

**LAURENCE A. TUTTLE**

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# 1648 35943

6 November, 2000

Britta Olson, Council Clerk  
City of Portland  
1221 SW 4th Avenue, Room 140  
Portland, Oregon 97204-198

Hand Delivered

Subject: Testimony - Agenda Item No. 1648 / November 8, 2000  
Resolution re: Portland General Electric Company Franchise Agreement

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2000 NOV - 6 P 3:17  
GARY BLACKMER, AUDITOR  
CITY OF PORTLAND, OR  
BY \_\_\_\_\_

Dear Ms. Olson,

The Resolution described above will be considered by the Council on November 8, 2000. Please provide a copy of this testimony to each of the Council members prior to the November 8, 2000, Council meeting. Please maintain this testimony as part of the permanent Council record. (Written testimony on the antecedent resolution was submitted to the Council Clerk on October 16, 2000.)

The Resolution remains defective for the following reasons:

Legal Validity of Existing Portland General Electric Franchise Agreements

The Resolution properly corrects the original Resolution's misstatement regarding PGE's status as successor in interest to various franchise agreements. The new Resolution, however, makes an equally grave error by failing to include the following provision which was part of the original Resolution:

"WHEREAS, the legal validity of these franchises is in question, and..."

Uncertainty arising from the legal validity of PGE's franchise agreements is the reason a new franchise agreement conforming to the City Code and Charter is required. Statements questioning the status and validity of PGE's franchise agreements appear in several City of Portland documents. To wit:

- 1) City Auditor's Internal Auditor's Report #2-85, page 13, March, 1985. Exhibit A.
- 2) "The City's Role in a Changing Electric Utility Environment," City of Portland Energy Office, page 15, October, 1996. Exhibit B.

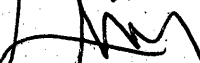
Conforming to the City of Portland Code and Charter

The revised Resolution, like the original, fails to stipulate that a new PGE franchise agreement will conform to the City Code and Charter, and to Oregon law. This is essential since the legal validity of PGE's franchise is in question.

Specificity

The NOW THEREFORE, BE IT RESOLVED, section, remains meaningless for the public, or as direction to City staff, because the issues to be negotiated are neither identified nor enumerated.

Sincerely,

  
Laurence Tuttle

Franchise Agreements Outdated

Our review of utility franchise agreements indicated a need for the City to review and update franchise agreements with the four major public utilities. Agreements are old, unclear, and may be in violation of City Charter and State law. Updated franchise agreements would clarify City and public utility relationships and help resolve potential disputes.

The agreements with PGE and NWNG date back to the late 1800's; the PP&L franchise was granted in 1966 and will expire in 1986; and the PNB franchise was granted in 1932. The agreements with PGE, NWNG, and PNB were granted for an undetermined period of time and may be in violation of current City Charter and State law that limit franchise periods to 25 and 20 years, respectively. In addition, the agreements with PGE and NWNG do not stipulate the types of compensation the utilities should provide to the City for the privilege of using City public streets and places. The operating conditions and corporate structures of the utilities have also changed dramatically since the franchises were first developed, and the City's ability to regulate these activities under Charter authority is diminished because terms and conditions in the agreements do not reflect current operating conditions. While the franchise agreements do not have a direct impact on license fees paid, they could serve to define what types of new activity and revenues should be included in the computation of the license fee.

In addition, properly drafted and updated franchise agreements could also serve to clarify areas of dispute between the City and the utilities. According to the City Attorney's office, properly drafted agreements may have helped avoid the dispute between the City and the utilities regarding who should carry the burden of relocation for the light rail project. The City Energy Office has also indicated that updated franchise agreements could also include requirements and conditions for carrying out the City Energy Policy.

Water and sewer utilities are charged eight percent. Electrical, gas, steam, cable, and telegraph utilities are charged five percent. Telecommunications utilities, in line with state statutes, are charged seven percent.

Payments made by utilites with valid franchises are allowed to deduct from the utility business license fee the amount of payments (franchise fees) made under the provisions of franchising agreements. Fees paid by utilities operating under an ordinance in lieu of franchise may also be deducted from the utility license fee.

**4. Franchise Authority:** Franchises are special privileges granted by government that generally do not belong to citizens as a common right. Once issued, franchises are construed as contracts which can be modified by the mutual consent of both parties prior to expiration. Used consistently, it can be a tool that the City employs to create a competitive arena for commodity electrical power sales.

Franchises typically grant the authority to use the public right-of-way to perform services that could not otherwise be performed. In Portland, the City Charter requires franchises to be granted in the form of an ordinance passed by City Council.

The status of current franchise agreements with energy providers in Portland is as follows:

•Portland General Electric operates in Portland as a successor in interest to at least five separate franchises granted over 100 years ago. The status of the franchise(s) is clouded due to the uncertainty as to whether franchises granted in perpetuity are valid.

•PacifiCorp was granted a 20-year franchise in October of 1986.

•Northwest Natural Gas claims to operate as successor in interest to a grant issued to a predecessor by the territorial legislature assembly in January 1859. Similar to PGE, the territorial grant also has an indefinite term.

•US West operates in Portland under a revocable permit issued to Pacific Telephone & Telegraph in 1938. In 1989, the Oregon Legislature redefined the City's authority to regulate the operation of telecommunications utilities. In so doing, the Legislature strictly limited city authority to set franchise fees on telecommunications providers, limiting the tax to "dial tone" or local

service only. At the same time, the Legislature raised the maxium percentage that cities could charge from five to seven percent of gross receipts. However, the higher percentage applies to a much smaller revenue base, since long-distance service may not be taxed.

There are a host of other franchises issued by the City, including cable, telecommunications access providers, and residential solid waste and recycling services.

**B. BONDING AUTHORITY**

Cities use debt in the same way that homeowners use a mortgage to buy a house: They pay for long term assets over the useful life of those assets. This allows for acquisition and beneficial use earlier than if one paid cash, while matching the time periods in which one pays for and uses the asset.

Cities regularly issue debt for water and sewer facilities, which are typically supported by their own fee structures, and roadway construction, which is largely supported by gas taxes. They also finance construction of public facilities that are supported by the General Fund, like parks, community centers and fire stations.

Bonds can also be used as a powerful mechanism to achieve adopted energy and environmental policies and goals. Historically, use of bonds to finance energy-related projects has been limited.

The City sold bonds to finance construction of the Bull Run hydroelectric facility. Portland General Electric built the project, operates it, and purchases its output. Bonds have also been sold to finance energy efficiency improvements at City-owned facilities to meet the City Energy Challenge goals.

Other possible uses of municipal bonds to support achievement of the City's energy goals are discussed in the sections on energy efficiency (Part 3, Section I.) and renewable resources (Part 3, Section II.).

Resolution No. **3 5 9 4 3**

Direct the City Attorney's Office and the Office of Sustainable Development to work with Portland General Electric Company to prepare, in coordination with Office of Cable Communications and Franchise Management, the Office of Management and Finance, the Office of Transportation and other city bureaus, a proposed franchise agreement to be considered by the City Council for adoption.

WHEREAS, Portland General Electric claims to be successor in interest to five separate franchises dating from the 1880s and 1890s; and

WHEREAS, Portland General Electric Company wishes to cooperate with the City of Portland to enable the City to efficiently manage public rights of way and ensure quality electricity service within the City; and

WHEREAS, the pending deregulation of and merger and acquisition activity in the electric utility industry have made discussion of a new franchise agreement between Portland General Electric Company and the City timely; and

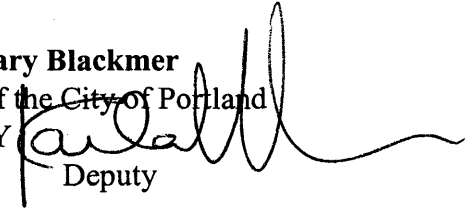
WHEREAS, the City and Portland General Electric Company are interested in pursuing the development of a new franchise agreement which is mutually beneficial to both parties and protects the public interest of the citizens of Portland;

NOW THEREFORE, BE IT RESOLVED, that the Portland City Council directs the City Attorney's Office and the Office of Sustainable Development to work with Portland General Electric Company to prepare, in coordination with Office of Cable Communications and Franchise Management, the Office of Management and Finance, the Office of Transportation and other city bureaus, a proposed franchise agreement to be considered by the City Council for adoption.

COMMISSIONER Erik Sten  
November 1, 2000  
B. Walters/Susan Anderson

Adopted by the Council:

**NOV 0 8 2000**

**Gary Blackmer**  
Auditor of the City of Portland  
BY 

Deputy

**RESOLUTION NO. 35943**

Title

Direct the City Attorney's Office and the Office of Sustainable Development to work with Portland General Electric Company to prepare, in coordination with Office of Cable Communications and Franchise Management, the Office of Management and Finance, the Office of Transportation and other city bureaus, a proposed franchise agreement to be considered by the City Council for adoption. (Resolution)

<p style="text-align: center;">INTRODUCED BY</p> <p>Commissioner Erik Sten</p> <hr/> <p style="text-align: center;">NOTED BY COMMISSIONER</p> <p>Affairs</p> <p>Finance and Administration</p> <p>Safety</p> <p>Utilities</p> <p>Works <i>Erik Sten King</i></p> <hr/> <p style="text-align: center;">BUREAU APPROVAL</p> <p>Bureau: Office of Sustainable Development</p> <hr/> <p>Prepared by      Date Michael Armstrong/jy    11/01/00</p> <hr/> <p>Budget Impact Review:</p> <p><input type="checkbox"/> Completed      <input checked="" type="checkbox"/> Not Required</p> <hr/> <p>Bureau Head: <i>Susan Anderson</i> Susan Anderson</p>	<p>DATE FILED:                      <b>NOV 03 2000</b></p> <p style="text-align: center;">Gary Blackmer Auditor of the City of Portland</p> <p>By: <u><i>Britta Olson</i></u> Deputy</p> <p>For Meeting of: _____</p> <p>ACTION TAKEN:</p>
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AGENDA	FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
			YEAS      NAYS
Consent      Regular    xx	Francesconi	Francesconi	✓
NOTED BY	Hales	Hales	✓
City Attorney	Saltzman	Saltzman	✓
City Auditor	Sten	Sten	✓
City Engineer	Katz	Katz	✓