

CITY OF FOUNTAINS
HEART OF THE NATION



KANSAS CITY
MISSOURI

Office of the City Clerk

25th Floor, City Hall
414 East 12th Street
Kansas City, Missouri 64106

FILED
May 13, 2008
Data Center
Missouri Public
Service Commission

(816) 513-3360
Fax: (816) 513-3353

CERTIFICATE OF THE CITY CLERK

I, Millie Crossland, City Clerk of Kansas City, Missouri, certify the attached is a true and correct copy of:

Chapter:

Charter Section:

Ordinance: Ordinance No. 60167, As Amended

Resolution:

Section:

Other:

Passed on October 30, 1986.

The above appears in records and is on file in the Office of the City Clerk, 25th Floor, City Hall, Kansas City, Missouri.

IN TESTIMONY WHEREOF, I have set my hand and affixed the seal of the City on this date, April 17, 2008.

Millie Crossland
City Clerk

By: Patricia D. Toney
Deputy City Clerk

CX 22 Exhibit No. 403
Case No(s) 80-2007-0374
Date 4-28-08 Rptr 25

K744835

60167

AN ORDINANCE

"As Amended"

K1609P 131

ORDINANCE EFFECTIVE
10 DAYS AFTER PASSAGE

GRANTING PERMISSION TO AND AUTHORIZING UTILICORP UNITED INC., A CORPORATION DOING BUSINESS AS MISSOURI PUBLIC SERVICE, ITS SUCCESSORS AND ASSIGNS, TO GENERATE, SUPPLY, SELL, DISTRIBUTE AND FURNISH ELECTRICAL POWER AND ENERGY TO THAT PORTION OF KANSAS CITY, MISSOURI, HEREINAFTER SET FORTH, FOR A PERIOD ENDING DECEMBER 31, 2006; STATING THE CONDITIONS UPON WHICH SUCH PERMISSION AND AUTHORITY ARE GRANTED; SPECIFYING CERTAIN OBLIGATIONS ASSUMED BY THE GRANTEE; IMPOSING OBLIGATIONS UPON ITS SUCCESSORS AND ASSIGNS; AND PROVIDING THE MANNER OF ACCEPTANCE OF THE TERMS AND PROVISIONS OF THIS ORDINANCE.

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. Franchise granted.

Subject to the provisions of the present Charter of Kansas City, Missouri (hereinafter referred to as the "City"), and the laws of Missouri and the present ordinances of Kansas City, Missouri, so far as applicable, and subject to the provisions of this ordinance, permission, right, privilege and authority are hereby given and granted unto UtiliCorp United Inc., a corporation doing business as Missouri Public Service (hereinafter sometimes referred to as the "Grantee"), its successors, transferees and assigns, for a period beginning from and after January 1, 1987, and ending December 31, 2006, to generate, supply, sell, distribute and furnish electrical power and energy to and within that portion of the corporate limits of said City as they now exist or may hereafter exist for which Grantee holds a Certificate of Convenience and Necessity from the Missouri Public Service Commission, and to all electrical energy customers of all classes now or hereafter located within the ~~described~~ areas of Kansas City served by the Grantee, and for that purpose, to operate, maintain, reconstruct and use its present distribution lines, transmission lines, poles, anchors, guy wires, conductors, wires, conduits, substations, transformers, apparatus and appliances now located in, along, over, across and under the public streets, avenues, boulevards, alleys and public ways, and on and across the viaducts and bridges, if any, and located in those portions of Kansas City above mentioned, and for the same purpose to erect, install, construct, maintain and reconstruct the necessary additional distribution lines, transmission lines, poles, conductors, anchors, guy wires, wires, conduits, substations, transformers, apparatus and appliances and other facilities and extensions thereof, and to

STATE OF MISSOURI
COUNTY OF JACKSON
CERTIFY INSTRUMENT RECEIVED

Form 8713 - Law
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RECORDED
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CATHERINE L. JOHNS
DIRECTOR OF RECORDS

*2000
P. McVreath*

trim and remove trees upon and overhanging such places, for the distribution and sale of electrical energy and power in that area of Kansas City above mentioned, and the public streets, avenues, boulevards, alleys and public ways, and located in that area of Kansas City mentioned above, and on and across the viaducts and bridges, if any, of the City, situated in said aforementioned area, all to be done and performed upon the terms and conditions hereinafter specified in this ordinance.

Section 2. Quality of service - jurisdiction of the Missouri Public Service Commission recognized.

The rates to be charged and exacted from the City and its inhabitants and the rules and regulations with reference to the boundary lines, character, quality, standards of service and rules governing the conduct of Grantee under this franchise shall be under the jurisdiction and control of the Public Service Commission of the State of Missouri. In the event Grantee cannot reasonably comply with both provisions of this ordinance and other rules and regulations promulgated by the City and the rules and regulations of the Public Service Commission, then the Grantee shall comply with the rules and regulations of the Public Service Commission.

Section 3. Records of company - reports.

The Grantee shall furnish promptly to the City a copy of each annual report filed by the Grantee with the Public Service Commission during the period this franchise is herein granted. Upon request of the City, Grantee shall provide a report of total kilowatt hour sales within the City during the preceding fiscal year of the City.

Section 4. Rates.

The Grantee shall supply electrical service within its service area of Kansas City at rates approved by the Missouri Public Service Commission and under terms of the Grantee's rules and regulations filed with and approved by the Public Service Commission.

Section 5. Excavation of public property - restoration - damage to City property.

Whenever it becomes necessary to excavate in public streets, alleys, highways, public ways or public grounds of the City under the granting clause of this franchise, granting permission to the

Grantee to do same in order to install, construct, reconstruct, maintain, repair or extend any of Grantee's distribution lines, transmission lines, poles, conductors, anchors, guy wires, wires, conduits, substations, transformers, apparatus and appliances now located or to be located therein or thereon, such excavations shall be made according to all of the provisions of the Charter and General Ordinances of Kansas City, Missouri.

In the construction, maintenance, repair and operation of its transmission lines, poles, conductors, wires, conduits, substations, apparatus and appliances, Grantee shall use all necessary care to avoid doing or permitting to be done any damage to the water lines, sewers, conduits or any property of the City, and shall use all reasonable care to avoid injury to the property of the City, and if it shall in such work do or permit to be done any such damage, Grantee shall promptly restore the property so damaged to the condition in which it was before being damaged, or pay therefor, and shall also be liable for any other damages which may accrue because of said damage to said City or any other person, firm or corporation.

Section 6. Injury to persons or property - defense of and indemnity to City - parties to legal actions.

In the construction, installation, repairing, operation and maintenance of all transmission lines, poles, conductors, wires, conduits, substations, apparatus and appliances and other facilities for the distribution of electrical energy and power, the Grantee shall use reasonable and proper precautions to avoid damage or injury to persons or property and shall at all times and under all circumstances hold and save harmless Kansas City from each and all such damage, injury, loss, cost or expense caused or occasioned by reason of any negligent act, or negligent failure to act, of the Grantee herein, its officers, agents, servants and employees in the connection, installation, repairing, maintaining of any of its facilities, for the sale or distribution of electrical power and energy in Kansas City or making excavation in the public streets and highways or public grounds of the City and the paving, repaving or repairing of any of the public streets, highways or public property of the City; and the Grantee herein agrees with Kansas City that if the City is sued in any court by any person, firm, association, company or corporation to recover damages for injuries to person or property alleged to have resulted from the sole negligence of the Grantee, its officers, agents, servants and employees in the installation, operation, maintenance or repairs of the Grantee's distribution lines, transmission lines, poles, conductors, wires, conduits, substations, apparatus and appliances or any part thereof or any of its facilities in Kansas City, the Grantee, its successors and assigns, shall defend all such suits and pay the final judgments, if any, resulting therefrom, and shall at the option of the City or Grantee be made a party of any such court proceeding.

The City shall have the right at all times to take part by its City Attorney in any such suit or action instituted by or against Grantee in which any judgment or decree can be rendered, or foreclosing any lien on any of the Grantee's property, situated in the City, or affecting the rights, powers or duties of Grantee to do or not to do anything which by this ordinance it may be required to do or not to do, and also to take such steps in any such proceeding that may be deemed essential to protect the interest of the City or the public interest. This paragraph shall not be construed to confer standing on the City to join in any such suit or action.

Section 7. No exclusive franchise.

Franchise rights and privileges granted by this ordinance shall never be construed or held to be exclusive, but the City retains and shall ever be considered as having and retaining the right and power to allow and to grant to any other person, firm or corporation, and other electrical companies, franchise rights and privileges to be exercised in and upon its streets, highways and public places and such of the same parts thereof as it may deem best or choose to allow, permit, give or grant.

Section 8. Restrictions on transfers.

Grantee shall not, except as in this ordinance provided, without the consent of the City evidenced by ordinance, sell, lease or transfer this franchise, property rights or privileges herein authorized, to any person, firm, company or corporation; provided, however, that nothing herein shall be construed or held to prevent the Grantee from assigning, conveying or transferring said franchise to a successor company, which company results from a reorganization, reincorporation or a merger of Grantee with another corporation or corporations; or giving a mortgage, voluntary lien or pledge or increase of its debt thereunder, lawfully authorized, on notice to the City and an opportunity to be heard thereon, by the Public Service Commission of the State of Missouri or any lawful authority of the State of Missouri or of the United States of America having jurisdiction in such matter.

The right of the City to demand, require and enforce performance of this ordinance by the Grantee and the City's remedy for default or failure by the Grantee herein, whether herein specified or provided by law, and whether by forfeiture or otherwise, as the City may choose, shall be paramount and superior to the rights, estates, provisions and interests of Grantee and all others whomsoever claiming thereunder; and this condition and provision shall apply successively and continuously at all times to all and every assign of every kind and character and other claiming or who may claim by, through or under Grantee.

Section 9. Rights and obligations of assignees.

All rights, privileges and franchises by this ordinance given or granted to Grantee, shall inure to the benefit of its assigns, transferees or successors in interest according to the provisions of this ordinance; and all obligations, duties, liabilities, limitations, provisions, amendments, forfeitures by this ordinance created or imposed upon Grantee, shall be binding upon and be assumed, kept and performed by its legal and bona fide transferees, assigns and successors in interest, according to the true intent and purposes of this ordinance, whether expressly so stated or not.

Neither this section nor any provision of this ordinance shall be so construed as to give Grantee the right to assign, or transfer any of such rights, privileges or franchises or, any right or interest therein or thereunder, except as otherwise provided in this ordinance.

Section 10. Insurance.

The Grantee shall at all times keep insured in reliable companies licensed, authorized and qualified to do business in Missouri, all buildings, plants and equipment and such other insurable property as is customarily and normally insured by the electric utility industry at not less than eighty percent (80%) of the fair and reasonable value thereof, against loss by fire or otherwise.

Section 11. Bankruptcy - receivership City's right and obligations of Grantee to continue.

Should the Grantee go into bankruptcy, or into the hands of a receiver or other court officer, or reorganize under provisions of law, the interests and rights and remedies of the City acquired herein shall not be affected or prejudiced, and any receiver, assignee, trustee, purchaser or successor, whether by operation of law or otherwise, so succeeding to or representing the interest or position of the Grantee, shall be bound by this ordinance and the obligations to the City imposed upon Grantee by this ordinance. These obligations and duties to the City shall be paramount and superior to the rights, liens, interests and estates of all and any other persons, firms, trusts or corporations whomsoever, and shall be so construed and may be enforced by the City against all and any such persons, trusts or corporations in any manner or method in this ordinance provided for enforcement against the Grantee.

Section 12. Reasonable regulations.

The City shall enact all needful and requisite ordinances to protect Grantee, its works and property, from damages, impositions and frauds, but the City shall not incur any liability by the failure to enact any such ordinance and the City does not hereby waive its police power or right of governmental control over the subject matter of this franchise.

Section 13. Forfeiture.

The City shall have the right to forfeit the franchise granted by this ordinance upon the grounds and in the manner provided by Section 407 of the City Charter.

Section 14. Acceptance.

This ordinance and its terms and provisions shall be accepted by Grantee by written instrument, executed and acknowledged by it as a deed is required to be, and filed with the City Clerk within twenty (20) days after the passage of this ordinance. Such written instrument shall state and express the acceptance of this ordinance in its terms, conditions and provisions, and said Grantee shall agree in said instrument to abide by, to observe and perform same and declare that statements and recitals herein are correct and that it has made and does make the agreement, statements and admissions in this ordinance recited or to be made. This ordinance shall take effect on January 1, 1987, provided such formal acceptance hereof of the terms and conditions by Grantee as herein provided, in form approved by the City Attorney, shall be filed with the City Clerk within such twenty (20) days.

Unless this ordinance shall be accepted within the time in this section provided and in the manner herein provided, it shall not become effective. The instrument of acceptance, or any executed counterpart thereof, shall be filed for record in the Office of the Recorder of Deeds of Jackson County, Missouri, at Kansas City, by the City Clerk, at the Grantee's expense, within thirty (30) days after the same is filed with the City Clerk. Two (2) copies of the acceptance shall be marked so as to indicate the receipt of such acceptance, and shall be returned to the Grantee by the Clerk. The recorded copy of such acceptance shall be obtained and preserved by the City Clerk.

Authenticated as Passed

Richard L. Berkley
RICHARD L. BERKLEY, Mayor

E. Richard Brennan
By *E. Richard Brennan* City Clerk
OCT 30 1986 Deputy City Clerk

Approved as to form and legality:

Carol C. Kennett
Assistant City Attorney
Carol C. Kennett
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