

ORDINANCE 2002-04

AN ORDINANCE GRANTING TO NORTH ARKANSAS ELECTRIC CO-OP, IT'S SUCCESSORS AND ASSIGNS, THE EXCLUSIVE RIGHT, PRIVILEGE AND AUTHORITY TO SELL, FURNISH AND DISTRIBUTE ELECTRIC POWER AND ENERGY AND ERECT, MAINTAIN, EXTEND AND OPERATE A SYSTEM FOR THE DISTRIBUTION, TRANSMISSION, FURNISHING OR SALE OF ELECTRIC POWER AND ENERGY TO THE CITY OF CHEROKEE VILLAGE, FULTON COUNTY, ARKANSAS, WITHIN THE UTILITY'S ALLOCATED SERVICE TERRITORY, AND THE INHABITANTS AND ALL OTHER CONSUMERS THEREOF, AND TO USE THE STREETS, ALLEYS, BRIDGES AND OTHER PUBLIC GROUNDS OF THE CITY IN CONNECTION THEREWITH; FIXING THE TERMS THEREOF, AND FOR OTHER PURPOSES.

WHEREAS, the City must have an adequate and dependable supply of electric power and energy to perform its governmental functions and to promote the peace, health and safety of its inhabitants; and

WHEREAS, electricity has become a household necessity, and an adequate and dependable supply of electric power and energy is essential for carrying on the business and industrial activity of this community; and

WHEREAS, it is in the public interest that there be no duplication of electric facilities on the streets; and

WHEREAS, North Arkansas Electric Co-op, by the acceptance of the rights and privileges granted hereunder, is willing to, and does, obligate itself, its successors and assigns, to meet the reasonable requirements of this City and its inhabitants for electric power and energy within utility's allocated service territory;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHEROKEE VILLAGE, ARKANSAS, THAT:

SECTION 1. The City of Cherokee Village, Arkansas (hereinafter called City or Grantor) hereby grants to North Arkansas Electric Co-op, its successors and assigns (hereinafter called Grantee), the exclusive right, privilege and authority within the present and all future expansion of the corporate limits of the City of Cherokee Village, Fulton County, Arkansas, within utility's allocated service territory, (1) to sell, furnish, transmit and distribute electric power and energy to Grantor and to all inhabitants and consumers within said limits, and (2) to construct, maintain, operate and extend a system for such purposes and to enter on, under and upon and use any and all of the streets, alleys, avenues, bridges and other public grounds and ways belonging to, or under the control of Grantor, for the purpose of erecting, maintaining, repairing, replacing and operating poles, wires, anchors, stubs, transformers, substations (subject to Planning & Zoning

Codes), cables, conduits and other related facilities, appliances and apparatus which are necessary for or useful in, the furnishing, sale, transmission or distribution of said electric service (hereinafter called facilities).

SECTION 2. Grantee shall, and does by acceptance hereof, agree to provide to the City and its inhabitants adequate and reasonable electric service as a public utility and the facilities necessary to provide such service. Grantor, in recognition of the large and continuing investment necessary for Grantee to perform its obligations hereunder, and the need and duty to promptly construct its facilities, as defined above, required to serve customers, in all areas and zones of the City, consents to the construction of such facilities as defined in Section 1 in all such areas and zones, and Grantor agrees to protect by ordinance, regulation and otherwise, to the fullest extent permitted by law, and except as otherwise limited herein, the grants of rights and privileges to Grantee set forth in and subject to Section 1 from interference with, or duplication by other persons, firms or corporations seeking to engage in the sale or distribution of electric energy.

SECTION 3. All facilities of Grantee which may be located on public ways, places and public property, as authorized herein, shall be located so as to not unreasonably obstruct public use and travel. All of Grantee's facilities shall be constructed, operated and maintained in accordance with standards at least equivalent to the standards prescribed by the National Electrical Safety Code. Grantee, its successors and assigns, shall replace and repair, at its own expense, all excavations holes or other damage caused or done by it to public streets, ways, places and public property in the construction, operation and maintenance of its facilities.

SECTION 4. The Grantee, its successors and assigns, is hereby given the right to trim, cut or remove trees, shrubbery or growth on or in public ways, places and public property which interfere or offer hazards to the operation of Grantee's facilities used or useful for the rendition of electric service, and, further, Grantee is hereby given the right, authority and permission to trim, cut and remove portions of trees, shrubbery or growth growing on private property which interfere or offer hazards to the construction, operation and maintenance of Grantee's facilities. Said brush is to be chipped and disposed of in a reasonable manner. There shall be no material deposited on improved lots.

SECTION 5. The rights, privileges and authority hereby granted shall exist and continue from the date of passage of this Ordinance, and thereafter, until terminated in accordance with provisions of Section 44 of Act 324 of the 1935 Acts of the State of Arkansas, as presently enacted or hereafter amended.

SECTION 6. The rates which are to be charged by Grantee for electric service hereunder shall be those which are now lawfully approved or prescribed, and as said rates may, from time to time, be amended by Grantee in accordance with law or by any regulatory authority having jurisdiction thereof.

SECTION 7. In the construction, operation and maintenance of its facilities, said Grantee shall use reasonable and proper precaution to avoid damage or injury to persons or property and shall hold and save harmless the said Grantor from damage, injury, loss or expense caused by the negligence of the Grantee, or its agents, servants or employees, in construction, operating and maintaining said facilities or in repaving or repairing any streets, avenues, alleys, bridges or other public grounds.

SECTION 8. The Grantee shall endeavor at all times to keep its facilities in a reasonable state of repair, and to conform to such practices and install such appliances and equipment as may be in keeping with the customary usage and practice in cities of similar size in this State during the time this franchise shall remain in force.

SECTION 9. Beginning the month of April 2002 North Arkansas Electric Co-op will quarterly determine and pay to the City a franchise payment in an amount equal to four and one-quarter percent (4.25%) of the preceding quarter's gross residential and commercial electric revenues as paid to North Arkansas Electric Co-op by residential and commercial customers located within the corporate limits of the City. Thereafter, payments shall be made by North Arkansas Electric Co-op to the City the first month of each quarter based on the preceding quarter's revenues. The first such payment is to be made in July 2002 for the second quarter 2002. Residential and commercial electric revenues are those revenues so classified pursuant to Grantee's uniform classification standards. Grantor shall have the right to examine and verify, from the records of the Grantee, any data relating to the gross revenues of Grantee from customers on which said franchise fee is due. In the event of a controversy between the Grantor and Grantee as to the amount of gross revenues received by Grantee in the City of Cherokee Village upon which said fee is due, such controversy shall be referred to the Arkansas Public Service Commission, or such successor regulatory agency which may have jurisdiction over the Grantee, for final determination, and the decision of said Commission shall be binding upon both parties hereto.

It is expressly agreed and understood by the Grantor and Grantee that the aforesaid payment shall constitute and be considered as complete payment and discharge by the Grantee, its successors and assigns, of all licenses, fees, charges, impositions or taxes of any kind (other than automobile license fees, special millage taxes, and the general ad valorem taxes) which are now or might in the future be imposed by the Grantor under authority conferred upon the Grantor by law. In the event such other tax or taxes are imposed by Grantor, the obligation of the Grantee set forth herein, to pay the City the sum of four and one-quarter percent (4.25%) quarterly of the gross residential and commercial electric revenues shall immediately terminate.

SECTION 10. Electric service furnished the Grantor for street lighting and other purposes shall be paid for by the grantor in accordance with the applicable rate schedules of the Grantee now on file and/or as they may in the future be filed by the Grantee and approved by the Arkansas Public Service Commission or other regulatory authority having jurisdiction. The Grantee shall have the privilege of debiting any amount due Grantor with any unpaid balances due said Grantee for electric service rendered to said Grantor.

SECTION 11. Upon written acceptance by Grantee, this Ordinance shall constitute a contract between Grantor and the Grantee, and its successors and assigns.

SECTION 12. If any provision, clause, word, section or grant of this Ordinance, or the application thereof to any person or circumstance, be held invalid, such invalidity shall not affect any other provision, clause, work, section or grant of this Ordinance which can be given effect without the invalid provision or application, and to this end, said provisions, clauses, words, sections and grants are hereby declared to be severable.

SECTION 13. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

PASSED AND APPROVED BY THE CHEROKEE VILLAGE CITY COUNCIL.

DATED: March 18, 2002

APPROVED: 
Marjorie A. Rogers, Mayor

ATTEST: 
Susan E. Maynard, Clerk/Treasurer

APPROVED AS TO FORM: 
Tom Garner, Attorney

North Arkansas Electric Co-op, a corporation, hereby accepts the above franchise subject to the terms and conditions therein this 25th day of March, 2002.

North Arkansas Electric Co-op

By: 



Entergy Arkansas, Inc.
425 West Capitol Avenue
P.O. Box 551
Little Rock, AR 72203-0551
Tel 501 377 4457
Fax 501 377 4415

Steven K. Strickland
Vice President
Regulatory Affairs

July 24, 2002

REGISTERED MAIL
RETURN RECEIPT REQUESTED

The Honorable Marjorie A. Rogers, Mayor
Post Office Box 986
Cherokee Village, AR 72525

Re: Franchise Agreement

Dear Mayor Rogers:

Entergy Arkansas, Inc. ("EAI") hereby acknowledges receipt of a copy of Ordinance No. 2002-03 of the City of Cherokee Village (the "City") as adopted by the City Council on March 18, 2002, as amended by Ordinance No. 2002-04, adopted by the City Council on July 15, 2002, which grants to EAI, its successors and assigns, a franchise which is subject to written acceptance by EAI.

This letter will constitute formal notice to the City that EAI does hereby accept, as proved in Section 11, Ordinance No. 2002-03, as amended by Ordinance No. 2002-04, and all of the privileges, rights, and terms thereof, as a franchise contract.

Sincerely,

ENTERGY ARKANSAS, INC.

By: 
Steven K. Strickland

cc: Harvey Piazza
Jeff Broadwater
Les Frenesley