

Ordinance No. 1087

AN ORDINANCE to grant to the Virginia Electric and Power Company, its successors and assigns the franchise, right and privilege upon certain conditions to use the streets, alleys and other public places of the City of Alexandria, Virginia, within its corporate limits, as the same now exist or may be hereafter extended or altered, for the purpose of distributing and transmitting electric current for light, heat and power and of supplying and selling electric current for light, heat, and power within said corporate limits, and to acquire, erect, maintain, and use, and if now constructed, to maintain and use poles, towers, wires, conduits, subways, lines, manholes, cables, equipment and appliances in, under, over and along such streets, alleys and other public places for the aforesaid purposes.

WHEREAS, pursuant to the provisions of Ordinance numbered 1078 which was adopted Tuesday, May 24th, 1960, and approved by the Mayor, and duly advertised once a week for four successive weeks, the presiding officer of the Council of the City of Alexandria invited bids as required by law, for the privilege, right and franchise, upon certain conditions, to distribute, transmit, supply and sell electric current within the City of Alexandria as set forth in said ordinance, and

WHEREAS, the Virginia Electric and Power Company submitted a bid in writing for the franchise, rights and privileges contained in said ordinance, which bid was delivered on June 28th, 1960, in accordance with the advertisement, to the presiding officer of the Council in open session and was read aloud, and

WHEREAS, the presiding officer then and there inquired for any further bids, and there being no further bids, said presiding officer declared the bidding closed, and

WHEREAS, the Council, after consideration, was of the opinion that it would be expedient and to the best interests of the City to grant said franchise, right and privilege to the Virginia Electric and Power Company and hereby accepts the bid of said company upon the condition that said company shall first reimburse the City of Alexandria for the cost of all advertisement in connection therewith and upon the further condition that said company first accepts the franchise in writing and executes the surety bond in accordance with Section 20 of said ordinance, and

WHEREAS, the Council was of the further opinion that the name of said Virginia Electric and Power Company should be inserted in the draft of the proposed ordinance contained in said Ordinance numbered 1078 so that the ordinance ordained is substantially the same as that proposed except as to the insertion of the name of the accepted bidder; therefore

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. The right is hereby granted unto the Virginia Electric and Power Company, hereinafter referred to as "Grantee," its successors and assigns, for the term and subject to the terms, provisions, conditions and limitations hereinafter stated, to use the streets, alleys and

other public places of the City of Alexandria, hereinafter referred to as "City," and to acquire, erect, maintain and use, and if now erected or installed, to maintain and use poles, towers, wires, equipment and appliances in, under, over and along, and to acquire, install, maintain and use, and if now installed, to maintain and use conduits, lines, or subways, including necessary manholes, and to run cables and wires in, under, over and along the streets, alleys and public places of the City for the purpose of distributing and transmitting electric current for light, heat and power, and to supply and sell electric current for light, heat and power at any point within the corporate limits of the City as the same now exist or may be hereafter extended or altered.

Section 2. The Grantee shall have the right to use, maintain and operate, subject to the provisions, terms, conditions and limitations prescribed in this franchise and subject to the lawful exercise of the police power of the City, the poles, towers, wires, appliances, conduits, subways, lines, manholes, cables and equipment erected, maintained and used in, under, over and along the streets, alleys and other public places of the City on the day this franchise becomes in force and effect for the purpose of so distributing and transmitting electric current for light, heat and power and for so supplying and selling electric current therefor.

Section 3. The Grantee shall have the right to erect, maintain and use such poles, towers, wires, appliances, conduits, subways, lines, manholes, cables and equipment in, under, over and along the streets, alleys and other public places of the City at such locations as are reasonably suitable and convenient for the purposes of the Grantee and the City subject to the terms, provisions, conditions and limitations hereinafter stated and, the lawful exercise of the police power of the City.

Section 4. The Grantee shall not erect or install, move, alter, or change the location of any pole, tower, wire, conduit, subway, line manhole, cable or equipment in any street, alley or other public place of the City or dig, cut or disturb any street, alley or other public place of the City unless prior written notice of its intention so to do is given to such department or agency of the City as shall have been or may be designated by the City Manager or the Council of the City and permission in writing so to do is granted by such department or agency or such requirement is waived by such department or agency. Such permission shall be conditioned upon compliance with the terms, conditions, provisions and limitations of this franchise and with such other terms, provisions, conditions and limitations as will preserve, protect and promote the safety of the public using the streets, alleys, and other public places of the City and as will prevent interference with or obstruction of the use of streets, alleys and other public places by the City or by any other public utility or public service corporation for their respective purposes and functions. Such permission shall also be conditioned upon such other terms, provisions, conditions and limitations as will preserve, protect and promote the health, safety and general welfare of the City and its citizens subject to the lawful exercise of the police power.

Section 5. In the event the relocation, construction, reconstruction, maintenance or repair by the City of any of its facilities or services now or hereafter acquired, and including but not limited to

any street, alley or other public place, sewer, electric, water, fire alarm, police communication or traffic control facilities or any part thereof, or in the event access to any street, alley or other public place to or from any property of the City is required, and it is necessary to move, alter or relocate, either permanently or temporarily, any of the Grantee's poles, towers, wires, appliances, conduits, subways, lines, manholes, cables or equipment or any part thereof, in order for the City to relocate, construct, reconstruct, maintain or repair any such facility, service, street, alley or other public place or any such sewer or electric, water, fire alarm, police communication or traffic control facility, or any part thereof, or to obtain access to or from such property, upon notice from the City, the Grantee will move, alter or relocate such pole, tower, appliance, conduit, subway, line, manhole, cable or equipment or part thereof, at its own cost and expense; and should the Grantee fail, refuse or neglect to comply with such notice, such pole, tower, wire, appliance, conduit, subway, line, manhole, cable or equipment or part thereof may be removed, altered or relocated by the City at the cost of the Grantee and the City shall not be liable to the Grantee for damages resulting from such removal, alteration or relocation.

Section 6. The Grantee shall at no cost to the City erect, install and maintain on any of its poles, towers, wires, appliances, conduits, subways, lines, manholes, cables or equipment in or near the streets, alleys and other public places of the City such reasonable devices to appraise or warn persons using the streets, alleys and other public places of the existence of such poles, towers, wires, appliances, conduits, subways, manholes, lines, cables or equipment as shall be from time to time reasonably prescribed or approved for purposes of public safety by such department or agency of the City as shall have been or may be designated for the purpose by the City Manager or Council of the City.

Section 7. The Grantee shall have the right to remove, trim, cut and keep clear of its poles, towers, wires and other overhead appliances and equipment the trees in and along the streets, alleys and other public places of the City, provided it first obtain a written permit from the City so to do, except in cases of emergency. and further provided that in the exercise of such right, the Grantee shall not cut, remove, trim or otherwise injure such trees to any greater extent than is reasonably necessary for the installation, maintenance and use of such poles, towers, wires and other overhead appliances.

Section 8. The Grantee in the exercise of any right granted to it by this franchise, shall at no cost to the City promptly reconstruct, replace, restore or repair any facility or service of the City, now or hereafter acquired, including but not limited to any street, alley or other public place, sewer, electric, water, fire alarm, police communication or traffic control facility or any part thereof which may be damaged, disturbed, or destroyed by the exercise of any such right, in a manner, with such materials and to the satisfaction of such department or agency as shall have been or may be designated by the City Manager or Council of the City.

Section 9. The City reserves and shall have the right to require the Grantee to obtain the specific permission of the City to locate, construct or erect poles, towers, wires, lines, cables, conduits, sub-

ways, manholes, equipment and appliances for the purpose of high voltage transmission on, above, along, or over the streets, alleys and other public places of the City and the City further reserves and shall have to right to attach reasonable conditions to the granting of any such specific permission. The Grantee agrees at its own cost and expense to construct and maintain underground facilities, in lieu of poles and overhead facilities, throughout the commercial and governmental sections of the urban renewal or redevelopment area in the northeast quadrant of downtown Alexandria, as shown on a plat entitled "Renewal Area Plan" dated February 24, 1959, on file with the City of Alexandria, Virginia, called the "Gadsby Urban Renewal Area," provided that the scope and character of this plan, or one similar in nature, is followed substantially. The Grantee also agrees at its own cost and expense to construct and maintain underground facilities in lieu of poles and overhead facilities in any other portions of the "Gadsby Urban Renewal Area" and in other Renewal and Redevelopment areas in the City having such density of demand and other characteristics as to make underground service desirable and reasonable. The Grantor further reserves the full scope of its police power to require by ordinance substitution of underground service for overhead service, or the transfer of overhead service from the front to the rear of property whenever reasonable in all areas in the City at such contributions or rates and charges as may be approved by the rate-making authority. The Grantor further reserves the full scope of its police power to require by ordinance the location, construction, and maintenance of overhead service at the rear of property or underground service, whenever reasonable in all new service installations in the City at such contributions or rates and charges as may be approved by the rate-making authority.

Section 10. The City reserves and shall have the right to continue to use, maintain, replace, repair and operate its existing traffic control, fire alarm, and police communication facilities, equipment and appurtenances on the existing poles and towers and in the existing conduits, subways, manholes or other structures of the Grantee for the exclusive use of the City and the performance of its functions and exercise of its powers without the payment of compensation therefore; provided that the Grantee shall have the right to remove or replace its equipment so long as it furnishes an equivalent facility for the City; and further provided that, the City shall indemnify, keep and hold the Grantee harmless from any and all loss, damage, cost or expense to, or which may be incurred by the Grantee, or to which it may be subjected by reason or as a result of such use of the Grantee's poles, towers, conduits, subways, manholes and structures.

Section 11. The City reserves, and shall have the right to use, the poles, towers, conduits, subways, lines, manholes or other structures of the Grantee, along, under or overground without the payment of compensation, for the erection and installation thereon and use and operation of traffic control, fire alarm and police communication facilities, equipment and appurtenances which are necessary for the exclusive use of the City and the performance of its functions and exercise of its powers; provided such use by the City of such poles, towers, conduits, lines, subways, manholes and structures shall not interfere with the proper use thereof by the Grantee for its purposes or in the exercise of its rights granted to it by this franchise; and

provided, further that the location on such poles and towers and in such conduits, subways, lines, manholes and structures and the character of such traffic control, fire alarm and police communication facilities, equipment and appurtenances shall be subject to the prior approval of the Grantee, which right of approval shall not be arbitrarily exercised; and provided, further, that the City shall indemnify, keep and hold the Grantee harmless from any and all loss, damage, cost or expense to, or which may be incurred by the Grantee, or to which it may be subjected by reason or as a result of such use of the Grantee's poles, towers, conduits, subways, lines, manholes and structures.

Section 12. Nothing contained in this franchise shall be construed to exempt the Grantee from any tax, levy or assessment which is now or which may be hereafter authorized by law.

Section 13. The Grantee shall render to the public in the City at all times during the term of this franchise efficient light, heat and power service at reasonable rates, which rates shall be prescribed by the State Corporation Commission so long as jurisdiction so to do is vested in the Commission, otherwise such rates shall be prescribed by the Council of the City. The Grantee shall render to the City at all times during the term of this franchise efficient light, heat and power service at reasonable rates, which rates shall be such as may from time to time be agreed upon by the Grantee and the City subject to the jurisdiction of the State Corporation Commission. The Grantee will maintain its poles, towers, wires, appliances, conduits, subways, lines, manholes, cables, fixtures, facilities and equipment within the City in good order and operating condition throughout the term of this franchise, and the Grantee by accepting this franchise, agrees that the State Corporation Commission has jurisdiction, to the full extent and in the manner now or hereafter provided by law, during the term of this franchise, to require the Grantee to render efficient light, heat and power service at reasonable rates, and that the Corporation Court of the City has jurisdiction to enforce compliance with all the terms, provisions, conditions and limitations of this franchise to the full extent and in the manner now or hereafter provided by law, during the term of this franchise.

Section 14. The Grantee agrees and binds itself to indemnify, keep and hold the City free and harmless from liability on account of injury or damage to persons, firms or corporations or property growing out of or directly or indirectly resulting from such use of the streets, alleys and other public places of the City, the acquisition, erection, installation, maintenance, repair, operation and use of such poles, towers, wires, appliances, conduits, subways, lines, manholes, cables, fixtures, facilities and equipment, or the exercise of any right granted by or under this franchise or the failure, refusal or neglect of the Grantee to perform any duty imposed upon or assumed by the Grantee by or under this franchise; and in the event that any suit or proceeding shall be brought against the City, at law or in equity, either independently or jointly with the Grantee on account thereof, the Grantee will defend the City in any such suit or proceeding at the cost of the Grantee; and in the event of a final judgment or decree being obtained against the City, either independently or jointly with the Grantee, then the Grantee will pay such judgment or comply with such decree with all costs and expenses of whatsoever nature and hold

the City harmless therefrom; but nothing herein contained shall be construed to render the Grantee liable for the negligence of the City or of its agents or employees, or for that of any other person, firm or corporation.

Section 15. The Grantor agrees that the provisions, terms, conditions and limitations prescribed in this franchise shall be applicable in all respects to the use of streets, alleys and other public places situated in any territory annexed to the City or which may otherwise become a part of the City through extension of its corporate boundaries, and to the acquisition, erection, maintenance and use, for the said purposes of the Grantee, of poles, towers, wires, appliances, conduits, subways, lines, manholes, cables, fixtures, facilities and equipment of the Grantee in such streets, alleys and public places, and the Grantee shall have the same rights and privileges with respect thereto as are granted by this franchise for the use of streets, alleys and other public places of the City, regardless of the provisions of any franchise or other authority, public or private, granted by any county or other city or town, or of or by any deed or other instrument, and regardless of any limitation upon the expiration thereof fixed in any such franchise, authority, deed or instrument; and the right and privilege to so use such streets, alleys, and public places and to acquire, erect, maintain and use such property in such streets, alleys and public places shall expire or terminate with the expiration or termination of this franchise.

Section 16. The rights granted to the Grantee by this franchise may be exercised by any successor or successors, assignee or assignees of the Grantee, but such successor or successors, assignee or assignees shall be subject to and bound by all of the provisions, terms, conditions, and limitations prescribed in this franchise.

Section 17. The rights and privileges granted by this franchise shall continue for a term of thirty years from the ninth day of July, 1960 unless sooner voluntarily surrendered by the Grantee, with the consent of the council of the City, or forfeited as provided by law. Upon the expiration of the term of this franchise or surrender or forfeiture of the rights and privileges granted by this franchise, the Grantee shall remove all of its poles, towers, wires, appliances, conduits, subways, manholes, cables and equipment from the streets, alleys and other public places of the City and shall repair, restore or replace any street, alley, or other public place and any sewer or water, electric, fire alarm, police communication or traffic control facility or tree, or any part thereof, which may be damaged, disturbed or destroyed by or as a direct or indirect result of the removal of such property, in a manner, with such materials and to the satisfaction of the City Manager of the City at the cost and expense of the Grantee within a reasonable time thereafter, which reasonable time shall be prescribed by the council of the City. Upon the refusal, failure or neglect of the Grantee to so remove such property from the streets, alleys and other public places, or to repair, restore or replace any such street, alley, public place, sewer, water or electric, fire alarm, police communication or traffic control facility or tree in a manner, with such materials and to the satisfaction of such department or agency of the City as shall be designated by the City Manager or Council of the City the City may remove such property from the streets, alleys and other public places of the City and repair, restore or replace any such

street, alley, public place, sewer, water, electric, fire alarm, police communication or traffic control facility or tree at the cost of the Grantee and the City shall not be liable to the Grantee for damages resulting from such removal.

Section 18. This franchise is granted pursuant to Sec. 124 and Sec. 125 of the Constitution of the Commonwealth of Virginia and article 2 of chapter 22 of Title 15 of the Code of Virginia, and is subject to all franchises and permits heretofore granted by the Council to use the streets, alleys and public places of the City by other public utility or public service corporations. It is not intended by the grant of this franchise to abridge the exercise of the police power heretofore or hereafter granted to the City by the General Assembly. The grant of this franchise is subject to all ordinances and resolutions of the Council of the City as the same now exist or may be hereafter amended, revised or codified, in the lawful exercise of the police power or in the lawful exercise of any other power granted to the City by the General Assembly

Section 19. That this franchise and the right and privileges granted thereby are not exclusive and nothing in this ordinance shall be construed to prevent a grant by the City of a similar franchise and rights and privileges to other persons or corporations.

Section 20. This ordinance shall be published in a newspaper of general circulation published in the City not later than five days following its introduction, together with a notice containing the time and place for a public hearing. The Clerk of the Council shall note the date of introduction and first reading, the date of publication, the date of the public hearing and the date of the second reading and final passage in the minutes. This ordinance shall be in force on the date of its final passage, and shall become effective when the Grantee (a) accepts this franchise and agrees to exercise the rights and privileges granted by this franchise upon and subject to the terms, provisions, conditions and limitations set forth in this franchise, which acceptance and agreement shall be in writing and shall be filed in the office of the City Clerk of the City, and (b) at the same time files in such office a bond in the amount of \$1,000.00, with surety approved by the City Manager of the City, conditioned that the Grantee will exercise the rights and privileges granted by this franchise upon and subject to such terms, provisions, conditions and limitations. Such written acceptance and bond shall be filed as provided in this section before the ninth day of July, 1960.

LEROY S. BENDHEIM
Mayor

Final Passage: July 26, 1960