

FRANCHISE ORDINANCE NO. 874

AN ORDINANCE GRANTING TO THE CANEY VALLEY ELECTRIC COOPERATIVE ASSOCIATION, INC., A CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE AND FRANCHISE OF CONSTRUCTING, OPERATING AND MAINTAINING IN THE STREETS, ALLEYS AND PUBLIC GROUNDS OF THE CITY OF SEDAN, KANSAS, AND ALL FUTURE ADDITIONS THERETO, ALL POLES, LINES, CONDUITS, WIRES, WORKS, AND OTHER APPLIANCES NECESSARY TO THE FURNISHINGS AND SUPPLYING OF SAID CITY AND ITS INHABITANTS WITH ELECTRICITY FOR LIGHT, HEAT AND POWER, AND FIXING AND DEFINING THE TERMS AND CONDITIONS OF SAID FRANCHISE.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SEDAN, KANSAS, THAT:

Section 1. The Caney Valley Electric Cooperative Association, Inc., a corporation, its successors and assigns, (hereinafter referred to as the “grantee”), is hereby granted, under all of the terms and conditions hereinafter provided, the right, privilege and franchise of constructing, operating and maintaining works in the City of Sedan, Kansas, (said City being hereinafter referred to as the “City”), and future additions thereto, for the purpose of acquiring, distributing and selling electricity for light, heat and power, and of entering upon and traversing along, under and across any and all of the streets, roads, alleys, ways, and public grounds of said City and to trim and remove trees where necessary, and of constructing, operating and maintaining thereon all poles, lines, conduits, wires, works and other appliances necessary for the safe and continued operation, delivery, distribution and sale of electricity in said City, and in the vicinity of said City, and all future additions thereto, all after consulting with the City officials.

Section 2. All excavations and the setting of all poles and other appliances may be made under the direction of the City Engineer or such officer or officers of the City as the City may appoint, and shall be made in such manner as to give the least inconvenience to the inhabitants of said City. All sidewalks, streets, and property disturbed by the Grantee shall be replaced or repaired by it so as to be restored to their former condition.

Section 3. In the extension, maintenance, and repair of said electric works and system, all wiring shall be done in accordance with the National Electric Code and shall not in any manner interfere with any existing telegraph or telephone wires.

Section 4. The Grantee, its successors and assigns, shall be liable for and shall pay any and all damages of any kind or nature to any persons or property growing out of or caused by the negligent construction or maintenance of its said electric works and system in the City, or by the negligent act of any of its servants, agents, or employees, and the Grantee hereby agrees to indemnify the City and to save it harmless from and against all damage.

Section 5. The Grantee shall endeavor to furnish at all times during the period of this franchise a sufficient amount of electric current to the City and its inhabitants for all purposes whatsoever, to the end that the industrial growth of the City may be encouraged. The Grantee shall maintain twenty-four hour service except when prevented by unavoidable accident or causes beyond its control. In the event that the supply of electric energy to be furnished by the Grantee shall interrupted or shall fail by accident, act of God, or other act beyond the control of the Grantee, Grantee shall restore the service of electricity to the City and its inhabitants as promptly as possible, but such interruptions shall not constitute a breach of this franchise, nor shall the Grantee be liable for damages for such interruptions or failure of service.

Section 6. The Grantee agrees to furnish to the City and its inhabitants electricity for lighting, heating, and power purposes at the schedules in force and effect and charged by the Grantee, which shall remain in force and effect until changed by proper Governmental authority. As consideration for the franchise herein granted, the grantee agrees to pay to the City **five percent (5%)** of the total of the gross sales of electricity sold by the Grantee to domestic and commercial customers within the corporate limits of the City, excepting, however, sales made by the Grantee to the City, County, State, and Federal Agencies. The amount aforesaid shall be paid

by the Grantee on the sales herein before specified made by the Grantee from and after the date on which this ordinance shall take effect and be in force as hereinafter specified and continuing thereafter during the term of this franchise. The first of said payments to be made by the grantee shall be made on or before July 31, 2012, and shall cover said sales made as herein before specified prior to June 30, 2012, and thereafter said payment shall be made semi-annually on or before January 31 and July 31 each year and shall cover said sales made by the Grantee during the six month periods ending on the last previous June 30 and December 31, respectively. The City agrees to accept the conditions and agreements contained herein to be performed by the Grantee as adequate compensation and consideration for the franchise herein granted.

Section 7. The Grantee shall at its own expense furnish and install all meters or other devices for measuring the quantity of electric current used by all consumers. The Grantee shall further furnish the City a copy of the terms and conditions of service constituting the rules and regulations, as approved by the State Corporation Commission, which will govern the supplying of electric energy. These provide a base procedure for good service, safety and well-being of the customer, the company, and the City. They are subject to change from time to time upon due authority and are issued in compliance with Kansas Statutes Annotated 66-107. Current and revised regulations will be provided the City during the term of the franchise.

Section 8. The grantee may promulgate such rules, terms and conditions governing the utilization of its electricity and interferences with or alteration of any of the Grantee's property upon the premises of its customers as may be necessary to insure the proper measurement thereof, and the Grantee shall in no event be required to render service to any consumer or party who may wrongfully take current from the Grantee or who may resell, lease, or otherwise deliver any part of the electrical energy furnished to him to a third party. The Grantee shall have the right to adopt and enforce all reasonable rules and regulations in respect to the types of equipment that may be connected to the lines of the Grantee and that may be needful and necessary in the general operation of the plants and systems of the Grantee.

Section 9. In the event it should become necessary at any time in the moving of any house or other building along any street, alley, or public way, either to cut or raise any wire of the Grantee, said Grantee shall not charge the City for such actions, but may charge the private citizen requesting the said actions a reasonable sum for the Grantee's assistance.

Section 10. the Grantee shall furnish and connect at its expense all meters, transformers, and service wires, between its distributing lines and the meters of its consumers, but the Grantee shall not be required to furnish or install any wiring or appliances beyond such meters on the premises of the consumers. The consumer shall use all due diligence to protect the property of the Grantee installed in the premises of the consumer or under the control of the consumer. The Grantee, or its representatives, shall have the right of access to the premises of the consumer at all reasonable hours for the purpose of reading, inspecting, testing, repairing, installing, altering, or removing any appliances or apparatus owned by the Grantee, or to prevent fraud on the Grantee, or in the event of the refusal or failure of the consumer to pay the charges of the Grantee. The Grantee shall have the right to examine and test all meters, whether owned by the Grantee or by the consumer.

Section 11. The City hereby grants to the Grantee for the entire period of the franchise herein granted, a license for the operation of the public utilities herein referred to and during the period of said franchise no license tax or other tax shall be assessed by the City against the business or properties of the Grantee other than the usual property taxes imposed upon all property situated in the City. All poles, wires, and other equipment placed on the streets, alleys, or public places of the City shall be exempt from any special tax or license, other than provided for herein, during the entire term of the franchise.

Section 12. The Grantee shall at any requested time by the City during the life of the franchise negotiate in good faith for revised or new street lighting fixtures and rates accordingly.

Section 13. The franchise herein granted, limited only as provided in the foregoing Section, shall be in full force and effect for the period of five years from and after the date of the final passage of this Ordinance. When this agreement expires, if a new agreement has not been passed by City Council, the 5% will continue being paid as long as the coop continues to serve customers in Sedan.

Section 14. This ordinance and the franchise herein granted shall be accepted by the Grantee in writing filed with the City Clerk within sixty days after the date on which this ordinance shall take effect and be in force, provided, however, that such time for the acceptance of this ordinance and the franchise herein granted may be extended by the Governing Body of the City.

Section 15. This ordinance, immediately after its final passage, shall be published in The Sedan Times-Star, the official City newspaper, one time. This ordinance and the franchise herein granted shall take effect and be in force after the expiration of sixty days from the date of the final passage of this ordinance.

PASSED by the Governing Body of the City of Sedan, Kansas, and approved by the Mayor, this 6th day of February, 2012.

Tim Hills, Mayor

ATTEST:

Sherry Miller, City Clerk