

ORDINANCE NO. 3-95

FRANCHISE

AN ORDINANCE GRANTING TO GULF STATES UTILITIES COMPANY, AND ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE AND FRANCHISE TO CONDUCT WITHIN THE CITY OF **ANDERSON**, TEXAS, AN ELECTRICAL LIGHTING AND POWER BUSINESS AND TO ENTER UPON, ERECT, CONSTRUCT, MAINTAIN, OPERATE, USE, EXTEND, REPAIR, REPLACE AND REMOVE UNDER, UPON, OVER, ABOVE, ACROSS AND ALONG ANY AND ALL OF THE PRESENT AND FUTURE PUBLIC ROADS, HIGHWAYS, PARKS, STREETS, LANES, ALLEYS, AND OTHER PUBLIC AREAS OF THE CITY, AND OVER, UNDER, ABOVE, ALONG, AND ACROSS ANY AND ALL STREAMS, CANALS, BAYOUS, EMBANKMENTS AND BRIDGES NOW OR HEREAFTER OWNED OR CONTROLLED BY IT, A SYSTEM OF POLES, POLES LINES, TOWERS, DISTRIBUTION LINES, TRANSMISSION LINES, WIRES, GUYS, CABLES, CONDUITS, TRANS-

FORMERS, AND OTHER DISTRIBUTION AND TRANSMISSION INSTRUMENTALITIES, FACILITIES AND APPURTENANCES (INCLUDING TELEPHONE AND TELEGRAPH POLES AND WIRES FOR SAID COMPANY'S OWN USE) NECESSARY OR PROPER FOR THE TRANSMISSION AND DISTRIBUTION, OR FOR THE TRANSMISSION OR DISTRIBUTION OF ELECTRICITY INTO, IN, WITHIN, FROM, ACROSS AND THROUGH THE CITY OF ANDERSON, AS NOW EXISTING, OR AS SAID CITY LIMITS MAY HEREAFTER BE EXTENDED; AND GRANTING GULF STATES UTILITIES COMPANY, AND ITS SUCCESSORS AND ASSIGNS, THE AUTHORITY TO USE SUCH FOR THE PURPOSE OF TRANSMISSION, DISTRIBUTION, DELIVERY AND SALE OF ELECTRICITY TO THE MUNICIPALITY, AND TO THE INHABITANTS OF THE CITY OF ANDERSON AND TO ANY OTHER GOVERNMENTAL AGENCY, GOVERNMENTAL SUBDIVISION, PERSON, FIRM OR CORPORATION, WHEREVER LOCATED WITHIN OR WITHOUT THE CITY LIMITS OF ANDERSON

TO BE USED BY SUCH PURCHASER OR PURCHASERS FOR LIGHTING, COOLING, HEATING, POWER OR ANY OTHER PURPOSE OR PURPOSES FOR WHICH ELECTRICITY MAY BE USED; PROVIDING AN EFFECTIVE DATE; PROVIDING THAT THIS FRANCHISE SHALL BE EFFECTIVE FOR A PERIOD OF FIFTY (50) YEARS COMMENCING UPON AND EXTENDING FROM FINAL PASSAGE HEREOF; PROVIDING FOR THE TEMPORARY REMOVAL, RAISING OR LOWERING OF WIRES AND OTHER APPURTENANCES; GIVING CITY'S CONSENT TO THE CUTTING AND TRIMMING BY COMPANY OF CONFLICTING TREES; PROVIDING FOR COMPENSATION TO BE PAID THE CITY; PROVIDING THAT THIS FRANCHISE SHALL NOT BE EXCLUSIVE; PROVIDING SEVERABILITY CLAUSE; RESERVING ALL POWERS OF REGULATION; MAKING MISCELLANEOUS PROVISIONS RELATIVE TO THIS GRANT OF FRANCHISE; AND PROVIDING FOR THE ACCEPTANCE OF THIS FRANCHISE ORDINANCE BY COMPANY.

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

Section 1: General Grant of Franchise. That, subject to the terms, conditions and provisions of this ordinance, the City of Anderson, Texas ("City") does hereby grant unto Gulf States Utilities Company ("Company") and its successors and assigns, the right, privilege and franchise to conduct within the City an electrical lighting and power business and to enter upon, erect, construct, maintain, extend, repair, replace or remove in, under, upon, over, above, across and along any and all of the present and future public roads, highways, parks, streets, lanes, alleys, and other public areas of the City and over, under, above, along and across any and all streams, canals, bayous, embankments and bridges, now or hereafter owned or controlled by the City, a system of poles, pole lines, towers, distribution lines, transmission lines, wires, guys, cables, conduits, transformers and other distribution and transmission instrumentalities, facilities and appurtenances (including telephone and telegraph poles and wires for Company's own use) necessary or proper for the transmission and distribution, or for the transmission or distribution, of electricity, into, in, within, from, across, and through the City as now existing, or as said City limits may hereafter be extended; and Company and its successors and assigns are authorized to

use said poles, pole lines, towers, distribution lines, transmission lines, wires, guys, conduits, transformers and other distribution and transmission instrumentalities, facilities and appurtenances for the transmission, distribution, delivery and sale of electricity to the City, and to the inhabitants of the City and to any governmental agency, and to any governmental subdivision, and to any person, firm or corporation, wherever located, within or without the City limits of the City, for use by such purchaser, or purchasers, for light, power, cooling and heat, and for any other purpose, or purposes, whether same or different from those herein specified, for which electricity may be used.

Section 2: Term. Upon the filing with City by Company of the acceptance required hereunder, this franchise shall be in full force and effect for a term and period of fifty (50) years commencing upon, and extending from, the date of passage of this ordinance by City.

Section 3: Raising of Lines. Company, on written request of any person, shall relocate, raise or lower its wires temporarily to permit construction work in the vicinity thereof, or to permit the moving of houses or other bulky structures. The expense of such temporary relocation, raising or lowering of such wires shall be paid by the benefited party or parties and the Company may require the payment in advance, being without obligation to remove, raise or lower its wires until such payment shall have been made. The Company shall be given not less than forty-eight hours prior notice to arrange for such temporary wire changes.

Section 4: Location of Lines. Within the streets or other public ways of the City, the location and route of all poles, stubs, guys, anchors, lines, conduits and cables placed and constructed, and to be placed and constructed, by Company in the construction and maintenance of its electrical lighting and power system in, within and through the City, shall be subject to the reasonable and proper regulation, control and direction of the City, or of any official to whom such duties have been, or may be, duly delegated.

Section 5: Tree-Trimming. To the extent that the City has authority to do so, it gives to Company, during the life of this franchise, the right, license, privilege and permission to trim trees upon and overhanging the streets, alleys, sidewalks and public places of City, so as to prevent the branches of such trees from coming into contact with the wires or other equipment of Company.

Section 6: Non-Exclusivity. Nothing contained in this ordinance shall ever be construed as conferring upon Company any exclusive rights or privileges of any nature whatsoever.

Section 7: Severability. If any provision, section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be unconstitutional, void, or invalid (or for any reason unenforceable), the validity of the remaining portions of this ordinance shall not be affected thereby, it being the intent of the City in adopting this ordinance that no portion thereof, or provision or regulation contained herein, shall become inoperative or fail by reason of any unconstitu-

tionality or invalidity of any other portion, provision or regulation, and, to this end, all provisions of this ordinance are declared to be severable.

Section 8: Retention of Original Jurisdiction. The City, by granting of this franchise, does not surrender or to any extent lose, waive, impair or lessen the lawful powers and rights, now or hereafter vested in the City under the constitution and statutes of the State of Texas to regulate the rates for services of Company; and Company, by its acceptance of this franchise, agrees that all such lawful regulatory powers and rights, as the same may be from time to time vested in the City, shall be in full force and effect and subject to the exercise thereof by the City at any time, and from time to time.

Section 9: Compensation. As compensation to City for the use and occupancy of its public roads, ways, highways, lanes, alleys, bridges, parks and other public places in the City, and in consideration for the other rights and privileges herein granted, Company agrees to pay to the City on September 1, 1996, and on each September 1, thereafter occurring during the continuance of this agreement, a sum of money equal to four percent (4%) of its gross receipts from billings for the twelve month period from July 1 to June 30, inclusive, next preceding such September 1 -- exclusive of receipts from (1) sales to industrial consumers, (2) sales for governmental pumping, and (3) street lighting -- received by the Company for said twelve month period (ending on the immediately preceding June 30) from its electrical lighting and power sales made direct by Company to ultimate consumers for consumption within the corporate limits of

the City; less a sum equal to the aggregate amount of any license, charge, fee, street, or alley rental, or any other charge, or levy, or character of tax, for use or occupancy of the public roads, ways, highways, lanes, alleys, bridges, parks or other public places in the City, and any pole tax or inspection fee tax, paid other than under this agreement to the City, or any agency, instrumentality, subdivision or successor of the City, by the Company during those twelve months (ending August 31, inclusive) next preceding said September 1 payment date. "Sales to industrial consumers" shall include, but not be limited to, sales of electric energy used by a consumer principally for manufacturing, processing, mining, refining, irrigation, shipbuilding, construction, radio communication, operation of railroads, and other common carriers, and public utilities, including, but not limited to, pumping, sewerage, and drainage. "Sales for governmental pumping" are those sales to the City, United States, County, State of Texas, or to any governmental or political subdivision, unit, body, district, agency, instrumentality or wholly-owned corporation, of any of the foregoing, which sales, if any, are made under a pumping service classification, or rate schedule, available only to such governmental authorities.

Each payment hereinabove provided shall compensate the City for the use of its public roads, ways, highways, lanes, alleys, bridges, parks and other public places in the City, by Company with its facilities for the twelve month period commencing upon, and extending from, July 1 of the year of such particular payment. As compensation to City for such use for the period commencing on

the effective date of this franchise and ending June 30, 1996, Company agrees to pay to City at the time Company accepts this franchise, the sum of \$ * _____, for each day this franchise is to be effective prior to July 1, 1996; and this payment shall not affect Company's liability for the amount that becomes due and payable to City in 1996 by Company under the presently effective street rental ordinance of City.

Section 10: Acceptance. Company shall, within thirty (30) days from the date of the final passage of this ordinance by the City Council of the City of Anderson, Texas, file with the City Clerk of Anderson, Texas, a written statement signed in its name and behalf in the following form:

To the Honorable Mayor and the City Council of the
City of Anderson, Texas:

Gulf States Utilities Company, for itself, and its successors and assigns, hereby accepts the attached ordinance finally passed by the City Council of the City of Anderson, Texas, the 10 day of August, 1995, and agrees to be bound by all of its terms and provisions.

GULF STATES UTILITIES COMPANY

By Carol Helbert

Dated the 6th day of Sept., 1995.

* Based upon an amount to be determined based upon the estimated annual gross receipts divided by 365 days.

Section 11: Final Passage. This franchise ordinance shall be in force and effective from and after the passage of this ordinance, conditioned that Company file the written acceptance above provided, within the period provided, after the passage of this ordinance, and thereupon this franchise shall become a binding contract, and shall exist for a period of fifty (50) years from the date of its passage.

PASSED and duly enacted as an ordinance of the City of Anderson, Texas, at a regular meeting of the City Council of Anderson, Texas, in accordance with the laws of the State of Texas, on this the 10 day of August, 1995.

Said ordinance was introduced by Mayor John Freeman;

Read in full to the members of the City Council by Stan Foley of GSU Entergy;

Tom Johanson moved the passage of such ordinance which was seconded by Andrew Thomas.

Thereupon, F.D. Calhoun, David Heyman,
Andrew Thomas, Tom Johanson,
John S. Freeman and _____
voted for the passage of said ordinance and none,
_____ and _____
voted against the passage of such ordinance.

John S. Freeman
Mayor, City of Anderson, Texas

ATTEST:

Tom Johnson

City ~~Clerk~~ Secretary

STATE OF TEXAS

COUNTY OF Grimes

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This is to certify that the above and forgoing is a true and correct copy of an ordinance adopted by the City Council of the City of Anderson, Texas at a regular meeting held on the 10th day of August, 1995.

Tom Johnson

City ~~Clerk~~ Secretary