

ORDINANCE NO. 01 of 1996

AN ORDINANCE OF THE TRIBAL COUNCIL, AS GOVERNING BODY OF THE BISHOP PAIUTE RESERVATION, STATE OF CALIFORNIA, PROVIDING FOR THE GRANTING OF FRANCHISES TO UTILIZE RIGHTS-OF-WAY ACROSS TRIBAL PROPERTY TO PROVIDE TELEPHONE, GAS, OIL, PIPELINE, ELECTRICAL, WATER OR CABLE TELEVISION SERVICE

The Tribal Council of the Bishop Paiute Indian Reservation (hereinafter "Tribal Council") hereby ordains as follows:

SECTION 1. DEFINITIONS

In this Ordinance:

1. "Grantee" means any individual, corporation, partnership or joint venture, its lawful successors and assigns, which has applied for and received from the Reservation a franchise to utilize rights-of-way across tribal property to provide telephone, gas, oil pipeline, electrical, water or cable television service.
2. "Reservation" means the land contained within the Bishop Paiute Indian Reservation.
3. "Tribe" means the Bishop Paiute Tribe.
4. "Tribal Council" means the Bishop Paiute Tribal Council.
5. The word "streets" shall mean the freeways, highways, streets, ways, alleys and places as the same now or may hereafter exist within the Reservation.

6. The phrase "poles, wires, conduits and appurtenances" shall mean poles, towers, supports, wires, conductors, cables, guys, stubs, platforms, crossarms, braces, transformers, insulators, conduits, ducts, vaults, manholes, meters, cutouts, switches, communication circuits, appliances, attachments, appurtenances and, without limitation to the foregoing, any other property located or to be located in, upon, along, across, under or over the streets of the Reservation and used or useful in transmitting or distributing electricity, sometimes otherwise referred to as "facilities".

7. The phrase "construct, maintain and use" shall mean to construct, erect, install, operate, maintain, use, repair, relocate or replace poles, wires, conduits and appurtenances thereto in, upon, along, across, under or over the streets of the Reservation.

8. The phrase "gross annual receipts" shall mean all gross operating revenues received by Grantee from the sale of the utility service to Grantee's customers with points of service within the limits of the Reservation.

SECTION IA. REQUIREMENT TO APPLY FOR FRANCHISE

1. Any individual, corporation, partnership or joint venture desiring to obtain or retain a right-of-way across tribal property to provide telephone, gas, oil pipeline, electrical, water or cable television service after the effective date of this ordinance shall be required to file an application for a franchise pursuant to Section 2 of this ordinance.

SECTION 2. APPLICATION FOR FRANCHISE; CONTENTS

1. An applicant for a franchise to utilize rights-of-way across tribal property to provide telephone, gas, oil pipeline, electrical, water or cable television service shall file an application stating all of the following:

(a) The name of the applicant.

(b) The purpose and term, whether definite or indeterminate, for which the franchise is desired.

(c) That the applicant, if granted the franchise, will pay to the Tribe during the life of the franchise two percent (2%) of the applicant's gross annual receipts arising from the use, operation, or possession of the franchise, except that this payment shall be not less than one percent (1 %) of the applicant's gross annual receipts derived from the sale within the limits of the Reservation of the utility service for which the franchise is awarded.

2. Notwithstanding any other provision of this ordinance. if the application is for a franchise for a pipeline for industrial gas or oil or products thereof, the application shall state that the applicant, if granted the franchise, will pay to the Tribe during the life of the franchise either a specified percentage agreed to by the applicant and the Tribal Council of the gross annual receipts of the applicant arising from the use, operation, or possession of the franchise or an annual franchise fee in an amount agreed to by the applicant and the Tribal Council or an annual franchise fee computed by multiplying the sum of one-half cent (\$.005) times the number of lineal feet of the pipe within the public streets, ways, alleys, or other public places within the Reservation.

SECTION 2A. FEES IMPOSED ON EXISTING FRANCHISES

1. All grantees of franchises issued by the Tribe which are in existence as of the effective date of this ordinance shall be liable for 'the fees imposed by Sections 2 and 3 of this ordinance. Such fees shall be assessed, collected and administered in the same manner as the fees imposed on franchise granted by the Tribe after the effective date of this ordinance.

SECTION 3. REPORTS, DATE OF PAYMENT TO RESERVATION, AUDITS

1. On or before the 15th day of February of each calendar year during the term of this franchise and forty-five (45) days after the expiration of the term of this franchise, Grantee shall file with the Tribal Council the original and one copy of a statement showing the gross receipts and/or number of lineal feet of oil pipeline on the Reservation during the preceding calendar year or fractional calendar year. The statement shall be on a form prescribed by the Tribal Council.

2. On or before ,the 25th day of February, Grantee shall pay to the Tribe the money herein required to be paid by Grantee to the Tribe upon the basis of the data set forth in said statement.

3. Thereafter, no later than the 25th day of the end of each quarter (May, August and November) of the Tribe's fiscal year during the term of this franchise, Grantee shall pay to the Tribe one-fourth (1/4) of the money herein required to be paid by Grantee to the Tribe upon the basis of the data set forth in the statement required by Subsection 3.1 hereof. By this method of payment, it is contemplated and understood that Grantee is in effect paying the money herein required to be paid by Grantee to the Tribe under this subsection on the basis of gross receipts or lineal feet of oil pipeline on the Reservation for the preceding calendar year and that adjustment shall be made, as more fully set forth in Subsection 3.4 hereof.

4. On or before the 25th day of February, Grantee shall pay to the Tribe, or receive as a refund from the Tribe, as the case may be, a sum of money equal to the difference between the sum of the payments of money made in accordance with Subsection 3.3 hereof and the annual payment of money herein required to be paid by Grantee to the Tribe upon the basis of the data set forth in said statement.

5. Any qualified person designated by the Tribal Council, at any reasonable time during business hours, may make examination at Grantee's office or offices, of its books and records, germane to and for the purpose of verifying the data set forth in the statement required by Subsection 3.1 hereof.

6. All books and records subject to examination by the Tribal Council, or qualified person designated by the Tribe, shall be kept in such places as the reasonable convenience of Grantee may require; and in the event that it becomes necessary for the representative designated by the Tribal Council to make such examination at any place other than within the Reservation, all increased costs and expenses necessary or incident to such examination and resulting from such books and records not being available within the Reservation, shall be paid to the Tribe by Grantee on demand.

7. Should any such examination or audit reveal an underpayment of the franchise fee due under this franchise, the amount of such underpayment shall become immediately due and payable to the Tribe. Should an underpayment of more than four percent (4%) be discovered, the grantee shall bear the cost of the audit. Said costs shall be paid to the Tribe on demand.

8. In the event Grantee fails to make any of the payments provided for in this franchise on or before the dates due as herein provided, Grantee shall pay as additional consideration both of the following amounts:

a. A sum of money equal to two percent (2%) of the amount due. This amount is required in order to defray those additional expenses and costs incurred by the Tribe by reason of the delinquent payment including, but not limited to, the cost of administering, accounting and collecting said delinquent payment and the cost to the Tribe of postponing services and projects necessitated by the delay in receiving revenue.

b. A sum of money equal to one percent (1 %) of the amount due per month as interest and for loss of use of the money due.

SECTION 3A. PROHIBITION ON PASS-THROUGH OF FEE

(a) Notwithstanding any other provision of law, no person may identify as a separate line item on each regular bill of a utility customer or subscriber the amount of the customer's or subscriber's bill assessed as the fee imposed by this ordinance and the identity of the authority to which the fee is paid;

(b) Violation of subdivision (a) shall be punished by a fine imposed by the Authority in the amount of the greater of:

(1) Treble the amount of fee due in the year in which the violation occurs; or

(2) \$5,000.00

(c) All utilities shall comply with the requirements of 47 USCS Section 542 and California Public Utilities Code Section 454.

(1) In enacting this ordinance, it is intent of the Tribal Council that the tax imposed herein meet the definition of a tax of "general applicability", as defined in 47 USCS Section 542 (g) (2) (A) .

(2) In enacting the ordinance, it is the intent of the Tribal Council to prohibit itemized pass-through of the tax imposed by this ordinance or adjustment of customer or subscriber rates on the Reservation because of the imposition of the tax imposed by this ordinance.

SECTION 4. COMPLIANCE WITH LAWS

All facilities or equipment of Grantee that Grantee shall construct, maintain and use or remove, pursuant to the provisions of the franchise granted hereby shall be accomplished in accordance with the ordinances, rules and regulations of the Reservation now or as hereafter adopted or prescribed.

SECTION 9. FORFEITURE

Any franchise granted under this ordinance is granted upon each and every condition herein contained, and shall ever be strictly construed against Grantee. Nothing shall pass by any franchise granted hereby unless it be granted in plain and unambiguous terms. Each of said conditions is a material and essential condition to the granting of the franchise. If Grantee shall fail, neglect or refuse to comply with any of the conditions of the franchise granted pursuant to this ordinance, and if such failure, neglect or refusal shall continue for more than thirty (30) days after written demand by the Tribal Council for compliance therewith, then the Tribal Council, in addition to all rights and remedies allowed by law, thereupon may terminate the right, privilege and franchise granted in and by this Ordinance, and all the rights, privileges and the franchise of Grantee granted hereby shall thereupon be at an end. Thereupon and immediately, Grantee shall surrender all rights and privileges in and to any franchise granted hereby. No provision herein made for the purpose of securing the enforcement of the terms and conditions of any franchise granted hereby shall be deemed an exclusive procedure for the enforcement of said terms and conditions, but the remedies and procedure outlined herein including forfeiture, shall be deemed to be cumulative.

SECTION 10. ACQUISITION AND VALUATION

Nothing in this Ordinance or in any franchise granted hereby shall be construed as in any way impairing the Tribe's rights to acquire property of Grantee through the exercise of the Tribe's power of eminent domain or through voluntary agreement between the Tribe and Grantee.

SECTION 11. PUBLICATION EXPENSE

Grantee of said franchise may be required to pay to the Tribe a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting thereof; such payment to be made within thirty (30) days after the Tribe shall have furnished Grantee with a written statement of such expenses.

SECTION 12. NO TRANSFER WITHOUT CONSENT

Grantee shall not sell, transfer or assign the franchise or the rights and privileges granted thereby without the consent of the Tribal Council.

SECTION 13. APPLICATION FEE

Grantee shall pay to the Tribe and as for an application fee to cover the Tribal Council's cost in processing Grantee's franchise application the sum of (\$__ __). Said application fee shall be paid to the Tribe concurrently with written acceptance of the franchise.

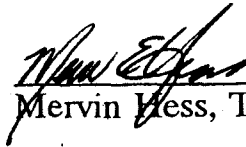
This Ordinance shall take effect January 1, 1996 after approval from and after its passage by the Tribal Council.

The foregoing Ordinance No. 01 of 1996, passed and adopted this 11 day of December, 1996, by the following vote:

YES: 4

NO: 0

ABSENT: 0



Mervin Hess, Tribal Chairman

Attest:

/s/ _____
Tribal Secretary

bpdc.306