



**ORDINANCE NO. 651**

**AN ORDINANCE GRANTING TO THE UTAH POWER AND LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO CONSTRUCT, ERECT, MAINTAIN, OPERATE, REMOVE AND USE WIRES, POLES AND FACILITIES FOR TRANSMITTING AND DISTRIBUTING ELECTRICITY FOR HEAT, LIGHTS AND POWER TO THE CITY OF REXBURG, IDAHO, AND ITS INHABITANTS, AND TO ERECT, CONSTRUCT, MAINTAIN, OPERATE, REMOVE AND USE SUCH FACILITIES FOR TELEPHONE AND TELEGRAPH PURPOSES IN ITS PRIVATE BUSINESS, AND TO CONSTRUCT, INSTALL, MAINTAIN, AND REMOVE CONDUITS ON, OVER, ALONG, UNDER AND ACROSS THE STREETS, ALLEYS AND PUBLIC WAYS WITHIN THE CORPORATE LIMITS OF THE CITY OF REXBURG, IDAHO, AS THEY EXIST OR AS THEY MAY HEREAFTER BE CHANGED, AND GRANTING USE OF STREETS, ALLEYS AND PUBLIC WAYS WITHIN THE CORPORATE LIMITS OF THE CITY OF REXBURG, IDAHO, TO THE UTAH POWER AND LIGHT COMPANY FOR A TWENTY-FIVE (25) YEAR TERM; PROVIDING FOR EVIDENCE OF BUILDING PERMITS OF THE CITY OF REXBURG BEFORE ELECTRICAL HOOKUP CAN BE MADE; PROVIDING THAT THE UTAH POWER AND LIGHT COMPANY PAY TO THE CITY OF REXBURG, IDAHO, A FRANCHISE TAX AND PROVIDING FOR THE EFFECTIVE DATE THEREOF; AND PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE.**

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF REXBURG, IDAHO, AS FOLLOWS:

**SECTION I:** That the Utah power and Light Company, a corporation organized under the laws of the State of Utah and authorized to do business in the State of Idaho, its successors and assigns, hereinafter called the "Grantee" be, and it is hereby granted for a term of twenty-five (25) years commencing January 1, 1983, and terminating January 1, 2008, the right, privilege and franchise to construct, erect, maintain, operate, remove and use wires, poles, plants and all necessary or desirable appurtenances thereto for transmitting and distributing electricity for electric lights, heat and power and also to use its wires, poles and properties for telephone and telegraph purposes in its private business; and install, construct, maintain and remove conduits over, on along, under and across the streets, alleys and public ways within the corporate limits as they now exist or as they may hereafter be changed in the City of Rexburg, Idaho. **SECTION II:** It is further given in connection herewith unto the Grantee, its successors and assigns, the right during the life of this franchise to cut and trim any and all trees growing in or over streets or alleys of the City of Rexburg that might or may interfere with any wires, poles, conduits or other appurtenances of the Grantee, its successors and assigns.

**SECTION II:** The poles, wires and other appurtenances mentioned herein shall be constructed, erected and maintained in accordance with the laws of the City of Rexburg and the State of Idaho relating to electrical construction and any rule or regulation adopted by any agency of the State of Idaho having jurisdiction over electrical construction in the City of Rexburg and also said construction shall be in such manner as to prevent and guard against accidents or damages as nearly as possible to any person who may be properly using said streets or alleys.

Whenever the Grantee, its successors or assigns, shall excavate in or obstruct any of the streets, alleys or public ways of the City of Rexburg for the purposes aforesaid, it shall return the same to the order or condition that they were in before they were excavated or obstructed as soon as practical and within a reasonable time after such excavation or 1 obstruction.

**SECTION III:** The Grantee, on request of the Council of the City of Rexburg, shall remove or raise its wires so as to permit the removal of any house or building when the same may be necessary to permit the removal of said building, on, over and along the streets, alleys, public highways of the said City to the point of destination; provided that the party to whom a permit has been granted to remove any such building on, over and along any streets or alleys of the City shall pay to the Grantee the cost incurred in removing or changing its wires and facilities so as to permit the removal of the said building.

**SECTION IV:** In consideration of the rights, privileges and power herein granted to the Grantee, its successors and assigns, the said Grantee shall at all times acquire, keep and maintain facilities of sufficient size and capacity to supply the City and inhabitants thereof with such an amount of electricity as they may reasonably require and shall in the absence of accident or misfortune from some cause beyond its control, furnish a continuous 24 hour service and should the said facilities or any part thereof become injured or destroyed, the same shall be replaced as soon as reasonably practical.

**SECTION V:** The Grantee shall furnish to the City applicable rate schedules for light and power to be used by the City of Rexburg within the corporate limits of the City as may be designated by the authorities of the City.

**SECTION VI:** As a further consideration for this franchise, the Grantee agrees to pay a sum equal to two percent (2%) of the gross revenue derived by the Grantee from the sale and use of electrical power and energy within the corporate limits of Rexburg, Idaho.

The term "gross revenue" as used herein shall be construed to mean any revenue of the Grantee derived from the sale and use of electric power and energy within Rexburg after adjustment for the net write-off of uncollectible accounts and corrections of bills theretofore rendered.

Within forty-five (45) days after the close of each quarter in each calendar year, the Grantee shall file with the City Treasurer of Rexburg a report of such gross revenue for such quarter. Such report shall contain a statement of gross revenue and any deductions made because of adjustments or corrections as herein provided, together with a computation of the tax to be paid. Coincidentally with the filing of such report, the Grantee shall pay to the City Treasurer the amount of the tax thus computed. Within thirty (30) days after the filing of such report, or within such reasonable additional time as the City Treasurer may request, the Treasurer shall examine such report, determine the accuracy of the amounts reported, and, if he finds any errors, report the same to the Grantee for correction; if the tax as paid be found deficient, the Grantee shall promptly remit the difference, and if the tax as paid be found excessive, the City shall promptly refund the difference. The records of the Grantee pertaining to such report shall be open for inspection by the Mayor or his duly authorized representative at all reasonable hours for the purpose of verifying such report.

The City may alter the herein described franchise tax upon sixty (60) days written notice to Utah Power & Light Company, Rexburg Division, 25 East Main, Rexburg, Idaho 83440, subject to existing federal, state and local laws, rules and regulations.

This franchise tax shall become effective immediately upon the adoption of this ordinance and publication thereof as provided by law.

**SECTION VII:** The Grantee may be directed to install its primary service wires underground upon request of the City and those property owners to be specifically benefited thereby after a public hearing and finding by the City Council that the area wherein underground facilities are requested is a feasible and practical area for underground installation and the installation is required for public safety, interest or convenience. In the event underground electric facilities are installed, the difference between the cost of constructing and installing wires and related facilities above ground and the cost of constructing and installing the wires and related facilities underground shall be borne proportionately by each property owner in the area, public or private, specially benefited thereby.

Whenever the Grantee determines to place its primary service wires underground in any portion of the City, permission to do so is hereby granted. However, the Grantee, its successors or assigns, shall file with the City a complete set of plans and specifications for such work and shall lay the necessary pipes or conduits for the same in such manner as not to interfere with any existing

pipes in any such area. Such work shall be done subject to the provisions of the proper authorities of said City.

**SECTION VIII:** The Grantee, its agents and employees, shall have the right and power of ingress and egress upon city property for the purpose of installing, servicing, maintaining its facilities and for the purpose of maintaining, testing, and reading its meters.

**SECTION IX:** The rates and charges applicable for electrical service furnished by the Grantee, its successors and assigns, shall be as filed with the regulatory body of the State of Idaho having jurisdiction during the term of the franchise.

**SECTION X:** The Grantee shall obtain evidence of City of Rexburg electrical inspection permits before any new or extended service may be activated.

**SECTION XI:** The City shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation or maintenance by the Grantee of its lines and appurtenances hereunder, and the acceptance of this franchise shall be deemed an agreement on the part of said Grantee, its successors and assigns, to indemnify said City and hold it harmless against any and all liability, loss, cost, damage or expense which may accrue to said City by reason of the neglect, default or misconduct of the Grantee in the construction, operation or maintenance of its lines and appurtenances hereunder.

**SECTION XII:** The franchise and all of its provisions shall be void, inoperative and of no force or effect whatsoever unless the Grantee named herein shall within thirty days after its introduction and publication thereof file with the City of Rexburg its acceptance thereof in writing.

**SECTION XIII:** The franchise hereby granted may be revoked by the City of Rexburg by duly enacted ordinance in the event the Grantee shall fail, after sixty days written notice, to comply with any of the terms, conditions, and obligations imposed upon the Grantee hereunder.

PASSED BY THE COUNCIL AND APPROVED BY THE MAYOR this 5th day of January, 1983.

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John C. Porter, Mayor

(SEAL)

ATTEST:

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Rose Bagley, City Clerk.

