

ACT 147

S.B. NO. 770

A Bill for an Act Relating to the Grant of a Franchise for the Island of Molokai to Molokai Electric Company, Limited.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. A franchise for the island of Molokai, State of Hawaii, is hereby granted to Molokai Electric Company, Limited, to read in its entirety as follows:

“FRANCHISE

Section 1. Definitions. The following words, wherever they are used or appear in this franchise, shall be construed to mean and be held to have the force and effect as follows:

“Corporation” shall mean, include, and represent Molokai Electric Company, Limited, and its successors and assigns as a body corporate under that or any other name as the company and its successors and assigns may adopt hereafter.

“Public utilities commission” shall mean and include any officer, board, or commission authorized or empowered to regulate public utilities under chapter 269, Hawaii Revised Statutes, or any amendments thereto.

Section 2. Franchise. The corporation is granted the right, authority, and privilege to manufacture, sell, furnish, and supply electric light, electric current, or electric power on the island of Molokai, State of Hawaii, for lighting the streets, roads, public and private buildings and property, or for motive power, or for any other purpose that it may deem advisable, and from time to time for the purposes stated in this section to construct, maintain, and operate suitable poles, lines, wires, cables, lamps, lamp posts, conductors, conduits, and any other appliances and appurtenances as from time to time may be necessary or convenient for the transmission, distribution, or supply of electricity to consumers thereof, under, along, upon, and over public rights-of-way, including but not limited to the streets, sidewalks, roads, squares, bridges, alleys, and lanes on that island, and to connect those wires, lines, and conductors with any manufactory, private or public buildings,

lamps, lamp posts, or other structure or object and the place or source of supply; provided that the proposed installation meets standards prescribed by the public utilities commission governing the installation.

Section 3. Rules. The council of the county of Maui and the director of health with respect to the county of Kalawao is authorized to make and from time to time to change, amend, or add to reasonable rules regulating, within the island of Molokai, the placing of poles and wires, the insulation of wires and apparatus carrying electric current, the excavation of conduits, and the maintenance in good repair of all poles, wires, and apparatus, and generally concerning the manufacture and supply of electricity that may be necessary or proper for the public safety and welfare. If at any time the corporation, after reasonable notice given to it in writing, shall fail to observe or execute the rules as provided for relative to the placing of poles and wires, the insulation of wires and apparatus carrying electric current, and the repair of all poles and appliances, the council of the county of Maui and the director of health with respect to the county of Kalawao, after giving the corporation reasonable notice thereof in writing of its intention so to do, may proceed to enforce rules regulating the placing of poles and wires, the insulation of wires and apparatus carrying electric current, the excavation of conduits, and the maintenance in good repair of all poles, wires, and apparatus and to make whatever repairs as may be necessary to enforce the rules; and the actual cost thereof may be recovered from the corporation by the county of Maui or the county of Kalawao, as the case may be.

Section 4. Poles not to interfere with streets. All poles, lines, wires, cables, lamps, lamp posts, conductors, conduits, and other apparatus constructed, maintained, or operated under, along, upon, or over the streets, sidewalks, roads, squares, bridges, alleys, and lanes on the island shall be so constructed, maintained, and operated by the corporation as not to interfere unnecessarily with the use of the streets, sidewalks, roads, squares, bridges, alleys, and lanes by the public.

Section 5. Plant subject to inspection. The entire plant, corporation, books, and accounts of the corporation shall be subject at all times to the inspection of the public utilities commission and the treasurer of the county of Maui and the director of health.

Section 6. Meters and rates. The corporation shall have the right to maintain, operate, and use electric meters or other means of measuring electric light, power, or current supply from time to time and to locate the same at whatever places may be necessary for determining the current supplied or to be supplied by the corporation. The corporation shall have the right to charge, receive, and collect from all consumers of electricity those reasonable rates as from time to time may be fixed and determined by the public utilities commission.

Section 7. Extensions of lines and charges for making connections. The public utilities commission may order the corporation to make extensions of its service lines whenever it appears that the extension is a public necessity and that the total plant of the corporation, including the extension or extensions, can earn a reasonable profit on the cost and maintenance of the extension or extensions.

Section 8. Charges for making connections. The corporation shall have the right, subject to the approval of the public utilities commission, to charge consumers or applicants for the use of electricity and for the cost and expense of making connections between the nearest line of supply and the premises where the

electricity is to be used. The cost and expense shall include price of all wires, poles, insulators, and other materials and labor necessary to be used in making the connections. The reasonableness of the charges, upon the application of any party in the interest, shall be subject to the approval of the public utilities commission.

Section 9. Rights to acquire property, limits to. The corporation shall have the right to acquire, hold, or take over, either by purchase or lease, property, both real or personal or mixed, as may be necessary or incidental to the proper conduct of its business; provided the corporation shall not have the power or right to acquire the franchise or property of any other public utility company, except with the approval of the public utilities commission.

Section 10. Power to borrow money and bonds. Whenever from time to time it shall be deemed expedient in the furtherance of the objects of the corporation, the corporation shall have the power to borrow money and secure the payment thereof, with interest agreed upon, by mortgage of all or any part of its property and this franchise; or if it is deemed advisable, bonds may be issued, secured by deed of trust of property and this franchise together with all future acquired property and franchises, the income and receipts of the property and franchises, as well as the income and receipts of the property from whatever sources derived, in whatever form and under whatever terms as the corporation may consider advisable; provided that nothing contained in this section shall operate to prevent the corporation from obtaining the usual business credits or making promissory notes without security.

Section 11. Franchise not exclusive. Nothing contained in this franchise shall be construed to grant to the corporation an exclusive right to furnish, sell, or supply electric current for light and power.

Section 12. Forfeiture of franchise. If the corporation, its representatives, successors, and assigns shall fail or refuse to do, perform, or comply with any of the provisions of this franchise or the laws of the State and continue to refuse, fail to perform, or comply therewith after reasonable notice given by the public utilities commission to comply therewith, the public utilities commission, with the consent of the governor and of the attorney general, may cause proceedings to be instituted before any appropriate tribunal to have the franchise forfeited and declared void.

Section 13. Rules to enforce rates. The corporation shall have the right to discontinue or cut off the supply of electricity to any consumer who refuses to pay the amount due for electricity supplied by the corporation within a reasonable time as the corporation may fix by general rules for the payment of amounts due, and the discontinuance of service or supply of electricity shall not be a bar to or prejudice the rights of the corporation in any remedy or remedies now or that may be authorized by law for the recovery and collection of the amount due.

Section 14. Eminent domain. The corporation shall continue to have the power of eminent domain pursuant to chapter 101, Hawaii Revised Statutes, or any amendments thereto and may continue to exercise the power; provided that prior to the exercise of the power:

- (1) The corporation submits to the public utilities commission its intention to exercise the power, with a description of the property to be condemned; and
- (2) The public utilities commission finds that the proposed condemnation is in the public interest, that the proposed condemnation is necessary, and that the corporation will use the property for its operations as a public utility.

Section 15. Annual statement, payment to government. Within one month after the expiration of each calendar year, the corporation shall file with the treasurer of the county of Maui a detailed statement, showing all of its receipts and expenditures during the preceding calendar year, and, at that time, shall pay to the treasurer of the county of Maui, for and on behalf of the county, two and one-half per cent of the gross receipts of the corporation from all electric current or power furnished to consumers on the island of Molokai during the preceding year; and all its books, papers, records, and accounts shall be open to inspection at all reasonable times by the treasurer of the county and the treasurer's respective agents appointed for that purpose. The payment by the corporation to the treasurer of the county of Maui under this section shall be in lieu of any other payment that the corporation may be required to pay to the treasurer of the county of Maui based on gross receipts of the corporation from electric current or power furnished to consumers on the island of Molokai under any other franchise held by the corporation.

Section 16. Regulation. The corporation shall have all the powers and be subject to all of the liabilities provided by law for corporations and shall be subject in all respects to all laws relating to public utilities and all laws as may be applicable from time to time to electric light and power companies or the persons or corporations operating them; provided that from every ruling, decision, and order, an appeal shall lie as provided by law.

Section 17. Amendment and repeal of franchise. This franchise may be amended or repealed at any time by the legislature of the State of Hawaii."

SECTION 2. The franchise previously granted to the corporation shall be superseded and replaced in its entirety by this Act, upon this Act's effective date.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 7, 1989.)