

TOWN OF ADDISON, TEXAS

ORDINANCE NO. 001-039

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING APPENDIX C (FRANCHISES), ARTICLE II (ELECTRICITY) OF THE CODE OF ORDINANCES OF THE TOWN BY ADDING A NEW DIVISION 3 THERETO ESTABLISHING AND IMPOSING ELECTRIC FRANCHISE FEE PAYMENTS AS CALCULATED AND PAID UNDER TEXAS UTILITY CODE §38.008 FOR EXISTING ELECTRIC UTILITY FRANCHISEES; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Addison, Texas (the "City") on or about July 31, 1953, by Ordinance No. 1 entered into a franchise ("Franchise") with Texas Power & Light Company (now TXU Electric Company) ("Electric Utility" or "Transmission and Distribution Utility") which granted to the Electric Utility, its successors and assigns, the right to use the public rights-of-way to deliver electricity in the City; and

WHEREAS, on August 24, 1993 the City adopted Ordinance No. 093-041 which amended Ordinance No. 1 in part; and

WHEREAS, Section 5 of Ordinance No. 1, as amended by Section 1 of Ordinance No. 093-041, provides that the City may collect a fee from the Electric Utility for the rental and use of the public rights-of-way in the City and the City has collected such a fee since the Franchise was entered into, which fee is due on August 1 of each year and is in an amount equal to four percent (4%) of gross receipts from the sale of electric energy within the City for the preceding 12 month period ending June 30; and

WHEREAS, Texas Utility Code §33.008(a) provides in part that "a municipality may impose on an electric utility, [or] transmission and distribution utility...that provides distribution service within the municipality a reasonable charge as specified in Subsection (b) for the use of a municipal street, alley, or public way to deliver electricity to a retail customer"; and

WHEREAS, Texas Utility Code §33.008(b) provides in part that "[i]f a municipality collected a charge or fee for a franchise to use a municipal street, alley, or public way before...[December 31, 2001], the municipality, after [December 31, 2001]...is entitled to collect from each electric utility, [or] transmission and distribution utility...that uses the municipality's streets, alleys, or public ways to provide distribution service a charge based on each kilowatt hour of electricity delivered by the utility to each retail customer whose consuming facility's point of delivery is located within the municipality's boundaries"; and

WHEREAS, Texas Utility Code § 33.008(b) further provides that "[t]he charge imposed shall be equal to the total electric franchise fee revenue due the municipality from electric

utilities...for calendar year 1998 divided by the total kilowatt hours delivered during 1998 by the...electric utility...to retail customers whose consuming facilities' points of delivery were located within the municipality's boundaries" ("KWH Charge"); and

WHEREAS, § 33.008(b) further provides "[t]he compensation a municipality may collect from each electric utility, [or] transmission and distribution utility...providing distribution service shall be equal to the charge per kilowatt hour determined for 1998 multiplied times the number of kilowatt hours delivered within the municipality's boundaries"; and

WHEREAS, the City Council finds and determines that the City did collect a franchise fee before December 31, 2001 and desires to impose and collect the charge authorized by Texas Utility Code § 33.008 from the Electric Utility or Transmission and Distribution Utility in the City.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

Section 1. Incorporation of Premises. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted and incorporated herein and made a part hereof.

Section 2. Kilowatt Hour Charge. Pursuant to Texas Utility Code §33.008(a) and §33.008(b), the City hereby imposes on the Electric Utility and/or Transmission and Distribution Utility, that provides distribution service within the City's boundaries, a kilowatt hour (KWH) charge as authorized by Texas Utility Code § 33.008. The KWH Charge is .25441 cents or \$.0025441.

The amount due under the Franchise on August 1, 2002 for the one year period ending June 30, 2002 shall be an amount equal to the sum of (i) four percent (4%) of the gross receipts from the sale of electric energy within the City by the franchisee from July 1, 2001 through December 31, 2001, plus (ii) the said KWH Charge times the number of kilowatt hours delivered within the City's boundaries from January 1, 2002 through June 30, 2002. For each year thereafter during the term of the Franchise, the Franchise fee shall an amount equal to the KWH Charge (as set forth above) times the number of kilowatt hours delivered within the City's boundaries for the period of time set forth in the Franchise.

Section 3. Report. Upon payment of the per kilowatt hour charge, as authorized by the Texas Utility Code, §33.008 the Electric Utility or Transmission and Distribution Utility shall also file a report with the City evidencing the kilowatt hours delivered within the City during the applicable period, and other reasonable information as requested in writing by the City to verify the accuracy of that report.

Section 4. Violations of Ordinance. It shall be a violation of this Ordinance for the Electric Utility or Transmission and Distribution Utility to knowingly make a material misrepresentation of any information required to be reported under this Ordinance.

Section 5. Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 6. Addition to Code of Ordinances. This Ordinance shall be added as Division 3 to Appendix C (Franchises), Article II (Electricity) of the City's Code of Ordinances, and shall be entitled "Kilowatt Hour Charge".

Section 7. Effective date. This Ordinance shall take effect November __, 2001, with the KWH charge beginning to accrue as of 12:01 AM, January 1, 2002.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this the 13th day of November, 2001.



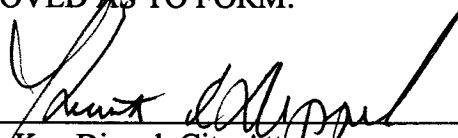
R. Scott Wheeler, Mayor

ATTEST:

By: 

Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: 

Ken Dippel, City Attorney