

Ordinance No. 2

AN ORDINANCE GRANTING TO HOUSTON LIGHTING & POWER COMPANY, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE AND FRANCHISE TO CONDUCT WITHIN THE CITY AN ELECTRICAL LIGHTING AND POWER BUSINESS AND TO ERECT, CONSTRUCT, MAINTAIN, OPERATE, USE, EXTEND, REMOVE, REPLACE AND REPAIR IN, UNDER, UPON, OVER, ACROSS AND ALONG ANY AND ALL OF THE PRESENT AND FUTURE PUBLIC ROADS, HIGHWAYS, STREETS, DEDICATED EASEMENTS, LANES AND ALLEYS OF THE CITY AND OVER AND ACROSS ANY STREAM OR STREAMS, BRIDGE OR BRIDGES, NOW OR HEREAFTER OWNED OR CONTROLLED BY IT A SYSTEM OF POLES, POLE LINES, TOWERS, TRANSMISSION LINES, WIRES, GUYS, CABLES, CONDUITS AND OTHER DESIRABLE INSTRUMENTALITIES AND APPURTENANCES (INCLUDING TELEGRAPH AND TELEPHONE POLES AND WIRES FOR THE COMPANY'S OWN USE), NECESSARY OR PROPER FOR THE SUPPLY AND DISTRIBUTION OF ELECTRICITY FOR LIGHT, POWER AND HEAT, AND FOR ANY OTHER PURPOSE FOR WHICH ELECTRICITY MAY BE USED, TO THE MUNICIPALITY AND INHABITANTS OF THE MUNICIPALITY, OR ANY OTHER PERSON OR PERSONS FOR A PERIOD OF FIFTY (50) YEARS FROM AND AFTER THE fourth (10) DAY OF June 1969; REGULATING THE USE OF STREETS BY THE COMPANY AND THE REPAIR AND RESTORATION OF STREETS DISTURBED BY CONSTRUCTION; CONTAINING A CONTRACT BY THE COMPANY TO FURNISH FIRST-CLASS SERVICE AND THE GRADE OF SERVICE TO ITS CUSTOMERS AS PROVIDED BY ITS RATE SCHEDULES EXCEPT UNDER CONDITIONS BEYOND THE COMPANY'S CONTROL; PROVIDING FOR THE TEMPORARY REMOVAL, RAISING AND LOWERING OF WIRES AND OTHER APPURTENANCES AND ESTABLISHING STANDARDS FOR THEIR CONSTRUCTION; PROVIDING FOR COMPENSATION TO BE PAID TO THE CITY; PROVIDING FOR USE BY THE CITY FOR ITS TRAFFIC SIGNAL LIGHT SYSTEM AND ITS POLICE AND FIRE ALARM SYSTEM OF CERTAIN WIRE AND CONDUIT SPACE; PROVIDING THAT THIS FRANCHISE SHALL NOT BE EXCLUSIVE; PROVIDING THAT THE COMPANY'S OBLIGATION TO FURNISH EFFICIENT SERVICE AT REASONABLE RATES; PROVIDING A SEVERABILITY CLAUSE; RESERVING ALL POWERS OF REGULATION; PROVIDING FOR INDEMNITY BY THE COMPANY TO THE CITY; MAKING MISCELLANEOUS PROVISIONS RELATIVE TO THIS GRANT OF FRANCHISE; REPEALING ALL PREVIOUS ELECTRICAL LIGHTING AND POWER FRANCHISE ORDINANCES; PROVIDING FOR ACCEPTANCE BY THE COMPANY; AND PROVIDING AN EFFECTIVE DATE.

* * * * *

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE TOWN OF MAGNOLIA, TEXAS:

Section 1. That, subject to the terms, conditions and provisions of this ordinance, the Town of Magnolia, Texas, in the caption above and hereinafter referred to as the "City", does hereby grant unto Houston Lighting & Power Company, hereinafter called "Company", its successors and assigns, the right, privilege and franchise to conduct within the boundaries of the City, as such boundaries now

exist or may hereafter be extended, an electrical lighting and power business and to erect, construct, maintain, operate, use, extend, remove, replace and repair, in, under, upon, over, across and along any and all of the present and future public roads, highways, streets, dedicated easements, lanes and alleys owned or controlled by the City, and over and across any stream or streams, bridge or bridges, now or hereafter owned or controlled by City, a system of poles, pole lines, towers, transmission lines, wires, guys, conduits, cables and other desirable instrumentalities and appurtenances (including telegraph and telephone poles and wires for use of Company), necessary or proper for the purpose of carrying, conducting, supplying, distributing and selling to the municipality and the inhabitants of said City or other person or persons, firms or corporations, electricity for light, power and heat, and for any other purpose for which electricity may be used; to carry, conduct, supply and distribute electricity by means of said poles, pole lines, towers, transmission lines, conduits, cables or other instrumentalities, and to sell same to said City and inhabitants thereof, or to any other person or persons, firms or corporations.

Section 2. Upon the filing with the City by the Company of the acceptance required hereunder, this franchise shall be in full force and effect for a term and period of fifty (50) years from and after the 10th day of June, 1967.

Section 3. All poles erected by the Company pursuant to the authority herein granted shall be of sound material and reasonably straight, and shall be so set that they will not interfere with the flow of water in any gutter or drain, and so that the same will interfere as little as

practicable with the ordinary travel, on the streets, sidewalks, or other public ways. Within the streets or other public ways of the City, the location and route of all poles, stubs, guys, anchors, lines, conduits and cables placed and constructed and to be placed and constructed by Company in the construction and maintenance of its electrical lighting and power system in the City, shall be subject to the reasonable and proper regulation, control and direction of the City, or of any City official to whom such duties have been or may be duly delegated, which regulation and control shall include, but not by way of limitation, the right to require in writing the relocation of Company facilities, exclusive of street lighting and facilities installed for service directly to the City, at Company's cost within the streets or other public ways whenever such shall be reasonably necessary on account of the widening, change of grade, relocation, or other City construction within such streets or public ways.

Section 4. The surface of any public road, highway, streets, lanes, alleys, or other public place disturbed by Company in erecting, constructing, maintaining, operating, using, extending, removing, replacing or repairing its electrical lighting and power system shall be restored immediately after the completion of the work to as good a condition as before the commencement of the work and maintained to the satisfaction of the City, or of any City official to whom such duties have been or may be duly delegated, for one year from the date the surface of said public road, highway, street, lane, alley, or other public place is broken for such construction, maintenance or removal work, after which time responsibility for the maintenance shall become the duty of the City. No public road, highway, street, lane, alley, or other public place shall

be encumbered by construction, maintenance or removal work by Company for a longer period than shall be necessary to execute such work.

Section 5. The service furnished hereunder to the City and its inhabitants shall be first class in all respects, considering all circumstances, and Company shall furnish the grade of service to its customers as provided by its rate schedules and shall maintain its system in reasonable operating condition during the continuance of this agreement. An exception to this requirement is automatically in effect when due to shortages in materials, supplies and equipment beyond the control of the Company and when due to fires, strikes, riots, storms, floods, war and other casualties, and when due to Governmental regulations, limitations and restrictions as to the use and availability of materials, supplies and equipment and as to the use of the services, and when due to unforeseen and unusual demands for service. In any of which events the Company shall do all things reasonably within its power to restore normal service.

Section 6. The Company on the written request of any person shall remove or raise or lower its wires temporarily to permit construction work in the vicinity thereof or to permit the moving of houses or other bulky structures. The expense of such temporary removal, raising or lowering of wires shall be paid by the benefited party or parties, and Company may require such payment in advance, being without obligation to remove, raise, or lower its wires until such payment shall have been made. The Company shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes. All of Company's lines for the transmission and distribution of electrical energy, located within City,

shall be constructed, operated and maintained, as to clearances, in accordance with the National Electrical Safety Code, as published in March, 1948, by the National Bureau of Standards, Handbook 30; provided, however, nothing herein shall impair the right of the City in the future by ordinance to adopt and require compliance with any new, amended or revised code, or by ordinance to require compliance with such further or different standards as may be found to be in the public interest.

Section 7. In consideration for the rights and privileges herein granted, the Company agrees to pay to the City for each year of the term of this franchise the sum of \$500 plus a sum equal to 4% of the gross receipts for such year, exclusive of receipts for street lighting, received by the Company from its electrical lighting and power sales for consumption within the corporate limits of the City. Payment shall be made by the 15th day of each February for the preceding calendar year. For fractional calendar years said \$500 shall be proportionately reduced and said 4% shall be based upon the gross receipts for that part of the year involved. Said payments shall be in lieu of any license charge or fee, street or alley rental, or other character of charge or levy by the City for the use or occupancy of the public roads, highways, streets, lanes, alleys, or other public places in the City and in lieu of any pole tax or inspection fee tax.

Section 8. In addition to the considerations set forth in Section 7, the Company shall hold itself ready to furnish, free of charge, subject to the use of the City, such pole space as may be required from time to time for the installation of City owned traffic, police and fire alarm system conductors; provided such conductor space does

not exceed the capacity of one crossarm on any one pole and provided such space is then available on existing poles. The specific location for these traffic, police and fire alarm conductors on Company poles shall be determined by the Company and will be allotted at the time specific applications for space are received from the City. All City traffic, police and fire alarm circuits on Company poles shall be installed in strict compliance with the applicable provisions of the National Electrical Safety Code, Handbook 30, as published in March, 1948, by the United States Department of Commerce, Bureau of Standards; provided, however, nothing herein shall impair the right of the City in the future by ordinance to adopt any new, amended or revised code, or by ordinance to specify such further or different standards as may be found to be in the public interest. Where main underground duct lines are located between manholes, the Company shall permit free of charge the installation in one interior duct by the City of its traffic, police or fire alarm signal cables; provided space is available in an interior duct not suitable for power circuits without interference with the Company's system neutral conductors. All cables installed by the City in Company ducts shall be of the nonmetallic sheath type to prevent corrosive or electrolytic action between City and Company owned cables. A request for duct assignment shall in each instance be submitted to the Company and a sketch showing duct allocation shall be received from the Company prior to the installation of City cables in Company owned duct lines. All City owned conductors and cables, whether on poles or in duct lines, shall be constructed, maintained and operated in such manner as to not interfere with or create a hazard in the operation of the Company's electrical

transmission and distribution system. It is further agreed that the Company shall not be responsible to any party or parties whatsoever for any claims, demands, losses, suits, judgments for damages or injuries to persons or property by reason of the construction, maintenance, inspection or use of the traffic signal light system or police and fire alarm systems belonging to the City and constructed upon Company's poles or in its ducts, and the City shall indemnify and hold the Company harmless against all such claims, losses, demands, suits and judgments, but the City does not, by this agreement, admit primary liability to any third party by reason of the City's operation and use of such police and fire alarm wires, such being a function of government.

Section 9. Nothing contained in this ordinance shall ever be construed as conferring upon Company any exclusive rights or privileges of any nature whatsoever.

Section 10. It shall be the Company's obligation as provided in Section 5 hereof to furnish efficient electrical service to the public at reasonable rates and to maintain its property in good repair and working order, except when prevented from so doing by forces and conditions not reasonably within the control of Company. Should Company fail or refuse to maintain its properties in good order and furnish efficient service at all times throughout the life of this grant, except only when prevented from so doing by forces and conditions not reasonably within the control of the Company, or should the Company fail or refuse to furnish efficient service at reasonable rates, lawfully determined by the City, throughout the life of this grant, excepting only during such periods as the Company shall in good faith and diligently contest the reasonableness of the rates in question, then it shall pay to the

City the sum of Twenty-Five Dollars (\$25) for each day it shall so fail or refuse after reasonable notice thereof and a hearing thereon by the City. Any suit to recover such sum shall be filed within one year from the date of accrual.

Section 11. If any provision, section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional, void or invalid (or for any reason unenforceable), the validity of the remaining portions of this ordinance shall not be affected thereby, it being the intent of the City in adopting this ordinance that no portion thereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion, provision or regulation, and to this end, all provisions of this ordinance are declared to be severable.

Section 12. The City by the granting of this franchise does not surrender or to any extent lose, waive, impair or lessen the lawful powers and rights, now or hereafter vested in the City to regulate the rates and services of Company; and Company by its acceptance of this franchise agrees that all such lawful regulatory powers and rights as the same may be from time to time vested in the City shall be in full force and effect and subject to the exercise thereof by the City at any time and from time to time.

Section 13. The Company, its successors and assigns, shall protect and hold City harmless against all claims for damages or demands for damages to any person or property by reason of the construction and maintenance of its electrical lighting and power system, or in any way growing out of the granting of this franchise, either directly or indirectly, or by reason of any act, negligence, or nonfeasance of the contractors, agents, or employees of Company, its successors or assigns, and shall

refund to City all sums which it may be adjudged to pay on any such claim, or which may arise or grow out of the exercise of the rights and privileges hereby granted, or by the abuse thereof, and Company, its successors and assigns, shall indemnify and hold the City harmless from and on account of all damages, costs, expenses, actions, and causes of action that may accrue to or be brought by any person, persons, company or companies at any time hereafter by reason of the exercise of the rights and privileges hereby granted, or of the abuse thereof.

Section 14. In granting this franchise, it is understood that the lawful power vested by law in the City to regulate all public utilities within City, and to regulate the local rates of public utilities within the City within the limits of the Constitution and laws, and to require all persons or corporations to discharge the duties and undertakings, for the performance of which this franchise was made, is reserved; and this grant is made subject to all lawful rights, powers and authorities, either of regulation or otherwise, reserved to the City by law.

Section 15. This franchise replaces all former franchise agreements or ordinances with Company, or its predecessors, which are hereby repealed, such repeal to be effective upon the date operations are started under this franchise.

Section 16. The Company shall, within thirty (30) days from the date this ordinance is passed and approved, file with the City a written statement signed in its name and behalf in the following form:

"To Magnolia, Texas:

"The Company for itself, its successors and assigns, hereby accepts the above and foregoing ordinance and agrees to be bound by all of its terms and provisions.

HOUSTON LIGHTING & POWER COMPANY

By _____

"Dated the _____ day of _____, 19____."

Section 17. This ordinance shall take effect and be in force from and after its passage and approval, and upon acceptance by the Company the term of this franchise shall begin and continue in accordance with Section 2 hereof.

Passed and approved this the 10th day of June, 1969.

Cecil E. Smith
MAYOR

Alfred J. Hanks
ALDERMAN

Carl J. Weaver
ALDERMAN

Wayton W. Barber Jr.
ALDERMAN

James S. Johnson
ALDERMAN

E. C. J. Green Jr.
ALDERMAN

ATTEST:

J. O'Leary J. Simmons
SECRETARY

THE STATE OF TEXAS §

COUNTY OF MONTGOMERY §

I, LORNALEE J. SIMMONS, the duly appointed, qualified and acting Secretary of the Town of Magnolia, Texas, hereby certify that the above and foregoing ordinance of the Town of Magnolia was passed at a regular meeting of the Board of Aldermen of the Town of Magnolia held on the 10th day of JUNE, 1969, at which meeting the Mayor and Alderman HALEY HANKS, CECIL GREENES, DAVID W. BARBER JR., JAMES S. JOHNSON and E. M. GREEN JR. were present and acted as the Board throughout; that the same has been approved by the Mayor and is duly attested by the Secretary and that the same has been duly engrossed and enrolled in the records of Magnolia, Texas.

EXECUTED under my hand and the official seal of Magnolia, Texas, this 10th day of JUNE, 1969.

J. O'Leary J. Simmons
SECRETARY
MAGNOLIA, TEXAS

(SEAL)

To Magnolia, Texas:

The Company for itself, its successors and assigns, hereby accepts the above and foregoing ordinance and agrees to be bound by all of its terms and provisions.

HOUSTON LIGHTING & POWER COMPANY

BY *F. M. Austin*
F. M. Austin, Senior Vice President
Dated the 12th day of June, 1969.

THE STATE OF TEXAS §
COUNTY OF MONTGOMERY §

I, *Jacobs L. Simmons*, the duly appointed, qualified and acting Secretary of Magnolia, Texas, hereby certify that the above and foregoing Acceptance was received and filed in the office of the Secretary of the Town of Magnolia on the 12th day of June, 1969.

EXECUTED under my hand and the official seal of Magnolia, Texas, this 12th day of June, 1969.

Jacobs L. Simmons
SECRETARY
TOWN OF MAGNOLIA, TEXAS

(SEAL)

THE STATE OF TEXAS §
COUNTY OF MONTGOMERY §

Before me, the undersigned authority, a Notary Public in and for the State and County aforesaid, on this day personally appeared Lela Lee J. Simmons, known to me to be a credible person, who upon oath deposes and says:

I am the Secretary of the Town of Magnolia, Texas, a municipality incorporated under the provisions of Chapter 11 of Title 28 of the Revised Civil Statutes of Texas (1925), and have acted in such capacity during the period of time covered by this affidavit. On the 10th day of June, 1969, the Board of Aldermen of said Town of Magnolia, at a regular meeting of said Board, enacted an ordinance granting unto the Houston Lighting & Power Company a franchise under which such corporation may use the streets, alleys and other public places within the corporate limits of said Town of Magnolia in accordance with the terms and conditions in such ordinance provided. After the enactment of the above-described ordinance the full text thereof was published by posting the same for at least ten days (between the 11th day of June, 1969, and the 23rd day of June, 1969) in the following three public places in said Town of Magnolia: (Give exact locations)

1. U.S. Post Office
2. Montgomery County Community Bldg. at Magnolia
3. Sportsman's Restaurant

Lela Lee J. Simmons
(Name)

Subscribed and sworn to before me, the undersigned Notary Public, by Lela Lee J. Simmons, on this the 23 day of June, 1969, to certify which witness my hand and seal of office.

Philip D. Coleman
Notary Public in and for
Montgomery County, Texas

(SEAL)