

**Ordinance # 2010-01
Franchise Granted to
Southwestern Public Service Company
by
Curry County, New Mexico**

Be it resolved by the Board of County Commissioners of Curry County, New Mexico ("County") as follows:

Section 1. The County grants to Southwestern Public Service Company, a New Mexico corporation ("SPS"), and SPS's legal representatives, successors, lessees, and assigns a franchise, permit, license, right-of-way, and privilege ("Franchise") to: (a) erect, construct, obtain, own, sell, equip, extend, expand, maintain, operate, replace, repair, and remove in the County works, systems, plants, poles, pole lines, wires, distribution lines, transmission lines, guys, cables, towers, transformer stations, conduits, fixtures, structures, appurtenances, and other facilities (collectively, "Facilities" or "SPS's Facilities") to generate, store, sell, transmit, conduct, distribute, furnish, or otherwise use electric power in, within, from, across, and through the County; (b) to serve, supply, and furnish to the County and its inhabitants and others electric power for light, heat, power, and other useful purposes to the County and its inhabitants and others; and (c) to use and occupy during the life of the Franchise all streets, avenues, roads, alleys, highways, sidewalks, bridges, and other structures and places on the County public grounds, both above and below the surface of those structures and places ("places on the County public grounds"), as the places on the County public grounds now exist or as they may after the effective date of

this ordinance be extended for any lawful purposes upon the terms and conditions of the Franchise.

Section 2. The Franchise shall exist and be in force from and after the effective date of this ordinance for a term of 25 years.

Section 3. SPS is authorized and empowered to do any and all things necessary and proper to be done and performed in executing the powers and utilizing the privileges granted in the Franchise, provided that: (i) all work done on the places on the County public grounds shall be done with the utmost diligence and the least inconvenience to the public; (ii) SPS shall within a reasonable time restore the places on the County public grounds excavated by it to their original condition as nearly as possible; and (iii) the work shall be done subject to the County's approval.

Section 4. If any proposed changes in the places on the County public grounds, or in the grades or drains of the places on the County public grounds would require a relocation of SPS's Facilities, the County shall give SPS written notice of the proposed changes at least 60 days in advance of the date the Facilities would need to be relocated. SPS shall bear the cost of relocating its Facilities. If SPS needs to cross any County street, avenue, road, alley, or highway with underground facilities, SPS will give the County prior notice of such crossing.

Section 5. SPS shall hold the County and the County's officers and agents harmless from any and all liability or claims of loss that may arise or be

incurred from the erection, construction, or operation of SPS's Facilities and that are attributable to SPS's negligence.

Section 6. SPS shall not be responsible or liable to any person, firm, corporation, association, partnership, or entity for the interruption of any service provided by SPS arising from floods, fires, wind storms, hail, ice storms, snow storms, earthquakes, accidents, acts of God, or any other cause beyond SPS's control, but in case of such interruption, SPS shall use reasonable diligence to re-establish service as soon as possible.

Section 7. SPS shall, within 60 days of the date the County passes this ordinance, file with the County SPS's written acceptance (in the Form of Exhibit A to this ordinance) of the Franchise. Upon SPS's filing the acceptance, the Franchise shall constitute all of the terms of the Franchise granted by the County to SPS.

Section 8. The Franchise is not exclusive. Nothing in the Franchise shall prevent the County from granting to any other person, firm, corporation, association, partnership, or entity, or operating itself where proper under the law, like, similar, or different rights, privileges, and franchises.

Section 9. The Franchise granted by this ordinance is subject to any New Mexico statute, constitutional provision, or court decision governing: (i) County's authority to impose a right-of-way or franchise fee for an electric utility's use of the public right-of-way and public areas in the unincorporated portions of County; or (ii) the rate recovery mechanism for SPS to recover any such fee.

Section 10. If any section, provision, sentence, clause, words, or phrase of this ordinance is, for any reason, held to be unconstitutional, unlawful, void, invalid, or in any way unenforceable, the validity of the remaining portions of this ordinance shall be unaffected by that holding.

Section 11. In the event of future legislation that renders all or part of this Franchise unenforceable or in the event of an emergency declared by the Curry County Board of Commissioners that directly or indirectly affects this Franchise or the subject matter of this ordinance, then County and SPS will negotiate in good faith regarding possible amendments to this Franchise to address that legislation or emergency.

Section 12. This ordinance shall become effective upon its passage as required by law and acceptance by SPS as required in this ordinance.

Having read and being familiar with this ordinance, the Board of Commissioners of Curry County, New Mexico, has duly executed this ordinance today, March 16, 2010.

THE BOARD OF COMMISSIONERS OF
CURRY COUNTY, NEW MEXICO

By: *Rodan*
Chairman

Attest:

Bruce Sherman
County Clerk



Approved:

By: _____

By: _____

Exhibit A
to
Ordinance # 2010-01
Franchise Granted to
Southwestern Public Service Company
by
Curry County, New Mexico
Dated March 16, 2010

The Board of Commissioners
of Curry County, New Mexico
Clovis, New Mexico

In accordance with Section 8 of the Franchise granted to Southwestern Public Service Company ("SPS") by Curry County, New Mexico, on March 16, 2010, SPS, a New Mexico corporation, accepts the Franchise.

Please indicate the date of the filing of this written acceptance in the space provided and return one copy to SPS.

Dated today, April 23, 2010

SOUTHWESTERN PUBLIC SERVICE COMPANY

By: C. Riley Hill
President

Filed with Curry County, New Mexico, today, April 23, 2010

BOARD OF COMMISSIONERS OF
CURRY COUNTY, NEW MEXICO

By: [Signature]



Attest: [Signature]
County Clerk