

ORDINANCE 449

AN ORDINANCE OF THE TOWN OF ANTHONY, EL PASO COUNTY, TEXAS DULY AND LEGALLY INCORPORATED UNDER THE GENERAL LAWS OF THE STATE OF TEXAS, GRANTING TO EL PASO ELECTRIC COMPANY, A CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE WITH THE RIGHT TO ACQUIRE, CONSTRUCT, ERECT, MAINTAIN, REPAIR, RECONSTRUCT AND OPERATE AN ELECTRIC LIGHT AND POWER PLANT AND SYSTEM IN ANTHONY, TEXAS, AND TO ERECT, MAINTAIN, CONSTRUCT, OPERATE AND INSTALL A SYSTEM OF POWER LINES OVER, ACROSS, UPON, ALONG AND UNDER THE PRESENT EXISTING AND HEREAFTER CONSTRUCTED HIGHWAYS, PUBLIC ROADS, STREETS, ALLEYS, BRIDGES, VIADUCTS, PUBLIC GROUNDS, PUBLIC PROPERTY AND PUBLIC PARKS AND PLACES IN THE TOWN OF ANTHONY FOR THE PURPOSE OF TRANSMITTING AND DISTRIBUTING ELECTRIC POWER TO THE INHABITANTS WITHIN THE SAID TOWN FOR DOMESTIC AND INDUSTRIAL PURPOSES FOR A TERM OF TWENTY YEARS TO EXPIRE ON THE 11th DAY OF November, TWO THOUSAND TWENTY SEVEN (2027) AND PROVIDING FOR A CONSIDERATION FOR THE FRANCHISE AND FOR REGULATIONS BY THE TOWN GOVERNING THE CONDUCT, OPERATION, SERVICE AND RATES OF SAID COMPANY, AND THE DURATION AND TERMINATION OF THE FRANCHISE.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF ANTHONY, TEXAS AS FOLLOWS:

SECTION I. The word "Grantee" as employed in this Ordinance shall denote and mean El Paso Electric Company, a Texas corporation, its lessees, associates, successors and assigns.

The word "Grantor" as employed in this Ordinance shall denote and mean the incorporated Town of Anthony, El Paso County, Texas.

The words "Town Council" as employed in this Ordinance shall denote and mean the present Town Council and successors elected as provided by law in the Town of Anthony, El Paso County, Texas, or the incumbents of any office or offices hereafter created by law or by charter performing the same or similar function.

SECTION II. (a). The Grantee, its successors and assigns shall be and are hereby granted a franchise for a period of twenty years, with full right, power and authority to acquire, erect, construct, extend, maintain, repair, reconstruct, remove and change poles, wires and any and all other necessary apparatus and appliances within the corporate limits of the Town as they now exist or as hereafter extended, for the purpose of generating, transmitting and distributing to said Town and its inhabitants electricity for light and power, and for said purposes it is granted the right and privilege to enter upon and use the streets, avenues, highways, underpasses, alleys, public parks and other public grounds and places of said Town to erect, construct, operate, maintain, repair and remove such poles, wires, apparatus, appliances, connections and attachments as may be necessary and proper, subject to the terms hereinafter provided, and authority is likewise granted to lay underground wires, cables and conduits in the streets, alleys

and highways and to break up the surface thereof and to make proper excavations and lay conduits and duct systems under the streets and sidewalks.

All work done in the streets, alleys, highways or other public grounds of the Town by the Grantee shall be performed with reasonable diligence, and it shall within a reasonable time restore the streets, alleys and public grounds excavated by it to their original condition as nearly as possible; and said work shall be done, subject to the approval and supervision of the Town or some official designated by it, provided that in laying all conduits, wires or other such structures and in the repairing of same the Town shall be held harmless from all damages on account of any excavations for conduits and other structures, and the Grantee shall assume all liability or risk of damage to persons or property which may arise from negligence in the construction or operation of any or all of said plant or plants and shall save the Town, its officers and agents harmless from any and all liability which may arise or be incurred from the erection, construction or operation of same.

There is also granted to the Grantee, El Paso Electric Company, the franchise and the right, if it so elects, to erect, operate and maintain an electric light and power generating plant in the said Town of Anthony, Texas.

(b). The right, license and privilege and permission is given to the Grantee to trim trees upon and overhanging the streets, alleys, sidewalks and public places of the Town so as to prevent the branches of such trees from coming in contact with the wires or cables of the Grantee and when so ordered by the Town said trimming shall be done under the supervision and direction of an officer or agent of the Town to whom said duty has been or may be delegated by the Council or Board of Aldermen.

SECTION III. The Town Council may require the placing of electric lines located upon or to be located upon or crossed any public street or highways of any town in the business area as described in Exhibit A, attached hereto and hereby incorporated by reference, underground and conduits wherever public travel, public safety and convenience in the use or occupation of such public street or streets or highways shall reasonably require, but in the event of exercising this right the Grantee shall have the right to increase any rates to meet any expenses in connection with the construction, and when this might be exercised it shall be by Ordinance and the Town may likewise by proper action of the municipal council have the right to require the relocation of any poles, lines, conduits and other appliances for the transmission of electricity to conform to changing, improving or widening of streets and public alleys and the alteration of the course and with thereof, or where necessary to provide for the lane or changing of water lines, sewer lines, or other public utility lines owned by the Town and where the cost of making such changes in the relocation of poles, lines, conduits and other appliances for the transmission of electricity so required the Grantee shall be entitled to an increase in its rates.

SECTION IV. The Town of Anthony grants unto the Grantee herein its successors, lessees, and assigns the right to operate and control all meters, wires, appliances or appurtenances owned by it, and in the case of a refusal or failure on the part of any customer to pay the proper charges for current consumed or to observe the established rules and regulations of the Grantee to disconnect its service and wires from the premises of the consumer and to remove all meters and other

materials, appliances or appurtenances furnished for service and owned by it; provided that the Grantee shall in connection with the furnishing of current upon the demand of any customer or user of electric power or current upon request of any consumer have any meter read and tested as provided under Texas law at its own cost and expense if such test shall determine incorrectness of or defect in the meter, but if the meter test shows no incorrectness or defect in the meter, then the cost of making said test shall be at the expense of the consumer so requesting said test and reading.

SECTION V. The Grantee may be required to extend its lines for service for light or power to any person, firm or corporation within the corporate limits where it is economically sound to do so and where there will be a reasonable and compensatory return upon the expense of making such extension.

The Grantee shall abide by the provisions of this franchise and any authority granted to the Town of Anthony by the State Legislature under its charter provisions and any lawful Ordinances of the Town enacted pursuant thereto.

SECTION VI. All current for light, heat or power shall be upon a meter basis, except in such cases as where a flat rate is established for certain classes of service, but the flat rate shall not be compulsory and the right may be reserved by any customer to demand service through a meter in any class of service to which it otherwise would be entitled and obtain current for light, heat, or power at metered rates for any of the different classes of service, provided that it furnishes proper security for prompt payment of bills when due. However, the Grantee shall not be obligated to furnish meters for the purpose of enabling customers to check energy used by them in or for different departments on the same premises and for the benefit of customers only. Such meters shall be furnished by customers at their own cost and expense.

SECTION VII. The Grantee shall not discriminate between its consumers, that is, it shall charge all consumers in the same class the same rate for the same service; provided that special rates may be made by said Grantee where it may become necessary to meet competition with other light, heat or power service of any person; firm or corporation operating in the Town of Anthony, Texas.

Where authorized by the general laws of Texas, the Town may regulate and fix rates and charges allowed and required to be paid by customer such charges and rates to provide a reasonable and fair return upon the fair value of the Grantee's investment.

SECTION VIII. Grantee may establish optional rates and where applicable, the consumer reserving the option shall be bound thereby.

SECTION IX. The Grantee may require the payment of a reasonable deposit on the part of a customer as a condition precedent to furnishing service in accordance with the general laws of Texas.

Section X. Grantee may require of consumer the right of ingress to and egress from the premises of the consumer for the purpose of installing, moving, changing and reading meters and for the purpose of testing same in this connection at any reasonable time.

SECTION XI. Grantee may refuse to supply electric service to any person, firm or corporation demanding or applying for service unless such person, firm or corporation agrees to use the service furnished by the Grantee for its own use and legitimate purposes and in no event for resale without the express consent of the Grantee, and in the event that any customer violates said provisions Grantee may disconnect and discontinue service, as well as disconnect or discontinue any service to any consumer who is in arrears in the payment of his bill for service.

SECTION XII. (a). Grantee, its successors and assigns for and in consideration of the granting of this franchise and as rental for the occupation and use and easement over, upon and beneath the streets, highways, alleys, parks and other public places in the Town of Anthony as aforesaid shall pay quarterly to the Town a total aggregate sum of 3.25% of the gross receipts of the Grantee, its successors, lessees and assigns beginning with the date hereinafter set forth during all the time this provision shall remain in force and effect derived from the sale of electricity, used or consumed within the corporate limits of the Town of Anthony, such gross receipts to consist of the total amount received from users of electricity for light, heat and power within the corporate limits of the Town under the Grantee's rights for electricity furnished to the Town of Anthony, Texas, excepting therefrom such receipts for electricity furnished the Town and all municipal, county, state and Federal agencies and institutions. Such payment shall be based on said gross quarterly receipts beginning on meter readings commencing January 2, 2008, and said payments shall be made to the Town on or after the expiration of 30 days from and after the first day of January, April, July and October for the preceding quarter of each and every year, from and after and during all the time this provision shall remain in force and effect.

(b). For the purpose of determining said revenue, the revenue accounts of the Grantee shall at all reasonable times be subject to inspection by duly authorized Town officials and said payments shall be made in lieu of any and all other franchise, privilege, pole, easement, wire or instrument, occupation, excise or revenue taxes, and all other exactions except general ad valorem property taxes upon business, revenues, property, poles, wire instruments, conduits, pipes, fixtures or other appurtenances of the Grantee and all other property or equipment of the Grantee or any part thereof in said Town during the term of this franchise; provided that anything to the contrary notwithstanding, said payments shall continue only so long as the Grantee is not prohibited from making such payments by any lawful authority having jurisdiction in the premises, and so long as the Town does not impose, charge, levy or collect any other franchise, license, privilege, occupation, excise or revenue taxes, and if any lawful authority having jurisdiction in the premises hereafter prohibits said payments or if the Town does impose, levy, charge or collect or attempt to impose, charge, levy or collect any such other franchise, license, privilege, occupation, excise or revenue tax or other exactions or charge other than ad valorem taxes, the obligation to make such payments hereinabove provided for shall forthwith cease.

SECTION XIII. This franchise shall be accepted by the Grantee in writing within thirty (30) days from its passage and approval; and it is hereby made an essential condition in the granting of this franchise and in its use and enjoyment by the Grantee, its successors, lessees and assigns of the

RIDER RELATING TO BOUNDARIES,
EXHIBIT A TO SECTION III OF FRANCHISE

Bounded on the north by the Texas-New Mexico State Line, on the west by the easterly property line of the Santa Fe Railway right of way, on the south by the southerly line of Magnolia Street and on the east by the westerly line of the first alley or street east of Main Street, which is also known as U.S. Highway 80. In the block bounded by Main Street, Franklin Street, South Third Street and Tamarisk Street and in the block between Poplar Street and Magnolia Street where no public alley now exists, the easterly boundary line shall be approximately 150 feet east of the east line of Main Street.

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(b). For the purpose of determining said revenue, the revenue accounts of the Grantee shall at all reasonable times be subject to inspection by duly authorized Town officials and said payments shall be made in lieu of any and all other franchise, privilege, pole, easement, wire or instrument, occupation, excise or revenue taxes, and all other exactions except general ad valorem property taxes upon business, revenues, property, poles, wire instruments, conduits, pipes, fixtures or other appurtenances of the Grantee and all other property or equipment of the Grantee or any part thereof in said Town during the term of this franchise; provided that anything to the contrary notwithstanding, said payments shall continue only so long as the Grantee is not prohibited from making such payments by any lawful authority having jurisdiction in the premises, and so long as the Town does not impose, charge, levy or collect any other franchise, license, privilege, occupation, excise or revenue taxes, and if any lawful authority having jurisdiction in the premises hereafter prohibits said payments or if the Town does impose, levy, charge or collect or attempt to impose, charge, levy or collect any such other franchise, license, privilege, occupation, excise or revenue tax or other exactions or charge other than ad valorem taxes, the obligation to make such payments hereinabove provided for shall forthwith cease.

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SECTION III. The Town Council may require the placing of electric lines located upon or to be located upon or crossed any public street or highways of any town in the business area as described in Exhibit A, attached hereto and hereby incorporated by reference, underground and conduits wherever public travel, public safety and convenience in the use or occupation of such public street or streets or highways shall reasonably require, but in the event of exercising this right the Grantee shall have the right to increase any rates to meet any expenses in connection with the construction, and when this might be exercised it shall be by Ordinance and the Town may likewise by proper action of the municipal council have the right to require the relocation of any poles, lines, conduits and other appliances for the transmission of electricity to conform to changing, improving or widening of streets and public alleys and the alteration of the course and with thereof, or where necessary to provide for the lane or changing of water lines, sewer lines, or other public utility lines owned by the Town and where the cost of making such changes in the relocation of poles, lines, conduits and other appliances for the transmission of electricity so required the Grantee shall be entitled to an increase in its rates.

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SECTION XI. Grantee may refuse to supply electric service to any person, firm or corporation demanding or applying for service unless such person, firm or corporation agrees to use the service furnished by the Grantee for its own use and legitimate purposes and in no event for resale without the express consent of the Grantee, and in the event that any customer violates said provisions Grantee may disconnect and discontinue service, as well as disconnect or discontinue any service to any consumer who is in arrears in the payment of his bill for service.

SECTION XII. (a). Grantee, its successors and assigns for and in consideration of the granting of this franchise and as rental for the occupation and use and easement over, upon and beneath the streets, highways, alleys, parks and other public places in the Town of Anthony as aforesaid shall pay quarterly to the Town a total aggregate sum of 3.25% of the gross receipts of the Grantee, its successors, lessees and assigns beginning with the date hereinafter set forth during all the time this provision shall remain in force and effect derived from the sale of electricity, used or consumed within the corporate limits of the Town of Anthony, such gross receipts to consist of the total amount received from users of electricity for light, heat and power within the corporate limits of the Town under the Grantee's rights for electricity furnished to the Town of Anthony, Texas, excepting therefrom such receipts for electricity furnished the Town and all municipal, county, state and Federal agencies and institutions. Such payment shall be based on said gross quarterly receipts beginning on meter readings commencing January 2, 2008, and said payments shall be made to the Town on or after the expiration of 30 days from and after the first day of January, April, July and October for the preceding quarter of each and every year, from and after and during all the time this provision shall remain in force and effect.

(b). For the purpose of determining said revenue, the revenue accounts of the Grantee shall at all reasonable times be subject to inspection by duly authorized Town officials and said payments shall be made in lieu of any and all other franchise, privilege, pole, easement, wire or instrument, occupation, excise or revenue taxes, and all other exactions except general ad valorem property taxes upon business, revenues, property, poles, wire instruments, conduits, pipes, fixtures or other appurtenances of the Grantee and all other property or equipment of the Grantee or any part thereof in said Town during the term of this franchise; provided that anything to the contrary notwithstanding, said payments shall continue only so long as the Grantee is not prohibited from making such payments by any lawful authority having jurisdiction in the premises, and so long as the Town does not impose, charge, levy or collect any other franchise, license, privilege, occupation, excise or revenue taxes, and if any lawful authority having jurisdiction in the premises hereafter prohibits said payments or if the Town does impose, levy, charge or collect or attempt to impose, charge, levy or collect any such other franchise, license, privilege, occupation, excise or revenue tax or other exactions or charge other than ad valorem taxes, the obligation to make such payments hereinabove provided for shall forthwith cease.

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SECTION XI. Grantee may refuse to supply electric service to any person, firm or corporation demanding or applying for service unless such person, firm or corporation agrees to use the service furnished by the Grantee for its own use and legitimate purposes and in no event for resale without the express consent of the Grantee, and in the event that any customer violates said provisions Grantee may disconnect and discontinue service, as well as disconnect or discontinue any service to any consumer who is in arrears in the payment of his bill for service.

SECTION XII. (a). Grantee, its successors and assigns for and in consideration of the granting of this franchise and as rental for the occupation and use and easement over, upon and beneath the streets, highways, alleys, parks and other public places in the Town of Anthony as aforesaid shall pay quarterly to the Town a total aggregate sum of 3.25% of the gross receipts of the Grantee, its successors, lessees and assigns beginning with the date hereinafter set forth during all the time this provision shall remain in force and effect derived from the sale of electricity, used or consumed within the corporate limits of the Town of Anthony, such gross receipts to consist of the total amount received from users of electricity for light, heat and power within the corporate limits of the Town under the Grantee's rights for electricity furnished to the Town of Anthony, Texas, excepting therefrom such receipts for electricity furnished the Town and all municipal, county, state and Federal agencies and institutions. Such payment shall be based on said gross quarterly receipts beginning on meter readings commencing _____, _____, and said payments shall be made to the Town on or after the expiration of 30 days from and after the first day of January, April, July and October for the preceding quarter of each and every year, from and after and during all the time this provision shall remain in force and effect.

(b). For the purpose of determining said revenue, the revenue accounts of the Grantee shall at all reasonable times be subject to inspection by duly authorized Town officials and said payments shall be made in lieu of any and all other franchise, privilege, pole, easement, wire or instrument, occupation, excise or revenue taxes, and all other exactions except general ad valorem property taxes upon business, revenues, property, poles, wire instruments, conduits, pipes, fixtures or other appurtenances of the Grantee and all other property or equipment of the Grantee or any part thereof in said Town during the term of this franchise; provided that anything to the contrary notwithstanding, said payments shall continue only so long as the Grantee is not prohibited from making such payments by any lawful authority having jurisdiction in the premises, and so long as the Town does not impose, charge, levy or collect any other franchise, license, privilege, occupation, excise or revenue taxes, and if any lawful authority having jurisdiction in the premises hereafter prohibits said payments or if the Town does impose, levy, charge or collect or attempt to impose, charge, levy or collect any such other franchise, license, privilege, occupation, excise or revenue tax or other exactions or charge other than ad valorem taxes, the obligation to make such payments hereinabove provided for shall forthwith cease.

SECTION XIII. This franchise shall be accepted by the Grantee in writing within thirty (30) days from its passage and approval; and it is hereby made an essential condition in the granting of this franchise and in its use and enjoyment by the Grantee, its successors, lessees and assigns of the

RIDER RELATING TO BOUNDARIES,
EXHIBIT A TO SECTION III OF FRANCHISE

Bounded on the north by the Texas-New Mexico State Line, on the west by the easterly property line of the Santa Fe Railway right of way, on the south by the southerly line of Magnolia Street and on the east by the westerly line of the first alley or street east of Main Street, which is also known as U.S. Highway 80. In the block bounded by Main Street, Franklin Street, South Third Street and Tamarisk Street and in the block between Poplar Street and Magnolia Street where no public alley now exists, the easterly boundary line shall be approximately 150 feet east of the east line of Main Street.

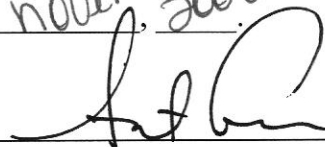
franchise and the rights and privileges hereby granted, shall be the acceptance by the Grantee, its successors, lessees and assigns of all the conditions, reservations and restrictions herein provided and contained; and when this franchise has been accepted as aforesaid this Ordinance shall be and become a contract duly executed by and between the aforesaid Town of Anthony and said Grantee.

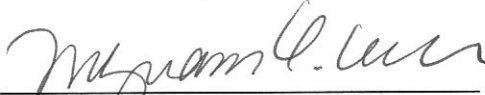
SECTION XIV. Upon the passage, approval and acceptance of this franchise, the same shall take effect and be in force for the period of twenty years from and after the adoption and approval of this Ordinance and its acceptance.


SECTION XV. Nothing herein contained shall be construed as giving to the Grantee any exclusive franchise.

SECTION XVI. If any section, paragraph, subdivision, clause, phrase or provision of this Ordinance shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this Ordinance as a whole or any part or provision thereof, other than the part so decided to be invalid or unconstitutional.

SECTION XVII. This Agreement is subject to, and shall be interpreted to conform with, all applicable laws, rules, orders, and regulations, including, but not limited to, the laws, rules, orders, and regulations of the Public Utility Commission of Texas. Any changes in applicable laws, rules, orders, or regulations shall become effective with regard to this Agreement, and any other agreements made pursuant to it, as of the effective date of the law, rule, order, or regulation. This Agreement shall terminate if EPE is required by any law, rule, order, or regulation to cease providing one or more of the services or obligations EPE agrees to perform pursuant to this Agreement.

PASSED AND APPROVED THIS 27th DAY OF November, 2008

Art Franco Mayor
Name Title

ATTEST: (seal)

Office Manager

Accepted:

J. Frank Bates
Interim President and CEO
El Paso Electric Company

02/29/2008
Date