

ORDINANCE NO. 66

AN ORDINANCE AMENDING THE EXISTING ELECTRIC FRANCHISE BETWEEN THE CITY AND ONCOR ELECTRIC DELIVERY COMPANY, TO PROVIDE FOR A DIFFERENT CONSIDERATION; PROVIDING AN EFFECTIVE DATE; PROVIDING FOR ACCEPTANCE BY ONCOR ELECTRIC DELIVERY COMPANY; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, Oncor Electric Delivery Company, successor in interest to TXU Electric Company (hereinafter called "Oncor") is engaged in the business of providing electric utility service within the City and is using the public streets, alleys, grounds and rights-of-ways within the City for that purpose under the terms of a franchise ordinance heretofore duly passed by the governing body of the City and duly accepted by Oncor; and

WHEREAS, the City and Oncor desire to amend said franchise ordinance to provide for a different consideration;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF Lawville, TEXAS: that

SECTION 1: The existing electric franchise ordinance between the City and Oncor Electric Delivery Company is amended as follows:

- A. Effective January 1, 2002, the franchise fee due from Oncor shall be a sum comprised of the following:
- (1) a charge, as authorized by Section 33.008(b) of PURA, based on each kilowatt hour of electricity delivered by Oncor to each retail customer whose consuming facility's point of delivery is located within the City's municipal boundaries and as specified by Oncor to the City by letter dated January 21, 2002.
 - (a) The franchise fee due pursuant to Section 33.008(b) of PURA shall be payable in accordance with the existing electric franchise; and
 - (2) a sum equal to four percent (4%) of gross revenues received by Oncor from services identified in its "Tariff for Retail Delivery Service", Section 6.1.2, "Discretionary Service Charges," items DD1 through DD24, that are for the account or benefit of an end-use retail electric consumer.

- (a) The franchise fee amounts based on "Discretionary Service Charges" shall be calculated on an annual calendar year basis, i.e., from January 1 through December 31 of each calendar year.
- (b) The franchise fee amounts that are due based on "Discretionary Service Charges" shall be paid at least once annually on or before April 30 each year based on the total "Discretionary Service Charges" received during the preceding calendar year.

B. Oncor Franchise Fee Recovery Tariff

- (1) Oncor may file a tariff amendment(s) to provide for the recovery of the franchise fee on Discretionary Service Charges.
- (2) City agrees (i) to the extent the City acts as regulatory authority, to adopt and approve that portion of any tariff which provides for 100% recovery of the franchise fee on Discretionary Service Charges; (ii) in the event the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of the franchise fees on such Discretionary Service Charges is an issue, the City will take an affirmative position supporting the 100% recovery of such franchise fees by Oncor and; (iii) in the event of an appeal of any such regulatory proceeding in which the City has intervened, the City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Oncor.
- (3) City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such franchise fees by Oncor.

SECTION 2: In all respects, except as specifically and expressly amended by this ordinance, the existing effective franchise ordinance heretofore duly passed by the governing body of the City and duly accepted by Oncor shall remain in full force and effect according to its terms until said franchise ordinance terminates as provided therein.

SECTION 3: This ordinance shall take effect upon its final passage and Oncor's acceptance. Oncor shall, within thirty (30) days from the passage of this ordinance, file its written acceptance of this ordinance with the Office of the City Secretary in substantially the following form:

To the Honorable Mayor and City Council:

Oncor Electric Delivery Company, acting by and through the undersigned authorized officer, hereby accepts in all respects, on this the 19 day of

August, 2002, Ordinance No. 666 amending the current electric franchise between the City and Oncor and the same shall constitute and be a binding contractual obligation of Oncor and the City.

Oncor Electric Delivery Company

By _____
Vice President

SECTION 4. It is hereby officially found and determined that the meeting at which this Ordinance is passed is open to the public as required by law and that public notice of the time, place and purpose of said meeting was given as required.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF
Zavalla, TEXAS, this the 9 day of September, 2002, at which meeting a quorum was present and voting.

Mayor

ATTEST:

Donna Marshall
City Secretary

APPROVED AS TO FORM:

City Attorney



COMPROMISE, SETTLEMENT AND RELEASE AGREEMENT

COPY

This Compromise, Settlement, and Release Agreement (the "Agreement") is made and entered into as of the date set forth below by and between the City of Zavalla (the "City") and TXU Electric Company n/k/a TXU US Holdings Company ("TXU Electric):

WHEREAS, thirty seven cities filed a suit in the 134th Judicial District Court of Dallas County, Texas, in Cause No. 00-9383, styled *City of Denton, Texas et al. vs. TXU Electric Company, et al.* (the "Litigation") which included claims arising out of electric franchise ordinances similar in some respects to the franchise ordinance entered into by and between the City and TXU Electric and, specifically, the Litigation involved a dispute with regard to the calculation and amount of franchise fees paid by TXU Electric;

WHEREAS, the Litigation was resolved by agreement and TXU Electric has agreed to offer the City the same benefits offered to the Plaintiffs in the Litigation and the City has agreed to accept the offer by TXU Electric and to release any claims related to the payment of franchise fees prior to and through December 31, 2001 ;

NOW, THEREFORE, in order to fully and finally resolve all disputes and claims arising out of the calculation and payment of franchise fees to the City by TXU Electric prior to and through December 31, 2001, for the mutual promises and covenants set forth in this Agreement, the adequacy and sufficiency of which consideration is acknowledged the City and TXU Electric agree as follows:

1. AMENDMENTS TO THE ELECTRIC FRANCHISE ORDINANCE

As the result of electric industry restructuring, the electric franchise formerly held by TXU Electric has been assigned to Oncor Electric Delivery Company ("Oncor"), accordingly, effective January 1, 2002, the City agrees to enter into and TXU Electric agrees to cause Oncor to accept an amendment to the current electric franchise ordinance substantially in the form of the

amendment attached as Exhibit A which amendment shall, at the election of the City, provide that the Discretionary Services Charges identified in Section 6.1.2 of the Tariff for Retail Delivery applicable to Oncor which are directly paid by the customer and which are those charges identified as items DD1 through and inclusive of DD24 in said tariff, shall be subject to an additional franchise fee based on 4% of such charges which additional franchise fee shall be paid to the City pursuant to the terms of the amendment attached as Exhibit A. The City acknowledges that Oncor may file with the Texas Public Utility Commission and/or the City a tariff amendment in compliance with the terms of this agreement, which will provide that Oncor shall have the right to collect from the customer the franchise fee on such Discretionary Service Charges such that the customer shall bear 100% of the franchise fee on such Discretionary Service Charges. The City acknowledges that Oncor is an intended third-party beneficiary of this agreement and agrees to cooperate with Oncor in order for Oncor to pass through to customers the entire franchise fee on such Discretionary Service Charges by taking the following actions: (i) to the extent the City acts as regulatory authority, by adopting and approving that portion of any tariff in compliance with the terms of this Agreement which provides for 100% recovery of such franchise fees; (ii) in the event the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of the franchise fees on such Discretionary Service Charges is an issue, the City will take an affirmative position supporting the 100% recovery of such franchise fees by Oncor and; (iii) in the event of an appeal of any such regulatory proceeding in which the City has intervened, the City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Oncor. The City further agrees not to take any action to prevent the recovery of the franchise fees on such Discretionary Service Charges by Oncor and to take other action which may be reasonably requested by Oncor to provide for the 100% recovery of such franchise fees by Oncor.

2. PAYMENTS TO THE CITY

Upon execution and delivery of a fully executed and notarized original of this Agreement TXU Electric agrees to pay, or cause Oncor to pay the City, the sum of \$ 542.16

3. RELEASE OF TXU ELECTRIC AND ITS AFFILIATES BY THE CITY

Except for claims arising out of a breach of this Agreement, the City of Zavalla, on behalf of itself and its successors and assigns and any and all persons, entities or municipalities claiming by, through or under them, hereby **RELEASES, DISCHARGES AND ACQUITS**, forever and for all purposes, TXU Electric Company (now known as TXU US Holdings Company), its successor Oncor Electric Delivery Company, TXU Corp. and each of their respective agents, employees, officers, directors, shareholders, partners, insurers, attorneys, legal representatives, successors and assigns as well as their affiliated corporations, including TXU Business Services Company and TXU Energy Company LLC and its subsidiaries, from and against any and all liability which they now have, have had or may have, and all past, present and future actions, causes of action, claims, demands, damages, costs, expenses, compensation, losses and attorneys' fees of any kind or nature whatsoever, or however described, whether known or unknown, fixed or contingent, in law or in equity, whether asserted or unasserted, whether in tort or contract, whether now existing or accruing in the future arising out of or related to the payment, calculation or rendition of franchise fees to the City on or before December 31, 2001 and all claims which could be asserted against TXU Electric in litigation in any way related to the payment, calculation or rendition of franchise fees by TXU Electric on or before December 31, 2001. This release is intended to only release claims related to the payment, calculation or rendition of franchise fees by TXU Electric on or before December 31,

2001 and is not intended to release any other claim or cause of action that any party to this Agreement has, known or unknown, or which accrues in the future.

4. WARRANTY AS TO OWNERSHIP OF CLAIMS AND AUTHORITY

- A. The City warrants and represents that it is the owner of the claims being compromised, settled, discharged and released pursuant to this Agreement and each further warrants and represents that it has not previously assigned all or any part of such claims to another entity or person. The City warrants and represents that there are no liens of any nature, assignments or subrogation interests in or to the money paid to the City under the terms of this Agreement. The City warrants that it will take all action necessary to properly execute and deliver this agreement.
- B. TXU Electric warrants that the person(s) executing this Agreement on its behalf has authority to bind the entity for whom such person signs this Agreement.

5. NO ADMISSION OF LIABILITY

This Agreement is made to compromise, terminate and to constitute an accord and satisfaction of all of the claims released by this Agreement and TXU Electric admits no liability, fault or wrongdoing of any nature or kind whatsoever and expressly denies and disclaims any liability, fault or wrongdoing alleged or which could have been alleged with regard to the claims asserted in the Litigation if the City had become a party to the Litigation or any similar claims which might be asserted by the City against TXU Electric.

6. RECOVERY OF DAMAGES DUE TO BREACH

In the event of breach by any party of the terms and conditions of this Agreement, a non-breaching party shall be entitled to recover all expenses as a result of such breach, including, but not limited to, reasonable attorneys' fees and costs.

MISCELLANEOUS PROVISIONS

7. It is understood and agreed that all agreements and understandings by and between the parties to this Agreement with respect to the payment of franchise fees and the settlement of any claims related to the payment of franchise fees are expressly embodied in this Agreement and that this Agreement supersedes any and all prior agreements, arrangements or understandings between the parties relating to the claims released pursuant to this Agreement or any matters related thereto executed by the parties.
8. The parties acknowledge and agree that the terms of this Agreement are all contractual and not mere recitals.
9. The parties acknowledge that they have read this Agreement, understand its terms, and that this Agreement is entered into voluntarily, without duress, and with full knowledge of its legal significance.
10. This Agreement may not be modified in any manner, nor may any rights provided for herein be waived, except by an instrument in writing signed by each party.
11. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.
12. Should any term or any provision of this Agreement be declared invalid by a court of competent jurisdiction, the parties agree that all other terms of this Agreement are binding and have full force and effect as if the invalid portion had not been included.
13. The parties represent and warrant that no party has been induced to enter this Agreement by a statement, action or representation of any kind or character made by the persons or entities released under this Agreement or any person or persons representing them, other than those expressly made in this Agreement.

14. It is understood and agreed that this Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

15. The headings contained herein are for convenience and reference only and are agreed, in no way, to define, describe, extend or limit the scope or intent of this Agreement or its provisions.

16. This Agreement shall be construed in accordance with the laws of the State of Texas.

IN WITNESS WHEREOF, this Agreement has been executed by the parties as of the date set forth.

THE CITY OF ZAVALLA, TEXAS

By: _____

Its: Mayor

Date: 9-16-02

TXU ELECTRIC COMPANY n/k/a TXU
US HOLDINGS COMPANY

By: _____

Its: _____

Date: _____

STATE OF TEXAS

COUNTY OF Angelina

This instrument was acknowledged before me on the 16 day of Sept, 2002, by ARTHUR BRIDGES, as Mayor on behalf of the City of Zavalla.



Donna Blair Marshall
Notary Public, State of Texas

STATE OF TEXAS '
'
COUNTY OF DALLAS '

This instrument was acknowledged before me on the ____ day of ____ 2002,
by _____, of TXU Electric Company n/k/a TXU US Holdings Company, on behalf
of said corporation.

Notary Public, State of Texas

CASSELS & REYNOLDS, L.L.P.
Attorneys at Law
117 E. Lufkin Ave.
P. O. Box 1626
Lufkin, Texas 75902-1626
Telephone: (936) 634-8466
FAX: (936) 639-1939

Jimmy A. Cassels, P.C.

Janet L. Reynolds

August 8, 2002

Ms. Donna Marshall
City Secretary
City of Zavalla
Zavalla, Texas 75980

Re: Electric Contract with the City of Zavalla by Oncor

Dear Donna:

I have reviewed the above referenced contract and it is obvious that Oncor will be changing the way the franchise tax is calculated before it is paid to the City of Zavalla. I am not knowledgeable enough about kilowatt hour calculation or our prior history with TXU to know if this will result in more money or a reduced payment to the City of Zavalla.

I would insist that the Oncor representative represent to the City whether we will receive more or less money and explain the calculation to the best of his ability. I would insist that he follow this explanation up with a letter so that we will have something to compare it to when our first check comes in. I would also call Texas Municipal League to see if they have any thoughts or comments about the contract being offered to small municipalities such as ours.

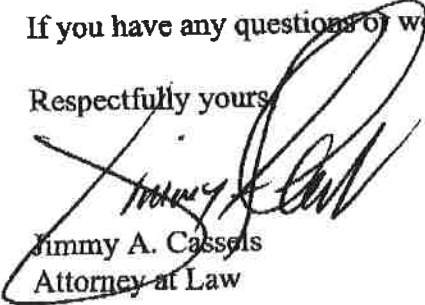
On Page 2 of the contract they have us agreeing to support their recovery of discretionary fees if we ever join in a suit with other municipalities. As you know, it is common for small towns to join under the umbrella of TML and bring suit against the electric company for adjustments. I would also ask the TML representative about their opinion on this paragraph. It is found on Page 2 under B(2).

I would keep the term of this agreement as short as possible until we have some sort of experience with these new calculations. If the new contract turns out to be dismal for us financially, I do not want to be tied to a five year contract. I would suggest the contract term be for a year or two until we get some idea of what this means to us financially. If it is a bad deal then we can explore our other options under deregulation.

Ms. Donna Marshall
August 8, 2002
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If you have any questions or would like to discuss this matter, please feel free to contact me.

Respectfully yours,



Jimmy A. Cassels
Attorney at Law

JAC/td

Sept 02,

Jimmy called after this letter + said he had done further review of the Ord. for Zavalla, Huntington & Dittoll + felt confident that it was okay.