

ORDINANCE NO. 9-28-A

AN ORDINANCE GRANTING TO PUBLIC SERVICE COMPANY OF OKLAHOMA (PSO) THE RIGHT, PRIVILEGE, AND NON-EXCLUSIVE FRANCHISE FOR TWENTY-FIVE 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 TOWN OF KIOWA, PITTSBURG COUNTY, OKLAHOMA; AND GRANTING TO 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 THE ELECTRIC SERVICE; AND, IF POSSIBLE, TO SELL AND DELIVER TO THE TOWN ALL ELECTRICITY AND SERVICES REQUESTED BY IT; PROVIDING FOR PAYMENT TO THE TOWN 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 TOWN OF KIOWA, OKLAHOMA:

SECTION 1. That the Town of Kiowa ("Town"), located in Pittsburg 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 used, 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 Town to the ultimate customer and to connections and systems in other localities with poles, wires, conduits,

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PITTSBURG COUNTY
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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 Town.

SECTION 2. All rights and privileges granted by this Ordinance will extend and be in force between Grantor and Grantee for a term of twenty-five years from and after acceptance of this Ordinance.

SECTION 3. All provisions of this Ordinance that obligate or benefit Grantee will also obligate or benefit its successors and assigns, and the word "Grantee," as used in this Ordinance, will include, and 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 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 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 when customers have failed to pay for electricity or services. Grantee shall have the right to enter upon customers' premises 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 so long as these rules and regulations are not in conflict with law or the rules and regulations from time to time made by the Oklahoma Corporation Commission or by other regularly constituted regulatory authority having jurisdiction over Grantee.

Grantor gives 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 Town 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 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. By accepting this franchise and contract, however, 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, 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 so long as Grantee exercises due diligence in the repair of its machinery, transmission or distribution lines, appliances and apparatus, and makes best efforts to resume operation without unnecessary delay.

Grantee covenants and agrees to hold Grantor 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 this contract and franchise. Regardless, it is understood and agreed that in the event of claims that are presented or prosecuted against the Town, Grantee will have the right to defend against and to settle and discharge all claims in any manner as Grantee may see fit. To this end, Grantor agrees to notify Grantee of any claims and to furnish to Grantee all related information and assistance as may be necessary in the defense of the claims.

SECTION 6. In performing the terms and provisions of this Ordinance, franchise and contract, Grantor gives Grantee 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 electric energy from some central location at proper voltage; together with the right to transmit electric energy from and through the Town to other localities for itself or others. Grantee is authorized to allow others who have a permitted right given 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 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 or the service of others that must

be compensatory and reasonable at all times, and if regulated, subject to the rules and orders as are in effect or that hereafter may be lawfully made by the Oklahoma Corporation Commission, 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 Grantor for municipal purposes including, but not limited to, water and wastewater treatment, water and storm water pumping, and the lighting of town streets.

SECTION 9. From and after the approval and acceptance of this Ordinance, and in consideration of the granting of this franchise, Grantee will 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 Town, 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 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 necessary revision, 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 such other person or entity to ultimate customers within the Town.

SECTION 10. This Ordinance will be in full force and effect from and after its acceptance upon its passage and approval by a vote of the qualified electors residing within the Town who will vote on the acceptance at a special election called under or pursuant to the provisions of this Ordinance. If, however, this Ordinance fails to be so approved at the special election, it will be deemed wholly void and of no effect.

The Mayor of the Town is authorized and instructed to call for an election by resolution 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 Town. The qualified electors will vote on the proposition by either approval or refusal of this Ordinance and the non-exclusive franchise contract granted herein; and the proper officers of the Town are directed to do all things 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.

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

SECTION 11. After Grantee has filed 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 Town's incorporated limits, and all other ordinances and parts of ordinances in conflict with this Ordinance will be and thereafter remain cancelled, annulled and repealed.

SECTION 12. In the event Grantee accepts a franchise from any other city or town in Oklahoma in which it agrees to pay a franchise fee that is a higher percentage of gross receipts than the percentage stated in Section 9 above, then in that event, Grantee shall inform Grantor's governing body of such occurrence. Thereafter, in the sole discretion of Grantor's governing body and pursuant to such process as it deems appropriate, Grantor's governing body may direct Grantee to increase the franchise fee percentage of gross receipts to be paid to Grantor to the highest percentage paid to any other city or town to the extent such increase is allowed by applicable law.

SECTION 13. The provisions of this Ordinance are severable, and if any court of competent jurisdiction judges any part or provision invalid, such adjudication will not affect or impair any of the remaining parts or provisions of this Ordinance.

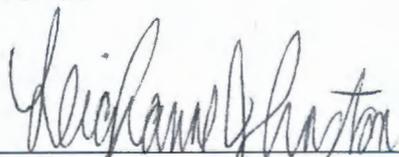
SECTION 14. Whereas an immediate necessity exists so that the Town's residents may be provided an adequate supply of electricity for heating, lighting and power purposes and for the purpose of providing light, heat and power for its streets, alleys, public grounds, parks and other public places and institutions and for the preservation of public health, peace and safety, an emergency is 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 PSO's filing of its acceptance.

Approved, this 28 day of September, 2023.


Kari Petterson, Mayor



ATTEST:


Leighanne Johnston, Town Clerk