

ORDINANCE NO. 2010 A

AN ORDINANCE GRANTING TO ONCOR ELECTRIC DELIVERY COMPANY LLC, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE ELECTRIC POWER FRANCHISE TO USE THE PRESENT AND FUTURE STREETS, ALLEYS, HIGHWAYS, PUBLIC UTILITY EASEMENTS, PUBLIC WAYS, AND OTHER PUBLIC PROPERTY OF THE CITY OF COCKRELL HILL, TEXAS, PROVIDING FOR COMPENSATION THEREFOR, PROVIDING FOR AN EFFECTIVE DATE AND A TERM OF SAID FRANCHISE, PROVIDING FOR WRITTEN ACCEPTANCE OF THIS FRANCHISE, PROVIDING FOR THE REPEAL OF ALL EXISTING FRANCHISE ORDINANCES TO ONCOR ELECTRIC DELIVERY COMPANY LLC, ITS PREDECESSORS AND ASSIGNS, AND FINDING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COCKRELL HILL, TEXAS:

SECTION 1. GRANT OF AUTHORITY: That there is hereby granted to Oncor Electric Delivery Company LLC, its successors and assigns (herein called "Company"), the non-exclusive right, privilege and franchise to construct, extend, maintain and operate in, along, under and across the present and future streets, alleys, highways, public utility easements, public ways and other public property (hereinafter referred to as "Public Rights-of-Way") of the City of Cockrell Hill, Texas (herein called "City") electric power lines, with all necessary or desirable appurtenances (including underground conduits, poles, towers, wires, transmission lines, other structures, and telephone and communication lines for its own use) (hereinafter referred to as "Electric Distribution System"), for the purpose of delivering electricity to the City, the inhabitants thereof, and persons, firms and corporations beyond the corporate limits thereof, for the term set out in Section 7. Company acknowledges that by this Franchise Agreement it obtains only the rights to or further use of the Public Rights-of-Way that may be expressly granted herein or as provided by other governing law.

SECTION 2. Poles, towers and other structures shall be so erected as not to unreasonably interfere with traffic over City Public Rights-of-Way. In determining the location of Company's facilities within the City, the Company shall not unreasonably interfere with then existing above-ground and underground structures, equipment and facilities of the City, other utility franchisees (which have received a franchise from the City), and other persons (whether a natural person or business entity of any kind) who have received the City's consent to place and locate equipment and facilities within the Public Rights-of-Way (such other persons being

“Public Right-of-Way Users”). Likewise, the City will seek, after the effective date of this Franchise, to include in its agreements with other utility franchisees and Public Right-of-Way Users provisions requiring that such users shall not unreasonably interfere with existing Company Facilities.

SECTION 3. Company shall, except in cases of emergency conditions or work incidental in nature, obtain a permit, if required by City ordinance, prior to performing work in the Public Rights-of-Way, except in no instance shall Company be required to pay fees or bonds related to its use of the Public Rights-of-Way, despite the City’s enactment of any ordinance providing the contrary. Company shall be subject to and comply with all applicable and controlling local, state and federal laws, including the rules and regulations of any and all agencies thereof, whether presently in force or whether enacted or adopted at any time in the future to the extent that City ordinances, rules, and regulations do not conflict with the provisions of this Franchise or federal and state laws, rules, and regulations. Nothing herein shall be deemed a waiver, release or relinquishment of either party’s rights to contest, appeal, or file suit with respect to any action or decision of the other party that it believes is contrary to any federal, state or local law, rules, or regulations. The Company shall install, construct, repair, maintain and replace its Facilities in a good and workmanlike manner. Company shall construct its facilities in conformance with the applicable provisions of the National Electric Safety Code or such comparable standards as may be adopted, provided comparable standards are not in conflict with the National Electric Safety Code. To the extent practicable City shall provide Company with reasonable notice and opportunity to review and comment upon any new or revised City Standards that impact Company’s use of the Public Rights-of-Way.

Company shall, to the extent reasonably practicable, restore at its sole cost and expense, any damage to Public Rights-of-Way caused by Company activities pursuant to this Franchise within ten (10) working days, or such additional time as agreed to by the City and Company. In the event that Company and its contractors and subcontractors fail to make such repair within such ten (10) working day period, or such additional time as agreed to by City and Company, City may notify Company in writing that the Company is in breach of this Contract. Company shall, within thirty (30) calendar days after receipt of such notice or such longer period of time as the City may specify in such notice, either cure such alleged failure or in a

written response to the City either present facts and arguments in refuting or defending such alleged failure or state that such alleged failure will be cured and set forth the method and time schedule for accomplishing such cure. In the event the dispute is not resolved, either party may exercise any and all cumulative remedies allowed by law.

The City reserves the right for any reason whatsoever to use, change the grade of, construct, install, repair, alter, maintain, relocate, modify, open, close, reduce, or widen (collectively "change") any Public Rights-of-Way, within the present or future limits of the City. At the City's request, the Company shall relocate or remove its Facilities in order to accommodate such change of any Public Rights-of-Way. If the Company is required by the City to remove or relocate its Facilities, Company shall be entitled to reimbursement from the City of the cost and expense of such removal or relocation except to the extent PURA Section 37.101(c) or other state or federal law requires or permits the City to require, the relocation to be done at Company's expense.

If the City requires the Company to adapt or conform its System, or in any manner to alter, relocate, or change its System to enable any other corporation or person to use, or use with greater convenience, said street, alley, highway, or public way, the Company shall not be bound to make such changes until such other corporation or person shall have undertaken, with good and sufficient bond, to reimburse the Company for any costs, loss, or expense which will be caused by, or arises out of such change, alteration, or relocation of Company's System.

If City adopts an ordinance which abandons any Public Rights-of-Way in which Company has facilities, such abandonment shall provide that, to the extent permitted by law, it is conditioned upon Company's right to maintain its use of the abandoned Public Rights-of-Way unless Company agrees otherwise in writing. If the party to whom the Public Rights-of-Way is abandoned requests the Company to remove or relocate its facilities and Company agrees to such removal or relocation, such removal or relocation shall be done within a reasonable time at the expense of the party requesting the removal or relocation. If relocation cannot realistically be made to another Public Rights-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.

SECTION 4. In consideration of the granting of this franchise, Company agrees to

indemnify, defend, and hold harmless the City, its officers, agents and employees (the "Indemnities") from and against all suits, actions or claims of injury to any person or persons, or damages to any property brought or made for or on account of any death, injuries to, or damages received or sustained by any person or persons or for damage to or loss of property arising out of, or occasioned by Company's intentional and/or negligent acts or omissions in connection with Company's operations in the Public Rights-of-Way; except that the Company's obligation to indemnify, defend, and hold harmless pursuant to this paragraph shall not apply to the negligence or intentional acts or omissions of the City, its officers, agents and employees. In addition, in the event of joint and concurrent negligence or fault of both the Company and the City, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas without, however, waiving any governmental immunity available to the City under Texas law and without waiving any of the defenses of the parties under Texas law. Further, in the event of joint and concurrent negligence or fault of both the Company and the City, responsibility for all costs of defense shall be apportioned between the City and Company based upon the comparative fault of each.

In fulfilling its obligation to defend and indemnify City, the Company shall have the right to select defense counsel, subject to City's approval, which will not be unreasonably withheld. The Company shall retain defense counsel within seven (7) business days of receipt of City's written notice that City is invoking its right to indemnification under this Contract. If the Company fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and the Company shall be liable for all defense costs incurred by City to the extent the Company is obligated to defend as set forth in the previous paragraph.

SECTION 5. This franchise is not exclusive, and nothing herein contained shall be construed so as to prevent the City from granting other like or similar rights, privileges and franchises to any other person, firm, or corporation.

SECTION 6. In consideration of the grant of said right, privilege and franchise by the City and as full payment for the right, privilege and franchise of using and occupying the said Public Rights-of-Way, and in lieu of any and all occupation taxes, assessments, municipal charges, fees, easement taxes, franchise taxes, license, permit and inspection fees or charges, street taxes, bonds, street or alley rentals, and all other taxes, charges, levies, fees and rentals

of whatsoever kind and character which the City may impose or hereafter be authorized or empowered to levy and collect, excepting only the usual general or special ad valorem taxes which the City is authorized to levy and impose upon real and personal property, sales and use taxes, and special assessments for public improvements, Company shall pay to the City the following:

- (a) A final quarterly payment will be made on or before February 15, 2010, for the privilege period October 1, 2009 through December 31, 2009 in accordance with the provisions in the previous franchise agreement.
- (b) On a quarterly basis, a charge, as authorized by Section 33.008(b) of PURA, multiplied by each kilowatt hour of electricity delivered by Company to each retail customer whose consuming facility's point of delivery is located within the City's municipal boundaries on a quarterly prospective schedule as follows:

<u>Payment Due</u>	<u>Basis Period</u>	<u>Privilege Period</u>
May 15	January 1 – March 31	January 1 – March 31
August 15	April 1 – June 30	April 1 – June 30
November 15	July 1 – September 30	July 1 – September 30
February 15	October 1 – December 31	October 1 – December 31

1. The first payment hereunder shall be due and payable on or before May 15, 2010 and will cover basis and privilege period of January 1, 2010 through March 31, 2010. If this Franchise Agreement is not effective prior to the first quarterly payment date, Company will pay any payments due within 30 days of the effective date of this Agreement. The final payment under this Franchise Agreement is due on or before February 15, 2030, and covers the basis period of October 1, 2029 through December 31, 2029; and
2. After the final payment date of February 15, 2030, Company may continue to make payments in accordance with the above schedule. City acknowledges that such continued payments will correspond to privilege periods that extend beyond the term of this Franchise Agreement and that such continued payments will be recognized in any subsequent Franchise Agreement as full payment for the relevant periods.

- (c) A sum equal to four percent (4%) of gross revenues received by Company from services identified as DD1 through DD24 in Section 6.1.2 "Discretionary Service Charges," in its Tariff for Retail Delivery Service (Tariff), effective 1/1/2002, that are for the account and benefit of an end-use retail electric consumer. Company will, upon request by City, provide a cross reference to Discretionary Service Charge numbering changes that are contained in Company's current approved Tariff.
1. The franchise fee amounts based on "Discretionary Service Charges" shall be calculated on an annual calendar year basis, i.e. from January through December 31 of each calendar year.
 2. The franchise fee amounts that are due based on "Discretionary Service Charges" shall be paid at least once annually on or before April 30 each year based on the total "Discretionary Service Charges" as set out in Section 6(c), received during the preceding calendar year. The initial Discretionary Service Charge franchise fee amount will be paid on or before April 30, 2010 and will be based on the calendar year January 1, 2009 through December 31, 2009. The final Discretionary Service Charge franchise fee amount will be paid on or before April 30, 2030 and will be based on the calendar year January 1, 2029 through December 31, 2029.
 3. Company may file a tariff or tariff amendment(s) to provide for the recovery of the franchise fee on Discretionary Service Charges.
 4. City agrees (i) to the extent the City acts as regulatory authority, to adopt and approve that portion of any tariff which provides for 100% recovery of the franchise fee on Discretionary Service Charges; (ii) in the event the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of the franchise fees on such Discretionary Service Charges is an issue, the City will take an affirmative position supporting the 100% recovery of such franchise fees by Company and; (iii) in the event of an appeal of any such regulatory proceeding in which the City has intervened, the City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Company.

5. City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such franchise fees by Company.
6. In the event of a regulatory disallowance of the recovery of the Discretionary Service Charges, Company will not be required to continue payment.

SECTION 7. This Ordinance shall become effective upon Company's written acceptance hereof, said written acceptance to be filed by Company with the City within sixty (60) days after final passage and approval hereof. The right, privilege and franchise granted hereby shall expire on December 31, 2029; provided that, unless written notice is given by either party hereto to the other not less than sixty (60) days before the expiration of this franchise agreement, it shall be automatically renewed for an additional period of six (6) months from such expiration date and shall be automatically renewed thereafter for like periods until canceled by written notice given not less than sixty (60) days before the expiration of any such renewal period.

SECTION 8. This Ordinance shall supersede any and all other franchises granted by the City to Company, its predecessors and assigns.

SECTION 9. In order to accept this franchise, Company must file with the City Secretary its written acceptance of this franchise ordinance within sixty (60) days after its final passage and approval by City.

SECTION 10. Company shall keep accurate books of account at its principal office for the purpose of determining the amount due to the City under this Franchise. Pursuant to Section 33.008(e) of the Texas Utilities Code, the City may conduct an audit or other inquiry in relation to a payment made by Company less than two (2) years before the commencement of such audit or inquiry. The City may, if it sees fit, and upon reasonable notice to the Company, have the books and records of the Company examined by a representative of the City to ascertain the correctness of the reports agreed to be filed herein. The Company shall make available to the auditor during the Company's regular business hours and upon reasonable notice, such personnel and records as the City may, in its reasonable discretion, request in order to complete such audit, and shall make no charge to the City therefore.

SECTION 11. The City agrees to maintain the confidentiality of any non-public information obtained from Company to the extent allowed by law. City shall not be liable to Company for the release of any information the City is required by law to release. City shall provide notice to Company of any request for release of non-public information prior to releasing the information so as to allow Company adequate time to pursue available remedies for protection. If the City receives a request under the Texas Public Information Act that includes Company's proprietary information, City will notify the Texas Attorney General of the proprietary nature of the document(s). The City also will provide Company with a copy of this notification, and thereafter Company is responsible for establishing that an exception under the Act allows the City to withhold the information.

SECTION 12. This Franchise Agreement shall be construed in accordance with the City Code of Ordinances in effect on the Effective Date of this Franchise Agreement to the extent that such Code is not in conflict with or in violation of the constitution and laws, rules, and regulations of the United States or the State of Texas.

SECTION 13. This Franchise Ordinance shall be construed and governed by the laws of the State of Texas. City and Company agree that any lawsuit between the City and the Company concerning this Ordinance will be filed in Texas. Nothing in this Ordinance shall prohibit the City from filing an action related to this Ordinance in Dallas County, Texas.

SECTION 14. It is hereby officially found that the meeting at which this Ordinance is passed is open to the public and that due notice of this meeting was posted, all as required by law.

PASSED AND APPROVED at a regular meeting of the City Council of Cockrell Hill, Texas, on this the 12 day of January, 2010.

Mayor Luis D. Carrera
City of Cockrell Hill, Texas

ATTEST:

Hector M. Saenz
City Administrator
City of Cockrell Hill, Texas