

ORDINANCE NO. 5301

AN ORDINANCE GRANTING DS&O ELECTRIC COOPERATIVE INC., A KANSAS CORPORATION, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC, LIGHT, HEAT AND POWER FRANCHISE, PRESCRIBING THE TERMS AND CONDITIONS THEREOF, AND RELATING THERETO, AND REPEALING ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT WITH OR CONFLICTING WITH THE TERMS THEREOF.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LINDSBORG, KANSAS THAT:

In consideration of the benefits to be derived by the City of Lindsborg, Kansas, (the "City") and its inhabitants, there is hereby granted to DS&O Electric Cooperative Inc., a Kansas corporation, and its successors and assigns, (the "Grantee") the right, privilege and authority for a period of ten (10) years from the effective date of this Ordinance, to occupy and use the present and future streets, avenues, alleys and other public places of the City, which are or may be within the area certified to the grantee by the Kansas Corporation Commission, for the placing and maintaining of electric distribution and transmission lines, together with all necessary and desirable appurtenances, including underground conduits, poles, towers, ground level transformers, wires, and other appurtenances, necessary to carry on the business of selling and distributing electricity to the City of Lindsborg, Kansas, its inhabitants, and persons and corporations within the limits thereof which are or may be located within the area certified to Grantee by the Kansas Corporation Commission; and to obtain said electricity from any source available; and to do all things necessary or proper to carry on said business of selling and distributing electricity for light, heat, power and other purposes.

COMPENSATION IN LIEU OF TAX

As further consideration for the granting of this franchise, and in lieu of any City occupation, license or revenue taxes, the Grantee shall pay to the City during the term of this franchise five percent (5%) of its gross revenues from the sale of electric energy to all residential and commercial customers served within such portion of the corporate limits of said city as may be certified to Grantee by the Kansas Corporation Commission, with such payment to be made monthly for the preceding monthly period. Gross cash receipts shall not include other operating revenues received by the Grantee, which are not related to the "sale of electric energy". Other operating revenues include, but are not limited to, delayed payment charges, connection fees, disconnection and reconnection fees, collection fees and return check charges. That said franchise fee may be renegotiated between the City and the Grantee after a period of five (5) years from the effective date of this Ordinance, and once renegotiated it cannot be renegotiated again during the remainder of the term of this Ordinance. Any change of the rate of the franchise fee agreed upon by the parties shall become effective upon City approval of any amending Ordinance and continue thereafter.

OPTIONS - NEGOTIATION

In the event the company's customers served within the area covered by this Agreement are granted the right to purchase electricity from a provider other than the company, either party may, upon thirty (30) days' written notice to the other party, but no later than six (6) months after such grant is effective, request that the franchise fee rate provided for herein be adjusted to reflect the modifications and resolutions of franchise fee issues adopted in the legislation which created the right of customers to obtain electricity from providers other than the company. The parties agree that, upon the giving and receipt of such notice, they will meet in good faith to negotiate any necessary changes to this Agreement. However, if the parties are unable to reach an agreement within ninety (90) days after the receipt of notice by the receiving party, either party may terminate this franchise. The company may terminate by giving written notice to the City; the City may exercise its option to terminate the franchise granted to the Grantee by action of the governing body repealing this Ordinance.

REASONABLE CARE REQUIRED

That the Grantee, its successors and assigns, in the construction, maintenance, and operation of its electric transmission, distribution, shall use all reasonable and proper precaution to avoid damage or injury to persons or property, and shall hold and save harmless the City of Lindsborg, Kansas, from any and all damages, injury and expense caused by the negligence of said Grantee, its successors and assigns or its or their agents or servants.

ACCEPTANCE REQUIRED

After approval of this Ordinance by the City, the Grantee shall file with the City Clerk of the City of Lindsborg, Kansas, its unconditional written acceptance of this Ordinance. Said Ordinance shall become effective and be in force and shall be and become a binding contract between the parties hereto, their successors and assigns, from and after the expiration of sixty (60) days from its final passage, approval and publication as required by law, and acceptance by said Grantee.

REPEAL OF PROVISIONS IN CONFLICT

That any and all ordinances or parts of ordinances in conflict with the terms hereof are hereby repealed.

ASSIGNABILITY

The franchise shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time when any assignment is made, provided, however, that the franchise may be assigned by the Grantee without action by the City to any creditworthy entity which succeeds to all or substantially all of the electric utility business of the Grantee. In the event of such assignment to a successor, the

Grantee shall be released from all obligations which are assumed in writing by such successor and the assignee shall have executed an assumption of the franchise being assigned.

ACCEPTANCE

- A. That this Ordinance, when accepted as above provided, shall constitute the entire agreement between the City and the Grantee relating to this franchise and the same shall supersede and cancel any prior understandings, agreements, or representations regarding the subject matter hereof, or involved in negotiations pertaining thereto, whether oral or written.
- B. The Grantee will file this Ordinance with the State Corporation Commission of Kansas. Should the State Corporation Commission take any action with respect to this franchise ordinance, which would or may preclude DS&O Electric Cooperative, Inc., a Kansas corporation, from recovering from its customers any cost provided for hereunder, the parties hereto shall renegotiate this Ordinance in accordance with the State Corporation Commission's ruling.

LAW APPLICABLE

This Franchise is granted pursuant to the provisions of K.S.A. 12-2001.


Passed and approved this 7th day of June, 2021.

ATTEST


Becky Anderson, Mayor


Roxie Sjogren, MMC
City Clerk

Approved as to Form:


William E. Gusenius
City Attorney