

ORDINANCE NO. #93-2

AN ORDINANCE AMENDING THE EXISTING FRANCHISE BETWEEN THE CITY AND TEXAS UTILITIES ELECTRIC COMPANY TO PROVIDE FOR A DIFFERENT CONSIDERATION; EXTENDING THE TERM OF SAID EXISTING FRANCHISE; PROVIDING AN EFFECTIVE DATE; PROVIDING FOR ACCEPTANCE BY TEXAS UTILITIES ELECTRIC COMPANY; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, Texas Utilities Electric Company (hereinafter called "TU Electric") is engaged in the business of providing electric utility service within the City and is using the public streets, alleys, grounds and rights-of-ways within the City for that purpose under the terms of a franchise ordinance heretofore duly passed by the governing body of the City and duly accepted by TU Electric; and

WHEREAS, TU Electric has, pursuant to said franchise ordinance, been paying to the City a sum equal to three percent (3%) of its gross receipts from the retail sale of electric power and energy within the City for the rights and privileges set forth in said franchise ordinance and, in addition thereto, has reimbursed the City for its ratemaking expenses pursuant to Section 24 of the Public Utility Regulatory Act; and

WHEREAS, the City and TU Electric desire to amend said franchise ordinance to provide for a different consideration to consist of a sum equal to four percent (4%) of its gross receipts

from the retail sale of electric power and energy within the City, which different consideration includes, among other things, TU Electric's obligation to reimburse the City for its ratemaking and other regulatory expenses to be incurred by the City involving the regulation of TU Electric;

Now, Therefore,

BE IT ORDAINED BY THE CITY _____ COUNCIL _____ OF THE CITY OF
CUMBY _____, TEXAS:

SECTION 1. The consideration payable by TU Electric for the rights and privileges granted to TU Electric by the franchise ordinance heretofore duly passed by the governing body of this City and duly accepted by TU Electric is hereby changed to be four percent (4%) of its gross receipts from the retail sale of electric power and energy within the corporate limits of the City, said changed percentage to be applied to said gross receipts beginning on the first day of the month immediately following the date on which TU Electric accepts this ordinance, and being payable as specified in said franchise ordinance and based upon the same time periods as specified in said franchise ordinance and being payment for the said rights and privileges during the period specified in said franchise ordinance, said payment being in lieu of and shall be accepted as payment for all of TU Electric's obligations to pay municipal charges, fees, rentals, pole rentals, wire taxes, inspection fees, easement taxes, franchise taxes, certain

regulatory expenses under Section 24 of the Public Utility Regulatory Act or any similar or successor law, or other charges and taxes of every kind, except ad valorem taxes, sales and use taxes, and special taxes and assessments for public improvements.

SECTION 2. TU Electric shall make a one-time payment hereunder for the purpose of making the changed consideration as specified in Section 1 hereof effective as specified in said Section 1 without altering the payment dates specified in said franchise ordinance heretofore duly passed by the governing body of this City and duly accepted by TU Electric, said one-time payment being due and payable thirty (30) days after TU Electric's acceptance of this ordinance as provided in Section 7 hereof, and being a sum calculated as follows: (a) TU Electric shall determine the monthly average of its gross receipts from the retail sale of electric power and energy within the City during the period upon which the most recent franchise payment made to the City prior to the date determined in accordance with Section 1 hereof was based; (b) the said monthly average of its said gross receipts shall be multiplied by 1% (0.01); and (c) the product so calculated shall be multiplied by the number of whole months from the date determined in accordance with Section 1 hereof through the last day of the last month of the period for which the most recent franchise payment made to the City prior to said date determined in accordance with Section 1 hereof was made.

SECTION 3. Notwithstanding anything to the contrary in Section 1 hereof, if TU Electric files general rate cases and the City incurs cumulative expenses, otherwise reimbursable by TU Electric under Section 24 of the Public Utility Regulatory Act or similar or successor law, in excess of \$4 million, then in such event, TU Electric shall reimburse all of the expenses incurred by the City in connection with all general rate cases filed during the period ended fifteen (15) years from the effective date hereof in excess of said \$4 million. The term "general rate case" as used in this Section means a rate case initiated by TU Electric in which it seeks to increase its rates charged to a substantial number of its customer classes in the City and elsewhere in its system and in which TU Electric's overall revenues are determined in setting such rates. City agrees to exercise reasonable best efforts, considering the facts and circumstances, to keep its expenses on average to under \$1,000,000 per general rate case.

SECTION 4. Notwithstanding the provisions of Section 1 hereof, TU Electric will continue to reimburse the City's ratemaking expenses, if any, in connection with the appeal and any remand of Public Utility Commission of Texas Docket No. 9300 that are otherwise reimbursable under Section 24 of the Public Utility Regulatory Act, and will continue to reimburse the City's ratemaking expenses, if any, in connection with Public Utility Commission of Texas Docket No. 11735 that are otherwise reimbursable under Section 24 of the Public Utility Regulatory Act

to the extent that said ratemaking expenses are incurred through the entry of the last action by the Public Utility Commission of Texas (i.e., the said Commission's order overruling the last motion for rehearing) in said Docket No. 11735; the City hereby agrees that any ratemaking expenses incurred in connection with said Docket No. 11735 that the City incurs on appeal of said order will be the City's sole responsibility and further agrees -- in the events that the City is a participant in the joint intervention of cities managed by the Steering Committee of TU Electric Service Area Cities intervening in Docket No. 11735, that the City decides to continue to participate with the Steering Committee in such appeal of said order, and TU Electric is required to reimburse said Steering Committee for ratemaking expenses under Section 24 of the Public Utility Regulatory Act that are incurred on appeal of said order in Docket No. 11735 -- to reimburse TU Electric the City's share of reimbursable expenses related to said appeal and owed by TU Electric to said Steering Committee determined by the methodology chosen by the said Steering Committee (the City to notify TU Electric of the method so chosen by the Steering Committee prior to the submission of an invoice by the Steering Committee for the payment by TU Electric of said reimbursable expenses related to said appeal).

SECTION 5. The said franchise ordinance heretofore duly passed by the governing body of this City and duly accepted by TU Electric shall not terminate as provided therein, but the initial term of

said franchise ordinance is hereby extended for a period of fifteen (15) years from and after the date on which said franchise ordinance would have otherwise terminated but for this extension.

SECTION 6. In all respects, except as specifically and expressly amended by this ordinance, the said franchise ordinance heretofore duly passed by the governing body of this City and duly accepted by TU Electric shall remain in full force and effect according to its terms.

SECTION 7. This ordinance shall take effect from and after its final passage and TU Electric's acceptance. TU Electric shall, within fifteen (15) days from the passage of this ordinance, file its written acceptance of this ordinance with the Office of the City Secretary in substantially the following form:

To the Honorable Mayor and City Council:

Texas Utilities Electric Company (TU Electric), acting by and through the undersigned authorized officer, hereby accepts, on this the 22nd day of September, 1993, Ordinance No. 93-2 amending the current franchise between the City and TU Electric.


TEXAS UTILITIES ELECTRIC COMPANY

By: Jerry R. Gill
Senior Vice President

SECTION 8. It is hereby officially found and determined that the meeting at which this ordinance is passed is open to the public as required by law and that public notice of the time, place and

purpose of said meeting was given as required.

PASSED AND APPROVED BY THE CITY _____ COUNCIL _____ OF THE CITY OF
CUMBY _____, TEXAS, this the 16TH day of
SEPTEMBER _____, 1993.



Mayor

ATTEST:



City Secretary

APPROVED AS TO FORM:

City Attorney