

AN ORDINANCE GRANTING TO ARIZONA PUBLIC SERVICE COMPANY, AN ARIZONA CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE AND FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE UPON, OVER, ALONG, ACROSS, AND UNDER THE STREETS, AVENUES, ALLEYS, HIGHWAYS, BRIDGES AND OTHER PUBLIC PLACES IN THE TOWN OF SAN LUIS, ARIZONA, AND FUTURE ADDITIONS THERETO, ELECTRIC LIGHT AND BOWER PLANTS AND LINES, TOGETHER WITH ALL NECESSARY OR DESIRABLE APPURTENANCES, FOR THE PURPOSE OF SUPPLYING ELECTRICITY TO SAID TOWN, ITS SUCCESSORS, THE INHABITANTS THEREOF, AND PERSONS AND CORPORATIONS EITHER WITHIN OR BEYOND THE LIMITS THEREOF, FOR ALL PURPOSES; PRESCRIBING CERTAIN RIGHTS, DUTIES, TERMS, AND CONDITIONS IN RESPECT THERETO REPEALING CONFLICTING ORDINANCES; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF SAN LUIS, ARIZONA, AS FOLLOWS:

Section 1. There is hereby granted to Arizona Public Service Company, a corporation organized and existing under and by virtue of the laws of the State of Arizona, its successors and assigns (herein called "Grantee"), the right, privilege and franchise to construct, maintain and operate upon, over, along, across and under the present and future streets, avenues, alleys, highways, bridges and other public places in the Town of San Luis, Arizona (herein called "Municipality"), electric power lines, together with all necessary or desirable appurtenances (including electric power plants, substations, poles, towers, wires, cables, transmission lines, transformers, switches and signals, telephone and telegraph wires for its own use), for the purpose of supplying electric energy to the Municipality, its

successors, the inhabitants thereof, and all persons and corporations either within or beyond the limits thereof, for all purposes.

Any street lighting service furnished by the Grantee to the Municipality or to any street lighting improvement district within the Municipality shall be the subject of a separate agreement and shall not be governed by the provisions of this franchise.

Section 2. All construction under this grant shall be performed in accordance with established practices of the Municipality with respect to such streets, avenues, alleys, highways, bridges and public places, and before any installations are made in the streets, avenues, alleys, highways, bridges and public places of the Municipality, a map showing the location of such installations shall be submitted for approval to the Director of Public Works or Council.

In the event the Municipality undertakes either direct or through a contractor any construction project adjacent to or near the Grantee's facilities operated pursuant to this franchise, the Municipality shall include in all construction specifications, bids and construction contracts pertaining to such construction project a requirement that the contractor or his designee include in the bid for such construction project and obtain from the Grantee at the project's expense the temporary removal, barricading or de-energization of the Grantee's lines or equipment, the location of which may create an unsafe condition in view of the equipment to be

utilized or the methods of construction to be followed by the contractor.

Section 3. In the event that any lines or related facilities installed or constructed under this grant shall at any time be found by the Municipality to interfere unduly with any governmental, as opposed to proprietary, projects affecting such streets, avenues, alleys, highways or bridges or other public rights-of-way, the Grantee shall at its own expense, and within a reasonable time after notice thereof by the Municipality, permanently relocate said lines or related facilities so as to minimize said interference. In all other instances the costs incurred in relocating lines or facilities shall be borne by and added to the costs of the public or private improvements causing or resulting in such relocation by the Municipality.

Section 4. The Municipality shall indemnify and hold the Grantee harmless from any and all claims, costs, losses or expenses incurred by the Grantee as a result of the failure of the Municipality to comply with the requirements of Section 2. Except as provided in the preceding sentence, the Grantee shall save the Municipality harmless from any expenses and losses incurred as a result of injury or damage to third persons occasioned by the exercise of this franchise by the Grantee.

Section 5. Whenever the Grantee shall cause any opening or alteration whatever to be made for any purpose in any public streets, avenues, alleys, highways or public places, the work shall be completed with due diligence within a reasonable prompt

time, and the Grantee shall, upon completion of such work, restore the property disturbed to as good condition as it was prior to such opening or alteration, or in conformance with currently applicable Town construction standards whichever is more stringent.

Section 6. The Grantee agrees to pay the Municipality in consideration of the grant of this franchise a sum equal to two percent (2%) of the gross receipts of the Grantee from sale by it of electric energy at retail for residential and commercial purposes, as determined by the Grantee's rate classifications, within the present and any future corporate limits of the Municipality, as shown by the Grantee's billing records, such payment to be due and payable quarterly. Such payment shall be in lieu of all fees or charges for permits issued for the construction of the Grantee's facilities hereunder or for inspections thereof. For the purpose of verifying the amounts payable hereunder, the books and records of the Grantee shall be subject to inspection by duly authorized officers or representatives of the Municipality at reasonable times.

In the event that the Municipality, in addition to the payments required by this Section 6, shall assess, charge or levy upon the Grantee or its business any transaction privilege tax or any other tax measured by the revenues of the Grantee, there shall be credited against the total amount of any such taxes any payments made during the tax period pursuant to this Section 6. If, in any year the payments

made hereunder equal or exceed the total amount of any such taxes, then no such taxes shall be due or payable for such year.

Section 7. Notwithstanding any provision contained herein to the contrary, the Grantee shall, in addition to the payment provided in Section 6, pay any occupation tax established by the Municipality, provided the tax is a flat fee per year and that the annual amount of such fee does not exceed the amount of similar fees paid by any other business operated within the Municipality.

Section 8. The right, privilege and franchise hereby granted shall continue and exist for a period of twenty-five (25) years from the date of the granting hereof; provided, however, that either party may terminate this franchise on its tenth anniversary by giving written notice of its intention so to do not less than one year before the date of termination. If such notice is given for the purpose of negotiating a new franchise and such negotiation is successful, the party giving the notice of termination shall be responsible for the costs of the resulting franchise election.

This franchise shall be void and of no effect if written acceptance thereof by the Grantee is not filed in the office of the Town Clerk of the Municipality within sixty (60) days after it is granted.

Section 9. The right, privilege and franchise hereby granted may not be transferred in whole or in part by the Grantee, its successors and assigns, without the prior consent

of either the Town Council or the Arizona Corporation Commission. No consent shall be required in connection with an assignment made as security pursuant to a mortgage or deed of trust or in connection with subsequent transfer made pursuant to any such instrument.

Section 10. This grant is not exclusive, and nothing herein contained shall be construed to prevent the Municipality from granting other like or similar grants or privileges to any other person, firm or corporation.

Section 11. All ordinances and parts of ordinances in conflict with the provisions hereof, to the extent applicable to a franchised electric and gas public service corporation, are hereby repealed.

Section 12. If any section, paragraph, clause, phrase or provision of this franchise, other than Section 6, shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this franchise as a whole or any part of the provisions hereof other than the part so adjudged to be invalid or unconstitutional. If Section 6 shall be adjudged invalid or unconstitutional in whole or in part by a final judgment, this franchise shall immediately terminate and shall be of no further force or effect.

Section 13. The Municipality reserves the right and power to purchase and condemn the plant and distribution facilities of the Grantee within the corporate limits or any additions thereto, as provided by law.

Section 14. In consideration of this franchise and the rights granted hereby, the Municipality shall have the right to place, maintain and operate on the poles and towers of the Grantee, its successors and assigns, erected and maintained upon and along the public streets, highways, alleys and places aforesaid, any and all wires, brackets and appurtenances (other than steps or climbing devices) which the Municipality may install and/or own during the term and period of this franchise, for its municipal fire alarm and police telephone or other communication services, free of any charges for the use of the Grantee's poles and towers; provided, however, all such systems, the installation and maintenance thereof, shall comply with the applicable requirements of the Occupational Safety and Health Act and the National Electric Safety Code, as amended.

WHEREAS, it is necessary for the preservation of the peace, health and safety of the Town of San Luis, Arizona, an emergency is declared to exist and this ordinance shall become effective immediately after its passage and adoption.

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE TOWN OF SAN LUIS, ARIZONA, THIS 8th day of July, 1981.

  
\_\_\_\_\_  
Mayor

. . .  
. . .  
. . .

Ord. No. 17.

undersigned notary public, personally appeared Jess Vela, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

ATTEST:

Jess Vela  
Town Clerk

STATE of Arizona  
County of Yuma

My Commission Expires  
Sept. 8, 1981

[Signature]  
Notary Public

APPROVED AS TO FORM:

[Signature]  
Town Attorney