ORDINANCE NO. 12105

AN ORDINANCE AMENDING THE FRANCHISE GRANTED BY THE CITY OF Frankston TO SOUTHWESTERN ELECTRIC SERVICE COMPANY INCREASING THE TAX CALCULATED ON GROSS RECEIPTS AS DEFINED THEREIN FROM 3% TO 4%; PROVIDING FOR WRITTEN ACCEPTANCE OF THIS AMENDMENT; AND FINDING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF Frankston, TEXAS:

The Ordinance granting a franchise to Southwestern Electric Service Company is amended to provide for the tax now calculated at 3% on gross receipts as defined therein for the purposes stated therein, to be increased to 4%. The 4% shall be effective with respect to meter readings on and after the first day of the calendar month next following the acceptance of this Ordinance by Southwestern Electric Service Company. Except for such change the method of calculation and times of payment and all other provisions of the franchise shall remain the same.

The City Secretary shall cause this Ordinance to be promptly submitted to Southwestern Electric Service Company for acceptance. This Ordinance shall become effective upon the delivery of a signed acceptance by Southwestern Electric Service Company to the City Secretary. Should Southwestern Electric Service Company fail to deliver a signed acceptance of this Ordinance within thirty days after the date of the council approval as shown below, then this Ordinance shall become null and void.

The Council finds that this meeting is open to the public.

PASSED AND APPROVED at a regular meeting of the City Council of Frankston, Texas, this the 12th day of October, 1995.

Mayor, City of Frankston

ATTEST:

City Secretary

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SOUTHWESTERN ELECTRIC SERVICE COMPANY HEREBY ACCEPTS AND AGREES TO THE FOREGOING ORDINANCE AMENDING THE FRANCHISE HERETOFORE GRANTED TO IT BY THE CITY OF Frankston

SOUTHWESTERN ELECTRIC SERVICE COMPANY

By: _____
Its President

Date signed: _____

ORDINANCE NO. 178

AN ORDINANCE GRANTING TO SOUTHWESTERN ELECTRIC SERVICE COMPANY, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC LIGHT, HEAT AND POWER FRANCHISE AND REPEALING ALL PREVIOUS ORDINANCES OF THE CITY OF FRANKSTON, TEXAS, GRANTING A FRANCHISE FOR SUCH PURPOSE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRANKSTON, TEXAS:

Section 1: That there is hereby granted to Southwestern Electric Service Company, its successors and assigns (herein called the "Grantee") the right, privilege and franchise for a period of Twenty-Five (25) years from the effective date hereof, to construct and maintain in the present and future streets, alleys and public places of the City of Frankston, Texas, and its successors, electric light and power lines, with all necessary or desirable appurtenances (including underground conduits, poles, wires, transmission lines and other structures and telephone wires for its own use), for the purpose of supplying electricity to the said City, the inhabitants thereof, and persons and corporations beyond the limits thereof, for light, heat, power and other purposes.

Section 2: Poles, structures and other appurtenances shall be so erected and maintained as not to interfere unreasonably with traffic over streets and alleys.

Section 3: The service furnished hereunder to the City and its inhabitants shall be first class in all respects, considering all circumstances, and Company shall furnish the grade of service to its customers as provided by its tariffs in effect at the time the service is rendered and on file with the City Secretary. The Company shall maintain its system in reasonable operating condition during the continuance of this Agreement. An exception to this requirement is automatically in effect when due to shortages in materials, supplies and equipment beyond the control of the Company and when due to fires, strikes, riots, storm, floods, war and other casualties, and when due to governmental regulations, limitations and restrictions as to the use and availability of material, supplies and equipment and as to the use of the services, and when due to unforseen and unusual demands for service. In any of which event the Company shall do all things reasonably within its power to restore normal service.

Section 4: The Grantee shall hold the City harmless from all expense or liability for any act or neglect of the Grantee hereunder.

Section 5a: In consideration for the rights and privileges herein granted, the Grantee shall pay the City during the term of this franchise a sum equal to three percent (3%) of Grantee's gross receipts received from the retail sale of electric power and energy within the corporate limits of said City, provided that such payments shall be made quarterly and delivered to the City together with a statement indicating the derivation and calculation of such payments. Each such quarterly payment shall be due on the last day of the first month following the end of the three-month period for which said payment is due and shall be based upon Grantee's said gross receipts during that same three-month period. Such quarterly payments shall be due on January 31, April 30, July 31, and October 31 of each year during the term hereof. Said quarterly payments shall be in lieu of any other tax or increased rate of tax or other imposition, assessment or charge, except ad valorem taxes, charges permitted by Section 24 of the Public Utility Regulatory Act (Art. 1446c, V.A.T.S.), assessments for public improvements and sales taxes on Grantee's sales within the City to the extent authorized by state law. For purposes of verifying the amount of payments due hereunder, Grantee's books shall at all reasonable times be subject to inspection by the duly authorized representatives of the City.

Section 5b: If Grantee shall at any time after the effective date of this franchise pay a franchise or street rental fee (other than by succession or assignment of an existing franchise through the acquisition by merger or otherwise of another utility), renew or extend a franchise ordinance agreement adopted by any municipality on or after the effective date of this ordinance, (other than a short-term (not to exceed three (3) years in the aggregate to be extended by the City in the event that the City determines that the Grantee and such other municipality are negotiating in good faith) extension or a pre-existing franchise agreement pending negotiation of a new franchise agreement), and that franchise agreement or street rental ordinance provides for payment to the municipality for the use of said municipality's public rights-of-way in an amount, however characterized, higher than three percent (3%) of the Grantee's gross receipts (from sale of electric energy) in said municipality, then Grantee's payments under this Section shall be increased to that proportionally higher rate of the Grantee's Gross Receipts. Such increased payment to City shall be subject to the same method or terms of collecting such fee. Grantee shall notify City of such increase within thirty (30) days of the other payment's effective date. Collections of the franchise fee and payments to City will be based on such higher rate from the first date of the first month next following the date City accepts and authorizes the increase on the same terms to those in effect in such other municipality. The collection of the franchise fee and the increased payment shall continue until expiration of the term of this franchise, or until the expiration of the franchise agreement of such other municipality, whichever is earlier. Provided that nothing herein shall alter or affect the dates upon which payments specified in this franchise are payable or the period to which each of said payments is referable. The audit provisions of this Section shall extend to any and all records of payments between other municipalities and Grantee.

Section 6: This franchise shall become effective upon Grantee's written acceptance hereof, said written acceptance to be filed by Grantee with Grantor within sixty (60) days after final passage and approval hereof, provided that if Grantee does not file its written acceptance with Grantor within said sixty (60) days, this franchise shall become null and void.

Section 7: This franchise is not exclusive, and nothing herein contained shall be construed so as to prevent the City from granting other like or similar rights and privileges to any other person, firm or corporation.

Section 8: When this franchise ordinance shall have become effective, all previous ordinances of the City of Frankston, Texas, granting a franchise to Southwestern Electric Service Company for electric light, heat and power purposes, shall be automatically cancelled and annulled, and the same, together with any existing street rental agreement between the City and Grantee, shall be of no further force and effect.

PASSED AND APPROVED on 1st reading this 17th day of August, 1993.

PASSED AND APPROVED on 2nd reading this 14th day of September, 1993.

Mayor, City of Frankston

ATTEST:

City Secretary

ACCEPTANCE BY
SOUTHWESTERN ELECTRIC SERVICE COMPANY

TO: CITY COUNCIL OF THE CITY OF FRANKSTON, TEXAS

Southwestern Electric Service Company accepts and agrees to City Ordinance No. 178 passed and approved on second reading by the City Council of the City of Frankston, Texas on the 14th day of September, 1993, being the Ordinance which will constitute the franchise under which Southwestern Electric Service Company will operate within the City of Frankston, effective the 15th day of September, 1993.

SOUTHWESTERN ELECTRIC SERVICE COMPANY

BY: John A Barton
John A. Barton, President

Date Signed: September 15, 1993

ATTEST:

Frank L. Diamont
Frank L. Diamont