

ORDINANCE NO. B 480

AN ORDINANCE GRANTING TO MIDWEST 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 THEREOF.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF VICTORIA, KANSAS:

Section 1. That, in consideration of the benefits to be derived by the City of Victoria, Kansas, and its inhabitants, hereinafter called "City", there is hereby granted to Midwest Energy, Inc., hereinafter called "Grantee" or "Company", its successors and assigns, the right to use and occupy the streets, avenues, alleys and other public places within the City of Victoria, Kansas, for the purpose of constructing, erecting, operating and maintaining electric transmission and distribution lines and all necessary facilities and appurtenances for use in the transmission, distribution and sale of electricity for all purposes to said City and its inhabitants for a period of twenty (20) years from the date of passage of this Ordinance through the 25th day of October, 2025.

Section 2. The Company is hereby given the right, under the supervision of the Governing Body of the City, and within the City limits, to trim and cut such trees and foliage as may be reasonably necessary to prevent the same from interfering with the safe and efficient operation and maintenance of its transmission lines, distribution system, street lighting equipment, and to establish reasonable rules and regulations for the conduct of its business.

Section 3. That, in consideration of the rights and privileges hereby granted, said Grantee hereby undertakes and agrees to use reasonable effort to maintain good and adequate service to the City hereunder, but it is understood that the Company does not guarantee that the supply of electrical energy will at all times be continuous and it is agreed that temporary cessation of Company's service hereunder occasioned by fire, explosion, flood, strike, insurrection, mob violence, governmental interference, breakdown or injury to machinery, or transmission or distribution lines or from other accidents or causes not reasonably within its control, shall not constitute a breach of this Ordinance or any obligation arising hereunder on the part of the Company; and, that Grantee shall not be liable to City or to any other person, firm or corporation for any damages resulting from such temporary cessation of service.

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WITH THE
KANSAS CORPORATION COMMISSION
DATE JAN 6 - 2006

STATE CORPORATION COMMISSION
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UTILITIES DIVISION

Section 4. That, in consideration of the rights and privileges hereby granted, said Grantee, its successors and assigns, shall locate its distribution lines in the streets, avenues, alleys and other public places in such manner as not to interfere with the use of said streets, avenues, alleys and public places. At times when City causes public improvements to be made to any of the streets, avenues, alleys or other public places within the City that are occupied by Company's electric facilities, Company shall, at City request, relocate its electric facilities at Company's expense to conform to the City's planned improvement. If said Grantee is required to move, alter or rebuild any of its electric facilities not located on public right-of-way, the cost of moving, altering or rebuilding said facilities shall be borne by the requesting party. In the event City vacates or otherwise abandons City right-of-way on which Company facilities are located, or planned to be located, the Ordinance vacating or abandoning such City right-of-way shall provide City granted easement to Company.

Section 5. It is further agreed by the City and the Company, that the rates now in effect or such rates as may be approved by the proper governmental authority having jurisdiction over the Company, shall be deemed to be a reasonable schedule of maximum rates charged the City and its inhabitants for the service provided by the Company.

Section 6. Subject to any restriction placed on Company by regulatory authorities having jurisdiction over the Company in consideration of and as compensation for the granting of this franchise by the City of Victoria, Kansas, and in lieu of any licenses, fees and occupation or other revenue taxes, Company shall collect from consumers and pay to the City an amount equal to five percent (5%) of the gross revenue derived from the sales of electric power and energy within the corporate limits of said City, such payment to be made to the City monthly for the preceding monthly period.

If and when retail wheeling becomes an option, this ordinance may be opened so that a franchise tax may be collected on such electric energy that is being wheeled through Midwest Energy's local distribution system in the city limits of Victoria, Kansas. The option to reopen this provision of Section 6 will not effect the other terms of this ordinance.

The City shall have access to and the right to examine, at all reasonable times, all books, receipts, files, records and documents of Company necessary to verify the correctness of said payments.

Section 7. Without affecting the other terms of this Ordinance, as further consideration for the rights and privileges hereby granted Company and subject to any restrictions placed on Company by regulatory authorities having jurisdiction over Company, Company agrees that the City will have the option to open the provision of Section 6 relating to the percentage applied to gross receipts derived from applicable electric sales. Six (6) months prior to the end of each 5-year period that this Ordinance is in existence, the Company and the City may renegotiate the percentage to be paid to the City during the succeeding 5-year period. If the Company and the City cannot reach a mutual agreement on said percentage during such 6-month period, this Ordinance shall become null and void.

Section 8. That the Company, its successors and assigns, in the construction, maintenance and operation of its electric transmission, distribution and street lighting system, under the rights and privileges herein granted, shall exercise all reasonable and proper precaution to avoid damage or injury to persons or property, and shall hold and save harmless the City of Victoria, 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 9. It is further provided that should any section or sections of this Ordinance be held null and void, or void or illegal by any court having jurisdiction in a proper action, such decision by such court shall not affect any other part of this Ordinance not passed upon by such court.

Section 10. That all ordinances or parts of ordinances in conflict with or inconsistent with this Ordinance are hereby repealed.

Section 11. This franchise is granted pursuant to the provisions of Article 20, Chapter 12, Kansas Statutes Annotated.

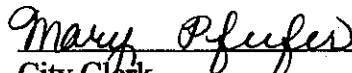
Section 12. The ordinance shall take effect and be in force from and after its passage and publication in the Hays Daily News, the official city newspaper.

FINAL ADOPTION AND PASSAGE by the Governing Body of the City of Victoria, Kansas, this 25th day of October, 2005.



Mayor

ATTEST:




City Clerk

(SEAL)



President, Midwest Energy, Inc.

ATTEST:



Assistant Secretary, Midwest Energy, Inc.

(SEAL)