

ORDINANCE NO. 0-79-25

AN ORDINANCE ENTITLED "AN ORDINANCE GRANTING TO THE CONWAY CORPORATION A FRANCHISE TO OPERATE AN ELECTRIC PLANT FACILITY WITHIN THE CITY OF CONWAY."

Unless the context specifically indicates otherwise, the meaning of the terms used in this ordinance shall be as follows:

City - shall be the City of Conway, Arkansas.

City Council - shall be the City Council of the City of Conway, Arkansas.

Corporation (Corp.) - shall be the Conway Corporation.

Electric Plant - shall include all property, equipment and apparatus of every kind and nature, whether now owned or thereafter acquired and whether owned totally or in part by the City of Conway, Arkansas, and/or Conway Corporation, which is necessary and/or incidental to the supplying of electric service within the City of Conway, Arkansas and elsewhere, including but not limited to generators and auxiliary equipment, buildings, fixtures, transmission and distribution pole lines, transformers, service wires and metering equipment.

Electric Service - shall be the necessary power and energy delivered to a pre-determined metering point, and, in the case of street lighting, shall include operation and maintenance of fixtures.

Force Majeure - shall mean any cause or causes beyond the control of Corporation, including, but not limited to, acts of God or the public enemy, failure of the Corporation's facilities, flood, earthquake, storm, lightening, fire, epidemic, war, embargo, riot, civil disturbances, strikes, picketing, lockouts or other labor disputes or disturbances, sabotage, or restraint or prevention of performance by act of any Court, regulatory body or defense agency, which by the exercise of due diligent and foresight the Corporation could not reasonably have been expected to avoid.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CONWAY, ARKANSAS:

Section One. THAT there is hereby granted to the Conway Corporation, a corporation organized under order of the Circuit Court of Faulkner

County, and under Certificate of Incorporation, issued by the Clerk of the Circuit Court of Faulkner County on the 7th day of May, 1929, the exclusive privilege of operating and maintaining an Electric Plant within or without the City of Conway, Arkansas for the purpose of supplying electric power and energy generated at its Conway generating plant or generating plants located elsewhere owned totally or in part by it or purchased by it from other sources for Electric Service to the City and to its inhabitants and to all persons and corporations doing business therein for a period beginning on June 1, 1979 and ending on May 31, 2009. It is expressly provided, however, that no contract or agreement for the purchase by it of electric power or energy shall be entered into by Corporation, nor shall any such agreement or contract be or become effective, unless and until such contract or agreement shall have been approved by the City Council, by resolution or ordinance adopted for that purpose.

Section Two. Corporation is hereby granted the exclusive right, privilege and right of way to place, maintain, construct and operate Electric Plant facilities in, through, over and under all streets, alleys, avenues, sidewalks and public grounds of the City for the purpose of furnishing Electric Service, and is hereby granted the right of ingress and egress thereon for the purpose aforesaid during the term of this franchise, with the right to trim all trees in said streets, alleys, sidewalks and public grounds, that may come in contact with any Electric Plant facilities. It is hereby expressly provided, however, that the powers, rights and privileges in this Section Two of this Ordinance granted to Corporation may, in order that Corporation may exercise its obligation, following prior approval of the City Council, by resolution or ordinance adopted for that purpose, be by it granted and assigned to such other persons, firms or corporations, whether publicly, privately or otherwise owned and operated, to the extent and for the purpose designated in such grant or assignment.

Section Three. Corporation shall at all times during the term of this franchise keep in constant force and effect power purchase and/or exchange agreements, operate and maintain efficient and properly equipped electric generating plants owned totally or in part by it, together with a proper and sufficient distribution system to afford Electric Service to the inhabitants of the City and all persons, firms and corporations doing business therein, and for street lights in said City during the term of this franchise, and shall sufficiently and properly supply and maintain said Electric Service at all times whether it be generated and produced by its said electric generating plants or be purchased from other sources, unless prevented by Force Majeure.

Section Four. The City shall, from time to time, make, adopt and enforce any and all necessary ordinances to protect the Electric plant and other property under the control of said Corporation and to protect Corporation in the sole and exclusive and unrestricted enjoyment of all privileges granted under this franchise.

Section Five. Corporation shall, at all times during the term of this franchise, maintain in good condition all street lights now being maintained in the City, together with all equipment necessary therefor, and shall furnish all Electric Service necessary to keep said street lights burning at the proper time, free of any charge whatever to the City, and from time to time, as its gross income shall increase, Corporation shall install, equip, maintain and furnish Electric Service, free of charge, for all additional street lights that may be ordered by the City Council; provided, that the maximum expenditure which the City may require in any year for installing and equipping said additional street lights and for furnishing electric service therefor when compared to the cost of the present street lights and the Electric Service therefor shall not exceed the proportionate increase in the gross revenues derived by Corporation from the operation of said electric plant. It is the express intent of this provision, however, that nothing herein shall prevent Corporation from making

Expenditures for such equipment, additions and extensions in excess of the amount hereinabove set forth if Corporation has or can acquire funds with which to do the same.

Section Six. The rates charged for Electric Service shall be set by Corporation subject to the approval of the City Council. Said rates shall provide adequate revenues to cover the costs of operation and maintenance, debt service, plant expansion and necessary and reasonable surpluses and reserves.

Corporation shall make and enforce all such proper rules as to collection of delinquent bills and as to discontinuance of service to delinquent consumers as it may deem necessary.

Section Seven. The provisions of this franchise shall be accepted in writing by Corporation within 30 days after the passage and publication of this ordinance, whereupon said franchise shall be deemed to be in full force and effect.

Section Eight. There is hereby found and declared to be an immediate need for the securing of Electric Service to the City and the inhabitants thereof for the period stated in Section One hereof, and the granting of the franchise authorized hereby and the taking of the other action authorized hereby are immediately necessary for the accomplishment of this purpose. It is, therefore, declared that an emergency exists and this ordinance being necessary for the immediate preservation of the public peace, health and safety shall be in force and effect immediately upon and after its passage.

PASSED: May 22, 19 79.

APPROVED:

Bill Wright
Mayor

ATTEST:

Doris Dunn
Clerk-Treasurer