement in favor of Grantor for the purpose of operating and maintaining the facilities of the Grantee and other public utilities. Such easement shall also expressly prohibit any use of the vacated properties, which will interfere with Grantor's ability to provide Grantee's full enjoyment of its rights under this Franchise. Grantor shall also continue to permit Grantee to operate and maintain its facilities in or on the vacated property consistent with and subject to this Franchise.

Section 10: RELOCATION OF FACILITIES

Grantor shall notify Grantee of any intended or expected requirement or request to relocate Grantee's facilities, within Grantor's existing roads, rights of way or other property, as early as practicable, but not later than 120 days prior to any such relocation when the requirement or request could have been foreseen by that date. Grantor shall endeavor to cause any such relocation to be consistent with any applicable long-term development plan or projection of Grantor or approved by Grantor. If, at any time the Grantor shall cause or require the alteration or the improvement of any road, highway or right-of-way wherein grantee maintains facilities subject to this franchise by grading or re-grading, planking or paving the same, changing the grade, altering, changing, repairing or relocating the same or by constructing drainage, the Grantee upon written notice from the Grantor shall, with all convenient speed, change the location or readjust the elevation of its system and other facilities so that the same shall not interfere with such work and so that such equipment and facilities shall conform to such new grades or routes as may be established. The relocation of Grantee's facilities, within Grantor's existing roads, rights

of way or other property, shall be at the sole expense of Grantee unless: (i) the improvement was not paid for solely with public funds, in which case the Grantor agrees to make reasonable efforts to facilitate an agreement between the adjoining property owners or developers to pay for the costs of relocation; or (ii) Grantor has failed to provide the required advance notice in which case any and all excess costs caused by the failure to provide such notice shall be paid by Grantor.

Section 11: 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.

Section 12: 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 of 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 13: 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.

Section 14: 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 15: 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 16: PRIOR FRANCHISES SUPERSEDED

This Franchise shall update and supersede all prior electric franchises for the above stated purpose heretofore granted to Clearwater 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.

Section 17: ASSIGNMENT OF FRANCHISE

Grantee, its successors and assigns, shall have the right to sell, transfer or assign 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.

Section 18: 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 Franchise is for any reason held illegal, invalid, or unconstitutional, such invalidity shall not affect the validity of the Franchise or any of the remaining portions. The invalidity of any portion of this Franchise shall not abate, reduce, or otherwise affect any obligation required of Grantee.

Section 19: FRANCHISE AS CONTRACT

This Franchise 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 the Grantee.

Section 20: FRANCHISE FEES AND COSTS

The Grantor shall follow the laws of the State of Idaho when assessing any franchise fees. A franchise fee of 1% of gross revenue will be assessed again Grantee, a percentage mutually agreed upon between the City of Peck and Clearwater Power Company. The fee shall be assessed upon passage of this Ordinance and its publication in the Lewiston Tribune. Gross revenue shall be defined as the amount of money billed by Grantee for electricity it sells, transmits or distributes within the corporate limits of the Grantor City to customers, less uncollectible amounts. Grantor shall have the right during the term of this franchise agreement to increase the franchise fee up to three percent (3%) after obtaining the consent of voters in compliance with Idaho law.

In the event that Grantor charges or imposes upon Grantee any fees, taxes or other costs in connection with the issuance, maintenance, existence, continuation, or use of the franchise, or the public rights-of-way governed hereby, granted pursuant to this document, then Grantor shall impose equivalent charges, fees, taxes or costs upon any other franchisee in the same business or competing with the Grantee.

Section 21: INDEMNITY

To the extent permitted by Idaho law and without waiver of rights, sovereign immunity and damage limited under the Idaho Tort Claims Act, Grantor agrees to defend, indemnify and hold harmless the Grantee, its officers and employees, from any and all liabilities, claims, causes of action, losses, damages and expenses, including costs and reasonable attorney's fees, that the Grantee may sustain, incur, become liable for, or be required to pay, as a consequence of or arising from the negligent acts or omissions of the Grantor, its officers, employees or agents: provided, however, that this indemnification provision shall not apply to the extent that said liabilities, claims, damages, losses and so forth were caused by or result from the negligence of the Grantee.

Section 22: ABANDONMENT OF FRANCHISE

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

Section 23: 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 24: This Ordinance shall take effect and be in force thirty (30) days after its final publication.

PASSED BY THE COUNCIL AND APPROVED BY THE MAYOR THIS

21st DAY OF December, 2022.


Nancy J. Greene, Mayor

ATTEST:


Sandra K. Royer, City Clerk-Treasurer

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SUMMARY OF CITY OF PECK ORDINANCE NO. 182:

An ordinance of the City of Peck, Idaho, granting a franchise to Clearwater Power Company for the construction, operation and maintenance of electric facilities within the City of Peck and providing for an effective date.

The City of Peck, Nez Perce County, Idaho ("City") issues this summary of Ordinance No. 182 in accordance with Idaho Code 50-901A, which ordinance was passed in an open meeting on December 21, 2022. The Ordinance grants a non-exclusive, 25 year franchise agreement to Clearwater Power Company ("CPC"), imposing a franchise fee of one percent (1%) of gross revenue collected by CPC within Peck city limits and paid to City, and giving CPC the right to enter upon all rights of way, streets, public places or structures operated or maintained by City and lying within the boundaries of City, to locate, construct, operate and maintain poles, wires, underground cables, appurtenances and facilities for the purpose of transmitting and distributing electricity. The Ordinance includes provisions granting to CPC the rights to trim or remove trees in the public right of way, rights of excavation, rights of ingress and egress upon customer properties and the requirement that the City reserve easements upon rights of way or properties vacated by City, as well as provisions regarding indemnification, various changes to CPC facilities and City boundaries, publication and effective date. A copy of the full ordinance is available at Peck City Hall.

The undersigned City of Peck legal advisor, having reviewed Ordinance No. 182 and the summary of Ordinance No. 182, believes the summary of Ordinance No. 182 is true and complete and that it provides adequate notice to the public.

/s/ Jennifer B. Douglass
Jennifer B. Douglass, Douglass Law, PLLC
Attorney for the City of Peck

AFFIDAVIT OF PUBLICATION

S KELLAM, being duly sworn, deposes and says, I am the Legal Clerk of the Tribune Publishing Company, a corporation organized and existing under and by virtue of the laws of the State of Idaho and under and by virtue of the laws of the State of Washington, publishers of the Lewiston Tribune, a newspaper of general circulation published at Lewiston, Nez Perce County, Idaho; That the said Lewiston Tribune is an established newspaper and has been published regularly and issued regularly at least once a day for more than 105 consecutive years next immediately preceding the first publication of this notice, and has been so published uninterrupted for said period; that the 172285 SUMMARY attached hereto and which is made a part of this affidavit was published in the said Lewiston Tribune, 1 time(s). Publication being on 01/18, or once a day for 1 consecutive day, the first publication thereof being on the 01/18/2023, and the last publication thereof being on the 01/18/2023, and said 172285 SUMMARY was so published in the regular and entire issue of said newspaper and was not in a supplement thereof and was so published in every issue and number of the said paper, during the period and times of publication as set forth above.

Skellam

State of Idaho
S.S.
County of Nez Perce

On this 19th day of January in the year of 2023, before me, a Notary Public, personally appeared S KELLAM, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

Barb Marsh
Notary Public in and for the State of Idaho,
residing at Lewiston, therein
Commission Expires 2.14.25
BM

