

69266

311.1869

Vol. ^m79 Page 844

EASEMENT

STATE OF OREGON - BOARD OF FORESTRY

to

PACIFIC POWER & LIGHT COMPANY

* * * *

THIS AGREEMENT, Made in duplicate this 13th day of June, 1979, by and between the STATE OF OREGON, acting by and through its Board of Forestry, hereinafter called "GRANTOR," and PACIFIC POWER & LIGHT COMPANY, a Maine corporation, hereinafter called "GRANTEE," WITNESSETH;

In consideration of the faithful performance of all the covenants and agreements to be performed by GRANTEE, as herein contained, and subject to the following conditions, the State of Oregon, acting by and through its Board of Forestry, GRANTOR, does hereby grant unto the Pacific Power & Light Company, GRANTEE, an easement and right of way over, upon and across the following described land, situated in Klamath County, Oregon, to-wit:

The Northeast quarter of the Southeast quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 32, Township 39 South, Range 7 East of the Willamette Meridian, said easement and right of way being all that portion of the above described subdivision which lies within a strip of land 162.5 feet in width adjacent to and paralleling an existing 230 KV transmission line, said strip of land being 87.5 feet on the North side and 75 feet on the South side of a line described as follows:

Beginning at a point on the West boundary of said Section 32, said point being North 898 feet from the Southwest corner of said Section 32; thence North 76°46'51" East 4,112 feet, more or less, to the true point of beginning on the West boundary of the above described legal subdivision; thence continuing North 76°46'51" East 1,371 feet, more or less, to a point on the East boundary of the

PACIFIC POWER & LIGHT COMPANY
PORTLAND OFFICE

COPY

above described legal subdivision, said point being South 384 feet, more or less, from the East one quarter corner of said Section 32, said strip of land containing 5.114 acres, more or less.

TO HAVE AND TO HOLD the above described easement and right of way unto the GRANTEE for the purposes hereinafter set out, subject to the exceptions and encumbrances presently existing of public record, and further, subject to the following:

(1) PURPOSES: The grant herein shall be for the purposes of the right of GRANTEE to enter and erect, operate, maintain, repair, rebuild, and patrol one or more electric power transmission lines and appurtenant signal lines, poles, towers, wires, cables, and appliances necessary in connection therewith, in, upon, over, under, and across the above described easement and right of way.

(2) ROAD CONSTRUCTION: GRANTEE hereby shall have the right to construct, reconstruct, repair and maintain a patrol road on and over said easement and right of way for the purposes stated herein, and further, for the exercise of other rights herein granted GRANTEE, including the performance of obligations required herein; GRANTOR hereby shall have the right of ingress and egress over and across such road insofar as the same extends across the land of the GRANTOR covered by this easement and right of way, said right of the GRANTOR to be exercised in a manner that will not interfere with the use of the road by GRANTEE.

(3) INGRESS AND EGRESS: GRANTEE hereby shall have the right of ingress and egress over and across lands of the GRANTOR adjacent to said easement and right of way for the purposes stated herein, and, for the purposes of GRANTEE complying with the requirements hereof; provided however, that prior to such use

14446

of adjacent lands, the GRANTEE first shall notify the GRANTOR and obtain therefrom a road use permit, and thereafter, comply with the requirements and conditions of such permit.

(4) RIGHT-OF-WAY CLEARING: GRANTEE hereby shall have the right to clear said easement and right of way and to keep the same clear for all purposes and obligations described herein; such right shall include the removal and disposal of debris, brush, timber, structures and fire hazards; provided, however, GRANTEE first shall obtain from the State Forester, and thereafter comply with the terms and conditions thereof, the right of way clearing permit required by Oregon law; should GRANTOR exercise its express and reserved right to use said easement and right of way or to plant, manage and harvest forest crops thereon or therefrom, the right and obligation of GRANTEE herein shall be so limited thereby.

(5) DANGER TREES: In addition to the grant of said easement and right of way herein, GRANTEE hereby shall have the present and future right to top, limb, fell and remove all growing trees, dead trees or snags (collectively called "danger trees") located on the lands of GRANTOR adjacent to said easement and right of way which could fall upon or against said transmission and signal line facilities provided, however, such right is upon the condition that the GRANTOR be first notified in writing, and GRANTOR thereafter agrees in writing said trees are danger trees; payment for danger trees shall be made as provided herein; the above requirments as to notice shall not apply to danger trees which are an immediate threat to the facilities of GRANTEE on said easement and right of way.

14447

(6) PAYMENT FOR TIMBER: GRANTEE shall not cut, remove, or destroy any timber (including trees herein designated as "danger trees") not previously purchased on lands of the GRANTOR, without first making payment to GRANTOR therefor; such payment shall be the current market value based upon the estimated volume of stumpage as determined by the GRANTOR.

(a) GRANTEE hereby agrees to pay GRANTOR the sum of Thirteen Thousand Five Hundred Sixty-six and 82/100 Dollars, (\$13,566.82) within thirty days of the date of this instrument for timber to be cut, removed or destroyed by GRANTEE on said easement and right of way.

(b) The amount stated in (a), above, was determined as of the date of instrument and pursuant to the procedures required by Paragraphs (4) and (6) hereof.

(c) Payment of said amount shall be made to GRANTOR at its address designated in Paragraph (23), hereof.

(7) UNAUTHORIZED CUTTING: GRANTEE shall neither cut, damage nor destroy any of GRANTOR'S timber, or timber managed by GRANTOR, without the permission of GRANTOR in writing; the cutting, damaging or destroying of any such timber shall be considered willful trespass and GRANTEE shall be liable to GRANTOR therefore in a sum equal to three times the damage sustained by GRANTOR on account of the cutting, damaging or destroying of such timber; "timber" shall include trees of all ages; provided, however, this paragraph does not apply to timber growing on said easement and right of way, pursuant to Paragraph 19, hereof, which is over fourteen (14) feet in height.

14448

(8) SOIL CONSERVATION: GRANTEE hereby covenants to and with GRANTOR to so use the easement and right of way in such a manner as will adequately provide for the conservation of soil and for the prevention of soil erosion.

(9) NOXIOUS WEEDS: GRANTEE hereby covenants to and with GRANTOR to so use said easement and right of way in a manner as will comply with the provisions of Oregon law relating to the destruction of, or prevention of, the spread or seeding of noxious weeds.

(10) PREVENTION AND SUPPRESSION OF FIRE: In consideration of the rights and privileges granted herein to GRANTEE, and of the additional fire hazard the lands of the GRANTOR are exposed to by reason of the erection, maintenance and operation of high voltage electrical transmission lines and facilities therefor, which additional hazard could not exist were such lines and facilities not installed, maintained or used, GRANTEE hereby covenants to and with the GRANTOR to:

(a) Dispose of all slashings and debris created by GRANTEE on lands of the GRANTOR in a manner satisfactory to the GRANTOR; and

(b) Maintain said easement and right of way, and said patrol road, reasonably free of inflammable debris; and

(c) Take all reasonable precautions to prevent forest, brush and grass fires and endeavor with all available personnel to suppress any fire originating on or threatening said easement and right of way; and

(d) Do no burning on or near said easement and right of way without first obtaining a burning permit from the State Forester or his designated representative during seasons that such permits are required by Oregon law; and

14449

(e) Immediately notify GRANTOR and the nearest State Fire warden upon delivery of fire in the vicinity of said easement and right of way.

(11) MATERIALS AND LABOR: GRANTEE will fully pay for all materials joined or affixed to said easement and right of way, and pay in full all persons who perform labor upon said easement and right of way, and will not permit or suffer any mechanics' liens or materialmen's liens of any kind or nature to be enforced against said easement and right of way for any work done or materials furnished thereon at GRANTEE'S instance or request.

(12) INDEMNITY: GRANTEE shall, and hereby expressly agrees to, indemnify and save harmless the GRANTOR, its officials, employees and contractors, from all suits or actions of every name and description brought for or on account of any damage, injury, loss, expense, inconvenience or delay received or sustained by any person, or damage caused to any property, which damage, injury, loss, expense, inconvenience or delay may have been caused by or may have resulted from the carrying out of the purposes of this agreement, or from any act, omission or neglect of the GRANTEE, its officials, employees or agents; for the purposes of this agreement, all persons, except the parties hereto, using said easement and right of way under authority of GRANTEE shall be deemed an agent of GRANTEE.

14450

(13) LIABILITY OF GRANTEE: GRANTEE shall be liable to GRANTOR for all loss or damage to or destruction of the property of GRANTOR, not herein authorized (including amounts expended by GRANTOR for fire-fighting purposes or paid to fire-protective organizations or like organizations), which loss or damage is the proximate result of any negligent act or omission of such GRANTEE, unless such loss or damage is a direct result of negligence or other fault of GRANTOR.

(14) INSURANCE: GRANTEE shall, before commencing the use of said easement and right of way for the purposes stated herein, at its own cost, procure insurance acceptable to the GRANTOR in insurers acceptable to the GRANTOR, covering its operations in the use of said easement and right of way and insuring it against liability for personal injury and property damage for all sums for which it may by law become liable to pay by reason of accidents or occurrence, with limits not less than \$100,000 in excess of \$10,000 for injury to one person and \$250,000 in excess of \$10,000 for injury to two or more persons, and \$250,000 in excess of \$10,000 for damage to property; GRANTEE, before commencing use of such easement and right of way, shall furnish GRANTOR with a copy of such policy or policies of insurance, which shall bear an endorsement requiring the insurer to give ten (10) days' prior written notice to GRANTOR of any intended or proposed cancellation or qualification of obligation of such insurance; copies of all subsequent endorsements thereto shall also be furnished GRANTOR upon execution.

(15) PERFORMANCE BOND: GRANTEE shall obtain and maintain during the construction period of the electric power transmission lines granted herein, a performance bond issued by a

14401

surety company acceptable to GRANTOR in the amount of Five Thousand Dollars, (\$5,000) as security for the performance of all the obligations to be performed hereunder by the GRANTEE; the GRANTEE shall be and remain liable for any deficiency and for all amounts which may be due GRANTOR by reason of any default hereunder after the application of said performance bond.

(16) COMPLIANCE - LAWS AND REGULATIONS: GRANTEE hereby agrees to comply with all laws and regulations, federal, state and local, applicable to the use of said easement and right of way, including, but not limited to, those relating to the prevention, suppression and control of fire, and all valid orders of federal and state officials pertaining thereto.

(17) ASSIGNMENT: GRANTEE shall not assign nor transfer this agreement in whole or in part without the written consent of GRANTOR first had and obtained.

(18) FAILURES, NEGLECT, AND REFUSAL: If GRANTEE shall fail, neglect or refuse to keep, observe or perform any of the conditions, covenants or agreements herein contained, for a period of 30 days after having been given written notice to comply therewith, GRANTOR may terminate this agreement by written notice to GRANTEE, and thereupon all rights hereby given shall forthwith cease and determine.

(19) RESERVATION BY GRANTOR: GRANTOR hereby expressly reserves the right to go upon, over and across the strip of land described herein, and to make such use of said land that is not inconsistent with the rights herein granted as the GRANTOR may desire; such reservation, upon written notice to the GRANTEE of its intention to exercise such right, shall include, but not be

limited to, the planting, growing, thinning and harvesting of forest crops to a height of not more than fourteen (14) feet.

14452

(20) COSTS AND FEES: In case GRANTOR shall bring suit to compel performance of, or to recover for breach of, any covenant, agreement or condition herein written, GRANTEE shall and will pay to GRANTOR reasonable attorney's fees in addition to the amount of judgment and costs.

(21) TERMINATION: All rights of the GRANTEE hereunder shall cease automatically:

(a) If for a continuous period of five (5) years GRANTEE shall fail to use said easement and right of way for the purposes stated herein;

(b) Immediately upon insolvency, adjudication of bankruptcy or appointment of a receiver for the property of GRANTEE, or failure strictly to comply with the terms and conditions of Paragraph 10, hereof;

(c) Upon receipt of written notice of termination as provided in Paragraph 18; provided, however, termination of this agreement shall not prejudice the right of GRANTOR to damages theretofore or thereafter accruing on account of breach by GRANTEE of any condition, covenant or agreement hereof.

(22) STRICT CONSTRUCTION: This agreement shall be binding upon the executors, administrators, successors and assigns of the parties hereto, and the words and phrases hereinabove used, particularly those of indemnification, are to be strictly construed, that is to say, the same are to be given

their full, exact and technical meaning and shall not be extended
by implication beyond the literal meaning thereof.

14453

(23) NOTICE: All notices or other communications provided for herein may be served personally or by certified mail addressed to the parties to be served as follows; either party may change its address or designated authorized representative by written notice:

(a) GRANTEE: Pacific Power & Light Company
920 S.W. Sixth Avenue
Portland, Oregon 97204

(b) GRANTOR: Oregon State Board of Forestry
c/o State Forester
2600 State Street
Salem, Oregon 97310

IN WITNESS WHEREOF, The parties hereto have executed this agreement in duplicate as of the day and year first hereinabove written.

STATE OF OREGON, acting by and through its Board of Forestry

By J.E. Schroeder
J.E. Schroeder, State Forester
and Secretary of the Board of Forestry

GRANTOR

Attest:

F. L. Elliff

PACIFIC POWER & LIGHT COMPANY,
a Maine corporation

By Robert W. Macmillan

GRANTEE

14453
J.E. Schroeder
State Forester
Salem, Oregon
9/1/60
S.M.G.D.T.

14454

ACKNOWLEDGMENT

STATE OF OREGON)
) ss.
County of Marion)

On this 2nd day of May, 1979, before me appeared J. E. Schroeder, to me personally known, who, being duly sworn, did say that he, the said J. E. Schroeder, is the Secretary of the Oregon State Board of Forestry, and that the within instrument was signed for and by authority of said Board, and said J. E. Schroeder acknowledged said instrument to be the free act and deed of said Board, acting for and in behalf of the State of Oregon.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal this, the day and year first in this, my certificate, written.

Bernell E. Bick
Notary Public for Oregon

(SEAL)

My Commission expires: June 1, 1982

ACKNOWLEDGMENT

STATE OF OREGON)
County of Multnomah) ss.

On this 13th day of June, 1979, before me appeared Robert W. Moench and T. L. Selliken, both to me personally known, who, being duly sworn, did say that he, the said Robert W. Moench, is the Senior Vice President, and he, the said T. L. Selliken, is the Assistant Secretary of Pacific Power & Light Company, the within-named corporation, and that the said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said Senior Vice President and Assistant Secretary acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal the day and year last above written.

(SEAL)

[Signature]
Notary Public for Oregon

My Commission expires: Sept. 15, 1980

PP&L
Page 12

[Signature]
JAMES A. MILLER, Attorney General
By [Signature] Assistant

PACIFIC POWER & LIGHT COMPANY
REGISTRATION OFFICE

STATE OF OREGON; COUNTY OF KLAMATH; ss.

I hereby certify that the within instrument was received and filed for record on the 20th day of June, A.D., 1979 at 2:22 o'clock P.M., and duly recorded in Vol. 14455 of Deeds on Page 14444.

FLE 33,90

WM. D. MURRI, County Clerk
By [Signature] Deputy