

City of Mansfield
MINUTES OF REGULAR PUBLIC MEETING
August 11, 2014

The Board of Aldermen met in regular session on **Monday, August 11th**, in Mansfield City Hall, located at 705 Polk Street. Mayor McCoy called the meeting to order at **4:30 p.m.**, after which an **Invocation** was offered by **Alderswoman Mary L. Green**. The Pledge of Allegiance was led by **Alderman Mitchell L. Lewis**. Following the pledge, the roll was called, and the following officials were recorded as **Present**: Hon. Curtis W. McCoy, Mary L. Green –District **A**, Roy R. Jones –District **B**, Mitchell L. Lewis –District **C**, and Kervin D. Campbell –District **E**. **Absent**: Joseph Hall, Jr. –District **D**. **Other City Personnel Present**: James “*Jim*” Ruffin (Public Works Director), Brian Phillips (Court Clerk), Richard Johnson, Jr. (City Attorney) Lee Chief Lee Shaver (Mansfield Fire Dept.), Chief Gary Hobbs (Mansfield Police Dept.) and Coty Rachal (Firefighter –Mansfield Fire Dept.). Others Present: F. Randy Peoples (External Affairs Mgr. -SWEPCO), Kris Gordon (1st Choice Property & Development), Jacob Scher (1st Choice Property & Development) and George Apperson (Mansfield resident –Dist. B). **Press Present**: Julie Morris and Bennie Hall (*The Enterprise*).

It was MOTIONED by **ROY R. JONES** and SECONDED by **MARY L. GREEN** to approve the minutes of the **July 28, 2014 regular** City Council meeting and to dispense with the reading. Motion Passed Unanimously.

It was MOTIONED by **MITCHELL L. LEWIS** and SECONDED by **KERVIN D. CAMPBELL** to approve the payment of current outstanding bills for this period.

The City Clerk next opened the floor to hear public comments from those in attendance to any item outlined on the meeting agenda. When no comments were offered from the floor, the **Public Comments Period** was then closed.

Old Business:

Item A: At this time, a public hearing was conducted to hear any comments related to the adoption of Proposed **Ordinance No. 6 of 2014**, introduced at the Council’s 07/28/14 regular meeting, to renew the non-exclusive Franchise Agreement with ***Southwestern Electric Power Company*** (SWEPCO). The new agreement commences on September 1, 2014 and recites several new terms different from the present arrangement. The duration of the agreement was amended from a 5-year agreement to a 30-year term, the franchise fee changes from 3% to 5% of the company’s gross receipts of the Grantees’ customers located within the City’s corporate limits, and payment to the City of franchise fees will be changed from monthly to quarterly. When no comments were voiced, the public hearing was subsequently closed.

Item B: It was MOTIONED by **ROY R. JONES** and SECONDED by **MITCHELL L. LEWIS** to adopt **Ordinance No. 6 of 2014**, granting a non-exclusive 30-year Franchise Agreement with ***Southwestern Electric Power Company*** (SWEPCO). Motion Passed Unanimously. (Full Ordinance recited below):

CITY of MANSFIELD
ORDINANCE NO. 6 of 2014

AN ORDINANCE, GRANTING UNTO SOUTHWESTERN ELECTRIC POWER COMPANY, THE RIGHT, PRIVILEGE AND FRANCHISE TO ACQUIRE, CONSTRUCT, ERECT, MAINTAIN, REPAIR, RECONSTRUCT, REMOVE AND OPERATE A SYSTEM OF ELECTRIC POWER LINES, WIRES, TRANSFORMERS, COMMUNICATION CABLES AND OTHER RELATED AND NECESSARY OR DESIRABLE APPURTENANCES IN, UNDER, OVER, ACROSS, THROUGH AND ALONG ANY AND ALL OF THE PRESENT AND FUTURE STREETS, AVENUES, ALLEYS, THOROUGHFARES, ROADS, HIGHWAYS, SIDEWALKS, BRIDGES AND PUBLIC GROUNDS AND PUBLIC PLACES OF THE CITY OF MANSFIELD, LOUISIANA, FOR THE PURPOSE OF TRANSMITTING AND DISTRIBUTING ELECTRIC POWER TO THE CITY AND ITS INHABITANTS AND ANY OTHER PERSON OR PERSONS, FIRMS AND CORPORATIONS FOR A TERM OF THIRTY YEARS; REGULATING THE USE OF STREETS BY THE COMPANY AND REPAIR AND RESTORATION OF THE STREETS DISTURBED BY CONSTRUCTION; PROVIDING FOR COMPENSATION TO BE PAID TO THE CITY; PROVIDING THAT THIS FRANCHISE SHALL NOT BE EXCLUSIVE; PROVIDING THE COMPANY'S OBLIGATIONS TO FURNISH EFFICIENT SERVICE; PROVIDING FOR INDEMNITY BY THE COMPANY TO THE CITY; PROVIDING FOR CONDITIONAL FORFEITURE IN EVENT OF DEFAULT BY THE COMPANY; MAKING MISCELLANEOUS PROVISIONS RELATIVE TO THIS GRANT OF FRANCHISE; PROVIDING FOR ACCEPTANCE BY COMPANY; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

**SOUTHWESTERN ELECTRIC POWER COMPANY
FRANCHISE AGREEMENT**

BE IT ORDAINED by the City Council of the City of Mansfield, Louisiana, in due, regular and legal session convened:

ARTICLE I

That, as used in this Ordinance, the following terms shall be defined, to-wit:

- (a). The word “*City*” as used in this Ordinance shall mean the incorporated City of Mansfield, DeSoto Parish, Louisiana.
- (b). The word “*Grantee*” as used in this Ordinance shall mean Southwestern Electric Power Company, a corporation, its successors and assigns.
- (c). The word “*City Council*” as used in this Ordinance shall mean the present City Council of the City of Mansfield, Louisiana and its successors elected as provided by the City Charter of the City of Mansfield, Louisiana.
- (d). The word “*Public Right(s)-of-Way*” as used in this Ordinance shall mean the streets, roads, alleys, avenue, sidewalks, bridges, public grounds and public places of the City of Mansfield, Louisiana.

ARTICLE II

Subject to the terms, conditions and stipulations set forth in this Ordinance, a franchise is hereby granted wherein Grantee shall have the right to sell, distribute and transmit electric energy in, through and beyond the City of Mansfield, DeSoto Parish, Louisiana (within the limits thereof, as same may now or hereafter lawfully exist), including the right to erect, communication facilities and cables and other related equipment and necessary or desirable appurtenances and to license or lease space on or within Grantee’s poles, conduits and appurtenant facilities for the attachment of third party facilities required or authorized under applicable law in, over, under and through any Public Rights-of-Way.

ARTICLE III

This Ordinance and rights granted herein shall take effect and continue in full force and effect for a period of thirty (30) years, commencing **September 1, 2014**. Grantee shall file its written acceptance of the terms and conditions hereof within ten (10) days after the final passage of this Ordinance or the same shall become of no force and effect.

ARTICLE IV

In consideration for the rights and privileges herein granted, Grantee shall pay to the City an annual amount of money equal to five percent (5%) of the gross receipts of Grantee derived by it from the distribution and sale of all electricity and electric current to residential, commercial and industrial customers within the corporate limits of the City, during the term of this franchise, to be paid quarterly by or before the first day of February, the first day of May, the first day of August and the first day of November of each year for the three-month periods ending respectively on December 31, March 31, June 30 and September 30, next preceding. The compensation set forth in this paragraph shall be paid in lieu of any license, charge, fee, street or ally rental or other character of charge for the use and occupation of the Public Rights-of-Way.

ARTICLE V

The City shall notify Grantee in writing of newly annexed and de-annexed areas. The notice shall include the Ordinance number authorizing the action and an appropriate map identifying the areas affected by such annexation or de-annexation. Grantee shall have no responsibility for commencing payments to the City for revenue collected in newly annexed areas until it shall have received the City's notification. Upon the City's notification and starting the 91st day after receipt of such notice, Grantee will commence payments to the City for revenue collected in each newly annexed area and will make any appropriate adjustments in payment made for revenues collected in such de-annexed areas after de-annexation. Payments for revenues collected in newly annexed areas and adjustments for overpayments in de-annexed areas shall be made effective back to the date of the authorizing Ordinance.

ARTICLE VI

During the period of the franchise herein granted, the Grantee shall furnish to the City a report generated by Grantee along with the payments as herein set out showing the gross receipts of

Grantee derived by it from the distribution and sale of electricity to residential, commercial and industrial customers within the corporate limits of the City for the three-month period ending respectively on December 31, March 31, June 30 and September 30, next preceding.

ARTICLE VII

Upon request of the City, Grantee shall make available at Grantee's offices any and all records, accounts and books for inspection relative to the gross receipts of Grantee within the corporate limits of the City of Mansfield, Louisiana, subject to privacy laws and the rules, regulations and jurisdiction of the Louisiana Public Service Commission. Grantee agrees to maintain all records supporting and relative to such payment for a period of not less than three (3) years following payment.

ARTICLE VIII

All poles, wires, conduits and other equipment and appurtenances shall be erected and placed in accord with appropriate industry standards and specification and in such places and in such manner as not to unreasonably interfere with public travel and other public uses of Public Rights-of-Way.

ARTICLE IX

The City hereby grants to Grantee permission to cut, trim, treat and dispose of trees and other vegetation upon and overhanging Public Rights-of-Way in the vicinity of Grantee's electric facilities where such trees and other vegetation, in Grantee's reasonable opinion, constitute a hazard to Grantee's personnel or facilities or the provision of continuous electric service.

ARTICLE X

Unless otherwise provided for herein, all notices or other communication required or permitted hereunder shall be made in writing and may be delivered by: (i) hand delivery; (ii) United States overnight registered or certified mail; (iii) overnight carrier service; or (iv) facsimile to the addresses set forth below. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a business day and, otherwise, shall be effective at the close of business on the next business day after it was sent. Notice by United States registered or certified mail (other than overnight mail) shall be effective upon delivery or refusal to accept delivery. A party may change its address or any contact information upon written notice to the other party pursuant to the terms thereof.

If to City : Mayor
City of Mansfield
P. O. Box 773
Mansfield, LA 71052

If to Grantee : Manager, External Affairs
Southwestern Electric Power Company
1725 Texas Street
Natchitoches, LA 71457

With Copy to : Senior Counsel
American Electric Power Service Corporation
1201 Elm Street, Suite 800 (75270)
P. O. Box 660164
Dallas, TX 75266

ARTICLE XI

The City and Grantee are entering into this franchise solely for their own benefit and nothing herein shall be considered to confer any rights, privilege or benefit on any person or entity other than the City and Grantee. No action may be commenced or presented against any party by any

third party claiming as a third party beneficiary of this franchise agreement. The franchise agreement shall not release or discharge any obligation or liability of any third party to either party.

ARTICLE XII

The City agrees to maintain the confidentiality of any information provided by the Grantee on a confidential basis or marked as confidential, as required by the Federal Critical Infrastructure Information Act and subject to the rules, regulations and jurisdiction of the Louisiana Public Service Commission. The City shall not be liable to Grantee for the release of any information the City is required by law to release.

ARTICLE XIII

All the construction and other work, including reconstruction, maintenance, repair or removal of Grantee's system shall be subject to and in conformity with the ordinances, rules, laws and regulations now in force or that by hereafter be approved or adopted by the City, provided that such ordinances, rules, laws and regulations shall not be in conflict or inconsistent with the express terms and conditions of this franchise and shall not conflict with the laws of the State of Louisiana or the laws of the United States of America.

ARTICLE XIV

Grantee, in laying constructing, adjusting and repairing its electric lines, shall not unreasonably interfere with any water lines, sewer lines, conduits, or other pipe lines or supply lines, or with any public or private drain in any street or alley, except with the consent and under the direction of the Mayor or his duly authorized agent (s). This provision shall not apply when emergency conditions exist, with those conditions to include natural disasters, equipment failures or outage and similar circumstances. Whenever the City shall conclude to make any street or other

improvements in which the electric lines of Grantee exist, Grantee shall, in advance of such improvement and at Grantee's own expense, be required to relocate such electric lines to an alternate location provided by the City. The Grantee shall be given reasonable notice of the intention of the City to pave or make such improvements and reasonable time under the circumstances to relocate its facilities.

ARTICLE XV

Grantee shall indemnify, save and hold harmless the City from any and all claims, demands or causes of action for injuries and damages to persons and property, occasioned by or arising out of the construction, renewing maintenance, operation, removal adjustment or repair of said Grantee's electrical system, or by virtue of Grantee conducting such business in Public Rights-of-Way. This duty to hold harmless and indemnify shall run in favor of the City, its officials, officers, agents and employees. It shall include the duty to investigate any claim, to defend any lawsuit including actions for injunctive relief and to reimburse the City, its officials, officers, agents and employees under terms of this Article on indemnification for any sums of money that it or they are or might become legally obligated to pay to others. This indemnity does not extend to claims arising from the gross negligence or intentional conduct of the City, its officials, officers, agents and employees.

ARTICLE XVI

Grantee, in the construction, reconstruction or adjustment of its system, shall not take up or excavate any pavement or street, alley or other public place at any time without first securing permissions and approval from the City; and providing further that, in every case where possible, Grantee shall, in the construction, reconstruction or adjustment of its system, bore beneath paved streets, curbs and sidewalks instead of cutting them; and where any such cutting or excavation of streets, alleys or public ways shall be necessary, Grantee shall, at Grantee's own expense, repair

and replace same according to standards and specifications of the City; and provided that, when practicable, lines shall be placed in alleys instead of streets and that, should Grantee fail or refuse, as required above, to properly restore and replace such pavements, sidewalks and excavations within a reasonable time after the completion of such work, then the same may be replaced and restored by the City at the expense of said Grantee, and including reasonable attorney's fees and court costs that the City may incur in securing a judgment for breach thereof. The Grantee shall, on request of any person holding a moving permit issued by the City, subject to applicable regulatory requirements and system operating condition, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid, in advance, by the person requesting same, and the Grantee shall be given reasonable advanced written notice to arrange for such temporary relocation.

ARTICLE XVII

Nothing herein contained shall ever be held or considered as conferring upon Grantee, or its successors and assigns, any exclusive rights or privileges or any nature whatsoever.

ARTICLE XVIII

Grantee shall not at any time sell or assign its rights and privileges under this Ordinance to any other person, firm or corporation or surrender management control without the prior approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed. Approval shall be deemed granted in the event Grantee provides written notice and the City fails to respond and provide written notice as provided in Article X above. Further, the Grantee may, without consent of the City, assign, sell and transfer the franchise to its parent, affiliates, or subsidiaries of its parent. Grantee (or its assign) may, also without City's consent, assign, pledge, mortgage or transfer the rights and privileges under this franchise to any lender of Grantee (or such assign).

ARTICLE XIX

The City may at any time declare a conditional forfeiture of this grant for a continuing violation by Grantee of any of the substantial terms thereof. In such event, the City shall give written notice, specifying all grounds on which forfeiture is claimed, by registered mail, addressed and delivered to Grantee, to the attention of its President. The Grantee shall have sixty days after receipt of such notice within which to discontinue said alleged violation, or to file suit in a court of competent jurisdiction for adjudication or declaration of the rights of the parties with respect to the forfeiture of the franchise. No forfeitures shall be effective until and unless, (1) the Grantee shall have continued such violation or violations for more than sixty (60) days after receipt of such written notice from the City without filing suit; or (2) Grantee shall have continued such violation or violations for more than sixty (60) days (or such longer period as the court in its discretion shall allow) after the entry or affirmation in a court of last resort of a final judgment finding and establishing the existence of such violation or violations, and that such violation or violations are sufficiently substantial to warrant forfeiture, and decreeing forfeiture as a consequence thereof. The Grantee shall not in any event be deemed to be in default of performance of any provisions of this grant, nor shall any forfeiture be invoked for violation or violations for failure to perform any provision hereunder when due to shortage of materials, supplies and equipment beyond the control of the Grantee, or to fires, strikes, riots, storms, floods, wars or other casualties, or to governmental regulations, limitation or restrictions as to the use or availability of materials, supplies or equipment or as to the use of the service, or to unforeseen or unusual demands for service, or for any other cause not reasonably or practicably within the control of the Grantee.

ARTICLE XX

Grantee shall provide, upon reasonable notice, on a project-by-project basis, such available maps, plats and/or drawings as the City may request which depict the location of all electric

power lines, poles and other facilities used for the generation and distribution of electricity within the Public Rights-of-Way. As to any such maps, plats and drawings so provided, Grantee does not warrant the accuracy thereof and to the extent the locations of the facilities are shown, such facilities are shown in their approximate locations. Any such information with respect to the location of Grantee's facilities shall be used by the City solely for management of the Public Rights-of-Way. The City shall take all prudent steps required by applicable law to prevent disclosure, reproduction or dissemination of such maps, plats, drawings and/or any other information specifically marked as confidential to any unauthorized third party, without the prior express written consent of Grantee.

ARTICLE XXI

Grantee shall not in its service facilities, rules, regulations or in any other respect, make or grant preference or advantages to any user or potential user of its system, nor subject any person to any prejudice or disadvantage, subject to the applicable regulations of the Louisiana Public Service Commission.

BE IT ORDAINED that all Ordinance, Resolutions and parts of Ordinances and Resolutions in conflict herewith are hereby repealed as of **September 1, 2014**.

BE IT FURTHER ORDAINED that if any provision or item of this Ordinance or the application thereof is held invalid, such invalidity shall not affect other provisions, items or applications of this Ordinance which can be given effect without the invalid provisions, items or applications and to this end, the provisions of this Ordinance are hereby declared severable.

BE IT FURTHER ORDAINED that the Mayor of the City of Mansfield be and is hereby authorized to execute on behalf of the City of Mansfield this franchise agreement Ordinance.

The above and foregoing Ordinance was read in full at open and legal session convened and was on motion Roy R. Jones, seconded by Mitchell L. Lewis, and adopted this 11th day of August, 2014.

Ayes: 4 (M. Green, R. Jones, M. Lewis & K. Campbell)
Nays: 0
Absent: 1 (J. Hall, Jr.)
Abstain: 0

/s/ Marvin R. Jackson, Clerk
/s/ Curtis W. McCoy, Mayor

Item C: At this time, Mayor McCoy announced that the public hearing to hear any comments concerning the request to change the name of West City Park Drive to **Riemer Calhoun Sr. Circle** was cancelled. Some disagreement surfaced on exactly what the street should be renamed. It was MOTIONED by **MARY L. GREEN** and SECONDED by **KERVIN D. CAMPBELL** that the Council take no action of the proposed street name change and entertain a recommendation at the next regular meeting as to a new name for the thoroughfare. Motion Passed Unanimously.

Item D: No other old business discussed.

New Business:

Item A: This matter was related to Item C under Old Business and thus no action was required since the Council voted to take no action on the proposed street name change.

Item B: It was MOTIONED by **ROY R. JONES** and SECONDED by **KERVIN D. CAMPBELL** to approve the recommendation of the Mansfield Board of Zoning Adjustments granting the request of *FirstChoice Property & Development* to allow a 'Special Exception' variance for the proposed **Fred's Pharmacy & Superstore** for a reduction in the required parking spaces as outlined in the City's 1980 Zoning Ordinance. Because of the proposed size of the new store, the Ordinance mandated 81 parking spaces. However, this developer/owner applied for a reduction of the required parking spaces to 48 to allow for additional 'green space.'

Present at this meeting was a local businessman (Mr. Donald Dufour) who was one of the property owners within 300 feet of the proposed site (400 Washington Ave.) for this new store. He rose to state the he had no objection to the variance or to the location of the new facility. Further, representatives (Kris Gordon and Jacob Scher) with *FirstChoice* were present to further comment that the new store is slated to create as many as thirty new jobs, and will also result in a new revenue stream for the City in the way of sales taxes and property taxes. Motion Passed Unanimously.

Item C: It was MOTIONED by **ROY R. JONES** and SECONDED by **MITCHELL L. LEWIS** to approve the recommendation of Fire Chief, Lee Shaver, to offer full-time employment with the Mansfield Fire Department to firefighter, Mr. **Coty Lane Rachal**. Mr. Rachal was originally hired to work in the City's fire department on November 30, 2012, and successfully completed his mandatory 90-day probationary period. Additionally, in July 2014 Mr. Rachal attained both his Haz-Mat Operations Level Certification and Firefighter I Certification. Chief Shaver stated that Coty is a diligent worker and is in his opinion very deserving of approval of this recommendation for full-time employment status. Motion Passed Unanimously.

Item D: No other New Business discussed.

With no further business to discuss, the meeting was declared adjourned at **4:45 p.m.** by MOTION from **MARY L. GREEN**. and SECONDED by **ROY R. JONES**. Motion Passed Unanimously.

Curtis W. McCoy, *Mayor*
Marvin R. Jackson, *Clerk*