

# APPENDIX B. FRANCHISES

## ARTICLE 1. KANSAS CITY POWER & LIGHT COMPANY

**Section 1.** In consideration of the benefits to be derived by the City and the inhabitants thereof from the construction, operation and maintenance of an electric light and power system and the sale and distribution of electric energy to the public, there is hereby granted to the Company and to its successors and assigns a franchise and authority to construct, operate and maintain within the existing and any future extended corporate limits of the City for which the Company now or shall hereafter hold a Certificate of Convenience and Authority from the Kansas Corporation Commission all appropriate facilities for carrying on a power and light business and all other operations connected therewith or incident thereto for the purpose of selling and distributing within the City and outlying areas, electric energy in such forms as may be reasonably required for domestic, residential, commercial, industrial, municipal and other purposes, to the extent allowed by City ordinances, and to produce and supply such electric energy by manufacture, purchase or otherwise, and to transmit and distribute same by means of underground or overhead facilities or otherwise. This Franchise only grants the Company the right to provide electric light and power service, and the Company shall not provide any other services, including, but not limited to, internet, telecommunications, cable, or open video systems, without permission and a franchise from the City. For any or all of said purposes Company is authorized to (i) construct, install, replace and remove conduits, poles, lamp posts, guys, anchors, wires, cables, street lights and all other related facilities in, on, under, along, across and over all streets, alleys, avenues, bridges, utility easements dedicated to the City and other public rights-of-way, subject to Section IV, and (ii) construct, erect, maintain and remove all buildings, machinery and attachments of any and every kind for any and all said purposes in, on, under, along, across and over all streets, alleys, avenues, bridges, utility easements dedicated to the City and other public rights-of-way, and (iii) enter upon any and all of said public streets, alleys, avenues, bridges, utility easements dedicated to the City and other public rights-of-way within the corporate limits of the City as they now exist or may hereafter be opened, widened, extended, laid out and established, including any other territory hereafter added thereto or coming under the City's jurisdiction, and to trim trees upon and overhanging such places and make such excavations thereon as may be appropriate for the construction, operation, maintenance, repair, renewal and removal of the Company's overhead and underground facilities and plants, provided, that all such use of the streets, alleys, avenues, bridges, utility easements dedicated to the City and other public rights-of-way are used in such a way as to give the least inconvenience to the inhabitants of the City and the public generally and such uses are subject to all right-of-way management and other rules, regulations, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City in its reasonable exercise of its police power. Notwithstanding the above grant authority, the company shall not locate, construct or erect (a) any facilities used in the production, manufacture or generation of electricity, or (b) any storage buildings, sheds or other storage facilities that are inconsistent with or otherwise not permitted by City ordinance.

- Section 2.** This Franchise is for a term of fifteen (15) years from the effective date hereof. At any time after three years from the effective date, either party may terminate this Franchise by providing written notice, one year prior to any such termination date, to the other party that it is terminating the Franchise.
- Section 3.** The Company shall be subject to all right-of-way management and other rules, regulations, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City in its reasonable exercise of its police power. Any pavements, sidewalks or curbing taken up or any and all excavations and construction made shall be done under the supervision and direction of the Governing Body of said City under all necessary permits issued for the work, and shall be made and done in such manner as to give the least inconvenience to the inhabitants of the City and the public generally, and pavements, sidewalks, curbing and excavations shall be replaced and repaired in as good condition as before with all convenient speed, by and at the expense of the Company. The Company shall promptly remove, relocate or adjust any facilities located in the right-of-way as directed by the City for a public improvement or when reasonably required by the City by reason of public safety. Such removal, relocation, or adjustment shall be performed by the Company at the Company's expense without expense to the City, its employees, agents, or authorized contractors and shall be specifically subject to rules, regulations and schedules of the City pertaining to such. The Company shall proceed with relocations at due diligence upon notice by the City to begin relocation.
- Section 4.** The Company shall at all times during the term of this Franchise supply to consumers of electric energy, residing in those portions of the City duly certificated to the Company by the Kansas Corporation Commission, such electric energy as they may require, and shall extend and construct its lines and services in accordance with legal requirements, and rules and regulations as filed from time to time with the Kansas Corporation Commission and the terms of this Franchise. Nothing contained herein shall be construed as a guarantee upon the part of the Company to furnish uninterrupted service, and interruptions due to Acts of God, fire, strikes, civil or military authority, orders of court and other causes reasonably beyond the control of the Company are specifically exempted from the terms of this Section.
- Section 5.** All poles and wires shall be erected in accordance with the rules and regulations of the Kansas Corporation Commission and any amendments thereto and any applicable local, state or federal laws. All poles carrying said wires shall be placed in such manner as to interfere with and obstruct as little as reasonably possible, the ordinary use of the streets, alleys, lanes and highways of said City, and shall not interfere with any gas main, water main sewer or other lawful user of the right-of-way laid out or constructed in or under said streets, alleys, avenues, bridges, utility easements dedicated to the City and other public rights-of-way. In all residential locations within the City, the Company shall, wherever feasible, continue the placement of its electric service facilities in backyards only. Any pole replacement shall be made in accordance with all City ordinances and regulations.

- Section 6.** The Company shall fully indemnify, release, defend and hold harmless the City and agents of the City when acting in their capacity as municipal officials, employees and agents, from and against any and all claims, demands, suits, proceedings, and actions, liability and judgment by other persons for damages, losses, costs, and expenses, including attorney fees, to the extent caused by negligent acts or omissions of the Company in the performance of its work within the City. The City agrees to timely notify the Company of any such claim, demand, suit, proceeding, and/or action by providing written notice to the Company and the registered agent of the Company. Nothing herein shall be deemed to prevent the City, or any agent from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not under any circumstances relieve the Company from its duty to defend against liability or its duty to pay any judgment entered against the City or its agents.
- Section 7.** The Company shall maintain liability insurance and performance and maintenance bonds as required by any rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City.
- Section 8.** As a further consideration for the rights, privileges and franchise hereby granted, and in lieu of all rental for the use of the streets, alleys, avenues, bridges, utility easements dedicated to the City and other public rights-of-way involved herein, the Company shall monthly pay to the City in cash five percent (5%) of its gross receipts charged and collected from the sale of electric energy and all distribution products and services purchased and used within the present or future boundaries of said City for domestic, residential, commercial and industrial consumption. Such payment shall be made on or before the last day of each month, and shall be based upon said gross receipts charged and collected for the preceding month. The term "gross receipts" as applied to the sales of electricity for domestic, residential, commercial or industrial purposes, as used in this section shall not include (1) the electric energy sold to the United States and the State of Kansas or any agency or political subdivision thereof; (2) the electric energy sold to public utilities performing activities which are presently franchised by the City and regulated by the Kansas Corporation Commission; (3) the electric energy sold for other use which cannot be classified as domestic, residential, commercial or industrial, limited to electric energy used by educational institutions not operating for profit, churches and charitable institutions; (4) the electric energy sold for resale; and (5) the franchise consideration paid to the City pursuant to this section.
- Section 9.** This Franchise shall not convey title, equitable or legal, in the rights-of-way, and gives only the right to occupy rights-of-way for the purposes and for the period stated in this Franchise and subject to the requirements herein. This Franchise shall not grant the right to use property, other than right-of-way property, or physical facilities owned or controlled by the City or a third-party, without the separate consent of such party, nor shall this Franchise excuse Company from obtaining separate appropriate access or attachment agreements before locating its facilities on property other than right-of-way property or facilities owned or controlled by the City or a third party.

- Section 10.** The Company shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or voluntary sale, or by ordinary sale, consolidation, or otherwise, this Franchise or any of the rights or privileges granted by this Franchise, without the prior written consent of the City. Such consent shall not be unreasonably withheld. Except as otherwise may be provided by law, the Company shall not lease, sell or otherwise transfer possession or control of the Facilities, or any portion thereof, for any purpose to any person or entity that has not obtained a duly issued Franchise, or other grant by the City to use the rights-of-way and which includes the authority to use or maintain such lease or transferred facilities.
- Section 11.** If during the term of this Franchise, federal or state law is changed to permit competition between Company and others in the sale or distribution of electricity within the City, to permit retail wheeling of electricity in any form, to include the sale of unbundled services within the City or to eliminate or substantially modify the authority of the Kansas Corporation Commission has over the sale and distribution of electricity within the State then the City and the Company agree to enter into good faith negotiations for the purpose of revising and amending this Franchise to address said change(s). Should the City and the Company fail after good faith negotiations to agree upon revised or amended Franchise terms, then the City and the Company shall each have the right to terminate this Franchise upon 120 days written notice.
- Section 12.** All provisions of this Ordinance shall be binding upon the Company and shall inure to the benefit of the Company, its grantees and its successors and assigns from and after the date of written acceptance hereof by the Company which shall be filed with the City Clerk within sixty (60) days after the final passage and approval of this Ordinance.
- Section 13.** Ordinance No. 1215 is hereby repealed as of the effective date of this Ordinance.
- Section 14.** This Franchise is granted pursuant to the provisions of K.S.A. 12-2001 and shall take effect and be in force as therein provided.

[Ord. No. 1215; Effective Date: 6-30-91]  
[Ord. No. 1947; Effective Date: 06-15-02]