

ORDINANCE NO. 995

AN ORDINANCE GRANTING TO PUBLIC SERVICE COMPANY OF OKLAHOMA (PSO) THE RIGHT, PRIVILEGE AND NON-EXCLUSIVE FRANCHISE FOR 25 YEARS TO BUILD, EQUIP, MAINTAIN, EXTEND, OWN, AND OPERATE A SYSTEM FOR THE MANUFACTURE, TRANSMISSION, DISTRIBUTION, SALE, AND CONTROL OF ELECTRICITY AND COMMUNICATIONS CIRCUITS FOR ITSELF AND OTHERS IN, UNDER, OVER, ACROSS, THROUGH, AND ALONG ANY AND ALL OF THE PRESENT AND FUTURE STREETS, ALLEYS, AVENUES, WAYS, AND OTHER PUBLIC PLACES AND GROUNDS WITHIN THE LIMITS OF THE CITY OF CLINTON, CUSTER COUNTY, OKLAHOMA; AND GRANTING PSO THE RIGHT TO OPERATE AN ELECTRIC BUSINESS PURSUANT TO REASONABLE RULES AND REGULATION BY THE OKLAHOMA CORPORATION COMMISSION; WITH PSO AGREEING TO CHARGE LEGAL RATES FOR ELECTRIC SERVICE; AND, IF POSSIBLE, TO SELL AND DELIVER TO THE CITY ALL ELECTRICITY AND SERVICES REQUESTED BY IT; PROVIDING FOR PAYMENT TO THE CITY BY PSO OF A MONTHLY FEE ON GROSS RECEIPTS FROM THE DELIVERY AND SALE OF ELECTRICITY; AND PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; AND DECLARING AN EMERGENCY.

THE BOARD OF TRUSTEES OF THE CITY OF CLINTON, OKLAHOMA AUTHORIZES:

SECTION 1. That the City of Clinton, a municipal corporation of the state of Oklahoma, located in Custer County ("Grantor"), grants unto Public Service Company of Oklahoma, an Oklahoma corporation, its successors and assigns, ("Grantee"), the right, power, and authority to use the streets, alleys, avenues, ways, and other public places and grounds of Grantor ("Public Rights of Way") as now constituted and as it may be extended or created in the future, for the purpose of building, equipping, maintaining, extending, owning, and operating any plants, systems, and appurtenant facilities for the manufacture, transmission, distribution, sale, and control of electricity for lighting, heating, and power purposes, as well as for such other purposes as electric energy may be put, in and to Grantor

and to the public generally, and to transmit electric energy and communicate and distribute information (audio, video, and data) for itself or others over distribution and transmission lines throughout the City to the ultimate customer and to connections and systems in other localities with poles, wires, conduits, substations, meters, appliances, and apparatus necessary and convenient for the plant and system upon, across, over, and under the Public Rights of Way of the City.

SECTION 2. All rights and privileges granted by this Ordinance shall extend and be in force between Grantor and Grantee for a term of 25 years from and after the acceptance of this Ordinance.

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

SECTION 4. Grantee will have the right to make and enforce reasonable rules and regulations for the sale, delivery, control, and metering of its electric energy and the conduct of its business and may reserve in these rules and regulations the right to disconnect service to customers where Grantee's meters, wires, switches, appliances, or apparatus are found to have been tampered with, or who have failed to pay for electricity or services, and to enter upon the premises of its customers at all reasonable times, or at any hour if for the sole purpose of restoring service, for the purpose of inspecting, repairing, or reading meters or

for removing wires, meters, switches, and appliances and perform other activities necessary to provide and maintain electric service. Provided that these rules and regulations are not in conflict with law or the rules and regulations from time to time made by the Corporation Commission of the State of Oklahoma or by other regularly constituted regulatory authority having jurisdiction over Grantee.

Grantor grants to Grantee permission to cut down, trim, remove, and otherwise control using herbicides or tree growth regulators any trees, branches, vegetation, or brush upon and overhanging the Public Rights of Way of the City in the vicinity of Grantee's electric facilities where trees and other vegetation, in Grantee's reasonable opinion, may endanger the safety of Grantee's personnel or interfere with the construction, operation, or maintenance of Grantee's facilities or ingress or egress to, from, or along the Public Rights of Way.

SECTION 5. Grantee agrees that it will maintain electric distribution service in and to Grantor unless excused by statute, under the rules and orders imposed upon it by the Corporation Commission of the State of Oklahoma, or by other regularly constituted regulatory authority having jurisdiction over Grantee. But in accepting this franchise and contract, Grantee does not guarantee continuous service at all times and will be relieved temporarily from its obligation to furnish services continuously in case of any disability caused by act of God or by the elements, or terrorism, or strikes, or lock-outs, or by any temporary breakdown or failure of machinery, transmission, or distribution lines, appliances or apparatus, or by other causes beyond Grantee's reasonable control; provided Grantee agrees in these cases to exercise due diligence in the repair of such machinery, transmission,

or distribution lines, appliances and apparatus, and to resume operation without unnecessary delay.

Grantee agrees it will indemnify and hold the City of Clinton free and clear of any claims for damages or otherwise to the extent caused by Grantee's negligence in the construction or operation carried on under the franchise. But it is understood and agreed that in the event of claims being presented or prosecuted against the City, Grantee will have the right to defend against and to settle and discharge any claims in any manner as it may see fit. To this end Grantor agrees to notify Grantee of any claims and to furnish to it related information and assistance, as may be necessary, in the defense.

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

SECTION 7. During the life of this franchise and for and in consideration of the acceptance by Grantee, it is agreed that Grantee may charge and collect from Grantor and its inhabitants a rate or rates, for its or the service of others that will at all times be compensatory and reasonable, and if regulated, subject to the rules and orders as are in effect

or that hereafter may be lawfully made by the Corporation Commission of the State of Oklahoma, or by other regularly constituted regulatory authority having jurisdiction over Grantee.

SECTION 8. During the life of this franchise, Grantee will, if possible and permitted under applicable law, sell to Grantor all electric energy requested by it for municipal purposes, including, but not limited to, water and wastewater treatment, water and storm water pumping, and the lighting of its streets.

SECTION 9. From and after the approval and acceptance of this Ordinance, Grantee must pay, and, in consideration of the granting of this franchise, agrees to pay to Grantor, as a franchise fee and as compensation for the rights and privileges enjoyed under the franchise, a sum equal to two percent of its gross receipts from the delivery and, if applicable, the sale of electrical energy within the City, payable monthly with each payment to be made not later than the first business day of the second month following the month in which the receipts were received for the billing cycle for that month. For example, payment for April receipts, for a subject year covering a billing cycle from March 29th through April 27th would be paid not later than June 1st. The fee will be in lieu of all concessions, excise, franchise, licenses, occupation, privilege, and permit fees, or taxes, except assessments for special improvements and ad valorem taxes.

Grantor must notify Grantee in writing of newly annexed and de-annexed areas. The notice must include the ordinance number authorizing the action, an appropriate map identifying the areas, and documentation of the notice to the State of Oklahoma regarding the annexation or de-annexation. Grantee will have no responsibility for commencing franchise payments under the franchise to Grantor in newly annexed areas until Grantee

has received Grantor's notification. Upon Grantor's notification and beginning the 91st day after receipt of the notice, Grantee will commence payments to Grantor for the gross receipts from delivery and, if applicable, the sale of electrical energy in each newly annexed area and will make any appropriate adjustments in payments reflecting overpayments made in any prior month resulting from the inclusion of gross receipts from delivery and, if applicable, the sale of electrical energy in de-annexed areas. Payments for receipts in newly annexed areas and adjustments for overpayments in de-annexed areas will be made back to the effective date of the ordinance authorizing the action.

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

SECTION 10. This Ordinance will be in full force and effect from and after its acceptance as provided, upon its passage and approval by a vote of the qualified electors residing within the City, who will vote on the Ordinance at a special election called under or pursuant to the provisions in this Ordinance; and if this Ordinance fails to be approved at the election, it will be void and of no effect. The Mayor/President of the Board of Trustees of the City is authorized and instructed to call by an authorized resolution an election in the manner and form provided by the laws of the State of Oklahoma for the calling of special elections, giving the resolution, notice, and ballot title accordingly as provided by law, for the purpose of submission to the qualified electors residing within the City the proposition of approval or refusal of this Ordinance and the non-exclusive franchise contract thus

granted; and the proper officers of the City are directed to do all things that may be necessary for the holding of the election and for the submission of the question, and must, in all things, comply with the election laws of the State of Oklahoma.

It is understood and agreed that in the event the 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 an acceptance in writing duly executed according to law, accepting this Ordinance and franchise.

SECTION 11. Upon the filing by Grantee of the acceptance of this Ordinance as hereinabove provided, all rights, privileges, and obligations of any other ordinances and franchises, or portions, under which Grantee may now be exercising its privileges to use the streets, alleys, avenues, ways, and other public places and grounds within the incorporated limits of Grantor, and all other ordinances and parts of ordinances in conflict by this means, will be and thereafter remain cancelled, annulled, and repealed.

SECTION 12. If any provision or clause of this Ordinance is held invalid for any reason, this invalidity will not affect other provisions or clauses of this Ordinance that can be given effect without the invalid provision or clause, and to this end the provisions and clauses of this Ordinance are declared to be severable.

SECTION 13. Whereas an immediate necessity exists in order that the inhabitants of Grantor may be provided an adequate supply of electricity for heating, lighting, and power purposes and for the purpose of providing light, heat, and power for the streets, alleys, public grounds, parks, and other public places and institutions of Grantor, and for the preservation of public health, peace, and safety, an emergency is by means of this declared to exist by reason of which this Ordinance will be in full force and effect from and after its

passage and approval at the special election, its publication, and Grantee's filing of its acceptance of or concerning this.

Approved, this _____ day of _____, 2019.

_____, Mayor/President of the Board of Trustees

(SEAL)

ATTEST:

_____, City Clerk