

AN ORDINANCE GRANTING A FRANCHISE TO APPALACHIAN POWER COMPANY, A CORPORATION, ITS SUCCESSORS AND ASSIGNS, TO USE THE STREETS, THOROUGHFARES, ALLEYS, AND OTHER PUBLIC WAYS OF THE CITY OF LYNCHBURG FOR THE PURPOSE OF INSTALLING AND MAINTAINING LINES FOR THE TRANSMISSION AND DISTRIBUTION OF ELECTRIC ENERGY BY MEANS OF OVERHEAD OR UNDERGROUND CONDUCTORS WITH ALL NECESSARY APPURTENANCES THERETO, TO OPERATE AN ELECTRIC LIGHT, HEAT AND POWER TRANSMISSION AND DISTRIBUTION SYSTEM WITHIN THE CITY OF LYNCHBURG, AND REGULATING THE MANNER OF USING THE STREETS, THOROUGHFARES, ALLEYS, AND PUBLIC PLACES OF THE CITY FOR A PERIOD OF 20 YEARS FROM AUGUST 17, 1996 THROUGH AUGUST 16, 2016.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG AS FOLLOWS:

SECTION I. FRANCHISE GRANTED

Subject to the provisions, conditions, and restrictions hereinafter set forth, Appalachian Power Company, its successors and assigns (hereinafter called "Grantee"), is hereby granted the right, privilege, franchise and authority within the limits, as the same now or hereafter exist, of the City of Lynchburg, State of Virginia, hereinafter called the "City", to acquire, construct, maintain and operate in, above, under, across, and along the streets, thoroughfares, alleys and public places, as the same now exist or may hereafter be laid out, of the City, lines for the transmission and distribution of electric energy either by means of overhead or underground conductors, with all necessary or desirable appurtenances for the purpose of supplying electric energy to the City and the inhabitants thereof and persons or corporations beyond the limits thereof, for light, heat, power or any other purpose or purposes for which electric energy is or may hereafter be used, and for the transmission of the same through or across the City; provided, however, that no such line shall be constructed on any bridge or viaduct in the City without prior written approval of the

Director of Public Works or such other person as the City Manager may from time to time designate.

SECTION II. RIGHT AND DUTIES OF GRANTEE

(a) The Grantee shall have the right, upon issuance of a permit by the City, to excavate the public right-of-way for the purpose of constructing and extending its electric transmission and distribution lines and all necessary appurtenances and appendages thereto and shall have, when necessary, the right, upon issuance of a permit by the City, to excavate the public right-of-way for the purpose of repairing, replacing, renewing, and maintaining its electric transmission and distribution lines and all necessary appurtenances and appendages thereto. These rights are subject to the terms and conditions hereinafter specified and to the terms and conditions prescribed by the ordinances and procedures of the City which are now in force or hereafter enacted.

(b) The materials to be used and the manner of construction, maintenance and repair to be followed under this Franchise shall be such as are commonly used in comparable circumstances and shall conform to the standards of the National Electrical Safety Code and any and all federal, state and local laws and regulations pertaining to the construction, maintenance, operation and safety of electric transmission and distribution lines.

(c) The location and construction of all electric transmission and distribution lines and all necessary appurtenances and appendages thereto shall be subject to the prior approval of such person as the City Manager may from time to time designate. Said lines and appurtenances shall be constructed so as to interfere as little as possible with the public in its use of the public streets, thoroughfares, alleys, bridges and other public areas.

(d) Any work to be performed under this Franchise shall be done in such manner so as not to damage any construction, properties, or facilities of any other public utility or

public service corporation holding a Franchise from the City or any construction, properties, or facilities of the City or the Virginia Department of Transportation.

(e) All new or extended underground electric transmission or distribution lines or appurtenances or appendages thereto shall be constructed outside the limits of paved street areas. The portions of all new and extended electric transmission or distribution lines that are installed under paved street areas shall be enclosed in conduit.

In the event that the Grantee does not believe that Grantee can comply with the condition that all new underground lines shall be constructed outside the limits of paved street areas and all underground line crossings enclosed in conduit, the Grantee shall request a waiver of this condition from the Director of Public Works, or such other person or persons as the City Manager may from time to time designate. Construction shall not proceed unless and until the Director of Public Works, or such other person or persons as the City Manager may from time to time designate, has issued a written permit granting the requested waiver and approving the proposed project.

(f) In making any excavation in the public right-of-way for any purpose, the Grantee shall not unnecessarily obstruct or impede traffic upon the streets and shall avoid any interference with, or injury to, the water pipes, sewers, other pipes, mains, conduits, gas lines, tracks, lines, or other fixtures of the City or other public utility or public service corporations. If any injury or damage be done by the Grantee to City property, and the damaged facilities were properly located and marked as required by Virginia law, the Grantee shall immediately make indemnity and satisfaction to the City. The City retains any and all rights which it may have against the Grantee for the Grantee's failure to comply with this provision.

(g) Whenever the City shall determine that it is necessary in connection with the repair, relocation, or improvement of the public right-of-way, the City may require by written notification that any properties or facilities of the Grantee be removed or relocated. Within sixty (60) days after receipt of notification, unless the City extends such period for good cause shown, the Grantee shall remove or relocate its facilities to such place and under such terms and conditions as specified by the City. The Grantee shall bear all expenses associated with the removal and relocation except that the City will issue, without charge to the Grantee, whatever City permits are required for the relocation of Grantee's facilities. If the Grantee does not complete its removal or relocation within sixty (60) days or such other period as authorized by the City, the City may take such actions as necessary to effect such removal or relocation at the Grantee's expense.

(h) The Grantee shall provide the most economical and practical place, when so requested by the City, on its poles and in its conduits, for the free use of communication and signal systems to be installed by and for the use of the City. Should the City decide in the future to enter into the business of providing communications services to others, the Grantee will enter into a pole attachment agreement which will permit the City to utilize such poles and conduits as may be necessary for the City's business purposes on the basis of terms and conditions which are at least as favorable as those available to other entities providing similar services.

SECTION III. TERMINATION OF THE FRANCHISE

(a) The City retains the right to withhold or withdraw any and all privileges under this Franchise and to terminate this Franchise at any time if the Grantee fails to substantially comply with any of the terms of the Franchise. Exercise of this right by the City shall be in addition to and not in place of any other rights which the City has under the terms of this

Franchise. Prior to exercising this right, the City Manager, or such other person or persons as the City Manager may from time to time designate, shall provide the Grantee with written notification of the Grantee's failure to comply with the terms of this Franchise. The Grantee shall have sixty (60) days from the date of such notice to remedy any such default. The Grantee may make a written request for a reasonable extension of the period in which it may remedy any such default to the Director of Public Works, or such other person or persons as the City Manager may from time to time designate. Any such request by the Grantee shall be in writing and must be made at least fifteen (15) days prior to the expiration of the initial sixty (60) day period. Any subsequent request shall be in writing and must be made at least fifteen (15) days prior to the expiration of any subsequent period.

(b) If there are instituted by or against the Grantee proceedings in bankruptcy or insolvency during the term of this Franchise, the City may terminate the Franchise at any time thereafter. The exercise of this right by the City shall be in addition to and not in place of any other rights which the City has under the terms of this Franchise. Any successor or successors, or assignee or assignees, or trustee, or receiver of the Grantee resulting from proceedings in bankruptcy or under any insolvency law shall be subject to and bound by all of the provisions, terms, conditions, and limitations of this Franchise. The City may terminate the Franchise as to any such successor or successors, or assignee or assignees, or trustee, or receiver of the Grantee at any time.

(c) The City retains the right to withhold or withdraw any and all privileges under this Franchise and to terminate this Franchise at any time if there is a taking of the Grantee's assets by a court of competent jurisdiction. Exercise of this right by the City shall be in addition to and not in place of any other rights which the City has under the terms of this Franchise.

(d) Subject to the City's right to terminate the Franchise under the terms of Franchise, the rights granted to the Grantee by this Franchise may be exercised by any successor or successors, assignee or assignees of the Grantee, but such successor or successors, assignee or assignees shall be subject to and bound by all of the provisions, terms, conditions, and limitations prescribed in this Franchise.

SECTION IV. DUTY OF GRANTEE TO FURNISH SAFE, ADEQUATE, AND EFFICIENT ELECTRIC SERVICE AT JUST AND REASONABLE RATES.

The Grantee shall furnish to the public within the City safe, adequate, and efficient electrical service at such just and reasonable rates as may be legally fixed and declared to be just and reasonable by the duly constituted governmental authority having lawful jurisdiction thereof.

The Grantee shall exercise this franchise subject to such regulations as may be adopted by the State Corporation Commission of Virginia, or such other body upon which said State may hereafter convey regulatory powers over like corporations for the purpose of securing efficiency of public service at reasonable rates from the Grantee, its successors and assigns, in the City, and the maintenance of the property and works of the Grantee in good order throughout the term of this franchise.

In the event no other governmental authority lawfully exercises such jurisdiction, the City Council shall have jurisdiction to declare by ordinance what shall constitute safe, adequate and efficient service and to prescribe and fix by ordinance maximum just and reasonable rates for furnishing such service.

It is understood and agreed that the provisions of this section shall not apply to the Grantee's electric service to the City itself, which shall be provided under the terms of the Grantee's Public Authority Tariff.

SECTION V. NON-EXCLUSIVE FRANCHISE.

Nothing contained herein shall be construed as granting or attempting to grant the Grantee the exclusive right to use any public right-of-way of the City for its electric system, or in any manner preventing the City from granting similar, equal, or greater privileges to any other person or corporation.

SECTION VI. GENERAL ORDINANCES OF THE CITY.

The grant of this Franchise is subject to all ordinances, resolutions and procedures of the City as the same now exist or may be hereinafter be adopted, amended, revised, or codified, in the lawful exercise of any power granted to the City by the General Assembly or any other lawful body.

SECTION VII. EXTENSION OR REVISION OF CITY LIMITS OR STREET SYSTEM.

(a) If, during the life of this Franchise, the corporate limits of the City shall be extended or revised so as to include any of the properties and facilities of the Grantee other than those within the present corporate limits, the provisions of this Franchise shall be and become, upon the extension or revision of the City limits, applicable to any and all properties and facilities of the Grantee, which may be located in any public-right-of-way within such extended or revised limits of the City; and the Grantee shall be deemed to be maintaining and operating such properties and facilities under the terms of this Franchise.

(b) Where any electric transmission or distribution line or any appurtenance or appendage thereto is placed anywhere in the City limits as now or hereafter extended or revised which is not a public right-of-way, and a public right-of-way shall thereafter be opened or dedicated so as to include such facilities within the lines of such public right-of-

way, said facilities shall be deemed to be operated and maintained under the terms of this Franchise. However, the Grantee shall not be required to bear the expenses associated with the removal or relocation of any of its facilities that were originally constructed on private property that later is opened or dedicated as a public right-of-way.

SECTION VIII. INDEMNITY.

The Grantee shall indemnify and hold harmless the City, its officers, and its employees and its agents, from any and all claims, damages, losses, costs, expenses, or judgments that may be asserted against the City by any person, firm, corporation, or any other entity arising from the construction, operation, or maintenance of the Grantee's properties and facilities or from the exercise of any right or privilege granted herein, or the performance of any duty imposed herein. In the event any such action or other proceeding shall be brought against the City, either independently or jointly with the Grantee on account thereof, said Grantee, upon notice to it by the City, shall defend the City in any such action or other proceeding at the expense of the Grantee. In the event of a final judgment or decree being obtained against the City, either independently or jointly with the Grantee, then the Grantee shall pay such judgment with all interest and costs. The Grantee shall pay all other expenses incurred in any such action or proceeding regardless of the outcome of the action or proceeding including, but not limited to, attorney fees, investigative costs, and court costs, and shall hold the City harmless therefrom. Nothing contained herein shall be construed as recognizing, on the part of the City or the Grantee, any claim or right of action growing out of this Franchise in favor of any third person. The City retains any and all rights and remedies which it may have against the Grantee as a result of the Grantee's failure to comply

with this provision. It is not the purpose of this section to require the Grantee to indemnify the City for the negligence of the City's officials, employees or agents.

SECTION IX. CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY.

This Franchise and the rights and privileges hereby granted and conferred are conditioned upon the Grantee obtaining from the State Corporation Commission of Virginia or its lawful successor and maintaining such certificates of public convenience and necessity as may be requisite for operations under the terms of this Franchise.

SECTION X. FRANCHISE TERM.

This Franchise will be effective from August 17, 1996, and will remain in effect, subject to the City's right to terminate this Franchise under Section III. Termination of Franchise or the forfeiture of this Franchise by the Grantee under Section XII, Forfeiture. In addition to the initial twenty (20) year term, the City and Grantee may, at their option, agree to extend the Franchise for two additional terms of five (5) years each.

SECTION XI. EXPIRATION OF FRANCHISE.

At the end of the Franchise period, unless a new Franchise has been negotiated, this Franchise agreement shall continue as a month-to-month tenancy, subject to all of the terms and conditions contained in this Franchise agreement. Such month-to-month tenancy shall continue until such time as the City gives the Grantee thirty (30) days written notice of the termination of the month-to-month tenancy.

SECTION XII. FORFEITURE.

The rights and privileges herein set forth are granted and conferred upon the Grantee upon the express condition and understanding that the Grantee shall render to the public

within the City safe, adequate, and efficient electric service at just and reasonable rates as provided in this Franchise and that the Grantee shall maintain its properties and facilities as necessary in order to provide such service in good order throughout the term of this Franchise. If no other governmental authority lawfully exercises such jurisdiction, the City Council shall have the jurisdiction to declare by ordinance what shall constitute safe, adequate, and efficient service and to prescribe and fix by ordinance maximum just and reasonable rates for furnishing such service. In the event the Grantee fails to render electrical transmission and distribution at just and reasonable rates or to maintain its properties and facilities in good working order in the manner now or hereafter required by law and the terms of this Franchise and any such failure continues after the Grantee has been given notice thereof and a reasonable time to remedy the same under the circumstances then existing, then the Grantee shall forfeit the Franchise hereby granted, provided the City has complied with the requirements of Section III, Termination of the Franchise.

It is understood and agreed that the provisions of this section shall not apply to the Grantee's electric service to the City itself, which shall be provided under the terms of the Grantee's Public Authority Tariff.

SECTION XIII. GENERAL PROVISIONS

(a) It is understood that the provisions of this Franchise shall not bar or prevent the City from levying a license tax against the Grantee or any other tax against the Grantee or on the Grantee's property now or hereafter permitted by law; but, on the contrary the rights of the City in this respect shall remain unaffected by any terms of this Franchise.

Notwithstanding the foregoing, the City hereby agrees with the Grantee that no franchise or specific pole or wire tax shall be imposed or charged against the Grantee, its successors or assigns, by the City during the life of the Franchise.

(b) In the event the Grantee abandons any of its properties and facilities, the Grantee shall comply with any and all federal, state and local laws and regulations pertaining to the abandonment of such properties and such facilities. Any such abandonment shall be subject to review at all times by the Director of Public Works, or such other person or persons as the City Manager may from time to time designate and shall be accomplished at the expense of the Grantee. Such abandonment shall be accomplished within a reasonable period of time. Upon the refusal, failure or neglect of the Grantee to abandon said properties and facilities consistent with any and all federal, state and local laws and regulations, the City may accomplish the abandonment consistent with any and all federal, state, and local laws and regulations pertaining to the abandonment of such properties and facilities and collect the cost from the Grantee. The City shall not be liable to the Grantee for damages resulting from such action.

(c) This Franchise is granted upon the express condition that the City shall be allowed to purchase electricity at the same rates and on the same terms and conditions as the Grantee's other Public Authority customers. In the event the City is not allowed by the Grantee to purchase electricity at such rates and upon such terms and conditions the City may terminate this Franchise as provided in Section III. Termination of the Franchise.

SECTION XIV. METHOD OF ACCEPTANCE.

Any person, firm, corporation, or other entity bidding for this Franchise shall deposit with the bid its check in the sum of \$1,000, payable to the City as the security to the City that the Grantee shall accept the Franchise within thirty (30) after the adoption of the ordinance granting the same. Upon the failure of the Grantee to accept this Franchise

pursuant to the provisions of this section, such Grantee shall forfeit this deposit to the City. The checks of all other bidders shall be returned upon the acceptance of the Franchise by the selected Grantee. The check will be returned to the successful bidder upon the execution of the Franchise.

This Franchise shall be and become effective and shall constitute a contract of Franchise between the City and Grantee when the Grantee shall cause a copy thereof to be signed by a proper official of the Grantee duly authorized thereto and under its corporate seal, duly attested to by an authorized official of the Grantee, accepting the terms and provisions of this Franchise on behalf of said Grantee.

Adopted: November 28, 1995

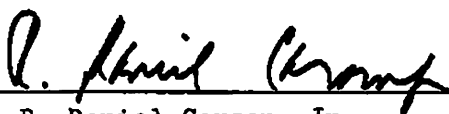
Certified: Patricia W. Kost
Clerk of Council

FORM OF ACCEPTANCE

The foregoing Franchise, as set forth in the ordinance adopted by the Council of the City of Lynchburg, Virginia on November 28, 1995, is hereby accepted by Appalachian Power Company, Grantee, according to the terms thereof, for a period beginning August 17, 1996 and continuing through August 16, 2016.

This acceptance is executed on behalf of Appalachian Power Company, by R. Daniel Carson, Jr., its Vice President, with its corporate seal hereto affixed and attested by T. E. Mitchell, its Assistant Secretary, this 11th day of January, 1996, by virtue of authority duly and properly vested in them as officers of the said company.

APPALACHIAN POWER COMPANY

By 
R. Daniel Carson, Jr.

Its VICE PRESIDENT

Attest:

