

City Council Communication

Item # 5

Submitted By: Kevin M. Farley, City Manager **Date:** 5/2/2013

Subject: ONCOR Franchise Agreement

Action Requested: To review and/or approve all matters relating to the ONCOR Franchise Agreement.

Purpose (Outline – Who, What, Where, Why & How)

See Attached.

Checklist of Attachments

<input type="checkbox"/> Contract	<input type="checkbox"/> Agreement	<input checked="" type="checkbox"/> Ordinance	<input type="checkbox"/> Resolution
<input type="checkbox"/> Policy	<input type="checkbox"/> Applications	<input type="checkbox"/> Legal Opinion	<input type="checkbox"/> Minute Order
<input type="checkbox"/> Letter/ Memo			
<input type="checkbox"/> From	<input type="checkbox"/> P&Z Minutes	<input type="checkbox"/> Council Minutes	<input type="checkbox"/> Other Minutes
<input type="checkbox"/> Applicant	<input type="checkbox"/> Checklist	<input type="checkbox"/> Federal Law	<input type="checkbox"/> Plans / Drawings
<input type="checkbox"/> Staff	<input type="checkbox"/> State Law	<input type="checkbox"/> Bid Tabulations	<input type="checkbox"/> Maps
<input checked="" type="checkbox"/> Other	<input type="checkbox"/> Attachments	<input type="checkbox"/> Notices	<input type="checkbox"/> Charter



Ron McCune
Franchise Manager,
Regulatory Affairs

Oncor Electric Delivery
1616 Woodall Rodgers Fwy
Suite 6A-011
Dallas, TX 75202-1234

Tel: 214-486-5678
Fax: 214-486-2180
ronald.mccune@oncor.com

January 28, 2013

Hon. Frank Budra
Mayor
City of Pottsboro
P.O. Box 1089
Pottsboro, TX 75076-1089

Dear Mayor Budra:

As you are aware, the City of Pottsboro electric franchise with Oncor Electric Delivery will expire on August 1, 2013. Enclosed is a proposed electric franchise renewal ordinance for the City of Pottsboro. The proposed franchise has been prepared utilizing our standard franchise language and incorporates existing payment provisions as contained in the current franchise and franchise amendments. In addition, the franchise proposes a term of 20 years, and expires on June 30, 2034.

I will be contacting you within the next few weeks to determine how you would like to proceed to finalize the franchise. If you have any questions or comments concerning the proposed franchise, please feel free to call me at 214-486-5678 or you may also reach me via e-mail at ronald.mccune@oncor.com

Sincerely,

Ron McCune

Enclosure
cc: Todd Thompson

ORDINANCE NO. 1306

AN ORDINANCE GRANTING TO ONCOR ELECTRIC DELIVERY COMPANY LLC, ITS SUCCESSORS AND ASSIGNS, 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 POTTSBORO, TEXAS, PROVIDING FOR COMPENSATION THEREFORE, PROVIDING FOR AND EFFECTIVE DATE AND A TERM OF SAID FRANCHISE, PROVIDING FOR WRITTEN ACCEPTANCE OF THIS FRANCHISE, PROVIDING FOR THE REPEAL OF ALL EXISTING FRANCHISE ORDINANCES TO ONCOR ELECTRIC DELIVERY COMPANY LLC, ITS PREDECESSORS AND ASSIGNS, AND FINDING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED TO OPEN TO THE PUBLIC.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF POTTSBORO, TEXAS:

SECTION 1. GRANT OF AUTHORITY: That there is hereby granted to Oncor Electric Delivery Company LLC, its successors and assigns (herein called "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 Pottsboro, Texas (herein called "City") electric power lines, with all necessary or desirable appurtenances (including underground conduits, poles towers, wires, transmission lines, telephone and communication lines, and other structures for its own use), (herein called "Facilities") for the purpose of delivering electricity to the City, the inhabitants thereof, and persons, firms and corporations beyond the corporate limits thereof, for the term set out in Section 7.

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 City reserves the right to lay, and permit to be laid, storm, sewer, gas, water, wastewater and other pipe lines, cable, and conduits or other improvements and to do and permit to be done any underground or overhead work that may be necessary or proper in, across, along, over, or under Public Rights-of-Way occupied by Company. The City also reserves the right to change in any manner any curb, sidewalk, highway, alley, public way, street, utility lines, storm sewers, drainage basins, drainage ditches, and the like. Upon request by City, Company shall relocate its facilities at the expense of the City except as otherwise required by Section 37.101© of the Texas Public Utility Regulatory Act (PURA), which statutory provision currently states, the governing body of a municipality may require an electric utility to relocate the utility's facility at the utility's expense to permit the widening or straightening of a street. City and Company further agree that widening and straightening of a street includes the addition of any acceleration, deceleration, center or side turn lanes, and sidewalks (meaning sidewalks done in conjunction with widening or straightening of a street), provided that the City shall provide Company with at least thirty (30) days notice and shall specify a new location for such facilities along the Public Rights-of-Way, of the street. 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 Company be required to pay fees or bonds related to its use of the Public Rights-of-Way, despite the City's enactment of any ordinance providing the contrary. Company shall construct its facilities in conformance with the applicable provision of the National Electric Safety Code.

If the City requires the Company to adapt or conform its Facilities, or in any manner to alter, relocate, or change its facilities to enable any other corporation or person to use, or use with greater convenience, said street, alley, highway, or public way, the Company shall not be bound to make such changes until such other corporation or person shall have undertaken, with good and sufficient bond, to reimburse the Company for any costs, loss, or expense which will be caused by, or arises out of such change, alteration, or relocation of Company's Facilities.

If City abandons any Public Rights-of-Ways in which Company has facilities, such abandonment shall be conditioned on Company's right to maintain its use of the former Public Rights-of-Ways and on the obligation of the party to whom the Public Rights-of-Way is abandoned to reimburse Company for all removal or relocation expenses if Company agrees to the removal or relocation of its 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 company agrees to such removal or relocation, such removal or relocation shall be done within a reasonable time at the expense of the party requesting the removal 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 the relocation.

SECTION 4.

- A. In consideration of the granting of this Franchise, Company shall, at its sole cost and expense, indemnify and hold the City, and its past and present officers, agents and employees (the "Indemnitees") harmless against any and all liability arising from suits, actions or claims of injury to any person or persons, or damages to any property brought or made for or on account of any death, injuries to, or damages received or sustained by any person or persons or for damage to or loss of property arising out of, or occasioned by Company or any of its officers, agents, or employees, intentional and/or negligent acts or omission in connection with Company's construction, maintenance and operation of Company's System in the Public Rights-of-Way, including any court costs, expenses and defenses thereof.
- B. The indemnity shall only apply to the extent that the loss, damage or injury is attributable to the negligence or wrongful act or omission of the Company, its officers, agents or employees, and does not apply to the extent such loss, damage or injury is attributable to the negligence or wrongful act or omission of the City or the City's officers, agents, or employees or any other person or entity. This provision is not intended to create a cause of action or liability for the benefit of third parties but is solely for the benefit of the Company and the City.
- C. In the event of joint and concurrent negligence or fault of both the Company and the City, responsibility and indemnity, if any, shall be apportioned comparatively between the City and Company in accordance with the laws of the State of Texas without, however, waiving any governmental immunity available to the City under Texas law and without waiving any of the defenses of the parties under Texas law. Further, in the event of joint and concurrent negligence or fault of both the Company and the City, responsibility for all costs of defense shall be apportioned between the City and Company based upon the comparative fault of each.

D. In fulfilling its obligation to defend and indemnify City, Company shall have the right to select defense counsel, subject to City's approval, which will not be unreasonably withheld. Company shall retain defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Franchise. If Company fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Company shall be liable for all reasonable defense costs incurred by City, except as otherwise provided in Section 4(B) and 4(C).

SECTION 5. This franchise is not exclusive, and nothing herein contained shall be construed so as to prevent the City from granting other like or similar right, privileges and franchises to any other person, firm or corporation. Any Franchise granted by the City to any other person, firm, or corporation shall not unreasonably interfere with this Franchise.

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, Company shall pay the City the following:

A. On an annual basis, a charge, as authorized by Section 33.008(b) of PURA, equal to a franchise fee factor of 0.003166 (the "Base Factor"), multiplied by each kilowatt hour of electricity delivered by Company to each retail customer whose consuming facility's point of delivery is located within the City's municipal boundaries. Company has agreed to increase the franchise fee factor to 0.003324 (the "Increased Factor"); however, should the PUC at any time in the future disallow Company's recovery through rates of the higher franchise payments made under the Increased Factor as compared to the Base Factor, then the franchise fee factor shall immediately revert to the Base Factor of 0.003166 and all future payments, irrespective of the time period that is covered by the payment, will be made using the Base Factor.

1. The annual payment will be due and payable on or before July 1 of each year throughout the life of the franchise. The payment will be based on each kilowatt hour of electricity delivered by 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 ended December 31 (January 1 through December 31). The payment will be for the right and privileges granted hereunder for the twelve calendar month period (July 1 through June 30) following the payment date.
2. The first payment hereunder shall be due and payable on or before July 1, 2014 and will cover the basis period of January 1, 2013 through December 31, 2013 for the privilege period of July 1, 2014 through June 30, 2015. The final payment under this franchise is due on or before July 1, 2033 and covers the basis period of January 1, 2032 through December 31, 2032 for the privilege period July 1, 2033 through June 30, 2034; and

B. a sum equal to four percent (4%) of gross revenues received by 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 1/1/2002, that are for the account and benefit of an end-use retail electric consumer. Company will, upon request by City, provide a cross reference to Discretionary Service Charge numbering changes that are contained in 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 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 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 2014 and will be based on the calendar year January 1 through December 31, 2013. The final Discretionary Service Charge franchise fee amount will be paid on or before April 30, 2035 and will be based on the calendar months of January 1 through June 30, 2034.
3. Company may file a tariff or tariff amendment(s) to provide for the recovery of the franchise fee on Discretionary Service Charges.
4. 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 at issue, the City will take an affirmative position supporting the 100% recovery of such franchise fees by 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 the 100% recovery of such franchise fees by Company.
5. 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 Company.
6. In the event of a regulatory disallowance of the recovery of the franchise fees on the Discretionary Service Charges, Company will not be required to continue payment of such franchise fees.

SECTION 7. This Ordinance shall become effective upon Company's written acceptance hereof, said written acceptance to be filed by Company with the City within sixty (60) days after final passage and approval hereof. The right, privilege and franchise granted hereby shall expire on June 30, 2034; 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.

SECTION 8. This Ordinance shall supersede any and all other franchises granted by the City to Company, its predecessors and assigns.

SECTION 9. In order to accept this franchise, 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 City.

SECTION 10. It is here by officially found 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 at a regular meeting of the City Council of Pottsboro, Texas, on this 6th day of May, 2013.

Frank Budra, Mayor
The City of Pottsboro

ATTEST:

Denise Smith, City Secretary

STATE OF TEXAS
COUNTY OF GRAYSON
CITY OF POTTSBORO

AN ORDINANCE GRANTING TO TEXAS POWER & LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC LIGHT, HEAT AND POWER FRANCHISE, AND REPEALING ALL PREVIOUS ORDINANCES OF THE CITY OF POTTSBORO, TEXAS, GRANTING A FRANCHISE FOR SUCH PURPOSE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF POTTSBORO, TEXAS:

Section 1: That there is hereby granted to Texas Power & Light Company, its successors and assigns (herein called the "Grantee"), the right, privilege and franchise until August 1, 2013, to construct, maintain and operate in the present and future streets, alleys, and public places of the City of Pottsboro, Texas, and its successors, electric light and power lines, with all necessary or desirable appurtenances (including underground conduits, poles, wires, transmission lines and other structures and telephone wires for its own use), for the purpose of supplying electricity to the said City, the inhabitants thereof, and persons and corporations beyond the limits thereof, for light, heat, power and other purposes.

Section 2: Poles, structures and other appurtenances shall be so erected and maintained as not to interfere unreasonably with traffic over streets and alleys. The location of all poles, conduits and other structures shall be fixed under the supervision of the street and alley committee of the City of Pottsboro, or the successors to the duties of that committee, but not so as to interfere unreasonably with the proper operation of said lines.

Section 3: The service furnished hereunder to said City and its inhabitants shall be first class in all respects considering all circumstances, and shall be subject to such reasonable rules and regulations as the Grantee may make from time to time. The Grantee may require reasonable security for the payment of its bills.

Section 4: The Grantee shall hold the City harmless from all expense or liability for any act or neglect of the Grantee hereunder.

Section 5: That on the 1st day of July, 1964, and annually thereafter on July 1 of each succeeding year for the life of this franchise, Texas Power & Light Company, its successors and assigns, shall pay to the City of Pottsboro a sum equal to two per cent (2%) of its gross revenue received from the sale of electric power and energy by said Company within the corporate limits of said City for the preceding calendar year ending December 31, in full payment for the privilege of using and occupying the streets, highways, easements, alleys, parks, and other public places in the City of Pottsboro, whether as rental, supervision and inspection charges, or otherwise, for twelve months succeeding July 1 of year in which payment is made. This payment shall be in lieu of any other tax or increased rate of tax or other imposition, assessment, or charges, except ad valorem taxes.

Section 6: The Grantee shall file its written acceptance of this franchise within sixty (60) days after its passage and approval.

Section 7: This franchise is not exclusive, and nothing herein contained shall be construed so as to prevent the City from granting other like or similar rights and privileges to any other person, firm or corporation.

Section 8: When this franchise ordinance shall have become effective, all previous ordinances of the City of Pottsboro, Texas, granting a franchise to Texas Power & Light Company for electric light, heat and power purposes, shall be automatically canceled and annulled, and the same, together with any existing street rental agreement between the City and Grantee, shall be of no further force and effect.

PASSED AND APPROVED THIS 8 day of August, 1963.

ATTEST:

Mrs. Eugene L. Bate
City Secretary

John H. Hines
Mayor

CITY SEAL

4. mfg

STATE OF TEXAS

COUNTY OF GRAYSON

I, Mrs. Bette L. Bates, City Secretary of the City
of Pottsboro, Texas, duly qualified, do hereby certify that
the attached and foregoing copy of ordinance entitled, "AN
ORDINANCE GRANTING TO TEXAS POWER & LIGHT COMPANY, ITS
SUCCESSORS AND ASSIGNS, AN ELECTRIC LIGHT, HEAT AND POWER
FRANCHISE, AND REPEALING ALL PREVIOUS ORDINANCES OF THE CITY
OF POTTSBORO, TEXAS, GRANTING A FRANCHISE FOR SUCH PURPOSE,"
was passed and approved at a ^{Regular} Called meeting of the City
Council of said City on the 8 day of Aug, 1963

GIVEN UNDER MY HAND AND SEAL OF THE City of
Pottsboro, Texas, this the 8 day of Aug, 1963

Mrs. Bette L. Bates
City Secretary, City of
Pottsboro, Texas

(CITY SEAL)

A. m. R.