



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 08/09/2022

REQUESTER: Kathryn Walker, City Attorney

PRESENTER: Kathryn Walker, City Attorney

ITEM TITLE: CONSIDERATION OF ADOPTION, REJECTION, POSTPONEMENT, AND/OR AMENDMENT OF ORDINANCE O-2122-48 UPON SECOND AND FINAL READING: AN ORDINANCE OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, GRANTING TO THE OKLAHOMA GAS AND ELECTRIC COMPANY, AN OKLAHOMA CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT TO PRODUCE, TRANSMIT AND DISTRIBUTE ELECTRICITY WITHIN THE CITY LIMITS AND TO SELL ELECTRICITY THEREIN FOR ALL PURPOSES FOR WHICH IT MAY BE USED, TO THE CITY OF NORMAN, CLEVELAND COUNTY, OKLAHOMA, ITS INHABITANTS AND THE PUBLIC GENERALLY, AND THE RIGHT TO CONSTRUCT, MAINTAIN AND OPERATE A SYSTEM OF POLES, WIRES, CONDUITS AND OTHER FACILITIES AND EQUIPMENT IN, UPON, ACROSS, UNDER AND OVER THE STREETS, ALLEYS, PUBLIC GROUNDS AND OTHER PLACES IN THE CITY FOR SUCH PURPOSES FOR A PERIOD OF TWENTY-FIVE (25) YEARS BEGINNING ON JANUARY 11, 2023, AND ENDING ON JANUARY 10, 2048, SUBJECT TO THE APPROVAL OF THE VOTERS AND ACCEPTANCE OF THIS ORDINANCE; PROVIDING COMPENSATION TO THE CITY; AND CALLING A SPECIAL ELECTION ON JANUARY 10, 2023.

BACKGROUND:

Article 18, Section 5(a) of the Oklahoma Constitution requires voter approval of a franchise in order for the City to grant the right to use its streets to sell and distribute utility services to its residents to a public utility company. A franchise is achieved by putting forth a franchise agreement to the voters in the form of an ordinance and calling a city-wide election. Franchise agreements are typically longer term and provide for a franchise fee to be paid to the City in exchange for access to the City streets and rights of way for utility services.

Recently, OG&E representatives approached the City about renewing its franchise for a twenty five (25) year term. The prior franchise agreement, which expired in 2018 and has been on a month to month basis since then, was also for twenty five (25) years.

DISCUSSION:

The proposed franchise agreement provides for an annual payment of a franchise fee equal to three percent (3%) of OG&E's gross revenues arising from the sale of electricity within the city limits of Norman. The franchise fee collected from OG&E for fiscal year 2020-2021 (FYE 2021) was \$2,921,195. In addition to the franchise fee, OG&E furnishes free electricity to the City for operation of traffic signal lights and municipal buildings in an amount of up to one-half of one percent (0.5%) of the kilowatt hours sold to Norman customers within the preceding fiscal year. This provision resulted in the City receiving free electricity for traffic signal lights and municipal buildings during part of the last fiscal year. OG&E also collected and remitted sales taxes to the City in FYE 21.

With this agreement, the City grants to OG&E the "right, privilege and authority to produce, transmit, distribute, and sell electricity" within Norman's City limits, and the "right, privilege and authority to construct, maintain and operate a system of poles, wires, conduits, transformers, substations, and other facilities and equipment in, upon, across, under and over the streets, alleys, public grounds and other places" for the purpose of producing, transmitting, distributing and selling the electricity to the City of Norman and its inhabitants."

OG&E feels strongly that the franchise proposed to the voters should match the franchises it has in other cities and towns across Oklahoma; however, if another city negotiates a better rate than the 3% franchise fee imposed by this ordinance, the higher franchise fee will automatically be imposed in Norman.

OG&E has adopted an Environmental Policy that, among other things, obligates OG&E to conduct business in a manner that minimizes environmental impacts and supports environmental protection, emission, waste and release minimization, efficient resource management and sustainability. Staff is working with OG&E to develop an agreement with Norman to increase the reliance on renewable sources of energy. OG&E wishes to partner in good faith with Norman to help Norman achieve its goals related to renewable energy.

The Oklahoma Constitution reserves the decision of granting a franchise to the voters. OG&E has requested that the City put the franchise before the voters in the January 10, 2023 election.

Ordinance O-2123-48 was adopted Upon First Reading on June 14, 2022. At the request of OG&E, the Second and Final Reading of Ordinance O-2122-48 was postponed until August 9, 2022.

RECOMMENDATION: Staff recommends that Ordinance O-2122-48 be adopted by Council on Second and Final Reading for submission to the voters.