

ORDINANCE NO. 89

AN ORDINANCE GRANTING TO THE PETIT JEAN ELECTRIC COOPERATIVE CORPORATION, ITS 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 CLINTON, ARKANSAS, 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;

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

WHEREAS, the Petit Jean Electric Cooperative Corporation, 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;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Clinton, Arkansas, as follows:

SECTION 1. The City of Clinton, Arkansas, (hereinafter called Grantor) hereby grants to the Petit Jean Electric Cooperative Corporation, 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 Clinton, Arkansas, except for such area

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within the present corporate limits, which at the date of enactment hereof is served by another supplier of electric energy, and except for such other areas which may be later annexed, where Grantee is not allowed by law to serve, (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 control of Grantor, for the purpose of erecting, maintaining, repairing, replacing and operating poles, wires, anchors, stubs, transformers, substations, 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 One in all such areas and zones, and Grantor agrees to protect by ordinance, regulation and otherwise limited herein, the grants of rights and privileges to Grantee set forth in Section One 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,

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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 or 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.

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 constructing, operating and maintaining said facilities or in repaving or repairing any streets, avenues, alleys, bridges or other public grounds.

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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 in 1970, and thereafter during the life of this franchise, the Grantee shall pay to Grantor each year, a franchise tax in an amount equal to: Four and one-quarter per cent (4.25%) of the preceding calendar year's gross residential and commercial electric revenues as paid to the Grantee by residential and commercial customers located within the corporate limits of the City of Clinton. Payments shall be made by the Grantee to the Grantor in approximately equal quarterly installments beginning in March 1, 1970. 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 tax is due. In the event of a controversy between the Grantee and Grantor as to the amount of gross revenues received by Grantee in the City of Clinton upon which said tax 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, general ad valorem taxes and other general

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taxes applicable to all citizens and tax payers) 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 in Section Nine hereof, to pay the City the sum of Four and one-quarter per cent (4.25%) annually 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 crediting any amount due Grantor with any unpaid balances due said Grantee for electric service rendered to said Grantor.

SECTION 11. Nothing herein shall be construed to prohibit any person, firm or corporation from owning and operating facilities for generating, distribution, or furnishing electric energy for his or its own use or the use of his or its tenants, all of which facilities and use are wholly on the same premises owned by such person, firm or corporation.

SECTION 12. The failure of the Grantee to file objection within thirty (30) days from the passage of this Ordinance shall constitute a contract between the Grantor and Grantee, and its successors and assigns.

SECTION 13. If any provision, clause, work, 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, word, 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 14. It has been found, and is hereby declared by the City Council of the City of Clinton that there is an urgent need to adopt terms and provisions of a franchise grant under which electric service is to be provided to the City and other consumers therein, to agree upon adequate franchise tax by the utility furnishing such service to the City and to fix terms and conditions for the use of City streets, alleys, and other public grounds for electric facilities; that it is in the public interest, convenience and necessity that there be no unnecessary duplication of such facilities; and that enactment of this Ordinance will provide these benefits to the City and its citizens.

THEREFORE, an emergency is declared to exist, and this Ordinance being necessary for the preservation and advancement of the public peace, health and safety, shall take effect and be in full force from and after the date of its approval. All Ordinances heretofore passed granting or giving Petit Jean Electric Cooperative Corporation or any other persons, firms or corporations any rights or franchises similar to the kind herein, are hereby repealed, set aside and cancelled.

APPROVED THIS 8th DAY OF MAY, 1970.

CHARLES BRADLEY, Mayor

ATTEST: ROY C. PATTON, City Clerk-Recorder

CERTIFICATE OF RECORD

STATE OF ARKANSAS)
COUNTY OF VAN BUREN)

I, Sammy Collums, Clerk of the Circuit Court and Ex-Officio Recorder for the County aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 27th day of November, 1970 at 9:00 o'clock am and the same as now duly recorded, with acknowledgment and certificate thereon in Record Book vol. Misc. 23 Page 323.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 3rd day of December, 1970.

Clerk - Sammy Collums