

The following Ordinance was offered by Alderman Jimmy McGrew, who moved its adoption:

ORDINANCE NO. 79

AN ORDINANCE

Upon the request of Entergy Louisiana, Inc., (the “Company”), and pursuant to La. R.S. 33:4401, this municipality’s police powers, and in order to protect the health, safety, and welfare of the public, Choudrant, Louisiana, (the “Municipality”) as set forth hereinbelow grants to the Company, its successors and assigns, a franchise, right, and privilege for a period of twenty-five (25) years from the date of adoption hereof, to distribute, deliver, sell and supply, in such a manner as it chooses, electric service throughout the Municipality, and to the inhabitants thereof, or to any person, firm, or corporation; the right to acquire, construct, operate, and maintain such plants, structures, transmission lines, distribution systems, cables, fibers, facilities, and equipment as may be useful or necessary for the generation, production, transportation, distribution, delivery and/or sale of electric service throughout the Municipality; the right to erect, operate, and maintain poles, masts, supports, wires, cables, fibers, transmission lines, conduits, conductors, substations, distribution systems, and any and all other appliances useful or necessary in connection with the sale, transportation, delivery and/or distribution of electric service on, over, under, along, upon, and across all of the present and/or future streets, roads, highways, alleys and public places of the Municipality; the right to repair, replace or remove same or any portion thereof; and the right to connect any such facilities to any other such facilities for the purpose of selling, transporting and/or distributing electric service into through, or beyond the boundaries of the Municipality.

SECTION 1: Be it ordained by the Mayor and Council Members of the Municipality in regular session duly convened, that the Municipality grants and there is hereby granted to Entergy Louisiana, Inc. (the “Company”), its successors and assigns, in addition to the rights and privileges presently enjoyed by the Company, a franchise, right, and privilege from the date of adoption hereof,

- (1) to distribute, deliver, sell and supply electric service throughout the Municipality and to the inhabitants thereof, or to any person, firm, or corporation, in such manner and from such sources as the said Company chooses;
- (2) to acquire, construct, operate, and maintain such plants, structures, transmission lines, distribution systems, cables, fibers, facilities, and equipment as may be useful or necessary for the generation, production, transportation, distribution, delivery and/or sale of electric power and energy throughout the Municipality;
- (3) to erect, operate, and maintain poles, masts, supports, wires, cables, fibers, transmission lines, conduits, conductors, substations, distribution systems, and any and all other appliances useful or necessary in connection with the sale,

transportation, delivery and/or distribution of electric service on, over, under, along, upon, and across all of the present and/or future streets, roads, highways, alleys and public places of the Municipality;

- (4) to repair, replace or remove same or any portion thereof; and
- (5) to connect any such facilities to any other such facilities for the purpose of selling, transporting and/or distributing electric service into, through, or beyond the boundaries of the Municipality.

SECTION 2: Be it further ordained that this Franchise does not authorize the Company to use its facilities for the transportation, distribution, or sale of electric service for or on behalf of third parties to any person, firm, or corporation other than the Company located within the boundaries of the Municipality, unless and until the Company has been notified, in writing, by the Municipality that the interests of the Municipality, including, but not limited to, its recovery of franchise fee revenue on such third party transactions, are adequately protected in connection with the provision of such third party service by the Company. In the event that the operations of the Company are unbundled, in connection with the adoption of a plan for retail open access or otherwise, the Company will have the right to assign its franchise rights with respect to particular facilities or operations as may be necessary to facilitate unbundled operations; provided, however, that any such assignment (1) shall not result in a reduction in the franchise fees received by the Municipality relating to the provision of electric service within the Municipality; and (2) shall ensure that the Municipality retains all other rights and protections afforded by this Franchise.

SECTION 3: Be it further ordained that this Franchise is granted upon and subject to the following provisions:

A. In maintaining its properties, the Company shall not unnecessarily or unreasonably damage, impair or obstruct the streets, roads, highways, alleys, sidewalks, and public grounds, and the Company shall at its own expense, without unreasonable delay, make all necessary repairs to remedy any damage or remove any obstruction caused by its operations hereunder, all in accordance with applicable industry standards. The Company shall obtain all necessary permits or approvals for construction, maintenance, and operations; provided, however, that this provision shall not apply to any requirements for such permits or approvals that are adopted or amended subsequent to the date of this Ordinance and that, as so adopted or amended, have a material effect on the Company's rights or obligations pursuant to this Franchise or on the Company's cost of providing service pursuant to this Franchise.

B. Upon request, the Company will make its best reasonable efforts to provide current

maps for specific areas showing feeder routes and the majority of pole locations, and will provide construction manuals that show the typical structural configurations used by the Company; provided, however, that the provision of such information by the Company shall not relieve the Municipality of any obligations that it may have pursuant to title 40, section 1749 or title 45, sections 141-146 of the Louisiana Revised Statutes or any related or successor statutes; and provided that such information shall be provided by the Company without any warrant as to its accuracy.

C. The Company shall use reasonable precautions to avoid damage or injury to persons or property, and shall hold and save harmless the Municipality from all damages, losses, and/or expense, including cost of defense, attributable to the negligence or fault of the Company, its agents or employees, while exercising any of the rights and privileges herein granted.

SECTION 4:

- A. In consideration of the facts:
- (i) that the Company, pursuant to this Ordinance holds a good, valid, and irrevocable twenty-five year franchise granted by the Municipality; and
 - (ii) that, to the extent the Company is permitted by law to provide such service, the Municipality has signed with the Company contracts for the purchase of all its electric service requirements, each of which contracts is for a period of two years from its date, or such longer period as may be required by the applicable rate schedule or other circumstances, and provides for periodic renewals for similar periods unless notice of termination is given as therein provided;

and other good and valid considerations, the Company agrees that it will pay to the Municipality a sum of money equal to two percent (2%) of the gross receipts of the Company from the sale of electric service at retail for residential and commercial purposes within the corporate limits of the Municipality (the Company's "gross receipts"), such payments to be calculated on such receipts commencing with the month of October, 2004, the first payment to be due and payable on the 10th day of January, 2004, subsequent payments to be due quarterly thereafter.

B. Further, upon the adoption of an appropriate Ordinance, the Municipality may require that the Company pay to the Municipality up to an additional two percent (2%) of the gross receipts of the Company from the sale of electric service at retail for residential and commercial purposes within the corporate limits of the Municipality (the "Additional Franchise Fee"). The Company shall include in its franchise fee calculation such Additional Franchise Fee commencing with respect to gross receipts received by the Company pursuant to bills rendered during the first calendar quarter following the adoption of an appropriate Ordinance, and the receipt of written notification from the Mayor of the Municipality. Pursuant to the October 11, 1988, General Order of the Louisiana Public Service Commission ("LPSC"), the Company shall collect from residential and commercial customers located within the corporate limits of the Municipality such additional percent of gross receipts as is not included in the Company's base rates through a line item included in bills rendered for electric service. The Company agrees that, in the event the LPSC approves the recovery of the Additional Franchise Fee through base rates, the Company shall remove the line item notation relating to the Additional Franchise Fee from the bills rendered to customers for electric service at such time as base rate recovery of the Additional Franchise Fee becomes effective.

C. It is distinctly understood and agreed that the percentage of gross receipts paid to the Municipality shall not apply to or include any receipts from the sale of electric energy to the

Municipality, or to Government or Municipal Agencies, or to any sale for industrial purposes or for resale within the corporate limits of the Municipality. It shall be the responsibility of the Municipality to notify the Company of any annexations or other changes in the corporate limits of the Municipality, so that the Company can make any adjustments to its gross receipts calculation that may be necessary as a result of such a change.

D. This obligation to make such payments to the Municipality shall remain in full force and effect so long as (1) the Company holds a good, valid and irrevocable twenty-five (25) year franchise granted by the Municipality, and (2) the Municipality, to the extent permitted by law, purchases all of its electric service requirements from the Company; provided, however:

- (i) This contract is wholly and entirely conditioned upon the approval of the Treasury Department of the United States of America and the Department of Revenue of the State of Louisiana, and upon the approval of the Louisiana Public Service Commission of the right of the Company to deduct from its gross revenues and charge as an operating expense any and all amounts which it may pay to the Municipality pursuant hereto other than such amounts as may be collected from customers through a line item on customer bill and in the event of failure to obtain the approval of any such authority for such purpose, the Company shall have the right to cancel this Contract upon thirty (30) days' notice; it being understood that in the event of the cancellation by the Company upon the grounds set out in this paragraph, the Company shall not be entitled to any refund of any monies theretofore paid to the Municipality pursuant hereto.
- (ii) Should the Municipality levy any new taxes, of any nature whatsoever, subsequent to the date of this Contract, or increase the rates of any taxes in existence on the date of this Contract (except uniform ad valorem taxes now authorized by Article VII, Section 18 of the Constitution of the State of Louisiana or other taxes that are generally applicable to all businesses in the Municipality), then the payments herein provided to be made by the Company to the Municipality will be reduced in an amount equal to the sum of such new and increased taxes, if any. The Additional Franchise Fee shall not be considered to be a new tax or an increase in the rate of a tax for purposes of this provision of the Ordinance.
- (iii) To the extent the Company is permitted by law to provide to the Municipality all of its electric requirements, in the event that retail open access is implemented in Louisiana, and is adopted for the Municipality, the obligation of Entergy Louisiana, Inc. to pay a franchise fee as set forth hereinabove shall cease to be conditioned on the purchase by the Municipality of all of its electric requirements from Entergy Louisiana, Inc.

E. In the event that the Company contracts with any town or municipality to pay a franchise fee more than four percent (4%) of gross receipts (includes fuel adjustment) of the Company from the sale of electric service at retail for residential and commercial purposes, the Company, upon the adoption of an appropriate Ordinance, and upon the receipt of written

notification from the Mayor of the Municipality, will increase the franchise fee paid to the Municipality by an amount which will equal the difference between four percent (4%) and the said higher amount paid to the other town or municipality; provided, however, that the Municipality shall have the right to increase the franchise fee to such higher amount only in the event that the Municipality is willing to accept all other terms and conditions of the franchise with the town or municipality that receives the higher amount. The Company shall include in its franchise fee calculation said increase in the franchise fee commencing with respect to gross receipts received by the Company pursuant to bills rendered during the first calendar quarter following the adoption of an appropriate Ordinance, and the receipt of written notification from the Mayor of the Municipality. In no event shall the Municipality have the right to increase the franchise fee to an amount in excess of five (5%) percent or such other amount as may established as a limitation on the application of the provisions set forth in title 33, section 4510 of the Louisiana Revised Statutes or any successor statute regarding the recovery of franchise fees. Any amount in excess of four percent (4%) shall be passed on by the Company to the residential and commercial customers in the Municipality as a line item on their bills for electric service to the extent that such treatment is afforded the Additional 2% Franchise Fee paid pursuant to Section 4(B), above.

F. The Municipality shall have the right, upon reasonable notice, to review the available data and calculations upon which the franchise fee calculations are based; provided that such notice must be received within three (3) years of the beginning of the period to which the data and/or calculations pertain.

SECTION 5: Be it further ordained that the Municipality shall make, adopt and enforce all ordinances necessary to protect the property and property rights of the Company owned and operated under this Franchise, while still recognizing the rights of any other entities holding valid franchises with the Municipality, and that the Municipality will not in any way interfere with the full legal use by the Company of the property which it now maintains or may hereafter maintain in the Municipality.

SECTION 6: Be it further ordained that this Ordinance, the public health and welfare and the public necessity requiring it, shall take effect from and after its adoption. Notwithstanding the foregoing, the Company shall file with the Municipality the Company's written acceptance of this Ordinance not later than thirty (30) days from the date of its passage.

SECTION 7: Be it further ordained that this Franchise shall be for a term of twenty-

five (25) years from date hereof, and upon exercise by the Company of any of the privileges granted hereunder, this Franchise shall be irrevocable. If either the Municipality or the Company, its legal representatives, successors, or assigns, institutes any action or proceedings to enforce the provisions of this Ordinance, the parties hereby agree that specific performance may be sought and obtained for any breach of this Ordinance, without the necessity of proving actual damages; provided, however, that either party may, at its option, waive its right to specific performance and collect damages resulting from any breach hereof or failure to perform hereunder.

SECTION 8: Nothing in this Franchise shall be construed as superseding, repealing, canceling, modifying, or in any way affecting any of the rights enjoyed by Entergy Louisiana, Inc. under that certain franchise granted by Ordinance No. 47, adopted by the Municipality on the 3rd day of August, 1981, and said franchise is hereby recognized as continuing in full force and effect in accordance with its terms. However, in the event of a conflict between said franchise and this Franchise, the provisions of this Franchise shall be controlling.

SECTION 9: Nothing herein shall be construed to constitute the grant of a franchise for the provision of any service other than electrical service to customers within the Municipality.

WHEREUPON, in open session said Ordinance was read and considered section by section and as a whole.

Alderman Eddie Ford seconded the motion to adopt the Ordinance.

The Mayor then ordered a vote of the yeas and nays on its final passage, and upon roll call such votes were as follows:

For the Adoption of the Ordinance: **YEAS:**

Alderman Jimmy McGrew
Alderman Eddie Ford
Alderman Joe R. Aswell

Against the adoption of the Ordinance: **NAYS:**

None

Present but not voting: **ABSTAINED:**

None

Not present: **ABSENT:**

None

Whereupon the Mayor declared such legally passed and adopted on this the 13th day

of September, 2004.

Approved:

MAYOR

CLERK

I, _____, certify that the foregoing is a true and correct copy of the original Ordinance adopted by the Mayor and Council Members of the Village of Choudrant, Louisiana, at a lawful meeting held on the 13th day of September, 2004 with a quorum present, and that the same is now in full force and effect.

Recorder Clerk

_____, Louisiana