

Copy

ORDINANCE NO. 133

AN ORDINANCE GRANTING TO DOUGLAS ELECTRIC COOPERATIVE, INC., A CORPORATION, A FRANCHISE FOR A PERIOD OF TWENTY-FIVE YEARS FOR AN ELECTRICAL POWER TRANSMISSION LINE OVER, ALONG AND ACROSS CERTAIN STREET, WAYS AND PROPERTIES AND EASEMENTS OF THE CITY OF DRAIN, OREGON, AND AUTHORIZING THE CITY OF DRAIN TO ACQUIRE BY PURCHASE ALL OF THE RIGHT, TITLE AND INTEREST IN AND TO AN EXISTING TRANSMISSION AND DISTRIBUTION LINE OF SAID DOUGLAS ELECTRIC COOPERATIVE, INC. AS DESCRIBED IN CONTRACT AND UPON THE TERMS AND CONDITIONS AS SET FORTH IN CONTRACT HEREBIN REFERRED TO AS EXHIBIT "A" AND AUTHORIZING THE MAYOR AND RECORDER TO EXECUTE AN AGREEMENT FOR SAID PURCHASE AS SET FORTH IN SAID EXHIBIT "A"

THE PEOPLE OF THE CITY OF DRAIN ORDAIN AS FOLLOWS:

Section 1. That the DOUGLAS ELECTRIC COOPERATIVE, INC., a corporation, be and hereby is granted the right for a period of twenty-five (25) years from date hereof, to and including the 5th day of February, 1971, the right to operate and maintain one electric transmission line, together with the appertences thereto as may be necessary and convenient for the efficient operation and maintenance of said electric transmission line, together with the necessary poles and other fixtures and appertences thereto, through the City, on, over and across the streets, alleys and other rights of ways and easements owned and controlled by the City, and said right of way being described as follows, to-wit:

1. Commencing at a point on the East side of Third Street opposite the Bonneville Sub-station site in Block 10 of the City of Drain; thence North along the Easterly line of Third Street to the City limits.
2. Commencing at a point on the East side of Third Street opposite the Bonneville Sub-station site in Block 10 of the City of Drain; thence South along the East side of Third Street to the South side of A Street; thence South along the East side of the alley between Cedar and Beach Streets to the South city limits.
3. Commencing at the junction of the West city limits of Cass Street, if extended, and the county road running Westerly from Drain; thence running Southeasterly to a point at the South city limits approximately 40 feet Southwest of the center of Pacific Highway No. 99 as said line is now located, and in place, it being understood that this portion of the easement is given and granted only over and across the streets and alleys of said city now actually crossed by the existing electrical line of the Douglas Electric Cooperative, Inc.

Section 2. That the CITY OF DRAIN be and hereby is authorized to acquire all of the right, title and interest of the DOUGLAS ELECTRIC COOPERATIVE, INC., free and clear of all claims whatsoever, the existing transmission and distribution line of said DOUGLAS ELECTRIC COOPERATIVE, INC., including the poles designated by the said DOUGLAS ELECTRIC COOPERATIVE, INC. as poles 1 to 23, said line extending from the existing substation of the DOUGLAS ELECTRIC COOPERATIVE, INC. in said City

1. Ordinance

in a southerly direction over and along the streets of said City to a point near the south city limits, and upon the terms and conditions set forth in the agreement marked Exhibit "A" which is hereto attached and by this reference made a part hereof.

Section 3. That there be paid from the electric fund of the City of Drain the sum of Four Hundred Seventy-five (\$475.00) Dollars to the said DOUGLAS ELECTRIC COOPERATIVE, INC. as full and complete payment for the rights mentioned in Section 2 above.

Section 4. That the Mayor and Recorder of the City of Drain be and they are hereby authorized to execute on behalf of the City an agreement securing the above rights to the DOUGLAS ELECTRIC COOPERATIVE, INC., and providing for the purchase of said existing transmission line upon the terms and conditions set forth in the form of agreement marked Exhibit "A" which is hereto attached and by this reference made a part hereof.

Passed by the Common Council this 5th day of March, 1946.

Presented to the Mayor for his approval this 5th day of March, 1946.

Approved by the Mayor this 5th day of March, 1946.

APPROVED:

ATTEST:

R. F. Pfister

Mayor.

C. L. Applegate

Recorder.

Exhibit 114

AGREEMENT and FRANCHISE

THIS AGREEMENT made and entered into this _____ day of _____, 1946, by and between DOUGLAS ELECTRIC COOPERATIVE, INC., an Oregon cooperative corporation, hereinafter referred to as the "Cooperative", and the CITY OF DRAIN, an Oregon municipal corporation, acting in accordance with its ordinance directing the execution of this instrument, hereinafter referred to as the "City",

W I T N E S S E T H:

That WHEREAS the Cooperative is now engaged in the construction of an electrical transmission line from Eugene to Drain, Oregon, which, after completion, it is contemplated will be leased to Bonneville Power Administration for the purpose of furnishing electrical power both to the Cooperative and to the City, and a sub-station will be constructed in Block 10 of said City from which will be taken power for distribution, both to the City and the Cooperative, and it is necessary that the transmission and distribution lines of the Cooperative be run from said sub-station to said City both in the Northerly and Southerly to the City limits thereof in order that the consumers of the Cooperative might properly be served; and

WHEREAS it is the considered judgment of the parties hereto that the agreements and franchise herein made and granted are for the mutual benefit of both of said parties,

NOW, THEREFORE, for and in consideration of the mutual benefits to be derived by the parties hereto and in consideration of the mutual promises and obligations hereinafter mentioned, it is hereby agreed by and between said parties as follows:

1. The City hereby does give and grant unto the Cooperative a franchise for the erection, construction and maintenance of electrical transmission and distribution poles and lines from the above mentioned sub-station in Block 10 of said City over and across the streets and alleys thereof in the location and locations designated on the map, plat or drawing attached hereto and by this reference and said attachment made a part hereof, and at and over such additional locations as said parties may hereafter agree upon, subject to the additional provisions of this agreement. Said electrical transmission and distribution poles and lines of the Cooperative are hereinafter referred to as the "Cooperative line".

2. The City shall have no right whatsoever to underbuild or attach any equipment or fixtures to the Cooperative line, which shall be constructed and maintained by the Cooperative, as hereinafter mentioned, as its individual and separate property free and clear of all right, title and interest of the City, excepting as said parties might hereafter agree.

3. The construction, operation and maintenance of the Cooperative line shall be done by the Cooperative in accordance with the specifications, rules and regulations contained in the latest edition and supplement to the National Electrical Safety Code Promulgated by the Bureau of Standards which may from time to time be issued.

4. The rights and franchise hereby granted to the Cooperative for the construction and maintenance of the Cooperative line are given for and during a consecutive period of twenty-five (25) years commencing from February 1, 1946.

5. As a part of the consideration for the granting of said rights and franchise by the City to the Cooperative the Cooperative hereby does sell, set over and transfer unto the City as its own and separate property, free and clear of all right,

title and interest of the Cooperative, all of that part of the existing transmission and distribution lines of the Cooperative, including the poles designated by the Cooperative as Poles Nos 1 to 23 inclusive, said line extending from the existing sub-station of the Cooperative in said City in a southerly direction over and along the streets of said City to a point near the South City limits, excepting for the rights of the Cooperative to remove and retain the following fixtures and appurtenances:

- (1) All attachments, fixtures and equipment located on Pole No 1 excepting the existing cross arm, guy wire, and dead end insulators;
- (2) All attachments, fixtures and equipment located on Pole No 2;
- (3) All attachments, fixtures and equipment located on Pole No 3 excepting that in lieu of the existing fixtures the Cooperative immediately after such removal shall reinstall and turn over to the City as its separate property, a new single cross arm and pin insulators, and shall reconnect to the same the existing wires; and
- (4) All attachments, fixtures and equipment located on Pole No 23 excepting that the Cooperative shall either leave or immediately reinstall on said pole two cross arms and dead end insulators. The City shall be obligated to put in its own anchors of said pole if it so desires. The Cooperative, however, is to furnish and install, at its own cost and expense, the down guy in accordance with the usual good practice.

6. It is the considered judgment of said parties that the value of the existing Cooperative line hereby turned over to the City is of greater value than the rights and franchise herein granted by the City to the Cooperative, Accordingly, on its part, the City, as a part of the consideration for the turning over of the existing Cooperative line, hereby does agree and obligate itself as follows:

- (1) Within a period of sixty (60) days from the effective date of this agreement the City shall pay to the Cooperative the sum of \$475.00;

- (2) The City forthwith shall acquire all necessary rights of way in the name of the Cooperative or for the use of the Cooperative over and across all privately owned lands to be crossed by the Cooperative lines, as shown on the attached map, plat or drawing, including all necessary overhang agreements, at such points where the Cooperative line shall overhang any private property. It is the intention hereby that the franchise herein granted to the Cooperative shall include the furnishings by the City to the Cooperative forthwith of all private rights of way and overhang agreements necessary for the construction and maintenance of the Cooperative line, excepting any and all private rights of way from the Cooperative's poles designated as Nos 24 and 25, and extending in a northwesterly direction to the westerly limits of said City;
- (3) The City forthwith and at its own expense, shall clear sufficient for the construction of the Cooperative line all lands to a width of 7 feet on each side of the center line of the Cooperative line along the franchise and private rights of way of the Cooperative from the south City limits of said City to said new sub-station site.
- (4) The City, at its own expense, shall forthwith remove from the side of the street or streets over and along which the Cooperative line is to be built, its existing distribution and other electrical poles and wires and reinstall the same in such other location as the City might desire so long as such new location shall not interfere with the new Cooperative line.

7. In constructing the distribution and transmission lines of the Cooperative extending both northerly and southerly from the above mentioned sub-station site but not on the line extending northwesterly from the south City limits of said City, the Cooperative shall use and install at the corner of A & Third Streets a 50-ft pole, and at all other places along said line 45-ft poles, excepting in such places where the contour of the land will permit the same clearance as the above designated length of poles will permit. In such places poles of lesser length may be used if such clearance can be given thereby.

8. The length of poles mentioned in paragraph 7 is provided so that the City may underpass the line of the Cooperative at all reasonable places. It is understood and agreed that in the event either of the parties hereto should at any

time, by reason of uncontrollable emergency, find it necessary to cut the power from the line of the other at the point of any such underpass, then and in such an event both of the parties hereto agree that upon notice from the other it will immediately shut the power off from its line. During the period of such emergency both of said parties hereby do further agree that they will diligently and conscientiously make every effort and use every means to keep such period of emergency to a minimum.

9. It is understood and agreed that the above mentioned part of the existing transmission and distribution line of the Cooperative located within the City limits of said City shall be retained and maintained by the Cooperative until such time as the City shall be furnished with power by Bonneville Power Administration, and until such further time as the Cooperative shall have constructed its new Cooperative line in the locations herein mentioned, and shall secure and transmit over said lines power to be furnished by the said Bonneville Power Administration from said new sub-station. The Cooperative hereby agrees to use due diligence and all reasonable effort to construct its said new Cooperative line and secure and transmit Bonneville power thereover as soon as possible. Upon the happening of such event the Cooperative hereby agrees immediately to remove its equipment from the above designated Poles 1, 2, 3 and 23, and the above mentioned existing line of the Cooperative shall immediately thereupon become and remain the property of the City free and clear of all rights and claims of the Cooperative.

10. It is understood and agreed that the existing line of the Cooperative, within the limits of said City, is subject to and encumbered by a mortgage executed by the Cooperative to the United States of America acting by and through the Rural Electrification Administration. It is understood and agreed that the Cooperative shall secure a release of those

parts of its line which it hereby agrees to turn over to the City, from the lien of said mortgage.

11. It is understood and agreed that this agreement supercedes and abrogates any and all rights and obligations of the respective parties hereto arising out of and also provision of that certain contract between the California Oregon Power Company and the City dated May 4, 1936, which has heretofore been assigned by the California Oregon Power Company to the Cooperative, and said contract as between the parties hereto hereby is cancelled, excepting for the right of the Cooperative to maintain its above described existing line within said city, and the right of said City to maintain its under-build attachments thereon until such time as the new Cooperative line shall have been constructed and energized with Bonneville power.

12. This agreement shall not become operative or binding upon either of the parties hereto until approval of the same has been made, in writing, by the Administrator of the Rural Electrification Administration, and such approval so far as all matters involved in this contract are concerned, shall constitute a release from the lien of the mortgage of the United States of America of all of the existing lines of the Cooperative to be turned over to the City hereunder as of the date that such lines are so turned over to the City.

IN WITNESS WHEREOF the Cooperative has caused this instrument to be executed by its president and secretary, and its corporate seal to be affixed by the latter, and the City has caused this instrument to be executed by its mayor and attested by its recorder, and its corporate seal to be affixed

by the latter in accordance with the ordinance of the City
authorizing and requiring such execution this _____ day of
_____, 1946.

DOUGLAS ELECTRIC COOPERATIVE, INC.

By _____ (President)

By _____ (Secretary)

(Cooperative)

THE CITY OF DRAIN

By _____ (MAYOR)

ATTEST: _____ (RECORDER)