

**TOWN OF ADDISON, TEXAS**

**RESOLUTION NO. R13-001**

**A RESOLUTION OF THE TOWN OF ADDISON, TEXAS REGARDING TOWN ORDINANCE NO. 011-042 THAT CONCERNS A NEGOTIATED RESOLUTION BETWEEN THE STEERING COMMITTEE OF CITIES SERVED BY ONCOR AND ONCOR ELECTRIC DELIVERY COMPANY LLC (“ONCOR”); DETERMINING THAT CERTAIN POSITIONS TAKEN BY ONCOR REGARDING THE COSTS TO RELOCATE UTILITY FACILITIES ARE INCORRECT AND ARE WITHOUT LEGAL OR FACTUAL BASIS; PROVIDING THAT THE COSTS INCURRED BY ONCOR TO RELOCATE ITS UTILITY FACILITIES TO ACCOMMODATE A MUNICIPAL/GOVERNMENTAL RIGHT-OF-WAY CONSTRUCTION PROJECT ARE ONCOR’S RESPONSIBILITY; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Oncor Electric Delivery Company, LLC (“Oncor”), filed on or about January 7, 2011, its application to increase rates in every municipality (including the Town of Addison, Texas (“City”)) in the Oncor service area (“Oncor’s January 2011 Rate Case”), with a similar application being filed with the Public Utility Commission of Texas to apply to the unincorporated areas in its service area (PUC Docket No. 38929); and

**WHEREAS**, Oncor’s January 2011 Rate Case concerned, in large part, issues on the proper calculation, collection and payment of municipal rights-of-way rental franchise fees; and

**WHEREAS**, Oncor’s January 2011 Rate Case did not concern any issues with the tariff and relocation of Oncor facilities to accommodate municipal/governmental rights-of-way construction projects or the payment of the cost of such relocations by Oncor; and

**WHEREAS**, Oncor’s January 2011 Statement of Intent to change rates filed at the PUC did not detail or disclose any intent to change its interpretation of the application of the tariff section on relocation, section 5.7.8, as required by Tex. Util. Code, § 36.102 (c) and by PUC Procedural Rule § 22.243 (a)-(b), nor did Oncor provide any prior notice to municipalities of such intent to change its interpretation of the application of the tariff section on relocation, section 5.7.8, as required by Tex. Util Code, § 33.024; and

**WHEREAS**, Oncor’s January 2011 Rate Case did not concern any issues with municipal police powers to regulate the use of municipal rights-of-ways, and to set conditions for that use pursuant to Texas statutes, to include, but not limited to Texas Utilities Code, § § 14.008, 37.101 (c), 181.043, 181.047 (c), and for home rule cities, Texas Civil Statutes, art. 1175; and

**WHEREAS**, Oncor’s January 2011 Rate Case did not concern any issues with the Texas common law rule that a utility relocates its facilities at its cost to accommodate municipal/governmental rights-of-way construction projects; and

**WHEREAS**, Oncor's January 2011 Rate Case did not concern any issues with municipal rights-of-way management ordinances or franchise terms requiring that Oncor relocate its facilities at its cost to accommodate municipal/governmental rights-of-way construction projects; and

**WHEREAS**, the City is a member of the approximately 160 cities that comprise the Steering Committee of Cities Served by Oncor ("Steering Committee of Cities"); and

**WHEREAS**, the Steering Committee of Cities reviewed Oncor's January 2011 Rate Case and reached a proposed settlement with Oncor on the proper calculation, collection and payment of municipal rights-of-way rental franchise fees; and

**WHEREAS**, the Steering Committee of Cities proposed settlement with Oncor revised and conformed the Oncor tariff to the settlement terms on the issues of the proper calculation, collection and payment of municipal rights-of-way rental franchise fees on or about June 2011 ("Oncor-City Steering Committee June 2011 Settlement"); and

**WHEREAS**, the Oncor-City Steering Committee June 2011 Settlement did not address any issues concerning the tariff and relocation of Oncor facilities to accommodate municipal/governmental rights-of-way construction projects or the payment of the cost of such relocations by Oncor; and

**WHEREAS**, the Oncor-City Steering Committee June 2011 Settlement did not address any issues concerning municipal police powers to regulate the use of municipal rights-of-ways, and to set conditions for that use pursuant to Texas statutes, to include, but not limited to Texas Utilities Code, § § 14.08, 37.101 (c), 181.043, 181.047 (c), Texas Civil Statutes, art. 1175; and

**WHEREAS**, the Oncor-City Steering Committee June 2011 Settlement did not address any issues concerning the Texas common law rule that a utility relocates its facilities at its cost to accommodate municipal/governmental rights-of-way construction projects; and

**WHEREAS**, the Oncor-City Steering Committee June 2011 Settlement did not address any issues concerning municipal rights-of-way management ordinances or franchise terms requiring Oncor to relocate its facilities at its cost to accommodate municipal/governmental rights-of-way construction projects; and

**WHEREAS**, the City, on or about June 10, 2011, as required by the Open Meetings statutes of Texas, posted a public notice for its June 14, 2011 City Council Agenda that the Council would consider adopting an ordinance regarding the recommended Oncor-City Steering Committee June 2011 Settlement would be considered, with the public notice posting, stating in part that that City was "adopting tariffs that reflect rate adjustments consistent with the negotiated settlement", which only revised and conformed the Oncor tariff to the settlement terms; and

**WHEREAS**, the City did not post any public notice for its City Council agenda that would give the public notice to indicate that the ordinance regarding the Oncor-City Steering Committee June 2011 Settlement would control, repeal, amend, or revise any conflicting municipal franchise terms and/or its rights-of-way management ordinance terms that require Oncor to relocate its

facilities at its cost to accommodate municipal/governmental rights-of-way construction projects, and the passage of the tariff was not intended to change or amend any municipal franchise or City rights-of-way management ordinance, and that the passage of the tariff did not meet the requirements under state law and City Charter to amend a municipal franchise or amend the City rights-of-way ordinance; and

**WHEREAS**, the City, on or about June 14, 2011, adopted the recommended Oncor-City Steering Committee June 2011 Settlement, by Ordinance No \_\_\_\_\_, that incorporated the Oncor-City Steering Committee June 2011 Settlement which only revised and conformed the Oncor tariff to the settlement terms ("Oncor-City Steering Committee June 2011 Settlement Ordinance"); and

**WHEREAS**, the Oncor-City Steering Committee June 2011 Settlement Ordinance, except for the changes required to effectuate the Oncor-City Steering Committee June 2011 Settlement, as is customary and usual, readopted the then currently existing Oncor tariff, without any other changes to any other tariff provisions, including no changes in section 5.7.8 of the Oncor tariff concerning payment of the cost to relocate Oncor facilities, which remains unchanged since at least 2006; and

**WHEREAS**, the Oncor-City Steering Committee June 2011 Settlement Ordinance did not revise the tariff in any way concerning the relocation of Oncor facilities to accommodate municipal/governmental rights-of-way construction projects or the payment of the cost of such relocations by Oncor; and

**WHEREAS**, the Oncor-City Steering Committee June 2011 Settlement Ordinance did not address any issues concerning municipal police powers to regulate the use of municipal rights-of-ways, and to set conditions for that use pursuant to Texas statutes, to include, but not limited to Texas Utilities Code, § § 14.08, 37.101 (c), 181.043, 181.047 (c), Texas Civil Statutes, art. 1175; and

**WHEREAS**, the Oncor-City Steering Committee June 2011 Settlement Ordinance did not address any issues concerning the Texas common law rule that a utility relocates its facilities at its cost to accommodate municipal/governmental rights-of-way construction projects; and

**WHEREAS**, the Oncor-City Steering Committee June 2011 Settlement Ordinance did not address and did not change or amend any municipal rights-of-way management ordinances or franchise terms requiring Oncor to relocate its facilities at its cost to accommodate municipal/governmental rights-of-way construction projects;

**WHEREAS**, on or about August 2012, and on December 7, 2012 in an Answer filed in litigation, Oncor staff have incorrectly asserted and claimed with at least one member of the City Steering Committee that the Oncor-City Steering Committee June 2011 Settlement Ordinance's readopted tariff, in particular the unchanged section 5.7.8 on relocation of Oncor facilities, *now* requires the member city to pay for relocation cost, and that section 5.7.8 of Oncor's tariff *now* controls over any conflicting municipal franchise terms and/or its rights-of-way management ordinance terms that require Oncor to relocate its facilities at its cost to accommodate municipal/governmental rights-of-way construction projects;

**WHEREAS**, the City does not want to allow these incorrect assertions to be made without

addressing the false legal and factual basis of such assertions.

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

Section 1. At the time of the City's recommendation of adoption of the Oncor-City Steering Committee June 2011 Settlement Ordinance, the City did not recommend, nor did the City have the intent, nor was there a meeting of the minds of the parties, that the Oncor-City Steering Committee June 2011 Settlement Ordinance would control, repeal, amend, or revise any municipal franchise terms and/or any rights-of-way management ordinance term that required Oncor to relocate its facilities at its cost to accommodate municipal/governmental rights-of-way construction projects.


Section 2. As the City's public notice posting of the Oncor-City Steering Committee June 2011 Settlement stated only that the City was "adopting tariffs that reflect rate adjustments consistent with the negotiated settlement", and as the City did not post any other public notice for its City Council agenda that would give the public notice to indicate that the Oncor-City Steering Committee June 2011 Settlement Ordinance would control, repeal, amend, or revise any conflicting municipal franchise terms and/or any rights-of-way management ordinance terms that require Oncor to relocate its facilities at its cost to accommodate municipal/governmental rights-of-way construction projects, any such interpretation of the Oncor-City Steering Committee June 2011 Settlement Ordinance is without legal or factual basis, and is void.

Section 3. The City rejects any assertion of Oncor that the Oncor-City Steering Committee June 2011 Settlement Ordinance controls over any conflicting municipal franchise terms and/or its rights-of-way management ordinance terms that require to Oncor to relocate its facilities at its cost to accommodate municipal/governmental rights-of-way construction projects.

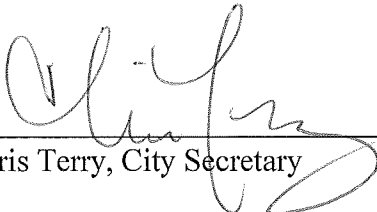
Section 4. The City shall provide Oncor with a copy of this Resolution.

Section 5. This Resolution shall take effect immediately upon its adoption.

**PASSED, ADOPTED AND APPROVED** by the City Council of the Town of Addison, Texas on this the 8th day of January, 2013.

  
\_\_\_\_\_  
Todd Meier, Mayor

**ATTEST:**

By:   
\_\_\_\_\_  
Chris Terry, City Secretary

**APPROVED AS TO FORM:**

By:   
\_\_\_\_\_  
John Hill, City Attorney