



TOWN OF JEROME, ARIZONA

POST OFFICE BOX 335, JEROME, ARIZONA 86331
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Founded 1876
Incorporated 1899

ORDINANCE NO. 383

AN ORDINANCE GRANTING TO ARIZONA PUBLIC SERVICE COMPANY, A CORPORATION ORGANIZED AND EXISTING UNDER AND BY VIRTUE OF THE LAWS OF THE STATE OF ARIZONA, CERTAIN POWERS, LICENSES, RIGHTS OF WAY, PRIVILEGES AND FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE ITS ELECTRICAL SYSTEM UPON, OVER, ALONG, ACROSS AND UNDER THE PRESENT AND FUTURE PUBLIC RIGHTS-OF-WAY TO SUPPLY AND DELIVER ELECTRIC ENERGY TO TOWN, ITS SUCCESSORS, THE INHABITANTS THEREOF, AND ALL PERSONS AND ENTITIES EITHER WITHIN OR BEYOND THE LIMITS THEREOF, FOR A PERIOD OF TWENTY-FIVE (25) YEARS; AND PRESCRIBING IN CONNECTION THEREWITH CERTAIN RIGHTS, DUTIES, TERMS AND CONDITIONS HEREIN MENTIONED; PROVIDING FOR THE PAYMENT TO SAID MUNICIPALITY OF A PERCENTAGE OF CERTAIN REVENUES OF GRANTEE AND ITS OPERATIONS THEREIN; AND DECLARING AN EMERGENCY.

BE IT ORDAINED by the Mayor and Town Council of Jerome, Arizona as follows:

Section 1. - Grant of Franchise:

The Town of Jerome, a municipal corporation in Yavapai County, Arizona, hereinafter called the "Town", hereby grants to Arizona Public Service Company, a corporation organized and existing under and by virtue of the laws of the State of Arizona (herein called "Grantee"), its successors and assigns, a franchise (herein called the "Franchise") to construct, maintain and operate its electrical system, as defined herein, upon, over, along, across and under the present and future public rights-of-way. These rights-of-way include but are not limited to streets, avenues, alleys, ways and highways in the Town of Jerome, Arizona (herein called "Town"). Grantee's electrical system includes electric power lines, together with all necessary or desirable appurtenances, including, but not limited to, poles, towers, wires, cables, underground conduits, transmission lines, transformers, switches and communication lines for its own use. This Franchise is for Grantee's use of Town's public rights-of-way to supply and deliver electric energy to Town, its successors, the inhabitants thereof, and all persons and entities either within or beyond the limits thereof, for all purposes. This Franchise includes the right to use public rights-of-way for telecommunication services incidental to supplying electricity to Town or for Grantee's own use. However, this Franchise does not include one-way transmissions directly to customers, users or subscribers of video programming or other programming services or subscriber interaction, if any, which is required for the selection of or response to video programming or other programming services. For purposes of the foregoing, the term "video programming" means programming provided by or generally considered comparable to programming provided by a television broadcast station. The term "other programming services" means information that a cable

television system operator makes available to all subscribers generally. This Franchise does not include intrastate or interstate telecommunications services.

Section 2. – Grantee’s Compliance with Town Practice; Plans Submitted for Approval; Town Construction near Grantee’s Facilities:

All construction under this Franchise shall be performed in accordance with established practices of Town with respect to such public rights-of-way. Before Grantee makes any installations in the public rights-of-way, Grantee shall obtain a construction permit and submit for approval plans showing the location of such proposed installations to Town’s Engineer.

If Town authorizes either directly or through a contractor any construction project adjacent to or near Grantee’s facilities operated pursuant to this Franchise, Town shall include in all such construction specifications, bids, and contracts, a requirement that the contractor or his designee must comply with the overhead power line safety laws (A.R.S. § 40-360.41 *et. seq.* as amended).

Section 3. – Construction and Relocation of Grantee’s Facilities; Payment:

All facilities installed or constructed pursuant to this Franchise shall be so located or relocated and so erected as to minimize the interference with traffic, or other authorized uses over, under or through the public rights-of-way. Activities related to the construction of Grantee’s facilities within the rights-of-way such as traffic control, backfilling, compaction and paving, as well as the location or relocation of lines and related facilities herein provided for, shall be subject to regulation by Town. Grantee shall keep accurate records of the location of all facilities in the public rights-of-way and furnish them to Town upon request. Upon completion of new or relocation construction of underground facilities in the public rights-of-way, Grantee shall, upon request or direction from Town, provide Town’s Engineer with corrected drawings showing the actual location of the underground facilities in those cases where the actual location differs significantly from the proposed location. Grantee shall provide to Town, upon Town’s request, the actual location of such new or relocated facilities in the public rights-of-way in an electronic format. Such format shall conform to utility industry best-practice standards.

- A. If Town requires Grantee to relocate Grantee’s facilities which are located in private easements obtained by Grantee prior to Town’s acquisition of said property from which the facilities must be relocated, the entire cost of relocating Grantee’s facilities (including the cost of purchasing a new private easement if necessary) shall be borne by Town. Town shall also bear the entire cost of all subsequent relocations of the relocated facilities required by Town, until such time as Town condemns or purchases Grantee’s private easement.
- B. Except as covered in Paragraph A above, Grantee shall bear the entire cost of relocating its facilities located on public rights-of-way, the relocation of which is necessary for Town’s carrying out its governmental functions. Notwithstanding the foregoing, if Grantee is requested to perform work of a temporary nature on a governmental project to relieve construction problems which could be relieved by other reasonable means, the cost of said temporary work will be borne by Town or Town’s contractor working on the governmental

project. Governmental functions are those duties imposed on Town, where the duties involve a general public benefit, not in the nature of a corporate or business undertaking for the corporate or business undertaking for the corporate benefit and interest of Town. Governmental functions include, but are not limited to, the following:

1. Any and all improvements to Town’s public rights-of-way;
 2. Establishing and maintaining domestic water systems, sanitary sewers, storm drains, and related facilities;
 3. Establishing and maintaining municipal parks, parking spaces, parkways, pedestrian malls, or grass, shrubs, trees and other vegetation for the purpose of landscaping any street or public property;
 4. Providing fire protection and other public safety functions; and
 5. Collection and disposal of garbage and recyclables.
 6. The relocation of Grantee’s facilities necessary to carry out the exercise of the Town’s police power for urban renewal.
- C. Town will bear the entire cost of relocating any of Grantee’s facilities, the relocation of which is necessitated by the construction of improvements by or on behalf of Town in furtherance of a proprietary function. All functions of Town which are not governmental are proprietary.
- D. Notwithstanding provisions set forth in 3.B. above, Town and Grantee shall provide one another with reasonable notice of upcoming construction projects within the public rights-of-way. Reasonable notice shall mean that neither party shall finalize the design of any such facility without providing the other party notice as set forth in Section 15 below, and a reasonable opportunity to comment. If either party identifies a potential conflict between their existing facilities and the other party's proposed facilities, said party shall immediately notify the other party of such conflict and the parties shall use their best efforts to resolve such conflict.
- E. If, in the course of Town government construction projects, Town determines that it is necessary and reasonable to make a change in the design of the project and, as a result of such change, Grantee's facilities will be in conflict with Town's project, Grantee shall bear the entire cost of the relocation of such facilities if, pursuant to the terms of this Franchise, Grantee would have been responsible for the cost of such relocation if Town had originally designed its project in the manner accomplished by the change in the project's design.
- F. Town and Grantee agree and understand that there may be instances when Grantee is required to make repairs that are of an emergency nature. Grantee shall notify Town prior to such repairs, to the extent practicable, and shall obtain the necessary permits in a reasonable time after notification, showing the work performed in the public rights-of-way.

- G. Whenever Grantee shall cause any opening or alteration whatsoever to be made for any purpose in any public rights-of-way, the work shall be completed with due diligence within a reasonably prompt time. If, in the installation, use or maintenance of its electrical system, Grantee damages or disturbs the surface or subsurface of any public right-of-way or public improvement located thereon, therein or there under, Grantee shall promptly, at its own expense, and in a manner acceptable to Town, restore the surface or subsurface of the public right-of-way, or repair or replace the surface or subsurface of the public right-of-way or improvement thereon, therein or thereunder, to substantially its former condition with comparable materials, so that the restoration meets or exceeds Town's engineering design and construction standards. If such restoration, repair or replacement of the surface, subsurface or any structure located thereon, therein or thereunder is not completed within a reasonable time, or such repair or replacement does not meet industry or Town's duly adopted standards, or as required by Grantee's permit which may incorporate special conditions when required for Town purposes, Town shall notify Grantee that said restoration does not meet industry or Town standards. Town shall then have the right to perform the necessary restoration, repair or replacement through Town's own forces or through a hired contractor and Grantee agrees to reimburse Town for its reasonable expenses in so doing within thirty (30) days after its receipt of Town's invoice.
- H. If Town participates in the cost of relocating Grantee's facilities for any reason, the cost of relocation to Town shall not include any upgrade or improvement of Grantee's facilities as they existed prior to relocation.
- I. Town will not exercise its right to require Grantee's facilities to be relocated in an unreasonable or arbitrary manner, or in order to avoid its obligation under the Franchise. Town agrees to notify Grantee during the planning and design of Town's projects in public rights-of-way that may require relocation of Grantee's facilities and to coordinate its construction plans and schedules with Grantee to determine the most cost-effective design to mitigate Grantee's cost to relocate its facilities.
- J. Town agrees it will not require Grantee to relocate its facilities located within the public rights-of-way without providing Grantee adequate space within the rights-of-way to relocate the facilities that must be moved.
- K. Town will not plant any tree that can normally grow to a height of more than 25 feet under or adjacent to Grantee's overhead power lines in the public rights-of-way. Grantee shall have the authority to trim, prune or remove any trees or shrubs located within or hanging over the limits of the public rights-of-way of Town that in the judgment of Grantee may interfere with the construction, or endanger the operation, of the lines and/or facilities of Grantee. Except in emergencies or situations where trees pose an immediate hazard, Grantee shall, prior to removing trees in the public rights-of-way, request approval by Town for such tree removals and Town shall promptly respond to such requests. All said vegetation management work is to be done at Grantee's expense.

- L. Grantee shall bear the entire cost of relocation of existing facilities, irrespective of the function served, where Town facilities or other facilities occupying public rights-of-way under authority of a Town permit or license are already located in the rights-of-way and the conflict between Grantee's potential facilities and existing facilities can only be resolved by the movement of the existing Town or permittee facilities.
- M. In any instance where Grantee is required to reimburse Town, costs will include reasonable costs for professional services, including but not limited to engineering and legal services, if applicable.

Section 4. – Indemnification; Insurance:

Town shall in no way be liable to or responsible for any accident or damage that may occur in the construction, operation or maintenance by Grantee of its lines and appurtenances hereunder, and the acceptance of this grant shall be deemed an agreement on the part of said Grantee to indemnify said Town and hold it harmless for, from and against any and all liability, loss, costs, legal fees, damage or any other expense which may be imposed on said Town by reason of the acts of this Grantee in the construction, operation and maintenance of its lines and appurtenances hereunder, including the maintenance of barricades and traffic control devices in construction and maintenance areas; provided however, that such claims, expenses and losses are not the result of the willful misconduct or negligent acts or omissions of Town.

Grantee shall maintain throughout the term of this Franchise liability insurance and/or a program of self-retention or general assets, to adequately insure and /or protect the legal liability of Grantee with respect to the installation, operation and maintenance authorized herein to occupy the public rights-of-way. Such insurance, self-retention or general asset program will provide protection for bodily injury and property damage including contractual liability and legal liability for damages arising from explosion, collapse and underground incidents. Grantee shall file with Town documentation of such liability insurance, self-retention or general asset program within thirty (30) days following the effective date of this Franchise and thereafter upon request of Town.

Section 5. – Franchise Fee:

Grantee shall pay to Town in consideration of the grant of this Franchise a sum equal to two percent (2%) of all revenues of Grantee, including Regulatory Assessments, but excluding transaction privilege taxes and similar governmental impositions, from the retail sales and/or delivery by it of electric energy and other charges for services attendant to the retail sale and/or delivery of electric energy delivered through Grantee's electric distribution system within the present and any future corporate limits of Town, as shown by Grantee's billing records. Grantee shall not, however, pay said franchise fee on revenues charged to Grantee's retail customers by third party electric service providers. Said payments shall be in lieu of any and all fees, charges or exaction of any kind otherwise assessed by Town in any way associated with Grantee's use of the rights-of-way, including but not limited to, the construction of Grantee's facilities hereunder or for inspections thereof during the term of this Franchise.

For the purpose of verifying amounts payable hereunder, the books and records of Grantee shall be subject to inspection by duly authorized officers or representatives of Town at reasonable times.

Beginning December 1, 2010, payment as described in the preceding paragraphs shall be payable in monthly amounts within 30 days after the end of each calendar month (“the Delinquent Date”). If the payment is later than the Delinquent Date, a 2% penalty will be added, and interest at the then current rate charged by the Arizona Department of Revenue for delinquent transaction privilege taxes on the entire amount due. The penalty and interest will be waived by Town if the failure to pay by the Delinquent Date was the result of a casualty that renders Grantee unable to compute the liability from business records; provided, however, Grantee in such event must file an estimated payment by the Delinquent Date to avoid penalty and interest charges.

Notwithstanding the provisions of this Franchise, if during the term of this Franchise Grantee enters into any electric franchise with any other municipality in Arizona during the term of this Franchise that provides for a higher percentage of Grantee’s revenues than two percent (2%) or includes more categories of revenues than set forth in this Franchise, Grantee shall notify Town Council of such higher percentage or expanded revenue base. Town Council, at its sole discretion, shall have the option to, as applicable: (i) increase Grantee’s franchise fee to the higher percentage rate; and/or (ii) include other revenue categories set forth in the franchise agreement Grantee has with the other entity of this State. Grantee agrees to promptly, after Town Council’s action, pay to Town as its new franchise fee the higher franchise percentage or include the additional revenue categories.

Section 6. – Additional Fees and Taxes:

Notwithstanding any provision contained herein to the contrary, Grantee shall pay, in addition to the payment provided in Section 5, the following charges, taxes and fees as established in a code or ordinance properly adopted by Town:

- A. General ad valorem property taxes;
- B. Transaction privilege and use tax as authorized by law and collected by Grantee from the retail sales and/or delivery by it of electric energy and other charges for services attendant to the retail sale and/or delivery of electric energy delivered through Grantee’s electric distribution system within the present and any future corporate limits of Town, as shown by Grantee’s billing records;
- C. Other charges, taxes or fees generally levied upon businesses by Town, provided said charge, tax or fee is a flat fee per year and that the annual amount of such fee does not exceed the amount of similar fees paid by any other businesses operated within Town.

Section 7. – Term:

This Franchise shall continue and exist for a period of twenty-five (25) years from the first day of the calendar month following the election approving this Franchise (the “Effective Date”), which shall be entered in the space provided herein; provided, however, that either party may terminate this Franchise on its tenth

anniversary by giving written notice of its intention to do so not less than one (1) year before the date of termination. If such notice is given for the purpose of negotiating a new franchise and such negotiation is successful, the party giving the notice of termination shall be responsible for the costs of the resulting franchise election.

Section 8. – Franchise; Non-Exclusive:

This Franchise is not exclusive, and nothing contained herein shall be construed to prevent Town from granting other like or similar grants or privileges to any other person, firm or corporation.

Section 9. – Conflicting Ordinances:

Notwithstanding any other provisions hereof, all ordinances and parts of ordinances in conflict with the provisions hereof, to the extent applicable to a franchised electric public service corporation, are hereby superseded.

Section 10. – Independent Provisions:

If any section, paragraph, clause, phrase or provision of this Franchise, other than Section 5 above, shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this Franchise as a whole or any part of the provisions hereof other than the part so adjudged to be invalid or unconstitutional. If Section 5 above shall be adjudged invalid or unconstitutional in whole or in part by a final judgment, this Franchise shall immediately terminate and shall be of no further force or effect.

Section 11. – Town Code:

Subject to the provisions of Section 9. herein, Grantee agrees that it shall comply with all applicable codes and ordinances of Town.

Section 12. – Town Use of Grantee’s Facilities:

In consideration of this Franchise and the rights granted hereby, Town shall, if the following six criteria are met, have the right, without fee or charge to Town except as specified in Section 12.F. below, to place, maintain, and operate on Grantee’s poles located on public rights-of-way within Town’s corporate limits, any and all wires and appurtenances (other than steps or climbing devices), that Town may use for its municipal fire alarm, and police telephone or other municipal communications services utilized for governmental functions:

- A. Town must notify Grantee in writing of Town’s intended use of Grantee’s poles;
- B. Town shall, to the fullest extent permitted by law, defend, indemnify and hold Grantee harmless from any and all claims, costs, damages, expenses and losses, including but not limited to attorney fees and court costs relating to, arising out of, or alleged to have resulted from Town’s use of Grantee’s facilities pursuant to this Franchise; provided however, that such claims, expenses and losses are not the result of the willful misconduct or negligent acts or omissions of Grantee.

- C. Town’s facilities and the installation and maintenance thereof must comply with the applicable requirements of the Occupational Safety and Health Act, the National Electrical Safety Code, and all other applicable rules and regulations as amended. If Town does not comply with all applicable laws, ordinances and regulations, or if Town’s facilities create an immediate safety hazard, Grantee retains the right to remove or correct Town’s facilities at Town’s expense;
- D. Town’s facilities and the installation and maintenance thereof must not cause Grantee’s facilities and the installation and maintenance thereof to be out of compliance with all applicable requirements of the Occupational Safety and Health Act and the National Electrical Safety Code and all other applicable rules and regulations as amended. If Town does not comply with all applicable laws, ordinances and regulations, or if Town’s facilities create an immediate safety hazard, Grantee retains the right to remove or correct Town’s facilities at Town’s expense;
- E. Town’s use of its facilities shall not interfere with Grantee’s use of Grantee’s facilities, and;
- F. Town shall be responsible for any incremental costs incurred by Grantee as a result of Town’s use of Grantee’s facilities.

Section 13. – No Third Party Beneficiaries:

There are no third party beneficiaries to this Franchise agreement between Town and Grantee.

Section 14. – Voter Approval Required:

This Franchise is subject to the approval of the electors of Town. Grantee shall pay all of the costs incurred in conducting the franchise election, except that, if one or more additional propositions are presented to the electors at such election, Grantee shall pay only that portion of Town’s election expense determined by dividing all of Town’s expenses by the number of issues presented on the ballot.

Section 15. – Notices:

Any notice or other communication required or permitted to be given under this Franchise shall be in writing, unless otherwise expressly permitted or required, and shall be deemed effective either (i) upon hand delivery to the person then holding the office shown on the attention line of the address below, or, if such office is vacant or no longer exists, to a person holding a comparable office, or (ii) on the third business day following its deposit with the United States Postal Service to the address set forth below, postage prepaid, first class mail, or (iii) deposited with to a recognized and reputable overnight delivery service for delivery to the address set forth below:

To Town:

Town of Jerome
Manager
PO Box 335
Jerome, Arizona 86331

To Grantee:

Franchise Department
Arizona Public Service Company
P.O. Box 53999, M.S. 8679
Phoenix, Arizona 85072-3999

Section 16. – Assignment of Franchise

The right, privilege or franchise granted hereunder shall not be leased, assigned or otherwise alienated without the express consent of the Town evidenced by action of the Town Council at a public meeting; provided, however, that the consent of Town is hereby given to Grantee to transfer or assign this Franchise to Grantee's parent corporation, Pinnacle West Capital Corporation or another subsidiary of Pinnacle West Capital Corporation.

Section 17. – Adoption; Declaring an Emergency

Whereas, it is necessary for the preservation of the peace, health and safety of the Town of Jerome, Arizona, an emergency is declared to exist, and this ordinance shall become immediately operative and in force from and after the date of posting hereof.

We, the undersigned, have adopted this document on the dates written below in accordance with the results of the Town of Jerome Election on November 2, 2010.

TOWN OF JEROME

ARIZONA PUBLIC SERVICE COMPANY,
An Arizona Corporation

By _____
Jay Kinsella, Mayor
On behalf of the Town of Jerome

By _____
Daniel T. Froetscher, Vice President
Energy Delivery

Date: _____

Date: _____

ATTEST:

Candace B. Gallagher, CMC, Town Manager/Clerk

APPROVED AS TO FORM:

 Kathleen G. Williamson, Williamson & Young, P.C.
 Town Attorney

Date of First Reading:	11/9/2010	Date of Adoption:	11/9/2010	
		<i>Ayes</i>	<i>Nays</i>	<i>Absent</i>
		5	0	0
Dates Published: <i>Entire ordinance published as per statute in each edition of the Verde Independent between 9/29/10 and 10/29/10. Notice of adoption published 11/21/10.</i>				

CERTIFICATION OF POSTING

I, the duly appointed Deputy Clerk of the Town of Jerome, Arizona, or my representative, hereby certify that Ordinance No. 383 was posted on the following dates and times, and at the following places:

	DATE	TIME	PLACE
1			301 Main Street, second floor, exterior posting case
2			970 Gulch Road, side of Gulch Fire Station, exterior posting case
3			600 Clark Street, Jerome Town Hall, exterior posting case
4			120 Main Street, Jerome Post Office, interior posting case

 R.A. Shemaitis, Deputy Clerk