

## **APPENDIX B - FRANCHISES**

NOTE: The franchise ordinances included herein are for information only. Each of them contains the substance as adopted by the governing body but enacting clauses, repealers and signatures have been omitted. Complete copies of each ordinance as adopted are on file in the office of the city clerk. Date of adoption of each franchise ordinance is shown in parentheses at the end of the text.

### **ORDINANCE NO. 422**

AN ORDINANCE GRANTING UNITED TELEPHONE COMPANY OF KANSAS A FRANCHISE TO USE THE STREETS, AVENUES, BOULEVARDS, ALLEYS, AND OTHER PUBLIC PLACES IN THE CITY OF ESKRIDGE, STATE OF KANSAS, TO CONTINUE TO CONDUCT THE BUSINESS OF CONSTRUCTING, INSTALLING, MAINTAINING, MANAGING, AND OPERATING A TELEPHONE SYSTEM WITH ALL NECESSARY POLES, WIRES, CABLES, FIXTURES, CONDUIT AND APPARATUS.

United Telephone Company of Kansas, grantee, a corporation organized under the laws of the State of Kansas, with a license to do business in the State of Kansas, and its successors and assigns, are hereby granted the right, in operating a telephone system, to construct, install, maintain, and repair all the necessary poles, wires, cables, pole and wire fixtures, telephone plant, and telephone apparatus of whatsoever nature for the purpose of conducting such business; to erect, maintain, and repair such telephone poles and string the same with wire and cable along, upon, across or below the streets, avenues, boulevards, alleys, and other public places of the City of Eskridge, grantor; and to construct, lay, maintain, and repair such cable as grantee, its successors and assigns, may require, under those streets, avenues, boulevards, alleys, and other public places for the purpose of such business under the following terms and restrictions:

Section 1. This grant shall be effective in accordance with Section 12, below and shall continue for a term of five years from its effective date, and for successive terms of like duration unless written notice is given by either the grantor or the grantee to the other 120 days or more prior to the expiration of the initial term of any successive term of its intention to terminate the same at the expiration of the then current term.

Section 2. Grantee, its successors and assigns, shall conduct telephone business in such a manner as shall be to the benefit of the city and its inhabitants, rendering good telephone service at reasonable rates as authorized by the Kansas Corporation Commission or any other state or local governmental agency charged by law with the power to regulate telephone public utilities.

Section 3. All poles and overhead wires or cables erected in accordance with this ordinance shall be placed, whether on streets, avenues, boulevards, alleys, or other public places, so as not to interfere with ordinary travel on such streets, avenues, boulevards, alleys, or other public places. All poles erected under this ordinance shall be located so as not to injure any drains, sewers, catch basins, or other like public improvements and, if such be injured, grantee shall repair any damages caused to the

satisfaction of the mayor of the city and, in default thereof, the city may repair such damage and charge the cost to grantee.

Section 4. The poles of grantee, its successors and assigns, shall be placed and erected in such a manner so as not to interfere unreasonably with the orderly conduct of the business and rights of any other public service corporation having a right or franchise to operate its business in the city.

Section 5. Grantee shall remove, raise, or adjust its aerial plant, after 48 hours' notice by a properly authorized city official, for the purpose of permitting the moving of houses or other structures along the streets of the city. The person or persons for whose benefit such telephone plant is removed, raised, or adjusted, however, shall first secure proper permission from the city for the movement and agree to pay grantee for its related costs and damages. If desired, an advance deposit from the mover may be required by grantee.

Section 6. Permission is hereby granted to grantee to trim trees upon and overhanging streets, alleys, sidewalks, and public places of the city so as to prevent the branches of such trees from coming into contact with grantee's wires and cables. All such trimming will be done under the supervision and direction of any city official to whom such duties have been or may be delegated.

Section 7. In consideration for rights and privileges herein granted, grantee shall pay to the city, two percent of the annual gross receipts from billings for local exchange service rendered wholly within the corporate limits of the city. The gross receipts are for the regular basic local exchange service rates to customers or subscribers for telephone services in the city, but does not include charges for special services, custom calling features, long distance calls, access charges, or any other charges not considered basic local exchange service. Such payment shall be made on or before the 1st day of March of each year during the term of this ordinance. The city agrees to accept those sums as full and fair compensation, which sums shall be in lieu of any general or special license tax, occupant tax, or any other such tax for the term of this ordinance.

Section 8. Nothing herein shall affect any prior or existing rights of grantee to maintain a telephone company within the city.

Section 9. The recovery of the charges from grantee's customers is subject to the jurisdiction of the regulatory and state authorities and not the city. The obligation of grantee to pay compensation under this ordinance is contractual; the city makes no requirements as to the method grantee uses to recover the payments.

Section 10. The franchise and all rights hereunder may be assigned by the grantee, as well as all succeeding grantees, at their option, and the successors and/or assigns shall succeed to all the rights, duties, and liabilities of the grantee hereunder.

Section 11. All ordinances and agreements or parts of ordinances and agreements in conflict with this ordinance are hereby repealed.

Section 12. This ordinance shall be effective at the expiration of 65 days from the date of its final passage.

Section 13. If this ordinance expires either prior to the effective date of a passed subsequent ordinance granting grantee a franchise, or while the city and grantee are engaged in good faith negotiations intended to result in the passage of such a subsequent ordinance, the terms of this ordinance shall apply until the effective date of the subsequent ordinance.

Section 14. If any portion of this ordinance for any reason is held to be invalid, such portion shall be considered severed from the remainder of this ordinance and the remainder shall be unaffected and continue in full force and effect.  
(5-20-96)

#### **ORDINANCE NO. 495**

AN ORDINANCE, GRANTING TO WESTAR ENERGY, INC., A KANSAS CORPORATION, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE, PRESCRIBING THE TERMS THEREOF AND RELATING THERETO, AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT WITH OR IN CONFLICT WITH THE TERMS HEREOF.

SECTION 1. That in consideration of the benefits to be derived by the City of Eskridge, Kansas, and its inhabitants, there is hereby granted to Westar Energy, Inc., a Kansas corporation, hereinafter sometimes designated as "Company," said Company being a corporation operating a system for the transmission of electric current between two or more incorporated cities in the State of Kansas, into and through which it has built transmission lines, the right, privilege, and authority for a period of twenty (20) years from the effective date of this ordinance, to occupy and use the several streets, avenues, alleys, bridges, parks, parkings, and public places of said City, for the placing and maintaining of equipment and property necessary to carry on the business of selling and distributing electricity for all purposes to the City of Eskridge, Kansas, and its inhabitants, and through said City and beyond the limits thereof; to obtain said electricity from any source available; and to do all things necessary or proper to carry on said business in the City of Eskridge, Kansas.

SECTION 2. As further consideration for the granting of this franchise, and in lieu of any city occupation, license, or revenue taxes, the Company shall pay to the City during the term of this franchise three percent (3%) of its gross receipts from the sale of electric energy within the corporate limits of said City, such payment to be made monthly for the preceding monthly period. Gross cash receipts shall not include other operating revenues received by the Company, which are not related to the "sale of electric energy". Other operating revenues include, but are not limited to, return check charges. At the option of either the City or the Company and upon written notice given by one to the other sent at least ninety (90) days before the fifth, tenth or fifteenth anniversary of this franchise, the rate of compensation hereunder may be renegotiated. Any new rate of compensation that results from such renegotiation shall be effective on and after the fifth, tenth, or fifteenth anniversary of this franchise.

SECTION 3. That Company, its successors and assigns, in the construction, maintenance, and operation of its electric transmission, distribution and street lighting system, shall use all reasonable and proper precaution to avoid damage or injury to persons and property, and shall hold and save harmless the City of Eskridge, Kansas,

from any and all damage, injury and expense caused by the negligence of said Company, its successors and assigns, or its or their agents or servants.

SECTION 4. After the approval of this ordinance by the City, Company shall file with the City Clerk of the City of Eskridge, Kansas, its unconditional written acceptance of this ordinance. Said ordinance shall become effective and be in force and shall be and become a binding contract between the parties hereto, their successors and assigns, from and after the expiration of 60 days from its final passage, approval and publication as required by law, and acceptance by said Company.

SECTION 5. That this ordinance, when accepted as above provided, shall constitute the entire agreement between the City and Company relating to this franchise and the same shall supersede and cancel any prior understandings, agreements, or representations regarding the subject matter hereof, or involved in negotiations pertaining thereto, whether oral or written.

SECTION 6. This franchise is granted pursuant to the provisions of K.S.A. 12-2001.

SECTION 7. That any and all ordinances or parts of ordinances in conflict with the terms hereof and hereby repealed.

SECTION 8. The Company will file this ordinance with the State Corporation Commission of Kansas. Should the State Corporation Commission take any action with respect of this franchise ordinance, which would or may preclude Westar Energy, Inc., a Kansas corporation, from recovering from its customers any cost provided for hereunder, the parties hereto shall renegotiate this ordinance in accordance with the State Corporation Commission's ruling.

SECTION 9. A franchise shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time when any assignment is made, provided, however, that the franchise may be assigned by Company without action by the City to any creditworthy entity which succeeds to all or substantially all of the electric utility business of the Company. In the event of such assignment to a successor, Company shall be released from all obligations which are assumed in writing by such successor and the assignee shall have executed an assumption of the franchise being assigned.

(7-19-04)