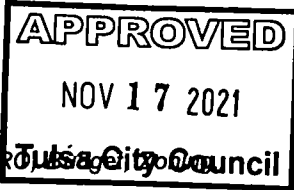


24695

Ordinance

Version 3.2 released on 8/3/21

Use for all Ordinances including: Trust Indentures, etc.



24695



CITY COUNCIL USE ONLY

Date Received:

Committee Date: 10-20-21

1st Agenda Date: 10-20-21

Tracking #:

Committee: PW

Hearing Date:

2nd Agenda Date: 11-3-21

CITY CLERK USE ONLY

☐ Scanned

Date:

12.01.2021

☐ Posted

Item #:

2110.02181

All department items requiring Council approval must be submitted through the Mayor's Office.

Primary Details

Dept. Tracking No.	Board Approval	Other Board Name	City Council Approval <input checked="" type="radio"/> Yes <input type="radio"/> No
Department Mayors Office	Contact Name Jack Blair	Email jblair@cityoftulsa.org	Phone 918-576-5199
Subject (Description) Public Service Company of Oklahoma (PSO) Electric Utility Franchise		Ordinance Type Creating a Franchise	
Section	Township	Range	Lot
Block	Address		BA / CT Number
Amending Ord. No. 18968	TRO Title No. 15 e.g. 43	TRO Subtitle 4 e.g. G	Property/Non-Property
Council District	Zoning No.	PUD No.	Planning District

Budget

Funding Source(s)

TOTAL:

Enter the funding source(s) using the appropriate Munis funding format: Org (Allocation Code)-Object-Amount (1001211-531401-\$10.00) or Project String-Amount (144104.AbstTitle5413102.6001-4043122-541102-\$30,000.01)

Approvals

Department:

Legal:

Board:

Mayor:

Other:

[Signature] H. SWINEY

[Signature]

Date:

Date:

Date:

Date:

Date:

9/28/21

9.29.21

OCT 06 2021

Policy Statement**Background Information**

This is a 15-year renewal of PSO's electric utility franchise. The ordinance establishes standards for PSO's use and repair of public rights-of-way and establishes a basis for compensation for the use of public property to distribute electric power to PSO customers. The City Charter requires voter approval, and PSO will be required to file an official acceptance of the franchise within 30 days after voter approval.

Provide background information on the requested action.

Summation of the Requested Action

Request Mayor and City Council Approval

Summarize the pertinent details of the requested action.

Emergency Clause?

☒ Yes

☐ No

Reason for Emergency Clause

An immediate necessity exists for the uninterrupted provision of electricity for heating, lighting, cooling and power purposes; for the purpose of providing light, heat, cooling and power for the streets, alleys, public grounds, parks and other public places and institutions of the City; and for the preservation of the public health, peace and safety.

Explain why you are requesting that the City Council approve this action with an emergency clause.

Processing Information for City Clerk's Office**Post Execution Processing**

- ☐ Mail vendor copy (addtl signature copies attached)
- ☐ Must be filed with other governmental entity
- ☐ Addtl governmental entity approval(s) required

Additional Routing and Processing Details

(Published in the *Tulsa World*,

November 24, 2021)

ORDINANCE NO. 24695

AN ORDINANCE ADOPTING A NEW CHAPTER 4, ENTITLED "PUBLIC SERVICE COMPANY FRANCHISE" WITHIN TITLE 15, TULSA REVISED ORDINANCES (TRO), "FRANCHISES AND GRANTS"; SETTING FORTH DEFINITIONS; GRANTING TO PUBLIC SERVICE COMPANY OF OKLAHOMA (PSO) A FRANCHISE, TO USE THE PUBLIC WAYS OF THE CITY OF TULSA FOR THE PURPOSE OF SUPPLYING ELECTRICITY TO THE PUBLIC; SETTING A TERM OF YEARS FOR THE FRANCHISE; PROVIDING FOR THE ASSIGNMENT, SALE OR LEASE OF THE RIGHTS AND OBLIGATIONS HEREIN; ESTABLISHING CONDITIONS OF ENFORCEABILITY, STANDARDS OF SERVICE AND INDEMNIFICATION; SETTING FORTH RESPONSIBILITIES AS TO LOCATION AND RELOCATION OF LINES, PLANTS AND SYSTEMS; STATING CONDITIONS FOR THE USE AND REPAIR OF PUBLIC WAYS; ALLOWING PSO TO CHARGE CONSUMERS REASONABLE RATES OF COMPENSATION; OBLIGATING PSO TO PROVIDE ELECTRIC POWER TO THE CITY OF TULSA FOR MUNICIPAL PURPOSES; ESTABLISHING FEES TO BE PAID FOR THE GRANT OF THIS FRANCHISE; REQUIRING PSO TO MAINTAIN RECORDS, AND ALLOW CITY TO INSPECT AND AUDIT SAME; ALLOWING CITY AT ITS OPTION TO PURCHASE PSO'S PLANTS AND SYSTEMS AFTER FIFTEEN (15) YEARS, AND SETTING TERMS AND CONDITIONS OF SAID PURCHASE; REQUIRING VOTER APPROVAL OF THIS FRANCHISE AT A SPECIAL ELECTION ON FEBRUARY 8, 2022; REPEALING THE PREVIOUS FRANCHISE AGREEMENT; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY OF TULSA:

Section 1. That Title 15, Chapter 14, be and the same is hereby amended to read as follows:

"CHAPTER 4. - PUBLIC SERVICE COMPANY FRANCHISE

Section 400. - Definitions.

As used in this ordinance and franchise, the following words and phrases shall have the meanings ascribed below:

- A. **Cable service** shall mean the one-way transmission to subscribers of video and audio programming or other programming services and subscriber interaction, if any, which is required for the selection or use of video and audio programming or other programming services provided through electric or electronic signals, or which utilizes a cable system, an open video system or any other Facility designed to provide video and audio programming services to subscribers, but excluding IP video service. By the exclusion of IP video service from this definition of Cable Service, the City shall not be deemed to have waived any of its rights to assert that any ROW occupant providing IP video service is providing Cable Service.
- B. **Consumer** shall mean any individual person, corporation, company, partnership, firm, unincorporated association, trust, municipality or public corporation served by the Grantee through any use of the Public Ways.
- C. **Control of electricity** shall mean regulation of the current and/or voltage or use of such electricity.
- D. **Facility** or **facilities** shall mean all or any part of a collective system of tangible things, including but not limited to pipelines, conduits, copper or fiber optic cabling, pedestals, guy wires, anchors, vaults, junction boxes, utility poles and electrical wiring, that is partly or entirely located in the Public Ways and is used for the transmission of goods or services, including but not limited to natural gas, steam, chilled or potable water, electricity, video service or Telecommunications service, regardless of whether the services are provided for a fee, or provided to the general public, to a limited group of private users, or solely for the benefit of the owner of the system.
- E. **Franchise** shall mean the rights, privileges and duties granted by Grantor to Grantee under this ordinance and franchise agreement.
- F. **Grantee** shall mean Public Service Company of Oklahoma, an Oklahoma corporation, its successors and assigns.
- G. **Grantor** shall mean the City of Tulsa, a municipal corporation of the state of Oklahoma.
- H. **Gross receipts** shall mean any and all compensation derived and received by Grantee from the sale, distribution and/or transportation of electricity within the corporate limits of the City of Tulsa. Gross Receipts shall include but not be limited to the franchise fee reimbursement and the following specific miscellaneous fees or charges received by the Grantee: trip (collection/not home), account research, late payment, duplicate bill, reconnect, customer account history, service initiation, master summary, temporary disconnect, tampering/unauthorized use, insufficient funds, return check, meter test, equipment damage, no access, special meter reading, temporary service, any fees or payments received by Grantee for the lease or use of its Plants and Systems, and any other fees or charges approved by the Oklahoma Corporation Commission.
- I. **Information service** shall mean the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information via Telecommunications.

- J. **Install, operate and maintain** (and other forms of such words) shall mean to acquire, erect, build, construct, install, extend, repair, remove, relocate, replace or otherwise operate and maintain.
- K. **Major project** shall mean any installation, operation or maintenance work, which:
1. Is in or adjacent to an arterial street, and which will require more than ten (10) business days to complete;
 2. Will interfere with or redirect vehicular or pedestrian traffic for more than five (5) business days;
 3. Will require excavation of or into a public street; or
 4. Will require construction of new plants or systems, or relocation of existing plants or systems, in a public sidewalk.
- L. **Plants and systems** shall mean plants, systems, poles, wires, conduits, substations, meters, structures, equipment, Facilities, appliances and apparatus as are reasonably necessary for the control, transmission, distribution and sale in and to Grantor and to the public, generally.
- M. **Public ways** shall mean the public rights-of-way, including streets, alleys, avenues, boulevards, parkways, lanes, thoroughfares and public utility easements within the corporate limits of the City of Tulsa as now constituted or as may be added to hereafter.
- N. **Telecommunications** shall mean the transmission between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.
- O. **Ultimate consumer** shall mean a consumer (as defined in this chapter) which receives electric energy other than for resale to another consumer.
- P. **Underground installation** shall mean the installation, operation and maintenance or replacement of any portion of Grantee's Plants and Systems underground or beneath the surface of any Public Way.

Section 401. - Grant of franchise.

Upon approval of this ordinance and acceptance by the Grantee, the Grantor grants to Grantee, its successors and assigns, the right, power and authority to use the Public Ways of Grantor for the purpose of owning, installing, operating and maintaining Plants and Systems for the control, transmission, distribution and sale in and to the Grantor and to the public, generally, of electricity for lighting, heating, cooling and power purposes as well as for such other purposes as electric energy may be put, and to transmit and provide electric energy and related services, over distribution and transmission lines throughout the City and to connections and systems in other localities, with Plants and Systems upon, across, over and under each and any of Grantor's Public Ways. The rights and privileges granted by this ordinance shall include the right, power and authority for Grantee to Install, Operate and Maintain the Plants and Systems described in this chapter for the purpose of providing Telecommunications, Telecommunications services, Cable Services and Information Services to the extent that such are related to and used solely in connection with Grantee's manufacture, control, transmission, distribution and sale of electric energy and related services, and not for the purpose of selling or providing such

Telecommunications, Telecommunications services, Cable Services and Information Services to the public, generally. Sale or provision of such Telecommunications, Telecommunications services, Cable Services or Information Services to the public, by Grantee or any other entity, shall be considered separate and distinct use and occupancy of the Public Way, subject to the permit, fee, and other requirements of City ordinances governing rights-of-way occupancy management, currently codified by Title 11, Chapter 12 of Tulsa's Revised Ordinances, as may be amended from time-to-time.

Section 402. - Term of franchise.

All rights and privileges granted by this ordinance shall extend and be in force between Grantor and Grantee for a term of fifteen (15) years from and after the date of acceptance of this ordinance, except as otherwise provided in this chapter.

Section 403. - Assignment, sale or lease.

- A. All provisions of this ordinance and franchise 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. Subject to the provisions of this subsection and Subsection 403.B below, Grantee may assign all or a portion of its rights and/or obligations under the provisions of this ordinance and franchise. Any assignment by Grantee shall be in writing, and the assignee shall agree in writing to accept and become responsible for full performance of all conditions, covenants, obligations and liabilities contained in this ordinance and franchise to the extent such are the subject of such assignment. Upon notifying Grantor of any such assignment or proposed assignment, Grantee and/or the assignee shall provide Grantor with such information as is reasonably necessary to enable Grantor to make an informed determination of such assignee's financial status and capabilities. Any such assignment shall be deemed approved by Grantor unless within thirty (30) days of receiving written notice of such assignment Grantor notifies Grantee in writing that it objects to such assignment on the ground that the assignee is not financially able to perform the conditions, covenants, obligations and liabilities in this ordinance and franchise which the assignee will be responsible for as a result of such assignment. Any such objection by Grantor must be based upon reasonable and generally recognized financial standards, and upon the information provided by Grantee and/or the assignee or verified by another generally recognized source of financial information. In the event such an objection is timely made by Grantor, Grantee and the assignee shall have a reasonable opportunity to address and, if necessary, provide appropriate remedies with respect to the grounds for such objection. Any assignments by Grantee of a portion of its rights and/or obligations established in this franchise, shall, unless provided otherwise in such assignment, be effective until the end of the term provided in Section 402, above, notwithstanding the termination of any other rights and obligations under the provisions of this ordinance and franchise prior to the end of such term.
- B. If, by reason of law or otherwise, a person or entity other than Grantee ("Third Party") shall lease or otherwise make use of Grantee's Plants and Systems for the distribution and/or

transmission of electric energy which is to be sold to an Ultimate Consumer within the City of Tulsa, the following requirements shall apply:

1. Prior to permitting such use of Grantee's Plants and Systems, Grantee shall make reasonable efforts to ensure that such Third Party has secured any applicable permits to furnish electric energy to Ultimate Consumers within the City of Tulsa.
2. The parties understand that Grantor may require, as a condition of any such permit, that such Third Party pay applicable permit fees to Grantor. In such cases, if requested by Grantor, Grantee agrees to act as Grantor's agent, at cost, for the collection and remittance of such fees to Grantor.
3. On a monthly basis, Grantee shall report to Grantor estimates of electric energy distributed and/or transmitted by and through Grantee's Plants and Systems for sale to Ultimate Consumers within the City of Tulsa.

This Subsection 403.B shall not apply to any use of Grantee's Plants and Systems for the distribution and/or transmission of electric energy to any party purchasing, receiving and using such electric energy outside the corporate limits of the City of Tulsa.

Section 404. - Enforceability of rules and regulations of Grantee.

Grantor shall not adopt any ordinance or regulation which has the effect of prohibiting Grantee from making and enforcing reasonable rules and regulations for the sale, delivery, control and metering of its electric energy and related services and the conduct of its business, including rules and regulations which reserve in Grantee the right to disconnect service to customers where any portion of Grantee's Plants and Systems 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 for the purpose of inspecting, repairing or reading meters or for removing any portion of its Plants and Systems. Provided that any such rules and regulations of Grantee shall not be in conflict with law or the rules and regulations from time to time adopted by the Corporation Commission of the state of Oklahoma, the Federal Energy Regulatory Commission, or by any other regularly constituted regulatory authority.

Section 405. - Standard of service—indemnification of City.

- A. Grantee covenants and agrees that, in consideration or granting this franchise, it will maintain electric service in and to Grantor under the rules and regulations imposed upon it by the Corporation Commission of the state of Oklahoma or by any other regularly constituted regulatory authority. 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 in case of any disability caused by an act of God or by the elements, or terrorism, or strikes, or lock-outs, or by any temporary breakdown or failure of its Plants and Systems, or any portion of them, or by any other causes beyond the control of Grantee; provided Grantee does agree in such cases to exercise due diligence in repair of such Plants and Systems, and to resume operation of same without unnecessary delay.
- B. The Grantee covenants and agrees that it will indemnify and hold the City of Tulsa free and clear of any claims for damages or otherwise caused by the negligence of Grantee in the

installation, operation or maintenance carried on under this franchise. But it is understood and agreed that in the event of claims being presented or prosecuted against the City of Tulsa which are alleged by the claimant or Grantor to have resulted from the negligence of Grantee, 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. And to this end the City of Tulsa agrees to notify the Grantee of such claims and to furnish to it such information and assistance as may be necessary to mount a defense.

Section 406. - Duty to move or alter lines.

- A. Grantor reserves the right to lay or permit to be laid cables, electric conduits, water, sewer, gas or other pipelines and to do or permit to be done any underground work deemed necessary and proper by Grantor, along, across, over or under the Public Ways. If Grantor determines that any such work may cause damage to Grantee's Plants and Systems, or their installation, operation and maintenance, Grantor shall, except in the case of emergency, provide Grantee with written notice that such work is to be performed before it is commenced. In permitting such work to be done and in doing such work, Grantor shall not be liable to Grantee for any damages unless they are negligently, willfully or unnecessarily occasioned by Grantor.
- B. Whenever by reason of establishing a grade or changes in the grade of any street, or in the location or manner of construction of any Public Way, cables, electric conduits, water, sewer, gas or other underground structures, it shall be deemed necessary by Grantor to alter, change, adapt or conform the Plants and Systems of Grantee, or any part of them, such alterations or changes shall be made within a reasonable time by Grantee, as directed in writing by Grantor, without any claim for reimbursement or compensation for damages against Grantor, or any agency, trust or authority formed for, by, or for the benefit of Grantor.
- C. Grantor may require Underground Installation at a cost that would exceed Grantee's current urban installation, operation and maintenance or replacement procedures. In such case, Grantor shall pay and reimburse Grantee the difference between the reasonable cost of such required procedures and the reasonable cost of Grantee's current procedures plus the salvage value of any Plants and Systems being replaced, provided that Grantor shall not be required to reimburse Grantee for such expenses to the extent that Grantee is allowed to recover such expenses by the Corporation Commission of Oklahoma or other regularly constituted regulatory authority in establishing the rates which Grantee may charge its Ultimate Consumers.
- C. If Grantor shall require Grantee to adapt or conform its Plants and Systems, or any part of them, or to in any way alter, relocate or change its property to enable any other person, firm, corporation or entity (whether public or private), other than Grantor, to use the Public Ways, Grantee shall be entitled to reimbursement by the person, firm, corporation or entity desiring or occasioning such change, alteration or relocation. "Person," "firm," "corporation" and "entity," as used in this section, shall not include regular departments of Grantor, or any trust or authority formed by or for the benefit of Grantor, for public utility purposes, or whose revenues are subsidized by or contribute to the general funds of Grantor, but shall include any other agency or authority of the City of Tulsa, whether acting in a governmental or non-

governmental capacity, including, but not limited to any agency or authority which as a part of its program clears whole tracts of land within the city limits and relocates citizens for the purpose of urban development or similar aims.

- D. Grantee will notify Grantor in writing within ten (10) business days in the event Grantee ceases completely to use its Plants or Systems, or any portion of them, for any of the purposes for which this franchise is granted. If Grantee is not required by law or by provisions of a legally-imposed contract to make the use of such Plants and Systems available to any other person or entity, Grantee will, within ninety (90) calendar days of the date when it and any other such persons or entities cease all such use, remove any such Plants and Systems located upon the Public Ways of Grantor.

Section 407. - Location of plants and systems and transmission of energy and related services.

In performing the terms and provisions of this ordinance, franchise and contract, Grantee is granted the continuing right, privilege and option to manufacture, control and store electric energy within the corporate limits of Grantor, and/or to transmit such electric energy over transmission lines from other plants and wholesale suppliers and to distribute same from some central location or locations at proper voltage; together with the right to transmit electric energy from any source to, from and through the City of Tulsa to other localities. Grantee is also given the continuing right to use its Plants and Systems to provide transmission and distribution services to other wholesale suppliers of electrical energy as Grantee is authorized or required to provide under applicable law. Grantee is also authorized to allow others, having a permitted right granted by the City of Tulsa, or as may otherwise be authorized or required by applicable law, to attach Telecommunications and cable Facilities to its poles and structures or to place such Telecommunications and cable Facilities within, upon or adjacent to its underground ducts and conduits, on such conditions as it deems just and reasonable and in compliance with applicable law, including but not limited to City ordinances governing rights-of-way occupancy management, currently codified at Title 11, Chapter 12, of Tulsa's Revised Ordinances, as may be amended from time-to-time; provided, to the extent that applicable law does not establish such conditions and should the parties be unable to agree to such conditions, the City Council of the City of Tulsa shall determine such conditions as are just and reasonable, which shall be binding upon all parties. Grantee shall not prohibit or deny attachment or shared placement of Telecommunications or cable Facilities solely on the basis that Grantee or a related entity provides or plans to provide such services to the public. Grantee herewith grants and sets aside for Grantor's exclusive use the duct or ducts in Grantee's existing downtown Tulsa underground distribution system as transferred to Grantor pursuant to written Lease Agreement dated October 25, 1974, and, further, Grantee agrees that in the event it hereafter builds ducts for its own use and service in downtown Tulsa's underground network distribution system, in such event, it will install at its expense one (1) separate duct of equal length and size for City's exclusive use, including connections for manholes, laterals and outlets.

Section 408. - Use and repair of the public ways.

- A. Grantee's Plants and Systems shall be installed, operated and maintained in compliance with the standards prescribed in the Americans with Disabilities Act (42 U.S.C. §12101, et

seq.), and in such a manner as will, consistent with reasonable necessity, least interfere with other public uses of the Public Ways.

- B. With regard to any installation, operation or maintenance work which may interfere with normal use of a Public Way, Grantee shall:
1. Identify at the work site and on vehicles that the work is being conducted by or on behalf of Public Service Company Oklahoma (or its successors and assigns), in a manner that is clearly legible to passing motorists and pedestrians;
 2. Perform all required underground utility locations and notifications;
 3. Avoid, where possible, temporarily restricting sidewalks and ADA access ways, and if sidewalks are closed, provide a temporary ADA access path or an appropriate detour;
 4. Safely barricade excavation sites;
 5. Follow all applicable traffic diversion requirements and remove all temporary traffic diversion equipment within 48 hours of completion;
 6. Provide to Grantor regularly updated contact information for a representative of Grantee authorized and available to provide timely information and address concerns.

Any work which may interfere with normal use of a Public Way shall be conducted as expeditiously as possible to minimize such interference. After such work is completed, Grantee shall, with due diligence and reasonable dispatch, place the Public Ways where such work was performed in a condition in compliance with Grantor's reasonable standards and specifications; provided, that Grantor shall not impose standards and specifications which are in conflict with any standards and specifications of the Corporation Commission of the state of Oklahoma or by any other regularly constituted regulatory authority, which are applicable to Grantee.

- C. In addition to the requirements of subsection B above, before Grantee commences work on a Major Project, except in the case of emergency, Grantee shall first obtain a permit, pursuant to reasonable standards and regulations required by the Grantor.
- D. An emergency Major Project required to protect the immediate safety and well-being of the general public should be commenced without delay. Grantee must provide notice to the person designated in writing by Grantor to receive such notice, as soon as possible, to include:
1. General description of the activity and any emergency traffic control measures;
 2. Location (site address if possible), including nearest cross streets;
 3. Start date and time, anticipated duration, and anticipated daily start and stop times; and
 4. Name and contact information of any agents or contractors performing work on Grantee's behalf.
- E. When Grantee commences a Major Project on an emergency basis, Grantee shall apply for a standard Major Project permit as soon as reasonably possible, but in any event no later than two business days following the date of notification, and shall notify Grantor upon completion of the work.

- F. In the event Grantee fails to commence or complete any construction, maintenance, installation, restoration or repair work required by this Ordinance or the terms of any permit with due diligence and reasonable dispatch and in accordance with any mutually agreed upon schedule of activity, Grantor may cause such work to be performed after written notice to Grantee, given so as to afford Grantee an opportunity to commence and complete such work within a reasonable time. The cost of such work incurred by Grantor upon Grantee's failure to perform shall then be charged and collected from Grantee.
- G. The provisions of this Section may be supplemented by mutual agreement of Grantor and Grantee, memorialized in a separate memorandum of understanding, and Grantor reserves the right to make and enforce reasonable regulations concerning the installation, operation and maintenance of Grantee's Plants and Systems located along, across, over or under the Public Ways of Grantor and to reasonably designate where such Plants and Systems shall be placed.
- H. Grantor agrees that in the event it requires installation of any portion of Grantee's Plants and Systems contrary to Grantee's current urban installation, operation and maintenance or replacement procedures, Grantor shall pay and reimburse Grantee for the difference between the reasonable cost of such required procedures and the reasonable cost of Grantee's current procedures plus the salvage value of any Plants and Systems being replaced. Provided, however, that Grantor shall not be required to reimburse Grantee for such expenses to the extent that Grantee is allowed recover such expenses by the Corporation Commission of Oklahoma or other regularly constituted regulatory authority in establishing the rates which Grantee may charge its Ultimate Consumers.

Section 409. - Reasonable rates authorized.

During the term of this franchise and for and in consideration of its acceptance by Grantee, it is agreed that Grantee may charge and collect from Grantor, its inhabitants and the consumers therein, a rate or rates, which shall at all times be compensatory and reasonable, subject to such rules, regulations and orders as are now in effect or that may hereafter be lawfully made by the Corporation Commission of the state of Oklahoma, or by any other regularly constituted regulatory authority.

Section 410. - Sale of power to City.

During the term of this franchise, Grantee shall provide Plants and Systems for all electric energy required by Grantor for municipal purposes, including wastewater treatment, water and stormwater pumping, and lighting of its streets, and shall sell and deliver to Grantor, and Grantor shall purchase and receive from Grantee, all electric energy requested by Grantor for municipal purposes.

Section 411. - Fees.

- A. From and after the date of acceptance of this Ordinance, as consideration of the granting of this franchise, for use of the Public Ways, and as a compensation for the rights and privileges enjoyed hereunder, Grantee agrees to pay to Grantor a sum of two percent (2%) of Gross Receipts.

- B. In addition to the sum provided for in Subsection 411.A above, Grantee shall also pay to Grantor an additional sum of one percent (1%) of Gross Receipts, to be deposited by Grantor into a special revenue fund for the maintenance and repair of Public Ways, including but not limited to right-of-way and median maintenance and enhancement; street and highway lighting maintenance, repair, and replacement; and Underground Installation cost reimbursement as provided for in Subsections 406.C and 408.H.
- C. The sums described above shall be payable monthly on or before the 20th day of each month, on receipts of Grantee for the preceding calendar month, and shall be in lieu of all concessions, charges, excise, franchise, licenses, occupation, privilege and permit fees, or taxes, except assessments for special improvements and ad valorem taxes.
- D. Should Grantee accept a franchise from any other city or town in which it agrees to pay a higher percentage of Gross Receipts than the percentage provided for in Subsection 411.A above, then and in that event Grantee shall immediately and without demand inform Grantor's governing body of such occurrence. Thereafter, at the sole discretion of Grantor's governing body and pursuant to such process as it deems appropriate, Grantee may be directed by Grantor's governing body to increase the percentage of Gross Receipts to be paid to Grantor hereunder to such higher percentage to the extent such increase is allowed by the Charter of the City of Tulsa and other applicable law.
- E. Grantor agrees that the total of the percentage rates used to calculate the fee paid by Grantee to Grantor, including any revision of such fee, 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 sales of electric energy by such other person or entity to Ultimate Consumers within the City of Tulsa.

Section 412. - Maintenance and inspection of records.

- A. Grantee shall at all times make and keep full and complete plats, maps and other records showing the location, nature and size of all of Grantee's Plants and Systems within the corporate limits of the City of Tulsa.
- B. Grantee shall maintain and provide to Grantor a regularly updated catalogue of street and highway lighting pole and fixture standards and costs, including electricity costs.
- C. For the purpose of affording Grantor the opportunity to enforce and collect the franchise fee imposed by this ordinance and franchise, Grantee shall further permit Grantor to inspect and audit, during regular business hours and at Grantor's expense, the relevant books and records kept by Grantee in the ordinary course of business.

Section 413. - Right of city to purchase property.

- A. Grantor shall have the right at any time after fifteen (15) years after the date of acceptance of this franchise to purchase all, but not less than all, of the properties of Grantee which comprise the Plants and Systems of Grantee that are used for or related to the manufacture, transmission, distribution, sale and Control of Electricity which are located within the corporate limits of the City of Tulsa at the time such right to purchase is exercised, and to terminate this franchise if such purchase and termination are approved by a majority of the qualified electors of the City of Tulsa voting at a special or general election held in

accordance with the provisions of this Section 413. At any time after the right to purchase such properties of Grantee shall have accrued under the terms of this Subsection 413.A and the fair market value of such properties has been determined in accordance with Subsection 413.B below, the question of the purchase of such properties and termination of this franchise may be submitted by the City Council of the City of Tulsa to the qualified electors of the City for approval. The question of the acquisition of such properties and the termination of this franchise shall also be submitted to the qualified electors of the City of Tulsa upon the petition to the City of twenty-five percent (25%) of the qualified electors of the City presented after the right to purchase such properties of Grantee shall have accrued under this Subsection 413.A. In the event such a petition is so presented, the question of the acquisition of such properties and the termination of the franchise shall be submitted at the next succeeding election in the City of Tulsa after the fair market value of such properties has been determined in accordance with Subsection 413.B below.

- B. Grantee shall be compensated by Grantor for the purchase of the above-described properties by payment to Grantee of the fair market value of such properties located within the City of Tulsa, which shall include consideration of the services provided by means of such properties and any legal obligations or commitments which Grantee has which are directly related to such properties. Such value shall be determined by the majority of three (3) appraisers, one (1) to be selected by the Mayor of the City of Tulsa, one (1) by Grantee, and the third by the first two appraisers. The appraisers shall be persons of recognized skill, ability and experience with respect to the appraisal and evaluation of properties of the character and type which City is entitled to purchase pursuant to this section and of services provided by means of such properties. If Grantee shall refuse to select an appraiser for thirty (30) days after an appraiser has been selected by the Mayor, the fair market value of the properties described above, taking into consideration the services provided by means of such properties, shall be fixed by the vote of a majority of the City Council. If the two (2) appraisers appointed by the Mayor and by Grantee shall fail to agree upon the third appraiser within thirty (30) days after their appointment, the third appraiser, upon the application of either Grantor or Grantee, shall be appointed by the Presiding Judge of the District Court of Tulsa County, Oklahoma, or if such Judge shall fail or refuse to make such appointment for any reason, then the Corporation Commission of Oklahoma, upon ten (10) days' notice to the adverse party, may appoint such third appraiser. The fair market value of the properties described above shall be determined by the appraisers within ninety (90) days after the appointment of the third appraiser.
- C. After the fair market value of the properties described above has been determined by the appraisers in accordance with the provisions of Subsection 413.B above, the question of the acquisition of such properties by payment to Grantee of the fair market value of such properties as so determined and termination of this franchise shall be submitted to the qualified electors of the City of Tulsa at the next succeeding special or general election. In the event a majority of such qualified electors approve the question of such acquisition and termination, Grantor shall have ninety (90) days from its receipt of the official results of such election within which to pay Grantee in cash the fair market value of all of such properties as determined by the appraisers and submitted to the qualified electors at the election. Until such payment, Grantee may continue to operate its Plants and Systems and

provide services pursuant to the terms of this franchise; provided, that if between the date of the appraisal of such properties and the date of payment therefor, reasonable and necessary additions, betterments and replacements shall have been made by Grantee to its Plants and Systems or services within the City of Tulsa, Grantor shall pay in addition to the value established by the appraisers, the reasonable cost of such additions, betterments and replacements. If Grantor fails to pay the appraised amount plus any additions, betterments and replacements as provided for here to Grantee within the ninety (90) day period prescribed above, then the right of purchase granted to Grantor by this section shall expire and become void.

- D. For the purpose of aiding the appraisers in determining the fair market value of the properties described above, including consideration of the services provided by means of, and obligations and commitments directly related to such properties, all of the relevant books, records, contracts and other information in the possession of the Grantee shall be open and accessible to the appraisers during the time their appraisal is being made, and the appraisers may take into consideration any other factors appropriately presented to them in determining the fair market value.
- E. In the event City purchases properties of Grantee pursuant to this section, City agrees that it will, for a reasonable fee, make the use of such properties available to Grantee as is necessary for the efficient operation by Grantee of the remaining portions of its Plants and Systems for the transmission, distribution, provision and sale of electric energy and related services.
- F. In the event the provisions concerning rights of purchase contained in Article VIII, Section 9 of the Amended Charter of the City of Tulsa, as in effect on the operative date of this ordinance, shall be repealed or substantially revised during the term of the franchise granted here so as to remove the requirement that the right of purchase prescribed in this Section 413 be included as a condition of franchises granted by the City of Tulsa, the provisions of this Section 413 by which Grantor is given the right to purchase Plants and Systems of Grantee shall become null, void and of no further effect.

Section 414. - Election required—acceptance by Grantee.

This ordinance and franchise shall be in full force and effect from and after the date of its acceptance, upon its passage and approval by a vote of a majority of the qualified electors residing within the City of Tulsa, who shall vote on it at a special election called under or pursuant to the provisions of this ordinance; and if this ordinance fails to be so approved at that election, it shall be wholly void and of no effect.

The Mayor of the City of Tulsa is authorized and instructed to call by proclamation such election in the manner and form provided by the laws of the state of Oklahoma for the calling of special elections, to be held on February 8, 2022, giving such notice and preparing such proclamation, ballot title and call as provided by law, for the purpose of submission to the qualified electors residing within the City of Tulsa the proposition of approval or refusal of this ordinance and the franchise granted by it; and the proper officers of the City are hereby directed to do all things that may be necessary for the holding of such election and for the submission of the question, and shall, in all things, comply with the laws of the state of Oklahoma, in designating February 8,

2022, as the day, month and year of this election, the hours of opening and closing the polls, the voting places within the City in which this election shall be held and the proper persons within the respective precincts of the City for the purpose of holding this election.

It is understood and agreed that in the event this 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 City Clerk of the City of Tulsa an acceptance in writing duly executed according to law, accepting this ordinance and franchise.

Section 415. - Repeal of previous franchise agreement.

Upon the filing by the Grantee of the acceptance of this ordinance as provided, all rights, privileges and obligations of any other ordinance and franchises, or portions of them, under which the Grantee may now be exercising its privileges of use of the Public Ways in the City of Tulsa and particularly Ordinance No. 18968 of the City of Tulsa, codified as Title 15, Sections 400 through 416, both inclusive, of the Tulsa Revised Ordinances and all other ordinances and parts of ordinances in conflict, shall be and remain canceled, annulled and repealed.

Section 416. - Emergency clause.

Because an immediate necessity exists in order that the inhabitants of Grantor may be provided an adequate supply of electricity for heating, lighting, cooling and power purposes and for the purpose of providing light, heat, cooling and power for the streets, alleys, public grounds, parks and other public places and institutions of Grantor, as well as for the preservation of the public health, peace and safety, an emergency is declared to exist by reason of which this ordinance shall be in full force and effect from and after its passage, approval and publication; and same shall be submitted at a special election.”

Section 2. SEVERABILITY CLAUSE. If any section, sentence, clause or phrase of this ordinance or any part thereof is for any reason found to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this ordinance or any part thereof.

Section 3. REPEAL OF CONFLICTING ORDINANCES. That all ordinances or parts of ordinances in conflict herewith be and the same are now expressly repealed.

NOV 17 2021

Adopted by the Council: _____

Date


Vice-Chair of the Council

OFFICE OF THE MAYOR

Received by the Mayor: _____, at _____.

Date


Time

G. T. Bynum, Mayor

By: _____
Secretary

Approved by the Mayor of the City of Tulsa, Oklahoma, NOV 18 2021 at _____
Date


Time



Mayor

(Seal)

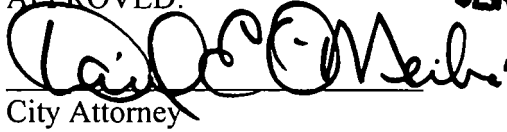
ATTEST:



City Clerk



APPROVED:



City Attorney

TITLE 15 - FRANCHISES AND GRANTS
CHAPTER 4. - PUBLIC SERVICE COMPANY FRANCHISE
REDLINE FOR COMPARISON TO CURRENT FRANCHISE

Section 400. - Definitions.

As used in this ordinance and franchise, the following words and phrases shall have the ~~following~~ meanings ascribed below:

A.—**Cable service** shall mean the one-way transmission to subscribers of video and audio programming or other programming services and subscriber interaction, if any, which is required for the selection or use of video and audio programming or other programming services provided through electric or electronic signals, or which utilizes a cable system, an open video system or any other Facility designed to provide video and audio programming services to subscribers, but excluding IP video service. By the exclusion of IP video service from this definition of Cable Service, the City shall not be deemed to have waived any of its rights to assert that any ROW occupant providing IP video service is providing Cable Service.

~~1.—One way transmission to subscribers of video programming or other programming service; and~~

~~2.—Interaction, if any, which is required by the receiver of such programming for the selection or use of such video programming or other programming service.~~

B.—**Consumer** shall mean any individual person, corporation, company, partnership, firm, unincorporated association, trust, municipality or public corporation served by the Grantee through any use of the ~~p~~Public ~~W~~ays.

C.—**Control of electricity** shall mean regulation of the current and/or voltage or use of such electricity.

Facility or facilities shall mean all or any part of a collective system of tangible things, including but not limited to pipelines, conduits, copper or fiber optic cabling, pedestals, guy wires, anchors, vaults, junction boxes, utility poles and electrical wiring, that is partly or entirely located in the Public Ways and is used for the transmission of goods or services, including but not limited to natural gas, steam, chilled or potable water, electricity, video service or Telecommunications service, regardless of whether the services are provided for a fee, or provided to the general public, to a limited group of private users, or solely for the benefit of the owner of the system.

D.—**Franchise** shall mean the rights, ~~and~~ privileges and duties granted by Grantor to Grantee under this ordinance and franchise agreement.

E.—**Grantee** shall mean Public Service Company of Oklahoma, an Oklahoma corporation, its successors and assigns.

F.—Grantor shall mean the City of Tulsa, a municipal corporation of the state of Oklahoma.

Gross receipts shall mean any and all compensation derived and received by Grantee from the sale, distribution and/or transportation of electricity within the corporate limits of the City of Tulsa. Gross Receipts shall include but not be limited to the franchise fee reimbursement and the following specific miscellaneous fees or charges received by the Grantee: trip (collection/not home), account research, late payment, duplicate bill, reconnect, customer account history, service initiation, master summary, temporary disconnect, tampering/unauthorized use, insufficient funds, return check, meter test, equipment damage, no access, special meter reading, temporary service, any fees or payments received by Grantee for the lease or use of its Plants and Systems, and any other fees or charges approved by the Oklahoma Corporation Commission.

G.—Information service shall mean the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information via ~~te~~Telecommunications.

H.—Install, operate and maintain (and other forms of such words) shall mean to acquire, erect, build, construct, install, extend, repair, remove, relocate, replace or otherwise operate and maintain.

Major project shall mean any installation, operation or maintenance work, which:

1. Is in or adjacent to an arterial street, and which will require more than ten (10) business days to complete;
2. Will interfere with or redirect vehicular or pedestrian traffic for more than five (5) business days;
3. Will require excavation of or into a public street; or
4. Will require construction of new plants or systems, or relocation of existing plants or systems, in a public sidewalk.

I.—Plants and systems shall mean plants, systems, poles, wires, conduits, substations, meters, structures, equipment, ~~fa~~Facilities, appliances and apparatus as are reasonably necessary for the control, transmission, distribution and sale in and to Grantor and to the public, generally.

J.—Public ways shall mean the public rights-of-way, including streets, alleys, avenues, boulevards, parkways, lanes, thoroughfares and public utility easements within the corporate limits of the City of Tulsa as now constituted or as may be added to hereafter.

K.—Telecommunications shall mean the transmission between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

L.—Ultimate consumer shall mean a consumer (as defined in this chapter) which receives electric energy other than for resale to another consumer.

M.—Underground installation shall mean the installation, operation and maintenance or replacement of any portion of Grantee's pPlants and sSystems underground or beneath the surface of any pPublic wWay.

Section 401. - Grant of franchise.

Upon approval of this ordinance and acceptance by the Grantee, ~~There is hereby granted by the~~ Grantor grants to Grantee, its successors and assigns, the right, power and authority to use the pPublic wWays of Grantor for the purpose of owning, installing, operating and maintaining pPlants and sSystems for the control, transmission, distribution and sale in and to the Grantor and to the public, generally, of electricity for lighting, heating, cooling and power purposes as well as for such other purposes as electric energy may be put, and to transmit and provide electric energy and related services, over distribution and transmission lines throughout the City and to connections and systems in other localities, with pPlants and sSystems upon, across, over and under each and any of ~~said~~ Grantor's pPublic wWays. The rights and privileges granted by this ordinance shall include the right, power and authority for Grantee to iInstall, eOperate and mMaintain the pPlants and sSystems described ~~herein in this chapter~~ for the purpose of providing tTelecommunications, tTelecommunications services, eCable sServices and iInformation sServices to the extent that such are related to and used solely in connection with Grantee's manufacture, control, transmission, distribution and sale of electric energy and related services, and not for the purpose of selling or providing such tTelecommunications, tTelecommunications services, eCable sServices and iInformation sServices to the public, generally. Sale or provision of such Telecommunications, Telecommunications services, Cable Services or Information Services to the public, by Grantee or any other entity, shall be considered separate and distinct use and occupancy of the Public Way, subject to the permit, fee, and other requirements of City ordinances governing rights-of-way occupancy management, currently codified at Title 11, Chapter 12, of Tulsa's Revised Ordinances, as may be amended from time-to-time.

Section 402. - Term of franchise.

All rights and privileges granted by this ordinance shall extend and be in force between Grantor and Grantee for a term of ~~twenty-five~~fifteen (125) years from and after the date of acceptance of this ordinance, except as ~~hereinafter otherwise provided~~ in this chapter.

Section 403. - Assignment, sale or lease.

A. All provisions of this ordinance and franchise 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.

Subject to the provisions of this subsection and Subsection 403.B below, Grantee may assign all or a portion of its rights and/or obligations under the provisions of this ordinance and franchise. Any assignment by Grantee shall be in writing, and the assignee shall agree in writing to accept and become responsible for full performance of all conditions, covenants, obligations and liabilities contained in this ordinance and franchise to the extent such are the subject of such assignment. Upon notifying Grantor of any such assignment or proposed assignment, Grantee and/or the assignee shall provide Grantor with such information as is reasonably necessary to enable Grantor to make an informed determination of such assignee's financial status and capabilities. Any such assignment shall be deemed approved by Grantor unless within thirty (30) days of receiving written notice of such assignment Grantor notifies Grantee in writing that it objects to such assignment on the ground that the assignee is not financially able to perform the conditions, covenants, obligations and liabilities in this ordinance and franchise which the assignee will be responsible for as a result of such assignment. Any such objection by Grantor must be based upon reasonable and generally recognized financial standards, and upon the information provided by Grantee and/or the assignee or verified by another generally recognized source of financial information. In the event such an objection is timely made by Grantor, Grantee and the assignee shall have a reasonable opportunity to address and, if necessary, provide appropriate remedies with respect to the grounds for such objection. Any assignments by Grantee of a portion of its rights and/or obligations ~~hereunder established in this franchise,~~ shall, unless provided otherwise in such assignment, be effective until the end of the term provided in Section 402, above, notwithstanding the termination of any other rights and obligations under the provisions of this ordinance and franchise prior to the end of such term.

B. ~~Grantor and Grantee agree that as of the effective date of this ordinance, there are ongoing public discussions concerning the potential restructuring of the electric utility industry. In some cases, such discussions contemplate that as part of such restructuring, a person or entity other than an incumbent electric utility (referred to hereafter as a "Third Party"), may use the plants and systems of incumbent electric utilities, or portions thereof, for sales to ultimate consumers. It is the intent of the parties that in the event of such restructuring, Grantee shall make reasonable efforts to ensure that any Third Party which uses Grantee's plants and systems for the sale of electric energy to ultimate consumers within the City of Tulsa shall first obtain all applicable permits and agree to pay any and all applicable fees to the Grantor.~~

~~If after the date of acceptance of this ordinance,~~ by reason of law or otherwise, a person or entity other than Grantee ("Third Party") shall lease or otherwise make use of Grantee's pPlants and sSystems for the distribution and/or transmission of electric energy which is to be sold to an uUltimate eConsumer within the City of Tulsa, the following requirements shall apply:

1. Prior to permitting such use of Grantee's pPlants and sSystems, Grantee shall make reasonable efforts to ensure that such Third Party has secured any applicable permits to furnish electric energy to uUltimate eConsumers within the City of Tulsa.
2. The parties understand that Grantor may require, as a condition of any such permit, that such Third Party pay applicable permit fees to Grantor. In such cases, if requested by Grantor, Grantee agrees to act as Grantor's agent, at cost, for the collection and remittance of such fees to Grantor.

3. On a monthly basis, Grantee shall report to Grantor estimates of electric energy distributed and/or transmitted by and through Grantee's pPlants and sSystems by any Third Party for sale to uUltimate eConsumers within the City of Tulsa.

This Subsection 403.B shall not apply to any use of Grantee's pPlants and sSystems for the distribution and/or transmission of electric energy to any party purchasing, receiving and using such electric energy outside the corporate limits of the City of Tulsa.

Section 404. - Enforceability of rules and regulations of Grantee.

Grantor shall not adopt any ordinance or regulation which has the effect of prohibiting Grantee from making and enforcing reasonable rules and regulations for the sale, delivery, control and metering of its electric energy and related services and the conduct of its business, including rules and regulations which reserve in Grantee the right to disconnect service to customers where any portion of Grantee's pPlants and sSystems 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 for the purpose of inspecting, repairing or reading meters or for removing any portion of its pPlants and sSystems. Provided that any such rules and regulations of Grantee shall not be in conflict with law or the rules and regulations from time to time adopted by the Corporation Commission of the state of Oklahoma, the Federal Energy Regulatory Commission, or by any other regularly constituted regulatory authority.

Section 405. - Standard of service—indemnification of City.

A. Grantee covenants and agrees that, in consideration ~~hereof~~ for granting this franchise, ~~that~~ it will maintain electric service in and to Grantor under the rules and regulations imposed upon it by the Corporation Commission of the state of Oklahoma or by any other regularly constituted regulatory authority. 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 in case of any disability caused by an act of God or by the elements, or terrorism, or strikes, or lock-outs, or by any temporary breakdown or failure of its pPlants and sSystems, or any portion ~~thereof~~ of them, or by any other causes beyond the control of Grantee; provided Grantee does agree in such cases to exercise due diligence in repair of such pPlants and sSystems, and to resume operation of same without unnecessary delay.

B. The Grantee covenants and agrees that it will indemnify and hold the City of Tulsa free and clear of any claims for damages or otherwise caused by the negligence of Grantee in the installation, operation or maintenance carried on ~~hereunder~~ under this franchise. But it is understood and agreed that in the event of claims being presented or prosecuted against the City of Tulsa which are alleged by the claimant or Grantor to have resulted from the negligence of Grantee, 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. And to this end the City of Tulsa agrees to notify the Grantee

of such claims and to furnish to it such information and assistance as may be necessary ~~in the to~~
mount a defense thereof.

Section 406. - Duty to move or alter lines.

A. Grantor reserves the right to lay or permit to be laid cables, electric conduits, water, sewer, gas or other pipelines and to do or permit to be done any underground work deemed necessary and proper by Grantor, along, across, over or under the ~~pPublic wWays~~. If Grantor determines that any such work may cause damage to Grantee's ~~pPlants and sSystems~~, or ~~the their~~ installation, operation and maintenance ~~thereof~~, Grantor shall, except in the case of emergency, provide Grantee with written notice that such work is to be performed before it is commenced. In permitting such work to be done and in doing such work, Grantor shall not be liable to Grantee for any damages unless they are negligently, willfully or unnecessarily occasioned by Grantor.

B. Whenever by reason of establishing a grade or changes in the grade of any street, or in the location or manner of construction of any ~~pPublic wWay~~, cables, electric conduits, water, sewer, gas or other underground structures, it shall be deemed necessary by Grantor to alter, change, adapt or conform the ~~pPlants and sSystems~~ of Grantee, or any part ~~thereof of them~~, such alterations or changes shall be made within a reasonable time by Grantee, as directed in writing by Grantor, without any claim for reimbursement or compensation for damages against Grantor, or any agency, trust or authority formed for, by, or for the benefit of Grantor.

C. Grantor may require Underground Installation at a cost that would exceed Grantee's current urban installation, operation and maintenance or replacement procedures. In such case, Grantor shall pay and reimburse Grantee the difference between the reasonable cost of such required procedures and the reasonable cost of Grantee's current procedures plus the salvage value of any Plants and Systems being replaced, provided that Grantor shall not be required to reimburse Grantee for such expenses to the extent that Grantee is allowed to recover such expenses by the Corporation Commission of Oklahoma or other regularly constituted regulatory authority in establishing the rates which Grantee may charge its Ultimate Consumers.

DC. If Grantor shall require Grantee to adapt or conform its ~~pPlants and sSystems~~, or any part ~~thereof of them~~, or to in any way alter, relocate or change its property to enable any other person, firm, corporation or entity (whether public or private), other than Grantor, to use the ~~pPublic wWays~~, Grantee shall be entitled to reimbursement by the person, firm, corporation or entity desiring or occasioning such change, alteration or relocation. "Person," "firm," "corporation" and "entity," as used in this section, shall not include regular departments of Grantor, or any trust or authority formed by or for the benefit of Grantor, for public utility purposes, or whose revenues are subsidized by or contribute to the general funds of Grantor, but shall include any other agency or authority of the City of Tulsa, whether acting in a governmental or non-governmental capacity, including, but not limited to any agency or authority which as a part of its program clears whole tracts of land within the city limits and relocates citizens for the purpose of urban development or similar aims.

~~ED.~~ Grantee will notify Grantor in writing within ten (10) business days i~~n the event~~ Grantee ceases completely to use its plants or systems, or any portion ~~thereof of them~~, for any of the purposes for which ~~this~~ franchise is granted ~~herein~~, ~~and~~ If Grantee is not required by law or by provisions of a legally-imposed contract to make the use of such ~~p~~Plants and ~~s~~Systems available to any other person or entity, Grantee will, within ninety (90) calendar days of the date when it and any other such persons or entities cease all such use, remove any such ~~p~~Plants and ~~s~~Systems located upon the ~~public~~ Public ~~w~~ays of Grantor.

Section 407. - Location of plants and systems and transmission of energy and related services.

In performing the terms and provisions of this ordinance, franchise and contract, Grantee is ~~hereby given~~ granted the continuing right, privilege and option to manufacture, control and store electric energy within the corporate limits of Grantor, and/or to transmit such electric energy over transmission lines from other plants and wholesale suppliers and to distribute same from some central location or locations at proper voltage; together with the right to transmit electric energy from any source to, from and through ~~said the City of Tulsa~~ to other localities. Grantee is also given the continuing right to use its ~~p~~Plants and ~~s~~Systems to provide transmission and distribution services to other wholesale suppliers of electrical energy as Grantee is authorized or required to provide under applicable law. Grantee is ~~hereby also~~ authorized to allow others, having a permitted right granted by the City of Tulsa, or as may otherwise be authorized or required by applicable law, to attach ~~t~~Telecommunications and cable ~~f~~Facilities to its poles and structures or to place such ~~t~~Telecommunications and cable ~~f~~Facilities within, upon or adjacent to its underground ducts and conduits, on such conditions as it deems just and reasonable and in compliance with applicable law, including but not limited to City ordinances governing rights-of-way occupancy management, currently codified at Title 11, Chapter 12, of Tulsa's Revised Ordinances, as may be amended from time-to-time; provided, to the extent that applicable law does not establish such conditions and should the parties be unable to agree to such conditions, the City Council of the City of Tulsa shall determine such conditions as are just and reasonable, which shall be binding upon all parties. Grantee shall not prohibit or deny attachment or shared placement of Telecommunications or cable Facilities solely on the basis that Grantee or a related entity provides or plans to provide such services to the public. Grantee herewith grants and sets aside for Grantor's exclusive use the duct or ducts in Grantee's existing downtown Tulsa underground distribution system as transferred to Grantor pursuant to written Lease Agreement dated October 25, 1974, and, further, Grantee agrees that in the event it hereafter builds ducts for its own use and service in downtown Tulsa's underground network distribution system, in such event, it will install at its expense one (1) separate duct of equal length and size for City's exclusive use, including connections for manholes, laterals and outlets.

Section 408. - Use and repair of the public ways.

A. Grantee's ~~p~~Plants and ~~s~~Systems shall be installed, operated and maintained in compliance with the standards prescribed in the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.), and in such a manner as will, consistent with reasonable necessity, least interfere with other public uses

of the ~~pPublic w~~Ways, including those prescribed by the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.).

~~B. Before grantee commences any installation, operation or maintenance work which may interfere with normal public use of a public way, Grantee shall, except in the case of emergency, give at least forty-eight (48) hours' written notice thereof, together with a schedule of activity, to the Director of Public Works of the City of Tulsa, or other proper authority designated in writing by Grantor to receive such notice.~~

B. With regard to any installation, operation or maintenance work which may interfere with normal use of a Public Way, Grantee shall:

- i. Identify at the work site and on vehicles that the work is being conducted by or on behalf of Public Service Company of Oklahoma (or its successors and assigns), in a manner that is clearly legible to passing motorists and pedestrians;
- ii. Perform all required underground utility locations and notifications;
- iii. Avoid, where possible, temporarily restricting sidewalks and ADA access ways, and if sidewalks are closed, provide a temporary ADA access path or an appropriate detour;
- iv. Safely barricade excavation sites;
- v. Follow all applicable traffic diversion requirements and remove all temporary traffic diversion equipment within 48 hours of completion;
- vi. Provide to Grantor regularly updated contact information for a representative of Grantee authorized and available to provide timely information and address concerns.

Any work which may interfere with normal use of a Public Way shall be conducted as expeditiously as possible to minimize such interference. After such work is completed, Grantee shall, with due diligence and reasonable dispatch, place the ~~pPublic w~~Ways where such work was performed in a condition in compliance with Grantor's reasonable standards and specifications; provided, that Grantor shall not impose standards and specifications which are in conflict with any standards and specifications of the Corporation Commission of the state of Oklahoma or by any other regularly constituted regulatory authority, which are applicable to Grantee.

C. In addition to the requirements of subsection B above, before Grantee commences work on a Major Project, except in the case of emergency, Grantee shall first obtain a permit, pursuant to reasonable standards and regulations required by the Grantor.

D. An emergency Major Project required to protect the immediate safety and well-being of the general public should be commenced without delay. Grantee must provide notice to the person designated in writing by Grantor to receive such notice, as soon as reasonably possible, to include:

- i. General description of the activity and any emergency traffic control measures;
- ii. Location (site address if possible), including nearest cross streets;
- iii. Start date and time, anticipated duration, and anticipated daily start and stop times;
and

iv. Name and contact information of any agents or contractors performing work on Grantee's behalf.

E. When Grantee commences a Major Project on an emergency basis, Grantee shall apply for a standard Major Project permit as soon as reasonably possible, but in any event no later than two business days following the date of notification, and shall notify Grantor upon completion of the work.

~~EF.~~ In the event Grantee fails to commence or complete any construction, maintenance, installation, restoration or repair work required by this Ordinance or the terms of any permit with due diligence and reasonable dispatch and in accordance with any mutually agreed upon schedule of activity, Grantor may cause such work to be performed after written notice to Grantee, given so as to afford Grantee an opportunity to commence and complete such work within a reasonable time. The cost of such work incurred by Grantor upon Grantee's failure to perform shall then be charged and collected from Grantee.

~~DG.~~ The provisions of this Section may be supplemented by mutual agreement of Grantor and Grantee, memorialized in a separate memorandum of understanding, and Grantor reserves the right to make and enforce reasonable regulations concerning the installation, operation and maintenance of Grantee's ~~p~~Plants and ~~s~~Systems located along, across, over or under the ~~p~~Public ~~w~~Ways of Grantor and to reasonably designate where such ~~p~~Plants and ~~s~~Systems shall be placed.

~~EH.~~ Grantor agrees that in the event it requires installation of any portion of Grantee's ~~p~~Plants and ~~s~~Systems contrary to Grantee's current urban installation, operation and maintenance or replacement procedures "~~procedures~~", Grantor shall pay and reimburse Grantee for the difference between the reasonable cost of such required procedures and the reasonable cost of Grantee's current procedures plus the salvage value of any Plants and Systems being replaced. Provided, however, that Grantor shall not be required to reimburse Grantee for such expenses to the extent that Grantee is allowed to ~~include such expenses as an element to be considered~~ recover such expenses by the Corporation Commission of Oklahoma or other regularly constituted regulatory authority in establishing the rates which Grantee may charge its ~~u~~Ultimate ~~e~~Consumers.

Section 409. - Reasonable rates authorized.

During the ~~life-term~~ of this franchise and for and in consideration of ~~the its acceptance hereof~~ by Grantee, it is agreed that Grantee may charge and collect from Grantor, its inhabitants and the consumers therein, a rate or rates, which shall at all times be compensatory and reasonable, subject to such rules, regulations and orders as are now in effect or that may hereafter be lawfully made by the Corporation Commission of the state of Oklahoma, or by any other regularly constituted regulatory authority.

Section 410. - Sale of power to City.

During the life of this franchise, Grantee shall provide ~~p~~Plants and ~~s~~Systems for all electric energy required by Grantor for municipal purposes, including wastewater treatment, water and stormwater pumping, and lighting of its streets, and shall sell and deliver to Grantor, and Grantor shall purchase and receive from Grantee, all electric energy requested by Grantor for municipal purposes.

Section 411. - Fees.

A. From and after the date of acceptance of this Ordinance, as consideration of the granting of this franchise, for use of the ~~p~~Public ~~w~~Ways, and as a compensation for the rights and privileges enjoyed hereunder, Grantee agrees to pay to Grantor a sum of franchise fee that is equal to two percent (2%) of Grantee's gGross rReceipts from the retail sale of electric energy within the City of Tulsa, including any revenues, fees or payments received by Grantee for the lease or use of its plants and systems for the distribution and/or transmission of electric energy which is sold to an ultimate consumer by any other person or entity within the City of Tulsa.

B. In addition to the sum provided for in Subsection 411.A above, Grantee shall also pay to Grantor an additional sum of one percent (1%) of Gross Receipts, to be deposited by Grantor into a special revenue fund for the maintenance and repair of Public Ways, including but not limited to right-of-way and median maintenance and enhancement; street and highway lighting maintenance, repair, and replacement; and Underground Installation cost reimbursement as provided for in Subsections 406.C and 408.H.

~~BC.~~ The ~~franchise fees~~sums described above shall be payable monthly on or before the 20th day of each month, on receipts of Grantee for the preceding calendar month, and shall be in lieu of all concessions, charges, excise, franchise, licenses, occupation, privilege and permit fees, or taxes, except assessments for special improvements and ad valorem taxes ~~and any fees approved by the voters of the City of Tulsa in accordance with the provisions of Subsections 411.D and 411.E below.~~

~~CD.~~ Should Grantee accept a franchise from any other city or town in which it agrees to pay a ~~franchise fee that is a~~ higher percentage of ~~Ggross revenues~~Receipts than the percentage provided for in Subsection 411.A above, ~~or any revision of the franchise fee provided for in Subsection 411.D of this ordinance,~~ then and in that event Grantee shall ~~forthwith~~immediately and without demand inform Grantor's governing body of such occurrence. Thereafter, at the sole discretion of Grantor's governing body and pursuant to such process as it deems appropriate, Grantee may be directed by Grantor's governing body to increase the percentage of ~~gGross rReceipts~~ to be paid to Grantor hereunder to such higher percentage to the extent such increase is allowed by the Charter of the City of Tulsa and other applicable law.

~~D. At the end of the fifth, tenth, fifteenth and twentieth years from the date of acceptance of this franchise, Grantor shall have an option to present to the voters of the City of Tulsa the issue of whether the franchise fee provided for in Subsection 411.A should be revised. In order to exercise~~

~~such option, Grantor must, within the thirty (30) day period immediately preceding the end of the fifth, tenth, fifteenth and twentieth years from the date of acceptance of the franchise, provide Grantee written notification of Grantor's intent to submit the issue of revision of the franchise fee for election. If Grantor provides such written notification to Grantee in a timely manner, Grantor is then responsible for taking all action necessary to present the issue of revision of the franchise fee for election by the qualified voters of the City of Tulsa to be held not less than two (2) months nor more than six (6) months from the date of such written notification. Grantor shall be responsible for all costs of such election. If either the above described written notification is not provided or the above described election is not held within the periods set forth in this Subsection 411.D Grantor will be deemed to have waived its right to exercise the option to which such notification and election apply. Any proposed revision of the franchise fee shall be for fees that in their total amount are not less than one percent (1%) and not more than four percent (4%) of the gross receipts from the retail sale of electric energy by Grantee and the sale by other persons or entities to ultimate consumers within the City of Tulsa to the extent that such electric energy is transmitted over the plants and systems of Grantee which are located within the City of Tulsa, with such gross receipts determined and paid in the manner provided in Subsections 411.A and B above. Such franchise fee, as revised, shall continue to be in lieu of all concessions, charges, excise, franchise, licenses, occupation, privilege and permit fees, or taxes, except assessments for special improvements and ad valorem taxes. If the issue of revision of the franchise fee is submitted for election in accordance with the provisions of this Subsection 411.D and a majority of the qualified electors of the City of Tulsa vote in favor of such revision, the franchise fee shall be revised accordingly at the end of the calendar year in which such election is held. If a majority of the qualified electors of the City of Tulsa vote against revision of the franchise fee, the franchise fee then in effect will continue in full force and effect until the end of the term provided for in Section 402, above, or until such franchise fee is revised in accordance with the provisions of this Subsection 411.D.~~

~~E.— Grantor, in its exercise of independent discretion at anytime during the term of this franchise, shall have the right to present to the voters of the City of Tulsa the issue of whether a fee of one percent (1%) shall be assessed for the exclusive purpose of funding the mandatory installation and/or relocation of Grantee's plants and systems in underground locations at Grantor's direction. Subsequent to voter approval, Grantor agrees that in the event it directs installation of any portion of Grantee's plants and systems contrary to Grantee's current urban installation, operation and maintenance or replacement procedures (procedures), Grantor shall pay and reimburse Grantee with funds from the approved fee for the difference between the reasonable cost of such directed procedures and the reasonable cost of Grantee's current procedures. In order to exercise such option, Grantor must provide Grantee written notification of Grantor's intent to submit this issue for election. Grantor is then responsible for taking all action necessary to present this issue for election by the qualified voters of the City of Tulsa to be held not less than two (2) months nor more than six (6) months from the date of such written notification. Grantee shall be responsible for all costs of the election at which this issue may first be presented to the voters for decision. Subsequent elections on the same question, if any, shall be at Grantor's expense. Such proposed fees in their total amount, when considered with the franchise fee, are not less than one percent (1%) and not more than four percent (4%) of the gross receipts from the retail sale of electric energy by Grantee and the sale by other persons or entities to ultimate consumers within the City of Tulsa to the extent that such electric energy is transmitted over the plants and systems of Grantee~~

~~which are located within the City of Tulsa, with such gross receipts determined and paid in the manner provided in Subsection 411.A above. Such fee shall continue to be in lieu of all concessions, charges, excise, franchise, licenses, occupation, privilege and permit fees, or taxes, except assessments for special improvements and ad valorem taxes. If the issue of this fee is submitted for election in accordance with the provisions of this Subsection 411.E and a majority of the qualified electors of the City of Tulsa vote in favor of such issue, the total fees shall be changed accordingly at the end of the calendar year in which such election is held. If a majority of the qualified electors of the City of Tulsa vote against the fee, the franchise fee then in effect will continue in full force and effect until the end of the term provided for in Section 402, above, or until such franchise fee is changed in accordance with the provisions of Subsection 411.D.~~

~~FE.~~ Grantor agrees that the total of the percentage rates used to calculate the franchise fee paid by Grantee to Grantor, including any revision of such franchise fee, 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 sales of electric energy by such other person or entity to ~~u~~Ultimate ~~e~~Consumers within the City of Tulsa.

Section 412. - Maintenance and inspection of records.

A. Grantee shall at all times make and keep full and complete plats, maps and other records showing the location, nature and size of all of Grantee's ~~p~~Plants and ~~s~~Systems within the corporate limits of the City of Tulsa.

B. Grantee shall maintain and provide to Grantor a regularly updated catalogue of street and highway lighting pole and fixture standards and costs, including electricity costs.

~~BC.~~ For the purpose of affording Grantor the opportunity to enforce and collect the franchise fee imposed by this ordinance and franchise, Grantee shall further permit Grantor to inspect and audit, during regular business hours and at Grantor's expense, the relevant books and records kept by Grantee in the ordinary course of business.

Section 413. - Right of city to purchase property.

A. Grantor shall have the right at any time after fifteen (15) years after the date of acceptance of this franchise to purchase all, but not less than all, of the properties of Grantee which comprise the ~~p~~Plants and ~~s~~Systems of Grantee that are used for or related to the manufacture, transmission, distribution, sale and ~~e~~Control of ~~e~~Electricity which are located within the corporate limits of the City of Tulsa at the time such right to purchase is exercised, and to terminate this franchise if such purchase and termination are approved by a majority of the qualified electors of the City of Tulsa voting ~~thereon~~ at a special or general election held in accordance with the provisions of this Section 413. At any time after the right to purchase such properties of Grantee shall have accrued under the terms of this Subsection 413.A and the fair market value of such properties has been determined in accordance with Subsection 413.B below, the question of the purchase of such properties and termination of this franchise may be submitted by the City Council of the City of Tulsa to the

qualified electors of the City for approval. The question of the acquisition of such properties and the termination of this franchise shall also be submitted to the qualified electors of the City of Tulsa upon the petition to the City of twenty-five percent (25%) of the qualified electors of the City presented after the right to purchase such properties of Grantee shall have accrued under this Subsection 413.A. In the event such a petition is so presented, the question of the acquisition of such properties and the termination of the franchise shall be submitted at the next succeeding election in the City of Tulsa after the fair market value of such properties has been determined in accordance with Subsection 413.B below.

B. Grantee shall be compensated by Grantor for the purchase of the above-described properties by payment to Grantee of the fair market value of such properties located within the City of Tulsa, which shall include consideration of the services provided by means of such properties and any legal obligations or commitments which Grantee has which are directly related to such properties. Such value shall be determined by the majority of three (3) appraisers, one (1) to be selected by the Mayor of the City of Tulsa, one (1) by Grantee, and the third by the first two appraisers. The appraisers shall be persons of recognized skill, ability and experience with respect to the appraisal and evaluation of properties of the character and type which City is entitled to purchase pursuant to this section and of services provided by means of such properties. If Grantee shall refuse to select an appraiser for thirty (30) days after an appraiser has been selected by the Mayor, the fair market value of the properties described above, taking into consideration the services provided by means of such properties, shall be fixed by the vote of a majority of the City Council. If the two (2) appraisers appointed by the Mayor and by Grantee shall fail to agree upon the third appraiser within thirty (30) days after their appointment, the third appraiser, upon the application of either Grantor or Grantee, shall be appointed by the Presiding Judge of the District Court of Tulsa County, Oklahoma, or if such Judge shall fail or refuse to make such appointment for any reason, then the Corporation Commission of Oklahoma, upon ten (10) days' notice to the adverse party, may appoint such third appraiser. The fair market value of the properties described above shall be determined by the appraisers within ninety (90) days after the appointment of the third appraiser.

C. After the fair market value of the properties described above has been determined by the appraisers in accordance with the provisions of Subsection 413.B above, the question of the acquisition of such properties by payment to Grantee of the fair market value of such properties as so determined and termination of this franchise shall be submitted to the qualified electors of the City of Tulsa at the next succeeding special or general election. In the event a majority of such qualified electors approve the question of such acquisition and termination, Grantor shall have ninety (90) days from its receipt of the official results of such election within which to pay Grantee in cash the fair market value of all of such properties as determined by the appraisers and submitted to the qualified electors at the election. Until such payment, Grantee may continue to operate its pPlants and sSystems and provide services pursuant to the terms of this franchise; provided, that if between the date of the appraisal of such properties and the date of payment therefor, reasonable and necessary additions, betterments and replacements shall have been made by Grantee to its pPlants and sSystems or services within the City of Tulsa, Grantor shall pay in addition to the value established by the appraisers, the reasonable cost of such additions, betterments and replacements. If Grantor fails to pay the appraised amount plus any additions, betterments and replacements thereto as provided for herein to Grantee within the ninety (90) day period set

~~forth~~prescribed above, then the right of purchase granted to Grantor by this section shall expire and become void.

D. For the purpose of aiding the appraisers in determining the fair market value of the properties described above, including consideration of the services provided by means of, and obligations and commitments directly related to such properties, all of the relevant books, records, contracts and other information in the possession of the Grantee shall be open and accessible to the appraisers during the time their appraisal is being made, and the appraisers may take into consideration any other factors appropriately presented to them in determining ~~said the~~ fair market value.

E. In the event City purchases properties of Grantee pursuant to this section, City agrees that it will, for a reasonable fee, make the use of such properties available to Grantee as is necessary for the efficient operation by Grantee of the remaining portions of its ~~p~~Plants and ~~s~~Systems for the transmission, distribution, provision and sale of electric energy and related services.

F. In the event the provisions concerning rights of purchase contained in Article VIII, Section 9 of the Amended Charter of the City of Tulsa, as in effect on the operative date of this ordinance, shall be repealed or substantially revised during the term of the franchise granted ~~hereby~~ so as to remove the requirement that the right of purchase ~~set forth~~prescribed in this Section 413 be included as a condition of franchises granted by the City of Tulsa, the provisions of this Section 413 ~~whereby by which~~ Grantor is given the right to purchase ~~p~~Plants and ~~s~~Systems of Grantee shall become null, void and of no further effect.

Section 414. - Election required—acceptance by Grantee.

This ordinance and franchise shall be in full force and effect from and after the date of its acceptance ~~as hereinafter provided~~, upon its passage and approval by a vote of a majority of the qualified electors residing within the City of Tulsa, who shall vote ~~thereon on it~~ at a special election called under or pursuant to the provisions hereof of this ordinance; and if this ordinance fails to be so approved at ~~said that~~ election, it shall be wholly void and of no effect.

The Mayor of the City of Tulsa is ~~hereby~~ authorized and instructed to call by proclamation such election in the manner and form provided by the laws of the state of Oklahoma for the calling of special elections, to be held on ~~June 10, 1997~~February 8, 2022, giving such notice and preparing such proclamation, ballot title and call ~~therefor~~ as provided by law, for the purpose of submission to the qualified electors residing within the City of Tulsa the proposition of approval or refusal of this ordinance and the franchise ~~hereby~~ granted by it; and the proper officers of ~~said the~~ City are hereby directed to do all things that may be necessary for the holding of ~~said such~~ election and for the submission of ~~said the~~ question, and shall, in all things, comply with the laws of the state of Oklahoma, in designating ~~June 10, 1997~~February 8, 2022, as the day, month and year of ~~said this~~ election, the hours of opening and closing the polls, the voting places within ~~said the~~ City in which ~~said this~~ election shall be held and the proper persons within the respective precincts of ~~said the~~ City for the purpose of holding ~~said this~~ election.

It is understood and agreed that in the event ~~said this~~ franchise ~~be~~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 City Clerk of the City of Tulsa an acceptance in writing duly executed according to law, accepting this ordinance and franchise.

Section 415. - Repeal of previous franchise agreement.

Upon the filing by the Grantee of the acceptance of this ordinance as ~~hereinabove~~provided, all rights, privileges and obligations of any other ordinance and franchises, or portions ~~thereof of them~~, under which ~~said the~~ Grantee may now be exercising its privileges of use of the ~~p~~Public ~~w~~Ways in the City of Tulsa and particularly Ordinance No. ~~13304-18968~~ of the City of Tulsa, codified as Title 15, Sections 400 through ~~411~~416, both inclusive, of the Tulsa Revised Ordinances and all other ordinances and parts of ordinances in conflict ~~herewith~~, shall be and ~~thereafter~~ remain canceled, annulled and repealed.

Section 416. - Emergency clause.

~~Whereas~~ Because an immediate necessity exists in order that the inhabitants of Grantor may be provided an adequate supply of electricity for heating, lighting, cooling and power purposes and for the purpose of providing light, heat, cooling and power for the streets, alleys, public grounds, parks and other public places and institutions of Grantor, and as well as for the preservation of the public health, peace and safety, an emergency is ~~hereby~~ declared to exist by reason ~~whereof of~~ which this ordinance shall be in full force and effect from and after its passage, approval and publication; and same shall be submitted at a special election.