

ORDINANCE NO. 83-5

AN ORDINANCE GRANTING A FRANCHISE TO THE HAYWOOD ELECTRIC MEMBERSHIP CORPORATION, ITS SUCCESSORS AND ASSIGNS, TO OPERATE AND MAINTAIN AN ELECTRIC UTILITY DISTRIBUTION SYSTEM IN, OVER, ALONG, AND ACROSS THE STREETS AND WAYS OF THE CITY OF SKY VALLEY, GEORGIA; TO PROVIDE THE CONDITIONS GOVERNING THE GRANTING OF SAID FRANCHISE; TO PROVIDE FOR FRANCHISE FEES TO BE PAID BY HAYWOOD ELECTRIC MEMBERSHIP CORPORATION; AND FOR OTHER PURPOSES.

BE IT ORDAINED, by the Council of the City of Sky Valley, and it is hereby ordained by virtue of the authority thereof, as follows:

SECTION 1.

SHORT TITLE - This Ordinance shall be known and may be cited as the "Haywood Electric Membership Corporation Franchise Ordinance".

SECTION 2.

DEFINITIONS - For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. The word "shall" is always mandatory and not merely directory.

(a) "City" is the City of Sky Valley.

(b) "Company" is the Haywood Electric Membership Corporation; the Grantee of the rights under this franchise.

(c) "Council" is the City Council of the City of Sky Valley.

(d) "Person" is any person, firm, partnership, association, corporation, company, or organization of any kind.

SECTION 3.

GRANT OF AUTHORITY - There is hereby granted by the City to the Company, subject to the terms and conditions hereinafter set forth, the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over, and under the streets, alleys, public ways, and thoroughfares now laid out or dedicated, and all extensions thereof and additions thereto, located within the City, for the overhead or underground construction, maintenance, operation, and extension of poles, towers, lines, wires, cables, conduits, insulators, transformers, appliances, equipment, connections, and other apparatus for the business and purpose of transmitting, conveying, conducting, using, supplying, and distributing electricity for light, heat, power, and other purposes for which electric current may be or become useful or practicable for public or private use, and to re-enter upon such streets, alleys, and public places from time to time as it may deem proper or necessary to perform these functions, and to cut and trim trees and shrubbery when

where necessary, in the judgment of the Company, to insure safe and efficient service.

SECTION 4.

NON-EXCLUSIVE GRANT - The right to use and occupy said streets, alleys, public ways, and places for the purposes herein set forth shall not be exclusive, and the City reserves the right to grant a similar use of said streets, alleys, public ways and places, to any person at any time during the period of this Franchise.

SECTION 5.

COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES - The Company shall, at all times during the life of this Franchise, be subject to all lawful exercise of the police power by the City and to such reasonable regulations as the City shall hereafter by resolution or ordinance provide. Every installation by the Company shall be in accordance with the applicable codes (including electrical codes) then of force in the City of Sky Valley, including any codes or standards regulating cutting and repairing of public ways.

SECTION 6.

COMPANY LIABILITY - INDEMNIFICATION - It is expressly understood and agreed by and between the Company and the City that the Company shall save the City harmless from all loss sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever, resulting from negligence on the part of the Company in the construction, operation, or maintenance of its electric utility system in the City. In the event any claim or action is brought against the City for which the Company might be liable as an indemnifying party under this Section, the City shall give reasonable notice to the Company of such claim or action and a description of the source and nature thereof. Failure to give such notice shall relieve the Company from any liability hereunder with respect to the claim or action of which such notice was not properly given. Upon notice of any claim or action within the scope of this Section, the Company shall have the right (but not the obligation) to negotiate a settlement or compromise (any such settlement or compromise subject to the approval of the City, which approval shall not be unreasonably withheld) of any such claim or action, or to defend actions instituted at the sole cost and expense of the Company with counsel satisfactory to the City.

SECTION 7.

CONDITIONS ON STREET OCCUPANCY -

A. USE - All transmission and distribution structures, lines and equipment erected by the Company within the City shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of said streets, alleys or other public ways and places.

B. RESTORATION - In case of any disturbance of pavement, sidewalk, driveway, or other surfacing, the Company shall, at its own cost and expense, and in a manner approved by the City Inspector, replace and restore all paving, sidewalk, driveway, or surface, of any street or alley disturbed, to as good condition as before said work was commenced. No street, alley, highway or public place shall be encumbered for a longer period than shall be necessary to execute the work by the Company.

C. RELOCATION - In the event that at any time during the period of this Franchise the City in its governmental capacity shall lawfully elect to alter or change the grade of any street, alley, or public way, the Company, upon reasonable notice by the City, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes, and other electrical fixtures. The Company agrees to bear the reasonable expenses incurred by it in complying with this provision. Notwithstanding the foregoing, however, the Company shall not be liable for the payment of any expenses incurred by it in the event the Company is required to remove, relay or relocate its poles, wires, cables, underground conduits, manholes, and other electrical fixtures, where such alteration is made necessary by an act of the City in its proprietary, non-governmental capacity. For the purpose of this provision, alterations made necessary by the actions or proposed actions of the electrical department of the City in providing electrical services to consumers served by the City shall be considered proprietary and non-governmental as those terms are used in this sub-section.

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D. PLACE/OF FIXTURES - The Company shall not place poles or other fixtures where the same will interfere with any telephone lines, water hydrants, or water mains, and other such devices, and all wires, lines, and cables shall, pursuant to the ordinances and the regulations of the City, be placed underground and not above street level, unless in the event the Company determines that a proposed wire, line, or cable cannot be physically placed underground because of the terrain or other characteristics of the land, the Company shall be entitled to petition the City to waive the requirements of the ordinances and regulations of the City requiring underground placement of utilities, and the City shall not arbitrarily withhold approval of such request on the part of the Company. In the event that such above-ground service is approved, all such poles or other fixtures placed above street level on any street shall be placed at the outer edge of any sidewalk and inside the curb line, and those placed in alleys shall be placed in such a manner as not to interfere with the usual travel on said alleys or public ways.

E. TEMPORARY REMOVAL OF WIRE FOR BUILDING MOVING - The Company shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising, or lowering wires shall be paid by the person requesting the same, and the Company shall have the authority to require such payment in advance. The Company shall be given not less than forty-eight hours' advance notice to arrange for such temporary wire changes.

SECTION 8.

APPROVAL OF TRANSFER OF THIS FRANCHISE - The Company shall not have the right to transfer or assign this Franchise to any other person or entity without the prior written approval of the Council, and no such assignment or transfer shall be effective until the assignee or transferee hereof has filed in the office of the City Clerk an instrument, lawfully executed, reciting the fact that such assignee or transferee has accepted this Franchise and agrees to be bound by each and every one of the terms and provisions hereof; provided, however, that the Company shall have the right to transfer or assign this Franchise to any entity that is a subsidiary of or affiliated with the Company without the prior written approval of the Council.

SECTION 9.

SUPERVISION AND INSPECTION - The City shall have the right to inspect all work performed by the Company on, along, in, or across any of the public streets or ways of the City to ensure compliance with the rules and regulations of the City, and any pertinent ordinances, governing installations which affect, or might affect, such public streets or ways. The Company shall maintain its system in reasonable operating condition at all normal times during the continuance of this Franchise. An exception to this condition is automatically in effect when service furnished by the Company is interrupted, impaired, or prevented by fires, strikes, riots, or other occurrences beyond the control of the Company, or by storms, floods or other casualties, in any of which events the Company shall do all things reasonably within its power to do to restore normal service.

SECTION 10.

ACCESS TO COMPANY RECORDS - The City shall have access, at all reasonable hours, to such of the Company's accounting and financial records as are necessary to verify the proper amount of any fee imposed upon the Company by this Ordinance, and the Company shall file, with its payment required by Section 12, a certificate, signed by a certified public accountant or by the President of the Company, certifying the gross dollar revenue received by the Company during the preceding year from recurring local service subscribers located within the corporate limits of the City.

SECTION 11.

TERM OF FRANCHISE - The Franchise and rights herein granted shall take effect and be in force from and after the final passage hereof, as required by law, and upon filing of acceptance by the Company with the City Clerk, and shall continue in force and effect for a term of 35 years after the effective date of this Franchise.

SECTION 12.

PAYMENT TO CITY - The Company shall pay into the treasury of the City (a) on or before the first day of March in each year following the grant-

ing of this Franchise a sum of money equal to four percent (4%) of the gross sales of electric energy to customers served under residential and commercial rate schedules (as prescribed by the Georgia Public Service Commission) within the corporate limits of the City during the preceding calendar year and four percent (4%) of the gross sales of electric energy to customers served under industrial rate schedules (as so prescribed) within the corporate limits of the City during the period beginning on the first day of the month following granting of this Franchise and ending on December 31 thereafter; and (b) on or before the first day of March of each year thereafter during the term of this Franchise a sum of money equal to four percent (4%) of the gross sales of electric energy to customers served under residential, commercial and industrial rate schedules (as so prescribed) within the corporate limits of the City during the preceding calendar year on condition that, in the event the City shall grant to any other entity the right to use and occupy its streets for like purposes, such use and occupancy shall be upon the same terms and conditions as those herein contained, including the payment provisions hereof.

SECTION 13.

PENALTIES - A violation by the Company of the terms of this Franchise and a refusal by the Company to rectify such violation as quickly as is reasonably possible under the circumstances upon demand to do so by the City shall authorize the City to cancel this Franchise and terminate all the rights granted to the Company hereunder.


SECTION 14.

PARTIAL INVALIDITY AND APPEAL PROVISION - If any Section, sentence, clause, or phrase of this Ordinance is for any reason held to be illegal, ultra vires, or unconstitutional, such invalidity shall not affect the validity of the remaining portions of this Ordinance. All ordinances and agreements and parts of ordinances and agreements in conflict herewith are hereby repealed.

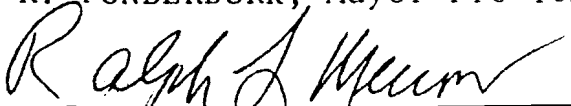
SECTION 15.

ACCEPTANCE OF AGREEMENT - The Company shall have thirty (30) days from and after the passage and approval of this Ordinance to file a written acceptance of the same with the Clerk of said City, so as to form a contract between the parties. Upon such acceptance, all laws and ordinances, and all agreements between the parties, in conflict herewith be and the same shall thereupon stand repealed and terminated, respectively.

THEREFORE, BE IT ORDAINED AND APPROVED BY THE COUNCIL OF THE CITY OF SKY VALLEY THIS 2nd DAY OF MAY, 1983.



O. R. FUNDERBURK, Mayor Pro Tem



RALPH MERROW Councilman

John Lodge
JOHN LODGE, Councilman

Approved by the Mayor this 5th day of May, 1983.

Larry P. McClure, Jr.
LARRY P. McCLURE, JR., Mayor

Approved and accepted by Haywood Electric Membership Corporation this _____ day of May, 1983.

HAYWOOD ELECTRIC MEMBERSHIP CORPORATION

Joe Davis

By: Barbara Taylor (Seal)

REC. from Haywood -
FEB 14 1984

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