

ATTACHMENT 3
CITY OF LUBBOCK,
TEXAS FRANCHISE
AGREEMENT

First Reading
October 9, 2003
Item No. 77B

Second Reading
October 10, 2003
Item No. 1
ORDINANCE NO. 2003-00110

FRANCHISE AGREEMENT

AN ORDINANCE GRANTING TO SOUTHWESTERN PUBLIC SERVICE COMPANY ("SPS") D/B/A XCEL ENERGY THE RIGHT, PRIVILEGE AND FRANCHISE TO CONDUCT WITHIN THE CITY OF LUBBOCK, TEXAS, AN ELECTRICAL LIGHTING AND POWER BUSINESS AND TO ENTER UPON, ERECT, CONSTRUCT, MAINTAIN, EXTEND, REPAIR, REPLACE AND REMOVE IN, UNDER, UPON, WITHIN, OVER, ABOVE, ACROSS AND ALONG ANY AND ALL OF THE PRESENT AND FUTURE PUBLIC ROADS, HIGHWAYS, STREETS, LANES, AND ALLEYS OF THE CITY OF LUBBOCK, A SYSTEM OF POLES, POLE LINES, TOWERS, DISTRIBUTION LINES, TRANSMISSION LINES, WIRES, GUYS, CABLES, CONDUITS, TRANSFORMERS, AND OTHER DISTRIBUTION AND TRANSMISSION EQUIPMENT, FACILITIES AND APPURTENANCES NECESSARY OR PROPER FOR THE TRANSMISSION AND DISTRIBUTION OF ELECTRICITY INTO, IN, WITHIN, FROM, ACROSS, AND THROUGH THE CITY OF LUBBOCK, AS NOW EXISTING, OR AS SAID CITY LIMITS MAY HEREAFTER BE EXTENDED; AND GRANTING SPS, ITS SUCCESSORS AND ASSIGNS, THE AUTHORITY TO USE SUCH FOR THE PURPOSE OF TRANSMISSION, DISTRIBUTION, DELIVERY AND SALE OF ELECTRICITY TO THE CITY, AND TO THE INHABITANTS OF THE CITY, OR ANY OTHER PERSON OR PERSONS, FIRMS OR CORPORATIONS, WHEREVER LOCATED WITHIN OR WITHOUT THE CITY LIMITS OF LUBBOCK, FOR USE BY SUCH PURCHASERS OR PURCHASERS FOR ANY PURPOSE AUTHORIZED BY LAW FOR WHICH ELECTRICITY MAY BE USED OR FOR ANY OTHER PURPOSE OR USE WHICH IS OR MAY BECOME NORMAL OR CUSTOMARY IN THE RETAIL ELECTRIC INDUSTRY IN TEXAS; PROVIDING THAT THIS FRANCHISE SHALL BE EFFECTIVE FOR A PERIOD OF TWENTY (20) YEARS COMMENCING UPON AND EXTENDING FROM THE EFFECTIVE DATE OF THIS ORDINANCE AFTER FINAL PASSAGE HEREOF ; PROVIDING FOR THE TEMPORARY REMOVAL, RAISING OR LOWERING BY SPS OF ITS WIRES AND OTHER APPURTENANCES; PROVIDING FOR THE RIGHT TO, AND CONDITION OF, THE OPENING OF PAVEMENTS AND SIDEWALKS BY SPS; RETAINING ALL RIGHTS OF CITY TO REGULATE THE LOCATION OF SPS'S FACILITIES IN, UPON, ALONG, UNDER AND OVER THE STREETS, ALLEYS AND OTHER PUBLIC PLACES OF CITY, AS WELL AS TO REQUIRE THE RELOCATION OF SAME; PROVIDING FOR EFFICIENT ELECTRICAL SERVICE AND THE MAINTAINING OF SPS'S FACILITIES; PROVIDING FOR THE USE BY CITY FOR THE PURPOSES SPECIFIED OF POLES AND CONDUITS OF SPS; PROVIDING COMPENSATION, AND METHOD OF PAYMENT OF SUCH, TO THE CITY FOR THE USE BY SPS OF THE STREETS, ALLEYS AND PUBLIC WAYS OF THE CITY, AND FOR SPS'S RECOVERY OF SUCH FEE; PROVIDING FOR THE MAINTAINING OF RECORDS BY SPS WITH RIGHT OF INSPECTION BY CITY RESERVING TO CITY ALL POWERS OF REGULATION; PROHIBITING ASSIGNMENT EXCEPT BY CONSENT BY CITY EXCEPT IN CERTAIN CASES; GIVING CITY'S CONSENT TO THE CUTTING AND TRIMMING BY SPS OF CONFLICTING TREES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING

THAT THIS FRANCHISE SHALL NOT BE EXCLUSIVE; MAKING MISCELLANEOUS PROVISIONS RELATIVE TO THIS GRANT OF FRANCHISE; REPEALING ALL PREVIOUS ELECTRICAL LIGHTING AND POWER FRANCHISE ORDINANCES AND RELATED RELEASE; PROVIDING FOR THE PUBLICATION OF THIS FRANCHISE ORDINANCE AND ITS ACCEPTANCE BY SPS.

WHEREAS, the City granted to Southwestern Public Service Company ("SPS") a franchise to operate and maintain an electric system in the City of Lubbock via Ordinance No. 8341, finally passed by the City Council on July 22, 1982.

WHEREAS, the electrical lighting and power franchise previously granted by the City Council of the City of Lubbock expired on September 10, 2002, and it appearing to this Council that the renewal of the franchise that has expired is expedient and wise, and will be of benefit to both SPS and the City of Lubbock; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK, TEXAS:

I. Franchise Authorization

That subject to the terms, conditions, and provisions of this ordinance, the City of Lubbock, Texas, hereinafter referred to as "City", does hereby grant unto Southwestern Public Service Company, a corporation incorporated under the laws of the State of New Mexico, having a permit to do business in the State of Texas, hereinafter referred to as "SPS", its successors and assigns, the right, privilege and franchise to conduct an electrical lighting and power business within the boundaries of the City of Lubbock, as such boundaries now exist or may hereafter be extended.

SPS shall have the right to enter upon, erect, construct, maintain, extend, repair, replace, and remove in, under, upon, within, over, above, across and along any and all of the present and future public roads, highways, streets, lanes, alleys and other public rights-of-way of the City now or hereafter owned or controlled by the City a system of

poles, pole lines, towers, distribution lines, transmission lines, underground and above ground lines, wires, guys, cables, conduits, transformers, and other distribution and transmission equipment, facilities and appurtenances necessary, proper or reasonably needed for the transmission and distribution of electricity into, in, within, from, across and through the City as now existing or as the said City limits may hereafter be extended to the extent City is authorized to grant such right.

SPS is authorized to use said poles, lines, towers, wires, guys, conduits, transformers, and other distribution and transmission equipment, facilities and appurtenances for the transmission, distribution, delivery and sale of electricity to the City and to the inhabitants of the City or any other person or persons, firms or corporations wherever located for use by such purchaser or purchasers for any purpose authorized by law for which electricity may be used or for any other purpose or use which is or may become normal or customary in the retail electric industry in Texas.

II. Term and Deregulation.

The term of this franchise granted to SPS shall be for Twenty (20) years from the date the franchise becomes effective as outlined below. The franchise rights and privileges shall be in full force and effect December 1, 2003 or thirty (30) days from the last publication of this Ordinance, whichever occurs later, provided SPS has formally accepted this franchise as provided in Section XXII.

III. Franchise Fee/Payment

As compensation and rental for the use of the streets, alleys and public ways of City in the conduct of its business under this franchise, SPS shall pay the City each year of the life of this franchise, beginning December 1, 2003, a sum of money equal to five percent (5%) of the annual gross receipts of SPS from its retail electric lighting and

power sales for consumption within the corporate limits of the City. All amounts payable to the City under this section shall be surcharged to SPS's customers taking electric service within the corporate limits of Lubbock. The franchise payments shall be due and payable monthly with the first payment to be due and payable on January 15, 2004. Each subsequent payment shall be due on the 15th day of each month thereafter for the remaining life of this franchise. Each payment shall be based on the gross receipts of SPS during the preceding calendar month. Said monthly payments above provided shall be exclusive of and in addition to ad valorem taxes.

All money due and payable to City by SPS computed under the terms of the previous franchise shall be payable to the time that computation begins under this franchise.

Any and all such payments made by SPS pursuant to this Section shall be credited on any amount imposed, levied or assessed against SPS by the City of Lubbock, pursuant to ordinance or otherwise, at any time as a charge (whether designated as rental, tax or otherwise) for the use by SPS of City's streets, alleys and public ways. The term "gross receipts" as herein used, shall include all receipts from the sale of electric lighting and power in SPS's certificated territory in the corporate limits of Lubbock, Texas. The term "gross receipts" shall also include all fees, commissions, collections, rents, royalties, and any income associated directly or indirectly with the sale of electric lighting and power within the corporate limits of Lubbock, Texas. Notwithstanding the general definition above, "gross receipts" shall not include revenues collected for franchise fees or sales taxes, and does not include bad debt from gross receipts billed but not paid and not collected. Any revenue subsequently received by SPS that was previously determined to be bad debt by SPS shall be subject to the franchise fee. SPS's wholesale sale of electric

lighting and power to the City's municipally owned electric utility are not covered by this Franchise Agreement and are not included in "gross receipts."

It is further understood and agreed to by SPS that the franchise fee authorized herein shall form the basis for which any franchise fee is authorized and calculated according to state law after retail electric deregulation is authorized by the State of Texas in the region which encompasses the City of Lubbock. This includes, without limitation, Sections 33.008 (b) and 39.402(b) of the Texas Utility Code.

All franchise fees that SPS fails to pay within the time period specified in this section shall bear interest according to the following formula: for the period January 1 through June 30, the prime rate last published in the *Wall Street Journal* in the preceding December plus two percent (2%); and for the period from July 1 through December 31, the prime rate last published in the *Wall Street Journal* in the preceding June plus two percent (2%).

IV. Pole Location.

Within the streets or other public rights-of-way of the City, the location and route of all poles, stubs, guys, anchors, liens, conduits, underground duct lines, manholes, and cables placed and constructed and to be placed and constructed by SPS in the construction and maintenance of its electrical lighting and power system in, within, through, or under the streets, alleys, or other public rights-of-way of the City shall be subject to reasonable and proper regulation, control and direction of the City, or of the City official to whom such duties have been or may be delegated.

All poles, guys or anchors erected by SPS shall be so set that they will not cause diversion of surface waters in any gutter or drain so as to cause damage to adjoining property, and so that the same will interfere as little as practicable with the ordinary travel

on the streets, sidewalks and other public rights-of-way of the City; the regulation and control herein reserved shall include, without limitation, the right of the City to require SPS, at SPS's expense, to relocate its poles, lines or conduits so as to permit the following activities undertaken by the City on its behalf:

- a. The widening or straightening of any street, alley or public right-of-way located within the City.
- b. The closing, opening or relocation of any street, alley or public right-of-way within the City.
- c. The location or relocation of any water or sewer lines within the City.
- d. The changing of grade of any street, alley, curb or sidewalk within the City.
- e. The construction and maintenance of parks and other public improvements owned by the City of Lubbock located within the City.

In all cases where SPS is required to relocate, change the route of or the position of the poles, lines or the conduits, the City shall provide thirty (30) days advance written notice to SPS specifying the new location, route, or position of the poles, lines, or conduits involved. SPS shall be entitled to be paid for its cost and expenses of any relocation, raising or lowering of its wires, required by the City, pursuant to this Section or Section V, only if such expenses or costs are reimbursable or payable to SPS or the City by the State of Texas, the United States or any governmental agency or subdivision of either, whether directly or indirectly. However, nothing herein shall impose any obligation on the City to pay such costs and expenses except to the extent it actually receives funds from the United States, the State of Texas, or any governmental agency or subdivision of either, for the reimbursement or payment of same. The provisions of this section shall not apply to improvements made by SPS on private easements purchased by SPS and recorded prior to any dedication of any street, alley or public way. In this latter event SPS shall be reimbursed its costs and expenses of relocating facilities.

V. Temporary Relocation

SPS, on written reasonable request of any responsible person, firm, corporation or governmental authority, shall relocate, raise or lower its wires, where located on, in, or over the streets, alleys and other public ways of City, temporarily to permit construction work in the vicinity thereof, or to permit the moving of houses or other bulky structures. The expense of such temporary relocation, raising or lowering of such wires shall be paid by the benefited party or parties, and SPS may require the payment in advance, being without obligation to remove, raise or lower its wires until such payment shall be made; provided, however, that no such payment shall be required of the City except as provided in Section IV. SPS shall be given not less than seventy-two (72) hours prior written notice to arrange for such temporary wire changes.

VI. Excavation of Sidewalks

If it becomes necessary in furnishing electricity as contemplated under this franchise, the City grants to SPS the right and privilege to take up pavements and sidewalks, if any, in and upon said streets, alleys and highways in said City for the purpose of making such excavation and installation as may be necessary; provided, however, that SPS shall not take up or excavate any pavement at any time without first securing the written permission of the City Manager or his designated representative, which permission will not be unreasonably withheld; and provided further, that all excavations and installations so made shall be performed in such manner as will cause the least reasonable inconvenience to the public, and SPS shall promptly restore or cause to be restored to as good condition as before working thereon all such pavements, sidewalks, streets, alleys or highways excavated by it to the reasonable satisfaction of the City Manager or his designated representative.

VII. Waiver

If any of the facilities installed by SPS hereunder shall be in any respect damaged or injured by the City or any of its officers, agents, representatives, or employees, in connection with the performance of any work or repairs that may be done upon the streets, avenues, alleys and other public places of the City of Lubbock, but not including work or repair for or related to the City's municipally owned electric utility, SPS shall not be entitled to prosecute or maintain a claim against the City of Lubbock for any such damage or injury so sustained by it, except where such damages are the result of willful acts or gross negligence of the officers, agents, representatives or employees of City, and said right is hereby waived; provided, however, this section shall not apply where such property is damaged or injured as a proximate result of installing, maintaining or removing City's equipment upon or from SPS's poles, or in or from SPS's ductlines, as provided in Section XI hereof.

VIII. City's Sovereignty

The City, by the granting of this franchise, does not surrender or to any extent lose, waive, imperil or lessen the lawful powers and rights now or hereinafter vested in the City under the Constitution and Statutes of the State of Texas and under the Charter of the City to regulate the rates for services of SPS; and SPS, by its acceptance of this franchise, agrees that all such lawful regulatory power and rights as the same may be from time to time vested in the City shall be in full force and effect and subject to the exercise thereof by the City at the City's discretion.

Notwithstanding anything contained in this ordinance to the contrary, all work done in connection with the construction, repair, maintenance and operation of all facilities of SPS is subject to the continuing police power of the City; and SPS shall

comply with all present and future laws, ordinances and regulations, except when such compliance is in conflict with that authority specifically surrendered by the City herein.

IX. Electric Service Provided

It shall be SPS's obligation hereunder to furnish efficient electrical service to meet standards of the industry for the area. SPS shall serve every eligible consumer in the franchise of SPS regardless of cost, amount of usage, customer deposits, return on investment, access and other reasonable factors. SPS shall not discriminate against any person, corporation, firm, or association in the charge for such electrical current or in the service rendered under like circumstances. SPS shall not directly or indirectly grant any discount or rebate, or give things of value to circumvent the rate schedule as approved by the appropriate regulatory authority. In order to meet competition, nothing herein shall prevent SPS from doing anything that is lawfully done by the City's municipally owned electric utility.

X. Non-exclusivity

Nothing contained in this Ordinance shall be construed as conferring upon SPS any exclusive rights or privileges of any nature whatsoever.

XI. City Use of SPS's Pole/Duct Space

In addition to the consideration set forth elsewhere in this ordinance, SPS shall hereafter hold itself ready to furnish free of charge, subject to the use of the City, such pole space as may be reasonably required from time to time for the installation of City-owned street light equipment, traffic, police and fire alarm system conductors, and alarm or other necessary signal boxes, data transmission and telecommunication equipment; provided that such space used by the City does not exceed the capacity of one cross-arm space on any one pole, and provided that such space is available on existing poles and has

been requested three (3) days in advance in writing by the City Manager or his designated representative prior to installation of SPS facilities hereunder placed within any street, alley or public way. The specific location of the street light equipment, and police and fire alarm conductors and boxes on SPS's poles shall be determined by SPS, and will be allotted at the time specific applications for space are received from the City. Where a main underground ductline is hereafter constructed or installed between manholes by SPS, SPS shall, as a part of same, provide free space for the installation by City of its traffic, police or fire alarm cables, on request in writing by City Manager or his designated representative prior to construction, one top duct having one capped off entry channel and one capped off exit channel between each two manholes, such entry and exit channels leaving the duct bank enclosure outside of, but near to, such manholes, and no cable or other equipment of City shall enter SPS's manholes. SPS shall, prior to each addition by it to any duct now existing or hereafter constructed, notify the City Manager or his designated representative of City of the nature and location of such intended addition; further, SPS shall, along with its application for a permit to open a street for the purpose of laying a new duct, provide the City Manager and the City Engineer's Office each with a set of plans showing the type, number, and location in the street, of the ducts to be constructed. City, prior to the original installation by it of its equipment in any such top duct, shall notify SPS three (3) days in advance of the time and place it intends to make such entry and installation. All cables installed by the City in SPS ducts shall be of the non-metallic, sheathy type to prevent corrosive or electrolytic action between the City and SPS-owned cables. All City-owned conductors and cables, whether on poles or in ductlines, shall be constructed, maintained and operated in such manner as to not interfere with or create a hazard in the operation of SPS's electrical transmission and

distribution system. Further, all City-owned traffic, police and fire alarm conductors, and alarm boxes, and any City circuits on SPS poles, and all cables installed by City in ducts constructed by SPS, shall be installed in strict compliance with the applicable provisions of the National Electrical Safety Code and other applicable federal, state and local codes.

Provided further, that no part or portion of this Section shall ever be construed as requiring SPS to make any additional expenditure over and above its normal and ordinary cost, and if the City's requirements hereunder cause an additional cost or expense in enlarging, removing, adding to or otherwise changing SPS's facilities, City shall reimburse SPS for the full amount of such costs. SPS shall not in any case be liable for damages or claims of damages to any person or persons arising from or growing out of the attachment of City's equipment, or arising from or growing out of the construction, operation or maintenance of such facilities. The City further agrees to indemnify and hold SPS harmless from any and all damages or claims for damages by reason of the construction, maintenance or operation of the City's facilities as set forth in this Section.

XII. Annual Receipts Report/Right to Audit

SPS shall on the 1st day of February of each year of the life of this franchise, file or cause to be filed, a statement, certified by a duly qualified officer of SPS, showing the gross receipts of SPS within the City of Lubbock (as defined above) during the twelve months ending on the 31st day of December immediately preceding. For the purpose of determining the amount of the gross receipts of SPS, SPS shall keep in its office at the disposal of and open to inspection by any auditor authorized and appointed by City at all reasonable times, books of accounts and other records showing a full, true, complete and accurate account of the gross receipts of SPS from its electric lighting and power sales for consumption within the corporate limits of the City for the prior three calendar years.

XIII. Indemnification

SPS shall indemnify and save the City harmless from all claims, demands or causes of action brought against the City occasioned by or arising out of the construction, reconstruction, maintenance, or repair of SPS's electrical lighting and power system, or in any way growing out of the granting of this franchise either directly or indirectly; provided, however, that the provisions of this Section shall not be applicable to any claims, damages, actions or causes of actions proximately resulting from the use by City, its officers, agents, representatives or employees, of SPS's poles and ductlines for the installation, maintenance or removal of City's equipment, as provided in Section XI, or for which the City is otherwise liable as provided herein.

XIV. Authority

In granting this franchise it is understood that the lawful power vested by law in the City to require all persons or corporations to discharge the duties and undertaking for the performance of which this franchise was made, is reserved; this grant is made subject to all the rights, powers and authorities either of regulation or otherwise reserved to the City by its Charter or by the general laws of the State.

XV. Assignment/Transfer of Franchise

The rights, franchises and privileges hereby granted shall not be transferred or assigned by SPS except with the consent of the City Council of the City of Lubbock expressed by Ordinance passed by said City Council; provided, however, SPS may mortgage or pledge its rights hereunder for security or obligations owing by SPS; and provided further, that a transfer could be made in a merger, consolidation or re-organization proceeding to which SPS is a party or to a subsidiary corporation or affiliate corporation of SPS or wherein SPS sells its entire physical assets. It is specifically

recognized that under the Public Utility Regulatory Act, Chapter 39, Restructuring of Electric Utility Industry, it is anticipated that at some date in the future SPS will unbundle into a power generation company, a retail electric provider, and a transmission and distribution utility. At the time of such unbundling to comply with retail electric deregulation, the franchise granted herein will go with the distribution utility and the franchise fee thereafter will be calculated as provided in Section III of this franchise.

In the event of contemplated transfer of this franchise, under the terms of this section permitting transfer without consent of City Council, SPS shall notify the City of Lubbock of the contemplated transfer by written notice delivered to the City Secretary not less than sixty (60) days prior to accomplishment of any merger, consolidation or re-organization proceeding or transfer of its entire physical assets; and will provide the City Council an opportunity to confer with the proposed transferee concerning proper acceptance of the terms of this franchise.

Prior to exercising any rights hereunder, any purchaser or transferee of SPS shall file with the City Manager a written acceptance of this franchise setting forth an agreement to be bound by all terms and provisions hereof.

XVI. Tree Trimming

To the extent that the City has authority to do so, it gives to SPS, during the life of this franchise, the right, license, privilege and permission to trim trees upon and overhanging the streets, alleys, sidewalks and public places of City, so as to prevent the branches of such trees from coming in contact with the wires or other equipment of SPS. SPS agrees that it will fully protect and indemnify City from any and all claims, demands, actions, causes of actions, damages and expenses arising because of such trimming by SPS under the provisions of this Section.

XVII. Notice of Default

The franchise rights and privileges hereinabove granted to SPS, its successors and assigns are and shall be at all times, during the term and life of this franchise, contingent upon the faithful and punctual performance of and compliance with all acts, requirements and provisions of this Ordinance, and any amendment hereof, by SPS, its officers, agents and employees on its part to be performed, complied with and abided by, and if at any time SPS shall refuse or fail to keep, perform, comply with and abide by all and singular the acts, requirements and provisions of this Ordinance, or any amendment, within sixty (60) days from receipt of written notice from the City Manager acting by Order of the City Council setting forth in detail the facts constituting default of SPS and what is required to cure such default; and upon continued failure of SPS to keep, perform, comply with and abide by such acts, requirements and provisions of this Ordinance or any amendment or failure to cure the default set forth in such written notice, the City Council may terminate, at its option, this franchise and all privileges and rights herein granted to said SPS. The notice herein mentioned shall be sufficient, if given to the Manager of SPS in charge of its main office in the City of Lubbock.

XVIII. Removal of Dangerous Objects

The City shall have power at any time to require SPS to remove and abate at its own expense any installation or structure that is dangerous to life or property, and in case SPS, after reasonable notice, fails or refuses to act, the City shall have the power using reasonable means and methods to remove or abate the same at expense of SPS, all without compensation or liability for damages to SPS.

XIX. Severability

If any provision, section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional, void or invalid (or for any reason unenforceable), the validity of the remaining portions of this Ordinance shall not be affected thereby.

XX. Right of First Refusal

In the event that SPS should desire to sell, market or advertise for sale, SPS's distribution system within the corporate limits of the City, then, and in that event, SPS shall, prior to selling its distribution system to any unaffiliated third party, notify the City of the availability of SPS's distribution system. The City shall, within thirty (30) days of the receipt of such notice, provide SPS written notice of the City's intention to purchase SPS's distribution system. If the City provides SPS with written confirmation of its intention to purchase SPS's distribution system the City shall have an additional sixty (60) days to exercise due diligence and enter into a contract with SPS to purchase the entire distribution system belonging to SPS within the corporate limits of the City upon terms and conditions mutually agreeable to the City and SPS.

XXI. Prior Franchise Repealed and Release

This franchise replaces all former franchise ordinances granted to SPS or its predecessors, which are hereby repealed, which repeal is effective as of the time the franchise herein granted takes effect. There is specifically and particularly repealed, effective as of that time, Ordinance No. 8341 passed by the City of Lubbock on the second reading July 22, 1982, granting to Southwestern Public Service Company, its successors and assigns, a franchise for a period of twenty (20) years, as amended by Ordinance No. 9329 passed by the City of Lubbock on the second reading February 8, 1990.

The City and SPS further release, acquit and forever discharge the other party for any further claims or unresolved issues arising out of any audit conducted by the City regarding the prior franchise and the method of calculating the franchise fee for the period between the termination of the prior franchise and December 1, 2003, the effective date of new definitions to be used in calculating the franchise fee under this franchise. However, nothing contained herein relieves SPS of their obligation to continue to pay a franchise fee to the City under the terms of the prior franchise until the effective date of this franchise and as outlined in Section III above.

XXII. Final Passage/Acceptance

SPS shall, within thirty (30) days from the date of the final passage of this Ordinance by the City Council of the City of Lubbock, file with the City Secretary of Lubbock, a written statement signed in its name and behalf by an officer of SPS duly authorized by its Board of Directors in the following form:

"The Honorable Mayor and the City Council of the City of Lubbock:

"Southwestern Public Service Company, for itself, its successors and assigns, hereby accepts the attached Ordinance finally passed by the City Council of Lubbock, the _____ day of _____, 2003, and agrees to be bound by all of its terms and provisions.

Southwestern Public Service Company

By: _____
(Office)

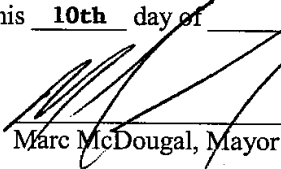
"Dated the _____ day of _____, 2003."

The full text of this Ordinance shall, after final passage by the City Council of the City of Lubbock, be published once each week for three (3) consecutive weeks in a newspaper of general circulation published in the City of Lubbock, and the expense of such publication shall be borne by SPS . Upon said publication being completed and the acceptance of this Ordinance by SPS as herein provided, this Ordinance shall take effect thirty (30) days after its last publication.


AND IT IS SO ORDERED.

Passed by City Council on first reading this 9th day of October, 2003.

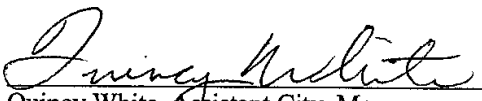
Passed by City Council of second reading this 10th day of October, 2003.


Marc McDougal, Mayor

ATTEST:


Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:


Quincy White, Assistant City Manager

APPROVED AS TO FORM:


Matthew L. Wade, Assistant City Attorney

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STATE OF TEXAS §
 §
COUNTY OF LUBBOCK §

To: The Honorable Mayor and the City Council of the City of Lubbock:

Southwestern Public Service Company, for itself, its successors and assigns,
hereby accepts the attached Ordinance finally passed by the City Council of Lubbock, the
10TH day of OCTOBER, 2003, and agrees to be bound by all of its terms and
provisions.

Southwestern Public Service Company

By: Gary L. Gibson
Gary Gibson
Title: PRESIDENT

Dated the 4TH day of NOVEMBER, 2003.

ATTACHMENT 3
CITY OF NEW DEAL,
TEXAS FRANCHISE
AGREEMENT

ORDINANCE NO. 103

THIS IS AN ORDINANCE OF THE TOWN OF NEW DEAL, TEXAS, THAT GRANTS TO SOUTHWESTERN PUBLIC SERVICE COMPANY, A NEW MEXICO CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN TEXAS, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE, TO ENTER UPON AND USE THE STREETS, AVENUES, BOULEVARDS, ALLEYS, HIGHWAYS, SIDEWALKS, BRIDGES AND OTHER PUBLIC GROUNDS OF NEW DEAL, TEXAS, WITHIN THE TOWN LIMITS AS THEY NOW EXIST OR AS THEY MAY BE CHANGED FROM TIME TO TIME, FOR A PERIOD OF TWENTY-FIVE YEARS TO USE, SELL, DISTRIBUTE AND SUPPLY ELECTRIC ENERGY FOR LIGHT, HEAT, POWER AND OTHER PURPOSES TO NEW DEAL, TEXAS, AND ITS INHABITANTS AND TO OTHERS. THIS ORDINANCE REPEALS ALL OTHER ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT WITH IT.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE TOWN OF NEW DEAL, TEXAS:

SECTION 1. GRANT OF FRANCHISE. The Town of New Deal, Texas, ("Town") by this ordinance grants to Southwestern Public Service Company, a New Mexico corporation authorized to transact business in Texas ("SPS"), a franchise, license, right-of-way and privilege to enter upon and use the streets, avenues, boulevards, alleys, highways, sidewalks, bridges and other public grounds within town limits of said Town as they now exist or as they may be changed from time to time (collectively "Public Areas"), for a period of 25 years (i) to erect, construct, equip, extend, alter, maintain, repair, replace, remove, and operate in, under, upon, within, over, above, across, and along Public Areas, all works, systems, plants, poles, pole lines, towers, distribution lines, transmission lines, wire, guys, cables, conduits, transformers, and other distribution and transmission instrumentalities, facilities and appurtenances necessary or proper for the transmission and distribution of electricity into, in, within, from, across, and through said Town; and (ii) to supply and furnish to said Town and its inhabitants and to any other person or persons, firms, or corporations, whether located within or without said Town, electric energy for light, power, cooling, heating, and any other purpose or purposes for which electricity may be used.

SECTION 2. TERM OF FRANCHISE. The term of this franchise shall be for a period of 25 years beginning on the Effective Date (as defined in Section 7 of this ordinance).

SECTION 3. POWERS AND CONDITIONS. SPS is authorized to perform any and all actions necessary to execute the powers and utilize the privileges granted by this ordinance, provided that (i) all work done by SPS in, under, upon,

within, over, above, and across Public Areas shall be done diligently and in good and workmanlike manner, with the least inconvenience to the public and (ii) SPS shall, within a reasonable time, restore all Public Areas excavated by it to their original condition, as nearly as possible.

SECTION 4. INDEMNITY BY SPS. The said Town shall not be liable or responsible for, and shall be saved and held harmless by SPS from and against any and all claims and damages of any kind (including injury to or death of any person or persons and damage to or loss of property) arising out of or attributable, directly or indirectly, to negligent acts or omissions of SPS, its employees or agents.

SECTION 5. FRANCHISE TAX. SPS, for and in consideration of the granting of this franchise by said Town and as a rental for the occupation and use of the Public Areas, shall pay to said Town 3% of its gross receipts. The term "gross receipts" shall mean the total monies received by SPS from the sale of electric energy to its retail customers excepting therefrom receipts from sales by SPS within said Town to any federal, state, or local governmental entity, department or agency, including the Town of New Deal, the County of Lubbock and the New Deal Independent School District. Amounts payable to the Town of New Deal under this section in excess of two percent of gross receipts shall be surcharged to all Customers taking service within said Town.

Payment of the rental shall be made within thirty (30) days following the end of each calendar quarter in which the gross receipts were collected. Rental payments shall be in lieu of any and all other taxes or exactions (except general ad valorem property taxes, special assessments for local improvements, and any other required non-waivable taxes) upon the business, revenue or property of SPS. Rental payments shall continue only so long as SPS is not prohibited from paying them by any lawful authority having jurisdiction and

so long as the Town of New Deal does not charge, levy or collect or attempt to charge, levy or collect other franchise, license, privilege, occupation, or excise taxes or other exactions (except general ad valorem property taxes, special assessments for local improvements and any other required non-waivable taxes). For the purpose of determining the amount of gross receipts, the books of SPS shall, at all reasonable times, be subject to inspection by the Town of New Deal or its official designated rate consultants.

SECTION 6. REPEALER. This ordinance repeals all said Town Ordinances, resolutions or orders which are in conflict with this ordinance, and this ordinance supersedes any previously granted franchise.

SECTION 7. EFFECTIVE DATE. SPS shall, within thirty (30) days of the final passage of this ordinance as required by law, file with the Town Secretary its written acceptance of the franchise granted by this ordinance in substantially the same form as the letter attached as Exhibit A. Upon the filing of SPS's acceptance, the Town Secretary will note, in the appropriate place on the acceptance, the date of filing. The effective date of this ordinance ("Effective Date") shall be the date entered by the Town Secretary on the acceptance.

SECTION 8. SUCCESSORS AND ASSIGNS. This franchise shall be binding upon and inure to the benefit of SPS, its successors and assigns.

Passed by the Mayor and the Board of Aldermen of the
Town of New Deal, Texas, on the 24th day of
April, 1995


MAYOR

ATTEST:


TOWN SECRETARY

THE STATE OF
COUNTY OF

I, Paula Purdom, Town Secretary of the Town
of New Deal, Texas certify that on the 24th day
of April, 1995, a copy of Ordinance No.
103 of the Town of New Deal as posted in each of
three public places in such city to wit:

New Deal Post Office -309 N. Monroe

New Deal City Hall -404 S. Monroe

New Deal Clubhouse -309 S. Monroe

To certify which I hereunto set my hand.

Paula Purdom
Town Secretary of the Town of New Deal, Texas