

CITY OF CHERRYVALE

ORDINANCE 18-4700

An ordinance, granting to Kansas Gas and Electric Company, a Kansas Corporation, doing business as Westar Energy, its successors and assigns, an electric franchise, prescribing the terms thereof and relating thereto, and repealing all ordinances or parts of ordinances inconsistent with or in conflict with the terms hereof.

BE IT ORDAINED BY THE GOVERNING BODY OF: Cherryvale, Kansas

SECTION 1. That in consideration of the benefits to be derived by the City of Cherryvale, Kansas (the "City"), and its inhabitants, there is hereby granted to Kansas Gas and Electric Company, a Kansas Corporation, doing business as Westar Energy, hereinafter sometimes designated as "Company," said Company being a corporation engaged in the business of selling and furnishing electric power throughout the state of Kansas and to the inhabitants of the City, the right, privilege, and authority for a period of ten years from the effective date of this ordinance, to occupy and use the several streets, avenues, alleys, bridges, parks, parkings, and public places of said City, for the placing and maintaining of equipment and property necessary to carry on the business of selling and distributing electricity for all purposes to the City, and its inhabitants, and through said City and beyond the limits thereof; to obtain said electricity from any source available; and to do all things necessary or proper to carry on said business in the City.

SECTION 2. As further consideration for the granting of this franchise, and in lieu of any city occupation, license, or revenue taxes, the Company shall pay to the City during the term of this franchise 5% of its gross cash receipts from the sale of electric energy for use within the corporate limits of said City, such payment to be made monthly for the preceding monthly period. Gross cash receipts shall not include other operating revenues received by the Company, which are not related to the "sale of electric energy." Other operating revenues include, but are not limited to, delayed payment charges, connection fees, disconnection and reconnection fees, collection fees and return check charges. Company will use commercially reasonable efforts to ensure the accuracy of its records and of the determination of the amount of gross cash receipts subject to the fee provided for in this Section 2. At the option of either the City or the Company and upon written notice given by one to the other sent at least (90) days before the fifth anniversary of this franchise, the rate of compensation hereunder may be renegotiated. Any new rate of compensation that results from such renegotiation shall be effective on and after the fifth anniversary of this franchise. Notwithstanding anything to the contrary in this Franchise, the fee provided for in this Section 2 shall not become effective within any area annexed by the City until 30 days after the City provides the Company with a certified copy of the annexation ordinance, proof of publication as required by law and a map of the city detailing the annexed area.

SECTION 3. That Company, its successors and assigns, in the construction, maintenance, and operation of its electric transmission, distribution and street lighting system, shall use all reasonable and proper precaution to avoid damage or injury to persons and property, and shall hold and save harmless the City, from any and all damage, injury and expense caused by the negligence of said Company, its successors and assigns, or its or their agents or servants.

SECTION 4. After the approval of this ordinance by the City, Company shall file with the City Clerk, the Company's unconditional written acceptance of this ordinance. Said ordinance shall become effective and be in force and shall be and become a binding contract between the parties hereto,

their successors and assigns, from and after the first day of the first month after such acceptance is provided by said Company to the City after its final passage, approval and publication as required by law, and acceptance by said Company.

SECTION 5. That this ordinance, when accepted as above provided, shall constitute the entire agreement between the City and Company relating to this franchise and the same shall supersede and cancel any prior understandings, agreements, or representations regarding the subject matter hereof, or involved in negotiations pertaining thereto, whether oral or written.

SECTION 6. This franchise is granted pursuant to the provisions of K.S.A. 12-2001.

SECTION 7. That any and all ordinances or parts of ordinances in conflict with the terms hereof are hereby repealed.

SECTION 8. The Company will file this ordinance with the State Corporation Commission of Kansas. Should the State Corporation Commission take any action with respect to this franchise ordinance, which would or may preclude Kansas Gas and Electric Company, a Kansas Corporation, doing business as Westar Energy, from recovering from its customers any cost provided for hereunder, the parties hereto shall renegotiate this ordinance in accordance with the State Corporation Commission's ruling.

SECTION 9. A franchise shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time when any assignment is made. In the event of any assignment of this franchise, Company shall be released from all obligations which are assumed in writing by its assignee upon the signing by such assignee of an assumption of the franchise being assigned.

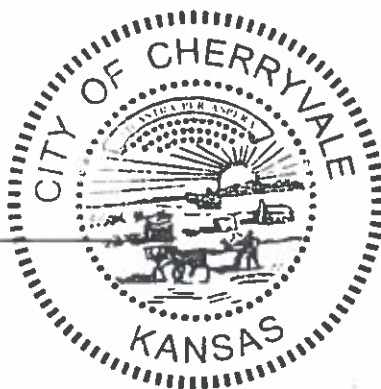
PASSED and APPROVED this 5th day of November, 2018.

EFFECTIVE DATE. This ordinance shall be in full force and effect upon its publication in the official city newspaper.

PASSED AND APPROVED By the Governing Body of the City of Cherryvale, Kansas this 5th Day of November, 2018.

ATTEST:

Karen Davis
Karen Davis, City Clerk



John M. Wright
John M. Wright, Mayor