

ORDINANCE NO. 2011-07

AN ORDINANCE OF THE COUNCIL OF THE CITY OF JURUPA VALLEY, CALIFORNIA, GRANTING TO SOUTHERN CALIFORNIA EDISON, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO USE AND TO CONSTRUCT AND USE, POLES, WIRES, CONDUITS, AND APPURTENANCES, INCLUDING COMMUNICATION CONDUITS NECESSARY OR PROPER THEREFOR, IN, ALONG, ACROSS, UPON, OVER, AND UNDER THE PUBLIC STREETS, WAYS, ALLEYS, AND PLACES, AS THEY MAY NOW OR HEREAFTER EXIST, WITHIN THE CITY OF JURUPA VALLEY, CALIFORNIA, FOR THE PURPOSE OF TRANSMITTING AND DISTRIBUTING ELECTRICITY.

This Franchise Agreement, herein referred to as "Agreement" or "Franchise," is entered into on December 1, 2011, by and between the City of Jurupa Valley, a municipal corporation, herein referred to as "City," and Southern California Edison Company, a California Corporation, authorized to do business in the state of California, herein referred to as Grantee, collectively, the "Parties."

THE CITY COUNCIL OF THE CITY OF JURUPA VALLEY DOES ORDAIN AS FOLLOWS:

SECTION 1. As used in this ordinance, the following words and phrases shall have the following meanings, unless the context in which they are used shall clearly import a different meaning:

- (a) The word "Grantee" shall mean Southern California Edison Company (SCE) and its lawful successors or assigns;
- (b) The word "City" shall mean the City of Jurupa Valley, of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form;
- (c) The phrase "public streets, ways, alleys, and places" shall have the meaning accorded in the Franchise Act of 1937 (California Public Utilities Code Sections 6201, et seq.);
- (d) The phrases "poles, wires, conduits, and appurtenances" and "electrical facilities" shall mean poles, towers, supports, wires, conductors, cables, guys, stubs, platforms, crossarms, braces, transformers, insulators, conduits, ducts, vaults, manholes, meters, cut-outs, switches, communication circuits, appliances, attachments, appurtenances, and any other property located or to be located in, over, under, along, across, and upon public streets, ways, alleys, and places within the City;

- (e) The phrase "construct and use" shall mean to lay, construct, excavate, erect, install, operate, maintain, use, repair, replace, relocate, or remove;
- (f) The word "Franchise" shall mean and include any authorization granted hereunder to use, and to construct and use, electric transmission and distribution facilities, including communication circuits, for transmitting and distributing electricity for all purposes, under, along, across, and upon the public streets, ways, alleys, and places within the City;
- (g) The term "Franchise Act of 1937" shall mean California Public Utilities Code Sections 6201, et seq.

SECTION 2. The City hereby grants a Franchise to Grantee, its successors and assigns pursuant to and in accordance with the Franchise Act of 1937. The franchise provides Grantee with all rights set forth in the Franchise Act of 1937 including, but not limited to Grantee's right to use, and to construct, poles, wires, conduits, and appurtenances, including communication circuits necessary or proper therefor, for transmitting and distributing electricity for all purposes, under, along, across, and upon the public streets, ways, alleys, and places within the City.

SECTION 3. This Franchise shall be for an indeterminate term and shall endure in full force and effect unless, with the consent of the Public Utilities Commission of the State of California, this Franchise shall be voluntarily surrendered or abandoned by the Grantee, or unless the State or some municipal or public corporation shall purchase by voluntary agreement or shall condemn and take under the power of eminent domain, all property actually used and useful in the exercise of this Franchise and situated within the territorial limits of the State, municipal, or public corporation purchasing or condemning such property, or unless this Franchise shall be forfeited for noncompliance with its terms by the Grantee.

SECTION 4. Grantee shall have the following duties and liabilities during the life of this franchise:

- (a) **Payment.** The Grantee shall pay to the City the sum provided by law, which is two percent (2%) of the Grantee's gross annual receipts arising from the use, operation, or possession of this Franchise; except that such payment shall in no event be less than one percent (1%) of the Grantee's gross annual receipts derived from the sale of electricity within the City. The franchise fee required to be paid to the City hereunder shall be in lieu of any other license or entitlement (including but not limited to business license taxes) for the privilege and/or right of transacting and/or carrying on the business of Grantee within the City with respect to the use of the public streets, alleys, ways, and places under this Franchise. The parties agree that in the event the Legislature amends the Franchise Act of 1937 to increase the amount of the payments due to a city or county pursuant to a franchisee, the Grantee shall pay to the City the new franchise payment approved by the Legislature in accordance with the other

terms of this Ordinance. In the event the Legislature amends the Franchise Act of 1937 to decrease the amount of the payments due to a city or county pursuant to a franchisee, the Grantee shall continue to pay to the City the franchise fee described in this paragraph without change unless the subject amendment is intended to apply to pre-existing franchises. To the extent the amendment applies to previously existing franchises, the new franchise rate approved by the legislature shall control.

(b) **Verified Statement and Payment Schedule.** On or before the 15th day of March of each calendar during the term of this franchise and forty-five (45) days after the expiration of the term of this franchise, Grantee shall file with the City Clerk of the City, the original copy of a statement showing the gross receipts during the preceding calendar year or fractional calendar year. Thereafter, Franchise Fees, calculated based on the formula in Section 4.a above, shall be paid for each calendar year in four quarterly installments, due on the last calendar day of each quarter (March 31, June 30, September 30, and December 31). The amount of each of the four quarterly installment payments for the year shall be one-fourth (1/4) of the amount of the total Franchise Fees due for that calendar year, as estimated in good faith by Grantee based on data of actual gross receipts from the preceding calendar year. In addition, as part of the first quarterly payment for the succeeding year, an annual true-up payment shall be paid. This payment shall reconcile any deficiency between what was ultimately owed for the entire preceding calendar year based on actual gross receipts from that preceding calendar year as calculated under the applicable Franchise Fees formula. In the event of an overpayment, Grantee may utilize such past payments as a credit against future quarterly payments. Any neglect, omission, or refusal by the Grantee to file the verified statement, or to pay the percentage at the times or in the manner hereinbefore provided, shall constitute grounds for the declaration of forfeiture of this franchise and all rights hereunder.

(1) At all reasonable times, the Grantee shall permit the City to examine at its own expense, any and all books, accounts, papers, and other records kept or maintained by the Grantee or under its control in order for the City to verify the accuracy of payments made by Grantee or due the City as a result of this Franchise. Upon examination and in the event the City discovers inaccuracies in payments made by Grantee to the City, Grantee shall reimburse City for all reasonable expenses in the examination of Grantee's books, accounts, papers and other records thereof within thirty (30) days after City furnishes Grantee with a written statement of such expenses. Such reimbursement shall be limited to instances where Grantee has underpaid the City in excess of five percent (5%) of what is owed. To the extent such underpayment is below five percent (5%), City shall solely bear the cost of such audit.

- (c) **Publication Expenses.** The Grantee shall pay to the City a sum of money sufficient to reimburse it for all reasonable publication expenses incurred by it in connection with the granting of this Franchise; such payment to be made within thirty (30) days after the City furnishes the Grantee with a written statement of such expenses.
- (d) **Compliance with Ordinances/Rules/Laws.** The Grantee shall construct, install, and maintain all poles, wires, conduits, and appurtenances in accordance and in conformity with all of the ordinances and rules adopted by the City Council of the City in the exercise of its police powers and not in conflict with the paramount authority of the State, including but not limited to, any areas regulated by the California Public Utilities Commission and the Federal Energy Regulatory Commission (such as design, access, location of Grantee's facilities) and, as to state highways, subject to the laws relating to the location and maintenance of such facilities therein. The grant of this Franchise shall not be construed as a waiver of the City's right (where applicable) to challenge the design, location, voltage or necessity of any of Grantee's facilities in any proceeding before the California Public Utilities Commission or the Federal Energy Regulatory Commission as may be applicable and in accordance with applicable law.
- (e) **Payment of Cost to Repair Public Property.** If any portion of any public street, way, alley or place shall be damaged by any of the operations of Grantee under this Franchise, Grantee shall, at its own cost and expense, commence to repair any such damage within thirty (30) days of its occurrence and complete within a reasonable period of time, and restore such portion of such damaged street, way, alley or place to as good or better condition as existed before such damage occurred. Such repairs, carried out by Grantee or its agents associated with American Public Works Association Standards 133-2 shall be the extent of the Grantee's repair obligation.
- (f) **Permits.** The City may require Grantee to obtain ministerial permits from the City for the purpose of notifying the City as to the approximate date and times that Grantee will be conducting its operations within the public streets, provided that such permits do not conflict with the paramount authority of the state and further provided that the fees charged for such permits reflect the City's actual and reasonable cost for processing such permits. City shall grant to Grantee, for a nominal fee, a blanket permit to carry out routine work affecting the public right-of-way in the City.
- (g) **Removal or Relocation of Facilities.** As required by California Public Utilities Code Section 6297, the Grantee shall remove or relocate any facilities installed, used, and maintained under the franchise if and when made necessary by any

lawful change of grade, alignment or width of any public street, way, alley or place. Such removal or relocation shall be performed by Grantee without expense to the City. In no event shall Grantee be obligated to incur the cost of removal or relocation of any Facilities which were previously removed or relocated at the request of the City, if the City request for the removal or relocation is delivered on a date that is less than five (5) years from the date of the completion of a prior removal or relocation requested by the City with respect to such Facilities.

- (h) **Indemnification.** The Grantee shall defend, indemnify and hold harmless the City and its officers from all liability for damages proximately resulting from any of Grantee's operations under this Franchise.
- (i) **General Regulations.** Grantee shall perform its work in compliance with applicable requirements of the California Public Utilities Commission (CPUC) and Federal Energy Regulatory Commission (FERC). All lines placed and constructed during the term of this Agreement shall be documented on recorded drawings as to the location, type, configuration and dimension. To the extent they are available, said record drawings shall be available within sixty (60) calendar days upon receiving a written request by the City. City acknowledges such drawings provided by the Grantee may not accurately depict the location of Grantee's lines or other facilities.

To the extent that Grantee provides City with any writings or other information pursuant to this Franchise that identify the native placement or capabilities of any of Grantee's electrical facilities located within the City, said writings or other information shall be exempt from public disclosure under the California Public Records Act, Government Code Section 6250 and following, but not limited to, including Section 6254 (e) any such writings or information that Grantee believes is proprietary or financial information or Critical Energy Infrastructure Information ("CEII") Title 6 Section 131(3) of the United States Code, as defined in this agreement, shall be clearly marked or identified as such when it is provided to the City. In the event of a request for presentation of such confidential information the City shall forthwith notify Grantee of the request in writing. Thereafter, Grantee may consent to the disclosure in writing. Alternatively, Grantee may object to the disclosure of such Confidential Information. The failure of Grantee to respond to the notification shall constitute Grantee's determination that such information shall be withheld by the City. During the period of time in which the Confidential Information is withheld by City, Grantee agrees to indemnify, defend and hold harmless the City in any action brought to disclose the withheld Confidential Information. City may comply with any find or appealed court order requiring the disclosure of such information.

SECTION 5. The Grantee shall defend, indemnify and hold harmless the City and its officers from all liability for damages proximately resulting from any operations under this Franchise.

SECTION 6. This Franchise does not in any way impair or affect the right of the City to acquire the property of the Grantee by purchase or condemnation, and nothing in this Franchise shall be construed to contract away, modify or abridge either for a term or in perpetuity, the City's right of eminent domain in respect to the Grantee or any other public utility. This Franchise shall never be given any value before any court or other public authority in any proceeding of any character in excess of the cost to the Grantee of the necessary publication and any other sum paid by it to the City herefor at the time of acquisition.

SECTION 7. The City, by its City Council, may declare this Franchise forfeited if the Grantee fails, neglects or refuses to comply with any of the provisions or conditions of this Franchise, and does not within sixty (60) days after written demand for compliance begin the work of compliance, or after such beginning does not prosecute the work with due diligence to completion. Grantee shall be afforded due process, including reasonable notice and reasonable opportunity to cure any non-compliance prior to commencement of an action to formally terminate the Franchise pursuant to Section 6292 of the Franchise Act of 1937.

SECTION 8. This ordinance and the various parts, sections and clauses thereof are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid, the remainder of this ordinance shall not be affected thereby. If any part, sentence, paragraph, section or clause of this ordinance, or its application to any person or entity is adjudged unconstitutional or invalid, such unconstitutionality or invalidity shall affect only such part, sentence, paragraph, section or clause of this ordinance, or person or entity; and shall not affect or impair any of the remaining provisions, parts, sentences, paragraphs, sections or clauses of this ordinance, or its application to other persons or entities. The City Council hereby declares that this ordinance would have been adopted had such unconstitutional or invalid part, sentence, paragraph, section or clause of this ordinance not been included herein; or had such person or entity been expressly exempted from the application of this ordinance.

SECTION 9. This Franchise shall not become effective until the Grantee files written acceptance hereof with the City Clerk within thirty (30) days after the adoption of this ordinance. Such written acceptance shall constitute a continuing agreement by the Grantee that if and when the City later annexes, or consolidates with, additional territory, all franchises, rights and privileges owned by the Grantee therein shall be deemed abandoned within the limits of the additional territory.

SECTION 10. All notices hereunder must be in writing and, unless otherwise provided herein, shall be deemed validly given on the date either personally delivered to the address indicated below; or on the third (3rd) business day following deposit, postage prepaid, using

certified mail, return receipt requested, in any U.S. Postal mailbox or at any U.S. Post office. Should City or Grantee have a change of address, the other party shall immediately be notified in writing of such change, provided, however, that each address for notice must include a street address and not merely a post office box. All notices, demands, or requests between Grantee and the City shall be addressed as follows:

CITY City of Jurupa Valley
Stephen G. Harding, City Manager
8304 Limonite Ave., Suite M
Jurupa Valley, CA 92509

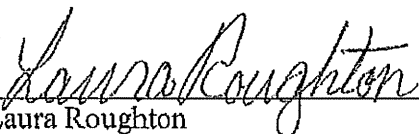
With A Copy to: Peter Thorson, City Attorney
c/o City of Jurupa Valley
8304 Limonite Ave., Suite M
Jurupa Valley, CA 92509

GRANTEE Southern California Edison Company
Local Governmental Affairs
Attn: Franchise Department
2244 Walnut Grove Ave
GO 1, Quad 4C
Rosemead, CA 91770-3714

With A Copy to: Southern California Edison Company
Local Public Affairs, Region Manager
24487 Prielipp
Wildomar, CA 92595

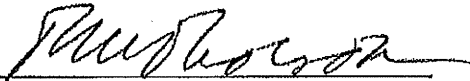
SECTION 11. This ordinance shall take effect thirty (30) days after its passage by the City Council.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Jurupa Valley on this 1st day of December, 2011.




Laura Roughton
Mayor

APPROVED AS TO FORM:


Peter M. Thorson
City Attorney

ATTEST:


Victoria Wasko, CMC
City Clerk

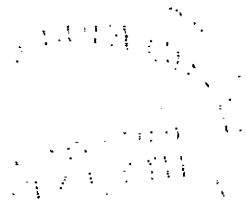
CERTIFICATION


STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF JURUPA VALLEY)

I, Victoria Wasko, City Clerk of the City of Jurupa Valley, do hereby certify that the foregoing Ordinance was regularly introduced at a regular meeting of the City Council on August 4, 2011 and thereafter at a regular meeting held on the 1st day of December, 2011, it was duly passed and adopted by the following vote of the City Council:

- AYES: GOODLAND, HANCOCK, JOHNSTON, LAURITZEN, ROUGHTON**
- NOES: NONE**
- ABSENT: NONE**
- ABSTAIN: NONE**

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Jurupa Valley, California, this 1st day of December, 2011.




Victoria Wasko, City Clerk
City of Jurupa Valley