

ORDINANCE NO. 1336

AN ORDINANCE GRANTING KANSAS CITY POWER & LIGHT COMPANY, ITS GRANTEEES, SUCCESSORS AND ASSIGNS, THE RIGHT AND FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN ALL WORKS AND PLANTS NECESSARY OR PROPER FOR SUPPLYING CONSUMERS WITH ELECTRIC OR OTHER ENERGY, GRANTING TO SAID COMPANY THE RIGHT TO USE THE STREETS, ALLEYS AND ALL OTHER PUBLIC PLACES, PRESCRIBING THE TERMS OF AND RELATING TO SUCH FRANCHISE AND REPEALING INCONSISTENT ORDINANCES OR PARTS THEREOF.

WHEREAS, Kansas City Power & Light Company (herein called the Company) is a corporation duly organized and existing under and by virtue of the laws of the State of Missouri, and admitted to do business under the laws of the State of Kansas as a foreign corporation for the purpose of generating and distributing electric energy;

WHEREAS, the Company is operating a system for the production, transmission and distribution of electric current between two or more incorporated cities in the State of Kansas and has heretofore built, or proposed to build its electric facilities into or through the City of Baldwin City, Kansas (herein called the City), under a twenty (20) year Franchise Ordinance;

WHEREAS, the Company has served customers within city limits of the City and, at the request of City, is in the process of selling to City certain facilities in connection with the City's future provision of electric service to those customers but, also at the request of City, certain of the Company's facilities will remain in place within city limits of City after the sale that are necessary to serve customers of the Company located adjacent to but not within city limits of the City; and

WHEREAS, the City and the Company desire to provide for the possibility that the Company may provide electric service to customers within city limits of the City at some time during the term of this franchise;

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF BALDWIN CITY, KANSAS:

SECTION I. In consideration of the benefits to be derived by the City and the inhabitants thereof from the Company's sale of facilities in connection with the City's future provision of electric service to customers within city limits of the City formerly served by Company and the resultant need for certain of the Company's facilities to remain in place, the potential for construction, operation and maintenance of an electric light and power system and the supplying of electric energy to the public which would result in gross receipts taxes to be paid to the City pursuant to Section VI hereof in the event the Company provides electric service in the future to customers within city limits of the City, there is hereby granted to the Company and to its successors and assigns, for the term of twenty (20) years from the effective date hereof, a franchise and authority to construct, operate and maintain within the existing and any future

extended corporate limits of the City for which the Company now or shall hereafter hold a Certificate of Convenience and Authority from the State Corporation Commission of the State of Kansas all appropriate facilities and plants for carrying on a power and light business and all other operations connected therewith or incident thereto for the purpose of supplying within the City and outlying areas electric or other energy in such forms as may be reasonably required for domestic, commercial, industrial, municipal and other purposes and to produce and supply such energy by manufacture, generation, purchase or otherwise, and to transmit and distribute same by means of underground or overhead facilities or otherwise, and for any or all of said purposes it is authorized to (i) construct, install, replace and remove conduits, poles, lamp posts, guys, anchors, wires, cables, street lights and all other related facilities in, on, under, along, across and over all streets, alleys, avenues, bridges, parks, parking and other existing and any future alleys, avenues, bridges, parks, parking and other existing and any future public places or thoroughfares, (ii) construct, erect, maintain and remove all structures, machinery and attachments of any and every kind for any and all said purposes, (iii) enter upon any and all of said public places within the corporate limits of the City as they now exist or may hereafter be opened, widened, extended, laid out and established, including any other territory hereafter added thereto or coming under the City's jurisdiction, and (iv) to trim trees upon and overhanging such places and make such excavations thereon as may be appropriate for the construction, operation, maintenance, repair, renewal and removal of the Company's overhead and underground facilities and plants.

SECTION II. Any pavements, sidewalks or curbing taken up or any and all excavations made shall be done under the supervision and directions of the governing body of said City under all necessary permits issued for the work, and shall be made and done in such manner as to give the least reasonable inconvenience to the inhabitants of the City and the public generally, and pavements, sidewalks, curbing and excavations shall be replaced and repaired in as good condition as before with all convenient speed, by and at the expense of the Company.

SECTION III. The Company shall at all times during the term of this franchise supply to consumers of electric energy, such electric energy as they may require, and shall extend and construct its lines and services in accordance with legal requirements, and rules and regulations as filed from time to time with the State Corporation Commission of the State of Kansas. However, nothing contained herein shall be construed as a guarantee upon the part of the Company to furnish uninterrupted service, and interruptions due to Acts of God, fire, strikes, civil or military authority, orders of the court and other causes reasonably beyond the control of the Company are specifically exempted from the terms of this Section. The City shall provide the Company a map of the City's corporate limits (the "Map"). The Map shall be of sufficient detail to assist Company in determining whether their customers reside within the City's corporate limits. The Map shall serve as a basis for determining Company's obligation hereunder; provided, however, that if the City's corporate limits are changed by annexation or otherwise, it shall be the City's responsibility to (a) update the Map so that such changes are included therein, and (b) provide the updated Map to the Company. During the term of this franchise, the City shall notify the Company in the event of service territory boundary modifications that affect both the Company and the City's Certificates of Convenience and Authority on file with the Kansas Corporation Commission. The City shall also provide a detailed legal description (metes and bounds) depicting the boundary modifications.

SECTION IV. All poles and wires shall be erected in accordance with the rules and regulations of the State Corporation Commission of the State of Kansas as set out in Docket No. 1944 and any amendments thereto. All poles carrying said wires shall be placed in such manner as to interfere with and obstruct as little as reasonably possible, the ordinary use of the streets, alleys, lanes and highways of said City, and shall not unreasonably interfere with any gas main, water main or sewer now laid out or constructed in or under said streets, alleys, lanes or highways of said City.

SECTION V. The Company shall, at all times, in the construction, maintenance, and operation of its electric transmission, distribution and street lighting system, use all reasonable and proper precaution to avoid damage or injury to persons or property, and shall hold and save harmless said City from any and all damage, injury and expense caused by the sole negligence of the Company, its successors and assigns.

SECTION VI. As a further consideration for the rights, privileges and franchise hereby granted, and in lieu of all rental, license or occupation taxes for the use of the ways and alleys and streets involved herein, the Company agrees to pay to the City, and the City agrees to accept as adequate compensation and consideration for the Franchise hereby granted five percent (5%) of the total gross receipts charged and collected solely from the sale of electric energy used within the present or future boundaries of said City for domestic, commercial and industrial consumption. Any consideration made hereunder shall be reported and paid to the City by the Company on a semiannual basis on each March 31 and September 30 for the years in which this Franchise remains in effect, reflecting such electric energy sold to customers for the six months' period ending at the last meter reading preceding each February 28 and August 31, respectively. Such payments shall be rendered in cash to the City.

SECTION VII. The percentage of gross receipts charged and collected from the sale of electric energy hereunder, as specified in SECTION VI above, shall be subject to a review and revision at the written request of either party on the annual anniversary of the effective date hereof. If either party desires a review and revision of said percentage of franchise fee charged and collected from the sale of electric energy hereunder at that time, it shall so notify the other party in writing not later than sixty (60) days prior to the review date, whereupon representatives of the parties will meet and in good faith attempt to reach an agreement with respect to said percentage. In the event the parties agree to revise said percentage, such revision shall be effected by ordinance duly passed as an amendment to this Ordinance, and all expenses connected with such revision, including but not limited to costs of publication, shall be borne by the City.

SECTION VIII. The term "gross receipts," when used in this ordinance, shall mean the aggregate amount of all sales and charges from the business of supplying electricity by Company, or any affiliated company, in said municipality during any period less discounts, late payment charges, credits, refunds, sales taxes and uncollectible accounts.

SECTION IX. All provisions of this Ordinance shall be binding upon the Company and successors and assigns from and after the date of written acceptance hereof by the Company, and shall inure to the benefit of the Company, its grantees and its successors and assigns.

SECTION X. All ordinances and parts of ordinances in conflict herewith are hereby repealed as of the effective date of this Ordinance.

SECTION XI. This Ordinance is made under and in conformity with the laws of the State of Kansas, and shall take effect and be in force as of the first day of the first month after written acceptance by the Company.

PASSED AND APPROVED THIS _____ DAY OF _____, 2016.

Mayor

ATTEST:

City Clerk