

ORDINANCE NO. 831

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 COWETA, WAGONER 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 SUCH 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.

BE IT ORDAINED BY THE CITY OF COWETA, OKLAHOMA:

SECTION 1. That the City of Coweta, a municipal corporation of the State of Oklahoma, located in Wagoner County ("Grantor") grants to 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 any 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, communications circuits, 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.

Grantee's distribution system must be installed, operated, and maintained in a manner that will, consistent with reasonable necessity, least interfere with other public uses of the Public Rights of Way.

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

SECTION 3. All provisions of this Ordinance that are obligatory upon or inure to the benefit of the Grantee will 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 in this ordinance, 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 or 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 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; 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 to perform other activities necessary to provide and maintain electric service provided that the 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 such 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 covenants and agrees that in consideration of this franchise and contract 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. However, by acceptance of this franchise and contract, Grantee does not guarantee continuous service at all times and will 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 Grantee's reasonable control; provided Grantee agrees in such cases to exercise due diligence in the repair of its machinery, transmission, or distribution lines, appliances and apparatus, and to resume operation of same without unnecessary delay.

Grantee covenants and agrees that it will indemnify and hold the City of Coweta free and clear of any claims for damages or otherwise to the extent caused by the negligence of Grantee in the construction or operation carried on under this contract and franchise. Nevertheless, 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 the same and to settle and discharge same in such manner as it may see fit. To this end Grantor agrees to notify 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 given the continuing right, privilege, and option to manufacture electric energy within Grantor's corporate limits 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 the City to other localities for itself or others. Grantor grants a permitted right to Grantee to authorize and allow others, or as may otherwise be authorized or required by applicable law, to attach telecommunications and cable facilities to Grantee's poles and structures on such conditions as it deems 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 of the franchise by Grantee, Grantor agrees that Grantee may charge and collect from Grantor and its inhabitants a rate or rates for its service and/or the service of others that

must be compensatory and reasonable at all times, 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 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 hereunder, 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 such payment to be made not later than the first business day of the second month following the month in which such 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. This 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 shall notify Grantee in writing of newly annexed and de-annexed areas. The notice shall 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 hereunder to Grantor in newly annexed areas until Grantee has received Grantor's notification. Upon Grantor's notification and starting the 91st day after receipt of such notice, Grantee will begin 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 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. This Ordinance will be in full force and effect from and after its acceptance as hereinafter provided upon its passage and approval by a vote of the qualified electors residing within the City who must vote on the acceptance at a special election called under or pursuant to the provisions hereof; and if this Ordinance fails to be so approved at the election, it will be deemed wholly void and of no effect. The Mayor 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 such resolution, notice and ballot title 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. 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 comply with the election laws of the State of Oklahoma.

If the franchise is approved at the election, Grantee will have 30 days after the result of the election is declared to file an acceptance of the Ordinance and franchise with the City Clerk, in writing and executed according to law,

SECTION 11. Upon the filing by Grantee of the acceptance of this Ordinance as provided in Section 10, all rights, privileges, and obligations of any other ordinances and franchises, or portions thereof, 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 with this Ordinance, will be and will thereafter remain cancelled, annulled, and repealed.

SECTION 12. If any provision or clause of this Ordinance is found invalid for any reason, the invalidity will 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 provisions and clauses of this Ordinance are severable.

SECTION 13. Whereas an immediate necessity exists so that Grantor's residents 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 declared to exist by reason whereof this Ordinance

shall 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.

Approved, this _____ day of _____, 2020.

Evette Morris, Mayor

(SEAL)

ATTEST:

Julie Casteen, City Clerk

APPROVED:

Ronald D. Cates, City Attorney