

CITY OF OWASSO, OKLAHOMA
ORDINANCE NO. 1043

AN ORDINANCE GRANTING TO PUBLIC SERVICE COMPANY OF OKLAHOMA, AN OKLAHOMA CORPORATION, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE FRANCHISE FOR TWENTY-FIVE (25) YEARS TO USE THE STREETS, ALLEYS, AVENUES, WAYS, AND OTHER PUBLIC PLACES AND GROUNDS IN THE CITY OF OWASSO, TULSA COUNTY AND IN THE CITY OF OWASSO, ROGERS COUNTY OKLAHOMA, FOR BUILDING, EQUIPPING, MAINTAINING, EXTENDING, OWNING, AND OPERATING A SYSTEM FOR THE MANUFACTURE, TRANSMISSION, DISTRIBUTION, SALE, AND CONTROL OF ELECTRICITY AND COMMUNICATION CIRCUITS FOR ITSELF AND OTHERS IN AND TO THE CITY AND THE PUBLIC GENERALLY; PROVIDING FOR ASSIGNMENT; GRANTING RIGHT TO OPERATE BUSINESS WITH REASONABLE RULES; WHEREBY PUBLIC SERVICE COMPANY OF OKLAHOMA AGREES TO MAINTAIN ELECTRIC SERVICE PURSUANT TO OKLAHOMA CORPORATION COMMISSION REGULATION AND AGREES TO INDEMNIFY THE CITY IN CERTAIN SITUATIONS; WHEREBY PUBLIC SERVICE COMPANY OF OKLAHOMA IS GIVEN A CONTINUING RIGHT TO OPERATE WITHIN THE CITY'S LIMITS AND IS AUTHORIZED TO ALLOW THOSE PROPERLY PERMITTED TO ATTACH FACILITIES TO ITS POLES; WHEREBY PUBLIC SERVICE COMPANY OF OKLAHOMA AGREES TO CHARGE LEGAL RATES FOR SUCH SERVICE; IF POSSIBLE TO SELL AND DELIVER TO THE CITY ALL ELECTRICITY AND SERVICES REQUESTED BY IT; PROVIDING FOR PAYMENT TO THE CITY BY PUBLIC SERVICE COMPANY OF OKLAHOMA OF A MONTHLY FEE ON GROSS RECEIPTS FROM DELIVERY AND, IF APPLICABLE, THE SALE OF ELECTRICITY; CALLING FOR AN ELECTION AND PROVIDING FOR ACCEPTANCE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OWASSO, OKLAHOMA:

SECTION 1. That there is hereby granted by the City of Owasso, a municipal corporation of the State of Oklahoma, located in Tulsa and Rogers County (hereinafter referred to as "Grantor"), unto Public Service Company of Oklahoma, an Oklahoma corporation, its successors and assigns, (hereinafter referred to as "Grantee"), the right, power, and authority to use the streets, alleys, avenues, ways, and other public places and grounds of Grantor as now constituted and as it may be hereafter extended or created, for the purpose of building, equipping, maintaining, extending, owning, and operating any plants, systems, and appurtenant facilities for the manufacture, transmission, distribution, sale, and control of electricity for lighting, heating, and power purposes, as well as for such other purposes as electric energy may be put, in and to said Grantor and to the public generally, and to transmit electric energy and communicate and distribute information (audio, video and data) for itself or others over distribution and transmission lines throughout the City to the ultimate customer and to connections and systems in other localities, with poles, wires, conduits, substations, meters, appliances, and apparatus necessary and convenient for such plant and system upon, across, over, and under each and any of said streets, alleys, avenues, ways, and other public places and grounds.

SECTION 2. All rights and privileges granted by this Ordinance shall extend and be in force between Grantor and Grantee for a term of twenty-five (25) years from and after the acceptance of this Ordinance, as hereinafter provided.

SECTION 3. All provisions of this Ordinance which are obligatory upon or which inure to the benefit of the Grantee shall also be obligatory upon and shall inure to the benefit of its successors and assigns, and the word "Grantee", as used in this Ordinance, shall include and be taken to mean not only Public Service Company of Oklahoma, but also its successors and assigns for which assignment consent is hereby given whether the assignment is for the whole or only a partial assignment. Subject to the provisions of this subsection Grantee may assign all or a portion of its rights and/or obligations under the provisions of this Ordinance and franchise.

SECTION 4. Grantee shall have the right to make and enforce reasonable rules and regulations for the sale, delivery, control, and metering of its electric energy and the conduct of its business, and may reserve in such rules and regulations the right to disconnect service to customers where Grantee's meters, wires, switches, appliances, or apparatus are found to have been tampered with, or who have failed to pay for electricity or services, and to enter upon the premises of its customers at all reasonable times, or at any hour if for the sole purpose of restoring service, for the purpose of inspecting, repairing, or reading meters or for removing wires, meters, switches, and appliances and perform other activities necessary to provide and maintain electric service. Provided that such rules and regulations shall not be in conflict with law or the rules and regulations from time to time made by the Corporation Commission of the State of Oklahoma or by other regularly constituted regulatory authority having jurisdiction over Grantee.

Grantor hereby grants to Grantee permission to cut, trim, treat and dispose of trees and other vegetation upon and overhanging the streets, alleys, avenues, ways, sidewalks, and other public places of the City in the vicinity of Grantee's electric facilities where such trees and other vegetation, in Grantee's reasonable opinion, constitute a hazard to Grantee's personnel or facilities, or the provision of continuous electric service.

SECTION 5. Grantee covenants and agrees in consideration hereof that it will maintain electric distribution service in and to Grantor, unless excused by statute, under the rules and orders imposed upon it by the Corporation Commission of the State of Oklahoma or by other regularly constituted regulatory authority having jurisdiction over Grantee. But in accepting this franchise and contract, Grantee does not guarantee continuous service at all times and shall be relieved temporarily from its obligation to furnish such services continuously in case of any disability caused by act of God or by the elements, or terrorism, or strikes, or lock-outs, or by any temporary breakdown or failure of machinery, transmission, or distribution lines, appliances or apparatus, or by other causes beyond the reasonable control of Grantee; provided Grantee agrees in such cases to exercise due diligence in the repair of such machinery, transmission, or distribution lines, appliances and apparatus, and to resume operation of same without unnecessary delay.

Grantee covenants and agrees that it will indemnify and hold the City of Owasso free and clear of any claims for damages or otherwise to the extent caused by the negligence of Grantee in the construction or operation carried on hereunder. But it is

understood and agreed that in the event of claims being presented or prosecuted against said City the Grantee shall have the right to defend against the same and to settle and discharge same in such manner as it may see fit. To this end the Grantor agrees to notify Grantee of such claims and to furnish to it such information and assistance, as may be necessary, in the defense thereof.

SECTION 6. In performing the terms and provisions of this Ordinance, franchise, and contract, Grantee is hereby given the continuing right, privilege, and option to manufacture electric energy within the corporate limits of Grantor, and to transmit electric energy over transmission lines from other plants and to distribute same from some central location at proper voltage; together with the right to transmit electric energy from and through said City to other localities for itself or others. Grantee is hereby authorized to allow others, having a permitted right granted by Grantor, or as may otherwise be authorized or required by applicable law, to attach telecommunications and cable facilities to its poles and structures on such conditions as it deems just and reasonable and in compliance with applicable law.

SECTION 7. During the life of this franchise and for and in consideration of the acceptance hereof by Grantee, it is agreed that Grantee owned utilities requiring relocation in streets, alleys, avenues, ways, and other public places and grounds of Grantor as now constituted and as it may be hereafter extended or created, for the purpose of Grantor's capital improvements projects, shall commence within ninety (90) calendar days of final approval of utility relocation plans by both Grantor & Grantee, provided that Grantee is able to obtain any and all permits, approvals, clearances or applications involving the relocation deemed necessary by any agencies or governmental bodies, including without limiting the generality of the foregoing, all permits and approvals required by the Oklahoma Corporation Commission (OCC) and the Southwest Power Pool (SPP) for clearance to interrupt service on affected electric lines. Grantor shall provide all reasonable assistance requested by Grantee to secure such permits, approvals, clearances and applications. Notwithstanding anything to the contrary contained in this Section 7, Grantee shall have no obligation to proceed with any work until all permits, approvals, clearances and applications are obtained, and if such permits, approvals, clearances and applications cannot reasonably be obtained, or are subsequently withdrawn, the Grantee shall be under no obligation to perform (or continue) the relocation.

SECTION 8. During the life of this franchise and for and in consideration of the acceptance hereof by Grantee, it is agreed that Grantee may charge and collect from Grantor and its inhabitants a rate or rates, for its and/or the service of others which shall at all times be compensatory and reasonable, and if regulated, subject to such rules and orders as are in effect or that hereafter may be lawfully made by the Corporation Commission of the State of Oklahoma, or by other regularly constituted regulatory authority having jurisdiction over Grantee.

SECTION 9. During the life of this franchise, Grantee will, if possible and permitted under applicable law, sell to Grantor all electric energy requested by it for municipal purposes, including, but not limited to, water and wastewater treatment, water and storm water pumping, and the lighting of its streets.

SECTION 10. From and after the approval and acceptance of this Ordinance, Grantee shall pay, and, in consideration of the granting of this franchise, agrees to pay to Grantor, as a franchise fee, and as compensation for the rights and privileges enjoyed hereunder, a sum equal to two percent (2%) of its gross receipts from the delivery and, if applicable, the sale of electrical energy within the City, payable monthly with each such payment to be made not later than the first business day of the second month following the month in which such receipts were received for the billing cycle for that month. For example, payment for April receipts, for a subject year covering a billing cycle from March 29th through April 27th would be paid not later than June 1st. Said fee shall be in lieu of all concessions, excise, franchise, licenses, occupation, privilege, and permit fees, or taxes, except assessments for special improvements and ad valorem taxes.

Grantor shall notify Grantee in writing of newly annexed and de-annexed areas. The notice shall include the ordinance number authorizing the action, an appropriate map identifying the areas and documentation of the notice to the State of Oklahoma regarding the annexation or de-annexation. Grantee shall have no responsibility for commencing franchise payments hereunder to Grantor in newly annexed areas until it shall have received Grantor's notification. Upon Grantor's notification and starting the ninety-first (91st) day after receipt of such notice, Grantee will commence payments to Grantor for the gross receipts from delivery and, if applicable, the sale of electrical energy in each newly annexed area, and will make any appropriate adjustments in payments reflecting overpayments made in any prior month resulting from the inclusion of gross receipts from delivery and, if applicable, the sale of electrical energy in de-annexed areas. Payments for receipts in newly annexed areas and adjustments for overpayments in de-annexed areas shall be made back to the effective date of the ordinance authorizing the action.

Grantor agrees that the percentage paid to Grantor by Grantee, including any revision thereof, shall in no event exceed the percentage rate used to calculate any fee or tax paid to Grantor by any other person or entity if such fee or tax is based in any way on the amount of revenues from delivery or sale of electrical energy or both by such other person or entity to ultimate customers within the City.

SECTION 11. This Ordinance shall be in full force and effect from and after its acceptance as hereinafter provided, upon its passage and approval by a vote of the qualified electors residing within the City, who shall vote thereon at a special election called under or pursuant to the provisions hereof; and if this Ordinance fails to be so approved at said election, it shall be wholly void and of no effect. The Mayor of the City is hereby authorized and instructed to call by a duly authorized resolution such election in the manner and form provided by the laws of the State of Oklahoma for the calling of special elections, giving such resolution, notice and ballot title therefore as provided by law, for the purpose of submission to the qualified electors residing within the City the proposition of approval or refusal of this Ordinance, and the non-exclusive franchise contract hereby granted; and the proper officers of the City are hereby directed to do all things that may be necessary for the holding of the election and for the submission of said question, and shall, in all things, comply with the election laws of the State of Oklahoma.

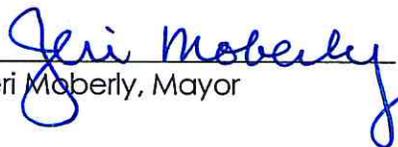
It is understood and agreed that in the event said franchise is approved at such election, the Grantee shall within thirty (30) days after the result of such election is declared, as provided by law, file with the Clerk of the City an acceptance in writing duly executed according to law, accepting this Ordinance and franchise.

SECTION 12. Upon the filing by Grantee of the acceptance of this Ordinance as hereinabove provided, all rights, privileges, and obligations of any other ordinances and franchises, or portions thereof, under which Grantee may now be exercising its privileges to use the streets, alleys, avenues, ways, and other public places and grounds within the incorporated limits of Grantor, and all other ordinances and parts of ordinances in conflict herewith, shall be and thereafter remain cancelled, annulled, and repealed.

SECTION 13. If any provision or clause of this Ordinance is held invalid for any reason, such invalidity shall not affect other provisions or clauses of this Ordinance which can be given effect without the invalid provision or clause, and to this end the provisions and clauses of this Ordinance are declared to be severable.

SECTION 14. Whereas an immediate necessity exists in order that the inhabitants of Grantor may be provided an adequate supply of electricity for heating, lighting, and power purposes and for the purpose of providing light, heat, and power for the streets, alleys, public grounds, parks, and other public places and institutions of Grantor, and for the preservation of public health, peace, and safety, an emergency is hereby declared to exist by reason whereof this Ordinance shall be in full force and effect from and after its passage and approval at the special election, its publication and Grantee's filing of its acceptance thereof.

Approved, this 16th day of December 2014.



Jeri Moberly, Mayor

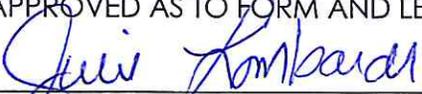
(SEAL)

ATTEST:



Sherry Bishop, City Clerk

APPROVED AS TO FORM AND LEGALITY:



Julie Lombardi, City Attorney