

Ordinance 120

An Ordinance granting Aquila, Inc., d/b/a Aquila Networks,
a Delaware corporation, its successors and assigns,
an electric franchise and the authority
to construct, operate, maintain, and extend
an electric distribution plant system,
and granting the right to use the streets, alleys, and other public places
within the present or future corporate limits
of the City of Liebenthal, Kansas

Be it ordained by the Governing Body of the City of Liebenthal, Kansas, as follows:

FRANCHISE GRANTED

The City of Liebenthal, Kansas, (hereinafter referred to as "Grantor") hereby grants a non-exclusive franchise to Aquila, Inc., d/b/a Aquila Networks, a Delaware corporation, (hereinafter called "Grantee"), its lessees, successors and assigns. Grantee is hereby granted the right, privilege, franchise, permission and authority to construct, maintain, operate and extend in the present and future streets, alleys, avenues, bridges, public rights-of-way and public places as are now within the present or future limits of said Grantor, an electric distribution system and all facilities necessary for the production, transmission and distribution of electrical power and energy for the purpose of carrying on a general power and light business and other operations connected therewith or incident thereto for all purposes to the inhabitants of said Grantor and consumers in the vicinity thereof, and for the distribution of electric power and energy from or through said Grantor to points beyond the limits thereof. Such facilities shall include, but not be limited to, poles, transmission lines, distribution lines, anchors, guy wires, cables conduits, street lighting poles, transformers and all other apparatus and appliances incident thereto for all purposes for which it may be used, and to do all other things necessary and proper in providing electric service to the inhabitants of Grantor and in carrying on such business. Grantor further grants Grantee the right, permission and authority to trim and remove trees upon, over, across and along all of the streets, alleys, avenues, bridges, public rights-of-way and public places of Grantor.

TERM

The rights and privileges granted by this Ordinance shall remain in effect for a period of 20 years from the effective date of this Ordinance.

FRANCHISE FEES

In exchange for the franchise granted herein, Grantee shall collect from its customers located within the corporate limits of the City of Liebenthal and pay to the Grantor an amount equal to three (3%) percent of gross receipts derived from the sale, distribution or transportation of electricity delivered within the present future limits of the Grantor.

Gross receipts as used herein are revenues received from the sale, distribution or transportation of electricity, after adjustment for the net write-off of uncollectible accounts and corrections of bill theretofore rendered.

The amount paid by Grantee shall be in lieu of, and Grantee shall be exempt from, all other occupation, license, excise or right-of-way permit fees or taxes which the Grantor may impose for the rights and privileges herein granted or for the privilege of doing business within the City of Liebenthal, and in the event any such fee, charge, license, tax or assessment shall be imposed by the Grantor, the payment to be made in accordance with the provisions of this section shall be reduced in an amount equal to the annual burden of such fee, charge, license, tax or assessment imposed upon the Grantee. Ad valorem property taxes imposed generally upon all real and personal property within the City of Liebenthal shall not be deemed to affect the obligation of the Grantee under this section.

Any consideration hereunder shall be reported and paid to the Grantor by Grantee on a semi-annual basis. Such payment shall be made not more than thirty (30) days following the close of the period for which payment is due. Initial and final payments shall be prorated for the portion of the period at the beginning and end of the term of this Ordinance.

Grantee shall list the local franchise fee collected from customers as a separate item on bills for utility service issued to customers. If at any time Kansas Corporation Commission, or other

Expires in 2025

authority having proper jurisdiction, prohibits such recovery, then Grantee will no longer be obligated to collect and pay the franchise fee herein contemplated.

The Grantor shall provide copies of annexation ordinances to Grantee on a timely basis to ensure appropriate franchise fee collection from customers within the corporate limits of the City.

Grantor shall have access to and the right to examine during normal business hours, those of Grantee's books, receipts, files, records and documents that are necessary to verify the correctness of payments due hereunder. If it is determined that a mistake was made in the payment of any franchise fee required hereunder, such mistake shall be corrected promptly upon discovery, such that any under-payment by Grantee shall be paid within 30 days of the recalculation and any over-payment by Grantee shall be discounted from the next payment(s) due.

GOVERNING RULES AND REGULATIONS

This Ordinance is granted subject to all conditions, limitations and immunities now provided for, or as hereafter amended, and applicable to the operations of a public utility, by State or Federal law. The rates to be charged by Grantee for service within the present or future corporate limits of Grantor and the rules and regulations regarding the character, quality and standards of service to be furnished by Grantee shall be under the jurisdiction and control of such regulatory body or bodies as may, from time to time, be vested by law with authority and jurisdiction over the rates, regulations and quality standards of service to be supplied by Grantee. Provided however, should any judicial, regulatory or legislative body, having proper jurisdiction, take any action that precludes Grantee from recovering from its customers any cost associated with services provided hereunder, then Grantee and Grantor shall renegotiate the terms of this Ordinance in accordance with the action taken, so as to allow Grantee to be made whole economically. In determining the rights and duties of the Grantee, the terms of this franchise Ordinance shall take precedence over any conflicting terms or requirements contained in any other Ordinance enacted by the Grantor.

If an energy supplier is unable to furnish an adequate supply of energy due to an emergency, an order or decision of a public regulatory body, or other acts beyond the control of the Grantee, then the Grantee shall have the right and authority to adopt reasonable rules and regulations limiting, curtailing or allocating extensions of service or supply of energy to any customers or prospective customers, and withholding the supply of energy to new customers, provided that such rules and regulations shall be uniform as applied to each class or customers or prospective customers, and shall be non-discriminatory as between communities receiving service from the Grantee.

CONSTRUCTION AND MAINTENANCE OF COMPANY FACILITIES

Any pavements, sidewalks or curbing taken up and any and all excavations made shall be done in such a manner as to cause only such inconvenience to the inhabitants or Grantor and to the general public as is reasonably necessary; and repairs and replacements shall be made promptly by Grantee, leaving such properties in as good as condition as existed immediately prior to excavation.

Grantee agrees that for the term of this grant, it will use its best efforts to maintain facilities and equipment sufficient to meet the current and future energy requirements of Grantor, its inhabitants and industries. While maintaining its facilities and equipment, Grantee shall obtain permits as required by ordinance, except that in emergency situations, Grantee shall take immediate unilateral actions as it determines are necessary to protect the public health, safety, and welfare; in which case, Grantee shall notify Grantor as soon as reasonably possible.

Grantor will give Grantee reasonable notice of plans for street improvements where paving or resurfacing of a permanent nature is involved that affect Grantee's facilities. The notice shall contain the nature and character of the improvements, the rights-of-way upon which the improvements are to be made, the extent of the improvements and the time when the Grantor will start the work, and, if more than one right-of-way is involved, the order in which this work is to proceed. The notice shall be given to the grantee a sufficient length of time, considering reasonable working conditions, in advance of the actual commencement of the work to permit the Grantee to make any additions, alterations, or repairs to its facilities.

STREET LIGHTING

Grantee will furnish, erect, maintain, clean, repair and operate, in accordance with the street lighting tariffs as approved from time to time by the Kansas Corporation Commission, electric street lights within the corporate limits of Grantor. Grantor will receive and pay for the street light service at the rates stipulated in the tariff.

Grantor may, from time to time, cause the number of streetlights to be increased by making written request to Grantee, stating the number, capacity, and location desired. Such request is to be made at least ninety (90) days prior to the time such additional streetlights are to be required by Grantor.

EXTENSION OF COMPANY FACILITIES

Upon receipt and acceptance of a valid application for service, Grantee shall, subject to its own economic feasibility criteria, make reasonable extensions of its distribution facilities to serve customers located within the current or future corporate limits of Grantor; provided however, nothing in this franchise shall require Grantee to install new facilities underground. In the event that Grantor shall order or request Grantee to install facilities underground along any street, alley, avenue, bridge, public right-of-way or public place, Grantee shall have the right to recover from Grantor the difference in cost between placing facilities overhead and placing new facilities underground. No obligation shall extend to, or be binding upon, Grantee to install new facilities underground unless Grantee is able to obtain an easement for such facilities on adjoining private property that is adjacent to the public right-of-way.

RELOCATION OF COMPANY FACILITIES

If Grantor elects to change the grade of or otherwise alter any street, alley, avenue, bridge, public right-of-way or public place for a public purpose, Grantee, upon reasonable notice from Grantor, shall remove and relocate its facilities or equipment situated in the public rights-of-way, if such removal is necessary to prevent interference and not merely for the convenience of the Grantor, at the cost and expense of Grantee; provided however, that nothing in this franchise shall require Grantee to relocate facilities underground. In the event that Grantor shall order or request Grantee to install facilities underground along any street, alley, avenue, bridge, public right-of-way or public place; Grantee shall have the right to recover from Grantor the difference in cost between placing facilities overhead and placing new facilities underground. No obligation shall extend to, or be binding upon, Grantee to install new facilities underground unless Grantee is able to obtain an easement for such facilities on adjoining private property adjacent to the public right-of-way. If Grantor orders or requests Grantee to relocate its facilities or equipment for the primary benefit of a commercial or private project, or as a result of the initial request of a commercial or private developer or other non-public entity, and such removal is necessary to prevent interference and not merely for the convenience of the Grantor or other right-of-way user Grantee shall receive payment for the cost of such relocation as a precondition to relocating its facilities or equipment. Grantor shall consider reasonable alternatives in designing its public works projects so as not arbitrarily to cause Grantee unreasonable additional expense in exercising its authority under this section. Grantor shall also provide a reasonable alternative location for Grantee's facilities. Grantor shall give Grantee written notice of vacating of a public right-of-way. Vacating of a public right-of-way shall not deprive the Grantee of its right to operate and maintain existing facilities, until the reasonable cost of relocating the same are first paid to the Grantee.

Any person or corporation desiring to move a building or other structure along, or to make any unusual use of any street, alley, avenue, bridge, public right-of-way or public place which shall interfere with the facilities or equipment of the Grantee, shall first give notice to the Grantor and the Grantee and pay a sum sufficient to cover the expense and damage incident to the moving of Grantee's facilities and equipment.

CONFIDENTIAL INFORMATION

Grantor acknowledges that certain information it might request pursuant to this franchise may be of a proprietary and confidential nature. If Grantee requests that any information provided by Grantee to Grantor be kept confidential due to such proprietary or commercial value, Grantor and its employees, agents, and representatives shall maintain the confidentiality of that information, to the extent allowed by law. If Grantor is requested or required by legal or administrative process to disclose any such confidential information, Grantor shall promptly notify Grantee of such request or requirement so that Grantee may seek an appropriate protective order or other relief. Grantor shall use all reasonable efforts to ensure that the confidentiality of Grantee's confidential information is maintained.

FORCE MAJEURE

It shall not be a breach or default under this franchise if either party fails to perform its obligations hereunder due to Force Majeure. Force Majeure shall include, but not be limited to, the following: 1) physical events such as acts of God, landslides, lightning, earthquakes, fires, freezing, storms, floods, washouts, explosions, breakage or accident or necessity or repairs to machinery, equipment or distribution or transmission lines; 2) acts of others such as strikes, work-force stoppages, riots, sabotage, insurrections or wars; 3) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, executive order, or regulation promulgated by a governmental

authority having jurisdiction; and any other causes, whether of the kind herein enumerated or otherwise not reasonably within the control of the affected party to prevent or overcome. Each party shall make reasonable efforts to avoid Force Majeure and to resolve such event as promptly as reasonably possible once it occurs in order to resume performance; provided, however, that this provision shall not obligate a party to settle any labor strike.

HOLD HARMLESS

Grantee, during the term of this Ordinance, agrees to save harmless Grantor from and against all claims, demands, losses, and expenses arising directly out of the negligence of Grantee, its employees or agents, in the constructing, operating, and maintaining of distribution and transmission facilities or appliances of Grantee; provided, however, that Grantee need not cave harmless Grantor from claims, demands, losses and expenses arising out of the negligence of Grantor, its employees or agents.

SEVERABILITY

If any clause, sentence or section of this Ordinance is deemed invalid by any judicial, regulatory or legislative body having proper jurisdiction, the remaining provisions shall not be affected.

NON-WAIVER

Any waiver of any obligation or default under this franchise shall not be construed as a waiver of any future defaults, whether of like or different character.

REPEAL CONFLICTING ORDINANCES

This ordinance, when accepted by Grantee as provided below, shall constitute the entire agreement between the Grantor and the Grantee relating to this franchise and the same shall supersede all prior ordinances pertaining to this franchise agreement, and any terms and conditions of such prior ordinances or parts of ordinances in conflict herewith are hereby repealed. Ordinance No. 111 of the City of Liebenenthal, Kansas, is hereby repealed as of the effective date hereof.


EFFECT AND INTERPRETATION OR ORDINANCE

The captions that precede each section of this ordinance are for convenience in reference only and shall not be taken into consideration in the interpretation of any of the provisions of this ordinance.

EFFECTIVE DATE AND ACCEPTANCE


This Ordinance shall become effective and be a binding contract between the Grantor and Grantee, upon its final passage and publication by Grantor, in accordance with applicable laws and regulations, any upon acceptance by Grantee delivering its acceptance, by written instrument to Grantor within sixty (60) days of passage of the Ordinance by the Governing Body of Grantor. Upon final passage and approval of the Ordinance by Grantor, the Grantee shall file its written acceptance with the City Clerk of the City of Liebenenthal, Kansas. The City Clerk shall sign and affix the community seal to acknowledge receipt of such acceptance, and return one copy to Grantee. When written acceptance has been received by Grantor from Grantee, the effective date of the Ordinance shall be the date on which the Ordinance was first published in accordance with applicable laws and regulations. If Grantee does not, within sixty (60) days following passage of this Ordinance express in writing its objections to terms or provisions contained therein, or reject this ordinance in its entirety, Grantee shall be deemed to have accepted this ordinance and all of its terms and conditions.

Passed and approved by the Governing Body of the City of Liebenenthal, Kansas, on this March 7th day of 2005.



Mayor





City Clerk