



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

RESOLUTION

T-177-02

WHEREAS, the Confederated Tribes and Bands of the Yakama Nation is a federally recognized Nation pursuant to the Treaty of June 9, 1855 (12 Stat. 951), and

WHEREAS, the Yakama Tribal Council is the governing body of the Confederated Tribes and Bands of the Yakama Nation of the Yakama Reservation by the authority delegated by Resolution T-38-56, and

WHEREAS, the Yakama General Council approved GC-04-98, thereby authorizing the Tribal Council to research and proceed with all opportunities in the electricity industry; and

WHEREAS, the Yakama Tribal Council finds that, by virtue of providing utility service to the residents of the Reservation and by obtaining easements to place facilities within such Reservation, utilities have entered into consensual relationships with the Yakama Nation and its members; and

WHEREAS, utilities operating on the Reservation have placed utility facilities on lands owned or controlled by the Yakama Nation without authorization or for which authorization has expired and the Tribal Council finds that it is in the public interest to require utilities operating on the Reservation to obtain permission for such facilities by entering into agreements with the Yakama Nation; and

WHEREAS, as a sovereign nation, the Yakama Nation retains the authority to regulate the activities of entities that have entered into consensual relationships with the Yakama Nation and to regulate activities that threaten the political or economic interests of the Yakama Nation; and

WHEREAS, the Tribal Council finds that the health, safety, and welfare of the residents of the Reservation require that the Yakama Nation regulate and control the activities of utilities operating on the Reservation.

NOW, THEREFORE, BE IT RESOLVED, by the Yakama Tribal Council meeting in regular session at the Governmental Headquarters of the Confederated Tribes and Bands of the Yakama Nation, Toppenish, Washington, with a quorum being present, that the attached Yakama Nation Franchise Ordinance is hereby adopted.

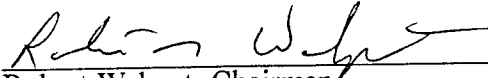
BE IT FURTHER RESOLVED, nothing in this Ordinance shall confer any permission to any utility for the placement of existing or future facilities within the external boundaries of the Reservation where such permission does not currently exist. Any franchise entered into between the Yakama Nation and a utility may be subject to the approval of the United States Bureau of Indian Affairs in its capacity as the Trustee for certain lands within the boundaries of the Reservation.

BE IT STILL FURTHER RESOLVED, that pursuant to the General Council 1944 Resolution and GC-2-81, this Ordinance shall be presented to the people for ratification at the next regular General Council session.

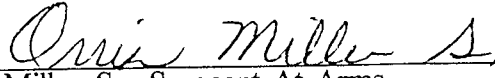
BE IT FINALLY RESOLVED, that the Yakama Nation does not waive, alter, or otherwise diminish its Sovereign Immunity, whether expressed or implied, by virtue of enacting this resolution, except as otherwise expressly stated herein, nor does the Yakama Nation waive, alter, or otherwise diminish any rights, privileges, remedies or services guaranteed by the Treaty of 1855.

DONE AND DATED on this 6th day of August, 2002, by the Yakama Tribal Council by a vote of 10 for, 0 against, and 0 abstentions.

ATTEST:



Robert Wahpat, Chairman
Yakama Tribal Council



Orrin Miller, Sr., Sergeant-At-Arms
Yakama Tribal Council

Yakama Nation Franchise Ordinance

ORDINANCE ESTABLISHING MINIMUM REQUIREMENTS, PROCEDURES, AND APPLICATION INFORMATION FOR FRANCHISE AGREEMENTS BETWEEN PUBLIC UTILITIES OPERATING ON THE RESERVATION AND THE YAKAMA NATION

PREAMBLE

The Yakama Nation, comprised of fourteen confederated tribes and bands, is a sovereign nation pursuant to the Treaty of June 9, 1855 (12 Stat. 951), entered into with the United States of America.

The Yakama Tribal Council is the governing body of the Confederated Tribes & Bands of the Yakama Nation, as delegated by the authority of the Yakama Nation General Council, pursuant to Resolution T-38-56.

The Tribal Council finds that, by virtue of providing Utility Service to the residents of the Reservation and by obtaining easements to place facilities within such Reservation, Utilities have entered into consensual relationships with the Yakama Nation and its members.

Utilities operating on the Reservation have placed Utility facilities on lands owned or controlled by the Yakama Nation without authorization or for which authorization has expired and the Tribal Council finds that it is in the public interest to require Utilities operating on the Reservation to obtain permission for such facilities by entering into agreements with the Yakama Nation.

As a sovereign nation, the Yakama Nation retains the authority to regulate the activities of entities that have entered into consensual relationships with the Yakama Nation and to regulate activities that threaten the political or economic interests of the Yakama Nation. The Tribal Council further finds that the health, safety, and welfare of the residents of the Reservation require that the Yakama Nation regulate and control the activities of Utilities operating on the Reservation.

Section 1: Policy

It is the policy of the Yakama Nation to require any Utility providing Utility Service to the Yakama Nation or residents of the Reservation to comply with the terms of this ordinance by entering into a Franchise Agreement with the Yakama Nation.

Section 2: Definitions

As used in this Ordinance, the following terms shall have the following meanings:

2.1 “Applicant” means any Utility that applies for a Franchise pursuant to the terms of this Ordinance.

2.2 “Franchise” means a contractual agreement between the Yakama Nation and a Utility required to be entered into by this Ordinance setting forth the terms and conditions under which such Utility may provide Utility Service to the residents of the Reservation.

2.3 “Grantee” means any Utility that has entered into a valid Franchise with the Yakama Nation.

2.4 “Gross Operating Revenue” means Grantee's gross revenues from the sale and of Utility Service to customers on the Reservation after deducting therefrom (i) any business taxes on the sale or distribution of electricity on the Reservation paid to the United States, to the Yakama Nation, to the State of Washington, or to any municipality thereof, (ii) any revenue from sales at wholesale by one Utility to another when the Utility purchasing the service is not the ultimate customer, and (iii) any revenue from joint pole use.

2.5 “Reservation”, for the limited purposes of this Ordinance, means all lands within the external boundaries of the Reservation created by the Treaty.

2.6 “Temporary Franchise” means a Franchise of limited duration issued pursuant to Section 4.4 of this Ordinance.

2.7 “Treaty” means the agreement between the United States and the Confederated Bands and Tribes of the Yakama Nation, both acting in their sovereign capacities, dated June 9, 1855 (12 Stat. 951).

2.8 “Tribal Council” means the tribal council elected by the General Council of the Yakama Nation.

2.9 “Utility” means any entity providing electric, natural gas, telecommunications, or cable television service to customers located within the external boundaries of the Reservation.

2.10 “Utility Service” is used in its broadest and most inclusive sense and includes equipment and facilities.

2.11 “Yakama Lands”, for the limited purposes of this Ordinance, means all of the lands located within the external boundaries of the Reservation over which the Yakama Nation has a claim of jurisdiction.

2.12 “Yakama Nation” means the Confederated Tribes and Bands of the Yakama Nation, a federally recognized Indian tribe.

Section 3: Franchise Agreement Required

It shall be unlawful for any Utility to provide Utility Service to any person within the external boundaries of the Reservation without a valid Franchise obtained pursuant to the provisions of this Ordinance and any subsequent amendments. This requirement applies to all Utilities serving customers on the Reservation, notwithstanding that such Utility's facilities may be placed on poles or other facilities owned by another Utility. The failure to enter into a valid

Franchise shall subject a Utility to the penalty provisions of this Ordinance set forth in Section 6 of this Ordinance.

Section 4: Procedure for Obtaining Franchise

4.1 Filing of Application. Any Utility desiring to enter into a Franchise with the Yakama Nation must submit an application to the Yakama Nation, which shall be considered pursuant to the procedures set forth in this section. An application may be filed at any time.

4.2 Contents of Application. At a minimum, any application must contain the following:

4.2.1 The legal name and business structure of the Applicant;

4.2.2 A demonstration of the Applicant's technical, legal, and financial ability to provide Utility Service to the residents of the Reservation, including but not limited to audited financial statements for the previous three fiscal years;

4.2.3 If, at the time the Application is filed the Applicant is providing Utility Service to the residents of the Reservation:

4.2.3.1 A detailed description, including maps, one-line diagrams and physical descriptions and location of all facilities used by the Applicant to provide Utility Service to its customers on the Reservation;

4.2.3.2 A detailed statement of the Applicant's gross revenue from its operations on the Reservation; and

4.2.3.3 Other information requested by the Tribal Council.

4.2.4 A description of the Utility Service to be provided, including the proposed rate(s) for such service;

4.2.5 A statement that the Applicant is fully licensed, bonded, and authorized to provide Utility Service in the State of Washington;

4.2.6 A demonstration that the proposal is consistent with all tribal, federal, and any applicable state rules and regulations; and

4.2.7 Other information reasonably requested by the Tribal Council.

4.3 Consideration of Applications. The Tribal Council will consider each Application that is found to comply with the terms of this Ordinance. In evaluating an Application, the Tribal Council will consider:

4.3.1 The Applicant's past service record, including billing practices and response to customer complaints, on the Reservation and in other communities;

4.3.2 The nature of the proposed Utility Service;

- 4.3.3 The proposed rates for Utility Service;
- 4.3.4 The proposed area of service; and
- 4.3.5 Whether the Application serves the interest of the residents of the Reservation.

4.4 Temporary Franchise. Any Applicant that is serving customers on the Reservation at the time its Application is filed may request the Tribal Council to grant such Utility a Temporary Franchise. The Tribal Council may grant an Applicant a Temporary Franchise if it determines that doing so will serve the public interest. Any Temporary Franchise shall last no longer than one hundred twenty (120) days and may not be extended or renewed without Tribal Council Resolution. Any Utility operating under a Temporary Franchise shall remit franchise fees set forth in Section 5 of this Ordinance within thirty (30) days issuance of such Temporary Franchise and every thirty (30) days thereafter.

4.5 Granting of Application. If the Tribal Council determines that the granting of an Application serves the public interest, it may grant a Franchise to such Applicant, subject to the terms and conditions as agreed upon by the Applicant and the Tribal Council.

4.6 Denial of Application. If the Tribal Council determines that the granting of an Application does not serve the public interest, it may refuse to grant a Franchise to such Applicant. Any action to contest such decision shall be pursuant to the terms of the Yakama Nation Tribal Administrative Code, T-020-01.

Section 5: Franchise Fee

5.1 Any Utility that is providing Utility Service to the residents of the Reservation as of the effective date of this Ordinance shall be liable for a franchise fee equal to three percent (3%) of such Utility's Gross Operating Revenue.

5.2 Such franchise fee shall begin accruing as of the effective date of this Ordinance.

5.3 Such franchise fee shall be owed by such Utility to the Yakama Nation notwithstanding that such Utility may not have entered into a Franchise with the Yakama Nation as of the effective date of this Ordinance.

Section 6: Penalty for Operating Without Franchise

Any Utility that is providing Utility Service to the residents of the Reservation within sixty (60) days following the effective date of this Ordinance and has neither obtained a Temporary Franchise pursuant to Section 4.4 of this Ordinance nor entered into a valid Franchise with the Yakama Nation shall be required to pay the Yakama Nation the franchise fee set forth in Section 5 of this Ordinance as well as one thousand dollars (\$1,000.00) for each day that such Utility is operating on the Reservation without a Franchise. The Tribal Council also reserves the right to prohibit all Utilities not in compliance with this Ordinance from serving customers on the Reservation.

Section 7: Removal of Facilities on Expiration of Franchise

7.1 Within one (1) year after the expiration of its Franchise or, in the event that no Franchise is obtained, within one (1) year from the date of this Ordinance, a Utility shall remove all property and materials (including poles, posts, towers, wires, conduits, mains, pipes, rails, tracks, ties, railways, pole lines, telegraph, telephone or electric distribution lines, or structures or equipment of any kind) placed in, on, upon, over, under or beneath any public right of way, or any portion of the Yakama Lands, unless further time is granted by the Yakama Nation.

7.2 If all property and materials referred to in subsection 7.1 of this section are not removed within the time specified in such section, all and every part thereof shall be forfeited and escheat to the Yakama Nation.

7.3 The Yakama Nation may notify the owner of the property and materials referred to in subsection 7.2 of this section that it waives forfeiture and escheat and may thereafter compel removal of such property and materials from the public right of way, or any portion of the Yakama Lands, and restoration of the public right of way and any affected portion of the Yakama Lands and may maintain suit in Tribal Court to require such removal and restoration or the payment of the cost thereof by the Utility owning such property.

Section 8: Enforcement and Review

Any proceeding to construe, adjudicate, or enforce any provision of this Ordinance shall be brought under the Yakama Nation Tribal Administrative Code, T-020-01. The Yakama Nation in no other way waives its sovereign immunity from suit.

Section 9: Effective Date

This ordinance shall take effect thirty (30) days after its enactment by the Yakama Nation Tribal Council.

Passed by the Tribal Council this 6th day of August, 2002.