

### ORDINANCE NO. 33

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ESTABLISHING A FRANCHISE WITH SOUTHERN CALIFORNIA EDISON FOR TRANSMITTING AND DISTRIBUTING ELECTRICITY ON THE SAME TERMS AND CONDITIONS PREVIOUSLY ESTABLISHED BY THE COUNTY OF RIVERSIDE, AND RATIFYING THE PRIOR TRANSFER AND TERMINATION OF THE COUNTY OF RIVERSIDE'S INTEREST IN THAT FRANCHISE

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES ORDAIN AS FOLLOWS:

**SECTION 1.** As used in this ordinance, the following words and phrases shall have the following meanings, unless the context in which they are used shall clearly import a different meaning:

- (a) The word "Grantee" shall mean Southern California Edison Company (SCE) and its lawful successors or assigns to which the franchise described in this ordinance is granted;
- (b) The phrase "public streets, ways, alleys, and places" shall mean county highways as defined in Streets and Highways Code section 941 and rights-of-way dedicated to and accepted by the City for road purposes as the same now or may hereafter exist within the City;
- (c) The phrase "poles, wires, conduits, and appurtenances" shall mean poles, towers, supports, wires, conductors, cables, guys, stubs, platforms, crossarms, braces, transformers, insulators, conduits, ducts, vaults, manholes, meters, cut-outs, switches, communication circuits, appliances, attachments, appurtenances, and any other property located or to be located in, over, under, along, across, and upon public streets, ways, alleys, and places within the City;
- (d) The phrase "construct and use" shall mean to lay, construct, excavate, erect, install, operate, maintain, use, repair, replace, relocate, or remove;
- (e) The word "franchise" shall mean and include any authorization granted hereunder to use, and to construct and use, electric transmission and distribution facilities, including communication circuits, for transmitting and distributing electricity for all purposes, under, along, across, and upon the public streets, ways, alleys, and places within the City;

- (f) The word "City" shall mean the City of Wildomar, in the County of Riverside of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

**SECTION 2.** Pursuant to and in accordance with the provisions of the Franchise Act of 1937, the City hereby grants to Southern California Edison Company (Grantee), its successors and assigns, a franchise to use, and to construct, poles, wires, conduits, and appurtenances, including communication circuits necessary or proper therefor, for transmitting and distributing electricity for all purposes, under, along, across, and upon the public streets, ways, alleys, and places within the City.

**SECTION 3.** This franchise shall be for an indeterminate term and shall endure in full force and effect unless, with the consent of the Public Utilities Commission of the State of California, this franchise shall be voluntarily surrendered or abandoned by the Grantee, or unless the State or some municipal or public corporation shall purchase by voluntary agreement or shall condemn and take under the power of eminent domain, all property actually used and useful in the exercise of this franchise and situated within the territorial limits of the State, municipal, or public corporation purchasing or condemning such property, or unless this franchise shall be forfeited for noncompliance with its terms by the Grantee.

**SECTION 4.** The Grantee shall have the following duties and liabilities during the life of this franchise:

- (a) The Grantee shall pay to the City the sum provided by law, which is presently two percent (2%) of the Grantee's gross annual receipts arising from the use, operation, or possession of this franchise; except that such payment shall in no event be less than one percent (1%) of the Grantee's gross annual receipts derived from the sale of electricity within the City;
- (b) The Grantee shall file with the City Clerk, within three (3) months after the expiration of the calendar year, or fractional calendar year, following the date of the granting of this franchise and within three (3) months after the expiration of each calendar year thereafter, a verified statement showing in detail the total gross receipts of the Grantee derived during the preceding calendar year, or fractional calendar year, from the sale of electricity within the City;

- (c) The Grantee shall pay to the City within fifteen (15) days after the time for filing its verified statement of gross receipts, in lawful money of the United States, the percentage specified in Section 4.a. above of its gross receipts for the calendar year, or fractional calendar year, covered by the statement. Any neglect, omission, or refusal by the Grantee to file the verified statement, or to pay the percentage at the times or in the manner hereinbefore provided, shall constitute grounds for the declaration of a forfeiture of this franchise and of all rights hereunder;
- (d) The Grantee shall pay to the City a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting of this franchise; such payment to be made within thirty (30) days after the City furnishes the Grantee with a written statement of such expenses;
- (e) The Grantee shall construct, install, and maintain all poles, wires, conduits, and appurtenances in accordance and in conformity with all of the ordinances and rules adopted by the City Council of the City in the exercise of its police powers and not in conflict with the paramount authority of the State, including but not limited to, any areas regulated by the California Public Utilities Commission and the Federal Energy Regulatory Commission (such as design, access, location of SCE facilities) and, as to state highways, subject to the laws relating to the location and maintenance of such facilities therein;
- (f) If any portion of any public street, way, alley or place shall be damaged by any of the operations of Grantee under this franchise, and is not due to ordinary wear and tear, City shall provide Grantee with written notice of the damage in question. Grantee shall, at its own cost and expense, repair any such damage within forty-five (45) days of its occurrence, and restore such portion of such damaged street, way, or alley to the condition as existed before such damage occurred. If the Grantee believes that it will be unable to complete necessary repairs in the specified time periods, Grantee may request that the City meet and confer with Grantee prior to the expiration of the applicable time period to determine the cause for the delay. If in the City's reasonable opinion, the work could not have been completed within the applicable time period due to unusual or unforeseen circumstances, and the work is being reasonably prosecuted towards completion, the City may extend the repair time periods. Alternatively, if Grantee has not completed the repair work as of the expiration of the applicable time period, City shall have the right to complete the necessary repairs that would have been required of Grantee and Grantee shall reimburse the City for the cost of the repairs.

- (g) The Grantee shall remove or relocate any facilities installed, used and maintained under the franchise if and when made necessary by any lawful change of grade, alignment or width of any public street, way, alley or place. Such removal or relocation shall be performed by Grantee without expense to the City. In no event shall Grantee be obligated to incur the cost of removal or relocation of any Facilities which were previously removed or relocated at the request of the City, if the City request for the removal or relocation is delivered on a date that is less than five (5) years from the date of the completion of a prior removal or relocation requested by the City with respect to such Facilities;
- (h) The Grantee shall file with the City Council of the City within thirty (30) days after any sale, transfer, assignment, or lease of this franchise or any part hereof, or any of the rights or privileges granted hereby, written evidence of the transaction certified to by the Grantee or its duly authorized officers;
- (i) The Grantee shall defend, indemnify and hold harmless the City and its officers from all liability for damages proximately resulting from any operations under this franchise, unless such damage is caused by the negligence of the City, its officers, or those working under or at the City's direction. The Grantee shall also defend, indemnify and hold harmless, the City and its officers from any claim, action or proceeding against the County or its officers to attack, set aside, void, or annul the City's approval of this ordinance;
- (j) The Grantee shall be liable to the City for all damages proximately resulting from the failure of the Grantee well and faithfully to observe and perform any provision of this franchise.

**SECTION 5.** Whenever any portion of the territory covered by this franchise shall be annexed to, or otherwise become a part of any other municipal corporation the rights reserved under this franchise to the City or any officer thereof, shall inure to the benefit of such municipal corporation, and its appropriate officers.

**SECTION 6.** This franchise does not in any way impair or affect the right of the City to acquire the property of the Grantee by purchase or condemnation, and nothing in this franchise shall be construed to contract away, modify or abridge either for a term or in perpetuity, the City's right of eminent domain in respect to the Grantee or any other public utility.

**SECTION 7.** Prior to excavating any public street, way, alley or place pursuant to this franchise, Grantee shall obtain a permit from the City authorizing it to conduct such excavation and shall pay any fee charged by the City that is reasonably related to the cost of issuing the permit. Grantee shall perform all excavation work in accordance with any City standards in effect at the time the excavation occurs.

- (a) Grantee shall work with the City to coordinate, to the extent practicable, its excavations with the City's repaving schedule and other planned excavations known to the City.
- (b) Grantee shall not excavate any public street, way, alley or place within five (5) years of the City's filing of a notice of completion or acceptance of a new street or within five (5) years after the repaving of the portion of the public street, way, alley or place that Grantee seeks to excavate, except in the following circumstances:
  - (i) An emergency which endangers life or property;
  - (ii) Repair or modification to prevent interruption of essential utility service;
  - (iii) Relocation work that is mandated by the City pursuant to Section 4(f) of this Ordinance;
  - (iv) Service for buildings where no other reasonable means of providing service exists;
  - (v) The public street is scheduled for repaving within one (1) year after the excavation permit is issued;
  - (vi) Potholing to verify utility depth or location;
  - (vii) Other situations deemed by the City to be in the best interest of the general public.
- (c) If Grantee is issued a permit to excavate within five (5) years of the City's filing of a notice of completion or acceptance of a new street or within five (5) years after the repaving of the portion of the public street, way, alley or place, Grantee shall repave the excavated area after completion of the work. The repaving shall cover the entire width of the street and shall cover the entire length of the trench plus ten (10) feet at both ends.

**SECTION 8.** This franchise shall never be given any value before any court or other public authority in any proceeding of any character in excess of the

cost to the Grantee of the necessary publication and any other sum paid by it to the City herefor at the time of acquisition.

**SECTION 9.** The City, by its City Council, may declare this franchise forfeited, if the Grantee fails, neglects or refuses to comply with any of the provisions or conditions of this franchise, and does not within sixty (60) days after written demand for compliance begin the work of compliance, or after such beginning does not prosecute the work with due diligence to completion. Grantee shall be afforded due process, including reasonable notice and reasonable opportunity to cure any non compliance prior to commencement of any termination proceedings.

**SECTION 10.** The City may sue in its own name for the forfeiture of this franchise, in the event of noncompliance with any of the provisions or conditions hereof by the Grantee.

**SECTION 11.** This franchise shall not become effective until the Grantee files written acceptance hereof with the City Clerk of the City within thirty (30) days after the adoption of this ordinance. Such written acceptance shall constitute a continuing agreement by the Grantee that if and when the City later annexes, or consolidates with, additional territory, all franchises, rights and privileges owned by the Grantee therein shall be deemed abandoned within the limits of the additional territory.

**SECTION 12.** Upon the effectiveness of this franchise pursuant to Section 11 above, the prior franchise between SCE and the County of Riverside as it pertains to the City of Wildomar, shall be of no further force and effect, between the parties hereto and this franchise shall control.

**SECTION 13.** This ordinance and the various parts, sections and clauses thereof are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid, the remainder of this ordinance shall not be affected thereby. If any part, sentence, paragraph, section or clause of this ordinance, or its application to any person or entity is adjudged unconstitutional or invalid, such unconstitutionality or invalidity shall affect only such part, sentence, paragraph, section or clause of this ordinance, or person or entity; and shall not affect or impair any of the remaining provisions, parts, sentences, paragraphs, sections or clauses of this ordinance, or its application to

other persons or entities. The City Council hereby declares that this ordinance would have been adopted had such unconstitutional or invalid part, sentence, paragraph, section or clause of this ordinance not been included herein; or had such person or entity been expressly exempted from the application of this ordinance.

**SECTION 14.** This ordinance shall take effect thirty (30) days after its passage by the City Council.

**SECTION 15.** The City Clerk shall cause this ordinance to be published or posted in accordance with Government Code section 36933.

**PASSED, APPROVED, AND ADOPTED** this 12th day of August, 2009.



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Scott Farnam  
Mayor

APPROVED AS TO FORM:

ATTEST:



\_\_\_\_\_  
Julie Hayward Biggs  
City Attorney



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Debbie A. Lee, CMC  
City Clerk

STATE OF CALIFORNIA )  
COUNTY OF RIVERSIDE )  
CITY OF WILDOMAR )

I, Debbie A. Lee, CMC, City Clerk of the City of Wildomar, California, do hereby certify that the foregoing Ordinance No. 33 was introduced at a regular meeting of the City Council of the City of Wildomar, California, on July 22, 2009, and was duly adopted at a regular meeting held on August 12, 2009, by the City Council of the City of Wildomar, California, by the following vote:

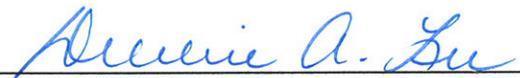
AYES: Mayor Farnam, Mayor Pro Tem Moore, Council Members Ade, Swanson

NOES: None

ABSTAIN: None

ABSENT: Council Member Cashman

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Debbie A. Lee, CMC  
City Clerk  
City of Wildomar