ORDINANCE NO. 518

AN ORDINANCE FOR THE CITY OF WEST COLUMBIA, TEXAS, GRANTING A TRANSMISSION AND DISTRIBUTION ELECTRIC UTILITY FRANCHISE TO TEXAS-NEW MEXICO POWER COMPANY FOR A THIRTY (30) YEAR TERM COMMENCING JUNE 28, 2002, AND ENDING JUNE 27, 2032; CONTAINING VARIOUS TERMS AND CONDITIONS WITH REGARD TO THE GRANT OF SUCH FRANCHISE; PROVIDING FOR THE AUTOMATIC TERMINATION OF THIS FRANCHISE IF NOT ACCEPTED BY THE GRANTEE WITHIN THIRTY (30) DAYS OF THE PASSAGE OF THIS ORDINANCE; CONTAINING A SEVERABILITY CLAUSE; PROVIDING FOR THE REPEAL OF ANY AND ALL KINDS OF ORDINANCES, REGULATIONS, RULES OR POLICIES WHICH ARE IN ANY MANNER INCONSISTENT OR IN CONFLICT WITH THIS ORDINANCE; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST COLUMBIA, TEXAS:

Section One

Texas-New Mexico Power ("Grantee") is hereby granted an electric transmission and distribution utility franchise pursuant to Chapter 20 of the Code of Ordinances of the City of West Columbia, Texas, upon the following terms and conditions:

[1] The franchise granted under this ordinance will automatically terminate unless written acceptance by the Grantee of the terms and conditions of this franchise is received by the City on or before thirty (30) days from the date of this ordinance.

[2] The franchise granted hereunder shall commence effective June 28, 2002, and end on June 27, 2032 and supersedes for all purposes the thirty year franchise previously granted under Ordinance 182 of the City of West Columbia on June 28, 1971 and by Ordinance 497 of the City of West Columbia on June 11, 2001.

[3] Notice to the parties under this franchise shall be in writing and shall be by certified mail, return receipt requested, or by private delivery service such as Federal Express or U.P.S. addressed as follows:

To the City:

City of West Columbia
512 E. Brazos Avenue
P. O. Box 487
West Columbia, TX 77486
Attention: City Manager

To the Grantee:

Texas-New Mexico Power Company
1207 West Parkwood
Friendswood, TX 77546
Attention: Business Unit Manager

Notice shall be effective upon the earlier to occur of actual receipt or the expiration of seven (7) business days from the date of deposit in an official depository of the United States Postal Service.

[4] This grant of franchise is expressly subject to the terms and conditions of Articles I and IV of Chapter 20 of the Code of Ordinances of the City of West Columbia, Texas, as such Chapter exists as of the date of this Ordinance, a true and correct copy of which is attached to this ordinance as Exhibit "A" and is incorporated herein for all purposes, and the other terms and conditions set forth below.
Any amendments, waivers or deletions set forth below are for the purposes of this franchise only, and are not intended and shall not be construed as amending, waiving or deleting those provisions for any other purpose.

[5] Section 20-4 [f] is amended to read as follows:

" Any Grantee under this Chapter shall not place equipment where the same will interfere with the equipment of any other utility or any water, sewer or drainage facilities or equipment maintained by the City, and all such equipment shall be placed as directed by the City, in such manner as to not interfere with the usual travel or use of the streets. Grantee shall make no excavation in the streets without first giving notice of the proposed excavation to the City, and provided further that all work shall meet the requirements of the Code of Ordinances of the City and shall, at the City's option, be supervised by the City Manager. For the purposes of this paragraph the term "excavation" shall include neither (i) replacement of a pole in an existing location nor (ii) work for which a permit from the State of Texas or any agency of the State is

required."

[6] Section 20-4 [i] is amended to read as follows:

" Subject to any applicable state or federal regulations or tariffs or contracts, the City shall have the right to make additional use, for any public purpose, of any poles or conduits controlled or maintained exclusively by or for the Grantee in any street provided that the City holds the Grantee harmless with respect to any damages or causes of action arising from such use, to the extent that such damages or causes of action do not arise from nor are they attributable to the negligence of the Grantee. It is further provided that, so long as Grantee agrees that such banners and seasonal decorations as the City reasonably requests be attached to or otherwise hung from the Grantee's poles or wires attached to those poles may be so attached or otherwise hung and the Grantee agrees to provide the labor and equipment necessary to attach and remove the same, as reasonably requested by the City, then the City shall have no right to use the Grantee's poles or conduits except for banners and seasonal decorations as provided in this section."

[7] For the purposes of this franchise, Section 20-6 (A) is understood to mean and refer to the National Electrical Safety Code, as it presently exists and as it may be amended in the future, from time to time.

[8] So long as, under applicable State and Federal law, rules and regulations, the retail provider of electricity is a consumer's first contact in the event of service outage or other consumer related problems or inquiries, the requirements of Section 20-6(C)[3] are waived.

[9] Section 20-7 is hereby amended to read as follows:

" The Grantee shall at all times maintain adequate records of revenue pertaining to services delivered within the Franchise Area, which records shall be available at all reasonable times to inspection by the City through its duly designated officers, agents or representatives. The City shall have access at all reasonable hours to all of the Grantee's plans, contracts, engineering, accounting, financial, statistical, customer and service records relating to the equipment and operations of the Grantee within the Franchise Area, and all other records required to be kept under this Chapter. The following records and reports shall be filed with the City Secretary and in the local office of the Grantee:

(1) Copies of such rules, regulations, terms and conditions adopted by the Grantee for the conduct of its business within the

Franchise Area; and

(2) An annual audit report showing gross revenues received by the Grantee with respect to the Franchise Area during the preceding fiscal year of the Grantee, said annual report to be filed no later than ninety (90) days from the end of Grantee's fiscal year, which reports shall be sworn to and shall include among other things a detailed explanation of all receipts and expenses relating to Grantee's operations within the Franchise Area."

[10] Section 20-8 is hereby amended to read as follows:

" Any Grantee under this Chapter shall not sell or transfer any rights under the franchise to another, other than a parent company or a wholly owned subsidiary of the Grantee, without the prior written approval of the Council. No sale or transfer of the Grantee's franchise rights shall be effective unless and until the transferee has filed in the office of the City Secretary an instrument duly executed, reciting the fact of such sale, accepting the terms of the franchise, and agreeing to perform and otherwise abide by all terms and conditions of the franchise. The City shall review and respond to any such requests in a reasonably timely manner."

[11] Section 20-9 [b] is amended to read as follows:

" [b] After receiving an application for a franchise, the City shall have access at all reasonable hours to all of the Applicant's contracts, and engineering, accounting, financial, statistical, customer and service records relating to the property and the operation of the Applicant within the Franchise Area, and to all other records required to be kept thereunder."

[12] Section 20-15 [7] is deleted.

[13] Section 20-17 is deleted as being inapplicable to an electric utility.

[14] Section 20-18 is hereby amended to read as follows:

" Grantee shall at all times comply with the customer service and protection rules established from time to time by the Public Utility Commission of Texas which establish customer service standards that electric utilities must follow in providing electric service to the public."

[15] Grantee shall pay a franchise fee for the use, occupancy,

oversight, supervision an regulation for the City's rights-of-way and to compensate the City for all costs associated with administering and regulating the utility system in question. The franchise fee under this section is in lieu of and in full compensation for any lawful tax or license or charge or right-of-way permit fee or inspection fee or right-of-way easement or rental or corporate franchise tax for the use and occupancy of the rights-of-way within the City, except for the usual general ad valorem taxes, special assessments in accordance with State law, or sales taxes now or hereafter levied by the State or City in accordance with State law. The annual amount of the franchise fee shall be based on all kilowatt hours (KWh) delivered within the city limits regardless of customer class. The charge per delivered KWh shall be determined by dividing the total 1998 franchise revenue by the total number of KWh delivered to all customers within the city limits. Grantee calculates that charge to be $0.001832 per KWh. Such fee shall be payable on a quarterly basis with respect to each quarter of the calendar year, and shall be payable within thirty (30) days of the close of the calendar quarter in question. Grantee shall be entitled to list the franchise fee as a separate line item on monthly bills. The franchise fee for any fractional portion of a calendar year included within the term of the franchise shall be prorated, including for the purposes of that proration all of any month during a portion of which the franchise is in effect. Failure to pay the franchise fee in full within fifteen (15) days of written demand by the City shall constitute a material breach under Section 20-11.

Section Two

It is hereby declared to be the intention of the City Council that the several provisions of this ordinance are severable, and if any court of competent jurisdiction enters a final order which holds that any section, sub-section, sentence, clause, phrase, or other portion of this ordinance is invalid, illegal, or otherwise unenforceable, then any such portion shall be deemed a separate, distinct and independent provision, and any such ruling shall not affect any other provision of this ordinance which are not specifically designated as being illegal, invalid or unenforceable.

Section Three

Any rules, ordinances, police regulations, resolutions, and/or policies of the City of West Columbia, whether written, or otherwise, which are in any manner in conflict with or inconsistent with this ordinance, shall be and are hereby repealed to the extent of such conflict and/or inconsistency.

Section Four

This ordinance shall be effective and applicable immediately from and after the date of its passage and approval by the City Council of the City of West Columbia, and the publication of its caption as provided by law.

PASSED AND APPROVED this the 14th day of July, 2003.

David E. Foster

DAVID FOSTER, Mayor

ATTEST:

Deborah Sutherland

DEBORAH SUTHERLAND, City Secretary

ACKNOWLEDGED, ACCEPTED AND AGREED TO:

TEXAS-NEW MEXICO POWER COMPANY

By: Douglas Hobbs

~~**PHILIP A. SCHIED, P.E.**~~ Douglas Hobbs P.E.

Its: ~~Business Unit Manager for the Bay & Brazos Area~~ Sr. Vice President Chief Operations Officer