

## APPENDIX 4

### PUBLIC SERVICE COMPANY OF OKLAHOMA

ORDINANCE NO. 02-1023

*[Amending Ord. No. 346; 1977]*

APPROVED JANUARY 14, 2003 SPECIAL ELECTION  
BY VOTE OF REGISTERED CITIZENS.

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

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

SECTION 1. That there is hereby granted by the City of WILBURTON , a municipal corporation of the State of Oklahoma, (hereinafter referred to as "Grantor"), located in Latimer County, unto Public Service Company of Oklahoma, an Oklahoma corporation, its successors and assigns, (hereinafter referred to as "Grantee"), the right, power and authority to use the streets, alleys, avenues, ways and other public places and grounds of Grantor as now constituted and as they may be hereafter extended or created, for the purpose of building, equipping, maintaining, extending, owning and operating any plants and systems for the manufacture, transmission, distribution, sale, and control of electricity for lighting, heating and power purposes, as well as for such other purposes as electric energy may be put, in and to said Grantor and to the public generally, and to transmit electric energy and data for itself or others over distribution and transmission lines throughout the city to the ultimate customers and to connections and systems in other localities, with poles, wires, conduits, substations, meters, appliances, and apparatus necessary and convenient for such plant and system upon, across, over and under each and any of said streets, alleys, avenues, ways and other public places and grounds, provided, however, Grantee will not build any power plant or substation on property owned by Grantor.

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

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

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

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

The Grantee covenants and agrees that it will indemnify and hold the Grantor free and clear of any claims for damages or otherwise caused by the negligence of the Grantee in the construction or operation carried on hereunder. But it is understood and agreed that in the event of claims being presented or prosecuted against said city the Grantee shall have the right to defend against the same and to settle and discharge same in such manner as it may see fit. To this end the Grantor agrees to notify the Grantee of such claims and to furnish to it such information and assistance, as may be necessary, in the defense thereof.

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

SECTION 7. During the life of this franchise and for and in consideration of the acceptance hereof by Grantee, it is agreed that Grantee may charge and collect from Grantor and its inhabitants a rate or rates, for its and the service of others which shall at all times be compensatory and reasonable, and if regulated, subject to such rules and orders as are in effect or that hereafter may be lawfully made by the Corporation Commission of the State of Oklahoma, or by other regularly constituted regulatory authority having jurisdiction over Grantee.

SECTION 8. During the life of this franchise, Grantee will, if possible, 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, the Grantee shall pay, and in consideration of the granting of this franchise agrees to pay to the Grantor as a franchise fee, and as a compensation for the right and privileges enjoyed hereunder, a sum equal to two percent (2%) of its gross receipts from the delivery and, if applicable, the sale of electrical power and energy within the city, payable monthly on or before the 20<sup>th</sup> day of each month, on such receipts for the preceding calendar month, which fee shall be in lieu of all concessions, excise, franchise, licenses, occupation, privilege, and permit fee, or taxes, except assessments for special improvements and ad valorem taxes. 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 percent provided in this Section 9, then and in that event, Grantee shall forthwith and without demand inform the 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 applicable law. Grantor agrees that the percentage paid to Grantor by Grantee, including any revision thereof, shall in no event exceed the percentage rate used to calculate any fee or tax paid to Grantor by any other person or entity if such fee or tax is based in any way on the amount of revenues from delivery or sales of electrical energy or both by such other person or entity to ultimate customers within the city.

SECTION 10. Grantor and Grantee acknowledge that there is ongoing public debate concerning the restructuring of the electric utility industry which could result in another person or entity utilizing Grantee's poles, wires, and similar facilities to provide retail electric service to the ultimate consumer. Grantor will cooperate with the Grantor in protecting Grantor's economic interest, which cooperation includes but is not limited to, Grantee's making reasonable efforts to insure that: (1) those using its poles, wires, and facilities to sell retail electric energy have complied with Grantor's relevant ordinances; and (2) Grantee acknowledges that it will abide by all applicable federal and state statutory and/or regulatory requirements.

SECTION 11. This Ordinance shall be in full force and effect from and after its acceptance as hereinafter provided, upon its passage and approval by a vote of the majority of the qualified electors residing within the city, who shall vote thereon at a special election called under or pursuant to the provisions hereof; and if this Ordinance fails to be so approved at said election, it shall be wholly void and of no effect. The Mayor of Grantor is hereby authorized and instructed to call such election in the manner and form provided by the laws of the State of Oklahoma for the calling of special elections, giving such notice and preparing such documents, ballot title and call therefore as provided by law, for the purpose of submission to the qualified electors residing within the city the proposition of approval or refusal of this Ordinance, and the non-exclusive



franchise contract hereby granted; and the proper officers of the city are hereby directed to do all things that may be necessary for the holding of the election and for the submission of said question, and shall, in all things, comply with the laws of the State of Oklahoma, in the designation of the day, month and year of the election, the hours of opening and closing the polls, the voting places within the city in which the election shall be held and the proper persons within the respective precincts of the city for the purpose of holding said election.

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

SECTION 12. Upon the filing by 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, under which said Grantee may now be exercising its privileges of use of the streets, alleys, avenues, ways and public places and grounds within the incorporated limits of Grantor, and particularly Ordinance No. 346, and all other ordinances and parts of ordinances in conflict herewith, shall be and thereafter remain canceled, annulled and repealed.

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

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

PASSED, and the emergency clause ruled upon separately; and approved, this 16TH day of October, 2002.

APPROVED this 16TH day of October, 2002 .