

When recorded, deliver to:
Marian Sheppard, Clerk
Board of Supervisors



RESOLUTION NO. 16-10-01

(Revised November 16, 2016)

A RESOLUTION OF THE BOARD OF SUPERVISORS OF GILA COUNTY, ARIZONA, GRANTING AN ELECTRICITY SERVICES FRANCHISE TO ARIZONA ELECTRIC POWER COOPERATIVE, INC.

KNOW ALL MEN BY THESE PRESENTS, THAT,

WHEREAS, Arizona Electric Power Cooperative, Inc., an Arizona corporation, was granted a franchise by the Board of Supervisors of Gila County, Arizona, on June 3, 1991, to erect, construct, operate and maintain electric lines across, over and under public roads and highways, and streets, and alleys of unincorporated cities and towns within specified areas of Gila County for the purpose of generating, transmitting and distributing electric power and energy; and,

WHEREAS, reasonable public notice of another application by Arizona Electric Power Cooperative, Inc. has been provided in the manner required by A.R.S. § 40-283 of the filing of said application and of the public hearing on this matter set for October 18, 2016, at 10:00 a.m., at the regular meeting place of the Board of Supervisors in the City of Globe, Arizona, as the time and place for the consideration of the matter; and,

WHEREAS, it appears from the affidavit of publication of the Arizona Silver Belt newspaper that due and regular notice of said date, time and place set for the consideration of such action has been published once a week for three (3) consecutive weeks prior to the date of said hearing, to wit: in the September 28, 2016, October 5, 2016, and October 12, 2016, editions of said newspaper, and the matter being called at 10:00 a.m., and it appearing that the Board of Supervisors has not received a petition signed by more than fifty (50) percent of the qualified electors of said County asking the Board to deny said application on or before the date set for consideration thereof; and,

WHEREAS, said application was heard on October 18, 2016, before the Board of Supervisors of Gila County, and the Board considered the application for the franchise, and there being good cause to grant this franchise;

NOW, THEREFORE, it being determined by the Board of Supervisors of Gila County that the grant of this franchise is regular, proper, authorized by law and in the best interest of Gila County, and the inhabitants thereof;

NOW, THEREFORE, IT IS HEREBY RESOLVED:

1. That this Board of Supervisors of Gila County, Arizona, acting for and on behalf of said County (hereinafter referred to as "County"), does hereby grant unto Arizona Electric Power Cooperative, Inc. (hereinafter referred to as "Grantee") a non-exclusive right, privilege, license, and franchise (hereinafter referred to as "franchise") to construct, install, operate and maintain along, over, under and across the streets, alleys and highways under the jurisdiction of the County, facilities for the purpose of maintaining and operating an electric system, and all other facilities and improvements necessary for electricity and energy within the following described area: Southeast Quarter of Section Eleven, and the Southwest Quarter of Section Twelve, and the East One-half of the West One-half and the West One-half of the East One-half of Section Thirteen, and the Northeast Quarter of Section Twenty-four, Township Five South, Range Fifteen East, Gila and Salt River Meridian, Gila County, Arizona. This grant does not include the authorization to use State highways and those areas within the corporate boundaries of any city or town. This grant is subject to the terms, conditions and limitations expressed below or incorporated herein by reference.
2. The County reserves the right to impose future restrictions, limitations and conditions upon the exercise of the rights granted herein as it deems best for the public safety and welfare. The Grantee is further required to comply with all lawful, applicable ordinances of Gila County regulating the conduct of work within the public rights-of-way; as such ordinances are now enacted or may be amended or adopted from time to time. The Grantee is required to obtain a separate right-of-way permit from the County prior to initiating any construction in the right-of-way and to pay the applicable fees for the associated inspections.
3. The franchise granted hereby shall not be exclusive, and nothing herein shall be construed to prevent the County from granting other like or similar franchises to any other person, firm or corporation.
4. The Grantee shall bear all expenses and costs, including damages and compensation for the alteration of the direction, surface, grade or alignment of a public roadway or for revenues lost by the Grantee, which may arise in connection with its exercise of the rights granted herein. The Grantee may not use the surface of a County highway for trackage.
5. The Grantee shall erect, construct and maintain all facilities authorized herein in a good and workmanlike manner and in compliance with all valid laws, ordinances and

regulations, which may be in force from time to time. All such work shall be performed in such a manner as may be necessary to avoid any unreasonable damage, disturbance or modification to existing public rights-of-ways, including roads, streets, highways, bridges, borrow ditches or shoulders thereon.

6. The Grantee shall, immediately upon erecting, constructing, replacing or repairing its facilities, or any part thereof, at its own cost and expense, restore any affected public right-of-way, including any road, street, highway, bridge, borrow ditch or shoulder thereon, to not less than the same condition which existed prior to the Grantee's action.
7. The County does not waive or relinquish any rights it may have to the full and complete use of the public rights-of-way subject to this franchise, whether for road purposes or otherwise. The rights of the County in and to the use of the rights-of-way are, and shall be, paramount and superior to the rights of the Grantee. In the event that the location of the Grantee's facilities may interfere or conflict with the County's use, expanded use, alteration, improvement or maintenance of the County's rights-of-way, the County may require the Grantee to relocate, at the Grantee's expense, all facilities which give rise to such interference or conflict. The County will provide the Grantee with reasonable notice of any relocation requirement and will provide a reasonable period of time for the Grantee to perform such relocation.
8. The Grantee assumes the sole responsibility for all liability for any injury or damage to any person or property, or to the road and the right-of-way itself, caused by or arising out of the exercise of the rights granted herein and attributable to any act or omission of the Grantee. The Grantee shall indemnify, defend and hold harmless Gila County, its officers, departments, employees and agents from and against any and all suits, actions, legal or administrative proceedings, claims, demands or damages of any kind or nature, including all costs of legal defense, arising out of the exercise of these rights which are attributed to any act or omission of the Grantee, its agents, employees or anyone acting under its direction, control or on its behalf.
9. The County grants this franchise for a term of twenty-five (25) years from the date of its authorization. This franchise may not be sold, leased, assigned, conveyed or transferred in any manner, in whole or in part, including pursuant to the sale or merger of the Grantee corporation itself, without the express written consent of the County, which consent shall not be unreasonably withheld.
10. The County reserves the right to alter or amend the terms of this franchise in any manner necessary to protect the safety or welfare of the public or the public interest. This reservation includes, but is not limited to, the authority to impose such amended franchise fees, rentals or use payments, or other form of compensation or assessment as the County may be authorized, now or in the future, to impose under the laws of the State of Arizona and the United States.

11. The County may terminate this franchise in the event that the Grantee fails to comply with the terms and conditions of this franchise. The Board of Supervisors, or its designee, shall provide the Grantee with written notice of non-compliance and allow the Grantee a period of not more than sixty (60) days to remedy any breach. If the Grantee continues to fail to comply with the terms of this franchise after this notice and remedy period, the Board of Supervisors may, following a public hearing, revoke all rights granted herein and render this franchise null and void.
12. Upon termination of this franchise, whether by expiration of its term, or for cause, or by voluntary abandonment, and after written notice from the County, the Grantee shall remove all of its facilities, installed pursuant to the rights granted herein within one hundred eighty (180) days of such termination, and shall repair any damages caused thereby. All such facilities which are not removed within this period shall be deemed to be abandoned and shall become the property of the County.
13. This franchise will not be effective for any purpose until the Grantee has indicated its acceptance in writing below.
14. The rights, privileges and franchise granted herein are made pursuant to the laws of Arizona, including A.R.S. § 40-283, which is incorporated herein by reference.
15. This agreement is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the provisions of which are incorporated herein by this reference.
16. Grantee hereby certifies that it is not currently engaged in and will not for the duration of this agreement engage in a boycott of Israel as defined by A.R.S. § 35-393.01. Violation of this certification by Grantee may result in action by the County up to and including termination of this franchise.
17. Grantee hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). If Grantee uses any subcontractors in performance of this franchise, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A). A breach of this warranty shall be deemed a material breach of the franchise subject to penalties up to and including termination of this franchise. The County retains the legal right to inspect the papers of Grantee and its subcontractors who work on the franchise to ensure that it or its subcontractors are complying with this warranty.

IN WITNESS WHEREOF, the Board of Supervisors of the County of Gila, State of Arizona, has caused these presents to be executed and signed by the Chairman of the Board of Supervisors on this 15th day of November 2016.

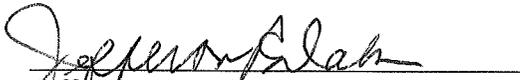
Attest:


Marian Sheppard
Clerk of the Board

GILA COUNTY BOARD OF SUPERVISORS


Michael A. Pastor, Chairman

Approved as to form:


Jefferson R. Dalton
Deputy Gila County Attorney
Civil Bureau Chief

ACCEPTANCE OF FRANCHISE

This is to certify that the Grantee, Arizona Electric Power Cooperative, Inc., has on the 15th day of November 2016, accepted the foregoing franchise. Grantee agrees that it will be bound by, observe and carry out the terms and conditions of such franchise.

Dated: November 15, 2016

GRANTEE:

ARIZONA ELECTRIC POWER COOPERATIVE, INC.

Signature: Patrick F. Ledger

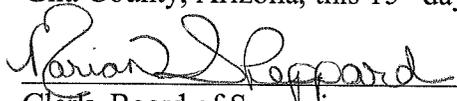
Name: PATRICK F. LEDGER

Title: CEO

CERTIFICATE OF CLERK

I, **Marian E. Sheppard**, Clerk of the Board of Supervisors of Gila County, Arizona, do hereby certify that the foregoing excerpt from the minutes of the meetings of the Board of Supervisors of Gila County, Arizona, held on **October 18, 2016**, and **November 15, 2016**, constitutes a true and correct copy of the said minutes insofar as they relate to the Application of **ARIZONA POWER ELECTRIC COOPERATIVE, INC.**, an Arizona corporation, for an electricity services franchise in the County and to the granting of said franchise pursuant to the resolution hereinabove set out, all as appears in the official records of the Board of Supervisors.

IN WITNESS WHEREOF, I have set my hand and official seal of the Board of Supervisors of Gila County, Arizona, this 15th day of November 2016.



Clerk, Board of Supervisors
Gila County, Arizona

Board of Supervisors' October 18, 2016 Meeting:

2. PUBLIC HEARINGS:

- A. Information/Discussion/Action to adopt Resolution No. 16-10-01 to grant an electricity services franchise to Arizona Electric Power Cooperative, Inc. for an additional 25 years.

Don McDaniel, County Manager, advised that on June 3, 1991, the Board of Supervisors issued a 25-year electricity services franchise to Arizona Electric Power Cooperative, Inc. (AEPCO) to run transmission lines in areas of unincorporated Gila County. He stated that the franchise recently expired; however, an application was submitted by AEPCO to renew the franchise for an additional 25 years. Mr. McDaniel proceeded to show AEPCO's franchised area on an overhead map. Chairman Pastor asked for comments from the Board at this time and there were none, so he proceeded to open the public hearing. There being no public comment; Chairman Pastor closed the public hearing and asked for a motion from the Board. Upon motion by Vice-Chairman Martin, seconded by Supervisor Marcanti, the Board unanimously adopted Resolution No. 16-10-01. **(A copy of the Resolution is permanently on file in the Board of Supervisors' Office.)**

Board of Supervisors' November 15, 2016 Meeting:

3. CONSENT AGENDA ACTION ITEMS:

- A. Adoption of revised Resolution No. 16-10-01, a 25-year franchise granted to Arizona Electric Power Cooperative, Inc., to add language to the resolution (section numbers 15-17) that is required in all contracts. **(Approved)**