

ORDINANCE NO. 2406

AN ORDINANCE OF THE CITY OF TERRELL, KAUFMAN COUNTY TEXAS GRANTING TO ONCOR ELECTRIC DELIVERY COMPANY L.L.C., TOGETHER WITH ITS SUCCESSORS AND ASSIGNS UNDER THE PROVISIONS OF ARTICLE X, SECTION TWO OF THE TERRELL CITY CHARTER, AN ELECTRIC POWER FRANCHISE TO USE THE PRESENT AND FUTURE STREETS, ALLEYS, HIGHWAYS, PUBLIC UTILITY EASEMENTS, PUBLIC WAYS AND PUBLIC PROPERTY OF THE CITY OF TERRELL, TEXAS; PROVIDING FOR COMPENSATION THEREFOR; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES INCLUDING, BUT NOT LIMITED TO, REPEAL OF ALL EXISTING FRANCHISE ORDINANCES WITH ONCOR ELECTRIC COMPANY L.L.C. TOGETHER WITH ITS PREDECESSORS AND ASSIGNS; PROVIDING FOR WRITTEN ACCEPTANCE OF THIS FRANCHISE; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE AND A TERM OF SAID FRANCHISE; AND FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TERRELL, KAUFMAN COUNTY, TEXAS THAT:

ARTICLE I.

That Oncor Electric Delivery Company, L.L.C., together with its successors and assigns is hereby granted an Electric Power Franchise under the following terms and conditions:

Section 1: That there is hereby granted to Oncor Electric Delivery Company, L.L.C., together with its successors and assigns (hereinafter referred to as the "Company"), the right, privilege and franchise to construct, extend, maintain and operate in, along, under and across the present and future streets, alleys, highways, public utility easements, public ways and other public property (Public Rights-of-Way) of the City of Terrell, Texas (hereinafter referred to as the "City") electric power lines with all necessary and desirable appurtenances (including, but not limited to underground conduits, poles, towers, wires, transmission lines and other structures together with telephone and communication lines for its own use), for the purpose of delivering electricity to the City, the inhabitants and citizens thereof as well as persons, firms and corporations beyond the corporate limits thereof, for the term set out in Article II below.

Section 2: Poles towers and other structures shall be so erected as not to unreasonably interfere with traffic over streets, alleys and highways.

Section 3: The Company shall, except in cases of emergency conditions or work incidental in nature, obtain a permit, if required by city ordinance, prior to performing work in the Public Rights-of-Way, except in no instance shall the Company be required to pay fees or bonds related to its use of the Public Rights-of-Way, notwithstanding the City's enactment of any ordinance providing the contrary. The Company shall construct its facilities in conformance with the applicable provisions of the National Electric Safety Code or such comparable standards as may be adopted. In the event the City abandons any Public Rights-of-Way in which the Company has facilities, such abandonment by the City shall be conditioned on the Company's right to maintain its use of the former Public Rights-of-Way and on the obligation of the party to whom the Public Rights-of-Way is abandoned to reimburse the Company for all removal and/or relocation fees and expenses should the Company agree to the removal or relocation of said facilities following abandonment of the Public Rights-of-Way. If the party to whom the Public Rights-of-Way is abandoned requests the Company to remove or relocate its facilities and the Company agrees to such removal and/or relocation, such removal and/or relocation shall be done within a reasonable time at the expense of the party requesting said removal and/or relocation. If relocation cannot practically be made to another Public Rights-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting said relocation.

Section 4: The Company shall, at all times, hold the City harmless from any and all claims, damages, expenses or other liability that results from any act or neglect on the part of the Company hereunder.

Section 5: This franchise is not exclusive. Nothing contained herein shall be construed so as to prevent the City from granting other like or similar rights, privileges and franchises to any other person, firm or corporation.

Section 6: In consideration of the grant of said right, privilege and franchise by the City and as full payment for the right, privilege and franchise of using and occupying the said Public Rights-of-Way, and in lieu of any and all occupation taxes, assessments, municipal charges, fees, easement taxes, franchise taxes, license, permit and inspection fees or charges, street taxes, bonds, street or alley rentals, and all other taxes, charges, levies, fees and rentals of whatsoever kind and character which the City may impose or hereafter be authorized or empowered to levy and collect, excepting only the usual general or special ad valorem taxes which the City is authorized to levy and impose upon real and personal property, sales and use taxes, and special assessments for public improvements, the Company shall pay to the City the following:

- (A) On an annual basis, a charge, as authorized by Section 33.008(b) of PURA, multiplied by each kilowatt hour of electricity delivered by the Company to each retail

customer whose consuming facility's point of delivery is located within the City's municipal boundaries.

- (1) The annual payment will be due and payable on or before January 15 of each year throughout the life of this franchise. The payment will be based on each kilowatt hour of electricity delivered by the Company to each retail customer whose consuming facility's point of delivery is located within the City's municipal boundaries during the preceding twelve month period ending December 31 (January 1 through December 31). The payment will be for the rights and privileges granted hereunder for the twelve calendar month period (January 1 through December 31) preceding the payment date.
- (2) The first payment hereunder shall be due and payable on or before January 15, 2010 and will cover the basis period of January 1, 2009 through December 31, 2009 and the privilege period of January 1, 2009 through December 31, 2009. The final payment under this franchise is due on or before January 15, 2030 and covers the basis period of January 1, 2029 through December 31, 2029 and the privilege period of January 1, 2029 through December 31, 2029; and

(B) A sum equal to four percent (4%) of gross revenues received by the Company from services identified as DD1 through DD24 in Section 6.1.2 "Discretionary Service Charges," in its Tariff for Retail Delivery Service (Tariff) effective January 1, 2002, that are for the account and benefit of an end-use retail electric consumer. The Company will, upon request from the City, provide a cross reference to Discretionary Service Charge numbering changes that are contained in the Company's current approved Tariff.

- (1) The franchise fee amounts based on "Discretionary Service Charges" shall be calculated on an annual calendar year basis, i.e. from January 1 through December 31 of each calendar year.
- (2) The franchise fee amounts that are due based on "Discretionary Service Charges" shall be paid at least once annually on or before April 30 of each year based on the total "Discretionary Service Charges" as set out in Section 6(b), received during the preceding calendar year. The initial Discretionary Service Charge franchise fee amount will be paid on or before April 30, 2010 and will be based on the calendar year January 1, 2009 through December 31, 2009. The final Discretionary Service Charge franchise fee amount will be paid on or before April 30, 2030 and will be based on the calendar year January 1, 2029 through December 31, 2029.

- (3) The Company may file a tariff or tariff amendment(s) to provide for the recovery of the franchise fee on Discretionary Service Charges.
- (4) The City agrees (i) to the extent the City acts as regulatory authority, to adopt and approve that portion of any tariff which provides for 100% recovery of the franchise fee on Discretionary Service Charges; (ii) in the event the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of the franchise fees on such Discretionary Service Charges is an issue, the City will take an affirmative position supporting the 100% recovery of such franchise fees by the Company and; (iii) in the event of an appeal of any such regulatory proceeding in which the City has intervened, the City will take an affirmative position in any such appeals in support of 100% recovery of such franchise fees by the Company.
- (5) The City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such franchise fees by the Company.
- (6) In the event of a regulatory disallowance of the recovery of the Discretionary Service Charges, the Company will not be required to continue payment.

ARTICLE II.

This Ordinance shall become effective upon the Company's written acceptance hereof, said written acceptance to be filed by the Company with the City within sixty (60) days after final passage and approval hereof. The right, privilege and franchise granted hereby shall expire on December 31, 2029 provided that, unless written notice is given by either party hereto to the other not less than sixty (60) days before the expiration of this franchise agreement, it shall be automatically renewed for an additional period of six (6) months from such expiration date and shall be automatically renewed thereafter for like periods until canceled by written notice given not less than sixty (60) days before the expiration of any such renewal period.

ARTICLE III.

This ordinance shall supersede any and all other franchises granted by the City to the Company, its predecessors and assigns. All other ordinances or parts of ordinances in conflict with this franchise ordinance, to the extent that such ordinances or parts of ordinances conflict, with this franchise, are hereby repealed.

ARTICLE IV.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court or agency of competent jurisdiction, such portion shall be deemed a separate provision and such holding shall not affect the validity of the remaining portions of the ordinance.

ARTICLE V.

In order to accept this franchise, the Company must file with the City Secretary its written acceptance of this franchise Ordinance within sixty (60) days after its final passage and approval by the City.

ARTICLE VI.

It is hereby officially found and determined that the meeting at which this Ordinance is passed is open to the public and that due notice of this meeting was posted, all as required by law.

PASSED AND APPROVED THIS the 7th day of April, 2009.
PASSED AND ADOPTED THIS the 19th day of May, 2009.

Hal Richards, Mayor

ATTEST:

APPROVED AS TO FORM:

John Rounsavall, City Secretary

Mary Gayle Ramsey, City Attorney